

HIGH COURT RULING[2009-TIOL-730-HC-DEL-IT](#)**Mawana Sugars Ltd Vs DCIT (Dated: November 19, 2009)**

Income Tax – Section 90 - Dividend received by a company resident in India, from a company resident in UK - tax withheld in UK – assessee claims credit for tax withheld in UK against Indian Income - ITAT ([2009-TIOL-268-ITAT-Del](#)) denies the claim for credit assuming that assessee is claiming a refund in India for UK tax - Assessee files an appeal before High Court – Held that after quoting provisions of Article 24 of Indo-UK DTAA and after observing that assessee's case is covered within Article 24 of DTAA, ITAT has not given any reasons for denying claim made by assessee – For this reason alone matter remitted back to ITAT.

[2009-TIOL-729-HC-ALL-IT](#)**E E Minor Irrigation Banda Vs CIT, Kanpur (Dated: December 17, 2009)**

Income tax - Sec 272A(2)(c), 194C - Assessee is a state government arm - deducts tax at source under Sec 194C and deposits the same in Govt account - fails to file Annual TDS Returns for several AYs - AO imposes penalty - CIT(A) and Tribunal confirm the same as assessee fails to provide valid reasons for non-filing of returns - held, since there is no loss of revenue to the Govt, merely for non-filing of returns will not attract rigour of penalty - Tribunal fails to examine whether there was valid reason for the same as return-filing is a ministerial job and assessee cannot be penalised for the same - Assessee's appeal allowed

[2009-TIOL-728-HC-ALL-IT](#)**CIT Vs M/s Eastern Book Company (Dated: December 9, 2009)**

Income tax - revenue vs capital receipt - Assessee is a publisher - receives certain compensation for infringement of copyrights - treats the same as capital receipt - AO disallows but Tribunal allows the assessee's appeal - held, since the compensation is not towards the loss of copyrights which is intact but only on account of loss of business, it is to be treated as revenue receipt - Tribunal order not sustainable - Revenue's appeal allowed

[2009-TIOL-727-HC-MUM-IT](#)**Sitaldas K Motwani Vs DGIT, New Delhi (Dated: December 15, 2009)**

Income tax - Sec 119(2)(b), 115C - condonation of delay for refund claim - Assessee is a Hong Kong-based NRI - makes investment in shares of Indian companies through NRE Account and makes short-term capital gains - concerned bank deducts tax at source @ 30% - assessee files return claiming short-term capital gains qualify to be investment income u/s 115C and are taxable @ 20% - claims refund - Prior to filing this delayed return, assessee had never filed any return - condonation of delay application u/s 119(2)(b) - Revenue rejects the same, following the Board's Instruction No 13/2006 - Writ filed - held,

++ the phrase 'genuine hardship' used in Section 119(2)(b) should be construed liberally. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit.

++ Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

++ When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

++ There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides . A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund.

[Also see analysis of the Order](#)

[2009-TIOL-726-HC-MAD-IT](#)

CIT, Chennai Vs M/s Spic Limited (Dated: December 7, 2009)

Income tax - Sec 32 - Assessee claims depreciation on standby spare parts - Since spare parts were not used during the year, AO disallows it - Tribunal allows the appeal - held, Tribunal has followed the dictum decided under I-T Act, 1922, and there is no infirmity in the Tribunal's order - Revenue's appeal dismissed

[2009-TIOL-725-HC-MAD-IT](#)

CIT, Chennai Vs Subbu Shashank (Dated: December 7, 2009)

Income tax - Sec 144, 143(2) - Assessee is a flute artist - claims to be non-resident for the relevant AY as he stayed outside India for 181 days - Revenue assesses income by including the foreign income to the declared income as assessee fails to provide evidence to his foreign stay - CIT(A) and Tribunal allow assessee's appeal as Revenue fails to prove that the notice u/s 143(2) was served on the assessee - held, since the Revenue fails to show that Sec 143(2) notice was served within limitation,

Revenue's appeal rejected.

[2009-TIOL-724-HC-MAD-IT](#)

Madras Cricket Club Vs ITO, Chennai (Dated: November 30, 2009)

Income tax - Sec 147 - Assessee is a club, set up to promote social interaction among its members and their families - claims its entire income is not liable to tax as it is mutual in character - AO invokes powers u/s 147 - makes addition for income earned from fixed deposits with banks - Tribunal agrees with the AO - held, since the bank is not a member of the club, the income generated out of FDs with banks does not qualify for exemption - Assessee's appeal dismissed

[2009-TIOL-719-HC-AHM-IT](#)

Ketan Construction Ltd Vs UoI (Dated: December 1, 2009)

Income tax - Sec 80IA(4) - Revenue issues show cause notice to disallow deduction - Assessee challenges the vires of insertion of Explanation to Sec 80IA(4) vide Finance No 2 Act, 2009 retrospectively from the year 2000 - seeks stay - held, Revenue can proceed with assessment or re-assessment but not to enforce any demand till disposal of this appeal - stay not granted - case disposed off

[2009-TIOL-718-HC-P&H-IT](#)

CIT, Faridabad Vs Smt Sita Devi Juneja (Dated: December 2, 2009)

Income tax - Sec 41(1) - AO makes addition on account of outstanding sundry credit balances by holding that liabilities have ceased to exist and have become liable to be treated as deemed income as per Explanation 1 to Sec 41(1) - CIT(A) and Tribunal disagree with the AO - held, the fact that these liabilities have been shown in the balance-sheet, it is an acknowledgment of the debts payable by the assessee. Merely because such liability is outstanding for the last six years, it cannot be presumed that the said liabilities have ceased to exist. It is also conceded position that there is no bilateral act of the assessee and the creditors, which indicates that the said liabilities have ceased to exist. In absence of any bilateral act, the said liabilities could not have been treated to have ceased. Invocation of Explanation 1 to Sec 41(1) is not sustainable in this case - Revenue's appeal dismissed

[2009-TIOL-717-HC-MUM-IT](#)

DCIT Vs Shri Gopal Ramnarayan Kasat (Dated: November 5, 2009)

Income tax - Sec 2(13), 147, 234B - Assesseees are real brothers - assesseees with an advocate friend buy agricultural land - land is acquired by the State Govt immediately after the purchase - compensation, enhanced compensation and interest on compensation paid - whether the profits are to be treated as 'adventure in nature of trade' or capital assets - whether interest on compensation is to be taxed only on reaching its finality as case is pending before the court - whether interest u/s 234B is chargeable

The assesseees received compensation / enhanced compensation towards the acquisition of the said lands during the assessment years 2000-2001, 2001-2002 and 2002-2003. The assesseees had filed their returns for the said assessment years. Noticing that the assesseees, apart from their regular business / professional activities, had jointly purchased agricultural lands, the assessment was re-opened under Section 147 after issuing a notice under Section 148 to the assesseees.

After collecting detailed inputs from the district officers the AO held the said transaction as "adventure in the nature of trade", as defined under the provisions of Section 2(13) of the said Act, and treated the same as business income, taxable as per provisions of Sec 28. Assesseees protest but the CIT(A) held that the compensation received for acquisition of lands, was liable to tax. However, the Commissioner of Income Tax (Appeals), directed deletion of the enhanced compensation and the interest component, in view of pendency of the issue regarding enhanced compensation before the High Court.

The Tribunal held that the enhanced compensation was liable to be taxed. In so far as the finding of the Commissioner of Income Tax (Appeals), regarding interest on enhanced compensation being not liable to be taxed, the Tribunal held that the interest was to be assessed on accrual basis from year to year. The Tribunal upheld the view of the Commissioner of Income Tax (Appeals), to the extent, that the interest was liable to be taxed only on reaching its finality. The Tribunal also upheld that the interest has to be assessed under the head "income from other sources".

The issue goes to the HC which held that,

++ there is no infirmity in the concurrent finding of the authorities, that the transactions, in question, were "adventure in the nature of trade" and as such, chargeable to income tax under the head "profits and gains of business or profession".

++ Since in view of amendment to Section 148 by the Finance Act, 2006, the notices issued to the assesseees under Sub-Section 2 of Section 143 of the Income Tax Act, 1961, after the expiry of 12 months, specified in the proviso to Sub-Section 2 of Section 143, where returns have been furnished during the period commencing from 1st day of October 1991 and ending on 30th September 2005, have been saved, no error could be found in the opening of the re-assessment proceedings under Section 147 of the Income Tax Act.

++ The interest, as provided under Section 234B of the Income Tax Act, is liable to be charged.

++ The interest which forms component of the compensation, as held by the Apex Court, in the case of Commissioner of Income Tax Vs. Ghanshyam (HUF) ([2009-TIOL-84-SC-IT](#)), has to be taxed in the year of receipt.

++ The interest, which has been held to be a component of the compensation, is chargeable to income tax under the head "profit and gains of business or profession" and not under the head 'income from other sources'.

[Also see analysis of the Order](#)

[2009-TIOL-713-HC-DEL-IT](#)

CIT Vs Ms Sushma Kapoor (Dated: October 26, 2009)

Income tax - Sec 14A - AO finds the assessee had taken interest-bearing loan and given interest-free advances to certain parties - disallows proportionate interest - CIT(A) gives the findings that the interest-free advances were paid advances and were made in the previous year, much before taking the bank loan - Tribunal finds that the AO had made disallowance of a sum on ad hoc basis which is not proper and was also without placing any evidence on record - held, no infirmity in the Tribunal's order - Revenue's appeal dismissed

[2009-TIOL-712-HC-KERALA-IT](#)

M/s Infoparks Kerala Vs DCIT (Dated: October 16, 2009)

Income tax - Sec 197(1), 2(15), 11 - Assessee is a govt-owned registered society - sets up IT Park and lets out the buildings constructed on rent - taxability of rental income - Assessee seeks TDS Certificate u/s 197(1) - argues that since it is a registered body under Sec 11, its rental income is not subject to TDS - AO denies the issue of certificate on the ground that there has been an amendment in the Sec 2(15) to tax the income earned from promotion of 'any trade, commerce or business' - assessee goes in writ - held, whether the assessee is eligible for exemption for the activity pursued during the period after the amendment in Sec 2(15) is an issue which can be looked into by the Revenue at the time of assessment. However, the Revenue is within the four walls of law to deny the issue of certificate u/s 197(1) - Assessee's appeal dismissed

[2009-TIOL-711-HC-AHM-IT](#)

M/s M Kantilal Exports Vs ACIT (Dated: December 4, 2009)

Income tax - Sec 69C - Assessee is a diamond trader - makes typo-error in the audit report submitted u/s 44AB - AO makes addition for unexplained expenditure - CIT(A) deletes the additions - Tribunal reverses the CIT(A) order - Held, since the Revenue has already adjusted the refund amount of Rs 3 Crore and the assessee has agreed to pay Rs 10 lakh per month till the disposal of the appeal, waiver from pre-deposit granted with stay - Case disposed off

[2009-TIOL-707-HC-KAR-IT](#)

CIT, Bangalore Vs Synopsys India Pvt Ltd (Dated: December 2, 2009)

Income tax - Sec 195(2) and Sec 9 - Assessee is a registered company - purchases software from non-resident company - makes payment without tax deduction at source - Revenue treats the payment in the hand of recipient as royalty payment for licensing right to use under Sec 9 read with the DTAA - Tribunal holds it is a case of outright sale of software which is not liable to TDS - held, in view of the decision in the case of Samsung Electronics, assessee cannot decide the tax liability of the recipient and the payments made for software is liable to TDS u/s 195 - Revenue's appeal allowed

[2009-TIOL-705-HC-AHM-IT](#)

CIT Vs Shree Bala Finvest Pvt Ltd (Dated: December 3, 2009)

Income tax - Sec 271(1)(c) - Assessee claims deductions under various heads - AO makes disallowances and initiates penalty proceedings, alleging concealment of information - held, penalty proceedings cannot be initiated by making disallowances, particularly when the assessee has maintained detailed account of expenses - Revenue's appeal dismissed

[2009-TIOL-704-HC-MAD-IT](#)

CIT, Coimbatore Vs Coimbatore Lakshmi Inv And Finance Co. Ltd (Dated: November 30, 2009)

Income tax - Assessee is a NBFC - follows mercantile system of accounting - does not account for interest on non-performing assets - AO makes addition for notional interest income on the ground that the assessee has claimed deduction for expenses relating to both performing and non-performing assets - Tribunal disagrees with the AO - held, issue is no longer res integra as no income can be recognised from such asset, and the principle of accrual cannot be applied to notional income - Revenue's appeal dismissed

[2009-TIOL-703-HC-KAR-IT](#)

CIT Vs M/s Sri Ram Chits (Bangalore) Pvt Ltd (Dated: November 17, 2009)

Income tax - Sec 145(2) - Assessee-company is engaged in chit fund business - files loss return - AO notices that assessee receives foreman commission on concluded chits and also credits a sum to 'chit fund suspense account' as commission for the running chits - Assessee argues it follows contract completion method of accounting before the same sum is offered as dividend to all group members - AO disagrees and makes addition - CIT(A) agrees with the AO - Tribunal allows the appeal in part, following its own orders in earlier years - held, since the provisions of Sec 145(2) have not been examined by all the lower authorities, the issue is remanded - Appeal is disposed off.

[2009-TIOL-702-HC-MAD-IT](#)

CIT, Chennai Vs M/s E I D Parry India Ltd (Dated: December 1, 2009)

Income tax - Sec 115JA, 234B, 234C - Assessee is a manufacturer of fertiliser products and industrial alcohol - admits book profits u/s 115JB - computes interest under Ss 234B and 234C after adjusting MAT credit - AO disallows - held, issue is already settled in favour of the assessee as MAT credit is to be adjusted before computation of interest - Revenue's appeal dismissed

[2009-TIOL-701-HC-MAD-IT](#)

CIT, Chennai Vs M/s Ample Properties Ltd (Dated: November 30, 2009)

Income tax - Sec 271(1)(c) - AO is a manufacturer of ether and anesthetic ether - files loss return - AO makes additions and initiates penalty proceedings - CIT(A) and Tribunal delete the same - held, when the assessment is made on estimate basis, penalty cannot be imposed - unless there is clear-cut suppression or furnishing of wrong particulars, penalty cannot be imposed - Revenue's appeal dismissed

[2009-TIOL-698-HC-DEL-IT](#)

CIT, Delhi-II Vs KSA Technopak India Pvt Ltd (Dated: November 4, 2009)

Income tax - Sec 80-O - Assessee earns income from domestic sources and also from consultancy provided to non-resident clients - claims deduction of profits u/s 80-O - AO objects to suppression of expenses attributable to foreign income in order to inflate exempted profits - CIT(A) follows a method to bifurcate common expenses incurred for earning domestic as well as foreign income - Tribunal agrees with the CIT(A) method - held, no infirmity in Tribunal's order - Revenue's appeal dismissed

[2009-TIOL-697-HC-DEL-IT](#)

CIT, Delhi-IV Vs H B Stock Holdings Ltd (Dated: November 16, 2009)

Income tax - Sec 148, 158BC - Assessee files return - shows short term capital gains from sale of shares - reassessment - AO holds that the shares were held as stock-in-trade and not investment - CIT(A) and Tribunal disagree - held, the Tribunal has rightly found that the AO has distorted the findings of the CIT(A) who had earlier given a detailed order in a block assessment order whereby the shares were found to be held as investment and not stock-in-trade - no infirmity in Tribunal's order - Revenue's appeal dismissed

[2009-TIOL-696-HC-DEL-IT](#)

CIT, Delhi-IV Vs Denso Haryana Pvt Ltd (Dated: November 5, 2009)

Income tax - Transfer Pricing - Sec 92, 40A(2) - Assessee is a registered company - imports certain goods from its holding company, a tax resident of Japan - AO invokes provisions of Sec 92 read with Sec 40A(2) and makes adjustments - whether comparable price of similar goods in local market prevailing in subsequent year can be taken for making adjustments

Assessee imports goods from M/s Denso Corporation, Japan - AO holds that the assessee paid higher price than the price prevailing in the local markets for similar goods - makes additions - CIT(A) deletes the addition on the ground that the AO erred by choosing the comparable price of similar goods prevailing in subsequent years - Tribunal agrees with the AO - held, no infirmity in the Tribunal's order as the AO was required to compare the price which prevailed in the local market in the same year

[2009-TIOL-695-HC-DEL-IT-LB](#)

Thirani Chemicals Ltd Vs DCIT (Dated: January 23, 2009)

Income Tax - Sec 80I, 80HH - difference of opinion between two judges of High Court - One judge takes the view that the two-member Bench of the ITAT could have heard the appeal pertaining to the A.Y. 1992-93 independently of the decision rendered by an earlier two-member Bench in respect of the A.Y. 1991-92 in view of the concession made by the assessee before the Tribunal - The view of other Judge on the Bench is that the decision rendered by the Tribunal in respect of the earlier A.Y could not have been overlooked while deciding the appeal for the A.Y 1992-93. The matter ought to have been referred to a larger Bench of the Tribunal in case the two-member Bench of the Tribunal is not in agreement with the earlier view expressed in respect of the A.Y. 1991-92

Whether Tribunal was correct in law in holding that the expansion of the production capacity of the petitioner's unit would not constitute setting up of an industrial undertaking eligible for the benefits of deduction under s. 80HH and 80-I - The question is not answered by the Division Bench in view of the difference of opinion - Held, it would be appropriate to have the matter heard on the question not answered by the Division Bench by a larger Bench of the Tribunal because ex facie there are two conflicting views rendered by two Benches of the Tribunal consisting of two members each. In view of the Judgment of this court in DLF Universal Ltd. vs. CIT and on the basis of Apex court decision in case of Sundarjas Kanyalal Bhatija & Ors. vs. Collector and, Mahadeolal Kanodia vs. Administrator General of West Bengal the matter is no longer res integra.

[2009-TIOL-694-HC-KERALA-IT](#)

Steel And Industrial Forgings Ltd Vs DCIT (Dated: January 5, 2009)

Income Tax - section 143(1A) - Assessee files loss return which includes claim for depreciation on block assets - Assessee claims depreciation in full against the eligibility for only 70 per cent - In proceedings u/s 143(1)(a), claim for depreciation stands reduced - assessee does not dispute intimation issued u/s 143(1)(a). - while issuing intimation u/s 143(1)(a) AO levied additional tax u/s 143(1A) on the reduced amount of loss by virtue of clause (ii) of section 143(1A)(a), - Appeal decided in favour of the assessee - The Tribunal reverses it - Held, if the adjustment made by the AO results in reduction of loss on account of disallowance of part or full depreciation claimed by the assessee, the same will justify levy of additional tax u/s 143(1A). Assessee Appeal dismissed.

[2009-TIOL-693-HC-KOL-IT](#)

M/s Shree Ram Electrocast (P) Ltd & Anr Vs CIT, Kol-I & Ors (Dated: January 6, 2009)

Income Tax - Section 127 - petitioner, a private limited company, challenges CIT order passed u/s 127, transferring the file from Kolkata to Ranchi on the ground that neither the petitioner has been given an opportunity of hearing to present its case as sought for by letter nor the order reveals how written objections filed pursuant to the notices proposing transfer has been considered - Held, it is clear from the order impugned that the written objections were not at all scrutinised and order was passed mechanically - Filing of objection is not an idle and empty formality. The order impugned passed u/s 127, set aside and quashed. The writ petition is allowed.

[2009-TIOL-692-HC-GUW-IT](#)

CIT Vs Peerchand Ratanlal Baid (HUF) (Dated: May 15, 2009)

Income Tax- Section 147/148 and 158BB - In terms of the direction of the Tribunal the undisclosed income for the block period revised by the AO - Subsequently, AO noticed that in the case of another group company, for the same block period the Tribunal observed that some of the documents seized in the said case pertained to the respondent assessee. Accordingly, the AO on the basis of such observation makes addition to the undisclosed income of the assessee for the block period revising the same - Tribunal held that the A.O. has failed to initiate proceeding in terms of the provisions of section 153 read with Explanation 3 and keeping in view that the direction of the Tribunal not in the case of the assessee or in a proceeding in which the assessee is not a party and opportunity of being heard provided to the assessee, therefore, the addition made by the A.O. is not sustainable in law and accordingly the same is to be deleted - Held, the concept of a charge on the 'total income' of the previous year under the Act is retained even under Chapter XIV-B., Section 158BB which deals with computation of undisclosed income of the block period has to be read with computation of total income under Chapter IV - provisions of Section 147/148 will apply to an assessment for a block period made under Chapter XIV-B - Revenue Appeal dismissed.

[2009-TIOL-691-HC-GUW-IT](#)

Pancharatna Cement P Ltd Vs Uoi (Dated: June 30, 2009)

Income Tax - Section 147 - Assessee company is engaged in the business of manufacture and sale of cement - receives transport subsidy and insurance subsidy and claims deductions u/s 80-IC of the said amount - return processed u/s 143(1) and additions made - assessee pays up - AO, subsequent thereto, issues notice u/s 143(2) and, asks the Petitioner to furnish the basis with evidence for claiming the deductions u/s 80-IC - Petitioner furnishes explanations - Thereafter, DCIT serves notice u/s 148 thereby proposing to reassess its income on the ground that its income chargeable to tax had escaped assessment within the meaning of section 147 - Held, the 'reason to believe' to be valid has to have a rational and logical inter relation with the belief that a taxable income has escaped assessment - belief necessarily has to be genuine and bona fide and not a charade - subjective satisfaction ought to be guided by the objective perceptions based on tangible materials. While any bona fide and genuine endeavour to arrest evasion of tax would be a legal obligation, no roving enquiry sans, any factual basis for such belief of escapement of assessment of any taxable income can be approved lest it occasions an abuse of the process of law. The impugned notice initiating the proceeding u/s 148 against the petitioner is not in conformity with the legislative prescriptions mandated in section 147 - Assessee's petition allowed.

[2009-TIOL-690-HC-MUM-IT](#)

CIT, Mumbai Vs ITAT, Mumbai (Dated: January 19, 2009)

Income tax - Sec 36(1)(vii) - Assessee claims deduction for bad debts - bad debts also include lease rental on which assessee had earlier paid tax - since lease rental becomes unrecoverable, assessee writes it off in its books - AO disallows the claim - CIT(A) partly allows writing off of lease rental - Tribunal allows the appeal - held, no merit in Revenue's appeal as the assessee had earlier paid tax on lease rental which has become unrecoverable and the same is written off in books - Revenue's appeal dismissed

[2009-TIOL-689-HC-DEL-IT](#)

MLBD Books International Vs ACIT (Dated: March 31, 2009)

Income Tax - Sec 40A(2)(a) - assessee is in the business of export and publication of books - Based on the difference in rates, paid by the assessee and other persons on the book purchased from the assessee's sister concern, AO disallows 5 per cent of the said payment made by the assessee to sister concern on the ground that they are excessive and unreasonable by taking recourse to the provisions of s. 40A(2)(a) - CIT(A) upholds AO's order - Tribunal dismisses assessee Appeal - Held, the view of the authorities below that in the absence of requisite details it was not possible to accept the contention of the assessee that the rate paid by the assessee, which undoubtedly is a higher rate, was for hardbound editions of the books upheld.

On the issue of commission paid to sister concern - Held, the Tribunal rightly restricted the deduction of commission to the assessee to the extent of 1 per cent of

the turnover.

No perversity in the impugned judgment . Assessee's appeal dismissed.

[2009-TIOL-688-HC-P&H-IT](#)

Karnail Singh Vs State Of Haryana And Others (Dated: August 13, 2009)

Income Tax - Section 194A - Petitioner challenges the notice issued by the SDO, calling upon the petitioner to deposit a sum being TDS - demand for TDS raised on account of interest for enhanced amount of compensation in respect of acquired agricultural land belonging to the predecessor-in-interest of the petitioner - Held, once interest is regarded as revenue receipt then it would fall within the mis-chief of Section 4 which is a charging section. The TDS u/s 194 A is to be paid by the petitioner in respect of the interest income on the delayed payment. Assessee writ Petition dismissed.

[2009-TIOL-687-HC-DEL-IT](#)

CIT Vs Hindustan Tin Works Ltd (Dated: February 13, 2009)

IncomeTax - Sec 94(7) - Assessee engaged in the business of manufacturing of tin/metal containers/components required for packing of different commodities like ghee, coffee, baby food, processed food, etc - AO makes disallowance with respect to loss incurred on account of purchase and subsequent redemption of units of the mutual fund on the ground that transaction is 'collusive' and really in the nature of an 'accommodation entry' provided by the mutual fund to the assessee, and hence the loss is not allowable - CIT(A) allows assessee Appeal and Tribunal upholds it - Held, it cannot be said that the transaction was sham, and that there was no purchase and subsequent redemption of the units in issue. No fault with the findings of fact by CIT(A) as well as of the Tribunal that the arrangement was not collusive or that the mutual fund had not provided accommodation entries to the assessee to purchase a loss. No dispute in respect of SEBI approval. Nothing has been brought on record to show that the transaction was not an arm's length - Revenue Appeal dismissed.

[2009-TIOL-686-HC-DEL-IT](#)

CIT Vs Denso India Ltd (Dated: July 6, 2009)

Income Tax - Sec 37 - Revenue expenditure - Assessee engaged in the business of manufacture of auto electrical parts for which it imported several components - separate cell set up for developing import substitute components - object of this special cell is to identify local manufacturers for the import components substitutes, prepare drawings for the components so required by the assessee, seek manufacture of the components by the local manufacturers under the supervision and direction for quality control of components - Towards this cell, expenditure incurred by the assessee in its books of account, under the head 'Deferred revenue expenditure' - AO

treats this expenditure as of capital nature and disallows deduction - CIT(A) and Tribunal consider it as revenue nature - Held, merely because the benefit of the type of expenditure involved in this case is such that the benefit can also be available later, is not a good enough reason to treat the expenditure, which is otherwise of revenue nature, as a capital expenditure. There are concurrent findings of both the authorities below which are not perverse. Revenue's appeal dismissed.

[2009-TIOL-682-HC-MAD-IT](#)

Express Newspapers Limited Vs DCIT, Chennai (Dated: November 17, 2009)

Income Tax - Section 254(2) - AO makes various additions and disallows many claims - CIT(A) allows the appeal in part - Tribunal allows the appeal in part which includes the loss claimed on the three heads - While reference petition is pending before the Tribunal the first respondent files petition u/s 254(2) for rectification of mistakes in the order of the Tribunal - Tribunal allows the miscellaneous petition in part - Held, what is mistake apparent on the face of the record or where does a mistake cease to be mere mistake, and become mistake apparent on the face of the record is rather difficult to define precisely, scientifically and with certainty. An element of indefiniteness inherent in its very nature and it must be discernible from the facts of each case by judiciously trained mind. Mere existence of a mistake or error would not per se render the order amenable for rectification, but such a mistake must be one which must be manifest on the face of the record. The Tribunal fell in error in invoking the jurisdiction of Section 254(2) to re-write the judgment while reviewing the issue already decided which bears no apparent mistake on the face of the record so as to invoke the jurisdiction. Assessee's writ petition allowed

[2009-TIOL-681-HC-AHM-IT](#)

Engineered Polymers (India) Pvt Ltd Vs CCIT (Dated: November 25, 2009)

Income tax - tax effect - Tribunal dismisses Revenue's appeal solely on the issue of tax effect - Revenue later files an application towards higher tax effect - Tribunal recalls the order and decides on merit - case partly goes against the assessee - held, since the Tribunal decision is based on law decided by the Apex Court, the assessee's appeal has no merit - Assessee's appeal dismissed

[2009-TIOL-680-HC-HP-IT](#)

CIT, Shimla Vs Shri Janak Raj Bansal (Dated: November 25, 2009)

Income tax - Sec 80IA, 80IB - Assessee converts limestone into limestone powder - claims deductions - AO disallows - held, it is settled law that the process of converting limestone into powder does involve manufacture and the assessee is eligible for the benefit - Revenue's appeal dismissed

[2009-TIOL-679-HC-HP-IT](#)

CIT, Shimla Vs M/s Kiran Enterprises (Dated: November 16, 2009)

Income tax - Sec 80IA - assessee is a manufacturer of plywood - sets up unit in backward areas - gets transport subsidy - treatment of subsidy questioned as assessee adds the same to total income derived from the industrial undertaking for claiming deduction u/s 80IA - AO finally disallows - Tribunal allows it - held, it is settled law that the transport subsidy is not a profit derived from industrial undertaking as it is not an operational profit. Since the source of subsidy is not the business of the assessee but a promotional scheme of the central govt, the assessee cannot include the same for claiming benefits - Revenue's appeal allowed

[2009-TIOL-678-HC-KAR-IT](#)

CIT, Bangalore Vs M/s ITC Hotels Ltd (Dated: November 16, 2009)

Income tax - Sec 37 - Assessee claims deduction for convertible and non-convertible debentures - AO disallows - CIT(A) allows expenses relating to non-convertible debentures - Tribunal allows both - held, issue is no longer res integra as Apex Court has dismissed Revenue's SLP in M/s Secure Meters Ltd case ([2008-TIOL-600-HC-RAJ-IT](#)) where Rajasthan HC has held that such expenses are revenue expenditure - Revenue's appeal dismissed

[2009-TIOL-677-HC-AHM-IT](#)

CIT Vs West Inn Limited (Dated: November 25, 2009)

Income tax - depreciation and penalty - Sec 32, 271(1)(c) - Assessee claims depreciation @ 20% on hotel buildings - AO allows only 10% - makes addition and initiates penalty u/s 271(1)(c) - CIT(A) confirms the penalty order - held, the fact that the assessee has been claiming the higher rate of depreciation for 12 years and the same being certified by tax professionals and the rate being reduced only during the relevant AY, it cannot be said that the assessee made a false claim - Tribunal order upheld - Revenue's appeal dismissed

[2009-TIOL-675-HC-KOL-IT](#)

The Peerless General Finance And Investment Co Ltd Vs CIT, West Bengal-III, Calcutta (Dated: October 28, 2009)

Income tax - AY 1989-90 - Sec 143(1), 154, 43B - Assessee claims deductions u/s 43B and Sec 80G - AO makes adjustments by issuing an intimation u/s 143(1)(a) for

lack of evidence - Application for rectification u/s 154 - Some corrections done but disallowance validated - CIT(A) allows the appeal - Tribunal disallows the deduction u/s 43B but allows the same u/s 80G - held, merely because the Tax Auditor did not provide a proper break-up of delayed payments of bonus and PF, disallowance cannot be made - Tribunal order deleting disallowance u/s 80G upheld - Assessee's appeal allowed

[2009-TIOL-671-HC-DEL-IT](#)

CIT, Delhi-XI Vs Standing Conference Of Public Enterprises (SCOPE) (Dated: September 25, 2009)

Income Tax - Sec 148 - Principle of Mutuality - Assessee is a registered society - set up to improve the performance of public enterprises and to improve its total role in conveying such information and advice to community and the Government - owns a building - earns income from interest on deposits with bank, rent from use of convention centre and from letting out of the part of the premises of the aforesaid building as well as subscriptions received from members - Assessee claims the entire income is exempt from tax on the 'principle of mutuality' - AO holds that, the activities of the assessee society are not limited to the members only, but encompasses the community at large - forms opinion that the activities of the society are tainted with commerciality which destroys the principle of mutuality and thus the judgment of the Supreme Court in Bankipur Club is clearly applicable and makes various additions - Tribunal holds that income in the form of rent and licence fee received from non-members is eligible to tax. However, other income, viz., interest income from surplus funds deposited with banks, rental income from the members, rental income from the use of convention centre and other premises is treated as exempted by applying the principle of mutuality - Held, simply because some incidental activity of the assessee is revenue generating, it does not provide any justification to hold that it is tainted with "commerciality" and reaches a point where relationship of mutuality ends and that of trading begins. Revenue Appeal dismissed.

[2009-TIOL-668-HC-HP-IT](#)

CIT Vs M/s H P State Cooperative Bank Ltd (Dated: November 3, 2009)

Income tax - Sec 80P(2)(a)(i) - Assessee is a registered Cooperative Society, carrying on banking business - earns interest income from investment of non-SLR reserves - AO disallows - Tribunal allows the appeal - held, the expression used in the Section is 'attributable to' which has much wider import than the expression 'derived' from. The expression 'attributable to' is used in conjunction with the phrase 'any one or more of such activities'. Any banking business providing credit facilities to its members and investing the sums deposited by the members of the society is part of banking business. The investment of the funds by the banks, including the non reserves were part of the banking activities since no bank would like its reserve funds to remain idle and not earn any interest. This is not only prudent business management but is also a part of the activity of banking. Therefore, the interest earned on such deposits is directly attributable to the business of banking. Revenue's appeal dismissed.

[2009-TIOL-667-HC-HP-IT](#)

CIT Vs M/s Ambuja Darla Kashlog Mangu Transport Co Op Society (Dated: October 20, 2009)

Income tax - Sec 194C(2) - Assessee are registered societies / Association of persons constituted by Truck Operators - enter into contract with Cement manufacturers for transport of goods - companies which enter into contract with the societies deduct TDS u/s 194C(1) - On receiving payment the assessee-societies make payments to its members who carry the goods - out of such payments, societies keep a nominal sum as administrative charges - AO for TDS on payments made to members by the societies - CIT(A) and Tribunal disagree with the AO - held, it is true that the Society has an independent legal status and is also contractor within the meaning of Section 194C. It is also not disputed that the members have a separate status but there is no sub-contract between the society and the members. In fact if the entire working of the society is seen it is apparent that the societies have entered into a contract on behalf of the members. The society is nothing but a collective name for all the members and the contract entered by the society is for the benefit of the constituent members and there is no contract between the society and the members. No TDS u/s 194C(2) is to be deducted. Revenue's appeal dismissed

[2009-TIOL-666-HC-HP-IT](#)

CIT Vs M/s Allied Industries (Dated: October 21, 2009)

Income tax - Sec 80IB - Assessee manufactures tractor and auto parts - claims deduction u/s 80IB - AO raises question about lower profits of the sister concern being run by one of the partners of the assessee-company - reply filed but the assessee also offered additional income for levying tax - also claimed deduction u/s 80IB - AO disallows but Tribunal allows it - held, if the additional sum is the income from business, deduction is eligible from the total sum. But if it is from any other source, deduction may not be allowed but Revenue fails to produce any evidence to prove that it is not business income - Revenue's appeal dismissed