

INCOME TAX APPELLATE TRIBUNAL ORDER
--

[2011-TIOL-533-ITAT-DEL](#)

ITO, Faridabad Vs Shri Yashpal Gera (Dated: May 20, 2011)

Income Tax - Sections 40A(3), 153A, 153C – Whether estimated addition is permissible under the new provisions of search and seizure - Whether, under the new provisions of search and seizure, AO can spread over his estimate to that time period for which no material has been unearthed during search - Whether provisions of section 40A(3) can be invoked in a case where income has been estimated.

[2011-TIOL-532-ITAT-DEL](#)

DCIT, New Delhi Vs M/s Neptune India Ltd (Dated: June 30, 2011)

Income Tax - Section 41(1) - Whether AO, by invoking the provisions of section 41(1) of the Act, can add any outstanding liability without bringing any material on record to establish that the liability in fact becomes ceased.

[2011-TIOL-531-ITAT-MUM](#)

ITO, Naupada Vs The Special Land Acquisition Officer (Dated: April 29, 2011)

Income Tax - Sections 2(14), 194LA, 201(1), 201(1A) of the Act - Whether when the compensation is paid for acquiring the agricultural land, the rigours of Sec 194LA are not attracted - Whether, even if the land is not cultivated for long, it remains agricultural in nature as long as it is not put to any other use.

[Also see analysis of the Order](#)

[2011-TIOL-530-ITAT-KOL](#)

ITO, Kolkata Vs Rajesh Kr Garg (Dated: August 5, 2011)

Income tax – Section 194C – Whether when the assessee has received Form 15I from the payee and no deduction is made on that basis, no disallowance can be made u/s 194C only for the reason that the forms were not submitted in time before the jurisdictional CIT.

[2011-TIOL-529-ITAT-VIZAG](#)

M/s Dredging Corporation Of India Ltd Vs ACIT, Visakhapatnam (Dated: July 25, 2011)

Income tax - Sections 28, 43C, 115VA, 143(3), 147, 148, 234D - Whether the assessee is not entitled to the exemption under the tonnage tax scheme in respect of the income which is not derived from core activities and the incidental activities as "relevant shipping income" such as receipts of interest on housing loan and other advances, recovery towards late attendance, sale of tender documents, training fees,

fee for supply of information under the RTI Act, liquidated damages collected from various contractee parties as compensatory payment for the failure to execute contract works etc – Whether the reassessment proceedings are rightly initiated within four years from the relevant assessment year when the assessee had not duly disclosed full and true facts relating to miscellaneous income – Whether reassessment proceedings u/s 147 after completion of the assessment u/s 143(3) is excluded from the purview of “regular” assessment for the purpose of application of section 234D.

[2011-TIOL-528-ITAT-DEL](#)

ACIT, New Delhi Vs Shri Ranjay Gulati (Dated: June 17, 2011)

Income Tax - Sections 45, 48, 54EC, 54F, 50C - Whether, for computation of capital gains on land sold by NRI, the fair market value of the land is to be reckoned with rather than the full value of the consideration received.

[2011-TIOL-527-ITAT-MAD](#)

M/s Millennium Alcobev Pvt Ltd Vs DCIT, Chennai (Dated: June 1, 2011)

Income tax – Section 254(2) – Whether where an order of High Court or Supreme Court placed before the ITAT is not considered, it would amount to a mistake apparent on record and the Tribunal has an inherent power to correct any mistake, error or omission.

[2011-TIOL-526-ITAT-MUM](#)

DCIT, Mumbai Vs Shri Nusli Neville Wadia (Dated: July 15, 2011)

Income Tax - Section 168 - Whether an administrator of an estate can be treated as residuary legatee of the owner of the Estate merely because he is given right to receive advances against the property of Estate - Whether an administrator of an estate can be equated and taxed in the capacity of owner when estate is continuously assessed as independent assessee under wealth tax.

[2011-TIOL-525-ITAT-MUM](#)

Shri Saif Ali Khan Vs ACIT, Mumbai (Dated: June 29, 2011)

Income tax – Sections 23(1), 24, 37 – Whether the assessee is entitled to deduction for society charges, municipal taxes for the property given on rent – Whether the electricity expenses incurred for house which is also used as business purpose, are rightly disallowed upto 50% though the assessee himself disallowed 25%.

[2011-TIOL-524-ITAT-MUM](#)

Triumph International Finance India Ltd Vs ACIT, Mumbai (Dated: June 30, 2011)

Income Tax - Section 158BFA - Whether when assessee fails to declare the undisclosed income in block return, and the additions made by the AO based on the seized materials are sustained, penalty is warranted in such a case - Whether mere

admission of an appeal before the High Court can save an assessee from the levy of penalty.
Also see analysis of the Order
2011-TIOL-523-ITAT-DEL
Oriental Insurance Co Ltd Vs ACIT, New Delhi (Dated: July 22, 2011)
Income tax – Sections 115JB, 143(3), 147, 148 – Whether when no discussion is recorded in the original assessment on the issue due to which notice u/s 148 was issued, it cannot be construed as change of opinion and the assessment can be reopened – Whether the profit on sale of investments of an insurance company is taxable.
2011-TIOL-522-ITAT-MUM
ITO, Mumbai Vs M/s Mechanalysis (India) Ltd (Dated: May 18, 2011)
Income Tax - Sections, 28(ii), 36(1)(vii), 37(1), 40A(2), 143(3) - Whether when the agency agreement between the assessee and the non-resident continues even after expiry but no royalty is paid during this period, compensation paid to the assessee after many years later for formal termination of the agreement is akin to loss of profit-making apparatus, and thus, is capital receipt.
Also see analysis of the Order
2011-TIOL-521-ITAT-MUM
Mrs Asha Bharat Shah Vs ITO, Mumbai (Dated: February 15, 2011)
Income Tax - Sections 50C, 55A - Whether the word may used in the sub-sec. (2) to sec. 50C gives discretion to the A.O. to refer or not to refer the matter to the DVO.
2011-TIOL-520-ITAT-MUM
M/s Audco India Limited Vs CIT, Mumbai (Dated: December 23, 2010)
Income Tax - Sections 80HHC(3), 143(3) - Whether assessee is entitled for deduction u/s 80HHC in respect of DEPB income even if one of the conditions of the provisions of third proviso to section 80HHC(3) is not satisfied.
2011-TIOL-519-ITAT-MUM
M/s Synthetic Colour Chem Industries Vs DCIT, Mumbai (Dated: May 11, 2011)
Income tax – Section 133A – Undisclosed Income – Whether when the assessee declares the undisclosed income at the time of survey but retracts the same while filing the return alleging that the declaration was taken forcibly, the disallowance can still be made as assessee failed to complain to higher authorities immediately after the survey and it was merely an afterthought.

2011-TIOL-518-ITAT-MUM
The Indian Hume Pipe Co Ltd Vs DCIT, Mumbai (Dated: July 29, 2011)
Income Tax - Section 80(IA) - Whether composite water supply which includes manufacturing, supplying, laying, joining of pipeline and includes construction of pump house, delivery, commissioning of turbine pump sets, installation of booster mains, branch mains and elevator reservoirs can be termed as development of infrastructure facility as defined in explanation (c) to Section 80IA(4) - Whether, for claiming benefit of section 80IA(4), twin conditions that is investment in eligible project and execution of the project by itself, are required to be satisfied
2011-TIOL-517-ITAT-MUM
Ashima Chemicals & Dychem P Ltd Vs ITO, Mumbai (Dated: July 22, 2011)
Income Tax - Sections 40(a)(ia), 143(3), 154, 194A, 197(1), 201(1), 201(1A) - Whether when the AO accepts the existence of certificate issued u/s 197 in the assessment order, even then proceedings under Ss 201(1) and 201(1A) can be initiated against the assessee.
2011-TIOL-516-ITAT-BANG
DCIT, Bangalore Vs M/s Toyoto Boshoku Automotive (I) Pvt Ltd (Dated: June 3, 2011)
Income Tax - Sections 143(1), 234C - Whether interest under section 234C is leviable where the cheques were deposited in time but encashed after due dates.
2011-TIOL-515-ITAT-PUNE
Weikfield Products Co (I) Pvt Ltd Vs DCIT, Pune (Dated: June 30, 2011)
Income Tax - Sections 14A, 36(1)(iii) - Whether any disallowance on the ground that the assessee has diverted interest bearing funds into tax-free income can be made where the assessee owes ample interest free funds on the date of investment.
2011-TIOL-514-ITAT-RANCHI
Pawan Kumar Vs ACIT, Ranchi (Dated: July 14, 2011)
Income Tax - Sections 132, 158BC - Whether when statements recorded are retracted later, even then additions can be made - Whether when the FDR is for only 30 days and credited to the account on 31st day, any addition can be made for the interest earned.
2011-TIOL-513-ITAT-RANCHI
ACIT, Ranchi Vs Shri Bhagwan Prasad (Dated: July 14, 2011)

Income Tax – Section 158BD – Whether assessee has the right to receive a copy of the note of satisfaction - Whether such right is a fundamental right of an assessee and denial of the same vitiate the proceedings - Whether, for assuming jurisdiction u/s 158 BD recording of satisfaction and its communication to the assessee is a condition precedent.

[2011-TIOL-512-ITAT-KOL-SB](#)

DCIT, Kolkata Vs Rajesh Kumar Drolia (Dated: August 12, 2011)

Income tax – Sections 10AA, 80IA, 80IB, 142(1), 143(2), 144 – Whether services like repair and maintenance constitute an integral part of manufacturing of industrial undertaking - Whether any income derived from such jobwork of repair and maintenance is also eligible for Sec 80IB benefits - Whether such income has any direct nexus with the main activity of the industrial activity.

[Also see analysis of the Order](#)

[2011-TIOL-511-ITAT-MUM](#)

M/s Manali Investments Vs ACIT, Mumbai (Dated: April 13, 2011)

Income tax – Sections 2(29A), 2(29B), 2(42A), 2(42B), 48, 49, 50, 74 – Whether assessee is entitled to set off long term capital loss against capital gains arising on sale of long term capital assets though the gain is short term capital gain in view of section 50 which is a deeming provision – Whether the application of section 50 is to be restricted to the computation of the capital gain only and it cannot convert the long term capital asset into a short-term capital asset and once the computation is done as per the deeming provision, the other provisions of the Act will apply.

[2011-TIOL-510-ITAT-MUM](#)

M/s Deepak Fertilisers & Petrochemicals Corpn Ltd Vs DCIT, Mumbai (Dated: May 31, 2011)

Income tax - Section 37, 14A, Rule 8D, 32 - Whether the assessee is entitled to claim expenses for obsolete stores / spares on provisional basis or it will be allowed in the year in which it is sold - Whether disallowance u/s 14A can be made applying Rule 8D even prior to A.Y. 2008-09 - Whether the assessee is entitled to depreciation on property ownership of which is attached with a particular and specific share having specified distinctive nos. as if that share is transferred then the absolute ownership of that flat is automatically transferred to the other party - Whether the assessee is entitled to depreciation on software @ 60% covered under the category of computers or @ 25% as applicable on intangible assets - Whether when the assessee did not claim the additional depreciation in the return of income, it cannot be denied merely on such basis as it is mandatory to be allowed if allowable as per the provisions of law.

[2011-TIOL-509-ITAT-MUM](#)

ITO, Mumbai Vs M/s Basic Chemicals & Allied Industries Pvt Ltd (Dated: April 29, 2011)

Income Tax - Section 69B - Whether the value of TDR and the value of fully constructed industrial building stand on equal footing - Whether any addition is called

for with respect to difference in the value being treated as unexplained investment u/s 69B.

[2011-TIOL-508-ITAT-MUM](#)

ACIT, Mumbai Vs M/s Bajaj Auto Limited (Dated: May 27, 2011)

Income Tax - Sections 154, 199, 203, 205 - Whether the bar u/s 205 comes into force only after it is proved that TDS was deducted at source.

[2011-TIOL-507-ITAT-MAD](#)

DCIT, Chennai Vs M/s Aban Offshore Ltd (Dated: July 15, 2011)

Income tax – Sections 10(34), 14A, 35D, 40(a)(ia), 44BB, 94(7), 195(2), Rule 8 – Whether when the assessee earns dividend income, disallowance of administrative expenditure incurred, directly or indirectly, can be made even without rule 8 provided AO is able to link the same to earning of the income - Whether disallowance u/s 40(a)(ia) is warranted for deduction of tax @ 1% on subcontract where the sub-contract is entered into to fulfill the conditions of the main contract and the same is not independent to the main contract – Whether the assessee is right in deducting tax @ 4% being 10% of 40% of tax rate u/s 44BB on the payments made to the non-residents engaged in providing services and facilities in connection with supplying plant and machinery on hire or to be used in prospecting for or extraction of or production of mineral oils - Whether where there is no record date for relevant schemes for which it had received dividend, no disallowance can be made u/s 94(7) - Whether the assessee is not entitled to claim expenses u/s 35D as amortization of preference shares issued for purchase of rig as it was under refurbishment and was yet to be put to use and was shown under the head 'Capital Work in Progress'.

[Also see analysis of the Order](#)

[2011-TIOL-506-ITAT-MUM](#)

Tivoli Investment And Trading Co Private Limited Vs ACIT, Mumbai (Dated: April 13, 2011)

Income Tax:- Sections 23(1)(a) & (1)(b) - Whether notional interest attributable to interest-free securities is taxable - Whether AO is required to substitute even the fair rent determined u/s 23(1)(a) by municipal value or standard rent - Whether AO can determine ALV on its own and has power to discard the ratable value or standard rent.

[Also see analysis of the Order](#)

[2011-TIOL-505-ITAT-AHM](#)

Shri Prashant H Shah Vs ACIT, Surat (Dated: July 8, 2011)

Income Tax - Sections 40(a)(ia), 194C(1) & (2) - Whether amendment brought in order to cast TDS liability on individuals and HUF under section 194C applies to AY 2007-08 - Whether an assessee who undertakes a contract as sub-contractor with a responsibility of transportation of goods can be held liable for deducting TDS on payments made to transporters, particularly when the transporter could not act as a subcontractor of that which assessee undertakes to complete.

2011-TIOL-504-ITAT-KOL
Amit Jain Vs ITO, Kolkata (Dated: June 30, 2011)
Income Tax - Sections 37, 40(a)(ia), 194C - Whether ad hoc disallowance of foreign tour expenditure is sustainable without questioning the business purpose of the trip.
2011-TIOL-503-ITAT-MUM-SB
DCIT, Mumbai Vs M/s Summit Securities Limited (Dated: August 10, 2011)
Income Tax – Section 255(3) - Whether when the High Court has admitted an identical question of law in another case, the reference to the Special Bench of the Tribunal on the same issue does not survive - Whether the Tribunal can hear the issues which are sub-judice before the High Court in another case.
Also see analysis of the Order
2011-TIOL-502-ITAT-DEL
M/s Hero Honda Motors Ltd Vs DCIT, New Delhi (Dated: May 27, 2011)
Income tax – Sections 36(1)(vii), 43B, 143(3), 271(1)(c) – Whether when the assessee discloses all the details necessary for claiming a deduction on a debatable issue while filing the return of income, penalty is even then warranted.
Also see analysis of the Order
2011-TIOL-501-ITAT-MUM
Procter & Gamble Distribution Co Ltd Vs JCIT, Mumbai (Dated: July 29, 2011)
Income tax – Revenue or Capital – Whether the non-competition fee paid to the assessee is allowable as revenue expenditure – Whether the amount paid for licence fee is revenue expenditure for the rights granted which are non-exclusive rights to use the trademarks – Whether the expenditure incurred for termination of manufacturing agreement and for termination of all other agreements is capital in nature as the payment was for termination of JVA and as per the terms of the JVA, no liability would be cast on any party towards the other party for loss of anticipated sale or prospective profits.
2011-TIOL-500-ITAT-MAD
Tamil Nadu State Transport Corporation (Kum Div I) Limited Vs JCIT, Kumbakonam (Dated: June 13, 2011)
Income tax – Sections 41(1), 72A – Whether there is no requirement to obtain permission from committee on disputes for pursuing litigation between PSUs and the Government – Whether no addition can be made u/s 41(1)(a) for the interest liability converted into the share capital as there is no cessation of liability – Whether the

assessee is entitled to carry forward and set off of brought forward business loss and unabsorbed depreciation u/s 72A in the scheme of an amalgamation though the assessee is not an industrial undertaking.

[2011-TIOL-499-ITAT-VIZAG](#)

M/s Transstory (India) Ltd Vs ITO, Guntur (Dated: July 14, 2011)

Income tax – Section 80IA(4) – Whether when, for all practical purposes, the two partners of a JV execute the infrastructural work awarded by the State Government, even then the assessee, one of the partners, is not entitled to avail the benefits of Sec 80IA(4) as the contract was awarded to the JV, an independent legal entity.

[Also see analysis of the Order](#)

[2011-TIOL-498-ITAT-AHM](#)

ITO, Bhavnagar Vs M/s Universal Associates (Dated: June 17, 2011)

Income Tax - Sections 269T, 271E - Whether introduction of capital in a partnership firm is akin to loans or deposits - Whether repayment of such capital to the partners in the form of an uncrossed cheque would be liable to penalty u/s 269T.

[2011-TIOL-497-ITAT-MUM](#)

Mid-Day Multimedia Ltd Vs Dy.CIT, Mumbai (Dated: July 22, 2011)

Income Tax – Sections 36(1)(iii), 37 - Whether interest paid on borrowed funds can be disallowed even when the assessee had ample funds at the time of investing in the equity of subsidiary companies - Whether foreign traveling expenses which are incurred exclusively for the purpose of business can be disallowed.

[2011-TIOL-496-ITAT-MUM](#)

M/s Pidilite Industries Limited Vs DCIT, Mumbai (Dated: June 10, 2011)

Income Tax - Section 80IA - Whether when the assessee sets up windmills at different places in different years and also has brought forward losses from the business, its claim for deduction u/s 80IA is not maintainable against the provisions of Sec 80IA(5).

[2011-TIOL-495-ITAT-MUM](#)

ACIT, Mumbai Vs M/s Bank Of India (Dated: June 30, 2011)

Income Tax - Section 244A - Whether interest u/s 244A on MAT credit can be allowed

[2011-TIOL-494-ITAT-MUM](#)

M/s Bhuwania Steel & Metal Pvt Ltd Vs ITO, Mumbai (Dated: June 8, 2011)

Income Tax - Sections 69C, 143A(3) - Whether, for the purpose of making addition, the findings of Customs authorities would prevail over the sales tax assessment order.

[2011-TIOL-493-ITAT-AHM](#)

ACIT, Ahmedabad Vs M/s Yug Corporation (Dated: June 17, 2011)

Income Tax - Section 80IB(10) - Transfer of Property Act - Section 53A - Whether when the assessee-company pays the entire consideration and also takes possession of the property, it would be the de facto owner irrespective of the registered documents - Whether, for the purpose of claiming Sec 80IB(10) benefits, a registered deed is necessary.