

**INCOME TAX APPELLATE TRIBUNAL ORDER**

[2010-TIOL-347-ITAT-MUM](#)

**Dy.CIT, Mumbai Vs M/s Cello Stationery Products (Dated : February 23, 2010)**

Income Tax – Section 80IB – Whether the creation of marketing arm be termed as a device to shift legitimate expenses of the assessee firm to the marketing arm, so as to show higher profits in the hands of the assessee firm, which could be claimed as deduction u/s 80-IB .

[Also see analysis of the Order](#)

[2010-TIOL-346-ITAT-MUM](#)

**Bayer Cropscience Ltd Vs ACIT, Mumbai (Dated : May 14, 2010)**

Income Tax - Section 36(1)(vii) r.w.s 36(2) - Whether the ITAT considered the claims and evidences on record before deciding disallowance of bad debts?

[2010-TIOL-345-ITAT-DEL](#)

**M/s Sapient Corporation Private Limited Vs ACIT, New Delhi (Dated : June 25, 2010)**

Income Tax Act – Allowability of Business Expenditure – Sections 10A, 30 to 36 vs Section 37 - Whether the Revenue is justified in disallowing the claim of rent paid for branch office premises vacated on ground of business expediency against non-sec 10A income.

[2010-TIOL-344-ITAT-MUM](#)

**M/s Reliance Energy Ltd Vs DCIT, Mumbai (Dated : May 14, 2010)**

Income Tax Act - sections 80IA, 80-IA(4), 80IA(8), 80IA(10), 143(3), 147, 147(2), 148 - whether AO was justified in reopening assessment on the ground that there was a need for re-computation of profits, which had already been the subject matter of appeal before the ITAT and adjudicated.

[2010-TIOL-343-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s Bhoruka Logistics Pvt Ltd (Dated : May 21, 2010)**

Income tax - Sections 40(a)(ia) , 271(1)(c) - Assessee is engaged in the business of transporter and public carrier. AO made disallowance u/s 40(a)(ia) by observing that the Assessee had deducted tax at source but there was some delay in payment of TDS in the Govt. Treasury. The Assessee admitted delay and requested the AO to disallow the amount u/s 40(a)(ia). He requested that the amount in question should be allowed as an expenditure in the A.Y 2006-07, as the payment of TDS was made in that year. The AO considering the facts disallowed this amount u/s 40(a)(ia) in this year and also levied a penalty u/ 271(1)(c) by observing that the Assessee had made a mention about the delay in TDS payment in the audit report, while at the same time, he did not disallow the amount in the computation of income filed by it. CIT(A) held that the Assessee had made full disclosure and deletes the penalty Issue goes to the Tribunal .Having heard the Revenue Counsel the Tribunal has held that, The first appellate authority has rightly relied upon the judgment of the Punjab & Haryana High court in the case of CIT vs. Ajain Singh & Co., wherein it is held that mere disallowance of expenditure will not per se amount to furnishing of inaccurate particulars of income. CIT(A) finding upheld.

[2010-TIOL-342-ITAT-MUM](#)

**ITO, Mumbai Vs Bisleri International Pvt Ltd (Dated : April 30, 2010)**

Income tax – Disallowance of interest - Whether the CIT(A) erred in deleting the addition of interest on account of interest-bearing loans advanced to sister concern without charging any interest by the assessee company.

[2010-TIOL-341-ITAT-MAD](#)

**DCIT, Madras Vs M/s Madras Refineries Ltd (Dated : March 19, 2010)**

Income Tax - Section 37 - Whether the assessee is entitled to claim expenses incurred by him on various social and welfare schemes for the smooth running of its business - Whether it is incumbent on the ITAT to records it's findings for deciding the issue even though the case is covered by the earlier decision.

[Also see analysis of the Order](#)

[2010-TIOL-340-ITAT-MUM-SB](#)

**Dy.CIT, Mumbai Vs M/s Times Guaranty Limited (Dated : June 30, 2010)**

**Income Tax – Whether Depreciation for assessment years 1997-98 to 1999-2000 can be set off against `Income from other sources' in assessment years**

**2003-2004 and 2004-2005. 'No'** - where the amount of depreciation allowance u/s.32(1) for the current year of a business cannot be absorbed fully or partly due to inadequacy of profits or gains from such business, then such allowance or part of it which remained unabsorbed, is to be referred to as "unabsorbed depreciation allowance".

**Contrary arguments by Revenue at different Benches** : if some Departmental Representative has rightly or wrongly argued an issue before any bench of the Tribunal, other Departmental Representatives across the country cannot be inhibited from arguing what they feel correct notwithstanding the earlier submission made by the learned Departmental Representative in some different case at some different bench.

**If two reasonable constructions of a taxing provision are possible then the one favourable to the assessee to be adopted:** This rule is applicable where the provision in question is such which is capable of two equally convincing interpretations. It cannot be applied in a loose manner so as to debar a superior authority from examining the legal validity of the conflicting views expressed by the lower authorities.

[Also see analysis of the Order](#)

[2010-TIOL-339-ITAT-MAD](#)

**ACIT Vs Swift Audio Video Entertainment Pvt Ltd (Dated : January 8, 2010)**

Income tax - Sec 40A(2)(b) - Whether AO is justified in deleting the commission paid to the Director of the assessee company whereas much higher commission was paid to other employees of the company, who were less experienced, for getting business.

AO disallows commission, incentives and consultancy charges paid to the Director and his close relations on the ground that there was no business expediency for such payments - Assessee argues before the CIT(A) that the Director and his relations were entitled to certain commission on net sales recorded by the company - CIT(A) deletes the additions on the ground that there were employees in the company who were less experienced but were paid higher commission for getting business for the company - held, no infirmity in the CIT(A) order as AO has failed to bring any materials to establish that the payments were unreasonable or higher than the fair market value for such services.

[2010-TIOL-338-ITAT-BANG](#)

**Swarnagiri Wire Insulations Pvt Ltd Vs ITO, Hubli (Dated : May 21, 2010)**

Income Tax - Section 80IA(5) - Whether the assessee, running two separate undertakings, is entitled to setoff depreciation of one undertaking, whose income is eligible for deduction u/s 80IA, with the business income of the other undertaking - Whether the provisions of section 70(1) have overriding effect over sub-section 80IA(5) of the Act.

[Also see analysis of the Order](#)

[2010-TIOL-337-ITAT-MUM](#)

**Mr Viresh S Taswala Vs ITO, Mumbai (Dated : April 5, 2010)**

Income tax Act – Disallowance of interest – whether interest paid on the amount taken on loan and utilised for capital contribution in the firm is allowable as expenditure against the remuneration received from the firm.

[2010-TIOL-336-ITAT-AHM](#)

**Shri Sugamchand C Shah Vs ACIT, Surat (Dated : January 29, 2010 )**

Income Tax - Section 45 - Whether the entries in books of account are relevant to judge as to whether the assessee has made investment in shares to earn capital gain or treated them as stock in trade for earning "business profit" and not the frequency of transactions of sale and purchase of shares and hence on basis of entries passed by the assessee it can be said that the assessee has made investment in share to earn capital gain and not business profit: - Held Yes.

[2010-TIOL-335-ITAT-MUM](#)

**DCIT, Mumbai Vs M/s Elzee Television Pvt Ltd (Dated : May 31, 2010)**

Income Tax – Whether expenses incurred towards cable right protection fees and also in telecasting Zee Cinema Awards are allowable – whether deduction u/s 80HHF is to be allowed without deducting 90% of the gross subscription receipts, commission receipts and sundry balance written off from the profit and gains of the business

[2010-TIOL-334-ITAT-MUM](#)

**M/s Royal Anti-Biotics & Investments Private Limited Vs ITO, Mumbai (Dated : May 21, 2010)**

Income tax – Sec 254(2) - Miscellaneous Application before ITAT - Assessee's contention, considering the judgment of High Court in the case of Naresh Pahuja Vs. DCIT, was that the Tribunal erred in applying the judgement not cited by the parties during the course of hearing. In the miscellaneous application filed by the assessee against the order of the ITAT, it was held by the ITAT

[2010-TIOL-333-ITAT-MUM](#)

**M/s Orbitech Ltd Vs Dy.CIT, Mumbai (Dated : May 21, 2010)**

Income Tax Act - sections 143(3), 147, 148, 43B(b) read with section 36(1)(ii) – whether reassessment can be initiated after four years?

[2010-TIOL-332-ITAT-DEL](#)

**ITO, New Delhi Vs Shri Pawan Kumar Gupta (Dated : June 14, 2010)**

Income Tax - opportunity to cross examine - Whether denial of opportunity to cross examine the witness rendered the assessment null and void.

[2010-TIOL-331-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s Rallis India Ltd (Dated : May 28, 2010)**

Income tax – Section 147 – Assessee questioned the validity of section 147, stating that the necessary conditions were not satisfied and the assessing officer could not have had reason to believe that the income chargeable to tax had escaped assessment and there was only change of opinion and no fresh material - The reason recorded by the assessing officer for initiating reassessment proceedings u/s 147 was that while computing the Book profits u/s 115JB neither the Assessee nor the A.O. had considered the provision for doubtful debts/ advances in the books of accounts which was excluded by the assessee while computing the book profit u/s 115JB in violation of explanation Explanation 1 to Clause 2 of Section 115JB. Assessee contended that provision for doubtful debts/ advances and diminution in value of investments is not provision made for meeting liabilities and is not covered by Explanation 1. Rejecting the contention of the assessee, the AO increased the book profits by this amount. In appeal, CIT(A) allowed the appeal of the assessee following the decision of Apex Court in the case of HCL Comnet Services and Systems Ltd. ( [2008-TIOL-182-SC-IT](#) ) on merit but declined to decide the claim in respect of jurisdiction.

[2010-TIOL-330-ITAT-DEL](#)

**ITO, Bijnor Vs Sanjeev Ranjan Agarwal (Dated : May 10, 2010)**

Income Tax - Section 2(24) - Embezzled fund as income - Whether the order of the AO is sustainable in view of the fact that the charge of embezzlement framed by the concerned department has been quashed by the order of the State Public Services Tribunal which has also been approved by the Jurisdictional High Court and hence, the very basis of making the addition does not survive.

[2010-TIOL-329-ITAT-AHM](#)

**ACIT, Ahmedabad Vs Vodafone Essar Gujarat Ltd (Dated: January 29, 2010)**

Income Tax - Section 80IA - Whether on the basis of licence agreement, issued by the state of Gujarat for establishing undertaking, alone, can it be said that the assessee has started its telecom services in AY 1996-97 in terms of section 80-IA (4) (ii), ignoring the other evidences such as list of cellular mobile services license holders, published by Telecom Department and assessment order of the AO 1996-97, mentioning that the assessee's business is actually commenced on 21.01.1997.

[Also see analysis of the Order](#)

[2010-TIOL-328-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s C C Choksi & Co (Dated: May 21, 2010)**

Income Tax - Section 4 - Diversion of income by overriding title - Whether the charge created by the partnership deed over the business receipt can be termed as overriding title over the income of the firm, particularly in view of the fact that the same has been accepted earlier and hence the payments made in pursuance to such charge are not includable in the income of the assessee.

[2010-TIOL-327-ITAT-MUM](#)

**Addl CIT, Mumbai Vs M/s BSES Ltd (Dated: May 21, 2010)**

Income Tax - Section 36(1)(iii), 37(2A) - Whether deletion of disallowance by the CIT(A) on account of bad debts justified - Whether deletion of disallowance by the CIT(A) in respect of entertainment expenses u/s. 37(2A) justified - Whether the CIT(A) justified in deleting the addition on account of disallowance of claim of deduction of interest on borrowings for power generation project?

[2010-TIOL-326-ITAT-MUM](#)

**Grasim Industries Limited Vs ACIT, Mumbai (Dated : February 12, 2010)**

Income Tax - Section 80HHC - Whether book entries are determinative factor to deal with the allowability of deductions – Whether it is a mandatory requirement that the raw material should be owned by the assessee for the purpose of claiming deduction u/s 80HHC.

[2010-TIOL-325-ITAT-MUM](#)

**M/s Modepro India Private Limited Vs Dy.CIT, Mumbai (Dated : March 29, 2010)**

Income Tax - Section 145A, 147 - Assessee files return - AO completes assessment u/s 143(3) - Subsequently, on the perusal of records the AO notices that the Assessee has failed to include Modvat credit in its closing stock in contravention of the provisions of section 145A - AO issue Notice u/s.148 after the expiry of four years from the end of the relevant assessment year and completes assessment after making addition on account of Modvat credit. The CIT(A) directs the AO to verify the facts and make addition if there is difference in the figure as pointed out by the Assessee.-Held, from the reasons for reopening extracted it is seen that there was no failure on the part of the Assessee to disclose fully and truly all material facts qua the Modvat credit as the same was part of Tax Audit Report annexed to the Balance Sheet filed along with the return of income.. The notice being beyond the period of four year was obviously time barred. The assessment flowing out of such time barred notice cannot stand and quashed. Assessee Appeal allowed.

[2010-TIOL-324-ITAT-MUM](#)

**M/s Ambience Advertising Pvt Ltd Vs ITO, Mumbai (Dated : May 14, 2010)**

Income Tax -Sections 22, 28, 56 - Whether the income received by the Assessee for providing facilities are assessable under the head "Income from business" or "Income from house property".

[2010-TIOL-323-ITAT-MUM](#)

**Mili Steels Private Limited Vs Addl CIT, Mumbai (Dated : March 30, 2010)**

Income Tax - Deduction u/s 80IB - On the issue of CIT[A] not considering the sale tax refund for calculating the profits of its eligible undertaking for the purpose of deduction u/s.80IB - Held, the sales tax refund is nothing but recoupment of losses and it is derived from the industrial undertaking. AO is directed to verify whether this sales tax refund also consisted of interest on such refund and if it is found to be so, then the interest component of the sales tax refund may be excluded for the purpose of computation of deduction u/s.80IB. Assessee's appeal partly allowed.

On the issue of CIT[A] holding that Assessee is entitled for deduction u/s.80IB in respect of sale of scrap which is a part of manufacturing process - Held, the scrap is generated out of the manufacturing activity is a part of the manufacturing activity of the undertaking and income from the sale of such scrap has to be included while computing the profits and gains of the Assessee derived from its industrial undertaking. Revenue Ground dismissed.

[2010-TIOL-322-ITAT-MUM](#)

**Shri Rakesh Damani Vs DCIT, Mumbai (Dated : May 21, 2010)**

Income Tax - Section 132 - Whether Revenue has to bring corroborative evidence/material to prove that the assessee has generated income in cash which was not declared to the department.

[2010-TIOL-321-ITAT-DEL](#)

**M/s Aerens Infrastructure & Technology Ltd Vs DCIT, New Delhi (Dated : February 5, 2010)**

Income Tax - Section 142A, 69B - Whether for the purpose of invoking the provisions of Section 142A, it is first necessary that there should have been some material or evidence or information on the basis of which it could be said that the consideration shown by the assessee for making investment was understated and that anything above what was disclosed by the assessee had actually been paid towards consideration.

[2010-TIOL-320-ITAT-DEL](#)

**Seasons Catering Services Pvt Ltd Vs Dy.CIT, New Delhi (Dated : April 30, 2010)**

Income Tax - Section 133A 145 - Rejection of Books of account - Whether the assessing officer has rightly rejected the books of the assessee on being failure of assessee to reconcile the entries of seized papers with the books of account.

[Also see analysis of the Order](#)

[2010-TIOL-319-ITAT-DEL](#)

**ACIT, New Delhi Vs M/s Shiva Commodities & Derivatives (Dated : February 12, 2010)**

Income Tax - Section 2(22)(e) - Whether in view of the decision of special Bench in the case of Bhaumik Colour ( [2008-TIOL-641-ITAT-MUM-SB](#) ) the provisions of section 2(22)(e) are applicable only when the shareholder is a registered beneficial shareholder and not otherwise - Whether the assessee who does not have any share can also fall under the provisions of section 2(22)(e).

Assessee firm reflected certain amount as deposits from one M/s Jai Siya Ram Pvt.(JSRCL) Ltd - AO took the view that since the partners of the assessee firm were holding shares of (JSRCL) the advance made by JSRCL fell under the ambit of section 2(22)(e) - accordingly, the AO made addition - CIT(A) deleted the addition.

[2010-TIOL-318-ITAT-DEL-SB](#)



**M/s CLC & Sons Pvt Ltd Vs ACIT, New Delhi (Dated : March 19, 2010)**

Income Tax – Section 253 – Held that once the issue on which special bench is constituted is pending adjudication before High Court any finding of the Special Bench on the said issue might cause prejudice to either party and therefore in the interest of justice the Special Bench matter should be heard after decision of High Court is available – Held further that once one of the Members had already expressed an opinion in some other case on the issue under consideration judicial discipline demands that he should be rescued from the Special Bench hearing.

[2010-TIOL-317-ITAT-MUM](#)

**DCIT, Mumbai Vs Bank Of America NT & SA (Dated : May 31, 2010)**

Income Tax - Section 37 – Allowability of various expenses – expenditure incurred by way of violation of R.B.'s directions with regard to portfolio management scheme – entertainment expenses and out of expenses for seminars / meetings, etc on employees – expenditure incurred on presentation articles – Share issue expenses – Expenditure incurred on account of penalty for infraction of RBI direction - payment to clubs – these expenses have been disallowed by the AO in the assessment of the assessee – CIT(A) deleted the additions made – further, addition as income made by the AO on account of notional interest on clean loans to brokers (Harshad Mehta) was also deleted by the CIT(A) .

[2010-TIOL-316-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s GTL Limited (Dated : March 10, 2010)**

Income Tax – Section 254(2) – Mistake Apparent From Record – Assessment was framed u/s 143(3) wherein provision of doubtful debts of Rs.18,99,254/- was not added back to the profit & loss account while computing deduction u/s.115JA of the Act. The AO then passed an order u/s.154 of the Act on 30-12-2004 adding back the provision for doubtful debts u/s.115JA of the Act - Tribunal vide orders dated 17-3-09 deleted the addition relying upon HCL Comnet Systems & Services Ltd. [2008-TIOL-182-SC-IT](#), CIT vs. Echjay Forgings P. Ltd. 251 ITR 15 [Bom] and Special Bench decision in JCIT vs. M/s Usha Machine Industries Ltd. [2006-TIOL-256-ITAT-KOL-SB](#) - Thereafter, by the Finance Act, 2009 clause [g] was inserted in Explanation to Sec.115JA(2) of the Act w.r.e.f. A.Y 1998-99 and subsequent years providing that provisions for doubtful debts and advances are disallowable while calculating book profit u/s 115JA. – Revenue filed miscellaneous petition u/s 254(2) before ITAT – Held that the Tribunal's order is dated 17th March, 2009 whereas the retrospective amendment of the Act received the assent of the President of India on 19-8-2009 i.e. after the order of the Tribunal was passed. – Held following Bombay High Court judgment in the case of CIT vs. Sudhir S.Mehta 265 ITR 548(Bom) that there is no mistake apparent from record in the order of the Tribunal dated 17-3-09.

[2010-TIOL-315-ITAT-MUM](#)

**Hindustan Lever Ltd Vs ACIT, Mumbai (Dated : April 30, 2010)**

Income Tax - Section 194C, 201(1), 201(1A) - Whether the provisions of section 194C is attracted in respect of payments made by the assessee to third parties for contract manufacture of finished products as well as packing material

[Also see analysis of the Order](#)

[2010-TIOL-314-ITAT-MUM](#)

**Dy CIT, Mumbai Vs Bombay Dyeing & MFG Co Ltd (Dated : April 20, 2010)**

Income Tax - Section 244A - Interest on MAT credit - Whether the assessee is entitled for interest u/s 244A on the MAT credit available to it.

AO while giving effect to the appellate order computes interest u/s 244A and then considers the MAT credit - Assessee contested the action of the AO before the CIT(A) who allowed the contention of the assessee.

After hearing the parties the ITAT has held that,

++ the issue is now covered in favour of the assessee by the Tribunal, Delhi Bench decision in the case of DCIT Vs Bharat Aluminium Co. Ltd., [2010-TIOL-145-ITAT-DEL](#), wherein the co-ordinate bench has held that the effect of MAT credit u/s 115JA has to be taken into account first and, accordingly, interest u/s 244A is to be granted by taking the same into account.

++ Attention is also drawn to the judgment of the Bombay High Court in the case of CIT Vs Apar Industries Ltd., where identical consequence is allowed. No infirmity in the order of the CIT(A) and, accordingly, we confirm the same.

[2010-TIOL-313-ITAT-MAD](#)

**M/s India Cements Capital & Finance Ltd Vs ACIT, Chennai (Dated : May 29, 2009)**

Income Tax - Section 32, 271(1)(c) - Whether to claim depreciation, it is the assessee's duty to prove the ownership of the asset with proper evidence - Whether penalty u/s 271(1)(c) could be imposed on the ground that the consequential effect of the disallowances made in the past AY has not been given in the current year's return of income.

The assessee is a non-banking finance company - AY 1996-97 - assessee files return declaring loss after adjusting the brought forward unabsorbed depreciation - As per the depreciation working, the assessee had shown having purchased Rs.3,08,86,500/- worth of machinery on which it claimed 100% depreciation - the assessee has purchased machineries from various parties, however, the only dispute relates to certain machineries leased to M/s Ravishankar Films and M/s Gomathy Mills - assessee contends that the machineries were purchased from M/s Thermax Ltd. through Visakapatnam firm namely, Aditya Engineering Corporation (AEC) which was actually fabricated and erected in the premises of Ravishankar Films - no documentary evidence filed by the assessee in its support - On enquiry, the AO held that M/s Thermax has supplied the boilers directly and AEC is not the supplier - AO

sends a letter to AEC which was returned with a note that the addressee is not there – further, M/s Ravishankar Films accepted that they have purchased the machinery from M/s Thermax as per the statement of Shri Gunaseelan, Vice President (Technical) – as per the AO, it is the assessee's duty to prove the ownership and the assessee did not prove – CIT(A) confirms the addition.

The assessee also entered into sale and lease back transaction with the Gomathy Mills for Rs.30,00,000 – on enquiry, the AO finds that the WDV of machineries leased back was Rs.7,29,769/- in the books of Gomathy Mills - In these circumstances, the AO disallowed the claim of depreciation on the conclusion that this sale and lease back transactions were not genuine and further held that the assessee has given only photocopies of invoices issued by original suppliers, the valuer who has valued the machineries has not visited the site and inspected the assets and he has not mentioned as to the basis of his estimate – CIT(A) partly allows the relief.

AY 1999-2000 – The assessee had claimed depreciation on the assets which were the subject matter of lease transactions entered with certain parties - The AO held the same as financial transactions. Accordingly, depreciation claim was to be disallowed and consequential effect of successive years had to be given – the assessee did not included the income added in the past voluntarily in their return of this year nor have they filed revised return including the amount prior to commencement of scrutiny proceedings – AO levied penalty u/s 271(1)(c) on the contention that the assessee has without valid reasons concealed income – on appeal to CIT(A) part relief was granted to the assessee wherein AO was directed to recompute the penalty u/s 271(1)(c) on the income to the extent concealed

[Also see analysis of the Order](#)

[2010-TIOL-312-ITAT-AGRA](#)

**ACIT, Gwalior Vs Tulsi Narayan Garg (Dated : April 22, 2010)**

Income Tax Act – Section 68, 131 – extent of assessee's onus of proof relating to 'unexplained' cash credits - expenses that may be allowed in the absence of proper vouchers.

Assessee, a civil contractor, received loans from several parties. He also deducted expenses under various heads incurred in the course of business without providing regular vouchers. The AO made an addition to income on account of these 'unexplained cash credits' into the assessee's account. The AO also disallowed the expenses amounting to Rs 2.32 lakh. The CIT(A) deleted the addition made by the AO on account of unexplained cash credit on the ground that assessee had established the identity of the cash creditors, their genuineness and creditworthiness. The CIT(A) also reduced the disallowance to Rs 50,000 thereby allowing the assessee relief of Rs 1.82 lakh against the 2.32 lakh added by the AO on the ground that proper vouchers cannot be expected in the case of several expenses, incurred in the unorganized sector, which should not viewed adversely.

[2010-TIOL-311-ITAT-MUM](#)

**Real Usha Sweets & Snacks Incorporation Vs ITO, Mumbai (Dated : March 30, 2010)**

Income Tax - Sections 22, 27(iii), 269A - Head of Income earned on sub-letting of property - Assessee takes a commercial premises on leave and licence basis for 33 months only and claims the income from the same as "income from business" - AO taxed the same under the head "income from other sources" and allowed corresponding expenditure - CIT(A), considering the assessee as deemed owner, taxed the same under the head "Income from house property" and restricted the expenditures up to 30% - Assessee argued before the Tribunal that since leasing and sub-leasing are part and parcel of the assessee's business the income should be taxed under the head of income from business - On the issue of deemed ownership of the assessee, the Tribunal held that in view of the provisions of section 27(iii) and 269A the assessee could not be considered as deemed owner of the property and hence the CIT(A) is not correct in treating the assessee as owner of property - As regards the correct head of the income, the case laws relied upon by the assessee are not applicable to the facts of the case and the income should be taxed under the head of Income from other sources and corresponding expenditures including rent paid to the owners of the property are allowable as deduction.

[2010-TIOL-310-ITAT-MUM](#)

**United Motors (India) Ltd Vs ITO, Mumbai (Dated : April 13, 2010)**

Income Tax - Section 263 - Assessee a public limited company engaged in the sales and service of automobiles - filed return of income declaring loss - AO framed the assessment - CIT observed that the assessee, earlier was capitalizing cost incurred in on leasehold assets and has written off the same on the sale of these assets and debited the amount in the profit and loss account - CIT is of the view that these types of expenses are not revenue in nature, beside this the CIT also considered the writing off "advances against rental properties" as capital loss - accordingly, CIT passed order u/s 263 of the Act - Assessee being aggrieved filed appeal before ITAT and craves that the assessment order is neither prejudicial to the interest of revenue nor erroneous - ITAT, with regard to the cost of improvement expenses, observed that all the agreements are only leave and licence agreements and not lease agreement, which permitted the assessee to use the premises, without creating any interest in the premises in favour of the assessee and hence the expenses incurred on these are revenue in nature and not capital - On the issue of writing off "advances against rental properties" it was observed that the assessee had made certain interest free deposits for obtaining rented premises on leave and licence basis, and hence it can not be said that the assessee had obtained anything having enduring benefit - therefore, the view of the CIT while passing order u/s 263 is the not correct, and the view of the AO is correct.

[2010-TIOL-309-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s Wall Street Finance Ltd (Dated : March 25, 2010)**

Income Tax - Lease Equalisation reserve - Assessee a company engaged in the business of leasing, hire purchase, money changing, etc., - create a reserve namely lease equalisation reserve and charge excess depreciation - AO disallowed the excess depreciation and made addition - CIT(A) confirmed the action of the AO vis-à-vis normal computation of profits however takes the view that these types of addition cannot be made to book profits - Revenue filed appeal to the ITAT - Held that since the entire set of accounts is not here the matter is restored to the file of the AO for fresh consideration - also directed that the AO shall treat the entire lease rents as income and the depreciation allowable under the I.T. Act shall be allowed as a

deduction - In case he finds, that the assessee has ultimately recognized the entire amount of lease rentals as its income and if the assessee has not claimed lease equalisation reserve as a charge on profit, then the AO may accept the claim of the assessee as correct. He is required to allow depreciation as per the Income Tax Act ;

Income Tax - Section 80HHC- Whether sale of foreign currency (F.C) is same as sale of goods and the receipts from the same are entitled for deduction - AO is of the view that the deduction of the 80HHC is not available on F.C - CIT (A) allowed the deduction - ITAT on appeal of the revenue held that the issue is no more res-integra as decided by the Karnataka High Court and followed by various benches of ITAT - Appeal of revenue is dismissed;

Income Tax - Section 147 - AO reopened the assessment on the basis of material enclosed with the return of income - Assessee challenges the reopening - CIT(A) upheld the proceedings of reassessment - ITAT held that in this case the assessment is reopened with in four years and there was no scrutiny assessment earlier and in such a situation the provision of explanation 2 of section 147 empowers the AO to reopen an assessment and it is well settled that at the stage of reopening of assessment a prima-facie view is enough - Hence the cross objection of the assessee is dismissed.

[2010-TIOL-308-ITAT-DEL](#)

**ITO, New Delhi Vs M/s Zars Trading Pvt Ltd (Dated : February 26, 2010)**

Income Tax - Section 68 - While processing return u/s 143(1) AO receives information from the Investigation Wing of the Department that Assessee has taken accommodation entries - AO raises queries to Directors who did not attend to them - makes additions u/s 68 - CIT(A) disagrees with the AO - Held, no document has been submitted to establish identity of the share applicants. It was also not the case of simple share application money. Shares worth Rs 10 per share were applied for at a premium of Rs 90/- by strangers. There is no justification or record whatsoever as to whether the companies' credentials commanded a premium of Rs. 90 per share on record.

[2010-TIOL-307-ITAT-DEL](#)

**MAA Bhagwati Siksha Prasar Samiti Vs CIT, Meerut (Dated : February 10, 2010)**

Income Tax - Section 12AA - Whether registration granted u/s 12AA can be withdrawn on the ground that there was unexplained cash credit in the books of the assessee society without commenting upon the activities of the assessee society.

Assessee society was granted registration u/s 12AA. The same was withdrawn by the CIT observing that there was cash credit in the books of the assessee. Matter reached to ITAT. ITAT set-aside the matter to the file of the CIT for reconsideration. In second round it has been held that, as per the submission of the assessee the approval from the Governor, U.P was obtained in Dec 2006 means on the date of registration there was no approval and the assessee failed to prove the credit worthiness and genuineness of unsecured loans and hence the 12AA registration is withdrawn.

[2010-TIOL-306-ITAT-MUM](#)

**Dy.CIT, Mumbai Vs Korn-Ferry International Pvt Ltd (Dated : April 30, 2010)**

Income Tax - Sections 36(1)(vii), 40A(2)(b) – Bad Debt - Whether, writing off the debt in the books is sufficient to treat the debt as bad and there is no requirement to prove the bonafide of doing so.

Assessee writes off certain amount as bad debts – AO not satisfied on the fact that dues have been credited during this year only and also considering the reputation of the clients and accordingly added the amount– On appeal, the Ld. CIT(A) deleted the disallowance on the observation that the debts have been written off in the books of account and also on the ground that the AO has not given any specific reason for not allowing the bad debt except that he followed the precedent

The AO also disallowed Rs.19,20,020 u/s 40A(2)(b) towards professional charges paid to M/s Gopal Rao & Co., Chartered Accountancy Firm on the contention that the payments made is highly unreasonable - On appeal, the Ld. CIT(A) deleted the addition following the decision of his predecessor in the immediately preceding year in the assessee's own case.

[2010-TIOL-305-ITAT-DEL](#)

**Mahanagar Telephone Nigam Ltd Vs ACIT, New Delhi (Dated : March 11, 2010)**

Income Tax - Section 80IA - Whether deduction u/s 80IA is to be computed on the profits of the eligible business and not on the basis of amount invested in plant & machinery in the form of telephone exchanges - Whether in view of the fact that after 1995 MTNL has underwent tremendous changes, the AO was not justified in restricting the deduction of section 80IA alleging that the assessee has simply modified its earlier set-up and also generating income from old set-up:- Held Yes

Assessee is a Govt Unde taking and claims deduction u/s 80IA. In the first round of litigation the matter was restored to the file of the AO for granting deduction to the assessee as per the provisions of section 80IA. In second round the AO allowed the deduction, however restricted and apportioned in unjustified manner. CIT (A) affirmed the order of the AO.

[Also see analysis of the Order](#)

[2010-TIOL-304-ITAT-DEL](#)

**Lovlesh Jain Vs ACIT, New Delhi (Dated : April 30, 2010)**

Income Tax - Section 10A – Whether interest on fixed deposit is assessable as profit of the business of undertaking for the purpose of computing the deduction available to the undertaking u/s 10A of the Act or assessable as "Income from Other Sources".

[2010-TIOL-303-ITAT-MAD](#)

**Addl.CIT, Chennai Vs M/s Phoenix Entertainments Pvt Ltd (Dated : March 29, 2010)**

Income Tax - Section 269SS, 271D - Whether the CIT(A) erred in deleting the penalty levied u/s 271D, by holding that section 269SS is not applicable to the transactions between the Assessee and four entities which contributed share application money.

Revenue had imposed a penalty of Rs 63,50,000/- on the Assessee, in terms of 271D. The basis for the levy of penalty as attributed by the Revenue is that the assessee had obtained funds from the four persons towards share application money. Out of four persons, 3 were independent companies which were closely known to the Assessee and which obliged the Assessee by incurring construction expenses on behalf of the Assessee during the year. Since this was the first year of commencement of business, it required extensive infrastructure to establish its business and the Assessee had to garner all resources to establish its business. The benefit of participation by these entities was solicited. As regards fourth person, who happens to be the husband of one of the Directors of the Assessee-company - thus, the JCIT levied the said penalty u/s 271D for the reasons recorded in detail in penalty order.

According to the CIT(Appeals), the journal entries passed against the three companies were not covered u/s 269SS. Regarding fourth person, the CIT(A) found that the cash given by the husband of the Director for share application money will no way evade the tax and Rule 2(b)(ix) of the Company (acceptance of deposits rules) would apply in the case of husband of the Director and it is a closely held company of the family and hence the cash given for share application to the wife's company would not attract the provisions of section 269SS. He also found that in the case of the Assessee there was no opportunity/chance to evade tax by introducing the cash. According to the CIT(A), there was a reasonable cause for accepting the share application money in cash from four individual persons.

Issue goes to the Tribunal where DR relied on the decision of Jharkand High Court in the case of Bhalotia Engineering Works Pvt Ltd vs. CIT ( [2005-TIOL-79-HC-RANCHI-IT](#) ).

Having heard the parties the Tribunal has held that,

++ Following the Tribunal's decision in Shri S. Durairaj case, the penalty u/s 271D cannot be levied on journal entries in respect of three companies.

++ As regards levy of penalty u/s 271D on the transaction between husband of the director of the Assessee company, no infirmity is found in the order of the CIT(A).

[2010-TIOL-302-ITAT-MAD](#)

**ACIT, Coimbatore Vs M/s Lakshmi Machine Works Ltd (Dated : March 30, 2010)**

Income Tax - Section 80HHC - Whether excise duty and sales tax are to be excluded from the total turnover while calculating deduction u/s 80HHC.

AO while computing the assessment enhanced the value of denominator by including excise and sales tax in total turnover. CIT (A) excludes both the items. Revenue takes the matter before the ITAT.

After hearing the parties it is held that,

++ the issue is covered in favour of the assessee and against the Revenue by the decision of Supreme Court in the case of CIT Vs. Lakshmi Machine Works ( [2007-TIOL-72-SC-IT](#) )

Income Tax - Section 80HHC - Whether income from generation of electricity from Wind Mill are to be included in the business profits.

AO while calculating deduction u/s 80HHC excluded the income of wind mill from the business profits - CIT(A) allowed the appeal.

On appeal, Tribunal held that,

++ in view of the earlier order of this Tribunal in assessee's own case, issue is restored to the file of the Assessing Officer to decide the same after examining the record and agreement in the light of the earlier order as well as order in the case of Elgitread (India) Ltd. Vs. ACIT ( [2009-TIOL-271-ITAT-MAD](#) ) .

[2010-TIOL-301-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s KNP Securities Pvt Ltd (Dated : March 26, 2010)**

Income Tax - Section 28, 43(5), 73 - A.O. observes that the Assessee has earned an amount on account of trading in shares and also earned brokerage - takes the view that the nature of share trading is deemed to be speculative. As per Explanation to section 28, speculation business should be segregated from other business. He thereafter segregated the transactions and allocated the expenditure and arrived at a speculation loss - CIT(A) deletes the allocation made by the AO - Held, speculative nature of transactions may be attributed only when a particular transaction is considered as speculative u/s 43(5). So long as the Assessee is dealing in delivery based transactions Explanation to Section 28 does not come into operation as there are no speculative transactions to be considered u/s 43(5). The issue can only be considered with reference to Explanation to section 73. The Allocation of expenditure and segregation of business will come into picture only when the Assessee indulges in speculative nature of transactions. Revenue's appeal dismissed.

[2010-TIOL-300-ITAT-MUM](#)

**M/s Shabro International Vs Addl.CIT, Mumbai (Dated : April 30, 2010)**

Income Tax - Section 37(1) - Whether expenses incurred to protect the business interest of assessee firm in protecting the valuable trade mark owned by its sister concern could be allowed as deduction - Whether deduction of expenses on account of foreign tour expenses be allowed on mere filing of credit card bills showing the amount spent - Whether expenses incurred on membership and subscription fee be said to be incurred for the purpose of business and accordingly allowable

[Also see analysis of the Order](#)



[2010-TIOL-299-ITAT-MUM](#)

**DCIT, Mumbai Vs M/s UTV Software Communication Ltd (Dated : March 25, 2010)**

Income Tax - Sections 158BC, 158BE(2) - Department conducts search on 04-09-2001 and concludes on 2.12.2001- Assessment framed on 31.12.2003- Assessee challenges, that the block assessment is barred by limitation - before the CIT(A), however, did not press the ground - Before ITAT assessee raised the ground of limitation again and argues that the assessment should have been completed on or before 30.09.2003 - Held that the perusal of copy of panchnama as filed by the assessee shows some overlapping, however the records produced by the DR clearly shows that on 05-09-2001 search was temporarily concluded and the same was concluded on 02.12.2001, therefore the block assessment order is not barred by limitation.

Income Tax - Disallowance of production expenses - AO while disallowing the expenses selected 111 parties at random basis and found that 12 are not verifiable - disallowed 11% of the expenses - Before CIT(A) assessee did not dispute the method of AO - however craves to restrict the amount to 7% instead of 11% - CIT(A) restricts the amount to 9% - Before ITAT both i.e. revenue and assessee filed appeal - Held that the disallowance can only be made on the unverifiable nature of amount which is 7% - Hence the appeal of the assessee is allowed.

Income Tax - Allowance on payment of brokerage - Assessee made payment of brokerage on inter-corporate deposits - AO disallowed the same holding that business expediency could not be proved - CIT(A) allowed the expenditure observing that the AO has not brought on record any material to substantiate the disallowance - On further appeal of the revenue ITAT held that DR has not brought on record anything to controvert the finding of CIT(A), hence the appeal of the revenue is dismissed.

[2010-TIOL-298-ITAT-MUM](#)

**Shri Suresh K Jajoo Vs ACIT, Mumbai (Dated : March 31, 2010)**

Income Tax - Section 147, 148, 2(42A), 2(29A), 2(29B), 2(42B) - Two assessees (1 and 2) are individuals and engaged in the business of dealing in share and securities - Both purchased shares in AY 2000-01 for which no assessment was made u/s 143(3). Both sold the shares in AY 2001-02 and declared long term capital gains - AO while completing the assessment of year 2001-02 made an observation that though the contract of sale for shares was entered into AY 2000-01 the transaction was actually completed in AY 2001-02 and since the delivery was effected in AY 2001-02, the AO accepted the gains as long term capital gain(LTG) - In march 2007 a notice under section 147 was issued for reopening of the assessment of AY 2000-01 on the ground that the gain should have been taxed as Short term capital gain (STG) instead of LTG, and the assessment of AY 2001-02 was a protective assessment and the substantive is required to be made in AY 2000-01- CIT(A) affirmed the view of the AO - Assessee filed appeal to the ITAT and challenged the assumption of jurisdiction under section 147 by way of additional ground - Revenue opposed the admission of additional ground - On admission of additional ground the ITAT held that the additional grounds are purely legal and go to the root of the matter - Revenue's argument is devoid of merit.

Validity of proceedings u/s 147- Assessee argues that the assessment of year 2001-02 was not a protective assessment in as much as the demand notice of the income

assessed was validly issued and “ if really , the Assessing Officer believed that the income offered by the assessee for a particular assessment year is to be taxed only in another assessment year, then it is for the Assessing Officer to first reopen assessment year to which, he believes the income relates to and make substantive assessment and then make a protective assessment in other year” . The revenue argues that the AO can assess an income on protective basis, in an AY, when there is confusion about the correct year - ITAT interalia held, that the assessment of AY 2001-02 is a substantive assessment and in view of the position of law as settled by Supreme Court in the case of Lalji Haridas, a protective assessment is always successive of substantive assessment and the reverse of the sequence is not permissible - further held that there was no reasonable belief of the AO on the basis of which proceedings under section 147 can be initiated - the belief of AO that capital gain has been brought to tax at too low a rate can be said to be held in good faith and not as a pretence - only when the contrary belief of the AO in the form of an Assessment of the very same capital gain as long term capital gain in AY 01-02 does not exist, more so when an income is already taxed in an assessment year on substantive basis - Hence, the notices of 147 are hereby quashed - additional ground of the assessee are allowed.

[2010-TIOL-297-ITAT-MUM](#)

**Smt Kishori Sharad Gaitonde Vs ITO, Mumbai (Dated : November 27, 2009)**

Income Tax - Section 50C - Surrender of tenancy rights - Whether surrender of tenancy right, though capital in nature, can be equated with the transfer of land and building within the meaning of section 50C, and hence market value may be applied for the valuation of these rights.

Assessee surrenders tenancy rights in respect of some property and got compensation. The AO while taxing the capital gains adopted the market value of the property on the ground that the provisions of section 50C are applicable and rejected the contention of the assessee that the payment was in relation to transfer of tenancy rights and not property. CIT(A) affirmed the order of the AO.

On appeal, the Tribunal held that,

++ section 50C was inserted by the Finance Act, 2002 with effect from 1-4-2003. Clause 24 of the Finance Bill as per Notes on clauses states that the insertion of this provision is to provide for a special provision for the full value of consideration in certain cases. It has been provided that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the 'stamp valuation authority') for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

++ A deeming provision has been enshrined in section 50C by virtue of which a legal fiction has been created for assuming the value adopted or assessed by any authority of State Government as the full value of sale consideration received in respect of such transfer. A legal fiction has been created only in respect of the cases where the consideration received by the assessee is less than the value adopted or assessed by the stamp valuation authority of the State Government for the purpose of payment of stamp duty 'in respect of such transfer'. It is a trite law that the legal fiction cannot be extended beyond the purpose for which it is enacted. Section 50C embodies the legal fiction by which the value assessed by the stamp duty authorities is considered as the full value of consideration for the property transferred. It does not go beyond the cases in which the subject transferred property has not become the subject-matter of the provisions of section 50C. By no stretch of imagination, the legal fiction confined

to restricted operation can be widened to include within its sweep all the cases where 'such property' is not covered. The Supreme Court in the case of CIT v. Amar Chand Shroff has held that 'legal fiction' is only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond the legitimate field'. Similar view has been reiterated by the Supreme Court in the case of CIT v. Mother India Refrigeration Industries (P.) Ltd. ( [2002-TIOL-133-SC-IT](#) );

++ from plain reading of the section 50C it appears that unless the property transferred has been covered by that section 50C, that is a capital asset, being land or building or both registered by sale deed and for that purpose the value has been assessed and stamp duty has been paid by the parties, only then section 50C cannot come into operation. In the case under consideration there is transfer of tenancy right though that is capital asset but not a capital asset, being land or building or both. Therefore, section 50C is not applicable to the facts of the case under consideration.

[Also see analysis of the Order](#)

[2010-TIOL-296-ITAT-BANG](#)

**Tax Recovery Officer , Bangalore Vs M/s Sagar Apollo Hospital (Dated : March 31, 2010)**

Income tax - Sec 17, 192 - Assessee is a hospital and a division of a Trust - Revenue conducts verification to ensure compliance with the TDS provisions - finds assessee has deducted tax at source u/s 194J for payments made to doctors for providing professional services but also takes the view that some of the doctors who were duty doctors in the hospital there exists an employee-employer relationship, therefore, TDS should have deducted as per Sec 192 - CIT(A) disagrees - held, going by the facts that there was contract for services and no contract of service, there was no employee-employer relationship - TDS rightly deducted as per Sec 194J - Revenue's appeal dismissed.

[2010-TIOL-295-ITAT-MAD](#)

**ACIT, Coimbatore Vs M/s Precot Meridian Ltd (Dated : March 19, 2010)**

Income Tax - Section 37 - AO makes addition on account of low tariff charged from sister concern - Assessee sold out electricity to its sister concern at discounted rate - AO is of the view that assessee should have charged at rate given to others and made the addition - Before CIT(A) assessee explained that sister concern made payments earlier than others - CIT(A) deleted the addition - On appeal, Tribunal held that a perusal of records shows that the assessee's sister concern made payment earlier than others, and therefore relying on the decision of S.A. Builders Ltd. Vs. CIT & Ors. ( [2006-TIOL-179-SC-IT](#) ) Revenue has no valid reason to make additions.

Income Tax - Disallowance of long term capital loss - Assessee shows long term capital loss on account of sale of share of the company (subsequently merged with the assessee) - AO takes the view that the transaction is bogus and disallowed the loss for the want of identity of purchaser and exact market price of the shares - CIT(A) affirmed the order of the AO - Assessee argued before the Tribunal that the shares were sold through broker and contract notes were produced which are evident of the transaction - Held that mere contract notes are not sufficient for proving the transaction and until and unless the primary onus vis-à-vis identity of purchaser and valuation of shares is discharged by the assessee to establish prima facie that the

transaction is genuine, the claim of the assessee cannot be accepted.

[2010-TIOL-294-ITAT-MUM](#)

**M/s Modepro India Private Limited Vs DCIT, Mumbai (Dated : March 29, 2010)**

Income Tax - Section 145A, 147 - Assessee files return - AO completes assessment u/s 143(3) - Subsequently, on the perusal of records the AO notices that the Assessee has failed to include Modvat credit in its closing stock in contravention of the provisions of section 145A - AO issues Notice u/s 148 after the expiry of four years from the end of the relevant assessment year and completes assessment after making addition on account of Modvat credit. The CIT(A) directs the AO to verify the facts and make addition if there is difference in the figure - Held, from the reasons for reopening extracted it is seen that there was no failure on the part of the Assessee to disclose fully and truly all material facts qua the Modvat credit as the same was part of Tax Audit Report annexed to the Balance Sheet filed along with the return of income.. The notice being beyond the period of four year was obviously time barred. The assessment flowing out of such time barred notice cannot stand and is therefore quashed.

[2010-TIOL-293-ITAT-DEL](#)

**DCIT, New Delhi Vs M/s Sophisticated Marbles & Granite Industries (Dated : February 26, 2010)**

Income Tax - section 36(1)(iii) - Assessee is a partnership firm consisting of two partners engaged in the business of manufacturing and sale of marble items. – CIT(A) deletes addition in respect of car expenses and depreciation , telephone expenses and business promotion expenses on the ground that the disallowance has been made on ad hoc basis - Held, AO has never examined the details of such expenses before coming to the conclusion as to whether any personal expenses are involved in this - merely on estimate or on ad hoc basis no disallowance can be made.

Section 36(1)(iii) – On the issue of CIT(A) deleted the disallowance made out of interest on borrowed capital - Held, Since the terms of MOU have been followed in letter and spirit, on the basis of which it can be said that the amount was borrowed for the purpose of business and hence interest paid on such borrowed amount are allowable. If by giving the advances the business interest of the assessee is served and even if such advances are without charging any interest or whether such advances are to associate concern, it will not alter the situation. Advances for the purpose out of borrowed funds will still be considered to be “Capital borrowed for the purpose of business” and hence interest payable on such borrowed amount are allowable as deduction under sec.36(1)(iii) while computing the business income. No ground to disallow the interest payable by the Assessee.

[2010-TIOL-292-ITAT-DEL](#)

**DCIT, New Delhi Vs M/s Tropicana Beverages Co (Dated : February 18, 2010)**

Income Tax - Section 32 - Assessee is in the business of trading of packed fruit juices - claims depreciation on imported machinery which is installed at the manufacturing premises of another company from where Assessee purchases the packed food juices - also claims depreciation on Visi Refrigerators installed at various outlets all over India - CIT(A) allows Assessee's claim - Held, in view of the Product Supply Agreement, the machinery has been provided by the Assessee to the company from where Assessee purchases the packed food juices - machinery has been used for the purpose of the business of the Assessee and consequently the Assessee would be entitled for claiming the depreciation - The fact that these refrigerators were at the various outlets all over India as recorded by the A.O. itself shows that the refrigerators have been put to use as these refrigerators are at the premises of the dealers of the product of the assessee and consequently the assessee would be entitled to the claim of depreciation. Revenue's appeal dismissed.

[2010-TIOL-291-ITAT-AMRITSAR](#)

**Shree Balaji Alloys Vs ITO, Kathua (Dated : November 26, 2009)**

Income tax - Sections 80IB, 234B - Whether Central Excise refund and interest subsidy are eligible for deduction u/s 80IB

The assessee-firm is engaged in the business of manufacture and sale of aluminium alloy and zinc alloy ingots. It claims deduction u/s 80IB. During the Course of assessment proceedings the A.O. treated the refund of Excise Duty and Interest Subsidy, as income not eligible for deduction under section 80IB of the Act . The findings of the A.O. were upheld by the Ld. CIT (A). Both held that these receipts are not derived from industrial undertaking.

The assessee by way of additional ground pleaded, that these receipts are in the nature of capital receipts. Further the assessee contended that in the view of the provisions of Memorandum issued by State Government No. 1(13)/2000-NER dated 14 th June, 2002, these receipts are capital receipts. The AR of the assessee stressed on the "Purpose Test", for determining the nature of receipt, as propounded by the Apex Court in the case of Sawheny steels and Ponni Sugar Mill case.

On appeal, the Tribunal held that,

++ since all the documents and material are very much before the authorities below and the grounds are purely legal in nature, the grounds raised by the assessee deserve to be admitted in view of the judgment of the Apex Court in the case of NTPC Vs CIT ( [2002-TIOL-279-SC-IT](#) ) ;

++ the case laws of Ponni Sugar Mills ( [2008-TIOL-174-SC-IT](#) ) and Sahney Steels ( [2002-TIOL-11-SC-IT](#) ) which are relied upon by the AR of the assessee infact support the case of the Revenue and not of the assessee in as much as in those cases the subsidy received was utilized by the assessee to repay the loans which were used for the setting up of new units or substantial expansion of old units;

++ However, in the present case, industrial unit has already been established and the impugned incentives have not been utilised, for acquisition of capital asset, hence, such receipts cannot be treated, as capital receipts. Board's Circular No.142, dated 1st August, 1974 relied by the assessee is also not applicable to the facts of the case;

++ With respect to Memorandum of Govt. of India providing benefits to the industries operating in the state of J&K, as per para 3 of Notification No.56/2002-C.E these incentives are available only after the commencement of production and not before

the setting up of units, hence these incentives were given for running the industrial units smoothly. Hence the additional ground raised by the assessee contending that the receipts of refund of excise duty and interest subsidy are capital receipts is dismissed.

++ it is crucial to point out that the judicial precedents are to be applied with care and caution and not mechanically, as each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. The observations of the court must be read in the context in which they appear to have been stated;

++ since the receipt of Excise Duty refund adds to the profit of the manufacturer and the direct source of this profit is not the Industrial Undertaking but the scheme of the Central Govt, it is revenue receipt.

[Also see analysis of the Order](#)

[2010-TIOL-290-ITAT-MUM](#)

**M/s Shantivijay Jewels Ltd Vs ITO, Mumbai (Dated : May 14, 2010)**

Income Tax - Section 271(1)(c) - Whether, the AO is correct in law in holding that since the assessee has failed to support his claim of treating dividend income as business income he is guilty of making frivolous claim and hence penalty u/s 271(1)(C) is attracted

Assessee company claimed deduction u/s 10A on dividend income received from the parent company, treating the same as "business income" - AO took the view that dividend income is not profit derived by the undertaking and hence deduction is not available - View of the AO in quantum proceedings is upheld by the CIT (A) and ITAT - AO levied penalty on the ground that assessee has made wrong and frivolous claim - CIT (A) affirmed the penalty.

On appeal the Tribunal has held that,

++ It has been held in various judicial pronouncements that penalty proceedings are different from assessment proceedings, and the assessee may adduce fresh evidences during penalty proceedings which were not furnished during the assessment proceedings. Since the exemption was denied on the ground of non establishment of linkage of the investment with the business of the assessee and in absence of any material to substantiate that the assessee is eligible to claim such deduction u/s.10A, the assessee has made an untenable and a frivolous claim for deduction u/s. 10A of the Act on account of dividend income from its wholly owned subsidiary company;

++ No infirmity in the order of the CIT (A) in sustaining the penalty levied u/s. 271(1) (c) of the Act.

[2010-TIOL-289-ITAT-MUM](#)

**M/s Eminent Holdings Pvt Ltd Vs DCIT, Mumbai (Dated : March 31, 2010)**

Income Tax - Assessee engaged in the business of trading and investments in securities - Assessee is a notified person under Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992; and all his assets including bank accounts attached and vested in the hands of the Custodian appointed under the said Act - Assessee, claims that interest expenses that it might incur consequent to the claim of the Custodian can be said to be interest attributable to earning of interest on short term deposits; and therefore the Assessee is entitled to claim deduction - Revenue rejects the claim of the Assessee on the ground that the interest liability has been quantified by the Special Court and liability can accrue only after such quantification - Held, matter remanded to the CIT(A) for fresh consideration giving the Assessee an opportunity to explain as to how interest expenses claimed by the Assessee can be said to be expenses incurred for the purpose of earning interest income

[2010-TIOL-288-ITAT-DEL](#)

**Shri Sunil Dutt Vs ACIT, New Delhi (Dated : April 30, 2010)**

Income Tax - Section 271(1)(c) - Whether penalty u/s 271(1)(C) is leviable on mere allegation that the trade liabilities shown in the books ceases to exist ignoring that the notices issued to the creditors were wrongly addressed.

AO in quantum proceedings made an addition on account of cessation of liabilities. The addition made by the AO confirmed by the CIT(A) and ITAT, thereafter AO levied penalty u/s 271(1)(c). CIT(A) affirmed the same observing that the assessee has furnished inaccurate particulars. Matter went to the ITAT wherein it has been contended that the AO during the course of assessment proceedings sent notices at the wrong address and failed to prove that the liability was not genuine.

[Also see analysis of the Order](#)

[2010-TIOL-287-ITAT-BANG](#)

**ACIT, Bangalore Vs M/s JSW Steel Ltd (Dated : February 22, 2010)**

Income Tax - Explanation 5 to section 32 - Assessee filed revised return - decided not to claim depreciation - But AO computed income after allowing depreciation - CIT(A) reversed the order of the AO and held that prior to the insertion of explanation 5 department can not thrust depreciation on an assessee in view of the decision of Apex Court in the case of Mahindra Mills - On further appeal to the ITAT, Revenue argued that decision of the Supreme Court in the case of Mahendra Mills related to the assessment year 1974-75 prior to the deletion of sub-section (1) and (2) of section 34 by the Taxation laws (Amendment and Misc. Provisions) Act, 1986 w.e.f. 1.4.1988 and therefore, the ratio of the concerned decision is not applicable to the facts of the assessee's case for the AY 1999-2000 - Held that in view of the Karnataka High Court decision in the case of CCIT & Anr. Vs. Machine Tools Corporation of India Ltd., if the assessee withdrew claim of depreciation in revised return, ITO cannot force depreciation on assessee by adverting to particulars furnished in original return.

[2010-TIOL-286-ITAT-MUM](#)

**M/s Metal Recycling Industry Vs ITO, Mumbai (Dated : March 24, 2010)**

Income Tax - Section 10B - Assessee a 100% Export Oriented Unit (EOU) engaged in the manufacture of ferrous and non-ferrous metals - claims deduction u/s.10B. - AO takes the view that deduction u/s.10B is allowable only on the export turnover and not on DTA sales - The AO allowed deduction at a reduced figure qua the export turnover - No relief granted by the CIT(A) - Held, in view of the precedents, there is no infirmity in the CIT(A) Order.

AO disallows deduction u/s 10B on interest income and treats it as taxable under the head 'Income from other sources' - CIT(A) confirmed the assessment order on this issue - Held, the language of sub-section (4) of section 10B is similar to that of section 10A. As the interest has resulted from the FDR which were taken for the purpose of obtaining letter of credit from the bank, such interest deserves to be included under the head 'Profits and gains of business or profession' and thereafter eligible for deduction u/s.10B.

[2010-TIOL-285-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s Kraftwares India Ltd (Dated : February 11, 2010)**

Income Tax - Estimation of profit - AO noted certain discrepancies in the excise register vis-à-vis quantity of scrap and finished products and estimated the profits of the assessee by rejecting books - AO also not followed the decision of the earlier years rendered by the appellate authorities - CIT(A) deleted the addition and followed the orders of the earlier years observing that there is no change in material facts and the AO has not compared the 'like with like' while doubting the scrap quantity in this year - Revenue files appeal to the ITAT and assailed the order of the CIT(A) on the ground that the discrepancies in excise register is not pointed out in earlier years - ITAT after considering the entire submission of both sides held that there is no infirmity in the order of the CIT(A) - since the AO has not compared the like with like while pointing out difference in scrap and finished products, the Appeal of the assessee is allowed.

[2010-TIOL-284-ITAT-MUM](#)

**Shri Surendra Kumar Garg Vs Dy.CIT, Mumbai (Dated : March 26, 2010)**

Income Tax – Section 132 & 144 - The assessee is an individual, engaged in the business of imports of various goods - Search & Seizure - assessee claims that he sold goods on high sea basis and that he had arranged finance for these imports. Further, it was a banking agent, who used to open Letters of Credit (LCs) at the instance of other parties and that he was having income by way of sundry brokerage and commission as banking agents - the AO completed the original assessments u/s 144 treating the assessee as an importer of goods in the name of 14 concerns which are being controlled by him and treated the entire imports as income of the assessee – CIT(A) confirmed the action of the AO – appeal filed before the tribunal;

Having heard the parties ITAT set aside the matter to the file of the AO for fresh adjudication in accordance with law with specific direction to follow in letter and spirit



and further observed that,

++ It is well settled that the party which alleges that a particular transaction is a benami transaction, the burden lies on that party to prove the same. Reliance placed on the judgment of the Madras High Court in the case of Madura Knitting Company;

++ On analysis of the transactions it appears that as far as the margin money paid to the bank for obtaining LCs is concerned, it is for the assessee to prove the source of this margin money as it is the assessee who has obtained the letters of credit. In case the assessee does not prove the source for the margin money, the AO may consider making an addition as unexplained money. As these are repeated transactions, the claim of the assessee that this is circulation of the same money, cannot be denied and hence in such a situation it is but necessary for the Revenue to ascertain the peak of such investment and restrict the addition to the peak. The burden would be on the assessee to furnish necessary details as to what would be the peak investment in margin money;

++ It is for the AO who alleges imports by the assessee, to prove with evidence that the customs duties etc. have actually been paid by the assessee. The assessee cannot prove the negative. When the assessee claims that it had not paid the customs duty, it would be unrealistic to expect that the assessee should produce evidence that it had not paid customs duty or had not paid the clearing agents. No one can give the evidence of the negative.

++ The settled position in law is that when sales are brought to tax, corresponding purchases have to be allowed as a deduction and the AO cannot do otherwise. He is bound to give deduction of those amounts. Under these circumstances, what can be brought to tax is only the peak investment in the business and the net profit margins

[2010-TIOL-283-ITAT-MAD](#)

**ACIT, Chennai Vs M/s Shriram Transport Finance Co Ltd (Dated : March 26, 2010)**

Income Tax: - Long Term Capital Loss (LTG): - Whether, LTG accrued as a result of sale of shares of a non-listed company can be disallowed by doubting the transactions entered between sister concerns

Assessee purchased shares of a non listed company and incurred losses by selling these shares to it's sister concern. AO disallowed the loss doubting the transaction-CIT (A) allowed the claim of the assessee. Matter reached to the ITAT

After hearing both the parties ITAT held as under: -

++ We have to confirm the appellate finding in this regard because the disallowance of long term capital gain/loss is not based on any solid/valid grounds. A commercial transaction between the two separate legal entities, even if they belong to the same group, cannot be ignored.

++If there are series of transactions between such parties, the decision of McDowell & Co. Ltd (supra) would not apply. In this regard, the decision of Hon'ble Supreme Court in the case of Union of India & Another vs Azadi Bachao Andolan and Another ( [2003-TIOL-13-SC-IT](#) ) will apply in which case similar view has been taken. Therefore, by drawing support from the above decision, we confirm the impugned deletion.

[2010-TIOL-282-ITAT-AHM](#)

**Multico Exports Pvt Ltd Vs CIT, Ahmedabad (Dated : May 21, 2010)**

Income Tax - Section 80HHC - Whether the AO was justified in disallowing the deduction of 80HHC, observing that the assessee while computing deduction has not considered the trading loss on export of goods.

Assessee Company has claimed deduction u/s 80HHC - however could not take into consideration the loss accrued as a result of export of trading of goods by other concern - AO disallowed the loss observing that the assessee company has not considered the figure of loss while computing deduction u/s 80HHC - AO also observed that the firm to whom goods were sold has been denied deduction u/s 10A - accordingly the AO disallowed the deduction of 80HHC on goods related to the said firm - CIT (A) affirmed the action of the AO.

On appeal, the Tribunal held that,

++ the claim of assessee for deduction under section 80HHC was disallowed by the lower authorities. The Commissioner of Income Tax(Appeals) observed that trading loss on export of goods Rs.18,09,031/- and even after adjusting 90% of export incentives of Rs.17,71,211/- there still remains loss of Rs.37,820/-. In view of the above, the Commissioner of Income Tax(Appeals) following the decision of the Supreme Court in the case of IPCA Laboratory Ltd. Vs. DCIT ( [2004-TIOL-26-SC-IT](#) ) held that no deduction under section 80HHC is allowable to the assessee;

++ no material is on record to show that the assessee actually derived any profit from export of goods or merchandise.

[2010-TIOL-281-ITAT-MAD](#)

**M/s Sakthi Sugars Ltd Vs ACIT, Coimbatore (Dated : March 31, 2010)**

Income Tax - Section 32 - Depreciation on assets, where commercial production could not be commenced - Assessee sets up a Beverage Division in association with Coca Cola - because of certain unavoidable circumstances the commercial production could not be commenced - AO disallowed the claim of the depreciation - CIT(A) confirmed the order of AO - Before ITAT assessee interalia argued that the plant has performed trial run and merely because commercial production could not start, depreciation can not be disallowed - Held that the authorities below are not correct in disallowing the depreciation since the plant was completely ready in all aspects either it is NOC of any civic body or electricity connection. Appeal of the assessee is allowed on this ground.

Income Tax - Section 37 - Disallowance of expenses crystallized during the impugned year - The order of State Govt. fixing the cane price relevant to earlier year arrived in the impugned year, certain expenses pertaining to year 1997-98 to 2000-01 are crystallised during this year as a result the assessee made additional payment to the farmers - AO doubting the date of receipt of the order disallowed the expenses on the ground that the same pertained to earlier year-CIT(A) confirmed the same - ITAT held that the only dispute between the assessee and the Revenue is the year in which the expenditure has been crystallised, AO has not brought any material on record to refute the evidences produced by the assessee vis-à-vis date of receipt of the order of the State Govt - ITAT further held that even otherwise, when the expenditure is allowable in either of the assessment years 2005-06 or 2006-07, then, there is no reason as to why the assessee will claim the said expenditure in a different year than

the year in which it actually crystallised. Appeal of the assessee is allowed.

Income Tax - Section 115JB - Addition of Cane Equalisation fund (fund) to book profit - Assessee in order to meet additional liability in future, because of State Govt notification on Sugar Cane rate, created a fund namely Cane Equalisation fund, and met the additional liability, crystallised after the notification - AO added the fund while computing the book profit - CIT(A) affirmed the order of the AO - Before ITAT assessee explained that the fund was utilized to meet the additional liability aroused due to notification of Govt - ITAT held that when two transactions, one debiting the P & L Account and transferring the same to the Reserve Account and, secondly, withdrawing the same amount from the Reserve and crediting to the P & L Account pertaining to the same assessment year, then, as per Explanation 1 of section 115JB, this amount has to be excluded while computing the book profits u/s 115JB.

[2010-TIOL-280-ITAT-MUM](#)

**The Bombay St Xavier's College Society Vs Addl.CIT, Mumbai (Dated : March 29, 2010)**

Income Tax - Section 272A(2)(c) - Whether penalty is leviable where the assessee has filed belated TDS return and failed to show reasonable cause for the same.

Assessee is a Trust run by the Jesuit Priests - the additional commissioner observed that the assessee has belatedly filed TDS return, and accordingly levied penalty 272A(2)(c) - CIT(A) affirmed the penalty - before the Tribunal it was argued that the assessee being run and managed by the Jesuit Priests was not aware about the technical provisions of Income Tax - assessee also pointed out the provision of filing quarterly return is a new provision.

After hearing the parties the ITAT has held that,

++ the assessee is a public trust registered under the Bombay Public Trust Act, 1950, running college at Mumbai. There was delay in filing Form Nos. 26Q and 24Q for both the years under consideration. The reason for the delay was stated to be the ignorance of the provisions in the backdrop of the fact that the assessee, a charitable trust, was managed by the Jesuit Priests who were not aware of the various technical provisions;

++ Another reason advanced was about the introduction of the necessary provision for the first time in financial year 2005- 2006. No reason has been advanced by the authorities below for not paying any attention to such submissions. The liability u/s.272A(1)(c) is not absolute but is subject to the provisions of section 273B, which section in turn provides that no penalty shall be imposed if the assessee proves that there was a reasonable cause for the failure. The Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P. & Ors. has held that there is no presumption that every person knows the law. Coming back to the peculiar facts prevailing in the instant case, the assessee had a reasonable cause in filing the TDS returns belatedly.

[2010-TIOL-279-ITAT-DEL](#)

**DCIT, New Delhi Vs Tupperware India Pvt Ltd (Dated : April 23, 2010)**

Income Tax - Section 271(1) (c) - Whether penalty is leviable in a case where the order of AO vis-à-vis disallowance of provision for warranty is partly affirmed by the ITAT.

Assessee made provision for warranty - the same was disallowed by the AO and the same was partly affirmed by the ITAT in quantum proceedings - AO levied penalty on account of disallowance of provisions for warranty - CIT (A) deleted the penalty observing that the act of the assessee of making provision is bonafide and hence no case of penalty.

On appeal, the Tribunal observed that,

++ in the notes to the accounts, it has been stated by the assessee company that provision for warranty expenses is made @ 1% on gross sales of Tupperware products based on technical assistance and experience;

++ In the present case, it is not the case of the AO that no explanation was offered by the assessee. It is also not the case of the AO that the explanation offered by the assessee is false. It was the submission of the assessee before the AO that it is worldwide policy of the assessee company to offer a life time warranty on Tupperware products being sold, and based on worldwide past experience, the assessee company estimated the expenditure on account of carrying out repairs/replacement of damaged Tupperware items sold in India at the rate of 1% of gross sales. Such provision was made by the assessee company @ 1% of the gross sale. The Tribunal has also allowed deduction to the assessee company on account of warranty expenses, but the same was restricted to the extent of actual expenditure incurred by the assessee company;

++ In its order the Tribunal has noted year-wise provision and actual expenses. There was no actual expenses in the initial three years i.e. AY 1997-98, 98-99 & 1999-2000. The actual claim in AY 2000-01 was only Rs 2.23 lakhs which has risen to Rs.7.29 lakhs in AY 2001-02, to Rs.8.89 lakhs in AY 2002-03 to Rs.18.90 lakhs in AY 2003-04 to Rs.29.04 lakhs in AY 2004-05 and to Rs.35.03 lakhs in AY 2005-06. This goes to show that every year, the quantum of actual expenses is rising and hence it cannot be said that the basis adopted by the assessee company to make provision @ 1% of gross sales is arbitrary or unreasonable;

++ Under these facts, the explanation offered by the assessee in support of 1% provision is bona fide, and therefore, Explanation 1 to section 271(1)(c) is not applicable in the present case and hence, in spite of part disallowance having been confirmed by the Tribunal on account of provision for warranty expenses, it is not a fit case for levy of penalty u/s 271(1)(c).

[2010-TIOL-278-ITAT-MAD](#)

**DCIT, Tirupur Vs M/s Jayavarma Textiles Pvt Ltd (Dated : January 8, 2010)**

Income Tax - Section 80IA(5) - Whether section 80IA(5) creates legal fiction due to which the other sources of income became redundant and hence unabsorbed depreciation can not be setoff.

Assessee claimed deduction of section 80IA(5), on the income earned from windmill. AO disallowed the same on the same on the ground that wind mill is not separate. AO further took the view that in view of provision of section 80IA(5) the unabsorbed depreciation cannot be allowed to be setoff with any other business income and the same is required to be setoff with the income eligible for deduction u/s 80IA. CIT(A) relying on the decision of Mohan Breweries decided the issue in favour of the assessee. The issue goes to the Tribunal where the DR argues that in view of the provision of section 80IA(5) the order of the AO is correct.

After hearing the parties, and referring to the following decisions, the Tribunal held that,

++ The Co-ordinate Benches of this Tribunal in the case of M/s VXL Systems Vs. ACIT as well as in the case of ACIT Vs. M/s Sudan Spinning Mills Ltd. & Ors. has decided the issue in favour of the Revenue and against the assessee by following the decision of Ahmedabad Special Bench of this Tribunal in the case of ACIT Vs. Goldmine Shares And Finance P. Ltd ( [2008-TIOL-220-ITAT-AHM-SB](#) ). Accordingly, by following the principle of consistency, and in view of the decisions of the Co-ordinate Benches of this Tribunal as well as Ahmedabad Special Bench decision, this issue is decided in favour of the Revenue and against the assessee;

++ Revenue appeal is allowed on this ground.

[Also see analysis of the Order](#)

[2010-TIOL-277-ITAT-MUM](#)

**Kumar K Chhabria Vs ITO, Mumbai (Dated : March 30, 2010)**

Income Tax - Sec 50C - Capital Gains - Assessee an individual sells office premises - Assessee adopts cost of acquisition for computing capital gains, on the basis of valuation report by an approved valuer - valuation report, in turn, relies on certain press reports about prevailing market prices and not on any comparable sale instances. When the AO tried to find out comparable sale instances in the same society, the same being found to be much lower - D.V.O. Values the premises at much lower rate than the Assessee's claim - AO accepts DVO report on the ground that this report is binding on the AO - CIT(A) rejects the Assessee's Appeal - Held, it is not even in dispute that at least in eighties, it was a common practice to pay a part of sale consideration by unaccounted cash and it was because of this practice several legislative measures had to be taken to combat tax evasion in property sale transactions. Bearing this in mind, the rates given by independent media and press is certainly more reliable indicators of the prevailing market value of properties. The market prices given in "Indian Valuer Directory & Reference Book", also partly supports the valuation by the valuation report as filed by the Assessee. it will meet the ends of justice to adopt the valuation of commercial premises @ Rs.2,000/- per sq.ft. as against valuation @ Rs.500/- per sq.ft. adopted by the D.V.O. and valuation @ Rs.2,700/- per sq.ft. adopted by the Assessee's valuer. Even according to the Assessee, "Indian Valuer Directory and Reference Book", is a reliable source of information and these rates are adopted by the Government of Maharashtra for official purposes.

[2010-TIOL-276-ITAT-MUM](#)

**ITO, Mumbai Vs Kishore Titta (Dated : April 9, 2010)**

Income Tax - Section 40(a)(ia), 194A, 194C, 194J - Assessee carries on the business as a proprietor of manufacturing & garment exporter unit - AO makes disallowance u/s 40(a)(ia), on the ground that the Assessee has failed to deduct tax in respect of various expenses thereby violating the provisions of chapter XVII-B.- CIT (A) held that the Assessee was not required to deduct tax under Chapter XVII-B and, therefore, no disallowance called for in respect of payment towards labour charges -

However, he confirms the disallowance in regard to interest paid to parties and audit fees paid which is covered by section 194A & 194J - Held, nothing has been brought on record to suggest that the Assessee was the contractor and doing the work for some other persons. On the contrary, details of payments show that a sum has been paid towards labour charges which clearly show that he got all these works done. The AO has not pointed out any receipt by the Assessee from some other parties on whose behalf the Assessee carried out the contract works. The provisions of section 194C are applicable in case of contractor and not applicable to the owner of the business. CIT (A) order confirmed.

Section 24(b) & 36(1)(viii) - On the issue of CIT (A) directing to disallow the interest only on the loans utilized for the purpose of house in excess of the CC limit - Held, the Assessee in the balance sheet, has shown investment and had not given any explanation as to how the same was financed apart from the utilization of CC limit and from secured and unsecured loans, the findings of the AO that a sum had been utilized out of the borrowed funds for the purpose of investment in house property cannot be doubted. The disallowance of interest to the extent was warranted. However, the alternate plea of the Assessee regarding allowing interest u/s 24(b) fully justified.

[2010-TIOL-275-ITAT-BANG](#)

**M/s Sweet Chariot Cafe Vs ACIT, Bangalore (Dated : February 26, 2010)**

Income Tax – Section 194H – TDS on commission - Assessee is a partnership firm and runs a Café – enters into marketing arrangement with M/s Fab Mall to sell its products – collects only net payment after deduction of commission for the supply made to them – claims deduction in respect of commission - AO disallows u/s 40(a)(ia) on account of non-deduction of TDS u/s 194H - assessee contends that there was no principal and agency relationship between them and since the amount did not constitute commission but was in effect discount, the provisions of section 194H were not applicable – CIT(A) confirms the addition.

On appeal, Tribunal held that,

++ no evidence of any significance has been led in by the assessee, to show that the transfer of goods to Fab Mall constituted a contract of sale. The assessee has failed to prove that his relationship with Fab Mall is on a principal to principal basis;

++ Further, the extract of Fab Mall's account in assessee's books also revealed that assessee is meeting electricity charges pertaining to its outlets within the Fab Mall's stores and as rightly pointed out by CIT(A), this would certainly not be the case if the title of the goods were being transferred in a contract for sale

[2010-TIOL-274-ITAT-DEL](#)

**Shri K G Sharma Vs Dy.CIT, New Delhi (Dated : January 29, 2010)**

Income Tax - Addition on the basis of surrendered Stock - Department conducts survey and inventories stock - found discrepancy in the value of stock recorded in books and physically available - Assessee surrenders the entire amount of stock and cash found, however at the time of filing of return assessee reduces the value of stock on the ground that some items of scrap are wrongly valued - AO made addition and

calculate gross profit taking into consideration the value of stock surrendered and the profit available in the trading account separately - CIT(A), is of the view that both items i.e. the value of closing stock and the profit available in the trading account have to be considered collectively - CIT(A) also estimated GP for post survey period instead of loss - On further appeal of the assessee goes to ITAT- Held that,

++ the order of the CIT(A) to extent of considering the collective figure of surrendered stock and GP available in the trading account is correct and deserves to be affirmed;

++ however, the estimation of the GP for the post-survey period deserves to be deleted. As regard to the reduction of the stock value by the assessee the inventory prepared at the time of survey is duly authenticated by the assessee, and reduction of value at the time of filing of return is not supported by any evidence, hence the contention of the assessee is dismissed.

[2010-TIOL-273-ITAT-MUM](#)

**M/s Nicholas Piramal India Ltd Vs JCIT, Mumbai (Dated : February 17, 2010)**

Income Tax - Section 254(2) - Rectification of order - Whether non consideration of the decision, cited by the assessee during the course of the hearing, is a mistake apparent from record and deserve rectification

Assessee's appeal was dismissed by the ITAT without considering the correct facts and judicial pronouncements. Assessee filed miscellaneous application and pleaded that mistakes are crept in the order of the ITAT since the decisions cited by the assessee are not considered.

[2010-TIOL-272-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s Lakhi Games Impex Pvt Ltd (Dated : January 29, 2010)**

Income Tax - Sec 133(6) - Whether payments made to Karigars can be disallowed on their non-appearance before the AO.

Assessee is a company engaged in the business of import of rough diamonds and export of the same after cutting and polishing - claimed deduction of payments made to karigars as labour charges - AO issued notices u/s 133(6) to all the Karigars - in pursuance to these notices none appeared before the AO - Assessee filed confirmation of all the karigars - AO disbelieving these confirmations disallowed the expenses on the ground that no PAN details of any party is made available by the assessee and creditworthiness of the parties not established - Before CIT(A) assessee argues that it is not the case of unexplained cash credit and hence there is no need of proving any creditworthiness - CIT(A) deleted the addition

[2010-TIOL-271-ITAT-MAD](#)

**ACIT, Madurai Vs Shri L Pandian (Dated : March 19, 2010)**

Income Tax - Section 69 - Unexplained investment - Assessee for the purpose of taking wine shops in auction borrowed some funds from one M/s Sundram Finance - after auction assessee got only one shop and the balance amount deposited with State Govt. was refunded to the assessee - AO accepted that the amount spent by assessee in auction is explained - however, taxed the refunded amount as unexplained investment - CIT(A) deleted the addition - Revenue filed appeal before the ITAT- Held that the assessment was completed in short time as is evident from the sequence of events however, in remand proceedings the AO after verifying the transaction has accepted the source of investment therefore there is no force in the appeal of the revenue

[2010-TIOL-270-ITAT-DEL](#)

**DCIT, New Delhi Vs Gopal Das Estats & Housing P Ltd (Dated : May 7, 2010)**

Income Tax - Whether CIT(A) erred in deleting the addition made by the AO on account of compensation of flat owners - Whether CIT (A) has erred in law and facts in deleting the additions made by the AO on account of interest and guarantee commission paid to the Bank.

The Assessee had constructed a multi-storeyed building which was completed in the financial year 1994. Various persons who had booked the space in the building a number of years ago, had surrendered their right to acquire the space. These parties required compensation for the user of their funds in constructing the building, and with a view to avoid litigation and for keeping the reputation and goodwill in the market, assessee refunded the advance taken along with compensation for the user of their funds during the long period of construction from 1982 onwards. Revenue objected to the payment of compensation.

Assessee treats the expenditure as revenue in nature and the compensation paid to the persons/space allottees is towards commercial expediency to retain good name in the market. The ITAT in the assessment year 195-96 had disallowed this claim. However, in the subsequent years all the Benches of the ITAT had allowed the claim following the order of ITAT in the asstt. year 1997-98 where they had considered additional submission and the Supreme Court decision cited on the subject. The latest order of the ITAT in the case is for the AY 1999-2000 and 2001-02 where again they had followed the decision of ITAT for the AY 1997-98. During the Assessment proceedings the AO observed that the Assessee had not paid any compensation to the allottees but in fact it has repurchased these flats as they have surrendered their rights in these flats. Hence, these payments are not business expenditure but investment in purchase of stock-in-trade. Therefore, AO disallowed the same. The AO also relied on the order of ITAT for AY 1995-96. The ITAT had allowed this expenditure in AY'S 1997-98, 1999-2000 and 2001-02 in the case of the Assessee itself. Similar addition had also been considered and allowed by the predecessor CIT(A) in AY 2005-06. CIT(A) held that since this issue is already covered by the order of ITAT in AY 1997-98, 1999-2000 and 2001-02, the appeal is allowed.

The issue with regard to the disallowance of interest, and bank guarantee came up for consideration before the ITAT in the Asstt. years 1999-2000 and 2001-02 where the Tribunal decided this issue in favour of the Assessee by following the Tribunal's earlier order in Assessee's own case pertaining to the Asstt. years 1997-98, 2002-03 and 2003-04. The CIT(A) has also deleted the addition by following the Tribunal's order in Assessee's own case.

Issue goes to the Tribunal where counsel for the Assessee pointed out that the issue raised in this ground is fully covered by the Tribunal decision pertaining to the Asstt.



years 1997-98, 1998-99, 1999-2000 and 2001-02 as was observed and discussed by the CIT(A) in his order. DR, submitted that the issue was decided in favour of the Revenue in Asstt. year 1995-96 against which an appeal filed by the assessee is pending before the High Court.

Having heard the parties the Tribunal has held that,

++ On the issue of deletion on account of compensation of flat owners, the Tribunal in its latest order dated 25.2.2009 pertaining to the Asstt. Year 1999-2000, and 2001-02 was inclined to follow the Tribunal's order for latter Asstt. Years 1997-98 and 1998-99 as against the Tribunal's earlier order pertaining to Asstt. Year 1995-96, and passed the order accordingly. Following the order of the Tribunal the order of CIT(A) in deleting disallowance made by the AO upheld;

[2010-TIOL-269-ITAT-DEL](#)

**Sunglow Builders Pvt Ltd Vs ACIT, New Delhi (Dated : April 30, 2010)**

Income Tax - valuation of closing stock - Whether the AO was correct in applying uniform rate for all the floors, for determining the value of closing stock, namely shops, ready for sale

Assessee company engaged in the business of executing building projects - a search was conducted at its premises - during the assessment proceedings the AO enquired about the valuation of remaining unsold shops - assessee replied that these are valued on the basis of sale instances of shops situated on that floor to which the closing stock belonged - AO doubted the valuation and took the opinion that the assessee has taken the lowest sale instance for valuing the stock according - AO took the average of total shops sold out and made addition on account of difference in closing stock - CIT(A) took the view that the AO was not correct in applying uniform rate for all the floors since in the property market the rate of property varies from floor to floor - accordingly reduced the quantum observing that there is no need to estimate any value for second floor - however sustained some additions on account of valuation difference in the case of third floor - still aggrieved, the assessee filed appeal before the ITAT.

[2010-TIOL-268-ITAT-MAD](#)

**ITO, Chennai Vs Shri T B Rathinavelu (Dated : March 31, 2010)**

Income Tax - Sec 2(31) - Assessment of property received in partition of HUF, in the capacity of Karta - Whether the CIT(A) was correct in law in holding that the correct hand to assess the long term capital gains is the hand of the HUF and not the Karta.

Assessee is a retired employee of RBI - filed his income tax return - the same is selected for scrutiny - AO makes addition on account of LTG and assessed the income - Before CIT(A) it was argued by the assessee that the LTG is taxable in the hands of HUF and not in the hand of assessee since the assessee received the property in the capacity of Karta and on the participation of HUF - CIT(A) allowed the appeal of the assessee - Matter reached the ITAT and DR argued that the assessee since have nocoparcener after the death of the father, the property should be assessed in the hands of the assessee. AR of the assessee argued that the assessee and his son constitute HUF and hence the LTG is taxable in the hands of the HUF.

After hearing the arguments of the both sides the Bench has held that,

++ the property was received by the assessee's father on family partition between him and his brother as early as 29.9.1936. It also remains a fact that the assessee received the property in his capacity as Karta of HUF consisting of himself and his son by way of family partition on 6.6.1988. From the records it appears that these facts are supported by registered documents. Thus the assessee received the property by way of partition belonging to HUF and it was this property which was sold during the accounting year and capital gains, if any, is assessable only in the hands of HUF. The case laws relied on by the assessee also support the assessee's case;

++ The Madras High Court in the case of P.R. Ramasubramania Raja v. State of Tamil Nadu cited, has held that the property having been obtained on partition belonged to HUF, of which the assessee was the karta. The Supreme Court in the case of Surjit Lal Chhabda v. CIT, Bombay, has held that the appellant, his wife and his unmarried daughter were members of a Hindu Undivided Family; the absence of an antecedent history of jointness between the appellant and his ancestors was no impediment to the appellant, his wife and unmarried daughter forming a Hindu Undivided Family.

[2010-TIOL-267-ITAT-MUM](#)

**M/s Chawla Oils Pvt Ltd Vs ACIT, Mumbai (Dated : March 30, 2010)**

Income Tax – Section 37 - Assessee in the business of manufacturing and trading in edible oil and oil products - Assessee carries out repairs and renovation of existing furniture and fixtures in its office and business premises and claims it as revenue Expenditure - AO treats it as capital expenditure and disallows the same - CIT(A) confirms the disallowance - Held, the most of the work done by the Assessee is for the purpose of repairs such as painting and polishing to the property which is in existence for the last 20 years - disallowance of 25% would meet the ends of justice. Appeal partly allowed.

[2010-TIOL-266-ITAT-HYD](#)

**DDIT, Hyderabad Vs Shri G Raghuram (Dated : April 30, 2010)**

Income Tax - Section 32, 194, 56(2)(iii) - Whether income which is earned by providing the amenities like DG sets transformers and furniture and fixtures, which are integral part of the building is to be taxed under the head "income from house property" - Whether lease rental is to be treated as 'income from other sources' and depreciation to be allowed

[Also see analysis of the Order](#)

[2010-TIOL-265-ITAT-MUM](#)

**ACIT, Mumbai Vs Tata Securities Pvt Ltd (Dated : April 30, 2010)**

Income Tax - Section 254(2) - Whether the order passed by the ITAT, which is not in consonance with the subsequent view of the High Court, can be said to be an erroneous order and hence deserves to be rectified

Assessee claimed depreciation on the BSE card the same was allowed by the ITAT. However, the jurisdictional High Court subsequently in the case of Techno Shares & Stocks Ltd. ( [2009-TIOL-495-HC-MUM-IT](#) ) held that BSE card is not an asset and hence not eligible for depreciation. On the basis of this decision Revenue filed Miscellaneous application and argued that the order of the ITAT suffers from errors in view of the judgment of Saurashtra Kutch ( [2008-TIOL-170-SC-IT](#) ) and hence needs to be rectified - Countering the submission of the Revenue assessee relied on Mepco ( [2009-TIOL-121-SC-IT-LB](#) ) and argued that the order of the ITAT is correct.

[2010-TIOL-264-ITAT-MUM](#)

**M/s Smart Chip Ltd Vs DCIT, Mumbai (Dated : April 30, 2010)**

Income Tax - Software Development expenses - Whether expenses incurred in the development of software for the smooth running of business and as per customer specification can be equated with incurring of expenses for purchase of software

Assessee company is in the business of personalization of smart cards, and for the impugned year the assessee has entered into agreement with RTO Gujarat and Army Canteens, the main work to be carried out in the above two agreement is in the nature of developing smart card for various projects and develop appropriate software for the use of smart card for different purposes envisaged under different contracts. Initially for the current year the assessee has deferred the entire expenditure incurred for the development of software debited under the head of "personnel expenses" and "administrative expenses", later on at the time of finalization of return the assessee has claimed the entire expenses as revenue in the computation of income. AO did not allow the same. CIT (A) affirmed the view of the AO- Before ITAT assessed pointed out that the assessee has not purchased any software rather developed software for the smooth running of its projects.

[Also see analysis of the Order](#)

[2010-TIOL-263-ITAT-BANG](#)

**M/s Digital Equipment India Ltd Vs CIT, Bombay (Dated : November 17, 2009)**

Income tax - Provision for warranty - Whether the provision made for meeting the warranty claims vis-à-vis goods manufactured is contingent and hence not allowable

Assessee, a public limited company, is engaged in manufacturing, sales and service of computers and also exports of software. It makes provision for warranty and claims the same as deduction - AO disallows the same on the ground that the provision is a contingent liability and hence not allowable - CIT(A) following Rotorok Controll ( [2009-TIOL-64-SC-IT](#) ) allowed the claim of the assessee - Revenue takes the issue before the ITAT which has held that,

++ in principle allowabilty of warranty is justified, but the quantification of the same depends on facts and circumstances of each case. It depends on the items sold and serviced/repared by the assessee and expenditure incurred thereon. There is nothing

on record to justify the higher percentage towards warranty;

++ In Rotork Controls India(P) Ltd case the percentage of warranty is 1.5% of the turnover, but in the instant case, there is nothing on record to suggest that higher percentage of warranty is justified;

++ case restored to the file of AO for quantification of allowability of expenses in question after taking into consideration all facts and circumstances.

Income Tax - Arbitration award paid by assessee whether revenue expense or capital - AO in AY 1990-91 did not dispute the allowability on the ground that it pertained to next assessment year - In next AY the AO again disallowed the same treating the same as capital - CIT(A) allowed the claim of the assessee - Revenue takes the matter before the ITAT which has held that,

++ the AO in principle, agreed for allowing the expenditure in question. However, the same was not allowed in AY 1990-91 on the ground that it pertained to AY: 1991-92, because award in this regard was passed on 22-09-2000. However, in 1991-92, the same was disallowed altogether on different footing by the AO by holding that the award has been passed in respect of purchase consideration, so same cannot be allowed as revenue expenditure. The AO has not substantiated its stand with regards to its stand that expenditure in question for the purpose of acquiring assets of capital nature. From the facts on record, it is clear that amounts of compensation has been arrived to be paid on account of 10% of pipeline orders and such nature of payments is like sale commission and the same has been rightly allowed by the CIT(A), Even if the same has been paid in lumpsum, it will not change the nature of payment.

[2010-TIOL-262-ITAT-MAD-SB](#)

**ACIT, Chennai Vs M/s Mahindra Holidays & Resorts (India) Ltd (Dated : May 26, 2010)**

Income tax - Sec 145, 147/ 148 - Whether an amount, received as advance, will remain a debt, and cannot be treated as income, unless and until the agreed services in respect of such advance are provided

[Also see analysis of the Order](#)

[2010-TIOL-261-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s Cipla Limited (Dated : February 17, 2010)**

Income Tax - Section 147 - Reopening of assessment - Whether reopening of an assessment, earlier completed under section 143(3), within four years is permissible, on an issue which is not pending before the CIT(A) in the appellate proceedings of 143(3) and that too on the basis of same material

Assessee Company filed return of income (ROI) and claimed deduction u/s 80IA and 80HHC the deductions were allowed in part - Later the AO observed that the deduction u/s 80IA has been wrongly computed in as much as the deduction was allowed on global profit method means on book profit and not on gross total income - Accordingly the AO reopened the assessment - CIT(A) affirmed the action of the AO - Before the ITAT assessee challenged the very jurisdiction of the AO u/s 147 on the ground that the issue of deduction u/s 80-IA is already pending adjudication before

the CIT(A) in the appellate proceedings of 143(3) and hence as per the principle of doctrine of merger the AO has no jurisdiction to reopen the assessment - Assessee also contended that the reopening is based on mere change of opinion and no new facts have been brought on record by the AO

[2010-TIOL-260-ITAT-HYD](#)

**ACIT, Warangal Vs M/s Kavuri Polymers (Dated : April 30, 2010)**

Income Tax:-Section 43B- Whether the provision of section 43B can be invoked on a statutory liability which by flux of circumstances changed it's character Held- No

Assessee did not pay the sales tax and reflected the same as interest-free loan in the balance sheets. AO took the view that the same is not allowable as per the provisions of section 43B. The CIT (A) allowed the appeal of the assessee. Matter reached the ITAT where the DR contends that the amount of sales tax was not paid by the assessee, and hence the order of the AO is correct. The AR of the assessee pointed out that the assessee was awarded sales-tax deferral scheme benefit under the State Incentive Scheme for setting up Industries vide order of the Department of Industries, Government of Andhra Pradesh dated 11-3-1999. Under this scheme, the assessee was permitted to retain the sales tax collected from its customers for its repayment after a period of 14 years. This deferred amount stands converted as interest free loan in the records of State Government and therefore has lost its character of a current liability and accordingly the provisions of section 43B of the Act are not applicable.

[Also see analysis of the Order](#)

[2010-TIOL-259-ITAT-DEL](#)

**Smt Kanta Kwatra Vs ITO, Panipat (Dated : April 30, 2010)**

Income Tax - Section 271(1) (C) – Whether, having regards to the facts and circumstances of the case the AO was justified in levying penalty on account of bogus gifts

Both the assesseees are individuals, claimed to have received gifts from one Mr. Sanjay Mohan Aggarwal. The AO after doing meticulous enquiries drawn a conclusion that the entries of gifts are nothing but the accommodation entries. Assesseees surrendered the gifts with a condition that no penalty will be levied. Later on the AO levied the penalty- Assessee filed appeal before the CIT (A) and interalia contended that there is no satisfaction of the AO

CIT (A) affirmed the order of the AO- Matter reached to the ITAT- AR of the assesseees argues that AO has levied penalty on two counts i.e. assesseees have furnished inaccurate particulars and the assesseees have concealed the particulars, where as both the situations are mutually exclusive, and can not be taken into course together, AR of the assesseees also pointed out that the assesseees have not concealed the particulars since both of them have shown the gifts in their respective returns

[2010-TIOL-258-ITAT-MUM](#)

**ITO, Mumbai Vs M/s Equator Holdings P Ltd (Dated : May 7, 2010)**

Income Tax - Sections 41, 68, 144, 145(3), rule 46(A)(1) - Whether CIT(A) erred in deleting the AO's addition made on account of change in method of valuation of closing stock - Whether CIT(A) erred in admitting the evidence filed as per rule 46(A)(1)(C)

Assessee engaged in the business of dealing in shares. During the scrutiny proceedings, the AO noticed that there is a change in the method of accounting this year. It was noted as against valuation of closing stock at "market value" all along, the Assessee has now switched to "cost price or market price, whichever is lower". The AO rejected the change on the ground that even though it is bonafide, the Assessee is required to offer profits to tax during transitional period so as to regularize the said change and makes addition - CIT(A) deletes the addition on the ground that the appellant has followed recognized and settled accounting practice of accounting. AO observes that the Assessee had to pay an amount of Rs.18,00,000/-., which was secured by third party pledge of shares but the same is no longer payable under the settlement. The AO thus treated the said amount as interest credited thereon as income of the Assessee u/s 41(1).The AO also treated this amount as unexplained credits in books of account.- CIT(A) disagrees with the AO

Having heard the parties the Tribunal has held that,

++ when market value of stock is taken into account for computation of business profits and when such market value is higher than cost, it results in bringing to charge appreciation in value of unsold stock – something which is clearly impermissible in view of first principles of stock valuation as set out in the judgment of Supreme Court in the case of Chainrup Sampatram Vs CIT . The adjustment made by the AO is unsustainable in law for this fundamental reason itself.

++ There is no dispute that the change in valuation method is bonafide and has been consistently followed in all subsequent years. Conclusion arrived at by the CIT(A) upheld. CIT(A) rightly observes that the question of addition u/s 41(1) arises only when amount written back is claimed as deduction in earlier years.

++ The provisions of section 68 can also not be applied as credit is duly explained, and interest credit is also in accordance with the directions of Special Court. Whatever amount has been deducted in computation of business profits in earlier years in respect of this transaction, and which is no longer payable, has anyway been offered as income u/s 41(1) by the Assessee. The amount shown as payable is to be settled on sale of shares.

[2010-TIOL-257-ITAT-MAD](#)

**ITO, Chennai Vs Shri N Selvakumar (Dated : March 30, 2010)**

Income Tax - Addition on account of reconciliation difference- Whether addition can be made on mere difference in reconciliation of account even though the payment are transacted through banking channel

[Also see analysis of the Order](#)

[2010-TIOL-256-ITAT-DEL](#)

**DCIT, New Delhi Vs M/s Independent Media Pvt Ltd (Dated : March 11, 2010)**

Income Tax - Section 68 - Whether for treating the share application money as bogus, it is incumbent on department to establish that the money actually belongs to the assessee company or has come out from the coffers of the assessee company

[2010-TIOL-255-ITAT-MUM](#)

**Harish P Mashruwala Vs ACIT, Mumbai (Dated : March 30, 2010)**

Income Tax - Section 271(1)(c) - Whether it is incumbent on the AO to levy penalty on the ground as reflected in show cause notice

Assessee, a HUF received gifts from NRI, which later proved to be bogus, before investigation wing - assessee also admitted that the gifts were accommodation entries - However, at the time of filing of return assessee concocted a story of surrender of tenancy rights and shown the amount as capital gain and offered the same for taxation - AO did not accept the story of the assessee and made the addition on account of unexplained cash credit - The quantum order is confirmed by the ITAT - AO levies penalty - CIT(A) affirms the same - Before ITAT it was argued that the penalty has been imposed by the AO on the ground of furnishing of inaccurate particulars - however the show cause notice was issued for concealing the particulars of income and hence the order of the AO is not sustainable.

[2010-TIOL-254-ITAT-MUM](#)

**Management Structure & Systems Pvt Ltd Vs ITO, Mumbai (Dated : April 30, 2010)**

Income Tax - Capital gain or business income - Whether the assessee whose substantial income from capital gain comprises long term capital gain and who has shown substantial dividend income, can be said to be a trader of shares and doing share trading business

[Also see analysis of the Order](#)

[2010-TIOL-253-ITAT-MUM](#)

**Sheetal Classic Home Makers Pvt Ltd Vs Dy.CIT, Mumbai (Dated : April 30, 2010)**

Income Tax - Section 4 - Chargeability of income in a case of project completion method - Whether, in project completion method only the proportionate income left after reducing the work in progress from sale is taxable

Assessee engaged in the business of construction and development of real estate,

following project completion method, fails to comply with the direction of AO during the course of assessment, as a result of which the AO estimated the income @ 10 % of advances received - CIT(A) observed that project of the assessee is completed in the preceding year accordingly he assessed the difference between the proportionate value of WIP at the beginning of the year and sale price - Assessee still aggrieved files appeal before the ITAT and argued that the project is completed in next year - alternatively raised two pleas that expenses incurred during the year should be allowed and a direction may be given to the AO to give benefit in next year

After hearing the parties ITAT held as under:-

++ The assessee could not bring any material on record to controvert the finding of the CIT(A) that construction activity of the assessee came to an end on 5.3.2002 and therefore, it could not be said that the assessee was carrying out any construction activity during the relevant previous year;

++ There is no reason thus to disturb these findings of the CIT (A). The Counsel's contention is that the expenses incurred during the year should also be taken into account for computing proportionate value of work in progress. To that extent, the plea of the assessee is upheld the AO is directed to re-compute the profits by modifying the proportionate value of work in progress. Counsel has also submitted that it will amount to double taxation of income since the assessee has already returned entire income from project in a later assessment year. He thus seeks a direction to the effect that the amount taxed as income of this assessment year should be excluded from the income finally taxed in the later year. There is no material to support the factual aspects embedded in Counsel's statement about taxability in the later year;

++ That apart, it is not open to the Bench to give directions about an assessment year other than the assessment and remedy would probably be elsewhere.

[2010-TIOL-252-ITAT-MUM](#)

**ACIT, Mumbai Vs Datamatic Technologies Ltd (Dated : March 25, 2010)**

Income Tax - Section 35D - Assessee increases authorised preference share capital and adjusts all the expenses incurred against its share premium - however fails to claim any expense in profit and loss account - AO takes the view that since the authorised capital is increased much after the incorporation the same are not allowable - CIT (A) affirms the disallowance - On further appeal ITAT has restores the matter to the AO for fresh consideration.

[2010-TIOL-251-ITAT-MUM](#)

**Smt Sadhana Nabera Vs ACIT, Mumbai (Dated : March 26, 2010)**

Income Tax - Nature of income - whether short term capital gain or business profit - Whether the income earned by the assessee on sale of shares is to be treated as short term capital gain or income from business.

Assessee is an individual and a Director in a few companies. All the companies were involved in the business of trading of shares. For the impugned year assessee filed return of income declaring business income as 'NIL' and showing short term capital



gain. Considering the volume, frequency and investment in the share trading business the AO took the view that the short term capital gain should be taxed as business income. CIT(A) also affirmed the view of the AO. Before the Tribunal the assessee argues that she is a high net worth investor having substantial capital. Assessee further pleaded that many of the transactions are delivery based transaction and the principles established by the ITAT in the case of Gopal Purohit vs. JCIT ([2009-TIOL-319-ITAT-MUM](#)) will apply to the facts of the case and further submitted that volume, frequency and other factors did not effect the nature of income.

[Also see analysis of the Order](#)

[2010-TIOL-250-ITAT-DEL](#)

**AT&T Communication Services India Pvt Ltd Vs DCIT, New Delhi (Dated : March 19, 2010)**

Income Tax - Sec 40(a)(i), 271(1)(c) - AO levied penalty on following three items (a) Rs.1,31,58,290/- on account of disallowance of expenses claimed in respect of payment made to AT&T, Singapore. (b) Rs.33,333/- being disallowance of expenses paid to ROC; and (c) Rs.3,98,36,108/- being amount received from Birla, AT &T.

[2010-TIOL-249-ITAT-DEL](#)

**ACIT, New Delhi Vs M/s Fortis Financial Services Limited (Dated : March 31, 2010)**

Interest Tax Act – Section 13 – Penalty for concealment or furnishing inaccurate particulars - AO found that assessee has not included in the computation of chargeable interest, the discounting charges earned by it - AO held that discounting charges so earned are interest in nature and assessee is liable to pay interest tax thereon - The addition so made in the quantum was deleted by the CIT(A) wherein it was held that discounting charges are not interest income, therefore not liable for interest tax – However ITAT reversed the order of the CIT(A) and held that discounting charges is interest income - With respect to the addition made in the quantum, the AO levied penalty u/s 13 – CIT(A) deleted penalty observing that there is a genuine issue of difference of opinion and interpretation on the basis of which assessee resorted to the view favourable to him – ITAT upheld order of CIT(A).

[2010-TIOL-248-ITAT-MUM](#)

**M/s Malabar Industries Pvt Ltd Vs ITO, Mumbai (Dated : December 18, 2009)**

Income Tax - Section 147 - Assessee a company engaged in the business of construction. In survey certain papers showing completion of projects are found - On the basis of which the AO reopened the assessment - Assessee challenges the Sec 147 action on the ground that the reopening is based on mere change of opinion - CIT (A) affirms the action since there is no assessment u/s 143 (3) and the return was merely processed u/s 143(1) and moreover the assessee has sold about 80% of the area constructed and as such it can be said the project was completed - Before ITAT

assessee filed appeal however remain absentee - Held that the action of the CIT(A) does not call for any interference in view of the decision of Rajesh Jhaveri. Hence appeal of the assessee is dismissed on this ground;

Income Tax - Section 37 - Payment of Compensation - Assessee paid compensation to the allottees and obtained ownership rights of some flats, resold these flats at higher figure and claimed deduction of compensation paid - AO denied on the ground that no documentary evidence was filed - Before CIT(A) assessee filed relevant documents - CIT(A) allowed the claim after obtaining remand report - Revenue filed appeal to ITAT and challenges that some original documents were not produced - ITAT held that the CIT(A) has correctly deleted the addition since the assessee has shown substantial profit from the reselling of these flats - genuineness of documents can not be doubted. Appeal of the revenue is dismissed on this ground.

[2010-TIOL-247-ITAT-MUM](#)

**M/s Metal Recycling Industry Vs ITO, Mumbai (Dated : March 24, 2010)**

Income Tax - Section 10B - Assessee is a 100% Export Oriented Unit (EOU) engaged in manufacture of ferrous and non-ferrous metals - claims deduction u/s 10B - In the opinion of the AO deduction u/s.10B is allowable only on the export turnover and not in respect of local sales. The AO allowed deduction at a reduced figure qua the export turnover - No relief by the CIT(A) - Held, in view of the precedent, CIT(A) Order upheld.

On the issue of AO not allowing of deduction u/s.10B on interest income and treating it as taxable under the head 'Income from other sources' - CIT(A) upheld the assessment order on this issue - Held, the language of sub-section (4) of section 10B is similar to that of section 10A. As the interest has resulted from the FDR which were taken for the purpose of obtaining letter of credit from the bank, such interest deserves to be included under the head 'Profits and gains of business or profession' and thereafter eligible for deduction u/s.10B. Assessee's ground allowed.

[2010-TIOL-246-ITAT-MUM](#)

**ATE Enterprises Private Limited Vs ITO, Mumbai (Dated : April 30, 2010)**

Income Tax - Sections 4, 5, 145 - Taxability of advance - Whether the amount received in advance for rendering services in future is taxable on the ground that under cash system of accounting each and every receipt is taxable irrespective of it's nature

Assessee was following cash system of accounting - received some amount in advance for rendering services in future - made provision for the same and set-apart under the head liability and provision - the AO was of the view that the amount was taxable as income since the assessee was following the cash system of accounting - CIT(A) deleted the opening balance figures coming out from the previous years - however, upheld the order of the AO in respect of remaining amount - Assessee filed further appeal to the ITAT

[Also see analysis of the Order](#)

[2010-TIOL-245-ITAT-MUM](#)

**TCE Consulting Engineers Ltd Vs Addl.CIT, Mumbai (Dated : April 30, 2010)**

Income Tax:- Section 36(1), 36(1)(vii)- Whether, once the assessee written off the debt and reduces the amount from the corresponding debtors, is sufficient to treat the debt become bad and there is no requirement to prove the bonafide of doing so

Assessee written off certain debts in its books AO called for explanation from the assessee. Assessee filed the same, AO not satisfied and added the amount- CIT (A) after construing the relevant provision of section 36 deleted the addition in part-Matter reached to the ITAT-DR vehemently argued that the transaction of debt was related to the group companies and hence the claim of the assessee could not be treated as bonafide claim of bad debts and the CIT(A) was justified in affirming the addition

[2010-TIOL-244-ITAT-MUM](#)

**Prana Studios Pvt Ltd Vs DCIT, Mumbai (Dated : April 15, 2010)**

Income Tax - Section 68 - Share Application Money - Whether the share application money can be treated as bogus on the ground that there was difference in the share holding pattern, shown in register of Members and share holding pattern submitted in assessment proceedings

Assessee company received share application money from three persons - one of them was a foreign company - During the course of assessment proceedings the AO noted that share holding pattern as shown in register of members is different from the pattern submitted in assessment proceedings - AO asked for explanation - assessee filed the same but the AO made the addition on the ground that there was contradiction in share holding pattern - CIT(A) partly allowed the appeal of the assessee, and added the portion of money received from foreign company as un-explained cash credit - Matter goes to the ITAT

[2010-TIOL-243-ITAT-MAD](#)

**M/s Mova Consultants Pvt Ltd Vs ACIT, Chennai (Dated : March 26, 2010)**

Income Tax - Section 263 - Whether the order of the AO is erroneous and prejudicial to the interest of revenue - whether CIT is justified in invoking powers u/s 263

[2010-TIOL-242-ITAT-MUM](#)

**ACIT, Mumbai Vs Shri Dilip S Hate (Dated : May 7, 2010)**

Income Tax - bogus firm - Sec 45 - capital gain or business profits - Whether having regard to the facts of the case the partnership firm constituted by the assessee with four other persons was constituted only for the purpose of tax evasion - Whether once it is held that firm was bogus then the profits accrued on transfer of land held as stock in trade is to be assessed as "business profits"

[Also see analysis of the Order](#)

[2010-TIOL-241-ITAT-MUM](#)

**Siemens Information Systems Ltd Vs Addl.CIT (Dated : March 4, 2010)**

Income Tax - Sec 10A, 115JB, 263 - Assessee company is engaged in the business of software development and consultancy. The return was filed declaring total loss of Rs. Nil. The assessment was completed at Rs. Nil under the normal provisions of the Act and book profit u/s.115JB. Subsequently CIT invokes powers u/s 263, observing that the Assessee has claimed deduction u/s.10A for its eight STP Units situated at various places and the same has been allowed by the AO. The Assessee company in its submission has disclosed the unit-wise P&L A/c and detailed certain expenses incurred for Post & Communication and Insurance Charges. However, these were not deducted from the total turnover to arrive at the export turnover as per provisions. According to the CIT, the admissible deduction u/s.10A is worked out to be less than what has been claimed and hence, excess deduction was allowed. On being asked the assessee stated that Post & Communication and Insurance expenses were not separately recovered in the invoices. Hence, the question of excluding these expenses to work out the export turnover does not arise and in support sample copies of invoices were also produced.

The CIT took the view that in order to properly examine the Assessee's case out of the purview of clause(4) of Explanation 2 to Sec 10A, scrutiny of the basic records maintained by the Assessee was required and accordingly he set aside the assessment with the direction to the AO to examine the facts in the aforesaid respect and take decision as per law

[2010-TIOL-240-ITAT-DEL](#)

**Sanjay Kumar Jain Vs CIT, Meerut (Dated : January 22, 2010)**

Income Tax - Section 263 - Whether the order of the AO is erroneous and prejudicial to the interest of revenue

[2010-TIOL-239-ITAT-DEL](#)

**MKR Frozen Food Exports Ltd Vs ITO, New Delhi (Dated : March 12, 2010)**

Income Tax - Section 147 - Whether under the new law that is after 1.04.1989 amendment, is there is any requirement of fresh "information" as was present under the old law, particularly when the original return is merely processed under section 143(1)

[2010-TIOL-238-ITAT-BANG](#)

**M/s J K Panthaki & Co Vs Income Tax Officer (INV), Bangalore (Dated : February 16, 2010)**

Income Tax - Sec 37(1) - Payment of secret commission - Assessee a firm engaged in the business of engineering contracts, for obtaining contract of Karnataka Ball Bearings Ltd paid commission to some persons controlling the company and were instrumental in awarding the contracts - During search and in investigation proceedings it emerged that the payment of commission is not for any services and the same was made for obliging the persons - AO takes the view that the same is not allowable - CIT affirms the view of the AO - Tribunal in first round confirms the view of the AO - however, recalls the order upon the direction of the High Court and allows the appeal - thereafter the Revenue approaches the High Court and asked for reference of few questions in view of explanation to section 37 - High Court again referred the matter to the ITAT and this time the ITAT after considering the matter observed that payer induces the other party to deceive the share holders of the company - Held that payment of commission is barred by explanation of section 37 therefore, the same is correctly disallowed by the AO - Appeal of the assessee stands dismissed.

[2010-TIOL-237-ITAT-MUM](#)

**M/s Modepro India Private Limited Vs DCIT, Mumbai (Dated: March 29, 2010)**

Income Tax - Section 147 - Assessee files return - AO completes assessment u/s 143(3) - Subsequently, on the perusal of the records the AO noticed that the Assessee has failed to include Modvat credit in its closing stock in contravention of the provisions of section 145A - Notice u/s 148 issued after the expiry of four years from the end of the relevant assessment year and completes assessment after making addition on account of Modvat credit - CIT(A) directs the AO to verify the facts and make addition if there is difference in the figure as pointed out by the Assessee - Held, from the reasons recorded for reopening it is seen that there was no failure on the part of the Assessee to disclose fully and truly all material facts qua the Modvat credit as the same was part of Tax Audit Report annexed to the Balance Sheet filed along with the return of income - The notice being beyond the period of four years was obviously time barred. The assessment flowing out of such time barred notice cannot stand - assessee's appeal allowed

[2010-TIOL-236-ITAT-MUM](#)

**ITO, Mumbai Vs Hardrock Electric & Engg Co (Dated: April 30, 2010)**

Income tax - Sec 69, 133 - whether AO is justified to make addition for bogus purchases if the assessee fails to produce parties for verification but does submit

confirmation letters from them

Assessee is engaged in the manufacture and assembling of engineering components and products - files Nil return - scrutiny - AO issues inquiry letters u/s 133(6) to verify the genuineness of business transactions - Assessee files confirmation letters from all the parties - AO takes the view that since the parties were not produced, the purchases declared by the assessee are not genuine and additions are made u/s 69 - CIT(A) deletes the addition by questioning the very foundation of addition made for failure to produce all the parties - held, no infirmity in CIT(A) order as the assessee has filed confirmation letters from all the parties, some of them are non-residents and a few are PSUs - Revenue's appeal dismissed

[2010-TIOL-235-ITAT-BANG](#)

**M/s 3i Infotech Ltd Vs CIT, Bangalore (Dated: March 31, 2010)**

Income tax - Sec 10B, 263 - Assessee is a STPI unit - claims benefits without applying the provision for diminution in value of investments pertaining to the unit - AO allows - CIT invokes Sec 263 - held, in view of Karnataka HC decision in Himatasingike Seide Ltd. ( [2006-TIOL-448-HC-KAR-IT](#) ) the AO has erred in giving Sec 10B benefits - CIT order is upheld - Assessee's appeal dismissed

[2010-TIOL-234-ITAT-MAD](#)

**Aircel Cellular Ltd Vs ACIT, Chennai (Dated: March 31, 2010)**

Income Tax - Sections 263, 115JB - Whether CIT was justified in invoking jurisdiction u/s 263 under the facts and circumstances of the case.

[Also see analysis of the Order](#)

[2010-TIOL-233-ITAT-BANG](#)

**ACIT, Bangalore Vs M/s JSW Steel Ltd (Dated: February 22, 2010)**

Income Tax - Explanation 5 to section 32 - Assessee files revised return and does not claim depreciation - AO computes income after allowing depreciation - CIT(A) reverses the order of the AO and held that prior to the insertion of explanation 5 department can not thrust depreciation on an assessee in view of the decision of Apex Court in the case of Mahindra Mills - before the Tribunal the Revenue argues that decision of the Supreme Court related to the assessment year 1974-75 prior to the deletion of sub-section (1) and (2) of section 34 by the Taxation laws (Amendment and Misc. Provisions) Act, 1986 w.e.f. 1.4.1988 and therefore, the ratio of the concerned decision is not applicable to the facts of the assessee's case for the AY 1999-2000- Held that in view of the Karnataka High Court decision in the case of CCIT & Anr. Vs. Machine Tools Corporation of India Ltd., if the assessee withdrew claim of depreciation in revised return, ITO cannot allow depreciation adverting to particulars furnished in

original return. Hence the appeal of the revenue is dismissed.

[2010-TIOL-232-ITAT-MUM](#)

**ACIT, Mumbai Vs M/s KNP Securities Pvt Ltd (Dated: March 26, 2010)**

Income Tax - Section 28, 43(5), 73 - A.O. observes that the Assessee has earned an amount on account of trading in shares and also earned brokerage income - forms an opinion that as per the Explanation to Section 73 the nature of share trading business of the Assessee is deemed to be speculative - As per Explanation to section 28, speculation business should be segregated from other business - segregates the transactions and allocates the expenditure and arrives at a speculation loss - CIT(A) deletes the allocation made by the AO - Held, speculative nature of transactions will come only when a particular transaction is considered as speculative in nature u/s 43(5). So long as the Assessee is dealing in delivery based transactions Explanation to Section 28 does not come into operation. The issue can only be considered with reference to section 73 Explanation. That portion of section will come into play after considering the income under the head "Business" as also income under other heads. The Allocation of expenditure and segregation of business will come into picture only when the Assessee indulges in speculative nature of transactions.

Section 41(1) - While verifying the sundry creditors confirmation in respect of two sundry creditors, have not been furnished by the Assessee and AO treated the amounts as income u/s 41(1) - CIT(A) deletes the addition - Held, the A.O. has not made out any case that there is cessation of liability. Just because Assessee has not been able to furnish confirmation in respect of the outstanding credits it does not mean that the amounts have been ceased to be in the books of account and be treated as income u/s 41(1). CIT(A) order upheld.

[2010-TIOL-231-ITAT-HYD](#)

**State Bank Of India, IFB Branch, Hyderabad Vs DCIT, Hyderabad (Dated: December 3, 2009)**

TDS - Retrospective amendment - non deduction of tax on concessional rental accommodation to employees - Assessee not liable to deduct TDS - the issue whether in the facts of the case, the assessee could be held to be in default for non-deduction of tax at source on the perquisite value of the residential accommodation provided at a lesser figure of rent than actually paid by the assessee to the lessor of the premises, in view of the amendment in law with retrospective effect from 1.4.2002, is covered in favour of the assessee with the decision of the Nagpur Bench of the Tribunal in the group cases of Canara Bank, wherein the coordinate Bench of the Tribunal has passed an elaborate order and has considered the relevant case-laws and has followed the ratio of the decisions of the Hon'ble Apex Court and held that as far as the assessee employer is concerned, it is not hit by the retrospective insertion of Explanation (1) to S.17(2) thereof in the absence of any such extension of retrospective effect either in S.192 or S.201 of the Act.

[Also see analysis of the Order](#)

[2010-TIOL-230-ITAT-MUM](#)

**M/s Tip Top Typography Vs ITO, Mumbai (Dated: March 31, 2010)**

Income Tax - Sec 23 - Determination of Annual Value of property - Assessee lets out the commercial premises for considerations - rent received by the assessee was more than the rateable value fixed by the Municipal authorities and accordingly assessee considered the rent received as fair rent u/s 23(1)(b) - AO determined fair rent u/s 23(1)(a) for arriving at the annual value - CIT(A) confirmed the action of the AO - appeal filed before the tribunal - held, the AO was right in exploring the possibility of assessing income at a higher figure but the annual value under section 23(1)(a) cannot go beyond the Municipal valuation - matter remitted back to the file of AO with direction to verify the rateable value fixed by the Municipal Authorities and if the same is less than the actual rent received by the assessee then the actual rent received should be taxed otherwise the matter may be decided in accordance with law - matter remanded

[2010-TIOL-229-ITAT-DEL](#)

**Shri Gian Chand Vs DCIT, New Delhi (Dated: February 5, 2010)**

Income Tax - Section 142(2A) - Whether assessment is barred by limitation since the AO has suo-motuo extended the time limit for filing the audit report

[2010-TIOL-228-ITAT-MAD](#)

**M/s Nippo Batteries Company Ltd Vs ACIT, Chennai (Dated: March 30, 2010)**

Income Tax - Section 143(3), 147 - Whether reopening of the assessment after four years or within four years without there being any fresh material is permissible or not

[2010-TIOL-227-ITAT-HYD](#)

**M/s Pioneer Road Carriers Vs ITO, Hyderabad (Dated: October 9, 2009)**

Income Tax - Sec 37(1) - The issue pertains to the disallowance of Rs.8,40,000 on account of inadmissible expenses debited by the assessee in its books of account. The Assessing Officer pointed out that these disallowable items refer to bribes and other illegal payments made by the assessee company and debited to its books of account. The CIT (A) after going through the log book maintained by the assessee and the nature of expenses held that these expenses are in the nature of bribes. The assessee company has not brought forward any evidence to show that these expenses are not bribes. Section 37 of the Income-tax Act clearly does not allow such illegal payments to be deductible as business expenditure.

[Also see analysis of the Order](#)



[2010-TIOL-226-ITAT-HYD](#)

**The Andhra Pradesh Chambers Of Commerce And Trade Secunderabad Vs DDIT, Hyderabad (Dated: December 23, 2009)**

Charitable institutions – Donations received prior to 31.3.2009 not covered by amendment to S.2(15): The law has been amended with the insertion of proviso to S. 2(15) of the Act with effect from 1.4.2009 by the Finance Act, 2008, which has the effect of taking away the activity in the nature of trade, commerce or business or rendering any services analogous to the same for which fee or cess or any other consideration is taken, and the same shall not be treated as the advancement of any other object of general public utility. The issue is covered in favour of the assessee with the decision of the Mumbai Bench of the Tribunal in the case of DDIT vs. Indian Electrical and Electronics Mfrs. Association , wherein the coordinate bench of the Tribunal has held that the proviso to S.2(15) added by the Legislature is not clarificatory in nature and hence the said proviso would not apply retrospectively. No other decision to the contrary has been brought to notice at Bar. The legislature has specified the date from which the proviso to S.2(15) shall be applicable. The provisions of S.80G allowing certain deductions to the donors apply to the specific act of donation made on a particular date. The provisions of proviso to S.2(15) being absent until and upto 31.3.2009, no hesitation in holding that the proviso to S.2(15) shall not apply to the donations received by the assessee upto 31.3.2009.

[Also see analysis of the Order](#)

[2010-TIOL-225-ITAT-MUM](#)

**M/s Foseco India Ltd Vs ACIT, Mumbai (Dated: March 26, 2010)**

Income Tax - Section 37(1) - assessee incures expenses on VRS – claims deduction of expenses in respect of three units - AO debunks the assessee's contention and disallows the claim - CIT(A) partly goes with the AO - held, merely because deduction has been allowed to the units u/s 80HH and 80I separately it can not be said that the business of the assessee was completely closed - the assessee has only reorganized his business model with view to increase the profitability and hence the expenses are allowed as revenue expenses. Appeal of the assessee is allowed

[2010-TIOL-224-ITAT-MAD](#)

**M/s Aiman Education & Welfare Society Vs ACIT, Tiruchirapalli (Dated: March 31, 2010)**

Income Tax - Section 10(23C)(iiiad) - Assessee is a trust established for running educational institutions - In response to notice u/s 148, the Assessee files its return of income showing loss and claims the entire income as exempt u/s 10(23C) - AO observes that the only income shown by the Assessee is interest on fixed deposits which is also claimed exempt u/s.10(23C) - AO also observes that besides education as its object, the Assessee has other objects and denies exemption - CIT (A) confirms the same – Held, since the Assessee is having non-educational objects in its trust deed, no one can prevent the trustees from pursuing those non-educational objects. It

cannot be said that the Assessee trust is existing solely for the purpose of education. It is a well established rule of interpretation that if the language of the statute is clear and unambiguous, there is no room for any intendment. CIT(A) Order upheld. Assessee's Appeal dismissed

[2010-TIOL-223-ITAT-BANG](#)

**ITO, Bangalore Vs Chenzi Wei (Dated: January 8, 2010)**

Income tax - Sec 68 - Assessee is a Chinese citizen - sets up a proprietary business - exports granite blocks - during assessment the AO notices introduction of capital - part of payment was received from its Thailand-based purchaser as loan - Revenue makes addition by treating the same as unexplained sale receipts - CIT(A) finds the loan genuine and deletes the addition - held, going by the facts that the creditor's identify has been established and also the fact that the loan was received in the assessee's personal capacity which was also introduced as capital it cannot be said that the loan was sale proceeds - Addition not sustainable - Revenue's appeal dismissed

[2010-TIOL-222-ITAT-DEL](#)

**L G Electronics India Pvt Ltd Vs Addl.CIT, New Delhi (Dated: February 26, 2010)**

Income Tax - Sale Tax Subsidy - whether sales tax subsidy is capital or revenue receipt in nature

Assessee collects sales tax from customers and adds the same to dealer's price - also offers the same for taxation - files revised return and claims the same as capital receipt relying on the decision of special Bench in the case of Reliance industries ( [2003-TIOL-14-ITAT-MUM-SB](#) ) - AO treats the same as revenue receipt - CIT(A) affirms the view of the AO - ITAT observes that the assessee is not authorized by the State Govt. to collect sale tax and the State Government vide its notification has exempted the assessee from the sale tax liability on twin conditions - one the capital employed must be above Rs 50 crores and the production must be commenced between 1.12.1994 to 31.03.2002 - it has further been observed that the exemption of sales tax is available from the date of first sale and not on mere setting-up of industry - Held, that the sales tax subsidy availed by the assessee is a revenue receipt since it is not linked with the setting up of industry rather linked with the production and first sale means assessee has collected this amount embodied in dealer price in ordinary course of business and the decision of the special bench in the case of Reliance industries is not applicable to the facts of the case. Appeal of the assessee is dismissed .

[2010-TIOL-221-ITAT-MUM](#)

**M/s Royal Metal Printers Pvt Ltd Vs Addl.CIT, Mumbai (Dated: January 29, 2010)**

Income Tax - Section 272A (2)(c) - whether filing of TDS return beyond prescribed time attracts penalty though TDS was deducted and deposited in Govt Treasury in Time

[Also see analysis of the Order](#)

[2010-TIOL-220-ITAT-MUM](#)

**M/s Dudhana Investment & Trading Pvt Ltd Vs ITO, Mumbai (Dated: March 24, 2010)**

Income Tax - Section 35(1)(ii), 80GGA - Assessee engaged in the activity of investment in shares and other securities and also in the business of accepting and granting of the loans to other companies - claims weighted deduction u/s. 35(1)(ii) showing the income under the head 'business' - AO re-computes the Assessee's income by assessing the dividend as well as the interest income under the head 'income from other sources' and denies the weighted deduction - CIT(A) confirms the view of the A.O that the interest income is to be assessed as an income from other sources - Regarding claim of deduction u/s. 35(1)(ii), he upheld the view of the AO but accepts the alternate plea of the assessee that the deduction should be allowed u/s 80 GGA - Held, no reason to differ from the view taken by the Tribunal in the case of Chittoda Investment & Trading Pvt. Ltd, the order of the CIT(A) on the issue that the Assessee has not carried out any business activity in the form of money lending for earning interest income upheld - The Assessee is fulfilling the conditions for deduction u/s. 80GGA - CIT(A) Order upheld for allowing the deduction to the Assessee under the said section even if the Assessee has no income from the business.

[2010-TIOL-219-ITAT-DEL](#)

**M/s Upkar Agro Engg. Vs Addl.CIT, Panipat (Dated: April 9, 2010)**

Income Tax - Section 144, 145(3) - Best Judgment Assessment - Assessee did not appear regularly in the assessment proceedings - AO after rejecting the books made the best judgment assessment and estimated the GP @ 15% - CIT(A) though recorded a finding that the estimation of GP is without any basis restricted the same to 12% - held that it is settled law that a best judgment assessment is to be based on material available on records - however in the present case both the authorities have not referred to any material hence the orders are set-aside and the addition is deleted - Appeal of the assessee is allowed.

Income Tax - Addition on account of unverified purchases - AO made addition on the basis of report of the Inspector and the CIT(A) affirmed the addition - ITAT after referring to the figures of sale concluded that no person can make such a huge sale without purchases and as far as the report of the inspector is concerned the same is defective in as much the address of the parties is missing in this report - Held, the orders of both the authorities are cancelled and the addition is deleted - Appeal of the assessee is allowed.

Income Tax - Addition on account labour charges - AO after making the assessment u/s 144, rectified its order u/s 154, because of audit objection and made addition on account of labour charges - CIT(A) affirmed the addition - held that the entire labour charges are not addable and the expenditure incurred are required to be deducted and in a case like this where an estimation is involved the issue of this nature became

debatable and cannot be decided in 154 proceedings - hence the orders of the AO and the CIT(A) are not correct - Appeal of the assessee is allowed.

[2010-TIOL-218-ITAT-DEL](#)

**M/s Microsoft Corporation (India) Pvt Ltd Vs DCIT, New Delhi (Dated: April 16, 2010)**

Income Tax - Sec 271(1)(c), 43A - payment of advance-tax and self-assessment tax is not an expenditure incurred for the purpose of business - This is an item of appropriation of income – penalty sustained

[Also see analysis of the Order](#)

[2010-TIOL-217-ITAT-DEL](#)

**M/s Pyoginam Vs Addl.CIT, New Delhi (Dated: February 11, 2010)**

Income tax - Sec 37 - Whether forfeiture of earnest money deposit paid to export promotion council is penal in nature and thus not allowable or a revenue expenditure or a capital expenditure

[2010-TIOL-216-ITAT-MUM](#)

**Ultramarine & Pigments Limited Vs ACIT, Mumbai (Dated: April 20, 2010)**

Income Tax - Section 271(1)(c) - assessee is a manufacturer of certain detergents, pigments and other chemicals and has nothing to do with any leasing or financing business in the normal course of business - AO levies penalty on the ground that the assessee has claimed depreciation on non-existing assets and entered into bogus lease transaction to evade tax - CIT(A) affirms the order - Before ITAT assessee argues that the fact that the assessee has abandoned his claim for depreciation is not because there was any lack of bonafides in the conduct of the assessee, but merely because the assessee did not want to prolong the litigation which, at the end of the day, the Tax authorities have proceeded to tax only interest element in the lease rental, as against the entire lease rental itself, as assessee's income, assessee further argues that it is not a case of concealment or furnishing of inaccurate particulars - it's a case where a claim has been made which remained un-substantiated - Assessee placed reliance on the decision of Supreme Court in CIT Vs Reliance ( [2010-TIOL-21-SC-IT](#) ) - held that there is no merit in assessee's contention that the lease transaction was a bonafide transaction, and the assessee had a strong case on merits - it's a case of money trail and the assessee did actually enter into an artificial arrangement to evade his tax liability for the assessment year and hence the penalty is correctly levied by the AO - Assessee's appeal dismissed.

[2010-TIOL-215-ITAT-MUM](#)

**Miss Rani Ram Mukerji Vs DCIT, Mumbai (Dated: April 1, 2010)**

Income tax - ROM - Sec 68 - Assessee is an actor - search & seizure - Revenue seizes a diary with multiple entries - remuneration received for a particular film found to be only partly declared - AO makes addition - Tribunal agrees with the AO - Assessee takes the plea that although the negotiation started with a higher sum but the assessee finally settled for much lower sum which was further lowered as distributors did not take interest in the film - held, going by the entry in the diary which shows lower sum agreed upon, the fresh plea that the agreed sum was further lowered later is not sustainable as if this was the case why did the assessee not make entry in the diary for the same - then film actors are known for haggling their remuneration to the last pie and second reduction appears to be an afterthought - Assessee's plea partly allowed