

Judicial Analysis
of
Some Recent Orders
of
Gujarat High Court

Rajkot Branch of WIRC of ICAI
22nd October, 2016, Rajkot.

Tushar P. Hemani,
Advocate, High Court

**Comprehensive Digest of Judgments of
Gujarat High Court passed in July 2016**

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SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	2(22)(e)	Where assessee is not a shareholder in the company from which it received deposit, no addition can be made as “deemed dividend”.	Amigo Brushes (P) Ltd.
2	2(22)(e)	Where assessee is not a shareholder in the company from which it received deposit, no addition can be made as “deemed dividend”.	K.P.H. Industries
3	4	Amount transferred to reserve fund account as per S.67 of Gujarat State Co-Operative Societies Act, 1957 is not diversion of income at source by over-riding title. Hence, such amount is liable to be taxed.	Gujarat Co-Op. Milk Marketing Federation Ltd.
4	4	Additions made merely on the basis of a letter by a third party cannot be sustained once such third party states on affidavit that such letter was written out of sheer anger & anxiety and contents of such affidavit remain uncontroverted by Department.	Karshanbhai K. Patel
5	4	Notional interest on Non-Performing Assets is not taxable.	Motrix Investment
6	4	No addition can be made on mere suspicion.	Somabhai & Co.

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7	10 (20)	Where assessee fulfills all the attributes of “local authority” within the meaning of section 3(31) of the General Clauses Act, it is entitled to exemption u/s 10(20).	Gujarat Maritime Board
8	10B	Process of segregating metal scrap from cable scrap is “manufacture or produce” within the meaning of S.10B.	Siyaram Metals
9	10B	“Export incentives” would come within the purview of profit derived from export of articles or things of a 100% EOU within the meaning of S.10B.	Vimal Agro Products Pvt. Ltd.
10	12A	At the time of application for registration, when the assessee trust has not even commenced its activities, it would not be possible to apply the proviso of S.2(15) and its applicability would arise at a later stage while actually granting exemption.	IMC Society of ITI Vadia
11	14A	Rule 8D is prospective and is applicable from Asst. Year 2008-09.	Alembic Ltd.
12	14A	In absence of any exempt income, no disallowance can be made u/s 14A.	Gujarat State Petronet Ltd.
13	14A	In absence of any exempt income, no disallowance can be made u/s 14A.	Harish K. Bhatt
14	17(2) & 192	Medical allowances to employees within prescribed limits shall not be considered as “perquisites” when such reimbursement is not in excess of actual medical expenses incurred by employees. Hence, TDS	Gujarat Alkalies & Chemicals Ltd.

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		provisions u/s 192 of the Act would not apply.	
15	28	Non-compete fees, being capital receipt, is not liable to tax.	Anjum G. Balakhia
16	28	Profit declared by way of development charges in accordance with development agreement entered into with members of co-operative housing society cannot be estimated unless such development agreement is declared to be bogus or sham.	Gordhan Becharbhai Patel
17	28 & 37	Amount transferred to reserve fund account as per S.67 of Gujarat State Co-Operative Societies Act, 1957 cannot be treated as business expenditure.	Gujarat Co-Op. Milk Marketing Federation Ltd.
18	28 & 45	Where land acquired many years ago was sold in two parts and there were no other transactions in relation to such land, such transactions cannot be termed as business adventure. Resultant gain is to be taxed as capital gain.	Arjundev K. Khanna Huf
19	28 & 45	If Dept. has accepted assessee's status as an "Investor" in earlier year, the mere fact that in current year, assessee bought shares of six companies and sold shares of three companies as a prudent investor will not convert assessee's status from "investor" into a "dealer".	Deepali Ajaybhai Patel
20	28 & 45	Where assessee is treated as investor in the past and there is no evidence that shares in	Kum. Mital C. Koticha

		question have been converted into stock in trade, gain on sale of shares shall be chargeable as capital gain and not as business income.	
21	28 & 45	Where assessee is involved in sale and purchase of shares within short time (i.e. within a period of 12 months), resulting income would be business income.	Shashikant H. Koticha
22	32	Depreciation, if not claimed, cannot be foisted upon the assessee prior to insertion of Explanation 5 to S.32 (1) of the Act (i.e. from 01.04.02) while calculating deduction under Chapter VI-A of the Act.	Gujarat Flurochemicals Ltd.
23	32	Depreciation can be claimed on air pollution control equipment purchased and leased back once genuineness of such claim established.	Gujarat Gas Financial Services Ltd.
24	32	“Mineral oil wells’ will form part of “Plant and machinery” for drilling of oil for the purpose of depreciation u/s 32.	Niko Resources Ltd.
25	32	“Mineral oil wells’ will form part of “Plant and machinery” for drilling of oil for the purpose of depreciation u/s 32.	Niko Resources Ltd.
26	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) in respect of interest on capital borrowed for expansion of existing business. (Note: Not applicable after insertion of proviso to S.36(1)(iii) by Finance Act, 2003 w.e.f. 01.04.04)	Akar Laminators Ltd.

27	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) where interest free advances to sister concern are made either out of commercial expediency or assessee has surplus interest free funds.	Core Health Care Ltd.
28	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) in respect of interest capitalized to work in progress since the Act makes no distinction between capital borrowed for revenue purpose or capital purpose. (Note: Not applicable after insertion of proviso to S.36(1)(iii) by Finance Act, 2003 w.e.f. 01.04.04).	Gujarat Ambuja Exports Ltd.
29	36(1)(iii)	Pre-operative expenses are allowable u/s.36(1)(iii).	Mardia Steel Ltd.
30	36(1)(iii)	No disallowance is called for u/s 36(1)(iii) of the Act when there are sufficient interest-free funds.	Riddhi Siddhi Gluco Boils Ltd.
31	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) in respect of interest expenses incurred on funds borrowed for the purpose of business of making share application money.	Vijaykumar D. Gupta
32	36(1)(va)	Employees' contribution to PF & ESI deposited within the extended/grace period is allowable.	Sayaji Industries Ltd.
33	36(1)(va)	Employees' contribution to PF & ESI deposited within the extended/grace period is allowable.	Shriram Mathurbhai Patel

34	37	Prior period expenditure cannot be disallowed when assessee-company is liable to pay tax at a uniform rate for all the years and when prior period income is considered as taxable income.	Adani Enterprises Ltd.
35	37	Actual payment made is allowable u/s 37 despite the fact that contractual liability itself is in dispute before SC.	Alembic Ltd.
36	37	Trial run expenses are allowable as revenue expenditure even if incurred before the commencement of commercial production	Alembic Ltd.
37	37	Trial run expenses for expansion of manufacturing activity in the existing line of business are revenue expenses and are allowable u/s 37.	Bell Ceramics Ltd.
38	37	Loss arising on account of fluctuations in foreign exchange rates is allowable.	Bosch Rexroth (India) Ltd.
39	37	Amount paid to bank in forward exchange contract extension charges partake the character of loss arising on account of fluctuations in foreign exchange rates and hence, is an allowable expenditure.	G L Rexroth India Ltd.
40	37	Loss arising on repayment of loan by the overseas Joint Venture Company to the assessee company on account of fluctuations in foreign exchange rates is allowable.	Samrat Namkeen Ltd.
41	37	“Revenue expenditure” in connection with technical know-how is allowable u/s 37.	Sayaji Industries Ltd.

		Provisions of S.35AB are restricted to only capital expenditure.	
42	37	Expenses incurred for raising “temporary structures”, which are to be removed after completion of project, are revenue expenses.	Skanska Cementation
43	37	Reimbursement of expenses to Head Office, wholly and exclusively for the business of the assessee, is allowable u/s 37.	Skanska Cementation
44	37	Reimbursement of expenses to sub-contractor, incurred wholly and exclusively for the business of the assessee, is allowable u/s 37.	Skanska Cementation
45	37	Entire lump sum payment for “non-compete fees” is allowable as revenue expenditure even though in the books, such expenditure is apportioned over a period of 5 years (i.e. the period during which the agreement was to remain in force) and only 1/5th is actually written off.	Smartchem Technologies Ltd.
46	40(a)(i)	No disallowance can be made u/s 40(a)(i) in respect of reimbursements of expenses to non-resident when there is no operation in India which would give rise to tax liability in India as far as such foreign party is concerned.	Skanska Cementation
47	40(a)(i)	No disallowance can be made u/s 40(a)(i) in respect of reimbursement of expenses to non-resident sub-contractor for further payment to others especially in absence of	Skanska Cementation

		any material to prove that ultimate recipients (i.e. persons who got payments through sub-contractor) are liable to be taxed in India.	
48	40(a)(ia)	Once the conditions of Provisos to S.194C(3) are satisfied, disallowance u/s 40(a)(ia) cannot be made merely because Form 15J were not furnished before 30 th June as required under Rule 29D.	Thakkar Upendra HUF
49	41(1)	No addition can be made u/s 41(1) in respect of outstanding closing balance especially when expenses relating to trucks are not disputed and sufficient records are maintained by assessee.	Shankar U. Jatwani
50	43B	No disallowance can be made u/s 43B in respect of sales tax liability deferred for a particular period and such deferred payment is treated as loan in favor of assessee when such issue was decided by ITAT in assessee's favor in earlier year against which revenue did not prefer an appeal.	Riddhi Siddhi Gluco Boils Ltd.
51	43B	Omission of second proviso to S.43B by Finance Act 2003 w.e.f 01.04.04, being curative in nature, has retrospective effect and hence, if employer's contribution to PF/ESI is deposited before due date of filing return of income, no disallowance is called for u/s 43B.	Shriram Mathurbhai Patel
52	44C	Expenditure incurred by Head Office for supervisory personal deputed to oversee the project executed in India and in respect of	Skanska Cementation

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		guarantees, sundry expenses, insurance, legal expenses, etc. would not fall under the definition of “Head Office Expenditure” for the purpose of S.44C. and hence, limits prescribed u/s 44C would not apply.	
53	45 & 48	No capital gain tax can be levied when cost of acquisition of asset is unascertainable.	Estate of Late Vikramsinji
54	45	Revised jantri rates w.e.f. 01.04.08 cannot be applied retrospectively while working out capital gain on land sold in FY 07-08 especially when sale consideration declared by assessee is higher than sale consideration as per other instances of sale of similar land.	Haresh Jagmohan Mehta
55	55A, 69 & 145	AO cannot make reference to DVO for ascertaining cost of construction in absence of recording any defect in books of accounts or without rejecting the books.	Aggarwal Buildcon Pvt. Ltd.
56	68	No addition can be made u/s 68 in respect of unsecured loans from sister concern once assessee has discharged its liability to establish that transactions were genuine.	Ilakshi Synthetics P. Ltd.
57	68 & Rule 46A	While deciding issue as to whether assessee had moved application under Rule 46A to produce additional evidences w.r.t. addition u/s 68 and whether such permission must be granted or not, ITAT cannot hold that in absence of books, it can't be said that assessee has any evidence regarding explanation of opening balance.	Shanti Medical Stores

58	69	No addition can be made in respect of difference between book-stock and stock as submitted to bank for procuring higher credit facilities.	Avi Polymers Ltd.
59	69	No addition can be made in respect of difference between book-stock and stock as submitted to bank for procuring higher credit facilities.	Patel Proteins Pvt. Ltd.
60	69	Merely because some amount is mentioned in the assessee's name in loose papers found during search, it cannot be presumed that such amount is his undisclosed capital unless there is sufficient material to hold so.	Vallamji Ravjibhai Patel
61	69 & 133A	No addition can be made in respect of alleged advance to truck owners as unaccounted investment based on statement u/s 133A especially when such statement is retracted within 3 days and there are evidences that such trucks are in the name of original truck owners.	Devrajibhai L. Prajapati
62	69	No addition can be made in respect of difference between book-stock and stock as submitted to bank for procuring credit facilities.	Vrundavan Roller Floor Mill
63	69B	No addition can be made u/s 69B on differential valuation of construction costs.	Lalitbhai P. Sorathiya
64	80HH & 80I	Process of obtaining "refined cotton seed oil" by refining raw cotton seed oil obtained from crushing cotton seeds by ginning	Hynoop Food & Oil Ind. Ltd

		factories is “manufacturing” and assessee is eligible for deduction u/s 80HH & 80I.	
65	80HH & 80IA	Interest income cannot be included in eligible profits for computing deduction u/s 80HH and 80IA.	Rubamin Ltd.
66	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC even after insertion of S.145A.	Alembic Ltd.
67	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC even after insertion of S.145A.	Dishman Pharmaceuticals Ltd.
68	80HHC	Only “Net amount” of the receipts is to be reduced under clause (baa) of S.80HHC and not “Gross amount”.	Gujarat Narmada Valley Fertilizers
69	80HHC	90% of insurance claim is to be excluded from the profit of the business for calculation of deduction u/s. 80HHC.	Jay Chemicals Industries Ltd.
70	80HHC	90% of net amount of interest, freight and commission is to be reduced as per the <i>Explanation</i> (baa) to S.80HHC.	Jeevan Products
71	80HHC	Commission and insurance, being business profits, need not be reduced while calculating deduction u/s 80HHC.	Jeevan Products
72	80HHC	“Net interest income” is to be excluded while computing deduction u/s 80HHC.	Nirma Ltd.

73	80HHC	“Net interest income” to be excluded for the purpose of deduction u/s 80HHC.	Nirma Ltd.
74	80HHC	Deduction u/s 80HHC is not permissible in case of loss or negative profit.	Rubamin Ltd.
75	80HHC	“Net interest” is to be considered while computing deduction u/s 80HHC and not “Gross interest”.	Rubamin Ltd.
76	80HHC	Excise Duty is to be excluded from total turnover while calculating deduction u/s 80HHC.	Shah Alloys Ltd.
77	80HHC	90% of “profit” of sale of licence computed in the proportion of export turnover to the total turnover is to be deducted while computing deduction u/s 80HHC.	Suresh Zaveri Exports
78	80HHC & 80IA	Deduction u/s 80HHC and 80IA cannot be claimed on same Gross Total Income without reducing each other.	Atul Intermediaries
79	80IA	Deduction u/s 80IA is allowable on power generation for captive consumption.	Alembic Ltd.
80	80IA	Workers engaged through labor contractors are to be considered while counting “Number of Workers” for the purpose of S.80IA.	Babul Products Private Limited
81	80IA	Assessee is eligible to claim deduction u/s 80IA on subsidy received from Government since there is a direct nexus between such subsidy and profits of industrial undertaking.	Kishan Discretionary Family Trust

82	80IA	Conversion of “milk” into “milk powder” amounts to “Manufacture”. Hence, assessee is eligible for deduction u/s 80IA.	Mehsana Dist. Co-Op. Milk Producers
83	80IA	Income derived by an assessee on sale of packing scrap is eligible for deduction u/s 80IA of the Act.	Mehsana Dist. Co-Op. Milk Producers
84	80IA	Provisions of S.80IA(9) do not restrict deductions under other sections of Chapter VIA to the extent of eligible income for deduction u/s 80IA.	Nirma Ltd.
85	80IA	Deduction u/s 80IA can be availed even when workers employed are casual laborers.	Parekh Power Corporation
86	80IA(4)	Deduction u/s 80IA(4) is available to an enterprise generating power for “captive consumption” and such deduction is to be worked out at “market rate” at which electricity is supplied by State Electric Board to industrial customers.	Alembic Ltd.
87	80IB	Profits, for deduction u/s 80IB, cannot be estimated by adopting different rate without pointing out any defect in the books of accounts maintained by the assessee.	Chandrakant R. Patil
88	80IB & 80HHC	Deductions u/s 80IB and 80HHC should be computed independently and with an only rider that total deduction should not exceed more than 100% of eligible profit computed under any of the provisions independently as well as cumulatively.	Transpek Silox Industry Ltd.

89	80P(2)(a)(i)	Interest on income tax refund is not eligible for deduction u/s 80P(2)(a)(i).	Rajkot Nagarik Sahakari Bank
90	80P(2)(d)	“Gross interest” received from co-operative banks is deductible u/s 80P(2)(d) and not “Net interest” especially when such claim has been accepted in earlier years coupled with the fact that the concerned loan was taken to purchase yarn and not for making fixed deposits.	Surat Vankar Sahakari Sangh Ltd.
91	94(7)	Short Term Capital Loss on sale of mutual funds shortly after earning tax free dividend income is allowable even though the assessee had full knowledge about fall in NAV after record date as the assessee had merely made use of S.10(33) and it is not a case of abuse of the law. (Note: Not applicable after insertion of S.94(7) by Finance Act, 2001 w.e.f. 01.04.02).	Munoth Investment
92	115JB & 14A	While computing MAT liability u/s 115JB, no adjustment can be made in respect of disallowance u/s 14A.	Alembic Ltd.
93	115JB & 80HHC	While computing MAT liability, downward adjustment as per clause (iv) of S.115JB in respect of deduction u/s 80HHC is to be made w.r.t. “adjusted book profit” and not w.r.t. income assessable under the head “profits and gains from business and profession”. (Note: Such provision has been omitted by Finance Act 2011 w.r.e.f. 01.04.05)	Alembic Ltd.

94	115JB & 80HHC	Book-profit must be reduced by amount of profit eligible for deduction u/s 80HHC while computing MAT liability. (Note: Such provision has been omitted by Finance Act 2011 w.r.e.f. 01.04.05)	Rubamin Ltd.
95	115JB	Provisions for gratuity liability based on actuarial valuation, ONGC liability and provision for diminution in the value of investment are not unascertained liabilities so as to add back the same in terms of clause (c) of Explanation 1 to S.115JB.	Alembic Ltd.
96	127	Transfer order u/s 127 is to be set aside where prima facie reasons for transfer are not mentioned in notice u/s 127.	Genus Electrotech Ltd.
97	131	In absence of any cogent evidence, no addition can be made based on statement of a third party unless opportunity of cross examination is afforded. Such addition also cannot be made on the count that assessee admitted having earned such income in his statement u/s 131 if such statement is retracted subsequently.	Ramanbhai B Patel
98	132(4)	In absence of any cogent evidence, addition in respect of speculation income cannot be made merely on account of admission in statement u/s 132(4) which has been subsequently retracted.	Chetnaben J. Shah
99	132(4)	Once statement u/s 132(4) is retracted, addition made solely on the basis of such	Narendra Garg.

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		statement cannot be sustained in absence of any other evidence.	
100	132(4)	No addition can be made in respect of undisclosed income merely based on statement u/s 132(4) which has been retracted after 2½ months.	Shah Bhimani Chemicals
101	143(3) r.w.s 263	Revenue's tax appeal arising out of consequential order passed by AO pursuant to revisionary powers exercised by CIT is to be dismissed when Revenue's tax appeal against ITAT's order setting aside order u/s 263 has been dismissed.	Babulal K. Daga
102	145	Low profits and absence of regular stock register are not sufficient reasons for rejecting books of accounts.	Babul Products Private Limited
103	145	Change in method of accounting on account of Modvat cannot be a reason for rejecting the books of account especially when there is nothing to hold that the change in accounting method of Modvat is a mala fide act on the part of the appellant.	Jaytick Intermediates
104	145	Books of account cannot be rejected without pointing out any major defects.	Jaytick Intermediates
105	145	Addition in respect of debit of an amount on account of prior period adjustments which is a consequential effect due to declaration under VDIS in respect of closing stock for preceding year is not justified.	L.M. Patel And Sons

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106	145	Valuation of closing stock in accordance with method consistently followed for several years and accepted by Department cannot be rejected all of a sudden. Further, opening stock as well as closing stock must be valued as per the same method.	M/s. D Subhashchandra & Co.
107	145	When proprietorship is converted into a partnership firm with the proprietor also being a partner, stock-in-trade of proprietary concern is to be valued at cost or market price whichever is lower.	Rajendra J Ladla
108	145	In absence of any proof, no addition can be made in respect of profit on alleged unaccounted sales estimated on the basis of electricity consumption.	Royal Marwar Tobacco Product Private Limited
109	145	If accounting system consistently followed by assessee is in accordance with established norms and has been accepted by Dept., then the same cannot be disturbed.	Sadashiv Shetty.
110	145A	Excise duty is to be excluded from closing stock of finished goods at the end of accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	Broach Textile Mills Ltd
111	145A	Excise duty is to be excluded from closing stock of finished goods at the end of accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	Diamond Cables
112	145A	Excise duty is to be excluded from closing stock of finished goods at the end of	Gujarat Metal Cast Industries

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		accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	
113	147	Reopening beyond four years is not permissible in absence on any failure on assessee's part as to full and true disclosure.	Adani Exports
114	147	Reopening based on change of opinion is not permissible.	Akshar Enterprises
115	147	Reopening is valid if AO, on the basis of material supplied to it by the Investigation wing, independently arrives at a belief that some income chargeable to tax has escaped assessment.	Amit Brothers
116	147	Reopening based on change of opinion is not permissible.	Aryan Arcade Ltd.
117	147	Reopening is not permissible on the basis of materials outside of the reasons recorded.	Asharam Ashram
118	147	Reopening based on change of opinion is not permissible.	Fuse Media Pvt. Ltd.
119	147	When a case is reopened for taxing bogus share application money but assessee points out that such receipt is in respect of unsecured loan which has been repaid in same year and such fact remains undisputed by Department, reopening is not justified.	Gujarat Eco Textile Park Ltd.
120	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee's part as to full and true disclosure.	Gujarat Narmada Valley Fertilizers

121	147	Reopening is also not permissible when the entire issue was threadbare examined at the original assessment stage. This case was reopened so as to disallow business loss and depreciation of a company which amalgamated with the assessee company. It was observed that once scheme of amalgamation is sanctioned by High Court prior to passing of the assessment order, it would relate back to the appointed date and hence, assessee should not be denied benefit of such development merely on the ground that during the accounting period and when the return was filed, High Court's order sanctioning the scheme was yet not passed.	IRM Limited
122	147	Reopening beyond four years is not permissible in absence on any failure on assessee's part as to full and true disclosure.	Jivraj Tea Ltd.
123	147	Reopening based on change of opinion is not permissible.	Manishkumar T. Kaneria
124	147	Reopening is invalid if there is no escapement of income.	National Dairy
125	147	Reopening beyond a period of four years is not permissible unless there is any failure on the assessee's part as to full and true disclosure. Reopening is also not permissible when the entire issue was threadbare examined by the Assessing Officer at the original assessment stage.	Nishith S. Soni

126	147	Reopening beyond four years is not permissible in absence on any failure on assessee's part as to full and true disclosure.	Quintiles Research (India) Pvt. Ltd.
127	147	Reopening beyond four years is valid if the assessee fails to disclose all material facts.	Ravjibhai Nagarbhai Patel
128	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee's part as to full and true disclosure.	Swetaben T. Sadhani
129	153A	While framing assessment u/s 153A, AO cannot make addition in respect of a claim, which was part of original assessment proceedings which have abated, if no incriminating material is found in respect of the same during the course of search.	Desai Construction Pvt. Ltd.
130	153A	While framing assessment u/s 153A, where an assessment has been framed earlier and no assessment or reassessment is pending on the date of initiation of search, addition in such years can be made only based on incriminating material found during search.	Khemani Distillers (P.) Ltd.
131	154	Decision on a debatable point of law is not a mistake apparent from record; Review of earlier order is not permissible u/s 154.	Meghmani Organics
132	154 & 244A	Question as to the time period for which interest is to be paid u/s 244A requires detailed consideration and examination of facts & law and would not fall within the scope of rectification proceedings.	Ajanta Manufacturing Ltd.

133	158BD	While framing assessment u/s 158BD, addition can be made only in respect of incriminating material discovered during the course of search.	Priya Blue Industries Ltd.
134	194C	Assessee, manufacturer of sugar is not liable to deduct tax at source from payments made to Mukadams and Transporters as that is an integral part of the sale transaction.	Khedut Sahakari Khand Udyog Mandli Ltd.
135	194C & 194J	S.194C applies to “Port charges” paid to clearing & forwarding agents and not S.194J of the Act.	Gujarat Ambuja Exports Ltd.
136	194LA	(1) S.194LA would not apply to compensation for “agricultural land”. Facts that land is treated as agricultural land in revenue records since long and invites land revenue are strong prima facie factors to suggest that it is agricultural land, but this is a rebuttable presumption; (2) S.194LA would not apply to separate compensation for ‘trees’; (3) S.194LA would apply in case of “buildings” standing on agricultural land in absence of any proof showcasing that such buildings are small farm houses or go-downs for agricultural operations.	Special Land Acquisition Officer
137	206C	Deoiled cake, raw cotton waste and maize husk are not in the nature of “scrap” within the meaning of S.206C.	Gujarat Ambuja Exports Ltd.

138	234A/B/C & 245D	Settlement Commission can charge interest only up to the stage of passing order u/s 245D(1) and not beyond that.	Settlement Commission
139	234D	Provisions of S.234D in respect of interest on excess refund would not be applicable in a case where assessment has been completed prior to 01.06.03.	Nirma Ltd.
140	244A	AO can make a reference to the CIT for determination of period to be excluded while granting refund as prescribed u/s 244A(2) even during rectification proceedings u/s 154.	Ajanta Manufacturing Ltd.
141	244A	Revising a return or raising a claim during the course of the assessment proceedings cannot be said to be reasons for delaying the proceedings which can be attributable to the assessee u/s 244A(2).	Ajanta Manufacturing Ltd.
142	244A	Assessee is eligible for interest u/s 244A on refund of self-assessment tax paid u/s 140A.	Indian Petrochemical
143	245C	Revised marginal upward declaration of income before Income Tax Settlement Commission should be considered in the spirit of settlement and would not render initial declaration as not being true and full.	Settlement Commission
144	250-255	Additional ground can be raised before appellate authorities for the first time.	Alembic Ltd.
145	250-255	Appellate authorities must condone delay in filing appeals if there is sufficient cause for	Kalpesh Hiralal.

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		such delay and thereafter decide the appeals on merits.	
146	250-255	New claim can be raised before CIT(A) & ITAT for the first time even though the same has not been raised before AO.	Nilesh R. Desai
147	252-255	ITAT cannot go beyond the scope of directions issued by the High Court in the earlier round of litigation.	J. R. Dying & Printing Mills
148	252-255	ITAT is duty bound to decide application for additional evidences, if any, prior to deciding the appeals finally.	Mahalaxmi Housing
149	252-255	ITAT is not justified in dismissing Revenue's appeal due to non-service of notice on the assessee. Matter was thus remitted to ITAT.	Mihir Textiles Ltd.
150	254	ITAT has the power to review its own order and rectify any "mistake apparent from the record".	Shailesh C. Mehta
151	263	Instead of quashing ex-parte order passed u/s 263 passed, ITAT must remit the issue back to CIT for deciding it on merits.	Alpine Chemicals
152	263	When two views are possible and AO adopts one of the two possible views, powers u/s 263 cannot be exercised.	Babulal K. Daga
153	263	Inadequacy of inquiry by AO cannot be a ground for revisionary proceedings u/s 263 of the Act.	Ginger Properties

154	263	CIT cannot exercise powers u/s 263 for non-compliance of provisions of S.194I leading to consequential levy of interest.	Golden Tree Plantation Ltd.
155	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on debatable issues when all primary facts have been supplied by the assessee.	Camphor & Allied Products Ltd.
156	271(1)(c)	Additional income in respect of on-money receipts declared during search would not be covered by <i>Explanation 5</i> to S.271(1)(c).	Jignesh V. Korawala
157	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on additions made in respect of undervaluation of closing stock and disallowance of deduction u/s 80I when complete details have been furnished by the assessee.	Mehsana District Co - op Milk Producers Union Ltd.
158	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on disallowance of deduction u/s 80IA when such claim is highly debatable coupled with the facts that assessee has made full disclosures and accounts are duly audited.	Sadbav Engineering
159	271(1)(c)	Penalty u/s 271(1)(c) can be levied on addition made in respect of unexplained cash deposits in bank account.	Sanjay Kumar Bucha
160	271(1)(c)	Where income declared by the assessee in the return is accepted by AO, penalty u/s 271(1)(c) cannot be levied.	Shree Ram Corporation
161	271(1)(c)	Merely because assessee's claim was not acceptable to the Revenue, that, by itself, would not attract penalty u/s 271(1)(c).	Silk City Petrofiles Co. Ltd.

162	271(1)(c)	Where substantial additions on merits have been deleted, penalty u/s 271(1)(c) cannot be levied.	Skanska Cementation
163	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on addition made u/s 68 once assessee gives a plausible explanation in respect of the same.	Soma Textiles & Industries Ltd.
164	271(1)(c)	When assessment is made on “Protective basis”, penalty u/s 271(1)(c) can’t be levied.	Vinay Kumar Yadav
165	271D	Penalty u/s 271D cannot be levied on cash loan taken from son to meet business exigencies especially when such loan has been repaid by cheque and entries in respect of the same are reflected in books.	Luhar B. Hakamsingh
166	271D	When genuineness of transaction is not in dispute and so also the importance and urgency of raising cash loan, penalty levied u/s 271D cannot be sustained.	Panchsheel Owners Association
167	2(ea)(i) – Wealth Tax Act	“Commercial establishments or complexes” need to be excluded from assets as defined u/s 2(ea) of The Wealth Tax, Act.	Baroda Packaging Pvt. Ltd.
168	2(ea)(i) - Wealth Tax Act	Property let-out on rent bears the character of “Commercial establishment”. Hence, it is an “asset” as defined u/s 2(ea)(i) of The Wealth Tax Act if it doesn’t fall within exceptional categories. (Note: Post amendment vide Finance Act, 1998 w.e.f. 01.04.99, “Commercial establishments” are excluded from definition of “asset”].	Narayan T. Baddi

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