Income-tax Act, 1961

2024-Digest of case laws (ITR 460 ITR to 471, Taxman 296 to 300, CTR,336 to 341, ITD,204 to 208, ITR(Trib),108 to 116 TTJ,227 to 232, BCAS, Chamber's Journal, AIFTPJ, NYTTJ (Judgement not yet published in TTJ)

S. 2(14)(iii) : Capital asset-Agricultural land-Land situated outside the Municipal limits-As per the last Census i. e., the Census of 2011, Zirakpur had a population of 95,443-Land situated more than four kilometers away from the Municipality Limits of Zirakpur-Sale consideration is not taxable. [S. 45] 1

Assessee sold agricultural land situated in village Chhatt which was outside the municipal limits as described in Notification No. 9447, dt. 6th Jan. 1994. It was by virtue of the Notification dt. 4th Dec. 2012, issued by the Department of Rural Development and Panchayats, Government of Punjab that the Gram Panchayat of village Chhatt was created. The village Chhatt, at that time, was not comprised within the municipal limits of Zirakpur. By virtue of Notification No. 10/16/16-3 SS3/2788, dt. 19th Dec. 2016 issued by the Department of Local Bodies, Government of Punjab, that the municipal limits of Zirakpur were extended and village Chhatt was included therein. The Tribunal held that the land is situated more than four kilometres away from the municipal limits of Zirakpur and as per the last Census i.e., the Census of 2011, Zirakpur had a population of 95,443. Accordingly the land sold by the assessee was agricultural land, not forming part of capital asset within the meaning of s. 2(14), accordingly the amount received by the assessee is was not chargeable to tax. (AY. 2017-18)

Avtar Singh v. ITO (2024) 230 TTJ 506 / 239 DTR 113 / 166 taxmann.com 278 (Chd)(Trib)

S. 2(14)(iii): Capital asset-Agricultural land-Sale of agricultural land-Land is situated beyond 10 Kms. from Municipal limits-And Shown as wet land-Registration of immovable property by land Registrar-Paid land revenue-Cannot be assessed as capital gains. [S. 45] 2

Held that the assessee had paid the land tax to the local Revenue office as agricultural land and had furnished the certificate issued by the Village Administrative Officer to prove that the land was situated beyond 10 kms. from the municipal limits as to fall outside the definition of capital asset per section 2(14) of the Act. The assessee had also furnished before the Dispute Resolution Panel the land details available in the records of the Revenue authorities showing it to be wet land for the purpose of valuation for registration of immovable property by the Land Registrar. Tribunal held that merely because the Tahsildar had left the columns of crops grown or cultivated blank, that could not lead to the conclusion that the immovable property is a capital asset. Addition as capital gain is deleted. (AY. 2015-16)

Nataraj Ramaiah v. ITO (IT) (2024) 115 ITR 31 (SN)(Chennai)(Trib)

3 **S. 2(14)(iii) : Capital asset-Agricultural land-Capital gains-Land is not situated within jurisdiction of Municipality-Population of village was 907 persons as per latest published census of 2011-Long term capital gains on sale of agricultural land cannot be taxed as capital gains. [S. 2(14)(iii)(a), 45, 54F]**

Assessee sold agricultural land at Mohali in 2014 and claimed deduction u/s. 54B of the Act by buying another agricultural land. AO considered agricultural land sold as a capital asset by rejecting contention of the assessee that land sold was outside the limits of the municipality and hence, it was exempt income. CIT(A) confirmed addition made by the AO. On appeal the Tribunal deleted the addition by accepting the evidence adduced by the assessee showing the population of the village was mere 907 persons as per published census and that land was situated outside the limits of the municipality. The long term capital gains on sale of land can could not be brought to tax. (AY. 2015-16)

Kulwant Singh v. ITO (2024) 112 ITR 719 / 165 taxmann.com 383. (Chd)(Trib.)

4 **S. 2(14)(iii): Capital asset-Agricultural land-Sale of agricultural land-Purchaser changed the use for commercial purposes-Not assessable as capital gains. [Gujarat Tenancy and Agricultural Lands (Amendment) Act, 1997, S. 63AA,65B]**

The assessee sold four pieces of agricultural land to a company Steel Strips Wheels Ltd. The purchaser received permission for use of the land for bona fide industrial purposes. Assessee has obtained certificate for change of land use from agricultural to non-agricultural. The assessee contented that the land sold by him did not qualify as "capital asset" in terms of section 2(14)(iii) being rural agricultural land. The AO held that the land sold by the assessee as non agricultural land and concluded that it qualifies capital asset and therefore capital gained earned is liable to tax. Tribunal held that, AO has erred in interpreting S. 63AA of the Gujarat Tenancy and Agricultural land laws Act,1997 and the land did not qualify capital asset in terms of s. 2(14)(iii) of the Act. Accordingly the capital gains is not liable to tax. (AY. 2016-17)

Hiten Tulshibhai Engineer v. ITO (2024) 204 ITD 98 (Ahd)(Trib)

5 **S. 2(15): Charitable purpose-General public utility-Publishing newspapers-Receipts more than 10 lakhs-Matter remanded for verification. [S. 11, 12A.]**

The Tribunal held that the denial of exemption under section 11 by the Revenue authorities without examining whether activities were in nature of trade commerce of or business was not justified merely on the ground that receipts had exceeded the limit of Rs. 10 lakhs. The matter was is remanded to the Assessing Officer to decide the issue in accordance with the judgement of apex court in Ahmedabad Urban Development Authority (2023) 449 ITR 1 (SC), examine the status of charitable entity granted under section 12A of the Act, examine the plea that the assessee has very nominal profit or margin from the main activity of selling IRS reports to members and non-members and also to decide the issue on principle of mutuality in light of the decision earlier years order of the Tribunal. (AY. 2009-10 to 2013-14)

Media Research Users Council v. ACIT [2024] 205 ITD 170 (Mum)(Trib)

S. 2(22)(e): Deemed dividend-Trade advances-Commercial transactions-Cannot be assessed as deemed dividend-Order of High Court is affirmed-SLP of Revenue is dismissed. [Art. 136] 6

Affirming the order of the Tribunal, the High Court by held that trade advances which were in nature of commercial transactions would not fall within ambit of word 'advance' in section 2(22)(e) of the Act. SLP filed by revenue is was dismissed.

PCIT (Central) v. Dwarka Prasad Aggarwal (2024) 299 Taxman 363 /471 ITR 435 (SC)

Editorial : PCIT v. Dwarka Prasad Aggarwal (2022) 140 taxmann.com 32 /(2024)471 ITR 432 (Delhi)(HC)

S. 2(22)(e): Deemed dividend-Capital contribution by companies in which assessee Firm's partners were shareholders-Commercial Transaction-Not loans and advances-Not assessable as deemed dividend. [S. 260A] 7

During the year under consideration, the assessee-partnership firm received capital contributions from two partner-companies in which two other partners held substantial interest. The assessee was neither a registered shareholder nor a beneficial owner of shares held in the companies. However, the assessing officer assessed the contributions as deemed dividend under section 2(22)(e) and taxed the same in the hands of assessee. The Commissioner of Income-Tax (Appeals) held that the capital contribution could not be treated as loans or advances extended to the assessee and therefore, the assessing officer could not have treated the same as deemed dividend in the hands of the assessee and the same was upheld by the Tribunal. On appeal by the Department, the Delhi High Court affirmed the decision of the Tribunal. The High Court further held that, if at all addition could have been made, it could've been made in hands of two individual partners and that too only by their assessing officers after affording them an opportunity of being heard. (AY. 2006-07), 2010-11)

PCIT v. Wig Investment (2024) 461 ITR 117 / 158 taxmann.com 379 (Delhi HC)

S. 2(22)(e): Deemed dividend-Business nexus and business exigency of entire transaction proved-Advance could not be construed as the receipt of dividend. 8

Held that the Assessee is an investment company holding 15. 47 percent. of equity in lender company took a loan from the bank for investment in two other companies against collateral security given by the director of the assesse. The assessee utilized the entire loan for investment. The company in which the assessee held 15. 47 percent equity lent money to the assessee for making monthly payments to the bank. Business nexus and business exigency of the entire transaction were proved, hence advance could not be construed as the receipt of a dividend. (AY. 2012-13)

Ambey Capital P. Ltd. v. Dy. CIT (2024) 111 ITR 4(SN) (Delhi)(Trib.)

S. 2(22)(e) : Deemed dividend-Loans and advances-Regular business transactions-Not a share holder-Not taxable as deemed dividend. 9

Held that neither the assessee was a substantial shareholder of ATL nor ATL was a shareholder of the assessee. After relying upon various decisions, the Tribunal held that since the assessee was not a shareholder in ATL, which has given loan/advance to assessee, therefore, the assessee did not fall under any of the limbs of section 2(22)(e)

of the Act, and the same could not be invoked in the hands of the assessee but only in the hands of KSWPL. (AY. 2013-14, 2014-15, 2016-17, 2017-18)
Apeejay P. Ltd. v. Dy. CIT (2024) 111 ITR 231 (Kol.) (Trib.)

10 **S. 2(22)(e) : Deemed dividend-Loans and advances-From group company (APL)-Beneficial shareholder was KSWPL under whose controlling interest and influence, APL had given loan/advance to assessee-Deeming provisions of section 2(22)(e) under second limb were attracted on KSWPL and not on assessee-loan amount was not taxable in hands of assesse. [S. 5 (1)(b)]**
The assesseee was not a registered share holder of APL who was lender company. Assessee received certain sum as loans/advances from its group company (APL). Assessing Officer treated amount of loans/advances received by assessee from APL as deemed dividend under section 2(22)(e) on ground that there was a common shareholding by KSWPL having substantial interest in both APL and assessee. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that KSWPL was in a position to control affairs of both APL and assessee. Benefit of transaction between APL and assessee accrued to KSWPL who was in a controlling position having more than 20 per cent of shareholding in both of them-Assessee and APL were in no way in a position to compel KSWPL in any way for exercising its voting rights in a particular manner. Thus, beneficial shareholder was KSWPL under whose controlling interest and influence, APL had given loan/advance to assessee and, accordingly, deeming provisions of section 2(22)(e) under second limb were attracted on KSWPL. Further, taking into consideration provisions contained in section 5(1)(b), income accrues or arises or is deemed to accrue or arise in hands of KSWPL and not in hands of assessee and same was not taxable in hands of assessee. Addition was deleted. (AY. 2013-14, 2014-15)
Apeejay Surrendra Management Services (P.) Ltd. v. DCIT (2024) 205 ITD 737 (Kol) (Trib.)

11 **S. 2(24)(xviii) : Income – Subsidy - Incentives – Constitutional validity – Finance Act, 2015 – All subsidies, grants, incentives, concessions, reimbursements etc. to be treated as income – Court cannot substitute legislative judgment of economic policies - Validity upheld. [S. 4, Art. 12, 14, 19, 226, 246, 265, 289]**
The assessee challenged the constitutional validity of section 2(24)(xviii) inserted by the Finance Act, 2015, which brought all forms of subsidies, grants, cash incentives, duty drawback, concessions and reimbursements within the ambit of taxable income, irrespective of whether capital or revenue in nature. It was contended that the amendment overruled judicial precedents applying the "purpose test" to subsidies, violated Articles 12, 14, 19, 246, 265 and 289 of the Constitution and was contrary to sections 4 and 5 of the Act. The High Court held that taxation is a matter of legislative policy; there is a presumption of constitutionality and courts cannot substitute legislative judgment in economic matters. Mere reduction in profitability or hardship to the assessee does not render a tax provision unconstitutional. The amendment was a transparent legislative act to recalibrate fiscal policy, and invalidation would cause fiscal chaos and refund claims. The provision was therefore upheld as constitutionally valid.
Serum Institute of India (P.) Ltd. v. UOI [2023] 157 taxmann.com 107 / [2024] 463 ITR 582 / 336 CTR 6 (Bom)(HC).

S. 2(31) : Person-Association of person-Characterization of consortium-Agreement-Terms of the agreement will be the deciding factors-Taxable as an AOP and not as individual members. 12

Held that characterization of consortium as an AOP, has to be determined in terms of the agreement between parties. Circular No 7/2016 dt. 7-3-2016 (2016) 382 ITR 27 (St.). Accordingly the Tribunal held that Consortium failed to fulfil the relevant requirement of the circular. Thus the TRIBUNAL upheld the taxability of Consortium as an AOP and not as individual members. (AY. 2011-12)(ITA No. 518 / Del/2022 dt. 22-12-2023)
Pico Deepali Overlay Consortium v. DCIT (2024) Chamber's Journal-February-P. 94 (Delhi) (Trib)

S. 2(42A) : Short-term capital asset-Capital gains-Unlisted shares-Investment in a residential house-Amended provisions of section 2(42A), which exclude holding period of unlisted shares being held for 12 months to be treated as long-term capital gain is applicable from assessment year 2015-16-Shares held around 31 months-Matter remanded to decide issue afresh as per provisions of law. [S. 45, 54F] 13

Assessee sold shares and earned LTCG and claimed deduction under section 54F. Assessing Officer denied exemption under section 54F on ground that period of holding of shares was less than 36 months i. e. 31 months. Drawing support from provisions of section 2(42A), Assessing Officer held that sale of shares gave rise to STCG and taxed same. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since provisions of section 2(42A) has been amended to exclude holding period of unlisted shares being held for 12 months to be treated as LTCG but said amendment has come from assessment year 2015-16 and applicable therefrom therefore, amended provisions is not applicable. Since holding period of impugned shares was around 31 months, capital gain was to be treated as LTCG and, hence, Assessing Officer should re-consider claim of exemption under section 54F and decide issue afresh as per provisions of law. (AY. 2013-14)
Ravi Jakhar v. ACIT (2024) 208 ITD 633 (Mum) (Trib.)

S. 4 : Charge of income-tax-Accrual-Interest on sticky advances credited to memorandum account is not taxable. [S. 145, Art. 136] 14

Interest on sticky advances credited to memorandum account is not taxable. Followed *UCO Bank v. CIT (1999) 237 ITR 889 (SC).* (AY. 1982-83)
CIT v. Citi Bank N. A. (NO. 3) (2024)469 ITR 403 (SC)
Editorial : CIT v. Citi Bank N. A ITR No. 191 of 1997 dt. 10-4-2003 (Bom)(HC)

S. 4 : Charge of income-tax-Accrual-Banks-Interest on bad and doubtful debts is not taxable. [S. 5, 119, Art. 136] 15

Held that the interest on bad and doubtful debt was not taxable in view of the Central Board of Direct Taxes circular dated October 9, 1984. Followed UCO Bank v. CIT (1999) 237 ITR 889 (SC) (AY. 1985-86, 1986-87)
CIT v. Standard Chartered Bank (2024) 469 ITR 408 (SC)
Bank of Rajasthan Ltd v. CIT (2024) 469 ITR 280/ 301 Taxman 463 (SC)
Editorial : CIT v. Standard Chartered Bank,ITR No. 87 of 1996 dt 16-7-2003 (Ker) (HC), CIT v. Bank of Rajasthan Ltd (2009) 316 ITR 391 (Raj)(HC), reversed, Decision in CIT (LTU) v. State Bank of India (2020) 428 ITR 316 (Karn)(HC), affirmed.

16 **S. 4 : Charge of income-tax-Capital or revenue-Preoperative expenditure pending capitalization-Interest Earned from fixed deposits of unutilised foreign external commercial borrowing loans during period of construction-Interest capitalised in the books of account-Capital receipt-SLP of revenue is dismissed due to failure to explain satisfactorily condonation of delay of 699 days in filing SLP. [S. 28(i), 56, 145, Art. 136]**

During this year, the assessee could utilise only part of loan which was borrowed during period of construction. The assessee had temporarily made fixed deposits of the external commercial borrowing funds till utilisation for fixed asset or capital expenditure. The assessee had paid interest of Rs. 13.38 crores on the borrowings and had earned interest of Rs. 4.03 crores on the fixed deposits. The net interest of Rs. 9.35 crores was added to the preoperative expenditure pending capitalization. The Tribunal allowed the capitalisation of interest on fixed deposit receipts earned during the period of construction. On appeal the Court affirmed the order of Tribunal. SLP of Revenue was dismissed due to failure to explain satisfactorily condonation of delay of 699 days in filing SLP (AY. 2012-13), (2013-14)

PCIT v. Triumph Realty Pvt. Ltd. (2024) 468 ITR 109 (SC)

Editorial : PCIT v. Triumph Realty Pvt. Ltd (2023) 450 ITR 274 (Delhi)(HC), PCIT v. Triumph Realty Pvt. Ltd. (No. 1) (2023) 450 ITR 271 (Delhi)(HC)

17 **S. 4 : Charge of income-tax-Consideration received for relinquishment of trustee ship-Not capital in nature-Assessable as income-SLP of Assessee is dismissed. [S. 45, 132, Art. 136]**

On appeal the High Court held that the consideration received by the trustees for relinquishment of the trusteeship could not be treated as a capital receipt for the purposes of assessment as capital gains, but would have to be treated as the individual income of the assessee under the appropriate head of income. On a petition for Special Leave to Appeal to the Supreme Court, SLP of the assessee is dismissed. (AY. 2009-10 to 2011-12)

Jose Thomas, Etc. v. PCIT (2024)468 ITR 108 / 301 Taxman 170 (SC)

Editorial : PCIT v. Grancy Babu (2024) 298 Taxman 722 / 471 ITR 377 (Ker)(HC)

18 **S. 4 : Charge of income-tax-Capital or revenue-Sales tax exemption –Notice is issued in SLP filed by the assessee. [U. P. Trade Tax Act, 1948, S. 4A, Art. 136]**

High Court held that the assessee availed exemption from payment of tax under exemption certificate issued under section 4A of U. P. Trade Tax Act, 1948 on turnover of sales and claimed amount representing tax exemption component as capital receipt, since section 4A clearly indicated that exemption from tax on turnover of sales was not a subsidy granted by Government, aforesaid amount of tax component was a revenue receipt in hands of assessee and it could not be treated as capital receipt. Whether in view of fact that issue regarding exemption granted under U. P. Trade Tax, 1948, and effect thereof was pending consideration before this Court in *Tata Steel BSL Ltd. v. CIT* [SLP (C) No(s). 30728–30732 of 2017] notice was to be issued in SLP filed by assessee against impugned order as well as on application for stay.

Birla Corporation Ltd. v. CIT (2024) 299 Taxman 508 (SC)

Editorial : CIT v. Birla Corporation Ltd (2024) 159 taxmann.com 651 (Cal)(HC)

S. 4: Charge of income-tax-Capital or revenue-Subsidy-Sales tax subsidy to be treated as a capital receipt-Department's SLP dismissed. 19

The Delhi High Court relying on various orders had held that the sales tax subsidy received by the assessee has to be treated as a capital receipt and not be added to the income of the assessee. The department filed SLP before the Supreme Court. The Court while dismissing the SLP held that consequent upon holding that the sales tax subsidy receipt by the Assessee was being treated as a capital receipt, the natural consequences as a result of the said declaration would follow. (AY. 2007-08-2010-11)

PCIT v. Sunbeam Auto (P.) Ltd (2024) 297 Taxman 375 / 463 ITR 3 /337 CTR 249 (SC)

Editorial : Sunbeam Auto (P.) Ltd v. PCIT (2020) 116 taxmann.com 763/ (2018) 402 ITR 309 (Delhi))(HC)

S. 4: Charge of income-tax-Club-Bank-Interest-Mutuality-Interest on fixed deposits-Principle of mutuality does not apply to interest income earned on fixed deposit in the banks-Appeal of Revenue is dismissed on account of Monetary limits [S. 268A. Art. 136] 20

Principle of mutuality does not apply to interest income earned on fixed deposit in the banks. Appeal of Revenue is dismissed on account of monetary limits.

CIT v. Noida Golf Course Society (Regd) (2024) 337 CTR 255 (SC)

S. 4 : Charge of income-tax-Capital or revenue-Amount received under non-compete agreement is capital receipt. [S. 28(i)] 21

Dismissing the appeal of the Revenue the Court held that the assessee had been restrained both directly and indirectly from undertaking any business which would compete with the business of WSIL. Clearly, for the period in which the non-compete agreement was to operate, which in this case was ten years, the assessee's source of income had been clamped and, therefore, the compensation received by him is a capital receipt. No substantial question of law. (AY. 1999-20

CIT v. Saeed Mustafa Shervani (2024)471 ITR 777 (Delhi) (HC)

S. 4 : Charge of income-tax-Capital or revenue-Income from other sources Short term deposits-Interest income is set off against expenditure-Deposits and income were inextricably linked with setting up of project, interest income on short-term deposits of funds infused by Government is in nature of capital receipt and not revenue receipt. [S. 56, 145] 22

Assessee-company is a 100 per cent subsidiary company of H, a wholly owned Government enterprise. Government sanctioned certain amount to assessee towards setting up of Integrated Vaccine Complex. Assessee parked certain amounts out of said funds which were not immediately required for construction, in banks and received interest from such short-term deposits. Interest income was set off against expenditure incurred for construction of Integrated Vaccine Complex. Assessing Officer treated interest received as income from other sources. It was noted that in communication from Government of India to assessee it is categorically mandated that funds and income earned out of funds provided by Government was to be utilised only for purpose for which they were released. It is also clarified that any interest income from said funds

consequent on bank deposits, would also be utilised only for purpose of project. Since deposits and income were inextricably linked with setting up of project, interest income on short-term deposits of funds infused by Government was in nature of capital receipt and not revenue receipt. (AY. 2013-14, 2014-15 and 2015-16)
HLL BIOTECH Ltd. v. CIT (2024) 301 Taxman 604 (Ker.)(HC)

23 **S. 4 : Charge of income-tax-Carbon Credit (CER)-Income from realisation of carbon credit is capital in nature-Not assessable as business income. [S. 28(i), 260A]**
Following the judgment in case of *Pr. CIT v. Gujarat Flurochemicals Ltd. [2023] 155 taxmann.com 135/295 Taxman 200/459 ITR 242 (Guj)(HC)* the High Court held that the income from realisation of carbon credit is capital in nature. Order of Tribunal was is affirmed.
PCIT v. Kalpataru Power Transmission Ltd. (2024) 301 Taxman 427 (Guj.)(HC)

24 **S. 4 : Charge of income-tax-Rental income-Property owned by Co-Owners-Association of persons-Maximum marginal rate-Rental income received by co-owners is to be assessed as income from AOP and not in hands of assessee as income from house property under section 22-Order of Tribunal is affirmed. [S. 2(31), 22, 26, 167B(2)(i), 260A]**
Assessee and other co-owners purchased property in their names and thereafter constructed godowns and plinths which were rented out to two companies. Assessee received rental income from these companies and deposited it in a joint bank account held by all co-owners. Assessing Officer assessed rental income received by co-owners as income from AOP under section 4. Tribunal held that the Income was assessable as income of an AOP. On appeal the Court held that rental income being paid by Government companies jointly in hands of co-owners treating them as a single land lord and amount was also being deposited in single account. There was no defined share to rental income and AOP had jointly received income. Accordingly the rental income received by co-owners was to be assessed as income from AOP and not in hands of assessee as income from house property under section 22. (AY. 2005-06)
Y. S. & Co-owners v. ITO [2024] 301 Taxman 647 (P&H)(HC)

25 **S. 4 : Charge of income-tax-Exemption from payment of tax under exemption certificate issued under section 4A of on turnover of sales-Not subsidy-Assessable as revenue receipt. [S. U. P. Trade Tax Act, 1948, S. 4A]**
Assessee availed exemption from payment of tax under exemption certificate issued under section 4A of U. P. Trade Tax Act, 1948 on turnover of sales and claimed amount representing tax exemption component as capital receipt. Assessing Officer treated aforesaid amount of tax component as revenue receipt. Appellate Authority allowed claim of assessee. On appeal by the Revenue the Court held that since section 4A of U. P. Trade Tax Act, 1948 clearly indicated that exemption from tax on turnover of sales was not a subsidy granted by Government and section 4A had not authorised assessee either to collect tax component on exempted sales or to retain it, aforesaid amount of tax component was a revenue receipt in hands of assessee and it could not be treated as capital receipt. (AY. 2001-02 to 2005-06)
CIT v. Birla Corporation Ltd (2024) 159 taxmann.com 632 / 336 CTR 595 (Calcutta) (HC)

S. 4 : Charge of income-tax-Capital or revenue-Subsidy received from Government-Purpose test-Sales-Tax subsidy received from State Government as incentive to set up new unit or large-scale investment in fixed capital-Capital receipt. [S. 28(i), 260A] 26

The Government of Maharashtra to achieve the dispersal of industries outside the Mumbai-Thane-Pune belt and to incentivise the setting up of new and expanded units in underdeveloped and developing areas, had, in 1964, forged a scheme titled "Package Scheme of Incentives". The Package Scheme of Incentives introduced in 1964 underwent changes from time to time. The 1993 Scheme was rooted in the Package Scheme of Incentives put in place by the Government of Maharashtra, as indicated above, in 1964. The 1993 Scheme was forged to achieve three broad objectives : (i) first, to disperse industries outside the now Mumbai-Thane-Pune belt and to attract new and expanded units to developing and underdeveloped areas of the State ; (ii) second, to rationalise incentives accorded by intensifying and accelerating the dispersal of units from developed to underdeveloped and developing areas ; and (iii) third, the development of underdeveloped regions of the State, particularly those which were at some distance from the Mumbai-Thane-Pune belt. Thus, the central theme, object and purpose of the 1993 Scheme was to industrialise underdeveloped and developing areas which fell outside the now Mumbai-Thane-Pune belt by incentivising the setting up of new and expanded units. The common thread running through various incentives provided under the scheme was the setting up of new units or large-scale investment in fixed capital. The fact that the eligibility certificate was to be issued by the agency implementing the scheme after the commencement of commercial production by the eligible unit had been incorporated in the 1993 Scheme to ensure that the object and the purpose of the 1993 Scheme, which was to industrialise underdeveloped and developing areas was fulfilled. Dismissing the appeal of the Revenue the Court held that the assessee was entitled to avail of sales-tax subsidy and incentives under two eligibility certificates dated December 13, 1994 and October 15, 1996 (as amended) for 14 years and 13 years and 11 months, respectively, subject to a maximum entitlement of 110 per cent. of the capital investment made in setting up of the industrial units. A perusal of the eligibility certificate dated December 13, 1994 would show that it was issued for setting up a "new unit", while the eligibility certificate dated October 15, 1996 was given to a "pioneer unit" which had undertaken expansion. The sales tax subsidy or incentive received by the assessee under 1993 Scheme was a capital receipt. (AY. 1997-98, 2005-06, 2006-07, 2008-09, 2013-14, 2014-15)

CIT v. Indo Rama Textiles Ltd. (2024)465 ITR 562 / 337 CTR 159/158 taxmann.com 685 (Delhi)(HC)

S. 4 : Charge of income-tax-Interest-Capital or revenue-Auction sale-Interest against principal amount deposited-Auction sale is nullified by court-Interest is capital receipt and cannot be assessed as income from other sources. [S. 56(2)(viii)] 27

Assessee deposited principal amount pursuant to auction sale. However, said auction was eventually nullified by court. High Court directed for refund of whole amount deposited by assessee along with interest accrued thereon. Assessing Officer made addition on account of amount of interest received by assessee under section 56(2)(viii) of the Act. CIT(A) affirmed the order of the Assessing Officer. Assessee contended that

said amount of interest was in nature of capital receipt not chargeable to tax. Tribunal held that principal amount could not be characterized as compensation granted by Court on account of cancellation of auction. Rather, such an amount was a bonafide amount of successful auction bidder, which he had deposited against purchase of land. Amount so received by assessee was entitlement of successful bidder which was given back to assessee vide an order of Court. Thus, when amount was not in nature of compensation, then, as a natural corollary, interest accrued on said amount could not tantamount to revenue receipts, and hence, same could not be subjected to tax as per section 56(2)(viii) of the Act. On appeal by Revenue High Court affirmed the order of the Tribunal. (AY. 2012-13)

PCIT v. INS Finance & Investment (P.) Ltd. (2024) 299 Taxman 131 / 340 CTR 602/(2025) 475 ITR 83 (Delhi)(HC)

28 **S. 4 : Charge of income-tax-Subsidy-Capital or revenue-Bengal Incentive Scheme, 2004-Linked to establishment of new units-Capital in nature. [S. 28(i)]**

Assessee received subsidies from Govt. of West Bengal under West Bengal Incentive Scheme, 2004 for industrial projects. The Assessing Officer held that subsidy is revenue receipts. On appeal the Tribunal treated subsidy as capital in nature, intended for industrialization, and not taxable as revenue receipts. Tribunal also held that as per provisions of Industrial Promotion Assistance Scheme as framed by State of West Bengal, receipt of subsidies was clearly linked to a total investment exceeding INR 25,00,00,000 being made and would have become payable on commencement of commercial production. Affirming the order of the Tribunal the Court held that since, subsidy being clearly linked to establishment of new units, it would be treated as capital in nature. As regards the issue of Advertainment, Marketing and Promotion ("AMP"), the appeals would be re-notified, since both sides seek an opportunity to address submissions in greater detail.

PCIT (Central) v. Pepsico India Holding (P.) Ltd. (2024) 299 Taxman 309 (Delhi)(HC)

29 **S. 4 : Charge of income-tax-Income –Redevelopment agreement-Amount paid to members of society-Members offered the amount for taxation-Not taxable in the assessee society-Possession not given-Not taxable as capital gain in the year under consideration. [S. 2(24), 5, 45, 56 260A]**

The assessee-society owned certain residential flats. The plot of land on which the said flats were constructed was held by the assessee as a lessee under a long-term lease. The assessee along with its members decided to redevelop the flats by demolishing the old flats and constructing new flats. Accordingly it entered into redevelopment agreement with one developer, whereby it granted rights and entitlements to the developer for the aforesaid land. The members of the society agreed to transfer their old flats to the developer. The developer, in turn, agreed to pay a certain amount to each member of society apart from a certain amount to the corpus fund of assessee. The payment was in addition to the flats and parking spaces to be constructed and handed over to the members. The Assessing Officer taxed the amount received by the members from the developer in the hands of the assessee. The Commissioner (Appeals) partly allowed the appeal of the assessee. The Tribunal, on appeals filed by both the assessee and

the revenue, held that the facts in the instant case were almost similar to the facts in the case of *CIT v. Raj Ratan Palace Co-operative Housing Society Ltd. [IT Appeal No. 2292 of 2011, dated 27-2-2013 (Bombay High Court)]* and relying on the said judgment concluded that as the members of the society had offered the amount received by them from the developer for taxation, the Commissioner (Appeals) was not justified in taxing the aforesaid amount to some extent in the hands of the assessee, as the same was the income of the members. It accordingly allowed the appeal of the assessee and dismissed the appeal of the revenue. Dismissing the appeal the Court held that the revenue is not even questioning the finding of the Tribunal that the facts in the case at hand were almost similar to the facts in the case of Raj Ratan Palace CHS (supra). Further against the above order of the High Court, the revenue had preferred a Special Leave Petition in the Apex Court, which came to be dismissed. Followed, *CIT v. Raj Ratan Palace Co-Operative Housing Society Ltd, ITA No. 2292 of 2011 dt. 27-2. 2013 (Bom)(HC))* (AY. 2011-12)

PCIT v. MIG Co-op. Hsg. Soc. Group II Ltd. (2024) 298 Taxman 284 / 467 ITR 524 (Bom.) (HC)

S. 4 : Charge of income-tax-Consideration received for relinquishment of trustee ship-Not capital in nature-Assessable as income-Reimbursements of certain sum for construction expenses-Not taxable in the hands of trustees-Not taxable in the hands of trustees-Donations were received by trusts-Not taxable in the hands of the Trustees. [S. 132, 260A] 30

Assessees were trustees of certain educational trust. Said trust was taken over by certain church and assessees relinquished trusteeship of said trust in favour of trustees of said church, and received consideration for same. The Asseessing Officer assessed the receipt as income. CIT(A) confirmed the addition. Tribunal deleted the addition. On appeal the Court held that since no power was conferred on trustees to relinquish their position as trustees en banc, therefore, en banc resignation/relinquishment by assessees, of their position as trustees of Trust, that too for a consideration, could not get imprimatur of this Court. Therefore, consideration received for such relinquishment would not qualify as a capital receipt and would be treated as individual income of assessees. Assessing Officer held that assessees had received reimbursements of certain sum for construction expenses and brought same to tax in their individual hands. On appeal, Commissioner (Appeals) held that evidence obtained in course of search proceedings revealed that no construction work had actually been undertaken by said assessees or any of trustees, and hence, payments shown as contractual receipts were nothing but payments received for voluntary relinquishment of trusteeship. On appeal Tribunal held that there was construction activity carried out by those two assessees as evidenced by agreements and construction was reflected in balance sheet of assessees which was subjected to TDS and it could not be said that payments were not made towards construction of building which was for establishment of educational institution. On appeal the Court held that since Tribunal had relied on audited balance sheet of church and TDS payments made to Department in relation to said payments, the order of Tribunal is affirmed. Donations were received by certain trust in which assessees were trustees. AO taxed same in hands of assessees. CIT(A) affirmed the Order of the Assessing Officer. Tribunal deleted the

addition. On appeal the Court held that payments were actually made to trust and not to trustees in their individual names and therefore, same could not be taxed in hands of assessees. (AY. 2009-10 to 2011-12)
PCIT v. Gracy Babu (2024) 298 Taxman 722 /471 ITR 377 /341 CTR 630 / 243 DTR 65 (Ker.)(HC)
Editorial : SLP of assessee is dismissed, Jose Thomas, Etc. v. PCIT (2024) 468 ITR 108 / 301 Taxman 170 (SC)

31 **S. 4 : Charge of income-tax –Sales tax incentive-Capital receipt-Not chargeable to tax. [S. 260A]**
Held that the sales tax incentive received by the assessee, a manufacturer, from the Government, as a refund of sales tax paid on goods manufactured is a capital receipt and not chargeable to tax. (AY. 2009-10)
PCIT v. Shantinath Detergents (P.) Ltd [2023] 151 taxmann. com 68 / [2024] 461 ITR 302 (Cal)(HC)

32 **S. 4 : Charge of income-tax-Diversion of income by overriding title-Amounts transferred to statutory reserve fund-Amounts received and then transferred-No diversion of income by overriding title. [S. 145]**
Held that the amount transferred to the statutory reserve fund was received and then reflected as part of the total income, and hence deduction was not permissible. The authorities below were justified in disallowing the deduction claimed by the assessees for the amount transferred to the reserve fund in compliance with the mandatory provisions of the Reserve Bank of India Act. (AY. 2003-04 to 2014-15)
Shriram Transport Finance Co. Ltd. v. ITO (OSD) (2024)460 ITR 66 (Mad)(HC)

33 **S. 4 : Charge of income-tax-Notional income-Credited to profit and loss account-Accounting standard (Ind AS)-Cannot be assessed as real income. [S. 143(1)(a), 154]**
Held that tax notional income credited to profit and loss account in compliance of Indian Accounting standard (Ind AS) cannot be assessed as real income in absence of contractual obligation of repayment. (AY. 2018-19) (ITA No. 3001 dt. 8-3-2024)
ACIT v. Kesar Terminals and Infrastructure Ltd (2024) BCAS-June-P. 41 (Mum)(Trib)

34 **S. 4 : Charge of income-tax- Pollution Control Board established by State Act-Controlled financially as well as administratively by the State Government -On winding up the funds would revert to the State Government-Income is not taxable. [The Orissa Water (Prevention and Control of Pollution) (Amendment) Act, 1974, S. 4(1), Art. 12, 289(1)]**
Tribunal held that the Assessee Board constituted under sub-s. (1) of S. 4 of the Orissa Water (Prevention and Control of Pollution) (Amendment) Act, 1974, is completely controlled financially as well as administratively by the State Government and consequently, it falls within the definition of 'State' under Art. 12 of the Constitution and its income is not liable for taxation as per the provisions of Art. 289(1). (AY. 2017-18)
State Pollution Control Board v. ITO (2024) 232 TTJ 887 (Cuttack)(Trib)

S. 4 : Charge of income-tax-Interest on deposits of grants received by nodal agency of Government-Issue is remitted back to the AO to ascertain whether the interest income has been remitted back; if the entire interest income has been remitted back to the Central Government/State Government, then no addition is sustainable on account of the interest income earned on the deposits. [S. 5] 35

Held that interest earned by the assessee nodal agency of the Central/State Government, on bank deposits of grants is immediately returned to the Central Government. In case of Central Government funds and interest received on State Government fund is adjusted against subsequent grant, Issue is was remitted back to the AO to ascertain whether the interest income has been remitted back; if the entire interest income has been remitted back to the Central Government/State Government, then no addition is sustainable on account of the interest income earned on the deposits. (AY. 2017-18, 2018-19)

ITO v. Managing Director, Davanagere Smart City Ltd. (2024) 232 TTJ 64 (UO) (Bang) (Trib)

S. 4 : Charge of income-tax-Accrual of income-Commission-Service charges receivable from State Government-Auditors report stating under reporting of income-Liable to be taxed on accrual basis. [S. 5, 145] 36

Held that when the assessee's chartered accountant in his audit report dt. 21st Sept., 2012 has categorically stated that the bank has understated its profit, the commission due to the assessee on account of service charges is assessable on accrual basis. Order of CIT (A) deleting the addition is set aside, order of the AO is affirmed. (AY. 2012-13)

ACIT v. Jila Sahakari Kendriya Bank Maryadit (2023) 37 NYPTTJ 962 / (2024) 229 TTJ 415 / 241 DTR 233 / (Raipur)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Interest subsidy-Technology upgradation fund scheme-Ground raised first time-Issue is restored to the AO for fresh adjudication as per provisions of law [S. 2(24)(xviii)] 37

Held that interest subsidy received under Technology Upgradation Fund Scheme is a capital receipt not chargeable to tax, issue being raised by the assessee by way of additional ground of appeal is restored to the AO for fresh adjudication as per provisions of law. Followed, *Dy. CIT v. Jindal Worldwide Ltd. (ITA No. 1843/Ahd/2016)* (AY. 2014-15)

Chirpal Industries Ltd. v. Dy. CIT (2024) 229 TTJ 87 (UO) (Ahd)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Business income-Compensation-Other payments-Income chargeable to tax-Compensation for termination (nonrenewal) of professional contract-Profession-Retrenchment-Freelance journalist-Compensation being capital receipt is not taxable. [S. 4, 28(ii)(e),32(1)(iv), 56(2)(xi), Industrial Relations Code, 2020, S. 2(ZA)] 38

The assessee has received compensation from Spiegel Verlag Spiegel Publishers which she claimed as exempt under section 4 of the Income tax Act. The AO held that the compensation is taxable as business income under section 28(ii)(e) of the Act read with Board Circular No. 8 /2018 dt. 26 December, 2018 (2019) 306 CTR 21 (St). The AO also held that said compensation is also taxable under section 56(2)(xi) of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that as per section 28(ii)(e),

the compensation for termination compensation received by any person on termination or modification of the terms and conditions of any contract relating to his business is taxable under the head Profits and gains of business or profession. Wherever the legislature thought of referring to both business and profession, it has used both the words in the enactment. This means that wherever the word only business is used, it does not include profession. The reference to business in S. 28(ii)(e) would not amount to reference to profession. On the facts of the case the assessee is a freelance journalist. Relevant clauses of the agreement refer to renewal of the agreement. Since the contract was not renewed, it came to an end. Compensation was received by the assessee by way of mutual agreement between Spiegel Verlag Spiegel Publishers and the assessee. As per S. 2(zh) of the Industrial Relations Code, 2020, non-renewal of any contract does not amount to retrenchment. Therefore the compensation received by the assessee is not taxable under S. 28(ii)(e). In S. 56(2)(xi) the reference is to termination of employment. This section is also not applicable on the facts of the case. Followed *G. K. Choksi & Co. v. CIT (2007) 213 CTR 431 / 295 ITR 376 (SC)*. Accordingly the compensation being capital receipt is not taxable. (AY. 2020-21)

Padma Rao (Ms.) v. CIT (2024) 159 taxmann. com 30 /228 TTJ 109 / 235 DTR 193 / 38 NYPTTJ 136 (Delhi) (Trib)

39 **S. 4 : Charge of income-tax-Subscription received by assessee from members towards holidays membership schemes-Entries in the books of account is not conclusive-Collective investment schemes(CIS)-Advances for sales-Deposits-The deposits received from the members cannot be treated as revenue receipt-Capital receipt. [S. 40(a)(ia), 145, 194A, 195]**

The assessee is involved in the business of selling holiday membership plans to its members. It had certain affiliation with certain hotels which provided accommodation to its members. Securities and Exchange Board of India (SEBI) vide order dt. 21 st August, 2015 held that schemes floated and prescribed by the assssee constitute Collective Investment Schemes (CIS). Only 2% of the members /investors have availed of the holiday facilities other 98% investors who have invested money with the sole motive of receiving the assured returns in the form of interest. The assesee has not deducted the tax at source. The AO assessed the deposit as income and also disallowed the interest for failure to deduct tax at source. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the schemes floated by the assessee were held to be in the nature of CIS and therefore, the NAC paid by the assessee to its members was considered as interest on deposits, such deposits by the members cannot be treated as revenue in the hands of the assessee. The deposits received from the members cannot be treated as revenue receipt in the hands of the assessee. Tribunal also held that it is trite law that entries in the books of account are not decisive or determinative of the true nature of the entries. Accordingly the amount received by the assessee from its members, to the extent the same is treated as income in its books of account, is directed to be reduced while calculating the total income of the assessee. (AY. 2009-10 to 2015-16)

Royal Twinkle Star Club (P) Ltd. v. DCIT (2023) 152 taxmann. com 374 / 37 NYPTTJ 334 / (2024) 228 TTJ 991 (Mum) (Trib)

S. 4 : Charge of income-tax-Capital or revenue-Sale of hotel asset Adjusted against capital work-in-progress-Not business income-No violation of Rule 46A-Commissioner (Appeals) is justified in deleting addition. [S. 28(1), R. 46A] 40

Held that as the information was available before the Assessing Officer, there could not be any violation of rule 46A ; secondly, the sum was received on account of capital receipt on sale of hotel assets and could not be treated as business asset. Such amount represented sale consideration as against sale of capital asset and should be adjusted against capital work-in-progress and not be treated as business income. The Order of CIT(A) is affirmed. (AY. 2008-09 to 2010-11)

ACIT v. Balaji Hotels and Enterprises Ltd. (2024)114 ITR 213 /229 TTJ 567/239 DTR 189 (Chennai)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Sales tax subsidy-Additional ground is admitted-Matter remanded-Exempted income-Disallowance-Matter remanded. [S. 28(1), 254(1)] 41

The additional ground whether sales tax subsidy is capital receipt or revenue receipt was admitted and the matter remanded for verification. As regards disallowance under section 14A the matter was remanded to the Assessing Officer. (AY. 2007-08 to 2009-10)

ACIT v. Jindal Poly Films Ltd. (2024)114 ITR 72 (SN)(Delhi)(Trib)

S. 4 : Charge of income-tax-Central excise subsidy from Central Government-Subsidy granted for setting up new unit in Sikkim-Capital receipt-Not liable to tax. [S. 28(i)] 42

Central excise subsidy from Central Government. Subsidy granted for setting up new unit in Sikkim is a capital receipt and is not liable to tax. (AY. 2009-10 to 2012-13, 2014-15)

IPCA Laboratories Ltd. v. Dy. CIT (2024)113 ITR 53/230 TTJ 409 (Mum)(Trib)

S. 4 : Charge of income-tax-A Government undertaking, nodal agency for propagation of non-conventional energy sources-Grants-in-aid from Government-Unutilised grants-in-aid placed in fixed deposit with banks-Interest earned is not income as unutilised grant-in-aid was also a part of grant-in-aid-Precedent-High Court-Fact that judgment of High Court is under challenge before Supreme Court is cannot be a ground for Tribunal not to follow it. [S. 260A Art. 136] 43

Held that the interest earned from the unutilised grant-in-aid is also a part of the grant-in-aid and was not income under the provisions of the Act, and there being no materials to take a different view, the order of the Commissioner (Appeals) is affirmed. Fact that judgment of High Court is under challenge before Supreme Court is cannot be a ground for Tribunal not to follow it. (AY. 2020-21)

ACIT v. Karnataka Renewable Energy Development Ltd. (2024)113 ITR 9 (SN)(Bang)(Trib)

S. 4 : Charge of income-tax-Doctrine of mutuality-Club-Complete identity between contributors and participators of funds-Letting out Air-conditioned hall and lawns to non-members-Member was only a name lender-Usage of Air-conditioned hall and lawns facility by non-members are not covered by principle of mutuality-Income from such activity is not exempt. [S. 143(3)] 44

Held that the facts were that the booking was done in the name of the member clearly mentioning the fact of the usage of facility by an outsider or non-member, the liability

for payment for the usage of the facility was raised in the account of the member, and the facility was utilised by non-members or guests, and payment also was made by the guests or non-members. The fact that the non-members paid for the usage of these facilities was a clear pointer to the fact that the facility was given to the non-members not on behalf of the members as their guests but for the benefit of the non-members alone. Clearly the member was only a name lender, a conduit. His role ended with the lending of his name, the facility was thereafter utilised by non-member on making payment. The mere fact that the club held the member liable for making the payment, did not take away the fact that in every such letting out to non-members, the payment invariably was made by the non-members. There was no doubt, therefore, that the letting out of these facilities to non-members was not for the contributors in the common fund of the assessee club. In other years, before the Tribunal, it was noted that the facilities had been extended to the non-members on the behest of the members as his guests and the fact that the payment was being made by non-members was not brought to the knowledge of the Tribunal ; and, therefore, it proceeded with the belief that the extension of the facility to non-members was for and on behalf of the members itself. Since the facility was not being given to the non-members for and on behalf of the member, but was being exclusively given to the non-members alone, the usage of the air-conditioned hall and lawns facility by non-members in the facts of the present case was not covered by the principle of mutuality. (AY. 2008-09, 2012-13, 2013-14, 2015-16)
Rajpath Club Ltd. v. Asst. CIT (2024)113 ITR 45 (SN)(Ahd)(Trib)

45 **S. 4 : Charge of income-tax-Accrual of income-Bank-Guarantee commission-Earned for unexpired period of guarantee contract-Offered to tax in succeeding years over period of guarantee-Interest from non-performing assets-Addition is deleted. [S. 4, 43D, R,6EA]**
The Assessing Officer had made an addition of the commission earned on guarantee issued by the bank relating to the unexpired period of the guarantee contract during the year but offered to tax by the assessee in succeeding years over the period of the guarantee. Likewise, an addition was also made on account of interest income on non-performing assets. The Dispute Resolution Panel, though noting that an identical addition of commission income made in the preceding years stood deleted by the Tribunal, directed the Assessing Officer to make the addition for the reason that the Department had appealed the Tribunal's decision before the High Court. Neither the Dispute Resolution Panel, nor the assessee, had brought out any distinction in facts from the preceding years. Therefore, as there was no case made out by the Revenue for not applying the Tribunal's decision in favour of the assessee, the addition of commission income and of interest income from non-performing assets is directed to be deleted. (AY. 2018-19)
Axis Bank Ltd. v. Asst. CIT (2024)112 ITR 28 (Ahd)(Trib)

46 **S. 4 : Charge of income-tax-Income-Accrual-Interest on non-performing asset-Deletion of addition is affirmed. [R. 6EA]**
The Assessing Officer made additions towards interest accrued, but not due of non-performing assets on the ground that non-performing assets should be classified according to rule 6EA of the 1962 Rules, which says that an account could be treated

as non-performing asset only if the interest was overdue for more than six months. The Commissioner (Appeals) deleted the additions. On appeal the Tribunal affirmed the order of the CIT(A) (AY. 2015-16 to 2017-18)
City Union Bank Ltd. v. Dy. CIT (2024)112 ITR 337 /229 TTJ 139 (Chennai)(Trib)

S. 4 : Charge of income-tax-Interest on fixed deposit-Not commenced its business-Interest income earned on fixed deposits pertaining to period prior to commencement of business was in nature of capital receipt. [S. 28(i), 35D] 47
Held that where assessee-company had not commenced its business activities during relevant financial year and earned interest income on fixed deposits made by it in earlier years, interest income earned on fixed deposits pertaining to period prior to commencement of business was in nature of capital receipt and pre-operative expenses of assessee had to be adjusted with this "capital receipt" and only balance expense, needed to be amortized as per provisions of section 35D. (AY. 2015-16)
DCIT v. BTW Atlanta Transformers India (P.) Ltd. (2024) 206 ITD 670 (Ahd) (Trib.)

S. 4 : Charge of income-tax-Insurance claim-Capital or revenue-Interim order-Matter remitted back to Assessing Officer to decide a fresh. [S. 28(i)] 48
Assessee had made a claim with insurance company on basis of insurance cover purchased by it in respect of its corporate office where fire took place and had received interim claim of Rs. 2. 75 crores and it had incurred loss. Assessing Officer had treated payment received by assessee as insurance claim on ad hoc basis and taxed same under head business or profession. Commissioner (Appeals) held that amount received by assessee was revenue receipt taxable under head business or profession. On appeal the Assessee contended that since assessee had ultimately incurred a loss, said receipt could not be taxed in its hand as revenue receipt. Tribunal held that since assessee did not produce evidence regarding loss incurred by it due to accidental fire, issue was to be remitted back to Assessing Officer to decide afresh for on verifying actual loss incurred by assessee. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636 /116 ITR 261 (Mum) (Trib.)

S. 4 : Charge of income-tax-Capital or revenue-Premature payment of deferred sales tax at present value of certain amount against total liability and credited balance amount to its capital reserve account-Amount credited amount is a capital receipt. [S. 28(i)] 49
Held that payment made premature payment of deferred sales tax at present value of certain amount against total liability and credited balance amount to its capital reserve account, said credited amount is a capital receipt not a revenue receipt. (AY. 2005-06)
Piramal Enterprises Ltd. v. DCIT (2024) 205 ITD 636 / 116 ITR 261 (Mum) (Trib.)

S. 4 : Charge of income-tax-Capital or revenue-Subsidy-Subsidy received by assessee from State Government under Package Scheme of Incentives, 2007 to encourage setting up of industries in less developed areas of State and not for purpose of running business more profitably is capital in nature. [S. 28(i)] 50
Held that subsidy received by assessee from Government under Package Scheme of Incentives, 2007 was only to encourage setting up of industries in less developed areas

of State and same is not for purpose of running business more profitably, same is to be treated as capital in nature. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

51 **S. 4 : Charge of income-tax-Capital or revenue-Grant-Electricity grants received by assessee from State Government under Industrial Policy, 2005 for setting up a project for manufacturing of paints is capital in nature.**
Assessee is engaged in business of manufacturing paints and enamels. Electricity. Grants received by assessee from State Government under Industrial Policy, 2005 for setting up a project for manufacturing of paints is capital in nature. (AY. 2014-15)
Asian Paints Ltd. v. ACIT (2024) 205 ITD 680 (Mum) (Trib)

52 **S. 4 : Charge of income-tax-Interest income-Temporarily parked / deposited with banks on fixed deposits-Prior to commencement of business-Capital receipt-Required to be set off against pre-operative expenses. [S. 145]**
Held that interest income was earned by assessee on fund which was temporarily parked/deposited with banks as fixed deposits prior to commencement of its business, it was in nature of a capital receipt and is required to be set off against pre-operative expenses. (AY. 2013-14)
Chandhok Cold Storage (P.) Ltd. v. ITO (2024) 204 ITD 17 /227 TTJ 744 (SMC)) (Raipur) (Trib.)

53 **S. 4 : Charge of income-tax-Capital or revenue--Income-Member of Society-Hardship compensation amount received from builder is capital receipt-Not taxable as income from other sources. [S. 2(24), 56]**
The assessee is a tuition teacher by profession. The assessee received hardship compensation from the developer. The assessee has shown the said receipt as capital receipts. The Assessing Officer assessed the receipts as income from other sources. On appeal the CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held the assessee has received the amount from builder and the same will not come under the purview of the income within the meaning of section 2(24) of the Act. The hardship compensation is a capital receipt hence not taxable. The Tribunal has relied on various judgements of the Tribunal and deleted the addition. (AY. 2012-13, 2015-16, 2016-17) (ITA Nos. 1081/ 1082/ 1083 /2024 (Mum) "D" dt. 23-9-2024)
Monica Parmanand Mirchandani v. ITO (Mum)(Trib) www.itatonline.org

54 **S. 5 : Scope of total income – Accrual of income – Termination of lease – Pendency of dispute before Small Causes Court – Deposit of lease rent in Court - Revenue was not justified in taxing lease rent as accrued income .[S. 4, 5(1)(b), 145]**
Where the assessee had terminated the sub-lease and filed a suit for eviction, while the tenant also filed a cross-suit, the Small Causes Court permitted the tenant to deposit lease rent in Court without prejudice to the rights of either party. Since the dispute regarding the subsistence of lease was sub judice and the assessee had not accepted rent after termination, the right to receive rent was in jeopardy. Income could not be said to have accrued to the assessee till final adjudication by the Court. Hence, the

Revenue was not justified in taxing lease rent as accrued income. (AY. 1986-87 to 1991-92, 1993-94)
T. V. Patel Pvt. Ltd. v. Dy. CIT (2024) 464 ITR 409 / 336 CTR 136 (Bom)(HC)
Editorial : Unless the right to receive is crystallized and enforceable, mere deposit of rent in Court does not amount to accrual of income.

S. 5 : Scope of total income-Accrual of income-Charge of income-tax-Real income-Redevelopment agreement-Corpus fund received prior to giving possession of land to developer-Capital gains-Not taxable in the year under consideration. [S. 2(24), 4, 45, 56, 260A] 55
Assessee-society owned certain flats, which were constructed on leasehold land-It entered into redevelopment agreement with a developer to redevelop flats and granted rights and entitlements to developer for aforesaid land. Developer agreed to pay Rs. 15 crores to corpus fund of assessee and an amount of Rs. 3.50 crores was paid on execution of agreement. Assessing Officer held that amount of Rs. 15 crores was just a receipt of non-recurring nature and taxed entire amount under head income from other sources during year under consideration. Dismissing the appeal of the Revenue the Court held that since assessee had not given possession of land to developer during year under consideration amount of Rs. 3.50 crores (real income) only could be taxed for year under consideration. Followed, *CIT v. Raj Ratan Palace Co-Operative Housing Society Ltd, ITA No. 2292 of 2011 dt. 27-2. 2013 (Bom)(HC))* (AY. 2011-12)
PCIT v. MIG Co-op. Hsg. Soc. Group II Ltd. (2024) 298 Taxman 284 /467 ITR 524 (Bom.) (HC)

S. 6(1) : Residence in India-Individual-Indian citizen-Stayed in India more than 183 days-Income derived in USA is chargeable to tax in India-DTAA-India-USA. [S. 5, 9(1)(i), Art. 4(2)(a)] 56
Assessee had a permanent home in India as well as in USA. Assessee claimed that his centre of vital interest lay in USA as his family was US national holding US passport, he was overseas citizen of India, had larger investments in US and one daughter out of three children was studying in USA. Assessing Officer held that assessee had stayed in India for more than 183 days and he was staying with his wife and children who had shown their place of residence as India. He treated assessee as resident of India for tax purposes and his US income was also taxed in India under section 5. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assessee had a home in India. Assessee had come back to India for carrying on business in a private limited company which was set up by him and his wife. Assessee had an active involvement in running of this company in India. In India he had operative bank accounts and he had also investment in mutual funds. From USA, assessee was deriving rental income where his house property was rented out, he had investments in bank accounts as well as alternative investments. He did not have any active involvement in USA for earning wages, remuneration, profit Personal relationship and economic relationship of assessee and tilt more in favour of being close to India than US and thus, assessee was held as a resident of India in terms of article 4(2)(a) of Indo-(USA). Consequently, all his income derived in USA, was chargeable to tax in India by virtue of provisions of section 5. (AY. 2013-14)
Ashok Kumar Pandey v. ACIT (2024) 209 ITD 274 (Mum) (Trib.)

57 **S. 6(1) : Residence in India-Individual-Non-Resident-Once assessee qualifies as non-Resident salary received by assessee while rendering service abroad not taxable in India-DTAA-India-United Kingdom. [S. 5(2)(b), Art, 16]**

Held Allowing the appeal, the Tribunal held that the assessee was a non-resident employee in an Indian company and was sent abroad to the United Kingdom for rendering services there. Service was rendered in the United Kingdom though the appointment made in India. The assessee received total salary which the assessee offered to tax in the United Kingdom. The Income-tax return and certificate of residence had been placed on record. The assessee claimed relief under the Double Taxation Avoidance Agreement between India and the United Kingdom which was not allowed for the want of tax residency certificate by the Assessing Officer. Once the assessee qualified to be treated as non-resident under section 6 of the Act the scope of income taxable in the hands of the assessee would be in terms of section 5(2)(b) of the Act. The assessee was a non-resident and therefore the salary received by the assessee while rendering service abroad was not taxable in India. The addition was deleted. (AY. 2014-15)

Arindam Dasgupta v. Asst. CIT (IT) (2024)110 ITR 57 (SN)(Kol)(Trib)

58 **S. 6(1) : Residence in India-Individual-Income from employment-Salary payments outside India-Exercised employment and received remuneration in US-Salary income is taxable in USA and not in India – India-USA. [S. 9(1)(i), 90(4), Art. 4, 16]**

Assessee, a tax resident of both India and US, employed with Indian-company was on an international assignment to US. He stayed and exercised his employment in US and received salary income. He claimed that as he had stayed in India only for 16 days, salary income earned by him was not taxable in India but was taxable in USA as per provisions of article 16 of Indo-US DTAA. Assessing Officer placing reliance on provisions of section 90(4) rejected assessee's claim of exemption from taxation of salary in India and made an addition of same. CIT(A) held that the remuneration was paid by the employer who was is always a resident of India and therefore, the assessee's salary was taxable in India. On appeal the Tribunal held that the assessee had not made any submissions relating to status of assessee of cumulative stay of less than 365 days in four years preceding year in question, therefore, assessee by virtue of provisions of section 6(1) had failed to establish his status of non-resident. During year, assessee did not have permanent home in US, whereas, he had a permanent home in India. The Assesseee is in permanent employment of Indian-company and bank account of assessee i also in India, wherein, salary is deposited. Address of wife of assessee mentioned in income tax return filed in USA for year 2019 is also in India. In view of provisions of section 6 read with article 4 of Indo-US DTAA, assessee is to be treated as a resident of India. Since assessee is a resident of India, however he had exercised employment and received remuneration in US, income of assessee is taxable in USA and not in India. Therefore, additions made by Assessing Officer is deleted. (AY. 2019-20)

Somnath Duttagupta v. ACIT (2024) 111 ITR 385 / 206 ITD 317 /229 TTJ 84 (Kol) (Trib.)

S. 6(1) : Residence in India-Individual-Employment outside India-Business or profession-Term employment outside India includes doing business' by assessee-Stayed in India for a period of 176 days-Non-resident-Global income is not taxable in India-Stayed 176 days during year-Entitled to claim the benefit of the extended period of 182 days as provided in explanation 1(a) to section 6(1) of the Act-Appeal of Revenue is dismissed-DTAA-India-Mauritius. [S. 6(1)(a), (6(1)(c), Art. 4] 59

During the assessment proceedings, on perusal of the return of income filed by the assessee, it was observed that the assessee had claimed his residential status as non-resident and had not offered his global income to tax in India. Assessee was asked to furnish documents in support of his residential status. On the basis of documents it was observed that the assessee stayed in India for 176 days and went to Mauritius during the year. The AO assessed the assessee as resident. On appeal the CIT(A) held that the assessee was away from India for the purpose of employment outside India and is entitled to take the benefit of Explanation 1(a) to section 6(1)(c). On appeal by the Revenue, dismissing the appeal the Tribunal held that the assessee was entitled to claim the benefit of the extended period of 182 days as provided in explanation 1(a) to section 6(1) of the Act. Circular No 346 dt. 30-6-1982 (AY. 2013-14)

ACIT v. Nishant Kanodia [2024] 205 ITD 20/109 ITR 50 (SN)/ 227 TTJ 625 (Mum) (Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Liaison Office-Non-Resident company-Did not finalize and transact a business deal and activities-Liaison Office could not be said to be preparatory or auxiliary in nature, LO did not constitute Permanent Establishment of assessee-MIPL was not performing additional function, in absence of material, it could not be taken as Dependant agency PE to assessee, a non-resident company-Delay of 395 days-SLP of Revenue is dismissed on account of delay as well as on merits-DTAA-India-Japan. [Art. 5, Art. 136] 60

High Court held that where Liaison Office (LO) of assessee, a non-resident company, did not finalize and transact a business deals and activities carried out by LO could not be said to be preparatory or auxiliary in nature, LO did not constitute a Permanent Establishment, liable to tax in India.. High Court also held that where MIPL was not performing additional function, in absence of material, it could not be taken as dependant agency PE to assessee liable to tax in India. There being gross delay of 395 days in filing this SLP, instant SLP was to be dismissed on ground of delay as well as on merits.

CIT v. Mitsui & Co. Ltd. (2024) 299 Taxman 365(SC)

Editorial : CIT (IT) v. Mitsui & Co. Ltd (2024) 161 taxmann.com 634 (Delhi) (HC)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-No conflict between provision of DTAA between India and Netherlands-Non-discrimination and there was no ambiguity in classification and rates of tax, assessee, which is not a 'domestic company', is liable to tax at rates prescribed for a company 'other than a domestic company'-DTAA-India-Netherlands. [S. 2(17), 2(23A), 90, Art. 24(2)] 61

Assessee is a branch of ABN Amro Bank NV incorporated in Netherlands with limited liabilities having its original office at Singapore. In India, assessee is registered as a scheduled bank in terms of Second Schedule to RBI Act, 1934 Since assessee had a PE in India, it was liable to tax in respect of income attributable to PE. Held that in

terms of Article 24(2) of DTAA between India and Netherlands, containing provision of non-discrimination, assessee is liable to Income Tax at rate applicable to a domestic company. It was found that Explanation to section 90 is not in conflict with provisions of DTAA and that there is no conflict between provisions of DTAA and Income-tax Act, 1961 regarding non-discrimination. Further, section 2(17) defining word 'Company', section 2(22A) defining word 'Domestic Company', section 2(23A) defining word 'Foreign Company', and section 90 of Act, 1961 read with Explanation and section 2(1), section 2(12)(a), Paragraph 'E' of First Schedule to Finance Act are plain, unambiguous and lead only to one conclusion that two classes of companies, namely, 'domestic company' and 'company other than a domestic company' are liable to tax at prescribed rates. Therefore, there being no ambiguity in classification and rates of tax, assessee, which was not a 'domestic company', was liable to tax at rates prescribed for a company 'other than a domestic company'.

Royal Bank of Scotland N. V. v. CIT (2024) 341 CTR 981 / 162 taxmann.com 780 (Cal) (HC)

62 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Fees charged by foreign branch for providing and extending a credit line to account holder outside India in respect of credit cards issued by foreign branch and used in India is not taxable in India-Order of Tribunal is affirmed. [S. 260A]**

Held that credit cards had been issued by foreign branch of assessee-bank and credit was given to customer outside India and debt had also arisen outside India, fees charged by foreign branch for providing and extending a credit line to account holder outside India in respect of credit cards issued by foreign branch and used in India would not be taxable in India. Order of Tribunal is affirmed. (AY. 1992-93, 1994-95, 1995-96)

DIT v. ANZ Grindlays Bank (2024) 301 Taxman 599 / (2025) 476 ITR 624 (Delhi)(HC)

63 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection –Permanent Establishment-Apportionment of income-Where an assessee had a Permanent Establishment in India, it would be liable to pay tax on income attributable to that PE notwithstanding that assessee at an entity level had suffered a loss-DTAA-India-UAE. [Art. 5, 7(1), 7(2)]**

The Full Bench was constituted to decide one of the questions arising in the petitions is whether any taxable income can be attributed to the Permanent Establishment (PE) in India if the overseas entity has incurred a loss in the relevant assessment year. Assessee contended that in case an enterprise at an entity level had suffered a loss at an entity level in relevant assessment year, no profit or income attribution would be warranted insofar as PE in India would be concerned. Court held that Article 7(1) constructs clear dichotomy between profits that may be earned by an enterprise on a global scale and those which are attributable to a PE situate in contracting state. It becomes further evident from Article 7(2) which stipulates that where an enterprise carries on business through a PE in other Contracting State, profits would be liable to be attributed to that PE as if it were a distinct and separate enterprise engaged in similar activities and independent of enterprise of which it may be a part. Article 7(1) itself excludes profits of an enterprise from being subjected to tax till such time as such an

entity carries on no business in other Contracting State through a PE. The fact that a PE was conceived to be an independent taxable entity could not be questioned. Article 7 cannot be viewed as restricting right of source State to allocate or attribute income to PE based on global income or loss that may have been earned or incurred by a cross border entity. Thus, where an assessee had a PE in India, it would be liable to pay tax on income attributable to that PE notwithstanding that assessee at an entity level had suffered a loss. The matters are placed before the appropriate Roster Bench for disposal of petitions. (AY. 2009-10 to 2017-18)

Hyatt International Southwest Asia Ltd. v. ADCIT (2024) 340 CTR 633 / 242 DTR 177 / 166 Taxmann.com 466 / (2025) 472 ITR 53 (FB) (Delhi)(HC)

Editorial : Refer, Hyatt International-Southwest Asia Ltd v. ADIT(2024) 297 Taxman 497 /464 ITR 508/ 337 CTR 39 (Delhi)(HC)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Strategic Oversight services-Not royalty-Business income-Since hotel premises were at disposal of assessee in respect of its business activities, Tribunal had rightly held that assessee had a PE in India in form of fixed place through which it carried on its business-DTAA-India-UAE. [S. 9(1)(vi), Art. 5(2)(a), 12] 64

Assessee, a tax resident of UAE, entered into two Strategic Oversight Services Agreements (SOSA) with an Indian company in respect of hotel located at Delhi. In terms of SOSA, assessee agreed to provide strategic planning services and know-how to ensure that hotel was developed and operated as an efficient and high quality international full-service hotel and received fee (strategic fee as well as incentive fee) as set out in SOSA. Assessing Officer and Tribunal held that payment received from owner under SOSA was royalty under DTAA as same related to provisions of know-how, skill, experience, commercial information and other intangibles. The Court held that the fee was not a consideration for use of or right to use any process or for information of commercial or scientific experience but was in consideration of providing services as set out in SOSA. Therefore, fee revived by assessee was not royalty under article 12 of DTAA but was in nature of business income. Court also held that in terms of SOSA, assessee agreed to provide strategic planning services and know-how to ensure Hotel was developed and operated as an efficient and high quality international full-service hotel. Order of Tribunal holding that the assessee had a Permanent Establishment (PE) in terms of article 5(2) of DTAA was affirmed. Court observed that the assessee exercised control in respect of all activities at hotel, inter alia, by framing policies to be followed by hotel in respect of each and every activity, and by further exercising apposite control to ensure that said policies were duly implemented. Admittedly, assessee also performed an oversight function in respect of hotel which was also carried out, at least partially if not entirely, at hotel premises. Since hotel premises were at disposal of assessee in respect of its business activities, Tribunal had rightly held that assessee had a PE in India in form of fixed place through which it carried on its business. (AY. 2009-10 to 2017-18)

Hyatt International-Southwest Asia Ltd v. ADIT (2024) 297 Taxman 497 /464 ITR 508/ 337 CTR 39 (Delhi)(HC)

Editorial : Refer, Hyatt International Southwest Asia Ltd. v. ADCIT (2024) 340 CTR 633 242 DTR 177 / 166 Taxmann.com 466 (FB) (Delhi)(HC)

65 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Business profits-Disallowed engineering fees on the ground that time log sheets were not filed, debit notes furnished provided sufficient information as to nature of duties and number of hours spent-Order of Tribunal deleting the disallowance is affirmed-Article 7 of OECD Model Convention. [S. 260A]**

Dismissing the appeal of the Revenue the Court held that, the involvement of the assessee in the project which was under execution was not in doubt. The DMRC had availed the engineering services rendered by the employees of the head office. The assessee only remitted the engineering fee to the head office. There is no dispute with regard to the fact that the debit note provided sufficient information not only concerning the names of the employees but also as to the nature of duties and number of hours that they spent on the job assigned to them. As the Tribunal was being the final fact-finding authority, hence no interference was called for, especially when revenue had not proposed any question which was indicative of the fact that any of the findings returned by the Tribunal was perverse. Therefore Disallowance was correctly deleted. (AY. 2005-06)

CIT (IT) v. Cobra Instalaciones Y Servicios S. A. (2024) 296 Taxman 287 (Delhi)(HC)

66 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Capital gains-Shares-Not liable to be assessed as capital gains-Explanations 6 and 7 to section 9(1)(i) has to be treated retrospectively as it have to be read along with Explanation 5 which operates from 1-4-1962-OECD Model Convention, Art 13. [S. 260A]**

The assessee, a Singapore based company, had invested in equity and preference shares of 'A', a company incorporated in and resident of Singapore. On 27-3-2015, the assessee sold its entire shareholding in 'A' to 'J' (an Indian company). The Assessing Officer computed the long-term capital gains arising from the transfer of shares of 'A' and proposed addition. The assessee submitted that Explanation 7 of section 9(1)(i) ought to have been given retrospective effect. The DRP up held the addition. Tribunal deleted the impugned addition holding that Explanations 4 and 5 inserted via the Finance Act, 2012 would operate retrospectively with effect from 1-4-1962. On appeal High Court up held the order of Tribunal. (AY. 2015-16)

CIT (IT) v. Augustus Capital Pte. Ltd (2024) 296 Taxman 398 / 463 ITR 199 (Delhi)(HC)

67 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Business profits-Composite contract-Service rendered and payment received outside India-Income earned on account of offshore supplies was not taxable-DTAA-India-South Korea. [S. 234B,260A, Art. 7]**

Dismissing the appeal of the Revenue the Court held that, though assessee had entered into a contract with MRVC for the supply of equipment and services, offshore as well as onshore, the terms of the contract distinctly set out the quantum of offshore supplies to be made by the assessee to MRVC and also the quantum of payment to be received by the assessee from MRVC outside India. The composite contract specifically records the quantum of goods to be supplied outside India, the property in the plant and machinery got transferred to MRVC once they were loaded on the mode of transport from the country of origin to India and even the payment is made outside India. Therefore the income arising from offshore supplies is not taxable in India. (AY. 2012-13)

CIT (IT) v. Iljin Electric Co. Ltd (2024) 296 Taxman 516 (Bom)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Income from offshore supply of plants, equipments, spares, etc. -Assessee has furnished evidence to show that the global profit rate in the paper division is 3 per cent the estimation of profit at 5% by the CIT(A) cannot be accepted-Issue is restored to the AO for de novo adjudication-DTAA-India-Germany. [Art. 5] 68

Held that when the assessee has furnished evidence to show that the global profit rate in the paper division is 3 per cent the estimation of profit at 5% by the CIT(A) cannot be accepted. Issue is restored to the AO for de novo adjudication. (AY. 2015-16)

J. M. Voith Se & Co. Kg v. DCIT (IT) (2024) 230 TTJ 837 / 241 DTR 137 / 38 NYPTTJ 521 / 161 taxmann.com 734 /(2025) 121 ITR 402 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Functions as selling and purchasing agent-Because the nature of business of trading is a continuous flow of the business process, that cannot be a foundation to conclude a principal-agent relationship for the purpose of art. 5 of the DTAA-There is no PE of assessee in the form of ITPL-DTAA-India-Japan-[S. 90, Art. 5(6)] 69

Held that as per art. 1 of memorandum of agency agreement, the appointment of the Indian subsidiary as agent was for the purpose of performing the functions as selling and purchasing agent for the export from Japan and the import into Japan of all kinds of goods. Article 1 itself mentions that the assessee-company as a principal reserves the right to quote price, place orders of the goods and otherwise deal directly with buyers and/or sellers located in the territory or visiting Japan from the territory, if all the actions of the assessee as principal, circumstances make it necessary advisable to do so. Because the nature of business of trading is a continuous flow of the business process, that cannot be a foundation to conclude a principal-agent relationship for the purpose of art. 5 of the DTAA. There was no PE of assessee in the form of ITPL. (AY. 2017-18)

ITOCHU Corporation v. ACIT (IT) (2024) 231 TTJ 744 / 242 DTR 57 / 38 NYPTTJ 995 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-None of the employees came to India for the purpose of either development or sale of or any activity related to development and sale of RPA software platform-No permanent establishment-No income attributable on sale of software licence-Additional ground-Rejected-DTAA-India-USA. [Art. 5, 12] 70

Tribunal held that there was nothing to demonstrate that the assessee has carried out any activity, either wholly or partly in relation to sale of software licence through the alleged PE in India so as to satisfy the conditions of art. 5(1) r/w art. 5(2) of the tax treaty. The income relating to the sale of software licence was not taxable no part of such income can be attributed to the PE. Additional ground being mixed question of fact and law is not a question of law. (AY. 2018-19, 2019-20)

Automation Anywhere Inc. v. Dy. CIT (IT) (2023) 153 taxmann.com 629 / (2024) 227 TTJ 287 / 234 DTR 295 (Delhi)(Trib)

71 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Non-Resident of Japan-Incurred loss-Only profits earned by Permanent Establishment in India is liable to tax-Addition is deleted-DTAA-India-Japan. [Art. 7]**

Held that only if profits attributable to the assessee's permanent establishment in India can be taxed. The assesseee incurred loss hence the Assessing Officer is directed to delete the addition. (AY. 2018-19, 2019-20)

Hitachi Ltd. v. ACIT (IT) (2024)116 ITR 393 / [2025] 171 taxmann.com 226 (Delhi)(Trib)

72 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Non-Resident-Dependent agent permanent establishment-Offshore supply of equipment-No fixed place-Addition under section. 44AB is deleted-Interest is consequential in nature-DTAA-India-France. [S. 444BBB 234B, Art. 5]**

Following the order of Tribunal for earlier year the Tribunal held that section 44BBB per se could not be made applicable in the case, that the contract is not artificially split for gaining any tax advantage as alleged by the Revenue, that there is no business connection of the assessee in India, that there did not exist a fixed place permanent establishment or construction permanent establishment of the assessee in India, and that, therefore, the addition made by the Assessing Officer was deleted. Levy of interest under S. 234B was consequential in nature. (AY. 2020-21)

GE Hydro France v. Dy. CIT (IT) (2024)116 ITR 42 (SN) (Delhi)(Trib)

73 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Limited Liability Company (LLC)-Resident of USA State by virtue of US Income-tax Law-Qualified as a person under Article 4 of Indo-US Tax Treaty-Eligible for treaty benefit-Liable to tax at 15 % and not 25%-DTAA-India-USA. [S. 90, Art. 4, 12]**

Assessee is a Limited Liability Company (LLC) incorporated in USA. Assessee claimed to be a resident of USA and offered to tax income by way of receipts on account of fees at rate of 15 per cent, applying rate given in India-USA DTAA. Assessing Officer held that LLCs were fiscally transparent entities according to US tax law, i. e., their income is not subject to tax in their own hands in USA and such corporations, therefore, did not qualify as residents of USA in terms of Article 4 of India-USA DTAA. He, accordingly, proceeded to bring to tax returned income of assessee at rate of 25 per cent. DRP affirmed the order of the AO. On appeal the Tribunal held that under US federal income tax law, an LLC with a single owner was disregarded as separate from its owner unless LLC elected to be treated as a corporation for US federal income tax purposes-Ability of LLC to elect its tax classification under US federal income tax law also supported legal situation or aspect of LLC being liable to tax. Further, where a LLC was disregarded as separate from its tax owner for US federal income tax purposes, tax owner of LLC paid tax on tax owner's share of taxable income attributed from LLC. Assessee being a resident under Article 4 of Indo-US Tax Treaty by virtue of incorporation and its recognition as a separate existence from its members qualified as a person. Accordingly the assessee was liable to tax in resident State by virtue of US Income-tax Law hence the tax authorities had fallen in error in not extending treaty benefit to assessee. (AY. 2014-15, 2015-16)

General Motors Company USA. v. ACIT IT, (2024) 209 ITD 60 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Non-Resident-Royalty-Licence to incorporate software belonging to non-Resident in Indian company's Vehicles-Receipts from supply of software is not royalty-Receipts business income not taxable in India in absence of a Permanent Establishment in India-Delay in filing of return-Extended notification-Matter remanded for verification-Interest-Income received after deduction of tax at source-Levy of interest is not valid-DTAA-India-China. [S. 9(1)(vi), 139, 209(1)(d), 234A, 234B, Art. 12(3)] 74

Held that under the licence agreement no rights were provided to make copies of software products or to modify, merge or combine with other software ; no right to change the object code from source code and make any derivative products from that had been provided and the technical documentation for the software remained the property of the assessee, the assessee was responsible for any claims of patent infringement and thus all intellectual property rights in the licensed products belonged to the assessee and its licensors only. The Indian company was required to get the terms of the legally binding end user licence agreement agreed by its customer before allowing use of the licensed products. The Indian company merely purchased the licensed software which was embedded in the head unit and fitted into cars for end use by the buyer of the car. The end user licence agreement was signed with the end user for use of the licensed software. The end user had limited right to use the application. The receipts from supply of software were not royalty income. The expression "imparting of information concerning industrial, commercial or scientific experience" alludes to the concept of "know-how" which is defined to mean "undivulged technical knowledge, information, experience or technique that is necessary for the industrial reproduction of a product or process". The licence agreement specifically provided for supply of software licence only, and the assessee had only supplied a standard, off-the-shelf software to the Indian company and had not given any "know-how" to the Indian company from which the Indian company could reproduce it for its perpetual use as the Indian company had to purchase licences equal to number of cars manufactured by it. The payments received by the assessee was not for the use of the copyright or imparting information concerning industrial, commercial or scientific experience and thus would not fall within the scope of article 12(3) of the DTAA to be taxed as royalty income. The receipts were business income in the hands of the assessee which was not taxable in India in the absence of a permanent establishment of the assessee in India. Held that interest under section 234A of the Income-tax Act, 1961 is levied only in cases where the assessee does not furnish its return of income or furnishes it after the due date prescribed under section 139 of the Act. The facts on record revealed that the assessee filed its return of income within the prescribed (extended) due date applicable to the assessment year. The Assessing Officer was to verify the date of filing of the return vis-a-vis the due date of filing of return for the assessment year 2020-21 in the light of the CBDT Notification No. 93/2020/F. No. 370142/35/2020-TPL dated December 31, 2020 by which the due date for furnishing of returns for the assessment year 2020-21 was extended to February 15, 2021 and decide it afresh in accordance with law. Tribunal also held that the proviso inserted in section 209(1)(d) of the Act by the Finance Act, 2012 with effect from April 1, 2012 would apply only where the person responsible for deducting tax has paid or credited such income without deduction of tax. Since the income had been received by

the assessee after deduction of tax at source the levy of interest under section 234B of the Act was not called for. (AY. 2020-21)
Saic Motor Overseas Intelligent Mobility Technology Co. Ltd. v. Asst. CIT (IT) (2024)110 ITR 49 (SN)/229 TTJ 801/ 239 DTR 42 (Delhi)(Trib)

75 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Operational staff and the Vessel and the captain of the vessel who originally belonged to the non-resident company and who had been sent to work under the complete control and supervision of the Assessee did not constitute a business connection for the non-resident in India-Article 5 of the OECD Model Convention.**
The Assessee contended that the overseas company did not carry out any dredging operations in India but only gave dredgers to the Assessee Company in India on a time charter basis, for which it charged a fixed fee/remuneration irrespective of the actual usage of such vessel. The Revenue argued that the foreign company had a business connection in India as the dredgers were continuously operating in Indian territorial waters. The Hon'ble Tribunal held that the foreign company did not have a business connection or permanent establishment in India. That the foreign company only provided dredgers on a lease basis without engaging in any active business operations in India. Further that the operational staff and the captain worked under the supervision and control of the Assessee, and the payments were for the use of equipment, not for any business activity conducted by the foreign company in India. (AY 2003 to 2010-11)
Jaisu Shipping Co. v. ADDI (2024) 111 ITR 601 (Rajkot)(Trib.)

76 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Changed mode of business operations-Computerized reservation system services on behalf of Air lines and Hotels to travel agents in India-No agency permanent establishment-Profits is not liable to tax in India-DTAA-India-USA [Art. 5, 7]**
The Assessee a US-based company, entered into Participating Carrier Distribution and services agreements with various airlines in India to facilitate ticket booking and related services through its computer reservation system (CRS). The company also had subscriber agreements with global travel agencies, allowing them access to the CRS. The Assessing Officer (AO) and the Dispute Resolution Panel (DRP) held that the Assessee had a fixed place PE and agency PE in India based on earlier assessment years' findings, despite changes in the business model post-2005. The Assessee contended that after 2005, there was a significant change in its business model. The company no longer provided computers, printers, or communication lines to travel agents in India. Instead, global travel agencies independently sourced these requirements. The Assessee argued that it did not have any office or employees in India and was not responsible for providing any equipment to Indian travel agents, thus negating the existence of a fixed place PE or agency PE in India. The Revenue contended that the Assessee had a fixed place PE and agency PE in India based on the company's operations and income generated from India. The AO and DRP relied on earlier assessment years' findings, arguing that the CRS gateway used by travel agents constituted a fixed place of business in India. They also maintained that the business model changes post-2005 did not materially alter the company's operations in India.

The Hon'ble Tribunal ruled in favor of the Assessee holding that the company did not have a fixed place PE or agency PE in India post-2005 due to changes in its business model. The Hon'ble Tribunal noted that the Assessee no longer provided equipment or communication links to Indian travel agents and had no office or employees in India. That the burden of proving the existence of a PE lies with the Revenue, which failed to establish this in light of the changed business model. (AY. 2012-13 to 2016-17)
Sabre GLBL Inc. v. ACIT (2024) 111 ITR 446 /230 TTJ 179 /159 taxmann.com 678 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company)-Not taxable in India under India France DTAA since branch had borrowed from overseas head office and debt claim of head office was connected to PE branch in India-DTAA-India-France. [Art. 7, 12] 77
Held that interest paid by Indian branch/PE of assessee, a French bank, to its head office (a foreign company) would not be taxable in India under India France DTAA since branch had borrowed from overseas head office and debt claim of head office was connected to PE branch in India. (AY. 2021-22)
BNP Paribas v. ACIT (2024) 207 ITD 532 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Business profits-Offshore supplies-Fees for technical services-Supply of goods and equipments was completed outside India-Transfer of title over goods had passed from non-resident assessee to Indian PSU's outside India-Receipts from such supply could not be made taxable in India-DTAA-India-China. [S. 9(1)(vii), Art. 7] 78
Assessee, a tax resident of China, received certain amount of consideration on account of offshore supply made to Indian PSUs. Assessing Officer, allocated 60 per cent of total receipts towards supply of equipment and 40 per cent towards fee for technical service (FTS) and made additions. DRP up held the addition. On appeal following the order of Tribunal in assessee's own case for earlier assessment years in *Jiangdong Fittings Equipments Co. v. ACIT (International Taxation) [2023] 157 taxmann.com 109 (Delhi (Trib.)* on similar issue had held that supply of goods and equipments was completed outside India and transfer of title over goods had passed from non-resident assessee to Indian PSUs outside India in terms with contract, receipts from such supply could not be made taxable in India. Tribunal directed the Assessing Officer to delete the addition. Following aforesaid order, Assessing Officer was to be directed to delete impugned additions. (AY. 2020-21)
Jiangdong Fittings Equipments Co. Ltd. v. ACIT (2024) 206 ITD 344 (Delhi) (Trib.)

S. 9(1)(i)) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Interest on income tax refund-Not effectively connected with PE either on basis of asset-test or activity-test-It has to be taxed under article 12 of India-France DTAA at 10 percent and not as business income-DTAA-India-France. [Art. 7, 12, 15] 79
The assessee had received income tax refund. In the return of income the assessee offered the interest at the rate of 10 percent as per Article 12 of DTAA between India

and France. The Assessing Officer assessed the interest as business income in terms of Article 7 read with Paragraph 5 of Article 12 of the DTAA. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that interest on income-tax refund is not effectively connected with permanent establishment either on basis of asset-test or activity-test, it could not be taxed under article 7 but was to be taxed under article 12 of India-France DTAA. (AY. 2018-19)
Corning SAS India v. ACIT (IT) (2024) 205 ITD 590 (Delhi) (Trib.)

80 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent establishment-Agency PE-Indian subsidiary-Advertisement sales agent-Not dependent PE-Not taxable in India-DTAA-India-Mauritius. [Art. 5(4)]**
Assessee, a Mauritius based company, was engaged in telecasting sports channel called 'Ten Sports'. It appointed its Indian subsidiary (Taj India) as its advertising sales agent to sell commercial advertisement time to prospective advertisers in India. It also appointed Taj India as its distributor to distribute subscription supported television programming service solely for exhibition to subscribers in India. Later, by addendum in distribution agreement assessee gave Taj India authority to conclude contracts in its name. Assessing Officer held that assessee had a dependent agent PE in India within meaning of article 5(4)(i) of DTAA on ground that Taj India had authority to conclude contracts in name of assessee hence the income is taxable in India. On appeal the CIT(A) held that the assessee did not have any PE with respect to its distribution functions. On cross appeal the Tribunal held that since Assessing Officer failed to establish that Taj India habitually exercised authority to conclude contracts on behalf of assessee, in such case Taj India could not be said to be dependent agent PE of assessee under article 5(4) of DTAA and distribution income of assessee was not be taxable in India. (AY. 2013-14)
Taj TV Ltd. v. DCIT IT (2024) 204 ITD 50 (Mum) (Trib.)

81 **S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Supply and delivery of equipment and supervision, installation, erection and commissioning activity-Single composite contract-Assessee had PE in India-Income attributable to Indian PE from said contracts is taxable in India-Matter remanded to the file of the AO for computation-DTAA-India-Germany. [Art. 5, 7]**
Assessee had entered into various contracts with Indian clients for supply and delivery of equipment and supervision, installation, erection and commissioning activity. Assessee did was not involved in any installation activity. Installation, erection and commissioning of projects was handled by wholly owned subsidiary of Germany company-Assessing Officer was of view that turnkey contract was a single composite contract between assessee and clients in India, thus he made an addition towards income attributable to Indian PE from said contracts and taxed same in hands of assessee-Whether in view of decision of Tribunal in assessee's own case for subsequent assessment years, contracts entered into by assessee with Indian clients was single composite contract and income arising therefrom was to be assessed in hands of the assessee, because project office of assessee constituted a PE in India. Further since assessee had failed to provide necessary information to justify that there was an error in computation of profit attribution to PE in India and there was duplication of income

in respect of service contract revenue, matter was remanded to Assessing Officer for limited purpose of computation of income (AY. 2009-10, 2011-12)
Durr Systems GmbH v. DCIT IT (2024) 204 ITD 258 (Chennai) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Off shore supply of goods and equipments-Out side India-No Permanent Establishment-Not taxable in India-DTAA-India-Thailand. [Art. 5] 82

The assessee, a tax resident of Thailand, which is engaged in the business of manufacturing of train control and signalling systems for mass transit system. In terms with the contract, the assessee made offshore supply of goods and equipments to DMRC from outside India and received certain amount of consideration for such supply. The Assessing Officer held that the assessee had a service PE in India, through which, it executed the contract. Accordingly, out of the receipts from offshore supplies, the Assessing Officer attributed 10 per cent of the total receipts as profits of the PE and accordingly, brought the same to tax same. The DRP upheld the view taken by the Assessing Officer. On appeal the Tribunal held that, that the assessee did not have any place of business in India and all business activities with respect to offshore supplies were carried outside India. Equipment supply had been manufactured at overseas manufacturing facility of assessee and sale of equipment had occurred outside India and payment had also been received by assessee outside India. Therefore, addition made by Assessing Officer was deleted. (AY. 2020-21)
Alstom (Thailand) Ltd v. ACIT (IT)(2024) 204 ITD 455/110 ITR 251 (Delhi)(Trib)

S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Shipping, Inland waterways Transport and Air Transport-Salary-Salary income received by assessee-NRI from his foreign employer for working in international waters is exempt income-DTAA-India-Singapore. [S. 2(25A), 5(2)(b) 6, Art. 8] 83

Assessee is an Engineer (Under Water Inspector) working at offshore fields. During year under consideration, it he had received salary income from his Singapore based employer for work done in oil fields in Bay of Bengal in international water and had claimed same as exempt income. Assessing Officer held that oil fields in Bay of Bengal was part of Indian Territory and therefore, work performed by assessee could not be termed as work outside Indian Territory and also held that co-ordinates of oil fields in Bay of Bengal were situated within Exclusive Economic Zone of India and same was within part of "India" as defined in section 2(25A). Accordingly, he had made an addition of same under section 5(2)(b) read with section 9(1)(ii). CIT(A) affirmed the order of the AO. On appeal the Tribunal held that sub-section 9 of section 7 of Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 gave freedom of navigation to foreign ships and therefore employees working on such ships who were not carrying out activities as specified by said notification were not deemed to be working in India. On facts, salary income received by assessee from his foreign employer was exempt income because of his non-residential status as salary was earned for working in international waters. Addition is deleted. (AY. 2018-19)
Pralay Pradyotkanti Ghosh v. ITO (IT) (2024) 208 ITD 163 (Ahd) (Trib.)

84 **S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Income from employment-Others-Non-resident for services rendered outside India-Assessee neither had any rest period nor leave period which was preceded and succeeded by services rendered outside India-Salary received by assessee from outside India could not be taxed in India-DTAA-India-UAE-Ireland. [S. 5, 15]**

Assessee, a non-resident Indian, received salary for services rendered in UAE and Ireland. Assessing Officer made addition to income of assessee on account of salary received by him. On appeal the Tribunal held that since salary was paid for services rendered outside India and assessee neither had any rest period nor leave period which was preceded and succeeded by services rendered outside India, it could not be brought to tax in India. (AY. 2019-20)

Sanjay Kumar. v. ACIT (IT) (2024) 206 ITD 14 (Delhi) (Trib.)

85 **S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Held, the Assessee, being a non-resident, has rendered services outside India, the salary cannot be taxable in India-DTAA-India-Austria [S. 5,15, Art. 15]**

The Assessee, an employee of an Indian company, was deputed to work in a project awarded by IAEA, Vienna, Austria and stationed at Vienna and was a non-resident. The salary and the compensatory allowances were paid to the Assessee at Vienna from the company in India which were permissible to be utilized through a credit card which was valid only in Austria. The AO made an addition on account of salary and allowances as the Assessee did not furnish a TRC. The Tribunal reproduced the provisions of S. 5 and 9 and observed that the Assessee neither had any rest period nor leave period which is preceded and succeeded by the services rendered outside India. Since, the Assessee, being a non-resident, has rendered services outside India, the salary can was not be taxable in India. (AY. 2016-17 2017-18)

Devi Dayal v. Asst. CIT (IT) [2024] 109 ITR 87 (SN) / 205 ITD 299 /228 TTJ 727 (Delhi) (Trib)

86 **S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Other income - Guarantee to various banks to extend credit facilities to its Indian subsidiaries-Guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary- Guarantee fee would not fall within expression 'interest' in article 12 of India UK DTAA-Accrue-Arise-Income - SLP of assessee is dismissed - DTAA-India-UK-Northern Ireland. [S. 2(28A), 5(2), 260A, Art. 7, 12(5), 23(3), Art. 136]**

Assessee, a tax resident of United Kingdom, is engaged in manufacture of specialty chemicals. During relevant year, assessee had extended guarantees to various overseas branches of foreign banks on a global basis in relation to credit facilities extended by those financial institutions to its Indian subsidiaries. In its return of income, it had characterized amount of guarantee fee as interest and, thus, taxable under article 12. Assessing Officer held that said sum would be liable to be taxed under Article 23(3) being in nature of other income. Tribunal held that guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary and guarantee charges were levied for service of providing parent company guarantees and counter indemnification of liabilities of Indian subsidiaries. Therefore on facts, guarantee

charges could not be viewed as 'interest' under Article 12. Further since guarantee charges became leviable every quarter at a rate already agreed upon by parties and on outstanding balance, guarantee charges clearly answered to description of income accruing or arising in India. Tribunal affirmed the order of Tribunal. Appeal of the assesseee is dismissed by High Court. SLP of assessee is dismissed. (AY. 2011-12)
Johnson Matthey Public Ltd. Co. v. CIT (IT) (2024) 469 ITR 31/ 301 Taxman 392 (SC)
Editorial: Johnson Matthey Public Ltd. Company v. CIT (2024) 299 Taxman 334 /465 ITR 649 (Delhi)(HC)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Other income-Guarantee to various banks to extend credit facilities to its Indian subsidiaries-Guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary-Guarantee fee would not fall within expression 'interest' in article 12 of India UK DTAA-Accrue-Arise-Income-DTAA-India-UK-Northern Ireland [S. 2(28A), 5(2), 260A, Art. 7, 12(5), 23(3)] 87
Assessee, a tax resident of United Kingdom, is engaged in manufacture of specialty chemicals. During relevant year, assessee had extended guarantees to various overseas branches of foreign banks on a global basis in relation to credit facilities extended by those financial institutions to its Indian subsidiaries. In its return of income, it had characterized amount of guarantee fee as interest and, thus, taxable under article 12. Assessing Officer held that said sum would be liable to be taxed under Article 23(3) being in nature of other income. Tribunal held that guarantee charges were not received by assessee in respect of any debt owed to it by its Indian subsidiary and guarantee charges were levied for service of providing parent company guarantees and counter indemnification of liabilities of Indian subsidiaries. Therefore on facts, guarantee charges could not be viewed as 'interest' under Article 12. Further since guarantee charges became leviable every quarter at a rate already agreed upon by parties and on outstanding balance, guarantee charges clearly answered to description of income accruing or arising in India. Tribunal affirmed the order of Tribunal. Appeal of the assesseee is dismissed. (AY. 2011-12)
Johnson Matthey Public Ltd. Company v. CIT(IT) (2024) 299 Taxman 334 /465 ITR 649 (Delhi)(HC)
Editorial : SLP of assessee is dismissed, Johnson Matthey Public Ltd. Co. v. CIT (IT) (2024) 469 ITR 31/301 Taxman 392 (SC)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Banking business-Interest earned by it in India on securities, being beneficially owned by it-Exempt from tax-DTAA-India-Mauritius. [S. 90, 260A, Art. 11(3)(c)] 88
Assessee-company, a tax resident of Mauritius, earned certain amount as interest income from securities. Assessee claimed said income would be exempt under clause (c) of article 11(3) of India-Mauritius DTAA. Assessing Officer disallowed said claim of assessee. Revenue contended that clause (c) of article 11 of DTAA would not apply to assessee as it did not have a banking business license from RBI. DRP upheld the findings of the Tribunal. Tribunal held that interest income from securities would be exempt under clause (c) of article 11(3) of India-Mauritius DTAA. On appeal the

Court held that in draft assessment order Assessing Officer had granted exemption to interest on ECB by accepting that assessee was carrying on bona fide banking business in Mauritius. Since assessee was carrying a bona fide banking business in Mauritius, interest that assessee earned would be exempt in India. (AY. 2011-12)
CIT (IT) v. HSBC Bank (Mauritius) Ltd (2024) 298 Taxman 54 (Bom)(HC)

89 **S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Interest payment to China Development Bank (CDB)-Financial institution wholly owned by Government of China-Exemption-Not liable to deduct tax at source-DTAA-India-China. [S. 195, Art. 11(3)]**

Assessee-company made interest payment to China Development Bank (CDB) without deducting tax at source under section 195 claiming benefit of article 11. AO held that since as per Financial Statement of CDB only 36. 45% shares in said Bank was held by Government of China during relevant period, i. e., FY 2015-16, CDB could not claim benefit of DTAA and, hence, assessee was liable to deduct tax under section 195. CIT(A) held that the CDBB is a financial institution wholly owned by the Government of China and is eligible for the beneficial provisions of Article 11(3) of the India-China DTAA. On appeal the Tribunal held that in protocol to India-China DTAA, paragraph 3 was simultaneously inserted by deleting erstwhile paragraph 3 which defined term 'any financial institution wholly owned by Government of other Contracting State' and specific institutions listed in protocol for both India and China, were always covered as Government owned financial institution for purpose of article 11. Therefore CDB being a financial institution wholly owned by Government of China was eligible for benefit of provisions of Article 11(3) the assessee could not be treated as assessee in default with respect to non-deduction of tax on interest payments made to CDB. (AY. 2016-17)
ITO v. Tata Teleservices Ltd. (2024) 208 ITD 648 (Delhi) (Trib.)

90 **S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Right to receive interest income on compulsorily convertible debentures (CCDs)-Taxed @10 per cent as per Article 11 of India-Cyprus DTAA-DTAA-India-Cyprus. [Art. 11(2)]**

Assessee is a Cyprus based company and was a wholly owned subsidiary of a company based in Mauritius. It invested in compulsorily convertible debentures (CCDs) of an Indian company and earned interest. Assessee claimed benefit of tax rate of 10 per cent as per India-Cyprus DTAA. Assessing Officer denied benefit of said rate on ground that Mauritius based company was beneficial owner of interest income and not assessee and taxed same at domestic rate of 40 per cent. Held that investment in CCDs was done by assessee in its own name through proper banking channels and assessee had complete right to receive and enjoy interest income earned on CCDs without any obligation to pass on same to any other person. Assessee had also got complete control over interest income on investment in CCDs and was free to enjoy same as per its own wish. On facts, assessee being beneficial owner of interest income on CCDs from Indian entity, was entitled for taxability at a concessional rate as provided under article 11(2). (AY. 2017-18)
Little Fairy Ltd. v. ACIT. IT (2024) 207 ITD 284 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Deduction of tax at source-Payment to Non-Resident-Royalty User licence agreement for use of computer software by Non-Resident supplier to distributor and resold to resident end-user, or directly supplied to resident end-user-Not royalty for use of Copyright in computer software-Not liable to deduct tax at source-Review petition is dismissed on account of delay of 515 days and also on the merits. [S. 195, Copyright Act, 1957, S. 14(a), 14(b), 30] 91

Review of the decision in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC)* to the effect wherein the Court held that payment to Non-Resident for user licence agreement for use of computer software by Non-Resident supplier to distributor and resold to resident end-user, or directly supplied to resident end-user is not royalty for use of Copyright in computer software. Review petition is dismissed on account of delay of 515 days and also on the merits. (AY. 1999-2000 to 2002-03)

CIT v. GE India Technology Centre Pvt. Ltd. (2024)469 ITR 389 (SC)

Editorial: Engineering Analysis Centre of Excellence Pvt Ltd v. CIT (2021) 432 ITR 471 (SC) is reaffirmed.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Deduction of tax at source-Payments to Non-Residents-Telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries-Not chargeable to tax as royalty-SLP of Revenue is dismissed. [S. 195, 201, Art. 136] 92

High Court, following *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC)* allowed the assessee's appeals, holding that the Double Taxation Avoidance Agreement could be considered in proceedings under section 201, that amendment to the provisions of section 9(1)(vi) inserting the Explanations would not result in amendment of the Double Taxation Avoidance Agreements, that the Department had no jurisdiction to bring to tax income that arose from extra-territorial sources, that the payments made to the non-resident telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries was not chargeable to tax as royalty under section 9(1)(vi) and that therefore, the assessee is not liable to deduct tax at source under section 195 thereon. Followed, *CIT v. GE India Technology Centre Pvt Ltd (2024) 469 ITR 389 (SC)*. SLP of Revenue is dismissed. (AY. 2008-09 to 2012-13, 2013-14 to 2015-16)

Dy. DIT v. Vodafone Idea Ltd. (2024) 469 ITR 391 (SC)

Editorial : Vodafone Idea Ltd v. Dy. CIT (2023) 457 ITR 189(Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation-DTAA-India-USA [S. 9(1)(vii), 195, Art. 12, Art. 136] 93

Dismissing the appeal of the Revenue the Court held that, revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation. SLP of Revenue is dismissed. (AY. 2010-11 to 2017-18)

CIT (IT) v. Microsoft Regional Sales Pte. Ltd. (2024) 301 Taxman 402 (SC)

Editorial: CIT (IT) v. Microsoft Regional Sales Pte. Ltd (2024) 159 taxmann.com 278 (Delhi)(HC)

94 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Computer software-Payments for licensing of software products-Resale of computer software-Not taxable as royalty-DTAA-India-USA-SLP of Revenue is dismissed. [Art. 12, Art. 136]**

Dismissing the appeal of the Revenue the High Court held that payments were made by Indian-company to non-resident company which was computer software manufacturer/ supplier for resale/use of computer software through distribution agreements, said payment did not amount to royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. SLP of Revenue is dismissed. (AY. 2005-06, 2007-08)

CIT (IT) v. Gracemac Corporation Golf View Corporate (2024) 301 Taxman 172 / 468 ITR 1 (SC)

Editorial : CIT (IT) v. Gracemac Corporation Golf View Corporate (2022] 287 Taxman 197 / (2023) 456 ITR 124 (Delhi)(HC)

95 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payment to Non-Resident telecommunication operators for provision of bandwidth and inter-connectivity usage-Not royalty-Not liable to deduct tax at source-Expansion of definition of royalty inserted later-Assessee cannot be expected to foresee future amendment at time of payment in earlier assessment years-Jurisdiction-No jurisdiction to tax income arising from extra-territorial source-Double Taxation Avoidance Agreement-Sovereign document between two countries-Applicable in Proceedings under Section 201 of the Act-DTAA-India-Belgium-SLP of Revenue is dismissed on account of delay of 222 days and also on merits. [S. 195, Art. 136]**

High Court held that a Double Taxation Avoidance Agreement being a sovereign document between two countries the assessee was entitled to take the benefit thereunder. Therefore, the Tribunal's view that the Double Taxation Avoidance Agreement cannot be considered in proceedings under section 201 was untenable. Held that amendment to the provisions of section 9(1)(vi) inserting the Explanations would not result in amendment of the Double Taxation Avoidance Agreements. The Supreme Court had held that Explanation 4 to section 9(1)(vi) was not clarificatory of the position as on June 1, 1976 and had expanded that position to include what was stated therein by the Finance Act, 2012. Explanations 5 and 6 to section 9(1)(vi) had been inserted with effect from June 1, 1976. Held that the fact that for the subsequent years in the assessee's own case, the Tribunal had held that tax was not deductible under section 195 when payment was made to non-resident telecommunications operators was not refuted. Therefore, the payments made to non-resident telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries was not chargeable to tax as royalty under section 9(1)(vi). Held that the Department had no jurisdiction to bring to tax income that arose from extra-territorial sources. The non-resident telecommunications operators to whom the assessee had made payments had no presence in India. The assessee's contract was with B, a Belgium entity which had made certain arrangement with OMT for utilisation of bandwidth and B had permitted the assessee to utilise a portion of the bandwidth which it had acquired from OMT. The facilities were situated outside India and the agreement was with B, a foreign entity which did not have any permanent establishment in India. Therefore, the assessee was not liable to deduct tax at source under section 195 on the

payments made to the non-resident telecommunications operators. Held that Deputy Director (International Transaction) was not right in holding that for the assessment years 2013-14 to 2015-16 the withholding of tax liability could be levied at a higher rate at 20 per cent. Held that as a deductor, the assessee was not liable for deduction of tax at source for payments made for the assessment years 2008-09 to 2012-13 on the basis of a subsequent amendment to section 9(1)(vi) whereby Explanations 5 and 6 were introduced. SLP of Revenue is dismissed on account of delay of 222 days and also on merits. (AY. 2008-09 to 2012-13, 2013-14 to 2015-16)

DCIT v. Vodafone Idea Ltd. (2024)300 Taxman 364 (SC)

Editorial : Vodafone Idea Ltd. v. DCIT (2023) 152 taxmann.com 575/ 457 ITR 189 /334 CTR 39 (Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-High Court held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN-DTAA-India-China-Delay of 255 days in filing SLP-Delay is not satisfactorily explained-SLP is dismissed. [S. 9(1)(vii), 90, 206AA, Art. 12] 96

Tribunal held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN. Appeal against order of Tribunal filed after 273 days was dismissed by High Court both on delay and merits. Court held that since there was delay of 255 days in filing SLP against order of High Court and explanation offered for delay was not satisfactory, SLP is dismissed on ground of delay. (AY. 2011-12)

CIT v. Infosys Ltd. (2024) 300 Taxman 113 (SC)

Editorial : CIT (IT) v. Infosys Ltd (2024) 164 taxmann.com 280(Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation-DTAA-India-USA [S. 9(1)(vii), 195, art. 12, Art. 136] 97

Dismissing the appeal of the Revenue the Court held that,revenue from software sales to Indian clients, said revenue could not be treated as royalty and subjected to Indian taxation. SLP of Revenue is dismissed. (AY. 2010-11 to 2017-18)

CIT (IT) v. Microsoft Regional Sales Pte. Ltd (2024) 298 Taxman 3 / 297 Taxman 535 (SC)

Editorial : CIT(IT) v. Microsoft Regional Sales Pte. Ltd (2024) 159 taxmann.com 278 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Sale of software-Subscription fees-Order of High Court is affirmed-SLP of Revenue is dismissed-DTAA-India-USA [S. 9(1)(vii), art. 12, Art. 136] 98

High Court held that where assessee, a US based company, earned revenue from sale of software to its Indian clients, since grant of right to install and use software did not include providing copyright of said software to clients, revenue earned from said sale would not be taxable in hands of assessee as royalty in India.. High Court also held

that where assessee, a US based company, provided cloud computing infrastructure to its Indian clients through subscription agreement and even though cloud based services were based on patents/copyright but subscribers did not get any right of reproduction, thus, subscription fee was merely a consideration for online access of cloud computing services and would not be taxable as royalty in India. In view of judgment of this Court in case of *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 (SC)/[2022] 3 SCC 321 and CIT (International Taxation) v. MOL Corporation [SLP(C) Diary No. 5669 of 2024, dated 11-3-2024]*
CIT v. MOL Corporation (2024) 299 Taxman 506(SC)
Editorial: CIT (IT)) v. MOL Corporation (2024) 162 taxmann.com 197 (Delhi)(HC)

99 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Computer software-Sale of conditional access systems and middleware products to Indian customers-Not taxable as royalty-SLP dismissed-DTAA-India-Switzerland. [Art. 12(3)]**
Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in holding that the income received from supply of conditional access systems and middleware products to Indian customers did not fall under "royalty" as defined under section 9(1)(vi) of the Income-tax Act, 1961, and article 12(3) of the Double Taxation Avoidance Agreement between India and Switzerland. SLP of Revenue is dismissed. (AY. 2017-18)
CIT (IT) v. Nagravision S. A. (2024) 461 ITR 146/ 297 Taxman 65 (SC)
Editorial : CIT (IT) v. Nagravision S. A. (2023) 157 taxmann.com 457/ (2024) 461 ITR 143 (Delhi)(HC).

100 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of telecom equipment's. i. e. mobile handsets-Supply of articles or goods-Not taxable as royalty-Review petition against SLP is dismissed-DTAA-India-China [S. 9(1)(i), Art, 12]**
Dismissing the appeal of the Revenue, the Court in *CIT (IT) v. ZTE Corporation (2021) 130 taxmann.com 128 (Delhi) (HC)* held that supply of software was embedded in supply of telecom equipment resulting in sale of copyrighted article, the said transaction was to be treated in nature of supply of articles or goods and thus, payment made towards supply of software was not taxable in India as royalty. SLP was dismissed. Review petition against SLP is dismissed. (AY. 2013-14)
CIT (IT) v. ZTE Corporation (2024) 296 Taxman 571 (SC)
Editorial : Refer, CIT (IT) v. ZTE Corporation (2021) 282 Taxman 304 (SC)

101 **S 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-High Court held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN-DTAA-India. [S. 9(1)(vii), 90, 206AA, Art. 12]**
Tribunal held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN. Appeal against order of Tribunal filed after 273 days was dismissed by High Court both on delay and merits. (AY. 2011-12)
CIT (IT) v. Infosys Ltd (2024) 164 taxmann.com 280 (Karn)(HC)

Editorial : SLP of revenue dismissed, delay of 255 days was not satisfactorily explained, CIT v. Infosys Ltd. (2024) 300 Taxman 113 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers-Consideration for resale/use of computer software through EULAs/distribution agreements-Not payment of royalty for use of copyright in computer software-Not liable to deduct tax at source-DTAA-India-USA. [S. 9(1)(vii)), 195(2), 260A Art. 12] 102

Assessee, a non-resident company, received consideration for supply of software to Reliance and claimed same to be business income not taxable in India in absence of any permanent establishment in India. Assessing Officer held that consideration received by assessee was towards a license to use software and, thus, taxable as royalty under section 9(1)(vi) hence liable to deduct tax at source. CIT(A) allowed the appeal of the assessee. On appeal Tribunal affirmed the order of the CIT(A). On appeal the Court held that the issue is covered by judgment of Supreme Court in case of *Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT(2021) 281 Taxman 19/ 432 ITR 471 (SC)* wherein it was held that amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, was not payment of royalty for use of copyright in computer software and that same did not give rise to any income taxable India. Order of Tribunal is affirmed. No substantial question. of law. (AY. 2003-04, 2004-05, 2006-07 2010-11 2010-11)

CIT(IT-3) v. Lucent Technologies GRL LLC (2024) 300 Taxman 311 (Bom)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Non-resident-Computer software manufacturer/supplier for resale/use of computer software through distribution agreements-Payment did not amount to royalty for use of copyright in computer software-Not taxable in India-Not liable to deduct tax at source-No substantial question of law-DTAA-India-Finland. [S. 9(1)(vii), 195, Art. 12] 103

Dismissing the appeal of the Revenue the Court held that payments were made by assessee-company to non-resident-company which was computer software manufacturer/ supplier for resale/use of computer software through distribution agreements, said payment did not amount to royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. No substantial question of law. Followed *CIT (LTU) 2024) 164 taxmann.com 10 /299 Taxman 488 (Bom)(HC)* (AY. 2008-09, 2009-10)

CIT (LTU) v. Reliance Industries Ltd (2024) 300 Taxman 398 (Bom)(HC)

104 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Provision of connectivity solutions-Services to customers of Indian companies outside India-Consideration received on basis of agreements from telecommunication operators for Bandwidth and inter-connectivity usage of their customers-Provisions of double taxation avoidance agreement override statutory provisions and amendments thereto-Receipts not assessable as royalty in India-No alienation of copyrighted articles, patents, trademarks, designs, models, secret formulae or processes, property or information-Mere advantage or benefit derived from service provided cannot be countenanced to fall within meaning of expressions use or right to use-Receipts under agreements for provision of bandwidth not royalty-Use or right to use-DTAA-India-Singapore. [S. 90(2),260A, Art. 3(2), 12(3)]**

Dismissing the appeal of the Revenue, Court held that consideration received on basis of agreements from telecommunication operators for Bandwidth and inter-connectivity usage of their customers. Provisions of double taxation avoidance agreement override statutory provisions and amendments thereto. Receipts not assessable as royalty in India. No alienation of copyrighted articles, patents, trademarks, designs, models, secret formulae or processes, property or information. Mere advantage or benefit derived from service provided cannot be countenanced to fall within meaning of expressions use or right to use. Receipts under agreements for provision of bandwidth not royalty. That even if Explanations 2 and 6 to section 9 applied, the position would remain unaltered since there was no transfer or conferment of a right in respect of a patent, invention or process. Customers and those availing of the services provided by the assessee were not accorded a right over the technology possessed or infrastructure by it. The underlying technology and infrastructure remained under the direct and exclusive control of the assessee and the parties availing of the assessee's services were not provided a corresponding general or effective control over any intellectual property or equipment. The agreements merely enabled them to avail of the services offered by the assessee. A person who was provided mobile communication services or access to the internet did not stand vested with a right over a patent, invention or process. The consideration that the service recipient paid also could not be recognised as being intended to acquire a right in respect of a patent, invention, process or equipment. The word "process" being liable to be construed ejusdem generis was lent added credence by clause (iii) employing the expression "or similar property" which followed. It was intended to extend to a host of intellectual properties. Neither the concept of process nor equipment royalty were attracted and the considerations for the transactions in question were not taxable under article 12 of the Double Taxation Avoidance Agreement. (AY. 2011-12, 2012-13, 2014-15 to 2019-20)

CIT (IT) v. Telstra Singapore Pte Ltd. (2024)467 ITR 302/ 165 taxmann. com 85 / 340 CTR 265/ 242 DTR 1 (Delhi)(HC)

105 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Domain name-Amount received for providing domain name registration services-Cannot be assessed as royalty-Appeal of assessee is allowed-DTAA-India-USA. [Art. 12(3)(a)]**

Assessee provides web hosting services, the registration and transfer of generic top-level domains, such as .com,. net, org. and info-Besides this, the assessee also provides the

same service for country code top-level domains, which includes a mark, distinguishes the goods and services of one person from those of others. Agreement in no uncertain terms, establishes that the assessee has given up exclusive ownership or use of data elements for all registered names submitted by it to the registry database or sponsored by it. Agreement clearly establishes that the assessee who acts as a registrar and, in that capacity, provides domain registration services to its customers does not have any proprietorship rights in the domain name. Therefore, the submission advanced on behalf of the assessee, i. e., that since it is not the domain name's owner, it cannot confer the right to use or transfer the right to use the domain name to another person/ entity, is accepted ance. Therefore, the fee received by the assessee for registration of domain names of third parties, i. e., its customers, cannot be treated as royalty. Appeal of assessee is allowed. (AY. 2013-14 to 2015-16)
Godaddy.Com LLC v. ACIT [2023] 157 taxmann.com 256 /(2024) 337 CTR 321 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Income-Tax-Transfer of Copyright and right to copyrighted article-Customer relationship management services by resident of Singapore-Fees received not royalty-Not taxable in India - DTAA-India-Singapore [Art. 12(4)(b)] 106

Dismissing the appeal of the Revenue the Court held that since the copyright in the application was never transferred nor vested in a subscriber, the fees were not assessable under section 9 of the Act. Court also held that article 12(4)(b) of the Double Taxation Avoidance Agreement between Singapore and India would have been applicable provided the Department had been able to establish that the assessee had provided technical knowledge, experience, skill, know-how or processes enabling the subscriber acquiring the services to apply the technology contained therein. The explanation of the assessee, which had not been refuted even before the High Court was that the customer was merely accorded access to the application and it was the subscriber which thereafter inputs the requisite data and took advantage of the analytical attributes of the software. This would clearly not fall within the ambit of article 12(4)(b) of the Agreement. (AY. 2011-12 to 2017-18)
CIT (IT) v. Salesforce. Com Singapore Pte. Ltd. (2024)465 ITR 257 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Transferee authorised to use licensed software-No transfer of Copyright-Amount received is not royalty-DTAA-India-USA. [S. 90(2) Art. 12] 107

Dismissing the appeals of the Revenue the Court held that the Tribunal was right in holding that payments for licensing of software products of the assessee in the territory of India by it were not taxable in India as royalty under section 9(1)(vi) read with article 12 of the Double Taxation Avoidance Agreement. (AY. 1997-98, 1999-2000)
CIT (IT) v. Microsoft Corporation (2022) 445 ITR 6 / 288 Taxman 32 (Delhi)(HC)
Editorial: SLP of Revenue dismissed, CIT (IT) v. Microsoft Corporation (Ms Corp) (2023)453 ITR 746 (SC)

108 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Consideration received by a company incorporated in Israel, for sale of software-Not royalty-No transfer of copyright in sale of off shelf software-Not taxable in India-DTAA-India-Israel. [S. 9(1)(vii) Art. 12]**

Dismissing the appeal of the Revenue the Court held that consideration received by assessee, a company incorporated and based in Israel, for sale of software to Indian company was not royalty since there was no transfer or use of copyright in sale of 'off shelf' software that could come within ambit of royalty and, hence, it was not taxable in India. (AY. 2011-12)

CIT(IT) v. Cognyte Technologies Israel Ltd (2024) 297 Taxman 120 (Delhi)(HC)

109 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for included services-Reviewing risk factor in particular project-Cannot be deemed to accrue or arise in India-DTAA-India-USA. [S. 9(1)(vii), Art. 12]**

Dismissing the appeal of the Revenue the Court held that the services rendered by the assessee were project specific and terminated with submission of bid by ABB India after making necessary changes or corrections in the bid based on the evaluation report. If the agreement permitted the assessee to make available the results for guidance to other entities in the group, that could not be attributed as services "made available" which could be used in perpetuity. No income accrued or arose to the assessee in India. Appeal of Revenue is dismissed. (AY. 2009-10)

CIT (I). v ABB INC. [2023] 152 taxmann.com 101/(2024)461 ITR 297 (Karn)(HC)

110 **S. 9(1)(vi) : Income deemed to accrue or arise in India -Royalty - Computer software-Sale of conditional access systems and middleware products to Indian customers -Not taxable as royalty- DTAA -India– Switzerland. [Art. 12(3)]**

Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in holding that the income received from supply of conditional access systems and middleware products to Indian customers did not fall under "royalty" as defined under section 9(1)(vi) of the Income-tax Act, 1961, and article 12(3) of the Double Taxation Avoidance Agreement between India and Switzerland. (AY. 2017-18)

CIT (IT) v. Nagravision S. A. (2023) 157 taxmann.com 457/ (2024) 461 ITR 143 (Delhi) (HC).

Editorial : SLP of Revenue is dismissed, CIT (IT) v. Nagravision S. A. (2024)461 ITR 146/ 297 Taxman 65 (SC)

111 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Business profits not taxable in India-DTAA-India-Malaysia. [S. 9(1)(vii), 90(2) Art. 5, 7, Copyright Act, 1957, S. 14(a), 14(b)]**

Held that since the assessee had no permanent establishment in India, income earned by it as business profits in India would not be taxable in India by virtue of the provisions of article 7 of the Double Taxation Avoidance Agreement between India and Malaysia according to which a tax resident of Malaysia would be taxable in India to the extent of the profits attributable to the permanent establishment in India only if it carried on business through a permanent establishment in India. The enterprises would be taxable

only to the extent article 5 of the Double Taxation Avoidance Agreement defined the permanent establishment as inter alia a place of management, a branch, an office, a factory, a warehouse and a workshop. (AY. 1999-2000)
CIT (IT) v. Colgate Palmolive Marketing Sdn Bhd(2023) 152 taxmann.com 124/ (2024)460 ITR 284 (Bom)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payment for supply of software-The payments received by the assessee is for the supply of software do not fall within the scope of art. 12(3) of the India-China DTAA. In the absence of PE the income is not taxable in India. DTAA-India-China. [Art. 12(3)] 112
Assessee has granted a non transferable, non-exclusive, non-assignable license to incorporate the software into the vehicles manufactured/sold by MG to the end customers. No rights have been provided to make copies of software products or to modify, merge or combine with other software. No right to change the object code from source code and make any derivative products from that have been provided. Technical documentation for the software remained the property of the assessee. All intellectual property rights in the licensed products belong to the assessee and its licensors only. Assessee has not transferred the copyright/right to use the copyright of the software but merely the copyrighted software. The payments received by the assessee is for the supply of software do not fall within the scope of art. 12(3) of the India-China DTAA. In the absence of PE the income is not taxable in India. (AY. 2020-21)
SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd. v. ACIT (IT) (2024) 229 TTJ 801 / 239 DTR 42 / 159 taxmann.com 779 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Supply of telecommunication hardware with software-Receipt is not taxable as royalty-Not liable to pay interest u/s234B-DTAA-India-USA [S. 90,195, 234B, Art. 7, 12] 113
Held that the assessee supplied telecommunication hardware along with software and the software embedded in the hardware was provided only for the purpose of operating the telecommunication equipments and thus, the receipts. are not taxable as royalty income, either under the domestic law or India USA DTAA. Interest under section 234B cannot be charged as the assessee being non-resident company is not liable to pay advance tax since the payer in under obligation to withhold tax under section 195 of the Act. (AY. 2004-05, 2005-06)
DIT v. Ut Starcom Inc. (2023) 155 taxmann. com 117 /37 NYPTTJ 923 (2024) 228 TTJ 479 / 236 DTR 339 (Delhi) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Selling advertising in, and distribution of, television channels in India through Indian company-No transfer of copyright, title or ownership interest to Indian company-Receipts taxable as business income and not royalty-DTAA-India-USA. [S. 9(1)(i), Art 12] 114
Following the order of the earlier year the Tribunal held that there was no transfer of copyright, title or ownership interest from the assessee to the Indian company, that broadcast reproduction right was distinct and separate from copyright, and that, therefore, the distribution revenue received by the assessee from W towards the grant of

distribution rights of its channels constituted business income, not royalty. The additions made by the Assessing Officer was deleted. (AY. 2020-21, 2021-22)
Turner Broadcasting System Asia Pacific Inc., USA v. Dy. CIT (2024) 115 ITR 21 (SN) (Delhi)(Trib)

115 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Deduction at source-Non-resident--Sponsorship agreement-Payment for right to use and display event marks-Having non-exclusive right to use footage relating to events or matches which recipients owned-Not royalty-Allowed refund of excess tax-DTAA-India-Singapore. [S. 195, Art. 7(1), 12(3)]**

The assessee was appointed official sponsor of International Cricket Committee events, and entered a sponsorship agreement with GCC and WSN. The assessee sought authorisation for remittances to GCC without tax deduction at source, asserting that the payment to GCC was not taxable in India in terms of article 7(1) of the Double Taxation Avoidance Agreement between India and Singapore in the absence of a permanent establishment. The Assessing Officer rejected this and deemed the amounts to be in the nature of "royalty" and directed deduction of tax at source at 24 per cent. and education cess at 2 per cent. The Commissioner (Appeals) granted part relief to the assessee holding that 50 per cent. of the payment was for usage of trademark, trade name, and copyright in the nature of "royalty" and taxable under article 12. On appeal claiming refund of excess tax paid in respect of remittances made to GCC, The Tribunal held that that the assessee had made payment primarily for the right to use and display event marks, etc. The other right to use official status, advertising and promotional rights before and at each event, and right to tickets and corporate hospitality were ancillary rights which the assessee had been allowed to exploit. The assessee had the non-exclusive right to use footage relates to the events or matches which IDI and GCC owned. That the payments made by the assessee to GCC were not in the nature of royalty as defined under section 9(1)(vi) of the Income-tax Act, 1961 or article 12(3) of the DTAA. That the State could not charge tax more than what was due from its subjects. If any tax had been paid by the assessee to the Government exchequer in the form of tax deducted at source on the payment made in pursuance to the sponsorship agreement, the assessee may claim refund thereof, in accordance with law.
Indian Oil Corporation Ltd. v. Dy. DIT (IT) (2024)113 ITR 403 (Mum)(Trib)

116 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Sale of online advertisement space to GIPL, India and to direct advertisers-Payment received from GIPL is not in nature of royalty or FTS-Not liable to tax in India-DTAA-India-Ireland. [S. 9(1)(vii), Art. 12]**

Assessee, Google Ireland, an Ireland based company, which is engaged in business of sale of online advertisement space to GIPL and to direct advertisers. Assessing Officer held that assessee had given marketing and distribution rights of Ad words program to GIPL and income received from sale of online advertisement space was in nature of royalty. He, thus, issued reopening notice on ground that assessee had not offered receipts for tax and income had escaped assessment. CIT(A) deleted the addition. On appeal the Tribunal in assessee's own case for assessment year 2007-08 held that

payment made by GIPL to assessee is not in nature of royalty or FTS and, consequently, it could not be brought to tax in hands of assessee. Order of the CIT(A) is affirmed. (AY. 2008-09)
DCIT v. Google Ireland Ltd. (2024) 209 ITD 461 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sub-Licence of designated rights-Not royalty-Addition is deleted-Deduction of tax at source-Direction is given to Assessing Officer to verify and allow correct credit of taxes deducted at source. [S. 9(1)(i), Form 26AS.] 117
Held that sub-licence designated rights is not royalty. Tribunal also directed the AO to allow correct credit for the taxes deducted at source. (AY. 2014-15)
ESS v. Asst. CIT (IT) (2024)112 ITR 326 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payments made for hiring dredgers on a time charter basis qualify as royalty for use of equipment-liable to deduct tax at source. [S. 195] 118
Held that the payments made by the Assessee to the foreign companies for hiring dredgers on a time charter basis qualify as royalty under Section 9(1)(vi) of the Income-tax Act. That the Assessee had exclusive control and possession of the dredgers, and the payments were made for the use of equipment, thus qualifying to be taxed as Royalty. Liable to deduct tax at source. (AY 2003 to 2010-11)
Jaisu Shipping Co. v. ADIT (2024) 111 ITR 601/160 taxmann.com 128 (Rajkot)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Subscription fees received by the assessee from its customers for providing access to databases and journals were not royalty-DTAA-India-USA [Art. 12(3) 119
Held that the subscription fees received by the assessee from its customers for providing access to databases and journals were not royalty as customers did not acquire copyright, and therefore, such fees were not liable to be taxed in India. (AY. 2021-22)
American Chemical Society v. Dy. CIT (IT) (2024) 111 ITR 38 (SN) /161 taxmann.com 354 (Mum)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Licensed software-Software packages like office 365, etc. -Amount paid to any use or right to use any copy right-Merely because tax was deducted at source u/s. 195 would not make payment liable to be taxed as royalty. [S. 9(1)(vi), Expln 2(iva), 195] 120
The assessee, a Danish Company, had entered into a global agreement with Microsoft for procuring various shrink-wrapped software user licenses such as Microsoft Visual Studios, dynamic 365, remote Desktop, office 365, etc., for entities within the Saxo group. The assessee received payments against the above licenses from its associated enterprise, M/s. Saxo Group India P. Ltd. (SGIPL) on which tax was withheld under section 195 of the Act. The assessee claimed that receipts from, its associated enterprise, M/s. Saxo Group India P. Ltd., was exempt which the Revenue treated as taxable as Royalty u/s. 9(1)(vi) of the Act because such receipt was for allowing use of its information technology infrastructure which consists of various third-party software,

owned/leased/supported platforms including hardware systems. On appeal to the Tribunal, after going through the documents produced and agreements, it held that the amount cross charged by the assessee did not pertain to any use or right to use of any copyright as neither the assessee nor M/s. Saxo Group India P. Ltd., could sub-licence, transfer, reverse engineer, modify or reproduce the software/user licence. M/s. Saxo Group India P. Ltd., acknowledged that the Microsoft Software had been granted to the assessee by Microsoft Denmark ApS under an object code-only, non-exclusive, non-sublicensable, non-transferable, revocable licence to access and use the object code version of the proprietary software, solely for the assessee and its group/associate companies' internal business purposes. Therefore, it held that mere fact that tax has been deducted does not automatically make the receipt taxable as royalty. (AY. 2020-21)
Saxo Bank A/S v. Asst. CIT (IT) (2024) 112 ITR 8 / 161 taxmann.com 590 (Delhi)(Trib.)

121 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Offshore sales of books/journals or providing access to online journals/online library-Not royalty-Services of providing access to online database/journals did not fall under FIS as services did not satisfy clause make available as required for provisions of article 12 of DTAA-India-USA [S. 9(1)(vii), Art. 12]**

Assessee, a US based company, was engaged in business of providing access to online journals/online library. Assessee entered into agreements from outside of India with customers in India to provide access to online journals/online library available at its online database maintained outside of India and earned revenue. Assessee claimed that said receipts from Indian customers were not chargeable to tax as Royalty/FTS/FIS under provisions of Act, 1961 read with India-US DTAA-DRP affirmed the order of the AO. On appeal the Tribunal held that since assessee sold compiled, indexed or curated articles obtained from other authors as copyrighted article/product, for easy access to customers and limited rights to access online journals granted by assessee to Indian customers did not amount to granting of any right in copyright in any manner whatsoever, receipts from Indian customers did not constitute royalties under DTAA. Accordingly receipts from Indian customers for offshore sales of books/journals or providing access to online journals/online library did not qualify as royalties under Act as well as under Treaty. Tribunal also held that services of providing access to online database/journals did not fall under FIS as services did not satisfy clause 'make available' as required for provisions of article 12 of DTAA. (AY. 2020-21)
John Wiley and Sons Inc. v. DCIT, IT (2024) 208 ITD 655/114 ITR 52(SN) (Delhi) (Trib.)

122 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Business of providing digital transmission of data-Bandwidth charges received from Indian customers-Not taxable as royalty-DTAA-India-Singapore. [Art. 12(3)]**

Assessee, a non-resident corporate entity, which is engaged in business of providing digital transmission of data through International Private Leased Circuits or Multiprotocol Label Switching to facilitate high speed data connectivity, Bandwidth charges received from Indian Customers were not taxable as royalty income either under section 9(1)(vi) or under Article 12(3). (AY. 2021-22)
Telstra Singapore Pte. Ltd. v. DCIT (2024) 207 ITD 73 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Receipts from reservation fee, marketing fee and loyalty programme-Cannot be assessed as royalty income-DTAA-India-Singapore [S. 9(1)(vii), Art. 12] 123

Assessee, a Singapore based company, had entered into franchise agreement with Indian companies to sub-license brand names to third party hotels in India. Assessee offered amounts received towards franchise, license fee etc. as royalty income. However, assessee did not offer receipts from reservation services, marketing services and loyalty programme to tax in India pleading that they were neither in nature of royalty nor fees for technical services. Assessing Officer held that amount received for services rendered in connection with use or right to use any trade mark fell within scope of royalty and, thus, treated said receipts as royalty/fee for technical services under section 9 and under article 12 of India-Singapore DTAA. DRP affirmed the order of the AO. On appeal the Tribunal held that since in assessee's own case for earlier assessment year 2015-16, on similar facts, it was held that there was no transfer of use or right to use any industrial or commercial or scientific equipments and, thus, amount in dispute would not qualify as royalty. Addition was deleted. (AY. 2020-21, 2021-22)

AAPC Singapore Pte. Ltd. v. ACIT (2024) 207 ITD 774 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fee for technical services-Management service-Support services-Not royalty-DTAA-India-Netherland. [S. 9(1)(vii), Art. 12 (4)] 124

Assessee, Netherlands based dredging contractor, filed its return of income declaring a business loss. VOIPL a subsidiary of assessee in India, had entered into a service agreement with assessee to avail ongoing assistance and support in field of information technology, operations, quality, health & safety estimating and engineering, marketing, administration, personnel, etc.. For rendering above services, assessee had recovered a certain sum from VOIPL, without any mark-up. Assessing Officer had considered said payments to be for use of information concerning industrial, commercial or scientific experience in India and had, accordingly, held same to be taxable as royalty in India. DRP approved the draft assessment order. On appeal the Tribunal held that since for rendering of these services, there was no element of imparting of any know-how or transfer of any knowledge, skill or experience, none of services provided by assessee in terms of 'service agreement' fell within scope and ambit of 'royalty' as defined in article 12(4). Since management services fees charged was on allocation of cost which was without mark-up, same being in nature of reimbursements did not constitute royalty as per India-Netherlands DTAA. (AY. 2020-21)

Van Oord Dredging and Marine Contractors BV v. ACIT (2024) 206 ITD 632 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Educational school-Lump sum fees-Discounts – Deduction of tax at source-Matter is remanded to the file of the Assessing Officer-DTAA-India-Switzerland-UK. [S. 9(1)(vii), 195, Art. 12, 13] 125

Assessee, a foundation, which is engaged in running of an educational school. It had made annual payments under various heads like evaluation fees, authorization fees workshop/training charges, fees for enrolment/registration fees etc. to various foreign

educational institutions in UK and Switzerland. Assessing Officer held that foreign educational institutions were providing services related to use and application of trademarks and hence such payments were taxable in India as royalty as per provisions of article 13 of India-UK DTAA and article 12 of India-Swiss Confederation DTAA. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assesee had not offered explanation regarding basis for raising invoice on assessee and also on what basis discount was offered to assessee by overseas educational institutions even after affording several opportunities to assessee both during course of assessment as well as appellate proceedings. Tribunal held that unless and until nature and basis of raising invoices by overseas educational institutions was clear to tax authorities, it was not possible to come to conclusion that no payments were made for use of trade name/brand of national educational institutions and payment was only for authorizing assessee to act as a mediator between students and educational institutions outside of India. Accordingly the matter is remanded to Assessing Officer to understand basis on which lump sum fee was charged by overseas entities from assessee and also basis for allowing/affording discount to assessee. (AY. 2017-18, 2018-19)
International Education & Research Foundation v. DCIT (IT) 2024] 206 ITD 96 (Ahd) (Trib.)

126 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Sale of software-Wrongly offered as income in the return-Return was not revised-Not chargeable to tax-Matter remanded to the file of Assessing Officer to verify the facts-DTAA-India-UK [S. 9(1)(vii), 139(5), Art. 13]**
Assessee, a UK based company, which is engaged in providing software development services and sales & marketing support services to its group entities. It had obtained certain receipts from various customers in India which was sale proceeds of off-the shelf software and offered same to tax in India as Royalty Income. During assessment proceedings, assessee claimed that receipts from sale of software had been wrongly offered to tax as income from royalty. The Assessing Officer assessed same as Royalty Income. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assessee could not be prevented from raising a claim that receipts from sale of software were not chargeable to Indian Taxation merely because such income was wrongly offered in ROI and which was not revised. However, since nature and character of sale proceeds qua underlying evidences did not appear to have been verified by Assessing Officer at any stage of proceedings, matter was to be remitted back to file of Assessing Officer for fresh determination. (AY. 2020-21)
AppDynamics International Ltd. v. ACIT (2024) 205 ITD 496 (Delhi) (Trib.)

127 **S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Taxation of receipts from the sale of software to Indian entities under the India-agreements merely granted the right to use software without transferring copyright ownership-Held, not liable to tax-DTAA-India-Singapore. [Art. 12(3)]**
The Assessee is a Singapore-based entity which received income from the sale of software to Indian entities. The AO treated these receipts as taxable u/s 9(1)(vi) of the Act and Article 12(3) of the India-Singapore DTAA. The Assessee challenged the

AO's order and submitted that the agreements merely granted the right to use software without transferring copyright ownership. It emphasized that the software was licensed to Indian entities for specific business purposes, and modifications were limited to operational needs. The TRIBUNAL scrutinized the clauses of the agreements between the Assessee and Indian entities and noted the discrepancies in the AO's interpretation of the DTA, emphasizing that the contractual terms aligned with the judgment in *Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT CA Nos. 8735-8736 of 2018*. After considering the arguments and contractual clauses, the Tribunal held that the receipts from software sales to Indian entities were not taxable under the India-Singapore DTAA. (AY. 2020-21)
Finastra International Financial Systems PTE Ltd. v. Asst. CIT(IT) [2024] 109 ITR 36 (SN) /205 ITD 338 (Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-Resident-Marketing services-No Permanent Establishment in India-Not taxable-Not liable to deduct tax at source-DTAA-India-USA-SLP of revenue dismissed. [S. 201, Art. 12(4), Art. 136] 128

Dismissing the appeal of the Revenue the Court held that the assessee had made payments to the U. S. company. The Tribunal had held that the scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process or develop and transfer technical plan or technical design. Accordingly the Tribunal was right in holding that the payments made by the assessee were not taxable in India. Tax was not deductible at source on such payment. SLP of Revenue is dismissed.
CIT (IT) v. Ad2pro Media Solutions (P.) Ltd (2024) 297 Taxman 141 (SC)
Editorial : CIT (IT). v. Ad2pro Media Solutions Pvt. Ltd. (2023)455 ITR 648 /148 taxmann.com 226 (Karn)(HC), SLP dismissed, CIT v. Ad2pro Media Solutions (P.) Ltd. (2023) 157 taxmann.com 205/ 296 Taxman 569 (SC)/ CIT v. Ad2pro Media Solutions (P.) Ltd. (2024) 297 Taxman 226 (SC)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Software-Sub-contracted certain overseas subsidiary-Not liable to deduct tax at source-Special leave petition filed against said order of High Court is dismissed was to be dismissed as there is gross delay of 296 days and also on merits. [S. 195, 201(1), 201(IA), Art. 136] 129

Assessee is an Indian software development company. Assessee sub-contracted its onsite overseas work to its subsidiary in China and made payment of sub-contracting charges to said subsidiary. Assessing Officer held that payments made to subsidiary in China was liable for tax deduction under section 9(1)(vii) as fees for technical services (FTS) in view of retrospective amendment to section 9 by Finance Act, 2010 and substitution of Explanation to said section. High court held that substitution had taken place in Finance Act, 2010 which was effective from 2011-12, thus, same would not apply to assessee during relevant years. Accordingly the assessee is not liable to deduct tax at source on payments made by it to its subsidiary in China. Special leave petition filed against said

order of High Court is dismissed was to be dismissed as there is gross delay of 296 days and also on merits. (AY. 2009-10, 2010-11)
CIT(IT) v. Infosys Ltd. (2024) 300 Taxman 177 (SC)
Editorial : CIT v. Infosys Ltd (2023) 152 taxmann.com 530 (Karn)(HC)

130 **S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-Resident-Marketing services-No Permanent Establishment in India-Not taxable-Not liable to deduct tax at source-DTAA-India-USA- SLP of revenue dismissed. [S. 201, Art. 12(4), Art. 136]**
Dismissing the appeal of the Revenue the Court held that the assessee had made payments to the U. S. company. The Tribunal had held that the scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process or develop and transfer technical plan or technical design. Accordingly the Tribunal was right in holding that the payments made by the assessee were not taxable in India. Tax was not deductible at source on such payment. SLP of revenue is dismissed.
CIT v. Ad2pro Media Solutions (P.) Ltd. (2024) 297 Taxman 226 (SC)
Editorial : CIT (IT). v. Ad2pro Media Solutions Pvt. Ltd. (2023)455 ITR 648 /148 taxmann.com 226 (Karn)(HC)/ SLP dismissed, CIT v. Ad2pro Media Solutions (P.) Ltd. (2023) 157 taxmann.com 205/ 296 Taxman 569 (SC)

131 **S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services Deduction of tax at source-Payment to non-resident-Foreign company had not rendered technical services to Indian company-Amount remitted not taxable-Not liable to deduct tax at source-SLP of Revenue is dismissed-DTAA-India-United States of America. [S. 195, 201(1), 201(IA), Art. 12(4), Art. 32]**
Dismissing the SLP of the Revenue the wherein the High Court held that the U. S. Company did not have any permanent establishment in India. The assessee had made payments to the U. S. Company. The scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process, or development and transfer technical plan or technical design. The services were utilized in the U. S. A., and the payments made by the assessee were not taxable in India. Hence, Tax was not deductible at source on such payment.
CIT v. Ad2pro Media Solutions (P.) Ltd. (2024) 296 Taxman 569/ 463 ITR 700 (SC)
Editorial : Refer, CIT v. Ad2pro Media Solutions (P.) Ltd (2023) 148 taxmann.com 226/ 455 ITR 648 (Karn)(HC)

132 **S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Business connection-Subscription fee-Access to data base pertaining to legal and law related information-Business profits-No permanent establishment in India-Not taxable in India-DTAA-India-USA. [S. 9(1)(1), Art. 5, 7, 12]**
Assessee, a tax resident of USA, was engaged in business of maintaining online data base (Lexis Nexis) pertaining to legal and law related information. It received

subscription fee for providing access to data base-Since assessee had no PE in India, it filed return of income by treating subscription fee received for providing access to data base as business income, not taxable in India as per provisions of India-US DTAA. Assessing Officer, treated receipt of assessee as FIS on ground that same was in nature of technical consultancy. Tribunal held that subscription fee received by assessee was in nature of business profit which could not be brought to tax in India in absence of Permanent Establishment (PE). On appeal the Court held that access to data base did not constitute rendering of any technical or consultancy services and in any case did not amount to technical knowledge, experience, skill, know-how or processes being made available to subscriber neither there was any transfer of copyright. Order of Tribunal is affirmed. (AY. 2018-19, 2019-20)

CIT (IT) v. Relx Inc (2024)470 ITR 611 /160 taxmann.com 109 (Delhi) (HC)

Editorial: Order in Relx Inc v. ACIT (2023) 103 ITR 54(SN) (Delhi)(Trib), affirmed.

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Software-Sub-contracted certain overseas subsidiary-Not liable to deduct tax at source-No substantial question of law. [S. 195, 201(1), 201(IA), 260A] 133

Assessee is an Indian software development company. Assessee sub-contracted its onsite overseas work to its subsidiary in China and made payment of sub-contracting charges to said subsidiary. Assessing Officer held that payments made to subsidiary in China was liable for tax deduction under section 9(1)(vii) as fees for technical services (FTS) in view of retrospective amendment to section 9 by Finance Act, 2010 and substitution of Explanation to said section. High court held that substitution had taken place in Finance Act, 2010 which was effective from 2011-12, thus, same would not apply to assessee during relevant years. Accordingly the assessee is not liable to deduct tax at source on payments made by it to its subsidiary in China. No substantial question of law. (AY. 2009-10, 2010-11)

CIT v. Infosys Ltd (2023) 152 taxmann.com 530 (Karn)(HC)

Editorial : SLP of revenue dismissed as there is gross delay of 296 days and also on merits, CIT(IT) v. Infosys Ltd. (2024) 300 Taxman 177 (SC)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – "Make Available" test – Business income under DTAA (India–UK) – Service Permanent Establishment – Services utilised outside India- No transfer of skill, technical knowledge, expertise, process-Mere usage or utilisation of research material, technical or consultative material in aid of business not sufficient to attract Article 13 of Double Taxation Avoidance Agreement- Not taxable - The income attributable to the Indian service PE remained taxable as business income under Article 7- DTAA-India-United Kingdom. [S. 9(1)(i), 9(1) (vii) (b),44DA, Art. 5(2)(k), 7, 13] 134

The Assessing Officer held that payments made by BCCI to IMG (UK) for designing and managing the IPL were taxable in India as fees for technical services (FTS) under section 9(1)(vii) and Article 13 of the India–UK DTAA. The Tribunal partly upheld this view, holding that the income was divisible: services attributable to IMG's Indian service PE were taxable in India as business income under Article 7, whereas income attributable to IMG's UK office was not taxable in India. On appeal Court held that the

services performed by IMG UK did not satisfy the "make available" test under Article 13(4)(c) since no technical knowledge, skill or know-how was transferred to BCCI. The Court emphasised that mere furnishing of advice, reports or research material does not constitute transfer of expertise enabling the recipient to act independently in future. It further held that services connected with IPL seasons shifted to South Africa and UAE were utilised outside India and income therefrom arose from sources outside India, hence not taxable under section 9(1)(vii)(b). However, the income attributable to the Indian service PE remained taxable as business income under Article 7. (AY. 2010-11 to 2018-19)

International Management Group (UK) Ltd. v. CIT (IT) (2024) 466 ITR 514 / 164 taxmann.com 225 / 340 CTR 745 (Delhi)(HC)

135 **S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Project-specific technical and consultancy services to an Indian company-Did not satisfy the 'make available' clause, did not warrant tax under Article 12(4)(b) of the DTAA between India and the US-DTAA-India-USA. [Art. 12(4)(b)]**

Held that ABB USA provided project-specific technical and consultancy services to an Indian company, that did not satisfy the 'make available' clause, did not warrant tax under Article 12(4)(b) of the DTAA between India and the US. (AY. 2009-10)

CIT (IT) v. ABB Inc [2023] 152 taxmann.com 101 / [2024] 461 ITR 297 (Karn)(HC)

136 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Global online learning platform-The receipts of the assessee do not qualify as fees for included services under art. 12(4) of India-USA tax treaty-DTAA-India-USA. [S. 144C(13), Art. 12(4)]**

Held that merely because the assessee has a customized landing page, it does not mean that the assessee provides technical services, that too, through human intervention. Even assuming for argument's sake that the services provided by the assessee are of technical nature, that by itself would not be enough to bring such receipts within the purview of art. 12(4) of the DTAA, unless the make available condition is satisfied. The receipts of the assessee do not qualify as fees for included services under art. 12(4) of India-USA tax treaty. (AY. 2020-21, 2021-22)

Coursera Inc. v. ACIT (IT) (2024) 231 TTJ 726 / 242 DTR 41 (Delhi)(Trib)

137 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-User of software-Payment received cannot be taxable as fees for technical services or royalty-DTAA-India-Netherland. [S. 9(1)(vi), 90, Art. 12(5)]**

Held that payment received for user of software is neither fees for technical services nor royalty. Not taxable in India. Appeal of Revenue is dismissed. (AY. 2013-14, 2015-16 & 2016-17)

ACIT (IT) v. Juniper Networks International B. V (2023) 154 taxmann.com 563 / (2024) 227 TTJ 529 / (2024) 234 DTR 49 (Mum)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Interior design services-Payments received by the assessee from RCITP are fees for technical services falling under cl. (4) of art. 12 of the DTAA-India-Singapore. [S. 90, 144C(5), 144(13), Art. 12] 138

The Tribunal held that the payments received by the assessee from RCITP are fees for technical services falling under cl. (4) of art. 12 of the DTAA, rightly taxed at 10 per cent. (AY. 2016-17)

Gensler Singapore (P) Ltd. v. JCIT /(2023) 155 taxmann.com 207/ (2024) 227 TTJ 998 / 234 DTR 193 (Delhi)(Trib)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Salary-Expatriate employees-Tax deducted at source-Reimbursed by Indian subsidiary on cost-to-cost basis-Reimbursement is not taxable--Not fees for technical services-Not liable for tax deduction at source-DTAA-India-Japan. [S. 192, 195, Art. 12] 139

Held that no material or evidence had been brought on record by the Revenue to substantiate its claim that the assessee rendered any managerial, consultancy or technical services to the Indian associated enterprises through the expatriates in furtherance of its business in India. The payment made by the Indian associated enterprises was purely reimbursement of the expatriates' salary costs, which the assessee had cross-charged by raising debit notes on the Indian associated enterprises. It could not be regarded as "fees for technical services" in the hands of the assessee as it was taxable as salary in the hands of the expatriate employees, who worked under the direct control and supervision of the Indian associated enterprises, and during the entire period of secondment, the associated enterprise were the real and economic employer of these expatriates. The expatriates had offered the entire salary income to tax in their respective returns of income as supported by form 16. As a result, the receipts were in the nature of employees' salary reimbursement cost, not having any element of income and not taxable in India as fees for technical services under the Double Taxation Avoidance Agreement between India and Japan. Consequently, the addition made on account of assessee's cross-charge raised on its Indian associated enterprises is deleted. (AY. 2017-18)

Advics Co. Ltd. v. ACIT (2024)113 ITR 147/ 232 TTJ 178 (Delhi) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Royalty-Non-Resident-Information technology and systems, applications and products service agreement with Indian subsidiary-Receipt is not fees for technical services and not taxable in India-DTAA-India-Portugal. [S. 9(1)(vi), Art. 12(4)(a), 12(4)(b), 13] 140

Held, that the services rendered under information technology and systems, applications and products support service agreement were completely different in nature and had no connection with the services rendered under the technical collaboration agreement. While the services rendered under the service agreement were for day-to-day office functioning and maintenance of the information technology infrastructure, the services rendered under the technical collaboration agreement were purely and strictly in connection with the drip irrigation system required for agricultural purposes. Therefore, the services rendered under the services agreement could not be considered ancillary and subsidiary to the services rendered under technical collaboration agreement. Further,

they did not relate to application or enjoyment of right to property or information resulting in payment of royalty. Not taxable in India. (AY. 2014-15, 2015-16)
Netafim Ltd. v. Dy. CIT (IT) (2024)113 ITR 548 (Delhi)(Trib)

141 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Network fees from its Indian AE-Neither royalty nor fees for technical services-Not taxable in India-DTAA-India-Netherlands. [S. 4, 9(1)(vi), Art. 7, 12]**
Assessee is engaged in business of logistics and freight forwarding across globe. During relevant assessment year, assessee earned network fees from its Indian associate enterprise (AE). Assessee did not offer said fees to tax on ground that it did not have any permanent establishment (PE) in India and network fees were business income. Assessing Officer held that network fees were in nature of fees for technical services (FTS) as per explanation 2 to section 9(1)(vii) and is taxable in India. DRP affirmed the order of the AO. On appeal the Tribunal held that Tribunal in assessee's own case for earlier assessment years had held that nothing was brought on record to substantiate that any technical know how was made available to Indian AE and thus, network fees received by assessee from its Indian is deleted. (AY. 2021-22)
Maersk Logistics & Services International B. V. v. DCIT, IT (2024) 209 ITD 95 (Mum) (Trib.)

142 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-commercial information is transferred to end user-Not taxable as fee for included services-Installation and integration services-Not taxable as fees for technical services-DTAA-India-USA[Art. 12(4)(b)]**
Assessee paid software licensing fee to a US company. Assessing Officer held that payment is in nature of fee for included services as per article 12(4)(b) of India-US DTAA and section 9(1)(vii). DRP affirmed the order of the AO. On appeal the Tribunal held that only commercial information was transferred to end user and not technical knowledge as required under article 12(4)(b) to constitute fee for included services, said payment could not be taxed as fee for included services. Tribunal also held that installation and integration services provided by assessee to US company were merely support services dealing with installation and integration and when primary services themselves were not taxable as FTS, these ancillary services qua primary services could not be taxed as FTS. (AY. 2021-22)
Mixpanel, Inc. v. ACIT (2024) 209 ITD 508 (Delhi) (Trib.)

143 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Marketing services-Commission on sales-Subsidiary of SEPL India-Performed pure sales function by connecting potential customers from US by performing pre sales activity of introducing SEPL India-Not taxable in India-DTAA-India-USA[Art. 12]**
Assessee, a US based company is subsidiary of SEPL India. Assessee-company procured local sales orders in US for its AE for products to be manufactured, executed by SEPL India, and received payment from customers which was remitted to SEPL India. Assessee received certain sum as commission on sales and marketing services. Assessing Officer held that payments received by assessee from SEPL India were in nature of FTS under section 9(1)(vii) and was chargeable to tax in India under article 12 with Indo-USA DTAA. On appeal the Tribunal held that the assessee, performed pure sales

function with connecting potential customers from US by performing pre sales activity of introducing SEPL India to potential customers and rest of activity was predominantly taken care by SEPL India. The assessee did not render services resulting in provision of FTS or make available technical knowledge to SEPL India. Accordingly commission on sales and marketing services cannot be treated as FTS in hands of assessee in terms of section 9(1)(vii). (AY. 2013-14, 2014-15)
Steer America Inc. v. DCIT (IT) (2024) 208 ITD 262 /[2025] 121 ITR 431 (Bang) (Trib.)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Deduction of tax at source-Non-Resident-Software development services rendered to overseas client-No transfer of specialised technical knowledge-Not fees for technical services-Not liable for tax deduction at source-DTAA-India-USA [S. 195, Art. 12] 144
Held that the fact that provision of services may require technical input by the person providing the service did not mean that technical knowledge, skills, etc., were "made available" to the person purchasing the service. Therefore, payment made by the assessee to the non-resident service provider could not be brought under article 12 of the Double Taxation Avoidance Agreement. (AY. 2010-11, 2012-13, 2013-14, 2016-17, 2017-18)
Dy. CIT (OSD) v. Aspire Systems India P. Ltd. (2024) 110 ITR 1 / 232 TTJ 387 (Chennai) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Providing hotel related services to hotels worldwide-Revenue is not in nature of royalty or fees for technical services-No Permanent Establishment in India-Receipt is not taxable as business income-DTAA-India-USA,[S. 9(1)(i), 9(1)(vii),, Art. 7, 12(4)] 145
Held, dismissing the appeal of the Revenue the Tribunal held that the included services were ancillary or auxiliary in nature and being an integral part of the job undertaken by the assessee, they were neither independent of, nor separable from, the job undertaken by the assessee in relation to publicity, advertisement and sales promotion of the hotel business worldwide, which were the main services rendered by the assessee to the Indian company, keeping the use of trademark, trade name and other enumerated services incidental to the main service, and that, thus, the payments received were neither in the nature of royalty under section 9(1)(vi), Explanation 2 nor in the nature of fees for technical services under section 9(1)(vii), Explanation 2 but in the nature of business income not taxable in India owing to the absence of a permanent establishment for the assessee in India. Order of CIT(A)) is affirmed. (AY. 2021-22)
ACIT v. Westin Hotel Management L. P. (2024) 111 ITR 69 (Delhi)(Trib)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Supply of drawings and designs-Plant and equipment supplied from outside India and sale transaction concluded outside India-Receipts cannot be taxed in India-Amount not taxable in India-Receipts from supervisory services for erection and Commissioning of equipment-Amount received falls within definition of fees for technical services-DTAA-India-Switzerland, Switzerland. [Art. 12(4)] 146
Held that the designs and drawings were made outside India in Switzerland and were supplied to the contractee from Switzerland and the sale transaction was completed

in Switzerland and amounts were received in Switzerland. From the details of designs and drawings as well as documentation submission, schedule of drawings and designs, it was clear that the drawings and designs supplied by the assessee were specifically related to the supply of plant and equipment for the JSW steel project. Though both the contracts, one for supply of plant and equipment and the other for supply of drawings and designs had been separately executed, they had been executed on the very same date. The purchaser was vested with the right to terminate the contract unilaterally, inter alia, due to the delay in delivery of the equipment in excess of 120 days for the reasons solely attributable to the seller and if the seller failed to take necessary remedial action. Thus, failure to supply plant and equipment within the stipulated time period could determine the contract for supply of drawing and design and the purchaser could terminate the contract in that eventuality. Therefore, the contract for supply of drawings and designs was inextricably linked to the contract for supply of plant and equipment. When the supply of plant and equipment had been treated as sale transaction completed outside India, and hence, not taxable in India, the sale and supply of drawings and designs being inextricably linked to sale and supply of plant and equipment had to be considered cumulatively and as a part of sale and supply of plant and equipment. Therefore, the amount received by the assessee from supply of drawings and designs was not taxable in India as fees for technical services. Tribunal also held that the assessee had entered into a contract for supply of electromagnetic stirrer. According to the assessee's admission, technical personnel were deputed to supervise the erection and commissioning of the plant and equipment. Thus, in course of such supervisory activity, the qualified technical personnel deputed by the assessee must have imparted technical services for erection and commissioning of the plant and equipment. Therefore, the amount received fell within the definition of fees for technical services, both under the domestic law as well as under article 12(4) of the Double Taxation Avoidance Agreement and it was immaterial whether the assessee had a permanent establishment in India or not. Therefore, the amount having qualified as fees for technical services, had rightly been brought to tax in the hands of the assessee. (AY. 2008-09)
SMS Concast AG v. DDIT (IT) (2024) 110 ITR 138 (Delhi)(Trib)

147 **S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Reimbursement of expenses-Not fees for technical services-Living allowance-No employer and employee relation ship-Agency commission-Not liable to deduct tax at source-Article 12 of OECD Model Convention-Levy of interest is not barred by limitation. [S. 192, 194J 195, 201]**

The Assessee, an Association of Persons (AOP) engaged in providing technical expertise in oil exploration and refinery, made payments to its member companies for the salary expenses and other benefits of seconded employees without deducting TDS. The Assessing Officer held that the reimbursements constituted fees for technical services as per Explanation 2 to section 9(1)(vii), making TDS deductible under section 194J for resident secondees and section 195 for non-resident secondees and payments to foreign agents. CIT(A) deleted the disallowance. On appeal the Tribunal held that, reimbursements for Indian salary and other benefits to member companies were not fees for technical services within the meaning of Explanation 2 to section 9(1)(vii),

hence TDS was not deductible. Payments made to resident secondees did not require TDS under section 194J as there was no employer-employee relationship between the Assessee and the secondees. Payments made to non-resident secondees were not chargeable to tax under section 5(2)(b) as the services were rendered outside India, thus no TDS was required under section 195. Payments to foreign agents did not attract TDS under section 195 as there was no business connection in India, and the agents did not perform any operations in India. The Tribunal also held that levy of interest is not barred by limitation. (AY. 1996-97 to 1998-1999)
ITO (TDS) v. Petroleum India International (2024) 111 ITR 365 (Mum.) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Marketing contribution, priority club receipt and reservation contribution with Indian hotels for using trade marks and providing support programs and systems-Fees received from Indian Hotels is not royalty-Addition is deleted-DTAA-USA. [Art. 12(3)] 148
The assessee, a tax resident of USA, had entered into licence agreements with various Indian hotels allowing them the use of trademarks 'Holiday Inn' and 'Crowne Plaza' in the business. The Royalty income earned was offered to tax in India. However, the marketing contribution and reservation fees received by the assessee from hotels in India were claimed as not taxable on the basis that the same is in the nature of reimbursement of common expenses. However, while completing the assessment u/s 143(3) rws 144C (3), the AO held it to be part of Royalty and added the same as income of the assessee. The CIT (A) upheld the addition. On further appeal, it was pleaded that the money received on account of marketing contribution and reservation fees were with a corresponding obligation to use it for the agreed purposes. The fund so created was obligated to expend assessment proceeds on behalf of the hotels and the fund's objective is to be self-funded each year. The report of independent auditor was filed in support thereof. Taking into account orders of the coordinate benches in the case of other assessee as well as assessee's own case for other assessment years, the Tribunal held that the marketing contribution and reservation fees received by the assessee was not royalty and therefore, the impugned addition was deleted. (AY. 2012-13, 2013-14, 2014-15, 2015-16)
Six Continents Hotels, Inc. v. Dy. CIT (IT) (2024) 112 ITR 423 (Mum)(Trib.)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Income from providing worldwide marketing, advertising and other services-Services were provided from outside India-Income is in not fees for included services and is business income-Not taxable in India-DTAA-India-USA. [Art. 7, 12(4)] 149
The assessee is engaged in providing worldwide Marketing and advertising services to Indian hotel owners through worldwide system of sales, advertising, promotion, Public relations, etc. Services are provided from outside India. Assessee does not have any PE in India. Assessee claimed refund of TDS deducted by Indian hotels and claimed income received from Indian Hotels to be exempt as per Section 9(1)(vii) and Article 7 of India-USA DTAA, as the centralized services provided by Sheraton Overseas from outside India cannot be treated as Fees for Included Services under Article 12(4) of India-USA DTAA as it were not technical in nature and further 'make available' condition of Article

12 of India-USA DTAA was not satisfied, and, as a natural corollary, the income was held to be business income as per Article 7 of India-USA DTAA, not taxable in India. The Hon'ble ITAT relied on the decision of Hon'ble Delhi High Court in the case of Sheraton International Inc. (group concern of the assessee) (2009) 313 ITR 267 (Delhi) (HC) and earlier decision of Delhi ITAT in assessee's own case upheld by the Delhi High Court. (AY. 2021-22)

ACIT v. Sheraton Overseas Management Corporation (2024) 112 ITR 126 (Delhi)(Trib.)

150 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Human resource screening services for clients in India-Reports provided to clients about candidates proposed to be hired not copyrightable but bound by confidentiality-Receipts is neither taxable as royalty nor as fees for technical services-DTAA-India-United Kingdom. [S. 9(1)(vi), Art. 7, 13(4), Copyright Act, 1957 13(1), 14(a)]**

Held that the role of the assessee was restricted to verification of the information concerning various candidates proposed to be hired by its clients. The information collected by the assessee was not protected by any copyright, but its circulation was regulated under the U. K., and other local laws, which cast a duty upon it to ensure the confidentiality of the reports as they contained details of the applicants. None of the requisites under article 13(3) of the Double Taxation Avoidance Agreement was satisfied so as to qualify such receipts as "royalty". The assessee was merely providing a report summarising its findings with respect to the background check undertaken by it, which report constituted factual data and could not per se qualify as literary, artistic or scientific work, patent, trademark, design, model, plan, secret formula or process or information. It did not fulfil the requirements enlisted under section 13(1)(a) of the Copyright Act, 1957. Moreover, none of the rights mentioned in section 14(a) thereof had been vested with the client by the assessee. The client did not have any right to publicly display, sell, distribute, copy, edit, modify or commercially exploit the report. The consideration received by the assessee was purely towards provision of background screening services and not for use, or right to use, any copyrightable material. Further, the assessee did not provide access to any database to its clients but only access to reports requisitioned by the client, in electronic form. Nothing had been brought on record by the Revenue to refute the assessee's claim. Online access to background screening results was not tantamount to providing access to the database maintained by the assessee. That the information obtained by the assessee from various sources was in the nature of factual data about prospective candidates, which did not involve imparting any kind of commercial experience, skill or expertise. It was a validation report assuring its client about the authenticity of the information contained therein. It did not involve any transfer of either commercial experience or the right to use the experience, nor transfer of any skill or knowledge of the assessee to the customers. As the assessee's services did not involve any technical skill, knowledge or consultancy or make available any technical knowledge, experience, skill, know-how or processes to the clients, the services should not be considered fees for technical services under article 13(4) of the Double Taxation Avoidance Agreement. No addition could be made on account of royalty(AY. 2021-22)

Hireright LLC v. Dy. CIT (IT) (2024) 111 ITR 28 (Delhi)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Data processing charges-Data processing charges paid to its Singapore branch office-Payment could not be taxed as fees for technical services either under Income-tax Act and India-Singapore DTAA-DTAA-India-Singapore. [S. 90, Art. 12] 151

Allowing the appeal the Tribunal held that Indian branches of assessee, a French bank, paid data processing charges to its Singapore branch office, said payment could not be taxed as fees for technical services either under Income-tax Act and India-Singapore DTAA. (AY. 2021-22)

BNP Paribas v. ACIT (2024) 207 ITD 532 (Mum)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Telecom and transmission services-Reimbursement from its Indian subsidiary for provision of connectivity services for international communication-Cannot be treated as fees for technical services-DTAA-India-Hong kong. [Art. 12] 152

Assessee, a Hong Kong based company, which is engaged in business of distribution of telecommunication products. During relevant assessment years, assessee received reimbursement of connectivity charges from its AE, Indian subsidiary for provision of connectivity services for international communication. Assessing Officer held that the assessee provided plethora of services to its AE right from negotiating agreements with third parties entering into purchase agreement, to issuing inspection certificates certifying products and services-He, thus held that these services would fall within ambit of technical consultancy' or managerial services and would qualify as fees for technical services under section 9(1)(vii). DRP affirmed the order of the AO. On appeal the Tribunal held that from purchasing service agreement between assessee and AE that all activities agreed to in writing by and between company and service provider were considered as steps involved in processing product purchased as per purchasing service agreement and could not be treated as other technical services. Since assessee was only paid for connectivity services which were merely ancillary to enabling provision of inter-connect services and part of processing product, same could not be treated as technical or managerial or consultancy services. Amount received by assessee could not be regarded as FTS under section 9(1)(vii) of the Act. (AY. 2018-19, 2019-20)

Huawei International Co. Ltd. v. ACIT (IT) (2024) 207 ITD 497 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Make available-Payments made to US company for administrative and IT services-Can not be treated to be in nature of FTS-Not liable to deduct tax at source-DTAA-India-USA. [Art. 12(4)(b)] 153

Assessee, an Indian company, made payments to its US parent company (AE) towards administrative services, IT services, technical services and royalty without deduction of tax at source. Assessing Officer held that since foreign party performed all administrative services as part of group global policies to maintain control over employed staff in India, services were in nature of managerial service. CIT(A) affirmed the order of the AO.. Tribunal held that though Assessing Officer had observed that AE had made available technical knowledge to assessee, but had failed to bring on record any relevant material

to support same and, consequently, payments made by assessee could not be treated to be in nature of FTS. (AY. 2013-14)
Herbalife International India (P.) Ltd. v. DCIT (IT) (2024) 207 ITD 658 (Bang) (Trib.)

154 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Make available-Business of cloud and hosting services, disaster recovery services, etc-Indian customer-Not taxable in India-DTAA-India-USA. [Art 12]**
Assessee is a foreign firm situated in USA, which is engaged in business of cloud and hosting services, disaster recovery services, and IT consultancy services. It received certain amount from its Indian customer and claimed said income to be not taxable in India. Assessing Officer taxed said receipts as fees for technical services. DRP up held the addition. On appeal the Tribunal held that very same issue in assessee's own case was decided in favour of assessee by Tribunal for earlier assessment years 2017-18 to 2019-20 holding that article 12(4)(b) stipulates taxability of income arising therefrom only if services concerned make available technical knowledge to recipient/payer. Since condition of make available had not been satisfied, services would not be taxable in India. (AY. 2020-21)
Sungard Availability Services LP v. ITO (IT) (2024) 206 ITD 10 (Pune) (Trib.)

155 **S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Freight/logistic support services-Cannot be treated as FTS/FIS either under Act or under India-USA DTAA-Reimbursement of global account management charges is not in nature of FTS/FIS-DTAA-India-USA-Reimbursement of lease line charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA. [Art. 12]**
Assessee, a US company, which is engaged in business of providing global freight logistics services worldwide. Assessing Officer made additions to income of assessee on account of sale of logistic services treating same as Fees for Technical Services ('FTS') under Act as well as India-USA DTAA. DRP up held the order of the Assessing Officer. On appeal Tribunal following assessee's own case in earlier year held that amount received by assessee from freight/logistic support services could not be treated as FTS/FIS. Consequently, amount received by assessee in question could not be treated as FTS/FIS or royalty under Act as well as India-USA DTAA. Held that the amount received by assessee, a non-resident company, for reimbursement of global account management charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA. Held that the amount received by assessee, a non-resident company, for reimbursement of lease line charges for services rendered outside India could not be treated as royalty under Act as well as India-USA DTAA. (AY. 2021-22)
Expeditors International of Washington Inc. v. ACIT (2024) 206 ITD 267 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Managing diamond factories and facilitating diamantaires to operate economically for high quality diamond factories across the Globe-FTS income received by assessee would not be taxable in India-DTAA-India-Mauritius. [S. 9(1)(i), 115A(1)(b)), Art. 12, 12A] 156

Assessee, a tax resident of Mauritius, which is engaged in business of managing diamond factories and facilitating diamantaires to operate economically for high quality diamond factories across the Globe. It had entered into a technical collaboration with its Associated Enterprises [AEs] in India viz., for providing technical, process, marketing and sales assistance services outside India and received fees for technical services (FTSs). Assessing Officer invoking provisions of section 9(1)(vii) read with section 115A(1)(b) and held that FTS were chargeable to tax in India. CIT(A) up held the order of the AO. On appeal the Tribunal held that there was no specific clause in DTAA entered into between India and Mauritius and article 12A was inserted with effect from 1-4-2017 which could not be applied for financial year 2017-18. It is a settled position of law by various co-ordinate benches and High Courts that in absence of a clause in DTAA not dealing with a particular item of income, payments are not be regarded as residuary income but as business income which is not chargeable to tax in India, in absence of any PE of non-resident assessee in India. Accordingly the FTS income received by assessee would not be taxable in India. (AY. 2017-18)

Diamond Manufacturing Management and Consultancy Ltd. v. ACIT (IT) (2024) 112 ITR 301 / 206 ITD 412 (Vishakha) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Subscription fee-Fees for technical services-Subscription payments, training and professional fees-No transfer of technology-DTAA-India-Netherlands [Art. 12] 157

Assessee, a non-resident company, had received certain amount of consideration on account of subscription payments, training and professional fees. Assessing Officer held that said receipts were taxable as fee for technical services under article 12 of India-Netherlands DTAA. DRP up held the order of the Assessing Officer. On appeal the Tribunal held that since assessee had merely granted only access to software and there was no transfer of technology by assessee, services rendered by assessee did not fall within definition of FTS. (AY. 2020-21, 2011-22)

Service Now Nederland BV v. ACIT (2024) 204 ITD 775 (Delhi) (Trib.)

S. 10(1) : Agricultural income-Soil placed on trays-Agricultural activity-Mushroom is an agricultural product-Income from sale of mushrooms constitutes agricultural income. [S. 2(IA)] 158

Held that soil is a part of land and, therefore, part of earth. The only part of the land that is cultivable is the soil, which is the top layer of land. When soil is placed on trays, it did not cease to be land and operations carried out on that soil would be agricultural activity. Whether such soil was attached to the land or placed in containers above the land made no difference. Soil which is placed on a vertical space above the land in trays is also land. That the word product could not be restricted to plants, fruits, vegetables or such botanical life only. The only condition was that the product should

be raised on the land by performing some basic operations. Mushroom is a product raised on land or soil by performing certain basic operation. It drew nourishment from the soil and was grown by human skill and labour. The product had utility for consumption, trade and commerce and, hence, would qualify as an agricultural product the sale of which gave rise to agricultural income. (AY. 2020-21)
Fresh Bowl Horticulture P. Ltd. v. ITO (2024)116 ITR 3 (SN)/ 169 taxmann.com 49 (Mum) (Trib)

159 **S. 10(1) : Agricultural income-Books of account-Agriculturist-No requirement to maintain books of account under section 44AA for agriculturists to claim exemption under section 10(1). [S. 44AA]**
Assessee is a director of a seed company and graduate in agricultural science, claimed exemption on agricultural income under section 10(1). Assessing Officer added agricultural income to taxable income, citing lack of books of account as required under section 44AA of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that requirement to maintain books of account under section 44AA does not include agriculturist. Since the assessee submitted copies of sales bills for agricultural produce, even though to related parties and consistently declared agricultural income over years addition is deleted. (AY. 2015-16)
Ishwar Chander Pahuja v. ACIT (2024) 209 ITD 52 (Delhi)(Trib.)

160 **S. 10(10AA) : Leave salary-Limit prescribed-Employee of the Central Government or State Government-State Bank of India-Retired employee of State Bank of India-Not violative of Article 14 of Constitution of India. [Art. 14, 15, 226, Central Civil Services (Leave)Rules 1972]**
Assessee retired from services of State Bank of India and claimed exemption u/s10(10AA) of the Act. The exemption is denied. The assessee contended that law discriminating the Central or State services, in case of employees of other establishments, period of leave was capped at 10 months and maximum amount exempted from income tax was subject to such limit as Central Government might notify in Official Gazette, that same being in year 2017 to be Rs. 3 lakhs was discriminatory and hence be declared ultra vires. On writ the Court held that State has wide discretion in matter of classification for taxation purposes. Accordingly the differentiation made by State between employees of Central and State Governments on one hand and employees of other establishments on other in section 10 (10AA) was neither discriminating nor violative of article 14 of Constitution. Therefore, a retired employee of State Bank of India could not claim parity with employees of Central and State Government. Writ petition is dismissed.
Purnendu Shekhar Sinha v. UOI (2024) 471 ITR 186 /159 taxmann. com 746 (Patna) (HC)

S. 10(10AA) : Leave salary-Superannuation benefits-Employee of the Central Government or State Government-Maharashtra State Electricity Board (MSEB)-Transferred to power companies-Grand-fathering-Assessees have to be treated as employees of a State Government and eligible for S.. 10(10A) and 10(10AA) benefits. [S. 10A, Electricity Act, 2003, 131, 133 (2)] 161

Assessees had joined the then Maharashtra State Electricity Board (MSEB) in regular employment. All of them ended up retiring from the re-designated power companies constituted under the provisions of the Electricity Act, 2003. The AO denied the exemption which is affirmed by the CIT(A). On appeal the Tribunal held that going by a conjoint reading of s. 131 r/w s. 133 of Electricity Act, 2003, the services of all officers and employees of the erstwhile MSEB first stood vested in the State Government of Maharashtra on Reorganization of the Board, followed by the transfer to various transferee entities engaged in generation, transmission and distribution of power. All these assessees had been assigned to their respective new employers after getting protection of their service conditions in the light of S. 133(2). These assessees have also undergone the very reorganization finally culminating in their respective superannuation. Not only these assessees have to be held entitled for exemption under S. 10(10A) and 10(10AA) as employees of MSEB, they are also eligible for the exemption in the newly set-up transferee entities. Therefore, these assessees have to be treated as employees of a State Government duly eligible for ss. 10(10A) and 10(10AA) benefits. (AY. 2018-19, 2019-20)

Mohan Baliramji Thakre v. ITO (2024) 229 TTJ 678 / 237 DTR 233 / 166 taxmann.com 158 (SMC) (Nagpur)(Trib)

S. 10(10D) : Life insurance policy-Key man insurance policy-If Keyman Insurance policy was transferred before its maturity then it would lose its character and thus sums received on surrender of such insurance policy would be eligible for exemption under section 10(10D) and it could not be taxed under section 28(vi). [S. 2(14), 28(vi)] 162

Assessee claimed exemption under section 10(10D) in respect of sums received on maturity of life insurance policy. Assessing Officer deemed it taxable under section 28(vi) as part of a Key man Insurance policy. In appeal, assessee argued that policy's character changed in 2008 when it was assigned from a proprietorship concern to assessee, justifying exemption under section 10(10D) as an ordinary policy. The Tribunal held that there was some merit in contention of assessee that if policy was transferred before its maturity then it would lose its character. Therefore, it had become ordinary policy, premium received under this policy, would not be subjected to tax in view of section 10(10D). Therefore, lower authorities were not justified in denying benefit of exemption to assessee. (AY. 2016-17)

Mihir Parikh v. ACIT (2024) 205 ITD 731 (Delhi) (Trib.)

S. 10(23C) : Educational institution-Charitable purpose-Order of High Court affirmed-SLP of Revenue is dismissed-Delay of 247 days-Review petition is dismissed on account of delay as well as on merits. [S. 2(15), 10(23C)(iv), Art. 136] 163

The High Court, following its decision in the assessee's case in *India Trade Promotion Organization v. DGIT (E) [2015] 371 ITR 333 (Delhi)(HC)* held that the Tribunal did not

err in granting exemption to the assessee under section 10(23C)(iv) of the Income-tax Act, 1961 for the AY. 2009-10, 2010-11 and 2011-12. SLP of Revenue was dismissed. Review petition of Revenue is dismissed on account of delay as well as on merits. (AY. 2009-10 to 2011-12)

CIT (E) v. India Trade Promotion Organization (2024) 299 Taxman 454/338 CTR 875 (SC)

Editorial : CIT (E) v. India Trade Promotion Organisation (2023) 454 ITR 799 / 294 taxman 1 (SC)

164 **S. 10(23C): Educational institution-Commissioner (E) and Tribunal failed to examine objects and record finding with respect to education or educational activities of assessee-Matter remanded. [S. 10(23C)(iii), 260A]**

The Tribunal held that the assessee was unable to furnish necessary information before the Commissioner (E) hence dismissed the appeal of the assessee. On appeal High Court remitted the matter to the file of the CIT(E) to decide a fresh after considering the ratio in *New Noble Educational Society v. CCIT (2022) 448 ITR 594 (SC)*

Shaheed Nand Kumar Patel Vishwavidyalaya v. CIT (E) (2024)468 ITR 334 / 167 taxmann.com 138/341 CTR 170/242 DTR 289 (Chhattisgarh)(HC)

165 **S. 10 (23C): Educational institution-Solely for educational purposes and not for profit-Substantial grant of finance from Government-Order of Tribunal is affirmed. [S. 10(23C)(iiib), 11, 260A, R. 2BBBB]**

Dismissing the appeal of the Revenue the Court held that since the Assessing Officer in his order had reached the conclusion that the assessee had claimed exemptions under section 10(23C)(iiiab) since it was substantially financed by the Government of more than 20 per cent., and expenditure had been incurred by the assessee towards its aims and objects in carrying out educational activities alone, the exemptions were rightly granted. The Tribunal had found that rule 2BBB of the Income-tax Rules, 1962 was not applicable during the assessment year 2012-13, since it came into force with effect from December 12, 2014. There was no error in the orders passed by the Tribunal and the Assessing Officer and, therefore, need not be interfered with. No substantial question of law. (AY. 2012-13)

CIT (E) v. Swami Ganga Giri Janta Girls College (2024)466 ITR 393 /162 taxmann.com 677 (P&H)(HC)

166 **S. 10(23C) : Charitable institution-Promoting, advancing and protecting trade, commerce and industry in India--Matter was remanded to Chief Commissioner for de novo consideration by applying law as laid down by Tribunal. Matter remanded. [S. 2(15), 10(23C)(iv), Art. 226]**

Assessee, an institution formed and established with primary object of promoting, advancing and protecting trade, commerce and industry in India, applied for grant of approval under section 10(23C)(iv) for assessment year 2014-15. Chief Commissioner held that assessee was not a charitable institution and by invoking provisions of proviso to section 2(15) rejected application. On writ, the Assessee submitted before High Court that Tribunal in its own case for assessment years 2016-17 and 2017-18 by an order had set aside order of rejection passed by Commissioner (E) and held that assessee was entitled to exemption under section 10(23C)(iv). Court held that since order of Tribunal

for assessment years 2016-17 and 2017-18 had been passed after impugned order was passed, matter was to be remanded to Chief Commissioner for de novo consideration by applying law as laid down by Tribunal. Matter remanded. (AY. 2014-15)
Indian Merchants Chamber v. ACIT (2024) 299 Taxman 62 (Bom.)(HC)

S. 10 (23C): Educational institution-Hospital-Controlled and funded by State Government-Matter remanded to the file of the AO for de novo adjudication. [S. 10(23C)(iiiac)] 167
Held that the assessee-society is created for the purpose of improvement of medical facilities for the general public as per the direction of the Health and Family Welfare Department of the State Government; funds are provided by the State Government in the form of grant-in-aid; since the lower authorities have not considered the claim of the assessee that it is entitled to benefit of "State" and exemption under s. 10(23C)(iiiac), the issues are restored to the AO for de novo adjudication. (AY. 2003-04 to 2007-08)
Swasthya Bikash Samity v. ITO (E) (2024) 230 TTJ 526 / 240 DTR 51 / 164 taxmann.com 756 (Cuttack) (Trib)

S. 10 (23C): Educational institution-Proviso to Section 143(3) requiring withdrawal of approval before denial of exemption on ground of contravention-Assessing Officer has no jurisdiction to reopen assessment. [S. 10(23C)(vi), 143(3)] 168
Dismissing the appeal of the Revenue the Tribunal held that the Assessing Officer's compliance with clauses (i) and (ii) of the first proviso to section 143(3) inserted by the Finance Act, 2002 with effect from April 1, 2003, which stated that no order of assessment shall be made by the Assessing Officer without giving effect to section 10 unless the Assessing Officer has intimated the Central Government or the prescribed authority that clause (23C) of section 10 had been contravened by the assessee. Only after the approval granted had been withdrawn, could he have proceeded to pass an order, denying the benefit of exemption on the ground of contravention. The disallowance is deleted. (AY. 2013-14)
Dy. CIT (E) v. Mahindra International School Academy (2024)116 ITR 712 / 172 taxmann.com 159 (Pune)(Trib)

S. 10(23C): Educational institution-Merger of three trusts-Multiple objects-Not solely for purpose of education-Not entitle to exemption. [S. 10(23C)(vi)] 169
Held that the assessee is not existing solely for the purpose of education. The assessee did not submit documentary evidence to establish its contention that such scholarships were in fact been used by those students for the purpose of education. Denial of exemption is affirmed. (AY. 2018-19)
Parul Arogya Seva Mandal Trust v. CIT (E) (2024)114 ITR 287 (Ahd)(Trib)

S. 10(23C): Educational institution-Accumulation of funds-Disallowance cannot be made under section 13 of the Act-Entitle to exemption. [S. 10(23C)(iv), 11, 12A, 13(1)(c)] 170
Dismissing the appeal of the Revenue the Tribunal held that since the assessee is a charitable society notified under section 10(23C)(iv), the conditions prescribed under section 13 thereof were not applicable to it per the Central Board of Direct Taxes

Circular No. 557, dated March 19, 1990 (1990) 183 ITR 93 (St) Consequently, the Assessing Officer can not make any disallowance under section 11. (AY. 2014-15)
ITO (E) v. The Theosophical Society (2024)114 ITR 282 (Chennai)(Trib)

171 **S. 10(23C): Educational institution-Two separate educational institutions-Gross receipts of each of educational institutions had to be separately considered for purpose of allowing claim of exemption. [S. 10(23C))(iiiad)]**
Assessee is a society and engaged in running, operating and management of educational institutions at Bhopal. Assessee filed its return of income and claimed exemption under section 10(23C)(iiiad). Assessing Officer denied the exemption under section 10(23C)(iiiad) on ground that gross receipt of assessee exceeds Rs. 1 crore as prescribed monetary limit under section 10(23C)(iiiad). Commissioner (Appeals) up held the order. On appeal the Tribunal held that since assessee is running two separate educational institutions, gross receipts of each of educational institutions had to be separately considered for purpose of allowing claim of exemption under section 10(23C)(iiiad). Order is set aside and the issue is remanded to Assessing Officer for fresh adjudication. (AY. 2019-20)
Aarti Mahila Kalyan Samiti v. ACIT, CPC (2024) 209 ITD 154 (Indore) (Trib.)

172 **S. 10(23C): Non profit organization-Promoting export of leather items-Objectives of general public utility-Net surplus was less than 20 per cent of total receipts-Exemption cannot be rejected under second proviso to section 2(15). [S. 2(15), 10(23C)(iv)]**
Assessee is a non-profit organization, which is engaged in promoting export of leather items. It is facilitating participation of its members in trade fairs and had claimed exemption under section 10(23C)(iv). Assessing Officer denied the exemption. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that Apex Court in case of *Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 /(2023) 291 Taxman 11(SC)* held that while actually carrying out objectives of general public utility (GPU), if some profit is generated, it can be granted exemption provided quantitative limit of not exceeding 20 per cent under second proviso to section 2(15) for receipts from such profits, is adhered to. On facts since net surplus of Rs. 7. 62 crores was less than 20 per cent of total receipts of assessee exemption under section 10(23C)(iv) could not be rejected under second proviso to section 2(15). (AY. 2016-17)
Council for Leather Exports v. DCIT (2024) 208 ITD 416/231 TTJ 873/242 DTR 272 (Chennai) (Trib.)

173 **S. 10(23C): Educational institution-Denied exemption under section 11 due to lack of registration under section 12A/12AA-Matter is remanded to Commissioner (Appeals) for fresh adjudication. [S. 10(23C)(iiiad), 11, 12A, 12AA]**
Assessee-trust was denied exemption under section 11 due to lack of registration under section 12A/12AA. Alternatively, it claimed deduction of expenses under section 10(23C)(iiiad) citing low turnover and educational engagement. Commissioner (Appeals) disallowed expenses due to lack of evidence. On appeal the Assessee sought another chance to provide relevant documents for genuine engagement in educational activities. It stated that expenses included salaries for staff engaged in educational activities,

as well as seminar, uniform, communication, vehicle, and postage expenses related to running educational institutions and assured that evidence would be provided to substantiate genuineness of those expenses for educational purposes. Since department had no objection to fresh adjudication, in such circumstances, appellate order was to be set aside, and matter was to be restored to Commissioner (Appeals) for a fresh decision with a direction to assessee to cooperate and provide necessary documents. Matter remanded. (AY. 2019-20)
Vidya Sagar Education Trust v. ITO (2024) 205 ITD 400 (Ahd) (Trib.)

S. 10(23C): Educational institution-Unregistered charitable and religious institutions-Non granting of registration-Income is required to be computed by applying normal provisions of Act as AOP-Net income only is required to be taxed-Matter remanded. [S. 28(i)] 174

Assessee-trust claimed exemption of administrative expenditure under section 10(23C). Assessing Officer held that assessee had not filed audit report, denied exemption. Assessee submitted before Commissioner (Appeals) that it was not registered under section 10(23C) and it had wrongly mentioned in return that it was registered under section 10(23C) and its real income after reducing expenditure or application of income be taxed. Commissioner (Appeals) without adjudicating submissions of assessee dismissed appeal. On appeal the Tribunal held that once assessee had no registration under section 10(23C) then its income was required to be computed by applying normal provisions of Act and net income only was required to be taxed as AOP. Since Commissioner (Appeals) had not adjudicated submissions of assessee, issue was to be remanded back to him to decide afresh by applying normal provisions of Act. (AY. 2019-20, 2020-21)
Sri Ramalingeswara Swamy Temple v. ADIT(E) (2024) 205 ITD 206 /109 ITR 79 (SN) (Hyd)(Trib)

S. 10(23C): Educational institution-No disallowance can be made by applying provisions of section 11 and 12-Grant in aid-Could not be considered as assessee's income-Exempt from tax-Depreciation- cost incurred on acquisition of fixed assets as application of income-Depreciation is allowable. [S. 10(23C)(vi), 11, 12, 32] 175

Held that where assessee-educational institution was approved under section 10(23C) (vi), no disallowance could have been made by applying provisions of sections 11 and 12. Grant in aid funds could be spent for specified purposes only on specific approval of State Government, same were grant-in-aid which could not be considered as assessee's income and thus, same would be exempt from tax. When assessee-educational institution had not claimed cost incurred on acquisition of fixed assets as application of income, order disallowing depreciation as application of income is deleted. (AY. 2015-16)
Baba Hira Singh Bhattal Institute of Engineering & Technology v. DCIT (2024) 204 ITD 698 /115 ITR 202/ 228 TTJ 273 (Chd) (Trib.)

176 **S. 10 (23C) : Educational institution-Assessee has 12 units-Annual receipts of each of the institutions of the Assessee was less than the prescribed limit under the provision-Entitled to the exemption-Directed to give effect to petition filed under S. 154 of the Act. [S. 10(23C)(iiiad), Form No 10BB]**

The Assessee trust was running 12 educational institutions and claimed exemption u/s 10(223C)(iiiad) in its return which was denied on ground that Form 10BB was not filed by the Assessee. The ITAT observed that the Assessee had filed all the documents along with the return, which showed that the gross receipts of the Assessee was Rs. 2. 50 crores. Before ITAT, the Assessee submitted that it was covered by the judgment of the jurisdictional High Court in case of CIT v. Children's Education Society [2013] 358 ITR 373 (Kar.) in which it was held that "the exemption in terms of the provisions of s. 10(23C)(iiiad) was available to the Assessee as annual receipts of each of the institutions of the Assessee was less than the prescribed limit under the provision.". It was held that the issue is no longer debatable and the AO was directed to give effect to s. 154 application filed by the Assessee. (AY. 2016-17)

D. Banumaiah's Educational Institutions v. ITO (E) [2024] 109 ITR 94 (SN) / 205 ITD 446 (Bang) (Trib.)

177 **S. 10 (23C): Educational institution-Approval by prescribed authority-Object is not found existed solely for advancing educational purposes-Denial of exemption is justified. [S. 10(23C)(vi), Art. 226]**

Authority has rejected the contention and claim of the assessee-trust on the ground that as per the aims and objects of the trust, it is apparent that it has not only been formed for the purpose of advancing education, but is also for other purposes as mentioned in cl. 5(i), (j), (k), (l), (m), (n) and (o) of the trust deed. On writ, the Court held that exemption was claimed by the trust itself and not by an individual educational institute namely, GHG academy, therefore it cannot be conclusively said that the trust was found and existed solely for advancing education purposes, hence, it was rightly not granted exemption. (AY. 2012-13)

Shri Guru Hargobind Sahib Charitable Trust v. CBDT (2024) 340 CTR 219 / 240 DTR 441 (P&H)(HC)

178 **S. 10(23D):Mutual Fund-Exemption-Approved by Government and Reserve Bank of India-Eligible for exemption-Order of CIT(A) is affirmed. [UTI India Fund Unit Scheme, 1986, Unit Trust of India Act, 1963]**

Held that the assessee is registered Mutual Fund approved by Government and Reserve Bank of India, the observation of the AO that in order to grant exemption under s. 10(23D) has to have a separate registration is uncalled for and the various documents submitted by the assessee proves that the offshore fund scheme maintained by the assessee is an approved unit by the SEBI. Order of CIT(A) allowing the exemption is affirmed. (AY. 2014-15, 2016-17 to 2018-19)

DCIT (E) v. UTI India Fund Unit Scheme 1986 (2024) 228 TTJ 607 / 237 DTR 44 (Mum) (Trib)

S. 10 (23FB): Venture Capital Fund-Exemption-Income from Investment in Venture Capital Undertaking-Shares of entity not listed on a recognized stock exchange which carried on business activity in India-Not covered in the negative list-Dividend income is exempt. [S. 2(31), 10(35), Securities and Exchange Board of India (Venture Capital Fund) Regulation, 1996, regln. 2(n)] 179

Since no income from the two entities was shown, the issue of s. 10(23FB) was academic. The financials of S showed that it qualified as a venture capital undertaking under the Regulations and therefore, it qualified as a venture capital undertaking for section 10(23FB). Similarly, in so far as investments made in O shares which were not listed on a recognised stock exchange which also carried on business activity in India, nowhere had it been pointed out that these activities were covered in the negative list under Schedule III to the Regulations. Held that investment in this company also qualified as a venture capital undertaking under the Regulations. Dividend income is exempt. (AY. 2018-19)

CIT (Dy.) v. Aditya Birla Real Estate Fund (2024) 111 ITR 40 SN) (Mum)(Trib.)

S. 10 (25) : Approved superannuation fund-Exemption-Only Chief Commissioner has power to withdraw approval-Approval not withdrawn-Denial of approval on ground that conditions for approval had not been complied with-Order of denial is not valid. [S. 10(25)(iii)] 180

The Assessing Officer passed an order denying exemption. On appeal CIT(A) directed the Assessing Officer to allow the exemption. On appeal the Tribunal, affirmed the order of the Assessing Officer. On appeal the Court held that the approval of the assessee-fund granted by the competent authority, i.e., the Commissioner by order dated September 29, 1995 continued for the assessment year in question, i.e., the assessment year 2005-06 and it had neither been withdrawn nor cancelled. Exemption had been denied on the ground that the assessee-fund did not comply with the conditions of approval and therefore the fund lost its recognition. The denial of exemption was not valid. Order of the Tribunal is set aside. (AY. 2005-06)

Assam Frontier Employees Pension Fund v. CIT (2024) 464 ITR 102/ 336 CTR 319/164 taxmann.com 116 (Cal)(HC)

S. 10(26): Schedule Tribes-Partnership firm-Person-Hotel business-A partnership firm being a separate assessable 'person' under Income-tax Act, would not be entitled to same exemption under section 10(26) as any or all of individual partners would be in their individual capacity. [S. 2(23), 2(31)(iv), Art. 366(25)] 181

Assessee-firm is running a hotel business. It consisted of two partners who were related to each other (brothers) and belonged to Khasi tribe which was enlisted as Scheduled Tribe in State of Meghalaya and was covered under article 366(25) of Constitution of India. They were residents of Khasi Hills Autonomous District and thus were entitled to exemption under section 10(26) in their individual capacity. Assessee firm claimed exemption under section 10(26) on plea that since a partnership firm in itself was not a separate juridical person and it was only a collective or compendious name for all of its partners having no independent existence without them, and since partners of assessee-firm were entitled to exemption under section 10(26), therefore, same exemption

under section 10(26) is available to firm. AO rejected the claim. CIT(A) up held the order of the AO. On appeal the Tribunal held that a partnership firm being a separate assessable person under Income-tax Act, would not be entitled to same exemption under section 10(26) as any or all of individual partners would be in their individual capacity. Advantages and disadvantages conferred under Income-tax Act on separate class of persons were neither transferable nor inter changeable and, thus, scope of beneficial provisions could not be extended to a different person under Income-tax Act as it might defeat mechanism and process provided for assessment of different class/ category of persons. Ratio decidendi in judgment of Gauhati High Court in *CIT v. Mahari & Sons (1993) 67 Taxman 449 (Gauhati)(HC)* in context of a Khasi family would not be applicable in case of a partnership firm, though consisting solely of partners, who in their individual capacity are entitled to exemption under section 10(26). (AY. 2013-14 to 2015-16)

Hotel Centre Point v. ITO (2024) 111 ITR 502 / 206 ITD 565 /228 TTJ 905 / 236 DTR 97 (Gauhati) (SB) (Trib.)

Ri-Kynjai Serenity v. ITO (2024) 111 ITR 502 / 206 ITD 565/228 TTJ 905/ 236 DTR 97 (Gauhati) (SB) (Trib.)

182 **S. 10(38) : Long term capital gains from equities-STT was not paid at time of acquisition of shares-Entitled to exemption. [S. 115U]**

Assessee is a trust registered as Venture Capital Fund. Assessee claimed exemption of long-term capital gains (LTCG) under section 10(38) in respect of sale of unlisted shares of a company. Assessing Officer held that assessee was not eligible for exemption as it had not paid Securities Transaction Tax (STT) at time of acquisition of shares. CIT(A) allowed the exemption. On appeal the Tribunal held that condition prescribed in clause (a) and (b) of section 10(38) were fulfilled and assessee would be covered by exemption provided in clause (b)(i) of Notification No. SO 1789(E) dated 5-6-2017. Therefore, even if assessee did not pay STT at time of acquisition of shares, still it was eligible for exemption under section 10(38). (AY. 2018-19)

DCIT v. Business Excellence Trust (2024) 208 ITD 173 (Mum) (Trib.)

183 **S. 10(46):Body or Authority-Specified income-Commercial Activity-Granting loan-Agent of State Government to support development activities-Entitled to exemption-The order rejecting exemption under section 10(46) was quashed-The Revenue was directed to process the application for exemption made by the assessee. [S. 2(15), 10(20A), 119, Art. 226]**

The assessee is an entity constituted under the Uttar Pradesh Industrial Area Development Act, 1976. The Central Board of Direct Taxes rejected its application to grant exemption under section 10(46) on the ground that the assessee extended loans to various entities and such activities undertaken were otherwise than for the benefit of the general public. On a writ petition the Court held that that the assessee had been constituted under the 1976 Act with the objective of undertaking developmental activities in an industrial development area. It acted as an arm and an adjunct of the State charged with undertaking planned development in the industrial development area. In that connection, the assessee undertook planning and development of the area,

acquired land and property, engaged in construction of housing units or industrial units. In order to fulfil these objectives, it was provided funds by the State Government and additionally created a corpus from the revenue and receipts generated and received in the course of its operations. The assessee primarily was an agent of the Government obligated to undertake planned development of areas placed under its control. It could not be viewed as being a corporation intended to have been incorporated for a profit or commercial motive. The provisions of the 1976 Act and the material on record clearly dispelled any notion of the assessee being a "hardcore trading corporation". Statutory bodies like the assessee, were intended to act as an "architectural agent" of development and growth. The Revenue had erred in holding that the loans and advances extended by the assessee would fall within the ambit of commercial activity. The grant of those loans had also not been established to have been motivated with a view to profit. Some of those loans were extended to finance activities supportive and supplemental to the development activity that was liable to be undertaken by the assessee. The finding in the order that the assessee had advanced loans to private entities was factually incorrect. The assessee did not claim exemption of interest income earned from bonds and shares for the purposes of section 10(46) and the interest income had been ploughed back for the purposes of carrying out the statutory functions and duties cast upon the assessee. Although the assessee was called upon to provide all financial details, the Revenue did not specifically place on notice to answer or tender any explanation with respect to the amount of interest income that was earned from bonds, shares and fixed deposits. The order rejecting exemption under section 10(46) was quashed. The Revenue was directed to process the application for exemption made by the assessee. Relied on *Greater Noida Industrial Development Authority v. UOI (2018) 406 ITR 418 (Delhi)(HC).*
New Okhla Industrial Development Authority v. UOI (2024) 468 ITR 195 (Delhi)(HC)

S. 10A : Free trade zone-Rental income-Sub lease of two units-Eligible for inclusion in profit as they were intimately connected with business of undertakings-SLP of Revenue is dismissed. [Art. 136] 184

Assessee had taken on lease certain area in STPI (Software Technology Park of India). As assessee could not use entire area for its operation, it sub-leased portion of premises to two units and was receiving rent for same. It claimed deduction under section 10A. Assessing Officer disallowed deduction in respect of rental income received from said two units on ground that lease amounts could not be considered as income derived from export of any software. Commissioner (Appeals) held that rental income received by assessee was eligible for inclusion in profit as they were intimately connected with business of undertakings. Tribunal affirmed the order of the CIT(A). On appeal High Court held that since conditions such as location of unit in STPI having been complied with, benefit of section 10A would be available to assessee. Special leave petition filed against the order of High Court is dismissed. (AY. 2005-06)
PCIT v. Infosys Ltd. (2024) 300 Taxman 592 (SC)
Editorial : PCIT v. Infosys Ltd(2023) 147 taxmann.com 520 (Karn)(HC)

185 **S. 10A : Free trade zone-Profits and gains derived from export oriented undertaking-Interest income-Short term fixed deposits-Matter remanded to the file of the Assessing Officer. [S. 28((i), 56, Art. 136]**

Court held that in view of the fact that the Tribunal has remanded the same matter in the case of the assessee to the AO in the subsequent assessment year for giving a finding bearing in mind the facts of the assessee and its business the matter pertaining to the relevant assessment year is also remanded to the AO for consideration of the issue by bearing in mind the nature of business of the assessee and the purpose for which the short-term fix deposit accounts were opened by the assessee in the bank and the nature of income and the treatment of interest income as income from other sources or business income. (AY. 2009-10)

Xl India Business Services (P) Ltd. v. ITO (2024) 340 CTR 939 / 242 DTR 265 / 167 Taxmann.com 583 (SC)

Editorial : Xl India Business Services (P) Ltd. v. ITO (2018) 94 taxmann.com 720 (Delhi)(HC) is set aside.

186 **S. 10A : Free trade zone-Export turnover-Total sales-Deemed exports-Export turnover should constitute at least 75 per cent of the total turnover, although in quantitative terms, the export quantity might be less than 75 per cent of the total sale quantity. [S. 10A(2)(ia), Export-Import Policy 1992-97]**

Held that the amendment by introducing sub-s. (ia) to cl. (2) of s. 10A stipulates that the exports should not be less than 75 per cent of 'the total sales'. The provisions of the Export Import Policy, 1992-97 provide that 'the entire production of EOU/EPZ units shall be exported except 25 per cent of the production in value terms may be sold in the Domestic Tariff Area when the use of indigenous inputs is more than 30 per cent in value terms'. On the basis of the aforesaid provision, it appears that the section imposes a value based restriction and not a quantitative restriction. What is required to be satisfied as per sub-s. (ia) to cl. (2) of s. 10A is that the export turnover should constitute at least 75 per cent of the total turnover, although in quantitative terms, the export quantity might be less than 75 per cent of the total sale quantity. (AY. 2000-01)

IBM Global Services India (P) Ltd. v. Dy. CIT (2024) 231 TTJ 1 / 240 DTR 321 (Bang)(Trib)

187 **S. 10A : Free trade zone-Foreign currency expenditure from export turnover-Refund-Interest on refund-Disallowance of expenditure-Exempt income-Interest -Matter remanded. [S. 14A, 234D]**

Held that none of the authorities had considered the facts and dealt with the issue in proper perspective with regard to the assessee's claim that deduction under section 10A was erroneously made due to the exclusion of foreign currency expenditure from the export turnover. As the issue needed verification, it was restored to the Assessing Officer for a decision in terms of the principle laid down by the Tribunal in the assessee's own case for an earlier assessment year. That the Assessing Officer was directed to verify whether refund had been issued to the assessee and, if so, the interest charged thereon under section 234D. Disallowance under section 14A is remanded. (AY. 2009-10)

Virtusa Consulting Services P. Ltd. v. Dy. CIT (2024) 114 ITR 386 (Chennai)(Trib)

S. 10A : Free trade zone-Computation-Total turnover-Expenses excluded from export turnover to be excluded from total turnover. 188

Held that the expenses excluded from the export turnover had to be excluded from the total turnover as well while computing the deduction under section 10A of the Income-tax Act, 1961. The Assessing Officer had not followed the directions of the Dispute Resolution Panel in granting the benefit to the assessee that the foreign currency expenses which are excluded from export turnover and not excluded from total turnover. The Assessing Officer was to exclude the expenses from the total turnover also while determining the exemption under section 10A of the Act. (AY. 2008-09 to 2012-13)

Crisil Ltd. v. Add. CIT (2024)112 ITR 56 (Mum)(Trib)

S. 10A : Free trade zone-Eligible profits-Interest income-Income from business eligible for deduction-Foreign exchange gain on exchange earners' foreign currency account-Allowable. 189

Held that the interest income is income from business eligible for deduction under section 10A of the Act. That deduction under section 10A in respect of foreign exchange gain on Exchange Earners' Foreign Currency Account is allowable. (AY. 2010-11)

Tech Mahindra Business Services Ltd. v. ACIT (2024)112 ITR 21 (SN)(Mum)(Trib)

S. 10A : Free trade zone-Reconciled entire figure and entire reconciliation matched amount declared in Form 56F-Claim is directed to be allowed. [Form No 56F] 190

Held, allowing the appeal, that the assessee had correlated and reconciled the entire figure and it seemed that the entire reconciliation matched the amount declared in form 56F. Claim is allowed. (AY. 2011-12)

Toppan Merrill Technology Services P. Ltd. v. Dy. CIT (2024)112 ITR 32 (SN)(Chennai)(Trib)

S. 10AA : Special Economic Zones-Constitutional validity-Explanation after sub-section (1) of section 10AA, inserted by amendment with prospective effect from 1-4-2018, applicable in respect of assessment year 2018-19 and subsequent years-Constitutionally valid. [Art. 14, 19(1)(g), 226, 265] 191

The assessee is incorporated on 7-9-2007, which established its unit on May, 2012, at Kandla Special Economic Zone, Gujarat, for manufacture of specialized refractories and commenced operations from May, 2012. It became eligible for claiming exemption under section 10AA, from the assessment year 2013-14 onwards. On 1-4-2018, an Explanation was inserted after section 10AA(1) by the Finance Act, 2017, with effect from the aforesaid date prospectively. On writ, the assessee contested the Explanation to section 10AA(1) inserted by the Finance Act, 2017 with prospective effect, as unconstitutional and allegedly violative of articles 14, 19(1)(g), and 265 of the Constitution of India. Court held that explanation after sub-section (1) of section 10AA, inserted by amendment with prospective effect from 1-4-2018, applicable in respect of the assessment year 2018-19 and subsequent years is constitutional and is a valid piece of legislation and is not arbitrary, discriminatory and is not violative of articles 14, 19 & 265 of the Constitution of India. Circulars & Notifications : Circular No. 3 of 2008, dated 12-3-2008.

IFGL Refractories Ltd. v. UOI (2024) 296 Taxman 553/463 ITR 649 / 338 CTR 73 (Cal.)(HC)

192 **S. 10AA : Special Economic Zones-Qualifying profits-Computation-Gross total income-Deduction to be allowed from the total income and shall not exceed such total income. [S. 80AB]**

Held, that section 80AB of the Act states that the amount of income computed in accordance with the provisions of the Act and included in the gross total income is eligible for deduction. Hence, section 80AB is concerned with the quantum of income that is eligible for deduction under the heading "C. Deduction in respect of certain income" in Chapter VI-A. The Explanation inserted in section 10AA of the Act states that the deduction to be allowed under section 10AA of the Act shall be allowed from "the total income" and shall not exceed such total income. Hence, the Explanation specifies "the stage" at which the deduction under section 10AA of the Act should be allowed (i. e., from the total income) and also states that quantum of deduction should be restricted to the amount of total income. Accordingly, section 80AB and the Explanation inserted in section 10AA operate in different fields. The decision of the Commissioner (Appeals) did not require any interference. (AY. 2017-18, 2018-19)

Dy. CIT v. Reliance Industries Ltd. (2024)109 ITR 180 (Mum)(Trib)

193 **S. 10(10AA): leave salary-Employee of the central government or state government-Leave encashment-Directed to allow the exemption. [S. 154]**

Assessee has joined as a technician in the central government department of telecom in the year 1981. The Government of India has corporatized the department of telecom into BSNL with effect from 1-10-2000. The assessee has credited 280 days of leave at the time of retirement for the service rendered department of telecom till the date of corporatization and claimed exemption of 280 days salary. The CPC calculated the exemption u/s 10(10AA) basing on the present declaration that the assessee was an employee of BSNL and hence the exemption u/s 10(10AA) was restricted to Rs. 3 lakhs. Rectification application was rejected. On appeal the Tribunal held that The CIT as well as the AO has not taken cognizance of these facts and wrongly denied the benefit of exemption of leave encashment u/s 10(10AA) of the Act. The appeal of the assessee is allowed. (AY. 2019-20)

Vijay pemmaraju v. ITO [2024] 204 ITD 663 (SMC) (Vishakha) Trib)

194 **S. 10B: Export oriented undertakings-Non-realisation of export proceeds within six months-CIT(A) has rightly issued directions to allow the assessee's claim in the year of return after due verification of the facts of return of goods-Provisions for doubtful debts and advances-Not to be added to book profit. [S. 115JB]**

Assessee is not entitled to exemption under s. 10B in respect of the amount of export turnover which was not received within six months from the end of the relevant financial year; since the goods were returned back in the succeeding year, CIT(A) has rightly issued directions to allow the assessee's claim in the year of return after due verification of the facts of return of goods. Tribunal also held that provisions for doubtful debts and advances is not to be added to book profit. (AY. 2009-10, 2011-12)

Sun Pharmaceutical Industries Ltd. v. Dy. CIT (2024) 231 TTJ 164 / 38 NYPTTJ 520 (Ahd) (Trib)

S. 10B: Export oriented undertakings-Manufacture or processing-Preparation and export of pickles-Change in characteristic of raw materials from vegetables to bottled pickle, with different use-New product Entitled to benefit-Entire sale proceeds must be received in convertible foreign exchange within stipulated time-Bank realisation certificates, certified statement of forex receipts and certificate of auditor establishing realisation of export proceeds-Eligible for deduction to extent of foreign exchange received during specified period-Entitled to deduction. [S. 80IC] 195

Held that in the manufacture of pickles, there was a change in the characteristic of the raw materials from that of vegetables to a pickle, whose use was also different. Moreover, section 80-IC(2) talked of manufacture or production and Schedule XIV to the Income-tax Act, 1961, gave the list of articles or things or operations under item I recognising fruit and vegetable processing industry manufacturing or producing canned or bottled products. Obviously, the assessee was a vegetable processing industry and, in terms of the Schedule, was manufacturing or producing the bottled product of pickles. There was no reason to hold that the assessee was not engaged in manufacturing activities. The process of manufacturing pickles from raw vegetables, fruits, masala and other ingredients brought about a new and different marketable commodity than the raw material. Entitled to deduction. Held that the assessee had produced bank realisation certificates, bank certified statement of forex receipts and certificate of the auditor to show the realisation of export proceeds. There was no infirmity in the order of the Commissioner (Appeals) in allowing the assessee's claim under section 10B to the extent of foreign exchange received during the specified period. Both of the assessee's units had become 100 per cent. export-oriented units. The Commissioner (Appeals) gave a categorical finding about acquisition of the machinery in different years after obtaining the remand report. There was no reason to sustain the disallowance made by the Assessing Officer. (AY. 2001-02 to 2008-09)

ITO v. M. M. Poonjiaji Spices Ltd. (2024)113 ITR 294/230 TTJ 312 (Mum)(Trib)

S. 11 : Property held for charitable purposes-Denial of exemption When the registration is granted by the CIT(E), further probe by Assessing Officer into objects of Trust based on such objects is not permissible-Activities of to identify, enrol, allot work, regulate operation of private workers from time of inception-Activities for advancement of general public utility-Surplus earned retained for carrying out activity-Cannot be treated as business activity-Exemption cannot be denied-Advances to Trustees-Interest recognised on accrual basis-Loans covered by adequate security and interest-Cannot be treated as investments in violation of S. 11(5), 11(3) of the Act-No violation of Section 13(1)(c). 13(2) of the Act. Accumulation of funds-Form 10 filed for Assessment Year 1999-2000 showing purpose of accumulation-Purpose of accumulation is not general in nature-Activities carried on in accordance with approved charitable objects for which assessee was formed and registered-No violation of Section 11(2)-Delay of 496 days in filing the SLP-SLP of Revenue is dismissed. [S. 11(2), 11(4A), 11(5), 12A, 13(1)(c), 13(2), Art. 136] 196

Dismissing the appeal of the Revenue the Court held that when the registration is granted by the CIT(E), further probe by Assessing Officer into objects of Trust based on such objects is not permissible. Activities of identify, enrol, allot work, regulate operation of private workers from time of inception, activities for advancement of

general public utility. Surplus earned retained for carrying out activity cannot be treated as business activity Exemption cannot be denied. Amount advanced to Trustees, interest recognised on accrual basis, loans covered by adequate security and interest. Advance of loan cannot be treated as investments in violation of S. 11(5), 11(3) of the Act. T here is no violation of Section 13(1)(c). 13(2) of the Act. As regards the accumulation of funds, form 10 filed for Assessment Year 1999-2000 showing purpose of accumulation. Purpose of accumulation is not general in nature. Activities carried on in accordance with approved charitable objects for which assessee was formed and registered there is no violation of Section 11(2). SLP of Revenue is dismissed as there was gross delay of 496 days in filing the SLP. (AY. 2003-04)

Asst. CIT v. Cargo Handling Private Workers Pool (2024)467 ITR 32/ 300 Taxman 450 (SC)

Editorial : CIT v. Cargo Handling Private Workers Pool (2024)467 ITR 32 (AP)(HC)

197 **S. 11 : Property held for charitable purposes-Information to charity commissioner-Remuneration to trustees-Denial of exemption is not justified-SLP of Revenue is dismissed. [S. 13(1)(c), 260A]**

Dismissing the appeal of the Revenue the High Court held that the Tribunal had followed its own decision in which it had granted exemption under section 11 to the assessee for the assessment years 2008-09 and 2009-10. Since there was nothing on record that such orders had been set aside or overruled in any manner by the court, the Tribunal had found no reason to interfere with the order of the Commissioner (Appeals). There was no infirmity in the order of the Tribunal granting exemption under section 11 to the assessee for the assessment year 2010-11. SLP of Revenue is dismissed. (AY. 2010-11)

CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 706/300 Taxman 178 (SC)

Editorial : CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 702/162 taxmann.com 118 (Bom)(HC)

198 **S. 11 : Property held for charitable purposes-Construction activities under State PWD department-2. 5 per cent supervision charges-Matter is remanded to Assessing Officer for determination of commercial activity and considering the benefit of section 12A. [S. 2(15), 12A]**

Assessee-society was registered under section 12A with main objective to take up construction work of any nature to establish a chain of retail outlets. It undertook construction activities under State PWD department in lieu of 2.5 per cent supervision charges and accordingly claimed certain amount as applied for charitable purposes. Assessing Officer held that construction work was an activity of trade, commerce or business for consideration and assessee could not claim status under section 12A since activities carried on by it did not fall within the meaning of charitable purpose warranting exemption from income tax. Order was affirmed by Tribunal. On appeal High Court held that where assessee executed construction work for benefit of Government and received certain amount from Government for same, purpose of such construction work could not be accepted as an activity coming within meaning of advancement of other object of general public utility. It further held that since assessee was involved in carrying on of any activity in nature of trade, commerce or business, proviso to section 2(15) would be attracted and assessee would not be entitled to benefit under section 11 of the Act. On appeal considering the judgement of Apex Court in *ACIT*

(E) v. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278/[2023] 291 Taxman 11/[2022] 449 ITR 1 (SC) matter is remanded to Assessing Authority for determination of commercial activity and for considering benefit of section 12A and for passing appropriate orders. (AY. 2009-10, 2013-14)
Nirmithi Kendra v. Dy. CIT (E) (2024) 297 Taxman 382/ 336 CTR 743 (SC)
Editorial : Nirmithi Kendra v. Dy. CIT (E) (2022) 141 taxmann.com 495 (Ker)(HC), set aside.

S. 11 : Property held for charitable purposes-The advancement of objects of general public utility-Entitled to exemption. [S. 2(15), 12, 260A] 199
Held that the advancement of objects of general public utility, assessee is Entitled to exemption. Followed *CIT (E) v. Ahmedabad Urban Development Authority [2022] 449 ITR 1 (SC).*
CIT (E) v. Ahmedabad Urban Development Authority (2024)470 ITR 164 (Guj) (HC)

S. 11 : Property held for charitable purposes-Donations to other charitable institutions-Out of accumulated income-Direction as part of corpus donations-Not hit by Explanation 2 to section 11(1) of the Act. [S. 11(1), 11(2), 11(3), 11(3)(d), 260A] 200
The assessee-trust had accumulated income under section 11(2) and extended donations to other charitable trusts. The Assessing Officer held that extending donations to other charitable trusts would amount to utilization of the funds for a purpose other than those for which the surplus was accumulated under section 11(2) and thus being violative of section 11(3)(c) and section 11(3)(d). On appeal, the Commissioner (Appeals) held in favour of the assessee. On further appeal, the Tribunal affirmed the view taken by the Commissioner (Appeals). On appeal High Court affirmed the order of the Tribunal. (AY. 2009-10)
CIT (E) v. Jamnalal Bajaj Foundation (2024) 300 Taxman 36 /468 ITR 723 (Delhi)(HC)

S. 11 : Property held for charitable purposes-Corpus fund-Corpus Donations-Securing admission-Tribunal is not justified in holding ineligible for exemption on corpus Fund. [S. 11(1)(a), S. 11 : Property held for charitable purposes. [S. 11(1)(d), 260A] 201
Allowing the appeal the Court held that the amounts paid by the parents of the students admitted to the educational institution of the assessee-trust were payments towards corpus donation and were not collected by way of capitation fees. The Assessing Officer had not conducted any inquiry with regard to examination of parents who had admitted the students in school as to whether the payment was made towards corpus fund or capitation fee. Though it was true that the donation was bound to have been given for material gain in securing admission, it could not be characterised as donation towards charitable purpose and the assessee would not be entitled to have the benefit, but in the absence of any material on record, such view could not be taken. Therefore, the Tribunal had committed an error by treating the admission fees charged from the students as not forming part of the corpus fund of the trust. Therefore, the Tribunal was not justified in confirming the addition of the corpus fund to the income of the assessee by holding that the receipts could not be treated as corpus donation and not eligible for exemption under section 11(1)(d). (AY. 2013-14)
N. H. Kapadia Education Trust v. Asst. CIT (E) (2024)467 ITR 278 (Guj)(HC)

202 **S. 11 : Property held for charitable purposes-Specific purposes and objects without profit motive-Investment in Joint venture and utilisation of land allotted by Government for commercial purposes and earning profits in form of rental Income and sharing of profits-Deviation and contravention of objects, purposes and mission-Not entitled to exemption-Denial of exemption cannot be restricted only to extent of sum of investment in joint venture-Assessee is not entitled to exemption. [S. 11(5), 12, 12A,13(1)(d), 80G, 260A]**

The assessee is a society registered under section 12A of the Act, and was approved under section 80G of the Act. It was established with a specific purpose, object and mission to promote the quality of construction and bring in international standards, and undertook activities for the promotion of education, training, research and imparting professionalism and skill formation at all levels of construction. For this a joint venture company H was constituted for holding exhibitions and also to promote the object and mission of the assessee. For the assessment year 2002-03 the Assessing Officer held that the investment of the assessee in the joint venture was in violation of section 11(5) and rejected the claim for exemption under section 11. The Commissioner (Appeals) and the Tribunal affirmed his order. On appeal dismissing the appeals, (i) that the assessee-society had acted contrary to its purpose, objects and mission and could not claim exemption under section 11. There were concurrent findings by the Commissioner (Appeals) and the Tribunal based on facts available on record that the assessee had earned profits in contravention of its mission and objects. In addition to the establishment of a joint venture, the assessee had also parted with hundred acres of land allotted by the Government to the joint venture which had utilised the land for purpose of holding exhibitions of all natures and in the process, had earned income in the form of rent. The joint venture had also used the land for commercial purposes by allotting the land to other commercial establishments. These aspects had been duly considered by the Assessing Officer and the appellate authorities who had rejected the exemption under section 11. The deviation and contravention disentitled the society from claiming the benefit of exemption under section 11. That the contention of the assessee that the Tribunal could have restricted the denial of exemption under section 11 to the extent of investment made in the joint venture could not be accepted for the reason that the amount of investment already carried out by the assessee in the joint venture, coupled with the fact that the assessee had parted with hundred acres of land to be used by the joint venture company for gaining rental and other income and the rental income earned by the joint venture having been shared with the assessee to some extent, in contravention of the object, purpose and mission for which the assessee was established. That the Government instructions or Government orders on the basis of which the assessee had received funds were no longer in existence but were struck down by the court. In view of passing of G. O. Ms. No. 92, dated May 19, 1998, by the State Government, the corpus amount generated by the assessee was not voluntary contribution and therefore, the amount invested by the assessee in the joint venture company could not be treated as group corpus fund. The amount of investment in shares of the joint venture company and the transfer of hundred acres of land by the assessee to the joint venture company were covered under section 13(1)(d). Therefore, the assessee-society rendered itself disentitled to the benefit under section 11 in view

of violation of section 11(5) Finance Act, 1983 ([1983] 142 ITR (St.) 13), (AY. 2002-03)
National Academy of Construction v. ADIT(E) [2023] 156 taxmann.com 532/ (2024)465 ITR 69 / 340 CTR 729 (Telangana) (HC)

S. 11 : Property held for charitable purposes-Information to charity commissioner-Remuneration to trustees-Denial of exemption is not justified. [S. 13(1)(c), 260A] 203
Dismissing the appeal of the Revenue the Court held that the Tribunal had followed its own decision in which it had granted exemption under section 11 to the assessee for the assessment years 2008-09 and 2009-10. Since there was nothing on record that such orders had been set aside or overruled in any manner by the court, the Tribunal had found no reason to interfere with the order of the Commissioner (Appeals). There was no infirmity in the order of the Tribunal granting exemption under section 11 to the assessee for the assessment year 2010-11. (AY. 2010-11)
CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 702 (Bom)(HC)
Editorial : SLP of Revenue is dismissed, CIT (E) v. Lata Mangeshkar Medical Foundation (2024) 464 ITR 706 (SC)

S. 11 : Property held for charitable purposes-Capital gains-Memorandum of Understanding (MOU)-Symbolic possession-Permission from the Charity Commissioner-Capital asset is held to be wholly for the purpose of charitable purpose-Legal possession-Sale proceeds were invested with nationalised bank-Entitled to claim exemption-Order of Tribunal is affirmed-No substantial question of law. [S. 11(IA), 260A] 204
Assessee, a public charitable trust, entered into an agreement in 1994 with a builder, Buildforce to sell a property and as per MOU, symbolic possession was given to Buildforce. Certain dispute arose between Buildforce and assessee and a suit came to be filed which was settled and under which assessee agreed to accept a certain sum in full and final settlement and transfer property in favour of nominee of Buildforce and sale proceeds were invested with nationalised bank and assessee claimed that no capital gain was to be assessed in hands of assessee in view of provisions of section 11(1A). Assessing Officer did not accept this stand of assessee because, according to him, assessee entered into an agreement with Buildforce in 1994 and sale deed was executed in favour of its nominee after a period of almost 12 years and since in this intervening period of 12 years, possession of property was with Buildforce as per MOU, assessee was not in possession, it could not be held that property was being held under trust wholly for charitable or religious purposes and, thus, assessee had not fulfilled requirement of section 11(1A). CIT(A) allowed the claim. Tribunal affirmed the order of the CIT(A). On appeal the Court held that once legal possession had been handed over by assessee only in 2008-09 then it was to be presumed and accepted that said capital asset was held by assessee trust wholly for charitable purposes till date of its sale and thus, assessee was entitled to claim benefit under section 11(1A). (AY. 2008-09).
CIT (E) v. Shree Ram Ashram Trust Nashik (2024) 298 Taxman 40 (Bom.)(HC)

205 **S. 11 : Property held for charitable purposes-Reassessment-Accumulation of income-Filed revised form-Assessee could not be precluded from filing a revised Form No. 10 during reassessment proceedings. [S. 11(2) 12A,143(1), 147, 148, Form No. 10, Rule 17]**
Held that there is no doubt about the fact that a revised Form No. 10 was filed after the notice under section 148 was issued, albeit, along with the ROI, in response to the said notice. Therefore, the point of inflection between the respondent/assessee and the appellant/revenue was whether a revised Form No. 10 could have been filed by the respondent/assessee during the reassessment proceedings. To claim the benefit of the provisions of sub-section (2) of section 11, the respondent/assessee had to file a statement in the prescribed form, i. e., Form No. 10. The Tribunal has noted that there is no adverse finding by the Assessing Officer concerning the fulfilment of conditions subject to which the accumulation of income was allowed under section 11(2). Accordingly the assessee is not precluded from filing a revised Form No. 10 during reassessment proceedings. (AY. 2008-09)
CIT (E) v. Canara Bank Relief and Welfare Society (2024) 297 Taxman 153 /471 ITR 37 (Delhi)(HC)

206 **S. 11 : Property held for charitable purposes-Form No 10 was filed in the course of assessment proceedings-Amendments in the Act went unnoticed-Delay in filing the Form No 10B is condoned. [S. 10(23A),12A, Art. 226]**
Assessee filed its return of income claiming exemption under section 10(23A). In course of assessment proceedings, assessee claimed exemption under section 11 and also filed Form 10 along with application, seeking condonation of delay in filing same. Assessing Officer passed assessment order without taking into consideration exemption claimed by assessee. CIT (E) dismissed condonation of delay application preferred by assessee, holding that assessee had no intention of filing Form 10 within due date and was not prevented by any reasonable cause from filing same. On writ the Court held the delay in filing Form 10 occurred because amendments went unnoticed by officials of assessee. Assessment year 2016-17 was first occasion subsequent to amendments in section 11 and 13 by way of Finance Act, 2015. Therefore, there was no reason to disbelieve explanation furnished by assessee to explain delay in filing Form 10. Further, mere failure to claim accumulation could not be read as reasons to believe that assessee did not intend to file Form 10. Order passed by Commissioner (E) is to be set aside and, delay in filing Form 10 is condoned. Circular No. 07/2018, dated 20-12-2018, Circular No. 03/2020 dated 3-1-2020, and Circular No. 17/2022, dated 19-7-2022. (AY. 2016-17)
Bar Council of India v. CIT (E) (2024) 297 Taxman 247 /466 ITR 780 (Delhi)(HC)

207 **S. 11 : Property held for charitable purposes - Income from property held for charitable or religious purposes – Reassessment- After the expiry of four years - Charging capitation fees - Contrary to the objectives of a charitable trust - Not eligible for exemptions - Term 'wholly' under section 11 refers to the purpose of the trust-Order of Tribunal setting aside reassessment proceedings is held to be erroneous. [S. 10(23C)(iv), 11, 12, 12A, 12AA, 132, 148, 245D(6), 260A]**
The Court ruled that the assessee was not eligible for exemptions under Sections 11 and 12, as charging capitation fees was contrary to the objectives of a charitable trust.

The Tribunal's decision to uphold the exemption was erroneous. The Court clarified that the term "wholly" in Section 11 pertains to the purposes of the trust, not the property, and is akin to "solely," leaving no room for purposes to be only partially charitable or religious in nature. Additionally, the Tribunal wrongly relied on a Settlement Commission order, which is final and conclusive only for the specific assessment year of the application, not for subsequent years. Consequently, the Tribunal's order was set aside. (AY. 2007-08)
PCIT v. Maharaji Education Trust (2024) 166 taxmann.com 197 (2024)468 ITR 634 (Delhi) (HC)

S. 11 : Property held for charitable purposes-Once exemption is denied and the registration is with drawn the income of the trust should be assessed an AOP-Only surplus profit can be assessed-Application before CBDT for condonation of delay in filing Form No 10BB-The AO is directed to decide the issue of exemption after the order of the CBDT. [S. 12AA, 119, Form 10BB.] 208
Held that once exemption is denied and the registration is with drawn the income of the trust should be assessed an AOP. Only surplus profit can be assessed. The Tribunal also held that the application before CBDT for condonation of delay in filing Form No 10BB is pending. The AO is directed to decide the issue of exemption after the order of the CBDT. (AY. 2019-20, 2020-21)
Church Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)
Aurora Educational Society v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)
Karshik Vidya Parishad v. ACIT (2024) 232 TTJ 553 / 244 DTR 193 (Hyd)(Trib)

S. 11 : Property held for charitable purposes-Rental income-Community hall-No profit motive-Object of general public utility-receipts from such activity do not exceed 20 per cent of the total receipts, proviso to S. 2(15) is not applicable-Corpus donations-Direction to building fund-Exemption under section 11(1)(d) is applicable. [S. 2(15), 11(1)(d), 12, 12AA] 209
Held that the rent charged by the assessee-society for letting out its community hall to public at large for organising social, cultural and religious ceremonies is fair and reasonable and the receipts from the rent is less than 20 per cent of the total receipts and there is no material on record to hold that the assessee is acting with profit motive, proviso to S. 2(15) is not attracted. Benefit of sections 11 and 12 is allowable. Held that corpus donations with specific direction to building fund the exemption under section 11(1)(d) is applicable. (AY. 2016-17)
CIT (E) v. Shree Assistant Maheshwari Samaj (2024) 232 TTJ 17 (UO) (Jodhpur) (Trib)

S. 11 : Property held for charitable purposes-Corpus donation-Foreign donation-Project is struck on account of stay order of High Court-Amount utilised for repayment of bank loan-Exemption is allowable. [S. 11 (1)(d)] 210
Held that the corpus donation received from its founder member for the purpose of construction/running of hospital/dispensary and clinic, there is no violation of s. 11(1)(d) for the reason that the assessee has utilized this donation for repayment of bank loan

which was taken for purchasing the land for the said purpose. Exemption is allowable. (AY-2014-15 to 2016-17)
ACIT (E) v. Padmavati Institute For Medical Education & Science Trust (2023) 37 NYPTTJ 1675 / (2024) 227 TTJ 470 / 233 DTR 321 (Jodhpur) (Trib)

211 **S. 11 : Property held for charitable purposes-Composite objects-Kalyan Mandapam on commercial lines for fees and cess like any other persons carrying business-Receipts from the marriage hall related activities are more than the specified limit as per proviso to S 2(15)-Rejection of exemption is justified-Printing a diary of trustees and their family members does not per se amount to diversion of trust funds for the benefit of trustees-Amounts spent for the Diwali get-together of the trustees in the course of carrying on activities of the trust cannot be considered as diversion of trust funds for the benefit of trustees-No violation under section 13(1)(c)-Depreciation-Commercial principle-Corpus donations-Exemption denied-Includable in total income-Expenditure-Expenditure is to be allowed for earning of income including its activities as deduction-House property for the benefit of the members of one family-Not allowable as deduction. [S. 2(15), 13(1)(c), 22, 24, 37(1), 133A]**
Assessee-trust is running Kalyan Mandapam on commercial lines for fees and cess like any other persons carrying out business operations. Except a minimum amount of donations, the assessee has not spent any amount for charitable purpose as per its objects specified in the deed of trust. Receipts from the marriage hall related activities are more than the specified limit as per proviso to S 2(15). Rejection of exemption is justified. Printing a diary of trustees and their family members does not per se amount to diversion of trust funds for the benefit of trustees. Amounts spent for the Diwali get-together of the trustees in the course of carrying on activities of the trust cannot be considered as diversion of trust funds for the benefit of trustees-No violation under section 13(1)(c). The assesseee Trust is denied the exemption hence the depreciation is directed to be allowed on commercial principle. When exemption is denied corpus donations is to be includable in total income as per the provisions of the Act. As the exemption is denied the expenditure is to be allowed for earning of income including its activities as deduction. As the house property is used for the benefit of the members of one family the expenditure incurred is not allowable as deduction. (AY. 2013-14 to 2019-20)
Ramsahaimal Sahuwala & Sons Charitable Trust v. ACIT (2023) 37 NYPTTJ 1514 /(2024) 227 TTJ 957 / 238 DTR409 / 163 taxmann.com 175 (Chennai) (Trib)

212 **S. 11 : Property held for charitable purposes-Advance for purchase of land in earlier year-Proposal for cancellation of registration is dropped-Addition as notional interest is deleted-Exemption cannot be denied. [S. 12AA, 13(1)(c), 13(2)(a) 13(3)]**
Held that the advances given by the assessee-society for purchase of land for its educational activities without interest or security have been accepted as genuine business deal by the CIT(E) and the proceedings for cancellation of registration under s. 12AA were dropped. There is no violation of provisions of s. 13(1)(c), 13(2)(a) and exemption under S. 11 cannot be denied. (AY. 2016-17)
Rastogi Education Society v. ITO (2024) 227 TTJ 478 / 233 DTR 225 / 161 taxmann.com 220 (Raipur)(Trib)

S. 11 : Property held for charitable purposes-Registered under section 12AA-Applied once again-Directed to allow the exemption. [S. 12A(2), 12AA] 213

Held that CIT(E) having granted registration under S 12AA when the appeal was pending for denial of exemption. Exemption is allowable. Followed, *CIT v. Shree Shyam Mandir Committee [IT No. 234 of 2016, dt. 23rd Oct., 2017 (Raj)(HC)* (AY. 2010-11)

Shri Parnami Panchayat v. ITO (E) (2024) 227 TTJ 603 / 234 DTR 313 / 161 taxmann. com 438 / (SMC) (Jaipur)(Trib)

S. 11 : Property held for charitable purposes-Objective of providing low-interest loans to downtrodden individuals-Interest charged over and above bank interest-Huge profit-Micro-Finance Activity-Business activity-Not entitled to exemption. [S. 2(15) 11(4A) 12 214

Held that as per the report of the Reserve Bank of India the interest charged by the assessee was very high. The activity being commercial in nature the proviso to section 2(15) is not available to the assessee (AY. 2016-17, 2018-19)

Sanghamitra Rural Financial Services v. ACIT (E) (2024)116 ITR 539 (Bang)(Trib)

S. 11 : Property held for charitable purposes-Imparting education-Activities in nature of trade, commerce or business-Separate Books account and balance-sheet is not maintained-Matter remanded for verification. [S. 2(15), 11(4A),12, 12A 13(8)] 215

Tribunal directed the Assessing Officer to examine the matter afresh keeping in mind that if some profits were generated from such activities, the assessee could be granted exemption provided the receipts from such profit do not exceed the quantitative limit of 20 per cent. in terms of the second proviso to section 2(15). Further, the prohibition against carrying on business or service of a commercial nature would not be attracted, if the quantum of such profits did not exceed 20 per cent. of the overall receipts. The matter is restored to the Assessing Officer to examine these facts. (AY. 2011-12, 2012-13, 2018-19)

Dy. CIT (E) v. Nehru Centre (2024)116 ITR 40 (SN)(Mum)(Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Utilised for capital expenditure-Failure to verify the submission-Section 11(6) which was introduced in the statute with effect from April 1, 2015, is clarificatory in nature-Matter remanded to the Assessing Officer to verify the claim. [S. 11(2), 11(6)] 216

Held, that the assessee is eligible to claim application of income towards acquisition of fixed assets. Though, section 11(6) was introduced in the statute with effect from April 1, 2015, it was clarificatory in nature and applicable for the year under consideration as well. The Assessing Officer, without verifying the submissions of the assessee, had held that no proper system was followed for utilisation of the accumulated income and that the capital expenditure could not be claimed as an application against accumulation under section 11(2). The finding of the Assessing Officer is not in accordance with the provisions of the Act. The matter is set aside to the Assessing Officer to re-examine the assessee's claim. (AY. 2014-15, 2016-17, 2017-18)

Gujarat Safety Council v. ITO (2024)114 ITR 70 (SN) (Ahd)(Trib)

217 **S. 11 : Property held for charitable purposes-Donations-Capitation fees-Assessing Officer had not carried out any independent investigation or examination of persons-Matter remanded.**

Held that the Assessing Officer had not carried out any independent investigation or examination of persons. Matter remanded. (AY. 2017-18, 2018-19)

MAC Charities v. ACIT (E) (2024)114 ITR 17 (SN)(Chennai)(Trib)

218 **S. 11 : Property held for charitable purposes-Commissioner (Appeals) condoned the delay in filing Form No 10-Revenue has not challenged the order of CIT(A)-Accumulation of income-Failure to provide specific purpose for accumulation of Funds Form 10-Entitled to exemption. [S. 11(2), 12A, Form No 10]**

Commissioner (Appeals) had condoned the delay in filing form 10 and the Revenue had not challenged this issue. Hence, the first reasoning on which the Assessing Officer disallowed the accumulation under section 11(2) did not survive. Tribunal held that substantial justice should be preferred to technicalities in deciding the issue. The purpose for which the amount was claimed to be accumulated was specifically mentioned in form 10 of assessment year 2016-17 as to be applied to promote and support research scientists for the advancement of research and development in future. The the Assessing Officer is directed to allow the consequential benefit under section 11(2) for the relevant year. (AY. 2016-17, 2017-18)

National Childrens Fund v. ITO (E) (2024)114 ITR 78 (SN)(Delhi)(Trib)

219 **S. 11 : Property held for charitable purposes-Promote welfare and causes of craftsmen-Ex-parte order by CIT(A)-Issue is set aside to Assessing Officer for de novo assessment as per ratio in *ACIT v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC)* [S. 2(15), 12A]**

Held, that the Commissioner (Appeals) had proceeded ex parte against the assessee in complete violation of the principles of natural justice. He ought to have remanded the appeals to the Assessing Officer for fresh adjudication. Therefore, the issue is set aside to the Assessing Officer for de novo assessment per ratio laid down by the Supreme Court in *Asst. CIT (E) v. Ahmedabad Urban Development Authority(2022) 449 ITR 1 (SC)* after affording an adequate opportunity of hearing to the assessee. (AY. 2011-12, 2013-14, 2015-16, 2016-17)

The Crafts Council Of India v. JCIT (E) (2024) 114 ITR 58 (SN) (Chennai)(Trib)

220 **S. 11 : Property held for charitable purposes-Charitable trust-Exemption under section 11-Allowability-Audit Report in Form No. 10B not filed along with return-AO is directed to verify the Form No. 10B filed by the assessee and allow the claim of exemption under section 11. [Form No 10B]**

Filing of Form No. 10B, would be directory in nature, as such, the AO is not powerless to allow an assessee to file Audit Report, if not filed along with return, at any time before completion of assessment. Further, filing of Form No. 10B beyond the due date, could not disentitle the trust from exemption claimed under section 11. Accordingly, AO is directed to verify the Form No. 10B filed by the assessee and allow the claim of exemption under section 11. [AY 2016-17] [ITA No. 903/Chny/2023, dt. 13/12/2023]

Sri Vetri Vinayagar Educational Trust v. ITO (Chennai)(Trib) (UR)

S. 11 : Property held for charitable purposes-Accumulation of income-Filing of audit report in Form 10B-Before due date of filing of return-Not mandatory-Filed along with the return-Direction of CIT(A) is affirmed. [S. 11(2), 139(1), Form 10B] 221

Held that the return was filed by the assessee on November 29, 2014, and form 10 was filed one day later on November 30, 2014. The assessee also brought on record evidence of filing of forms 10 and 10B on November 30, 2014, which was within the due date as prescribed under the Act and Rules. The audit report was filed in this case on November 30, 2014, which was within the time as admissible under the provisions of section 139(1) of the Act. Direction of the Commissioner (Appeals) to allow the deduction under section 11(2) of the Act is affirmed. (AY. 2014-15)

Dy. CIT (E) v. Gujarat State Board of School Text Book (2024)113 ITR 33 (SN)(Ahd) (Trib)

S. 11 : Property held for charitable purposes-Filing of audit report-Form No 10B was filed before passing of the intimation-Denial of exemption is not valid-Fee for late filing-Filed return within prescribed time-limit-Late fee is not leviable. [S. 139(1), 143(1), 234F, Form No 10B] 222

Held that that as on the date on which the intimation under section 143(1) of the Act was passed, the auditor of the assessee-trust had already filed the audit report in form 10B, before such intimation under section 143(1) of the Act was issued. There was no deliberate or mala fide intention on the part of the assessee or its auditor to file the audit report in form 10B belatedly. The claim of application of income could not be denied to the assessee only on the ground that the assessee or the auditor of the assessee omitted to file form 10B along with return of income, when it was submitted to the tax authorities before the intimation under section 143(1) of the Act was issued. The assessee-trust had filed its return of income as on September 26, 2018, within the prescribed time-limit under section 139(1) of the Act. Section 234F is not applicable. (AY. 2018-19)

Shiksha Foundation v. ITO (E) (2024)113 ITR 14 (SN)(Ahd)(Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Application of income-Non-corpus fund shown at figure higher than investment shown-Matter remanded for fresh adjudication. [S. 2(15), 11(2), 11(5), 13(1)(d)] 223

Held that the audited financial statements, statement of income and the return of income for the assessment year 2013-14 were not filed by the assessee during the proceedings before the authorities but had been filed along with the return of income, meaning thereby, that these documents were already available with the authorities below, but they did not look into them. In the interest of justice and fair play, the matter was to be remanded for fresh adjudication. That the balance-sheet of the assessee showed that the capital fund shown by the assessee was utilised in fixed assets, capital work-in-progress and current assets. Such amount represented the application of income and, therefore, was to be excluded while calculating the amount to be invested under the provisions of section 11(2) read with section 11(5) of the Act. Nevertheless, the assessee had not represented the facts properly, the matter is remanded to the Assessing Officer for de novo adjudication as per the provisions of law. (AY. 2018-19)

Vaidic Dharma Sansthan v. Dy. CIT (E) (2024)113 ITR 1 (SN) (Bang)(Trib)

224 **S. 11 : Property held for charitable purposes-Audit report-Filing audit report in Form No. 10B is procedural in nature-For not filing audit report along with return, exemption cannot be denied-Matter is remanded to the file of CIT(A). [S. 12A, Form No. 10B]**

Assessing Officer denied exemption under section 11 on reasoning that there was a delay of 235 days in filing Form No. 10B (audit report). CIT(A) dismissed appeal by stating that neither he nor the Assessing Officer were empowered to condone delay. On appeal the Tribunal held that requirement of filing audit report in Form No. 10B is procedural in nature and, therefore, not filing audit report along with return of income was a procedural omission only and could not be impediment in law in claiming exemption. Since due to confusion in interpretation of law audit report in Form No. 10B was filed after specified period, delay in filing audit report in Form No. 10B deserved to be allowed. Matter is restored to CIT(A) to allow exemption. (AY. 2021-22)

Bhagwant Kishore Memorial Educational Society v. ITO (2024) 209 ITD 179 (Delhi) (Trib.)

225 **S. 11 : Property held for charitable purposes-Advancement of general public utility-Sponsorship agreements with few Indian business groups-Neither sponsor nor assessee could be attributed any profit motive from outcome of these sponsorship agreements-Eligible for exemption. [S. 2(15), 12]**

Assessee, an apex sports body in India representing country, claimed exemption under sections 11 and 12. During the year, assessee entered into sponsorship agreements with few Indian business groups and received certain amount as sponsorships. Assessing Officer held that the nature of activities in respect of sponsorship agreements with various sponsors is in nature of business and held that assessee was hit by second proviso to section 2(15) and, hence, not eligible for benefit of exemption under sections 11 and 12. CIT(A) allowed the exemption. On appeal the Tribunal held that the assessee is representing country under aegis of Government in amateur international sports events and arranging these sponsorship contracts is in itself a great task for assessee as sponsors were paying out of their profits for motivating assessee and sportspersons of country in participating in international events. Therefore neither sponsor nor assessee could be attributed any profit motive from outcome of these sponsorship agreements. Order of CIT(A) is affirmed. (AY. 2017-18)

DCIT(E) v. Indian Olympic Association. (2024) 209 ITD 209 (Delhi) (Trib.)

226 **S. 11 : Property held for charitable purposes-Audit report Form 10B-Delay of 31 days-Pending before CIT(E)-Matter is remanded. [S. 12A(1)(b), Form 10B]**

Assessee-trust was denied benefit of section 11 by Assessing Officer on ground that it did not furnish audit report in Form 10B within prescribed time. CIT(A) up held the order of the AO. Tribunal held that since assessee had filed an application for condonation of delay of 31 days in filing Form 10B before CIT (E), but said application was still pending for disposal. Tribunal directed the Assessing Officer to restore exemption proceedings and to decide claim of assessee for exemption under section 11 after taking into consideration decision of CIT(E) on application of assessee for condonation of delay in filing Form 10B (AY. 2022-23)

Sha Hurgowan Anandji Desai Charities v. DIT, (2024) 209 ITD 248 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form No. 10-Matter remanded to the file of Assessing Officer-Assessee is directed to file exemption application before CIT(E). [S. 11(2), Form No. 10] 227

Assessee-trust claimed exemption under section 11(2). Assessing Officer disallowed claim of exemption on ground that assessee filed Form No. 10 after due date. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that in view of Circular No. 17/2022, dated 17-7-2022, matter is restored back to Assessing Officer with direction to assessee for applying to Commissioner (E) and seek condonation of delay in filing Form No. 10 and after condonation of delay in filing Form No. 10 by Commissioner (E), Assessing Officer would decide claim of exemption under section 11(2). (AY. 2021-22)

Shree Pushkar Foundation v. ITO (2024) 209 ITD 219 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Return was filed within time allowed under section 139(4)-Assessing Officer is directed to allow assessee's claim of exemption. [S. 12A, 139(1), 139(4), Form No. 10B] 228

Assessee-trust had filed e-return of income on 9-2-2019 along with Form No. 10B declaring total income at nil after claiming exemption under section 11. Assessing Officer disallowed assessee's claim on ground that return of income was filed beyond time limit prescribed under section 139(1). CIT(A) confirmed the action of the AO. On appeal the Tribunal held that provision of section 139(4) with effect from 1-4-2017 lays down that any person who has not furnished return of income within time allowed under section 139(1), may furnish return for any previous year at any time before end of relevant financial year or before completion of assessment whichever is earlier. Since relevant assessment year ends on 31-3-2019, return filed by assessee on 9-2-2019 was within provision of section 139(4). The Assessing Officer is directed to allow claim of exemption under section 11. (AY. 2018-19)

Susila Educational Trust v. ITO (2024) 209 ITD 253 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Development of areas and infrastructural activities-Autonomous body established by Government of Gujarat-Matter is set aside to file of Assessing Officer to consider same in accordance with law as enumerated by Supreme Court in case of Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC). [S. 2(15), 12AA] 229

Assessee, is an autonomous body, was established by Government of Gujarat for development of areas and infrastructural activities. It claimed exemption under section 11 of the Act. The Assessing Officer denied exemption. Commissioner (Appeals) allowed exemption holding that activities of assessee were not covered by proviso to section 2(15) read with section 13(8). On appeal the Tribunal set aside the matter to file of Assessing Officer to consider the same in accordance with law as enumerated by Supreme Court in case of *Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC).* (AY. 2016-17, 2017-18)

DCIT (E) v. Surat Urban Development Authority. (2024) 209 ITD 424 (Ahd) (Trib.)

230 **S. 11 : Property held for charitable purposes-Accumulation of income-Failure to file Form 10-Assessing Officer is directed to reconsider issue after disposal of application filed by assessee for condonation of delay in filing Form 10. [S. 11(2), 11(5), Form No. 10]**

Assessee-trust earned income from various sources and invested balance amount in fixed deposits. Assessee neither filed Form 10 explaining purpose of accumulation of income under section 11(2) nor filed any details of investment in fixed deposits before Assessing Officer. Assessing Officer made additions. CIT(A) up held the order of the AO. On appeal the Tribunal held that the assessee submitted that it had not filed Form 10 either with return of income or at assessment/appellate stages, but said Form-10 had been filed along with resolution of executive committee indicating accumulation of income for purpose of objects of trust and also filed relevant proof of investment under section 11(5). Assessee had also filed a petition for condonation of delay in filing Form 10 and said petition was pending for disposal. Since assessee had filed Form 10 along with resolution of executive committee and petition for condonation of delay was pending for disposal, matter is remanded back to Assessing Officer to reconsider issue in light of Form 10 filed by assessee after disposal of application filed by assessee for condonation of delay. (AY. 2020-21)

Sri Laxmi Narsimha Temple Nalgonda v. ITO (2024) 209 ITD 474 (Hyd) (Trib.)

231 **S. 11 : Property held for charitable purposes-Non-profit organization-Established for welfare of craftsmen-Exemption under section 11 to be decided in light of judgment of Supreme Court in case of Asstt. CIT (E) v. Ahmedabad Urban Development Authority(2022) 291 Taxman 11/ 449 ITR 1 (SC) [S. 2(15)]**

Assessee was a non profit organization having objects to promote welfare of craftsmen. During assessment, Assessing Officer invoked proviso to section 2(15) in respect of certain income which in her view were in nature of trade and commerce and denied exemption available under section 11. Commissioner (Appeals) by an ex parte order upheld denial of exemption. On appeal the Tribunal held that Commissioner (Appeals) should have remanded appeals to Assessing Officer for fresh adjudication in light of judgment of Supreme Court in case of *Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC)* rather than giving ex-parte decision as same was in complete violation of principles of natural justice. Accordingly the Assessing Officer is directed to consider claim of exemption under section 11 in light of Judgment of Supreme Court in case of Ahmedabad Urban Development Authority (supra). (AY. 2011-12, 2013-14, 2015-16, 2016-17)

Crafts Council of India v. Jt. CIT (2024) 209 ITD 581 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Accumulation of income-Accumulated certain amount for purpose of building funds-Re development work-Delay in redevelopment-NOC from Airport Authority-Application filed under section 11(3A) was pending consideration before Assessing Officer-Section 11(3)(c) is not applicable-Period of accumulation was ending on 31-3-2018 vide resolution dated 29-3-2018 and in order to rectify said mistake revised Form 10 was filed by assessee stating period of accumulation to be till 31-3-2023-Claim was under section 11(2) and not under section 11(1)(a), revised Form 10 should be considered for determining accumulated funds available with assessee under section 11(2). [S. 11(2), 11(3A), 11(5), 12A, 13(3)(c), Form No 10] 232

Assessee is a charitable trust registered under section 12A. Assessee had accumulated an amount of Rs. 4 crore during year 2012-13 for purpose of building funds. The assessee did not have surplus money to set apart or accumulate under section 11(2). Thereafter, assessee filed revised Form 10. Assessing Officer made additions in income of assessee on ground that income accumulated under section 11(2) did not satisfy conditions laid out under section 11(3). On appeal the CIT(A) deleted the disallowance. On appeal the Tribunal held that the assessee has submitted that funds accumulated in financial year 2012-13 for redevelopment work could not be utilised in year under consideration as it operated very close to Mumbai Airport and for any extension/redevelopment work it had to take NOC from Airport Authority of India and because of said reason redevelopment work of its school building was delayed. Furthermore assessee had filed an application under section 11(3A) in this regard. Since assessee's application filed under section 11(3A) was pending consideration before Assessing Officer, section 11(3)(c) would not apply to instant case. The Tribunal affirmed the order of the CIT(A). Assessing Officer also rejected assessee's claim of accumulation of funds under section 11(2) on ground that period of accumulation was stated to be ending on 31-3-2018 and, thus, assessee did not have income which it intended to accumulate or set aside under section 11(2). Amount was decided to be accumulated for carrying out purposes of trust vide resolution dated 29-3-2018 and in order to rectify said mistake revised form 10 was filed by assessee stating period of accumulation to be till 31-3-2023. Further, mode of investment was also as per section 11(5) as amount was deposited in scheduled banks or co-operative societies as per section 11(5)(iii). CIT (A) deleted the disallowance. On appeal the Tribunal held that since assessee's claim was under section 11(2) and not under section 11(1)(a), revised Form No. 10, which stated period of accumulation till 31-3-2023, should be considered for determining accumulated funds available with assessee under section 11(2). Order of CIT(A) deleting the addition is affirmed. (AY. 2018-19)

DCIT v. Vile Parle Mahila Sangh (2024) 209 ITD 587 (Mum)(Trib.)

S. 11 : Property held for charitable purposes-Donation to another trust with similar objects-Allowed as deduction in earlier years and latter years-Denial of exemption is not valid. [S. 12A] 233

Held that the Assessing Officer himself in the subsequent assessment year has allowed the claim of the assessee under section 11 of the Act and restricted the donation paid to the Council alone for disallowance. Therefore, there was no merit in denying the

benefit under section 11 of the Act without considering the actual charitable activities of the assessee-trust. Order of CIT(A) is affirmed. (AY. 2015-16
Dy. CIT v. Sheriff Foundation (2024)112 ITR 72 (SN) (Delhi)(Trib)

234 **S. 11 : Property held for charitable purposes-Corpus donations-Distinct and separate from income derived from property held under trust-Not entitled to exemption. [S. 2(24), 11(1(a), 11(1)(d), 12(1)]**
Held that Corpus donations are distinct and separate from income derived from property held under trust hence not entitled to exemption. (AY. 2016-17)
Dawoodi Bohra Musafirkhana Trust v. ITO (E) (2024)112 ITR 8 (SN)(Ahd)(Trib)

235 **S. 11 : Property held for charitable purposes-Running business school-Payment to related party-Assessing Officer had not demonstrated how payment for business support services was not commensurate with market value of services availed of--Salary expenditure to faculty members-Disallowance for failure to file qualifications of teachers not sustainable-Disallowance is not warranted-Payment of commission to Consultants and counsellors is justified-Disallowance of expenses on computers to students is not reasonable. [S. 12A 13(2)(c), 13(2)(c), 13(2)(g), 13(3)]**
Held that the Assessing Officer had not demonstrated how the business support expenses paid to F Ltd. were not commensurate with the market value of the services availed of from F Ltd. an entity said to be covered under section 13(3) and thus the assessee violated the conditions under section 13(2)(g) of the Act. The statement of assessable income, balance-sheet and statement of profit and loss account of F Ltd. showed income. The disallowance is not sustainable. That salary expenditure to faculty members was disallowed due to non-filing of qualifications and experience and elaborate the services rendered by persons. The assessee had engaged highly technical qualified persons in whole-time management activities of trust as well as regular time teachers in business school. The details of educational qualification and experience in absence of any other evidence to the contrary could not be said to be not just fair and reasonable. That the payment as commission to consultants and counsellors is justified. That keeping in view the invoices, quotations and student-wise list the disallowance of expenses on computers to students is not fair and reasonable. Additions confirmed by the CIT(A) is deleted. (AY. 2012-13)
Shri Balaji Human Resources Development Trust v. ITO (2024)112 ITR 41 (SN)(Delhi)(Trib)

236 **S. 11 : Property held for charitable purposes-Denial of exemption-Exemption denied due to personal benefit-Interest-free loans to trustees-Trustees using loans to acquire immovable properties-Expenditure disallowed as capital expense-Remand for fresh consideration. [S. 12, 13(1)(c)(ii), 250]**
The assessee, a charitable trust, had provided interest-free loans to trustees, who used the funds to acquire immovable properties for construction of nursing college. These properties were leased back to the trust. The Assessing Officer disallowed a lease deposit of ₹ 25 lakhs, treating it as capital expenditure, and also disallowed hostel expenses of ₹ 27,72,490 as unpaid during the year. Further, the AO found that the trustees had received loans totalling ₹ 1,70,11,398, which were used to buy properties in their individual capacities, violating Section 13(1)(c)(ii), leading to denial of exemption

under Sections 11 and 12. The CIT(A) upheld the AO's decision but did not address specific grounds relating to disallowed expenditures and the use of loans for property acquisition. The CIT(A), despite the assessee making specific submissions and enclosing documentary evidence, did not adjudicate specific grounds taken before him. The Tribunal, noting this, directed the CIT(A) to reconsider these issues. (AY. 2013-14)
M. A. J. Foundation v. ITO (E) (2024) 112 ITR 78 (SN) (Bang)(Trib.)

S. 11 : Property held for charitable purposes-Engaged in upliftment of poor, providing training and skill development of poor in rural areas in backward districts-Entitled to exemption. [S. 2(15)] 237
Held, dismissing the appeals, that the Tribunal having held for the assessment years 2011-12 to 2014-15 that the assessee was not engaged in any trade, commerce or business and thus the mischief of proviso to section 2(15) was not attracted in the case of the assessee, and there being no change in facts order of CIT(A) is affirmed. (AY. 2015-16 to 2017-18)
ITO (E) v. Professional Assistance for Development Action (2024)111 ITR 87 (SN)(Delhi)(Trib)

S. 11 : Property held for charitable purposes-Prima facie adjustments-Claim inadvertently made under Section 10(23C)-Failure to file mandatory form-Prima facie adjustment is proper-No action can be taken merely on basis of Form 10B filed in Appellate Proceedings-Direction of Commissioner (Appeals) to avail of remedy under Section 119 to file revised return is proper [S. 11, 119, 143(1), 154, Form No 10B] 238
Held that there was no denial of the fact that the claim for deduction under section 11 of the Act was not made in the return of income. The assessee had claimed deduction under section 10(23C) of the Act in the return. As the form essential for claiming exemption under section 10(23C) was not furnished, the claim had been rightly rejected. Therefore, the adjustment made while processing the return, could not be faulted. Tribunal also held that there is no error in the direction of the Commissioner (Appeals) to avail of the remedy under section 119 of the Act to file a revised return. The assessee was allowed an opportunity in the intimation to file a rectification application, if so required, which was not availed of. Accordingly, the remedy of rectification of mistake had to be availed of before resorting to the alternate remedy under section 119(2)(b), if required. The assessee may file an application under section 154 of the Act to rectify the mistake in the intimation, if deemed proper. The assessee was also free to avail of the remedy under section 119 of the Act, if he so desired. (AY. 2022-23)
Shri R. V. Shah Charitable Trust v. Dy. DIT (2024)111 ITR 83 (SN)(Ahd)(Trib)

S. 11 : Property held for charitable purposes-Accumulation-Not routed through income and expenditure Account-Addition is deleted-Nodal agency for rebuilding portions of the State of Uttarakhand affected by floods-Income-Received funds for rebuilding flood-hit State-Utilised funds as per requirements of State Government-Balance remaining after work repayable to payer-Assessee is not owner of funds-Funds not income-Addition is deleted. [S. 4, 11(2)] 239
The Assessing Officer held that the sums so received and accumulated ought to have been routed through the income and expenditure account and ought not to have been

transferred directly to the balance-sheet. An addition was made as income. On appeal the Commissioner (Appeals) deleted the addition. On further appeal the Tribunal held that since there was a categorical finding that the sum under the Swachh Bharat Abhiyan Scheme had been routed through the income and expenditure account. Order of CIT(A) is affirmed. Assessee received funds from public sector undertakings and then disbursed them as per the requirements of the State Government. It contended that these funds never formed a part of the income of the assessee as the assessee was not the owner of those funds but merely facilitated their collection and disbursal. Any balance in the relevant bank account after the rehabilitation work was complete was to be returned to the respective public sector undertakings. The AO assessed as income. CIT(A) deleted the addition. On appeal the Tribunal held that the assessee was not the owner of the funds received from the public sector undertakings in relation to the relief and rehabilitation work in Uttarakhand. Order of CIT(A) is affirmed. (AY. 2015-16)
Dy. CIT (E) v. Sewa-THDC (2024) 110 ITR 151 (Delhi)(Trib)

240 **S. 11 : Property held for charitable purposes-Object of general public utility-Business-Income from organising meetings, conferences and seminars, membership fee from members, interest on deposits and rentals from properties-Disseminate knowledge on specialised issues to members and non-members-Not business purposes-Subscription fee from existing members on annual basis as well as admission fee from new members is not income by virtue of principle of mutuality-Advancement of main object is not hit by proviso to Section 2(15) even post-amendments-Invested in terms of section-Entitled to exemption in respect of entire receipts-Depreciation-Directed to allow depreciation as application of income-Capital Gains-Sale of old motor car and purchase of new car-No opening written down value for year-Even if entire cost claimed as application of income, assessee is entitled to claim deduction of written down value from sale consideration for calculating capital gain-Accumulation of income-Accumulation is to be computed on gross receipts and not net receipts [S. 2(13), 2(15), 10(23C), 11(1)(a), 11(2), 11(5)(iii), 12A, 13(8), 32, 251(2)]**
The assessee is an association of various industrialists, organisations and other commercial entities for the development of trade, commerce and industry, was set up with the sole purpose of promotion and protection of Indian business and industry and was duly registered under section 12A of the Act as a charitable association with the main objects to promote and protect the trade, commerce and industries in or with which Indians were engaged or concerned. The membership of the assessee was comprised of business houses, corporate houses within the country and abroad. The assessee derived income from organising meetings, conferences and seminars for members and non-members on cost-to-cost basis and by way of membership fees from members besides earning or accruing interest on fixed deposit receipts, rental income and miscellaneous income from the properties held by the assessee. For the assessment year 2013-14, the assessee claimed exemption under section 11 of the Act. The Assessing Officer treated the activities of organising conferences, meetings and seminars as business activities by invoking the proviso to section 2(15) read with section 13(8) on the ground that the assessee was charging consideration in the form of sponsorships, that the receipts from these activities exceeded Rs. 25 lakhs in terms of the proviso to section 2(15) and denied the exemption claimed under section 11 by bifurcating the

total receipts into two components, namely, business income and charitable income under section 11 and computed the income accordingly and brought to tax the business income whereas the deduction was allowed in respect of charitable income. Accordingly, he added Rs. 2,00,75,470 as net business income by apportioning the administrative expenditure proportionately between the business and charitable receipts or income based on the gross quantum of receipts under these heads. The exemption was allowed to the assessee only in respect of interest, rental and miscellaneous income. On appeal, the Commissioner (Appeals), after issuing show-cause notice under section 251(2) of the Act, enhanced the income treating the entire receipts as business receipts and taxed it at the rate applicable to companies. On appeal the Tribunal held that the assessee, in order to protect and promote trade, commerce and industry had been organising the activities of seminars, meetings and conferences in order to disseminate knowledge on specialised issues to members and non-members on the subject with specialised knowledge. During the events experts on the subjects were invited to speak on the occasion and also participative discussion and interactions were held and members and non-members were invited to such activities of the assessee. It was not organising any trading programs to impart skill development courses by specialist and skilled knowledge and certified courses but general meetings, conferences and seminars were organised to discuss and debate issues in current topics, amendments of the Income-tax Act, Micro, Small and Medium Enterprises Development Act, foreign trade policy and other issues concerning trade, commerce and industries. During the year, the receipts from the activities of holding and organising meetings, seminars and conferences were Rs. 9,48,14,435 and the profits as computed by the Assessing Officer constituted only 2 per cent. of such receipts. Thus, the consideration charged by the assessee was just a cost basis and nominally above the cost. However, if the administrative expenses were allocated on a rational and scientific basis between the activities of holding meetings, seminars and conferences on the one hand and other charitable receipts such as interest, rental and miscellaneous income on the other hand, then there would be a huge loss from these activities meaning thereby that the assessee had not been even charging from these sponsors, participants, members or non-members sums enough to cover the cost of the assessee and therefore it could be reasonably presumed that the assessee had provided these activities below the cost. In the subsequent assessment year 2014-15, the Assessing Officer had computed loss of Rs. 77,87,698. Therefore, the assessee was not carrying on any activity of holding meetings, seminars and conferences for business purpose but only in support of its main object and it charged from its participants, members and non-members the amount of fee which did not even covers the cost of holding such events. That the administrative and other incidental expenses of holding and organising seminars, conferences and meetings were met out of other charitable income received from interest on fixed deposit receipts, rental and miscellaneous income. Hence, the assessee was entitled to exemption under section 11 as the activities of the advancement of main object was not hit by the proviso to section 2(15) of the Act even post-amendments. Tribunal directed the AO to allow depreciation as application of income. As regards capital gains in respect of sale of old motor car and purchase of new car, there is no opening written down value for the year. Even if entire cost claimed as application of income, assessee is entitled to claim deduction of written down value

from sale consideration for calculating capital gain. The accumulation of income is to be computed on gross receipts and not net receipts. (AY. 2013-14, 2014-15)
Indian Chamber of Commerce v. Dy. CIT (E) (2024) 110 ITR 30 /230 TTJ 364 /238 DTR 313 (Kol)(Trib)

241 **S. 11 : Property held for charitable purposes-Covid-19-Delay in filing return and Form No 10B-Supreme Court extending the period of limitation-Entitled to exemption. [S. 12AA, Form No 10B]**
Held that the return was filed in form 7 and form 10B on March 31, 2021 and March 30, 2021 while the extended due date for filing the return in the relevant assessment year was February 15, 2021. Due to the covid-19 pandemic, the Supreme Court had extended the period of limitation with respect to judicial or quasi-judicial proceedings. Therefore, there was no delay in filing the return or form 10B. The order of the Commissioner (Appeals) was set aside and the Assessing Officer was to allow the exemption claimed under section 11 of the Act. (AY. 2020-21)
Onkar Society for Engineering and Technological Research v. ITO (2024) 110 ITR 393 (Kol)(Trib)

242 **S. 11 : Property held for charitable purposes-Research work in area of micro wave electronics-No changes in facts-Denial of exemption is not valid. [S. 2(15) 12A]**
Assessee, an association, was engaged in research work in area of micro wave electronics. It claimed exemption under sections 11 and 12. Assessing Officer held that activities of assessee were purely research work and did not fall under section 2(15). CIT(A) held that dominant purpose is charitable and did not carry on business hence the exemption is allowed. On appeal the Tribunal held that since in earlier years, claim of assessee was accepted and for current assessment year also, there was no change in facts and circumstances, order of CIT(A) allowing the claim is affirmed. (AY. 2010-11)
DCIT v. Society for Applied Microwave Electronics Engineering Research Bombay. (2024) 208 ITD 339 (Mum) (Trib.)

243 **S. 11 : Property held for charitable purposes-Sale of property-Invested in bank fixed deposit-Converted into capital gain account scheme-Utilised entire amount of capital gain for purchasing other property in financial years 2022-23 and 2023-24-Instruction No. 883, dated 24-9-1975-Entitled to exemption. [S 11(1), 11(5), 11(IA)]**
Assessee-trust sold a property on 28-4-2015 at Rs. 75 lakhs and made investment in a bank in fixed deposits. Fixed deposits were matured on 29-4-2018, which were further renewed up to 29-4-2021, which were later on converted into capital gain account scheme. Assessee utilized entire amount of capital gain for purchasing another property in financial years 2022-23 and 2023-24 and claimed exemption under section 11(1A) Held that as per Instruction No. 853, dated 24-9-1975, the assessee qualified for exemption under section 11(1A) in relevant assessment year 2016-17. (AY. 2016-17)
Vaishnav Samaj Trust v. ITO (2024) 208 ITD 507/ (2025) 233 TTJ 946 (Surat) (Trib.)

S. 11 : Property held for charitable purposes-Loan scholarships to Indian students in India for education/higher education abroad-Application of income-Eligible for exemption. [S. 11(1)(c)] 244

Assessee-trust granted loan scholarships to Indian students in India for their higher education overseas. It filed nil return claiming exemption under section 11. Assessing Officer held that assessee had given loan/grants to various students who were studying outside India hence denied claim of exemption on ground that charitable purpose and its execution should be in India. CIT(A) allowed the claim. On appeal the Tribunal held that in assessee's own case for assessment year 2012-13 it was held that loan scholarships given to Indian students in India for education/higher education abroad would be considered as application of income for charitable purposes in India and, thus, would qualify for exemption under section 11. Appeal of Revenue is dismissed. (AY. 2011-12)

ITO (E) v. JN Tata Endowment for the Higher Education of Indians. (2024) 208 ITD 573 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Fresh registration under section 12AB-Original registration under Section 12AA up to Assessment year 2021-22-Denial of exemption is not valid. [S. 12AA, 12AB, 13] 245

Assessee-society registered under section 12AA, filed its return claiming exemption under section 11. Assessing Officer denied the exemption on ground that assessee had not furnished details of fresh registration under section 12AB obtained by it. On appeal the CIT(A) affirmed the order of the AO. On further appeal the Tribunal held that the assessee had applied for fresh registration under section 12AB in prescribed form within time allowed by statute. Original registration obtained under section 12AA would protect assessee up to assessment year 2021-22 for claim of exemption under section 11 as long as other conditions prescribed in section 11 to 13 had been fulfilled by assessee. Therefore, assessee would be duly entitled for claim of exemption under section 11 for assessment year 2021-22 (AY. 2021-22)

Shambhu Dayal Modern School. v. ITO (2024) 208 ITD 603 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Application of income-Less than 85 per cent of total receipts-Matter is remanded for de novo adjudication before NFAC. [S. 12A, 250, Form No 10] 246

Assessee trust was registered under section 12A and was running several educational institutions. It filed its return of income claiming exemption under section 11. Assessing Officer made certain additions to assessee's income on ground that assessee had spent less than mandatory 85 per cent of total receipts. Assessee filed appeal before National Faceless Appeal Centre (NFAC) and submitted that relevant Form No. 10, which was filed before department explaining amount of money, which was yet to be spent and how they planned to spend remaining amount in course of next five years, needed to be examined and considered by Assessing Officer while framing assessment order, which was not done by him. NFAC dismissed assessee's appeal holding that there was no material on record to warrant interference with order of Assessing Officer. Tribunal held that since NFAC had not adjudicated issue on merits, matter is remanded back to file of NFAC for de novo adjudication. (AY. 2016-17)

Giridih Carmel Convent School v. DCIT (2024) 208 ITD 597 (Ranchi) (Trib.)

247 **S. 11 : Property held for charitable purposes-General utility to public--Acquisition and sale of immovable properties-Issue is remanded to Assessing Officer to consider afresh strictly in light of observations made by Apex Court in CIT(E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC). [S. 2(15)]**

Assessee is engaged dominantly in activity of development and sale of properties. It filed its return of income declaring profit on total income/gross receipt which was claimed exempt as per provisions of section 11. Assessing Officer held that assessee is engaged in activity in nature of trade, commerce or business in as much as one of dominant activities of authority is acquisition and sale of immovable properties and receipts from which were in excess of ceiling stipulated in second proviso of section 2(15). He disallowed exemption under section 11 of the Act. CIT(A) allowed the exemption. On appeal the Tribunal held that since verification/examination had not been carried out by authorities below in terms of observations and guidelines framed by Apex Court in case of *CIT(E) v. Ahmedabad Urban Development Authority (2022) 291 Taxman 11/ 449 ITR 1 (SC)* issue is to be remanded to file of Assessing Officer to consider same afresh upon examining nature of assessee's activities and to pass a reasoned order strictly in light of observations made by Apex Court. (AY. 2014-15 to 2017-18)

DCIT(E) v. Jhansi Development Authority. (2024) 208 ITD 692 (Delhi) (Trib.)

248 **S. 11 : Property held for charitable purposes-Failure to furnish Form 10/10B before due date prescribed under Section 139(1)-Directory in nature-Exemption cannot be denied. [S. 11(2), 139(1), 143(1), Form No 10A, 10B]**

Assessee-trust claimed exemption under section 11 in return of Income. CPC, Bengaluru disallowed claim concluding that assessee failed to e-file Audit Report in form 10B one month prior to due date of filing return. CIT(A) affirmed the order of the AO. On appeal, Tribunal held that requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed under section 139(1) cannot be so fatal so as to deny very claim of exemption under section 11(2). Since delay in filing Form 10B is due to technical issues and was beyond control of assessee, procedural requirement should not deny substantive claim of exemption under section 11. The AO is directed to grant exemption under section 11. (AY. 2022-23)

ITO (E) v. Takshshila Foundation (NGO) (2024) 208 ITD 677 (Ahd) (Trib.)

249 **S. 11 : Property held for charitable purposes-Delay in filling Form 10B-Not mandatory-Issue is remanded back to Assessing Officer to consider claim of assessee in accordance with law by carrying out necessary verification of Form 10B filed by assessee-Delay of 29 days in filing of appeal before CIT(A) is condoned. [S. 119, 143(1)(a), 249 Form No 10B]**

Tribunal condoned the delay of 29 days in filing the appeal before CIT(A). Assessee-trust filed its return of income declaring shortfall in application of income. Assessee filed Form 10B i. e. audit report, before filing return of income. However, there was a delay of 29 days in filing same. Assessee had made applications to condone delay in filing Form 10B. However, same was not accepted and assessee's return was processed wherein exemption claimed by assessee under section 11 was denied. CIT(A) up held the order of the AO. On appeal the Tribunal held that filing of Form 10B was not mandatory but

directory, when audit report was available while passing intimation under section 143(1)(a) and requirement of law were complied with, exemption under section 11 could not be denied. It was further noted that circulars issued by CBDT which were available at time when assessee had made applications to condone delay in filing Form 10B had not been considered by authorities. On facts, issue is remanded back to Assessing Officer to consider claim of assessee in accordance with law by carrying out necessary verification of Form 10B filed by assessee. (AY. 2022-23)
Sarvadeivatha Education Trust v. ITO (2024) 208 ITD 759 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form 10B-Audit is completed before due date of filing of return-Procedural delay-CIT(A) is directed to pass fresh order on merits as per law. [S. 12A, 139(1), Form No. 10B] 250
Assessee trust claimed exemption under section 11. Assessing Officer disallowed same on ground that Form 10B is not submitted by auditor within due date i. e. under section 139(1). However, same was filed after delay of 31 days and the audit is completed well before due date fixed for filing Form 10B. The AO disallowed the claim of exemption. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the Assessee had provided a reasonable cause of lapse on part of auditors in filing Form 10B hence the Commissioner (Appeals) is supposed to take into consideration that non-filing of audit report along with return of income was a procedural omission. Therefore the matter is remanded to the file of Commissioner (Appeals) with the direction that he should take into consideration Form 10B of assessee and pass an order afresh on merits as per law. (AY. 2022-23)
Shakuntalam Bal Vikas Society v. ITO (2024) 208 ITD 772 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Intimation-Form 10B was filed-Failure to mention 12A registration-Adjustment is bad in law-Entitled to exemption. [S. 12A,139(1), 143(1)(a), R. 17B, Form 10B] 251
Assessee-trust claimed exemption under section 11. Assessing Officer by an intimation order under section 143(1)(a) disallowed claim on grounds that section 12A registration number was not mentioned and Form No. 10B (audit report) was not furnished one month prior to due date of filing of return of income under section 139(1). CIT(A) affirmed the order of the AO. On appeal the Tribunal held that since assessee is granted registration under section 12A during pendency of assessment proceedings and Form No. 10B is available with CPC while processing return, assessee is entitled to exemption under section 11. (AY. 2021-22)
Sirur Shikshan Prasarak Mandal v. ACIT (2024) 208 ITD 739 (Pune) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form No 10B-COVID-19-Delay is condoned. [S. 119, Form. No 10B, 10BBA] 252
Assessee-trust filed return of income on 14-3-2022 and also furnished Form No. 10B. Assessing Officer denied exemption under section 11 holding that Form No. 10B/10BB was not filed in time. CIT(A) allowed the exemption. On appeal the Tribunal held that since up to March, 2022, country was passing through COVID-19 Pandemic and due dates for filing of return of income as well as compliance made by assessee also fells

during that period, in such circumstances, delay caused in filing of Form No. 10B was to be condoned and the order of CIT(A) allowing the claim is affirmed. (AY. 2021-22)
ITO v. P K Krishnan Educational Trust (2024) 207 ITD 7 (Mum) (Trib.)

253 **S. 11 : Property held for charitable purposes-Form No 10B-Audit report-Delay of 28 days-COVID-19-Delay is condoned-Exemption is allowed. [S. 119, Form No 10B]**
The assessee-trust was denied exemption under section 11 due to a delay in furnishing audit report in Form 10B along with return. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that from March, 2020 to March, 2022, country was passing through Covid Pandemic which restricted normal activities and it was also an accepted fact that many changes had been brought into Act regarding procedure of filing of income-tax return as well as audit reports and certain technical glitches had been faced time and again. Considering those aspects, CBDT authorized condonation of delays up to 365 days for assessment year 2018-19 onwards and by Circular No. 16/2022 dated 19-07-2022 extended that to delays up to three years. Since delay was merely of 28 days, the delay is condoned and exemption under Section 11 allowed. (AY. 2020-21)
Kedar Nath Saraf Charity Trust v. DIT CPC (2024) 207 ITD 16 (Kol) (Trib.)

254 **S. 11 : Property held for charitable purposes-Profit motive-Business activity-Eligible to exemption-Depreciation-Allowable. [S. 2(15), 12A, 13, 32]**
Assessee-society which is registered under section 12A as a charitable society offering services to the nation as arm of Govt. of India under Software Technology Park of India (STPI) scheme. Assessing Officer held that assessee is indulged in business activities and treated all income except interest income as income from business and profession. Commissioner (Appeals) held that assessee is eligible for benefit of exemption under sections 11 to 13. On appeal the Tribunal held that assessee's own case for succeeding assessment year on identical issue Tribunal had held that assessee is a charitable society and income had to be computed in accordance with provisions of sections 11 to 13. Order of CIT(A) is affirmed. Claim of depreciation cannot be treated as double deduction. (AY. 2011-12)
Software Technology Parks of India v. DCIT (2024) 207 ITD 63 (Delhi) (Trib.)

255 **S. 11 : Property held for charitable purposes-Depreciation-Application of income-Application of income more than 85 percent of total income before depreciation-Matter remanded to the file of the Assessing Officer for deciding the issue in accordance with law. [S. 10(23C)(vi), 11(6),12A(a), 32]**
Assessee-trust claimed depreciation in its return of income and submitted that there was application of income of more than 85 per cent of total income. The AO disallowed depreciation, which was affirmed by the CIT(A). On appeal the assessee submitted that before depreciation, there would not be any tax liability, even if depreciation was inadvertently claimed in return. Tribunal held that looking into entire conspectus of section 11(6), it was necessary to set aside issue to file of Assessing Officer to look into application of income by assessee afresh. (AY. 2015-16)
Dharma Naidu Educational and Charitable Trust v. DCIT (2024) 207 ITD 419 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Activities for upliftment of poor, providing training and skill development to poor in rural areas-Denial of exemption is not justified. [S. 2(15)] 256

Assessee-trust is engaged in activities for upliftment of poor, providing training and skill development of poor in rural areas in backward districts of States. Assessee had been allowed benefit of exemption under section 11 continuously up to assessment year 2010-11. The Assessing Officer denied exemption to assessee by invoking proviso to section 2(15). CIT(A) allowed the exemption. On appeal the Tribunal held that the Assessing Officer had not brought on record any evidences which would suggest that activities of assessee had been carried out with profit motive and thus, mischief of proviso of section 2(15) was not attracted in case of assessee. Order of CIT(A) is affirmed. (AY. 2015-16 to 2017-18)

ITO v. Professional Assistance for Development Action (2024) 207 ITD 446 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Specified persons –Adequate consideration-Rental value adopted by Assessing Officer was less than 10 per cent rent received by assessee-Denial of exemption is not justified. [S. 12, 12A(a), 13(2)(b), 13(3)] 257

Assessee filed return of income disclosing nil income on account of it being registered as a company under section 25 of Companies Act, 1956 as also registered under section 12A(a). Assessing Officer held that assessee had made available building owned by it to persons referred to in section 13(3) without charging adequate rent or compensation and had violated provisions of section 13(2)(a) and 13(2)(b) read with section 13(3). Accordingly, he assessed total income of assessee at certain amount by denying claim for application of income and exemption under section 11 on account of infringement of section 13(2)(b) read with section 13(3). On appeal, Commissioner (Appeals) held that difference between rental value adopted by Assessing Officer and rental value adopted by assessee being less than 10 per cent, rent received by assessee could not be said to be not adequate hence allowed benefits of exemption under sections 11 and 12 to assessee. On appeal the Tribunal held that on facts order of Commissioner (Appeals) is affirmed. Followed *CIT(E) v. Hamdard National Foundation (India) (2022) 286 Taxman 441/ 443 ITR 348 (Delhi)(HC)* (AY. 2007-08)

DCIT v. Indian Grameen Services. (2024) 207 ITD 609 (Delhi) (Trib.)

S. 11 : Property held for charitable purposes-Promotion of education, culture and philosophy-Return filed in wrong form-Filed return in Form 5 claiming loss which is meant for business income-The Assessing Officer is directed to consider return as a rectification petition. [S. 12AA, 139(4A), 139(9), 139C, 143(1), 154, Form No 5, Form No 7] 258

Assessee, a charitable trust, filed its return claiming loss for relevant years. Return is processed under section 143(1) disallowing application of income under section 11(1)(a). Assessee did not act thereon and filed appeal before Commissioner (Appeals) with a delay of 3 years 2 months and 2 years and 2 months for two years respectively. CIT(A) dismissed the appeal as not maintainable on finding of gross negligence. On appeal the Tribunal held that since assessee-trust filed its return in Form 5, which was meant for business income, processing of returns denying exemption under section 11(1)(a) was a mistake apparent from record and Commissioner (Appeals) should have directed

Assessing Officer to consider assessee's returns of income as rectification petitions. Matter remanded. (AY. 2014-15, 2015-16)
Kathikode Charitable Trust v. ITO (2024) 207 ITD 588 (Cochin) (Trib.)

259 **S. 11 : Property held for charitable purposes-Rent receipt-Receipt from rent by assessee-society was in course of actual carrying out of objects of general public utility and same was below 20 per cent of total receipt-Commissioner (Appeals) is justified in allowing benefit under sections 11 and 12-Corpus donation-Donation received by assessee-society were with specific direction and also utilized for construction of fixed assets i. e. bhawans only, same was corpus donation exempted under section 11(1)(d) [S. 2(15), 11(1)(d), 12A]**

Assessee-society, registered under section 12A, which is engaged in arrangement, management and enhancement of immovable property in order to earn rent, to earn profit after sale, to earn donation etc. -It had claimed exemption under section 11 in respect of its rental income. Assessing Officer, rejected assessee's claim of exemption under section 11 holding that assessee-society was advancing object of general public utility and rent receipt from such activity was more than prescribed limit of Rs. 25 lakhs, therefore, activities of assessee were not for charitable purpose. Commissioner (Appeals) allowed the benefit of exemption under sections 11 and 12 to assessee. On appeal the Tribunal held that there was no material brought on record to support the fact that assessee was acting with profit motive so far in activities carried out. Receipt that assessee received was invested or expended for object of society and Assessing Officer failed to bring on record as to why rental income was treated as commercial income. Since receipt from rent was in course of actual carrying out of objects of general public utility and same was below 20 per cent, Commissioner (Appeals) is justified in allowing benefit under sections 11 and 12 to assessee. Tribunal also held that since copies of receipts contained direction of donor that money were for construction of fixed assets i. e. bhawans only and assessee had done that activity, Commissioner (Appeals) was justified in allowing benefit of section 11 to assessee. (AY. 2016-17)
ACIT v. Shree Maheshwari Samaj (2024) 207 ITD 701/232 TTJ 17(UO) (Jodhpur) (Trib.)

260 **S. 11 : Property held for charitable purposes-Grants received from Government-Spent 85 percent of such income-Balance income is exempt under section 11 of the Act. [S. 11(5), 13(1)(d)]**

Assessee is a Board established by Central Government to act as a nodal agency in developing activities of fisheries among various states in the country. Major source of receipt was grants from Central Government, and outflow was utilization of grants for projects developed by respective State Governments which were supervised by assessee. Assessee based on stage of completion of project released grants to State Government. Assessing Officer, held that the assessee did not utilise 85 per cent total grants-in-aid received during year and funds received back as refunds from various projects during year. He was of view that assessee had invested in equity shares of SDMSSL and thereby had contravened provisions of section 13(1)(d) read with section 11(5). Accordingly, he taxed shortfall in application of income below 85 per cent of total income of trust. Commissioner (Appeals),held that on an incorrect appreciation of accounting policies followed by assessee, Assessing Officer had rejected books, without actually bringing

on record any defect in audited accounts of assessee and, therefore, he allowed claim of exemption under section 11. It was observed that assessee had maintained books of account, bills, vouchers and all other requisite supporting documents in respect of grants received, spent and other activities. Such books were audited by independent auditors-Assessee had been following accounting procedure as defined in GFR 230(5) of Government of India and directions of Integrated Financial Division of Ministry of Agriculture, Government of India (IFD) over years and treating all grants as liabilities and only when grants were utilised by implementing agencies they were treated as income and when utilisation certificates were received, they were treated as expenditure irrespective of year in which grant was received, as per directions of Government of India. There was no income element on grant of funds by Central Government, nor any expenditure incurred merely by allocation. Assessee had spent 85 per cent of income for objectives. Further, such an investment was made in SDMSSL, in financial year 2008-09 and not during current year and never in earlier years any objection on that aspect was taken. Order of CIT(A) is affirmed. (AY. 2015-16)
DCIT v. National Fisheries Development Board. (2024) 206 ITD 20 (Hyd) (Trib.)

S. 11 : Property held for charitable purposes-Gross receipt is more than Rs. 10 lakhs-Primary purpose of an institution is advancement of objects of general public utility-Charitable trust would remain charitable even if an incidental or ancillary activity or purpose for achieving main purpose, is profitable in nature. [S. 2(15), 12A] 261
Assessee is a registered under section 12A and had derived income by way of contributions from the head office, membership fee, income from publication of Indian Foundry journal, other grants and donations etc. besides receiving interest on fixed deposits. It had claimed exemption under section 11. Assessing Officer, rejected claim of exemption on ground that assessee-society was advancing object of general public utility and gross receipt of assessee from such activity was more than Rs. 10 lakhs in previous year and, therefore, activities of assessee were not for charitable purpose. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that on similar issue in case of Indian Chamber of Commerce v. Dy. CIT [IT Appeal Nos. 933 & 934 (Kol.) of 2023, dated 22-12-2023] had held that if primary purpose of an institution was advancement of objects of general public utility, it would remain charitable even if an incidental or ancillary activity or purpose for achieving main purpose, is profitable in nature. Since profit derived from services rendered as public utility service was very meagre, Assessing Officer is directed to allow exemption under section 11. (AY. 2014-15)
Institute of Indian Foundrymen v. ITO (2024) 206 ITD 203 (Kol) (Trib.)

S. 11 : Property held for charitable purposes-Advertisement expenses –Specified person-Red Eye Media Pvt Ltd-Billed same amount as news paper company billed-Justified in deleting-Brokerage and commission-Matter is restored to Assessing Officer for re-adjudication-Depreciation-Position prior to 1-4-2015-Entitled to claim depreciation under section 32 on assets whose cost had been allowed as application for charitable purposes under section 11(1)(a). [S. 11(6), 11(1)(a), 12A, 13(3), 32] 262
Assessee, a charitable institute, had incurred advertisement expenses pertaining to advertisement work that which handled by Red Eye Media Pvt Ltd (REM)) a related party and a specified person, falling within the meaning of section 13(3). Assessing