

**SPEAKER**  
**CA M R SAHU**  
**FCA,FCMA,LLB**  
**TAX LITIGATION EXPERT**  
**EMAIL:msahu.fca16@gmail.com**  
**M.NO:9958062648**

### **1.Interpretation of Statute: Intention of Legislature must be judged.**

Interpretation of a Statute must be construed according to the intention of the Legislature and Courts should act upon true intention of the Legislation while applying the Law. If a statutory provision is open to more than one interpretation Court has to choose the interpretation which represents the intention of the Legislature.

PCIT, Shimla Vs. Aarham Softronics (2019) 412 ITR 623 (SC).

Kerala State Industrial Development Corpn. Ltd Vs. CIT (2003) 259 ITR 1 (SC).

Sole Trustee, Lok Shikshana Trust Vs. CIT (1975) 101 ITR 234 .

### **2.Rule of Construction of a Statute (may be new or amending statute) under the I.T Act:**

**Answer:** Two Rules of Construction (i). **Curative or Calrificatory nature** and (ii).**Substantive nature.**

Curative or Calrificatory Nature: **Retrospective Operation.**

Substantive Nature : **Prospectively.**

CIT Vs. Vatika Township (P.) Ltd (2014) 367 ITR 466 (SC).

CIW Vs. Sharvan Kumar Swamp & Sons (1994) 210 ITR 886 (SC).

CIT Vs. Sarkar Builders (2015) 375 ITR 392 (SC)

Tata Teleservices Vs. UOI (2016) 385 ITR 497 (Guj.HC).

### **3.Finance Minister's Budget Speech explaining the provision are relevant in construing the provision.**

Allied Motors Pvt Ltd Vs. CIT (1997) 224 ITR 677 (SC).

K.P.Verghese Vs. ITO (1981) 131 ITR 597 (SC).

**4. New or Amending statute which affects the existing rights, creates any new liability, attach any disability, impose obligations unless expressed in the Statute as Retrospective has to be constructed as Prospective.**

CIT Vs. Vatika Township (P.) Ltd (2014) 367 ITR 466 (SC).  
CIT Vs. Walfort Shares & Stock Brokers (P.) Ltd (2010) 326 ITR 1 (SC).  
CIT Vs. Gold Coin Health Food (P.) Ltd (2008) 304 ITR 308 (SC).  
Sedco Forex International Drill Inc. Vs. CIT (2005) 279 ITR 310 (SC).

**5. Law as stood on the 1<sup>st</sup> April of any financial year must apply to the assessment of that year. Any amendments in the Act which came in to force after the 1st day of April of a financial year would not apply to the assessment for that year unless specifically mentioned as applicable retrospectively even if assessment is actually made after the amendment came in to force.**

Karimtharuvi Tea Estates Pvt Ltd Vs. State of Kerala (1966) 60 ITR 262 (SC).  
Reliance Jute & Industries Ltd Vs. CIT (1972) 120 ITR 921 (SC).  
CIT Vs. Scindia Seam Navigation Co. Ltd (1961) 42 ITR 589 (SC).  
CIT Vs. Scindia Seam Navigation Co. Ltd (1961) 42 ITR 589 (SC).  
Avasaraja Automation Ltd Vs. DCIT (2004) 269 ITR 163 (Kar.HC)  
Andhra Cement Ltd Vs. CIT (1998) 232 ITR 364 (AP.HC)

**6. Amendment in section 40(a)(ia) by the Finance No.2 Act,2014,- Regarding 30% disallowance of expenses on which TDS was either not deducted or deducted not deposited before due date of filling return u/s 139(1):**

Amendment being **substantive** in nature has to be held applicable **prospectively NOT retrospectively.**

**Shree Choudhay Transport Co Vs. ITO. (2020) 118 taxmann.com 47 (SC).**

**7. Amendment by the Finance Act,2010 w.e.f regarding allowance of amount which was disallowed either due to non deduction of TDS or TDS deducted not**

**deposited before due date of filing return in earlier years to be allowed in subsequent year when TDS was deposited to the Govt.A/c.**

This amendment being **curative** in nature has to be applied **Retrospectively**.

**CIT Vs. Calcutta Export Co. (2018) 404 ITR 654 (SC).**

**Question.1:** Whether amendment brought in by the Taxation Laws (Second Amendment Act,2016 ) in section 115BBE increasing tax rate **30% to 60%** is Retrospective or Prospective?

**Answer: It is Applicable Prospectively.**

**Question.2:** Whether amendment brought in by the Taxation Laws (Second Amendment Act,2016 ) in section 115BBE increasing tax rate 30% to 60% is applicable to business transactions?

**Answer: Not Applicable to Business Transactions.**

**Question.3:**Whether amendment brought in by the Finance Act,2021 increasing tax audit limit from Rs.5.00 Crores to Rs.10.00 Crores in the case of non cash transactions is applicable Retrospectively or Prospectively?

**Answer: It is Applicable Retrospectively.**

**Question.4:**Whether amendment brought in by the Finance Act,2021 increasing annual receipt limit u/s 10(23C)(iiiad) and u/s 10(23C)(iii ae) from **Rs.1.00 Crores** to **Rs.5.00 Crores** is applicable Retrospectively or Prospectively?

**Answer: It is Applicable Retrospectively.**

**Question.5:**Whether amendment brought in by the Finance Act,2020 increasing the tolerance limit from 5% to 10% in section 50C,Sec 43CA and Sec 56(2)(x) is applicable Retrospectively or Prospectively?

**Answer: It is Applicable Retrospectively.**

**7A.Whether disallowance can be made u/s 40(a)(ia) for short deduction of TDS?**

**NO.** For short deduction of TDS no disallowance can be made u/s 40(a)(ia).

CIT Vs. S.K.Tekriwal (2014) 361 ITR 432 (Cal.HC).

CIT-LTUS Vs. Hewlett Packard India Sales (P.) Ltd (2016) 382 ITR 496 (Kar.HC).

**Question.5A: Whether assessee can suffer disallowance u/s 40(a)(ia) due to non deduction of TDS u/s 206AB (Non Filers of Return of Income) even though TDS was deducted under the applicable TDS section say 194C?**

**NO.** There may not be disallowance u/s 40(a)(ia) due to non deduction of TDS u/s 206AB as TDS was deducted under the applicable TDS section . Non deduction of tds u/s 206AB may be held as short deduction of TDS.

8.An assessment stood closed on basis of law as it stood at **relevant time** when **assessment order** was passed , which **neither** can be **reopened u/s 147** nor **revisionary proceeding u/s 263** can be undertaken in view of subsequent judgment of Jurisdictional High Court and Supreme Court or **retrospective** amendment in the Act.

DCIT Vs. Simplex Concrete Piles (India) Ltd (2013) 358 ITR 129 (SC).  
CIT,(Central), Ludhiana Vs. Max India Ltd (2007) 295 ITR 282 (SC).

**9. Whether Judicial decisions are operates retrospectively ?**

**Yes. Judicial decisions are applicable retrospectively.**

It is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite sometime, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

ACIT, Rajkot Vs.Sauratha Kutch Stock Exchange Ltd (2008) 305 ITR 227 (SC).  
CIT Vs.Smt. Aruna Luthra (2001) 252 ITR 76 (PH.HC)-FB.  
B.V.K Seshavataram Vs.CIT (1994) 210 ITR 633 (AP.HC).  
Kilko Tagiri Tea & Coffee Estates Co. Ltd Vs. ITAT (1988) 174 ITR 579) (Ker.HC).

**10.Whether not following Supreme Court/ Jurisdictional High Court Order is a mistake apparent from records u/s 154 or u/s 254 ?**

**Yes. It is a mistake apparent from records to be rectified either u/s154 or u/s 254.**

ACIT, Rajkot Vs.Sauratha Kutch Stock Exchange Ltd (2008) 305 ITR 227 (SC).

B.V.K Seshavataram Vs. CIT (1994) 210 ITR 633 (AP.HC).  
CIT Vs. V L S Finance Ltd (2009) 310 ITR 224 (Del.HC).  
Honda Siel Power Products Ltd Vs. CIT (2007) 295 ITR 466 (SC).

**11.Rectification u/s 154 or u/s 254 is not possible for debatable issues and where AO is finding the mistake after long drawn process.**

ITO Vs. Volkat Brothers (1971) 82 ITR 50 (SC).  
CIT Vs. Hero Cycles (P.) Ltd (1997) 94 Taxman 271 (SC).  
CIT Vs. Bhagwati Developers Pvt Ltd (2003) 261 ITR 658 (Cal.HC).  
CIT Vs. Ramesh Electric & Trading Company (1993) 203 ITR 497 (Bom.HC).  
Second Additional Income Tax Officer Vs. Atmala Nagraj (1962) 46 ITR 609 (SC).

**12.Education cess and higher secondary cess are liable for deduction u/s 37 while computing income under the head ' Profits and Gains Business or Profession'.**

Sesa Goa Ltd Vs. JCIT (2020) 423 ITR 426 (Bom.HC). **(Order dated 28/02/2020).**  
Chambal Fertilisers & Chemical Ltd Vs. Vs.CIT. ITA No: 52 of 2018 , Order dated 31/07/2018 .(Raj.HC)

**Question.6:**Which Assessee's can apply for rectification of the orders u/s 154 or u/s 254 following orders of Bombay or Rajasthan High Court relating to allow ability of Education Cess as normal business expenditure u/s 37.?

**Answer:**

Assessee having Jurisdiction in the state of Maharashtra and Rajasthan can take the advantage of the decisions of the Bombay HC and Rajasthan HC and can claim benefit u/s 154 or u/s 254 .

Other Assessee's having Jurisdiction out of the State of Maharashtra and Rajasthan can not apply for rectification u/s 154 or u/s 254 because the issue is **debatable** and rectification u/s 154 or u/s 254 can not be made.

**13.Whether time period given u/s 154 (7) i.e (no rectification order shall be made after the expiry of 4 years from the end of the relevant financial year when the order sought to be passed) specifies the time limit for making rectification application or rectified order to be passed ?**

Sec 154(7) specifies the time limit for making rectification petition to the Revenue Authorities.

Sree Ayyanar Spinning & Weaving Mills Ltd Vs. CIT (2008) 301 ITR 434 (SC).  
Vithalji Madhavji Vs. ITO (1969) 71 ITR 204 (All.HC).

#### **14.What is the Guidelines set by the Supreme Court regarding finality of legal proceedings?**

It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves, with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in **loss of revenue**. At the same time, one has to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a **particular stage and that lapse of time** must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.

Parashuram Pottery Works Co.Ltd Vs. ITO (1977) 106 IT 1 (SC).

**Question.7:**Whether assessment order passed u/s 143(3) can be rectified u/s 154 which are passed **before** pronouncement of Jurisdictional High Court Order?

**Answer: No.** Because assessment order passed u/s 143(3) was passed on the basis of law existing on the date of passing of the order.

**15.Whether intimation issued u/s 143(1) is an order for the purpose of appeal u/s 246 , revision in favour of assessee u/s 264, rectification u/s 154 and reassessment u/s 147?**

**Yes.** Intimation u/s 143(1) is an order for appeal u/s 246, revision in favour of assessee u/s 264 and rectification u/s 154 .

Vijaya Gupta Vs. CIT (2016) 386 ITR 643 (Del.HC).

S.R.Koshto Vs.CIT (2005) 276 ITR 165 (Guj.HC).

CIT Vs. K.V.Mankrama (2000) 245 ITR 353 (Ker.HC).

Assam Roofing Ltd Vs. CIT (2014) 43 taxmann.com 316 (Guhati HC).

**Yes. Intimation u/s 143(1) is an order for income escaped assessment u/s 147.**

ACIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd (2007) 291 ITR 500 (SC). **(For u/s 147).**

**Question.8:** Whether intimation issued u/s 143(1) can be rectified u/s 154 for prior years on the basis of Jurisdictional High Court / Supreme Court Order and if answer is **Yes** than time limit given u/s 154(7) has to be considered?.

**Answer: Yes.** Intimation **u/s 143(1)** can be rectified u/s 154 having regard to the ratio of the Jurisdictional High Court / Supreme Court Order as those orders are applicable **retrospectively**.

**Time Limit as given u/s 154(7)** is applicable , that is 4 prior years from the end of the relevant financial year when the Jurisdictional High Court Order was passed.

**For Example:** Bom. HC order in Seas Goa Ltd (supra) was passed on 28/02/2020 in the FY-2019-20. Hence Assessee can apply for rectification of the Intimation issued From FY 2015-16 to FY 2018-19. **(This is based on the logic for issuing notice u/s 148).**

**16. Interest u/s 234A, u/s 234B & u/s 234C is mandatory in nature has to be imposed.**

CIT Vs. Anjum M.H.Ghaswala (2001) 252 ITR 1 (SC).

CIT Vs. Bhagat Construction (P.) Ltd (2015) 235 Taxman 135 (SC).

**17. Interest u/s 234A, u/s 234B & u/s 234C though mandatory in nature can not be imposed and demand can not be raised in the demand notice without mentioning satisfaction of AO towards charge of interest on the face of the assessment Order.**

CIT Vs. Dehradun Club Ltd (2013) 351 ITR 396 (UK.HC).

CIT Vs. Deep Awadh Hotels (P.) Ltd (2013) 350 ITR 185 (All.HC).

CIT Vs. Ruchira Papers Ltd (2013) 212 Taxman 9 (HP.HC).

**Contra Decision:**

ACIT Vs. Norma Detergent (P.) Ltd (2016) 386 ITR 56 (Guj.HC).

**18. Law can not compel a person to do some thing which is impossible to perform.**

Krishna Swamy S.Pd Vs. UOI (2006) 281 ITR 305 (SC).  
Life Insurance Corporation of India Vs. CIT (1996) 219 ITR 410 (SC).

**19. Retrospective Amendment whether interest u/s 234A, u/s 234B & u/s 234C has to be imposed?**

**Answer : NO.**

Star India Pvt Ltd Vs. CIT (2006) 280 ITR 321 (SC).  
Emami Ltd Vs. CIT (2011) 337 ITR 470 (SC).

**20. Real Income** is Taxable, **Tax Rate remaining same** there should not be any dispute regarding allow ability of expenses in any particular year, **Rule of consistency.**

**Excel Industries Ltd Vs. CIT (2013) 358 ITR 295 (SC).**  
**CIT Vs. Shoorji Vallabhdas & Co (1962) 46 ITR 144 (SC). (For Real Income).**

**21. Whether waiver of Loan can not be taxed either u/s 28(iv) or u/s 41(1)?**

**No.** It can not be taxed u/s 28(iv) or u/s 41(1) as it is **capital receipt** not taxable.

**CIT Vs. Mahindra And Mahindra Ltd (2018) 404 ITR 1 (SC).**

Waiver of interest where deduction was **claimed** shall be taxed u/s 41(1).

**22. Availment of TDS credit by the Deductee even if not reflected in the Form 26AS:**

**(i). Deductee assessee is entitled to avail TDS credit u/s 199 r.w.r 37BA(3) in the year when income was offered to tax on submission of proof of TDS deduction including manual TDS certificate even if not reflected in Form 26AS**

PCIT Vs. Tata Communications Ltd (2019) 267 Taxman 497 (SC).  
Sumit Devendra Rajni Vs. ACIT (OSD) (2014) 369 ITR 673 (Guj.HC).  
Rakesh Kumar Gupta Vs. UOI (2014) 365 ITR 143 (All.HC).  
Subramania Siva Vs. ITO (2020) 272 Taxman 455 (Mad.HC)

**(ii). Once TDS has been deducted from the amount due to the deductee, assessee deductee can not be compelled again to deposit the tax and entitled to**



**TDS credit u/s 199 r.w.r 37BA(3), even if TDS was not deposited to the Central Govt. A/C.**

Pushkar Prabhat Chandra Jain Vs. UOI (2019) 262 Taxman 118 (Bom.HC)

Yashpal Saini Vs. ACIT (2007) 293 ITR 539 (Bom.HC)

Smt. Anusuya Salva Vs. DCIT (2005) 278 ITR 206 (Kar.HC)

**(iii).TDS credit not allowed to Assessee , TDS Receivable A/C in the books of account written off and charged to P&L A/C , Whether assessee is entitled to claim the loss on account of non avilment of TDS credit as business loss?**

**Yes.** On written Off 'TDS Receivable A/C' in the books of account assessee is entitled to claim the same as business loss u/s 37 or as bad debt u/s 36(1)(vii) r.w.s 36(2).

CIT Vs.Shreyans Industries Ltd (2008) 303 ITR 393 (P&H.HC).

DCIT Vs.AGC Network Ltd (2020) 180 ITD 204 (Mum.Trib).

ACIT Vs. Kelly Services India Pvt Ltd . ITA No:5435/Del/2011.Order dated 31/10/2012. (Del.Trib).

**23. Interest/Compensation paid by the Builder/Developer/Housing Board as per agreement for failure to make plots/house/flats available to allottees within agreed time such payment so made to the allottees would not be considered as interest as defined u/s 2(28A) of the I.T Act,1961 so as qualify for TDS deduction u/s 194A.**

**Definition of Interest u/s 2(28A): "Interest"** means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee, or other charge in respect of the moneys borrowed, or debt incurred, or in respect of any credit facility which has not been utilised.'

PCIT Vs. West Bengal Housing Infrastructure Development Corpn. Ltd (2018) 257 Taxman 570 (Cal.HC). SLP Dismissed by SC reported in (2019) 263 Taxman 237 (SC).

CIT Vs. H.P Housing Board (2012) 340 ITR 388 (HP. HC)

Ghaziabad Development Authority Vs. N.K.Gupta (2002) 258 ITR 337 (NCDRC)

Delhi Development Authority Vs. ITO (1995) 53 ITD 19 (Del.Trib)

**23.1. Whether compensation/interest paid by the Builder/Developer/Housing Board for delay in deliver of plots/flats is an allowable expenditure in the hands of the Builder/Developer/Housing Board?**

**Yes.** It is allowable in the hands of the Builder/Developer/Housing Board.

Kamdhenu Real Estate (P) Ltd Vs. ACIT. ITA No:1471/PN/2014. Order dated 16/09/2016. **(Pune.Trib)**

DCIT Vs. Achiver Builders Pvt Ltd . ITA No.5113/Del/2013.Order dated 19/05/2014. **(Del.Trib)**

**23.2.Compensation/Interest received by the buyer/allottee due to delay in delivery/possession from the Builder/Developer is a Capital Receipt not liable for tax under the I.T Act,1961.**

Jitender Kumar Soneja Vs. ITO . ITA No.291/MUM/2015. Order dated 12/05/2016. **(Mum.Trib)**

Kushal K Bangia Vs. ITO . ITA No.2349/MUM/2011.Order dated 12/01/2012. **(Mum.Trib)**

Smt.Jaswinder Kaur Vs. DCIT . ITA No.1307/Chd/2019.Order dated 11/07/2019. **(Chd.Trib)**

**23.3.Accounting Treatment in the hands of the Buyer:**

23.3.1. Possession/Delivery of the flat/plot was **taken** from the Builder/Developer:

**Interest/Compensation** has to be deducted from the value of the flat/plot and net asset value to be taken as cost of **acquisition**.

23.3.2. Possession/Delivery of the flat/plot was **not taken** from Builder/Developer:

**No need to deduct interest/compensation.**

**24.Failure in computation mechanism relating to Capital Gain , NO Capital Gain Tax to be imposed under the I.T Act,1961.**

CIT Vs. B.C.Srinivas Shetty (1981) 128 ITR 294 (SC).

PNB Finance Ltd Vs.CIT (2008) 307 ITR 75 (SC).

## **25.Failure to substantiate Identity, Genuineness and Creditworthiness of the Investor/Lender justifies addition u/s 68.**

### **PCIT Vs. NRA Iron & Steel (P.) Ltd (2019) 412 ITR 161 (SC).**

**25.1.**The principles which emerge from the decision of the SC in the case of ' PCIT Vs. NRA Iron & Steel (P.) Ltd ' where sums of money are credited as share capital/premium are as under:

**(i).**The Assessee is under a legal obligation to prove the genuineness of the transaction ,the identity of the creditors/investors/lenders and creditworthiness of the creditors/investors/lenders who should have the financial capacity to make the investment in question to the satisfaction of the AO so as to discharge the primary onus.

**(ii).**The **AO** is duty bound to investigate the creditworthiness of the creditor/subscriber/lender, verify the identity of the creditor/subscriber/lender and ascertain whether the transaction is genuine or these are bogus entries of the Lenders/Creditors/Subscribers.

**(iii).**If the enquiries and investigation reveal that the identity of the creditors/lenders/subscribers are dubious or doubtful or lack of creditworthiness , then the genuineness of the transaction would not be established. In such a case the assessee would not have discharged the primary onus contemplated by section 68 of the Act.

## **26.Whether creditworthiness of Source of Source is required u/s 68 in the case of unsecured loan?**

**NO.** Assessee is not obliged to prove credit worthiness of source of source in the case of unsecured loans.

Nemichand Kothari Vs. CIT (2003) 264 ITR 254 (Gauhati HC)

CIT Vs. Shiv Dhooti Pearls & Investment Ltd (2016) 237 Taxman 104 (Del.HC)

CIT Vs. Diamond Products Ltd (2009) 177 Taxman 331(Del.HC)

Prayag Tendu Leaves Processing Co. Vs. CIT (2018) 252 Taxman 306 (Jharkhand HC)

Kesharwani Sheetalaya Sahsaon Vs. CIT (2020) 274 Taxman 25 (All.HC)

**Credit worthiness of Source of source is required in the case of Share Application w.e.f AY 2013-14.**

**27.Once Identity, Creditworthiness , Genuineness of the creditors are proved , No addition u/s 68 even if return of income was filed at low/meager income.**

PCIT Vs. Ami Industries (P.) Ltd (2020) 271 Taxman 75 (Bom.HC)

CIT Vs. Vrindavan Farms Pvt Ltd . ITA 71 of 2015.Order dated 12/08/2015. (Del.HC).

PCIT Vs. Rakam Money Matters (P.) Ltd . ITA 778 of 2015.Order dated 13/10/2015. (Del.HC).

**28.Whether AO of the borrower / share issuer Company can establish the credit worthiness/genuineness of the Lender / Subscriber company without referring the matter to AO of the Lender / Subscriber company ?**

AO of the borrower / share issuer company in order to judge the genuineness and creditworthiness of the Lender/Share Subscriber Company has to refer the matter to the AO of the Lender/Share Subscriber Company where Lender/Share Subscriber Company is Income Tax Assessee and PAN NO. was submitted before the AO.

CIT Vs. Ranchhod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Guj.HC).

CIT Vs. Data Ware Pvt Ltd .ITA No.263 of 2011 & GA No.285 of 2011.Order dated 21/09/2011. (Cal.HC).

**29.Assessee produce preliminary details to prove Identity, genuineness and Credit worthiness which was not verified AO, addition made by AO on the basis of third party statements without offering an opportunity of cross examination addition u/s 68 is not valid.**

CIT Vs. Oden Builders Pvt Ltd (2019) 418 ITR 315 (SC).

**30.Where Assessee has discharged onus initially cast upon it by submitting necessary documents to proof about the identity, genuineness and creditworthiness and AO without verification made addition u/s 68 on the basis of third party statement ,such addition is invalid.**

PCIT Vs. Admine Construction Pvt Ltd (2018) 259 Taxman 131 (SC).

**31. Under deeming provisions (say u/s 68, u/s 69 etc) AO can not assume jurisdiction for making addition on the basis of surmises, assumption, doubt without verifying the documents placed before him, irrespective of quantum of addition.**

Pr.CIT Vs. Himachal Fibres Ltd ((2018) 98 taxmann.com 173 (SC).

"The Hon'ble Supreme Court in the case of **Pr.CIT Vs. Himachal Fibres Ltd (supra)** in which the departmental appeal was **dismissed confirming** the decision of the Hon'ble Delhi High Court in the case of '**Pr.CIT Vs. Himachal Fibres Ltd (2018) 98taxmann.com 172** in which the Hon'ble Delhi High Court has followed its earlier decisions in the case of '**Pr.CIT Vs. Softline Creations Pvt Ltd (2016) 387 ITR 636** , **Pr.CIT Vs. N.C.Cables Ltd (2017) 391 ITR 11** and it has been held that in a case where the assessee has **furnished** all relevant facts **within his knowledge** and has offered a **credible explanation** , then the **onus reverts to the revenue** to prove that these facts are **not correct**. In such a case , the revenue can not draw the **inference** based upon **suspicion or doubt or perception of culpability** or on the quantum of the amount involved particularly when the question is one of **taxation** under the **deeming provision**. It was further held that **neither doubt/suspicion nor the quantum** shall determine the **exercise of jurisdiction** by the AO".

**32. Where assessee produced all documentary evidence before AO to justify the Identity ,Genuineness and Credit Worthiness of the Share Applicants/Lenders , AO does neither make any independent enquiry nor issue any notice u/s131 and made addition on the basis of third party statement such addition is not valid.**

CIT Vs. Fair Invest Ltd (2013) 337 ITR 146 (Del.HC).

**33. Where Identity, Genuineness and Creditworthiness of creditors/share applicants are established are AO can not make addition u/s 68 under the ground that notice issued u/s 131 for physical presence was not served upon the Creditors/ Share Applicants and parties are not presented before him for attendance.**

CIT Vs. Orissa Corporation (P.) Ltd (1958) 159 ITR 78 (SC).

DCIT Vs. Rohini Builders (2006) 256 ITR 360 (Guj.HC).

CIT Vs. Shri Raj Kumar Agarwal . ITA No. 179 of 2008. Order dated 17/11/2009. (All.HC).

CIT Vs. Orchid Industries Pvt Ltd (2017) 397 ITR 136 (BOM.HC).

### **34. 'Principle of Natural Justice'- Latin Phrase ' Audi Alterma Parterm'.**

'Audi Alterma Parterm' is a phrase of Latin .Its meaning is ' Hear the other side' or ' the other side also heard as well'. This is a strong principle that no person shall be judged without fair haring. The principle is meant to give opportunity to respond the evidence against him.

The principle of *audi alteram partem* is the basic concept of natural justice. The expression 'audi alteram partern' implies that a person must be given an opportunity to defend himself. This principle is *sine qua non* of every civilized society. **The right to notice**, right to present case and evidence, right to rebut adverse evidence, right to cross-examination, right to legal representation, disclosure of evidence to party, report of enquiry to be shown to the other party and reasoned decisions or speaking orders. The Supreme Court has laid down that rule of fair hearing is necessary before passing any order. It is found that it is pre-decision hearing standard of norm of rule of audi alterarn parterm.

**34.1.Reasonable opportunity of hearing to be afforded by the CIT to the assessee to controvert and to explain the issues before passing the final order and failure to give such an opportunity would render the revisional order legally fragile not on the ground of Jurisdiction but on the ground of violation of principle of natural justice.**

CIT Vs. Amitabh Bachchan (2016) 384 ITR 200 (SC).

**34.2.Tax Liability can not be increased without proper opportunity of hearing.**

M.Chockalingam & M.Meyyappan Vs. CIT (1963) 48 ITR 34 (SC)

**34.3.Assessment order can not be passed without proper opportunity of hearing.**

TIN Box Co Vs. CIT (2001) 249 ITR 216 (SC)

**34.4.Adequate days to respond the show cause notice has to be allowed considering weekly off as well as public holiday.**

Sona Builders Vs. UOI (2001) 251 ITR 197 (SC).

**34.5.Assessment proceedings before the Income Tax Officer are quasi judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at. The Assessee has a right to inspect the**

**record and all relevant documents before he is called upon to lead evidence in rebuttal. This right has not been taken away by any express provision of the Income Tax Act.**

Suraj Mall Mohta & Co. Vs. Viswanatha Sastry (1954) 26 ITR 1 (SC).

**34.6. Order passed denying the opportunity of cross examination of the witnesses and offering a copy of the statement relied upon for confirming addition against the assessee is violative of 'Principles of Natural Justice' which is a serious flaw which renders the order a nullity.**

Andaman Timber Industries Vs. CCE (2015) 62 taxmann.com 3 (SC).

CIT Vs. Oden Builders Pvt Ltd (2019) 418 ITR 315 (SC).

Kalra Gule Factory Vs. Sales Tax Tribunal (1987) 167 ITR 498 (SC).

Kishanchand Chellaram Vs. CIT (1980) 125 ITR 713 (SC).

CIT Vs. Pradeep Kumar Gupta (2008) 303 ITR 95 (Del.HC).

CIT Vs. Eastern Commercial Enterprises (1994) 210 ITR 103 (Cal.HC)

H.R.Mehta Vs. ACIT (2016) 387 ITR 561 (Bom.HC)

**34.7. Violation of Natural Justice may lead to violation of fundamental rights of equality guaranteed by Article 14 or 21 of the Constitution of India.**

C.B.Gautam Vs. UOI (1993) 199 ITR 530 (SC)

Dharkeswari Cotton Mills Ltd Vs. CIT (1954) 26 ITR 775 (SC)

**35. What is the meaning of speaking document and dumb document ?  
Whether any charge can be created against the assessee on the basis of any dumb document found during survey/search/post search/survey investigation?**

**35.1. Speaking Document Definition and satisfaction of components of Taxation:**

Speaking document is one where all the ingredients/components for levying taxation are clearly readable, legible either on standalone basis or in association with other documents or through investigation. The ingredients/components which enter into the concept of taxation are as under:

(i). Nature of transaction whether it is revenue or capital without any presumption but based on cogent materials.

(ii). The person on whom the levy is imposed and who is obliged to pay the tax,

(iii).The assessment year in which charge of income tax is levied.

(iv).Quantum of income. Presumptions to arrive at the quantum of money is not sustainable.

A charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search/survey. The document should be clear and unambiguous in respect of all the four components of the charge of tax.

### **35.2.Dumb Document Definition :**

A document will be a document where any of the five ingredients for taxation is missing and the AO fails to supplement the missing ingredient with the help of other documents or from post –search investigation/inquiries including survey.

### **35.3.No charge can be levied against the assessee on the basis of any dumb document. Loose Sheets, Pen Drives, Documents found in Computer Disk not being records maintained by the Assessee in regular course of business can not be held as evidence u/s 34 of the Evidence Act,1872 for making addition against the assessee.**

Common Cause (A Registered Society) Vs. UOI (2017) 394 ITR 220 (SC).

CIT Vs. S.M.Aggarwal (2007) 293 ITR 43 (Del.HC):

PCIT Vs. Ajanta Footcare (India) (P.) Ltd (2017) 84 taxmann.com 109 (Cal.HC).

CIT Vs. Jai Pal Aggarwal (2012) 28 taxmann.com 269 (Del.HC).

Pankaj Dahyabhai Patel (HUF) Vs. ACIT (1999) 63 TTJ 790 (Ahd.Trib).

Ashwani Kumar Vs. ITO (1991) 39 ITD 183 (Del.Trib).

Dy.CIT Vs. C.Krishna Yadav (2011) 46 SOT 250 (Hyd.Trib)

### **36.Statement recorded during search/survey which was subsequently retracted by explaining the cause of retraction can not be relied upon for making addition against the assessee.**

PCIT Vs. Taxraj Realty Pvt Ltd (2018) 95 taxmann.com 102 (Guj.HC).

CIT Vs. Ravinder Kumar Jain (2011) 12 taxmann.com 257 (Jharkhand.HC).

CIT Vs. Dr. N.Thippanna Shetty (2013) 35 taxmann.com 310 (Kar.HC).

CIT Vs. Sunil Aggarwal (2015) 64 taxmann.com 107 (Del.HC).



**TRANSFER OF JURISDICTION FROM ONE AO TO ANOTHER AO UNDER SECTION 127 (2).**

**37. Whether Jurisdictional issue can be raised at any stage before the Appellate Authorities even if assessee participated in the assessment proceedings?**

Yes. CIT Vs. Green Wood Corporation (2009) 314 ITR 81 (SC).

**38. Whether where Jurisdiction is transferred from one AO to another AO not functioning within the Jurisdiction of same CIT than agreement between the two CIT's is required ?**

**Yes.** Absence of agreement between the two CIT's makes the transfer of jurisdiction as bad in law.

Noorul Islam Educational Trust Vs. CIT-I(2016) 76 taxmann.com 144 (SC).  
OSL Developers (P.) Ltd Vs. ITO . (2021) 125 taxmann.com 98 (Kol.Trib).

**39. Whether where Jurisdiction is transferred from one AO location to another AO having location having location difference may or may not functioning within the Jurisdiction of same CIT than order for transfer has to passed after giving proper opportunity of hearing to the Assessee ?**

**Yes.** Transfer of Jurisdiction made from one location to another location without transfer order and proper opportunity of hearing to the assessee such transfer is not valid.

Pr.CIT (Central) Vs. Rohtas Projects Ltd (2018)100 taxmann.com 384 (SC):  
Ajantha Industries Vs. CBDT (1976) 102 ITR 281 (SC).  
Vijay Vikram Dande Kurnool Vs. ACIT (Intl.Tax) (2019) 107 taxmann.com 452 (Hyd.Trib.)

**40. Whether assessment has to be made by the Authority who has issued the notice ? Where any other authority made the assessment without valid transfer of jurisdiction whether that assessment is bad in law due to lack of Jurisdiction ?**

**Yes.** Assessment has to be made by the authority who issued the notice. Any other authority made assessment without valid transfer of Jurisdiction such assessment is bad in law due to lack of jurisdiction.

Mega Corporation Ltd Vs. Addl.CIT (2015) 62 taxmann.com 351 (Delhi-Trib.).  
Rungta Irrigation Ltd Vs. ACIT (2020) 113 taxmann.com 330 (Kol.Trib).

**41. Whether order passed by any authority without satisfying the jurisdictional fact is valid ?**

**No.** Order passed by any authority without satisfying jurisdictional fact is not valid.

Raja Textiles Ltd Vs. UOI (1973) 87 ITR 539 (SC).  
Arun Kumar Vs. UOI (1986) 286 ITR 89 (SC).

**42. Whether in absence of Jurisdictional High Court Order Appellate Authorities including Tribunal has to be follow Non Jurisdictional Order?**

**Yes.** Income Tax being an all India statute and Central Law in absence of Jurisdictional High Court Order Appellate Authorities including Tribunal has to be follow Non Jurisdictional High Court Order in absence of contrary decisions.

CIT Vs. Godavari Devi Saraf (1978) 113 ITR 589 (Bom.HC)  
CIT Vs. Highway Construction Co. P.Ltd (1978) 113 ITR 589 (Bom.HC)  
CIT Vs. Sarabhai Sons Ltd (1983) 143 ITR 473 (Guj.HC)

**43. Whether error committed by a Court has to be rectified in subsequent proceedings once it is come to the knowledge of the Court ?**

**Yes. Errors should not be repeated it should be arrested.**

Distributors (Baroda) Pvt Ltd Vs. UOI (1985) 155 ITR 120 (SC).  
Thomson Press (India) Ltd Vs. CIT (2005) 379 ITR 222 (Del.HC).

**44. Whether unregistered agreement constitute transfer of immovable property u/s 53A of the Transfer of Property Act,1882 r.w.s 2(47)(v) of the I.T Act for capital gain even if possession was transferred ?**

**No. For transfer u/s 53A of the transfer Act,1882** document needs to be registered. Document not registered no transfer for u/s 2(47)(v) for Capital Gain.

CIT Vs. Balbir Singh Maini (2017) 398 ITR 531 (SC).

C.S.Atwal Vs. CIT (2015) 378 ITR 244 (P&H HC)-FB.

**45.Whether deduction u/s 80IA is limited only to business income of the eligible unit ?**

**No.** Deduction u/s 80IA is extended to **'Income from Other Sources'** of the eligible unit.

CIT Vs. Reliance Energy Ltd (2021) 127 taxmann.com 69 (SC).

**SPEAKER**

**CA M R SAHU**

**FCA,FCMA,LLB**

**TAX LITIGATION EXPERT**

**EMAIL:msahu.fca16@gmail.com**

**M.NO:9958062648**