

Taxsutra Insight

Recent Rulings Impacting Tax Audit u/s 44AB of the Income Tax Act

15 September 2015

Tax audit u/s 44AB

Assessment year	<ul style="list-style-type: none"> 2015-16
Applicability	<ul style="list-style-type: none"> Turnover/gross receipts from business > Rs 1 Crore Gross receipts from profession > Rs 25 Lakhs Profits and gains < deemed profits and gains u/s 44AE, 44BB, 44BBB, 44AD
Due Date	<ul style="list-style-type: none"> Due date for furnishing return of income u/s 139(1)
Form	<ul style="list-style-type: none"> Audit Report in Form 3CA or Form 3CB Statement of Particulars in Form 3CD <p><i>(Ref: Rule 6G of Income tax rules)</i></p>

With the commencement of the tax audit season this year, the second exclusive Taxsutra insight endeavors to compile the key rulings delivered in the years 2013 to 2015 which would impact the transactions typically covered in tax audits.

Click [here](#) to read the first edition of the Taxsutra insight on tax audit rulings.

Clauses 13 & 14: Method of Accounting and Valuation of closing stock

Judgement	Summary
STCL Limited [TS-228-ITAT-2015(Bang)]	Closing stock adjusted for price-fall, not accounting policy change; Follows Chainrup Sampatram (SC). Held that once the purchases were accepted by AO and were duly accounted the adjustment to closing stock resulting from fall in value of stocks represented by that purchases cannot be declined : Bangalore ITAT
International Metro Civil Contractors [TS-699-ITAT-2014(Mum)]	Approves assessee's adoption of AS-7, though not notified u/s 145; Rules that ICAI being highest accounting authority, the AS issued it cannot be brushed aside easily : Mumbai ITAT
KEC Holdings Ltd [TS-438-ITAT-2013(Mum)]	Mere NPA characterization not sufficient for non-accrual of interest income; Realizability, security and other factors to be considered before deciding accrual; Relies on Southern Technologies (SC) : Mumbai ITAT However, in the case of the same assessee, the Bombay High Court held that interest income on NPAs is not assessable on accrual basis [TS-380-HC-2014(Bom)].
Hercules Pigment Industry [TS-218-ITAT-2013(Mum)]	Upholds S.145A supremacy for stock valuation, admits accountancy v. excise conflict. Rejects assessee's inventory valuation approach by creating un-utilized cenvat credit a/c : Mumbai ITAT

Clause 15: Conversion of capital asset into stock-in-trade

Judgement	Summary
Goman Agro Farms Pvt Ltd [TS-322-ITAT-2015(Hyd)]	Invokes S.45(2) and splits land owners development profits into capital gains and business income. Intent at the time of acquisition was material for ascertaining as to whether the case was of capital asset or stock in trade. Treats the land as capital asset till the date of development agreement based on facts : Hyderabad ITAT
Upper India Paper Mills Company Pvt. Ltd. [TS-381-ITAT-2015(LKW)]	Interest free advance received from developer (upon entering into development agreement) not sale consideration; S. 2(47)(v) cannot be invoked where absolute possession not given to the buyer; capital gains would be chargeable only in the year in which stock in trade would be sold : Lucknow ITAT

Clause 16: Income u/s 28 & Capital receipts

Judgement	Summary
Elite Orgo Chem Pvt Ltd [TS-76-ITAT-2015(Mum)]	Receipt for business cessation is Taxable as capital gains and not business income u/s 28(va) : Mumbai ITAT
Digiwave Infrastructure & Services Ltd [TS-704-HC-2014(Bom)]	Loan waiver cannot be business income u/s 28(iv) when interest thereon was previously taxed as Income from other sources : Bombay HC
Excel Industries Ltd [TS-506-SC-2013]	Advance license benefit and DEPB benefits are taxable in the year of utilization. Income-tax cannot be levied on ‘hypothetical income’ : SC
Indur Green Power Private Limited [TS-447-ITAT-2015(Hyd)]	Consideration on sale of carbon credit not taxable being ‘capital receipt’ : Hyderabad ITAT
Sterling Construction & Investments [TS-187-HC-2015(Bom)]	Damages received for breach of oral agreement to transfer immovable property, a non-taxable capital receipt and not capital gains for relinquishment of claim for specific performance : Bombay HC

Clause 16: Income u/s 28 & Capital receipts

Judgement	Summary
Elegant Chemicals Enterprises Private Limited [TS-808-HC-2014(TEL&AP)]	Compensation upon termination of contract for specialized machinery, capital receipt, not taxable : Telangana & Andhra Pradesh HC
Graviss Hospitality Ltd. [TS-723-ITAT-2014(Mum)]	Share application money forfeiture, a non-taxable capital receipt. Distinguishes SC's T.V.Sundaram ruling : Mumbai ITAT
The Tata Power Co. Ltd. [TS-364-HC-2014(Bom)]	Forex gain from repatriation of Euro-note proceeds a non taxable capital receipt : Bombay HC
P. Sivakumar [TS-18-ITAT-2014(CHNY)]	Additional payments to retiring partners, a capital receipt not profit u/ 28(va). In absence of retirement deed restraining assessee from carrying on business activity, amount not taxable as non-compete fees u/s 28(va) : Chennai ITAT
Zyg Pharma Pvt Ltd [TS-296-ITAT-2013(Mum)]	Waiver upon sales tax deferral pre-payment a capital receipt, Follows special bench ruling in Sulzer India Ltd : Mumbai ITAT

Clause 17: Consideration on transfer of Land/building

Judgement	Summary
Bhaidas Cursondas and Co. [TS-114-ITAT-2015(Mum)]	Sec 50C is applicable to buildings (depreciable assets), but not while computing WDV. Deeming provision restricted to capital gains computation : Mumbai ITAT
Kancast Pvt Ltd [TS-32-ITAT-2015(Pune)]	99yrs leasehold right is a capital asset, but Sec 50C valuation is not applicable : Pune ITAT <i>Note:</i> Contrary ruling by Lucknow ITAT [TS-207-ITAT-2014(LKW)]
Nitco Logistics Pvt. Ltd. [TS-562-ITAT-2014(ASR)]	Sec 50C(1) inapplicable to purchaser of property; Can't replace word 'received' with 'paid' : Amritsar ITAT
Shrikishan Dass [TS-258-ITAT-2013(Del)]	Sec 50C not applicable to transfer of tenancy rights. Agrees with co-ordinate benches : Delhi ITAT

Clause 18: Depreciation

Judgement	Summary
SPR Publications Pvt Ltd [TS-353-ITAT-2015(Hyd)]	Allows depreciation claim once assets are ‘ready-to-use’. Inauguration date of business irrelevant. Holds term ‘used’ as employed in S. 32(1) has to be given a wider meaning and will also include passive user of the asset : Hyderabad ITAT
S Vijaya Kumar [TS-335-HC-2015(TEL&AP)]	Full bench lays down law on individual component v. plant applying the ‘functional test’. Holds merely because articles are durable, they cannot effectively stand alone without functional integration with other similar or dissimilar articles so as to qualify as a plant : Telangana & Andhra Pradesh HC
Gamma Pizzakraft (P) Ltd [TS-146-ITAT-2015(DEL)]	Assessee eligible for additional depreciation. Activities of making Pizza qualify as ‘manufacture or production of article or thing’ : Delhi ITAT
Moradabad Toll Road Co. Ltd [TS-681-HC-2014(DEL)]	Toll road a ‘building’, not ‘plant’ : Delhi HC
Shineup Fibre Ltd [TS-106-ITAT-2014(Kol)]	Temporary suspension of business cannot disentitle depreciation claim on ‘block of assets’ : Kolkata ITAT
Birlasoft Ltd. [TS-82-SC-2014]	Dismisses Revenue’s SLP: HC held computer peripherals entitled to 60% depreciation : SC

Clause 18: Depreciation

Judgement	Summary
Worldwide Media Pvt. Ltd. [TS-56-ITAT-2014(Mum)]	Allows depreciation on goodwill, Rejects AO's action of invoking S. 43(1) explanation : Mumbai ITAT
Gujrat Alkalies&Chemicals Ltd. [TS-46-HC-2014(GUJ)]	Chlorine toners and computers are not plant and machinery, upholds 60% depreciation claim : Gujarat HC
Apollo Tyres Ltd. [TS-646-ITAT-2013(COCH)]	Allows balance 10% additional depreciation in subsequent year. Ruled that S. 32(1)(iia) does not speak about the year of deduction : Cochin ITAT
Swagat Infrastructure Ltd [TS-287-ITAT-2013(Ahd)]	Allows depreciation on cars, despite registered in director's name. Similar ruling in the case of Dhimat Mehta Computing Solutions Private Ltd [TS-234-ITAT-2013(Mum)]. Contrary ruling in Edwise Consultants Pvt Ltd [TS-166-ITAT-2013(Mum)]
Judgments on depreciation allowance to lessor	ICDS Ltd [TS-8-SC-2013] - Allowed SBI Ltd [TS-355-ITAT-2013(Mum)] - Not Allowed UTI Bank Limited [TS-468-ITAT-2013(Ahd)] - Allowed Khaddarwal Leasing (India) Ltd [TS-637-HC-2013(ALL)] - Allowed K M Sugar Mills Limited [TS-159-SC-2015] - Allowed

Clause 18: Depreciation

Judgement	Summary
Judgments on nature of 'renovation' expenditure (Expl1 to S. 32(1))	Urban Infrastructure Venture Capital Ltd. [TS-335-ITAT-2014(Mum)] – Revenue expense Rohit Bal Designs Pvt Ltd [TS-186-ITAT-2014(DEL)] – Capital expenditure
Judgments on qualification as intangible assets (S. 32(1)(ii))	Bharti Teletech Ltd [TS-241-HC-2015(DEL)] -Exclusive network rights ThyssenKrupp Elevator [TS-558-ITAT-2014(DEL)] -AMC Contracts acquired post acquisition Cosmos Co-op Bank Ltd. [TS-47-ITAT-2014(PUN)] -Consideration for acquiring 'business advantage' Pentasoftware Technologies Ltd. [TS-578-HC-2013(MAD)] -Non-compete fee. Contrary decision in Mylan Laboratories Ltd. [TS-24-ITAT-2014(HYD)] Dabur India Limited [TS-411-ITAT-2013(Mum)] - Tenancy right not intangible asset SKS Micro Finance Ltd. [TS-283-ITAT-2014(HYD)] - Client acquisition cost Ashoka Infraways Pvt Ltd [TS-171-ITAT-2013(PUN)] -Right to collect toll Virbac Animal Health India P. Ltd. [TS-134-ITAT-2013(Mum)] - Distribution rights RFCL Limited [TS-122-ITAT-2013(CHANDI)] - Bundle of business rights

Clause 19: R&D Deductions

Judgement	Summary
Tejas Networks Limited [TS-395-HC-2015(KAR)]	Once DSIR certifies S. 35(2AB) scientific research expense, AO debarred from further scrutiny : Karnataka HC
Resil Chemicals Pvt Ltd. [TS-685-ITAT-2014(Bang)]	In-house R&D creating IP eligible for weighted deduction, holds exclusionary clause u/s 43(4)(ii) not attracted : Bangalore ITAT
Talisa Corporation Pvt Ltd. [TS-406-SC-2014]	Dismisses Revenue SLP; S. 35 deduction allowed treating software development as ‘scientific research’ : SC
Ferment Biotech Ltd [TS-93-ITAT-2014(Mum)]	DSIR officer’s designation irrelevant for in-house R&D unit’s S.35(2AB) approval. Deduction cannot be denied on this ground : Mumbai ITAT
Bharat Biotech International Ltd [TS-450-ITAT-2013(HYD)]	R&D expenditure not related to assessee’s business, not deductible u/s 35 : Hyderabad ITAT : Hyderabad ITAT

Clause 19: Other Deductions

Judgement	Summary
Subex Ltd [TS-362-ITAT-2015(Bang)]	‘Capital employed’ for S. 35D relief excludes share premium : Bangalore ITAT
International Computers Indian Manufacture Limited [TS-144-HC-2015(BOM)]	Denies depreciation for expenses covered by S. 35D : Bombay HC
Diageo India Pvt Ltd [TS-429-HC-2014(BOM)]	Allows severance pay amortization u/s 35DDA absent cessation of manufacturing activity : Bombay HC
Northern Coalfields Ltd [TS-284-ITAT-2015(JAB)]	Allows ‘overburden’ removal expense of Rs 2000 cr, rejecting revenue’s stand of allowing only 10% u/s 35E. Explains S.35E/ S.37(1) interplay : Jabalpur ITAT

Clause 20: Employee related payments

Judgement	Summary
New Silk Route Advisors P. Ltd. [TS-75-ITAT-2015(Mum)]	Deletes disallowance of performance bonus of 172% of Salary to Director-shareholders u/s 36(1)(ii). Business expediency accepted : Mumbai ITAT
Controls & Switchgear Contractors Limited [TS-334-HC-2014(DEL)]	Deletes disallowance u/s 36(1)(ii) for guarantee commission paid to directors, as they have acted beyond call of duty as employees : Delhi HC
Deduction for employees' contribution u/s 36(1)(va) deposited after respective due date but before due date for furnishing tax return u/s 139	Jaipur Vidyut Vitran Nigam Ltd. [TS-16-HC-2014(RAJ)] - Deductible Essae Teraoka Pvt. Ltd. [TS-71-HC-2014(KAR)]- Deductible Hindustan Organics Chemicals Ltd [TS-423-HC-2014(BOM)] - Deductible Spectrum Consultants India Pvt. Ltd [TS-684-HC-2013(KAR)] - Deductible Kichha Sugar Company Ltd. [TS-211-HC-2013(UTT)] – Deductible Gujarat State Transport Corporation [TS-681-HC-2013(GUJ)] - Not deductible LKP Securities Ltd. [TS-203-ITAT-2013(Mum)] - Not deductible

Clause 21(a): Business expense allowances/disallowances

Judgement	Summary
Allowable expenses	<p>Mallige Medical Centre Pvt Ltd[TS-111-HC-2015(KAR)] - Expenses for higher education of employee, has business nexus</p> <p>Vodafone Essar Gujarat Ltd[TS-762-ITAT-2014(Ahd)] - non-exclusive telecom license fee is a revenue expenditure</p> <p>Praveen Saxena[TS-668-ITAT-2014(DEL)] - Bail payment in customs-duty evasion case.</p> <p>Reliance Share and Stock Brokers (P) Ltd. [TS-664-ITAT-2014(Mum)] - Consent fee.</p> <p>Transport Corporation of India[TS-556-HC-2014(AP)] - Secret commission, if no taint of illegality/ secrecy</p> <p>Vikas Chemicals[TS-551-HC-2014(DEL)] - Redemption fine to customs authorities</p> <p>Cummins Generator Technology India Ltd.[TS-171-HC-2014(BOM)] - JV Termination fee</p> <p>Infosys Technologies Ltd.[TS-256-HC-2013(KAR)] - One time custody fees to NSDL is revenue in nature.</p> <p>Rajarani Exports P. Ltd.[TS-175-HC-2013(CAL)] - Commission payment despite ‘kickback’ end use.</p> <p>Groz Beckert Asia Ltd.[TS-64-HC-2013(P&H)] - Golf club membership, revenue in nature</p>

Clause 21(a): Business expense allowances/disallowances

Judgement	Summary
Disallowable expenses	<p>Modi Builders[TS-365-ITAT-2015(PUN)] - Compounding fees to municipal corporation</p> <p>Ambassador Industrial Corp[TS-161-SC-2015] - Expense on confiscated goods.</p> <p>Future Agrovat Ltd[TS-591-ITAT-2014(MUM)] - Sweat equity expenses</p> <p>Overseas Trading and Shipping Co P. Ltd.[TS-453-HC-2013(GUJ)] – Import contract without ‘license’ illegal. Disallows expense on transfer of contractual obligation.</p> <p>OPM International Pvt. Ltd.[TS-240-ITAT-2013(Mum)] - Legal fees to defend narcotics case.</p>

Clause 21(b): Disallowances u/s 40(a)

Judgement	Summary
P V S Memorial Hospital Ltd [TS-439-HC-2015(KER)]	Upholds Sec 40(a)(ia) expense disallowance on short TDS; Contrary ruling in Cal HC ruling in SK Teriwal [TS-902-HC-2012(CAL)], Sentini Technologies Pvt Ltd. [TS-85-ITAT-2015(HYD)], Leela Ghosh (TS-114-ITAT-2014(Mum))
WS Atkins India Pvt Ltd [TS-421-ITAT-2015(Bang)]	Deletes Sec 40(a)(ia) disallowance on domestic software payment; No TDS liability upon retro-law. Similar principle on retro-law laid down in Ajit Ramakant Phatarpekar [TS-147-ITAT-2015(PUN)], Rich Graviss Products Pvt Ltd [TS-566-ITAT-2014(Mum)], TTK Prestige Ltd. [TS-555-ITAT-2014(Bang)], NGC Networks (I) Pvt Ltd [TS-415-ITAT-2014(Mum)], Kerala Vision Ltd. [TS-342-ITAT-2014(COCH)], Virola International [TS-79-ITAT-2014(AGR)]
Mitsubishi Corporation India Private Limited [TS-296-ITAT-2015(DEL)]	'Non-discrimination' relief for TDS [Sec 40(a) disallowance] not affected by Article 9. Similar relief provided in assessee's own case [TS-647-ITAT-2014(DEL)] , Sandoz Pvt Ltd [TS-848-ITAT-2012(Mum)], Gupta Overseas [TS-699-ITAT-2013(AGR)]

Clause 21(b): Disallowances u/s 40(a)

Judgement	Summary
Vector Shipping Services (P) Ltd. [TS-401-SC-2014]	Dismisses Revenue SLP. HC held disallowance u/s 40(a)(ia) for TDS default applicable only to expenses remaining payable at year end, not to expenses paid during year : SC Approves Merilyn Shipping ratio
Aditya Housing & Infrastructural Development Corporation Pvt. Ltd. [TS-330-ITAT-2014(HYD)]	Sec 40(a)(ia) cannot be invoked for expenditure not debited to P&L account : Hyderabad ITAT
Municipal Committee [TS-275-ITAT-2014(ASR)]	Expense dis-allowance u/s 40(a)(ia) for TDS applicable to exempt entities; Rejects 'Merilyn' ratio : Amritsar ITAT
Right Tunnelling Co.Ltd. [TS-220-ITAT-2014(DEL)]	Adjusting expenditure against receipt amounts to 'constructive payment', liable to TDS : Delhi ITAT
AON Specialist Services Pvt. Ltd. [TS-90-ITAT-2014(Bang)]	Assessee 'real & economic employer' of secondees; No TDS required on salary reimbursement : Bangalore ITAT

Clause 21(d): Disallowances u/s 40A(3)

Judgement	Summary
Doshi Vijaykumar Motilal [TS-347-ITAT-2014(PUN)]	No “expenditure” results from principle-agent transactions, deletes Sec 40A(3) disallowance on recharge-voucher purchase : Pune ITAT
Abhinandana Housing Pvt. Ltd. [TS-91-ITAT-2014(HYD)]	Deletes Sec 40A(3) disallowance absent banking facilities, payments to "middlemen", agents, also exempted : Hyderabad ITAT
Anupam Teleservices [TS-52-HC-2014(GUJ)]	Allows "business expediency" exception to Sec 40A(3); Deletes disallowance for cash payment : Gujarat HC
Rajmoti Industries [TS-500-ITAT-2013(Rjt)]	Only 'account payee' cheque satisfies Sec 40A(3) compliance, disallows payment by 'crossed cheque' : Rajkot ITAT

Clause 21(h): Disallowance u/s 14A

Judgement	Summary
Judgments on 14A disallowance viz-a-viz exempt income	<p>Cheminvest Limited [TS-504-HC-2015(DEL)]-reverses special bench ruling. No disallowance when there is no exempt income.</p> <p>Anriya Project Management Services [TS-99-ITAT-2015(Bang)]-Cir.5/2014 not enough to invoke Sec. 14A absent exempt income;</p> <p>Joint Investments Pvt Ltd [TS-92-HC-2015(DEL)]-disallowance cannot swallow entire tax exempt income. Disallowance was worked out by AO at about 110% of exempt income.</p> <p>Alliance Infrastructure Projects Pvt.Ltd. [TS-624-ITAT-2014(Bang)]-Absent actual exempt income receipt, S.14A can't be invoked</p> <p>Varsha R. Taurani [TS-552-ITAT-2013(Mum)]-Disallows 'interest' expense u/s 14A though actual dividend income not received</p>
Judgements on S.14A and MAT u/s115JB	<p>Sobha Developers [TS-35-ITAT-2015(Bang)]-Approves use of Rule 8D to quantify disallowance while computing MAT profits</p> <p>RBK Share Broking Pvt.Ltd [TS-338-ITAT-2013(Mum)]-Sec 14A dis-allowance even applicable to MAT u/s 115JB</p>

Clause 21(h): Disallowance u/s 14A

Judgement	Summary
Judgments on Rule 8D	<p>ACB India Ltd [TS-176-HC-2015(DEL)], REI Agro Ltd. [TS-271-ITAT-2013(Kol)]- average investments include only tax-exempt investments</p> <p>Everest Kanto Cylinder Ltd [TS-138-ITAT-2015(Mum)]-average investments exclude investments in foreign subsidiaries</p> <p>Cranes Software International Ltd. [TS-662-ITAT-2014(Bang)]-Rule 8D doesn't allow for netting of interest</p> <p>Geojit Investment Services Ltd. [TS-631-ITAT-2014(COCH)]-Interest directly relatable to taxable income to be excluded u/r 8D</p> <p>GMR Power Corporation Ltd [TS-720-ITAT-2013(Bang)]-Sufficient reserves & loan funds trail exonerates Sec 14A disallowance on interest expense</p> <p>Iqbal M Chagala [TS-507-ITAT-2014(Mum)]-Rejects 14A disallowance on 'presumption'; AO can't apply Rule 8D formula mechanically</p>
Judgments on 'no expenditure-no disallowance'	<p>Piem Hotels Limited [TS-162-ITAT-2015(Mum)]</p> <p>Subramanya Constructions & Development Co.Ltd [TS-100-ITAT-2015(Bang)]</p>

Clause 21(h): Disallowance u/s 14A

Judgement	Summary
Judgements on S.14A viz-a-viz capital funds	Ferani Hotels Pvt Ltd [TS-715-ITAT-2014(Mum)]- ‘Sufficient capital’ presumption insufficient to hold own funds utilized for tax-free investments Gujarat State Fertilizers & Chemicals Ltd. [TS-304-HC-2013(GUJ)]-No 14A disallowance for interest, as owned funds higher than investment
Ashish Estate & Properties Pvt. Ltd. [TS-367-ITAT-2015(Mum)]	Investment in AOP excluded from the scope of Sec 14A disallowance : Mumbai ITAT
ICICI Prudential Life Insurance Co. Ltd. [TS-796-ITAT-2014(Mum)]	S.14A inapplicable to insurance companies : Mumbai ITAT
Banaskantha Dist.Co.op.Milk Producers Union Ltd. [TS-193-HC-2014(GUJ)]	Sec 14A not applicable to Chapter VI-A deductions; Follows Delhi HC ruling in Kribhco : Gujarat HC
Judgements on applicability of S.14A disallowance to shares held as stock in trade	Damani Estates & Finance Pvt. Ltd. [TS-330-ITAT-2013(Mum)]-applicable Gulshan Investment Co Ltd. [TS-202-ITAT-2013(Kol)]-applicable

Clause 21(i): Disallowance u/s 36(1)(iii)

Judgement	Summary
Taparia Tools Limited [TS-134-SC-2015]	Reverses wrong application of ‘matching concept’; Allows interest deduction despite accounting dichotomy. Holds assessee not ‘estopped’ from claiming entire deduction merely because it had spread over of interest expense over the period of 5 years, being life of debentures : SC
Eicher Goodearth Ltd [TS-289-HC-2015(DEL)]	Interest on borrowings for strategic investment covered u/s 36 (business) and not u/s 57, despite dividend income assessable under head ‘income from other sources’ u/s 56 : Delhi HC
Pistabai Rikhabchand Kothari [TS-27-ITAT-2013(Mum)]	Interest paid on borrowings allowed as deduction against taxable dividend/ interest income; Controlling interest an inalienable part of share itself, cannot be traded separately. Relies on Vodafone’s controlling interest principle : Mumbai ITAT

Clause 25: Deemed profits u/s 41

Judgement	Summary
Sulzer India Limited and Others [TS-734-HC-2014(BOM)]	Difference between premature payment & sales tax liability exempt capital receipt, Sec 41(1) inapplicable : Bombay HC
Sajjankumar Didwani [TS-653-ITAT-2014(Mum)]	Upholds Sec 41(1) on liabilities unclaimed since long-years, though not written off : Mumbai ITAT
Mcdowell & Co. Ltd. [TS-621-HC-2014(KAR)]	Deferred sales tax waiver upon prepayment not taxable benefit u/s 41 : Karnataka HC
National Dairy Development Board [TS-281-HC-2014(GUJ)]	Sec 41(1) inapplicable to write back of provision created in tax exemption year : Gujarat HC
Pradeshiya Industrial & Investment Corp. [TS-371-HC-2013(ALL)]	Adjustment of defaulted loan against losses, not taxable as remission of liability : Allahabad HC

Clause 25: Deemed profits u/s 41

Judgement	Summary
The Mula Pravara Electric Co-op. Society Ltd. [TS-238-ITAT-2013(PUN)]	Remission of trading liability not taxable to the extent of lapsed losses : Pune ITAT
Spel Semiconductor Ltd. [TS-228-ITAT-2013(CHNY)]	Waiver of interest not chargeable u/s 41(1) given earlier disallowance u/s 43B : Chennai ITAT

Clause 26: Disallowance u/s 43B*

Judgement	Summary
Rathi Graphics Technologies Ltd [TS-451-HC-2015(DEL)]	No Sec 43B disallowance for converting interest liability into shares; Explanation 3C not triggered : Delhi HC
Good Luck Kinetic [TS-356-ITAT-2015(PAN)]	Sec 43B disallowance relating to statutory liabilities overrides presumptive taxation u/s 44AF : Panaji ITAT
Shakti Spring Industries P. Ltd. [TS-4-HC-2013(JHAR)]	Book adjustments constitutes "actual payment" for Sec 43B; no disallowance warranted : Jharkand HC

* Also refer Slide 11

Clause 28/29: Transactions covered u/s 56(2)(viia)

Judgement	Summary
Sudhir Menon HUF [TS-146-ITAT-2014(Mum)]	ITAT rules that S.56(2)(vii)(c), providing for taxation of ‘receipt of property for inadequate consideration’ applicable to ‘rights issue’ of shares, however, so long as there’s no disproportionate/non-uniform allotment, no scope of property being ‘received’ on allotment, to attract rigors of S.56(2)(vii). Also holds that S.56(2)(vii) inapplicable on bonus shares as there is no receipt of any property by shareholder. : Mumbai ITAT

Clause 31: Section 269SS/269T

Judgement	Summary
Muthoot Financiers [TS-42-HC-2015(DEL)]	Bonafide advances from Partner to Firm, Sec 269-SS not attracted; Sec 271D penalty deleted : Delhi HC
Lodha Builders Pvt. Ltd. & Ors. [TS-386-ITAT-2014(Mum)]	Holds 'journal entries' at par with cheque for Sec 269SS/T; Deletes penalty : Mumbai ITAT
Madhav Enterprise Pvt Ltd. [TS-50-HC-2014(GUJ)]	Earnest money received by builder-contractor, neither loan nor deposit u/s 269T : Gujarat HC

Clause 32: Brought forward loss/ depreciation allowance

Judgement	Summary
Clariant Chemicals (I) Ltd. [TS-620-ITAT-2014(Mum)]	Denies 'capital loss' carry-forward to amalgamated co. absent specific provisions u/s 74 : Mumbai ITAT
Rajasthan R.S.S. & Ginning Mills Fed. Ltd. [(TS-241-SC-2014]	Denies loss carry forward to amalgamating co-operative societies absent specific IT-Act provisions : SC
KBD Sugars & Distilleries Ltd [TS-595-ITAT-2013(Bang)]	'Going concern' applies to 'transfer', not to 'demerged' unit; Allows set off of losses to resulting company post demerger based on harmonious interpretation of S. 2(19AA) and S. 72A : Bangalore ITAT
Ramshree Steels Pvt Ltd [(TS-267-ITAT-2013(LKW))]	Speculation loss set-off bar not applicable to speculation profits. Allows set off of normal business loss against profits from speculative business : Lucknow ITAT

Clause 32: Brought forward loss/ depreciation allowance

Judgement	Summary
Bayer material Science Pvt. Ltd [TS-55-ITAT-2013(Mum)]	In case of multiple amalgamations, conditions u/s 72A to be analyzed qua each amalgamating company separately. S. 72A analyzed : Mumbai ITAT
Wrigley India P. Ltd [TS-820-ITAT-2011(DEL)]	Loss carry forward conditions u/s 72A not applicable in reverse merger : Delhi ITAT
Kei Industries Ltd [TS-117-HC-2015(DEL)]	No set-off u/s.72 for Sec 10B profits/losses against non-10B units, Follows TEI Tech (Delhi HC)

Clause 32: Section 79 impact on losses

Judgement	Summary
Yum Restaurants (India) Pvt Ltd [TS-755-ITAT-2014(DEL)]	Immediate shareholding relevant u/s 79 loss carry-forward, rejects taxpayer's 'ultimate beneficial interest' claim. Contrary ruling in the case of GE India Industrial Private Ltd [TS-357-ITAT-2015(Ahd)] wherein, set off is allowed as beneficial ownership is unchanged : Delhi ITAT
Ganga Corporation Asbestos Pvt Ltd [TS-299-HC-2014(ALL)]	Change in business irrelevant, common management decisive for brought forward loss claim : Allahabad HC
Tejas Networks Limited [TS-830-ITAT-2014(Bang)]	Capitalised Scientific Research expense at par with unabsorbed depreciation; S.79 not applicable : Bangalore ITAT

Clause 33: Chapter VIA Deductions

Judgement	Summary
<p>Judgments on benefit on S.80IA/S.80IB</p>	<p>Deccan Industrial Products [TS-203-HC-2015(TEL&AP)]-Denies 80IA benefit on import license sale.</p> <p>Janapriya Engineers Syndicate [TS-614-ITAT-2013(HYD)]-80IA Benefit available on lease income of industrial park, does not qualify as ‘house property income’.</p> <p>Coral Clinical Systems [TS-416-ITAT-2015(PAN)]-80IB Benefit available on Goa VAT incentive</p> <p>Coromandel International Ltd [TS-729-ITAT-2014(HYD)]-Allows Sec. 80IB deduction; SC's Liberty ruling inapplicable as excise-duty refund non-transferable</p> <p>Umeya Corporation [TS-380-ITAT-2015(Ahd)]-Entrepreneurial risk, not land ownership , relevant for Sec 80IB(10) deduction</p> <p>Subba Reddy [TS-36-HC-2015(MAD)]-"Built-up area" excludes car park for reckoning qualifying area, Allows 80IB(10)</p> <p>Arvind Footwear Pvt. Ltd. [TS-491-SC-2014]-Dismisses assessee 's SLP on Sec. 80IB deduction on duty drawback</p> <p>Subhash Kabini Power Corpn. Ltd.[TS-582-ITAT-2014(Bang)] - Unabsorbed depreciation, distinct from accumulated loss, to be reduced from Sec 80IA deduction</p>

Clause 33: Chapter III Deductions

Judgement	Summary
Sankhla Polymers [TS-39-SC-2015]	Dismisses assessee's SLP; HC upheld taxability under MAT provisions inspite Sec 80IB eligibility
Blue Star Infotech Ltd [TS-235-ITAT-2015(Mum)]	Allows credit for foreign tax paid to tax-holiday entity post-2000 Sec 10B amendment
HCL Technologies [TS-195-HC-2015(DEL)]	Denies Sec 10A-benefit treating HCL's 31 units as separate-undertakings under 13 STP licenses
E4E Application Services P Ltd [TS-139-HC-2015(KAR)]	Extends Sec.10A benefit to DTA unit converted into STPI, applies Circular 1/2005
Mindteck(India) Limited [TS-53-ITAT-2015(Bang)]	Sec 10A - exemption provision, follows Yokogawa; Denies non-eligible unit loss set-off against 10A-income
Subex Limited [TS-812-HC-2014(KAR)]	Sub-letting rent, a deemed 'business income' u/s 10A(4), eligible for tax holiday
Tata Elxsi Limited [TS-843-HC-2014(KAR)]	Sale by one STP to another STP, deemed exports; Allows Sec 10A benefit

Clause 34: Non-compliance with TDS provisions

Judgement	Summary
Dishnet Wireless Limited [TS-409-ITAT-2015(CHNY)]	TDS machinery fails absent payee identification in provision for future expense : Chennai ITAT
ITC Hotels Ltd [TS-397-HC-2015(KAR)]	No TDS when payment held non-taxable in recipient's hand by High Court : Karnataka HC
Infosys BPO Limited [TS-408-ITAT-2015(Bang)]	DTAA prevails over Sec 206AA TDS rate; Such adjustment beyond AO's jurisdiction u/s 200A : Bangalore ITAT
IBM India Private Ltd [TS-305-ITAT-2015(Bang)]	Quarterly expense-provision through suspense attracts TDS de hors income-charge u/s. 4(1) : Bangalore ITAT

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