

*Nahata Professional Academy,  
INDORE*

# AMENDMENTS / CASE LAWS

**For C.A. Final Examination  
to be held in May/ Nov 2012**

<b>S.No.</b>	<b>Heading</b>	<b>Page No.</b>
1.	Amendments in the Act with Annexures –A to H	1-12
2.	Rules, notifications and Circulars with Annexure-1	13-14
3.	Latest Case Laws (covering cases as per Selected Cases per ICAI)	15-18

**Please also refer**

- 1. Supplementary Study material for May/ Nov. 2012 Exam, ICAI**
- 2. Selected cases in Direct tax laws 2011, ICAI**
- 3. Revision Test papers for May/ Nov. 2012, ICAI**

**Prepared by:  
CA. Ashish Goyal,  
Advocate**

**Recent Amendments Applicable for A.Y. 2012-13**  
**Applicable of May/ Nov 2012 Attempt**

Section	Summary	Remarks
-	Rate of TAX	Please refer <b><u>Annexure A.</u></b>
	<b><u>EXEMPT INCOME</u></b>	
10(46)	Specified Income of Body/ Authority/ Board/ Trust/ Commission is exempt, if following conditions are satisfied: - - such body is established under Central/ State/ Provincial Act or Constituted by Central/ State Govt - same is established for administering/ regulating activity for public welfare - same is not engaged in Commercial Activity - is notified by Central Government.	Provision is introduced to give exemption to government Companies like Maritime Boards, Development Authorities etc.
10(47)	Income of notified infrastructure Debt fund is exempt.	(a) Investment in notified debt fund provides deduction to investor u/s. 80CCF, upto Rs. 20,000. (b) Please refer section 115A(1)(a) <i>infra</i> . (c) Please refer TDS also.
10A, 10BA	10B, Impliedly repealed from A.Y. 2012-13.	10A – Free trade Zone 10B – 100% EOU 10BA – 100% of handicrafts  It may be noted that section 10AA is still in operation. Units located in SEZ are still eligible for deduction.
	<b><u>SALARY</u></b>	
10(45)	Notified allowances and perquisites received by Chairman/ Retired Chairman of Union Public Service Commission shall be exempt.	Following allowances/ perquisites have been notified vide notification no. 49/2011 dt. 06.09.2011: - <u>(a) In case of serving Chairman and members of UPSC.</u> - Rent free official accommodation. - Value of any conveyance facilities (including transport allowance) - Sumptuary allowance - Leave travel Concession <u>(b) In case of retired Chairman and members of UPSC</u> - a sum of maximum Rs. 14,000 p.m. for defraying the service of orderly and for meeting expenses towards secretarial assistance on contract basis - value of residential telephone free of cost and the number of free calls to the extent of Rs. 1500 p.m. (over and above the number of free calls p.m. allowed by telephone authorities)

	<b>BUSINESS/ PROFESSION</b>	
35	Deduction for donation to some notified Scientific research organizations extended to 200% instead of 175%	Please refer <b>Annexure B</b>
35AD	Two new specified business added: - (a) Notified Housing Project under scheme for affordable house by Central Govt/ State Govt. (b) New plant/ newly installed capacity in existing plant for production of fertilizer in India  Deduction is allowable for these two units commencing their business on or after 01.04.2011.	Capital Expenditure can be debited to P & L Account by following 8 assessee's as on date: - (a) Cold Chain Facility (b) Agricultural storage (c) Two-star or above category Hotel (d) Hospital (e) Housing project under slum redevelopment (f) Notified Housing Project under scheme for affordable house by Central Govt/ State Govt. (g) Production of fertilizer in India (h) Cross-Country Natural Gas Pipeline
35AD	Words "new" deleted for hotel and hospital industry	It is inferred that even by purchase of existing hotel and hospital, assessee would be eligible for deduction.
36	Employer's contribution to notified pension fund u/s. 80CCD is allowable upto 10% of salary.	Provision is synchronized with section 80CCD.
	<b>DEDUCTIONS/ 10A-10BA</b>	
80CCD	Limit of Rs. 1 lakhs for deduction u/s. 80C, 80CCC and 80CCD. The limit shall not apply for employer's contribution u/s. 80CCD.	Please refer <b>Annexure C.</b>
80CCF	Investment in Infrastructure Bonds, deduction allowable upto Rs. 20,000 p.a. The sunset of the section extended by one year. Thus, deduction will be allowable even if the investment is made for A.Y. 2012-13	
80IA	Power industry – the sunset clause has been extended for one year. Power industry can be set-up even upto A.Y. 12-13	
80IB	In respect to Production of Mineral Oil, it has been specified that no deduction shall be allowed in relation to blocks licensed under a contract awarded after the 31st day of March, 2011 under the New Exploration Licencing Policy or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner	Sunset clause has been introduced providing sunset of 31.03.2011.  The sunset of refining of mineral oil has already been brought in 2009.
	<b>ASSESSMENT OF FIRM/ LLP</b>	
115JC-JF	Alternative Minimum Tax (AMT) introduced for LLP. AMT credit is also available.	Please refer <b>Annexure D.</b>
	<b>ASSESSMENT OF COMPANY</b>	
115JB	Rate of MAT increased from 18% to 18.50%.	
115JB	Earlier MAT was not applicable on developer of SEZ. But now, MAT shall also apply on developer of SEZ.	
115JB	Similarly, in respect to a unit located in SEZ (covered by section 10AA), earlier MAT was not applicable. But, now MAT shall also be applicable to units located in SEZ.	As on date, generally MAT does not apply on exempt income. However, two exempt incomes are taxable under MAT: - - 10(38) - 10AA

115-O/ 10(34)	Dividend declared by developer of SEZ shall not be exempt from Dividend Distribution Tax (DDT)										
115-R	Rate of Income Distribution Tax (IDT), paid by Mutual Funds has been amended. New rates: -  <table border="1" data-bbox="391 495 927 689"> <thead> <tr> <th>Payee \ Payer</th> <th>Money Market Mutual Fund/ Liquid Fund</th> <th>Other</th> </tr> </thead> <tbody> <tr> <td>Individual/ HUF</td> <td>25%</td> <td>12.50%</td> </tr> <tr> <td>Other</td> <td>30%</td> <td>30%</td> </tr> </tbody> </table> <p>The amount shall be increased by surcharge, education cess and secondary higher education cess.</p>	Payee \ Payer	Money Market Mutual Fund/ Liquid Fund	Other	Individual/ HUF	25%	12.50%	Other	30%	30%	
Payee \ Payer	Money Market Mutual Fund/ Liquid Fund	Other									
Individual/ HUF	25%	12.50%									
Other	30%	30%									
	<b>ASSESSMENT OF TRUST</b>										
2(15)	Under the existing provisions, “any other object of general public utility” is a “charitable purpose” only gross receipts from such activity is not more than Rs. 10 lacs. The limit has been amended to Rs. 25 lacs.										
	<b>ASSESSMENT PROCEDURE</b>										
139	Due date for filing return in case of assessee (being a Company) who are required to get Audit Report u/s. 92E (i.e. in Form no. 3CEB) under Transfer Pricing	Please refer <b>Annexure E.</b>									
139(1C)	CBDT may notify cases, where they may grant exemption from filing of return. CBDT has notified the cases vide Notification No. 23.06.2011. Exemption is available to individual being salaried employee having Total income upto Rs. 5 lakhs. This may also include Saving bank interest of Rs. 10,000. No other income shall exist.	Please refer <b>Annexure F.</b>									
139(4C)	Specified association u/s. 10(46) and Infrastructure debt fund u/s. 10(47), are also required to file return if the income of such funds, before giving exemption u/s. 10 is above the basic exemption limit.	Thus, in following cases return is required to file return, if the income exceeds basic exemption limit, before giving exemption under following sections: - <ol style="list-style-type: none"> <li>1. Trust/ institution registered u/s. 12A/ 12AA</li> <li>2. Political party covered u/s. 13A</li> <li>3. News agency u/s. 10(22B)</li> <li>4. Association or institution u/s. 10(23A)</li> <li>5. Institution u/s. 10(23B)</li> <li>6. Educational/ Philanthropic/ Charitable/ Religious Institution u/s. 10(23C)</li> <li>7. Trade union or association u/s. 10(24)</li> <li>8. Specified body u/s. 10(46)</li> <li>9. Infrastructure Debt Fund u/s. 10(47)</li> </ol>									
285	A non-resident having a liaison office in India shall file return in respect of its activities in the F.Y. Return shall be filed within 60 days of end of F.Y. in prescribed form.	No form has been prescribed till date.									
153	In case of exchange of information u/s. 90/ 90A, the period of limitation for passing the order shall be extended from the date of reference for exchange of										

	information till the date on which information is received or 6 month, whichever is less.							
245C-D	<p>(a) Settlement Commission may rectify mistake apparent of record within 6 month from the end of the month in which order was passed.</p> <p>(b) Application can be filed to Settlement Commission only if the additional tax payable is minimum:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 60%;">In ordinary cases</td> <td style="text-align: right;">Rs. 10 lacs</td> </tr> <tr> <td>In search case u/s. 153A/C</td> <td style="text-align: right;">Rs. 50 lacs</td> </tr> <tr> <td><u>Related persons</u></td> <td style="text-align: right;"><u>Rs. 10 lacs</u></td> </tr> </table>	In ordinary cases	Rs. 10 lacs	In search case u/s. 153A/C	Rs. 50 lacs	<u>Related persons</u>	<u>Rs. 10 lacs</u>	
In ordinary cases	Rs. 10 lacs							
In search case u/s. 153A/C	Rs. 50 lacs							
<u>Related persons</u>	<u>Rs. 10 lacs</u>							
	<b>INTERNATIONAL TAXATION</b>							
131, 133	In order to empower the I-T Authorities to collect information about the particulars of tax liability, of India, which has been evaded and kept in foreign country, Notified I-T authorities are empowered to call for certain information covered u/s. 131/ 133. Further power has been given to impound the books.	Please refer <b>Annexure G.</b>						
94A	Transactions in NJA – Different provisions to apply.	Please refer <b>Annexure H.</b>						
92C	<p>(a) Earlier, difference between ALP determined by AO and transaction price upto 5% was acceptable. But instead of giving a straight percentage of 5%, now the provisions have been amended to provide that difference upto <b>prescribed percentage</b> shall be acceptable.</p> <p>(b) Further, it is stated that if the transaction is in NJA, even minor difference shall not be acceptable.</p>							
94CA	If during course of proceedings before TPO, any other international transaction (which is not referred to him) comes to his notice, the provisions of this Chapter will apply to those transactions also. In other words, the TPO would determine the ALP of such transaction also.							
115BBD	<p>(a) Section applies to A.Y. 2012-13.</p> <p>(b) Assessee is Indian company</p> <p>(c) Assessee earned Dividend</p> <p>(d) from “Specified Foreign company”</p> <p>Such dividend shall be taxable @ 15%.</p>	“Specified Foreign Company” means a foreign company in which the Indian Company holds 26% or more of nominal value of equity share capital of the company.						
115A(1)(a)	Interest income earned by any foreign company or non-resident non-corporate assessee, from infrastructure debt fund u/s. 10(47) shall be taxable at 5%. In case, this is the only source of income, on which TDS has been deducted, the assessee shall be exempt from filing return.							
	<b>TAX COLLECTION &amp; RECOVERY</b>							
194LB	<p>(a) Interest is paid by Infrastructure debt fund u/s. 10(47)</p> <p>(b) to a foreign company or non-resident non-corporate assessee</p> <p>(c) Infrastructure debt fund shall deduct TDS @ 5%.</p>	-						

## ANNEXURE A – Rates of tax for A.Y. 2012-13

The rates are assessee wise. The rates for A.Y 2012-13 are as follows: -

**(a) Individual & HUF: Slab rates**

(i) **Individual (non being senior/ very senior resident)/ HUF**

Income	Tax rate
<u>0-180000</u>	Nil
180001-500000	10%
500001-800000	20%
Above 800000	30%

(ii) **Female (non being senior/ very senior resident)**

Income	Tax rate
0-190000	Nil
190001-500000	10%
500001-800000	20%
Above 800000	30%

(iii) **Senior Resident: aged 60 or above**

Income	Tax rate
<u>0-250000</u>	Nil
250001-500000	10%
500001-800000	20%
Above 800000	30%

(iv) **Very Senior Resident: aged 80 or above**

<u>Income</u>	<u>Tax rate</u>
<u>0-500000</u>	<u>Nil</u>
<u>500001-800000</u>	<u>20%</u>
<u>Above 800000</u>	<u>30%</u>

➔ **SALIENT FEATURES: -**

- In case of non-resident individual (whether female/ senior/ very-senior non-resident), basic exemption limit shall be Rs. 1,80,000.
- In case of individuals, there is no surcharge.

(b) **Firm:** 30%

(c) **Companies**

Domestic	: 30% + surcharge
Foreign	: 40% + surcharge [however, 50% in case of Royalty/ Fees for Technical Services, received from Government/ Indian Concern in pursuance of agreement made prior to 31.03.1976]

**Surcharge:**

Surcharge is applicable if total income exceeds Rs. 1 crores. Rate of Surcharge: -

**5.00%** - in case of Domestic Company

**2.00%** - in case of Foreign Company

(d) **For local authority:** 30%

(e) **For co-operative society**

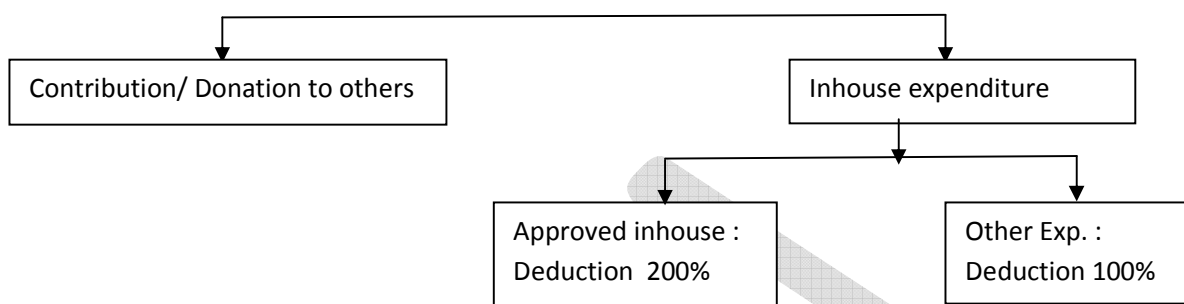
0-10000	10%
10001-20000	20%
Above 20000	30%

**Educational Cess:** 2% of (Income-tax + Surcharge)

**Secondary & Higher Education Cess:** 1% of (Income-tax+ Surcharge)

### Annexure B – Scientific Research Expenditure u/s. 35

Expenditure on scientific research can be classified in following manner: -



#### Contribution/ Donation to others

Donation to	Deduction
1. Approved scientific research association or to a university, college or other institution to be used for - scientific research. - social science or statistical research	<b>Amendment</b> <u>200%</u> 125%
2. Any national laboratory or IIT to be used for scientific research under an approved program	<u>200%</u>
3. A company, ▪ Which is registered in India; ▪ which has as its main object the scientific research and development ▪ which is approved by prescribed authority; and ▪ such company fulfils such other conditions as may be prescribed. As per section 35(6), no deduction shall be allowed to such company for expenditure on approved inhouse research.	125%

### Annexure C – Contribution to Pension fund for deduction u/s. 80CCD

- (a) **Eligible assessee:** Individual
- In employment on or after 01.01.2004
  - Other individual
- (b) **Eligible payment:** Employee's Contribution + Employer's (Govt.) contribution towards notified Pension Scheme/ New Pension Scheme.
- (c) **Quantum of deduction: -**
- a. Individual in employment (Govt or Private)**
    - Employee's contribution (Max. 10% of salary)
    - Employer's Contribution (Max. 10% of salary)
 'Salary' = Basic +CDA (All other allowances and perquisites are excluded.)
  - b. Other Individual**  
Maximum 10% of GTI

Total amount of deduction u/s. 80C, 80CCC, 80CCD shall not exceed Rs.100000. **However, employer's contribution shall not be considered for the limit of Rs. 1,00,000.**

	Example 1	Example 2	Example 3	Example 4
Salary	8,00,000	8,00,000	5,00,000	9,00,000
Employees contribution	40,000	70,000	70,000	80,000
Employers Contribution	35,000	65,000	65,000	1,20,000
Deduction u/s. 80C claimed	50,000	50,000	40,000	-
Deduction u/s. 80CCD (For Employees contribution)	40,000	50,000 (deduction u/s. 80C Rs. 50,000)	50,000 (restricted to 10% of salary)	80,000
Deduction u/s. 80CCD (for Employers Contribution)	35,000	65,000	50,000 (restricted to 10% of salary)	90,000 (restricted to 10% of salary)

Amendment

## Annexure D – Alternative Minimum Tax (AMT) for LLP

### SUMMARY OF APPLICABLE PROVISIONS

**2(23)** Definition of "firm"

#### CHAPTER XII-BA

**115JC** Special Provisions for payment of tax by certain LLPs

**115JD** Tax credit of AMT

**115JE** Application of Other provisions of the Act

**115JF** Interpretation in this Chapter

### LLP as a separate taxable entity

U/s. 2(31), "person" inter-alia covers firm. Further, "firm" u/s. 2(23) includes LLP under the LLP Act, 2008.

When the concept of LLP was introduced in India, it was disputed that how assessment of LLP would happen. There were arguments that the LLP would be taxed as a Company or Firm.

**As on date, with the Finance Act, 2011, the assessment of LLP has colours both of Assessment of Firm and Assessment of Company.**

### Computation of Total Income of LLP

Since Firm includes an LLP, thus while computing the total income of LLP, section 184 and section 185 shall apply. If the conditions of those sections are satisfied, then deduction shall be allowable for

- salary, commission, bonus, remuneration; and
- interest to partners

within the limits of section 40(b).

### Computation of Tax Liability of LLP

The Finance Act, 2011 introduced the concept of Alternate Minimum Tax (AMT) vide section 115JC. As per this section, the tax liability of LLP shall be **higher of the following figures**:-

- 30% (plus EC & SHEC) of Total Income (Called Regular Tax)
- 18.50% (plus ES & SHEC) of Adjusted Total Income (Called AMT)

Amendment

Effectively, the tax liability shall be **higher of:** -

- 30.90% of Total Income
- 19.055% of Adjusted Total Income.

◆ **SALIENT FEATURES:** -

- a. *Adjusted Total Income = Total Income + Chapter VIA (Part C) deductions + Income eligible u/s. 10AA.*
- b. Thus, Adjusted Total Income shall be total income before giving effect to Income based deductions and section 10AA exemption. Thus, although an LLP which is eligible under these sections is not liable for normal Income-tax, such assessee is liable for AMT.

**AMT CREDIT (Section 115JD)**

- a. AMT is required to be paid when **regular tax liability** is less than Liability under **AMT**.
- b. AMT paid is treated as a tax in advance. Assessee shall be allowed credit for AMT paid in the following manner: -
  - (i) AMT credit shall arise in the year in which AMT is paid.  
**AMT credit = AMT less Regular Tax**
  - (ii) In year when **Regular tax exceeds AMT**, following amount shall be **deducted** from tax: -  
**Deduction allowed = Regular tax less AMT for the year**  
**subject to maximum of AMT credit brought forward.**

*Some other points regarding AMT Credit: -*

- a. AMT Credit shall be carried forward only for **10 years** subsequent to first year.
- b. In case company is converted into LLP, MAT credit of company shall not be allowed as set-off against tax liability of LLP. This would cause unnecessary jeopardy to the assessee.
- c. Refund of carried forward tax credit will not be allowed.
- d. Interest on carried forward tax credit will not be allowed.
- e. AMT Credit would reduce/ increase as a result of subsequent order of AO/ Appellate Authorities etc.

**Amendment**

**Other Provisions**

1. In case AMT is applicable, assessee is required to file a report of CA. (Form No. 29C)
2. **Conversion of Company into LLP:** - In case a company is converted into LLP, the provisions are sought to be made tax neutral, by giving relief under Business head, Capital Gains and Set-off and Carry-forward of losses.  
  
However, no such benefit is given for Chapter VIA-Part C deductions, MAT credit etc.
3. **Signature on return:** - U/s. 140, return of LLP shall be signed by **Designated Partner**. However, if there is no Designated Partner or such partner is not available, the return may be signed by any partner.
4. **Presumptive Taxation u/s. 44AD:** - The benefit of presumptive taxation u/s. 44AD is available to Firm, but not to LLP.

### Computation of Income of Partners

1. As there are no special provisions for computation of income of partners of LLP, normal provisions shall apply. Since firm includes LLP, total income of partners shall be computed as it is done in the case of Assessment of Firm.
2. Thus,
  - o Share of profit in LLP in hands of partner shall be exempt.
  - o The amount of salary and interest allowed to LLP u/s. 40(b) shall be taxable in hands of partner under the head Business or Profession.
  - o The amount of salary and interest disallowed to LLP u/s. 40(b) shall not be taxable in hands of partner.

### ➔ SALIENT FEATURES: -

It may be noted that irrespective of the fact that the LLP was liable for regular tax or AMT, the calculation of total income of partners shall remain unaffected.

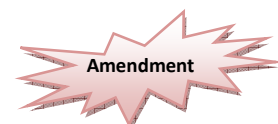
### Annexure E – Transfer Pricing Audit u/s. 92E – Due date for filing return

	Firm	Company	Company	Company
Turnover	2 crore	5 lakhs	5 lakhs	200 crore
Transfer pricing provisions	-	-	Apply	Apply
Tax audit required	Yes	No	No	Yes
Transfer pricing audit required?	No	No	Yes	Yes
Audit under Companies Act?	No	yes	Yes	Yes
Due date of return	30 <sup>th</sup> Sep	30 <sup>th</sup> Sep	30 <sup>th</sup> Nov	30 <sup>th</sup> Nov

### Annexure F – Section 139(1C) – Exemption from filing return

Exemption from filing return: - U/s. 139(1C) r/w Notification dt. 23.06.2011, exemption is available from filing of return if following conditions are satisfied: -

- (i) Assessee shall be Individual
- (ii) Only source is income shall be
  - "Salaries"
  - Saving Bank Interest
- (iii) Total Income shall not exceed Rs. 5 lakhs.
- (iv) Saving Bank interest shall not exceed Rs. 10,000
- (v) PAN no. shall be given to Employer
- (vi) Saving Bank Interest has been reported to employer and TDS has been deducted on same.
- (vii) Form no. 16 has been received by employee.
- (viii) Full tax liability has been discharged by TDS.
- (ix) No refund is claimed.
  - (x) Salary is received from only one employer.
  - (xi) Exemption is not available, if assessee is required to file return in response to notice u/s. 142(1)/ 148/ 153A/ 153C.



Further, as per FAQs dt. 21.07.2011, issued by CBDT, the examples have been given to clarify how the exemption shall be operational: -

	Example 1	Example 2	Example 3	Example 4	Example 5	Example 6	Example 7
Salary	450000	450000	550000	450000	550000	450000	450000
Interest	8000	18000	8000	8000	8000	8000	8000
Other adjustment	-	-	(80000) Chapter VIA deduction	(30000) H/P Loss	(80000) H/P Loss	4000 Agri. Income	15000 Agri. Income
Total Income	458000	468000	478000	428000	478000	458000	458000
Exempt from filing return	Yes	No. (As Interest more than Rs. 10000)	Yes	Yes	No (As due to H/P Loss, the Total Income is reduced below Rs. 5 Lakhs)	Yes (As agri. Income less than Rs. 5000)	No. (As Agri. Income to be included for rate purposes)

### Annexure G – Tax Information Exchange Agreement (TIEA)

As per Article 26 of the DTAA, generally the States enter into agreement for sharing of information regarding tax evasion. In terms of such article, the foreign government, banks and other institutions may share information regarding tax evasion. Say a bank in Linchisten, Germany may give details of Indians having unaccounted money in their bank.

However, there was no obligation on the foreign government and banks regarding sharing of information. They may deny the information, without any penal consequences. In G-20 summit held 2 years back, it was decided that agreements shall be made to compel the foreign governments and banks to provide the information. Such agreements shall be called as Tax Information Exchange Agreement (TIEA). In recent past, India has entered into TIEA with Bahamas, Bermuda and Isle of Man.

There was no provision in the Act, whereby the Indian IT authorities were empowered to call information from foreign governments, banks and institutions. Amendments have been brought in this respect this year: -

- a. The power is available to Notified IT authorities. Officer of ACIT or above rank may be notified.
- b. The powers are available only in respect to persons in relation to an agreement u/s. 90/90A.
- c. The powers are available irrespective of the fact, that the proceedings are pending before the authorities or not.
- d. The powers are as under: -
  - Sec. 131(1) – Powers of Civil Court for discovery and inspection etc.
  - Sec. 131(3) – Powers to impound books of accounts.
  - Sec. 133 – Powers to call for certain information.

#### ➤ SALIENT FEATURES:-

- a. The Provisions have been introduced in the grab of information provided by a bank of Linchisten whereby name of alleged 40 Indians were given who had deposited their alleged black money.
- b. The provisions empower the notified authorities to call for information and issue notice to foreign banks, other institutions.
- c. Even after this provision, it is very doubtful that if the foreign banks/ institutions do not give information, they will be liable to penal consequences. This is so that Indian government can may laws only for territory on India. Extra-territorial laws cannot be made. Does it amount to extra-territorial right is very doubtful.

- d. The provisions empower the IT authorities to obtain information in cases covered u/s. 90/90A. India has entered into separate agreements with certain countries for sharing of information in this regard. Such

## Annexure H – Transactions with persons in Notified Jurisdictional Area (NJA)

In order to track and tax black money, this section 94A has been introduced.

Where there is DTAA, and such DTAA provides for a clause regarding exchange of information, then the government may be able to exchange the information regarding black money in terms of DTAA. As stated earlier, this year, section 131 and 133 have been amended to empower the Notified I-T authorities to call for information. However, there may be situations where there may not be arrangements for “effective exchange of information with any country or territory”.

With a view to create obligation for black money circulating through such places, the following provision has been introduced: -

1. Having regard to lack of effective exchange of information with any country or territory, such territory may be announced by Central Government as “notified jurisdictional area” (NJA).
2. The provisions shall apply if an assessee does a transaction where one of the parties is person located in NJA.  
 Person located in NJA **includes:** -
  - (a) A person who is resident of the NJA;
  - (b) A person, not being an individual, which is established in the NJA;
  - (c) A Permanent Establishment (P.E.) of a person not falling in (a) or (b) above, and the P.E. is located in NJA.
3. If an assessee does any transaction, where one of the parties is a person located in NJA, then: -
  - (a) Transfer Pricing:** - Such transaction will be deemed to an International Transaction with Associated Enterprise and liable for “Transfer Pricing” u/s. 92 to 92F. All provisions of Transfer Pricing shall apply. Even, if the difference between transaction price and ALP is less than specified percentage, addition would be made.
  - (b) Payment : Non-allowability of deduction:** - No deduction (including depreciation) under any provision of the Act shall be allowed for any such transaction, unless: -
    - For Payment to Financial Institution located in NJA – Assessee submits authorization in prescribed form, authorizing the Board/any IT Authority to seek relevant information from the said Financial Institution;
    - For Payment to Others located in NJA – Assessee maintains such other documents and furnishes such other information as may be prescribed.
  - (c) Receipt : Prove Source of Source:** - Generally u/s. 68 (Cash Credits), assessee is not required to prove the source of source (or origin of origin). However, in respect to any receipt from any NJA, assessee is required to establish the source of person from whom the money is received. In case assessee is unable to prove the source of source or the explanation offered by assessee is not acceptable, it will be deemed to be income of assessee.



### Example:

Say, if Mr. A take a loan from Mr. B, Mr. A is required to prove the identity, genuineness and credit-worthiness of Mr. B. Mr A is not required to prove the source from where Mr. B got the money. If there is any unaccounted money with Mr. B, addition, if any, must be made in hands of Mr. B.

If in this example, Mr. B was in NJA, then Mr. A shall also prove the source of Mr. B (i.e. from where he got this money). If Mr. A is unable to explain it, it will be treated as unaccounted money of Mr. A and will be added as income in hands of Mr. A.

**(d) TDS:** - In case payment is made to any person located in NJA, TDS shall be deducted at: -

- Rate specified in the relevant provisions; or
  - 30%
- } whichever is **higher**.

#### **Constitution of Directorate of Income-tax (Criminal Investigation)**

In order to implement the provisions relating to investigation into international-tax evasion cases, Directorate of Income-tax (Criminal Investigation) [DCI] is constituted. [Notification No. 29/ 2011 dt. 30.05.2011]

**Amendment**

DCI shall be assisted by Addl. DCI, Dy. DCI, and Special Officers (of rank of ITO). The DCI shall discharge the following functions: -

- (a) Seek and collect information about persons and transactions suspected to be involved in criminal activities having cross-border, inter-State or international ramifications, that pose a threat to national security and are punishable under the direct tax laws;
- (b) To investigate the source and use of such funds;
- (c) To issue show-cause notice/ lodge prosecution for offences committed under any direct tax law;
- (d) To protect and rehabilitate witnesses who support the state in prosecution of such offences;
- (e) To coordinate with and extend necessary expert, technical and logistical support to any other intelligence or law enforcement agency in India investigating such crimes;
- (f) To enter into agreements for sharing of information and other cooperation with any central or state agency in India;
- (g) To enter into agreements for sharing of information and other cooperation with such agencies of foreign states as may be permissible under any international agreement or treaty; and
- (h) Any other matter relating to the above.

## Latest Circulars/ Rules/ Notifications – At a Glance

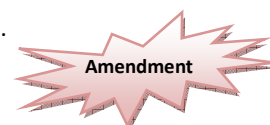
	<b><u>INCOME-TAX RULES</u></b>															
(Second Amendment) Rules, 2011	<p>Certificate u/s. 197 for non-deduction/ short-deduction of TDS. Certificate shall be granted u/s. 197, after considering following aspects:</p> <p>(i) tax payable on estimated income of the P.Y.;</p> <p>(ii) tax payable on the assessed income/ returned income, of the last three P.Ys.;</p> <p>(iii) existing liability under IT Act or Wealth-tax Act;</p> <p>(iv) advance tax/ TDS/ TCS for A.Y. till the date of filing application;</p> <p>The deductor is required to furnish the details of TDS not deducted due to certificate granted under this section.</p>															
(Eighth Amendment) Rules, 2011	<p>(a) Due date for filing quarterly TDS returns</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">Quarter ending</th> <th style="width: 33%;">Due Date of return</th> <th style="width: 33%;">Due date for Govt Deductor (I-T (Eighth Amendment) Rules, 2011)</th> </tr> </thead> <tbody> <tr> <td>30<sup>th</sup> June</td> <td>15<sup>th</sup> July</td> <td>31<sup>st</sup> July</td> </tr> <tr> <td>30<sup>th</sup> September</td> <td>15<sup>th</sup> Oct.</td> <td>31<sup>st</sup> Oct.</td> </tr> <tr> <td>31<sup>st</sup> December</td> <td>15<sup>th</sup> Jan.</td> <td>31<sup>st</sup> Jan.</td> </tr> <tr> <td>31<sup>st</sup> March</td> <td>15<sup>th</sup> May</td> <td>15<sup>th</sup> May</td> </tr> </tbody> </table> <p>(b) In case the TDS is deducted in name of one person, but the whole/part of income is assessable in hands of another person, credit for the whole or part of TDS shall be given to other person and not to deductee. However, the deductee shall furnish such details to the deductor, and the deductor shall furnish the same in the quarterly statement.</p>	Quarter ending	Due Date of return	Due date for Govt Deductor (I-T (Eighth Amendment) Rules, 2011)	30 <sup>th</sup> June	15 <sup>th</sup> July	31 <sup>st</sup> July	30 <sup>th</sup> September	15 <sup>th</sup> Oct.	31 <sup>st</sup> Oct.	31 <sup>st</sup> December	15 <sup>th</sup> Jan.	31 <sup>st</sup> Jan.	31 <sup>st</sup> March	15 <sup>th</sup> May	15 <sup>th</sup> May
Quarter ending	Due Date of return	Due date for Govt Deductor (I-T (Eighth Amendment) Rules, 2011)														
30 <sup>th</sup> June	15 <sup>th</sup> July	31 <sup>st</sup> July														
30 <sup>th</sup> September	15 <sup>th</sup> Oct.	31 <sup>st</sup> Oct.														
31 <sup>st</sup> December	15 <sup>th</sup> Jan.	31 <sup>st</sup> Jan.														
31 <sup>st</sup> March	15 <sup>th</sup> May	15 <sup>th</sup> May														
	<b><u>CIRCULARS</u></b>															
Notification dated 09.02.2011	<p>Appeal to SC/HC/ITAT by department cannot be filed if the tax effect is below monetary limits. The limits have been revised as under: -</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Forum</th> <th style="width: 50%;">Monetary Limits</th> </tr> </thead> <tbody> <tr> <td>Supreme Court</td> <td>Rs. 25 lacs</td> </tr> <tr> <td>High Court</td> <td>Rs. 10 lacs</td> </tr> <tr> <td>ITAT</td> <td>Rs. 3 lacs</td> </tr> </tbody> </table>	Forum	Monetary Limits	Supreme Court	Rs. 25 lacs	High Court	Rs. 10 lacs	ITAT	Rs. 3 lacs							
Forum	Monetary Limits															
Supreme Court	Rs. 25 lacs															
High Court	Rs. 10 lacs															
ITAT	Rs. 3 lacs															
Circular no. 2 / 2011	<p><b><u>Refund of Excess tax deposited:</u></b> - Excess TDS deposited means</p> <p>- TDS deposited by deductor <u>Less</u> TDS Deductible</p> <p>In case the excess TDS is deposited: -</p> <p>- Excess of one quarter can be set-off with the shortfall of another quarter in same F.Y</p> <p>- However, if cannot be set-off within same F.Y., the payer shall be allowed refund of excess TDS deposited, subject to administrative safe-guards.</p> <p>Further,</p> <p>- No refund shall be allowed beyond 2 years from the end of F.Y. in which the TDS was deductible.</p> <p>- Approval of Addl. CIT(TDS) shall be obtained.</p> <p>- Refund shall only be given only if following conditions are fulfilled: -</p> <ul style="list-style-type: none"> <li>o It is a case of genuine error and that error occurred inadvertently</li> <li>o The deductor has not issued TDS certificate to the deductee for the excess amount</li> <li>o The credit is not claimed and allowed to the deductee.</li> </ul> <p>- The Circular applies only for refund in case if deductee is resident.</p>															
Circular no. 3/ 2011	TDS Certificates can be issued with digital signatures.															
Circular no. 4/ 2011	U/s. 281, during assessment, certain transfers are treated as void. However, if the assessee applies to AO and AO grants approval, the transfers are treated as valid. CBDT has given conditions for															

	granting approval u/s. 281. Please refer <b>Annexure 1.</b>
Circular no. 7/2011	In case the provisions of domestic law are more beneficial then DTAA, TDS u/s. 195 shall be done as per domestic law.
Circular No. 8/ 2011	U/s. 194A, during pendency of litigation, when amount is deposited in bank deposits on directions of any court/ Tribunal, the depositor shall furnish the details in the form prescribed. The bank shall deduct the TDS and issue TDS certificates in the name of depositor. Sometimes, Court/ Tribunals direct more than one party shall may deposit with bank. In such a case, the bank shall issue TDS certificate in the name of depositors, in proportion of deposits made by them.

### Annexure 1 – Certain transfers to be void u/s. 281

The procedure for obtaining permission of AO shall be as under: -

- (i) Application shall be made in Form which can be downloaded from Department's website.
- (ii) Application has to be made at least 30 days prior to proposed date of transaction
- (iii) AO would grant permission if: -



	Situation I	Situation II	Situation III	Situation IV
<b>Demand is outstanding</b>	No	No	Yes (Undisputed demand)	Yes (Disputed Demand)
<b>Demand is likely to be outstanding in next 6 months</b>	No	Yes	No	Not Applicable
<b>Permission to be granted</b>	Yes	AO shall explore possibility of action u/s. 281B.	Yes, but only if taxpayer pays demand alongwith interest	Yes, but only if the taxpayer obtains stay of demand and provides adequate security (Bank guarantee/ other assets/ first charge against assets transferred)
<b>Permission to be granted within</b>	10 Working Days (W.D.) of receipt of application	15 W.D. of receipt of application	10 W.D. payment of demand alongwith interest	10 W.D. providing adequate security

(iv) If taxpayer is:

- unable to pay undisputed demand; or
- provide security; or
- application for stay is rejected

application shall be disposed off within 10 working days of time granted to assessee/rejection of stay.

In such a case, AO shall

- pass a reasoned order
- obtain approval of JCIT/ Addl CIT

(v) If AO is granting permission, AO shall obtain prior approval of JCIT/ Addl CIT if the asset transferred/ charge created is more than 10 crores.

(vi) Once permission is granted u/s. 281, same shall be valid for: -

- 180 days of date of approval; or
- Service of attachment u/s. 281B

**whichever is earlier.**

## Recent Case Laws – At a Glance

### [Selected Cases in Direct taxes issued by ICAI]

Case Law	Summary
<b>House Property</b>	
CIT vs Moni Kumar Subha (Del.)(FB)	Tenant made deposits with landlord. Notional interest therefrom cannot be taken as house property income.
Joseph George and Co. (2011) 328 ITR 161 (Ker.)	If the building of bank has been let out for a long term, income from such letting out is to be treated as House Property income and not business income. <i>Earlier decision of Universal Plast (SC) applied.</i>
<b>Business/ Profession</b>	
Shree Balaji Alloys (2011)333 ITR 335 (J & K)	The date of commencement of commercial production and the fact that subsidy was not granted for creation of new assets were not the sole criteria for determining the nature of subsidy. The fact that such incentives were provided to achieve a public purpose should also be considered to determine the nature of subsidy and hence, the subsidy was held to be a capital receipt. In present case, therefore excise duty refund and interest subsidy is to be treated as a capital subsidy. <i>Earlier decisions of Sahaney Steel (SC) and Ponney Sugar (SC) distinguished.</i>
CIT vs Yamaha Motor India Pvt Ltd. (2010) 328 ITR 297 (Del.)	If some of the items in the block have become obsolete, still depreciation shall be allowable on the block. The reasons for the same are as under: - - Depreciation is allowable on block. Once asset merges into the block, it loses its identity. - Depreciation is allowable if asset is “used” for business. Even if it is used in earlier years, depreciation is allowable.
CIT vs Cable Corporation of India Ltd. (2011) 336 ITR 56 (Bom.)	Assessee sold a depreciable asset and reduced the amount received/receivable from the block. AO wanted to reduce the FMV of the asset instead of amount received/ receivable. It was held that as per the Act, “Money Payable” is to be reduced from the block. Thus, actual consideration is to be reduced and not the market value.
B. Raveendran Pillai (2011) 332 ITR 531 (Ker.)	A hospital was run several years prior to purchase by the assessee. By transferring the right to use the name of the hospital itself, the previous owner had transferred the goodwill to the assessee and the benefit derived by the assessee was retention of continued trust. It was held that the payment was in the nature of “any other business or commercial right of similar nature.
Federal Bank Ltd. (2011) 332 ITR 319 (Ker.)	EPBAX and mobile phones shall not be treated as computers and shall not be eligible for deduction @ 60%. Same shall be eligible for depreciation as a plant @ 15%.
CIT vs Priya Village Roadshow (2011) 332 ITR 594 (Del.)	Expenditure incurred for conducting feasibility study was initially a capital expenditure. However, subsequently, the project was found not feasible. It was held that the expenditure was revenue expenditure.
Echjay Forgings Ltd. (2010) 328 ITR 286 (Bom.)	The question was whether foreign education of Director’s son be treated as “Wholly and exclusively for business”. It was held in the facts of the present case, that the foreign education of Director’s son was not backed by any evidence showing that earlier the Director’s son was in employment. The evidences produced, to prove that Director’s son was an apprentice are not reliable.
Iskrameco Regent Ltd. (2011) 331 ITR 317 (Mad.)	Waiver of principal amount of loan, cannot be treated as deemed business income u/s. 41 or u/s. 28. <i>Earlier case of T.V. Sunderam Iyenger (SC) and Mahindra &amp; Mahindra (Bom.)</i>

	applied.
Madras Gymkhana Club (2010) 328 ITR 348 (Mad.)	Principle of mutuality – Assessee club accepted deposits from members. Assessee invested the same in bank FDR. Assessee claimed that interest on such deposits was not liable for tax on the principle of mutuality. It was held that interest on FDR was not exempt as it did not satisfy the test of mutuality.
DDIT vs DSD Noell GmbH (2011) 333 ITR 304 (Del.)	U/s. 44BBB (presumptive taxation for turnkey projects), even if higher profit is earned, same need not be offered. Same principle applies for section 44B/44BB/44BBA. However, u/s. 44AD and section 44AE, since the language is “or such higher rate, as the case may be”; if higher profit is earned, higher profit shall be offered.
Global Geophysical Ltd. (2011) 332 ITR 418 (AAR)	Section 44BB (presumptive taxation for mineral support business) applies on assessee who was engaged in obtaining seismic data for mineral extraction.
<b>Capital Gains</b>	
CIT vs Smt. K.G. Rukminiamma 331 ITR 211 (Kar.)	Assessee was owner of old house, and entered into agreement with builder. Builder constructed the building on same and gave 4 flats as consideration to assessee. Assessee offered capital gain on transfer of old house. However, assessee claimed exemption u/s. 54 contending that assessee had received 4 flats. Department denied the exemption holding that exemption is available for “a” residential house, and not for 4 houses. It was held that all the flats constitute “a” residential house. <i>Earlier decision of Ananda Bassapa (Kar.) applied.</i> <i>It may be noted that in Pawan Arya (2011)(P &amp; H), it has been clearly held that deduction is allowable only for one house. The decisions of Ananda Bassappa and Smt. K.G. Rukminiamma were on the grounds that assessee invested in adjacent houses constituting them to be one house.</i>
<b>OTHER SOURCES</b>	
Parle Plastics (2011)332 ITR 63 (Bom.)	U/s. 2(22)(e), loan by company to shareholders holding more than 10% of the holdings is treated as dividend. However, if the substantial part of business of assessee is money lending, loan shall not be dividend.  It has been held in this case that “Substantial part of business” is not limited to “major part” of turnover, but even to a reasonable part of profit, manpower, capital, asset base etc.
CIT vs Manjoo and Co. (2011) 335 ITR 527 (Ker.)	Assessee was a lottery ticket seller. Assessee won lottery from unsold tickets. Assessee contended that it was professional income and therefore income was taxable at normal rate and not 30% u/s. 115BB. Held, the head in which the income is assessed is irrelevant. Although the income may be professional income, same is taxable @ 30%. <i>Earlier decisions distinguished on the ground that earlier decisions were given when section 115BB was not introduced.</i>
<b>Deductions</b>	
CIT vs Chiranjeevi Wind Energy Ltd. (2011) 333 ITR 192 (Mad.)	Assembling of parts of windmill into windmill would amount to “manufacture” or “production” and shall be eligible for deduction u/s. 80IB. This is so, as new and distinct commodity emerges from the process of assembling. Even under the definition of manufacture given in I-T Act u/s. 2(29BA), assembling of parts of windmill into windmill would amount to manufacture.
Praveen Soni (2011) 333 ITR 324 (Del.)	An assessee not claiming deduction u/s. 80IB in the initial years can claim deduction in the subsequent years. There is no requirement that the assessee shall claim deduction in the initial years.
CIT vs Jaswand sons (2010) 328 ITR 442 (P & H)	The words “Derived from” are narrow words and shall cover only those profits, which are directly having nexus with the industrial undertaking. It has been held that Sale of export incentive was not “derived from” industrial undertaking and therefore not eligible for deduction. Also refer <i>Liberty India (2009) (SC)</i>

	<i>In CIT Vs Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gau.), it has been held: -</i> Transport Subsidy – Not eligible. Interest Subsidy – Not eligible. Also refer CIT vs Gheria Oil Gram udyog (2011)(HP) Refund of Excise Duty - Eligible.
<b>Assessment of Company</b>	
JCIT vs Rolta India Ltd. (2011)330 ITR 470 (SC)	Advance tax is payable even in case of MAT. If advance-tax is not so paid, interest u/s. 234B and 234C shall apply.
<b>Assessment Procedure</b>	
CIT vs Haryana State Electricity and Handicrafts Corporation Ltd. (2011) 336 ITR 699 (P & H)	Once notice u/s. 143(2) is issued and scrutiny has been initiated, can AO make rectification u/s. 154 of the intimation u/s. 143(1).  It was held that once notice u/s. 143(2) is issued, any adjustment can be made only u/s. 143(3). AO cannot make adjustments u/s. 143(1). Since no adjustment can be made u/s. 143(1), no adjustment should be permitted u/s. 154/143(1), once a notice u/s. 143(2) is served.  <i>Earlier law of CIT vs Punjab National Bank (2001) 249 ITR 763 (Del.) applied.</i>
Ranbaxy Laboratories (2011) 336 ITR 136 (Del.)	AO made reopening u/s. 147 for certain grounds. On inquiry, it was felt that no addition is called for on those grounds. However, AO made addition on grounds for which reopening was not made. It was held that if reopening is done on certain grounds and addition is made on other grounds, without making addition on grounds on which reopening was done, reopening was liable to be set-aside. This is so, as the Act uses the words, "AO can assess or reassess such income <b>and also</b> other income". Since the words, "and also" are used, this shows a cumulative condition and without making addition on points for which reopening is done, addition cannot be made on other points. <i>Also refer Jet Airways (Bom.)</i>
Kanubhai M.Patel (HUF) (2011) 334 ITR 25 (Guj)	Since u/s.148, requirement is of "issue" of notice; for tracking date of issue of notice, date on which notice was handed over to postal authorities shall be important.
CIT vs Subhash Kumar Jain (2011) 335 ITR 364 (P & H)	Assessee offered agricultural income in return. AO asked the documentary evidence for same. Assessee surrendered the agricultural income on the ground that penalty shall not be levied. AO did not initiate penalty during assessment. CIT initiated proceedings u/s. 263 on the ground that AO should have initiated penalty u/s. 271(1)(c); not doing so made the order of the AO erroneous. HELD, since department had no documentary evidence that agricultural income was not justified, non-initiating penalty by AO was a permissible view. AO had taken a permissible view, and merely to change the view penalty cannot be initiated. <i>Earlier decision of Malabar Industrial Company Ltd. (SC) applied.</i> <i>Similar decision has been given in CIT vs Suresh G. Shah (Guj.), where it was held that penalty cannot be initiated in revision proceedings. However, contrary view is taken in Smt. Kiran Jaiswal (All.).</i>
CIT vs Indersons Leather P LTd (2010) 328 ITR 167 (P & H)	Assessee treated income as business income. AO treated the same as House Property income. It was held that contention of AO was correct. AO levied penalty. It was held that issue was debatable and therefore penalty cannot be levied as there was no concealment. <i>Earlier decisions of Rajasthan Spinning and Weaving Mills (SC) and Reliance Petroproducts Ltd. (SC) applied.</i>

Lachman Das Bhatia (2011)(Del.)(FB)	If the entire order of ITAT is wrong, ITAT can recall its full order.  Thus in entirety, the position of ITAT is as under: - (a) Rectification – ITAT has power (b) Review – ITAT has no power. (c) Recall – Generally, while doing rectification, part of order is recalled. In this case, it was held that if the entire order of ITAT was erroneous, then ITAT can recall the entire order. <i>Earlier decision of Honda Siel (SC) applied.</i>
<b>International Taxation</b>	
Indcom (2011) 335 ITR 485 (Cal.)	Income of match referee was not covered by section 115BBA. He is not a sportsman or athlete. It was therefore liable for tax as per normal provisions. TDS was therefore to be deducted u/s. 195 and not 194E.
<b>Tax Collection and Recovery</b>	
CIT vs Qatar Airways (2011) 332 ITR 253 (Bom.)	Assessee-airlines company sold tickets to agent at a price below MRP quoted in tickets. However, agents were allowed to sell the tickets at the price fixed by them, which was to be below MRP. Whether the difference between the MRP and the price at which tickets were sold to agents was to be treated as additional commission? It was held that same cannot be treated as additional commission as airlines company was not aware about the exact price at which the tickets would be sold by the agent.
Vodafone Essar Ltd. (2011) 332 ITR 255 (Ker.)	At the time SIM was available with the distributors, the ownership of the same was with the assessee (Vodafone). Thus, there was a principal and agent relationship between the assessee and distributors. Thus, in the facts of case, the margin of distributor was commission; and TDS was required to be deducted u/s. 194H.
CIT vs Dynamic Vertical Software India P Ltd (2011) 332 ITR 222 (Del.)	Assessee purchased software from Microsoft and sold the same in India. AO held that payment was in nature of royalty and therefore TDS should have been deducted. Since TDS was not deducted, disallowance u/s. 40(a)(i) was called for.  It was held that disallowance was not called for as the payment was purchase consideration and not royalty.
Vodafone International Holdings Ltd. (2010) 329 ITR 12226 (Bom)	Vodafone International Holdings (VIH) - Netherlands Hutchison Telecommunication Ltd. (HTL)– Hong Kong CGP – Cayman Islands, Mauritius – 100% subsidiary of HTL Hutchison Essar Ltd (HEL) – India – 52% shares held by CGP.  VIH entered into deal with HTL, for purchase of shares of CGP. AO held that since CGP held 52% shares in HEL, an Indian company, capital gains was taxable in India. AO further held that since VIH had made payment of capital gains, TDS should have been deducted by VIH. AO applied McDowell & CO. (SC) to contend that the transaction was routed through CGP, only to same tax in India. The real transaction lead to transfer of controlling interest in HEL, India. Bombay High Court held that TDS was required to be deducted. Recently Supreme Court has reversed the Bombay High Court judgment and held that there was no evasion, and tax planning within the four corners of the Act is permissible.
<b>Wealth-tax</b>	
CIT vs Smt. Neena Jain (2011) 330 ITR 157 (P & H)	Building under construction would avoid taxation both as land/ building. <i>Also refer Apollo Tyres Ltd. (2010)(Ker.)</i>