JUDICIAL UPDATE

1. **Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction under section 10AA?**

   CIT v. HCL Technologies Limited [2018] 404 ITR 719 (SC)

   Facts of the case: The assessee-company was engaged in the business of development and export of computer software and rendering technical services. For the relevant assessment year, the assessee claimed deduction under section 10AA as per certificates filed in the prescribed form.

   Issue: The issue under consideration is whether software development charges incurred in foreign exchange attributable to the delivery of technical services outside India, deductible from export turnover, be excluded from total turnover also for computing deduction under section 10AA.

   Supreme Court's Observations: The term "total turnover" has not been defined in section 10AA under which the deduction is sought.

   Clause (i) of *Explanation 1* to section 10AA defines "export turnover" to mean the consideration that has been received for export of articles/things/services received. Normally the consideration will include the freight/telecommunication charges/insurance which had been incurred to deliver the article/things or expenses incurred in rendering of services outside India. However, clause (i) of *Explanation 1* specifically seeks to exclude these three categories of expenditure for delivering the export of articles/things or expenses incurred in foreign exchange in rendering of services outside India.

   The Court observed that when a particular word such as "total turnover" is not defined by the legislature, ordinary meaning is to be attributed in conformity with the context in which it is used. Section 10AA deduction depends on arriving at the profit from export business, thus, expenses excluded from "export turnover" must also be excluded from "total turnover", since one of the components of "total turnover" is export turnover. Expenses incurred in foreign exchange for providing the technical services outside are thus, to be excluded from total turnover also.

   Supreme Court's Decision: If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction under section 10AA, then, it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature. Hence, such expenditure incurred in foreign exchange for providing technical services outside India are deductible from total turnover also.

   Note *- Though the above decision of the Supreme Court is in relation to erstwhile section 10A, the same is also relevant in the context of section 10AA. Accordingly, the reference to section 10A and the relevant sub-section and Explanation number thereto have been modified in the facts of the case and observations and decision of the Supreme Court and given with reference to section 10AA and the corresponding sub-sections, Explanation number and clause of Explanation. It may be noted that the CBDT has issued Circular No.4/2018 dated 14.8.2018 in relation to erstwhile section 10A in line with this decision of the Supreme Court.*

2. **Where the waiver is in respect of loan taken for purchase of plant and machinery and tooling equipment, would the same be subject to tax in the hands of the recipient by virtue of the provisions contained in either section 28(iv) or section 41(1)?**

CIT v. Mahindra and Mahindra Ltd. [2018] 404 ITR 1 (SC)

Facts of the Case: The assessee, Mahindra and Mahindra, decided to expand its jeep product line and entered into an agreement with K, an American company, which agreed to sell it dies, welding equipment and die models. The purchase consideration was agreed at $ 650,000 including cost, insurance and freight and K agreed to advance a loan to the assessee at 6% interest repayable after 10 years in instalments. The Reserve Bank of India and the concerned Ministry approved the loan agreement.

Later on, AMC took over K and agreed to waive the principal amount of loan advanced by K to the assessee-company and to cancel the promissory notes as and when they matured. This was communicated to the assessee-company which filed its return showing Rs.57,74,064 as cessation of its liability towards AMC. The Income-tax Officer concluded that the waiver of the loan amount represented income and held that the sum of Rs.57,74,064 was taxable under section 28(iv) as a perquisite. The alternate argument of the revenue authorities was that the sum would be taxable under section 41(1) as a waiver of a trading liability.

Issue: The issue under consideration is whether the sum due by the assessee-company to K, which has been waived off later on by AMC (which took over K), constitutes taxable income in the hands of the company.

Supreme Court's Observations: The Supreme Court observed that for applicability of section 28(iv), income must arise from business or profession and the benefit received has to be in non-monetary form. The amount of Rs.57,74,064, being a cash receipt, therefore, does not fall under section 28(iv).

For being covered under section 41(1), the assessee-company should have claimed an allowance or deduction in any assessment for any year in respect of a trading liability incurred by the assessee. Subsequently, during any previous year, if the creditor waives such liability, the assessee-company would be liable to pay tax under section 41. In this case, the loan was taken for procurement of capital assets, namely, plant, machinery and tooling equipment. The purchase amount had not been debited to the trading account or to the profit and loss account in any of the assessment years. Hence, waiver of such loan would not tantamount to cessation of a trading liability.

Supreme Court's Decision: The Supreme Court, accordingly, held that the amount of loan waived would not be taxable either under section 41(1) or under section 28(iv).

Note *– As per section 2(24)(xviii), assistance in the form of waiver by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee would be included in the definition of "income". In this case, the waiver is by a foreign company, and hence, is not included within the scope of definition of "income" under section 2(24).*

Further, it may be noted that as per Explanation 10 to section 43(1), deduction on account of, subsidy or grant or reimbursement, by whatever name called, received from any person has to be made while computing actual cost. Since waiver has not been expressly included in the said Explanation, it is possible to take a view that the same is not deductible while computing the actual cost. However, if a view is taken that "waiver" is included within the scope of the phrase "by whatever name called" in the said Explanation, then, the same has to be deducted while computing actual cost.

3. **Is interest income from share application money deposited in bank eligible for set-off against public issue expenses or should such interest be subject to tax under the head 'Income from Other Sources'?**

   CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426 (SC)

   Facts of the Case: The assessee-company is engaged in the manufacture of multi-layer tubes and other speciality packaging and plastic products. It came out with an initial public issue of shares during the relevant assessment years and deposited the share application money received in banks. The interest of Rs. 1,71,30,202 earned on the deposits was shown in the return of income originally filed under the head 'Income from Other Sources'. Subsequently, the assessee-company raised an additional ground before the Tribunal for allowing the set off of such interest against the public issue expenses.

   Issue: The issue under consideration is whether the interest income from share application money is taxable under the head 'Income from Other Sources', or can the same be set-off against public issue expenses.

   Supreme Court's Observations: The Supreme Court observed that the assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. The interest earned was inextricably linked with the requirement of raising share capital.

   Any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources". Here, the share application money was deposited with the bank not to make additional income but to comply with the statute. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized. Accordingly, the accrued interest is not liable to be taxed as "Income from Other Sources"; the same is eligible to be set-off against public issue expenses.

   Supreme Court's Decision: The Supreme Court concurred with the High Court's view that the interest accrued on deposit of share application money with bank is eligible for set off against the public issue expenses; such interest is, hence, not taxable as "Income from Other Sources".

4. **Can Inland Container Depots (ICDs) be treated as infrastructure facility, for profits derived therefrom to be eligible for deduction under section 80-IA?**

   CIT v. Container Corporation of India Limited [2018] 404 ITR 397 (SC)

   Facts of the case: M/s. Container Corporation of India Ltd. (CONCOR) is a Government company engaged in the business of handling and transportation of containerized cargo. Its operating activities are mainly carried out at its Inland Container Depots, Container Freight Stations and Port Side Container Terminals. CONCOR filed its income-tax returns for the relevant assessment years and claimed deduction under various heads including deduction under section 80-IA for profits derived from inland container depots. The claim for deduction on the profits earned from inland container depots was, however, rejected by the Assessing Officer.

   Issue: The issue under consideration is whether profits derived from inland container depots can be treated as an infrastructure facility eligible for deduction under section 80-IA.

   Supreme Court's Observations: Inland Container Depots function for the benefit of exporters and importers located in industrial centres which are situated at distance from sea ports. The purpose of establishing them was to promote the export and import in the country as these depots acts as a facilitator and reduce inconvenience to the exporter or importer.

Section 80-IA provides for a deduction of profits derived from operation of an infrastructure facility. The Finance Act, 2001 substituted section 80-IA(4), consequent to which the definition of "infrastructure facility" in *Explanation* to section 80-IA(4)(i) included an inland port. The Supreme Court observed that, considering the nature of work such as custom clearance carried out at inland container depots, it can be considered as an inland port within the meaning of section 80-IA(4). Thus, deduction under section 80-IA can be claimed in respect of income earned therefrom.

Supreme Court's Decision: The Supreme Court, accordingly, upheld the decision of the division bench of the High Court and held that CONCOR can claim for deduction under Section 80-IA in respect of profits derived from Inland Container Depots.

5. Can payment of interest by Canara Bank to NOIDA be exempted from the requirement of tax deduction at source under section 194A on the ground that the same is a corporation established by or under the Uttar Pradesh Industrial Area Development Act, 1976?

CIT (TDS) and Anr v. Canara Bank [2018] 406 ITR 161 (SC)

Facts of the case: The assessee, New Okhla Industrial Development Authority (NOIDA), was constituted by a notification dated April 17, 1976 issued under section 3 of the Uttar Pradesh Industrial Development Act, 1976. Canara Bank, the respondent, made a payment of Rs. 20.10 crores as interest on deposits to the assessee (NOIDA) for the relevant financial year. The Commissioner of Income-tax (TDS) issued notices to the respondent, Canara Bank, asking for information pertaining to interest paid and for showing cause for not deducting tax at source under section 194A.

Section 194A imposes an obligation on persons such as the respondent to deduct tax at source while making interest payments. However, under section 194A(3)(iii)(f), the Central Government is empowered to notify payments made to a specified class institution(s) for exemption from this requirement. A notification dated October 20, 1970 under section 194A(3)(iii)(f) was issued by the Central Government exempting payments made to "*any corporation established by a Central, State or Provincial Act*" from the requirement of tax deduction at source.

Issue: The issue under consideration is whether NOIDA is a Corporation established by or under the Uttar Pradesh Industrial Area Development Act, 1976, consequent to which it is eligible for exemption from requirement of tax deduction at source in respect of payment of interest made to it by Canara Bank.

Appellate authorities' view: The Tribunal was of the view that the payment of interest by the bank to NOIDA did not require deduction at source. The further appeal of the revenue authorities to the High Court was dismissed. The High Court held that the assessee is a corporation established by the Uttar Pradesh Industrial Area Development Act, 1976 and is, thus, covered under the exemption provided under section 194A(3)(iii)(f).

Supreme Court's Observations: The Supreme Court explained a 'corporation' as an artificial being created by law having a legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. There was no dispute about NOIDA being a corporation and a statutory corporation. The only question was whether it was established by a State legislation and thus covered under the notification dated October 20, 1970.

The revenue authorities argued that NOIDA would not be covered by the notification as it was established ***under*** the 1976 Act. The respondents argued that NOIDA was established ***by*** the 1976 Act and thus, covered under the notification. Relying on the ratio of *Dalco Engineering Pvt. Ltd. v. Shree Satish Prabhakar Padhye [2011] 164 Comp Cas 275 (SC)*, the Court held that that the phrase "established by or under" is used to denote a statutory corporation established or brought into existence by or under a statute. The establishment of Corporation is by a notification issued by State Government. In the present case, notification has been issued by the State Government in exercise of power of section 3 and the Authority has been constituted.

Supreme Court's Decision: The Supreme Court observed that the Preamble to the 1976 Act itself provides for constitution of an authority. NOIDA has, thus, been established by the 1976 Act and is clearly covered under the Notification dated October 22, 1970. Hence, it is eligible for exemption from tax deduction at source provided under section 194A(3)(iii)(f).

6. Are the provisions of tax deduction at source under section 194H attracted in respect of amount retained by accredited advertising agencies out of remittance of sale proceeds of "airtime" purchased from Doordarshan and sold to customers?

Director, Prasar Bharati v. CIT [2018] 403 ITR 161 (SC)

Facts of the Case: The assessee, Prasar Bharati Doordarshan Kendra, functions under the Ministry of Information and Broadcasting, Government of India and runs the television channel called Doordarshan. For the purpose of telecasting advertisements of consumer companies on its channel, the assessee entered into agreements with advertising agencies, on the basis of the application made by such agencies to the assessee for gaining "accredited status". The agencies were to give minimum annual business of Rs.6 lakhs to the assessee in a financial year and furnish bank guarantee for a sum of Rs.3 lakhs. The agreement provided that the accredited agencies would retain 15% by way of commission out of the amount collected from customers and paid to the assessee. The agencies were to retain the commission earned and not to part with the same either directly or indirectly to any other person.

In the relevant assessment years, the agencies retained Rs.4.87 crores towards commission as per the terms of the agreement. The Assessing Officer was of the view that such retention by the agencies were in the nature of "commission" under section 194H, and the assessee was in default under section 201(1) as it had failed to deduct tax at source on such commission retained.

The assessee, however, contended that its relationship with accredited agencies were on "principal-to-principal" basis since the accredited agencies purchased airtime from the assessee and then sold it in the market for advertisement to their customer after retaining 15% of the said sum. Therefore, the assessee contended the sum retained is not 'commission' to attract the provisions of section 194H.

Issue: The issue under consideration is whether the amount retained by the accredited agencies is in the nature of commission to attract the provisions of section 194H.

High Court's Observations: The Kerala High Court took the view that such retentions were in the nature of commission under section 194H. The assessee was, thus, under a statutory obligation to deduct the tax at source.

Supreme Court's Observations: The Supreme Court observed that the definition of "commission or brokerage" under section 194H is inclusive and covers any payment received or receivable directly or indirectly by a person acting on behalf of another person for the services rendered. The agreement itself uses the expression "commission" in all relevant clauses. The payment clause is free of ambiguity and the terms of the agreement indicate that both parties intended that the amount to be paid/retained is in the nature of commission. It is for this reason that the parties used the expression "commission" in the agreement. The relationship in question was a pure agency arrangement because the agency acted on behalf of the assessee and the actions of the agency were binding on the assessee. Moreover, the agreement itself contained a clause for deduction of tax at source on trade discount.

Supreme Court's Decision: The Supreme Court, thus, held that the amount retained by the accredited advertising agencies is commission and consequently, the provisions of tax deduction at source under Section 194H are attracted. Consequently, for failure to deduct tax at source under section 194H, the assessee would be treated as an assessee-in-default.

Note - *It may be noted that the CBDT has, vide Circular No.5/2016 dated 29.2.2016, clarified that TDS under section 194H is not attracted on retentions by an advertising agency (for booking or procuring of or canvassing for advertisements) from payments remitted to television channels/newspaper companies. The CBDT has issued this clarification on the basis of the Allahabad High Court ruling in Jagran Prakashan Ltd.'s case and Delhi High Court ruling in Living Media Ltd.'s case that the relationship between the media company and advertising agency is that of a "principal to principal". However, the Supreme Court, in this case, has distinguished from the Allahabad High Court ruling, on the basis of the fact that an agreement has been entered into by Doordarshan with the accredited agencies specifically appointing them as agents; and the agreement also contains a specific clause for deduction of tax at source on trade discount, which is in the nature of commission. Accordingly, the Supreme Court held that the relationship between Doordarshan and its accredited agencies is that of a principal and agent, consequent to which TDS provisions under section 194H would get attracted in respect of retentions by accredited advertising agencies from payments remitted to Doordarshan. Therefore, the applicability or otherwise of the CBDT Circular will depend on the facts of the specific case.*

7. **Whether delay in filing appeal under section 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record?**

Spinacom India (P.) Ltd. v. CIT [2018] 258 Taxman 128 (SC)

Facts of the Case: The appellants have approached the Supreme Court under a special leave petition. There has been a delay of 439 days in filing the appeal under section 260A for which reason the appellants requested for a condonation of delay under section 14 of Limitation Act, 1963. The appellants submitted that the delay was on account of pursuing an alternate remedy of filing a miscellaneous application before the Income-tax Appellate Tribunal (ITAT) under section 254(2).

Issue: The issue under consideration is whether delay in filing appeal under section 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.

Supreme Court's Observations: The Court rejected the question of invoking section 14 of the Limitation Act 1963 which allows condonation of delay on demonstration of sufficient cause. The Court refused to accept the submission that the application before the ITAT under section 254(2) was an alternate remedy to filing of the application under section 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. Under section 260A, an order of the ITAT can be challenged on substantial questions of law. The Court stated that the appellant had the option of filing an appeal under section 260A while also mentioning in the Memorandum of Appeal that its application under section 254(2) was pending before the ITAT. The time period for filing an appeal under section 260A does not get suspended on account of the pendency of an application before the ITAT under section 254(2) of the Act.

<u>Supreme Court's Decision</u>: Since no satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in filing the appeal, the Supreme Court dismissed the application for condonation of delay.

8. Is the cancellation of registration of a trust under section 12AA, on the basis of search conducted in the premises of its Secretary General and the statement recorded by him under section 132(4), valid?

U.P. Distillers Association (UPDA) v. CIT [2017] 399 ITR 143 (Del)

<u>Facts of the case</u>: A search and seizure operation took place in the premises of the Secretary General of the assessee, that is, Uttar Pradesh Distillers Association, in February 2006. During the search, the Secretary General's statement was recorded under section 132(4) of the Act. The statement was retracted after two years. In the meanwhile, the Commissioner of Income-tax (CIT) cancelled the assessee's registration under section 12AA(3) on the basis of the search operation and the statement made. The order was upheld by the Appellate Tribunal. The assessee contended that Secretary General's statement was made in the course of search in respect of his premises and not those of the assessee. Hence, the Secretary General's statement was not attributable to the assessee nor could the materials indicated by him be the basis for cancellation of registration of the trust under section 12AA

<u>Issue</u>: The issue under consideration is whether the cancellation of registration under section 12AA as a charitable trust on the basis of search conducted in the premises of the Secretary General of the assessee-trust and the statement recorded by him under section 132(4) is valid.

<u>Delhi High Court's Observations</u>: The Court dismissed the appeal to hold that although the premises, in which the search under section 132 took place, belonged to the Secretary General, he virtually ran the assessee-trust's activities from the same premises. The information which he provided in the course of the search pointed out to the activities of the assessee-trust and not to his own activities. Further, the Tribunal had expressly recorded that the search proceedings took place in the context of section 153A, in the very premises of the Secretary General, with respect to the assessee-trust.

<u>Delhi High Court's Decision</u>: The Delhi High Court, accordingly, held that cancellation of the trust's registration under section 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded under section 132(4) from him, is valid.

Note: *The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.*

9. Is the notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP?

Sky Light Hospitality LLP v. Assistant CIT [2018] 405 ITR 296 (Del)

<u>Facts of the Case</u>: Sky Light Hospitality (SH) LLP, a Limited Liability Partnership, had acquired the rights and liabilities of Sky Light Hospitality Private Limited (SHPL) upon conversion under the Limited Liability Partnership Act, 2008. The return for the relevant assessment year filed by SHPL was processed under section 143(1) and was not subjected to scrutiny assessment. However, upon further receipt of a tax evasion report, a reassessment notice had been issued under section 148. The petitioner-LLP has filed a writ petition to quash the notice and the reassessment proceedings.

Issue: The issue under consideration is whether a notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department can be treated as valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP.

Delhi High Court's Observations: The petitioner contended that the notice under section 148 was invalid because –

(i) the notice is not protected under section 292B as issuance of notice incorrectly in the name of SHPL had been done intentionally; and

(ii) the notice has been issued without a live nexus/reason to believe that the income had escaped assessment.

The High Court dismissed the contentions of the petitioner. Firstly, as long as there is "reason to believe" and not mere "reason to suspect", Courts should not interject to stop the adjudication process. In the notice for reassessment, reference was made to the tax evasion report received from the Investigation unit of the Income-tax department. The tax evasion report placed on record is detailed and elaborate. Peculiar and specific details relating to transactions between the assessee and a third party were mentioned in it. As per the tax evasion report, the assessee had not been able to satisfactorily explain source of Rs.35 crores. Hence, there was evidence and material on record to justify issue of notice under section 148 of the Act.

Secondly, there is clear evidence that the notice was erroneously addressed to SHPL instead of SH LLP. The error or mistake was that the notice did not record the conversion of SHPL into SH LLP. However, it is clearly evident that the notice was meant for the assessee-LLP and no one else. When the assessee-LLP received the notice, it filed a letter, without prejudice, objecting to the notice being issued in the name of SHPL. However, the letter indicated that the assessee-LLP understood that the notice was for it. Section 292B was enacted to ensure that technical pleas (such as mistake, defect or omission) or procedural irregularities do not invalidate assessment proceedings. Courts have not proceeded on technical trivialities. The error here was only a technical issue on the part of the respondent. No prejudice was caused. The Court acknowledges the lapses in the litigation but observes that mere human errors cannot be used to nullify proceedings.

Delhi High Court's decision: The Delhi High Court held that the notice issued under section 148 on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid, since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP. The Court clarifies that it has passed no opinion on the merits of the case which will be duly dealt with, by the Assessing Officer. The petitioner-LLP is required to appear before the Assessing Officer to deal with the merits of the issues pertaining to the notice.

Note - *The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.*

10. Can an assessee who has set up a new industrial undertaking and availed deduction@100% of profits under section 80-IC(3) for the five years, once again claim deduction@100% of profits on the basis of having undertaken substantial expansion thereafter?

CIT v. Classic Binding Industries [2018] 407 ITR 429 (SC)

<u>Facts of the case</u>: The assessee-firm started its business on July 11, 2005 and its initial assessment year for the purpose of deduction under section 80-IC was A.Y. 2006-07. The assessee claimed deduction under section 80-IC to the extent of 100 % of eligible profits for five assessment years from A.Y.2006-07 to A.Y.2010-11. Thereafter, the assessee once again claimed 100% deduction against eligible profits in the A.Y.2012-13 on the ground that it had carried out substantial expansion in the F.Y.2011-12.

The Assessing Officer restricted the deduction to 25% of the eligible profits for the assessment year under consideration, namely, A.Y.2012-13 (i.e., the seventh assessment year) on the ground that the assessee had already claimed deduction@100% of the eligible profits under section 80-IC for assessment years 2006-07 to 2010-11. The finding of the Assessing Officer was affirmed by the Commissioner (Appeals) and the Tribunal, but reversed by the High Court. Hence, the Department filed an appeal to the Supreme Court.

<u>Relevant provision of the Income-tax Act, 1961</u>: Section 80-IC applies to an undertaking or enterpirse which has begun or begins to manufacture any specified article or thing therein by setting up a new factory, *inter alia,* in the State of Himachal Pradesh. As per section 80-IC(3), the category of undertakings or enterprises to which the assessee belongs, is entitled to deduction@100% of profits and gains for five assessment years commencing from the initial assessment year and, thereafter, deduction@25% of profits and gains for the next five years. The period of deduction is, thus, 10 years, namely, deduction@100% for the first five years and @25% for the remaining five years.

<u>Issue</u>: The issue under consideration is whether an assessee who has set up a new industrial undertaking and availed deduction@100% of profits under section 80-IC(3) for the first five years, can once again claim deduction@100% of profits on the basis of having undertaken substantial expansion thereafter in a subsequent year.

<u>Supreme Court's Observations</u>: The Supreme Court observed that upon a pragmatic and reasonable interpretation, once the assessee satisfies the eligibility conditions under section 80-IC and the initial assessment year commences from a certain assessment year for claim of deduction@100% of profits for a certain period, five years in this case, there cannot be another "initial assessment year", commencing after the expiry of the said period on the basis of substantial expansion.

<u>Supreme Court's Decision</u>: The Supreme Court held that within the period of ten years, having claimed deduction@100% of profits for the first five years, the assessee cannot once again claim deduction@100% of profits for a fresh period of five years thereafter on the basis of substantial expansion as section 80-IC (3), in no uncertain terms, provides for deduction only at 25% of profits in respect of the next five year period.

11. Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?

Regen Powertech Private Limited v. CBDT and Another [2019] 410 ITR 483 (Mad)

<u>Facts of the Case</u>: The assessee company was engaged in the manufacture of wind energy generators. For the A.Y.2014-15, the assessee filed its return of income on January 7, 2015 with a delay of 37 days. The assessee contended that the delay was on account of obtaining the audit report required under section 44AB. The appointed firm of chartered accountants (SRB) had some reservations regarding the valuation of the assessee company's business transfer which was communicated to the assessee only on the last day of filing the audit report. In such circumstances, the assessee had to look for an alternative auditor which could also be done subject to a "No Objection Certificate" from SRB. The "No Objection Certificate" was only issued on December 15, 2014, after which the return of income along with audit report was filed on January 7, 2015.

The assessee contends that the delay in filing the return was beyond its control. The assessee wished to modify the return of income but under section 139(5), revision of return of income was possible only when the original return was made within the due date[1]. The assessee's application for condonation of 37 days delay before the CBDT under section 119(2)(b) had been pending for a long time, and hence, the assessee approached the High Court under a writ petition.

Issue: The issue under consideration is whether the CBDT can refuse to condone delay in filing the return of income, where such delay was caused by circumstances beyond the control of the assessee**.**

High Court's Observations: The High Court opined that the assessee could not be blamed for the delay in carrying out its audit, as it was beyond its control. Since there was some misunderstanding between the erstwhile auditor and the assessee, the return of income could not be presented before the due date. The assessee had also not been able to obtain the "No Objection Certificate" from the erstwhile auditor immediately.

The High Court observed the view of the Bombay High Court in *Bombay Mercantile Co-op. Bank Ltd. v. CBDT [2010] 195 Taxman 106* that in condonation matters "a highly pedantic approach should be eschewed and a justice oriented approach should be adopted".

High Court's Decision: The High Court held that application for condonation of delay could not have been rejected by the CBDT as the circumstances causing delay were beyond the control of the assessee. The High Court opined that the CBDT should have exercised its discretion in a proper manner and condoned the delay.

Note - *Even though as per the current provisions of income-tax law, a belated return filed u/s 139(4) can also be revised u/s 139(5), this case law is still relevant since filing of return on or before the due date is required for carry forward of certain losses and claim of profit-linked deductions under Chapter VI-A. If delay in filing of return is condoned, such carry forward of losses and claim of profit-linked deductions would be permissible under law.*

12. Is the assessee-company engaged in refining, distribution and sale of petroleum products, liable to deduct tax under section 194C or under section 194-I, in respect of payment made to the carrier engaged for road transport of bulk petroleum products?

CIT v. Indian Oil Corporation [2019] 410 ITR 106 (Uttarakhand)

Facts of the Case: The assessee-company was engaged in refining crude oil and storing, distributing and selling the petroleum products. The assessee-company required tank trucks for road transportation of bulk petroleum products from its various storage points to customers or other storage points. It entered into an agreement with another company for the said purpose.

Upon scrutinizing the contract, the Assessing Officer came to the conclusion that the assessee was liable to deduct tax under section 194-I as the carrier is being hired and being paid for full time unlike in the case of a works contract. However, the Commissioner (Appeals) and the Appellate Tribunal held that tax was deductible under section 194C not under section 194-I.

Relevant provision of the Income-tax Act, 1961: Section 194-I provides for deduction of tax at source on payment of rent. As per clause (i) of the *Explanation* to section 194-I, "rent" means payment, by whatever name called, for, *inter alia*, use of any plant. Section 194C deals with deduction of tax at source in respect of payment made to a contractor for carrying out any work. Clause (iv) of *Explanation* to section 194C defines "work" to include carriage of goods or passengers by any mode of transport other than by railways.

Issue: The issue under consideration is whether the assessee-company is liable to deduct tax under section 194C or under section 194-I on payment made to the carrier engaged for road transport of bulk petroleum products.

High Court's Observations: Upon perusing the terms of the contract, the High Court observed that the parties understood the agreement as one where the carrier would be paid transport charges, and that too, for the shortest

[1] As per the current provisions of law, even a belated return under section 139(4) can be revised u/s 139(5).

route travelled by it in the course of transporting the goods of the assessee. The contract did not require payment of idle charges and it was clear that there was no entitlement to any payment other than the actual transportation of the goods. Hence, the carrier was not being hired for full time.

The carrier under the contract was undoubtedly obliged to maintain the requisite number of trucks of a particular type subject to various restrictions and conditions. However, the carrier was under the obligation to operate the trucks for the specific purpose of transporting the goods belonging to the assessee.

High Court's Decision: The High Court held that, even after amendment to the *Explanation* under section 194-I to include within its scope, payment for use of plant, the case could not fall within its ambit. The contract is one for transportation of goods and, therefore, is a contract of work within the meaning of section 194C and not section 194-I.

13. Can an assessee setting up a hotel claim deduction under section 35AD for the relevant previous year, on the basis that it had commenced its operations and made an application for three-star category classification in beginning of the said previous year, even though the same was granted by the authority only in the next year due to the requirement of completion of inspection?

CIT v. Ceebros Hotels Private Limited [2018] 409 ITR 423 (Mad)

Facts of the Case: The assessee commenced operation of hotel business in the relevant previous year and filed an application for classification of hotel in April of the said previous year and claimed deduction under section 35AD for the assessment year relevant to the said previous year. While completing the assessment under section 143(3) for the assessment year relevant to the said previous year, the Assessing Officer denied the benefit of deduction under section 35AD on the ground that the assessee obtained three-star category hotel classification only during the subsequent previous year. The appeal by the assessee was denied by the Commissioner (Appeals), while it was allowed by the Tribunal.

Issue: The issue under consideration is whether an assessee setting up a hotel can claim deduction under section 35AD for the relevant previous year, on the basis that it had commenced its operations and made an application for three-star category classification in the said year, even though the same was granted by the authority only in the next year due to the requirement of completion of inspection.

Appellate Tribunal's view: The reasoning of the Tribunal was that once the Department had accepted the assessee's income, offered to tax, the assessee was eligible for deduction under section 35AD. As the application for three star category classification was granted with no discrepancy during inspection, the assessee could not be penalised for the delay on the part of the concerned authority (the Hotel and Restaurant Approval and Classification Committee, in the instant case) to complete inspection before the end of the financial year.

High Court's Observations: The High Court observed that the reasons assigned by the Tribunal for grant of deduction to the assessee under section 35AD were just and proper. The assessee had made an application for classification as early as in the month of April of the relevant previous year. Thereafter, an inspection was required to be conducted for such purpose. The manner in which the inspection was conducted and the time frame taken by the competent authority were factors beyond the control of the assessee.

The Department had not disputed the operation of the new hotel from the relevant previous year as it had accepted the income, which was offered to tax. Under section 35AD, deduction is available from the previous year in which the assessee commences operation of the specified business i.e., hotel business, in this case. Section 35AD does not mandate that the date of the certificate has to be with effect from a particular date.

High Court's Decision: The High Court upheld the Tribunal's view that the assessee is entitled to claim the deduction under section 35AD for the relevant previous year, opining that the provision which was introduced to encourage the establishment of hotels of a particular category is a beneficial provision, and hence, should be read and interpreted liberally.

14. Can part of the interest paid by the assessee on unsecured loans taken be disallowed due to the reason that, out of the said loans, the assessee had advanced certain sum of money to third parties without charging any interest?

Principal CIT v. Reebok India Company [2018] 409 ITR 587 (Del)

Facts of the Case: The assessee-company had taken unsecured loans of Rs.502.69 crores. Out of the said sum, it had advanced Rs.172.59 crores to third parties on which no interest was charged and received. Pursuant to this, for the relevant assessment year, the Assessing Officer proportionately disallowed, under section 36(1)(iii), an amount of Rs.23.60 crores from the interest of Rs.68.75 crores paid by the assessee.

The Dispute Resolution Panel affirmed the addition opining that the Assessing Officer was empowered to examine if the expenditure incurred by the assessee met the rigors of "business connection" and "expediency".

Issue: The issue under consideration is whether part of the interest paid by the assessee on unsecured loans can be disallowed due to the reason that, out of the said loan, the assessee had advanced certain sum of money to third parties without charging any interest

Tribunal's view: The Appellate Tribunal opined that the proportionate interest genuinely paid on unsecured loans taken for business purpose could not be disallowed. The assessee had paid interest on capital borrowed for business purpose and in the absence of any allegation and finding that the assessee had diverted unsecured loans for non-business purpose, no disallowance could be made.

High Court's Observations: The High Court relied upon the Supreme Court ruling in *S. A. Builders Ltd. v. CIT (Appeals) [2007] 288 ITR 1,* which interpreted the expression "for purposes of business or profession" in section 36(1)(iii) as being wider in scope than the expression "for the purpose of earning income, profits or gains". Accordingly, expenditure voluntarily incurred and meeting the "commercial expediency" test is to be allowed as a deduction. The expression "commercial expediency" is of wide import and is satisfied once it is established that there was a connection and nexus between the interest paid (claimed as expenditure) and the assessee's business.

The High Court observed that merely because non-interest bearing advances were given to third parties, that would not justify a finding that the test of "commercial expediency" was not satisfied. Interest-free advances were advanced to the parties connected with the business of the assessee. Money taken on loan was not diverted for non-business purpose. The unsecured loans were not used for personal purpose. Therefore, according to section 36(1)(iii), interest paid on capital borrowed for the purpose of business had to be allowed as a deduction.

Further, the High Court opined that the Revenue cannot assume the role and occupy the armchair of a businessman to decide whether expenditure was reasonable. The Revenue cannot look at the matter from its own standpoint, but the opinion and decision of a businessman on "business expediency" matters.

High Court's Decision: The High Court, accordingly, held that deduction for interest paid on unsecured loans has to be allowed under section 36(1)(iii), where the commercial expediency test is satisfied, even though part of the unsecured loan was advanced to third parties without charging interest.

15. Would sale of fertilizer bonds (issued in lieu of government subsidy) at loss be treated as a business loss or a loss under the head "Capital gains"?

Principal CIT v. Gujarat State Fertilizers and Chemicals Limited [2018] 409 ITR 378 (Guj)

Facts of the Case: The assessee is engaged in manufacturing of fertilizers. The sale price of fertilizers is fixed by the Government of India and many a times, such price is even lower than the cost of production. Therefore, to compensate the manufacturer for the difference between the retention price of individual unit and sale price, fertilizer subsidy is given by the Government. Due to cash crunch, sometimes the Government of India discharges its dues of paying the subsidy by issue of fertilizer bonds. These bonds are saleable in the open market and the prices of such bonds are varying.

In this case, when such bonds were sold in the open market, the assessee incurred a loss of Rs. 91,45,000 which it treated as a business loss. The Assessing Officer disallowed the same treating it as a loss under the head "Capital Gains". The Tribunal, however, allowed the same.

Issue: The issue under consideration is whether sale of fertilizer bonds (issued in lieu of government subsidy) at a loss should be treated as a business loss or a loss under the head "Capital gains".

High Court's Observations: The High Court observed that there is no dispute that fertilizer subsidy given to an assessee to compensate the loss on sale of fertilisers should be treated as business income of the assessee. Due to cash crunch, the Government of India had discharged its dues of paying the subsidy by issue of fertilizer bonds. These bonds are saleable in the open market and the prices of such bonds are varying. In this case also, the assessee received fertilizer bonds (in lieu of subsidy) which were sold at a loss in the open market.

High Court's Decision: The High Court, accordingly, held that since the subsidy would have been treated as business income, loss on sale of fertilizer bonds issued is to be allowed as business loss.

16. Would an assessee who enters into an agreement with the Gujarat State Road Development Corporation for an infrastructure development project be entitled to deduction under section 80-IA(4), even though as per the requirement contained therein, the agreement has to be entered into with the Central Government or State Government or a local authority or any other statutory body?

CIT v. Ranjit Projects Private Limited [2018] 408 ITR 274 (Guj)

Facts of the Case: The assessee is a private limited company engaged in implementing infrastructure development projects. For the relevant assessment year, it claimed deduction of Rs. 4.97 crores under section 80-IA(4). The assessee contended that it had undertaken a road development project, for which, it had entered into an agreement with the Gujarat State Road Development Corporation (GSRDC) which was set up by the Government for the special purpose.

The Assessing Officer doubted whether such agreement would satisfy the requirements of section 80-IA(4). The assessee, however, contended that the GSRDC was performing all the functions of the State Government and therefore, the concession agreement executed by GSRDC should be treated to have been entered into by the State Government. The Assessing Officer, however, did not accept the assessee's contention and rejected the assessee's claim of deduction under section 80-IA(4). However, the Commissioner (Appeals) and the Tribunal allowed the assessee's claim for deduction under section 80-IA(4).

Relevant provision of the Income-tax Act, 1961: Section 80-IA provides for a certain deduction in respect of profits and gains from undertakings or enterprises engaged in infrastructure development. Section 80-IA(4) provides that such section would, *inter alia*, apply to any enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility. One of the conditions to be fulfilled for claiming deduction is that the assessee should have entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility.

Issue: The issue under consideration is whether an assessee who enters into an agreement with Gujarat State Road Development Corporation for an infrastructure development project would be entitled to deduction under section 80-IA(4), even though as per the requirement contained therein, the agreement has to be entered into with the Central Government or State Government or a local authority or any other statutory body.

High Court's Observations: The High Court observed that GSRDC is a wholly Government owned company incorporated pursuant to the State Government's resolution dated February 28, 1999. The memorandum of association shows that the Government enjoys total control over GSRDC. GSRDC was constituted by the State Government as a nodal agency for the purpose of executing road development projects through private participation. Hence, GSRDC is a Government agency as defined in section 2(e) of the Gujarat Infrastructure Development Act, 1999.

High Court's Decision: The High Court held that since the assessee has entered into an agreement with GSRDC, a government agency constituted by the State Government for the purposes of executing road development projects, it is entitled to deduction under Section 80-IA.

17. Can the amount incurred by the assessee towards perfecting title of property acquired through will, for making further sale, be included in the cost of acquisition for computing capital gains?

CIT v. Aditya Kumar Jajodia [2018] 407 ITR 107 (Cal)

Facts of the Case: The assessee obtained a leasehold property under a will which gave some interest to a trust and, thus, the assessee's acquisition of the perpetual lease was subject to rights of the trust as flowing from the will. The testator of the trust had also entered into an agreement to sell with a third party. The assessee had to, thus, perfect the ownership title before he transferred the property. For this purpose, he made payment to the Delhi Development Authority (DDA) for conversion of leasehold rights to freehold rights. He also made payments to the trust and to the third party to give up his right under the agreement.

Issue: The issue under consideration is whether the amount incurred by the assessee towards perfecting title of property acquired through will, for making further sale, can be included in the cost of acquisition for computing capital gains.

Assessee's contention *vis-à-vis* Assessing Officer's contention: The assessee contended that his interest in the property was clouded by the rights conferred to the trust by the will as well as the rights of the third party with whom agreement for sale was entered into by the trust. He could not have transferred the property without taking care of these claims and hence, the payments made to the trust, the third party and the DDA should count towards cost of acquisition. The Assessing Officer, on the other hand, contended that such payments cannot be included in cost of acquisition. The Commissioner (Appeals) and the Tribunal, however, held in favour of the assessee.

High Court's Observations: The High Court observed that the assessee had inherited the immovable property under a will and the costs incurred by him for perfection of the title from perpetual leasehold rights to the complete ownership had to be regarded as a cost of acquisition within the meaning of sections 48 and 55, as the assessee was transferring the complete ownership rights to the transferee, and not the leasehold rights.

Further, the High Court took note of the Supreme Court's ruling in *RM. Arunachalam v. CIT [1997] 227 ITR 222* holding that the amount incurred in discharging the mortgage created by the predessor-in-interest of the assessee has to be regarded as cost of acquisition of the assessee.

The High Court, accordingly, observed that, in this case, the encumbrances were got rid of by the assessee by making certain payment, consequent to which a better title to the property was acquired by the assessee and transferred to the assessee's transferee. The cost of getting rid of such encumbrances in any immovable property had to be accepted as a part of the cost of acquisition of the property, subject, however, to the assessment as to the genuineness and validity of such encumbrances.

High Court's Decision: The High Court, accordingly, held that, the assesseee is entitled to deduction of amount incurred towards perfecting title of property acquired under will and the amount incurred towards making payments to the trust and the third party in whose favour rights were created, as cost of acquisition under section 55.

18. Would the cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned residential house property, qualify for exemption under section 54?

C Aryama Sundaram v. CIT [2018] 407 ITR 1 (Mad)

Facts of the Case: The assessee sold a residential house property for a consideration of Rs.12.5 crores on January 15th, 2010. Long-term capital gains arising to the assessee on sale of such property was Rs.10.48 crore. In May, 2007, the assessee had purchased a property with a superstructure thereon for a total consideration of Rs.15.96 crores and after demolishing the existing superstructure, the assessee constructed a residential house at a cost of Rs.18.74 crores. For the A.Y.2010-11, the assessee had claimed exemption of the entire long-term capital gains of Rs.10.48 crore under section 54, since it was lower than the cost of construction of Rs.34.70 crores.

Assessing Officer's view: The Assessing Officer opined that only that part of the construction expenditure incurred after the sale of the original asset was eligible for exemption under section 54. Based on records, the Assessing Officer calculated the cost of construction incurred after the sale of the original asset, amounting to Rs.1.15 crores and accordingly, allowed exemption only to that extent. The Commissioner (Appeals) upheld the view of the Assessing Officer.

Appellate Tribunal's view: The Tribunal held that section 54 was a beneficial provision and had to be construed liberally on compliance with the conditions stipulated thereunder. The Tribunal observed that the assessee had complied with the following conditions stipulated under section 54 for claim of exemption:

(a) The assessee should have purchased one residential house in India either one year before or two years after the date of transfer of a residential house which resulted in capital gains or alternatively, constructed a new residential house in India within a period of three years from the date of the transfer of the residential property which resulted in the capital gains.

(b) If the amount of capital gains is greater than the cost of the residential house so purchased or constructed, the difference between the amount of the capital gains and the cost of the new asset is to be charged under section 45 as the income of the previous year.

(c) If the amount of the capital gains is equal to or less than the cost of the new residential house, the capital gains shall not be charged under section 45.

Issue: The issue under consideration is whether the cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned residential house property would qualify for exemption under section 54.

High Court's Observations: The High Court opined that statutory provisions should, to the extent feasible, be construed in accordance with the plain meaning of the language used in those provisions.

According to section 54, capital gains exemption is available in respect of the cost of new residential house purchased or constructed. Section 54(1) is specific and clear in that it mentions cost of new residential house and not just the cost of construction of the new residential house. The cost of the new residential house would necessarily include the cost of the land, materials used in the construction, labour and any other cost relatable to the acquisition or construction of the residential house. Also, in this case, the assessee's construction of new house is within the timeline stipulated in section 54(1).

Section 54 does not lay down that construction could not have commenced prior to the date of transfer of the asset that resulted in capital gains. Also, section 54(1) does not contemplate that the same money received from the sale of a residential house should be used in the acquisition of new residential house. This is apparent as section 54 also provides exemption in respect of property purchased one year prior to the transfer of residential house property, which gave rise to the capital gains.

High Court's Decision: The High Court, accordingly, held that, in this case, the cost of land and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for the purpose of capital gains exemption under section 54. As capital gains arising on transfer of previously owned house property of the assessee is less than the cost of the new residential house in this case, the entire capital gains would be exempt under section 54.

19. Can payments made by an assessee to a non-resident agent who does not have any income assessable in India be disallowed under section 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee under section 195(2) for making deduction of tax at source at nil rate?

CIT v. Maruti Suzuki India Limited [2018] 407 ITR 165 (Del)

Facts of the Case: The issue relates to payments made by the assessee to its agents based and operating abroad. The agent had no assessable income in India. The Assessing Officer disallowed the payment invoking section 40(a)(i) on the ground that no application was made by the assessee under section 195(2) for making deduction of tax at source at nil rate or lower rate. The Commissioner (Appeals) and the Tribunal, however, allowed the deduction.

Issue: The issue under consideration is whether payments made by an assessee to a non-resident agent who does not have any income assessable in India be disallowed under section 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee under section 195(2) for making deduction of tax at source at nil rate.

High Court's Observations: The High Court observed that the non-resident agent who operated outside India did not have any income arising in India. In order to come to this conclusion, the High Court relied on *CIT v Model Exims [2013] 358 ITR 72 (All)* where it was held that there was no obligation to deduct tax under section 195 from commission paid to a non-resident recipient who was not liable to tax in India. Further, in *CIT v. Gujarat Reclaim & Rubber Products Ltd. [2016] 383 ITR 236 (Bom),* it was held that the commission earned by a non- resident agent who was in the business of selling Indian goods abroad, did not accrue or arise in India, and hence no tax was deductible on such commission payment to a non-resident agent.

High Court's Decision: The High Court, accordingly, held that where the assessee has made payment to a non-resident agent where such income is not chargeable to tax in India, section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source, while computing the business income of the assessee.

20. Is interest under section 201(1A) attracted even in a case where non-deduction of tax at source was under a *bona fide* belief that tax was not deductible and the default was not willful?

Sun Outsourcing Solutions Private Limited v. CIT (Appeals) [2018] 407 ITR 480 (T&AP)

Facts of the Case: The assessee is a private limited company engaged in the business of software development with its office in Hyderabad and branch office in London. In the course of executing software projects in the U.K., the assessee had deputed some employees from Hyderabad to London and it had also employed local personnel (NRIs) in the U. K. The assessee did not deduct tax at source on the allowances paid to the staff deputed to the U. K. and the salary payments made to the local personnel engaged in the U. K.

The Assessing Officer charged interest on payments made to staff deputed to the U. K. and on salaries paid to the personnel engaged in the U.K. under section 201(1A). The first appellate authority set aside the demand raised under section 201(1A) with respect to non-deduction of tax at source from payments made to the non-resident consultants working abroad. However, it upheld the order of the Assessing Officer with respect to non-deduction of tax at source on allowances paid to Indian residents deputed to work in the U. K.

The assessee contended that since it was under a *bona fide* impression that the amounts paid to its employees were not taxable, it did not deduct tax on such payment. There was no malice or *mens rea* on its part, and hence, the assessee was of the view that interest under section 201(1A) should not be attracted.

Relevant provision of the Income-tax Act, 1961: Under section 201(1), if any person, including an employer, who is required to deduct tax, does not deduct or does not pay or after so deducting fails to pay, the whole or any part of the tax, as required by or under the Act, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax. Under section 201(1A), such person is liable to pay simple interest at the rate specified therein for failure to deduct tax or remit tax within the prescribed time after deduction.

Under section 221(1), penalty is attracted where an assessee is in default or is deemed to be in default for making payment of tax. However, the second proviso to section 221(1) provides that where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty would be leviable.

Issue: The issue under consideration is whether interest under section 201(1A) is attracted even in a case where non-deduction of tax at source was under a *bona fide* belief that tax was not deductible and the default was not willful

High Court's Observations: The High Court observed that section 201(1A) was automatically attracted for failure to deduct tax at source on the payments made. Only in case of penalty under section 221, there is a provision for non-levy where the assessee proves that the default was for good and sufficient reasons. Unlike section 221, section 201(1A) does not require proof of willful default. Even if the assessee was *bona fide* in not making such deduction, interest was nevertheless payable. Therefore, for levying interest under section 201(1A), *mens rea* or willful conduct is wholly irrelevant.

High Court's Decision: The High Court, accordingly, held that since the company had failed to deduct tax on the payments made to its employees, being Indian residents deputed to work in the U.K., section 201(1A) is automatically attracted; even if such non-deduction was due to the *bona fide* belief that tax is not deductible in such case, the company is, nevertheless, liable to pay interest under section 201(1A).