

## ITRV CASE LAW DIGEST FOR YEAR 2012

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**ASSESSMENT / REVISION / APPEALS / DEMAND / REFUND**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-001	Girnar Investment Ltd. vs. CIT	Delhi High Court	If original demand not fully paid, interest is payable u/s 220(2) even for period when demand was not in existence.
2012-ITRV-HC-RAJ-014	Maheshwari Agro Industries vs. Union of India & Anrs	Rajasthan High Court	In high-pitched assessments, AO must ordinarily grant stay of demand
2012-ITRV-ITAT-VIS-023	Cargo Handling Private Workers Pool vs. DCIT	ITAT (Visakhapatnam)	Tribunal's order is binding and failure to follow it is 'Contempt of Court'
2012-ITRV-ITAT-MUM-028	Vijay Corporation vs. ITO	ITAT (Mumbai)	S. 143(3) assessment order without AO's signature is Void
2012-ITRV-HC-KAR-038	CIT vs. DSL Software Ltd.	Karnataka High Court	Only way to prevent Dept from filing frivolous appeals is by imposing heavy costs.
2012-ITRV-HC-DEL-039	Sak Industries Pvt. Ltd. vs. DCIT	Delhi High Court	Undesirable haste in passing assessment order results in miscarriage of justice
2012-ITRV-HC-P&H-040	V.R.A. Cotton Mills (P) Ltd. vs. Union of India & Others	Punjab & Haryana High Court	"Issue" of notice is equivalent to its "service" for purposes of section 143(2)
2012-ITRV-SC-042	CIT vs. Virgo Marketing Pvt. Ltd.	Supreme Court	High Court is to consider whether Low Tax Effect Circular has retrospective effect or not
2012-ITRV-HC-KAR-043	CIT vs. M/s Ranka & Ranka	Karnataka High Court	CBDT's decision to confine the effect of low tax effect Instruction to fresh appeals is contrary to the object of s. 268A & the National Litigation Policy
2012-ITRV-HC-GAU-048	CIT vs. Shri Jawahar Bhattacharjee	Gauhati High Court	The judgment has resolved conflicts amongst various judgments on revision u/s 263.
2012-ITRV-SC-054	Office of Chief Post Master General & Ors vs. Living Media India Ltd. & Anrs	Supreme Court	Delay by department in filing appeal cannot be mechanically condoned.
2012-ITRV-HC-DEL-056	ITO vs. DG Housing	Delhi High Court	Revision u/s. 263 CIT must give finding on merits & cannot simply remand to AO

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	Projects Ltd.		
2012-ITRV- HC-MUM-062	Nishith Madanlal Desai vs. CIT	Mumbai High Court	Stay of demand matters AO and appellate authorities are not mere tax gatherers; have duty to be fair to the assessee
2012-ITRV- HC-MUM-063	Tata Toyo Radiators Private Limited vs. Union of India & Others	Mumbai High Court	AO must pass reasoned order to deal with stay applications u/s 220(6)
2012-ITRV- HC-MUM-064	UTI Mutual Fund vs. ITO	Mumbai High Court	It lays down the guidelines on how stay applications should be dealt with u/s 220(6)
2012-ITRV- HC-MUM-072	Rajasthani Sammelan Sarvoday Balika Vidyalaya and another vs. Asst. DIT	Mumbai High Court	HC has reminded AO that he is not mere “tax gatherer” & cautioned to follow guidelines for recovery of tax in pursuance of s. 220(6)
2012-ITRV- HC-ORS-073	Lopamudra Misra vs. ACIT	Orissa High Court	AO should not adopt “extra legal steps” of threatening or inducing the assessee for tax recovery u/s 220(6)
2012-ITRV- HC-MUM-074	Firoz Tin Factory and another vs. ACIT	Mumbai High Court	Power u/s 220(1) proviso to reduce period for payment of tax is to be exercised after application of mind & recording reasons
2012-ITRV- HC-MUM-076	CIT vs. Varsha Dilip Khole	Mumbai High Court	Low Tax Effect instruction for filing appeal is retrospective and dept Must Show “Cascading Effect”
2012-ITRV- HC-ALL-077	L.G. Electronics India Pvt. Ltd. vs. CIT	Allahabad High Court	If Prima Facie case is in favour of the assessee, full demand should be stayed
2012-ITRV- HC-DEL-085	Court on its own Motion vs. CIT	Delhi High Court	The Court by converting a letter into public interest writ petition has taken Notice of TDS Refund Harassment by Dept & Demands Answers and asked the Officials to reply
2012-ITRV- HC-ALL-086	CIT vs. Deep Awadh Hotels Pvt. Ltd.	Allahabad High Court	S. 234A, 234B & 234C interest, though mandatory, is not payable if AO does not direct it to be charged in assessment order
2012-ITRV- HC-RAJ-88	Mehru Electrical & Engg. Pvt. Ltd. vs. CIT	Rajasthan High Court	Despite “Last Chance” appeal should be adjourned if there is sufficient cause
2012-ITRV- ITAT-CHD- 093	Ambala Central Cooperative Bank Ltd vs. ITO	ITAT (Chandigarh)	The bench has hauled up the department for CPC Fiasco & unnecessarily harassing assessee but spared of costs on the ground that AO & CIT(A) were “only doing their

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			duty”
2012-ITRV-ITAT-MUM-094	All Cargo Global Logistics Ltd. vs. DCIT	ITAT (Mumbai) (Special Bench)	It has reviewed the entire law on what is “Additional Ground” & power of Tribunal to admit it
2012-ITRV-HC-DEL-108	CIT vs. Promain Ltd.	Delhi High Court	Tribunal has to deal with factual findings of AO and give reasons for its conclusion
2012-ITRV-ITAT-MUM-120	Tulip Hotels Pvt. Ltd. vs. DCIT	ITAT (Mumbai) (Special Bench)	Bench cannot refuse to give effect to Third Member’s opinion in terms of section 255(4)
2012-ITRV-HC-P&H-125	CIT vs. Punjab Breweries Ltd.	Punjab & Haryana High Court	Tribunal’s order not dealing with finding of “sham” transaction is “perverse”
2012-ITRV-ITAT-PUNE-130	in ITO vs. Rachana Constructions and Engineers & Contractors	ITAT (Pune)	It dismissed department's appeal owing to ‘apathy’ in serving notice of hearing
2012-ITRV-HC-MUM-144	CIT vs. Pruthvi Brokers & Shareholders Pvt. Ltd.	Mumbai High Court	Assessee is entitled to raise claims before appellate authorities even if claim is not made in return of income
2012-ITRV-HC-KAR-152	CIT vs. Ecom Gill Coffee Trading Co. Pvt. Ltd.	Karnataka High Court	Tribunal has no power to extend stay beyond 365 days even if assessee is not at fault
2012-ITRV-ITAT-MUM-159	Smt. Sushila Suresh Malge vs. ACIT	ITAT (Mumbai)	It has hauled up the assessing officer for repeatedly disregarding ITAT’s directions and directed him to pay costs
2012-ITRV-SC-164	Columbia Sportswear Company vs. DIT	Supreme Court	“Binding” AAR Rulings can be challenged but not directly in the Supreme Court
2012-ITRV-HC-DEL-172	CIT vs. ITAT	Delhi High Court	Tribunal has the power to stay proceedings to give effect to s. 263 revision order. Plea as to jurisdiction of AO/CIT, even if given up, can always be raised
2012-ITRV-AAR-181	In Re Castleton Investment Ltd.	Authority for Advance Ruling	AAR is not bound by own rulings.
2012-ITRV-HC-MUM-182	CIT vs. Virendra & Co.	Mumbai High Court	Low Tax Effect Circular is retrospective and applies to pending appeals
2012-ITRV-HC-DEL-184	Netapp B V vs. AAR	Delhi High Court	Mere filing of Return of Income disbars an advance ruling application
2012-ITRV-ITAT-MUM-	Kellogg India Pvt. Ltd. vs.	ITAT (Mumbai)	In fresh assessment passed pursuant to remand by ITAT, assessee cannot be worse

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185	ACIT		off than what he was in the original assessment order
2012-ITRV-HC-GUJ-195	CIT vs. Sureshchandra Durgaprasad Khatod (HUF)	Gujarat High Court	Low Tax Effect Circular has retrospective effect & applies to pending appeals
2012-ITRV-HC-DEL-208	Court in its Own Motion vs. CIT	Delhi High Court	It seeks to end TDS & Refund harassment by Department
2012-ITRV-HC-PAT-218	Birendra Kumar Singh vs. Union of India & Anrs	Patna High Court	HC fumes and Sends Dept's Top Brass to Jail for "Gross Contempt"
2012-ITRV-HC-ORI-219	Managing Committee Paradeep Port vs. ITO (TDS)	Orissa High Court	HC seethes with Fury at Dept For "Dirty Games" with assesseees
2012-ITRV-SC-222	Karanvir Singh Gossal vs. CIT	Supreme Court	S. 234A to 234C is mandatory & can be levied even if assessment order is silent
2012-ITRV-HC-KOL-224	Hindustan Tobacco Company vs. CIT	Kolkata High Court	Plea of natural justice breach/ cross-examination should be raised at the earliest opportunity
2012-ITRV-HC-DEL-225	CIT vs. Maruti Insurance Distribution Services Ltd.	Delhi High Court	Tribunal cannot recall its order & substitute by new order u/s 254(2)
2012-ITRV-SC-230	DCIT vs. Simplex Concrete Piles (India) Ltd.	Supreme Court	Reversal of law by Supreme Court does not justify reopening
2012-ITRV-HC-MUM-233	ITO vs. Everest Home Construction (India) Pvt. Ltd.	Mumbai High Court	S. 234D applies even to refunds granted prior to 1.6.2003
2012-ITRV-SC-234	DIT (International Taxation) vs. Citibank NA	Supreme Court	SC flays department for "peculiar phenomenon" of delay in filing high stakes appeals
2012-ITRV-SC-235	CIT vs. Atma Ram Properties P. Ltd.	Supreme Court	Low Tax Effect Circular cannot apply "Ipso Facto"
2012-ITRV-HC-GUJ-258	CIT vs. Shambhubhai Mahadev Ahir	Gujarat High Court	Question whether Low Tax Effect Circular can apply to pending appeals referred to Full Bench
2012-ITRV-	J B Roy vs.	Allahabad High	A Retrospective Amendment does not affect

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HC-ALL-259	DCIT	Court	completed matters.
2012-ITRV- HC-KAR-260	CIT vs. Smt. B. Sumangaladevi	Karnataka High Court	Earlier view of the same Court that Low Tax Effect Circular applies to pending appeals is against “public policy”. Suggestions given on how to increase tax base
2012- ITRV- ITAT-DEL-262	Qualcomm Incorporated vs. ADIT (International Taxation)	ITAT (Delhi)	Judicial conflict whether Tribunal has power to extend stay beyond 365 days has to be resolved in favour of the assessee
2012- ITRV- HC-MUM-269	Fiat India Automobiles Ltd. vs. ACIT	Mumbai High Court	HC has strongly condemned “Disgraceful & Deplorable Conduct” of ACIT & CIT in seeking to circumvent the law
2012-ITRV- ITAT-MUM-270	Gemini Oils Pvt. Ltd. vs. ITO	ITAT (Mumbai)	Despite set aside for “ <i>de novo consideration</i> ”, AO cannot look at fresh issues.

### CAPITAL GAIN

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012- ITRV- ITAT-MUM-016	Kushal K. Bangia vs. ITO	ITAT (Mumbai)	Gains on housing society redevelopment is non-taxable capital receipt
2012-ITRV- ITAT-MUM-030	ACIT vs. Ishverlal Manmohandas Kanakia	ITAT (Mumbai)	Transferable Development Rights (TDR) is “improvement” of land & if it has no cost, then, even if the land has a “cost”, no part of the gain on transfer of land is taxable
2012-ITRV- HC-DEL-035	Arun Shungloo Trust vs. CIT	Delhi High Court	In case of transfer by gift, will, trust, etc indexed cost to be determined with reference to holding by previous owner
2012-ITRV- ITAT-KOL-041	DCIT vs. Tejinder Singh	ITAT (Kolkatta)	Transfer of tenancy/ leasehold rights are not covered for the purposes of deemed consideration u/s. 50C
2012-ITRV- ITAT-JAP-047	ACIT vs. Raj Kumar Jain & Sons (HUF)	ITAT (Jaipur)	S. 54EC limit of investment of Rs. 50L in bonds applies to the transaction & not financial year
2012-ITRV- ITAT-MUM-049	DCIT vs. Summit Securities Ltd.	ITAT (Mumbai) (Special Bench)	For s. 50B “Slump Sale”, liabilities reflected in “negative net worth” cannot be treated as “consideration” but the resultant “negative net worth” has to be added to the “consideration”

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2012-ITRV- HC-KAR-050	CIT vs. Sri. Sambandam Udaykumar	Karnataka High Court	S. 54F does not require construction to be complete within specified period
2012-ITRV- ITAT-KOL-051	Chanchal Kumar Sircar vs. ITO	ITAT (Kolkata)	S. 54EC investment time limit begins from date of receipt of consideration
2012-ITRV- AAR-061	In Re RST	Authority for Advance Ruling	S. 47(iv) is relief not available if holding co <i>and</i> nominees hold 100% of subsidiary
2012-ITRV- ITAT-AHD- 071	Shri Aspi Ginwala vs. ACIT	ITAT (Ahmedabad)	Section 54EC limit of Rs. 50L does not apply to the transaction but financial year. Delay in investing within 6 months owing to non-availability of bonds to be excused
2012-ITRV- HC-ALL-079	CIT vs. Kan Construction and Colonizers Pvt. Ltd.	Allahabad High Court	Section 50C does not apply to land & building held as 'stock-in-trade'
2012-ITRV- ITAT-PUNE- 091	Mahesh Nemichandra Ganeshwade vs. ITO	ITAT (Pune)	Under Section 54EC if investment in bonds within 6 months of transfer is impossible, then relief is available if investment is made within 6 months of receipt of consideration
2012-ITRV- HC-DEL-119	SREI Infrastructure Finance Ltd. vs. IT Settlement Commission & Ors	Delhi High Court	"Slump Sale" u/s 50B need not be a "Sale". All Slump Transfers are covered
2012-ITRV- ITAT-AHD- 121	ITO vs. Yasin Moosa Godil	ITAT (Ahmedabad)	S. 50C is a deeming provision which does not apply to "rights in land & building"
2012-ITRV- HC-MUM-183	CIT vs. Cello Plast	Mumbai High Court	S. 54EC bonds were available during the 6 months and that there were alternative bonds available is irrelevant if the bonds are not available on the last date
2012-ITRV- ITAT-CHE-275	ACIT vs. Shri C. Ramabrahmam	ITAT (Chennai)	Interest paid on borrowing for acquiring house deductible u/s 24(b) as well as u/s 48 simultaneously
2012-ITRV- ITAT-BGL-286	Vivek Jairazbhoy vs. DCIT	ITAT (Bangalore)	S. 54EC limit of Rs. 50L does not apply to the transaction but financial year. Cheque has to be issued within 6 months. Encashment of Cheque & Allotment of Bonds beyond 6 months is irrelevant

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**CAPITAL V/S REVENUE**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-153	Krishak Bharti Cooperative Ltd. vs. DCIT	Delhi High Court	Lease Premium is capital expenditure and not allowable as “advance rent”
2012-ITRV-HC-MUM-232	CIT vs. Xylon Holdings Pvt. Ltd.	Mumbai High Court	Cessation of liability to repay loan taken for capital purposes is not assessable as income u/s 41(1)
2012-ITRV-HC-MUM-257	CIT vs. Jaydev H. Raja	Mumbai High Court	“Hypothetical Tax” of expatriate employee is not assessable as income

**CARRY FORWARD AND SET-OFF OF LOSSES**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-ITAT-BANG-006	Nandi Steels Ltd. vs. ACIT	ITAT (Bangalore) SB	Gains arising from “business assets” (fixed assets used for business) are not eligible for set-off against brought forward business loss u/s 72.
2012-ITRV-HC-MUM-029	CIT vs. Darshan Securities Pvt. Ltd.	Mumbai High Court	Share loss to be first set-off against other income under the head business & profession to determine what GTI consists of for the purposes of determining share loss to be speculative under the provisions of explanation to section 73.

**DEDUCTIONS UNDER CHAPTER VIA**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-GUJ-011	CIT vs. Radhe Developers	Gujarat High Court	Deduction u/s 80-IB (10) for “Housing Project” is eligible even if Developer is not “owner” of land.
2012-ITRV-SC-026	Topman Exports vs. CIT	Supreme Court	Whole DEPB sale proceeds is not “profits” for the purposes of section 80HHC read with s. 28(iiid)

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2012-ITRV-SC-027	ACG Associated Capsules Pvt. Ltd. vs. CIT	Supreme Court	For Expl (baa) to s. 80HHC, netting of income from expenditure <i>is</i> allowed
2012-ITRV-HC-GUJ-060	Gujarat Alkalies & Chemicals Ltd. vs. CIT	Gujarat High Court	Despite “Dependence” on Old Unit, Unit can be “New Industrial Undertaking” for the purposes of section 80-I
2012-ITRV-HC-MUM-067	CIT vs. Vandana Properties	Mumbai High Court	Multiple Housing Projects on 1 Acre Plot permissible u/s 80 -IB(10)
2012-ITRV-ITAT-MUM-147	All Cargo Global Logistics Ltd. vs. DCIT	ITAT (Mumbai)(Special Bench)	It has explained the scope of s. 80IA(4) deduction
2012-ITRV-HC-GUJ-148	Avani Export & Anrs vs. CIT	Gujarat High Court	Retrospective effect given to 3rd & 4th Provisos to s. 80HHC is ultra vires
2012-ITRV-HC-MUM-209	Vijay Silk House (Bangalore) Ltd. vs. Union of India & Anrs	Mumbai High Court	Retrospective effect given to 3rd & 4th Provisos to s. 80HHC is ultra vires
2012-ITRV-SC-213	Arisudana Spinning Mills Ltd. vs. CIT	Supreme Court	In absence of separate books, AO is entitled to estimate eligible profits u/s 80IA
2012-ITRV-SC-221	CIT vs. Bongaigaon Refinery and Petrochemical Limited	Supreme Court	S. 80HH & 80-I do not require maintenance of separate books
2012-ITRV-ITAT-MUM-236	ITO vs. Everest Home Construction (India) Pvt. Ltd.	ITAT (Mumbai)	S. 80-IB(10)(d) cap on commercial area inserted w.e.f. AY 2005-06 applies to projects approved earlier
2012-ITRV-HC-GUJ-241	Manan Corporation vs. ACIT	Gujarat High Court	S. 80-IB(10)(d) ceiling on commercial area inserted w.e.f. 1.4.05 does not apply to projects approved before that date

### DEEMED DIVIDEND

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-ITAT-CHE-276	ACIT vs. Smt. G. Sreevidya	ITAT (Chennai)	There would be no s. 2(22)(e) “Deemed Dividend” if loan to shareholder is given as quid pro quo

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2012-ITRV-ITAT-MUM-285	Shantikumar D Majithia vs. DCIT	ITAT (Mumbai)	Building occupancy rights to shareholder by the company is taxable as “ <i>deemed dividend</i> ” u/s 2(22)(a) but not as “ <i>benefit or perquisite</i> ” u/s 2(24)(iv).
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### DEPRECIATION

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-069	Areva T&D India Ltd. vs. DCIT	Delhi High Court	Business information, contracts, records etc are “ <i>intangible assets</i> ” & eligible for depreciation u/s 32(1)(ii)
2012-ITRV-HC-DEL-078	Steel Authority of India Ltd. vs. CIT	Delhi High Court	Though Expl. 10 to s. 43(1) does not apply to loan waiver, treatment in books of reducing amount waived from asset cost means that WDV has to be reduced for purpose of allowing depreciation
2012-ITRV-ITAT-AHD-160	ACIT vs. GE Plastics India Ltd.	ITAT (Ahemdabad)	Non-Compete rights are an “ <i>intangible asset</i> ” eligible for depreciation
2012-ITRV-SC-191	CIT vs. Smifs Securities Ltd.	Supreme Court	“ <i>Goodwill</i> ” is an intangible asset eligible for depreciation u/s 32
2012-ITRV-HC-GUJ-192	General Motors India Pvt. Ltd. vs. DCIT	Gujarat High Court	Unabsorbed depreciation of AYs 1997-98 to 2001-02 is eligible for relief granted by amended s. 32(2) in AY 2002-03
2012-ITRV-HC-DEL-272	Sharp Business System vs. CIT	Delhi High Court	To be an “ <i>intangible asset</i> ” u/s 32(1)(ii), the rights must be “ <i>in rem</i> ” & transferable. A “ <i>non-competite right</i> ” is not an “ <i>intangible asset</i> ” though “ <i>goodwill</i> ” is.

### INCOME FROM HOUSE PROPERTY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-GUJ-081	CIT vs. Hariprasad Bhojnagarwala	Gujarat High Court (Full Bench)	HUF is “ <i>owner occupying house for own residence</i> ” u/s 23(2)
2012-ITRV-ITAT-PUNE-253	DCIT vs. Magarpatta Township Development &	ITAT (Pune)	ITAT has laid down the tests on when rental income is assessable as “ <i>house property income</i> ” vs. “ <i>business profits</i> ”

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	Construction Co.		
2012-ITRV-ITAT-MUM-267	Gagan Trading Co. Ltd. vs. ACIT	ITAT (Mumbai)	Notional interest on deposit is not includible in Annual Letting Value u/s 23(1)(a)
2012-ITRV-ITAT-CHE-275	ACIT vs. Shri C. Ramabrahmam	ITAT (Chennai)	Interest paid on borrowing for acquiring house deductible u/s 24(b) as well as u/s 48 simultaneously
2012-ITRV-ITAT-MUM-281	Woodland Associates Pvt. Ltd. vs. ITO	ITAT (Mumbai)	Annual Letting Value u/s 23(1)(a) has to be determined as per market rent & not municipal rateable value if property is not subject to “bona fide” rent control

**INTERNATIONAL TAXATION / TRANSFER PRICING / 10A / 10B**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-002	DIT vs. Rio Tinto Technical Services	Delhi High Court	Even if not assessable as “fees for technical services” under DTAA, bar in s. 44D against deduction of expenses will apply.
2012-ITRV-HC-GUJ-004	Veer Gems vs. ACIT	Gujarat High Court	AO’s decision to refer to TPO must be based on material & not be arbitrary. The question as to whether there is an “international transaction” cannot be referred to TPO.
2012-ITRV-ITAT-MUM-005	Delmas vs. ADIT	ITAT (Mumbai)	Onus is on AO to show foreign co has a PE in India. Under India-France DTAA, even dependent agent is not PE in absence of finding that transactions are not at ALP.
2012-ITRV-ITAT-PUNE-007	Demag Cranes & Components (India) Pvt. Ltd. vs. DCIT	ITAT (Pune)	TPO is duty bound to eliminate differences in comparables’ data for working capital if material.
2012-ITRV-SC-010	Vodafone International Holdings vs. Union of India & Anrs	Supreme Court	Transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company
2012-ITRV-ITAT-BANG-015	Kodiak Networks (India) Pvt. Ltd. vs. ACIT	ITAT (Bangalore)	TPO can rely on “contemporaneous” data even if not available at specified date
2012-ITRV-ITAT-MUM-032	DDIT vs. Solid Works Corporation	ITAT (Mumbai)	On issue of software to be assessed as royalty has held that view in favour of assessee should be followed

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2012-ITRV-ITAT-MUM-068	Sumitomo Mitsui Banking Corporation vs. DDIT	ITAT (Mumbai)	While interest paid by PE of foreign bank to H.O. is deductible in hands of PE, same interest is not taxable in hands of H.O
2012-ITRV-ITAT-DEL-089	Telecommunications Consultants India Ltd vs. Addl. CIT	ITAT (Delhi)	Under Article 7 of the DTAA, foreign PE profits may be taxed in India
2012-ITRV-ITAT-DEL-095	Ericsson India Pvt. Ltd. vs. DCIT	ITAT (Delhi)	Transfer Pricing Officer (TPO) has no power to question business purpose of transaction
2012-ITRV-HC-KAR-097	CIT vs. De Beers India Minerals Pvt. Ltd.	Karnataka High Court	For a service to be covered under FTS, to “make available” technical knowledge, mere provision of service is not enough; the payer must be enabled to perform the service himself
2012-ITRV-AAR-100	In Re Roxar Maximum Reservoir Performance WLL	Authority for Advance Ruling	A composite contract for installation & commissioning cannot be split so as to exempt the profits from offshore supply of goods
2012-ITRV-AAR-101	In Re Aramex International Logistics Private Limited	Authority for Advance Ruling	A subsidiary created for Indian business is a PE of the foreign parent
2012-ITRV-AAR-102	In Re Alstom Transport SA	Authority for Advance Ruling	A composite contract cannot be split to exempt profits from offshore supply of goods. A joint contract constitutes an AOP despite separate responsibility of parties
2012-ITRV-ITAT-MUM-104	DDIT(IT) vs. B4U International Holdings Ltd	ITAT (Mumbai)	It has explained tax implications of a “Dependent Agent Permanent Establishment”
2012-ITRV-HC-DEL-107	CIT vs. Havells India Ltd.	Delhi High Court	Export sales is not a “source of income outside India”, hence amount paid for KEMA’ certification is FTS u/s 9(1)(vii)(b).
2012-ITRV-HC-DEL-123	CIT vs. EKL Appliances Ltd.	Delhi High Court	Transfer Pricing Officer (TPO) cannot examine the necessity of, or rewrite, the transaction
2012-ITRV-HC-DEL-128	DIT vs. Guy Carpenter & Co. Ltd.	Delhi High Court	To “make available” technical knowledge, mere provision of service is not enough; the payer must be enabled to perform the service himself
2012-ITRV-ITAT-MUM-132	B4U International Holdings Ltd. vs. DCIT	ITAT (Mumbai)	Despite Retro Law by Finance Act 2012, “Royalty” is not taxable as DTAA prevails
2012-ITRV-ITAT-MUM-	KPMG India Private Limited vs. DCIT	ITAT (Mumbai)	Rendering of services is not “supply of knowledge or information” to be “royalty”

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2012-ITRV-ITAT-CHE-134	Van Oord ACZ Marine Contractors BV vs. ADIT	ITAT (Chennai)	Fact that third party invoices are paid does not necessarily show "reimbursement" and are 'fee for technical services'
2012-ITRV-ITAT-KOL-137	Dongfang Electric Corporation vs. DDIT	ITAT (Kolkata)	It has explained the law on taxability of "turnkey contracts" for offshore & onshore supply
2012-ITRV-ITAT-KAR-139	Dy. CIT vs. Andaman Sea Food Pvt Ltd	ITAT (Kolkata)	Consultancy fees, if not taxable as "fees for technical services", is not taxable as "other income"
2012-ITRV-ITAT-KOL-141	DIC Asia Pacific Pte Ltd vs. ADIT	ITAT (Kolkata)	"Education cess" is "additional surcharge" & is included in "tax" under DTAA. If DTAA caps the rate of "tax" payable, cess is not payable by foreign assessee
2012-ITRV-HC-KAR-162	Aztec Software & Technology Services Ltd. vs. ACIT	Karnataka High Court	It has affirmed 5 Member Special Bench Transfer Pricing verdict without examining merits
2012-ITRV-ITAT-MUM-166	Addl. CIT vs. Technimont ICB India Pvt. Ltd.	ITAT (Mumbai)	A "controlled transaction" can never be regarded as "comparable" even if at Arm's Length Price
2012-ITRV-ITAT-HYD-168	Addl. DIT vs. Bhel-GE-Gas Turbine Servicing Pvt. Ltd.	ITAT (Hyderabad)	Fees for "routine technical repairs" is not assessable as "fees for technical services"
2012-ITRV-ITAT-MUM-174	JCIT vs. American Express Bank Ltd.	ITAT (Mumbai)	Article 7(3) limitation applies to all expenditure & not only to s. 44C H.O. expenditure
2012-ITRV-AAR-181	In Re Castleton Investment Ltd.	Authority for Advance Ruling	Transfer pricing & ROI filing provisions apply despite no income.
2012-ITRV-HC-MUM-188	DIT vs. Balaji Shipping UK Ltd.	Mumbai High Court	Income from "slot charter" is exempt as income from "operation of ships" under Article 9 of India-UK DTAA
2012-ITRV-ITAT-MUM-205	DCIT vs. Dosdal Pvt. Ltd.	ITAT (Mumbai)	Installation & commissioning services are an integral part of supply and not assessable as "fees for technical services" despite separate contract.
2012-ITRV-HC-DEL-223	DIT vs. Nokia Networks OY	Delhi High Court	Offshore supply profits are not taxable. Ishikawajima case still good law. Despite retrospective amendments to s. 9(1)(vi) no tax is leviable on software in view of DTAA
2012-ITRV-HC-DEL-226	Rolls Royce Singapore Pvt. Ltd. vs. ADIT	Delhi High Court	HC has allowed the review petition & judgment is recalled on issue of PE & profit attribution

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2012-ITRV-ITAT-DEL-239	DDIT vs. Mitchell Drilling International PTY. Ltd.	ITAT (Delhi)	Service tax is not part of “Gross Receipts” for purposes of s. 44BB
2012-ITRV-ITAT-DEL-248	Adidas Sourcing Ltd. vs. ADIT	ITAT (Delhi)	ITAT has laid down what ingredients are required for services to be assessable as "fees for technical services" u/s 9(1)(vii)
2012-ITRV-ITAT-MUM-249	RBS Equities (India) Ltd. vs. ACIT	ITAT (Mumbai)	ITAT has discussed Transfer Pricing Methods CUP vs. TNMM & Weighted Average Arithmetic Mean & Rule 10B Adjustments
2012-ITRV-ITAT-DEL-250	GAP International Sourcing (India) Pvt. Ltd. vs. ACIT	ITAT (Delhi)	ITAT has laid down importance of FAR analysis to determine ALP; choice of Method & Profit Level Indicator ("PLI")
2012-ITRV-ITAT-MUM-252	Ebay International AG vs. ADIT	ITAT (Mumbai)	ITAT has discussed what constitutes a "Dependent Agent Permanent Establishment" & "Place of Management".
2012-ITRV-ITAT-MUM-254	State Bank of Mauritius Ltd. vs. DDIT	ITAT (Mumbai)	No disallowance can be made u/s 43B under Article 7(3) of the India-Mauritius DTAA. However disallowance u/s 14A can be made under Article 7(3) of the India-Mauritius DTAA
2012-ITRV-ITAT-DEL-261	National Petroleum Construction Company vs. Addl. CIT	ITAT (Delhi)	ITAT explaining the taxability of 'turnkey' contracts has held that even a “Turnkey” contract has to be split into various components
2012-ITRV-ITAT-AHD-264	Atul Ltd. vs. ACIT	ITAT (Ahemdabad)	ITAT has explained the Law on application of “Aggregation”/ “Portfolio Approach” in Transfer Pricing
2012-ITRV-ITAT-MUM-271	ADIT (International Taxation) vs. Mediterranean Sea Co.	ITAT (Mumbai)	Declining to follow AAR Ruling on taxability of Shipping Profits has held that Shipping profits are not taxable in India even if there is a PE (India-Swiss DTAA)
2012-ITRV-ITAT-MUM-284	WNS North America Inc. vs. Addl. DIT (International Taxation)	ITAT (Mumbai)	Despite retrospective amendment, royalty is not taxable. So is pure reimbursement of expenses
2012-ITRV-ITAT-BGL-290	Trilogy E-Business Software India Pvt. Ltd vs. Dy. CIT	ITAT (Bangalore)	Explaining important Transfer pricing principles ITAT has held that comparables cannot be ignored on ground of abnormal profits/losses if they are functionally comparable
2012-ITRV-	Essar Steel Limited	ITAT	Assessment order following binding TPO's

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ITAT-MUM-291	vs. Addl. CIT	(Mumbai)	order is not “erroneous or prejudicial”. Doubt raised whether TPO’s order can at all be revised u/s 263
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**MAT – 115JA / 115JB**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-SC-021	Al- Kabeer Exports Ltd. vs. CIT	Supreme Court	For MAT calculation u/s. 115JA/JB deduction u/s. 80HHC is to be computed as per P&L Profits & not normal provisions
2012-ITRV-AAR-181	In Re Castleton Investment Ltd.	Authority for Advance Ruling	Foreign company is liable for MAT u/s 115JB
2012-ITRV-ITAT-MUM-268	Genesys International Corporation Ltd. vs. ACIT	ITAT (Mumbai)	SEZ units continue to be exempt from MAT u/s 115JB

**MISCELLANEOUS**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-052	Council of ICAI vs. Ajay Kumar Gupta	Delhi High Court	A CA issuing wrong s. 80HHC certificate is guilty of “gross professional misconduct”
2012-ITRV-ITAT-MUM-058	IndusInd Bank Limited vs. Addl. CIT	ITAT (Mumbai)	The judgment has explained the difference between “Finance Lease” & “Operating Lease”
2012-ITRV-HC-DEL-124	R. K. Jain vs. Union of India & Anrs	Delhi High Court	Tribunal Member’s corruption charges information can be disclosed under RTI
2012-ITRV-HC-GUJ-127	Millennium Houseware vs. CIT	Gujarat High Court	It has referred the question related to whether the s. 127(2) transfer order is invalid for want of reasons to Full Bench
2012-ITRV-HC-UTK-176	DIT vs. Sedco Forex International	Uttarakhand High Court	Tax on employees’ salary is a “non-monetary” perquisite exempt u/s 10(10CC)

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	Drilling INC		
2012-ITRV-ITAT-MUM-177	Kotak Mahindra Capital Co. Ltd. vs. ACIT	ITAT (Mumbai)	Right to set-off capital loss is a “vested right” not affected by amendment u/s 74
2012-ITRV-SC-194	CIT vs. Gujarat Flouro Chemicals	Supreme Court	Sandik Asia 280 ITR 643 (SC) law of interest on interest is not correct and should be reconsidered
2012-ITRV-HC-MUM-196	CIT vs. Jai Hind CHS Ltd.	Mumbai High Court	TDR Premium received by Co-op Hsg Society from its members is exempt on ground of “mutuality”
2012-ITRV-HC-GUJ-210	DCIT vs. Harishkumar J. Gupta	Gujarat High Court	Salary Income on which tax has been deducted at source is not "undisclosed income" even if ROI not filed
2012-ITRV-SC-214	CIT vs. Dynavision Ltd.	Supreme Court	Excise duty need not be included in closing stock under section 145
2012-ITRV-SC-220	Sundaram Finance Ltd. vs. ACIT	Supreme Court	Contingent deposits" received from customers is "income"
2012-ITRV-HC-MUM-228	Akay Organics Ltd. vs. ITO	Mumbai High Court	In a One Time Settlement of principal & interest, it cannot be assumed that assessee has paid the interest due on proportionate basis
2012-ITRV-SC-231	Rakesh Shantilal Mardia vs. DCIT	Supreme Court	Interest (difference between purchase & redemption price) is not assessable in the year of allotment of debenture
2012-ITRV-ITAT-MUM-238	ACIT vs. Arnav Akshay Mehta	ITAT (Mumbai)	Notification u/s 43(5)(d) treating MCX as "recognised stock exchange" on 22.5.2009 is to be treated as retrospective and applying since 1.4.2006
2012-ITRV-SC-246	CIT vs. Bannari Amman Sugars Ltd.	Supreme Court	Valuation of closing stock, sugar was rightly valued at levy price which was less than manufacturing cost.
2012-ITRV-SC-247	Morinda Cooperative Sugar Mills Ltd. vs. CIT	Supreme Court	To decide what is "manufacture" Dept should have a panel of experts
2012-ITRV-SC-256	Girish Ramchandra Deshpande vs. CIC	Supreme Court	Income-tax details can be disclosed under RTI only if in “larger public interest”
2012-ITRV-HC-DEL-263	CIT vs. Jackson Engineers Ltd.	Delhi High Court	HC fumes on non-payment of fee to Dept’s counsel & extracts promise that there would be no laxity in the assistance rendered to the court in future
2012-ITRV-	Shiv Mandir	ITAT	“Hinduism” is not a religion & worship of

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ITAT-NAG-273	Devsttan Panch Committee Sanstan vs. CIT	(Nagpur)	Hindu Gods is not “religious purpose”
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### PARTNERSHIP

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-RAJ-131	CIT vs. The Asian Marketing	Rajasthan High Court	Partnership deed need not quantify partner’s remuneration in terms of section 40(b)(v)
2012-ITRV-HC-KOL-171	Md. Serajuddin & Brothers vs. CIT	Kolkata High Court	For s. 40(b)(v) limits, P&L A/c profits ( <i>including non-business income</i> ) have to be taken & not only “profits & gains of business” as computed u/s 28 to 43D

### PENALTY

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-ITAT-HYD-008	P. V. Ramana Reddy vs. ITO	ITAT (Hyderabad)	Despite surrender after detection, penalty can be waived u/s 271 (1) (c)
2012-ITRV-ITAT-DEL-009	Chadha Sugars Pvt. Ltd. vs. ACIT	ITAT (Delhi)	CA’s opinion does not necessarily make claim “bona fide” and penalty can be levied u/s 271(1)(c)
2012-ITRV-ITAT-KOL-036	DCIT vs. Pioneer Marbles & Interiors Pvt. Ltd.	ITAT (Kolkata)	Immunity from s.271AAA penalty is available even if tax on undisclosed income is unpaid till passing assessment order.
2012-ITRV-SC-098	CIT vs. Nalwa Sons investment Ltd.	Supreme Court	Despite concealment, no s. 271(1)(c) penalty if s. 115JB book profits assessed
2012-ITRV-HC-KAR-118	CIT vs. Sangameshwara Associates	Karnataka High Court	Despite offer of income in s. 148 return of income, s. 271(1)(c) penalty is leviable
2012-ITRV-ITAT-AHD-142	Chimanlal Manilal Patel vs. ACIT	ITAT (Ahemdabad )	Penalty u/s. 271(1)(c) is not leviable for breach of s. 50C

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2012-ITRV-ITAT-KOL-149	Darwabshaw B Cursetjee Sons Ltd vs. ITO	ITAT (Kolkata) (Third Member)	Professional's opinion in support of claim does not per se make it bona fide, penalty leviable u/s 271(1)(c). Third Member cannot sit in judgment over dissenting Members' views
2012-ITRV-ITAT-DEL-155	Global Green Company Ltd. vs. DCIT	ITAT (Delhi)	Penalty u/s. 271(1)(c) is not valid if "satisfaction" is not recorded in the assessment order
2012-ITRV-HC-DEL-163	CIT vs. Societex	Delhi High Court	There would be no s. 271(1)(c) penalty if wrong claim is caused by "bona fide mistake"
2012-ITRV-HC-MUM-167	CIT vs. Hans Christian Gass	Mumbai High Court	Ignorance of law caused by complicated provisions amounts to "bona fide belief"
2012-ITRV-ITAT-IND-187	Radheshyam Sarda & Ors vs. ACIT	ITAT (Indore)	Penalty u/s 271(1)(c) cannot be levied even if revised return of income is filed after detection but before issue of notice u/s. 148
2012-ITRV-HC-MUM-199	CIT vs. Wander Pvt. Ltd.	Mumbai High Court	If quantum appeal is admitted by Court, s. 271(1)(c) penalty proceedings may be kept in abeyance till the decision of the High Court on the merits
2012-ITRV-HC-MUM-202	CIT vs. Aditya Birla Nova Ltd.	Mumbai High Court	For penalty proceedings u/s 271 Reliance Petroproducts 322 ITR 158 (SC) is not "per incuriam"
2012-ITRV-ITAT-DEL-203	ACIT vs. Ashok Raj Nath	ITAT (Delhi)	Despite issue of notice u/s. 143(2), revised Return of Income saves from penalty u/s. 271(1)(c)
2012-ITRV-SC-216	ACIT vs. Gebilal Kanhaiyalal HUF	Supreme Court	S. 271(1)(c) Expl 5 immunity is available even if tax is not paid by due date of return of income
2012-ITRV-SC-244	CIT vs. Pricewaterhouse Coopers Pvt. Ltd.	Supreme Court	There would be no s. 271(1)(c) penalty for a "bona fide/ inadvertent/ human error"
2012-ITRV-HC-DEL-274	CIT vs. Usha International Ltd.	Delhi High Court	Surrender via revised ROI before issue of formal notice does not necessarily avoid s. 271(1)(c) penalty

### RE-ASSESSMENT / RE-OPENING

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-GUJ-012	Doshion Ltd. vs. ITO	Gujarat High Court	Retrospective amendment is no basis to reopen the case beyond 4 years u/s 147. AO not to

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			delay passing objection order
2012- ITRV- HC-DEL-013	Alpine Electronics Asia Pte Ltd. vs. DGIT	Delhi High Court	Delay in issue of s. 143 (2) notice renders assessment invalid u/s 147. After raising objection s. 292BB is not applicable.
2012- ITRV- ITAT-MUM- 025	HV Transmissions Ltd. vs. ITO	ITAT (Mumbai)	There cannot be reopening u/s 147 in absence of “new material” even though the original assessment was u/s 143(1)
2012-ITRV- ITAT-AGRA- 031	ITO vs. Lal Chand Agarwal	ITAT (Agra) 3 <sup>rd</sup> Member	S. 148 notice “issued” within limitation period is valid even if “service” is later
2012-ITRV- HC- GUJ-057	Ganesh Housing Corporation Ltd. vs. DCIT	Gujarat High Court	Reopening u/s 147 even within 4 years, on basis of retrospective amendment to s. 80-IB(10) is invalid
2012-ITRV- HC- MUM-083	Ghanshyam K. Khabrani. vs. ACIT	Mumbai High Court	Sanction of CIT instead of JCIT renders reopening void u/s 147 / 151
2012-ITRV- HC- DEL-126	CIT vs. Usha International Ltd.	Delhi High Court	Section 147 question whether there is “change of opinion” if AO does not specifically apply his mind has referred the matter to Full Bench
2012-ITRV- HC- DEL-129	A. G. Holding Pvt. Ltd. vs. ITO	Delhi High Court	S. 147 reopening reasons need not be supplied within limitation period
2012-ITRV- ITAT-MUM- 143	Tata International Ltd. vs. DCIT	ITAT (Mumbai)	Non-supply of recorded reasons <i>before</i> passing reassessment order renders the reopening void u/s 147. Subsequent supply does <i>not</i> validate reassessment order
2012-ITRV- HC- MUM-151	CIT vs. Amitabh Bachchan	Mumbai High Court	Reopening u/s 147 in the absence of “fresh tangible material” is invalid
2012-ITRV- HC- MUM-173	ICICI Home Finance Co. Ltd. vs. ACIT	Mumbai High Court	S. 147 reopening based solely on audit department’s objection is void
2012-ITRV- ITAT-MUM- 179	Telco Dadajee Dhackjee Ltd., vs. DCIT	ITAT (Mumbai) (Third Member)	S. 143(1) assessment cannot be reopened u/s 147 in absence of “new material”
2012-ITRV- HC- GUJ-189	Inductotherm (India) Pvt. Ltd. vs. CIT	Gujarat High Court	S. 143(1) intimation cannot be reopened u/s 147 in absence of “tangible material”
2012-ITRV- HC- GUJ-190	Gujarat Power Corporation Ltd. vs. ACIT	Gujarat High Court	If claim is not considered by AO, there is no “change of opinion” u/s 147
2012-ITRV- SC- 193	ACIT vs. ICICI Securities Primary	Supreme Court	S. 147 reopening on “change of opinion” is not permissible

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	Dealership Ltd.		
2012- ITRV- HC-DEL-207	Qualcomm Incorporated vs. ADIT	Delhi High Court	In addition to allegation, there must be finding of failure to disclose material facts to re-assess income u/s 147
2012-ITRV-HC- MUM-227	DSJ Communications Ltd. vs. DCIT	Mumbai High Court	Approval of the CIT instead of JCIT/Addl. CIT renders reopening void u/s 147 / 151
2012- ITRV- HC-DEL-242	CIT vs. Usha International Ltd.	Delhi High Court	There is no “change of opinion” u/s 147 if AO does not specifically apply his mind
2012- ITRV- ITAT-MUM- 277	Delta Air Lines, INC vs. ITO	ITAT (Mumbai)	S. 143(1) assessment cannot be reopened u/s 147 in absence of “new material”

### SEARCH AND SEIZURE

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV- HC-PAT-019	CCIT vs. Rajendra Singh	Patna High Court	Interrogation during search u/s 132 till late night (3.30 pm) amounts to “torture” & violation of “human rights”
2012-ITRV- ITAT-PUNE- 080	Akil Gulamali Somji vs. ITO	ITAT (Pune)	Failure to obtain JCIT’s approval renders section 153C Assessment Order Void
2012-ITRV- ITAT-JOD-136	ACIT vs. Shree Ram Lime Products Ltd	ITAT (Jodhpur) (Special Bench)	Under Section 158BE a panchnama which does not record a search does not extend limitation
2012-ITRV- ITAT-MUM- 147	All Cargo Global Logistics Ltd. vs. DCIT	ITAT (Mumbai) (Special Bench)	It has explained the scope of s. 153A assessment (Search)
2012-ITRV- HC-DEL-175	CIT vs. Anil Kumar Bhatia	Delhi High Court	S. 153A applies if incriminating material is found even if assessments are completed
2012-ITRV- ITAT-AGRA- 278	ACIT vs. Global Estates	ITAT (Agra)	S. 153C search assessment is void if AO’s satisfaction not recorded
2012-ITRV- HC-CHE-279	A. Rakesh Kumar Jain vs. ACIT	Chennai High Court	Every search panchnama does not extend Limitation period u/s 158BE
2012-ITRV- ITAT-MUM- 289	Ingram Micro (India) Exports P. Ltd. vs. Dy.	ITAT (Mumbai)	S. 153C search assessment is void if AO’s satisfaction is not recorded.

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<b>SECTION 10A / 10B</b>
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<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-ITAT-IND-082	Maral Overseas Ltd. vs. Addl. CIT	ITAT (Indore) (Special Bench)	Extension of relief period is available for existing units u/s 10B
2012-ITRV-ITAT-KOL-161	Madhu Jayanti International Ltd vs. DCIT	ITAT (Kolkata) (Special Bench)	It has explained the law on what is “manufacture”, “production” and “processing” for the purposes of s. 10A / 10B and held blending and processing of tea is manufacture / production
2012-ITRV-ITAT-MUM-178	WNS Global Services Pvt. Ltd. vs. ITO	ITAT (Mumbai)	S. 10A(9) omission applied prospectively but its omission has retrospective effect
2012-ITRV-HC-DEL-200	CIT vs. TEI Technologies Pvt. Ltd.	Delhi High Court	S. 10A is an "exemption" provision even after the amendment and loss of non-10A unit cannot be set-off against s. 10A profits
2012-ITRV-ITAT-RJK-280	Saffire Garments vs. ITO	ITAT (Rajkot) (Special Bench)	Condition of filing of Return of Income within due date is mandatory for deduction / exemption u/s 10A

<b>SECTION 14A</b>
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<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-065	CIT vs. Machino Plastics Ltd	Delhi High Court	S. 14A disallowance cannot exceed original disallowance
2012-ITRV-ITAT-DEL-066	Gillette Group India Pvt. Ltd. vs. ACIT	ITAT (Delhi)	S. 14A & Rule 8D disallowance cannot exceed total expenditure
2012-ITRV-HC-KAR-075	CCI Ltd. vs. JCIT	Karnataka High Court	S. 14A does not apply to shares held as stock-in-trade. Disallowance on notional basis is invalid
2012-ITRV-ITAT-DEL-087	ACIT vs. SIL Investment Ltd	ITAT (Delhi)	Onus is on AO to show expenditure is incurred to earn tax-free income for disallowance u/s 14A
2012-ITRV-	Auchtel Products	ITAT	There can be no S. 14A/ Rule 8D disallowance

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ITAT-MUM-109	Ltd vs. ACIT	(Mumbai)	without showing how assessee's method is wrong
2012-ITRV-ITAT-AHD-115	Vishnu Anant Mahajan vs. ACIT	ITAT (Ahmedabad) (Special Bench)	S. 14A disallowance applies to partner's share of profits. Depreciation is not "expenditure" and cannot be disallowed u/s 14A
2012-ITRV-HC-MUM-138	CIT vs. Delite Enterprises	Mumbai High Court	There would be no disallowance u/s 14A if there is no tax-free income
2012-ITRV-ITAT-MUM-140	Avshesh Mercantile P. Ltd. vs. Dy. CIT	ITAT (Mumbai)	Clubbing 15 other appeals on same issue has held that there would be no disallowance u/s 14A if tax-free investments are capable of taxable income
2012-ITRV-ITAT-MUM-174	JCIT vs. American Express Bank Ltd.	ITAT (Mumbai)	S. 14A applies even if the securities are held as stock-in-trade.
2012-ITRV-ITAT-MUM-204	Esquire Pvt. Ltd. vs. DCIT	ITAT (Mumbai)	S. 14A does not apply to dividend on shares held for trading purposes
2012-ITRV-ITAT-KOL-243	ACIT vs. Champion Commercial Co. Ltd.	ITAT (Kolkata)	Interest incurred on taxable income has also to be excluded to avoid incongruity & in view of Department's stand before High Court for calculation under Rule 8D(2)(ii) read with section 14A
2012-ITRV-ITAT-MUM-254	State Bank of Mauritius Ltd. vs. DDIT	ITAT (Mumbai)	Disallowance u/s 14A can be made under Article 7(3) of the India-Mauritius DTAA
2012-ITRV-ITAT-MUM-255	Justice Sam P Bharucha vs. Addl. CIT	ITAT (Mumbai)	There would be no s. 14A disallowance in absence of "live nexus" between expenditure & tax-free income
2012-ITRV-ITAT-PUNE-282	Smt. Apporva Patni vs. Addl. CIT	ITAT (Pune)	S. 14A does not apply to shares held as stock-in-trade
2012-ITRV-ITAT-AHD-283	Ethio Plastic Pvt. Ltd. vs. DCIT	ITAT (Ahmedabad)	S. 14A does not apply to shares held as stock-in-trade.

### SECTION 36 / 37 / OTHER BUSINESS DEDUCTIONS

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-	Shankar Trading	Delhi High	Interest actually paid on additional sales-tax

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DEL-018	Co. Pvt. Ltd. vs. CIT	Court	can be claimed as deduction u/s 43B
2012-ITRV-ITAT-MUM-020	ACIT vs. DICGC Ltd.	ITAT (Mumbai)	Even if Payee has paid tax, payer not eligible for deduction of tax and amount is not disallowable u/s 40(a)(ia)
2012-ITRV-HC-DEL-024	CIT vs. Virtual Soft Systems Ltd.	Delhi High Court	In a finance lease, claim for “lease equalization charge” as per ICAI Guidelines is allowable
2012-ITRV-ITAT-HYD-033	ACIT vs. Late Dr. B. V. Raju	ITAT (Hyderabad) (Special Bench)	Explained the law on taxing non-compete fee u/s 28(va) & 55(2)(a)
2012-ITRV-SC-037	Catholic Syrian Bank Ltd. vs. CIT	Supreme Court	Banks are entitled to both deductions for bad debts u/s 36(1)(vii) and for provision for bad debts 36(1)(viia)
2012-ITRV-HC-MUM-044	CIT vs. Shreyas S. Morakhia	Mumbai High Court	If brokerage is offered to tax, the principal debt also qualifies as a “bad debt” u/s 36(1)(vii) r.w.s. 36(2)
2012-ITRV-HC-DEL-059	Basu Distributor Pvt. Ltd. vs. ACIT	Delhi High Court	Financial crises may be “exceptional or unavoidable circumstance” for cash payment u/s 40A(3).
2012-ITRV-ITAT-AHD-090	Mastek Limited vs. DCIT	ITAT (Ahmedabad)	Foreign income-tax is deductible u/s 37(1). Bar in s. 40(a)(ii) does not apply to foreign taxes
2012-ITRV-ITAT-KOL-103	DCIT vs. Rajrani Exports Pvt Ltd	ITAT (Kolkata)	Fact that payment is used for ‘illegal’ purpose does not attract Expl to s. 37(1) and expense is allowable
2012-ITRV-HC-DEL-107	CIT vs. Havells India Ltd.	Delhi High Court	Expenditure on fully convertible debentures is not expenditure on equity hence is deductible expense
2012-ITRV-SC-110	Addl. CIT vs. Tulip Star Hotels Ltd.	Supreme Court	S. A. Builders 288 ITR 1 (SC) needs to be reconsidered. It relates to allowability of interest u/s 36(1)(iii) where loan is taken to invest in shares of subsidiary company which acquired business assets
2012-ITRV-HC-KAR-116	CIT vs. United Breweries Ltd.	Karnataka High Court	Commission to CMD for personal guarantee may be treated as “ploy to divert funds”
2012-ITRV-HC-KER-145	CIT vs. Hindustan Latex Ltd.	Kerala High Court	S. 43B(f) which allows deduction for leave encashment only on payment basis is ultravires. In any event, it does not cover premium paid to insurer
2012-ITRV-HC-MUM-156	CIT vs. CA Computer Associates India Pvt. Ltd	Mumbai High Court	Arms’ length royalty is allowable even in respect of unpaid sales

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2012-ITRV-ITAT-CHD-157	ACIT vs. Spray Engineering Devices Ltd	ITAT (Chandigarh)	Value of shares allotted free of cost to employees is deductible revenue expenditure
2012-ITRV-HC-MAD-158	CIT vs. PVP Ventures Limited	Madras High Court	Difference between market price and option price of ESOP shares is deductible expenditure
2012-ITRV-ITAT-PUNE-170	DCIT vs. KRA Holding & Trading Pvt. Ltd.	ITAT (Pune)	In case of conflict in judgments on deductibility of Shares PMS fee has to be decided in favour of assessee
2012-ITRV-HC-DEL-186	NPTC SAIL Power Company Pvt. Ltd. vs. CIT	Delhi High Court	Law on non-taxing pre-construction interest is good law despite s. 36(1)(iii) Proviso
2012-ITRV-HC-DEL-212	CIT vs. Modi Revlon Pvt. Ltd.	Delhi High Court	It has set out principles for deduction of business expenditure (brand promotion & consultancy charges)
2012-ITRV-SC-215	Drilcos (India) Pvt. Ltd. vs. CIT	Supreme Court	Lumpsum technical know-how fees are deductible only u/s 35AB & not u/s. 37(1)
2012-ITRV-ITAT-DEL-240	Lira Goswami vs. ACIT	ITAT (Delhi)	If there is no doubt that expenditure has been incurred, disallowance is not sustainable
2012-ITRV-SC-245	Sandur Manganese and Iron Ores Ltd. vs. CIT	Supreme Court	S. 40A(9) applies to a "contribution" but not to "reimbursement"
2012-ITRV-ITAT-MUM-254	State Bank of Mauritius Ltd. vs. DDIT	ITAT (Mumbai)	No disallowance can be made u/s 43B under Article 7(3) of the India-Mauritius DTAA.

### SECTION 68

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-DEL-034	CIT vs. Nova Promoters & Finlease P. Ltd.	Delhi High Court	Distinguishing the case in Lovely Exports, Divine Leasing, Oasis Hospitalities and others has held that where the AO show the link between the entry providers and the assessee-company, and also provide the statements of persons who admitted before the DIT (Inv) that they were entry providers, addition is to be made for share application money in the hands of the assessee company u/s 68.
2012-ITRV-SC-	CIT vs. P.R.	Supreme	Burden on assessee to show that donors have

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229	Ganapathy & Anrs	Court	financial capacity to give gifts u/s 68
2012-ITRV-HC-DEL-287	CIT vs. Fair Finvest Ltd.	Delhi High Court	All cases of share application money would not be covered u/s 68 by applying Nova Promoters nor Lovely Exports. Facts of each case has to be seen
2012-ITRV-HC-DEL-288	CIT vs. N. R. Portfolio Pvt. Ltd.	Delhi High Court	Despite PAN & Bank details, addition of share allotment money is valid u/s 68 if applicants do not respond to summons

**SHAM TRANSACTIONS / COLOURABLE DEVICE / TAX PLANNING**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-ITAT-MUM-055	Killick Nixon Limited vs. DCIT	ITAT (Mumbai)	Transaction within four corners of law can be treated as “sham” & “colourable device” by looking at “human probabilities”
2012-ITRV-AAR-070	In Re A Mauritius Company	Authority for Advance Ruling	Selective buy-back of shares in lieu of dividend is a “colourable transaction”
2012-ITRV-HC-MAD-092	CIT vs. High Energy Batteries (India) Ltd	Madras High Court	Sale & Lease Back transactions are not “sham” transactions
2012-ITRV-HC-MUM-154	In Re AVM Capital Services Pvt. Ltd	Mumbai High Court	Tax planning is legitimate if it is within the framework of the law
2012-ITRV-AAR-180	In Re Orient Green Power Pte. Ltd.	Authority for Advance Ruling	“Gift” by company to subsidiary appears to be “Dubious tax avoidance scheme”
2012-ITRV-HC-GUJ-197	Vodafone Essar Gujarat Ltd. vs. Department of Income Tax	Gujarat High Court	S. 391-394 scheme of arrangement is not a “tax avoidance scheme”
2012-ITRV-ITAT-DEL-237	Shroff Eye Centre vs. ACIT	ITAT (Delhi)	ITAT explains the concept of "diversion of income by overriding title"
2012-ITRV-ITAT-KOL-251	ADIT vs. Maersk Line UK Ltd.	ITAT (Kolkata)	ITAT has described what makes a transaction a "sham" transaction or "colourable device"

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**SHARE TRANSACTIONS / DERIVATIVES**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-ITAT-DEL-003	Radials International vs. ACIT	ITAT (Delhi)	Long-term & short-term gains from PMS transactions are taxable as business profits.
2012-ITRV-HC-DEL-096	CIT vs. Sahara India Housing Corporation Ltd.	Delhi High Court	It has laid down objective tests to classify shares gains as STCG vs. biz profits laid down
2012-ITRV-HC-DEL-111	CIT vs. Vinay Mittal	Delhi High Court	It has laid down tests to determine where shares gain is capital gains or business profits
2012-ITRV-ITAT-DEL-112	Narendra Gehlaut vs. JCIT	ITAT (Delhi)	Despite borrowing, gains on shares is assessable as STCG and not business profits
2012-ITRV-HC-MUM-146	CIT vs. Suresh R. Shah	Mumbai High Court	Despite speculation activity and short period of holding, shares gain is STCG & not business profits
2012-ITRV-HC-GUJ-169	CIT vs. Vaibhav J. Shah (HUF)	Gujarat High Court	It has laid down tests to distinguish shares gains as LTCG/STCG vs. business profits
2012-ITRV-HC-GUJ-198	ACIT vs. Biraj Investment Pvt. Ltd.	Gujarat High Court	Transaction of “sale” of “pledged” shares at loss to a group company with object to set-off loss against gains is not a “colourable transaction”

**TAX DEDUCTED AT SOURCE / SECTION 40(a)(ia)**

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-KAR-017	CIT vs. Nova Nordisk Pharma India Ltd.	Karnataka High Court	When assessee outsources manufacturing of a pharma product for which raw materials are supplied by a foreign company having interest in the assessee company and trade mark of assessee to be labeled on such products, conversion charges attract provisions of Sec 194C
2012-ITRV-ITAT-MUM-022	Kotak Securities Ltd. vs. DCIT	ITAT (Mumbai)	In absence of principal-agent relationship, payment, though called “commission”, TDS is not deductible u/s 194H
2012-ITRV-ITAT-DEL-045	ACIT vs. Catholic Relief Services	ITAT (Delhi)	Extended time limit in passing of TDS assessment order s. 201(3) Proviso does not save proceedings initiated before 1.4.2010 even

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			if order is passed after that date
2012-ITRV- HC-KOL-046	CIT vs. Virgin Creations	Kolkatta High Court	S. 40(a)(ia) TDS amendment to give extended time for payment is applicable with retrospective effect
2012-ITRV- ITAT-MUM- 053	Crompton Greaves Ltd. vs. DCIT (TDS)	ITAT (Mumbai)	There would be no TDS Liability u/s 195 on payer if payee is not assessed.
2012-ITRV- ITAT-VIZ-084	Rajamahendri Shipping & Oil Field Services Ltd. vs. Addl. CIT	ITAT (Vishakhapa tnam)	Judgment of non-jurisdictional High Court prevails over Special Bench and expenditure is allowed u/s 40(a)(ia) if TDS paid on or before due date u/s 139(1)
2012-ITRV- ITAT-BANG- 099	ACIT vs. M.K. Gurumurthy	ITAT (Bangalore)	S. 194C default does not result in s. 40(a)(ia) disallowance if TDS is paid before ROI due date
2012-ITRV-SC- 105	CIT vs. Cargil Global Trading I.P. Ltd.	Supreme Court	Discounting charges is not "Interest" and no tax is to be deducted u/s 194A
2012-ITRV- HC-ALL-106	Jagran Prakashan Limited vs. DCIT	Allahabad High Court	TDS Defaulter is liable only for interest and penalty and not the tax - s. 194H
2012-ITRV- ITAT-MUM- 113	Piyush C. Mehta vs. ACIT	ITAT (Mumbai)	Amendment by Finance Act 2010 in section S. 40(a)(ia) w.e.f 1.4.2010 is retrospective
2012-ITRV- ITAT-DEL-114	ITO vs. Taru Leading Edge (P) Ltd	ITAT (Delhi) (Special Bench)	S. 40(a)(ia) amendment by Finance Act 2010 is retrospective
2012-ITRV- ITAT-VIZ-117	Merilyn Shipping & Transport vs. ACIT	ITAT (Vishakhapa tnam) (Special Bench)	S. 40(a)(ia) TDS disallowance applies only to amounts "payable" as at 31st March and not to amounts already "paid" during the year
2012-ITRV- ITAT-AHD-122	Alpha Projects Society P. Ltd vs. DCIT	ITAT (Ahemdaba d)	Special Bench verdict cannot be followed in view of High Court verdict and expenditure is allowed u/s 40(a)(ia) if TDS paid on or before due date u/s 139(1)
2012-ITRV- HC-KAR-135	A Kowsalya Bai & Ors vs. Union of India	Karnataka High Court	S. 206AA PAN law is unconstitutional and should be read down to not apply to assesseees without taxable income
2012-ITRV- ITAT-KOL- 165]	Ramakrishna Vedanta Math vs. ITO	ITAT (Kolkata)	Before imposing s. 201 TDS Liability, AO has to show that recipient has not paid tax
2012-ITRV- HC-P&H-201	Serco BPO Pvt. Ltd. vs. ACIT	Punjab & Haryana	S. 197 TDS application cannot be rejected for extraneous reasons

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	(TDS)	High Court	
2012-ITRV-ITAT-MUM-205	DCIT vs. Dosdal Pvt. Ltd.	ITAT (Mumbai)	Installation & commissioning services are an integral part of supply and not assessable as "fees for technical services" despite separate contract, hence on by not withholding taxes u/s 195, section 40(a)(i) was not applicable
2012-ITRV-ITAT-MUM-206	Channel Guide India Ltd. vs. ACIT	ITAT (Mumbai)	S. 40(a)(i) disallowance cannot be made on basis of retrospective law
2012-ITRV-SC-217	CIT vs. Ahmedabad Stamp Vendors Association	Supreme Court	"Discount" in a "sale" is not "commission or brokerage" hence no TDS is to be made u/s 194H
2012-ITRV-ITAT-MUM-265	Pifzer Ltd. vs. ITO(TDS)	ITAT (Mumbai)	There is no TDS obligation for general credit entry, hence no s. 40(a)(i) disallowance. Even if TDS is applicable, no s. 201 TDS liability if s. 40(a)(i) disallowance made
2012-ITRV-HC-GUJ-266	CIT vs. Valibhai Khanbhai Mankad	Gujarat High Court	Despite part breach of s. 194C, no s. 40(a)(ia) disallowance is permissible

### WEALTH TAX

<i>Citation</i>	<i>Appellant vs. Respondent</i>	<i>Court</i>	<i>Held</i>
2012-ITRV-HC-GUJ-150	Aims Oxygen Pvt. Ltd. vs. CWT	Gujarat High Court (Full Bench)	Property subject to Urban Land Ceiling Act restrictions cannot be valued at market value for wealth tax purposes
2012-ITRV-HC-GUJ-211	Ramanbhai B. Patel HUF vs. DCIT	Gujarat High Court	S. 18(1)(c) of W. T. Act requires "clear cut" finding of concealment. If AO has not invoked Explanation 4 to s. 18(1)(c), CIT(A) cannot do so

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