Direct Tax & TP Rulings Overruled / Impacted by Finance Bill, 2014

Finance Bill, 2014 has proposed several amendments to the existing Income-tax Act. The Bill proposes some amendments, which could have the effect of overruling quite a few Court and Tribunal decisions.

Taxsutra.com has compiled a list of case-laws that are likely to be overruled /impacted if the amendments take effect.

Sr. No	Amendment Proposed	Case laws
1	**Capital gains exemption on investment in specified bonds u/s 54EC** Sec 54EC exemption for investment in specified bonds to be restricted to Rs. 50 lakhs even if it is spread over 2 financial years	**Shri Aspi Ginwalavs. CIT [TS-192-ITAT-2012(Ahd)]** Ahmedabad ITAT held that Sec 54EC exemption available on investment of Rs 1 Cr in specified bonds made within prescribed time-limit falling in two different Financial Years. ITAT observed that proviso to Sec 54EC was clear, unambiguous and did not restrict investments to Rs 50 lakhs if eligibility period falls in two different Financial Years. **Shri Vivek Jairazbhoy vs. DCIT [TS-901-ITAT-2012(Bang)]** Following Ahmedabad ITAT ruling, Bangalore ITAT held that Rs 50 lakh limit for Sec 54EC exemption was available for 2 financial years separately falling within 6 month window from date of sale Similar view was also taken by Panaji ITAT in **Shantabai V. Kamat vs. CIT [** TS-710-ITAT-2013(PAN)] and **ITO vs.Rania Faleiro** [TS-711-ITAT-2013(PAN)]and Chennai ITAT **in SriramIndubal vs. ITO** [TS-712-ITAT-2013(CHNY)] **Note:** **ACIT vs.Shri Raj Kumar Jain & Sons (HUF) [TS-142-ITAT-2012(JPR)]** However, Jaipur ITAT took a contrary view and held that Sec 54EC exemption was to be restricted to Rs 50 lakhs, even if Rs 1 crore was invested in specified bonds within prescribed time limit falling in two different financial years. ITAT observed that interpretation of proviso to Sec 54EC should not lead to discrimination against various taxpayers depending upon date of transfer
2	**Capital gains exemption u/s 54 and**	**On interpretation of the term "a house"**

	54F in case of investment in residential house property Sec 54 and 54F exemption for investment in residential house property to be allowed only for 1 residential house and only if it is situated in India	**CIT vs. K.G. Rukminiamma[TS-170-HC-2010(KAR)]** Karnataka HC held that 'A' residential house in Sec 54 does not mean a single residential house. An asset newly acquired after the sale of the original asset also can be buildings or lands appurtenant thereto, which also should be 'a residential house'." The High Court thus held that *"Therefore, the letter 'a' in the context it is used should not be construed as meaning 'singular'. But, being an indefinite article, the said expression should be read in consonance with the other words 'buildings' and 'lands' and, therefore, the singular 'a residential house' also permits use of plural by virtue of s. 13(2) of the General Clauses Act."* **CIT vs. Late Khoobchand M. Makhija [TS-706-HC-2013(KAR)]** Karnataka HC upheld Sec 54(1) benefit for 2 separate residential houses absent tax evasion intention, relying on co-ordinate bench ruling in K.G. Rukminiamma. However, HC observed that such beneficial interpretation should be adopted by Courts / Tribunals and Authorities only after keeping in mind facts of a particular case, not in a case where attempt is made to avoid tax **Gita Duggal [TS-69-HC-2013(DEL)]** Delhi HC allowed Sec 54 benefit for house with independent units, following Kar HC ruling in K.G. Rukminiamma since affirmed by SC. HC held that Section requires investment in a residential "house" not "unit". **CIT v. Syed Ali Adil [TS-934-HC-2012(AP)]** Andhra Pradesh HC allowed Sec 54 benefit or investment in two adjacent flats purchased from different vendors under two separate sale deeds. HC held that investment in "a" residential house doesn't indicate single house and disapproved Special Bench (SB) ruling in Sushila M Jhaveri. **CIT vs. D. Ananda Basappa 309 ITR 329 (Kar.)** Karnataka HC allowed exemption u/s 54 on multiple flats in the same complex which were used as one unit. The special leave petition filed by the department against this decision was also rejected by the Supreme Court [320 ITR (St.) 19]. **CIT v. Raman Kumar Suri [TS-868-HC-2012(BOM)]** Bombay HC allowed Sec 54 exemption in respect of a duplex consisting of two flats connected by an internal staircase. Duplex was considered as a "single" flat

		since it had a common entrance and passage and a single kitchen. HC upheld SB ruling in Sushila M Jhaveri . **Note:** **ITO v. Ms.Shushila M. Jhaveri(2007) 107 ITD 327** SB of Mumbai ITAT held that Sec 54 exemption was allowable only in case of purchase of single house. ITAT noted that It was held that the word "any" used by the Legislature in Sec 54B, 54D, 54E, 54EA and 54EB of the Act while the word "a" used only in Sec 54 and 54F of the Act. This clearly showed that the Legislature intended different meaning to these two words. Thus, exemption under Sec 54/ 54F was held to be available in respect of one house only. However, it was observed that where two houses joint together constitutes a single unit for residence, then exemption under section 54 would be available to such joint residential house. **On purchase of residential house outside India** **Prema P. Shah v. ITO [100 ITD 60 (Mum)]** Mumbai ITAT held that exemption u/s.54(1) could be extended to the capital gains that was reinvested in a residential house purchased in a foreign country on selling the property that was situated in India. Similar view was taken by **Mumbai ITAT in case of ITO v. Dr. Girish M. Shah [ITA No. 3582/M/ 2009]** **Vinay Mishra vs ACIT [TS-944-ITAT-2012(Bang)]** Bangalore ITAT held that Sec 54F was allowable on the investment in house property situated outside India. **N. Ranganathan vs. ITO [TS-396-ITAT-2014(CHNY)]** Recently, Chennai ITAT allowed Sec 54 exemption to assessee for investment of capital gains in a Singaporean house following Bangalore ITAT ruling in Vinay Mishra. **Note:** **Smt. Leena J. Shah v. ACIT [6 SOT 721 (Ahd.)]** Ahmedabad ITAT held that for claiming Sec 54F exemption,a residential house purchased/constructed must be in India and not outside India.
3	**Clarification of "substantially**	**Visvesvaraya Technological University ('VTU') vs.**

	financed by the Government" u/s 10(23C) It is proposed to provide definition of institution (university, hospital or other educational institution) 'substantially financed by the Government" u/s 10(23C). A specific percentage will be prescribed for amount of Government grant as a percentage of total receipts including any voluntary contribution and when such percentage is exceeded the institution will be treated as substantially financed by the Government.	**ACIT TS-702-HC-2013(KAR)** Karnataka HC denied exemption u/s 10(23C)(iiiab) to VTU on the grounds that it did not satisfy the condition of being an institution 'wholly or substantially financed by the Government'. VTU received exorbitant amounts from students through affiliated colleges and examination authority and the grants / financial aid received from the Government was hardly 1% of VTU's total receipts of Rs 500 crores. HC also observed that Legislative intent behind the word 'financed' in Sec 10(23C)(iiiab) contemplates extending actual grants and not merely organizing funds by Government.
4	**Depreciation not allowed for computing income of charitable trust / institution u/s 11** It is proposed that income of trusts / institutions u/s 11, for the purposes of application, shall be determined without any deduction or allowance by way of depreciation.	**CIT vs. Tiny Tots Education Society [(2011) 330 ITR 21 (Punjab & Haryana)]** Punjab & Haryana HC held that allowing depreciation in the computation of income to be applied will not lead to a double deduction. A similar view has been taken by Madhya Pradesh HC in **CIT vs. Raipur Pallottine Society [TS-13-HC-1989(MP)]** and Delhi HC in **DIT vs.VishwaJagriti Mission[TS-425-HC-2012(DEL)]**
5	**Advance for 'transfer' taxable u/s 56** It is proposed to insert clause (ix) in Sec 56(2) to provide for taxability of amount received as an advance or otherwise in the course of negotiations for transfer of a capital asset under the head 'Income from other sources". In order to avoid double taxation of advance, Sec 51 is proposed to be amended to provide that where advance money is taxed u/s 56, it shall not be reduced from cost of acquisition.	**Travanacore Rubber & Tea Co. Ltd. vs. CIT [(2000) 243 ITR 158 (SC)]** SC held that advance money for sale of rubber tress came within the purview of Sec 51 and therefore its subsequent forfeiture was a capital receipt. Similar view was taken by Delhi HC in **CIT vsMeeraGoyal [[2014] 360 ITR 346 (Delhi)]** **Madras HC ruling in CIT vsSeshasayee Bros. (P.) Ltd. [1996 222 ITR 818(Mad)]** ***(Input provided by Taxsutrareader, Mr.MayankAgarwal)*** Madras HC held that the earnest money received by assessee for sale of the property and forfeited did not become the business income of the assessee and hence was not liable to be taxed, being in nature of capital receipt. Similar view was taken by **Andhra Pradesh HC in CIT v. Balaji Chitra Mandir [(1985) 154 ITR 777 (AP)] and Madras HC in CIT v. M. Ct. M/ Corporation Pvt. Ltd. [(1995) 211 ITR 95]*****(Input provided by Taxsutra reader, Mr.Mayank Agarwal)***

6	**FIIs income to be taxed under the head 'capital gains'** It is proposed that securities held by foreign institution investor ('FIIs') which has invested in such securities as per SEBI regulations will be treated as capital asset. Therefore, income arising from transfer of such security by foreign portfolio investor would be in the nature of capital gains.	**Prudential Assurance Co. Ltd vs. ADIT [TS-177-ITAT-2012(Mum)]** Mumbai ITAT held that income arising from sale of shares by a non-resident FII assessee would be taxable as business income & not capital gains. Similar view was taken by **AARs in Fidelity Advisor Series VIII, In re [(2004) 271 ITR 1 (AAR)] and XYZ / Abc, Equity Fund, In Re [(2001) 250 ITR 194 (AAR)].** **Note:** **AAR in Fidelity Northstar Fund, In re (AAR No. 678/2006),** held that profit derived by FII assessee on account of purchase and sale of equities was chargeable to tax under the head `Capital gains'.
7	**Reference to Valuation Officer u/s 142A** It is proposed to amend Sec 142A so as to allow AO to make reference to valuation officer irrespective of whether he is satisfied with correctness or completeness of accounts.	**Sargam Cinema vs. CIT [328 ITR 513 (SC)] (*Input provided by Taxsutrareader, Mr.R. Ramachandran)*** SC held that an assessing authority cannot refer any matter to Departmental Valuation Officer without rejecting books of account.
8	**Enhanced compensation, referred u/s 45(5), to be taxed in year of final order** It is proposed that compensation received (due to compulsory acquisition u/s 45(5)) in pursuance of an interim Court / Tribunal / other authority order shall be deemed to be income chargeable under the head "Capital gains" in the previous year in which the final order of such Court / Tribunal / other authority is made. .	**CIT vsGhanshyam (HUF) [(2009) 315 ITR 1 (SC)]** SC held that irrespective of the fact whether litigation with regard to award of compensation had attained finality or not, in terms of amended Section 45(5)(b), the taxability of compensation shall be in the year of receipt. **Note:** **CCIT &Anr v. Smt. Shantavva [(2004) 267 ITR 67 (Karn)] *(Input provided by Taxsutrareader, Mr.Sandeep Krishnan)*** Kar HC held that amount received by assessee on compulsory acquisition of her land in pursuance of interim orders passed by High Court and Supreme Court could not be considered as receipt of enhanced compensation taxable u/s 45(5)(b). It was further held that Sec 45(5)(b) will be attracted only when assessee receives enhanced compensation in pursuance of a final award/order of a Court, Tribunal or other authority, increasing compensation
9	**Deemed Speculative definition under Explanation to Sec 73, not applicable to companies in**	**B.L.K. Securities (P.) Ltd.vs ITO [[2009] 27 SOT 142 (Delhi)]**

	business of share trading It is proposed to amend Explanation to Sec 73 to provide that provision of the Explanation shall also not be applicable to a company, the principal business of which is the business of trading in shares.	Delhi ITAT held that where assessee, a share broker, had incurred loss on trading transactions of shares entered into on its own account, said loss shall be treated as speculation loss as assessee would be deemed to be carrying on speculative business to extent of business of purchase and sale of shares within meaning of Explanation to Sec 73. Similar view was taken by Delhi ITAT in DCIT vs. **Frontline Capital Services Ltd. [(2005) 4 SOT 473 (Delhi)]**
10	**Sec 10 exemptions not available to trusts claiming Sec 11 exemption** It is proposed to insert sub-section 7 to Sec 11 to provide that any trust or institution registered for availing exemption u/s 11 cannot claim any other exemption u/s 10 other than exemption related to agriculture income and exemption u/s 10(23C).	**Jamsetji Tata Trust vs Joint Director of Income Tax (Exemptions) [TS-172-ITAT-2014(Mum)]** ***(Input provided by Taxsutra reader, Mr. Siddharth Banwat)*** Mumbai ITAT held that benefit of Sec 10 cannot be denied by invoking provisions of Sec 11 to 13 of the Act. Thus, ITAT allowed assessee's claim for exemption in respect of dividend income on shares and mutual funds and long term capital gain on sale of shares u/s 10(34), 10(35) and 10(38) respectively.
Transfer Pricing		
1	**Deemed International transaction:** Sec. 92B(2) is proposed to be amended. As per proposed amendment, a transaction between an enterprise with another person which is not AE and there exists a prior agreement between such other person and AE of the enterprise or where terms of relevant transaction are determined in substance between such other person and AE, then such transaction will be deemed international transaction irrespective of **whether or not such other person is a non-resident.**	**Kodak India Pvt. Ltd. [TS-93-ITAT-2013(Mum)-TP]** Mumbai ITAT deletes TP addition on sale of business between 2 domestic entities. Provisions of Sec 92B(2) cannot be read independently of Sec 92B(1). Deeming fiction u/s 92B(2) is not attracted absent foreign entity's influence over resident. **Swarnandhra IJMII Integrated Township Development Co. P. Ltd vs. DCIT [TS-762-ITAT-2012(HYD)-TP]** Hyderabad ITAT held that deemed international transaction' fiction is not applicable to transactions between Indian entities. **IJM (India) vs. ACIT [TS-257-ITAT-2013(HYD)-TP]** Hyderabad ITAT treats Indian PE as 'resident'. Holds no TP for transactions with PE. Also, holds that transactions with two other Joint ventures (JV) and assessee are also not 'international transactions' and not subject to TP.

		Similar observations have been made in following rulings **IJM (India) Infrastructure Ltd. vs. Dy. CIT [TS-135-ITAT-2014(HYD)-TP]** **CIT vs. Swarnandhra IJMII Integrated Township Development Co. Pvt. Ltd. [TS-178-ITAT-2014(HYD)-TP]**
2	**Use of multiple year data instead of single year data for ALP computation**	**24/7 Customer.com Pvt. Ltd. [TS-708-ITAT-2012(Bang)-TP]** Bangalore ITAT holds that there is a mandatory requirement of law to utilize current year (contemporaneous) data, even if it was not available in public domain at the time of preparation of TP study. **Qualcomm India Pvt. Ltd. [TS-227-ITAT-2013(DEL)-TP]** Delhi ITAT rejects use of earlier/multiple year data. Earlier year data relevant only for analysis of project life cycles, business cycle, effect of economic circumstances etc. **Michael Aram Exports Pvt. Ltd. [TS-268-ITAT-2013(DEL)-TP]** Delhi ITAT holds that use of multiple year data is allowed only in exceptional circumstances, when such data influences determination of transfer prices in relation to the transactions which are being compared. **MagnetiMarelli Powertrain India Pvt. Ltd. [TS-78-ITAT-2014(DEL)-TP]** Delhi ITAT holds that Rule 10B(4) mandates the use of current/single year data for computation of ALP. Proviso to this rule, allowing use of multiple year data, is only an exception and can be invoked only if the data for the current year does not result in correct determination prices. **Fuchs Lubricants (India) Pvt. Ltd. [TS-92-ITAT-2014(Mum)-TP]** Mumbai ITAT, interpreting Rule 10B(4) r.w.r 10D(4), rules that only current year (contemporaneous) data should be considered as far as possible for the purpose of comparing the uncontrolled transactions with the international transaction. However, an exception is provided under the proviso to Rule 10B(4), where multiple year data can be used in existence of abnormal or exceptional circumstances/facts for the current year which could

		have an influence on the determination of transfer pricing.
3	**Use of range instead of arithmetical mean**	**24/7 Customer.Com P Ltd Vs DCIT [TS-708-ITAT-2012(Bang)-TP]** Bangalore ITAT holds that Indian TP regulations deviate from OECD, as they apply 'arithmetical mean' as against 'quartile method'. Rejects reliance of OECD guidelines. **Trilogy E-Business Software India P. Ltd vs. DCIT [TS-748-ITAT-2012(Bang)-TP]** Bangalore ITAT holds that under OECD Guidelines and US TP Regulations, "the question on considering companies with either abnormal profits or abnormal losses may not arise at all because those regulations advocate the quartile method for determining ALP. Indian regulations specifically deviate from OECD guidelines and provide Arithmetic Mean method for determining ALP. In the arithmetic mean method, all companies that are in the sample are considered, without exception and the average of all the companies are considered as the ALP. Hence, ITAT held that a general rule that companies with abnormal profits should be excluded may be in tune with the principles enunciated in OECD guidelines but cannot be said to be in tune with Indian TP regulations. **DCIT vs. Exxon Mobil Company Pvt. Ltd[TS-754-ITAT-2012(Mum)-TP]** Mumbai ITAT holds that 'Inter-quartile range' not recognized in India. No ground to exclude high-profit comparables. **Mentor Graphics Noida P. Ltd. [TS-86-HC-2013(DEL)-TP]** Delhi HC reverses Mentor Graphics ITAT conclusion that where PLI of one of the comparables is lower than taxpayer's PLI, transaction to be treated as arm's length. Where more than one price is determined under Most Appropriate Method, ALP should be computed by taking arithmetical mean of such prices. Section does not refer to prices being determined by more than one method. Only one method can be selected as Most Appropriate Method. **Tilda Riceland Pvt Ltd vs. ACIT[TS-47-ITAT-2014(DEL)-TP]** Delhi ITAT observed that, assessee had excluded exceptionally high prices. ITAT held that, the CUP method did not allow exclusion of high priced sale

		instances, unless such high prices could be explained by differences of product or commercial terms. Further, quartile ranges was normally not permissible under the scheme of determination of ALP under the CUP method.

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