

# ORANGE ANNUAL DIGEST

*A COMPILATION OF 100+  
IMPORTANT RULINGS OF YEAR  
2018-19*

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## Orange presents compilation of 100+ handpicked, important rulings reported on Orange during the financial year 2018-19

Sr. No	Orange Annual Digest - Key Takeaways from Handpicked rulings of F.Y 2018-2019	Orange Citation
1	Software payments by assessee to its US-parent company not taxable as royalty – Delhi HC rules in favour of assessee; Holds software licence fees paid by assessee to its parent company in US not covered under definition of ‘royalty’ both u/s. 9 of Income Tax Act and under Article 12 of the India-USA DTAA;	<a href="#">[TS-5180-HC-2018(DELHI)-O]</a>
2	Joint ventures (JV) which have been formed only to secure the contract cannot be subjected to tax as Association of Person (AOP) - ITAT rules in favour of assessee; Holds that no net profit on percentage basis can be taxed since the JV is merely a pass through entity with minimal expenses, formed for the basic purpose of jointly becoming eligible for the tender as individually none of the two constituents could have bagged the same;	<a href="#">[TS-6185-ITAT-2018(Delhi)-O]</a>
3	Organizing Committee Common Wealth Games 2010 (OC CWG) is a society registered under the Societies Registration Act and not a Government entity; Tax on amount paid by OC CWG to the consortium (between assessee and EKS, a /Mauritian company) to be deducted at 42.23% and not 10%; The functional office provided by OC CWG to assessee constituted a PE in India	<a href="#">[TS-5181-HC-2018(Delhi)-O]</a>
4	Deduction on account of permissible accumulation of 15% as provided u/s. 10(23C)(iv) cannot exceed actual accumulation made by the assessee-Trust – ITAT allows Revenue’s	<a href="#">[TS-6294-ITAT-2018(Chandigarh)-O]</a>

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	appeal for AY 2008-09; Denies carry forward of loss arising on account of deduction of accumulation u/s. 10(23C)(iv) in excess of the actual accumulated amount; Gross receipts earned by the assessee for the year was Rs. 149.14 crores against which the total expenditure of Rs.136.48 crores resulting in a surplus of Rs.12.66 crores;	
5	Adjudication by TRO that transfer of immovable property by legal heirs of tax defaulter is null and void u/s. 281 is without jurisdiction, in the absence of intention to defraud the Revenue – HC holds in favour of assessee; Holds that it is for the Income Tax Department to file a suit under Rule 11(6) to have the transfer declared void u/s. 281;	<a href="#">[TS-5272-HC-2018(Madras)-O]</a>
6	No interest u/s. 244A(i)(a) is payable when the refund arises out of excess advance tax and TDS, and the refund amount is less than 10% of the total tax amount – ITAT dismisses assessee’s appeal; Rejects its argument that once excess advance tax and TDS is adjusted with tax liability arising out of regular assessment, it loses the character of advance tax and TDS, and becomes tax paid on regular demand;	<a href="#">[TS-6390-ITAT-2018(MUMBAI)-O]</a>
7	Financial crisis in US and accident injuries are genuine hardships; Delay of up to 1,232 days in filing returns condoned - HC allows NR assessee’s writ for assessment years 2010-11, 2011-12 and 2012-13; Holds that the phrase “genuine hardship” employed in sec. 119(2)(b) should be construed liberally, particularly in matters of application for condonation of delay;	<a href="#">[TS-5210-HC-2018(Karnataka)-O]</a>
8	No deduction u/s. 10B allowable in absence of an approval by the Board or ratification by the Board of approval granted by the Director, STPI, as prescribed under Explanation– 2(iv) to section 10B – Mumbai ITAT denies deduction u/s. 10B to assessee (engaged in export of software);	<a href="#">[TS-6638-ITAT-2018(Mumbai)-O]</a>

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9	Cancellation of certificate u/s. 197 not possible in absence of a copy of the reasons recorded at the time of issuing the certificate under Section 197 – HC allows assessee's writ; Quashes order passed by TDS authorities cancelling certificate u/s. 197 given to the assessee to deduct tax at lower rate of 0.39 percent;	<a href="#">[TS-5115-HC-2018(Bombay)-O]</a>
10	Royalty income on licensing of patents earned by assessee (a US based company) from Original Equipment Manufacturers (OEMs) situated outside India, not taxable in India u/s. 9(1)(vi)(c) - ITAT holds in favour of assessee; Holds that royalty income received from OEMs on sale of handsets to Indian telecom companies which were embedded with CDMA technology patented by the assessee, is not taxable in India;	<a href="#">[TS-6652-ITAT-2018(Delhi)-O]</a>
11	When the statute does not prescribe the time limit for passing order u/s. 201(1)/ 201(1A), then reasonable time limit ought to be read into the provisions – ITAT rules in favour of assessee for AY 2007-08; Holds order passed u/s 201(1)/ 201(1A) after eight years from end of the financial year was barred by limitation;	<a href="#">[TS-6476-ITAT-2018(Cochin)-O]</a>
12	Once there is evidence in Form No.16 disclosing the salary paid to assessee and tax deducted and deposited with the Government, no further liability can be levied on assessee-employee in respect of salary income - ITAT rules in favour of assessee for AY 2014-15, allows credit of taxes paid in Egypt;	<a href="#">[TS-6634-ITAT-2018(CHENNAI)-O]</a>
13	Royalty paid by a foreign company (a tax resident in India by virtue of POEM in India) to another foreign company for patents used in manufacture of products in India by its 100% holding company, taxable in India even if products were entirely sold outside India – ITAT rules in favour of Revenue for A.Y.2009-10;	<a href="#">[TS-6764-ITAT-2018(MUMBAI)-O]</a>
14	Mere mention of External Development Charges (EDC) in the balance sheet and in reply to a questionnaire would not render the AO powerless to re-open the case – HC dismisses	<a href="#">[TS-5298-HC-2018(PUNJAB &amp;</a>

	assessee's (a development authority) writ petition for quashing of the order disposing its objections to the reasons recorded for re-opening of assessment for AY 2010-11;	<a href="#">HARYANA)-O]</a>
15	Multiple adjacent properties used in a combined manner to be treated as one property for counting the existing properties for purpose of exemption u/s. 54F; Property constructed for residential purpose but used for commercial purposes to be treated as commercial and not to be counted as a residential property; Proviso to Sec. 54F not applicable;	<a href="#">[TS-6684-ITAT-2018(BANGALORE)-O]</a>
16	Assessments u/s 153A framed on a non-existent company is bad in law – ITAT rules in favour of assessee, quashes assessment orders u/s. 153A for A.Ys 2005-06 to 2009-10 as being void-ab-initio; Holds that pursuant to amalgamation of assessee company with Pernod Ricard India Pvt. Ltd. w.e.f. 1st April 2009 vide HC order dated 8th Dec 2010, assessee company was no longer in existence and assessments in the name of nonexistent amalgamating company being jurisdictional defect are not sustainable;	<a href="#">[TS-6753-ITAT-2018(DELHI)-O]</a>
20	Right treatment of unaccounted excess stock of raw materials in books is to credit the profit & loss a/c. and not partners' capital account - ITAT allows Revenue's appeal, remits the issue back to AO; Discards assessee's method of accounting of unaccounted excess stock of raw materials of debiting purchases account and crediting partners' capital account;	<a href="#">[TS-6760-ITAT-2018(MUMBAI)-O]</a>
21	HC sustains attachment u/s. 281 of property alienated subsequent to service of notice of demand under Rule 11(2) of the second schedule; Quashes TRO's order to the extent it declared the transaction as null and void – HC refuses to lift attachment of property	<a href="#">[TS-5361-HC-2018(MADRAS)-O]</a>

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	alienated by the tax-defaulter and purchased by the writ petitioner;	
22	Stay application not filed against demand, Revenue can attach bank account - HC dismisses writ petition for AY 2014-15 challenging attachment of assessee's bank account and withdrawal from the account in excess of 20% of tax demand as provided in CBDT Circular dated 29th February, 2016 (which provides that AO shall grant stay of demand till disposal of the appeal by the CIT(A) upon payment of 20% of the disputed amount);	<a href="#">[TS-5296-HC-2018(BOMBAY)-O]</a>
23	Appeal cannot be dismissed on the ground that it is not filed electronically – ITAT allows assessee's appeal for AY 2013-14; Sets aside CIT(A) order who dismissed assessee's appeal on the ground that it was not filed electronically as mandated by Rule 45; Directs assessee to re-file the appeal electronically within 10 days from the date of receipt of the order and that the delay in e-filing the appeal shall stand condoned;	<a href="#">[TS-6848-ITAT-2018(MUMBAI)-O]</a>
24	Capital gains taxable in the year of entering into development agreement, Sec. 45(5A) as introduced by Finance Act, 2017 cannot be applied to development agreement entered into in AY 2009-10 - ITAT upholds chargeability of capital gains on land transfer in AY 2009-10 in year of entering into development agreement between assessee and developer; Rejecting assessee's contention that as per Sec. 45(5A) introduced by Finance Act, 2017 capital gains can be deferred to the year of completion of project;	<a href="#">[TS-5722-ITAT-2018(HYDERABAD)-O]</a>

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25	The doctrine of resjudicata cannot be picked up and abused to shelter any and every wrong doing of the state - ITAT sets aside CIT(A) order, holds that assessee cannot be taxed on sale of land when the other co-owners for the sale of the same land have not been taxed; Disapproving the 'pick and choose' attitude of the Revenue,	<a href="#">[TS-7433-ITAT-2018(DELHI)-O]</a>
26	Activities on semi-finished garments to bring it to export-worthy condition to be considered as 'manufacturing' – HC dismisses Revenue's appeal, holds assessee eligible for deduction u/s. 10B; Holds that assessee's activity of affixing/stitching stickers to improve the look, ironing and packing in poly poplin bags along with hanger to bring them to export-worthy saleable condition as manufacturing for purpose of Sec. 10B	<a href="#">[TS-5488-HC-2018(CALCUTTA)-O]</a>
27	Temporary credits in bank account on account of bounced cheques, subsequently reversed cannot be treated as unexplained cash credit u/s. 68; A non-verifiable expenditure recorded in the books of account should be considered u/s. 37(1) and not u/s. 69C – ITAT dismisses Revenue's appeal; Noting the general banking practice of crediting amounts in the bank accounts upon cheques being presented subject to clearance, and reversing the same in case the cheque bounces	<a href="#">[TS-7362-ITAT-2018(HYDERABAD)-O]</a>
28	Purchases made by assessee not bogus - SC dismisses Revenue's SLP against HC order; HC noted ITAT's observations that the purchases were supported by bills and payments were made in account payee cheques; It also noted that the party from whom the purchases were made confirmed the transactions and there was no evidence to the effect that the amount was recycled back to the assessee;	<a href="#">[TS-5310-SC-2018-O]</a>
29	Sec. 40(a) is applicable only if the assessee has claimed deduction of expenditure mentioned in the section; Interest earned during the pre-commencement period out of	<a href="#">[TS-7392-ITAT-2018(AHMEDABAD)-O]</a>

	funds raised for infusion in business, capital receipt, not taxable - ITAT deletes disallowance u/s. 40(a)(i) on amounts paid towards consultancy and legal service charges;	<a href="#">OI</a>
30	Mandatory one-time fees paid by mining company for use of forest land for mining purpose is a revenue expenditure – HC holds in favour of assessee; Holds the mandatory fee payable in pursuance of SC order is a kind of a compensation for using forest land for non-forest purpose is revenue in nature, states that “since the mining licence was previously issued in favour of the assessee and the payment of the NPV did not extend the area of the assessee’s mining operations, it merely removed an impediment in the carrying on of the operations in terms of the original licence”;	<a href="#">[TS-5503-HC-2018(Calcutta)-O]</a>
31	Deemed dividend u/s. 2(22)(e) cannot be taxed in the hands of the lender company (assessee) even if there is commonality in shareholding of the lender company and the borrower company – ITAT allows assessee’s appeal, quashes the reassessment order passed by the AO;	<a href="#">[TS-7564-ITAT-2018(MUMBAI)-O]</a>
32	Interest on deposits paid to its members by assessee – society, covered under the specific provision of Sec. 194A(3)(v), not liable to TDS – ITAT allows assessee’s appeal; Clarifies that interest paid by a co-operative society to its members falls under the specific provision of Sec. 194A(3)(v) (providing for exception from TDS to interest paid by a co-operative society to its members or other co-operative societies), prevailing over the general provisions of Sec. 194A(3)(i)(b) (providing for exception to interest of an amount less than Rs. 10,000/- paid by a co-operative society carrying on business of banking);	<a href="#">[TS-7441-ITAT-2018(Bangalore)-O]</a>
33	Commission paid by dealer in mobile handsets and sim cards to retailers, on behalf of the mobile operators not liable to TDS u/s. 194H – ITAT allows assessee’s appeal, notes that assessee is an intermediary and has only carried out necessary entries in his books of account for completion of record;	<a href="#">[TS-7036-ITAT-2018(Jaipur)-O]</a>



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34	HC dismisses Revenue's writ petition against Settlement Commission (SETCOM) order; Holds that HC's power to interfere with SETCOM order under Article 226 of the Constitution is categorical and it can interfere with SETCOM order only where there is manifest and egregious findings of law that are erroneous, or there is non-application of mind or lack of bona fides, or where no true and full disclosure is made by the assessee;	<a href="#">[TS-5568-HC-2018(DELHI)-O]</a>
35	When Commissioner invokes his revisionary jurisdiction u/s 263 on issues which are not considered in the reassessment order, the time limit for invoking the revisionary jurisdiction will run from the date of the original assessment order and not from the reassessment order - HC sets aside single judge order and quashes notice u/s. 263 for AY as being hit by limitation;	<a href="#">[TS-5783-HC-2017(Madras)-O]</a>
36	Tax effect of appeals filed by Revenue less than the monetary limit of Rs.20 Lakhs for filing appeals by Revenue before the ITAT as prescribed by Circular 3/2018, appeals not maintainable - Kolkata ITAT dismisses a bunch of low tax effect appeals by Revenue as being below the monetary limits for filing appeals as prescribed by recent Circular no. 3/2018 dated 11th July, 2018;	<a href="#">[TS-7697-ITAT-2018(KOLKATA)-O]</a>
37	Software downloaded by assessee from website of the American vendor for its own use is a transaction of sale, not Royalty; TDS provisions u/s. 195 not applicable - ITAT deletes disallowance u/s.40(a)(ia) on payment made to American company; Holds that amount paid towards purchase of software which was directly downloaded from the website, is a transaction of sale and cannot be termed as Royalty and hence, TDS provisions u/s. 195 are not applicable;	<a href="#">[TS-7648-ITAT-2018(DELHI)-O]</a>
38	Compounding fee to be computed at the rate that existed on the date of filing the application; Statute does not stipulate an inviolable period of limitation for the payment - HC dismisses assessee's plea in writ challenging the rejection of compounding application made on the ground that when there is a genuine dispute about the quantum of compounding fee payable, Revenue cannot reject the application for compounding, without resolving the dispute and prosecution sanctioned u/s. 279(1);	<a href="#">[TS-5657-HC-2018(ANDHRA PRADESH)-O]</a>
39	Plenary powers of HC includes the power of review relating to errors apparent on the face of the record; No appeal can lie before the ITAT if the favorable order of CIT(A) is based on AO's remand	<a href="#">[TS-5611-HC-2018(Madras)-O]</a>

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	report - HC reviews its order dismissing assessee's appeal against ITAT order; Rejects Revenue's plea regarding maintainability of the Review petitions on the ground that Income Tax Act does not confer the power of Review under Section 260A(7);	
40	Deduction u/s. 54 cannot be denied for the reason that a claim to that effect was made during appellate proceedings and not made in the ROI - ITAT allows assessee's appeal, holds that " If the assessee is entitled to deduction while computing the long term capital gain, that cannot be denied on the ground that such a claim was not before the AO.";	<a href="#">[TS-7702-ITAT-2018(BANGALORE)-O]</a>
41	Exclusion from Export Turnover to be reduced from Total Turnover for Sec 10A; STP unit's profits for Sec 10A relief to be computed before adjusting loss and depreciation - SC dismisses Revenue's SLP against HC order which had dismissed Revenue's appeals against ITAT order;	<a href="#">[TS-5365-SC-2018-O]</a>
42	Issue of sales promotion expenditure to doctors, part of appellate proceedings before CIT(A), cannot be considered for revision by PCIT u/s.263 - ITAT quashes revisional order of PCIT u/s. 263, terms the approach of the PCIT 'callous' and findings devoid of application of mind;	<a href="#">[TS-7755-ITAT-2018(DELHI)-O]</a>
43	SC refuses to interfere with HC order upholding IT authority's order disposing assessee's objections to reopening, as reassessment order was already passed; Directs filing of statutory appeal before CIT(A) against the reassessment order - SC dismisses assessee's SLP against HC order dismissing its writ for quashing order disposing its objections to reasons for reopening; States that " Since the reassessment is already complete and the assessing officer has passed the assessment order, we do not find any reason to interfere with the impugned order passed by the High Court";	<a href="#">[TS-5364-SC-2018-O]</a>
44	'Net consideration' u/s. 54F is the actual consideration received by the assessee and not net consideration as determined under section 50C based on the stamp duty authority valuation; Provisions of section 50C can only be applied to the extent of computation of capital gains u/s. 48 and cannot be extended to Sec. 54F;	<a href="#">[TS-8135-ITAT-2018(Lucknow)-O]</a>
45	Assessee's quantum appeal before ITAT having been allowed and re-assessment order been quashed, CIT(A) should have cancelled the penalty order appealed before him instead of	<a href="#">[TS-8115-ITAT-2018(Delhi)-O]</a>

	dismissing the appeal as 'withdrawn'; Assessee having once filed an appeal cannot withdraw it - ITAT accepts and allows assessee's appeal against CIT(A) order dismissing assessee's appeal as withdrawn;	
46	An amendment in a procedural statute, if it affects the vested rights adversely, has to be construed as prospective - ITAT allows assessee's Miscellaneous Application (MA) for AY 2008-09 filed after 3 years of passing the original order (passed ex-parte), rejects objection of the Registry that the MA is time barred in view of the amendment to Sec. 254(2) vide Finance Act 2016, w.e.f. 1.4.2016 (which reduced the time limit for filing of an MA from 4 years to 6 months from the date of passing the order);	<a href="#">[TS-7842-ITAT-2018(Bangalore)-O]</a>
47	Assessee is liable to explain the source of investment made in cash to purchase a property - ITAT dismisses assessee's appeal for AY 2014-15; Upholds addition of unexplained investment made in cash for purchase of property from her mother; States that "The Income Tax Department is concerned with the source of the investment in purchase of property at the end of the assessee.	<a href="#">[TS-8134-ITAT-2018(Delhi)-O]</a>
48	ITAT denies LTCG exemption u/s. 10(38) on share sale with 3000+% profits in absence of proof of genuineness of transaction - ITAT dismisses assessee's appeal for AY 2011-12, denies LTCG exemption u/s. 10(38) claimed by assessee on share sale; Observes that the assessee has failed to establish that the genuineness of purchase and sale transactions of shares of a non-descript, small company which earned him a gain of 3072% profit within a period of 17 months;	<a href="#">[TS-8147-ITAT-2018(CHANDIGARH)-O]</a>
49	Date of sale, not date of registration to be reckoned for granting exemption u/s. 54 - ITAT grants exemption u/s. 54 based on the unregistered sale deed, entered into within one year after to date of purchase of a new flat, states that "an unregistered agreement to sell cannot be looked into for seeking benefit of part performance u/s. 53A of Transfer of property Act....however, an unregistered agreement to sell can always be a basis for a suit for specific performance in view of sec. 49 of Registration Act";	<a href="#">[TS-8206-ITAT-2018(Kolkata)-O]</a>
50	Penalty under Expln. 5A of Sec. 271(1)(c) not leviable when search is conducted before due date of filing return of income and the assessee has not furnished the return as on the search date -	<a href="#">[TS-8178-ITAT-2018(Delhi)-O]</a>

	ITAT quashes CIT(A)'s penalty order u/s. 271(1)(c) for non-filing of return u/s. 139 for AY 2014-15, Holds that "the deeming provisions of Explanation 5A cannot be applied because at the time of search for the relevant previous year under appeal, the due date of filing of the return of income had not expired";	
51	Deduction u/s. 80IB(10) is allowable only to the extent of permissible FSI that is utilised for construction of houses - HC allows Revenue's appeal, restricts deduction u/s.80IB(10) to the extent of utilised permissible FSI and disallows deduction claimed towards the unutilised FSI; Notes that assessee's eligibility for deduction u/s. 80IB(10) was not disputed, however, in each of the projects, the assessee had utilized about 20% or less of the permissible FSI;	<a href="#">[TS-6808-HC-2018(Gujarat)-O]</a>
52	Deemed Dividend taxable in the hands of the shareholder, not the borrower - ITAT deletes deemed dividend addition u/s. 2(22)(e) arising from a loan transaction between two subsidiaries with a common holding company (assessee being the borrower); Holds that though the amount borrowed amounts to "deemed dividend" u/s. 2(22)(e), it is to be taxed in the hands of the shareholder and not the borrower;	<a href="#">[TS-8159-ITAT-2018(Delhi)-O]</a>
53	AO not entitled to recover the entire tax after passing of order by CIT(A), before completion of the statutory time limit to file an appeal against the said order of CIT(A) - HC allows assessee's writ, orders refund of about Rs. 15 crores recovered from the bank account of the assessee within one week of receipt of its order;	<a href="#">[TS-6820-HC-2018(Karnataka)-O]</a>
54	Business transactions does not attract the rigor of deemed dividend u/s. 2(22)(e) - ITAT dismisses Revenue's appeal that the transaction of issue of cheques by one company for purchase of land that were registered in the name of its sister concern having common shareholders with substantial interest is taxable as deemed dividend u/s. 2(22)(e);	<a href="#">[TS-8277-ITAT-2018(VISAKHAPATNAM)-O]</a>
55	Sec. 234E is a charging provision creating a charge for levying fee for defaults in filing the statements, fees prescribed u/s. 234E could be levied even without a regulatory provision of sec. 200A for computation of fees - ITAT upholds order u/s. 154 dt. Sept 3, 2014 levying late filing fees of TDS statements u/s. 234E for AYs 2013-14 to 2015-16; Rejects assessee's stand that there was	<a href="#">[TS-7569-ITAT-2018(AHMEDABAD)-O]</a>

	no enabling provision in law prior to first June, 2015 for raising a demand in respect of fees u/s. 234E;	
56	Tahbazari is not a toll; License to collect the same is not covered u/s. 206(1C), not liable to TCS provisions - HC reverses ITAT order, rules in favour of assessee; Refers to Sec. 206C(1C) which provides for collection of tax at source along with lease rentals, by a person who grants license or lease, any parking lot or toll plaza or mine or quarry, from the lessee and notes that "Tahbazari is not an item which is provided under this Section for collecting TCS.	<a href="#">[TS-6828-HC-2018(ALLAHABAD)-O]</a>
57	Gains from trading of only 10 scrips, without frequent buying and selling for quick money is not business income - SC dismisses Revenue's SLP against HC order wherein HC had confirmed ITAT and CIT(A) order and had held income derived from the sale of shares to be short term capital income;	<a href="#">[TS-5401-SC-2018-O]</a>
58	SC : When an asset becomes non-performing, it ceases to yield income and no notional interest accrues that is liable to tax, even if the assessee is following mercantile system of accounting - SC dismisses Revenue's SLP against HC ruling; HC had in its order rejected Revenue's contention that even though NPAs do not yield any income, assessee has to pay tax on the revenue which has accrued notionally as it has adopted mercantile system of accounting;	<a href="#">[TS-5404-SC-2018-O]</a>
59	Amendment to Sec.40(a)(ia) by the Finance Act, 2010 is only an amendment in continuation of the earlier amendment made in the Finance Bill, 2008 with retrospective effect from 01.04.2005 - SC dismisses Revenue's SLP against HC order wherein HC had deleted the disallowance made u/s. 40(a)(ia) by ITAT following HC decisions in CIT vs Harish Chand Ahuja [TS-6167-HC-2014(Rajasthan)-O], Piu Ghosh vs Dy CIT [TS-5593-HC-2016(Calcutta)-O]	<a href="#">[TS-5405-SC-2018-O]</a>
60	Assessee being the only common shareholder in both the lending and the borrowing entities, the question of taxing proportionate deemed dividend assessee's hands does not arise - HC upholds ITAT ruling that held deemed dividend taxable in hands of the assessee having substantial interest in both the lending and the borrowing entities;	<a href="#">[TS-6890-HC-2018(BOMBAY)-O]</a>

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61	Sec. 50C cannot be applied to tax shortfall of purchase price and stamp duty value as undisclosed investment - ITAT deletes addition u/s. 50C in hands of assessee-purchaser of property; Holds that section 50C applies to cases where a property has been sold and the legal fiction thereunder cannot be extended so as to take within its ambit the case of a purchaser where it is alleged that the purchaser had paid a price less than the stamp duty value and treat the shortfall as undisclosed investment u/s. 69; Notes that such a case can at best be taxed u/s. 56(2)(vii) which is however not applicable to assessee as it is a partnership firm;	<a href="#">[TS-8318-ITAT-2018(DELHI)-O]</a>
62	When a resident is not liable to deduct TDS while making a payment of certain nature to a resident, he is similarly not liable to deduct while making payment to a non-resident following the non-discrimination clause under the tax treaty - ITAT deletes disallowance u/s. 40(a)(i), applies non-discrimination clause under Article 26 of the India-USA DTAA and holds assessee not liable to deduct tax on purchase of bearings from a US based entity; Upholds CIT(A) order who followed several rulings including ITAT Special Bench decision [TS-86-ITAT-2011(Ahd)-O] and [TS-5149-ITAT-2006(Delhi)-O] to conclude that the AO erred in applying Sec. 40(a)(i) to the assessee;	<a href="#">[TS-8359-ITAT-2018(DELHI)-O]</a>
63	An advice by another CA at the time of appearing for subsequent year cannot constitute "sufficient cause" for condonation of delay for filing an appeal before the CIT(A) pursuant to a decision by assessee to not file an appeal against the order of the AO - ITAT condones the 2 days delay in filing an appeal before it, however, upholds CIT(A)'s dismissal of assessee's appeal on the ground of a 285 days delay without a sufficient cause;	<a href="#">[TS-8378-ITAT-2018(MUMBAI)-O]</a>
64	Gift of 50% share in a property to brother-in-law, as part of a family arrangement cannot be considered as transfer within the definition of section 2(47) - ITAT rules in favour of assessee, deletes additions made towards computation of long term capital gain for relinquishment of 50% share in property by way of gift;	<a href="#">[TS-6843-ITAT-2018(MUMBAI)-O]</a>
65	The one year prior window under sec. 54 is available even for construction of a residential house and not only for purchase - ITAT allows entire deduction claimed by the assessee u/s. 54, deletes the part disallowance sustained by the CIT(A) on the ground that the deduction cannot be allowed	<a href="#">[TS-8475-ITAT-2018(KOLKATA)-O]</a>

	for amount spent on construction of residential house made before the date of transfer of original asset;	
66	Notice u/s. 143(2) need not be issued if no return is furnished by the assessee u/s. 139 - HC allows Revenue's appeal for AY 2005-06, reverses ITAT order which held that notice u/s. 143(2) was required to be issued even in the case when no return is filed in response to notice u/s. 148; Notes that no return was filed in response to notice u/s. 148 and the return filed for AY 2005-06 was after the time limit prescribed u/s. 139(1) & 139(4) and hence have to be treated as non-est;	<a href="#">[TS-6928-HC-2018(JAMMU AND KASHMIR)-O]</a>
67	Deeming fiction u/s. 50 treating capital gains on depreciable assets as short term capital gains, cannot be extended to Sec. 54F - ITAT allows assessee's claim u/s. 54F on sale of a depreciable asset, holds that Sec.54F does not make any distinction between depreciable assets and non depreciable assets and capital gain arising from long term depreciable assets is long term capital gain for the purpose of claiming exemption u/s. 54F;	<a href="#">[TS-8455-ITAT-2018(MUMBAI)-O]</a>
68	Penalty for belated E-TDS returns filing u/s. 272A(2)(k) cannot be levied when delay is caused due to technical glitches caused by the software for filing of the returns - ITAT deletes penalty levied for belated filing of E-TDS returns for AY 2010-11, grants immunity u/s 273B noting technical difficulties faced in filing e-TDS returns;	<a href="#">[TS-8481-ITAT-2018(DELHI)-O]</a>
69	Bank charges for utilization of credit card facilities not in the nature of commission within the meaning of sec.194H; Interest on delayed payment of Service Tax compensatory in nature, allowable as expenditure u/s. 37; Interest paid u/s. 201(1A) for delayed remittance of TDS in the nature of tax, cannot be allowed as a deduction - ITAT allows deduction of payments made to banks on account of utilization of credit card facilities for realizing payments on behalf of assessee through credit cards used by the its customers;	<a href="#">[TS-8474-ITAT-2018(BANGALORE)-O]</a>
70	Sec.56(2)(viiia) introduced w.e.f. June 2010 prospective in nature, not applicable to allotment of shares during AY 2008-09 - ITAT allows assessee's appeal; Holds that Sec. 56(2)(viiia) introduced w.e.f. June 2010, bringing to tax receipt of shares for inadequate consideration r.w.s 2(24)(xv) is prospective in nature and hence not applicable to allotment of shares during AY 2008-09; ITAT	<a href="#">[TS-8527-ITAT-2018(DELHI)-O]</a>

	also relies on AP HC decision in the case of K.N.B. Investments Pvt. Ltd. wherein it was held that mere issuance of shares does not result in any benefit, it was further explained that the word used in Sec. 28(iv) are 'arisen from business' where 'arisen' signifies that benefit itself must have arisen;	
71	Penalty u/s. 271(1)(c) correctly levied since assessee made a false claim of depreciation on an asset that did not exist - SC dismisses assessee's SLP against HC order that confirmed penalty u/s. 271(1)(c) with respect to depreciation claimed on an asset that did not exist; HC had dismissed assessee's appeal and sustained penalty on assessee for making a false depreciation claim on a leased asset that did not exist; Further, HC had rejected assessee's claim that the notices issued u/s. 274 r/w/s 271 are vitiated since it did not specifically state the grounds mentioned in Sec. 271(1)(c), notes that that the relevant columns were marked; It was thereby concluded that even assuming that there was defect in the notice, it had caused no prejudice to the assessee and the assessee clearly understood what was the purpose and import of notice issued u/s. 274 r.w.s 271	<a href="#">[TS-5438-SC-2018-O]</a>
72	Provisions of Sec.44 applicable to an assessee engaged in life insurance business even though assessee filed computation u/s. 44 only during appellate proceedings and not earlier; Issuing notice in the standard proforma wherein the irrelevant clauses have not been struck off indicates non-application of mind on the part of the AO while issuing the penalty notice - ITAT dismisses Revenue's appeal, holds that income of the assessee carrying on business of life insurance and duly registered and governed by IRDA is to be computed u/s. 44 read with the First Schedule (providing for computation of income for insurance businesses) and the profit and gains from the life insurance business are to be computed separately from any other business of the assessee;	<a href="#">[TS-8621-ITAT-2018(DELHI)-O]</a>
73	Sufficiency or correctness of the information is not to be seen at the stage of the reopening of the assessment; The reassessment proceedings empower the AO to verify correctness of the information - ITAT allows Revenue's appeal, sets aside the order of CIT(A) to the extent of holding	<a href="#">[TS-8532-ITAT-2018(DELHI)-O]</a>



	the reopening proceedings u/s. 147 as invalid; States that the information obtained from DIT(Inv) regarding accommodation entries which was after carrying out detailed enquiries from the accommodation entry providers, giving out specific details cannot be termed as vague;	
74	HC dismisses assessee's appeal, confirms order of ITAT where it was held that dealings and deposits with non-members lead to non-eligibility for deduction u/s. 80P and matter was remanded for de novo assessment; Rejects assessee's submission that while remanding the matter, the Tribunal has erred in holding that the Pigmi account goes to show that the appellant has accepted the deposit even from non-members, which is totally erroneous, holds that the ITAT while remanding the matter ought not to have recorded any finding on merits of the case;	<a href="#">[TS-6978-HC-2018(KARNATAKA)-O]</a>
75	Value of interest free unsecured loan obtained from employer taxable as perquisite u/s. 17(iii)(c) – ITAT dismisses assessee's appeal; Upholds AO's action of determining the value of perquisite in respect of interest free unsecured loan obtained by assessee-employee from her employer; AO observed that value of benefit obtained by an employee is assessable as perquisite u/s. 17(iii)(c) and brought to tax notional interest on the loan in hands of the employee;	<a href="#">[TS-6833-ITAT-2018(MUMBAI)-O]</a>
76	ITAT order pronounced beyond period of 90 days from conclusion of hearing, liable to be recalled for fresh hearing – ITAT recalls its order for conducting fresh hearings before the Regular Bench in view of Rule 34(5) of ITAT Rules (which provides for a time limit of three months for passing the order) r.w.s 254(2) of IT Act; Allows assessee's MA on the ground that the order was pronounced beyond a period of 90 days of hearing; Follows co-ordinate bench decision in G Shoe Exports [TS-7109-ITAT-2017(Mumbai)-O];	<a href="#">[TS-6858-ITAT-2018(MUMBAI)-O]</a>
77	Disposal of assessee's objections in a re-assessment proceedings is not a statutory requirement; Directions provided by SC in GKN Driveshaft is only a procedural safeguard - HC dismisses assessee's writ petition for AY 2012-13, remits the matter to the AO for passing a fresh order, after disposing the objections;	<a href="#">[TS-5378-HC-2018(Madras)-O]</a>
78	Where the AO was not aware of the demise of the assessee, notice u/s. 143(2) issued in his name cannot be held to be invalid – ITAT dismisses assessee's appeal, holds the notice u/s. 143(2) issued	<a href="#">[TS-7209-ITAT-2018(Bangalore)-O]</a>

	in the name of the deceased person to be valid; Also denies exemption u/s. 54F on the ground that no evidence was placed to establish that a residential house was constructed within a prescribed period of 1 year prior, or 2 years post, the sale of immovable property;	
79	The jurisdiction to correct errors vested in the Tribunal is not akin to review powers - HC reverses Third Member ruling who upheld AM's view that Revenue's miscellaneous petition deserves to be allowed; Notes that Revenue sought rectification of the ITAT order (which had accepted assessee's contention that the undisclosed income was agricultural income) on the ground that according to assessee, the undisclosed income belonged to his son and daughter-in-law; Holds that the Tribunal erred in recalling its order that was based on submissions made before it and upon consideration of materials and evidences on record;	<a href="#">[TS-7045-HC-2018(GUJARAT)-O]</a>
80	Receipts from "Sale of Software" by Irish company not in nature of "Royalty" under Article 12 of India-Ireland DTAA - ITAT rules in favour of assessee, holds its income from sale of software not taxable in India; Notes that treaty provisions between India and Ireland unambiguously require that the use of copyright is to be taxed in the source country; Holds that assessee having transferred the copyrighted product and not the copyrights in the computer software programme, consideration received therefrom is not taxable in India in terms of the Treaty between India and Ireland;	<a href="#">[TS-8935-ITAT-2018(DELHI)-O]</a>
81	MCI guidelines prohibit doctors from accepting travel facilities for conferences where they are 'delegates' and not where they are 'faculty doctors' or 'consultant doctors'; Expenses on sales staff, hiring materials and participation / sponsorship expenses on employees incurred for business purposes, not in violation of MCI Guidelines - ITAT allows amount spent by assessee (distributor of heart therapy products and related medical equipments) in connection with medical conference attendance of faculty and consultant doctors, finds that the expenditure is towards business exigencies that demand updating of knowledge of the doctors/surgeons to implant/use assessee's products;	<a href="#">[TS-8936-ITAT-2018(MUMBAI)-O]</a>

82	Absent explanation for receiving and paying out deposits in cash from shareholder-director in violation of provisions of Sec.269SS & 269T, penalty u/s.271D & 271E is confirmed - ITAT confirms penalty u/s. 271D & 271E, peruses the cash flow to note that sufficient funds were available with assessee to meet its requisite expenditure and hence, cash was not required to be taken; Holds that “ It is true that if the assessee really needs emergency funds for business exigencies, taking of cash can be considered as a reasonable cause but that has not been established here, clearly. In fact, the cash flow produced by the assessee clearly negates the claim of business exigencies raised by the assessee.”;	<a href="#">[TS-8934-ITAT-2018(CHENNAI)-O]</a>
83	Rajasthan HC upholds applicability of Sec. 50C to assessee, distinguishes Bombay HC ruling in case of Greenfield Hotels & Estates [TS-6112-HC-2016(Bombay)-O]; Examines the provisions of Sec. 50C, and states that the section is clearly applicable to assessee in view of the facts that assessee executed and registered a sale deed for sale of the land and received consideration; Holds that ITAT rightly upheld application of Sec. 50C inasmuch as sale deed was made on consideration of Rs.11,70,000/-, whereas, value of the property taken by the Sub-Registrar IV, Jaipur for registration of sale deed was at Rs.53,11,367/-; Rejects assessee’s submission that the land sold by assessee was purchased from the khatedar having rights like a leaseholder and further that the vesting and possession of land was with RIICO (State Govt.) and hence, there was no transfer of capital asset, rather, it was only transfer of rights in the property;	<a href="#">[TS-6810-HC-2018(RAJASTHAN)-O]</a>
84	Assessee-bank held assessee-in-default for short-deduction of TDS on LTC claim relating to foreign leg of the travel of its employees, being not eligible for exemption u/s. 10(5) r/w Rule 2B - Jaipur ITAT dismisses assessee’s appeal for AY 2013-14, upholds Revenue’s stand that the employees were not eligible for exemption u/s. 10(5) on foreign travel made by them and hence, the payments made towards the LTC claim to that extent were chargeable to tax and assessee was under obligation to deduct TDS on such payments;	<a href="#">[TS-5023-ITAT-2019(JAIPUR)-O]</a>
85	Sudden reduction in rentals post receipt of interest-free advance from tenant, a colourable device to reduce overall tax burden, upholds addition; Corporate entity, a separate legal entity, notional	<a href="#">[TS-5022-ITAT-2019(MUMBAI)-O]</a>

# Orange Bulletin

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	rent on premises used for business of a company in which assessee is a director, liable to tax as income from house property; Business of a partnership-firm, is business of the partner, deletes notional rent addition on premises used by one of assessee's partnership	
86	Sec. 40A(3)-Cash Payments : Absent cogent reason compelling assessee to make cash payments, disallowance u/s. 40A(3) is sustainable - HC dismisses assessee's appeal, sustains disallowance of cash payments of Rs. 34.68 crores made in bidding processes; Considers ITAT's finding that assessee failed to demonstrate that the conditions of the bid required the assessee to effect payments in cash then and there and payments could not have been made by cheque or Demand Draft or any other mode;	<a href="#">[TS-5001-HC-2019(MADRAS)-O]</a>
87	Forfeiture of amount advanced for purchase of property by assessee engaged in real estate, is an allowable business loss - ITAT allows assessee's claim of forfeiture of advance as a an allowable claim u/s 37 as it is a business loss occurred during the course of business activity of the assessee being business of real estate; Stating that the law provides Sec. 51 as a safeguard against the loss of revenue on account of such forfeiture, ITAT observes that "the said claim of forfeiture of Rs. 7.00 crores is not a revenue affecting transaction but it will be taken into consideration at the time of sale of the property by the seller" and hence, it is only a matter of different assessment year when finally the properties in question are to be sold by the seller;	<a href="#">[TS-5052-ITAT-2019(JAIPUR)-O]</a>
88	Although AO is entitled to rely upon subsequent year assessment order as tangible material to initiate reassessment proceedings, the same must be 'processed' as to its applicability for the subject AY so as to form a reasonable belief that income chargeable to tax has escaped assessment - HC allows assessee's writ, quashes Sec. 148 notice for AY 2011-12 issued to bring to tax assessee's expenditure of Rs. 3.24 crores under the head "Colour Idea Concept" holding it to be capital in nature; Rejects AO's reasoning based on assessment for AY 2015-16, where, on perusal of the agreement for the expenditure on "Colour Idea Concept" ..	<a href="#">[TS-5013-HC-2019(BOMBAY)-O]</a>
89	SC dismisses Revenue's appeal against HC ruling wherein penalty u/s. 271D was deleted, upholding ITAT order that assessee had reasonable cause as provided u/s. 273B for non-	<a href="#">[TS-5003-SC-2019-O]</a>

	<p>compliance of Sec. 269SS; HC had referred to co-ordinate bench ruling in Triumph International wherein it was observed that “journal entries constituted a recognized modes of recording of transactions and in the absence of any adverse finding by the authorities that the journal entries were made with a view to achieve purposes outside the normal business operations or there was any involvement of money, then, in these facts there was a reasonable cause for not complying with Section 269SS of the Act”;</p>	
90	<p>Absent evidence to substantiate KSRTC employee’s claim of agricultural income to be the source of cash deposits, addition u/s. 68 is sustained - ITAT upholds addition of unexplained credits u/s 68 in case of a KSRTC employee for AY 2014-15; Notes that assessee had made a cash deposit of Rs. 10 lakhs in his bank account, states that “except for making claims, the assessee has not been able to file any proof like copies of sale bills of agricultural produce to evidence that the assessee was carrying on agricultural operations”; Grants part relief to the extent of 5 lakhs considering assessee’s claim of cash deposit out of savings from salary for earlier and current years.</p>	<p><a href="#">[TS-5006-ITAT-2019(BANGALORE)-O]</a></p>
91	<p>No transfer absent handover of possession and receipt of complete consideration, mere Deed of Assignment does not suffice - ITAT allows assessee’s appeal, deletes the addition of tax on long term capital gains made by AO, sustained by CIT(A); Noting that a Deed of Assignment was entered into by assessee for sale of property during the subject year, but possession was not handed over and complete consideration was not given, states that “There may be a document by which certain rights were transferred but once the possession of property has not been handed over, the assessee does not become liable to pay capital gains tax on such transaction as the conditions laid down in section 2(47)(v) of the Act have not been fulfilled”;</p>	<p><a href="#">[TS-5051-ITAT-2019(PUNE)-O]</a></p>
92	<p>Issue pertaining to the taxability of anonymous donations received being pending adjudication before CIT(A) for AY 2015-16, HC was justified in denying exercise of writ jurisdiction against Sec. 148 notice for AY 2013-14 - SC affirms HC order disposing off assessee’s writ petition against Sec.</p>	<p><a href="#">[TS-5007-SC-2019-O]</a></p>

	148 notice, denying to exercise jurisdiction under Article 226 and keeping it open to be raised in appropriate legal proceedings;	
93	Change of auditors and non-receipt of NOC from erstwhile auditors sufficient cause for delay in filing returns; CBDT should have condoned the delay - HC allows assessee-company's writ, sets aside CBDT order refusing to condone the delay of 37 days in filing the return of income for AY 2014-15; Notes that assessee had to change its auditors due to disagreement on issue of valuation of business transfer made during the year post which it had to change its auditors; Notes that assessee could not file its returns until the erstwhile auditors issued a NOC which resulted in delay of 37 days in filing its returns;	<a href="#">[TS-7319-HC-2018(MADRAS)-O]</a>
94	AO is required to verify the business expediency of interest-free loans to sister concerns before making disallowance of interest u/s. 36(1)(iii) - HC sets aside ITAT order upholding disallowance u/s. 36(1)(iii)/37 and remits the matter to AO to consider whether the amount claimed by the assessee comes within the four corners of business expediency or otherwise after providing opportunity to assessee; Observes that SC in the decision of SA Builders has held that Revenue has to step in the shoes of the assessee to whether the expenditure incurred was out of commercial expediency or not; AO having not done such exercise of verifying commercial expediency of assessee's interest-free loans to sister concerns, HC sets aside ITAT order and remits the matter to the AO.	<a href="#">[TS-6076-HC-2009(KARNATAKA)-O]</a>
95	ITAT allows Revenue's appeal, remits the case back to AO to consider the issue afresh; Notes that all the members of the assessee-society purchasing a property from the society have contributed a similar amount to a Trust and states that "It will be too much of a coincidence that almost all the purchasers of the property in the society have suddenly developed interest in yoga and meditation and have voluntarily agreed to contributing to the trust in which the Chief Promoter of the society is sadhak.";	<a href="#">[TS-5275-ITAT-2019(Panaji)-O]</a>

96	Sec 68 addition unsustainable absent evidence indicating that unaccounted money was routed as share application; Proviso to Sec. 68 prospective, applicable from AY 2013-14 - ITAT deletes addition of share application money received by assessee for AY 2011-12, notes that Revenue did not bring anything on record to indicate that cash got exchanged between the assessee and the investor to suggest that the unaccounted money belonging to the assessee was routed in the accounts as Share Application Money; Refers to the documents submitted by assessee to hold that assessee has established the identity of the investor and genuineness of the transaction, further considering no immediate cash deposits in the bank account of the share applicant, negates Revenue's stand that the investor does not have creditworthiness to make those investments;	<a href="#">[TS-5373-ITAT-2019(MUMBAI)-O]</a>
97	Calcutta HC dismisses assessee's writ challenging order of the IT Authorities refusing to regularise the delay in payment of the third installment under Income Declaration Scheme, 2016; Notes the authorities reasoning that in the event, the regularisation is allowed, the same will demotivate compliant taxpayers; Notes assessee's plea for regularisation on the ground of his mother's illness;	<a href="#">[TS-5030-HC-2019(CALCUTTA)-O]</a>
98	Expenditure incurred by assessee-PSU (engaged in business of mining of Rare Earth Minerals) for running a school as per Govt Directive deductible business expenditure - ITAT dismisses Revenue's appeal, notes that assessee was incurring expenses on running and maintenance of a school for children of its employees and local residents as per the directives of the department of atomic energy;	<a href="#">[TS-5374-ITAT-2019(MUMBAI)-O]</a>
99	Foreign travel expenses incurred in foreign currency in furtherance of assessee-trust's objectives to be considered as application for charitable purpose in India; Prior to 2014, depreciation allowable on assets, acquisition of which was also claimed as application of income; Assessee-trust entitled to carry forward expenditure incurred in excess of its income for setting off against income of the succeeding years - ITAT holds that foreign travel expenses of beneficiaries incurred in foreign currency has to be considered as application for charitable purpose and incurred for the	<a href="#">[TS-5310-ITAT-2019(BANGALORE)-O]</a>

	charitable purposes in India, follows coordinate bench decision in Associated Chamber of Commerce & Industry wherein expenses incurred in foreign currency outside india in furtherance of its objectives was held to be considered as application for charitable purposes in India;	
100	SC dismisses Revenue's appeal against HC upholding ITAT order wherein it was held that Sec. 43B can be invoked only when the assessee claims deduction for any amount payable by way of a tax or duty; ITAT had observed that the assessee had merely included the total customs duty provision in the cost of raw material and customs duty payable in the value of the closing stock ;	<a href="#">[TS-5016-SC-2019-O]</a>
101	Sum paid by a CA-firm to legal heirs of a deceased partner, qualifies as diversion of income by overriding title, allowable as a deduction - ITAT allows assessee's appeal, holds that the amount paid by the assessee firm to the legal heirs of the deceased partners could not be assessed as income of the firm; Follows Bombay HC decision in Mulla & Mulla & Craigie Blunt wherein it was explained that the amount paid to the legal heirs of the deceased partner was under legal obligation and the amount was never received by the assessee-firm as its income but was diverted at source;	<a href="#">[TS-5514-ITAT-2019(COCHIN)-O]</a>
102	Non-intimation of ITAT order by ex-employee, not a sufficient cause for condonation of delay in filing appeal before HC - Bombay HC dismisses assessee's notice of motion seeking condonation of delay of 507 days in filing an appeal against Tribunal order; Rejects assessee's reasoning for non-filing of affidavit from the ex-employee as him being a part-time employee who was not traceable post leaving his service; States that "It is intriguing that the applicant - company ...	<a href="#">[TS-5066-HC-2019(BOMBAY)-O]</a>
103	Property gifted by partnership-firm to its partners pre-October 2009, not colourable device, not liable to tax - ITAT reverses AO's action of bringing to tax, capital gains in respect of the lands gifted by the assessee-firm to its partners for AY 2010-11, by alleging assessee resorted to colourable device in order to overcome tax liability u/s.45(4) (distribution of capital assets of the firm to its partners) and probable tax liability in the hands of its partners u/s.56(1)(vii) (taxation of assets received without consideration);	<a href="#">[TS-9629-ITAT-2018(CHENNAI)-O]</a>



104	ITAT allows assessee's appeal; Holds that interest income and other incidental income earned by the assessee (a Special Purpose Vehicle under Industrial Infrastructure Upgradation Scheme of Government of India) during the construction period should only go to reduce the capital cost of the plant and it cannot be brought to tax as revenue income; Relies on coordinate bench decision in Bank Note Paper Mill India which was further affirmed by HC and also on SC ruling in Bokaro Steel Ltd and Karnal Co-operative Sugar Mills Ltd.	<a href="#">[TS-5527-ITAT-2019(CHENNAI)-O]</a>
105	SC dismisses Revenue's SLP against HC order for AY 2009-10 wherein it was held that second proviso to Sec. 40(a)(ia) retrospective in nature and no disallowance for non-deduction of TDS u/s. 40(a)(ia) is called for if the payee has paid tax on the amounts paid by assessee - HC had affirmed ITAT order wherein the issue of disallowance u/s. 40(a)(ia) for non-deduction of TDS was set aside to the file of the AO in the light of applicability of second proviso (inserted vide Finance Act, 2012 which provides that Sec 40(a)(ia) will not be attracted where payee has deposited tax) in the light of decision of the Delhi HC in the case of Ansal Land Mark Township wherein Sec 40(a)(ia) disallowance was deleted by holding second proviso to Sec 40(a)(ia) to be retrospective in nature	<a href="#">[TS-5519-SC-2018-O]</a>
106	Stay granted by Courts, in all the civil and criminal matters, shall come to an end after expiry of six months, unless the Court extends the same by way of a speaking order in exceptional circumstances - SC lays down law in respect of stay; Rules that "In all pending matters before the High Courts or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil and criminal appellate/revisional courts under the jurisdiction of the High Courts";	<a href="#">[TS-5524-SC-2018-O]</a>
107	Deduction u/s. 54/54F allowable on 2 flats comprising of two adjacent units, on the first and second floor of the same building ; Reference to DVO when FMV is alleged to be higher than claimed by assessee is bad in law - ITAT rules in favour of assessee for AY 2010-11; Explains that	<a href="#">[TS-5611-ITAT-2019(MUMBAI)-O]</a>

	for the purpose of claiming deduction u/s 54/54F, there is no such requirement that, two units constituting of one residential house property, should not have separate main doors or they should be adjoined together or there should be inside staircase between two units, etc;	
108	Cheques issued for share capital and premium being backed by deposits in applicants' bank accounts and absent creditworthiness and genuineness of transaction, addition u/s. 68 justified - Allows Revenue's appeal, confirms AO's addition of Rs.4.85 crores share application money received as unexplained credit u/s. 68; Opines that share applicant entities are paper entities created by some individuals for providing entries to the persons including the assessee, not having tax paid capital for promoting their venture; Takes note of issue of cheques backed by deposits in bank accounts of the share applicant and companies are not having creditworthiness for making such huge investment and the persons who invested were not produced before AO;	<a href="#">[TS-5587-ITAT-2019(DELHI)-O]</a>
109	HC allows PSU-assessee's appeal, allows its claim of loss on revaluation of inventory; Notes that the revaluation was made based on technical evaluation made by a Committee pursuant to audit objection on account of obsolescence of stores and spares; Observes that when the assets were put to use, the written off value was being debited to the P&L A/c and when they were stopped being used, they were being revalued which was as per accounting principles and though the same caused prejudice to Revenue, it cannot be the reason to disallow the loss on revaluation;	<a href="#">[TS-5084-HC-2019(KERALA)-O]</a>
110	CIT(A) does not have jurisdiction to make an addition on an issue which was never considered by the AO - ITAT grant relief to assessee, deletes addition made by CIT(A) u/s 56(2)(viib) on account of share premium; Explains that although the powers of the CIT(A) are co-terminus with that of the powers of the AO, yet, he has jurisdiction only on those items which have been considered by the AO irrespective of the fact whether the issue is subject matter of appeal or not; States that "In case it is accepted that the Id.CIT(A) has power to consider an issue which was not considered by the Assessing Officer, then, the provisions of section 263 or 147 will become otiose";	<a href="#">[TS-5699-ITAT-2019(DELHI)-O]</a>

111	Referral-fees paid by Indian-Branch of Credit Suisse to Dubai-Branch for referring clients not FTS; Interest paid by Indian-branch to overseas head-office is neither deductible in the hands of Indian Branch nor chargeable to tax in the hands of head office - ITAT rules in favour of assessee; Relies on coordinate bench decision in assessee's own case for AY 2011-12 and holds that 'referral fee' paid by assessee's (tax-resident of Switzerland) branch office in India to its branch in Dubai for referring clients in India is in the nature of 'business income', rejects Revenue's stand that the same is in the nature of 'fees for technical services' (FTS) and taxable in India;	<a href="#">[TS-5692-ITAT-2019(MUMBAI)-O]</a>
112	Sec. 54 does not require that the sale proceeds from transfer of original capital asset must be used for meeting cost of new asset - ITAT allows assessee's appeal appeal for AY 2005-06, allows deduction u/s. 54 to assessee rejecting AO's reason for denying that the investment made towards purchase of new flats was not out of assessee's own funds; Notes that assessee has made investment in a new property within the period stipulated u/s. 54(1) and states that "There being no pre-condition under section 54(1) of the Act providing for investment of the long term capital gain in purchase of new house for claiming deduction under section 54 of the Act, the departmental authorities cannot import such restriction/condition to the statutory provision"; Relies on precedents including P&H HC decision in case of Kapil Kumar;	<a href="#">[TS-5701-ITAT-2019(MUMBAI)-O]</a>
113	Sec. 50C on transfer of capital asset/rights : Rajasthan HC upholds applicability of Sec. 50C to assessee, distinguishes Bombay HC ruling in case of Greenfield Hotels & Estates [TS-6112-HC-2016(Bombay)-O]; Examines the provisions of Sec. 50C, and states that the section is clearly applicable to assessee in view of the facts that assessee executed and registered a sale deed for sale of the land and received consideration; Holds that ITAT rightly upheld application of Sec. 50C inasmuch as sale deed was made on consideration of Rs.11,70,000/-, whereas, value of the property taken by the Sub-Registrar IV, Jaipur for registration of sale deed was at Rs.53,11,367/-;	<a href="#">[TS-6810-HC-2018(RAJASTHAN)-O]</a>

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114	TDS on employees' LTC claim on foreign travel : Assessee-bank held assessee-in-default for short-deduction of TDS on LTC claim relating to foreign leg of the travel of its employees, being not eligible for exemption u/s. 10(5) r/w Rule 2B - Jaipur ITAT dismisses assessee's appeal for AY 2013-14, upholds Revenue's stand that the employees were not eligible for exemption u/s. 10(5) on foreign travel made by them and hence, the payments made towards the LTC claim to that extent were chargeable to tax and assessee was under obligation to deduct TDS on such payments;	<a href="#">[TS-5023-ITAT-2019(JAIPUR)-O]</a>
115	AO having accepted remuneration paid to directors in preceding year, cannot make disallowance u/s. 40A(2)(b) by comparing the payments made in earlier years; No deduction u/s. 14A when assessee is having enough surplus funds - SC dismisses Revenue's SLP against HC order deleting addition u/s. 40A(2)(b) and Sec. 14A r/w Rule 8D	<a href="#">[TS-5026-SC-2019-O]</a>

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Your weekly dose of updates from Tax arena..!



## About Orange:

**Taxsutra & LexisNexis** together present the game-changer product - 'Orange', that for the first time ever, combines the best of both worlds - Repository of over **100,100+** income-tax rulings as reported in **7 journals viz., ITR, CTR, Taxman, DTR, ITD, ITR-Trib. & SOT, which also includes recent ruling handpicked by Orange Editorial Team & the iconic tax commentary - Chaturvedi & Pithisaria (C&P), covering over 80,000 judicial decisions and meticulously arranged under 25,000 headings & sub-headings.**



### **Orange - What makes it Special!**

- Integration of database and commentary to give the users a seamless experience
- C&P commentary available along with the relevant common judgment
- Expert views in C&P commentary right there
- Common cases in C&P Commentary available at a click of button.

# Orange Bulletin

Your weekly dose of updates from Tax arena..!



- Updated with latest cases reported in ITR, CTR and other leading journals
- Powerful search engine that shall get you the desired results at click of a button
- Search algorithm developed based on cutting-edge technology and deep tax domain experience
- Various filters available for both Orange and C&P for refining the search results viz., court level, location, case number, citation and others
- Unique 'Bulls Eye' Search Tool with options like “exact words”, “any of these” & “none of these” to further refine search results.
- Option to search within C&P Commentary – subject & section index available
- Option to search within the judgment copy
- And lots more...

## **Taxsutra suite of portals:**

1. Real time tax news & analysis for Corporate Tax ([www.taxsutra.com](http://www.taxsutra.com))
2. Transfer Pricing Portal ([www.tp.taxsutra.com](http://www.tp.taxsutra.com))
3. GST and Central Indirect Taxes Portals ([www.gstsutra.com](http://www.gstsutra.com) - [www.idt.taxsutra.com](http://www.idt.taxsutra.com))
4. "Orange" - Powerful Online Direct Tax Reference and Search Tool ([www.orange.taxsutra.com](http://www.orange.taxsutra.com))
5. LawStreetIndia (LSI) ([www.lawstreetindia.com](http://www.lawstreetindia.com)) contains sub-modules on Company law, Securities law (SEBI/SAT), FEMA, IP laws & Competition Law
6. Taxsutra Accounting Standards portal (Ind-AS) ([www.greentick.taxsutra.com](http://www.greentick.taxsutra.com))

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