केवल विभागीय प्रयोग के लिए
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विधि शब्दावली
Legal Glossary

आयकर निदेशालय
(जन सम्पर्क, मुद्रण, प्रकाशन एवं राजभाषा)
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(Public Relations, Printing, Publications and Official Language)
INCOME-TAX DEPARTMENT, NEW DELHI

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संकलन/Compilation by :
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सि.लि.क्र. 82010/Civil List No. 82010

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DISCLAIMER

The interpretation of case laws in the Legal Glossary are those of the author and not of the Government of India. In case of any doubts as to the authenticity or applicability of the meanings of terms/expressions given in the Glossary or to seek further clarification, reference may be made to the full text of the concerned case laws.

PREFACE

Usage of correct term and expression in the discharge of assessment and appellate function cannot be over emphasized. Though there are many publications available in the market, they have primarily been designed and written keeping the interest of the taxpayer in mind. There was, therefore, need for a book which would cater to the needs of the officers of the Department.

2. The compilation entitled **"Legal Glossary"** containing meanings of about 1500 terms assigned in the pronouncements of the Hon'ble Supreme Court and High Courts would definitely fulfill a long standing need. The case laws which assign meaning to terms and expressions in favour of revenue, spread over a period of seven decades from 1936 to 2006, have been painstakingly selected by Shri Rajendra, an officer of the 1982 batch of the Indian Revenue Service.

3. The compilation **"Legal Glossary"** is before you. I hope that the officers of the Department, especially those handling assessment and appellate work, and representation before the Income Tax Appellate Tribunal, shall find it useful and handy.

4. Suggestions for improving the compilation shall be welcomed and all efforts would be made to incorporate them in future editions.

(MILAP JAIN)
Director General of Income Tax (Admn.)
New Delhi

New Delhi
November 7, 2007

FOREWORD

My tenure as a Departmental Representative, I.T.A.T., Mumbai and as the training In-charge of the probationers of the 54th and 55th batches of the I.R.S. taught me a basic lesson about tax administration. The lesson learnt at these institutions always reminds me that it is essential for the officers of the department to know and understand legal meaning of the words used in the taxation-laws in addition to grammatical and generic meanings of such words. **"Legal Glossary"** is the result of that lesson.

While interpreting tax-laws Hon'ble Supreme Court and various High Courts have defined, analysed and explained the words so as to give them a legal meaning. Departmental offices are expected to follow that meaning while administering the taxation-laws. Out of innumerable definitions and meanings more than 1500 words have been compiled for the period 1936 to 2006 in the Glossary. I am confident that the Glossary will prove useful for the officers of the department, especially for the DRs. and the Cs.IT(A).

Indian tradition expects a person to repay ***Tririn*** (three debts). **"Legal Glossary"** is second installment of repayment of my ***rin*** due to the department. In my humble opinion it is a part ***Manushya-rin***. Being a student of History, I found it convenient to compile the 'Glossary' in a chronological order. I am happy that the 'Glossary' is reaching in the hands of the officers during the Silver Jubilee year of my batch i.e. 1982 batch.

I express my heartiest gratitude to the inspiration behind the glossary - Smt. Indira Bhargava, Ex-Chairman, C.B.D.T. I will be failing in my duties, if I do not thank DGIT (Inv.), Mumbai, Shri S.S.N. Moorty, for his constant encouragement in preparing the compilation. Without positive and constructive steps taken by Shri Milap Jain, DGIT (Adm.) and members of his team - Ms. (Dr.) Sudha Sharma, Amitabh Kumar (Directors), Shri Jagvir Singh, Shri R.K. Raina (Addl. Directors) publication of the compilation would not have been possible. I am specially indebted to Shri Milap Jain for writing preface. I am also very thankful to Mr. Amol Kadu, Inspector and Ms. Sneha Rane, Stenographer who have helped me immensely in preparing the compilation. I want to thank Mr. Ranjay Kumar for his painstaking efforts in publishing it.

Anything good in it belongs to the department. For suggestions, improvements and opinions, please contact me at my following E-mail address -

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(RAJENDRA)
Director of Income Tax (Inv.-II), Mumbai
(Civil List No. 82010)

Deepaavalee, 2007
Mumbai

भूमिका

आयकर अपीलीय न्यायाधिकरण, मुंबई के विभागीय प्रतिनिधि और भा.रा.से. के 54वें-55वें बैच के प्रावेशनर्स् के प्रशिक्षण-प्रभारी के रूप में काम करते समय एक बहुत ही महत्वपूर्ण बात मेरे समझ में आई। इन संस्थाओं ने यह पाठ पढ़ाया कि विभागीय अधिकारियों के लिए आवश्यक है कि उन्हें अधिनियम में काम में आए शब्दों के व्याकरणिक तथा उत्पत्तिमूलक अर्थों के साथ उनके कानूनी अर्थ भी मालूम हों। **विधि-शब्दावली** उसी बोधपाठ का परिणाम है।

माननीय सर्वोच्च न्यायालय एवं विभिन्न उच्च न्यायालयों ने कर संबंधी विवादों के निर्णय करते हुए अनेकों शब्दों को परिभाषित किया है, उन्हें विश्लेषित किया है और उनके कानूनी अर्थ बताए हैं। ऐसे ही अगणित शब्दों में से (1936-2006 अवधि के) लगभग 1500 शब्दों को विधि शब्दावली में संकलित किया गया है। कराधान कानूनों को लागू करते समय अधिकारियों से यह अपेक्षा की जाती हे कि वे इन शब्दों को विशिष्ट अर्थों में प्रयुक्त करें। मुझे आशा है कि संकलन विभागीय अधिकारियो-विशेषकर विभागीय प्रतिनिधियों तथा अपीलीय आयुक्तों - के लिए उपयोगी सिद्ध होगा।

भारतीय परंपरा में व्यक्ति से आशा की जाती है कि वह **त्रिऋण** का भुगतान करे। विभाग के प्रति अपने **ऋण** चुकाने की मेरी यह दूसरी किस्त है और इसे मैं **मनुष्य-ऋण** का ही भाग मानता हूँ। इतिहास का विद्यार्थी होने के नाते मेरे लिए यह स्वाभाविक था कि संकलन को कालक्रमानुसार (1936-2006) तैयार करता। यह सुखद संयोग है कि संकलन मेरे बैच (1982 बैच) के रजत जयंती वर्ष में तैयार हुआ है।

इस अवसर पर संकलन की प्रेरणा स्रोत-श्रीमती इंदिरा भार्गव-भूतपूर्व अध्यक्ष, केन्द्रीय प्रत्यक्ष कर बोर्ड के प्रति अपना हार्दिक आभार प्रकट करना चाहता हूँ। मैं आयकर महानिदेशक (अनुसंधान), मुंबई-श्री एस्.एस्.एन्. मूर्ति-का कृतज्ञ हूँ, जो संकलन की तैयारी के दौरान समय-समय पर मुझे निरंतर प्रोत्साहित करते रहे। श्री मिलाप जैन, महानिदेशक (प्रशासन), नई दिल्ली एवं उनकी टीम के सदस्यों-सुश्री (डा.) सुधा शर्मा, श्री अमिताभ कुमार (निदेशक), श्री जगवीर सिंह तथा श्री आर.के. रैना (अतिरिक्त निदेशक) ने इसके प्रकाशन के दौरान जो रचनात्मक एवं सकारात्मक कदम उठाए वे निश्चय ही प्रशंसनीय है। श्री मिलाप जैन के प्राक्कथन के लिए मैं उनका आभारी हूँ। श्री अमोल कडु, आयकर निरीक्षक एवं श्रीमती स्नेहा राणे, आशुलिपिक के सक्रिय सहयोग के बिना संकलन तैयार नहीं हो पाता, अतः वे विशेष रूप से धन्यवाद के पात्र हैं। श्री रंजय कुमार ने इसके प्रकाशन में जो सहयोग दिया है उसके लिए उन्हें धन्यवाद।

संकलन में जो कुछ अच्छा है वह सारे विभाग का है। सुझावों, राय और टिप्पणियों के लिए मेरे निम्न ई-मेल पते पर संपर्क करने का कष्ट करें-

rajendra82010@yahoo.co.in

(राजेन्द्र)

आयकर निदेशक (अनुसंधान)-II, मुंबई
सि.लि.क्र.-82010

दीपावली 2007
मुंबई

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A day	1995	Mad-HC	CIT V/s. Southern Sea Foods Ltd.

A reading of rule 6D of the Income-tax Rules, 1962, would show that it does not specify a twenty-four hour period as comprising **a day** for the purpose of calculating travelling allowance. For an employee to claim allowance for a day, he need not be travelling all the twenty-four hour. **[*215 ITR 176]***

Accommodation advance	1971	SC	Amarchand Sobhachand V/s. CIT

An **accommodation advance** is a neutral expression: it may be of the nature of a loan advanced in the ordinary course of business by a money-lender; it may be an advance in the money-lending or other business of the assessee but not in the nature of a loan; or it may be wholly unrelated to the business of the taxpayer. **[*82 ITR 591]***

Accompanied by a fee of Rs.100/-	1954	Mad-HC	Nagappa Chettiar V/s. CIT

The words **accompanied by a fee of Rs. 100** in section 66(1) of the Indian Income-tax Act, 1922, should not be given a too literal interpretation. Accompanied cannot mean necessarily that the sum of Rs. 100 or something representing that sum should be contained in the same envelope as the application or that both the application and the money should be delivered together at the same time. The application however is not complete without the payment of the fee. A reasonable construction of this requirement would be that the assessee should have made the payment of the fee in such time that in the ordinary course it would either be received or deemed to be received within the time allowed. **[26 *ITR 741]***

Accrue	1971	Ker-HC	I.T.O. Hydrose V/s. CED

The word **accrue** used in section 34(4) of the Act means, according to dictionaries, to fall (to anyone) as a natural growth or increment; to come as an accession or advantage, arise or spring as a natural growth especially interest. Accordingly to section 34(4) of the Act, interpreted in the light of this meaning, if, in the cash or property gifted either by way of an out and out gift or by way of a settlement, the donee gets absolute domination and he invests the same in any manner he likes, then the profit or the income resulting from such investment will not form part of the estate of the deceased. In such a case, the profit or income cannot be said to have accrued to have resulted as a natural growth, accession or increment from the property gifted. On the other hand, if the property gifted yields as a natural growth or result, without the intervention of the donee, income or profits, then such income or profits can be said to have accrued from the property gifted, with the result that the income or profit will also form part of the estate left by the deceased. **[81 *ITR 745]***

Accrue	1995	Cal-HC	CIT V/s. Eastern Investments Ltd.

Income must be held to accrue at the point of time when a debt becomes due. Thus, the verb **accrue** is inter-connected with income becoming due because it is only when something becomes due to the assessee and appears crystallised as a debt in his favour that the right to receive can be said to have emerged. Until then, there is no accrual of income, as a person cannot recover which is not due and payable. Deferment of payment or the quantification of course, does not matter. If the assessee can show that either by the covenants in the contract or by any operation of law, the right to receive did not arise to the assessee and, therefore, no debt equivalent to the amount of the income in question was created in his favour, no income can

accrue. It is necessary for the income to accrue that the income must be due to be paid to the assessee. **[*213 ITR 334]***

Accrue	1998	P&H-HC	CIT V/s. Punjab Bone Mills

Accrue means to increase, to augment, to be added as an increase, to arise or spring as a natural growth or result. The words accrue and arise have not been defined in the Act but they appear to be synonymous and have been used for bringing in a natural result. Strictly speaking, the word accrue may not be synonymous with arise, the former would be connoting the idea of growth or accumulation and the latter, the growth or accumulation with a tangible shape so as to receivable. It is clear that income may accrue to an assessee without the actual receipt of the same. If the assessee acquires the right to receive the income, the income can be said to have accrued to him though it may be received later, on its being ascertained.

[146 *CTR 63, 232 ITR 795, 96 TAXMAN 55]*

Accrue arise,	1967	SC	Seth Pushalal Mansinghka (P.) Ltd. V/s. CIT

The words **accrue** and **arise** do not mean actual receipt of the profits or gains. Both these words are used in contradistinction to the word receive and indicate a right to receive. If the assessee acquires a right to receive the income, the income can be said to accrue to him, though it may be received later, on its being ascertained. **[66 *ITR 159]***

Accrue, arise and is received	1988	All-HC	CIT V/s. Govind Prasad Prabhu Nath

The words…. **accrue, arise and** … **received**, have not been defined in the Income-tax Act. Mere receipt of income is not the sole test of chargeability. Receipt of income refers to the first occasion when the recipient gets the money under his own control. According to the Oxford English Dictionary, the meaning of the word accrue is to fall as a natural growth or increment; to come as an accession or advantage . The word arise is defined as to spring up, to come into existence. The words accrue and arise do not mean actual receipt of profits or gains. Both these words are used in contradistinction to the word receive and indicate a right to receive. Thus, it is manifest that if an assessee acquires a right to receive income, the income can be said to accrue to him though it may be received later on. Unless and until there is created in favour of an assessee a debt due by somebody, it cannot be said that he has acquired a right to receive the income or that income has accrued to him. A mere claim to income without an enforceable right thereto cannot be regarded as accrued income for the purpose of the Income-tax Act. **[171 *ITR 417, 35 TAXMAN 513]***

Accrue and arise	1985	Kar-HC	CIT V/s. A.B.V. Gowda

Income is liable to be taxed under the Income-tax Act, 1961, on the basis of its accruing or arising to the assessee, or on the basis of its receipt by the assessee, during the relevant previous year. The words accrue, arise and is received are not synonymous. The expression is received conveys a clear and definite meaning. But the words **accrue and arise** depend upon the rights of the assessee to secure the income though the actual receipt of the income may not be there. Ordinarily, income is said to have accrued to a person when he has acquired an enforceable right to that income, though actual quantification and receipt may follow in due course. **[42 *CTR 265, 157 ITR 697]***

Accrue or arise	1955	Bom-HC	Bhogilal Laherchand V/s. CIT

Though income may **accrue or arise** to an assessee before he actually receives it, income

cannot accrue or arise to him until he acquires a right to receive the same; and unless and until there is created in favour of the assessee a debt due by somebody, it cannot be said that he has acquired a right to receive the income. **[28 *ITR 919]***

Accrues, Arises	**2000**	**Ker-HC**	**CIT V/s. Jai Hind Travels (P.) Ltd.**

In order that income, profits or gains may accrue to a person, it is necessary that he must have acquired a right to receive the same or a right to the income, profits or gains must have become vested in him though its valuation may be postponed or though its materialisation may depend on the contingency that the making up of the accounts would show income, profits or gains. Thus it is manifest that if an assessee acquires a right to receive income the income can be said to accrue to him though it may be received later on. A mere claim to income without an enforceable right thereto cannot be regarded as accrued income for the purpose of the Act. **Accrues, arises** and is received are three distinct terms. So far as receiving of income is concerned, there can be no difficulty; it conveys a clear and definite meaning. The words accrue and arise also are not defined in the Act. The three expressions accrues, arises and is received having been used in section 5 of the Act, strictly speaking, accrues should not be taken as synonymous with arises but in the distinct sense of growing by way of addition or increase or as an accession or advantage; while the word arises means comes into existence or notice or presents itself. The former connotes the idea of a growth or accumulation and the latter of growth or accumulation with a tangible shape so as to be receivable. Both the words are used in contradistinction to the word receive and indicate a right to receive. They represent a state anterior to the point of time when the income becomes receivable and connote a character of the income which is more or less inchoate. Income is said to be received when it reaches the assessee; when the right to receive the income becomes vested in the assessee, it is said to accrue or arise. **[*158 CTR 664, 243 ITR 451, 108 TAXMAN 242]***

Accrues and arises	**2001**	**Del-HC**	**CIT V/s. National Electric Supply and Trading Corporation (P.) Ltd.**

The expressions income, is received, accrues and arises, as appearing in section 5 of the Act, have not been defined. The two words, i.e., **accrue and arise** do not mean actual receipt of profits or gains. Both these words are used in contradistinction to the word receive. Thus, it is manifest that if an assessee acquires a right to receive the income, the income can be said to accrue to him though it may be received later on. There is clear distinction between cases where the right to receive payment is in dispute and it is not a question of merely quantifying the amount to be received, and cases where the right to receive payment is admitted and the quantification only of the amount payable is left to be determined in accordance with settled or accepted principles. **[164 *CTR 599, 248 ITR 749, 114 TAXMAN 326]***

Accruing, arising or received	**1939**	**PC**	**CIT V/s. Diwan Bahadur S.L. Mathias**

The words '**accruing, arising or received**' exhibit some variation in meaning and in a limited sense the expressions may be anti-thetical, but they are not completely disjunctive or mutually exclusive. **[*7 ITR 48]***

Accruing or arising	**1937**	**Cal-HC**	**V.G. Every**

The words **accruing or arising** in section 4(1) of the Indian Income-tax Act mean something different from received. They indicate some origin or source of growth for the income in question. **[5 *ITR 216]***

Accumulated	1966	Mad-HC	CIT V/s. M.V. Murugappan

Accumulated normally means heaped up, stored up, or put by. Accumulation is a conscious act and the result of a decision especially when a company is concerned. Current profit is what accrues in praesenti accumulated profit relates to the past. **[*62 ITR 382]***

Accumulated	1975	All-HC	CIT V/s. Roshan Lal

Accumulated profits within the meaning of clause (e) will necessarily be comprised of the amount available for being distributed as profits. Profits can accumulate even within a single year. Accumulated means earned bit by bit and accumulated. The entire amount which is available for distribution as profits on a particular date would be the accumulated profits and any amount paid as advance or loan to the shareholder to the extent of this amount of accumulated profit will be dividend within the meaning of section 2(6A)(e) of the Act.
[98 *ITR 349]*

Accumulated profit	1980	SC	CIT V/s. V/s. Damodaran

The word **accumulated profits** in section 2(6A) of the Indian Income-tax Act, 1922, cannot include current profits, and, therefore, the profits earned by the company during the year in which loans are advanced to a shareholder cannot be regarded as accumulated for the purpose of section 2(6A)(e). **[13 *CTR 191, 121 ITR 572, 2 TAXMAN 39]***

Accumulated profit of the company before its	1980	Bom-HC	CIT V/s. Scindia Steam Navigation Co. Ltd.

The words attributable to the **accumulated profits of the company immediately before its liquidation** in section 2(6A)(c) cannot be read as equivalent to accumulated before its liquidation in the sense that the company had gathered the amount in its hand before the date of liquidation.
[*8 CTR 543, 125 ITR 118]*

Accumulated profits	1972	Ker-HC	CIT V/s. V. Damodaran

Section 2(6A)(e) creates a fiction by which a loan made by a company to a shareholder is treated as dividend subject to the condition that it shall be treated as dividend only to the extent to which the company possesses **accumulated profits**. Accumulated normally means heaped up, stored up or put by. It indicates an effort on the part of the person in that direction. It is, therefore, inappropriate to describe current profits as profit heaped up, stored up or put by. Current profit is what accrues in praesenti: accumulated profit relates to the past. Therefore, current profit cannot be included in the term accumulated profits. The amendment of section 2(6A) by the Finance Act, 1956, has not changed the meaning of the termAccumulated profits cannot mean profits or gains of any company as determined under section 10 of the Act for the levy of income-tax. The expression accumulated profits necessarily relates to profits which could be accumulated by a company from time to time. This means that all liabilities due from the company will have to be deducted from the profits to enable the company to accumulate the same. **[85 *ITR 590]***

Acquiring	2005	MP-HC	CIT V/s. Bright Automotives and Plastics Ltd.

The use of the expression **acquiring** in section 35AB has to be given a liberal meaning rather than a strict one. In other words, in order to attract the rigour of section 35AB it may not be necessary for the assessee to actually become an absolute owner of the know-how...the

expression acquire has to be used liberally and in the context of actual user of know-how be that in a capacity as conditional/limited owner or absolute owner or as licensee.

[*192 CTR117, 273 ITR 59, 141 TAXMAN 582]*

Actively engaged in the conduct of the ...	**1973**	**Guj-HC**	**CIT V/s. Natwarlal Tribhovandas**

The expression **actively engaged in the conduct of the business**' occurring in section 2(7)(iii)(b) of the Finance (No. 2) Act, 1962, must be given a liberal meaning. The expression does not necessarily signify active and continuous participation in the actual transaction of the day-to-day business of the firm; it is flexible enough to take in the case of a partner who devotes time, attention and labour to some activity or assignment calculated or designed to lead to the preservation, growth or advancement of the business of the firm. **[87 *ITR 703]***

Actual cost	**1970**	**AP-HC**	**CIT V/s. Challapalli Sugars Ltd.**

Interest paid on borrowed capital which is used for the acquisition of the machinery is not included in **actual cost** as contemplated under section 10(2)(vi) and depreciation and development rebate are not admissible with reference to the capitalised amount of such interest.The words actual cost in section 10(2)(vi) mean the sum of money which a person expends or lays out for acquiring and installing the asset like machinery. No hard and fast rule can be laid down as to what items of expenditure will be included in that term. In acquiring an asset of machinery, broadly speaking, it includes not only the invoice cost but also the cost which the assessee incurs in transporting the machinery and erecting it for the purpose of the business. All expenditure incurred directly or intimately on the machinery can be said to be included in the term actual cost. **[77 *ITR 392]***

Actual cost	**1971**	**P&H-HC**	**CIT V/s. Ambala Cantt. Electric Supply Co. Ltd.**

The words **actual cost** in section 10(5) mean the cost actually ascertained and do not mean that the cost should necessarily be defrayed from the assessee's own resources.

[*82 ITR 217]*

Actual cost	**1975**	**All-HC**	**CIT V/s. J.K. Cotton Spinning and Weaving Mills Ltd.**

The expression **actual cost** on which depreciation under section 10(2)(vi) and development rebate under section 10(2)(vib) of the Indian Income-tax Act, 1922, is based has not been defined in the Act. Such meaning will have to be assigned to it as is understood in the commercial or business world because it deals with the computation of profits and gains of a business. When a businessman sets up a factory, the cost of such factory would include the cost of the machinery and the cost of construction of the building in which the machinery is installed. The cost of the machinery may include not only the actual price of the machinery but also such incidental expenses as sales tax, octroi, railway freight, insurance, transportation charges, etc. Similarly, the cost of installation of the machinery will include not only the price of the building material, but also the wages paid to labour, the supervisory staff like technicians and engineers who are employed to set up the machinery and put it in working order. From the accountancy point of view also all preliminary expenses directly connected with acquisition of fixed business assets like buildings, plant, machinery, etc., are to be capitalised and added to the total cost. This includes interest incurred by a newly started company, which is in the process of construction and erecting its plant, on borrowings which are used to finance capital

expenditure before production is commenced. Section 208 of the Companies Act, 1956, also permits the capitalisation of interest on borrowed capital. **[98 *ITR 153]***

Actual cost	**1977**	**Bom-HC**	**CIT V/s. Bombay Suburban Electric Supply Co.**

The Explanation of the expression **actual cost** for the purposes of section 10(5) of the Act, in which the Legislature has stated that the expression actual cost means the actual cost of the assets to the assessee reduced by that portion of the cost thereof as has been met directly or indirectly by Government or public or local authority are applicable only to the provisions in connection with depreciation allowance under sub-section (2)(vi) and cannot be given any larger operation than what the Legislature intended it should have. The Legislature has found it necessary to make a specific provision to exclude the contributions received from Government or public or local authority in order to give a particular meaning to the expression actual cost of the assets to the assessee in connection with depreciation allowance. Therefore, ordinarily, the expression actual cost of the assets must mean the actual amount paid for the assets irrespective of the source from which the cost or part thereof has been met.

[106 *ITR 752]*

Actual cost	**1978**	**Guj-HC**	**Arvind Mills Ltd. V/s. CIT**

The expression **actual cost** in the context of the statutory provisions, sections 33(1) and 43(A) of the Income-tax Act, 1961, must be understood in the sense in which no commercial man would misunderstand. The word cost is not synonymous with price. Besides the price of machinery or plant, cost takes in many other items of expenditure such for instance as freight, warehouse or insurance charges, legal expenses incurred in connection with its acquisition and interest incurred before the commencement of production on the capital contributed or borrowed to acquire such asset. In other words, in determining the actual cost of a fixed asset, all expenditure necessary to bring such asset into existence and to put it in working condition may legitimately be taken into account. **[*112 ITR 64]***

Actual cost	**1979**	**Bom-HC**	**CIT V/s. Great Eastern Shipping Co. Ltd.**

In computing the depreciation allowance, all expenditure incurred directly or indirectly or intimately on the capital assets acquired by the assessee can be included in the term **actual cost** of the asset. It will not be correct to treat the words actual cost to mean only the cost paid to the vendors for the asset. The term actual cost should be liberally construed.

[*118 ITR 772, 1TAXMAN 393]*

Actual cost	**1984**	**Pat-HC**	**Ranchi Electric Supply Co. Ltd. V/s. CIT**

The expressions **actual cost** and the actual cost of the assets to the assessee do not bear the same meaning. Section 43(1) of the Income-tax Act, 1961, specifically and without ambiguity says that actual cost means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. Hence, section 43(1) of the Income-tax Act, 1961, supersedes the rule that in computing the actual cost for the purposes of depreciation, it is immaterial whether someone else has recouped the assessee what he has spent on the asset only to the extent to which the assessee was reimbursed by the Government or any public or local authority.

[150 *ITR 95, 16 TAXMAN 231]*

Actual cost	1985	AP-HC	CIT V/s. Coromandel Fertilisers Ltd.

The expression **actual cost** has not been defined and hence it should be construed in accordance with the normal rule of accountancy prevailing in commerce and industry. The accepted rule of accountancy for determining the cost of fixed assets is to include all expenditure necessary to bring such asset into existence and to put it in working condition……. that any increased monetary liability imposed upon the purchaser of the machinery would form part of the actual cost of the purchase of the machinery. Where the assessee has to pay an additional sum on machinery purchased abroad on deferred payment basis on account of devaluation of the Indian rupee, it would be entitled to development rebate on the enhanced cost of machinery and plant due to devaluation. ……In other words, in the matter of calculation of development rebate which an assessee is entitled to under section 43 read with section 33, sub-section (2) of section 43A has no overriding effect. Sub-section (2) of section 43A applies only where the actual cost of the machinery is to be calculated under section 43A and section 43 cannot be applied. **[156** ***ITR 283, 18 TAXMAN 411]***

Actual cost of a machinery or plant	1946	Bom-HC	CIT V/s. Poona Electric Supply Co. Ltd.

In determining the question what is the **actual cost of a machinery or plant** to the assessee, it is an irrelevant consideration whether the assessee has spent the whole amount or only a part of it. What the taxing authorities have to consider is what the actual cost of the article is independently of who has contributed towards that particular amount. **[*14 ITR 622]***

Actual cost to the assessee	1954	Pat-HC	CIT V/s. Ranchi Electric Supply Co. Ltd.

The **actual cost to the assessee** within the meaning of section 10(5)(a) is the actual cost incurred in installing service connection irrespective of any consideration as to the amount actually contributed by the company or the amount actually recouped ultimately from the consumers. Consequently, the amount paid by the consumers on account of service connection should not be taken into account in calculating the actual cost to the company. **[26** ***ITR 89]***

Actual cost to the assessee	1963	Bom-HC	Habib Hussein V/s. CIT

The meaning of the expression **actual cost to the assessee** as used in section 10(5) of the Act was what the assessee had, in fact, expended or laid out for the purpose of acquiring the depreciable assets. **[*48 ITR 859]***

Actual cost to the assessee	1967	Cal-HC	CIT V/s. Lothian Jute Mills Co. Ltd.

The expression **actual cost to the assessee** means the amount in fact paid by the assessee and the legislature in using that expression wanted to indicate the sum of money or money's worth which it cost the assessee to acquire the asset. **[*66 ITR 630]***

Actual cost	1965	Ker-HC	CIT V/s. Cochin Electric Co. Ltd.

The words **actual cost** mean cost accurately ascertained. It does not mean that the cost should be defrayed out of the assessee's own resources.An electric supply company is entitled to the allowance of depreciation in respect of that portion of the service line towards the construction of which the consumer has contributed amounts. **[*57 ITR 82]***

Actual delivery	1969	Cal-HC	Budge Budge Investment Co. Ltd. V/s. CIT

There must be **actual delivery** or transfer of the commodity itself in order to take a transaction out of the definition of speculative transaction in Explanation 2 to section 24(1). Delivery of a pucca delivery order without delivery of the goods cannot be actual delivery within the meaning of Explanation 2. **[73 *ITR 772]***

Actual delivery	1975	SC	Davenport and Co. P. Ltd. V/s. CIT

The words **actual delivery** in Explanation 2 to section 24(1) mean real as opposed to notional delivery. Whether a transaction is speculative in the general sense or under the Contract Act is not relevant for the purpose of this Explanation. The definition of actual delivery in section 2(2) of the Sale of Goods Act which has been held to include both actual and constructive or symbolical delivery has no bearing on the definition of speculative transaction in the Explanation. A transaction which is otherwise speculative would not be a speculative transaction within the meaning of Explanation 2 if actual delivery of the commodity or the scrips has taken place; on the other hand, a transaction which is not otherwise speculative in nature may yet be speculative according to Explanation 2 if there is no actual delivery of the commodity or the scrips. The Explanation does not invalidate speculative transactions which are otherwise legal but gives a special meaning to that expression for purposes of income-tax only. **[100 *ITR 715]***

Actually allowed	1975	SC	Madeva Upendra Sinai V/s. Union of India

The key word in clause (b) of section 43(6) of the Income-tax Act, 1961, is actually. It is the antithesis of that which is merely speculative, theoretical or imaginary. Actually contra-indicates a deeming construction of the word allowed which it qualifies. The connotation of the phrase **actually allowed** is thus limited to depreciation actuary taken into account or granted and given effect to, i.e., debited by the Income-tax Officer against the incomings of the business in computing the taxable income of the assessee; it cannot be stretched to mean notionally allowed or merely allowable on a notional basis. **[98 *ITR 209]***

Actually allowed	1993	Cal-HC	CIT V/s. Suman Tea and Plywood Industries (P.) Ltd.

The provisions of section 43(6)(b) of the Income-tax Act, 1961, are in pari materia with section 10(5)(b) of the Indian Income-tax Act, 1922. Section 43(6) defines the expression “written down value” as meaning the actual cost to the assessee less all depreciation “actually allowed”. The key word is actually. It is the antithesis of that which is merely speculative, theoretical or imaginary. Actually contra-indicates a deeming construction of the word allowed which it qualifies. The connotation of the word **actually allowed** is thus limited to depreciation actually taken into account or granted and given effect to, i.e., debited by the Income-tax Officer against the incomings of the business in computing the taxable income of the assessee; it cannot be stretched to mean “notionally allowed” or merely allowable on a “notional basis”.

[115 *CTR 156, 204 ITR 719, 71 TAXMAN 622]*

Actually allowed	2002	Mad-HC	Guindy Machine Tools P. Ltd. Vs. CIT

The words **actually allowed** with reference to depreciation do not mean notionally allowed and depreciation cannot be granted even when it is not claimed.

[176 *CTR 56, 254 ITR 780, 1 70 TAXMAN 382]*

Actually paid	1966	Mad-HC	Pereira and Roche V/s. CIT

Actually paid in sub-section (5) is not to be understood in a physical sense, but in the sense that the expenditure is actually incurred. **[*61 ITR 371]***

Adequate consideration	1972	AP-HC	Potti Veerayya Sresty V/s. CIT

Consideration to support a contract under the provisions of the Indian Contract Act is different from **adequate consideration** under section 64(iii) of the Income-tax Act. Since the Income-tax Act insists that the consideration for transfer must be adequate, there must be some means to measure the adequacy of the consideration. That is to say, the consideration that supports the transfer should be one, the value of which can be measured in terms of money or money's worth. Religious or spiritual benefit was not consideration which could be measured in terms of money or money's worth. **[85 *ITR 194]***

Adequate consideration	1973	AP-HC	CWT V/s. Khan Saheb Dost Mohd. Alladin

The expression **adequate consideration** cannot be equated to sufficient consideration, good consideration or valid consideration. Adequate consideration, within the meaning of section 4(1)(a)(i), must be construed as valuable consideration capable of being compared and measured with money or money's worth. **[*91 ITR 179]***

Adequate consideration	1977	Bom-HC	CGT V/s. Cawasji Jehangir Co. (P.) Ltd.

The expression **adequate consideration** has to be construed in a broad sense. In order that the court may hold that a particular transfer is not for adequate consideration, the difference between the true value of the property transferred, and the consideration that passed for the same, must be appreciable in the context of the facts and figures of the particular case. **[*106 ITR 390]***

Adequate consideration	2000	Mad-HC	CGT V/s. Nelson and Co.

Adequate consideration referred to in the Gift-tax Act, 1958, is not the same as the market value and adequacy is to be determined with reference to all the circumstances and keeping in view the nature of the transaction whether it is bona fide and whether the consideration stated was the whole amount of consideration. **[*245 ITR 347, 116 TAXMAN 206]***

Admission, admit or admitted	2003	MP-HC	Shree Amarlal Kirana Stores V/s. CIT

The word **admission, admit or admitted** though not defined under any Act/rule has acquired a definite meaning in the judicial system. No sooner than the appeal/ petition/ reference as the case may be is filed, is it placed for hearing before the appellate authority/court for deciding whether it involves any arguable case or not. If the appellate authority/court is of the opinion after hearing the appellant/writ petitioner that the case involves an arguable point, then in such event, the appellate authority/court admits the appeal/writ petition and directs issuance of notice to the respondent for its bi parte hearings. Such order of admission is a judicial order passed by the authority/court after hearing the appellant/writ petitioner on the question involved and after perusing the entire record of the case. There may be cases where the appellate authority/ court finds no merit in the appeal/petition/reference after hearing the appellant/writ petitioner on the question involved and hence, may proceed to dismiss the case at its threshold and without calling upon the respondent to support the order impugned in the appeal/petition / reference.

In such eventuality, the question of admission of the case does not arise and the lis results in its final termination at its threshold. However, if the appellate authority/court is satisfied that the appeal/writ/reference involves an arguable point then the case is admitted for final hearing and notice is issued to the respondent. **[*180 CTR 355, 259 ITR 572, 126 TAXMAN 512]***

Advance tax	**1975**	**AP-HC**	**CIT V/s. Sreerama and Co.**

…….Section 218 says that if an assessee does not pay advance tax on the specified date, he will, be deemed to be in default. Section 219 provides for giving credit for advance tax so paid. Thus, though the word **advance tax** is not specifically referred to, still the scheme of the Act implies that the word tax includes advance tax. Hence, the failure to pay advance tax by the assessee can be visited with penalty under section 221. **[*101 ITR 531]***

Advance tax	**1977**	**Mad-HC**	**Rasiklal Kamdar V/s. CIT**

The expression **advance tax**, whether understood as defined in section 207(2) of the Income-tax Act, 1961, or as could be understood by the common man, will mean only the tax paid before the assessment as required by the Act. The Act itself contains an elaborate machinery for payment of advance tax and, hence, wherever the expression advance tax occurs in the Act, it can mean only that advance tax which was paid as required to be paid pursuant to the provisions contained in the Act and, accordingly, the tax paid by an assessee pursuant to a provisional order of assessment made under section 141 of the Act is not comprehended by the expression advance tax, if any, paid occurring in section 139(1) (iii)…. **[109 *ITR 56]***

Advance tax	**1988**	**AP-HC**	**CIT V/s. Ramagouda Satyam Reddy (P.) and Co.**

It would not be reasonable to say that any instalment of **advance tax** not paid on or before the prescribed date but paid after the due date but during the relevant financial year shall not be treated as advance tax and shall not be deducted as contemplated by the aforesaid Explanation.Therefore, the advance tax paid beyond the due date but during the relevant financial year is also to be deducted from the tax payable, namely, assessed tax, for the purpose of calculating the penalty under section 271(1)(a).

[*70 CTR 38, 172 ITR 491, 36 TAXMAN 314]*

Advancement of any other object of ..	**1978**	**Cal-HC**	**CIT V/s. Indian Sugar Mills Association**

The expression **the advancement of any other object of general public utility not involving the carrying on of any activity for profit** in the definition of charitable purpose in section 2(15) of the Income-tax Act, 1961, plainly indicates that it is not the object of general public utility which would involve the carrying on of any activity for profit but the advancement of that object. In other words, the advancement of any other object of general public utility would be a charitable purpose provided that its advancement does not involve the carrying on of any activity for profit. **[*111 ITR 429]***

Advancement of general public utility	**1978**	**Cal-HC**	**Bengal National Chamber of Com. & Ind. V/s. CIT**

In order to find out whether there is an **advancement of general public utility not involving the carrying on of any activity for profit**, the true test is to find out whether (a) the object of the assessee is one of general public utility; (b) the advancement of the object involves activities bringing in moneys; and (c) if so, whether such activities are undertaken (i) for profit

or (ii) irrespective of profit. Even if (a) and (b) are answered affirmatively if c(i) is answered affirmatively exemption cannot be claimed. Whether an activity is one for or irrespective of profit depends on the facts and circumstances of the case and the real nature of the activity—whether it is one ordinarily carried on by ordinary people for gain; whether there is a built-in prescription in the constitution against making a profit; whether there has been, in practice, profit from this venture, although this last is a weak test. **[*111 ITR 514]***

Adventure in the nature of trade	**1980**	**Bom-HC**	**Estate Investment Co. Ltd. V/s. CIT**

When section 2(4) of the Indian Income-tax Act, 1922, refers to an **adventure in the nature of trade**, it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not by all of them; and so even an isolated transaction can satisfy the description of an adventure in the nature of trade. **[9 *CTR 272, 121 ITR 580]***

Advertisement	**1999**	**Cal-HC**	**Sarda Plywood Industries Ltd. V/s. CIT**

The word **advertisement** has been stated to mean a notice given in a manner designed to attract public attention. Any expenses incurred by way of advertisement must be considered from the point of view of the assessee and not from any other angle. **[238 *ITR 354]***

Advertisement	**2006**	**AAR**	**Google Online India P. Ltd.**

……Advertisement means to make something known to the public or a segment of the public, to announce publicly by a printed notice or broadcast to call public attention to, especially, by emphasizing, desirable qualities so as to arouse a desire to buy and patronize. To this meaning of the term the definition adds notices, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas. An advertisement is generally of goods and services and is an information intended for potential customers.
[200 *CTR 245, 280 ITR 211]*

Advertisement, publicity, sales promotion	**1992**	**Kar-HC**	**Smith Kline and French (India) Ltd. V/s. CIT**

Each of the three words **advertisement, publicity and sales promotion** cannot always be confined to distinct and different concepts. Some aspects of one word would naturally overlap with the meaning attributed to the other words. No doubt, in a commercial sense, the purpose of these activities is to gain goodwill and a market but the mode of achieving this object cannot be confined to the act of media propaganda and a direct approach to the consumers by publicising the product through newspaper advertisements, posters or some other similar methods. The nature of the advertisement or publicity depends upon the nature and quality of the article in question. An inducement to the public to buy a particular commodity may be formulated in a mode most suitable to the article in question.
[*97 CTR 47, 193 ITR 582, 59 TAXMAN 387]*

Affair	**1951**	**SC**	**Vr. N.M. Subbayya Chettiar V/s. CIT**

The word **affairs** must mean affairs which are relevant for the purpose of the Income-tax Act and which have some relation to income. **[*19 ITR 168]***

Affairs	1960	SC	CIT V/s. Nandlal Gandalal

The word **affairs** in section 4A(b) means the affairs of a Hindu undivided family which are capable of being controlled and managed by the family as such. Where a coparcener enters into partnership with strangers, the Hindu undivided family exercises no controlling power of management over the partnership. **[*40 ITR 1]***

Affairs	2006	AAR	Ms. Meenu Sahi Mamik

The word **affair**s meant affairs which were relevant for the purpose of the Act which have some relation to income. **[*287 ITR 514]***

Affect	2002	Mad-HC	CIT V/s. Fab Exports (P.) Ltd.

The term **affect** here does not seek to confer a benefit on the assessee nor does it seek to deprive the assessee of any benefit available to the assessee under the Act. It seeks to build as it were, a wall, between what is to be determined in relation to the sections mentioned in sub-section (2) and what has been provided for in sub-section (1). **(Section 115 J)**

[*176 CTR 129, 258 ITR56, 131 TAXMAN 790]*

Agency	1999	Ker-HC	CIT V/s. Kerala Nut Food Co.

....the word '**agency**' has not been defined in the Act, but accoridng to the Concise Oxford Dictionary it meant 'function of an agent or representative; business establishment of an agent'.

[*151 CTR 202, 239 ITR 127]*

Agent	1986	P&H-HC	Hazoora Singh V/s. CIT

The agent of a non-resident is a representative assessee in respect of the income of the non-resident irrespective of the fact whether he has been treated as agent under section 163 of the Income-tax Act, 1961, or not. Section 163 does not define the term **agent** but only states that the persons mentioned in it will be included in the term agent in relation to a non-resident. Section 182 of the Indian Contract Act, 1872, defines agent as a person employed to do any act for another or to represent another in dealing with third persons. For the appointment of an agent, it is not necessary that there must be written authority.

[*CTR 531, 160 ITR 746, 25 TAXMAN 211*]

Agent	2005	AAR	Dun and Bradstreet Espana S.A.

The word **agent** is defined in the Concise Oxford English Dictionary, inter alia, as under:
"1. a person that provides a particular service, typically one working transactions between two other parties. A person who manages financial or contractual matters for an actor, performer, or writer, 2. a person who works in secret to obtain information for a Government. 3. a person or thing that takes an active role or produces a specified effect. Grammar-the doer of an action, 4. Computing-an independently operating internet programme, typically one set up to locate information on a specified subject and deliver it on a regular basis."...The meaning of the term "agent" is given in Black's Law Dictionary, inter alia, as follows :"The etymology of the word agent or agency tells us much. The words are derived from the Latin verb, ago, agree; the noun agens, agentis. The agent denotes one who acts a doer, force or power that accomplishes things."..And, section 182 of the Indian Contract Act defines "agent" as a person employed to do any act for another or to represent another in dealing with third parties.

[*193 CTR 9, 272 ITR 99, 142 TAXMAN 284]*

Agent	2006	All-HC	CIT V/s. Rudra Bilas Kisan Sahkari Chini Mills

Section 140 of the Income-tax Act, 1961, specifies the persons who can sign the return. In the case of an association it has been provided in clause (e) that the return can be signed by any member of the association or the principal officer thereof. The principal officer has been defined under section 2(35). From a reading of the provision it is clear that the return can be signed by the **agent** also. Any person can appoint an agent orally or in writing or agency can be inferred by implication. **[197*CTR 397, 280 ITR 249, 145 TAXMAN 497]***

Aggregate of the amount... on which tax is not payable..	1972	Ker-HC	CIT V/s. Dat Pathe

The portion in rule 2(3) of the Rules reading **as reduced by the aggregate** of the amount or any portion thereof on which income-tax or super-tax is not payable and the amount in respect of which a deduction of income-tax or super-tax has been granted **under any provision of the Act** must refer to the income which is included in the total income as envisaged by section 66 of the Income-tax Act, 1961, but on which no income-tax or super-tax is payable and in relation to which deductions were permitted under section 110 of the same Act, as well as under any other provisions of the Income-tax Act, 1961. It is clear from these provisions of the Income-tax Act, and particularly from the expression total income used in rule 2(3) of the Rules that the total income must be the total income as computed under the provisions of the Income-tax Act. **[83 *ITR 823]***

Agricultural income	1948	Nag-HC	Beohar Singh Raghubir Singh V/s. CIT

Income from the sale of forest produce such as timber, tendu leaves, mohua flowers, harra nuts, etc., derived from a forest which is not a cultivated one but is of spontaneous growth is not **agricultural income** and is not exempt from taxation under section 4(3)(viii) of the Indian Income-tax Act.Agriculture is the art or science of cultivating the ground. The essence of agriculture, even when it is extended to include forestry, is the application of human skill and labour; without that it can be neither an art nor a science.It is essential that the income should be derived from some activity which necessitates the employment of human skill and labour and which is not merely a product of man's neglect or inaction except for the gathering-in of the spoils. Not only must the assessee labour to reap the harvest, but he must also labour to produce it.Clause (a) of section 2(1) refers to income derived from land which is used directly for agricultural purposes and clause (b) to by-products, such as the selling of milk, the pasturing of cattle, etc., provided the endeavour is agricultural and provided it is reasonably connected with land used for agricultural purposes. **[*16 ITR 433]***

Agricultural land	1965	Guj-HC	Rasiklal Chimanlal Nagri V/s.CWT

The expression **agricultural land** has nowhere been defined in the Constitution and has therefore to be understood in the plain, ordinary meaning of the expression according to English language bearing in mind the fundamental principle of construction that the expression occurs in a head of legislative power under which the Wealth-tax Act has been enacted and it should, therefore, receive the widest and most liberal meaning.Whether a land is agricultural land or not cannot depend on the fluctuating or ambulatory intention of the owner of the land. The criterion must be something more definite and more objective, something related to the nature or character of the land and not varying with the intention of the owner as to the use to which he wants to put the land at a particular point of time.The intention as to user is,

however, not altogether an irrelevant consideration and is a factor which would bear on the nature of or character of the land, but it does not afford a sole or exclusive criterion for determining whether a land is agricultural land or not.Where the land is actually paid to use, there is usually not much difficulty in ascertaining the nature or character of the land. If the land is used for agricultural purposes, ordinarily it would be correct to say that the land is agricultural land and vice versa. But even this test may not always furnish a correct answer, for there may be cases where land admittedly non-agricultural (such as a building site) may be used temporarily for agricultural purposes.In a case where the land is not being actually put to any use, the trust test to be applied for the purpose of determining whether a particular land is agricultural land or not, is not whether the land is capable for being used for agricultural purpose, but whether, having regard to the various relevant factors, the general nature or character of the land is such that it can be regarded as agricultural land. **[*56 ITR 608]***

Agricultural land	**1974**	**Del-HC**	**Shiv Shankar Lal V/s. CIT**

In order to come within the category of **agricultural land**, the land must not only be capable of being used for agricultural purposes but should have been actually used as such at some point of time. A temporary non-user for agricultural purposes will not affect the character of the land but a permanent abandonment of user for agricultural purposes will affect the character of the land as agricultural land. The actual conversion of the land for non-agricultural purposes will also affect the character of the land as agricultural land. Whether such a conversion has taken place will depend on the facts of each case. **[*94 ITR 433]***

Agricultural land	**1976**	**SC**	**CWT V/s. Officer-in-charge (Court of Wards)**

Simply because **agricultural land** has not been defined in the Wealth tax Act, 1957, it is not correct to give the expression as wide a meaning as possible. The correct rule is to find out the exact sense in which the words have been used in the particular context and give an interpretation in consonance with the purpose of the statute. The object of the Act is to tax surplus wealth and it is clear that all land was not excluded from the definition of assets . Therefore, it is imperative to give reasonable limits to the scope of the expression agricultural land and give it a restricted meaning;.The determination of the character of the land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case. What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of assets, but its actual condition and intended user which has to be seen for purposes of exemption from wealth-tax. One of the objects of the exemption is to encourage cultivation or actual utilisation of land for agricultural purposes. If there is neither anything in its condition, nor anything in the evidence to indicate the intention of its owners or possessors so as to connect it with an agricultural purpose, the land could not be agricultural land for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence. **[*105 ITR 133]***

Agricultural land	**1984**	**Mad-HC**	**CWT V/s. T.N.K. Govindaraju Chettiar**

Though the expression **agricultural land** has to be given a wide connotation it must be confined to denote land which is either actually under cultivation or which is appropriated or set apart for a purpose which could be regarded as agricultural and for which it could be reasonably used without any alteration of its existing character. If there is no evidence to show that forest land had been cleared and prepared or earmarked for agricultural purpose, it would be too

unreal or too soon to hold that it had become agricultural land and the question in every case has to be decided on evidence of actual or intended user for which the land may have been prepared or set apart. The burden is on the assessee to show that forest land covered with wild and natural growth had been converted into land which was actually used for agricultural purpose or had keen prepared or set up for such a purpose.**[*149 ITR 588, 18 TAXMAN 217]***

Agricultural operation	**1990**	**Bom-HC**	**CIT V/s. Kirloskar Brothers Limited**

An **agricultural operation** extends to all activities which makes the agricultural produce marketable. Consequently, an implement used to make the agricultural produce marketable must be held to be an agricultural implement. **[*181 ITR 523, 48 TAXMAN 146]***

Agricultural primary commodities	**2006**	**Guj-HC**	**CIT V/s. Gujarat State Export Corporation**

The expression **agricultural primary commodities** has not been defined in the Act. However, the phrase envisages that there should be an agricultural commodity, and further, it should be a primary commodity. The provision does not require that the commodity, namely, the goods which are exported cease to be agricultural commodities. The only prohibition or exception carved out qua the goods or merchandise which are exported is that such goods should not be agricultural primary commodities. A primary product is one as it actually grows.

[*199 CTR 217, 280 ITR 62]*

Agricultural product	**1999**	**SC**	**CIT V/s. Cynamid India Ltd.**

Section 35C of the Income-tax Act, 1961, was designed to encourage development of agriculture. The term **agricultural product** or product of agriculture is required to be construed liberally so as to include not merely the primary product as it actually grows, but also a product which undergoes a simple operation so as to make it more saleable or more usable.

[*153 CTR 201, 237 ITR 585, 104 TAXMAN 94]*

Agricultural purpose	**1979**	**Guj-HC**	**Chhotalal Prabhudas V/s. CIT**

If land is actually used for **agricultural purposes** at least prima facie, it can be said to be land which is either actually used or ordinarily used or meant to be used for agricultural purposes. If it is actually used at the relevant date for agricultural purposes and there are no special features, as for example, a building site being actually used as a stop-gap for agricultural purposes, it would be agricultural land. Potential use of the land as agricultural land is totally immaterial. Entries in the record of rights are good prima facie evidence regarding land being agricultural and if the presumption raised either from actual user of the land or from agricultural use of the land is to be rebutted, there must be material on the record to rebut the presumption. The approach of the fact-finding authorities, namely, the income-tax authorities and the Tribunal, should be to consider the question from the point of view of presumption arising from entries in the record of rights or actual user of the land and then consider whether that presumption is dislodged by the presence of other factors in the case. **[*116 ITR 631]***

Agricultural and cultivation	**1949**	**Cal-HC**	**CIT(Agr.) V/s. Raja Jagadish Chandra Deo Dhabal Deb**

The ordinary dictionary meanings of the two words **agriculture** and cultivation are different. Agriculture is of much wider import than cultivation. **[*17 ITR 426]***

Agriculture	1950	Mad-HC	CIT V/s. K.E. Sundara Mudaliar

Irrespective of the nature of the produce or product of the land, whatever is grown on land aided by human labour and effort, whatever does not grow wild or spontaneously on the soil without human labour or effort, would be an agricultural product, and the process of producing it would be **agriculture** within the meaning of that expression in section 2 of the Indian Income-tax Act. In short, the word is used to denote the raising of valuable or useful products deriving nutriment or sustenance from the soil with the aid of human labour or skill. **[18 *ITR 259]***

Agricultural	1954	Ass-HC	Jyotikana Chowdhurani V/s. CIT

The term **agriculture** is not confined merely to tilling the earth of ploughing of the soil but is used in a wide sense to denote the raising of useful or valuable products which derive nutriment from the soil with the aid of human skill and labour; it would include horticulture, arboriculture and sylviculture where the growth of the trees is effected by the expenditure of human effort, skill and attention in such operations. **[*26 ITR 424]***

Agriculture	1957	SC	CIT V/s. Raja Benoy Kumar Sahas Roy

Agriculture in its primary sense denotes the cultivation of the field and is restricted to cultivation of the land in the strict sense of the term, meaning thereby tilling of the land, sowing of the seeds, planting and similar operations on the land. These are basic operations and require the expenditure of human skill and labour upon the land itself. Those operations which the agriculturist had to resort to and which are absolutely necessary for the purpose of effectively raising produce from the land, operations which are to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth, removal of undesirable undergrowth, and all operations which foster the growth and preservation of the same not only from insects and pests but also from depradation from outside, tending, pruning, cutting, harvesting and rendering the produce fit for the market, would all be agricultural operations when taken in conjunction with the basic operations. The human labour and skill spent in the performance of these subsequent operations cannot be said to have been spent on the land itself.The mere performance of these subsequent operations on the products of the land, where such products have not been raised on the land by the performance of the basic operations, would not be enough to characterise them as agricultural operations; in order to invest them with the character of agricultural operations these subsequent operations must necessarily be in conjunction with and in continuation of the basic operations which are the effective cause of the products being raised from the land. The subsequent operations divorced from the basic operations cannot constitute by themselves agricultural operations.Only if this integrated activity which constitutes agriculture is undertaken and performed in regard to any land can that land be said to have been used for agricultural purposes and the income derived therefrom be said to be agricultural income derived from the land by agriculture, under section 2(1) of the Indian Income-tax Act, 1922. **[*32 ITR 466]***

Agriculture	1962	Ori-HC	State of Orissa V/s. Ram Chandra Choudhury

The term **agriculture** should not be given such a wide meaning as to include activities in relation to land like rearing of livestock, dairy farming, butter and cheese making, etc.**[*46ITR246*]**

Agriculture	1970	Pat-HC	Syed Rafiqur Rahman V/s. CWT

Agriculture means the cultivation of the land meaning thereby tilling of the hand, sowing, planting and similar operations on the land. Only when the integrated activity of agriculture is

undertaken and performed on any land, can that land be called agricultural land. The mere presence of trees on the land will not make is agricultural, especially when mere situated in the heart of a town and is surrounded by residential buildings. The question whether a land is agricultural land or not, does not also depend upon the intention of the owner to use the land or on the fluctuating or ambulatory intention of the owner. The criterion must be something more definite and more objective, something related to the nature or character of the land.

[*75 ITR 318]*

Agriculture produce of its members	**1993**	**SC**	**Assam Coop. Apex Market. Soc. Ltd. V/s. Addl. CIT**

The words **agricultural produce of its members** must be understood consistent with this object. If it is not so understood, even a co-operative society comprising traders dealing in agricultural produce would become entitled to the exemption which could never have been the intention of Parliament. Agricultural produce produced by the agriculturist can legitimately be called agricultural produce in his hands but, in the hands of traders, it would be appropriate to call it an agricultural commodity: it would not be their agricultural produce.

[*113 CTR 58, 201 ITR 338, 69 TAXMAN 446]*

Aircraft	**2001**	**AAR**	**Lloyd Helicopters International Pvt. Ltd.**

Etymologically, the expression **aircraft** comprehends within it any structure or machine designed to travel through air with the possible exception of hovercrafts.

[166 *CTR 226, 249 ITR 162, 115 TAXMAN 334]*

Aircraft, aero engines	**1998**	**Bom-HC**	**CIT V/s. Kirloskar Oil Engines**

A conjoint reading of items D(1) and E(1) of the depreciation table appended to the Income-tax Rules, 1962 (Part I of Appendix I), makes it clear that the subject-matter of the two items is quite different and distinct. Though both items are given under the heading Aeroplanes, item D(1) prescribes the rates of depreciation on Aircraft and aerial photographic apparatus whereas item E(1) prescribes the rate of depreciation on Aero-engines. **Aircraft and aero engines** are two quite different and distinct machines. An aircraft is a machine capable of flight, whereas an aero-engine is only the power unit of an aircraft. An aero-engine, therefore, cannot be termed as aircraft or, to put it differently, an aircraft can never be described as an aero-engine even if it is heavier-than-air. An aircraft which is heavier-than-air is also aircraft. In Chamber's Science and Technology Dictionary, the word aircraft has been described only as a mechanically driven heavier-than-air flying machine with wings of fixed or variable sweep angle. It has not been described to mean gliders, balloons and other flying machines. Similarly, in the definition of aircraftin the Aircrafts Act, 1934, balloons, airships, kites, gliders and flying machines have been added by specific inclusion. It is, therefore, not correct to say that aircraft, which are heavier-than-air are not aircrafts but are aero-engines. All aircrafts, whether lighter-than-air or heavier-than-air, are aircrafts. No aircraft can ever be termed as an aero-engine because an aero-engine is not an aircraft or aeroplane at all. It is only the power unit of an aircraft. It is thus clear from the above discussion that aircraft does not mean only crafts like balloons, airships, helicopters but also means aircrafts heavier-than-air. **[*151 CTR 544, 230 ITR 88]***

All the provisions of this Act shall apply…	**1987**	**All-HC**	**Addl. CIT V/s. Hasmat Rai Raj Pal**

The words **all the provisions of this Act shall apply accordingly** used in section 297(2)(d)(ii) mean only the procedural provisions. It follows that the substantive provisions of the Act of

1961 will not apply to the completion of an assessment relating to an assessment year prior to the coming into force of the Act of 1961 provided other conditions contained in section 297(2)(d)(ii) are satisfied. ***[61 CTR 256, 167 ITR 794, 32 TAXMAN 72]***

Already pending	**1996**	**AAR**	**Monte Harris V/s. CIT**

The words **already pending** should, therefore, be interpreted to mean: already pending as on the date of the application and not with reference to any future date. No applicant can afford to ignore the mandatory provision requiring a return of income to be filed within the prescribed time merely because he has filed an application before the Authority.

[128 CTR 59, 218 ITR 413, 82 TAXMAN 365]

Amendment	**2002**	**Del-HC**	**J.N. Sahni V/s. ITAT**

The expression **amendment** must be assigned its true meaning. While an order of amendment is passed, the order remains but when an order is recalled it stands obliterated. What cannot be done directly, cannot be done indirectly. **[174** ***CTR 367, 257 ITR 16, 123 TAXMAN 569]***

Amount of scrap value, if any	**2002**	**Mad-HC**	**CIT V/s. Ashoka Betelnut Co. P. Ltd.**

….when the asset was discarded, demolished or destroyed, the asset which was no longer put to use or which had suffered damage or destruction, may even after being so discarded, damaged or destroyed still have **amount of scrap value, if any**. It was immaterial whether the assessee had chosen to convert that scrap value into cash. What was required to be seen was the value of scrap and not the amount realised by the assessee. The fact that the assessee by choosing to gift away the salvaged material after the building had been demolished, chose not to realise the price from the person to whom the articles were given did not deprive the article of its value. The scrap value had to be taken into account while determining the extent to which the assessee could claim the benefit under section 32(1)(iii) of the Income-tax Act, 1961. The Assessing Officer had taken a higher figure as he found that there were a number of items of steel windows and doors with the assessee even after the building was pulled down.

[178 CTR 349, 259 ITR 733, 125 TAXMAN 321]

Amount	**2005**	**SC**	**Sandvik Asia Ltd. V/s. CIT**

The expression **amount** in the earlier part of section 244(1A) refers not only to the tax but also to the interest; it is a neutral expression and it cannot be limited to the tax paid in pursuance of the order of assessment. ***[280 ITR 643]***

An application made	**1962**	**Mys-HC**	**Shanta Bai Devarao V/s. CIT**

An application under section 66(1) of the Indian Income-tax Act, 1922, can be deemed to have been **made** within the meaning of the section only when that application is received in the office of the Appellate Tribunal. An application which is posted before the expiry of the period of limitation prescribed in section 66(1) but which is received by the Tribunal after the expiry of the period cannot be held to have been made within the prescribed period and is liable to be rejected as time-barred. ***[46 ITR 272]***

An article … of personal use	**1987**	**Raj-HC**	**Hanuman Mal Sekhani V/s. CWT**

Articles in respect of which exemption can be allowed under section 5(1)(viii) of the Wealth-tax Act, 1957, must be of such a nature as could ordinarily be put to use by the assessee personally or for his household purposes. **An article can be of personal use** if it is used or

could be used by the person of its possessor and must have more or less intimate relation with the assessee. **[*57 CTR 185, 168 ITR 364, 34 TAXMAN 21]***

An asset in the hands ….. on the relevant valuation date	**1982**	**Guj-HC**	**CWT V/s. Arvindbhai Chinubhai**

Even assuming that the mere likelihood of obtaining a refund, in future, of tax paid for the relevant assessment year could be characterised as **an asset in the hands of the assessee on the relevant valuation date** especially when the assessment proceedings for the relevant assessment years are pending on the valuation date, it would be impossible to comprehend and predicate with any degree of certainty as to what would be the actual amount of tax refund, if any, which would be available to the assessee in future and which could be treated as his asset on the valuation date. The right of the assessee to receive a particular amount of refund vis-a-vis tax paid for a given assessment year is a mere possibility. Equally so is the corresponding liability of the department to refund to the assessee a particular amount. So long as the assessment proceedings are not processed and finalised by the department, the alleged right and the corresponding liability remain in a fluid state. Therefore, even assuming that the likelihood of obtaining refund of the amount may be an asset, it is not capable of evaluation as on the valuation date and such an asset is not capable of being ascertained and cannot be treated as an asset for the purpose of arriving at the net wealth of the assessee during the relevant assessment year. **[*24 CTR 228, 133 ITR 800]***

An association of persons	**1995**	**Pat-HC**	**CIT V/s. Chandmal Rajgarhia**

An association of persons is a unit of assessment under the Indian Income-tax Act. The precise meaning of the expression has come up for consideration on several occasions before the courts. The word association indicates plainly the voluntary combination for a common endeavour and not a mere legal status resulting from operation of law. Co-owners, co-heirs or co-legatees do not constitute such an association in respect of the income of the joint or common asset by reason only of their jural relationship. But, if they unite themselves with the objective of earning income, they constitute an association of persons for assessment purposes and they cannot take advantage of their legal position to resist assessment on that basis. The essential criterion that attracts the label of association of persons in the Income-tax Department is the unity of the income-making purpose rather than the unity of title in the income-yielding asset. **[126 *CTR 321, 213 ITR 789]***

An association of persons	**1996**	**Mad-HC**	**State of T.N. Vs. Thiruvalargal Singara Estate**

An association of persons is one in which two or more persons join in a common purpose or common action and as the words occur in a section which imposes a tax on income, the association of those persons must be one, the object whereof is to produce income, profits or gains and share the same. The question whether an association of persons has engaged itself in an activity with a common object to produce income, profits and gains and share the same would depend upon the facts and circumstances of each case. The jointness of the enterprise aimed at production and the sharing of income, profits or gains are the essential ingredients to call a body of persons an association of individuals. **[*217 ITR 199]***

An association of persons	**1997**	**SC**	**Meera and Company V/s. CIT**

An **association of persons** is not something distinct and separate from a body of individuals. The latter expression has been added to obviate any controversy as to whether only combinations of human beings are to be treated as a unit of assessment. When several individuals are found

to have joined together for the purpose of making profit, the group of individuals may be conveniently described as a body of individuals. An association of persons or a body of individuals, whether incorporated or not, has been brought within the net of taxation with the intention clearly to hit combinations of individuals or other persons who were engaged together in some joint enterprise. The combinations may or may not be incorporated. A profit-yielding joint venture has to be taxed as a single unit. **[*139CTR 492, 224 ITR 635, 91 TAXMAN 219]***

An attempt to commit a particular offence	**1995**	**Mad-HC**	**ITO V/s. Dharamchand Surana**

An attempt to commit a particular offence is made when the person : (i) intends to commit that particular offence; and (ii) having made preparations and with the intention to commit the offence, he does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. Section 276C of the Income-tax Act, 1961, deals with the attempt to evade tax which is chargeable or imposable indicating that it need not be relating to the tax that was paid already. **[*216 ITR 678, 96 TAXMAN 317]***

An order of any court	**1985**	**Kar-HC**	**T. M. Kousali V/s. ITO**

An order of any court means an order of any and every court in the country. The hierarchy and status of the court in the country is not decisive. All that this provision provides is that it must be a court and there must be an order of a court. The nature of the court and the nature of the order made by the court have no relevance. If there is an order of a court, whatever be its status, then the bar of limitation is automatically lifted. **[*155 ITR 739]***

And - or	**1981**	**Mad-HC**	**CIT V/s. Puthuthotam Estates (1943) Ltd.**

The circumstances under which the word **and** may be construed as or and vice versa should be somewhat rare. Otherwise if the two are taken to be interchangeable terms, then it would result in Parliament throwing into the statute the two expressions indiscriminately and leave them to the courts to sort out the meaning. In ordinary usage and is conjunctive and or is disjunctive. **[18 *CTR 3, 127 ITR 481]***

Annual payments	**1957**	**Cal-HC**	**CIT V/s. State Bank of India**

Annual payments as used in taxing statutes must be taken to mean payments, in whatever kind of instalments paid, made every year in discharge of a liability incident to that year, if it has to be made during more than one year, whether consecutively or otherwise. A payment is annual if it has the quality of recurrence in different years, although it might not be in every one of the succession of years. It is also not necessary. **[*31 ITR 545]***

Annual value	**1992**	**Bom-HC**	**Panalal Silk Mills Pvt. Ltd. V/s. CIT**

Section 24(1)(ix) does not speak of either gross or net annual value. All that this clause provides is that where the property is let and was vacant during a part of the year, that part of the **annual value** which is proportionate to the period during which the property is unoccupied is deductible from income chargeable under the head Income from house property. It is section 23 which gives the meaning of the expression annual value. The scheme of section 23 is that if the property has not been let, then the annual value shall be deemed to be the same for which the property might reasonably be expected to be let from year to year. This, of course, is a hypothetical figure which has to be estimated by the Assessing Officer where the property

is not actually let. Where the property is let and the annual rent received or receivable by the owner is in excess of the amount which could be calculated on hypothetical basis as above, then the annual value of the property shall be deemed to be the amount so received or receivable. The proviso to section 23(1) provides that where the property is in the occupation of a tenant, the taxes levied by any legal authority in respect of the property shall, to the extent the taxes are borne by the owner, be deducted in determining the annual value of the property. This section does not speak of gross or net annual value. It merely indicates two different methods of computing the annual value which are applicable to two different situations. The amount determined in accordance with section 23 would be the annual value of the property and it is only a proportionate amount out of this annual value, proportionate to the period of non-occupancy, which is permissible as a deduction under section 24(1)(ix).

[*194 ITR 270, 59 TAXMAN 221]*

Annuity	**1972**	**All-HC**	**P.K. Banerji V/s. CWT**

An **annuity**, in the sense of the law, means a fixed sum of money payable every year and it is not dependent upon variations in the net income of the property. But the amount of an annuity may not be absolutely fixed and may be variable from year to year, but so long as the variation in the amount to be received is in no way dependent upon or related to the general income of the estate, it will be still described as an annuity. An annuity confers no interest in any particular part of the property charged, but simply a security extending over the whole.

[*83 ITR 117]*

Annuity	**1989**	**MP-HC**	**Parmanandbhai Patel V/s. CWT**

The word **annuity** in clause (iv) of section 2(e) of the Wealth-tax Act, 1957, must be given the signification which it has assumed as a legal term, owing to judicial interpretation and not its popular and dictionary meaning. The hallmark of an annuity is (i) it is a money payment, (ii) made annually, (iii) it is of fixed sum, and (iv) usually it is a charge personally on the grantor. An annuity involves the conversion of capital into income. Section 2(e)(iv) excludes annuity from assets where the terms and conditions of the grant precluded the commutation of any portion thereof. It connotes that there should be, in the contract of annuity, a specific term against commutation, if the annuity is to be excluded in the computation of net wealth. In the alternative, a prohibition against commutation should clearly emerge from the scheme of the settlement and from the terms and conditions relating to the annuity itself. Annuity shall be excluded from the assets only if the terms and conditions relating to the grant make it impossible to interchange it for a lump sum amount. It is generally a question of fact depending on the terms and conditions of the grant giving the annuity. The question of commutability may be inferred not only from the specific conditions but also from all relevant terms creating the annuity and other related conditions. Thus, non-commutability may arise either on account of specific prohibition in the terms and conditions contained in the grant or it may otherwise be so inferred from the circumstances or the law applicable. **[*74 CTR 90, 177 ITR 339]***

Annuity	**1991**	**Bom-HC**	**Gopikumari Birla V/s. CWT**

A right to an annuity is not includible in the asset of the assessee for the purpose of wealth-tax where the terms and conditions relating thereto preclude the commutation of any portion thereof into a lumpsum grant.The expression **annuity** has not been defined in the Wealth-tax Act. The principles relating to annuity are: (1) An annuity is a right to receive de anno in annum a certain sum payable by the grantor personally or out of corpus or income of the estate or a fund specifically set apart. The amount receivable by the annuitant must be a predetermined fixed amount and the variation in the quantum of the said amount, if any, should not be

dependent upon the increase or fall in the general income of the estate or the trust fund. (2) Such predetermined or fixed amount may be payable by the grantor personally, i.e., secured merely by a personal covenant of the grantor. (3) An annuity is a right to receive a specified sum and not an aliquot share in the income arising from any fund. If the beneficiary is entitled to a share in the estate or a share in its income in entirety or in a particular proportion as contrasted with a mere right to receive a predetermined fixed sum per annum, such an interest does not partake of the character of an annuity. (4) If the amount of annuity payable fluctuates or varies depending upon the general income of the estate and its quantum tends to increase or decrease depending upon the quantum of general income of the estate as such, the provision made for payment of such an amount would not partake of the character of an annuity. This principle, however, has no application to a situation where the annuity may have to abate proportionately by operation of law. (5) Merely because the predetermined and fixed amount of annuity is made payable out of the income of the trust which is one of the permissible modes of creating an annuity, it does not follow that the right to receive such sum is dependent upon or related to the general income of the estate and the right to receive such predetermined amount is not an annuity. (6) The terms and conditions precluding commutation of an annuity into a lumpsum may be express or implied. If the terms and conditions of the trust deed or any other relevant deed provide for payment of a continuing annuity to the beneficiary throughout his life and provide for handing over of the entire corpus to another beneficiary on the death of the surviving annuitant, it necessarily follows that the right to receive the periodical amount cannot be commuted into a lump sum grant. ***[192 ITR 318, 59 TAXMAN 366]***

Annuity	**1995**	**Bom-HC**	**CWT V/s. Ajit alias Hamid Alikhan**

In order to constitute an **annuity** the payment to be made periodically should be a fixed or predetermined one and it should not be liable to any variation depending upon or on any grant relating to the general income of the fund or estate which is charged for such payment. Payment of annuity thus should not be dependent upon the income of the corpus. From the definitions in section 2(e) of the Wealth-tax Act, 1957, it is clear that the right to annuity is an asset within the meaning of section 2(e) right from the commencement of the Act. Such right to annuity was excluded from the definition of asset by virtue of item (iv) of sub-clause (1) of clause (e) of section 2 in cases where the terms and conditions relating thereto precluded the commutation of any portion thereof into a lump sum grant. If this condition was fulfilled, the right to annuity was excluded from the definition of asset. This exclusion was subjected to a further condition with effect from April 1, 1975, by the Finance Act, 1974, that it is not an annuity purchased by the assessee or purchased by any other person in pursuance of a contract with the assessee. ***[128 CTR 230, 215 ITR 454]***

Annuity	**1997**	**All-HC**	**Udai Chand Jain V/s. CIT**

….the amount standing to the credit of a subscriber under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974, and which is to be received back by the subscriber in five equal instalments every year together with interest constitutes **annuity** within the meaning of section 2(e)(2)(ii) of the Wealth-tax Act, 1957, and hence is not an asset within the meaning of section 2(e). ***[142 CTR 155, 228 ITR 190, 98 TAXMAN 209]***

Annuity and property	**1970**	**SC**	**Ahmed G.H. Ariff V/s. CWT**

The right of a beneficiary to receive an aliquot share of the net income of properties comprised in a wakf-alal-aulad created by a Muslim governed by the Hanafi school of Mahomedan law is property and is covered by the definition of assets in section 2(e) of the Wealth-tax Act, 1957, and the capitalised value of the right is assessable to wealth-tax. This would be so even if the

aliquot share of the income was intended merely for the maintenance and support of the beneficiary. Such a right is not a mere **annuity**. The word annuity in clause (iv) of section 2(e) must be given the signification which it has assumed as a legal term owing to judicial interpretation and not its popular and dictionary meaning. **[*76 ITR 471]***

Any	**1951**	**Pat-HC**	**Liquidators, Pursa Ltd. V/s. CIT**

Section 10(2)(vii) did not apply to a business which had been discontinued or was in the process of being discontinued. The word **any** in the expression any such machinery or plant means a particular item or items of machinery or plant and does not mean the entire aggregate of plant and machinery. **[*20 ITR 95]***

Any assessment made under this act	**1964**	**SC**	**Illuri Subbayya Chetty and Sons V/s. State of A.P.**

The expression **any assessment made under this Act** is wide enough to cover all assessments made by the appropriate authorities under the Act whether the said assessments are correct or not. It is the activity of the Assessing Officer acting as such officer which is intended to be protected and as soon as it is shown that, exercising his jurisdiction and authority under the Act, an Assessing Officer had made an order of assessment, that clearly falls within the scope of such prohibition. **[*94 CTR 263, 192 ITR 365, 58 TAXMAN 216]***

Any assessment made under this Act	**1963**	**SC**	**Illuri Subbayya Chetty and Sons V/s. State of AP**

Section 10(2)(vii) did not apply to a business which had been discontinued or was in the process of being discontinued. The word **any** in the expression any such machinery or plant means a particular item or items of machinery or plant and does not mean the entire aggregate of plant and machinery. **[*50 ITR 93]***

Any case	**2004**	**Ker-HC**	**K.V. Kader Haji V/s. CIT**

Section 127 used the expression **any case**. The Explanation contains the word case in relation to any person whose name is specified in any order or direction issued thereunder and means all proceedings under the Income-tax Act in respect of any year. Therefore, the expression any case means all proceedings under the Act in respect of any year. The expressions any year and any case exclude limitation or qualification, which points in a distributive construction. The words any case and any year connote wider generality. Considering the object and purpose of section 127 and to facilitate effective and co-ordinated investigation, the Explanation to section 127 has to be liberally construed and therefore block assessment would fall within the expression case enabling the Commissioner to transfer those cases relating to block assessment to the subordinate officer. **[*189 CTR 313, 268 ITR 465, 140 TAXMAN 527]***

Any expenditure	**2000**	**Mad-HC**	**CIT V/s. Bharat Overseas Bank Ltd.**

Section 35B of the Income-tax Act, 1961, refers to **any expenditure**. Expenditure refers to an outgoing. If the monies had been expended, all such monies would qualify for the weighted deduction, provided the expenditure was incurred for any one of the purposes referred to in section 35B. It is significant that the section refers to any expenditure . The use of the word any preceding the word expenditure would also indicate that the focus is on the expenditure actually incurred by way of outgoing, and once it is established that such expenditure had been incurred, there is no occasion for making any deductions therefrom.

[242 *ITR 314, 117 TAXMAN 759]*

Any income	2003	Mad-HC	DIT (Exemp.) V/s. A.M.M. Hospitals and Medical Benefit Society

Section 10(22A) of the Income-tax Act, 1961, exempts from levy of tax **any income** of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit. The ratio of the decision of the court in CIT v/s. A. M. M. Arunachalam Educational Society [2000] 243 ITR 229 (Mad) is equally applicable to the income referred to in section 10(22A). Any income in that provision in effect means all income. The material requirement of section 10(22A) is that the hospital or institution referred to therein of the nature set out in that provision should exist solely for philanthropic purposes and not for the purposes of profit. ***[187 CTR 567, 262 ITR 241, 140 TAXMAN 81]***

Any individual	1999	SC	CIT V/s. Shri Om Prakash

Under section 4 of the Income-tax Act, 1 Illuri Subbayya Chetty and Sons Vs. State of Andhra Pradesh 1961, the charging section, the total income of the previous year or years of every person is charged for any assessment year at the rate or rates prescribed by the Finance Act. A plain reading of the definition of person in section 2(31) shows that both an individual and a Hindu undivided family are, inter alia, constituents of the meaning of the term person. The expression **any individual** is narrower than the terms person and assessee defined in section 2(7); an individual is a person but every person need not be an individual. So also an individual may be an assessee but every assessee need not be an individual. Had Parliament intended to give a wider meaning to the word individual in section 64(1)(i) and (ii) so as to include the karta of a Hindu undivided family it would have drafted the provision differently. It is thus clear that individual in section 64(1) does not take in karta of the Hindu undivided family within its import. **[155** ***CTR 206, 238 ITR 1044, 105 TAXMAN 619]***

Any other case	2006	P&H-HC	CWT V/s. Anil Tayal (HUF) (No. 1)

The expression **any other case** in clause (b) of section 16A(1) is wide enough to include a case where no return has been filed by the assessee. If a narrow view is taken that a reference under section 16A(1) can be made only where the return has been filed, then the expression in clause (b) of section 16A(1) and the expression where no such return has been made in sub-section (4) of section 16A would become redundant.

[195 CTR 420, 238 ITR1044, 146 TAXMAN 239]

Any other person	2000	Mad-HC	CIT V/s. K.P.V. Shaik Mohamed Rowther and Co. (P) Ltd.

Sub-rule (2) of rule 6D of the Income-tax Rules, 1962, places a ceiling on the travelling expenses incurred by an employee or **any other person** to be allowed as expenditure. In view of the expressionany other person used in the sub-rule, even if a director or a managing director is not an employee of the company, the ceiling prescribed by sub-rule (2) of rule 6D applies. A director or a managing director of a company will come within the expression any other person mentioned in rule 6D(2) and deduction can be allowed for the travelling expenses incurred by them within the ceiling prescribed thereunder. ***[161 CTR 453, 242 ITR 245]***

Any other sum chargeable under the provisions of the Act	2006	AAR	Imt Labs (India) P. Ltd.

That the expression **any other sum chargeable under the provisions of the Act**, in section

195(1) would mean a sum on which income-tax is leviable. The only consideration would be whether payment of the sum to the non-resident was chargeable to tax under the provisions of the Act. The sum might or might not be income; income might be hidden therein or otherwise embedded therein. The scheme of tax deduction at source applies not only to the amount paid, which wholly bears income character but also to gross sums, the whole of which might not be income or profit of the recipient.

[*206 CTR 396, 287 ITR 450, 157 TAXMAN 189]*

Any person	1971	All-HC	Dhiraj Mal V/s. CIT

The expression **any person**, in its widest connotation, may include any person, whether connected or not with the assessee; but this construction cannot be accepted for purposes of section 34(3), for the said expression is necessarily circumscribed by the scope of the subject-matter of the appeal or revision, as the case may be; that person must, therefore, be one who would be liable to be assessed for the whole or a part of the income that went into the assessment of the year under appeal or revision. **[*79 ITR 242]***

Any person	1982	Bom-HC	CIT V/s. Homi Mehta and Sons P. Ltd.

Under the provisions of section 34(3) of the Indian Income-tax Act, 1922, the bar of limitation will not apply where reassessment is made on any person consequent on a direction or finding given by an appellate or revisional authority. The expression **any person** in the setting in which it appears must be confined to a person intimately connected with the assessments of the year under appeal. The intimate connection must be such that the assessment of one must depend on the assessment of the other as in the case of a partner and the partnership firm, and of an individual and members of the joint Hindu family. Merely because in the course of assessment a finding is recorded that the income belonged to somebody else, an intimate connection is not automatically established by the fact that the same income is sought to be assessed in the hands of another. It should be possible to say that the interests of the person whose income is sought to be reassessed on the basis of a finding recorded in the assessment proceeding of another are so closely intertwined that no separate issues will really arise at a later stage when the assessment is reopened acting on the finding or a direction. If impliedly a person is represented in the earlier proceedings, only then the question of intimate connection can be said to be established. Merely because the same income becomes the subject-matter of the two assessments an intimate connection cannot be established. **[*27 CTR 238, 137 ITR 213]***

Any person	1990	Kar-HC	Smt. Fouzia Shahi Nazeer V/s. B.K. Lingappa

….an application for a tax clearance certificate could be made and issued only to the transferor of the property and not to the transferee because the words **any person** occurring in section 230A could have reference only to the transferor and could not include the transferee as well. **[*182 ITR 342]***

Any person who has not hitherto being assessed	1964	Mys-HC	K.Y. Pilliah V/s. CIT

The words **any person who has not hitherto been assessed** in section 18A(3) of the Indian Income-tax Act, 1922, means any person who has not been actually assessed up to that date, and includes persons against whom assessment proceedings are pending but who have not been assessed up to the date. **[*53 ITR 705]***

Any person who is responsible for paying	1991	Mad-HC	Shital N. Shah V/s. ITO

The words **any person who is responsible for paying** found in section 194A of the Income-tax Act, 1961, have to be read in conjunction with section 204 of the Act which furnishes the meaning of person responsible for paying. This provision makes it abundantly clear that, if the payer is a company, the company itself including the principal officer thereof will be the person responsible for paying. If that be so, it is fairly apparent that the company itself including the principal officer thereof were liable for prosecution for the alleged contravention. Section 2(35) would then step in to find out as to who the principal officer would be. Section 2(35) makes it clear that the partners of the firm do not fall within that fold unless the Income-tax Officer had served a notice on any of them of his intention of treating them as the principal officer of the firm, connected with the management or administration thereof. **[*88 CTR 103, 188 ITR 376]***

Any policy of insurance	1985	SC	CWT V/s. Yuvaraj Amrinder Singh

While granting the exemption under section 5(l)(vi), the Legislature has used the expression **any policy of insurance**, which is one of very wide import. The exemption is not confined to rights or interests in life insurance policies alone, much less any particular species of life insurance policies, but it extends to rights or interests of an assessee in other types of insurance policies also. The exemption contemplated by section 5(l)(vi) covers interests of an assessee in all types of insurance policies and the expression any policy of insurance in the section would a fortiori attract within its ambit or scope a deferred annuity policy based on, human life, it being a species of life insurance policies and, therefore, unless there is some warrant to cut down the ambit or scope of that expression, the right or interest of an assessee in such a policy would be exempt from the charge of wealth-tax unless of course any moneys thereunder have become due and payable to the assessee on the valuation date.
[49 *CTR 211, 156 ITR 525, 23 TAXMAN 25]*

Any residential accommodation in the nature of a...	1992	Guj-HC	CIT V/s. Gaekwar Mills Ltd.

Under sub-section (3) of section 37 of the Income-tax Act, 1961, any expenditure incurred by an assessee after March 31, 1964, on maintenance of any residential accommodation including any accommodation in the nature of a guest house was allowable only to the extent and subject to such conditions, if any, as may be prescribed. Sub-section (4)(i) of section 37 lays down that no allowance shall be made in respect of any expenditure incurred by the assessee after the 28th of February, 1970, on the maintenance of any residential accommodation in the nature of a guest house. What clause (i) of section 37(4) refers to is not a guest house, but any residential accommodation in the nature of a guest house. The expression **any residential accommodation in the nature of a guest house** will have a much wider meaning than guest house. **[99 *CTR 19, 193 ITR 743, 62 TAXMAN 333]***

Any such debt or part thereof	2002	Raj-HC	CIT V/s. Bank of Rajasthan Ltd.

The use of the words **any such debt or part thereof** clearly indicates that the exclusion of the provision in the proviso to section 36(1)(vii) will apply only in cases, where a provision for bad and doubtful debts has been made in the relevant accounting year on the bad and doubtful debts, which were outstanding at the commencement of the relevant accounting year and/or were also outstanding at the end of the relevant year. The aggregate average advances with reference to which the deduction in respect of the provision for bad and doubtful debt can be allowed necessarily implies that such a provision has to be made in respect of the loans and

advances made at the end of the year. Thus, it is evident that the clauses, i.e., sections 36(1)(vii) and 36(1)(viia) are separate and they are distinct and independent. It is open for an assessee to claim benefit of the provision which enables him to get a larger benefit.
[*174 CTR 400, 255 ITR 599, 124 TAXMAN 781]*

Any sum	**1953**	**Cal-HC**	**CIT V/s. Samnugger Jute Factory Co. Ltd.**

The words **any sums** in section 15B(1) of the Indian Income-tax Act, 1922, must be sums assessable in their nature, being parts of the assessable income of the relative accounting year and sums brought into the assessment and about to be brought to charge. **[*24 ITR 265]***

Any sum payable	**2002**	**Mad-HC**	**Kalpana Lamps and Components Ltd. V/s. DCIT**

The expression **any sum payable** under clause (a) means a sum for which the assessee has incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law. The year in which the liability was incurred is taken as the year in which the sum was paid. That provision is meant for assessees who have received the deferral benefit under the schemes framed by the State Governments with regard to sales tax.
[*175 CTR 549, 255 ITR 491, 125 TAXMAN 1045]*

Any unit of residential accommodation	**2005**	**Ker-HC**	**CIT V/s. Abad Hotels India (P.) Ltd.**

The word any occurring in section 3 of the Expenditure-tax Act, 1987, cannot be restricted to one unit of residential accommodation. The words **any unit of residential accommodation** means all the units of accommodation. **[193 *CTR 408, 272 ITR 331, 142 TAXMAN 29]***

Any work	**1999**	**Ker-HC**	**CIT V/s. Indian Textile Paper Tube Co. Ltd.**

There is nothing in sub-section (1) of section 194C of the Income-tax Act, 1961, to hold that a contract to carry out a work or a contract to supply labour to carry out a work should be confined to works contracts and that the words **any work** occurring in the sub-section mean any work and not a works contract. Therefore, a transport contract simplicter (i. e., a transport contract for mere carriage of goods without loading and unloading facility) would amount to carrying out any work within the meaning of section 194C(1) of the Act and, therefore, deduction of tax at source at the rate of two per cent. from the amounts credited to the account of the contractor has to be made by a person responsible for paying any sum for the transport contract. **[*150 CTR 528, 236 ITR 993, 103 TAXMAN 29]***

Apparatus and appliances	**1981**	**Bom-HC**	**CIT V/s. I.B.M. World Trade Corporation**

The word **apparatus** is a word of much wider import than the word **appliances** and the definition of plant in section 43(3) of the Income-tax Act, 1961, shows that scientific apparatus is included in the word plant. But while a given appliance may be in the form of an apparatus, the converse will not always be true and every apparatus will not necessarily be an appliance. The word appliances is qualified by the word office in section 33 and the words have to be construed in the context of appliances which are generally used in an office as an aid or a facility for the proper functioning of the office. **[130 *ITR 739]***

Apparent	2001	Del-HC	Hotz Hotels Pvt. Ltd. V/s. CIT

In order to bring in application under section 154 of the Income-tax Act, 1961, the mistake must be **apparent** from the record. Section 154 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. It does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. The word mistake, in taxation laws, has a special significance and it is inherently indefinite in scope. The word apparent means that it must be something which appears to be so ex facie that it is incapable of argument or debate.

[*264 CTR 319, 248 ITR 647, 118 TAXMAN 94]*

Apparent	2001	Del-HC	Smt. Baljeet Jolly V/s. CIT

In order to attract the power to rectify under section 254(2) of the Income-tax Act, 1961, it is not sufficient if there is merely a mistake in the order sought to be rectified. The mistake to be rectified must be one apparent from the record. A decision on a debatable point of law or disputed question of fact is not a mistake apparent from the record. The plain meaning of the word **apparent** is that it must be something which appears to be so ex facie and is incapable of argument or debate. **[*250 ITR 113]***

Apparent from record	1957	Bom-HC	Arvind N. Mafatlal V/s. ITO

The expression **apparent from the record** should not be equated with the expression apparent on the face of the record. The mistake to be rectified should, however, be a mistake patent on the record and not a mistake which may be discovered by a process of elucidation, argument or debate. **[*164 CTR 37, 250 ITR 113, 113 TAXMAN 38]***

Applied	1981	AP-HC	CIT V/s. Nizams Charitable Trust

In order to secure exemption under section 11(1)(a) of the Income-tax Act, 1961, it is sufficient if the assessee provides or sets apart the funds for a charitable purpose and it is not necessary that the assessee must have spent the amount specified for a charitable purpose during the relevant assessment year. That this is the intention of the Legislature is evident from the word used, namely, **applied** in section 11(1)(a). If the intention of the Legislature was otherwise, nothing prevented the Legislature from using the word spent instead of applied in section 11(1)(a). **[131 *ITR 497]***

Applied	1988	Ker-HC	CIT V/s. St. George Forana Church

The word **applied** is wider in import than the word expenditure. According to Webster's Third New International Dictionary, the word applied means to put to practical use; engaged in for a utilitarian or contributory purpose; employed in the decoration, design or execution of useful objects. The word expenditure means disbursement. Expend means to pay out or distribute; to spend. The Supreme Court in the decision in Indian Molasses Co. (P.) Ltd v/s.CIT [1959] 37 ITR 66 held that the word expenditure means put out or away; spending something which is gone out irretrievably . Considering these two words, the word applied is of a wider import. The money or amount will not go irretrievably when it is applied to a purpose. **[170 *ITR 62]***

Appropriate authority	1946	Mad-HC	Venkata Seshavatharam V/s. Chapalamadugu Venkata Rangayya

The expression **appropriate authority** in clause (m) of section 54(3) of the Indian Income-tax

Act, 1922, includes a Civil Court where it is called upon to determine judicially whether a person has or has not been assessed to income-tax in a given year. **[*170 ITR 62, 36 TAXMAN 42]***

Appurtenance	**1998**	**Mad-HC**	**M. Ramalakshmi Reddi V/s. CIT**

What is necessary for the enjoyment of the building is alone covered by the expression **appurtenance**. The touchstone of appurtenance is dependence of the building on what appertains to it for its use as a building. What is integral is not necessarily appurtenant. A position of subordination, something incidental or ancillary or dependent is implied in appurtenance.
[*146 CTR 154, 232 ITR281, 100 TAXMAN 509]*

Arising out of the order passed by it	**1965**	**All-HC**	**Ram Nath Ram Prasad V/s. CIT**

A question cannot be said to arise out of an order passed by the Tribunal unless it was raised before it; in other words, every question of law applicable to the relevant facts proved or admitted before the Tribunal is not a question of law **arising out of the order passed by it**. It is not enough that the question of law may be applied to the relevant facts found or proved before the Tribunal; it must have been raised before it. The view that every question of law applicable to the relevant facts found or proved is a question arising from the Tribunal's order is wrong. **[54 *ITR 777]***

Arrears	**1958**	**Mad-HC**	**T.M.K. Abdul Kassim V/s. First Addl. ITO**

Before any **arrears** of tax can emerge there must be a legal obligation to pay an amount which has been ascertained or is easily ascertainable and a default in the performance of that obligation. **[33 *ITR 466]***

Articles	**1974**	**Bom-HC**	**CIT V/s. Hindustan Antibiotics Ltd.**

The word **articles** used in the expression has begun or begins to manufacture or produce articles in section 15C(2)(ii) must be interpreted regard being had to the object for which the section was enacted. The provision was enacted with a view to encouraging the establishment of new industrial undertakings and the object was sought to be achieved by granting exemption from tax on profits derived from such undertakings during the first five years. The object of the section pre-supposes that profits are capable of being earned. Hence, until an assessee reaches a stage where it is in a position to decide that a final product which can be ultimately sold in the market can be manufactured it cannot be said to have started manufacture of the articles. If it becomes necessary for an assessee to produce a trial product at an earlier stage to verify whether it can be used ultimately in the manufacture of the final article, the commencement of operation for the manufacture of the trial product would not constitute commencement of manufacture of articles for the purposes of section 15C **[93 *ITR 548]***

Articles	**1994**	**Cal-HC**	**CIT V/s. Madgul Udyog**

There could be some expansiveness in the expression **articles** in contrast to the word goods. But in the context of manufacturing or producing articles and deriving profits of business, articles should be synonymous with the word goods. Goods cannot include an immovable property and, therefore, the word articles cannot likewise include an immovable property including a house property. **[208 *ITR 541]***

Articles or things	1974	P&H-HC	Ramesh Chaner V/s. CIT

The **articles or things** referred to in sub-section (3) of section 132 are those which the authorised officer was empowered to search for and seize and no other. They must be articles or things which it may be necessary to search for before they can be seized. The power conferred under section 132(1) is contemplated in relation to those cases where the precise location of the article or thing is not known to the income-tax department and, therefore, a search has to be made for it, and where it will not ordinarily be yielded over by the person having possession of it and, therefore, it is necessary to seize it. It is such article or thing alone which can be the subject of an order under section 132(3). Therefore, it would not include a case where it is already known that the article or thing is kept in a certain building or place and will ordinarily be yielded up by the person holding custody of such article or thing. Under section 132, the power to search and seize go together. If no search is called for, no seizure can be made. Therefore, a search must be carried out under section 132(1) before an order under sub-section (3) can be passed. **[93 *ITR 244]***

Assessable income	1955	All-HC	Juggilal Kamlapat Cotton Spinning and Weaving Co. Ltd. V/s. CIT

Assessable income means income assessable to income-tax under the Indian Income-tax Act and has the same meaning wherever it is used in, sub-section (1) of section 23A. There is no warrant for the suggestion that the words assessable income in the first part of that section mean income which the company considers to be its assessable income and treats it as such in its balance-sheet and accounts. **[28 *ITR 78]***

Assessable income	1962	Bom-HC	CIT V/s. Homi Mehta and Sons Ltd.

The expression **assessable income** which was used in section 23A(1) of the Indian Income-tax Act, 1922, before it was amended in 1955, meant income liable to be assessed to income-tax. **[46 *ITR 1135]***

Assessed	1973	All-HC	CIT V/s. Roop Narain Ram Chandra (P.) Ltd.

The word **assessed** in section 18A(3) should be read in its ordinary sense as comprising every kind of assessment including a provisional assessment under section 23B of the Act. A person on whom a provisional assessment has been made is not a person who is not hitherto assessed within the meaning of section 18A(3) and is under no obligation to file an estimate of his income under that provision. **[87 *ITR 13]***

Assessed	1973	Guj-HC	Mandal Ginning and Pressing Co. Ltd. & others V/s. CIT

When section 30(1) of the Indian Income-tax Act, 1922, uses the words any assessee . . . . denying his liability to be assessed under this Act, the word assessed is used in a comprehensive sense to mean subjected to the whole procedure for ascertaining and imposing liability on the taxpayer. There is nothing in section 30(1) to indicate that a narrow meaning should be given to the word **assessed**. On the contrary, the words under this Act, clearly show that the reference here is to the whole procedure laid down in the Act for imposing liability on the taxpayer. The denial of liability to be assessed may be in respect of the whole income or any part of the income. It may be based on any ground, whether of fact or law, and it may be total denial of liability or denial of liability under particular circumstances. But, the denial must be of the liability to be assessed under the Act and not merely under any particular provision of the Act. When

an assessee claims that he is not liable to be proceeded against under section 35(1), he is not denying his liability to be assessed under the Act. His objection is only against a proceeding for assessment under the particular provision of the Act. **[90 *ITR 332]***

Assessed	**1980**	**Mad-HC**	**CIT V/s. N.D. Georgopoules**

The word **assessed** in section 212(3) refers only to the computation of the income or to the determination of the amount of tax payable. Merely because the computation of income or the determination of the amount of tax has not resulted in any tax liability it does not mean that the process of computation of income or the determination of the amount of tax is not an assessment. **[125 *ITR 632]***

Assessed tax	**1980**	**P&H-HC**	**CIT V/s. P.B. Nanda**

A reading of section 273 of the Income-tax Act, 1961, along with section 215(5) shows that for purposes of calculation of penalty on default committed under section 273(a), **assessed tax** means the tax on the basis of regular assessment reduced by the deductions permissible in accordance with the provisions of sections 192 to 194, section 194A, section 194C, section 194D and section 195 and further subject to advance tax. If the Legislature wanted to deduct also the amount paid on self-assessment under section 140A, then it would have been so stated in section 215(5). Therefore, penalty under section 273(a) is to be levied with reference to the net tax payable on completion of the assessment after giving credit only for the advance tax paid and the tax deducted at source but not for the tax paid on self-assessment under section 140A. **[*18 CTR 105, 125 ITR 429]***

Assessed tax	**1981**	**P&H-HC**	**CIT V/s. Hari Chand Hans Raj**

The words **assessed tax**, which has been defined in the Explanation to the section, provides that assessed tax, means tax as reduced by the sum, if any, deducted at source under Chapter XVII-B or paid in advance under Chapter XVII-C. **[*21 CTR 219, 128 ITR 467]***

Assessed tax	**1984**	**Mad-HC**	**CIT V/s. Madras Fertilisers Limited**

The expression **assessed tax** used in section 215(1) of the Income-tax Act, 1961, has to be understood as the tax finally assessed as reduced by the amount of tax deductible in accordance with the provisions of section 194A of the Act. So long as section 215 of the Act permits levy of interest only on the difference between the assessed tax and advance tax actually paid, the amount of tax deductible at source under section 194A will have to be taken note of and this has been specifically provided for in sub-section (5) of section 215. Consequently, in construing sub-section (5) of section 215, it is not possible to understand the expression deductible occurring therein as deducted. Where the statute provides for deduction of tax at source in respect of a particular income, the assessee concerned need not pay advance tax in relation to the said income. **[149 *ITR 703]***

Assessed tax	**1992**	**Cal-HC**	**CIT V/s. Borhat Tea Co. Ltd.**

While computing the **assessed tax** as defined under section 215(5) of the Income-tax Act, 1961, for the purpose of determining the quantum of minimum penalty imposable for the default falling under section 273(1)(b) tax deductible at source and deducted within the financial year has to be taken into consideration. The assessee is not liable to pay any advance tax on the income which is subject to deduction of tax at source. The advance tax is, paid in a financial year; the credit for the tax so paid in advance is given to the assessee at the time of regular assessment in the assessment year immediately following the year in which the advance tax

is paid. It is, therefore, clear that tax deductible in the context of section 215(5) means tax deducted at source. The amount of tax so deducted at source under the provisions of sections 192 to 195 is, so far as the affected person is concerned, to be treated as income received by him. For the purpose of computation of his total income, gross salary, gross dividend or gross interest, etc., i.e., the amount actually received plus the amount of tax deducted at source, will have to be considered. Unless tax is deducted at source during the relevant previous year by the payer, the payee cannot claim the benefit of such deduction while filing the estimate of advance tax. **[193 *ITR 134]***

Assessed tax	**1992**	**All-HC**	**CIT V/s. Adhyapak Prakeshan Mandir**

…. **assessed tax** means tax as reduced by the sum, if any, deducted at source under Chapter XVII-B or paid in advance under Chapter XVII-C, …. **[197 *ITR 714]***

Assessed tax	**1999**	**Guj-HC**	**CIT V/s. Ranoli Investment P. Ltd.**

The words **assessed tax** occurring in sub-section (1) of section 215 of the Income-tax Act, 1961, dealing with interest payable by the assessee are to be read in the light of the special meaning given to them under sub-section (5) of section 215 and accordingly, assessed tax would mean not the full amount of the assessed tax determined on the basis of the regular assessment, but the amount reduced therefrom to the extent of tax deductible in accordance with the provisions of sections 192 to 194, 194A, 194C, 194D and 195 so far as it related to income subject to advance tax. **[146 CTR 745, *235 ITR 433]***

Assessed to income-tax	**1941**	**Mad-HC**	**Venkadadri Somappa V/s. Narasepally Venkataswami Chetty**

……. to say that a person has been **assessed to income-tax** may properly be paraphrased by saying that he has paid income-tax, or that his income has been subject to income-tax, or has been reduced by the amount of the income-tax. **[9 *ITR 284]***

Assessee	**1936**	**Lah-HC**	**Probynabad Stud Farm**

Uder the Indian Income-tax Act, **assessee** is the person who is in actual receipt and control of the income. **[4 *ITR 114]***

Assessee	**1938**	**Bom-HC**	**CIT V/s. Mazagaon Dock Ltd.**

Where a person carrying on a business, profession or vocation has been succeeded in such capacity by another person and an assessment is made on the successor under section 26(2) of the Indian Income-tax Act, on the profits of the predecessor, the word **assessee** in section 10(2)(vi) of the Act must be construed as referring to such predecessor, and depreciation allowance should be calculated on the original cost to the predecessor and not to the successor. **[6 *ITR 124]***

Assessee	**1943**	**PC**	**Indian Iron and Steel Co. Ltd. V/s. CIT**

Though the words **assessee** in Section 10(2) must, when there is a successor to the business charged to tax, be read in certain of the paragraphs as including both predecessor and successor, it does follow as a consequence that the unabsorbed depreciation of the predecessor must be added to that of the successor or that even in a case when the only business concerned is that which is transferred, the business when transferred carries to the purchaser its unabsorbed depreciation. **[11 *ITR 328]***

Assessee	1960	All-HC	Moti Lal Purshottam Das V/s. ITO

…… for the purpose of fixing the liability for tax, the provisions of the Partnership Act would be available or the liability might pass to the partners under section 44, but the partners would Still not be covered by the word **assessee** as used in section 29. **[27 *ITR 202]***

Assessee	1962	SC	Addl. ITO V/s. E. Alfred

The generality of the definition of **assessee** in section 2(2) of the Indian Income-tax Act, 1922, is sufficient to include even a legal representative who is to pay the tax, though out of the assets of the deceased person. **[39 *ITR 497]***

Assessee	1968	Mys-HC	Raja Pid Naik V/s. Agricultural Income

On the death of an assessee, his legal representative becomes only an **assessee**; he would not become an assessee in default until the tax is again demanded from him under section 23, and is not paid within the time allowed by section 23. **[44 *ITR 442]***

Assessee	1978	Guj-HC	Sudhakar Manibhai and Kulinsingh Manibhai V/s.CWT

Section 4(1)(b) of the Wealth-tax Act, 1957, has to be interpreted by taking into account the definition of the expression **assessee** contained in section 2(c) of the Act which provides that assessee means a person by whom wealth-tax or any other sum of money is payable under this Act. There is nothing in section 4(1)(b) which would suggest that the expression assesseeis employed therein in a different or restricted sense so as to apply to assessees who are individuals only. The karta of Hindu undivided family who is a partner in a firm would fall within the expression assessee in section 4(1)(b). **[6 *CTR 473, 111 ITR 384]***

Assessee	1994	Guj-HC	CIT V/s. Gunvantlal Ratanchand

……the word **assessee** in section 2(7) of the Income-tax Act, 1961, is defined to mean a person by whom any tax or a sum is payable under the Act. The said definition includes other persons also. The word person in section 2(31) is defined by the Act to include a Hindu undivided family, company, firm, etc. Thus the word assessee would include not only an individual but also a Hindu undivided family and others who are included within the meaning of the word person. **[208 *ITR 1028]***

Assessee is in default	1968	Mys-HC	Raja Pid Naik V/s. Agricultural Income

On the death of an assessee, his legal representative becomes only an assessee; he would not become an **assessee in default** until the tax is again demanded from him under section 23, and is not paid within the time allowed by section 23. **[*69 ITR 401]***

Assessee in default	1980	Kar-HC	S.N. Santhalingam V/s. ITO

The scheme of the Income-tax Act is that there should first be an assessment. A notice of demand should be served on the assessee in regard to whom assessment is made and if default is made in payment of the amount demanded then such assessee would become an **assessee in default.** **[121 *ITR 868]***

Assessing Officer	2001	Cal-HC	Reckitt Colman of India Ltd. V/s. ACIT(TDS)

The expression **Assessing Officer** in section 2(7A) is not confined to the Assessing Officer making the regular assessment but includes others also who may come within the purview of section 2(7A). Rule 36A of the Income-tax Rules, 1962, has been inserted by way of amendment effective from July 12, 1988. On a plain reading of rules 36A, 37 and 37A, it clearly appears that as per the powers delegated by or under section 206 of the Act which is under Chapter XVII concerning tax deduction at source, the officer authorised has the jurisdiction to receive returns relating to tax deducted at source. The Assessing Officer has the jurisdiction under section 131 to call for the records or evidence or document or discovery as the civil court has got under the Code of Civil Procedure when trying a suit. Now under the same section 131, this Assessing Officer has been given power to impound books of account or other documents. This Assessing Officer has been given power to charge interest and to levy penalty. The authority having power to charge interest and levy penalty on a particular return cannot be said to be an officer who is meant for the purpose of accepting only TDS returns by affixing a rubber stamp. **[*172 CTR 499, 252 ITR 550, 124 TAXMAN 496]***

Assessment	1938	PC	CIT V/s. Khemchand Ramdas

The word, **assessment** is used in Income-tax Acts as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable, and sometimes the procedure laid down in the Act for imposing liability upon the taxpayer. **[6 *ITR 414]***

Assessment	1942	All-HC	Kunwar Bishwanath Singh V/s. CIT

The word **assessment** is used in the Act as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable, and sometimes the whole procedure laid down in the Act for imposing liability on the taxpayer. **[*10 ITR 322]***

Assessment	1967	SC	Kalawati Devi Harlalka V/s. CIT

The word **assessment** can bear a very comprehensive meaning; it can comprehend the whole procedure for ascertaining and imposing liability upon the taxpayer and there is nothing in the context of section 297 of the 1961 Act, which compels the court to give the expression procedure for the assessment a narrower meaning. The expression proceedings for the assessment of that person in clause (a) of section 297(2)(a) of the Income-tax Act, 1961, has a very comprehensive meaning. **[66 *ITR 680]***

Assessment	1971	SC	CIT V/s. Balkrishna Malhotra

The word **assessment** in the first proviso of section 34(3) meant not merely the computation of the income of the assessee but also the determination of the tax payable by him.
[*81 ITR 759]*

Assessment	1977	Bom-HC	CIT V/s. Bashirkhan Ismailkhan

There is nothing in the context of the provisions of clauses (f) and (g) of section 297(2) of the Income-tax Act, 1961, to warrant that the expression assessment therein can only refer to the original assessment and not to reassessment under section 34 of the 1922 Act or section 147 of the 1961 Act, as the case may be. The expression assessment in these two provisions should be given the meaning to be found in section 2(8) of the 1961 Act and would include reassessment. **[109 *ITR 629]***

Assessment	1981	Cal-HC	Kashiram Tea Industries Ltd. V/s. ITO

…**assessment** has been defined in the Act to mean reassessment, and regular assessment has not been defined to mean an initial assessment. **[*132 ITR 783]***

Assessment	1983	Cal-HC	Mohendra J. Thacker and Co. V/s. CIT

The word **assessment** in section 153 of the Income-tax Act, 1961, prior to its amendment with effect from April 1, 1971, means not merely the computation of the income of the assessee but also the determination of the tax payable by him. … **[*29 CTR1, 139 ITR 793]***

Assessment	1989	Mad-HC	CIT V/s. C.J. Sheth

The word **assessment** has been defined in section 2(8) of the Act of 1961 as including reassessment and the definition provision would apply if there is nothing repugnant in the subject or the context and there is nothing to indicate that the definition under section 2(8) of the Act cannot be read into section 297(2)(g) of the Act. Thus, if a reassessment for the year ending on March 31, 1962, or any earlier year, was completed on or after April 1, 1962, proceedings for penalty could be initiated and penalty also imposed or levied under the provisions of the Act of 1961. **[76 *CTR132, 179 ITR30, 44 TAXMAN 384]***

Assessment	1990	MP-HC	CIT V/s. Miss. Swarn Taneja

…the expression **assessment** is not used in the Income-tax Act merely in the sense of computation of income. The determination of the tax payable by the assessee is as much mandatory as the determination of his income. Section 143(1)(a) of the Income-tax Act, 1961, enjoins upon the Income-tax Officer not only a duty to assess the income of an assessee, but also a duty to determine the sum payable or refundable to the assessee on the basis of such assessment. It is, therefore, obvious, that an assessment under section 143(1) comprises computation of income and computation of tax on such income. A bare reading of the provisions of sections 143, 154 and 156 would show that where the income-tax authority amends any assessment order which has the effect of enhancing the assessed income, he is bound to issue and serve on the assessee a notice of demand under section 156 of the Act. Such notice would indicate the tax demanded. It is, therefore, apparent that the rectification of an assessment order would include rectification of computation of income as also rectification of computation of tax earlier made during the regular assessment and such rectification of mistake would take effect from the date the demand notice under section 156 is served on the assessee.

[87 *CTR66, 186 ITR 348]*

Assessment	1991	Raj-HC	CIT V/s. Multimetals Ltd.

In the Income-tax Act, the word **assessment** may carry different meanings depending on the context in which it is used. The words assessment and reassessment are wider in scope than the word regular assessment. Regular assessment is narrower in its scope and is limited only to the assessment under section 143 or section 144 of the Income-tax Act, 1961. A fresh assessment made under section 263 under the direction of the Commissioner of Income-tax is not a regular assessment. It does not fall within the purview of sections 143 and 144 read with clause (40) of section 2 of the Income-tax Act. Assessment made under section 263 has been termed fresh assessment. **[*88 CTR1, 187 ITR98]***

Assessment	2000	Mad-HC	CIT V/s. S. Antony

The assessment made for the first time though not on the basis of return voluntarily filed in the

manner required by the statutory provision and within the time prescribed therein is a regular assessment. The word **assessment** as defined in the Act includes reassessment.

[*125 CTR421, 242 ITR 363]*

Assessment	2000	Guj-HC	Prabhavati B. Solanki V/s. CWT

The term **assessment** in the provision prescribing the period of limitation in the Wealth-tax Act, 1957, has been used in comprehensive sense which includes the integrated process of computation of net wealth as well as computation of tax liability thereon. The two actions need not be simultaneous; they may be taken separately and at different times but the assessment is complete only when both the processes are over, namely, determination of net wealth and determination of tax payable on such net wealth. It is only when both the processes are complete that the assessment can be said to be completed. As a result, both the processes must take place prior to the expiry of the period of limitation.

[*159 CTR406, 243 ITR 827, 105 TAXMAN 563]*

Assessment	2001	Del-HC	CIT V/s. Punjab National Bank

Assessment is used as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable and sometimes the whole procedure laid down in the Act for imposing liability upon the taxpayer. In the scheme of things, the intimation under section 143(1)(a) of the Income-tax Act, 1961, cannot be treated to be an order of assessment.

[*166 CTR 340, 249 ITR 763, 116 TAXMAN 310]*

Assessment	2005	All-HC	CIT V/s. Sanjai Kumar Gupta

The word **assessment** is used in the Income-tax Act, 1961, in a number of provisions in a comprehensive sense and it includes all proceedings starting with the filing of the return or issue of notice and ending with the determination of the tax payable by the assessee. Proceedings for the assessment of a firm consist of computation of the income of the firm, determination of tax payable by the firm, apportionment of the income of the firm between its partners in the case of a registered firm, and in appropriate cases the imposition of tax on the firm after including the share of the income of certain partners in the income of the firm, even though the firm is registered. The proceedings under section 182 do not come to an end merely on computation of the income of the firm and the determination of tax payable by the firm on that income. When proceedings are taken under section 155 of the Act to give effect to the order of the appellate authority and in pursuance thereof treat a firm as registered under the Act, which was earlier treated as unregistered by the Income-tax Officer, it is a proceeding for assessment. In the proceedings under section 155, the Income-tax Officer amends the order of completed assessment of a partner in a firm on the assessment or reassessment of the firm, on the ground that the share of the partner in the income of the firm has not been correctly included in the income of the partner. Such proceedings are amendment proceedings and, therefore, clearly form part of the proceedings for assessment.**[276 *ITR73, 146 TAXMAN 462]***

Assessment made under this Act	1947	PC	Raleigh Investment Co. Ltd. V/s. Governor-Gen. in Council

The meaning of the phrase **assessment made under this Act** is an assessment finding its origin in an activity of the assessing officer acting as such; the circumstance that he has taken into account an ultra vires provision of the Act is in that view immaterial in determining whether the assessment is made under this Act. The phrase describes the provenance of the assessment, it does not relate to its occuracy in point of law. **[*15 ITR 332]***

Assessment or reassessment	1980	Del-HC	CIT V/s. Srikishan Dass

The words **assessment or reassessment** in the first limb of section 35(5) of the Indian Income-tax Act, 1922, are wide enough to include rectification and the Income-tax Officer is competent to rectify the assessment of a partner made under the 1922 Act, by invoking the provisions of section 35(5) to give effect to the consequences of an order or rectification passed under section 154 of the Income-tax Act, 1961, in the case of the firm.

[*18 CTR 297, 125 ITR 730]*

Assessment to be made under section 143(3)	1997	Mad-HC	CIT V/s. Sundaram Spinning Mills

The expression **assessment to be made under section 143(3)**, used in section 144B of the Income-tax Act, 1961, does not cover a reassessment and this expression is confined only to the assessments to be made originally and, therefore, the procedure prescribed under section 144B is not available to reassessments to be made under section 147. Consequently, the extended time limit provided for in Explanation (1)(iv) to section 153 is not available to the Department. **[*141 CTR109, 225 ITR214, 96 TAXMAN 287]***

Assessment year	1990	Mad-HC	Rockweld Electrodes (India) Ltd. V/s. CIT

The concept of **assessment year** must be understood in the manner prescribed under the provisions of the Income-tax Act and not with reference to a particular assessee.

[*83 CTR 45, 185 ITR 62]*

Assessment year	1999	SC	Premier Cable Co. Ltd. V/s. CIT

Section 2(9) of the Income-tax Act, 1961, defines the assessment year to be the period of 12 months commencing on the first day of April every year. It is a standard period of 12 months commencing on April 1 of every year. It does not depend upon one or other assessee and whether or not he had a previous year relevant to a particular assessment year. It is as invariable as the calendar year. The **assessment years** mentioned in sections 33 and 80J must be read in this light. **[1*53 CTR172, 237 ITR202, 103 TAXMAN 640]***

Assessment year	2001	Guj-HC	CIT V/s. Nuforam Industries

The concept of **assessment year** must be understood in the manner prescribed under the provisions of the Income-tax Act and not with reference to a particular assessee. Whenever the assessee is permitted to get relief for a specified number of consecutive assessment years, the assessment years should be taken in the natural sequence. Irrespective of the change of the assessment year of the assessee, the period of four years will have to be reckoned on the basis of the definition of assessment year as contained in section 2(9) of the Income-tax Act, 1961, (section 80J.) **[*171CTR171, 252 ITR697, 128 TAXMAN 571]***

Asset	1989	Ker-HC	CWT V/s. N. Lakshmikutty Amma

Life interest in property is an **asset** within the meaning of section 2(e) of the Wealth-tax Act, 1957. **[180 *ITR 289, 46TAXMAN184]***

Asset	1990	AP-HC	CWT V/s. Prince Muffakkam Jah Bahadur

The expression **asset** is defined in clause (e) of section 2, the relevant portion whereof reads

thus: (e) 'assets' includes property of every description, movable or immovable.
[*76 CTR56, 186 ITR421, 44 TAXMAN 34]*

Asset	1995	Bom-HC	CWT V/s. Vidur V/s. Patel

The definition of **asset** in section 2(e) of the Wealth-tax Act, 1957, is an inclusive definition. All properties of every description, movable or immovable, are included therein except those specifically excluded. **[*124 CTR343, 215 ITR30, 79 TAXMAN 289]***

Asset held by the assessee in such business	1973	Mad-HC	CWT V/s. K.M. Desikar

The word assessee in the phrase **asset held by the assessee in such business** in section 7(2)(a) of the Act has to be understood as including an individual, a firm or an association of persons and not merely a partnership. **[92 *ITR101]***

Assets	1963	All-HC	Ram Lakhan V/s. ITO

The word **assets** in section 24B(1) of the Indian Income-tax Act should be interpreted to include not merely the corpus but also the usufruct of the assets left by the deceased and it should make no difference that the usufruct accrued only after the date of the death of the deceased. Rents falling due after the death of a Hindu father, of property owned by the father, are **assets** of the father in the hands of his sons who have inherited such property after his death, and can, therefore, be attached for recovering income-tax payable by the father. **[47 *ITR 311]***

Assets	1965	Ori-HC	Vysyaraju Badri Narayanamurthy V/s. CWT

The word **assets** in entry 86 of List I of the Seventh Schedule to the Constitution of India is not qualified by any limiting expression and, on the other hand, by excluding agricultural lands alone the framers of the Constitution made it absolutely clear that all other assets would come within the scope of that entry. Therefore buildings and lands cannot be held to be excluded from the scope of the entry. Parliament was competent to levy wealth-tax on the capital value of lands and buildings. **[56 *ITR 298]***

Assets	1985	SC	CWT V/s. Yuvaraj Amrinder Singh

Section 2(e) defines **assets** to include property of every description; it, however, excludes certain items from the purview of the charge by excluding them from the definition of assets . A harmonious reading of section 2(e)(iv) with section 5(1)(vi) and section 5(1)(vii) would be that while non-commutable annuities are wholly outside the purview of wealth-tax, commutable annuities are exempt under sections 5(1)(vi) and 5(1)(vii) to the limited extent mentioned in each. It is well settled that when such a harmonious construction is possible and which furthers the object of the Act, namely, to promote thrift and channelise private savings for national use, the same must be preferred to the construction which leads to a conflict between sections 2(e)(iv) and 5(1)(vi). **[*49 CTR211, 156 ITR525, 23 TAXMAN25]***

Assets	1992	Bom-HC	CWT V/s. Sudha P. Patel

The definition of the term **assets** in section 2(e) of the Wealth-tax Act, 1957, is an inclusive definition and anything that amounts to property would fall within its ambit unless specifically excluded by the Act. Property is a term of the widest import and subject to any limitations or qualifications which the context may require, it signifies every possible interest which a person can acquire, hold or enjoy. **[196 *ITR 8]***

Assets	1996	All-HC	CIT V/s. Vidya Charan

From the inclusive definition given under section 2(e) it is clear that the word **assets** includes property of every description, movable or immovable, excluding the assets enumerated in the clause or sub-clause of that section. Section 2(e) takes in property of every description and that expression is qualified by the words movable or immovable. Properties which do not ordinarily answer the test of movability or immovability such as intangible rights or incorporeal rights, cannot be regarded to be assets within the meaning of section 2(e). A debit balance in the capital account of a firm cannot be said to be a tangible right and cannot be regarded as an asset of the industrial undertaking belonging to the firm.

[*133 CTR 375, 220 ITR 78, 86 TAXMAN 133]*

Assets	2005	Guj-HC	CWT V/s. C.D.R. Laxmidevi

The definition of **assets** in section 2(e) states that it includes property of every description, movable or immovable, but does not include the assets specified. Stock-in-trade was not an asset excluded from the definition in the assessment year 1981-82. Even if the assessee is a dealer in shares, such shares constitute assets. **[*193 CTR222, 274 ITR257, 144 TAXMAN 600]***

Assets	2005	All-HC	CWT V/s. Smt. Kiran Devi

Section 2(e)(v) of the Wealth-tax Act, 1957, as it stood after amendment by the Finance Act, 1969, excluded any interest in property where the interest is available to an assessee for a period not exceeding six years from the date the interest vests in the assessee from the term **assets** under the Act. **[*277 ITR 344, 147 TAXMAN 40]***

Association	1958	Mad-HC	Estate of Khan Sahib Mohd. Oomer Sahib V/s. CIT

Association does necessitate the exercise of volition of those who form the association. The exercise of that violation can be by or on behalf of those who form the association.An association of persons can include minors. To render an association of persons a taxable unit, for which section 3 of the Income-tax Act provides, the objects of the association must be to produce income, profits or gains. To associate is to join in a common purpose or action.

[33 *ITR 767]*

Association of individual	1966	Mad-HC	State of Madras V/s. Karuppan Chettiar

A common object to earn income, a joint endeavour towards that end and a resultant income being the fruit of the joint enterprise are the essentials which should be present before individuals can be clubbed together as an association to be taxed.When tenants-in-common of a property divide the income in the ratio of their definite shares without a division of the corpus by metes and bounds, they cannot be said to have earned their respective income by a joint endeavour. A joint management of the undivided property held in shares either by one of the sharers or by a duly appointed attorney and would not constitute them as **association of individuals**.

[61 *ITR 488]*

Association of individuals	1936	All	Mohammad Aslam V/s. CIT

The expression **association of individuals** in section 3 of the Indian Income-tax Act is - ejusdem generic- with the word immediately preceding, viz., 'firm' and before there can be an association of individuals within the meaning of the section it must first be shown that the

association has at least some of the attributes of a firm or partnership though not in the strictly legal sense of the term.Persons having specified but undivided shares in property which produces income do not come within the expression association of individuals in section 3 of the Act and are not liable to be assessed to income-tax as such. Even the appointment by a body of co-owners of a common collecting agent will not convert such body of co-owners into an association of individuals within the meaning of section 3. **[4 *ITR 412]***

Association of individuals	**1937**	**Bom-HC**	**CIT V/s. Laxmidas Devidas**

The words '**association of individuals**' in section 3 of the Indian Income-tax Act, must be construed in their plain and ordinary meaning. They are not ejusdem generis with the word immediately preceding, namely, 'firm'. The only limit imposed on the words is such as necessarily follows from the fact that the words appear in an Act imposing a tax on income, profits and gains, so that the association must be one which produces income, profits or gains. **[5 *ITR 584]***

Association of persons	**1960**	**SC**	**CIT V/s. Indira Balkrishna**

The word associate means to join in common purpose, or to join in an action. Therefore, **association of persons**, as used in section 3 of the Indian Income-tax Act, means an association in which two or more persons join in a common purpose or common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains. **[39 *ITR 546]***

Association of persons	**1985**	**All-HC**	**CIT V/s. S.B. Sugar Mills**

The expression **association of persons** as used in section 4 of the Income-tax Act, 1961, means an association in which two or more persons join in a common purpose or common action, and, as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains.

[*44 CTR 129, 156 ITR 273, 22 TAXMAN 277]*

Association of persons	**1988**	**AP-HC**	**CIT V/s. Friends Enterprises**

An **association of persons** must be one in which two or more persons join in a common purpose or a common action, and as the words occur in a section which imposes a tax on income, the association must be one the object of which is to produce income, profits or gains.

[*66 CTR 143, 171 ITR 269, 34 TAXMAN 411]*

Association of persons	**1993**	**Cal-HC**	**CIT V/s. Shri Krishna Bandar Trust**

It is now well-settled that the word individual does not necessarily and invariably always refer to a single natural person. A group of individuals may as well come in for treatment as an individual under the tax laws if the context so requires. The word association means to join in any purpose or to join in action. Therefore, **association of persons** as used in section 2(31)(v) of the Income-tax Act, 1961, means an association in which two or more persons join in a common purpose or common action. The association must be one the object of which is to produce income, profits or gains. In the case of a discretionary trust, neither the trustees nor the beneficiaries can be considered as having come together with the common purpose of earning income. The beneficiaries have not set up the trust. The trustees derive their authority under the terms of the trust deed. Neither the trustees nor the beneficiaries come together for a common purpose. They are merely in receipt of income. The mere fact that the beneficiaries or the trustees, being representative assessees, are more than one, cannot lead to the conclusion that they constitute an association of persons. **[*201 ITR 989]***

Association of persons	1998	All-HC	CIT V/s. N.K. Patni

The word associate means to join in common purpose, or to join in an action. Therefore, **association of persons** as used in section 3 of the Income-tax Act, 1961, means an association in which two or more persons join in a common purpose or common action, and the association must be one the object of which is to produce income, profits or gains.

[*148 CTR411, 234 ITR 12]*

At any time	1971	Cal-HC	CIT V/s. Srimati Minabati Agarwalla

The phrase **at any time**, with regard to the voluntary submission of returns under section 22(3), must mean at any time within the period prescribed by other provisions of the statutes; once the period mentioned in section 34(3) is over, there is an absolute bar to any order of assessment or reassessment unless it comes within the exceptions mentioned in the proviso to sub-section (3) of section 34. The view that since the liability of an assessee exists even when the machinery for assessment and realisation of the tax becomes non-available due to the expiry of the period mentioned in the machinery sections, which include section 34 of the Act, it is open to an assessee to waive the machinery and to invite the Department to realise from him the tax which has already accrued, is not correct. **[*79 ITR 278]***

At the time of making an assessment	1950	E.P.-HC	Rajmal Paharchand V/s. CIT

The expression **at the time of making an assessment** in section 25A means in the course of the process of assessment. It is not restricted to the time of making the final order determining the assessment. The power of the Income-tax Officer to pass an order under sub-section (1) of section 25A, therefore, arises when, at the time of making an assessment under section 23, a claim is made by a member that a partition has taken place but not necessarily during the accounting year. **[*18 ITR 1]***

At the time of credit of such income to the account of	1999	Guj-HC	CIT V/s. Ranoli Investment P. Ltd.

The words **at the time of credit of such income to the account of the payee** in section 194A would take within their sweep, the interest debited to interest account or any other nominal account when the debit is for a specific amount calculated with reference to the deductor's liability to a particular creditor in accordance with the terms and conditions of the loan. The time of deduction would be when the interest is credited. The liability of the deductor would arise for failure to make deduction at the time of credit notwithstanding that it came to be made later on at the time of actual payment. Deduction made at such belated stage of payment, would not be tax deducted at source properly so-called and such subsequent deduction even when deposited with the Government, cannot be treated as tax deducted at source.

[146*CTR745, 235 ITR433]*

Attributable to	1978	SC	Cambay Electric Supply Industrial Co. Ltd. V/s. CIT

In computing the total income of the assessee carrying on the business of an industry specified under section 80E of the Income-tax Act, 1961 [as it stood prior to its amendment by the Finance (No. 2) Act, 1967], for the purpose of the special deduction permissible thereunder, the balancing charge arising as a result of the sale of old machinery and buildings and worked out in accordance with section 41(2), irrespective of its real character, has to be taken into account and included as income of the business. In other words, the balancing charge will have to be

taken into account before computing the deduction of 8 per cent. under section 80E.The legal fiction under section 41(2) and the grant of special deduction under section 80E in the case of specified industries are so closely connected with each other than taking into account the balancing charge (i.e., the deemed profits) before computing the 8 per cent. deduction under section 80E(1) will amount to extending the legal fiction within the limits of the purpose for which the fiction has been created.The legislature has deliberately used the expression **attributable to**, having a wider import than the expression derived from, thereby intending to cover receipts from sources other than the actual conduct of the business of the specified industry. **[*7 CTR50, 113 ITR84*]**

Attributable to	**1979**	**All-HC**	**CIT V/s. Co-op. Cane Dev. V/s. Union Ltd.**

Section 80P(2)(c) of the Income-tax Act, 1961, exempts income of co-operative societies to the extent mentioned in the section if the profits or gains are **attributable to** the activity in which the co-operative society is engaged. The expression attributable to is much wider than the expression derived from and it covers receipts from sources other than the actual conduct of the business of the assessee. **[1*0CTR282, 118 ITR770]***

Attributable to	**1981**	**Mad-HC**	**CIT V/s. Ashok Leyland Ltd.**

In section 80-I the Legislature has deliberately used the expression **attributable to** which has a wider import than the expression derived from and has thereby shown its intention to grant the relief in respect of receipts from sources other than the actual conduct of the business of the specified priority industry. **[*130 ITR 900]***

Attributable to	**1984**	**Mad-HC**	**CIT V/s. Madurai District Central Co-op. Bank Ltd.**

The expression **attributable to** occurring in section 80P(2)(a)(i) has to be understood in a broad sense and it cannot be equated to the expression derived from.
[*148 ITR 196, 17 TAXMAN 247]*

Attributable to	**1985**	**Bom-HC**	**Khandelwal Ferro Alloys Ltd. V/s. R.M. Chakravorthi, ITO**

The expression **attributable to** occurring in section 280ZB of the Income-tax Act, 1961, is of wide import and any profits or gains having reasonable nexus to the activity of manufacture or production of specified articles must be considered attributable to such manufacture or production. The Legislature has deliberately used the expression attributable to instead of derived from and has thereby shown clear intention to grant relief even in respect of receipts from sources other than actual conduct of the business of manufacture or production of the specified item.
[39 *CTR 130, 152 ITR20, 16 TAXMAN 135]*

Attributable to	**1994**	**Mad-HC**	**CIT V/s. Seshasayee Paper and Board Ltd.**

As the term **attributable to** is wider than derived from, the relief is not confined only to the profits of the priority industry, strictly so called. It would have a wider ambit. In order to be eligible for deduction under section 80-I income could be from another source as long as that other source is in one form or the other connected with the business of the priority industry.
[*207 ITR 80]*

Attributable to	2005	All-HC	CCIT (Admn.) V/s. Kisan Sahkari Chini Mills Ltd.

The expression **attributable to** is much wider than the expression derived from. The expression attributable to suggests that the Legislature intended to cover the receipts from sources other than the actual conduct of the business of the assessee. **[273 *ITR 42]***

Authority	1974	All-HC	U.P. State Warehousing Corporation V/s. ITO

Ex hypothesi, the term **authority**, as occurring in section 10(29), cannot possibly be construed as referring to an authority having quasi-governmental powers. Any legal entity or juristic personality constituted by law for the purpose of marketing commodities would be an authority within the meaning of section 10(29). The petitioner which was established under the Warehousing Corporations Act, 1962, was an authority constituted under law within the meaning of section 10(29). **[94 *ITR129]***

Authority	1980	Cal-HC	Singhal Brothers P. Ltd. V/s. CIT

The mere fact that a juristic personality is created under any particular statute or law having as its direct or indirect object marketing of commodities will not make the entity an **authority** within the meaning of clause (29) of section 10 of the I.T. Act, 1961. Such juristic entity or personality must have some other attributes which would entitle it to claim to be an authority. To be an authority, the juristic entity or personality has to possess one or more of the following characteristics:(a) exercise of governmental or quasi-governmental power;(b) performance of governmental or quasi-governmental functions;(c) power to have its directions enforced with punishment, i.e., having a right to command and to be obeyed;(d) exercise of general or particular statutory power;(e) power to make regulations, rules or bye-laws having the force of law. A joint stock company, incorporated primarily for carrying on ordinary business or commercial activities cannot come within the meaning of authority under section 10(29) of the Act.
[124 *ITR 147]*

Auxiliary	2004	AAR	UAE Exchange Centre LLC

The word **auxiliary** in common English usage means helping, assisting or supporting the main activity. **[*89 CTR467, 268 ITR 9, 139 TAXMAN 82]***

Avoidance of tax,	1968	Guj-HC	CIT V/s. Sakarlal Balabhai

The words **avoidance of tax** in the marginal note of section 44F are not colourless words but are strong and compelling words connoting a positive volition or a deliberate intention on the part of the assessee to avoid tax. The section being punitive in character must be construed strictly and if two constructions are possible one which favours the taxpayer must be preferred as against the other which throws a greater burden upon him. **[*69 ITR186]***

B

Bad and doubtful debts	1955	Cal-HC	Hongkong and Shanghai Banking Corporation V/s. CIT

The expression **bad and doubtful debts** in section 10(2)(xi) does not contemplate two kinds of debts, but refers to the same class of debt namely, a debt which is bad and doubtful, i.e., a debt, of which the chance of recovery is nil or slender. A doubtful debt does not mean a debt which cannot be held to be irrecoverable. Such a debt may also be held to be irrecoverable wholly or in part. **[28 *ITR 199]***

Bad debts	1981	Guj-HC	Vithaldas H. Dhanjibhai Bardanwala V/s. CIT

Under section 36 of the Income-tax Act, 1961, it is clear that before any claim for allowance for a **bad debt** is held established by the Income-tax Officer it must appear that the concerned bad debt was written off as irrecoverable in the account books of the assessee for the relevant previous years. This requirement has become a condition for the grant of claim for bad debt allowance. To that extent, there is a clear departure from the scheme in the earlier Act. Still, so far as the exact requirement of the writing-off of the concerned debt as irrecoverable in the account books of the assessee is concerned, the language used in both the Acts, viz., the Act of 1922 and the Act of 1961, is almost identical. The only requirement of section 36(2)(i)(b) is that the concerned bad debt must have been written off as irrecoverable in the accounts of the assessee. If the debit entries posted by the assessee indicate the said fact the requisite statutory condition has got to be treated as fully complied with. Once the assessee has posted entries in the profit and loss account and corresponding entries are posted in the bad debt reserve account that would be sufficient compliance with the provisions of the statutory requirement for writing off as irrecoverable the concerned debt in the books of the assessee. No further requirement can be spelt out from the express language used by the Legislature. It is not necessary that the assessee must also post corresponding entries in the ledger account of the concerned parties and should close those accounts.

[*21CTR 190, 130 ITR95, 6 TAXMAN 105]*

Banking	2003	Bom-HC	CIT V/s. Ahmednagar District Central Co-op.Bank Ltd.

Banking is not restricted to receiving deposits for the purposes of lending. Banks offer various facilities to its customers. Section 6(1)(a) of the Banking Regulation Act, 1949, is an enabling provision. It provides for various forms of business akin to banking. Section 6(1) states, inter alia, that in addition to the banking business, a banking company may engage in specified forms of business enumerated in section 6(1)(a) to (o). Section 6(1)(b) states that in addition to the business of banking, a banking company may engage itself as agent for Government or local authority or any other person for giving receipts and discharges.

[*185 CTR 336, 264 ITR 38, 132 TAXMAN 226]*

Banking activity	2001	Guj-HC	Gujarat State Co-operative Bank Ltd. V/s. CIT

Parking of such surplus funds, in excess of banking reserves, cannot be considered to be a **banking activity** or attributed to banking activity, though it may be part of banking business in the wider sense. **[*167 CTR34, 250 ITR229, 119 TAXMAN 160]***

Became due	1972	Del-HC	P.C. Gulati Liquidator V/s. CIT

Under section 41, the point of time at which the excess realised over the written down value of assets sold has to be taxed, is not the previous year in which the sale took place or the previous year in which the money was received, but the previous year in which the money **became due**. No amount can be said to be due, within the meaning of that section, till it has become ascertained. **[*86 ITR 501]***

Before	1998	Bom-HC	CIT V/s. Vijaya Hirasa Kalamkar (HUF)

…the word **before** will have to be construed as up to or as not after. There are various provisions in the Income-tax Act wherein the expression before has been used (section 139(1)(b); section 184; section 212). The expression has always been taken to mean up to.
[*229 ITR 772]*

Being property of the assessee	1976	Del-HC	CIT V/s. Hindustan Cold Storage & Refrigeration P. Ltd.

The words **being the property of the assessee** appearing in section 10(2)(vi) of the 1922 Act had the same meaning as the words owned by the assessee appearing in section 32(1) of the 1961 Act, and these words merely clarified the position that already existed under section 10(2)(vi) of the 1922 Act. **[103 *ITR 455]***

Belonging	1976	SC	CWT V/s. Bishwanath Chatterjee

Under section 3 read with section 2(m) of the Wealth-tax Act, l957, liability to wealth-tax arises out of ownership of the asset and not otherwise. Mere possession or joint possession, unaccompanied by the right to, or ownership of, property would therefore not bring the property within the definition of net wealth for it would not then be an asset **belonging** to the assessee.
[103 *ITR 536]*

Belonging	1992	Cal-HC	CWT V/s. Jugal Kishore Bhagat

It is not necessary that a person should be the exclusive owner of the property so as to claim the benefit of clause (iv) of section 5(1) of the Wealth-tax Act, 1957. A part ownership or co-ownership may be sufficient for this purpose. What is probably required is that he should be having some rights of ownership and not merely a right of possession. The word **belonging** is capable of signifying possession of an interest less than that of full ownership. **[197 *ITR 250]***

Belonging to	2003	P&HC	IT V/s. Smt. Badhurani Deepinder Kaur

In Nawab Sir Mir Osman Ali Khan (Late) v. CWT [1986] 162 ITR 888, the Supreme Court stated that the liability to wealth-tax arises because of the belonging of the assessee and not otherwise. Mere possession or joint possession unaccompanied by the right to be in possession or ownership of property would therefore not bring the property within the definition of net wealth for it would not have been an asset belonging to the assessee. The Supreme Court observed that it had to be borne in mind that unlike the provisions of the Income-tax Act section 2(m) of the Wealth-tax Act, 1957, used the expression **belonging to** and as such indicates something over which a person has dominion and lawful dominion.
[*184 CTR 359, 262 ITR 403, 133 TAXMAN 591]*

Belonging to	2005	Cal-HC	Electro Zavod (India) Pvt. Ltd. V/s. CIT

The words **belonging to** mentioned in section 281B of the Income-tax Act, 1961, have to be read and understood in the context of the definition of transfer provided elsewhere in the said Act itself. **[278 *ITR 187*]**

Benami transactions	1996	Ker-HC	Bhargavy P. Sumathykutty V/s. Janaki Sathyabhama

The Benami Act contains a definition of **benami transactions** in section 2 thereof. The definition takes in only the first category or tripartite benami transactions. Section 3 of the Benami Act contains a prohibition against any person entering into any benami transaction. It also contains a penal provision. By expressing that the definition is intended for the Act and by employing the restrictive term means in preference to the word includes, Parliament has conveyed its intention that the word benami transaction is not to be confined to one section alone and that the definition would contain only one category—the tripartite—of benami transactions. The employment of the words unless the context otherwise requires has no special impact on the statute so far as benami transactions are concerned. **[217 *ITR 129]***

Beneficially held	1965	Bom-HC	Raghuvanshi Mills Ltd. V/s. CIT

The expression **beneficially held** does not, in the context in which it is used, imply only the relationship of trustee and cestui que trust. Although the expression may include that relationship, it is not used as an equivalent thereof. **[56 *ITR 470]***

Beneficiary	1946	Pat-HC	Province of Bihar V/s. Hayes

The definition of **beneficiary** as given in the Explanation to section 11 must be held to be controlled by its accepted legal meaning and that the section could not have been intended to apply to income received by full owners of property through their servant, agent or manager. **[14 *ITR 326]***

Benefit or perquisite obtained	1973	Mad-HC	CIT V/s. Adaikappa Chettiar

In order to attract section 2(6C)(iii) of the Indian Income-tax Act, 1922, the benefit or perquisite obtained should be by some of arrangement with company. The words **benefit or perquisite obtained** from a company would take in only such benefit or perquisite which the company had agreed to provide and which the person concerned could claim as of right based on such agreement. A mere advantage derived from the company without its authority or knowledge will not amount to a benefit or perquisite obtained. The word obtained occurring in the said section must be agreement oriented and cannot merely mean taken. **[91 *ITR 90]***

Block period	2001	Mad-HC	Lakshmi Jewellary V/s. DCIT

The expression **block period** has been defined in section 158B of the Income-tax Act, 1961. The opening part of this definition specifies that block period means the previous years relevant to ten assessment years, which precede the previous year in which the search was conducted under section 132 or any requisition was made under section 132A. Having so specified, a further addition is made to the block period by the latter part of the definition, which states that it would also include in the previous year in which the search was conducted or requisition made, the period up to the date of the commencement of such search or the date of requisition. The definition is in two parts. First, it says that it means the previous years relevant to ten

assessment years preceding the previous year in which the search was conducted or requisition made. Thereafter, an addition is made to that period by stating that the block period also includes in the previous year in which the search was made, the period up to the date of search. The contention that the word includes should be related to the specification to the previous years relevant to ten assessment years is difficult to accept. Reference to the previous years relevant to the ten assessment years is followed by the words preceding the previous year. It is, therefore, clear that no part of the previous year in which the search was conducted can be regarded as forming part of the previous years relevant to the ten assessment years referred to in the opening part of the definition. The words and includes which occur in the later part of the definition are words which can only be regarded as relevant to the term block period as the inclusion of the additional period to which reference is made, is after the words. The words and includes can only be for the purpose of regarding that period also as forming part of the block period. **[129 *TAXMAN 890]***

Body of individuals	**1980**	**Ker-HC**	**CIT V/s. T.V. Suresh Chandran**

Joining together for the purpose of producing income is the requisite for the formation of an association of persons. Such coming together or combining is a consensual act and depends upon the volition of the parties. Merely because certain persons are constituted joint owners such as by inheriting the property of a person on his death, they do not become an association of persons, for, in that event, the joining is the result of an operation of law and not of volition of parties. Some element of volition is necessary even for body of individuals. A **body of individuals** is different from individuals and if they are treated as a person because they are a body there must be joining by volition. **[*13 CTR 366, 121 ITR 985]***

Body of individuals	**1984**	**Ker-HC**	**CIT V/s. A.P.Parukutty Mooppilamma**

….the words, **body of individuals** occurring in the definition section should be understood in the context and collection of the words and not in isolation. In construing the words body of individuals occurring in section 2(31) of the I.T. Act, 1961, alongside the words association of persons, the aforesaid well-settled principle of interpretation laid down by courts should be borne in mind. It is now well-settled by decisions of the Supreme Court that in order to constitute an association of persons, persons must join in a common purpose or action and the object of the association must be to produce income. It is not enough that the persons receive the income jointly. The word body of individuals occurring in section 2(31) of the Act alongside association of persons should be understood in the said background and context.

[*38 CTR 354, 18 TAXMAN 275]*

Body of individuals	**1979**	**P&H-HC**	**Meera and Co. V/s. CIT**

The expression **body of individuals** must have a distinct meaning of its own irrespective of the fact that it may have some characteristics common with an association of persons. It could not be the same thing as, or a mere species of, an association of persons. An association of persons does not mean any and every combination of persons. It is only when they associate themselves in an income producing activity that they become an association of persons. The expression body of individuals should receive a wider interpretation, perhaps not wide enough to include a combination of individuals who merely receive income jointly without anything further as in the case of co-heirs inheriting shares or securities, but certainly wide enough to include a combination of individuals who have a unity of interest but who are not actuated by a common design and one or more of whose members produce or help to produce income for the benefit of all. A body of individuals need not necessarily be the result of an agreement, arrangement or design. It might arise out of a certain situation. **[*8 CTR 28, 120 ITR 564]***

Body of individual and an association of	1977	AP-HC	Deccan Wine and General Stores V/s. CIT

The expression **body of individuals** must have a distinct meaning of its own, otherwise Parliament would not have introduced it. It may have some characteristics common with an association of persons but it cannot be the same thing as, or a mere species of, an association of persons. Both expressions are placed alongside each other in the definition because of the common characteristics possessed by them, both deal with combinations, whether of persons or individuals, who have a common interest and who are engaged in income-producing activity.An association of persons does not mean any and every combination of persons. It is only when they associate themselves in an income-producing activity that they become an association of persons. The expression body of individuals should receive a wide interpretation, perhaps not wide enough to include combination of individuals who merely receive income jointly without anything further as in the case of co-heirs inheriting shares or securities, but certainly wide enough to include a combination of individuals who have a unity of interest but who are not actuated by a common design and one or more of whose members produce or help to produce income for the benefit of all. **[106 *ITR 111]***

Body of individual whether incorporated or not	1979	All-HC	CGT V/s. S.B. Sugar Mills

A firm is not a separate legal entity under the general law, but is a collective name of a body of persons who have entered into a partnership. Therefore, a firm would fall within the category of **body of individuals or persons, whether incorporated or not**, contained in the later part of the definition. **[1*20 ITR126]***

Book	1979	AP-HC	Satyanarayana Publishing House V/s. CIT

The word **book** is not defined in the Income-tax Act. Hence, the expression must be understood with reference to the connotation of the said word in common parlance; and in common parlance, the word book is comprehensive enough to include all kinds of books. Hence, books of all varieties except those which are specifically excluded from its purview under section 80QQ, such as magazines, brochures, newspapers, journals, etc., answer the description of books in section 80QQ. Guides which contain questions and answers and which are published for the benefit of students studying in schools and colleges, cannot be described as brochures or tract nor do they fall under the expression other publications of a similar nature by whatever name called. **[118 *ITR 519]***

Book assets	1986	AP-HC	CIT V/s. Warner Hindustan Ltd.

The expression **book asset** in rule 2 does not refer to a notional, fictitious and intangible asset. There is nothing to support this interpretation in the Explanation itself. The expression book asset should be understood in its normal sense as any asset appearing as such in the books of account of the company. The object of Explanation 1 to rule 2 is to prevent companies from bringing into existence or increasing paid-up share capital or reserve by revaluation or otherwise of any book asset. The Explanation does not apply where there has been a real increase in the value of the asset which is realised, as opposed to any unrealised increase by taking recourse to revaluation. **[*46 CTR 34, 158 ITR 51]***

Books	2002	Bom-HC	Sheraton Appearels V/s. ACIT

In traditional terms, **books** means a collection of sheets of papers bound together with the

intention that such binding shall be permanent and the papers used are kept collectively in one volume. It may also be assumed that it connotes the intention that it should serve as a permanent record. **[175 *CTR 651, 256 ITR 20, 123 TAXMAN 238]***

Books of ac/s.	2002	Bom-HC	Sheraton Appearels V/s. ACIT

If **books of account** is considered in isolation, then it may mean books in which merchants, traders and businessmen generally keep their accounts and which are maintained for recording (a) all receipts and expenses with matters relating thereto; (b) all sales and purchases; and (c) the assets and liabilities. They are the documents and ledgers which must be prepared and kept by the business entity including the profit and loss account and the balance-sheet. In traditional terms, books means a collection of sheets of papers bound together with the intention that such binding shall be permanent and the papers used are kept collectively in one volume. It may also be assumed that it connotes the intention that it should serve as a permanent record. At the same time to account means to reckon, and it is difficult to conceive of any accounting which does not involve either additions or subtractions or both of these operations of arithmetic. A book which contains successive entries of items may be a good memorandum book; but until those entries are totalled or balanced, or both, as the case may be, there is no reckoning and no accounts. A book which merely contains entries of items of which no account is made at any time, is not a book of account in a commercial sense…..Section 34 of the Evidence Act, 1872, refers to the words entries in books of account. The accounts under section 34 means accounts which are maintained in the regular course of business. Income-tax legislation has been using the term book or books of account right from its inception. But these terms are defined in the Act for the first time by the Finance Act, 2001, with effect from June 1, 2001. Section 2(12A) defines the said term as including ledgers, day-books, cash books, account books and other books whether kept in the written form or as print-outs of data stored in a floppy, disc, tape or any other form of electromagnetic data storage device. The above definition appears to have been framed by the Legislature keeping in view the development of computer technology. If the newly inserted definition of books of account inserted in the Income-tax Act is examined in contrast to the definition given under section 34 of the Evidence Act, it will be clear that the stringent requirements of section 34 are not to be found in the said definition. Obviously, for the simple reason that the purpose of both the legislations are different. The term books of account referred to in sub-clause (1) of clause (a) of Explanation 5 to section 271(1)(c) means books of account which have been maintained for determining any source of income. **[175 *CTR 651, 256 ITR 20, 123 TAXMAN 238]***

Books of the assessee	1970	P&H-HC	CIT V/s. Kartar Singh

The expression **books of the assessee** in the context in which it appears in section 10(2)(vii) of the Indian Income-tax Act, 1922, does not give any indication of the particular type of accounts which the assessee should maintain. That the accounts maintained by the assessee do not lead to the correct assessment of the income, profits and gains of the business has nothing to do with the allowance that can be granted under section 10(2)(vii). Therefore, where the assessee produced a memorandum book which showed the relevant entries regarding the purchase and sale of vehicles, and wherein the loss had been calculated and written off, the department cannot contend that such a book was not a book within the meaning of the section. **[*77 ITR 338]***

Borne	1984	SC	CIT V/s. Dalhousie Properties Ltd.

In the context of section 23(1), the expression **borne** should be construed as referring to the

amount of tax which the owner is liable to discharge and not merely the actual sum paid by him in discharge of his liability. **[*42 CTR 142, 149 ITR 708]***

Borne by	2005	AAR	Dhv Consultants

.....That the remuneration of the employees is **borne by** a permanent establishment, if the same is deductible in computing the permanent establishment's taxable profits in the source country. **[*197 CTR 105, 277 ITR 97, 147 TAXMAN 521]***

Borrowed money	1954	Cal-HC	CEPT V/s. Bhartia Electric Steel Co. Ltd.

The term **borrowed money** was used in Rule 5A of the First Schedule and Rule 2A of the Second Schedule to indicate and denote money actually borrowed as a loan in the ordinary sense and not also to indicate and denote money which, though obtained on some other basis and in some other kind of transaction, could be, on the failure of such basis and such transaction, made out to be borrowed money in essence and in law. **[25 *ITR 192]***

Break-up	1968	Ass-HC	Mahadeo Jalan V/s. CWT

The expression **break-up** in section 7 of the Wealth-tax Act is inextricably connected with the situation where the company was reached the stage of winding up and that expression cannot be applied to a company which is a going concern and there is nothing ostensibly wrong with it. **[69 *ITR 170]***

Broker dealer, broker, business, profession	1993	Bom-HC	CIT V/s. Lallubhai Nagardas and Sons

……..From the definitions of broker, broker dealer and profession and the discussion on profession in the Corpus Juris Secundum, it is clear that a stock broker cannot be said to be engaged in the practice of a profession. The real job of a stock broker is to make arrangements for sale of shares or securities of others. Such activity clearly falls within the expression business and not profession…….There is no dispute that stocks and shares are commodities which are marketable. A person selling his own shares and securities has always been held to be carrying on business and not engaged in the practice of a profession. The distinction between a dealer and a broker in common parlance is that a dealer sells his own goods whereas a broker sells or arranges the sale of the goods of others though there may be cases where the same person does both the acts, that is, sells his own goods and also arranges for the sale of goods of others. In either event, he is engaged substantially in the sale of goods. The question is whether such a person can be held to be engaged in the practice of a profession. The answer to this question, in clear terms, is in the negative for the simple reason that the activity of a sharebroker is nothing but a business activity which falls within the expression business as defined in clause (13) of section 2 of the Act. It does not fall within the expression profession even if it is interpreted in the broader sense to include many of the activities which were earlier not included therein. A broker is not held to be engaged in the practice of a profession in the English speaking world as is evident from the discussion in the Corpus Juris Secundum. **[*114 CTR 58, 204 ITR 93]***

Building	1967	SC	CIT V/s. Alps Theatre

The word **building** in clause (vi) of section 10(2) as much as in clauses (iv) and (v) means structures and does not include the site. **[65 *ITR 377]***

Building	1968	Bom-HC	CIT V/s. London Hotel

Upon a plain construction of section 10(2)(vii) and considering that section 10(2) refers to allowances to be made in computing profits and gains of business, the word **building** in section 10(2)(vii) would include a part of the building. **[68 *ITR 62]***

Building	1971	All-HC	CIT V/s. Kailash Motors

The word **building** in section 10(2)(vi) of the Indian Income-tax Act, 1922, means the superstructure and does not include the site on which it is erected. **[82 *ITR 253]***

Building	1984	Kar-HC	CIT V/s. Bangalore Turf Club Ltd.

The word **building** occurring in the Income-tax Act, 1961, has to be understood from the commonsense point of view and its use in the Act has to be appreciated in the context in which the provision for depreciation on building has been made, treating the same as the capital asset of an assessee. The roads laid in the proximity of the building belonging to the assessee, a turf club, for providing access to the race course premises and other buildings within the compound, fall within the meaning of the word building as referred to in section 32(1)(ii) of the Act, read with Appendix I in rule 5 of the Income-tax Rules, 1962, and hence depreciation is allowable on such roads. **[*38 CTR 162, 150 ITR 23, 15 TAXMAN 221]***

Building	1996	Bom-HC	CIT V/s. Indian Oil Corporation Ltd.

Building means structures and does not include site. Premium paid for leasehold land not includible in cost of superstructure. **[*134 CTR 416, 218 ITR511, 87 TAXMAN 117]***

Building	1998	Ker-HC	CIT V/s. Hotel Luciya

The terms **building** and plant occurring in section 32(1) of the Act, are not mutually exclusive and a building, depending on its nature and peculiarity, can be held as plant.Plant cannot necessarily be confined to an apparatus which is used for mechanical operations or process or is employed in mechanical or industrial business….Therefore, the test would be, does the article fulfil the functions of a plant in the assessee's trading activity? Is it a tool of his trade with which he carried on his business. If the answer is in the affirmative, it will be plant.If a building is merely a setting or place to accommodate some apparatus, then that will not be held as plant, but if a building is such that it does not merely accommodate something or which cannot be regarded merely as a setting or premises, but if that plays an important role in carrying on the business, then that would fall within the inclusive definition of plant.

[1*47 CTR 332, 231 ITR 492, 100 TAXMAN 438]*

Building, flat	1998	Kar-HC	Karnataka Bank Employees Association V/s. CIT

The words **building or flat** have not been defined in the Income-tax Act. The meaning which is given in common parlance has to be ascertained. With the growth of civilization, and more particularly in recent years in the cities, instead of constructing an independent building to be used as a house, the concept of multistoreyed flats has developed. The structure intended for human habitation having its place and intended for the occupation of a family has been defined as a house. This purpose is achieved by an independent house as well as a flat. The vertical growth leads to multistoreyed construction of buildings where independent flats are constructed for human habitation. The word house or building covers a flat for the purposes of withdrawal from the recognised provident fund to meet expenditure on building a house or purchasing a

site or a house or a house and a site under rules 68 and 69 of the Income-tax Rules, 1962. **[*151 CTR 487, 233 ITR 628, 102 TAXMAN 107]***

Building owned by the assessee	**1981**	**All-HC**	**Addl. CIT V/s. U.P. State Agro Industrial Corp. Ltd.**

The expression **building owned by the assessee** in section 32 of the 1961 Act has not been used in the sense of property, complete title in which vests in the assessee. The assessee will be considered to be an owner of the building under section 32 if he is in a position to exercise the rights of the owner not on behalf of the person in whom the title vests but in his own rights. **[*20 CTR 141, 127 ITR 97]***

Business	**1938**	**Alla-HC**	**Mahammad Faruq**

Business must be some activity which has for its object the acquirement of some profit which can be claimed as of legal right and the activities of the assessee could not be described as business. **[6 *ITR 1]***

Business	**1940**	**Mad-HC**	**CIT V/s. Bosotto Brothers Ltd.**

The term **business** as used in section 10 denotes an abstract and intangible thing, quite apart from any of these physical adjuncts, and quite apart also from such other elements as the goodwill, the business connections, the business reputation and so on. **[8 *ITR 41]***

Business	**1969**	**Mad-HC**	**P. Vadamalayan V/s. CIT**

The definition of **business**, being an inclusive definition and not being exhaustive, is indicative of extension and expansion and not restriction. **[74 *ITR 94]***

Business	**1972**	**SC**	**S.G. Mercantile Corporation P. Ltd. V/s. CIT**

The definition of **business** in section 2(4) was of wide amplitude and it could embrace within itself dealing in real property as also the activity of taking a property on lease, setting up a market thereon and letting out shops and stalls in the market. **[83 *ITR 700]***

Business	**1973**	**Guj-HC**	**CIT V/s. Saurashtra Cement and Chemical Industries Ltd.**

Business connotes a continuous course of activities. All the activities which go to make up the business need not be started simultaneously in order that the business may commence. The business would commence when the activity which is first in point of time and which much necessarily preceded all other activities is started. **[91 *ITR 170]***

Business	**1980**	**HP-HC**	**CIT V/s. Mohan Meakin Breweries Ltd.**

The word **business** has a wider connotation which comprehends within itself three important stages of the business of every industrial undertaking, viz., purchase, manufacture and sale. Therefore, when a particular asset is used in the capital work-in-progress that asset must be treated as an asset used in business. Similarly, if a piece of land is acquired or stores are put in transit they must be treated as having been used in business because user in business starts the moment the land or the store is purchased for the business of the undertaking and any attempt to limit the user in business to manufacture and subsequent sale would offend the clear

and simple meaning of the word business, which has a wider significance.The expression capital employed found in section 84(1) of the Act cannot be construed to mean capital used or utilised. Any asset purchased for the undertaking is capital employed in that undertaking.The capital which is employed in a particular undertaking should not be confused with the capital which is used in that undertaking. The whole capital which is employed by an entrepreneur in establishing a particular industry cannot and would not necessarily be utilised or used in manufacturing process. The employment of capital for the establishment of an industry has a very wide connotation. When an entrepreneur starts a new industry, for various commercial exigencies, he cannot utilise all the assets which are employed by him for starting that industry. Therefore, the value of the assets employed by that entrepreneur would always be more than the value of the assets which are actually utilised for bringing out production.

[*11 CTR 52, 122 ITR203, 2TAXMAN 103]*

Business	**1981**	**SC**	**Barendra Prasad Ray V/s. ITO**

The expression **business** does not necessarily mean trade or manufacture only: it is being used as including within its scope professions, vocations and callings for a fairly long time. The word business is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour and skill with a view to earning an income. **[129 ITR 295, 6*TAXMAN 19]***

Business	**1993**	**Ori-HC**	**CIT V/s. M.P.Bazaz**

The word **business** is a word of large and indefinite import. It is something which occupies the attention and labour of a person for the purpose of profit. It has a more extensive meaning than the word trade. An activity carried on continuously in an organised manner with a set purpose and with a view to earn profit is business. **[200 *ITR 131]***

Business	**1995**	**Mad-HC**	**CIT V/s. R.M.Meenakshisundaram**

The question whether a particular source of income is **business** must be decided according to ordinary notions of what a business is. The activity from which the income is derived must have a set purpose. The motive for the activity must be profit and not sport or pleasure. Even a single or isolated transaction can constitute business if it bears a clear indicia of trade, although the activity would normally be systematic and organised characterised by a course of dealings which are frequent, regular and continuous. **[212 *ITR 220]***

Business	**2000**	**Mad-HC**	**CWT V/s. K. Vijayakumar**

……the expression '**business**' though extensively used, is a word of indefinite import. In taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business, there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. The carrying on of activity of agriculture which necessarily involves time, attention and labour, is to be regarded as business if it is done with a profit motive and not for sport or pleasure.

[*166 CTR246, 243 ITR271, 107 TAXMAN 570]*

Business	**2001**	**All-HC**	**CIT V/s. Jai Bharat Theatre**

The word **business** has been defined to include every trade, occupation and profession. The question whether a particular letting amounts to business has to be decided in the circumstances of each case and each case has to be looked at from a businessman's point of view to find

out whether the letting was the doing of a business or the exploitation of his property by an owner. It is the actual activity carried on by the assessee that has to be seen…..

[*167 CTR 274, 247 ITR 295, 110 TAXMAN297]*

Business	**2002**	**SC**	**Commissioner of Sales Tax V/s. Sai Publication Fund**

. . .if the main activity is not business, then any transaction incidental or ancillary would not normally amount to **business** unless an independent intention to carry on business in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on business in the incidental or ancillary activity of sales rests on the department. The inclusion of incidental or ancillary activity in the definition of business contained in section 2(11) pre-supposes the existence of trade or commerce, etc. **[*177 CTR 1, 258 ITR 70]***

Business	**2005**	**All-HC**	**CIT V/s. U.P. Electronic Corporation Ltd.**

The term **business** is to be given a wide meaning and with the rapid advancement and growth in the field of science and technology even consultancy services offered would be covered under the term business. **[276 *ITR 45, 145 TAXMAN 494]***

Business already in existence	**1971**	**Cal**	**CIT V/s. Textile Machinery Corporation**

The term **business** is to be given a wide meaning and with the rapid advancement and growth in the field of science and technology even consultancy services offered would be covered under the term business. **[80 *ITR 428]***

Business and profession	**2000**	**Mad-HC**	**CIT V/s. International Clearing and Shipping Agency**

The terms **business** and profession are defined in the Income-tax Act, 1961, in sections 2(13) and 2(36), respectively. Though the scope of the term business is wide, if the activity is properly to be characterised as profession, then that activity cannot also be regarded as business. The distinguishing feature of a profession is the possession by the practitioner of the pro-fession of specialised knowledge involving intellectual skill and higher education and learning. The services rendered by a professional while practising the profession, are services for which he has been trained. The practice of a profession cannot be regarded as a commercial activity though the practice is not without compensation or profit. The compensation earned by the practitioner of a profession is by reason of the personal qualification possessed by him.

[158 CTR 672, 241 *ITR 172, 118 TAXMAN 730]*

Business and vocation	**1947**	**All-HC**	**Upper India Chamber of Commerce V/s. CIT**

Upon a proper construction of the words **business** and **vocation** in the context of the Indian Income-tax Act, there must be some real, substantive and systematic course of business or conduct before it can be said that a business or vocation exists the profits of which are taxable as such under the Act. In the case of a company, the words business and vocation are virtually synonymous, since there can be no room for a vocation, ……Business or vocation in ordinary parlance connotes activities in which a person is engaged with a set purpose, and the frequency or the repetition of the activity, though at times a decisive factor, is by no means an infallible test……The word vocation is a word of wider import than the word profession. **[15 *ITR 263]***

Business connection	1937	Ran-HC	CIT V/s. P.V.R.M. Visalakshi Achi

The word **business** does not merely qualify the word connection by describing the sort of connection. It has the significance indicated in section 2(4) of the Act and denotes an adventure or concern in the nature of trade, commerce or manufacture, and the word connection must be used in the sense of that with which one is connected; and the expression any **business connection** therefore, means any adventure or concern in the nature of trade, commerce or manufacture, being a business with which he (i.e., the person residing out of British India) is connected. **[*5 ITR 448]***

Business connection	1952	Bom-HC	Abdullabhai Abdul Kader V/s. CIT

The **business connection** contemplated by section 42 is something wider than mere doing business with India. All those cases in which the non-resident is merely doing business with India should be excluded from section 42.The language used by the Legislature in section 42(1) is very wide: any business connection is not necessary that business connection which is constituted by a permanent and exclusive agency. On the other hand, a mere casual connection, a connection which has no continuity, would also not be a business connection as contemplated by the Legislature under section 42. An isolated transaction through an agent, or even a connection for a short period, would not necessarily constitute business connection. It is impossible to give an interpretation to this expression which would be a good interpretation for all the innumerable cases which may arise. It is only possible to interpret the expression negatively rather than positively. In most cases it would depend upon the facts of the particular case as to whether the business connection has been established or not. **[*58 ITR 169]***

Business connection	1965	Raj	Bikaner Textile Merchants Syndicate Ltd. V/s. CIT

The expression **business connection** in section 42(1) of the Indian Income-tax Act, 1922, is an expression of wide and indefinite import and that expression is different from, though related to, the expression business as defined in the Act.Business connection of the nature contemplated in section 42(1) connotes some element of continuity between the person in the taxable territories who helped to make the profits and the person outside who receives or realises the profits, and an isolated transaction does not attract the operation of section 42. It is not the length of time during which the connection has subsisted but the nature of the connection which would determine whether a business connection within the meaning of section 42(1) has been established or not. A course of numerous dealings within a short time having an element of continuity about them would be sufficient to establish a business connection. **[*120 ITR 887]***

Business connection	1979	Cal	Biyani and Sons (P.) Ltd. V/s. CIT

The expression **business connection** used in section 9(1)(i) of the Act, 1961, undoubtedly means something more than business. A business connection involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non-resident and the activity in the taxable territories; a stray or isolated transaction is normally not to be regarded as a business connection. Business connection may take several forms; it may include carrying on a part of the main business or activity incidental to the main business of the non-resident through an agent, or it may merely be a relation between the business of the non-resident and the activity in the taxable territories which facilitates or assists the carrying on of that business. In each case, the question whether there is a business connection from or through which income, profits or gains arise or accrue to a non-resident must be determined upon the facts and circumstances of the case. **[129 *ITR 295, 6 TAXMAN 19]***

Business connection	1981	SC	Barendra Prasad Ray V/s. ITO

In the context in which the expression **business connection** is used in section 9(1), there is no warrant for giving a restricted meaning to it excluding professional connections from its scope. **[151** ***ITR286]***

Business connection	1985	Cal-HC	T.I. and M. Sales Ltd. V/s. CIT

The expression **business connection** postulates a real and intimate relation between trading activity carried on outside the taxable territories and trading activity within the territories, the relation between the two contributing to the earning of income by the non-resident in his trading activity. In the case of an agency agreement, the crux of the matter is the agent's authority to accept offers or to bind the principal. If that element is absent, it cannot be said that there was any business connection as contemplated by section 9.

[56 ***CTR 73, 164 ITR 401, 28 TAXMAN 462]***

Business connection	2004	AAR	UAE Exchange Centre LLC

The essential features of **business connection** are : (a) a real and intimate relation must exist between the trading activities by a non-resident carried on outside India and the activities within India; (b) the relation contributes directly or indirectly to the earning of income by the non-resident in his business; and (c) a course of dealing or continuity of relationship and not a mere isolated or stray nexus between the business of the non-resident outside India and the activity in India, would furnish a strong indication of business connection.

[*189 CTR 366, 268 ITR 156, 138 TAXMAN 87]*

Business connection	1987	Cal-HC	CIT V/s. Atlas Steel Co. Ltd.

A **business connection** contemplated under section 9 of the Income-tax Act, 1961, involves a relation between a business carried on by a non-resident and some activity in the taxable territories which is attributable directly or indirectly to the earnings, profits or gains of such business. **[*189 CTR 467, 268 ITR9, 139 TAXMAN 82]***

Business premises	1992	P&H-HC	CWT V/s. Jaidev Inder Singh

Where agricultural operations are carried on on urban land, the land will fall within the definition of the expression **business premises** as provided in rule 1(i), Paragraph B, Part I, of the Schedule to the Wealth-tax Act, 1957, and would thus be entitled to exemption from the charge of additional wealth-tax on urban assets, under Paragraph A(2) of the Schedule.

[*103 CTR 173, 195 ITR 367, 63 TAXMAN 25]*

Buyer	1998	HP-HC	Rudra and Co. V/s. Union of India

The Explanation to section 206C of the Income-tax Act, 1961, makes it clear as to who is a **buyer**. It says that the buyer is one who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in sub-section (1) of section 206C.

[*152 CTR 27, 233 ITR 66]*

Buyer	2001	SC	Union of India V/s. Om Prakash S.S. and Company

Buyer means a person who, by virtue of the payment, gets a right to receive specific goods and not one who is merely allowed/permitted to carry on business. ***(Section-206 C).***

[*248 ITR 105, 115 TAXMAN 325*]

* *Marginal notes are not decisive in interpreting a substantive provision of law but, in case of doubt, they can be relied upon as one of the aids for construction.*

C

Can not be recovered from him	1968	Ker-HC	R.K.V. motors and Timbers (P.) Ltd. V/s. CIT

The words **cannot be recovered from him** in the proviso to section 26(2) of the Indian Income-tax Act, 1922, do not postulate the difficulties that may be experienced in collection or the time that may elapse or the impediments that may be put forward in the way of collection of tax from the person succeeded but of the availability of sufficient assets from which the tax can be collected. Where it is extremely doubtful whether there were assets available with the person succeeded, who transferred his business to the successor, it cannot be said that proceedings against the successor under the proviso would be without justification. **[68 *ITR794]***

Capital	1982	MP-HC	CIT V/s. Anand Bahri Steel and Wire Products

The word **capital** in the business world means the net worth of an enterprise and excludes the borrowings. It is, therefore, wrong to assume that the expression capital employed is not open to the construction that it does not embrace moneys borrowed by the assessee and invested in the industrial undertaking. In some contexts, the expression capital employed may include the borrowed moneys or borrowed capital; but, in the context of section 80J, the expression does not include borrowed moneys and debts, as it is in this sense that the expression has been understood right from 1949. The computation of capital employed has to be in the prescribed manner as is expressly provided in section 80J and, therefore, the rules can prescribe as to what should or should not be included in the computation. The provision for deduction of borrowed moneys and debts in rule 19A(3) is not such which changes the character of that which has to be computed under section 80J and is valid. **[*21 CTR 166, 133 ITR365]***

Capital asset	1985	Kar-HC	Syndicate Bank Ltd. V/s. Addl. CIT

The term **capital asset** as defined in section 2(14) of the Income-tax Act, 1961, has a wide meaning and includes every kind of property as generally understood except those that are expressly excluded in the definition. A business undertaking as a whole would constitute a capital asset within the meaning of section 2(14). However, in deciding whether income-tax can be levied on capital gains, the following points have to be taken into account—(i) There are assets of different nature, those involving cost in the acquisition and those which could be acquired by way of production in which the cost element cannot be identified. But none of the provisions pertaining to capital gains suggest that they include an asset in the acquisition of which no cost at all can be conceived; (ii) the cost of acquisition mentioned in section 48 implies a date of acquisition; and (iii) if the cost of acquisition and/or the date of acquisition of the asset cannot be determined, then, it cannot be described as an asset within the meaning of section 45 and, therefore, its transfer is not subject to income-tax under the head Capital gains. **[*45 CTR 68, 155 ITR681]***

Capital asset	2006	Guj	Guj Patel Brass Works V/s. CIT

….. till that point of time when the assessee has some right that could be termed to be property, it will not fall within the definition of capital asset as defined under section 2(14) of the Act. **[*205 CTR139, 286 ITR598]***

Capital borrowed	2001	Del-HC	CIT V/s. Saraswati Chemicals and Allied Industries (P.) Ltd.

The expression **capital borrowed** used in section 36(1)(iii) of the Income-tax Act, 1961, in the context in which it is placed in the provision means money and not any other asset. …….. Interest payable on capital borrowed means interest, which actually becomes payable on an amount of money and not on any other asset. An amount due under a statute cannot be regarded as borrowed capital for the expression capital predicates the relationship of a borrower and a lender, which relationship has to be found as a matter of

[167 CTR150, 249 ITR235, 114 TAXMAN 564]

Capital employed	1978	Cal-HC	CIT V/s. Indian Oxygen Ltd.

Section 84 (now section 80J) of the Act refers to **capital employed** and not to assets used. Rule 19 is even more specific. It clarifies the expression capital employed and lays down that capital employed consists of certain classes of assets. It is clear from the rule that if an asset is acquired prior to the commencement of the accounting period, the question of its user or non-user is entirely immaterial. Whether such an asset is used or not, it will still be included in the capital employed in the business. ***[113 ITR 109]***

Capital employed	1985	SC	Lohia Machines Ltd. V/s. Union of India

There can be no doubt that the expression **capital employed** is susceptible of more than one interpretation and it may include long-term borrowings or it may not, depending on the context and the circumstances in which it is used. There is doubt even amongst lawyers and accountants whether short-term borrowings can be regarded as forming part of the capital employed. The expression capital employed is not a term of art nor is it an expression having a fixed connotation or meaning but it is susceptible of varied meanings, including or excluding short-term borrowings or long-term borrowings, whether of all categories or of any particular category or categories, depending on its environmental context. Since the expression capital employed has a variable meaning, which in a given case may or may not include borrowed monies, the Board could, in exercise of its rule-making power, exclude borrowed monies in the computation of the capital employed and in doing so, it would not in any way be acting contrary to the mandate of the statute. ***[44CTR 328, 152 ITR308, 20 TAXMAN 9]***

Capital employed	1990	Bom-HC	CIT V/s. Century Spg. and Mfg. Co. Ltd.

The moment capital is utilised for the purpose of acquiring any asset for a business, such **capital** becomes **employed** in the business. Whether the asset itself is actually used in the business or not, so far as the capital is concerned, it continues to be employed in the business.

[181 ITR 214]

Capital expenditure	1995	Raj-HC	CIT V/s. Jaipur Mineral Development Syndicate

Ordinarily, the word **capital expenditure** refers to the expenditure which is of a permanent nature or for securing tangible or intangible property, corporeal or incorporeal right or enduring benefit to the business. An expenditure may be once and for all or in respect of fixed capital or for enduring benefit. Purchase of capital asset and stock-in-trade marks the distinction between capital and revenue expenditure. If the asset is acquired as stock-in-trade then it will be revenue expenditure. ***[27 CTR253, 216 ITR 469, 82 TAXMAN 52]***

Capital loss	1990	Cal-HC	Darjeeling Consolidated Tea Co. Ltd. V/s. CIT

Capital loss is not defined anywhere in the Act. But it is clear that it must be a loss arising out of the same transaction as mentioned in section 45 of the Income-tax Act, 1961, as giving rise to a capital gain. In the first place, there must be a transfer of a capital asset and in the second place, there must be a loss arising out of such transfer. **[183 *ITR 493]***

Capital of that concern	1999	Guj-HC	CWT V/s. Lallubhai Gordhandas Charitable Trust

.....the expression **capital of that concern** which occurs in the second proviso to section 21A is intended to take within its sweep all the types of concerns in which the trust could invest its funds. The word capital will therefore take colour from the type of concern to which it is applied. When the concern is a company registered under the Companies Act, 1956, the word capital will have to be understood in the context of the provisions of that Act. As provided by section 13(4) of the Companies Act, in the case of a company having a share capital, the memorandum shall state the amount of share capital with which the company is to be registered and the division thereof into the shares of a fixed amount. The word capital is used in company law in various senses, but it is properly used to denote the share capital of a company. The nominal capital of a company sets the limit of capital available for issue and, therefore, the issued capital of a company cannot exceed that limit. The nominal capital is strictly speaking not capital at all, since it is only an authority by the shareholders to the directors to create new capital by the issue of shares. The issued capital is on the other hand a reality and not a mere authority to create new capital. The nominal capital must be stated in the memorandum of association and would be equal to nominal value of shares which the directors are authorised to issue. The alteration in the actual value of shares as contrasted with the nominal, does not affect the amount of issued capital and this would apply to the whole concept of share capital in whatever sense that term is used. The capital of a company would mean share capital in the context of the provisions of the second proviso to section 21A of the said Act and the meaning of the word capital cannot be made mercurial by attaching it to all the assets that the company may own, nor can it include the reserves of the company, which can at any subsequent time be distributed as dividend. The expression capital employed stands on a different footing in the context of the provisions of section 80J of the Income-tax Act read with rule 19A of the Rules framed thereunder and cannot be projected in the expression capital of that concern occurring in the second proviso to section 21A of the Act, the purpose underlying the provisions of section 80J being entirely different from the object sought to be achieved by the provisions of the second proviso to section 21A of the said Act, and for that matter even the provisions of section 13(4) of the Income-tax Act. **[*152 CTR 338, 239 ITR 448, 102 TAXMAN 174]***

Capital value of assets	1972	SC	Union of India V/s. Harbhajan Singh Dhillon

The expression **capital value of assets** does not take in either the general liabilities of the individual owning them or in particular the debts owed in respect of them.A valid tax on the capital value of assets including agricultural land cannot be imposed under the power under article 246(1) read with entry 86 in List I, as entry 86, which is the only entry authorising such a tax, restricts in express terms the power to impose a tax on the capital value of assets, exclusive of agricultural land, of individuals and companies. An interpretation of the content and scope of such power, however liberal, cannot be adopted to include within it anything which the entry in positive terms excludes or restricts. **[83 *ITR 582]***

Carrying on business in India	1979	Cal-HC	Imperial Chemical Industries Ltd. V/s. CWT

To determine whether a foreign company is **carrying on business in India** or not, it has to be ascertained initially if transactions are being had or entered into to which the company is a party. If the participation of the company in the transactions is direct, e.g., where contracts are executed in its name and through its own officers and employees, then there is no difficulty in holding that the company itself is carrying on business in India. The position may not be so clear where the company is connected with the transactions indirectly, e.g., through a third party in India. In such a case, it has to be determined further whether the transactions are those of the third party on his own account or whether he is acting for or on behalf of the foreign company as an agent. In the latter case again, the transactions would be those of the foreign company and not those of the agent and it would follow that the foreign company is carrying on the business. To come to the conclusion that business is being carried on in India the transactions must be found to have some connection with this country. Even if some connection is established it may not follow that business is being carried on in India where goods are imported into India in the course of international trade. The supplier abroad may not in such cases be held to be carrying on business in India.The tests enunciated in decided cases to determine the situs where the business or trade is being carried on are as follows: (a) Where the goods involved in the transaction are brought, stored, or located in India, further dealings with the same in India may indicate that business is being carried on in India. (b) Where transactions are had pursuant to contracts entered into by and between parties in India, the business resulting from such transactions would be held to be carried on in India. (c) Where payments involved in the transactions are made and received in India it would be relevant evidence to show that the business is being carried on in India. (d) Similarly, where negotiations leading to the transactions and forming a crucial part of the transaction take place within India, then again it would be a piece of evidence to hold that business is being carried on in India. **[119** ***ITR 46, 2 TAXMAN 127]***

Case	1991	All-HC	Shyam and Company V/s. CIT

A perusal of the Explanation to section 127 of the Income-tax Act, 1961, makes it clear that the expression **case** used in section 127 of the Act comprises not only a pending proceeding but also proceedings which may have been completed on or before the date of transfer. It also includes all proceedings which may be commenced after the order of transfer.**[*192 ITR 387]***

Case	1995	Kar-HC	United Breweries Ltd. V/s. DCIT (Assessment)

In section 127 of the Income-tax Act, 1961, the word **case** is used in a comprehensive sense for pending proceedings as well as for proceedings to be instituted in future. Consequently, an order of transfer can be validly made even if there is no proceeding pending and the purpose of transfer in such an event will simply be that all future proceedings have to take place before the officer to whom the case of the assessee is transferred. **[211** ***ITR 256]***

Case	2002	Guj-HC	Mohanlal S. Doppa V/s. CIT

Case is defined as any proceeding under the Income-tax Act for, or in connection with the assessment or reassessment of any person in respect of any year or years which is pending before the income-tax authority on the date on which the application is made under section 245C of the Act. **[172*CTR 1, 253 ITR 33, 121 TAXMAN 671]***

Cash	1985	Guj-HC	CWT V/s. Shri Sadiqali Samsuddin

The word **cash**, whether in hand or in the bank, would mean moneys which are readily available and not any money without any implication of ready availability. An amount belonging to an Indian national and lying in a frozen fixed deposit account in a bank in a foreign country and subject to temporary restraint prohibiting repatriation of such amount and permitting repatriation, if at all, of the balance amount only after certain deductions would not amount to cash so as to enable the wealth-tax authorities to take the face value thereof for purposes of computation of the wealth-tax liability of the assessee. **[41 CTR 282, *152 ITR 190]***

Casual	1991	Cal-HC	Asiatic Oxygen Limited V/s. CIT

The word **casual** means (1) subject to or produced by change; accidental; fortuitous (2) coming at uncertain times; not to be calculated on, unsettled. A receipt which is foreseen, known, anticipated and provided for by agreement cannot be regarded as casual even if it is not likely to recur ever or at least for a considerable time. **[189 *ITR 483]***

Casual visit	1950	Mad-HC	A.M.M. Sayed Abdul Cader V/s. CIT

The test to determine whether a visit is casual or not is to find out whether it was of an accidental or uncertain nature and whether the intention of the person visiting the place was for a temporary stay with the intention of reverting back to the place of his abode. It is easy to give instances of **casual visit**s rather than to define in precise terms the essence and the nature of a casual visit……...The question whether a visit is a casual or an occasional visit within the meaning of section 4A(a)(iii) depends not on mere presence in British India but on the quality of the presence in relation to the objects and intentions of the person sought to be charged to tax in a particular year. **[18 *ITR 310]***

Casual and non recurring	2004	All-HC	WG. CDR. K.P.K. Ghose V/s. CIT

The words **casual** and **non-recurring** have not been defined in the Act and they must, therefore, receive their plain and ordinary meaning. In the Oxford Universal Dictionary, the word casual has been defined as meaning : (i) subject to or produced by chance; accidental, fortuitous; (ii) coming at uncertain times; not to be calculated on; unsettled. . . In the context of the statute, unsettled seems to be the aptest meaning to be applied in such cases.

[*191 CTR 32, 268 ITR 260, 140 TAXMAN 437]*

Catching fish	1995	Bom-HC	CIT V/s. Fazalbhoy Ibrahim and Co. P. Ltd.

Catching fish does not amount to manufacture or production of fish, because when a person catches fish, he does not manufacture or produce fish. Therefore, an assessee who is engaged in the business of fishing with a trawler is not an industrial undertaking manufacturing or producing articles and is not entitled to relief under section 80J of the Income-tax Act, 1961. This position will not be affected even if the fish caught by the assessee in the deep seas are subjected to some process because the benefit of section 80J is restricted only to undertakings which manufacture or produce articles. **[*126 CTR 242, 214 ITR 239, 81 TAXMAN 54]***

Cause of action	1992	Ker-HC	Kurumber Betta Estate V/s. ITO

….. **Cause of action** has not been defined in the Constitution or in the Code of Civil Procedure. A liberal interpretation of the expression is necessary. Cause of action means a bundle of essential facts which it is necessary for the party seeking relief to prove, if denied by the

opposite party, in order to secure the relief prayed for. If one of such essential facts required to be proved to secure an order has arisen within the territory of a court it will have jurisdiction to entertain a writ petition presented in such territory…….. **[*197 ITR 499]***

Cause of action	**1998**	**Del-HC**	**Raj Kumar Mangla V/s. Chairman, CBDT**

The **cause of action** is a bundle of facts which would give the plaintiff a right to relief. Any and every fact, though relevant, would not necessarily be included in the bundle of essential facts constituting cause of action. If a cause of action arises within the jurisdiction of a High Court, the writ issued by it can extend and run beyond its territorial jurisdiction.

[*154 CTR 228, 234 ITR 113, 102 TAXMAN 110]*

Ceasing to be a partner	**1976**	**Mad-HC**	**Kaithari Lungi Stores V/s. CIT**

A change in the constitution of a firm may arise by admission, retirement, expulsion, insolvency or death of one or more partners subject to the conditions referred to in sections 31 to 35 of the Partnership Act. In the case of death of a partner, there should be a contract express or implied between the partners that the firm shall not be dissolved by the death of a partner. Under the ordinary law, every change in the constitution of a firm amounts to a dissolution of the old firm and bringing into existence of a new firm. In law the firm also has no legal existence apart from its members and it is merely a compendious name to describe a collection of persons who are partners. But the mercantile usage recognises the firm as a distinct person. The Partnership Act struck a medial note as between these two extreme propositions and recognised the continued existence of the firm in spite of a change in its constitution. The Income-tax Act went a little further and recognised the firm for the purpose of assessment as a unit independent of the partners constituting it.A change in the constitution of a firm is different from the dissolution of the firm. If there is a contract to the contrary against dissolution of a firm by the death of a partner, a change in the constitution of the firm also occurs by reason of the death of a partner provided there are at least two surviving partners. The words **ceasing to be partners** in section 187(2) of the Income-tax Act, 1961, would also include a case of death of a partner when such death by reason of the contract to the contrary or by reason of any law did not bring about the dissolution of the partnership. However, where there is no contract to the contrary against the dissolution of the firm by death of a partner, it cannot be stated that death will amount to a change in the constitution of the firm within the meaning of section 187(2). **[*104 ITR 160]***

Change in a constitution of a firm	**1984**	**MP-HC**	**Girdharilal Nannelal V/s. CIT**

In clause (a) of sub-section (2) of section 187 of the Income-tax Act, 1961, a clear provision is made to cover the situation ordinarily that of dissolution under the general law within the meaning of the expression change in the constitution of a firm for the purpose of this section. Resort to the general law and the concept of dissolution and **change in the constitution of a firm** according to the general law contained in the Indian Partnership Act, 1932, is, therefore, not warranted. The words and the case is not one covered by section 187 in section 188 also indicate that a situation which would be ordinarily one of succession of firm under the general law, can also be within the ambit of section 187 and, therefore, a case of that kind is excluded from the ambit of section 188 which provides for cases of succession of one firm by another. The definition of the expression a change in the constitution of a firm as contained in section 187(2) is a new definition. Such a definition did not exist in the 1922 Act. However, what was merely implicit in section 26(1) of the 1922 Act has been made explicit by the definition. There is no other significant difference between these corresponding provisions in the old and new

Acts. Plainly construed, section 187(2) indicates that if one or more of the partners of the old firm continue to be partners in the new firm, it is a case of change as defined in section 187(2). If a firm is dissolved and succeeded by another firm which has, as its partners, one or more partners of the original firm, the case will be one covered by section 187, as it would be merely a change in the constitution of the firm as defined in sub-section (2) thereof. **[*147 ITR 529]***

Charge	**1957**	**Cal-HC**	**CIT V/s. State Bank of India**

The word **charge** in section 9(1)(iv) means payment and not mere security. What section 9(1)(iv) provides for is a deduction of certain sums out of the assessee's income, after the income has become his. The broad ground that where there is only an application of the income, there can be no claim to exemption from tax or deduction in the computation of the income is, therefore, not available as an argument against a literal construction of section 9. **[31 *ITR 545]***

Charge	**1995**	**SC**	**State Bank of Bikaner and Jaipur V/s. National Iron and Steel Rolling Corp**

A **charge** is wider than a mortgage, it would cover within its ambit a mortgage also. Therefore, when a first charge is created by operation of law over any property, that charge will have precedence over an existing mortgage. **[126 *CTR 69, 212 ITR 428]***

Charitable	**1936**	**All-HC**	**Chamber of Commerce V/s. CIT**

Before an institution can be held to be '**charitable**' there must be an element of altruism, that is to say, the beneficiaries must not be able to claim the benefit. **[4 *ITR 397]***

Charitable object of general public utility,	**1976**	**Mad-HC**	**CIT V/s. Madras Stock Exchange Ltd.**

If the profit-making activity is the appointed means of achieving a **charitable object of general public utility**, the profit would be taxable. One cannot carry on a business and claim exemption on the income therefrom by merely saying that it is for a charitable purpose. There is a distinction between a business being held under trust whose profits feed a charity in which case the income is clearly exempt and the carrying on of a business in carrying out what is conceived as charitable purpose in which case the income may be taxable. The distinction is somewhat fine but it has to be kept in mind. The proposition that one must run the activity on a no profit no loss basis is applicable to a case where in the course of carrying out a charitable purpose there is an activity. In such a case if the aim was not to render the service on no profit no loss basis, the profit would be taxable. The test that the profit from a business which is taxable if carried on by a businessman does not cease to be taxable by a charity indulging in it is also applicable primarily to a case where the profit-making activity is embarked upon as the appointed means of achieving the purpose of the trust. **[105 *ITR 546]***

Charitable purpose	**1971**	**Cal-HC**	**CIT V/s. Indian Chamber of Commerce**

The proper interpretation of the definition of **charitable purpose** in section 2(15) of the Income-tax Act, 1961, is to consider the expression not involving the carrying on of any activity for profits as qualifying the expression the advancement of any other object of general public utility and not the other classes of charitable purpose mentioned in that section like relief of the poor, education and medical relief. In other words, the advancement of any other object of general public utility would be a charitable purpose provided that its advancement does not involve the

carrying on of any activity for profit. Parliament has thought it necessary to impose certain restrictions on the area of the object of general public utility and the area selected is that its advancement must not involve the carrying on of any activity for profit.Therefore, though the normal objects of a chamber of commerce may be held to be objects of general public utility, any profit that may be derived from its activities in the form of (i) arbitration fees, (ii) fees for issuing certificates of orgin, and (iii) fees for weighment and measurement for the benefit of traders in general are the result of activities carried on for profit within the meaning of section 2(15) of the Act and the income from such activities are not exempt from tax under section 11 of the Act. **[81 *ITR 147]***

Charitable purpose	**1978**	**Kar-HC**	**Addl. CIT V/s. Aroor Brothers Charitable Trust**

The last clause in the definition of **charitable purpose** in section 2(15) of the Income-tax Act, 1961, namely, not involving the carrying on of any activity for profit qualifies only the object immediately preceding it, that is, any other object of general public utility. The first three objects in section 2(15), namely, relief of the poor, education and medical relief are by themselves considered as charitable purposes and there was no need to qualify them. Because Parliament was introducing into the definition of charitable purpose a new category of a general nature, namely, advancement of any other object of general public utility, it added the qualifying words appearing in the last clause to prevent adventures of a purely commercial nature claiming the benefit of exemption under the Act. **[*7 CTR 99, 115 ITR 418]***

Charity	**1946**	**Bom-HC**	**Chaturbhuj Vallabhdas V/s. CIT**

The word **charity** if used generally or without qualifications or limitations denotes public charity and falls within the definition of charitable purpose in section 4(3) of the Indian Income-tax Act. **[*14 ITR 144]***

Chemical works	**1991**	**All-HC**	**CIT V/s. Babu Ram Ramesh Chand**

A higher rate of depreciation is allowable in the case of plant and machinery installed in a **chemical works**. The machinery and plant upon which the depreciation is claimed must be installed in a unit or plant which can be called chemical works. Merely because a certain chemical process is gone through, it cannot be said that it is a chemical works. For that matter, a chemical process is probably gone through in most of the manufacturing processes. To wit, even in a steel plant, some chemical process may be involved but on that account a steel plant cannot be called a chemical works. If the product is a chemical, the plant or factory producing the same can be called a chemical works. **[*95 CTR 232, 190 ITR 535, 54 TAXMAN 348]***

Child	**1992**	**Gau-HC**	**CIT V/s. Saraswati Devi Singh**

Section 2(15A) of the Income-tax Act, 1961, defined the term **child** as including a step-child. The object of the Explanation to section 64(1) is to determine in whose income, whether of the father or of the mother, the income of the child has to be included. This Explanation does not nullify the definition of child in section 2(15A). The step-child also would come within the purview of section 64(1)(iii) of the Act in view of the clear definition of child in section 2(15A). **[*195 ITR 185]***

Circular	**1985**	**Ker-HC**	**CIT V/s. Kerala Financial Corporation Ltd.**

Unless copies of the **circular**s are addressed to the other authorities mentioned in s.116, the

letter or document which is claimed to be a circular cannot be treated as such. The burden of proving that a particular document or letter is a circular is on the party who raises such a claim. **[*47 CTR297, 155 ITR 246]***

Class of income	**1949**	**Bom-HC**	**CIT V/s. B.B. & C.I. Railway Co-op. Mutual Death Benefit Society**

A **class of income** really means a category of income and it is a much wider expression than a head of income. **[*17 ITR 509]***

Class of income	**1966**	**Bom-HC**	**CIT V/s. Bombay State Co-operative Bank Ltd.**

The expression **class of income** used in section 60 and the notification issued under the section on 25th August, 1925, means a category of income, which is a much wider expression than heads of income. **[*59 ITR 31]***

Closure	**2006**	**A.P.**	**Sadula Janardhan (HUF) Vs. State Bank of Hyderabad**

The word closure connotes an act or process of closing something. **[*206 CTR117, 286 ITR 291]***

Colourable device	**2001**	**Del-HC**	**Bhagat Construction Co. (P.) Ltd. V/s. CIT**

A **colourable device** is a colourable transaction which is seemingly valid, but a feigned or counterfeit transaction entered into for some ulterior purpose.
[*165 CTR 181, 250 ITR 291, 114 TAXMAN 606]*

Commencement of business	**1993**	**AP-HC**	**CIT V/s. Sponge Iron India Ltd.**

The following are the principles applicable to determine whether a business has commenced: (i) whether a business has been commenced or not is a question of fact. However, what activities constitute commencement of business is a mixed question of law and fact and it has to be decided on the facts of each case; (ii) there is a distinction between setting up of business and commencement of business. A business is said to be set up when it is ready to commence; (iii) where the business consists of a continuous course of activities, for commencement of business all the activities which go to make up the business need not be started simultaneously. As soon as an activity which is the essential activity in the course of carrying on the business is started, the business must be said to have commenced. **(Commencement of business)**
[201 *ITR 770]*

Commercial assets	**1964**	**SC**	**Sultan Brothers Pvt. Ltd. V/s. CIT**

A thing is not by its very nature a commercial asset. A **commercial asset** is only an asset used in a business and nothing else, and business may be carried on with practically all things. **[*51 ITR 353]***

Commercial vehicles	**2002**	**Mad-HC**	**Sundaram Industries Ltd. V/s. CIT**

The term **commercial vehicles** used in the Ninth Schedule is not to be understood as being applicable only to a commercial vehicle, which is complete in all respects. Any such construction would render the manufacturer of a chassis ineligible to be regarded as a manufacturer of commercial vehicles. Without the chassis there can be no commercial vehicle. It is the essential base and it is that chassis with the other things included therein, viz., the engine, the wheels,

the steering mechanism, etc., that provides the mobility required in order to qualify it for being regarded as vehicle. The body built thereon is essential in order to make the vehicle usable for the purpose for which the vehicle is intended to be used as a commercial vehicle. ***[176 CTR 229, 258 ITR 38, 131 TAXMAN 93]***

Commission	**1960**	**Bom-HC**	**Harihar Cotton Pressing Factory V/s. CIT**

The expression **commission** has no technical meaning but both in legal and commercial acceptation of the firm it has definite signification and is understood as an allowance for service or labour in discharging certain duties such as for instance of an agent, factor, broker or any other person who manages the affairs or undertakes to do some work or renders some service to another. Mostly it is a percentage on price or value or upon the amount of money involved in any transaction of sale or service or the quantum of work involved in a transaction. It can be for a variety of services and is of the nature of recompense or reward for such services. ***[39 ITR 594]***

Commission or brokerage	**2006**	**Ker-HC**	**Kerala State Stamp Vendors Association V/s. Office of A.G.**

It is clear from section 194H of the Income-tax Act, 1961, that what is subject to deduction of income-tax at source is only commission or brokerage. It is clear from the definition of **commission or brokerage** as contained in the Explanation to section 194H that the commission or brokerage that attracts TDS is the one paid for services rendered in the course of sale which obviously can be services rendered by a third party like a broker or an agent and cannot be by the buyer as the buyer is not rendering any service except buying. A discount given on price by the seller to the purchaser cannot be termed as commission or brokerage for services rendered in the course of buying and selling of goods as the act of buying does not constitute rendering of any service. Wherever the Legislature wanted to levy tax on trade discount, the legislature specifically provided for the same which is clear from the provisions of section 194H of the Act which provides for deduction of tax on discount paid to the lottery dealers in the form of commission. ***[202 CTR 231, 282 ITR7, 152 TAXMAN 398]***

Commutation of the value of an annuity	**1981**	**Bom-HC**	**CWT V/s. Hirji Cowasji Jehangir**

The **commutation of the value of an annuity** necessarily implies that the annuitant gives up his right to receive the annuity. Commutation is a bilateral transaction in which the grantee of the annuity gives up his right to receive a sum annually in return for a lump sum and the grantor gets rid of his recurring liability to pay an annuity annually. The question whether in the case of an annuity, the value thereof could not be included in the net wealth of an assessee under section 2(e)(1)(iv) of the Wealth-tax Act, 1957, does not necessarily get answered in favour of the revenue merely because the terms and conditions of the grant of the annuity do not contain any positive provision which prevents a commutation of the annuity into a lump sum. It is when there is no express provision which prevents commutation of annuity into a lump sum grant that a further enquiry becomes necessary in that direction and such an enquiry must necessarily be directed at finding out whether the preclusion of such a right can be inferred from the terms and conditions of the grant. ***[17 CTR 36, 129 ITR 642]***

Company dealing in or holding investments	**1977**	**SC**	**Nawn Estates (P.) Ltd. V/s. CIT**

The expression **company whose business consists wholly or mainly in the dealing in or**

holding of investments in section 23A and Explanation 2(i) thereto of the Indian Income-tax Act, 1922, is not limited to companies whose principal business is the acquisition and holding of shares, debentures, stocks or other securities but covers companies whose primary or principal source of income is house property or capital gains as well. **[106 *ITR 45]***

Company carrying on an industrial undertaking in India,	**1966**	**Pat-HC**	**Harsco Corporation V/s. CWT**

The phrase any **company** established with the object of **carrying on an industrial undertaking in India** etc., in section 45(d) of the Wealth-tax Act, 1957, must mean in the context the formation and registration of a company or its incorporation either in India or outside in any foreign country. It cannot mean the establishment of a place of business in India.

[*60 ITR 715]*

Company whose business consists wholly .. holding	**1995**	**Mad-HC**	**CIT V/s. Emcete and Sons P. Ltd.**

The expression **company whose business consists wholly or mainly in the dealing in or holding of investments** consists of two parts, viz., (1) a company whose business consists wholly or mainly in the dealing in investments, and (2) a company whose business consists wholly or mainly in the holding of investments. **[*215 ITR 817]***

Compensation	**2001**	**Del-HC**	**CIT V/s. D.R. Sondhi**

The primary significance of the word **compensation** is equivalence and the secondary or more common meaning is something given or obtained as an equivalent. The large number of ways in which this expression compensation has been interpreted has one common factor running through them all, that is, compensation is regarded as an equivalent or recompense which makes good the lack of variation of something else. Flowing from the concept enlargement of the meaning of this expression takes in that which compensates for loss or provision, amends, remunerates or recompenses.*(Section 28(ii)(a))***[164*CTR 560, 248 ITR 695, 114 TAXMAN 259]***

Compensation	**2005**	**Kar-HC**	**CIT V/s. P. Surendra Prabhu**

…The expression **compensation** is a well known term. It means a payment to the holder of an office as compensation for being deprived of profits to which as between himself and his employer he would, but for an act of deprivation by his employer or some third party such as the Legislature, have been entitled**.** **[*198 CTR 209, 279 ITR 402, 149 TAXMAN 82]***

Compensatory	**1998**	**Kar-HC**	**Dr. S. Reddappa V/s. Union of India**

In the fiscal statute, the word **compensatory** would mean to make good the loss suffered by the Revenue on account of acts of commission and omission attributable to the assessee. Creating circumstances for compelling the assessee to discharge his statutory obligation cannot be termed to be a penalty. The collection of tax being an act of the State for providing protection, security and other amenities to the society, cannot, in all circumstances, be termed to be either a penalty or a punishment. The failure on the part of the assessee to abide by the provisions of the Income-tax Act has been made a basis for forcing him to compensate society by paying interest in terms of sections 234A, 234B and 234C of the Act. The amount on which interest is levied is an amount which can legitimately be said to be public revenue though payable by the assessee, but not paid by him, despite his knowledge of the position of law. Levy of interest on such amount which is utilised by the assessee for his own purposes has

rightly been directed to be compensated by means of directing him to pay the interest at the rates specified under the sections. The Legislature in its wisdom thought it appropriate to replace penal provisions by incorporating compensatory provisions. It is not possible to hold that the provisions of sections 234A, 234B and 234C are provisions of a penal nature simply because in actual application of these provisions there may be situations where an assessee may render himself liable to payment of interest under each one of these provisions simultaneously for the same period nor can the compensatory nature of the provisions be deemed to have been lost simply because in a given situation the provisions may on account of their simultaneous application to an assessee raise the liability to pay interest for the overlapping period to a rate higher than 2% per month. So long as the basic character of the levy remains compensatory, the rate of interest which is levied either by the provision itself or on account of its dual effect in a given situation will be wholly immaterial. The argument that the charge of interest for a period in excess of the period for which the assessee withheld the amount of tax payable by him amounted to penalty, is also without any substance. Such a provision appears to have been made with a view to facilitate the computation of liability of the assessee, without imposing any penalty upon him. The safeguards provided in the statute itself unambiguously show that the sections cannot be termed to be penal in character and thereby unconstitutional on the ground of violating the principle of audi alteram partem.

[*149 CTR 521, 232 ITR62]*

Compensatory tax	**2006**	**SC**	**Jindal Stainless Ltd. V/s. State of Haryana**

From the point of view of the Government, **a compensatory tax is a charge for offering trading facilities**. It adds to the value of trade and commerce which does not happen in the case of a tax as such. A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability). Taxes may be progressive rather than proportional. Compensatory taxes, like fees, are always proportional to benefits. They are based on the principle of equivalence. However, a compensatory tax is levied on an individual as a member of a class, whereas a fee is levied on an individual as such.The theory of compensatory tax is that it rests upon the principle that if the Government by some positive action confers upon individual(s), a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it. For a tax to be compensatory, there must be some link between the quantum of tax and the facility/services. Every benefit is measured in terms of cost which has to be reimbursed by compensatory tax or in the form of compensatory tax. In other words, compensatory tax is a recompense/reimbursement…In the context of article 301, therefore, compensatory tax is a compulsory contribution levied broadly in proportion to the special benefits derived to defray the costs of regulation or to meet the outlay incurred for some special advantage to trade, commerce and intercourse. **[283 *ITR 1]***

Complete	**1986**	**Del-HC**	**Chhotey Lal Bharany V/s. CIT**

……The word **complete** in the context meant free from deficiency, entire or perfect. To attract the provision contained in section l45, the return had to be correct and complete, which meant that the disclosure made therein must be full . Therefore, the Commissioner erred in holding that the petitioner had not made full disclosure. **[*46 CTR 317, 161 ITR 552]***

Completed assessment	**1975**	**Cal-HC**	**Hansraj Dhingra V/s. Union of India**

Completed assessment in section 155(1) means a positive act of completion which should be clearly distinguished from lapse of authority to assess on the expiry of the period of limitation

prescribed. It cannot be held that on the lapse of the authority to assess on the expiry of the period of limitation, the provisional assessment became final and complete in this case. **[98 *ITR 397]***

Complexity	**2006**	**SC**	**Rajesh Kumar V/s. DCIT**

The expression complexity in section 142(2A) would mean the state or quality of being intricate or complex or that it is difficult to understand. Difficulty in understanding would, however, not lead to the conclusion that the accounts are complex in nature. The formation of opinion under section 142(2A) that the accounts of the assessee require an expert audit should indisputably be based on objective considerations. No order can be passed on whims or caprice. All that is difficult to understand should not be regarded as complex. What is complex to one may appear simple to another. It depends upon one's level of understanding or comprehension. Sometimes, what appears to be complex on the face of it, may not be really so if one tries to understand it carefully. Therefore, special audit should not be directed on a cursory look at the accounts. There should be an honest attempt to understand the accounts of the assessee. **[*206 CTR 175, 287 ITR 91, 157 TAXMAN 168]***

Computation	**2004**	**Cal-HC**	**CIT V/s. Ashim Krishna Mondal**

The word **computation** has a narrower meaning than the word assessment. It is also completely distinct and different from estimate. In the context of the Income-tax Act, computation is a calculation, a method of determination by reckoning through calculation. It involves some methodical process with some amount of approximate mathematical precision based on the calculable data available. **[*192 CTR336, 270 ITR 160, 144 TAXMAN 365]***

Computer	**2002**	**Gau-HC**	**CIT V/s. Technotive Eastern (Pvt.) Ltd.**

Computer means one that computes; specifically a programmable electronic device that can store, retrieve, and process data. **[*176 CTR 422, 255 ITR 253, 124 TAXMAN 769]***

Concealment	**1981**	**All-HC**	**Mohammad Ibrahim Azimulla V/s. CIT**

The dictionary meaning of the word **concealment** is to hide, to keep secret. The Explanation to section 271(1)(c) does not alter or extend this meaning. It only assumes the concealment to exist if the assessee fails to prove that the non disclosure was not due to fraud or wilful conduct. Between fraud and innocence, carefulness and gross or wilful conduct, there may be numerous stages. One may not be innocent yet he may not be a fraud. An action may not be careful but for that reason only, it cannot be considered gross or wilful. The assessee may lead evidence in penalty proceedings or may rely on circumstances on record to show that the non-disclosure was not due to fraud or wilful conduct, and the Tribunal may find that the assessee was not careful. If non-disclosure is due to not being careful, it is not due to fraud or wilful conduct and the assessee cannot be said to be guilty of concealment. Even after the rejection of his explanation the authorities may find that the conduct of the assessee was not fraudulent or wilful. Disclosure under threat or pressure implies knowledge, and cannot be equated with disclosure which, with more alertness, an assessee could have made. The one assumes knowledge, the other negatives it. Proof that the disclosure was not due to care would establish that it was not due to fraud or gross or wilful conduct: **[*131 ITR 680]***

Concealment	**2000**	**Ker-HC**	**P.C. Joseph and Brothers V/s. CIT**

Concealment can be said to be in law the intentional suppression of truth or fact known to the injury or prejudice of another. Where, in order to make good an omission in the originally filed

return, the assessee voluntarily furnishes a revised return inclusive of the income so omitted, a question arises whether the filing of a revised return will not expatiate the contumacious conduct, if any, on the part of the assessee in not having disclosed the true income in the originally filed return. Blameworthiness attached to the assessee with reference to the original return cannot be avoided by filing a fresh return after concealment was detected by the assessing authority. ..... that a return in response to a notice under section 148 was not to be treated at par with or compared to a revised return. That being the position, the filing of the return including the agreed concealed income did not constitute a mitigating circumstance and penalty had been rightly levied. **[*158CTR104, 243 ITR818, 108 TAXMAN 253]***

Concealment	**2004**	**SC**	**K.C. Builders V/s. Assistant CIT**

Concealment inherently carries with it the element of mens rea. The fact that some figure or some particulars have been disclosed, even if it takes out the case from non-disclosure, would not by itself take the case out of the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt amounts neither to concealment nor to deliberate furnishing of inaccurate particulars of income, unless and until there is some evidence to show or circumstances are found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid imposition of tax thereon. **[*186 CTR 721, 265 ITR 562, 135 TAXMAN 461]***

Concern	**1994**	**Bom-HC**	**Dr. J.M. Mokashi V/s. CIT**

... the expression **concern** appearing in section 64(1)(ii) is a word of wide import and takes within its sweep and ambit all organisations or establishments engaged in business or profession, whether owned by a company, partnership or individual or any other entity.

[*115 CTR 73, 207 ITR 252, 72 TAXMAN 98]*

Concession	**2006**	**SC**	**Arun Kumar V/s. Union of India**

Section 17(2)(ii) declares that the value of any "concession" in the matter of rent respecting any accommodation provided to the employee by his employer would be a "perquisite". Nevertheless, it must be a "concession" in the matter of rent respecting any accommodation provided by the employer to his employee. It is, therefore, clear that before section 17(2)(ii) can be invoked or pressed into service and before calculation of concession as per rule 3, even after its amendment in 2001, is made, the authority exercising power must come to a positive conclusion that it is a concession. The "concession" is, thus, a foundational, fundamental or jurisdictional fact.

[*205 CTR 193, 286 ITR 89, 155 TAXMAN 659]*

Conclusive proof	**2006**	**SC**	**P.R. Metrani V/s. CIT**

Conclusive proof gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combatting that effect. In this sense, this is an irrebuttable presumption. **[*203 CTR 290, 287 ITR 209, 155 TAXMAN 186]***

Consideration	**1941**	**Pat-HC**	**Rai Bahadur H.P. Banerjee V/s. CIT**

The word **consideration** appearing in section 16(3) (a)(iii) is used in its legal sense as it is used in connection with the transfer of assets. The word has not been defined in the Transfer of Property Act and it must be given a meaning similar to the meaning which it has in the Indian Contract Act. **[*9 ITR 137*]**

Consideration	1995	Ker-HC	CGT V/s. C.K. Nirmala

One of the essential ingredients constituting a gift under section 2(xii) of the Gift-tax Act, 1958, is that the transfer of property by one person to another must be without consideration in money or money's worth. However, the word **consideration** is not defined in the Act and, therefore, it must carry the meaning assigned to it in section 2(d) of the Indian Contract Act, 1872. Section 2(d) of the Indian Contract Act provides that when at the desire of the promisor, the promisee or any other person had done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. Under the Contract Act, the adequacy or inadequacy of the consideration is immaterial but under the Gift-tax Act an agreement to transfer property otherwise than for adequate consideration gives rise to a gift to the extent of the inadequacy. There is nothing to show in the definition of the term consideration that the benefit of any act or abstinence must enure directly to the promisor. **[215 *ITR 156]***

Consideration	1997	Ker-HC	CGT V/s. Smt. K. Nagammal

The term **consideration** has not been defined under the Gift-tax Act. The term would carry the meaning assigned to it in section 2(d) of the Indian Contract Act, 1872. Consideration is that which creates a contractual relationship between the promisor and promisee in regard to the performance of promise and in regard to which the parties to the agreement or contract get related to each other. Consideration may be relating to a party other than the promisor and promisee. **[*135 CTR 17, 226 ITR 598]***

Constituted under an instrument	1954	Pun-HC	Padam Parshad Rattan Chand V/s. CIT

The words **constituted under an instrument** in section 26A of the Indian Income-tax Act, 1922, mean created or formed by a formal deed. But the fact that the partners of a firm who jointly execute a partnership deed choose to allege therein that, under an oral agreement, they have previously been partners for some time on the same terms as those embodied in the deed does not debar the firm from registration under section 26A. The deed cannot have retrospective effect as regards the income-tax assessment of the firm but there is no objection to the firm being treated as constituted under the instrument as from the date of the instrument itself.
[25 *ITR 335]*

Constituted under an instrument of partnership	1959	SC	R.C. Mitter and Sons V/s. CIT

The words **constituted under an instrument of partnership** in section 26A of the Income-tax Act include not only firms which have been created by an instrument of partnership but also those which may have been created by word of mouth but have been subsequently clothed in legal form by reducing the terms and conditions of the partnership to writing. Firms which were created by word of mouth but the constitution of which has subsequently been reduced to writing can also, therefore, be registered under section 26A…. ……. It is however necessary that the instrument of partnership should have been in existence in the accounting year in respect of which assessment is being made. **[36 *ITR 194]***

Contingent liability not provided for	1981	MP-HC	CWT V/s. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. (No.1)

A debt which does not exist on the valuation date could not be taken into consideration for determining the net wealth for purposes of the Wealth-tax Act, 1957, and such a debt must

exist on or before the valuation date.There is no statutory liability on an assessee to pay dividends compulsorily on cumulative preference shares, whether profits are earned or not, and the amounts of arrears of dividend on cumulative preference shares which are shown in the balance-sheet under the head **contingent liability not provided for** are not deductible in computing the net wealth as the liability is not a debt owed under section 2(m) of the Wealth-tax Act, 1957, where the general body of the company has not declared the dividend before the valuation date. **[131 *ITR 140]***

Continue	**1965**	**Bom-HC**	**Hiralal Jeramdas V/s. CIT**

Though it is true that one of the shades of the meaning of the word **continue** is to resume, and one of the shares of the meaning of the word resume is to take up a thing after an interruption, having regard to the different shades of meaning of both the words, the main idea conveyed is continuation of a thing without break. Even assuming that the word resume means taking up a thing after having given it up, having regard to the scheme underlying the relevant provisions of section 24 the words provided that the business, profession or vocation in which the loss was originally sustained continued to be carried on by him in that year are not capable of bearing a construction so as to include restarting a business, in which loss was suffered after its discontinuance. **[58 *ITR 1]***

Contractor	**2005**	**AAR**	**A.A.R. No. 542 of 2001**

The word **contractor** is defined in Concise Oxford Dictionary to mean a person who undertakes a contract to provide material or labour for a job.Contractor is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons, without submitting himself to their control in respect to the detail of the work.
[*193 CTR 328, 274 ITR 501, 143 TAXMAN 71]*

Control and management	**1960**	**SC**	**CIT V/s. Nandlal Gandalal**

The expression control and management meant de facto **control and management** and not merely the right or power to control and manage. **[40 *ITR 1]***

Control and management	**2006**	**AAR**	**Ms. Meenu Sahi Mamik**

The expression **control and management** meant de facto control and management and not merely the right or power to control and manage. Since the de facto control and management of the affairs of the firm would be with the resident partner the firm could not be said to be a non-resident. **[287 *ITR 514]***

Controlling interest	**1951**	**Cal-HC**	**CEPT V/s. Jeewanlal Ltd.**

The phrase **controlling interest** occurring in section 2(21) of the Excess Profits Tax Act, 1940, refers to the director's power of controlling by votes the decisions binding on the company in the shape of resolutions passed at a general meeting. The fact that the beneficial interest in the shares is in a third party or that a vote-carrying share is vested in a director as trustee is, therefore, immaterial. No distinction can be made between the case when the director trustee has, and when he has not, a beneficial interest in the shares. **[20 *ITR 39*]**

Controlling interest	**1953**	**SC**	**CIT V/s. Jeewanlal Ltd.**

In common parlance a person is said to have a **controlling interest** in a company when such a person acquires, by purchase or otherwise, the majority of the vote-carrying shares in that company, for the control of the company resides in the voting powers of its shareholders. In

this sense, the directors of a company may well be regarded as having a controlling interest in the company when they hold and are entered in the share register as holders of the majority of the shares which, under the articles of association of the company, carry the right to vote. It is not, however, necessary that in order to have a controlling interest the person or persons who hold the majority of the vote-carrying shares must have a beneficial interest in the shares held by them. They may hold the shares as trustees and may even be accountable to their beneficiaries and may be brought to book for exercising their votes in breach of trust, nevertheless, as between them as shareholders and the company, they are the shareholders, and, as such, have a controlling interest in the company. When a shareholder holding the majority of shares authorises an agent to vote for him in respect of the shares so held by him, the agent acquires no interest, legal or beneficial, in the shares. The shares being always subject to the will and ordering of the shareholder, the controlling interest which the holder of the majority of shares has never passes to the agent. **[24 *ITR 475]***

Cooperation	**2003**	**Cal-HC**	**CIT V/s. Bimal Kumar Damani**

The word **cooperation** employed in the amnesty scheme was required to be read and interpreted in the context of the amnesty scheme. Once the income was denied and alternatively claimed as business loss, the element of co-operation evaporates.

[*180 CTR 452, 261 ITR 87, 129 TAXMAN 564]*

Co-operation	**1981**	**Kar-HC**	**Mahalakshmi Rice Mills V/s. CIT**

The expression **co-operation** in any enquiry relating to the assessment, in section 273A should be held to mean that the assessee did not resort to litigation, obstruction or evasive tactics in concluding the assessment and no more. **[*19 CTR 177, 129 ITR 53]***

Corrosive chemicals	**1989**	**P&H-HC**	**CIT V/s. Saraswati Industrial Syndicate Ltd.**

The words **corrosive chemicals** employed in entry (ii) B(7) of Para III of Part I of Appendix I to the Income-tax Rules, 1962, contemplates only free chemicals and does not include non-free chemicals of corrosive effect. **[178 *ITR 419, 45 TAXMAN 11*]**

Cost of acquisition	**1996**	**Cal-HC**	**CIT V/s. Octavious Steel and Co. Ltd.**

The **cost of acquisition** of an asset, be it a capital asset or any other asset must be understood in its common sense, that is, it must represent the expenditure incurred in acquiring the asset.

[*137 CTR 257, 221 ITR 810, 82 TAXMAN 79]*

Cottage industry	**1973**	**All-HC**	**District Co-operative Federation Ltd. V/s. CIT**

The expression **cottage industry** occurring in section 14(3)(i)(b) contemplates an industrial activity of which a well-recognised feature is that it is commonly located in the cottages or homes of the artisans. It is carried out on a small scale with a small amount of capital and a small number of workers and has a turnover which is correspondingly limited. **[87 *ITR 639]***

Cottage industry	**1982**	**Del-HC**	**Addl.CIT V/s. Indian Co-operative Union Ltd.**

Primarily a cottage industry is carried on by the families in their dwelling houses but when the term **cottage industry** is applied to co-operative societies, the idea of a family unit does not fit in. A co-operative society can in a way be likened to a family constituted of its members.

Where the members of a cooperative society are engaged in the manufacture of goods in their cottages or dwelling houses it can be said that the family constituted of its members is engaged in a cottage industry. Before it can be said that a co-operative society is engaged in an industry it is necessary that there must be an activity relating to an industry. An industry implies manufacture of certain articles and cannot embrace a business of mere purchase and sale of goods. **[134 *ITR 108*]**

Cottage industry	**1988**	**Ker-HC**	**CIT V/s. Tax Textile Industries Co-operative Society Ltd.**

A **cottage industry** is one carried on by persons in their homes. But the phrase cottage industry used in section 80P of the I. T. Act, 1961, has to be understood in the context of the Act and in the background of the section. The concept of cottage industry in the context of section 80P cannot be limited to industries carried on by families in their own houses.
[*66CTR 103, 170 ITR 465, 35 TAXMAN 271]*

Course	**1989**	**SC**	**CIT V/s. East West Import and Exports P. Ltd.**

Course ordinarily conveys the meaning of a continuous progress from one point to the next in time or space and conveys the idea of a period of time; duration and not a fixed point of time. In the course of such previous year in the Explanation to section 23A(1) would, therefore, refer to the period commencing with the beginning of the previous year and terminating with the end of the previous year. Therefore, it would necessarily mean that free transferability of the shares by the holders to other members of the public should be present throughout the previous year.
[*76 CTR9, 176 ITR 155, 43 TAXMAN 26]*

Crane	**2002**	**Guj-HC**	**Gujco Carriers V/s. CIT**

The word **crane** when used for an inanimate object means a machine for moving heavy objects usually by suspending them from a projecting arm or beam. Crane is any of a diverse group of machines that not only lift heavy objects but also shift them horizontally. Movable cranes are mounted on railway, cars, motor trucks or chassis equipped with caterpillar treads and the hoisting machinery is mounted so as to counterpoise part of the load on the boom and thereby, prevent the entire crane from overturning while carrying the load. A mobile crane mounted on a truck constitutes a single unit known as truck crane which is adapted for use on roads for special services. The truck on which the crane is mounted is constructed and adapted specially to carry the crane. **[*174 CTR 324, 256 ITR 50, 122 TAXMAN 206]***

Credit society	**1977**	**Mad-HC**	**CIT V/s. Coral Mills Workers Co-op. Stores Ltd.**

A **credit society** within the meaning of section 14(3)(i) of the Indian Income-tax Act, 1922, and section 81(i) of the Income-tax Act, 1961, can only mean a society which provides credit by way of loans of money to its members and not a society which sells goods on credit. **[106 *ITR 868]***

Criminal contempt	**1999**	**SC**	**ITAT V/s. V.K. Agarwal**

….the definition of **criminal contempt** under section 2(c) of the Contempt of Courts Act, 1971, refers not merely to publication by words, signs, etc., but includes the doing of any act whatsoever which scandalises or tends to scandalise or lowers or tends to lower the authority of any court [section 2(c)(i)] or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any manner [section 2(c)(iii)]. Therefore, any act which tends to

interfere with the administration of justice or tends to lower the authority of any court can be punished for contempt. It is not necessary that there should be an actual interference with the course of administration of justice. It is enough if the offending act or publication, tends in any way to so interfere. If there are insinuations made which are derogatory to the dignity of the court and are calculated to undermine the confidence of the people in the integrity of the judges, the conduct would amount to contempt….Article 129 of the Constitution provides that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. The article confers power on the Supreme Court to punish for contempt of itself and in addition, it confers some additional power relating to contempt as would appear from the expression including. The plain language of the article clearly indicates that the Supreme Court as a court of record has power to punish for contempt of itself and also something else which could fall within the inherent jurisdiction of a court of record. In interpreting the Constitution, it is not permissible to adopt a construction which would render any expression superfluous or redundant. While construing article 129, it is not permissible to ignore the significance and impact of the inclusive power conferred on the Supreme Court. The expression including was deliberately inserted in the article. Article 129 recognises the existing inherent power of a court of record in its full plenitude including the power for the contempt of inferior courts. The Supreme Court has jurisdiction to punish for contempt of the Income-tax Appellate Tribunal. ***[150 CTR 513, 235 ITR 175, 101 TAXMAN 382]***

Current liabilities and provisions	**1992**	**Del-HC**	**CIT V/s. Modi Industries Ltd.**

Accounts are made up annually and **current liabilities and provisions** must relate to those items which existed as on the last date of the accounting year. True and correct representation of the profits and losses will not be known unless the current liabilities are accounted for. If a definite figure is known, then the same would be regarded as a current liability. But, if the liability exists, e.g., income-tax or excise duty, but no assessment has been made and amount determined, then only a provision will have to be made. It is incumbent upon the company to make a provision in its accounts for every liability which exists on the last date of the accounting year. In respect, however, of a liability which is to arise in the future even if the amount or extent of liability is known, it is not incumbent on the company to provide for the same in its accounts. However, a company may be prudent enough to keep a sum apart, from out of its profits, with a view to meeting the future liability as and when it arises. The same may be kept apart for a specific purpose, like Debenture Redemption Account which would be a reserve created to meet a future liability, or an amount may be transferred from out of its accumulated profits to the general reserve for future utilisation. ***[197 ITR 655]***

Current repairs	**1956**	**Bom-HC**	**New Shorrock Spinning and Manu. Co. Ltd. V/s. CIT**

The word **current** in the expression current repairs does not mean petty but denotes such repairs which are attended to when the need for them arises and are not allowed to fall into arrears or to be accumulated. If the assessee, although the need has arisen, does not attend to that need and allows the repairs to get accumulated, it could not be said that when he is expending money on these repairs he is expending them on current repairs. But if the need for repairs had not arisen before they were actually effected, even repairs done long after the acquisition of the asset would be current repairs. ***[30 ITR 338]***

Current repairs	**1962**	**Mad-HC**	**A.Y.S. Parisutha Nadar V/s. CIT**

The expression **current repairs** in section 10(2)(v) of the Indian Income-tax Act, 1922, indicates expenditure incurred by an assessee in relation to a building or machinery necessitated during

the time when his business was conducted and by reason of the business itself, such as an account of wear and tear and the like. There can be no expenditure incurred on account of current repairs either before the business started or after the business has ceased. **[*46 ITR 1041]***

Current repairs	1993	Del-HC	Modi Spinning and Weaving Mills Co. Ltd. V/s. CIT

One of the ingredients of an amount being allowed as a deduction under section 30(a)(ii) of the Income-tax Act, 1961, is that the amount must be spent for purposes of carrying out **current repairs**. An amount spent in carrying out repairs which were long overdue cannot be said to be spent on current repairs. Section 30(a)(ii) is not concerned with the question as to whether the nature of the repairs is capital or revenue. As long as the repairs which are carried out fall under the category of current repairs, then, irrespective of the fact that the repairs have been carried out to a capital asset and may otherwise have been regarded as capital expenditure, the section specifically allows deduction. Current repairs must necessarily mean repairs which are required to be carried out from time to time as and when a defect arises. If there has been wear and tear on an item, like the floors of a building, over a number of years and ultimately they are replaced, then such replacement cannot be regarded as current repairs. **[82 *ITR 352]***

Current repairs	2002	Del-HC	CIT V/s. Volga Restaurant

The expression **current repairs** in section 31 of the Income-tax Act, 1961, means expenditure on building, machinery, plant which is not for renewal or restoration. It is only for preserving or maintaining an already existing asset which does not bring a new asset into existence or does not give to the assessee a new or different advantage and they must be such repairs as are attended to as and when the need for them arises and the question as to when a building, machinery, plant or furniture requires repairs and when the need arises must be decided not by any academic or theoretical test but must be decided by the test of commercial expediency. But if the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure. **[*170 CTR 206, 253 ITR 405, 119 TAXMAN 757]***

Current repairs	2002	Mad-HC	CIT V/s. Madras Cements Ltd.

…… In order to constitute **current repairs** the expenditure must have been incurred to preserve and maintain an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or for obtaining a new advantage. It is difficult to accept that for the purpose of determining the allowability of expenditure under the head Repairs the entire productive apparatus of a manufacturing company be treated as one single asset and wholesale replacement of complete identifiable and distinct parts be regarded as a repair effected to the production facility as a whole. While judging a claim for deduction under the Income-tax Act the scope of the term repair cannot be stretched beyond all recognition.

[*175 CTR 551, 255 ITR 243, 123 TAXMAN 412]*

Current repairs to machinery	1956	Pat-HC	CIT V/s. Darbhanga Sugar Co. Ltd.

The expression **current repairs to machinery** in section 10(2)(v) of the Indian Income-tax Act must be interpreted to mean repairs to machinery in the current accounting year. There is nothing in that section to suggest that the expenditure on repairs cannot be allowed as a proper deduction if the repairs are not petty. Current cannot be interpreted to mean petty. The section does not say anything about the magnitude of the expenditure. **[29 *ITR 21]***

D

Data processing	2002	Gau	CIT V/s. Technotive Eastern (Pvt.) Ltd.

Data processing" means the converting of raw data to machine-readable form and its subsequent processing (as storing, updating, combining re-arranging or printing out) by a computer.
[*176 CTR 422, 255 ITR253, 124 TAXMAN 769]*

Dealer	2002	SC	CIT V/s. Sai Publication Fund

The **dealer** under section 2(11) in respect of the goods sold or purchased by him unless he carried on the business of buying and selling of such goods . . .. on a combined reading of sections 3, 2(5A) and 2 (11), the tax under the Act was leviable on the sales or purchases of goods by a dealer and not every person. . . . The definition of dealer in section 2(11) clearly indicates that in order to hold a person to be a dealer, he must carry on business and then only he may also be deemed to be carrying on business in respect of transactions incidental or ancillary thereto. **[*177 CTR 1, 258 ITR70]***

Debenture	2004	Raj-HC	CIT V/s. Shree Rajasthan Syntex Ltd.

The term **debenture** is not a technical term nor a term of art, but in its ordinary sense denotes one of the modes for borrowing money by any company in exercise of its borrowing powers….However, in the ordinary business sense, a debenture is generally understood to be a document usually but not necessarily under seal, acknowledging a debt and securing repayment thereof by mortgage or charge on the company's property or undertaking and providing that until repayment, interest will be paid thereon at a fixed rate payable usually either half-yearly on fixed dates. **[186 *CTR 59, 269 ITR 461, 134 TAXMAN 577]***

Debt	1962	Cal-HC	Ramesh Behari Ghose V/s. Union of India

The word **debt** means a sum payable in respect of a liquidated money demand recoverable by action. The word is a generic name for various kind of money payable, for example, a judgment debt or a public demand under section 3(6) of the Public Demands Recovery Act or a private demand for money had and received. **[45 *ITR 622]***

Debt	1964	Bom-HC	CWT V/s. Standard Mills Co. Ltd.

It cannot, as an invariable rule, be said that for an existing obligation to pay money to be a debt, it must necessarily be for an ascertained sum. The word **debt** has been used in some enactments in the sense of an existing obligation to pay an ascertained sum of money and in some other enactments to include an existing obligation to pay a sum of money, though its ascertainment may come at a later stage. The word debt in section 2(m) of the Wealth-tax Act is capable of being understood to include an existing obligation to pay an ascertained sum of money as well as an existing obligation to pay money, though the amount may not have been yet ascertained.
[*50 ITR 267]*

Debt	1979	MP-HC	Bhagwandas Jain V/s. Addl. CWT

A **debt** is a present obligation to pay an ascertainable sum of money either immediately or in future and the provision for payment of income-tax is a debt owed within the meaning of section

2(m) of the Wealth-tax Act, 1957, and as such deductible in computing the net wealth of an assessee. ***[7 CTR 240, 116 ITR 347]***

Debt	**1982**	**All-HC**	**CWT V/s. Dina Nath**

The word **debt** is synonymous with liability. It may be payable now or it may become payable in future but the obligation must be a present one and should be in respect of an ascertainable sum of money. The liability to pay income-tax is embedded in the accrual or earning of the income itself. It is ascertainable also because the rates are provided in the Finance Act relating to the concerned years. Its actual quantification may be delayed. That will not, however, change the nature of the liability. Therefore, all kinds and categories of debts are deductible irrespective of the purpose or use thereof. Therefore, the liability to income-tax on the concealed income in respect of an assessment year, which though quantified later on as a result of a settlement between the assessee and the department, was a debt owed within the meaning of section 2(m) of the Wealth-tax Act, 1957, and was deductible in computing the net wealth of the assessee for that assessment year. It would not be a liability falling within clause (iii) of section 2(m) as, on the relevant valuation dates, the liability had not been quantified by way of an assessment nor was the assessee claiming in appeal, revision or other proceeding that the amount was not payable by him nor was it outstanding for a period of more than twelve months on the relevant valuation dates. **[136** ***ITR 499]***

Debt	**2001**	**Raj-HC**	**CWT V/s. Late Rao Karan Singh**

An income-tax liability is a **debt** within the meaning of section 2(m) of the Wealth-tax Act, 1957. ***[171 CTR 477, 252 ITR 447, 118 TAXMAN 384]***

Debt owed	**1966**	**SC**	**Kesoram Industries and Cotton Mills Ltd. V/s. CWT**

….debt owed within the meaning of section 2(m) of the Wealth-tax Act, 1957, could be defined as the liability to pay in praesenti or in futuro an ascertainable sum of money .A debt involves a present obligation incurred by the debtor and the liability to pay a sum of money in present or in future. The liability must however be to pay a sum of money, i.e., to pay an amount which is determined or determinable in the light of factors existing on the date when the nature of the liability has to be ascertained. On the terms used in section 3 of the Indian Income-tax Act, 1922, liability to be taxed becomes effective not later than the last day of the year of account. That liability does not give rise to any obligation to pay a sum of money either determined or determinable in the light of the factors existing on that date. The liability to pay tax however arises only when the Finance Act becomes operative on the first day of April of the assessment year… ***[59 ITR 767]***

Debt owned	**1964**	**Mys-HC**	**CIT V/s. Amco Batteries (P.) Ltd.**

Liability to pay income-tax on income earned before the valuation date is a **debt owned** at the time of the valuation date and a provision made for such income-tax is deductible from the gross wealth for determining the net wealth upon which wealth-tax is levied. **[52** ***ITR 370]***

Debt owened	**1981**	**Bom-HC**	**CWT V/s. Associated Cement Co. Ltd.**

The mere fact that some adjudication had taken place, the nature of which was not fully disclosed, would not affect the position that the amounts set apart were on the same basis on which the payments were made during the previous year. If the employer did not dispute his

liability to pay bonus, the amounts so set apart represented an ascertained present liability in respect of the payment of bonus. Therefore, in computing the net wealth of the assessee, the provision for bonus was a **debt owned** under section 2(m) and was a permissible deduction. **[128 *ITR 626]***

Debts due to the Crown	**1937**	**Sind-HC**	**Secretary of State for India V/s. Official Assignee**

The expression **debts due to the Crown** in section 49(1)(a) includes not only debts which have become due to the Crown but debts which are provable within the meaning of section 46(3) of the said Act; in other words, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is adjudged an insolvent or to which he may become subject before discharge by reason of an obligation incurred before the date of such adjudication, and the income-tax debt in question should therefore be given priority and should be paid in full out of the estate of the insolvent before a dividend was declared. **[5 *ITR 677]***

Declared	**1981**	**SC**	**K.P. Varghese V/s. ITO**

The word **declared** in sub-section (2) of section 52 is very eloquent and revealing. It clearly indicates that the focus of sub-section (2) is on the consideration declared or disclosed by the assessee as distinguished from the consideration actually received by him and it contemplates a case where the consideration received by the assessee in respect of the transaction is not truly declared or disclosed by him but is shown at a different figure. **[131 *ITR 597*]**

Deeming	**1947**	**Bom-HC**	**Habib and Sons V/s. CIT**

Deeming a past event or thing to be something other than what it was or is, may be an interference with the course of nature, since it creates artificial data in the place of existing fact. But it is not a retrospective changing of the statute law. **[15 *ITR 132]***

Deferred benefit	**1988**	**AP-HC**	**CIT V/s. T. Ponnaiah**

….the words **deferred benefit** occurring in section 64(1)(vii) must be construed as being a benefit deferred to a year subsequent to the accounting year in which the income was taxable, so long as it is not deferred beyond the minority of the child.

[*69 CTR150, 172 ITR 269, 36 TAXMAN 18]*

Definite information	**1946**	**All-HC**	**Badar Shoe Stores**

The words **definite information** are placed in section 34 to protect the subject against an assault by an Income-tax Officer based upon mere suspicion. The definite information, which is something more than mere gossip or rumour, must lead to the discovery or belief. Provided the information is definite and does lead to that belief, it need not necessarily be information of fact, though in ninety-nine cases out of a hundred it would inevitably be information of fact. Still less need it be information of actual escape from assessment or under assessment. It may well be information of circumstances not themselves amounting to under assessment or escape from assessment, but leading to the belief of under assessment or escape from assessment. In short, it may be circumstantial evidence. **[14 *ITR 431]***

Definite information	**1947**	**All-HC**	**Kedar Nath V/s. CIT**

The words **definite information** are placed in the section to protect the subject against any assault by the Income-tax Officer based upon mere suspicion. Definite information, which is

something more than mere gossip or rumour, must lead to the discovery or belief. A mere change of opinion based on the same facts and figures does not amount to discovery. **[15** ***ITR224]***

Demolished or destroyed	**1986**	**Cal-HC**	**CIT V/s. Bengal Assam Steamship Co. Ltd.**

The expression **demolished or destroyed** in section 41(2) referred in physical demolition or destruction. **[161** ***ITR 576]***

Demolished or destroyed	**2004**	**Ker-HC**	**Kerala Shipping Corporation Ltd. V/s. CIT**

The expression **demolished or destroyed** in section 41(2) of the Income-tax Act, 1961, refers to physical demolition or destruction. **[*185 CTR 364, 265 ITR 13, 132 TAXMAN 763]***

Dependent	**1965**	**AP-HC**	**His Highness Prince Azam Jah. V/s. ETO**

After the amendment of 1957, the term **dependant** includes in the case of an individual his wife or husband and minor child even if they were not dependent on him or her. **[55** ***ITR 230]***

Dependent	**1970**	**MP-HC**	**Rajkumarsinghji V/s. CET**

It is only a spouse or minor child who is wholly or mainly dependent on the assessee for support and maintenance that falls within the definition of the term **dependant** … **[*78 ITR 405]***

Dependent	**1970**	**Mad-HC**	**CET V/s. Krishna**

The word **dependant** is not a term of art in taxation and should bear its natural meaning which may not include one who is independent and who does not require and get the assistance of another for support and maintenance. **[*78 ITR 541]***

Deposit	**1988**	**SC**	**CIT V/s. Bazpur Co-operative Sugar Factory Ltd.**

The essence of a **deposit** is that there must be a liability to return it to the party by whom or on whose behalf it is made on the fulfilment of certain conditions.
[*70 CTR 94, 172 ITR 321, 38 TAXMAN 195]*

Deposit	**1993**	**Cal-HC**	**CIT V/s. Suman Tea and Plywood Industries (P.) Ltd.**

From the definition of **deposit** in Explanation (b) to section 40A(8), it is manifest that deposit could mean any deposit of money with the company including any amount borrowed by the company. Borrowing is a generic term. It includes deposits as well as loans and the distinction between deposits and loans is thus obliterated and furnishes no saving from the mischief of the provisions of section 40A(8). **[115 CTR 156,** ***204 ITR 719, 71 TAXMAN 622]***

Deposit	**1994**	**Guj-HC**	**Agew Steel Manufacturers Pvt. Ltd. V/s. CIT**

The specific definition of the word **deposit** in clause (b) of the Explanation to section 40A(8) does not in any manner contemplate which persons, and/or the nature or character of the persons, from whom the assessee-company may have received such amounts. Thus the fact

that the amount was received by the company from directors, friends or relatives, etc., is totally irrelevant for the purposes of this provision. Clause (b) of the Explanation to section 40A(8), while defining the word deposit, has made no such exclusion in favour of directors, friends, relatives, etc., and, therefore, deposits by such persons in their current accounts cannot be excluded. Therefore, under section 40A(8), the interest paid by the assessee-company on amounts received from friends and relatives of directors and directors and shareholders can be subjected to a disallowance of 15 per cent. as contemplated by the section. **[209 *ITR 77]***

Deposit	**1995**	**Bom-HC**	**CIT V/s. Jhaveri Bros. and Co. Pvt. Ltd.**

The definition of **deposit** is very wide which is evident from the word any that precedes deposit. The term deposit has been defined in clause (b) of the Explanation to mean any deposit of money with a company. The nature of the deposit, viz., fixed deposit, call deposit, deposit in current account or savings account, is immaterial and irrelevant for determining whether it is a deposit within the meaning of section 40A(8) of the Act or not. The decisive factor is the true relationship between the assessee-company and its creditors. A deposit would not cease to be so merely because of the fact that it is kept in a current account if it does not fall in any of the exclusions contained in clause (b) of the Explanation to section 40A(8). **[214 *ITR 374]***

Deposit	**1997**	**Cal-HC**	**Daga and Co. (P.) Ltd. V/s. CIT**

The word **deposit** has been explained to mean any deposit of money with, and includes any money borrowed by a company. **[227 *ITR 480]***

Deposit	**1998**	**Del-HC**	**CIT V/s. Bhandari Machinery Co. (P.) Ltd.**

The term **deposit** as defined by the Explanation to section 40A(8) also means any deposit of money and includes any money borrowed by the company. There is therefore, no occasion for drawing a difference between deposits made by directors and shareholders and deposits made by public, other than directors and shareholders of the company. The Company Law Board circular deals with deposits dealt with by the Companies Act and not for the purpose of the Income-tax Act. **[*151 CTR 334, 231 ITR 294]***

Deposit	**1999**	**Ker-HC**	**CIT V/s. Commonwealth Trust India Ltd.**

....from the definition of the word **deposit** as contained in Explanation (b) to sub-section (8) of section 40A of the Act, it is amply clear that unless interest liability is incurred on the deposit of money which includes money borrowed by a company, no disallowance as envisaged by sub-section (8) of section 40A could be made. **[*153 CTR 485, 240 ITR 758, 106 TAXMAN 39]***

Deposit	**2001**	**Guj-HC**	**CIT V/s. Navjivan Roller and Pules Mills**

The word **deposit** has not been left to take its colour from the general law but has to be construed in the context of the provision and the special meaning assigned to it, though even alluding to the general meaning of deposit in the context of the provision of sub-section (8) of section 40A, the current account of directors, etc., with the company would not make difference. The word deposit has been defined to mean any deposit of money with, and includes any money borrowed by a company. This is wide enough to obliterate the distinction between a deposit and a loan that is generally kept in view in the context of determining when the same

becomes payable, that is particularly with reference to finding out when the payment was due and computing the period of limitation for filing a suit. **[*251 ITR661, 121 TAXMAN 200]***

Deposits	**1997**	**Mad-HC**	**CIT V/s. Khivaraj Motors Ltd.**

The expression **deposits** has been defined in Explanation (b) to section 40A(8) of the Income-tax Act, 1961, and it means any deposit of money, which includes any money borrowed by a company, but does not include any amount received by the company mentioned in sub-clauses (i) to (ix). The deposits made by directors in a company in their current account do not form part of any of the exempted categories.Deposits which are understood in the business of a bank may be in the current account, savings bank account and fixed deposit account. Payment into the current account cannot be excluded from the nature of deposits which are made in the bank. The only distinction between a fixed deposit and this deposit is that the term for which the payment has been made in the case of a fixed deposit is a fixed one whereas, in the case of a current account, no time is fixed therein and this distinction will not take the amount outside the purview of deposit used in the clause. Any assistance from the Companies (Acceptance of Deposit) Rules, 1975, cannot be taken because the said rules came into force on February 3, 1975, and clause (ix) was specifically added in the definition of deposit in the said Rules with effect from September 18, 1975, which excluded deposits by the directors from the term 'deposit'. This specific exclusion by the amendment in the 1975 Rules makes it more clear that deposits by the directors were included in the term 'deposit' and it is by way of a specific provision that the same has been excluded. The words 'deposit by the directors' which were excluded by the insertion of clause (ix) of the definition in the 1975 Rules, refers to all deposits whether they are for a fixed period or in their current accounts. In Explanation (b) to section 40A(8) of the Income-tax Act, by defining the word deposit, no such exclusion has been made and, therefore, deposits by the directors in their current accounts cannot be excluded. On a correct interpretation of the provisions of section 40A(8) the payments which are made by a director to the company in the current account of the said director on which the company is paying interest will be considered as a deposit. **[146 *CTR700, 227 ITR473]***

Deposits	**2005**	**All-HC**	**CIT V/s. Nath Roller Flour Mills (P.) Ltd.**

A perusal of section 40A(8) of the Income-tax Act, 1961, makes it absolutely clear that the word **deposits** has not been qualified by any phrase limiting it to public or private deposits. The word deposit is in respect of any deposits received by the company. Any deposits would definitely cover within its ambit all the deposits whether received from the public or shareholders or from the directors. **[*192 CTR 328, 273 ITR432, 142 TAXMAN 578]***

Depreciation	**2006**	**Guj-HC**	**CIT V/s. Daudayal Hotels P. Ltd.**

The term **depreciation** as understood in commercial circles and those dealing with the assessment of income from business, as well as within the meaning of accountancy practice, means wear and tear of the assets used for the purposes of earning revenue on user of the assets. In other words, one cannot deduce the correct income without taking into account the wear and tear which an asset undergoes while being used for the purpose of generating receipts, which on finalisation of accounts, result in taxable profits. The concept of depreciation is that any asset, on account of normal wear and tear, is required to be replaced at a point of time in future. Therefore, to enable a business to meet the cost of such replacement, the wear and tear is permitted to be calculated at a notional rate of percentage of the cost/written down value of the assets. **[*199 CTR 556, 282 ITR 132, 152 TAXMAN 389]***

Depriciation actually allowed	1966	SC	CIT V/s. Nandlal Bhandari Mills Ltd.

Depreciation actually allowed means depreciation taken into account in arriving at the total or world income. **[*60 ITR 173]***

Depreciation actually allowed	1968	Bom-HC	Allied Publishers Pvt. Ltd. V/s. CIT

The words **depreciation actually allowed** in section 10(5)(b), mean depreciation of which the assessee has received effective advantage or benefit and not merely depreciation which is notionally allowed or which is allowable. **[*68 ITR 546]***

Derive	2003	Mad-HC	CIT V/s. Viswanathan and Co.

....cash assistance, duty drawback and import entitlements though undoubtedly attributable to business carried on by the assessee as the assessee would not have been in a position to receive any of those benefits, had the assessee not been carrying on business, it cannot be said that such income was derived from business as to qualify for deduction under sections 80J and 80HH of the Act. . . . . .the expression derived from is narrower than the expression attributable to. . . . . the word **derived** is usually followed by the word from, and it means : get or trace from a source; arise from, originate in; show the origin or formation of.
[*181 CTR 335, 261 ITR737, 133 TAXMAN 476]*

Derived	1951	Mad-HC	CIT V/s. Maddi Venkatasubbayya

Agricultural income cannot be said to accrue to every person into whose hands the produce of the land passes. It is only the owner, landlord or ryot, or persons having a derivative interest in the land from these persons that can be said to **derive** income from the land by the performance of agricultural operations in it. **[*20 ITR 151]***

Derived	1980	Bom-HC	Hindustan Lever Ltd. V/s. CIT

As far as income-tax law is concerned, the word **derived** has been given a narrow meaning—a strict meaning by courts, and has been understood in the restricted sense of a direct derivation and not understood in the broad sense as equivalent to derived directly or indirectly. In other words, only the proximate source has to be considered and not the source to which it may ultimately be referable. Giving the word derived in section 2(5)(i) of the Finance (No. 2) Act, 1962, a meaning consistent with the restricted sense, the words derived from exports cannot be accepted as equivalent to referable to exports. The construction to be put on a statutory provision cannot either be enlarged or restricted by the rules framed which are for the purposes of computation of the qualified income. **[*12 CTR 55, 121 ITR 951]***

Derived	1995	Mad-HC	CIT V/s. Eastern Seafoods Exports (P.) Ltd.

The word **derived** in section 80J of the Income-tax Act, 1961, is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. Profit or gain can be said to have been derived from an activity carried on by a person only if the said activity is the immediate and effective source of the said profit or gain. There must be a direct nexus between the activity and the earning of the profit or gain. The income, profit or gain cannot be said to have been derived from an activity merely by reason of the fact that the said activity may have helped to earn the said income or profit in an indirect or remote manner. The expression derived from the business in section 80J should receive a restricted meaning and if it is an income directly

relatable to the business activities of the assessee, it will be deemed to be derived from the business of the assessee. ***[215 ITR 64]***

Derived from	**1984**	**Kar-HC**	**Sterling Foods V/s. CIT**

The expression **derived from** has a definite but narrow meaning and it cannot receive a flexible or wider concept. ***[150 ITR 292]***

Derived from	**1998**	**Mad-HC**	**CIT V/s. Pandian Chemicals Ltd.**

The expression, **derived from** should be given a restricted meaning and whenever the Legislature wants to give a wider expression, the Legislature employs the expression, attributable to and the use of the expression, derived from indicates that the profit or gain should be derived from the conduct of the business. There is no justification to give the expression, derived from a wider meaning to cover every receipt connected with the industrial undertaking. It is not all business receipts that would qualify for the deduction and the Legislature has apparently not intended to give the benefit of deduction to all business income. If the intention of the Legislature was to grant relief to all business income, it could have used the expression, profits and gains of industrial undertaking. ***[147 CTR5, 233 ITR497]***

Derived from	**2003**	**Ker-HC**	**K. Ravindranathan Nair V/s. DCIT (Asst.)**

The meaning of the expression **derived from** has got only a limited import and, therefore, the expression derived from as used in section 80HHC must be understood as profit directly arising from the export of the goods and not incidental to the export. **[*181 CTR 310, 262 ITR 669*]**

Derived from	**2003**	**SC**	**Pandian Chemicals Ltd. V/s. CIT**

The words **derived from** in section 80HH of the Income-tax Act, 1961, must be understood as something which has a direct or immediate nexus with the assessee's industrial undertaking. Although electricity may be required for the purposes of the industrial undertaking, the deposit required for its supply is a step removed from the business of the industrial undertaking. ***[183 CTR 99, 262 ITR 278, 129 TAXMAN 539]***

Derived from	**2005**	**Del-HC**	**CIT V/s. Ritesh Industries Ltd.**

There must be, for the application of the words **derived from**, a direct nexus between the profits and gains and the industrial undertaking. **[*192 CTR 81, 274 ITR 324, 142 TAXMAN 551]***

Derived from an industrial undertaking	**1998**	**MP-HC**	**CIT V/s. Paras Oil Extraction Ltd.**

The words **derived from an industrial undertaking** mean that the income has been derived from industrial activity which the industry is undertaking and it does not mean any industrial activity undertaken by the assessee. The words industrial undertaking have to be construed narrowly and cannot be given a wide meaning. What is to be seen is as to what is the activity of the industrial undertaking of the assessee. **[230 *ITR 266, 96 TAXMAN 234]***

Derived from exports	**1982**	**Guj-HC**	**Ahmedabad Mfg. and Calico Printing Co. Ltd. V/s. CIT**

The words **derived from exports** cannot be interpreted as meaning referable to exports. Profits and gains can be said to have been derived from an activity carried on by a person only

if the activity is the immediate or effective source of the profits or gains. There must be a direct nexus between the activity and the earning of profits or gains. **[*25 CTR 263, 137 ITR 616]***

Destroyed	1992	Bom-HC	Otis Elevator Co. (India) Ltd. V/s. CIT

The expression **destroyed** used in the section has a wider connotation than mere physical destruction. It also applies to a case where the use of the asset is denied to the assessee in its business for an indefinitely long duration, even though there may be no evidence of its physical destruction. Where the asset, of the nature described in the section, becomes unavailable to the assessee for an indefinitely long period, albeit on account of an act of a stranger, the asset must be said to have been destroyed as far as the assessee is concerned. …Moreover, though sale, discarding or demolition required a voluntary act on the part of the assessee, destruction can be either voluntary or involuntary, there being more likelihood of its being involuntary. ***(Section 32(1)(iii))*** **[195 *ITR 682, 60 TAXMAN 215]***

Detected	1974	Guj-HC	Manilal Gafoorbhai Shah V/s. CIT

Considering the scheme of section 24, the detection, which is stipulated by this sub-section, is the detection of the declared amount as the income of the declarant himself and of none else. This idea is that if the declared amount is already **detected** by the income-tax authorities as the income of the declarant, or is deemed to have been so detected prior to the date of declaration, the declarant should not be allowed to take the special and peculiar benefits which the Act contemplates. The obvious anxiety of the Legislature was, therefore, to bring out the income which was not already detected or deemed to have been detected in the hands of an assessee. ***(VDIS)*** **[*95 ITR 624]***

Detection	2003	Cal-HC	CIT V/s. Bimal Kumar Damani

....The process undertaken for issuing notice under section 132A for requisitioning the materials from the customs authority were an attempt to obtain the documents. Until those documents were requisitioned, scrutinised and investigated upon there was no question of detection. Hence, it could not be said that there was any **detection** before the disclosure.

[*180 CTR 452, 261 ITR 87, 129 TAXMAN 564]*

Detriment	2005	Del-HC	Sony India Ltd. V/s. CIT

The dictionary meaning of the word **detriment** is any loss or harm suffered in person or property. It could also be understood that the promisee has, in return of a promise, forborne some legal right which he otherwise would have been entitled to exercise, or that he has given up something which he had a right to keep. Legal detriment again refers to giving up something which immediately prior thereto the person had the privilege to retain. (Black's Law Dictionary, 6th Edition). This expression has been used simply to imply that there should be no loss or injury to the Revenue. Loss of revenue would normally refer to non-recovery of its dues or that a demand of tax may not become irrecoverable. The assessee by his acts and deeds may not be able to frustrate the recovery of tax. Intention on the part of the assessee to cause loss or injury to the Revenue should be evident from the reasons recorded by the Officer in support of his belief that grant of full period would be detrimental to the interest of the Revenue.

[196 *CTR 81, 276 ITR 278, 146 TAXMAN 98]*

Development	1997	SC	Gujarat Industrial Development Corp. V/s. CIT

The word **development** in section 10(20A) of the Income-tax Act, 1961, should be understood

in a wide sense. There is no warrant to exclude all development programmes relating to any industry from the purview of the word development in the said clause. There is no indication in the Act that development envisaged therein should be confined to non-industrial activities. Development of a place can be accelerated through varieties of schemes and establishment of industries is one of the modes of developing an area. **[227 *ITR 414, 94 TAXMAN 64]***

Devolution	1985	Mad-HC	CIT V/s. S. Krishnamurthy

The word **devolution** in section 49(1)(iii)(a) of the Income-tax Act, does not denote merely succession on death but includes also a change of ownership from one living being or body, whether incorporated or not, to another living being or body, whether incorporated or not. Consequently, the act of throwing the individual property into the family hotchpot could be considered to be an act of devolution within the meaning of the said provision. **[*38 CTR 71, 152 ITR 669]***

Dharmadaya	1979	SC	CIT V/s. Bijli Cotton Mills (P.) Ltd.

Dharmada or Dharmadaya, in common parlance, means anything given in charity or for religious or charitable purposes. Among the trading or commercial community in various parts of this country a gift or payment for Dharmada is by custom invariably regarded as a gift for charitable purposes. A gift to Dharmada or Dharmadaya, both in common parlance as well as by customary meaning attached thereto among the commercial and trading community, cannot be regarded as void or invalid on account of vagueness or uncertainty. **[116 *ITR 60]***

Direction	1968	All-HC	Gangadhar Baijnath V/s. CIT

The expression **direction** in the proviso could only refer to the directions which the Appellate Assistant Commissioner or other tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression finding as well as the expression direction can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. **[*69 ITR 500]***

Direction	1982	Bom-HC	CIT V/s. Homi Mehta and Sons P. Ltd.

The finding referred to in section 34(3) must be one which is necessary for the disposal of the appeal. The finding should not be an incidental finding and the **direction** must be one which the authorities who, give it, must be entitled to give in the exercise of their powers as either appellate or revisional authorities. **[*27 CTR 238, 137 ITR 213]***

Directions and findings	1966	Pat-HC	CIT V/s. Joharmal Parsuram (A Firm)

The expression **direction** could only refer to the directions which the Appellate Assistant Commissioner or other Tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression **finding** as well as the expression direction can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. The words in consequence of or to give effect to have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. **[*62 ITR 729]***

Directors may veto any transfer	1965	Cal-HC	Star Company Ltd. V/s. CIT

A provision in the articles of association of a company that the **directors may veto any transfer** without assigning any reason operates as a restriction on transfer and where the articles contain such a provision the shares of the company are not freely transferable, even though the directors might not have in fact objected to the transfer of any shares. **[58 *ITR 149]***

Disclosure	2003	Cal-HC	CIT V/s. Bimal Kumar Damani

The word **disclosure** means to disclose, reveal, unravel or bring to notice. Disclosure in Part III satisfied the above test of disclosure. .....The meaning of the phrase in good faith and true disclosure had to be construed in a wider amplitude. It was not the disclosure of the amount alone but also the nature of the amount of the concealed income of the assessee. If one claims that this was not a concealed income of the assessee and the income of someone else, then it could not be said to be a true disclosure of concealed income. The disclosure could not be treated to be bona fide or to have been made in good faith and a true disclosure nor could it be treated to be a situation within the meaning of clause (c) of the amnesty scheme **[*180 CTR 452, 261 ITR 87, 129 TAXMAN 564]***

Discontinuance of business	1938	Pat-HC	Hanutram Bhuramal V/s. CIT

The phrase **discontinuance of business** is apt to be used in an ambiguous sense. Where a business changes hands or a partner ceases to be a partner there is no discontinuance of business but only a change in the ownership of the business. **[6 *ITR 290]***

Discover	1945	Bom-HC	CIT V/s. Sir Mahomed Yusuf Ismail

The word **discover** in section 34 does not mean a mere change of opinion on the same facts or on a question of law, or the mere discovery of a mistake of law. **[12 *ITR 8]***

Discovers	1946	All-HC	Badar Shoe Stores

So far as the word **discovers** in the amended section 34 of the Indian Income-tax Act is concerned, it requires that the Income-tax Officer should have formed an honest and reasonable belief upon material which could reasonably support such belief. In the nature of things, it cannot amount to a conclusion of certainty. **[14 *ITR 431]***

Discretion	2000	Del-HC	VLS Finance Ltd. V/s. CIT

Discretion must be a sound one governed by law and guided by rule, not by humour. There is nothing like unfettered discretion immune from judicial reviewability. Courts stand between the executive and the subject, alert, to see that discretionary power is not exceeded or misused. Discretion is a science of understanding to discern between right or wrong, between shadow and substance, between equity and colourable glosses and pretence and not to do according to one's will and private affections. The action of the State, an instrumentality, any public authority or person whose actions bear the insignia of public law element or public character are amenable to judicial review and the validity of such action would be tested on the anvil of article 14 of the Constitution. **[*163 CTR 343, 246 ITR 707, 112 TAXMAN 295]***

Dismissed	1960	Mad-HC	M.R.M. Periannan Chettiar V/s. CIT

The term **dismissed** has a definite legal connotation, implying a final disposal by the Tribunal rejecting the case of the suitor. **[39 *ITR 159]***

Disposition	1969	AP-HC	Kancharla Kesava Rao V/s. CED

The term **disposition** covers every mode by which property can pass by act of parties and it should be liberally construed. **[74 *ITR 248]***

Disposition	1970	SC	Goli Eswariah V/s.CGT

The word **disposition** is not a term of law. It has no precise meaning. Its meaning has to be gathered from the context in which it is used. In the context in which it is used in section 2(xxiv), it cannot mean to dispose of. In that sub-section, it is used along with the words conveyance, assignment, settlement, delivery, payment or other alienation of property. Hence, it is clear from the context that the word disposition therein refers to a bilateral or a multilateral act. It does not refer to a unilateral act. **[76 *ITR 675]***

Disposition	1976	SC	CED V/s. Kantilal Trikamlal

The term **disposition** is not a term of art nor legalese but a plain English word of wide import. What is more, the word has acquired, beyond its normal ambit, an extended meaning on account of the special definition in section 2(15) with Explanation 2 super added. Explanation 2 is deliberately designed to take into its embrace what otherwise may not be disposition or conform to its traditional concept. **[105 *ITR 92]***

Distributed	1963	MP-HC	Central India Industrial Corporation Ltd. V/s. CIT

For the purpose of section 23A of the Income-tax Act, 1922, no real distinction can be drawn between declaration and distribution of dividend and if dividends are declared by a company, then for the purpose of that provision there is a distribution of dividends. To read the word **distributed** as meaning actual payment would be contrary to the object of the provision and would lead to a manifest absurdity amounting to an inconsistency with the provisions of section 16(2). **[48 *ITR 543]***

Distribution	1965	SC	Punjab Distilling Industries Ltd. V/s. CIT

The word **distribution** in the context of section 2(6A)(d) means allotment or apportionment of the surplus amongst the shareholders; the allotment takes place and each shareholder gets a vested right to his portion of the surplus as soon as the capital stands reduced. **[57 *ITR 1]***

Diversion of income by overriding title	1985	Cal-HC	K.C. Bose and Co. V/s. CIT

In determining whether there has been **diversion of income by overriding title**, it is the nature of the obligation which is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by an obligation, income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part his income, but for and on behalf of the person to whom it is payable. **[156 *ITR 701]***

Dividend	1961	SC	Kantilal Manilal V/s. CIT

Dividend need not be distributed in money; it may be distributed by delivery of property or right having monetary value. **[41 *ITR 275]***

Dividend	1963	MP-HC	CIT V/s. Shrikrishan Chandmal

…….the distribution by the company entailed the release by the company to its shareholders of a part of the assets of the company and thus fell within the terms of section 2(6A)(a), but it cannot be regarded as **dividend** as the profit which the company made on account of the sale of land and building was a capital gains arising after March 31, 1948, and, therefore, excluded from the expression accumulated profits for the purpose of clause (6A) and thus from the category of dividend mentioned in sub-clause (a) of the said clause (6A). **[*47 ITR 833]***

Dividend	1999	SC	CIT V/s. Mysodet (P.) Ltd.

Since the Act has not provided for any other definition of the word **dividend** except the ones enumerated in section 2(22) of the Income-tax Act, 1961, it should be construed that this definition would be applicable to all provisions which contain the term dividend in the Act. As per section 104 an Income-tax Officer, if satisfied that a company in respect of any previous year has not distributed as required by the statute, dividends from out of its profits and gains, shall make an order in writing that the company shall, apart from the sum determined as payable by it on the basis of the assessment under section 143 or 144, be also liable to pay income-tax at the rate provided in that section. The object of the Legislature in enacting section 2(22)(e) and section 104 of the Income-tax Act, 1961, is one and the same, namely, to prevent the escapement of tax by some shareholders and/or companies. While under section 2(22)(e) of the Act, by a deeming provision, the Legislature has made payment of any advance or loan to a shareholder a deemed dividend so as to subject such payments to the levy of tax in the hands of the receiver of the said amount, section 104 of the Act provides for levy of tax on companies which attempt to avoid payment of tax by their shareholders by not distributing their surplus profits and income. In either case, the object of the Act is to see that evasion of tax is prevented. Thus it is clear that the Act did not contemplate the levying of tax twice, namely, once in the hands of the shareholder who has received it as a deemed dividend and again in the hands of the company which, according to the assessing authority, has failed to declare the dividend. The two sections have used two different verbs but that by itself would not take away the effect of the deeming provision found in the definition clause. If actually the Legislature wanted the deeming clause not to be made applicable to the provisions of section 104 of the Act then it would have said so in categorical terms in the statute, in the absence of which the statutory definition given under section 2(22)(e) of the Act will have to be applied to the word dividend as found in section 104 also. **[*152 CTR 531, 237 ITR 35, 103 TAXMAN 336]***

Documents evidencing the creation of trust	1984	MP-HC	Laxminarayan Maharaj V/s. CIT

That the words **documents evidencing the creation of the trust** embrace all evidential documents, i.e., all documents which afforded a logical basis for inferring the creation of the trust. ……. documents, though not directly evidencing the creation of the trust, afforded a logical basis for inferring the creation of the trust…… and could be described as documents evidencing the creation of the trust for purposes of rule 17A. **[*150 ITR 465, 17 TAXMAN 80]***

Donee	2002	Guj-HC	Bhavna Nalinkant Nanavati V/s. CGT

The definition of **donee** specifically states that where a gift is made to a trustee for the benefit

of another person it includes both the trustee and the beneficiary, meaning thereby that the trustee does not receive the property for his absolute use but receives the same for the benefit of another person and such other person when read in the context of a trust and as distinguished from the trustee shall have to be the beneficiary. **[*174 CTR 152, 255 ITR 529]***

Draw	**2005**	**Ker-HC**	**Canaan Kuries and Loans (P.) Ltd. V/s. ITO**

...it is clear that a lottery is a chance for a prize against a price and, therefore, the element of purchase of a lottery ticket must be present and secondly, the purchaser of a lottery ticket has a right to participate in the **draw.** **[*194 CTR 413, 272 ITR 534, 142 TAXMAN 249]***

Drawn up	**2001**	**Mad-HC**	**CWT V/s. T.R. Kannan**

The expression **drawn up** is not defined. A fair reading of Explanation I shows that if a balance-sheet was drawn up on the valuation date, then that balance-sheet should be taken into account for the purpose of rule 1D. The second contingency provided in the rules is that if the balance-sheet was not drawn up on the valuation date, then the balance-sheet drawn up on a date immediately preceding the valuation date should be taken into account. The third situation that is contemplated in the rule is that in the absence of both, the balance-sheet drawn up on the date immediately after the valuation date should be taken into account.
[*172 CTR 422, 252 ITR 382, 105 TAXMAN 669]*

Due	**1942**	**Cal-HC**	**Smt. Usharani Roy Choudhurani**

The word '**due**' in section 7(1) is not limited to salary 'due' in respect of the accounting year. **[10 *ITR 199]***

Due	**1993**	**Kar-HC**	**CIT V/s. H.S. Shivarudrappa**

The word **due** is normally understood as conveying the meaning imminent. Money payable becomes due for payment on the date when it is to be paid; such a date is usually called the due date. Unless the money payable is due, its recovery cannot be enforced; a creditor cannot demand payment, unless it is due. **[200 *ITR 1]***

Due	**2003**	**Guj-HC**	**CIT V/s. Upnishad Investment P. Ltd.**

……the word payable is used with reference to the payer. **Due** means as a noun, an existing obligation or a simple indebtedness without reference to the time of payment; or a debt ascertained and fixed though payable in future. As an adjective, due means capable of being justly demanded, payable or owing and unpaid. The expression due is defined by Webster to mean that which is owed; that which custom, statute or law requires to be paid. **[*260 ITR 532]***

Due	**2004**	**Mad-HC**	**CIT V/s. Southern Roadways Ltd.**

The word **due** has several shades of meaning. The word is used to refer to debt or obligation which has become immediately payable. It is also used to refer to simple indebtedness without reference to the time of payment. Though the amount becomes payable when the asset is transferred in the absence of any agreement to the contrary, and the amount also becomes due in the sense that that amount is owed, the determination of the amount if not made at the time of the transfer, and is made subsequently, the amount can be said to become due at that subsequent point of time when the amount payable is determined. Section 41(2) of the Income-tax Act, 1961, does not equate payable with due. The word due in section 41(2) of the Act

should be understood as the time at which the person entitled to the monies could enforce the payment of the same which had by then been determined. **[*88 CTR 53, 266 ITR135]***

Due and payable	**1976**	**Guj-HC**	**Baroda Board and Paper Mills Ltd. V/s. ITO**

Under section 530(1)(a) of the Companies Act, 1956, in a winding up, there shall be paid in priority to all other debts, inter alia, all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in section 530(8)(c) and having become due and payable within the twelve months next before that date. The only meaning that could be attached to the word **due** occurring in the section is that it must be presently due and the words, due and payable mean the same thing, namely, that it must be presently payable. Therefore, so far as section 530(8)(a) is concerned, the revenue, tax, cess or rate due from the company to the Central or State Government or to a local authority must be presently payable, that is, that the liability could be enforced as at the relevant date and, secondly, it must have to become presently payable within twelve months immediately preceding the relevant date. **[*102 ITR 153]***

Due date	**2004**	**Ker-HC**	**CIT V/s. G.T.N. Textiles Ltd.**

The expression **due date** means the time stipulated for payment. As per the Explanation to clause (va) of section 36(1) of the Income-tax Act, 1961, for the purpose of the clause due date means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund. **[*269 ITR 282]***

Due date	**2004**	**Ker-HC**	**CIT V/s. Jairam and Sons**

As per the Explanation to clause (va) of section 36(1) for the purpose of the clause **due date** means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund. The amount is deductible only if the assessee credits the amount to the employee's account in the relevant fund on or before the date by which he is legally or contractually required to do so. The right to deduction would be lost if the sum is credited after the due date. **[*187 CTR 99, 269 ITR 285, 134 TAXMAN 503]***

Due time	**2004**	**SC**	**Prakash Nath Khanna V/s. CIT**

Section 276CC refers to **due time** in relation to sub-sections (1) and (2) of section 139 and not sub-section (4). It cannot be said that the Legislature without any purpose or intent specified only sub-sections (1) and (2) and the conspicuous omission of sub-section (4) has no meaning or purpose behind it. Sub-section (4) of section 139 cannot control the operation of sub-section (1) wherein a fixed period for furnishing the return is stipulated. The mere fact that for the purposes of assessment and carry forward and set off of losses the return filed under sub-section (4) is treated as one filed within sub-section (1) or (2) would not amount to the return having being filed within due time. **[*187 CTR 97, 266 ITR 1, 135 TAXMAN 327]***

During a period of not less than seven years.	**1993**	**SC**	**CIT V/s. Braithwaite and Co. Ltd.**

The only interpretation which can be given to the expression **during a period of not less than seven years** in the proviso is that the period should go beyond seven years. The period of seven years would not be complete till the last minute or even the last second is counted. In other words, till the last minute of the seven-year period is completed, the period remains less than seven years. **[*110 CTR 290, 201 ITR 343, 67 TAXMAN 155]***

Dwelling place	1957	Bom-HC	CIT V/s. Fulabhai Khodabhai Patel

The connotation of a **dwelling place** is quite different from a mere residence or a mere house in which one finds oneself for a temporary or short period. A dwelling place connotes a sense of permanency, a sense of attachment, a sense of surroundings, which would permit a person to say that this house is his home. A man may have more than one home; he may have a home at different places; but with regard to each one of these he must be able to say that it is something more than a mere house or a mere residence.It is not sufficient in order to satisfy this test that there is a dwelling place in the taxable territories in which the assessee goes and lives. What is necessary and what is essential is that the dwelling place must be maintained for him. In other words, there must be a house or a building or a part of the building which must be set apart and made available for him, in which he could live if he so desired as a home. There must also be in him a right to live in such a dwelling place maintained for him, because without that right, it could not be said that he has either maintained a dwelling place or a dwelling place has been maintained for him. **[*31 ITR 771]***

Dwelling place	1978	Mad-HC	CIT V/s. K.S. Ratnaswamy

Maintenance and dwelling are not words of art but have a special signification particularly when they are to raise a statutory presumption under section 4A(a)(ii) which has a far-reaching fiscal effect on the status of an individual. The inherent concept in the words involves a sense of continuity, periodicity or permanence tending to declare the dwelling place as a house away from home. A mere right in property does not always lead to the conclusion that the person in whom the right is vested is bound to maintain the same or cause it to be maintained for him by others who are admittedly possessing it. A dwelling house, as the words imply, projects the meaning that the house or portion thereof is an abode of his, available to him at all times without any let or hindrance by others. **[78 *ITR 303]***

Dwelling place	1980	SC	CIT V/s. K.S. Ratnaswamy

…. the expression **dwelling place** in section 4A(a)(ii) of the Indian Income-tax Act, 1922, primarily meant residence, abode or home where an individual was supposed usually to live and sleep and since the expression was used in a taxing statute in the context of a provision which laid down a technical test of territorial connection amounting to residence, the concept of an abode or home was implicit in it. In other words, it must be a house or a portion thereof which could be regarded as an abode or home of the assessee in the taxable territories.

[*14 CTR 377, 122 ITR 217, 3 TAXMAN7]*

* *The dictionary or natural meaning of a word cannot be imported in the statute where such word is defined by the statute.*

* *No provision of law can be interpreted in such a manner which would take away the very spirit, object and purpose of the provision itself and make it a dead letter. It will have to be interpreted in a manner which will not only put life in the provision but make it workable.*

E

Education	1988	Raj-HC	CIT V/s. Maharaja Sawai Mansinghji Museum Trust

Education connotes the process of training and developing knowledge of students by normal schooling. A museum cannot be taken to be an educational institution existing solely for educational purposes. It is not entitled to exemption under section 10(22) of the Income-tax Act, 1961. ***[65 CTR46, 169 ITR379, 33TAXMAN 279]***

Education	1992	Guj-HC	Gujarat State Co-operative Union V/s. CIT

Advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a class-room may remain ideal for most of the initial **education** it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula. Its progress lies in acceptance of new ideas and development of appropriate means to reach them to the recipients. …….. ***[103 CTR 206, 195 ITR 279]***

Education	1996	Bom-HC	CIT V/s. Oxford University Press

The word **education** connotes the process of training and developing the knowledge, skill, mind and character of students by normal schooling and has not been used in the wide and extensive sense according to which every acquisition of further knowledge constitutes education. ***[135 CTR 163, 221 ITR 77, 89 TAXMAN 353]***

Effective arrangements to secure that tax..	1962	All-HC	Hindustan Commercial Bank Ltd. V/s. CIT

The mere appointment of trustees without imposing any obligation on them to deduct tax before making the payment and leaving it to them in the discharge of their duties for the administration of the trust to deduct tax before making a payment out of the provident fund could not be called an effective arrangement for deduction of tax. Further, the making of an arrangement is the voluntary act of the assessee conditioned by his volition. It is very different from an obligation cast by a statute. Such an obligation can in no way be described as an arrangement made by an assessee. The requirement of section 10(4)(c) that **effective arrangements to secure that tax shall be deducted at source** was not satisfied and the amounts were not therefore deductible. ***[46 ITR 910]***

Either before or after the institution of ..	1998	MP-HC	Laxmandas Pranchand V/s. Union of India

The Income-tax Act does not provide that before instituting a criminal proceeding under the Act, the accused has to be given a notice in order to afford him an opportunity to compound the offence. The court cannot insist upon issuance of prior notice as a condition precedent for criminal prosecution…The composition of an offence under Chapter XXII of the Income-tax Act, 1961, is permissible **either before or after the institution of proceedings**. It is for the offender to take steps towards composition and not for the authorities to ask him whether he is intending to compound and save himself from prosecution. This can be done even after the proceedings in court. That being so, it would be improper to invalidate the proceedings for want of notice before institution of proceedings. Firstly, there is no condition of notice in the Act.

Secondly, the occasion to compound is not frustrated even after the institution of the proceeding. The law must, therefore, sustain the validity of prosecution even when there is no prior notice.
[*154 CTR 315, 234 ITR 261, 98 TAXMAN 203]*

Electrical machinery	**1993**	**All-HC**	**CIT V/s. Saran Khandsari Udyog**

If a machinery has in-built motor and operates electrically, then the same would be **electrical machinery**. The generator generates electricity, but no in-built motor is fitted into it and it is not operated by electricity and, therefore, the same cannot be said to be an electrical machinery.
[*114 CTR 410, 204 ITR 447, 73 TAXMAN 303]*

Electrical machinery	**2000**	**Mad-HC**	**CIT V/s. S.R.P. Tools Ltd.**

For machinery to come within the scope of the term **electrical machinery** it is not necessary that the machinery should produce, transmit or store electricity. It would not also include any machinery which is run by electricity or whose motive power is electricity. What it comprehended is that the machinery is such that inbuilt into it is the electric motor which forms a vital and inseparable part of the machinery. **[*242 ITR 636]***

Employed	**1993**	**Bom-HC**	**CIT V/s. Tata Engineering and Locomotive Co. Ltd.**

The word **employed** used in section 32(1)(iv) is a very wide expression and takes within its ambit not only persons who are contractually employed in the strict sense of the term, but all persons engaged in the business of the assessee. It has no relation to the capacity in which the assessee contracts to employ them. What is required is that such persons should be so engaged in the business that one can say that they are employed. That being so, an apprentice will clearly fall within the expression persons employed in the business.
[112 *CTR 328, 201 ITR1036]*

Employee	**1980**	**Ker-HC**	**CIT V/s. Travancore Tea Estates Co. Ltd.**

The expression **employee** in section 40(a)(v) is qualified by the word such and refers to the type of employees in the earlier part of the section. The earlier part of the section makes it clear that the employee must have had some benefit or amenity arising out of the expenditure.
[*122 ITR 557]*

Employee	**2005**	**All-HC**	**R and P Exports V/s. CIT**

Therefore the word **employee** will include only such workers who are directly employed by the assessee. *(Sec.80 HH (2)* **[*196 CTR 45, 279 ITR 536, 146 TAXMAN 404]***

Employer	**1988**	**SC**	**CBDT V/s. Aditya V Birla**

Employer means the use of services of any person: it comprehends wholetime servant or part-time engagee. **[*67CTR 165, 170 ITR 137, 36 TAXMAN 9]***

Employs	**2006**	**Guj-HC**	**CIT V/s. Prithviraj Bhoorchand**

The expression used in the statute is **employs** twenty or more workers. The plain dictionary meaning of the said term employ is to use the services of a person in return for payment. As long as the industrial undertaking manufactures articles or things, and where the manufacturing process is carried on without the aid of power, it employs twenty or more workers, the

requirements of the provision are fulfilled. When the provision is clear and unambiguous, there is no need to read anything more into the same. **[200 *CTR 82, 280 ITR 94]***

Encumbrance	**2005**	**Bom-HC**	**Jethamal Mohanlal Khivansara V/s. Union of India**

The word **encumbrance** means interests in or burden or charge upon property. The estate (encumbrances) which may be carved out of ownership, may be classified as (1) securities; (2) leases; (3) servitudes and (4) trusts. All such estates may be called encumbrances. The encumbrance in a given case may include in its fold claim by adverse possession which again creates interests in property. Thus, it would be clear that the word encumbrances can only mean interest in the property or land which is a subject-matter of agreement to sale…encroachment, i.e., an unlawful gaining upon the possession of a neighbour without having any right or interest in the land can hardly be said to be an encumbrance on the property. **[*188 CTR 546, 272 ITR 143, 137 TAXMAN 545]***

End of the previous year	**1953**	**SC**	**CIT V/s. K. Srinivasan and K. Gopalan**

The expression **end of the previous year** in sub-section (3) and (4) of section 25 of the Indian Income-tax Act, 1922, in the context of those sub-sections means the end of an accounting year (a period of full 12 months) expiring immediately preceding the date of discontinuance or succession. **[*23 ITR 87]***

Enduring	**1976**	**All-HC**	**Girdhari Dass and Sons V/s. CIT**

The word **enduring** means enduring in the way that fixed capital endures and it does not connote a benefit that endures in the sense that for a good number of years it relieves the assessee of a revenue payment. **[*105 ITR 339]***

Enduring benefit	**1971**	**SC**	**CIT V/s. Coal Shipments P. Ltd.**

Although an **enduring benefit** need not be of an everlasting character it should not be so transitory and ephemeral that it can be terminated at any time at the volition of any of the parties. **[*82 ITR 902]***

Engaged	**1969**	**Del-HC**	**National Projects Construction Corp. Ltd. V/s.CWT**

The word **engage** may have a variety of meanings depending on the context and setting in which it is used. Ordinarily the expression connotes doing of more than one act or one transaction. Continuity of action is implicit in the meaning of the word. It has also been used in the sense of being busy or conducting or devoting attention or effect or employing oneself. The words engaged in the manufacture, production, etc., should normally, therefore, mean continuously occupied in the manufacture as a principal business as distinguished from an occasional participation or single act or casual employment or a mere supervision without physical participation. The extent of activity would be a relevant factor and if such activity is at an extended scale it may be suggestive of being engaged in manufacturing activity.
[*74 ITR 465]*

Entertainment	**1976**	**All-HC**	**Brij Raman Dass and Sons V/s. CIT**

The word **entertainment** has different meanings for purposes of different Acts. In the Income-tax Act, the word has not been defined and will have to be given its general meaning. An

entertainment expenditure would include all expenditure incurred in connection with the business on the entertainment of customers and constituents. The entertainment may consist of providing refreshment as in this case or it may consist of providing some other form of entertainment. **[*104 ITR 541]***

Entertainment	**1977**	**Guj-HC**	**CIT V/s. Patel Brothers and Co. Ltd.**

The dictionary meaning of the term **entertainment** is to receive and treat with hospitality, which broadly means receiving and entertaining guests in a friendly, generous and liberal way. The term entertainment in the context of section 37(2A) and (2B) of the Income-tax Act, 1961, on its true construction and meaning, would include the acts or practice of receiving and entertaining strangers and friends in a friendly, generous and liberal way. These acts may consist of providing, inter alia, a formal or elegant meal, a banquet and being hospitable in providing for the wants of a guest in a liberal and generous manner. If the act of entertaining is on a lavish and a grand scale involving wasteful expenditure, it would, no doubt, amount to entertainment. On the other hand, if the acts or practice of being hospitable in the sense of providing meals, drinks or other wants of the persons entertained, whether they may be employees, workmen or officers, servants or agents in the service of an assessee, are an express or implied condition of service, they would not amount to acts of entertainment. Similarly, if the acts or practice of being hospitable in the sense of providing meals, drinks or satisfying any other wants of guests, whether they are friends, strangers or customers, are a part and parcel of the express or implied terms and conditions of business, trade or profession, or on account of long standing custom in such trade, business or profession, they would not amount to acts of entertainment. In the area lying between these two termini the broad dictionary meaning of the term 'entertainment' indicated above should be adopted. No doubt, entertainment is hospitable treatment of guests and every act of entertainment includes hospitality. But that would not warrant the converse position that every act of hospitality would constitute entertainment. Hospitality shown on account of obligation of business arising as a result of express or implied contract or arising on account of long standing custom of a trade, business or profession cannot amount to entertainment, and acts done in discharge of such obligation cannot be included and covered in the term entertainment. Though ultimately in each case it would be a question of fact depending on many factors, the following broad tests will provide a guideline to determine the nature of entertainment expenses:(a) If the provision of food, drinks or any amusement to a client, constituent or customer is on a lavish and extravagant scale, or is of wasteful nature, it is entertainment per se(b) If the provision of food, or drinks to a client, constituent or customer is in the nature of bare necessity, or by way of ordinary courtesy, or as an express or implied term of the contract of employment spelled out from long-standing practice or custom of trade or business, it will not amount to entertainment.(c) If the provision of food or drinks to a client, customer or constituent is in a liberal and friendly way, it may amount to entertainment having regard to the place, item and cost of such provision.(d) The provision of amusement to a client, customer or constituent by way of hospitality or otherwise will always be entertainment. **[*106 ITR 424]***

Entertainment	**1980**	**P&H-HC**	**CIT V/s. Nadh Shah Kapur and Sons**

Entertainment is hospitable treatment of guests and every act of entertainment includes hospitality. But that would not warrant the converse proposition to be correct and every hospitality would not constitute entertainment. Hospitality shown on account of obligation in the business arising as a result of an express or implied contract or arising on account of a long-standing

custom of a trade, business or profession cannot amount to entertainment and acts done in discharge of such obligation cannot be included and covered in the term entertainment in section 37(2A) of the Income-tax Act, 1961. **[*14 CTR 77, 122 ITR 972]***

Entertainment	**1982**	**MP-HC**	**CIT V/s. Rajkumar Mills Ltd.**

The term **entertainment** in the context of section 37(2B) of the Income-tax Act, 1961, on its true construction and meaning, would include the practice of receiving and entertaining strangers and friends; but if the practice of being hospitable in the sense of providing meals, drinks or other wants of guests are a part and parcel of the express or implied terms and conditions of a business, trade or profession or on account of longstanding custom in such trade, business or profession, they would not amount to acts of entertainment. Thus, hospitality shown on account of obligation of business arising as a result of an express or implied contract or arising on account of the longstanding custom of a trade cannot amount to entertainment. **[*135 ITR 811]***

Entertainment	**1999**	**Gau-HC**	**CIT V/s. Assam Asbestos Ltd.**

The meaning of the term **entertainment** is to receive and treat with hospitality or entertaining guests in a friendly, generous way. Generally entertainment expenditure is an expression of wide import. However, in the context of disallowance of entertainment expenditure it must be construed strictly and not expansively. **[*158 CTR 252, 240 ITR 297, 108 TAXMAN 438]***

Entries in books of account	**2002**	**Bom-HC**	**Sheraton Appearels V/s. ACIT**

Section 34 of the Evidence Act, 1872, refers to the words **entries in books of account**. The accounts under section 34 means accounts which are maintained in the regular course of business. **[175 *CTR 651, 256 ITR 20, 123TAXMAN 238]***

Erroneous	**1996**	**Del-HC**	**Duggal and Co. V/s. CIT**

It is incumbent on the Income-tax Officer to further investigate the facts stated in the return, when circumstances would make such an inquiry prudent and the word **erroneous** in section 263 of the Income-tax Act, 1961, includes the failure to make such an enquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. **[*122 CTR 171, 220 ITR 456, 71 TAXMAN 331]***

Erroneous	**2001**	**Cal-HC**	**Jai Kumar Kankaria V/s. CIT**

The term **erroneous** could be looked into only from the facts and circumstances which were placed before the assessing authority at the time of the assessment.There is no scope for reopening the assessment on a subsequent event or on any new material. **[171 *CTR 483, 251 ITR707, 120 TAXMAN 810]***

Erroneous and prejudicial to the revenue	**1973**	**SC**	**Tara Devi Aggarwal V/s. CIT**

Where an assessee is assessed on an income voluntarily returned, it is not prejudicial to the interests of the revenue only if it is found that the assessment was made on the basis that the income had been earned by the assessee which was assessable. Where an income has not been earned and is not assessable, merely because the assessee wants it to be assessed in his or her hands in order to assist some one else who would have been assessed to a larger amount, an assessment so made will be **erroneous and prejudicial to the revenue** and the

Commissioner has jurisdiction under section 33B of the Indian Income-tax Act, 1922, to cancel the assessment and proceedings for assessment may be initiated under the provisions of the Act against some other assessee who according to the income-tax authorities would be liable for the income thereof. ***[88 ITR323]***

Erroneous and prejudicial to the interests	**2000**	**SC**	**Malabar Industrial Co. Ltd. V/s. CIT**

A bare reading of section 263 of the Income-tax Act, 1961, makes it clear that the prerequisite for the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is **erroneous; and (ii) it is prejudicial to the interests of the Revenue.** If one of them is absent if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue recourse cannot be had to section 263(1) of the Act. The provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. The phrase prejudicial to the interests of the Revenue is not an expression of art and is not defined in the Act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue. The phrase prejudicial to the interests of the Revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law. **[159** ***CTR 1, 243 ITR 83, 109 TAXMAN 66]***

Error apparent from the record	**1969**	**All-HC**	**Devendra Prakash V/s. ITO**

There is no invariable rule of law that, to constitute an **error apparent from the record**, the error must be apparent from the record of the proceedings against the assessee himself. **[*72 ITR 151]***

Error apparent on the face of the record	**2002**	**Ker-HC**	**Upasana Hospital and Nursing Home V/s. CIT**

The **error apparent on the face of the record** cannot be said to be the record of one particular assessment, but the entire record of the assessee relating to all the assessment years. **[173** ***CTR 54, 253 ITR 507, 120 TAXMAN 545]***

Escaped assessment	**1938**	**Sin-HC**	**CIT V/s. Lokumal Bhojumal**

Where an assessee makes a false return and by misleading the income-tax authorities evades income-tax, the income-tax authorities have power, on finding out that income had been

concealed, to take proceedings under section 34 of the Indian Income-tax Act for fresh assessment. The words **escaped assessment** in section 34 are wide enough to cover such cases. **[*6 ITR 51]***

Escaped assessment	**1957**	**Pat-HC**	**Bhimraj Panna Lal V/s. CIT**

The burden of proving that income has **escaped assessment** within the meaning of section 34 is on the Income-tax authorities. Section 34 is not a charging section but a machinery section; and a machinery section should be so construed as to effectuate a charging section, and in interpreting such a provision, the rule is that that construction should be preferred which makes the machinery workable. In the ordinary course, an order of assessment made after investigation by a particular Officer should not at his sweet will and pleasure be allowed to be revised. There must exist something, either suppressed by the assessee, or a fact or a point of law which was inadvertently or otherwise omitted to be considered by the Income-tax Officer, before he can proceed to act under section 34. A mere change of opinion on the same facts and law is not covered by that section. Under section 34, the Income-tax Officer cannot institute a fishing investigation or enquiry merely with the object of finding out facts which would entitle him to re-open a past year's assessment. But to enable the Income-tax Officer to initiate proceedings under section 34, it is enough that he, on the information which he has with him and in good faith, considers that he has a good ground for believing that the assessee's profit has for some reason escaped assessment or been assessed at too low a rate, so that a notice can be served if the Income-tax Officer is bona fide of opinion that the income has escaped. Action can be taken with reference to events which happened subsequently, these events having relation to the facts on which the original assessment had been made. In order to hold that income may have escaped assessment, there must have been either some fresh facts brought to the notice of the Income-tax authorities, or some change in the law, which were in existence during the chargeable accounting period, but which were not brought to the notice of, or taken notice of by, the Income-tax authorities during the assessment year, but which arose subsequent to assessment, having relation to the facts on which the original assessment had been made. Under section 34(1), the belief of the Income-tax Officer that income has escaped assessment or has been under-assessed must be that of an honest and reasonable person, based upon reasonable grounds; the Income-tax Officer may act under this section on direct or circumstantial evidence, but not on mere suspicion, gossip or rumour. The powers under the present section are wide, but they are not plenary. The words of the section are reason to believe, and not reason to suspect. **[32 *ITR 289]***

Escaped assessment	**1972**	**SC**	**Tax Officer-cum-Regional Transport Officer V/s. Durg Transport Co. P. L.**

When the liability to pay tax is evaded by one method or other there is an escapement of assessment. The term **escaped assessment** includes both non-assessment as well as underassessment. When a person is not assessed to tax though he is liable to be taxed the tax escapes assessment. **[85 *ITR 156]***

Escaped assessment	**1999**	**Guj-HC**	**Praful Chunilal Patel V/s. M.J. Makwana ACIT**

The power to make assessment or reassessment within four years of the end of the relevant assessment year would be attracted even in cases where there has been a complete disclosure of all relevant facts upon which a correct assessment might have been based in the first instance, and whether it is an error of fact or law that has been discovered or found out justifying the belief required to initiate the proceedings. The words **escaped assessment**, where the return is filed, cover the case of discovery of a mistake in the assessment caused

by either an erroneous construction of the transaction or due to its non-consideration, or caused by a mistake of law applicable to such transfer or transaction even where there has been a complete disclosure of all relevant facts upon which a correct assessment could have been based…In cases where the Assessing Officer had over-looked something at the first assessment, there can be no question of any change of opinion, when the income which was chargeable to tax is actually taxed as it ought to have been under the law, but was not, due to an error committed at the first assessment. **[148 CTR 62, *236 ITR 832]***

Escaped assessment	**2001**	**SC**	**K. Govindan and Sons V/s. CIT**

In section 147 of the Income-tax Act, 1961, provision is made for both assessment and reassessment in a case where any income chargeable to tax has escaped assessment for any assessment year. The proviso treats at par the assessment under section 143(3) and under section 147 and makes no distinction whether the escapement of income is by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. Under clauses (a) and (b) of Explanation 2 to section 147, cases where no return has been furnished by the assessee and where a return of income has been furnished by the assessee but no assessment has been made, have both been included in the expression **escaped assessment**. Section 148 mandates the Assessing Officer to serve a notice on the assessee before making the assessment, reassessment or recomputation under section 147. From the aforementioned provisions, it is manifest that an initial assessment made by the Assessing Officer either on the assessee voluntarily furnishing a return of the income or furnishing such a return on being served a notice under section 148, is a regular assesment under section 2(40) of the Act, but an order passed by the Assessing Officer making a reassessment or revised assessment in a case where an assessment has been made, does not come within the meaning of the said expression. **[164 *CTR 490, 247 ITR 192, 114 TAXMAN 94]***

Estimate and underestimate	**1980**	**All-HC**	**CIT V/s. Elgin Mills Co. Ltd.**

The words **estimate** and **underestimate** have not been defined in the Income-tax Act. The dictionary meaning of the word estimate is the action of valuing or appraising; and approximate calculation based on probabilities. The word underestimate signifies an estimate which is below the truth or which is at too low a rate. Both for making an estimate and an underestimate an application of mind is required on the part of the maker. The question whether there was justification for the estimate or whether it was an underestimate has to be examined with reference to the time when the estimate was filed. It is not correct to say that while making an estimate the maker should project himself into the future. It at the time when the estimate is filed there is proper basis and justification shown for it, then it cannot be said that it is an underestimate. **[*123 ITR 712, 3 TAXMAN 529]***

Etc.	**2000**	**Ker-HC**	**CIT V/s. Maulana Tea Co.**

The word **etc.** does not share the character of an inclusive definition. Usually, after reciting the initiatory words of a set formula, or a clause given in full, etc. is added as an abbreviation for the sake of convenience…….. the word etc. cannot be given any restrictive meaning.
[160 *CTR 291, 244 ITR 589, 110 TAXMAN 303]*

Evidence	**1937**	**Lah-HC**	**Paras Dass Munna Lal V/s. CIT**

The word '**evidence**' as used in sub-section (2) of section 23 of the Income-tax Act, is not confined to direct evidence, but is comprehensive enough to cover circumstantial evidence.
[5 *ITR 523]*

Examining the record	2003	Guj-HC	CIT V/s. Arunaben Sumankumar

... in view of the clear words used in clause (b) of the Explanation to section 263(1), it has to be held that while calling for and **examining the record** of any proceeding under section 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding avilable to him at the time of examination. **[177** ***CTR 470, 259 ITR 386, 124 TAXMAN 57]***

Exceptional and not systematic	2004	MP-HC	CIT V/s. Vallabh Leasing and Finance Co. Pvt. Ltd.

… the juxtaposition of the words **exceptional and not systematic** shows that the Legislature was using the word systematic in contradistinction to exceptional. The avoidance of tax must be exceptional, that is, by way of exception to the normal practice of the assessee and it should not be systematic, that is, part of a regular reprehensible practice carried on by the assessee. **[187** ***CTR 20, 265 ITR 1, 134 TAXMAN 770]***

Exchange	1974	Bom-HC	CIT V/s. Rasiklal Maneklal (HUF)

The word **exchange** as defined in the Transfer of Property Act or as understood in ordinary parlance connotes the following: Existence of different properties owned by different persons; as a result of the transaction of exchange both properties continue to exist; the properties continue to be owned by two different parties but the ownership of one is transferred to the owner of the other and vice versa. **[95** ***ITR 656]***

Exchange	1989	SC	CIT V/s. Rasiklal Maneklal (HUF)

An **exchange** involves the transfer of property by one person to another and reciprocally the transfer of property by that other to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. **[*77 CTR 31, 177 ITR 198]***

Exclusive use	2000	Mad-HC	CWT V/s. Smt. Muthu Zulaikha

A mere perusal of section 5(1)(iv) of the Wealth-tax Act, 1957, clearly shows that it will apply only in the case of individual assessments of co-owners and not to the total value of the property jointly owned by the co-owners. Section 5(1)(iv) reads thus : one house or part of a house belonging to the assessee and exclusively used by him for residential purposes. The purpose should be residential, meaning thereby that it should not be used for commercial or non-residential purposes and it should be used exclusively for residential purposes. The expression cannot be read as solely for residential purposes. What is to be seen is whether the intention of the assessee is to live in the house. The expression **exclusive use** should be read to mean that the house should be used for residential purposes meaning thereby that it should not be let out for rent or given on license or used for commercial purposes. The requirement of exclusive use of the building for residential purposes must, therefore, be construed in a practical and pragmatic way rather than in a pedantic sense.

[164 ***CTR 613, 245 ITR 800 115 TAXMAN 85]***

Exclusively used by him for residential purposes throughout	1995	Mad-HC	CWT V/s. W. Doraisamy

The expression **exclusively used by him for residential purposes throughout the period of twelve months immediately preceding the valuation date** can mean nothing but that the intention or animus manendi of the assessee was to live in the house and that he had not

created any interest in the said property in favour of any other person, that is to say, there is no element of right in the property of any other person in the house. In such a case, the house belonging to the assessee is exclusively used by him for residential purposes throughout the period he has kept it available to himself for occupation whenever he desired. Any trespass or permissive possession cannot rob the owner, who has chosen to keep the house vacant, of his right of residence and so long as such a right of residence is not disturbed, it is he who is in occupation and thus it is he alone who is using it exclusively and no one else. The position is completely different, however, of a person, who has admitted a lessee upon the land on rent or even licenses for use to another on receiving a fee. In the case of a lease, there is an element of transfer of property. In the case of licence, there is a withdrawal by the owner on conditions of payment of a fee, from occupation and the use is not exclusively by him.

[130 *CTR 157, 215 ITR 853, 87 TAXMAN 260]*

Executor	**1980**	**Guj-HC**	**CIT V/s. Navnitlal Sakarlal**

The word **executor** as defined in the Explanation to section 168 of the Income-tax Act, 1961, means an executor as known under the Indian Succession Act, 1925, as well as an administrator known under the Indian Succession Act and, what is more, any other person administering the estate of a deceased person is also included in this special definition of executor, though, under the Indian Succession Act, such other person administering the estate of the deceased would never be referred to either as an executor or as an administrator. Reading the provisions of section 2(11) of the CPC in the light of the provisions of section 2(29) and section 159 of the Income-tax Act, 1961, it is clear that an executor, who certainly represents the estate of a deceased person in law, and an administrator, who also similarly represents the estate of a deceased person in law, and also any person who intermeddles with the estate of the deceased, all fall within the definition of legal representative for the purposes of the Income-tax Act.

[*7 CTR 258, 67 ITR 125]*

Executor	**1996**	**Mad-HC**	**CIT V/s. P.Visalakshi**

The term **executor** in section 168 of the Income-tax Act, 1961, is not to be understood in any restricted sense as the Explanation to the section has given an extended meaning to the word executor so as to include an administrator or any other person administering the estate of the deceased person, that is, including one who is in de facto management of the property of the deceased person.

[130 *CTR 488, 217 ITR 282, 132TAXMAN 281]*

Expenditure	**1966**	**SC**	**CIT V/s. Nainital Bank Ltd.**

In its normal meaning, the expression **expenditure** denotes spending or paying out or away, i.e., something that goes out of the coffers of the assessee. A mere liability to satisfy an obligation by an assessee is undoubtedly not expenditure: it is only when he satisfies the obligation by delivery of cash or property or by the settlement of accounts that there is expenditure. But expenditure does not necessarily involve actual delivery of or parting with money or property. If there are cross claims one by the assessee against a stranger and the other by the stranger against the assessee and as a result of the accounting the balance due only is paid, the amount which is debited against the assessee in the settlement of the accounts may appropriately be termed expenditure within the meaning of section 10(2)(xv). **[*62 ITR 638]***

Expenditure	**1977**	**Bom-HC**	**South India Insurance Co. Ltd. V/s. CIT**

Expenditure is equal to expense and expense is money laid ot by calculation and intention.

[106 *ITR 969]*

Expenditure	1977	All-HC	Ratan Udyog V/s. ITO

The term **expenditure** used in section 40A(3) of the Act has a wide meaning and includes anything that is paid out or away, including payments for stock-in-trade.

[*6 CTR 134, 109 ITR 1]*

Expenditure	1982	Cal-HC	CIT V/s. Indian Jute Mills Association

The expression **expenditure** is not defined in the Income-tax Act, 1961, and must be understood in the context in which it is used. The Legislature has used the expression allowances and depreciation in several sections in the scheme in Chap. IV within which section 44A appears. Section 37 of the Income-tax Act, 1961, enjoins that any expenditure not being expenditure of the nature described in sections 30 to 36 laid out or expended wholly and exclusively for the purpose of the business or profession should be allowed in computing the income chargeable under the head Profits and gains of business or profession . In sections 30 to 36, the expression expenses incurred as well as allowances and depreciation has been used. For example, depreciation and allowances have been dealt with in section 32. Therefore, the Legislature was using the expression any expenditure in section 37 to cover both. It has used both the expressions allowances contemplated under section 32 as well as the actual expenditure as contemplated under section 30. Section 44A appears in Chap. IV, which comprises of sections 14 to 44B, and, under that chapter, under sub-heading D, section 44A appears. Sub-heading D deals with profits and gains of business or profession. Though, normally, an association like a trade, professional or similar association would have been entitled to provide for depreciation if it was using those assets for the purpose of its business, yet, as it cannot carry on any business as such, it would not be entitled to any depreciation. Therefore, it cannot be said that it does not fall within the expression expenditure deductible, which describes the quality and nature of the expenditure under the provisions of any Act. Though an exemption must be strictly construed and the provisions in fiscal statutes must receive strict construction, yet section 44A is a special provision for deduction in the case of certain computations. In that sense it is a beneficial provision. It is also a canon of construction that even in a statute which requires to be strictly construed, if there is any beneficial provision it should be liberally construed. The provisions of section 44A being intended for the benefit of a trade, professional or similar association, in case of doubt, it should be construed liberally and in favour of the taxpayer.

[*23 CTR 198, 134 ITR68]*

Expenditure	1986	Raj-HC	Fakri Automobiles V/s. CIT

The word **expenditure** in section 40A(3) is of wide import and includes expenses which are taken into account while determining the gross profit. It includes the price paid for stock-in-trade and/or raw materials, etc.Spending in the sense of paying out of away of money is the primary meaning of expenditure. **[160 *ITR 504]***

Expenditure	1988	Raj-HC	Kejriwal Iron Stores V/s. CIT

Spending in the sense of paying out of away of money is the primary meaning of **expenditure**. Thus expenditure is what is paid out or away and is something which is gone irretrievably. The word expenditure in section 40A(3) of the Income-tax Act, 1961, should not be given a restricted meaning because section 40A(3) is designed to check tax evasion by claims of cash expenditure which are difficult to be properly investigated. The term expenditure in section 40A(3) includes within its ambit payments made for the purchase of goods.

[62 *CTR 227, 169 ITR12, 31 TAXMAN 311]*

Expenditure	1991	Gau-HC	CIT V/s. Hardware Exchange

A bare perusal of section 40A(3) makes it clear that it has an overriding effect over all other provisions of the Act. …….Spending in the sense of paying out or away of money is the primary meaning of expenditure. **Expenditure** is something which is gone irretrievably.

[*95 CTR 183, 190 ITR 61]*

Expenditure	1991	SC	Attar Singh Gurmukh Singh V/s. ITO

The word **expenditure** in section 40A(3) has not been defined in the Act. It is a word of wide import. Section 40A(3) refers to the expenditure incurred by the assessee in respect of which payment is made. It means that all outgoings are brought under the word expenditure for the purpose of the section. The expenditure for purchasing stock-in-trade is one of such outgoings. Rule 6DD of the Income-tax Rules, 1962, also contemplates payments made for stock-in-trade and raw materials. This rule is in accordance with the terms of section 40A(3). Section 40A(3) is, therefore, attracted to payments made for acquiring stock-in-trade and other materials.

[*97 CTR 251, 191 ITR 667]*

Expenditure	1992	All-HC	Janata Metal Supply Co. V/s. CIT

The object underlying section 40A (3)of the Income-tax Act, 1961, is to prevent the use of unaccounted money in carrying on business. Hence, the meaning of the expression **expenditure** cannot be restricted to deductions provided by sections 28 to 43A alone. The emphasis is upon the word expenditure and not upon the word deduction, as would be evident from a reading of the sub-section. The amounts spent by the assessee in purchasing goods for the purpose of resale is expenditure within the meaning of section 40A(3). **[*100 CTR 52, 193 ITR 646]***

Expenditure in the nature of entertainment	1980	Kar-HC	Addl. CIT V/s. Bangalore Turf Club Ltd.

In order that an expenditure should constitute **expenditure in the nature of entertainment** within the meaning of section 37(2A) of the Income-tax Act, 1961, it should have been expended for entertaining persons, whether customers or guests, either by way of providing food, drinks, refreshment or in providing any type of pleasure or amusement or an expenditure of a like nature incurred by the assessee for the purpose of entertainment, pleasure or amusement for himself or for his employees. Whatever be the case, the dominant purpose of incurring the expenditure for the purpose of food, drinks, refreshment and amusement, must be for deriving or providing pleasure. **[19 *CTR 172 126 ITR 430]***

Explanation	1996	Mad-HC	K.A. Ramaswamy Chettiar V/s. CIT

An **Explanation** added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

[*220 ITR 657, 88 TAXMAN 526]*

Explanation	2002	Del-HC	CIT V/s. Orissa Cement Ltd.

The object of an **Explanation** to a statutory provision is : (a) to explain the meaning and intendment of the Act itself; (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve; (c) to provide an additional support to the dominant object of the Act in order to make

it meaningful and purposeful; (d) An Explanation cannot in any way interfere with or change the enactment or any part thereof; but where some gap is left which is relevant for the purpose, the Explanation, in order to suppress the mischief and advance the object of the Act, can help or assist the court in interpreting the true purpose and intendment of the enactment, and the right with which any person under a statute has been clothed. It cannot set at naught the working of an Act by becoming a hindrance in the interpretation of the same.

[173 *CTR 371, 254 ITR 24, 122 TAXMAN 353*]

Explanation	**2003**	**Ker-HC**	**CIT V/s. Kerala Electric Lamp Works Ltd.**

The label **Explanation** is not decisive of the true meaning and scope of the provision. Ordinarily the purpose of an Explanation in a statute is to clarify or explain or settle any doubt or ambiguity or controversy. It may even widen the scope of the main provision in rare cases. The words used alone can reflect the true intent and they should be construed on their own terms.

[183 *CTR 182, 261 ITR721, 129TAXMAN 549]*

Extinguishment of rights	**1994**	**Bom-HC**	**Bharat Forge Co. Ltd. V/s. CIT**

The phrase **extinguishment of rights** takes colour from the associated words and expressions and will have to be restricted to the sense analogous to them. Hence, the expression extinguishment of any rights therein will have to be confined to the extinguishment of rights on account of transfer and cannot be extended to mean any extinguishment of right independent of or otherwise than on account of transfer. **[205 *ITR 339]***

* *When power is given to a public authority for being used for the benefit of a class of persons and the conditions precedent for the exercise are well defined, there is a duty to exercise such power and on a failure to perform that duty, the courts are not only empowered but are duty bound to interfere. If the conditions laid down for exercise of the discretion are satisfied, the authority cannot refuse to exercise the discretion. If there is omission to exercise discretion, inter alia, on account of the failure on the part of the authority to genuinely address itself to the matter before it or due to misconception of the scope of its power under the statute, mandamus can issue directing such authority to rehear and determine the matter afresh according to law.*

* *Once it is held that the assessee suffers civil consequences and any order passed would be prejudicial to him, the principles of natural justice must be held to be implicit. The principles of natural justice are required to be applied inter alia to minimize arbitrariness.*

* *Natural justice should not be treated in the abstract. It should be treated in the practical context of administration of justice and what is natural or not depends a good deal on the particular facts and circumstances of each case.*

F

Factory	1963	Pun-HC	CIT V/s. Sarveshwar Nath Nigam

The word **factory** is not defined in the Income-tax Act, and in its popular sense, kohlus, which are used in connection with the manufacture of gur, must be deemed a factory. For the applicability of proviso (2) to rule 8, it is not necessary that the factory should be worked by the assessee himself; it is enough if the factory is worked by a licencee or a hirer. **[48 *ITR 853]***

Fails	1981	All-HC	Swadeshi Polytex Ltd. V/s. ITO

…the word **fails** occurring in section 144(b) must be interpreted to mean omits or does not. The word fails is wide enough to include an act of inevitable necessity. It does not involve any want of care, neglect or default on the part of the assessee but places on him an absolute duty to comply with the directions issued under section 142(2A) to have the accounts audited. It is significant that while in contingencies contemplated by clauses (a), (b) and (c) of section 144 an assessee can apply on sufficient cause being shown for cancellation of the assessment, he has no such rights in a case where he fails to comply with a direction issued under sub-section (2A) of section 142. This clearly indicates that the reasons which result in the omission on the part of an assessee to comply with the direction issued under section 142(2A) are wholly irrelevant. The failure thus may be on account of reasons within or without his control. In either case he incurs the liability to be assessed under section 144(b) of the Act.

[*127 ITR 287, 4 TAXMAN 490]*

Fails to furnish the return	1975	AP-HC	Mullapudi Venkatarayudu V/s. Union of India

The argument for the petitioner that under section 271(1)(a) penalty can be levied only in cases where an assessee **fails to file the return** under section 139(1)(a) and not in cases where there was a mere omission on the part of the assessee to do so, .. ……. under section 139(1) as obligation has been cast on an assessee to file a return within the period prescribed in that section, and, there being an obligation. non-furnishing of the return would be a failure to furnish the return within the ambit of section 271(1) of the Act. **[*99 ITR 448]***

Failure	1956	Bom-HC	Pannalal Nandlal Bhandari V/s. CIT

According to 34(1)(a) of the Income-tax Act **failure** connotes that there is an obligation which has not been carried out and if there was no obligation upon the assessee to make a return then it would not be a failure on his part to carry out that obligation. **[*30 ITR 57]***

Family	1974	SC	C. Krishna Prasad V/s. CIT

Family always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. A family consisting of a single individual is a contradiction in terms. Section 2(31) of the Income-tax Act, 1961, treats a Hindu undivided family as an entity distinct and different from an individual. Assessment in the status of a Hindu undivided family can be made only when there are two or more members of the Hindu undivided family. **[97 *ITR 493]***

Family settlement	1996	Gau-HC	CGT V/s. S.N.Zaman and S.M. Elahi

A **family settlement** is made just to avoid disputes to maintain the honour and dignity of

a family. It is neither a partition nor an exchange. Dispute not only means existing dispute, but also a dispute which is possible or is likely to occur in future.

[157 *CTR 385, 221 ITR 842]*

Fee	2002	P&H-HC	CIT V/s. Dr. Mrs. Usha Verma

According to Corpus Juris Secundum **fee** in a generic sense, implies compensation or salary; but if used in its narrow, distinctive sense it signifies the compensation for particular acts or services rendered in the line of official duties. It has been defined as a charge fixed by law for the services of a public officer, or for the use of a privilege under the control of the Government; a charge for services; a charge or emolument . . . This meaning conforms to the provisions of section 17 of the Act and it is in consonance with the broad concept of salary as compensation for services rendered. **[*172 CTR 98, 254 ITR 404, 120 TAXMAN 738]***

Fee	2006	SC	Jindal Stainless Ltd. V/s. State of Haryana

…. fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/ services, which costs in turn become the basis of reimbursement /recompense for the provider of the services/facilities. Compensatory tax is based on the principle of pay for the value. It is a sub-class of a fee. **[*283 ITR 1]***

Fees for technical services	2001	Mad-HC	Skycell Communications Ltd. V/s. Deputy CIT

Fees for technical services is not defined in section 194J of the Income-tax Act, 1961. Explanation (b) in that section provides that that expression shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9. This definition shows that consideration paid for the rendering of any managerial, technical or consultancy service, as also the consideration paid for the provision of services of technical or other personnel, would be regarded as fees paid for technical service. The definition excludes from its ambit consideration paid for construction, assembly, or mining or like project undertaken by the recipient, as also consideration which would constitute income of the recipient chargeable under the head Salaries. Thus while stating that technical service would include managerial and consultancy services, the Legislature has not set out with precision as to what would constitute technical service to render it technical service. Having regard to the fact that the term is to required to be understood in the context in which it is used, fees for technical services could only be meant to cover such things technical as are capable of being provided by way of service for a fee. The popular meaning associated with technical is involving or concerning applied and industrial science. Technical service referred to in section 9(1) contemplates rendering of a service to the payer of the fee. Mere collection of a fee for use of a standard facility provided to all those willing to pay for it does not amount to the fee having been received for technical services.

[*170 CTR 238, 251 ITR 53, 119 TAXMAN 496]*

Fees for technical services	2006	AAR	Imt Labs (India) P. Ltd.

The term **fees for technical services** as used in Explanation 2 to section 9(1)(vii) was at par with the term fees for included services in article 12(4)(a) of the DTAA. *(India -US DTAA)*

[*206 CTR 304, 287 ITR 450, 157 TAXMAN 213*]

Final order	1963	Mys-HC	Ekambarappa V/s. Addl. ITO

When an appeal has been preferred from the order of assessment made by an Income-tax Officer against a firm, the date of the **final order** in the case of the firm for the purpose of taking action under section 35(5) of the Income-tax Act for rectification of the assessment of the partners is the date of the order made in the appeal by the appellate authority. The principle that when an appeal has been preferred from an order of a Tribunal and an order is passed on appeal, the order of the Tribunal merges in the order of the appellate authority, is a principle of general application and applies to income-tax proceedings also. **[49 *ITR 692]***

Financial company	2006	Guj-HC	Barkha Investment and Trading Co. V/s. CIT

Under clause (c) of the Explanation to sub-section (8) of section 40A of the Act a **financial company** means (i) a hire-purchase finance company; (ii) an investment company; (iii) a housing finance company; (iv) a loan company; (v) a mutual benefit finance company; and (vi) a miscellaneous finance company. **[*200 CTR 342, 281 ITR 316, 150 TAXMAN 523]***

Finding	1963	Mad-HC	A.S. Khader Ismail V/s. ITO, P. Sahadeva Mudaliar

The word **finding** in the proviso to section 34(3) must be given a wide significance so as to include not only findings necessary for the disposal of the appeal but also findings which are incidental to it. It will also apply to cases where it is held that the income in question was not received during the year with which the appellate authority was concerned. If, in pursuance of such a finding, the Income-tax Officer proceeds to investigate afresh as to in which year the income was received, the action of the Income-tax Officer would still be the result of or the logical consequence of the finding arrived at for the purpose of the disposal of the appeal and the proviso to section 34(3) would apply to such a case. **[*47 ITR 16]***

Finding	1966	Bom-HC	Sabita Bhagwandas Shah V/s. K.P. Majumdar, 2nd ITO

The expression **finding** in the second proviso to section 34(3) of the Indian Income-tax Act, 1922, means a finding necessary for giving relief in respect of the assessment for the year in question and the said proviso did not save the time-limit prescribed under section 34(1) in respect of an escaped assessment of a year other than that which was the subject-matter of the appeal or revision, as the case might be. **[*59 ITR 652]***

Finding and direction	1964	SC	ITO V/s. Murlidhar Bhagwan Das

That the expressions **finding** and **direction**, in the second proviso to section 34(3), meant respectively, a finding necessary for giving relief in respect of the assessment for the year in question, and a direction which the appellate or revision authority, as the case may be, was empowered to give under the sections mentioned in that proviso. A finding, therefore, could only be that which was necessary for the disposal of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner might hold, on the evidence, that the income shown by the assessee was not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context was that the income did not belong to the relevant year. He might incidentally find that the income belonged to another year, but that was not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. **[*52 ITR 335]***

For all purposes	1969	SC	ITO V/s. Tata Engineering and Locomotive Co. Ltd.

The vicarious liability imposed upon a person by his appointment as the statutory agent of a non-resident under section 43 of the Indian Income-tax Act, 1922, extends to the liability for the assessment year for which the appointment is made and cannot extend to the liability for any other assessment year. The expression **for all purposes** in section 43 only indicates that when an appointment is made for a particular assessment year it is good for all purposes as far as that assessment is concerned, i.e., for all purposes for imposing tax liability, determining the quantum of the liability and for recovering it. **[*71 ITR 457]***

For any year and that year	1962	SC	First Addl.ITO V/s. H.N.S. Iyengar

The period of limitation for the service of a notice under section 34(1)(a) of the Indian Income-tax Act, 1922, for the assessment or reassessment of income escaping assessment, is eight years from the end of the relevant assessment year and not the accounting year. The words **for any year and that year** in section 34(1)(a) have reference to the assessment year and not the accounting year, for the assessment is for the assessment year although of the income of the previous year. **[44 *ITR 437*]**

For every month during which the default continued	1981	SC	CWT V/s. Suresh Seth

The words **for every month during which the default continued** indicate only the multiplier to be adopted in determining the quantum of penalty and do not have the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. **[21 *CTR 349, 129 ITR 328, 6 TAXMAN 35]***

For the benefit of the minor child	2006	Mad	CIT V/s. K.J. Ramaswamy

..**for the benefit of the minor child** means that the minor should have the benefit of the income. In other words, the income must be readily available for the use of the minor. If the income is only to be credited to the minor's account in the trust and to remain there till the minor attains majority, then, it is not for the immediate use of the minor, which means that the minor does not get any benefit at all for the present. He is not entitled to receive the money till he attains majority. So long as it is shown that the beneficiary/minor child of the individual has to receive his share of income only on attaining majority, clause (iii) to section 64(1) of the Act would not be attracted. **[*205 CTR 352, 286 ITR 77, 157 TAXMAN 2]***

For the purpose of business	1971	Bom-HC	Ebrahim Aboobaker V/s. CIT

The expenditure incurred for the preservation of the entire business as an entity and for defending against a claim of hostile title or against nationalisation must be construed to be an expenditure incurred **for the purposes of business** which is deductible under section 10(2)(xv) of the Indian Income-tax Act, 1922. Deductible expenditure would not include merely expenditure incurred for protecting individual asset or assets, but would include expenditure incurred in defending a challenge to the title of the trader to the entire business as an entity.

[81 *ITR 664]*

For the purpose of protecting..	2001	AP-HC	Society for Integrated Dev/s. in Urban & Rural Areas V/s. CIT

The expression **for the purpose of protecting the interests of the Revenue** in section 281B

is very wide in its meaning. The provisional attachment provided in section 281B is more like an attachment before judgment under the Code of Civil Procedure and it is a liability on the property. It should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee. Not to misuse this power a number safeguards have been provided in the section itself.

[172 *CTR 77, 252 ITR 642, 119 TAXMAN 289]*

For the purpose of the business	**1998**	**Bom-HC**	**Krishna Sahakari Sakhar Karkhana Ltd. V/s. CIT**

The expression **for the purpose of the business** is wider in scope than the expression for the purpose of earning profits. Its range is wide : it may take in not only the day to day running of a business but also the rationalisation of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for the carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. The only limitation is that it should be for the purpose of the business, that is to say, the expenditure incurred should be for the carrying on of business and the assessee should incur it in his capacity as a person carrying on the business. It cannot include sums spent for purposes unconnected with the business. **[229 *ITR577]***

Foreign enterprises	**1989**	**SC**	**Petron Engg.Construction (Pvt.) Ltd. V/s. CBDT**

A branch, unit or establishment of an Indian company doing business in a foreign country cannot be said to be a **foreign enterprise** within the meaning of section 80-O of the Income-tax Act, 1961. A foreign enterprise contemplated by section 80-O is an enterprise situate in a foreign country having been created or registered in accordance with the laws of that country. This view is supported by the setting in which the expression has been placed and the circumstances in which the law came to be passed.

[75 *CTR 20, 175 ITR 523, 41 TAXMAN 294]*

Forward	**1997**	**AP-HC**	**CIT V/s. Shahzadi Begum**

The word **forward** is a word of common usage and has to be understood in its usual meaning. From the dictionary meaning of the word forward the connotation of the expression is abundantly clear. It denotes sending forward or sending towards the place of destination or transmission. In all these situations the thing forwarded moves from the place of its origin towards its destination. That would show that it has left the place from which it was forwarded. It follows that on the date when a letter is dispatched in the usual course, either through special messenger, or by handing it over to a responsible person for posting in the normal course or when a letter is handed over at the post office for delivery to the addressee, it can be said that the letter is forwarded on that date. The draft assessment order would be deemed to have been forwarded on the date on which it was given for purposes of service on the assessee, to any process server of the Income-tax Department or when it was delivered at the post office or when it was handed over to any person, for posting the same through the media of the post office or when it is handed over to the representative of the assessee.

[142 *CTR 471, 225 ITR 963, 94 TAXMAN 336]*

Founder of the institution	**2003**	**SC**	**DIT V/s. Bharat Diamond Bourse**

The expression **founder of the institution** in section 13(3)(a) means that the person concerned

should be the originator of the institution or at least one of the persons responsible for the coming into existence of the institution. Contribution of money is not an inexorable test of a person being a founder, though it might happen often that the person who originates an institution may often also fund it. **[179 *CTR 225, 259 ITR 280, 126 TAXMAN 365]***

Four assessment years immediately succeeding the initial	**1999**	**All-HC**	**CIT V/s. Laxmi Metal Ind.**

The expression and each of the **four assessment years immediately succeeding the initial assessment year** occurring in sub-section (2) of section 80J is to be construed in its plain and ordinary sense. When so construed, there is no room for ambiguity on a plain reading of those words. The failure to make a claim for relief under section 80J in the initial assessment year or in any of the succeeding assessment years in no way creates a hurdle for making a legitimate claim for the remaining period of exemption provided in sub-section (2) of section 80J. The assessee can legitimately make a claim for relief under section 80J within the period of exemption of five years by showing that it fulfils all the requirements for the grant of relief contemplated under section 80J of the Act. There is nothing in the statutory provisions which imposes a limitation that the relief must necessarily be claimed for all the five assessment years. **[146 *CTR7 22, 236 ITR 130, 100 TAXMAN 619]***

Full and true disclosure	**1992**	**P&H-HC**	**R.P. Handa V/s. ITO**

The words **full and true disclosure** has not been defined in the Act. It must be seen whether, on the facts of a case, the assessee had made a full and true disclosure of his income.
[198 *ITR 54]*

Full and true disclosure of income	**2001**	**MP-HC**	**Sureshchandra Babulal Mittal V/s. ACIT (Inv.)**

The Explanation appended to the section defines the meaning of the words **full and true disclosure of income**. By a deeming fiction, if it is found that the excess of income assessed over the income returned is of such a nature as not to attract the provisions of clause (c) of section 271(1) then it is deemed that the assessee had made a full and true disclosure of his income or particulars relating thereto. By this deeming fiction, the Legislature has given certain benefits to the assessee which if proved would result in reduction or waiver of penalty.
[169 *CTR 29, 249 ITR 603, 118 TAXMAN 65]*

Full value of consideration	**1991**	**Bom-HC**	**CIT V/s. Shakuntala Kantilal**

The expression **full value of consideration** contemplates both additions to, as well as deductions from, the apparent value. What it means is the real and effective consideration. So far as clause (i) of section 48 is concerned, the expression used by the Legislature in its wisdom is the expenditure incurred wholly and exclusively in connection with such transfer. The expression in connection with such transfer is wider than the expression for the transfer. Any amount the payment of which is absolutely necessary to effect the transfer will be an expenditure covered by this clause. In other words, if, without removing any encumbrance, sale or transfer could not be effected, the amount paid for removing that encumbrance will fall under clause (i).
[190 *ITR56]*

Full value of the consideration .. of the capital asset	**1967**	**SC**	**CIT V/s. George Henderson and Co. Ltd.**

The expression **full value of the consideration for which the sale, exchange or transfer of**

the capital asset is made, appearing in section 12B(2) of the Indian Income-tax Act, 1922, does not mean the market value of the asset transferred, but the price bargained for by the parties to the sale, etc. The consideration for the transfer of a capital asset is what the transferor receives in lieu of the asset he parts with, viz., money or money's worth, and therefore the very asset transferred or parted with cannot be the consideration for the transfer. The expression full consideration in the main part of section 12B(2) cannot be construed as having a reference to the market value of the asset transferred but the expression only means the full value of the thing received by the transferor in exchange for the capital asset transferred by him. The main part of section 12B(2) provides that the amount of capital gain shall be computed after making certain deductions from the full value of the consideration for which the sale, exchange or transfer of the capital asset is made. In the case of a sale, the full value of the consideration is the full sale price actually paid. The legislature had to use the words full value of the consideration because it was dealing not merely with sale but with other types of transfers, such as exchange, where the consideration would be other than money. The expression full value means the whole price without any deduction whatsoever and it cannot refer to the adequacy or inadequacy of the price bargained for. Nor has it any necessary reference to the market value of the capital asset which is the subject-matter of the transfer. **[*66 ITR 622]***

Fund	**1981**	**Cal-HC**	**Duncan Brothers and Co. Ltd. V/s. CIT**

The expression **fund** used in clause (ii) of rule 2 of Sch. II of the Companies (Profits) Surtax Act, 1964, has been construed by the Board in Circular No. I. P. (XV-5) of 1968, dated 23rd January, 1968, giving it its ordinary meaning as understood in common parlance. A fund as contemplated under rule 2(ii) need not be a free fund available for any purpose and not earmarked for a particular purpose. A provision for taxation would constitute a fund within the meaning of that rule. **[*128 ITR 302]***

Fund	**2001**	**Del-HC**	**CIT V/s. Sir Sobha Singh Public Charitable Trust**

In construing the provisions of section 13(2)(h) of the Income-tax Act, 1961, the expression **funds** has to be understood in the context of the provisions of section 13(2)(h) of the Income-tax Act, 1961, and not only with reference to dictionaries or to commercial parlance or to the principles of accountancy. The expression used is funds and not fund. Funds means money in hand or cash according to some dictionaries. This would be the proper meaning to be attributed to the expression funds as appearing in the provision. The fundamental requirement of section 13(2)(h) is that there must be investment of funds of a trust. If any expanded meaning is given to include assets other than money in hand or cash or credit balance in a bank account, it is evident that they are not capable of being invested as such. Other assets of the trust apart from money in hand or cash or balance in bank will have to be converted into money or cash before the same can be invested. The expression invest connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit or financial advantage or return. What is contemplated is the trust having assets in the form of money or cash or balance in a bank or any other form capable of being invested or by a positive act which pursuant to a decision of the trust is laid out or committed in a concern of a nature specified before it can be held that such an investment comes within the mischief of section 13(2)(h). **[*167CTR 358, 250 ITR 475]***

Funds	**1988**	**Cal-HC**	**CIT V/s. Birla Charity Trust**

In construing section 13(2)(h) of the Income-tax Act, 1961, the meaning of the expression fund

will have to be determined not only with reference to dictionaries or to commercial parlance or to the principles of accountancy but also in the context of the said section itself. The expression in the said section is **funds** and not fund. One of the meanings of the said expression funds in the dictionaries is money in hand or cash. In the context of this provision, this is the meaning which should be attributed to the expression funds in construing the said section. The section contemplates that there will be investment of funds of a trust. If any other meaning is given to the expression funds, the same will not be available for investment or capable of being invested. If the funds of the trust are construed to include assets other than money in hand or cash or a credit balance in a bank account, the same are not capable of being invested as such. Other assets of the trust apart from money in hand or cash will have to be converted into money or cash before the same can be invested. **[66** ***CTR 172, 170 ITR 150, 34 TAXMAN 504]***

Funds	**2001**	**Del-HC**	**CIT V/s. Sir Shri Ram Foundation**

In construing the provisions of section 13(2)(h) of the Income-tax Act, 1961, the expression **funds** has to be understood in the context of the provisions of section 13(2)(h) of the Income-tax Act, 1961, and not only with reference to dictionaries or to commercial parlance or to the principles of accountancy. The expression used is funds and not fund. Funds means money in hand or cash according to some dictionaries. This would be the proper meaning to be attributed to the expression funds as appearing in the provision.

[167 ***CTR 349, 250 ITR 55, 116TAXMAN 113]***

* *The cardinal law of interpretation is that if the language is simple and unambiguous, it is to be read keeping in mind the clear intention of the legislation. Any addition or subtraction of words is not permissible. It is also not proper to use a sense which is different from what it ordinarily conveys.*

* *The meaning of the words and expressions used in an Act take their colour from the context in which they appear. Such words are to be taken not in an isolated or detached manner dissociated from the context but are to be read together in the context and construed in the light of the purpose and object of the Act itself.*

* *Ordinarily, the same meaning is implied by the use of the same expression in every part of an enactment but this presumption as to identical meanings is not of universal application. The same expression may be used in different senses in the same statute and even in the same section. The context in which the expression has been used or the subject-matter dealt with by that particular provision which contains that expression may necessitate the adoption of a different meaning of that expression.*

* *In the absence of a statutory definition, the court will have to consider the meaning of a word in the manner it is understood generally by those who deal with the subject in question.*

* *The meaning attributable to a term has to be understood with reference to the context and the purpose for which a particular provision is enacted.*

G

Galvanisation and manufacturing	1981	Cal-HC	CIT V/s. Hindusthan Metal Refining Works (P.) Ltd.

Galvanization is an act or process of galvanizing or coating by which iron or steel is coated with zinc to protect it from rust. The process of galvanizing does not result in the manufacture or production of new goods as such. **[*128 ITR472]***

General and public utility	1973	Guj-HC	CIT V/s. Ahmedabad Rana Caste Association

A purpose would be charitable if it is for the advancement of any other object of **general public utility**. General means pertaining to a whole class. Public means the body of people at large including any class of the public and utility means usefulness. Therefore, the advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individuals would be a charitable purpose. **[88 *ITR 354]***

General deposits	1993	Raj-HC	CIT V/s. Gandhi Metals Mills (P.) Ltd.

In legal parlance, a **general deposit** is where the money deposited itself is not returned but equivalent to the money (i.e., a like sum) is to be returned. A perusal of section 40A(8) of the Income-tax Act, 1961, shows that the word deposit mentioned therein has not clearly been defined. In the Explanation to section 40A(8), an inclusive definition of deposit has been given which states that the word deposit means any deposit of money with, and includes any money borrowed by, a company. This Explanation in clause (b) has defined the word deposit in a wider sense and besides any deposit of money with a company, the money borrowed by the company is also taken within the ambit of the word deposit. A distinction has been drawn in this definition with regard to the deposit of money and money borrowed. In the said Explanation, certain exceptions have been provided which would not include the amount received by the company as deposit. Admittedly, the amount deposited by a director in the company in its current account has not been excluded therefrom. The deposits which are understood in the business of a bank may be in the current account, savings bank account and fixed deposit account. The payment in the current account cannot be excluded from the nature of deposits which are made in the bank. The only distinction between a fixed deposit and this deposit is that the term for which the payment has been made in the case of a fixed deposit is a fixed one whereas, in the case of a current account, no time is fixed therein and this distinction will not take the amount outside the purview of deposit used in the clause. … In the Explanation to section 40A(8) referred to above, by defining the word deposit, no such exclusion has been made and, therefore, deposits by the directors in their current accounts cannot be excluded. On a correct interpretation of the provisions of section 40A(8), the payments which are made by a director to the company in the current account of the said director on which the company is paying interest will be considered as a **deposit**. **[200 *ITR 252]***

General public utility	1944	PC	All India Spinners' Association V/s. CIT

The words **general public utility** in section 4(3) are very wide words. They would exclude the object of private gain, such as an undertaking for commercial profit though all the same it would subserve general public utility. **[12 *ITR 482]***

General public utility	2000	Guj-HC	Hiralal Bhagwati V/s. CIT

An object beneficial to a section of the public is an object of **general public utility**. To serve as a charitable purpose, it is not necessary that the object must be to serve the whole of mankind or all persons living in a country or province. **[161 *CTR 401, 246 ITR 188]***

Gift	1974	Del-HC	Shiv Shankar Lal V/s. CIT

The definition of the word **gift** in the Gift-tax Act, 1958, rather than that in the Transfer of Property Act, was applicable to the term used in section 47(iii) of the Income-tax Act, 1961 **[94 *ITR 433]***

Gift	1978	Bom-HC	CGT V/s.Mrs. Jer Mavis Lubimoff

It is quite evident from the language of section 3 of the Gift-tax Act, 1958, that it is only a gift as defined in this Act which is subjected to gift-tax. Having regard to the definition of the word **gift** and the expression transfer of property it is clear that unless the transfer in question is a transfer of property within the definition given in section 2(xxiv), it is not capable of being a gift within the meaning of the Act. **[*7 CTR 28, 114 ITR 90]***

Gift	1980	Cal-HC	CIT V/s. Sham Narayan Mehrotra

The expression gift in section 47(iii) of the Income-tax Act, 1961, should be construed as meaning gift under general law. If the expression **gift** is confined to the gifts contemplated by the Gift-tax Act, 1958, then section 52 of the Income-tax Act would become otiose for the purpose of application of section 45. The definition of gift in section 2(xii) of the Gift-tax Act is only for the purpose of that Act and not for the purpose of any other Act. The definition clause says so clearly. Section 4(1) of the Gift-tax Act of 1958 creates a legal fiction. The fiction is limited for the purposes for which it is created. The term transfer, as defined in section 2(47) of the Income-tax Act, 1961, is an indication that the transfer contemplated in section 45 and onwards cannot be confined to transfers contemplated by the Gift-tax Act. **[*122 ITR 313]***

Gift	1981	Kar-HC	Sanjiv V. Kudva V/s. CIT

Where two legislations are pari materia in that they deal with the same subject-matter and are mean to enforce each other, it is permissible to assign the meaning, given to a word in an earlier enactment, to the same word used in a later enactment. The Gift-tax Act was enacted in the year 1958 and the Income-tax Act was enacted in the year 1961 by Parliament. Both the enactments impose direct taxes and are administered by the same administrative agency. The Legislature gave an enlarged definition to the word gift in Gift-tax Act, 1958, so as to include every sale for inadequate consideration so as to prevent evasion of gift-tax by clothing a gift in the form of sale for a notional consideration. It is for the reason that every sale for inadequate consideration had been defined as a **gift** and the provisions of Gift-tax Act were made applicable, the legislature deliberately excepted the gifts out of the provisions of section 45, by section 47(iii). If every sale of capital asset for inadequate consideration also falls within the purview of section 52(2) of the Act, when the fair market value as on the date of sale exceeds 15 per cent. of the consideration actually received, section 47(iii) would be rendered meaningless, which is not a permissible rule of interpretation. By giving the word gift used in section 47(iii) the same meaning as given in the Gift-tax Act, there would be complete harmony between section 47 and 52 of the Income-tax Act. Every sale for inadequate consideration falls within the meaning of the word gift and consequently it would attract the levy of gift-tax and be outside the purview of capital gains tax and every sale in which there is understatement of the value falls within the mischief of section 52 and attracts capital gains tax and not the provisions of

the Gift-tax Act. The provisions would be complementary to, and enforcing, each other. Hence, the word gift used in section 47(iii) of the Income-tax Act, should be given the same meaning as given to it in the Gift-tax Act, and consequently neither, section 45 nor section 52 of the Income-tax Act is attracted to a case of transfer of capital asset for inadequate consideration. **[*20 CTR 1, 127 ITR 354]***

Gift	1982	Guj-HC	CGT V/s. Ansuya Sarabhai

Section 2(xii) of the Gift-tax Act, 1958, read with section 2(xxiv)(d) shows that before a transaction can be termed a **gift** there must be a transfer by one person to another of an existing movable or immovable property made voluntarily and without consideration. The first part of the definition in section 2(xii) requires at least two persons. The transaction must be bilateral or multilateral. A unilateral transaction by which one party releases his interest in a given property is not covered by this definition. **[22 *CTR 201, 133 ITR 108]***

Gift	1988	AP-HC	CIT V/s. Jagtram Ahuja

A perusal of sections 2 and 4 of the Gift-tax Act, 1958, shows that Parliament has sought to give an extended meaning to the expression "transfer of property" and consequently to the expression "gift". Every transfer of existing movable or immovable property, made without consideration, constitutes "gift". **[*172 ITR 632]***

Gift	1997	Ker-HC	CGT V/s. Smt. K. Nagammal

Section 2(xii) of the Gift-tax Act, 1958, defines the term **gift**. According to the definition a transaction to be understood as a gift has to be a transfer by one person to another of any existing movable or immovable property. Secondly, the transaction has necessarily to be without consideration. **[135 *CTR 17, 226 ITR 598*]**

Gift	1999	Ker-HC	M.A. Ismail V/s. CGT

Gift has been defined in section 2(xii) of the Gift-tax Act, 1958, as the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth. The expression transfer of property has been defined in section 2(xxiv). Under sub-clause (d) of section 2(xxiv) transfer includes any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person. The propositions established are (1) the transaction referred to takes colour from the main clause, each of which deals with one or the other mode of transfer. It must be a transfer of property in some way; (2) the transaction must be with some other person and it cannot be a unilateral act; (3) the required intent must be shown to be existing. The main ingredient of the clause is intent. Intent means the main or substantial object of the transaction. **[157*CTR 557, 240 ITR 539]***

Gift	2002	SC	CGT V/s. T.M. Louiz

The definition of ''gift'' makes it clear that there has to be a transfer by one person to another of movable or immovable property; such transfer has to be voluntary and without consideration in money or money's worth. What is, therefore, absolutely essential for the purpose of a gift is a transfer of property. ''Transfer of property'' is defined for the purpose of the Gift-tax Act as any disposition or conveyance, or assignment or settlement or delivery or payment or other alienation of property. **[*163 CTR 359, 245 ITR 831, 112 TAXMAN 622]***

Gift	2002	Guj-HC	Bhavna Nalinkant Nanavati V/s.CGT

A **gift** for the purposes of the Gift-tax Act, 1958, means transfer of any property made voluntarily and without consideration by one person to another. The definition of transfer of property takes within its sweep the creation of a trust in property. The donor is a person who makes the gift and the donee is a person who acquires any property under a gift and includes both the trustee and the beneficiary where a gift is made to a trustee for the benefit of another person.

[*174 CTR152, 255 ITR 529]*

Godowns or warehouses	1986	Guj-HC	CIT V/s. Ahmedabad Maskati Cloth Dealers Co-op W. House Soc.

The Legislature advisedly used the words **godowns or warehouses** because the intention was to encourage co-operative societies to construct godowns and warehouses which would prove useful for the rural economy. Literal interpretation of the words godowns or warehouses will not lead to any absurdity or produce any manifestly unjust result. The dictionary meanings of godowns and warehouses show that both these terms are synonymous and interchangeable. The common parlance meaning which can be attributed to godowns or warehouses is that it must be used for the purpose of storage of goods even for a temporary period. The expression facilitating the marketing of commodities would suggest a stage anterior to the actual sale of the commodity. The words facilitating the marketing of commodities would not lend colour to the words godowns or warehouses so as to enlarge their meaning. Rental income derived from letting of shops used for business cannot be said to be income derived from the letting of godowns or warehouses and exemption under section 80P(2)(e) will not be available in respect of such income.

[50 *CTR283, 162 ITR142]*

Godowns or warehouses	2005	All-HC	CIT V/s. District Co-operative Federation

Section 80P(2)(e) of the Income-tax Act, 1961, provides for deduction of income derived by a co-operative society from the letting of **godowns or warehouses** for storage, processing or facilitating the marketing of commodities. It will appear from the dictionary meanings of godowns and warehouses that both these terms are synonymous and interchangeable. The common parlance meaning which can be attributed to godowns or warehouses is that they must be used for the purpose of storage of goods even for a temporary period.

[*193 CTR 992, 271 ITR 22, 144 TAXMAN 333]*

Good faith	1978	All-HC	Jakhodia Brothers V/s. CIT

The **good faith** which is required to be established for invoking the provisions of sections 273A(1)(ii) is that, in making the disclosure, the petitioner must have acted honestly. In other words, he should not have been guilty of having acted dishonestly in making the disclosure. The fact that before making the disclosure his conduct had been dishonest or that he did not act in good faith is irrelevant for the purpose of applying these provisions. The disclosure under this section is made by an assessee for the purpose of getting the benefits provided therein. The fact that in the past the assessee did not make a full disclosure of his income and concealed the same is immaterial.

[7*CTR 400, 115 ITR61]*

Good faith	1980	Kar-HC	Radhakrishna V/s. CWT

The requirement of section 18(2A) (now section 18B) of the Wealth-tax Act, 1957, is that a full and true disclosure of the net wealth must be in **good faith**. If it has been made honestly, it should be considered as having been done in good faith whether or not it has been done

negligently, i.e., even in a case where a disclosure has been made negligently, it can still be considered as having been done in good faith if in fact it has been done honestly.

[121 *ITR 722]*

Good faith	1981	AP-HC	Seetha Mahalakshmi Rice and Groundnut Oil Mill Contractors Co. V/s. CIT

The expressions **good faith** and full and true disclosure of the income mean that the assessee in the circumstances must have felt that he has filed the return voluntarily and in good faith and according to him has made a full and true disclosure of his income. **[127 *ITR 579]***

Good faith	1990	AP-HC	K. Ramulu and Bros. V/s. CIT

The expression **good faith** is not defined in the Act. Under clause (22) of section 3 of the General Clauses Act, 1897, a thing shall be deemed to be done in 'good faith' where it is in fact done honestly whether it is done negligently or not. Thus if the element of honesty is present, the requirement of good faith is satisfied. The good faith which is required to be established for invoking section 273A is that in making the disclosure the petitioner must have acted honestly. **[*185 ITR 517, 51 TAXMAN 57]***

Good faith	1991	Bom-HC	Rohitkumar and Co. V/s. F.J. Bahadur, CIT

The term **good faith** is not defined under the Act but is defined under section 2(22) of the General Clauses Act. Either under the General Clauses Act or in ordinary parlance, an act done in good faith means an act done honestly even if it is tainted with negligence or mistake. All that is required is that the disclosure of income must be full and true according to the honest belief of the assessee. Voluntary means without compulsion. **[*92 CTR 260, 190 ITR 93]***

Good faith	1992	All-HC	Sardar Gur Iqbal Singh V/s. CWT

The expression **good faith** used in section 18B(1)(b), has not been defined in the Act. However, under the General Clauses Act, a thing shall be deemed to be done in good faith when it is, in fact, done, honestly, whether it is done negligently or not. Good faith has relevance to the frame of mind of the person at the relevant time when he furnished voluntarily the return making the disclosure of his net wealth. In a given case, in deciding the question of good faith what is relevant to be kept in consideration is the intention of honesty and absence of bad faith or mala fides. In a case where the disclosure has been made negligently, it may still be considered as having been made in good faith if, in fact, it was made honestly. A mistake committed unintentionally in making a full and true disclosure by oversight or negligence without anything more would not render the disclosure outside the purview of good faith.

[197 *ITR 269]*

Good faith	1999	Kar-HC	K.L. Swamy V/s. CIT

The expression **good faith** means an act done honestly even if the same be tainted with negligence or mistake. Section 2(22) of the General Clauses Act, 1897, lends a similar meaning to the said expression. In order that a disclosure is termed as having been made in good faith, the same must be demonstrably honest. A disclosure which is made under the compulsion of a possible penalty or other proceedings cannot be termed honest or one made in good faith, the underlying object of any such disclosure being not to come clean on the subject but to avoid the adverse consequences that may follow a non-disclosure.

[*57 CTR 489, 239 ITR 386, 102 TAXMAN 491]*

Goods	2005	SC	Tata Consultancy Services V/s. State of A.P.

The term **goods**, for the purposes of sales tax, cannot be given a narrow meaning. Properties which are capable of being abstracted, consumed and used and/or transmitted, transferred, delivered, stored or possessed, etc., are goods for the purpose of sales tax. The test to ascertain whether a property is goods for the purposes of sales tax is not whether the property is tangible or intangible or incorporeal. The test is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed, etc. In the case of software, both canned and uncanned, all of these are possible. Intellectual property when it is put on a media becomes goods.

[192 ***CTR 257, 271 ITR 401, 141 TAXMAN 132]***

Goods	2006	SC	Bharat Sanchar Nigam Ltd. V/s. Union of India

Goods do not include electromagnetic waves or radio frequencies for the purpose of article 366(29A)(d) of the Constitution of India. The goods in telecommunication are limited to the handsets supplied by the service provider. There are two reasons : (i) Electromagnetic waves are neither abstracted nor consumed in the sense that they are not extinguished by their user. They are not delivered, stored or possessed. Nor are they marketable. They are the medium of communication. What is transmitted is not an electromagnetic wave but the signal through such means. The signals are generated by the subscribers themselves. In telecommunication what is transmitted is the message itself by means of the telegraph. No part of the telegraph itself is transferable or deliverable to the subscriber. (ii) The second reason is more basic : a subscriber to a telephone service cannot reasonably be taken to have intended to purchase or obtain any right to use electromagnetic waves or radio frequencies when a telephone connection is given. Nor does the subscriber intend to use any portion of the wiring, the cable, the satellite, the telephone exchange, etc. At the most the concept of sale in the subscriber's mind would be limited to the handset that may be purchased. As far as the subscriber is concerned no right to the use of any other goods, incorporeal or corporeal, is given to him or her with the telephone connection. Electromagnetic wave (or radio frequencies) do not fulfil the parameters applied for determining whether they are goods, the right to use of which would be sale for the purposes of article 366(29A)(d). The essence of the right under article 366(29A)(d) is that it relates to the user of goods. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at the time of transfer, must be deliverable and delivered at some stage. If the goods or what are claimed to be goods are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods would not arise. **[*201CTR 346, 282 ITR 273, 152 TAXMAN 135]***

Goods carriage	2002	Guj-HC	Gujco Carriers V/s. CIT

The truck on which the crane is mounted is constructed and adapted specially to carry the crane. **Goods carriage** as defined in section 2(14) of the Motor Vehicles Act, 1988, means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

[174 ***CTR 324, 256 ITR 50, 122 TAXMAN 206]***

Goods or merchandise	2004	Bom-HC	Abdulgafar A. Nadiadwala V/s. ACIT

The Income-tax Act does not define the words **goods or merchandise**. It is well-settled that in the absence of there being anything contrary to the context the language of a statute should

be interpreted according to the plain dictionary meaning of the terms used therein. It would be clear that the word goods has been understood to mean all items of merchandise, supply of raw materials, finished goods, all things specifically manufactured which are movable at the time of identifying for trade and sale, other than money.

[188 *CTR 232, 267 ITR 488, 137 TAXMAN 112]*

Government security	**1998**	**Bom-HC**	**British Bank of The Middle East V/s. CIT**

Government security has been defined in clause (2) of section (2) of the Public Debt Act, 1944, to mean (a) a security created and issued by the Government for the purpose of raising a public loan and having one of the following forms, namely, (i) stock transferable by registration in the books of the bank; or (ii) a promissory note payable to order; or (iii) a bearer bond payable to bearer; or (iv) a form prescribed in this behalf; (b) any other security created and issued by the Government in such form and for such of the purposes of the Act as may be prescribed…Government security has been defined in clause (a) of section 2 of the Indian Securities Act, 1920, to mean promissory notes (including Treasury Bills), stock certificates, bearer bonds and all other securities issued by the Central Government, etc…Therefore, it is clear from the definition of Government security contained in the above two enactments that Treasury Bills are Government securities. **[149 *CTR 169, 233 ITR 251]***

Growing Crops	**1996**	**Mad-HC**	**M. Rangaswamy V/s. CWT**

A perusal of the Explanatory Notes on Clauses to the Finance Act, 1969, shows that what was intended to be exempted was **growing crops,** fruits on trees and grass in agricultural land. Even applying the commonsense concept of crops, the same can by no stretch of imagination be extended to the tree or plant concerned and merely because the word used is growing crops it will not make anything which grows, including the tree or plant, also a crop merely because the crop is a yield from the tree or plant concerned. Tea or coffee bushes or plants, apart from the two leaves and the bud of the tea plant or the berries of the coffee plant, cannot be considered as growing crops within the meaning of section 5(1)(viiia) of the Act.

[136 *CTR76, 221 ITR 39]*

Guest house	**1982**	**P&H-HC**	**Saraswati Industrial Syndicate Ltd. V/s. CIT**

Guest house as defined by sub-rule (4) of rule 6C of the Income-tax Rules, 1962, includes accommodation hired or reserved by the assessee in a hotel for a period exceeding 182 days during the previous year. This provision also indicates that expenses towards food and other amenities are included in the accommodation provided by an assessee in the nature of a guest house. Therefore, the expenses of a kitchen attached to the guest house for providing food and other amenities fall within the scope of section 37(3) of the Income-tax Act, 1961.

[24 *CTR 246, 136 ITR361]*

Guest house	**1991**	**Cal-HC**	**Kesoram Industries and Cotton Mills Ltd. V/s. CIT**

……. A **guest house** is a guest house whatever may be the category of the guests to which it caters and whatever may be the standard of comforts and amenities provided and no matter whether the intention of the party is merely to provide them with shelter and food or to entertain and amuse or gratify the visitors. **[191 *ITR 518]***

Guest house	1995	Bom-HC	CIT V/s. Ocean Carriers Pvt. Ltd.

Sub-section (5) of section 37 of the Income-tax Act, 1961, which has been inserted by the Finance Act, 1983, with retrospective effect from April 1, 1979, has clarified that accommodation maintained by an assessee to provide lodging or boarding and lodging to any person including any employee or a director or the holder of any office in the assessee-company would be in the nature of a **guest house** within the meaning of sub-section (4) of section 37.

[211 ***ITR 357]***

* *The words of the statute are ultimately to be regarded as decisive. When the language of the statute is plain and unambiguous, the width of its meaning cannot be cut down by importing the principles laid down in the cases decided under other statutes in the background of facts which are wholly dissimilar*

* *…….. It is always open for a Legislature to stretch or shrink or to give an artificial projection to any word including one used for goods, to make it more meaningful to subserve the objectives it intends to achieve.*

* *A machinery section should be so construed as to effectuate a charging section, and in interpreting such a provision, the rule is that that construction should be preferred which makes the machinery workable.*

* *In a taxing statute before taxing any person, it must be shown that the person sought to be taxed falls within the ambit of the charging section by clear words used in the section, and none can be taxed merely by implication. The legislative history of the provision is a useful guide for ascertaining the legislative intention in using the words found in a statute.*

H

Hardship	2006	Ker-HC	Commonwealth Trust (India) Ltd. V/s. DCIT (Asst.)

...the expression **hardship** is qualified and stipulated as genuine and not severe or grave, etc. Even if the hardship is really severe or grave, it need not be genuine. The stress is more on the background and conduct and not on the quantum. Whether the non-payment of the tax is due to circumstances beyond the control of the assessee and whether the payment of interest would cause genuine hardship have to be analysed and appreciated taking into account various other factors also. **[200** ***CTR 245, 280 ITR 70, 149 TAXMAN 648]***

Harijan	1997	All-HC	CIT V/s. Harijan Evam Nirbal Varg Avas Nigam

…the word **Harijan** should be interpreted in accordance with its meaning in common parlance. Commonly understood, the term Harijan refers to the members of the Scheduled Castes only. **[131** ***CTR 169, 226 ITR 696]***

Has been succeeded	1951	All-HC	Shiva Shakti Saran Raghubir Saran V/s. CIT

The words **has been succeeded** in section 26(2) are governed by the words in such capacity which must mean the capacity in which the persons succeeded was carrying on the business. **[19** ***ITR 314]***

Has reason to believe	2002	Ori-HC	Vishnu Borewell V/s. ITO

The expression **has reason to believe** in section 147 of the Income-tax Act, 1961, is stronger than the words is satisfied. The belief must be based on reasons which are relevant and material. The court can examine whether the reasons are relevant and have a bearing on the matters with regard to which he is required to entertain the belief before he can issue notice under section 148. If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the inevitable conclusion is that the Assessing Officer could not have reason to believe that any part of the income of the assessee had escaped assessment. **[178** ***CTR 409, 257 ITR 512, 125 TAXMAN 696]***

Having become due and payable within the twelve months	1991	Bom-HC	Kewalramani Bros. V/s. CIT

The words **having become due and payable within the twelve months next before the relevant date** in section 530(1)(a) have to be understood as putting a restriction on or cordoning off the amount for which priority is claimable and not in respect of each and every debt on account of taxes, rates and cesses, etc., which may be outstanding at that time and payable. **[***189 ITR 90]***

Having regard to	2006	SC	Rajesh Kumar V/s. DCIT

The expression **having regard to** in section 142(2A) is significant. An opinion must be formed strictly in terms of the factors enumerated therein. The expression indicates that in exercising the power regard must be had also to the factors enumerated therein together with all factors relevant for the exercise of the power. The factors enumerated in section 142(2A) are not

exhaustive……. If the assessee is put to notice, he could show that the nature of the accounts is not such as would require appointment of special auditors. The assessee could further show that what the Assessing Officer considers complex is in fact not so. It would also be open to him to show that the same would not be in the interest of the Revenue.

[206 ***CTR175, 287ITR91, 157 TAXMAN 168]***

Heavy chemical	**1999**	**Bom-HC**	**Colour Chem Limited V/s. CIT**

…..that **heavy chemical** is described as heavy chemical on the basis of the tonnage whereas fine chemical is defined on the basis of smaller quantity. In other words, the parameter of tonnage applies in order to ascertain whether the chemical is a heavy chemical or a fine chemical. **[155*CTR 23, 238 ITR 171, 105 TAXMAN 28]***

He has maintained for him a dwelling place	**1980**	**SC**	**CIT V/s. K.S. Ratnaswamy**

The expression **he has maintained for him a dwelling place** in section 4A(a)(ii) meant he causes to be maintained for him a dwelling place. In either of these expressions the volition on the part of the assessee in the maintenance of a dwelling place emerged very clearly; whether he maintained it or he caused it to be maintained, the maintenance of the dwelling place had to be at his instance, behest or request and when it was maintained by someone else other than the assessee, it had to be for the assessee or for his benefit.

[14 ***CTR377, 122 ITR217, 3 TAXMAN 7]***

Hedging contract	**1982**	**All-HC**	**CWT V/s. Gourepore Co. Ltd.**

The **hedging contract** is so called because it enables the persons dealing with the actual commodity to hedge themselves, i.e., to insure themselves against adverse price fluctuations. A dealer or a merchant enters into a hedging contract when he sells or purchases a commodity in the forward market for delivery at a future date. His transaction in the forward market may correspond to a previous purchase or sale in the ready market or he may propose to cover it later by a corresponding transaction in the ready market, or he may offset it by reverse transaction on the forward market itself. Hedging contracts, in order to be out of speculative transactions, must be only in respect of raw materials so far as the manufacturer is concerned, though these contracts may be both with regard to sales and purchases. Hedging contracts need not succeed the contracts for sale and actual delivery of goods manufactured, but the latter may be subsequently entered into, provided they are within reasonable time not exceeding generally the assessment year. In order to be genuine and valid hedging contracts of sales, the total of such transactions should not exceed the total stocks of the raw materials or the merchandise on hand which would include existing stocks as well as the stocks acquired under the firm contracts of purchase. **[135** ***ITR 606]***

Hedging transactions	**1993**	**Guj-HC**	**CIT V/s. Mohanlal Ranchhoddas**

The Legislature has, after carving out a subordinate source of business income styled as speculative business, enjoined that any loss under this head cannot be set-off against profits and gains from any non-speculative transaction, though it may be part of the larger head of income of business or profession. However, clauses (a), (b) and (c) of the proviso to section 43(5) of the Income-tax Act, 1961, by legal fiction take out of the purview of speculative transactions, hedging transactions. **Hedging transactions** are genuine transactions entered into for the purpose of insuring against adverse price fluctuations. In hedging transactions, neither delivery nor transfer is contemplated, and yet, they cannot be considered as speculative transactions in commercial parlance. By hedging transactions, a trader by corresponding contract

of sale and purchase in the forward market tries to offset the likely loss which may arise in the ready market due to adverse price fluctuations. A dealer in stocks and shares can enter into a contract to guard against loss in his holdings of stocks and shares which may arise due to adverse price fluctuations. However, the only condition which should be satisfied before he can claim that a contract entered into by him should not be considered as a speculative transaction is that he must have entered into such a contract to guard against the loss due to adverse price fluctuations of shares in respect of which he might have entered into contract of sale by actual delivery. **[203 *ITR304]***

Held by the assessee	**1988**	**Raj-HC**	**Sushila Devi V/s. CWT**

To interpret the meaning of the term **held by the assessee** appearing in section 5(3) of the Wealth-tax Act, 1957, it would be profitable to have an idea of the object and purpose of enacting clause (xxvi) of section 5(1) of the Act. In order to widen the area of investment in financial assets qualifying for exemption from levy of wealth-tax, six types of investments enumerated in clauses (xxii) to (xxvii) were inserted in section 5(1). One type of investment amongst them such as deposits in banks falls in clause (xxvi) of section 5(1) of the Act. In order to enable the assessee to have the benefit of clause (xxvi), it is required that the property, i.e., the deposit in the bank, remains in his/her name till its maturity.

[61 *CTR 75, 172 ITR 74, 34 TAXMAN 1]*

Hindu Undivided Family	**1937**	**PC**	**Kalyanji Vithaldas V/s. CIT**

The expression **Hindu undivided family** is used in the Indian Income-tax Act, 1922, with reference not to one school only of Hindu Law, but to all schools, and it is a mistake to read it as equivalent to the narrower expression Hindu coparcenary. It cannot be said that no female can be a member of a joint Hindu family. **[*5 ITR 90]***

Hindu Undivided Family	**1940**	**Oud-HC**	**CIT V/s. Rani Rudh Kumari**

The expression **Hindu undivided family** is much wider than a Hindu coparcenery.**[8 *ITR 607]***

Hindu Undivided family	**1995**	**Ori-HC**	**Dulari Devi V/s. CED**

The expression **Hindu undivided family** for the purpose of the Income-tax Act, or the Wealth-tax Act, or the Estate Duty Act, is not co-terminous with a Hindu coparcenary. The expression Hindu undivided family is used in the sense in which it is understood in the personal laws of Hindus. That means, a joint family may consist of a single male member, his wife and daughters, and there is no embargo either under the Income-tax Act, or the Wealth-tax Act, or the Estate Duty Act, to suggest that unless there is more than one male member, there cannot be an assessable unit of the Hindu undivided family. **[211 *ITR 524]***

Hindu Undivided Family	**1997**	**Gau-HC**	**CIT V/s. Arun Kumar Jhunjhunwalla and Sons**

The expression **Hindu undivided family** in the Income-tax Act, 1961, is used in the sense in which a Hindu joint family is understood under the personal law of Hindus. **[223 *ITR 45]***

Hire	**1997**	**Gau-HC**	**A.B.C. India Ltd. V/s. CIT**

The expressions **hire** and transportation are not defined in the Act. However, the dictionary meaning of hire is compensation for the use of a thing, or for labour or services. It also includes the other meaning to purchase the temporary use of a thing, or arrange for the labour or services of another for a stipulated compensation. **[145 *CTR 158, 226 ITR 914]***

Hire	2002	Mad-HC	CIT V/s. Madan and Co.

The word **hire** used in entry No. III(2)(ii) of Appendix I to the Income-tax Rules, 1962, is only meant to denote that the use of the vehicle is not by the owner himself for his own purpose, but it is given to another for use for a limited period, of that other for a consideration. For this purpose, there is no qualitative difference between lease of the vehicle for a specified period for consideration and letting the vehicle on hire for short duration on payment of hire charges. **[174** ***CTR 172, 254 ITR 445, 128 TAXMAN 116]***

His income	1980	SC	CIT V/s. P.K. Kochammu Amma

The total income of the assessee chargeable to tax would include the amounts representing the shares of the spouse and minor child in the profits of the firm. If this be the correct legal position, there can be no doubt that the assessee must disclose in the return submitted by him all amounts representing the shares of the spouse and minor child in the profits of the firm in which he is a partner, since they form part of his total income chargeable to tax.The words **his income** in section 139(1) must include every item of income which goes to make up his total income assessable under the Act. **[125** ***ITR 624, 4 TAXMAN 11]***

Hold	1994	P&H-HC	CIT V/s. Ved Parkash and Sons (HUF)

The word **hold**, according to the dictionary, means to possess, be the owner, holder or tenant of (property, stock, land . . . .). Thus, a person can be said to be holding the property as an owner, as a lessee, as a mortgagee or on account of part performance of an agreement, etc. **[*207 ITR 148]***

Hospitality	2005	Guj-HC	CIT V/s. Gujarat Carbon Ltd.

The term **hospitality** normally cannot be included in the ordinary meaning of the term entertainment, but falls with the enlarged meaning given to the words by Explanation 2 to section 37(2A) of the Income-tax Act, 1961. **[196** ***CTR 614, 277 ITR349]***

House	1981	Ori-HC	CWT V/s. K.B. Pradhan

The word **house** has no statutory definition and, therefore, has to be given the common parlance meaning. The dictionary meaning of the word is building for dwelling in, a building in general, a dwelling place. It also has the meaning of abode, habitation, etc. Though the concept of residence has been omitted from section 5(1)(iv), proviso, of the Wealth-tax Act, 1957, by the amendment made by the Finance (No.2) Act, 1971, with effect from April 1, 1972, house or part of a house cannot cover a situation where the premises is not habitable. If a house was once habitable and became uninhabitable on account of want of repairs, the exemption provided by section 5(1)(iv), proviso, may operate. Where, however, the house is in the process of construction and, on account of the fact that it is not complete, has not reached a habitable stage, the concept of a house cannot be extended to cover such an incomplete construction. Parliament has also exempted a part of the house where the assessee's interest extends to a part of it. The concept of habitability is inherent in the word house. **[130** ***ITR 393]***

House	1996	Gau-HC	CWT V/s. Mahal Chand Pandia

Under section 5(1)(iv) of the Wealth-tax Act, 1957, one house or part of a house belonging to the assessee is exempt from tax. The Act has not defined **house**. The word house would include any building irrespective of its use, that is to say, it may be used for business purposes

or as a residence or as a school, and it should not be restricted to a dwelling house. Section 5(1)(iv) does not contemplate that every room or a single self-contained unit of a house occupied by one person, although not in itself a division, is a separate house in law.

[134 CTR 120, 219 *ITR733, 73 TAXMAN 534]*

House	1998	Mad-HC	CWT V/s. Appuswamy (M.)

CBDT Circular No. 317/8/73/WT/ dated July 9, 1973, lays down that a building used for purposes other than residential would also qualify for exemption under section 5(1)(iv) of the Wealth-tax Act, 1957. According to the Board's circular, the term **house** in section 5(1)(iv) of the Act would refer not only to a building used for residential purposes, but for other purposes as well. **[233 *ITR 460]***

House	1999	Mad-HC	CWT V/s. N. Thavamani

The word **house** in section 5(1)(iv) of the Wealth-tax Act, 1957, is not limited to a structure designed for human habitation and it includes any building or shed intended or used as a habitation or shelter for animals of any kind, a building in the ordinary sense or any building, edifice or structure enclosed with walls and covered, regardless of the fact of human habitation.

[237 *ITR 152]*

House	2003	All-HC	CIT V/s. Jai Kishan Gupta

Section 5(1)(iv) of the Wealth-tax Act, 1957, at the relevant time stated that the following asset shall not be included in the net wealth of the assessee : One house or part of the house belonging to the assessee. The word **house** has not been defined in the Wealth-tax Act nor in the General Clauses Act, 1897. However, the word building has been used in section 5(1)(iii) of the Wealth-tax Act and in section 5(1)(i) the word property has been used. Thus, the Wealth-tax Act has used the words house, building and property in different places, and hence different meanings should ordinarily be ascribed to these words in accordance with the settled principles of interpretation. All buildings cannot be regarded as houses. In common parlance a house means a place where people live. Of course a residential building can also be given for commercial purpose and yet it will remain a house. However, by no stretch of imagination can a cinema hall be regarded as a house. No one ever calls a cinema hall a house.

[185 *CTR 340, 264 ITR 482, 137 TAXMAN 388]*

House	2005	All-HC	CWT V/s. Smt. Angoori Devi

House is a building where people live and reside. It is mainly for residential purposes. Cinema building cannot be treated as a house. **[195 *CTR 381, 273 ITR500, 144 TAXMAN 643]***

House property	1981	Del-HC	Addl. CIT V/s. Vidya Prakash Talwar

…..**House property**, for the purposes of section 54 of the Income-tax Act, 1961, has the same meaning as the concept of house property under sections 22 to 27, which make it clear that the expression house property takes into account an independent residential unit. When section 54 talks of house property it does not mean an independent and complete house: it takes into account all independent residential units, particularly in these days when multi-storeyed flats are becoming the order of the day. **[132 *ITR661]***

House property	1985	Guj-HC	CIT V/s. Kodandas Chanchlomal

A **house property** for the purposes of section 54 of the Income-tax Act, 1961, has the same meaning as the concept of house property under sections 22 to 27 which takes into account

an independent residential unit and does not mean an independent and complete house; it takes into account all residential units, particularly in these days when multistoreyed flats are becoming the order of the day. **[155 *ITR 273]***

Hundi transaction	**1995**	**AP-HC**	**CIT V/s. Dexan Pharmaceuticals Pvt. Ltd.**

The main characteristics of **hundi transactions** are as follows: (1) There are always three parties to such transaction. They are the drawer, the drawee and the payee. The drawer cannot himself also be the drawee. If the transaction is bilateral it is a very strong indication to show that it is not a hundi transaction. (2) A hundi is payable to satisfy a person or order but negotiable without endorsement by the payee. (3) The holder of a hundi is entitled to sue on its basis without any endorsement in his favour. (4) A hundi, once accepted by the donee, can be negotiated without endorsement. (5) In the case of loss of a hundi, the owner can claim duplicate or triplicate from the drawer and present the same to the drawee for claiming payment. (6) A hundi is normally in oriental language as per the mercantile custom. The above characteristics emanate from the long-standing custom of hundi transactions.

[126 *CTR 57, 214 ITR 576, 82 TAXMAN 620]*

* *Res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or precedential value of the earlier pronouncement. Where the facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is per incuriam.*

* *The provisions of an Act have to be read harmoniously giving full effect to all the provisions….The powers conferred on the authority constituted under the Act are to be exercised having due regard to the nature of the proceeding, and all the powers conferred by statute cannot be.*

I

Illegal	2005	Del-HC	Remfry & Sons V/s. CIT & V. Sagar V/s. CIT

The expression **illegal** has been defined as being contrary to law and is normally applicable to everything which is an offence or which is prohibited by law. This word has an extensive meaning including anything and everything which is prohibited by law which constitutes an offence or which furnishes the basis for a civil suit. The expression in a wider meaning has been equated to unlawful but it may still not be void. This expression is distinguishable from the expression irregularity which is defined as a want of adherence to some prescribed rule or mode of proceedings and primarily consists of omitting to do what is necessary for due and orderly conduct of the proceedings. The word illegality on the other hand denotes a complete defect in jurisdiction or proceedings. **[195** ***CTR 66, 276 ITR 1, 145 TAXMAN 22]***

Immediate or deferred	1977	Bom-HC	Yogindraprasad N. Mafatlal V/s. CIT

The words **immediate or deferred** were added in section 64(v) in order to get over the reasoning adopted by the Bombay High Court in Manilal Dhanji's case …….. the word minor in the expression minor child occurring in clause (v) of section 64 will have to be given a proper meaning and the word minor in that expression cannot be regarded as merely a word descriptive of the child. This expression used in section 64(v) requires that the income should be for the benefit of a minor child even when it is deferred. Looked at from this point of view the expression immediate or deferred cannot be regarded as having been added with the intention of covering a case where the benefit had been deferred beyond the minority of the child or children concerned. **[6** ***CTR 439, 109 ITR 602]***

Immediately before	1973	Mad-HC	Thangam Textiles V/s. First ITO

Sections 187 and 189(1) and (3) of the Income-tax Act, 1961, make it clear that the persons who are liable to bear the tax are the partners of the firm at the time of its dissolution. Hence, the notice under section 283(2) has to be issued only to such of those persons who were partners immediately before the dissolution of the firm. The phrase **immediately before** in section 283(2) means preceding the date of dissolution and has no reference to the year of assessment. **[*90 ITR 412]***

Implied decision	1977	Guj-HC	CIT V/s. Steel Cast Corporation

What is meant by **implied decision** is that though a point might have been raised before the Appellate Assistant Commissioner, in his final order the Appellate Assistant Commissioner might not have dealt with that point and thereby impliedly rejected it. A party may be aggrieved by an express decision of the Appellate Assistant Commissioner or by an implied decision of the Appellate Assistant Commissioner. **[*107 ITR 683]***

Improve	1992	Mad-HC	CIT V/s. V/s. Ramaswamy Mudaliar

The cost of improvement of a capital asset can be taken into account in computing capital gains. The word **improve** has various shades of meaning and it includes everything by doing which there is an enhancement in the value of the asset or there is a rise in its price or the asset is made to grow better. **[*196 ITR 939]***

In accordance with	1980	Cal-HC	Nav Bharat Vanijya Ltd. V/s. CIT

The words **in accordance with** mean being in agreement or harmony with or in conformity to. These words do not alter the meaning of the word includible. **[123 *ITR 865]***

In accordance….. Parts II and III of Schedule VI to the	2002	SC	Apollo Tyres Ltd. V/s. CIT

The use of the words **in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act** in section 115J was made for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, the Assessing Officer has to accept the authenticity of the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by that Act and the same to be scrutinised and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. Sub-section (1A) of section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company. **[174 *CTR 521, 255 ITR 273, 122 TAXMAN 562]***

In computing the total income of any individual	1996	SC	CIT V/s. Shri Om Prakash

Sub-section (1) of section 64 of the Income-tax Act, 1961, opens with the words **in computing the total income of any individual**. Then it proceeds to say that in the total income of such individual shall be included the income of his spouse arising from the membership of such spouse in the partnership firm in which such individual is the partner. It further says that the income arising to the minor children of such individual who are admitted to the benefits of partnership wherein such individual is a partner shall also be included in the total income of such individual. An individual can be a partner in a partnership firm in his individual capacity or in the capacity of the karta of a Hindu undivided family or, for that matter, in any other capacity, e.g., as a trustee. There may be a firm comprising an individual and his wife, to which their minor children are admitted. There can also be a firm comprising two or more individuals wherein the wife/wives of one or more of the partners are also partners. The minor children of one or more of the partners may also have been admitted to the benefits of the partnership firm. So far as other partners in the partnership firm are concerned, they are not really concerned in what capacity a particular person is a partner, i.e., whether as an individual, as a karta, as a trustee or otherwise. To them, he is an individual, a person. This aspect, however, becomes relevant as between the partner and those whom he represents in the partnership firm. To wit, where a person is a partner as the karta of a Hindu undivided family, the capacity in which he is a partner in the partnership firm is relevant as between him and the other members of the Hindu undivided family. For, the income the karta receives as a partner is not his individual income; it is the income of the Hindu undivided family and he receives it on behalf of the Hindu undivided family. It is for this reason that the income of the wife and minor children arising from their membership/admission to the benefits of the partnership firm, is held not includible in the income of the Hindu undivided family since the total income of the Hindu undivided family is not the total income of the individual (husband or father, as the case may be). For section 64(1) to get attracted, it is necessary that the husband/father should be a partner in a partnership firm as an individual, i.e., in his individual capacity. It is not attracted where he is a partner as the karta of the Hindu undivided family to which such wife and/or minor children belong.

[217 *ITR 785, 84 TAXMAN 156]*

In connection with	1991	Kar-HC	Stumpp, Schuele and Somappa Ltd. V/s. CIT

The expression **in connection with** in section 37(3) includes matters occurring prior to as well as subsequent to or consequent upon, so long as they are related to the principal thing. In other words, whatever has nexus to the travel undertaken in connection with the work outside the headquarters resulting in the stay, such stay, whether actual work in connection with company affairs was carried out or not, would be relatable to the travel undertaken which was indisputably in connection with the work of the company and, therefore, the only logical inference to be drawn is that the stay also was in connection with the work as it is intimately connected with the travel undertaken. The entire expenses of such travel would be covered by section 37(3). **[190 *ITR 152, 61 TAXMAN 278]***

In connection with such transfer	1980	Ker-HC	V.A. Vasumathi V/s. CIT

In computing capital gains, expenditure incurred wholly and exclusively in connection with the transfer of a capital asset has to be deducted under section 48 of the Income-tax Act, 1961. The words **in connection with such transfer** occurring in the section mean intrinsically related to the transfer. Only such expenditure as is wholly and exclusively related in an intrinsic manner to the transfer is a deductible expenditure. **[123 *ITR 94]***

In good faith, made full disclosure of his net wealth	1982	Gau-HC	Sardar Joginder Singh V/s. CWT

The expression **in good faith**, **made full disclosure of his net wealth** occurring in section 18(2A) of the Wealth-tax Act, 1957, merely means that once the assessee lays open his assets and liabilities which go to constitute his net wealth and makes an honest estimate of the same, the requirement of the provision would be satisfied. The word disclosure indicates that something is exposed, brought to light, uncovered, laid open or revealed, which was earlier kept hidden. Therefore, if an assessee honestly makes a full disclosure of his net wealth, although the disclosure made by him is ultimately found to be inaccurate, it cannot be said that the assessee did not act in good faith. **[134 *ITR 636]***

In good faith made full disclosure of its net wealth	1975	All-HC	Hasan Ahmad Khan V/s. CWT

The question whether the assessee made full disclosure of his net wealth or not, has not to be looked into with reference to the net wealth as ultimately evaluated by the Wealth-tax Officer, but from the point of view of the assessee, that is, whether or not, while disclosing his net wealth fully, he acted honestly. The expression **in good faith made full disclosure of his net wealth** merely means that the assessee should have honestly described all his assets and liabilities which go to constitute his net wealth, along with their estimated value.**[*99 ITR 414]***

In part	1981	Guj-HC	Arvindkumar J. Saheba V/s. CIT

The expression **in part** in section 11(1)(b) of the Income-tax Act, 1961, does not refer to an aliquate part. If half a house is held in trust wholly for religious or charitable purposes, the subject-matter of the trust is only the said half of the house and that half is held wholly for religious or charitable purposes. There may be instances where, though there is a trust, it involves only a partial dedication of the property held under trust in the sense that only a part of the income of that property is utilised for religious or charitable purposes. The dichotomy between the two expressions wholly and in part is not based upon the dedication of the whole or fractional part of the property but between the dedication of the property wholly for religious or charitable purposes or in part for such purposes. **[22 *CTR 245, 131 ITR 86]***

In the course of marketing of business	1975	Ker-HC	V.O. Markose V/s. CIT

The expression **in the course of carrying on of business** in section 5(1)(xiv) means that the gift should have some relationship with the carrying on of the business. It is not sufficient that the gift is made during the carrying on of a business. It must further be established that there was some integral connection or relation between the making of the gift and the carrying on of the business. **[98 *ITR 504]***

In the like manner..	1982	Cal-HC	CWT V/s. Official Trustee of W.B. For Trust Murshidabad Estate

A trustee is assessed under the scheme of the Wealth-tax Act, 1957, only as a representative assessee although for certain purposes of the Act a trustee is an assessee. Section 21 of the Wealth-tax Act makes it clear that wealth-tax shall be levied upon a trustee and is recoverable from the trustee in the like manner and to the same extent as it would be leviable upon and recoverable from the person on whose behalf or for whose benefit the assets are held. Section 21(2) also provides that the Wealth-tax Officer can make a direct assessment on the beneficiary and recover the tax from the beneficiary in respect of the assets held under trust. The Wealth-tax Officer, therefore, has an option either to assess the beneficiary directly or to assess the trustee in respect of the assets held under trust. The Act does not envisage that when an assessment is made on a trustee the incidence of tax will be heavier. This is clearly provided by the expression **in the like manner, and to the same extent** used in section 21 of the Act. **[29 *CTR 50, 136 ITR 162, 10 TAXMAN 67]***

In the nature of entertainment expenditure	1981	P&H-HC	CIT V/s. Khem Chand Bahadur Chand

In construing the provisions of sub-sections (2) and (2A) of section 37 of the Income-tax Act, 1961, what first meets the eye and deserves highlighting is the designed and considered use of the phraseology by Parliament. The phrase deliberately employed is **in the nature of entertainment expenditure**. It is not merely entertainment expenditure or business entertainment simpliciter. …… whilst using the larger and compendious expression in the nature of entertainment expenditure, Parliament had an obvious purpose behind it. The expression is much wider in its connotation, inasmuch as it would take within its ambit not merely what may stricto sensu be regarded as entertainment expenditure proper but also all other expenditure of allied nature partaking of some, if not all, of the characteristics of entertainment expenditure. The phrase has a wide amplitude and its use leaves little doubt that the intention of the Legislature in employing it was to cast the net sufficiently wide so as to bring within its field all types of hospitality. Any lavish hospitality expended for business purposes would amount to entertainment expenditure. If that is so, all hospitality, even though frugal, would be well within the ambit of the larger phrase in the nature of entertainment expenditure. **[23 *CTR 319, 131 ITR336]***

In the nature of entertainment expenditure	1988	AP-HC	CIT V/s. Navabharat Enterprises (P.) Ltd.

The expression **in the nature of entertainment expenditure** has not been defined in the Income-tax Act. Entertainment involves hospitality of any kind, which an assessee extends to a customer, client or a constituent for furtherance of business or profession. It must be wholly and exclusively necessary for the purpose of business or profession. The primary motive behind laying out or incurring entertainment expenditure is commercial or professional expediency. The phrase in the nature of entertainment expenditure encompasses within its ambit entertainment

expenditure proper as well as expenditure akin to it partaking of some, if not all, of the characteristics of entertainment expenditure. Even lavish or frugul hospitality is none the less hospitality. The income-tax authorities have to minutely scrutinise the accounts in each case item wise and see whether the expenditure by the assessee is wholly and exclusively for the purpose of the business or profession or whether it is in the nature of entertainment expenditure. Even if it comes under sections 37(1), 37(2) and 37(2A), it has still to be investigated whether it is reasonable expenditure. The reason is obvious. By a fastidious or lavish person, the act of hospitality with luxurious dishes and costly hot drinks may be regarded as an ordinary lunch or dinner, but, to a common man, it would be a lavish meal or staggering wasteful expenditure. The test whether the hospitality is appropriate and befitting is an elusive and ambiguous one. What is appropriate and befitting is always a big question mark affording a carte blanche right to an assessee to expend lavishly exhibiting ostentation with the belief that the public exchequer would defray the wasteful expenditure. If this consideration is allowed to prevail, sub-sections (2), (2A) and (2B) of section 37 would be rendered otiose and ineffectual, defeating the legislative animation. Therefore, the fact-finding authorities have to carefully scrutinise the records and give the necessary allowance as per law. **[63 *CTR 187, 170 ITR 332]***

In the performance of his duties	**1973**	**Ker-HC**	**A.K. Venkiteswaran V/s. CIT**

Section 16(v) of the Income-tax Act, 1961, allows a deduction from salary of any amount actually expended by the assessee which, by the conditions of his service, he is required to spend out of his remuneration wholly, necessarily and exclusively **in the performance of his duties**. It is not sufficient if the expenditure claimed is wholly met in the performance of the assessee's duties or has necessarily to be so met nor is it sufficient if it is shown that it was met exclusively in the performance of the duties of the assessee. The requirements are cumulative and, therefore, it must be shown that the assessee was required to spend the amount out of his remuneration not only wholly but also necessarily and exclusively in the performance of his duties. More important is the requirement that it is not for the performance of his duties that he has to spend it but in the performance of his duties. The term in the performance is much narrower in scope than the term for the purpose of the performance. Many items of expenditure may be incurred by an assessee to enable to perform his duties properly. These are not expenses incurred in the performance of his duties as these are limited to expenses incurred during the process of the performance of the duties. The expenses must be incurred wholly in the discharge of the duties and exclusively in the discharge of the duties. Only such expenditure as is incurred after the process of performance of duties has commenced is deductible.

[92 *ITR 233]*

In the performance of official duties	**1955**	**SC**	**Matajog Dobey V/s. H.C. Bhari**

In order that an act done by an officer may be an act done **in the performance of his official duties**, there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the officer could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.

[28 *ITR 941*]

In the prescribed manner	**1972**	**Mad-HC**	**M.CT. Muthiah Chettiar Family Trust V/s. Fourth ITO**

The words **in the prescribed manner** in section 11(2)(a) of the Income-tax Act, 1961, do not confer power on the rule-making authority to prescribe a time limit for making an application for exemption under the section. Therefore, paragraphs 2 and 4 in Form No. 10 issued in

pursuance of rule 17 of the Income-tax Rules, 1962, are ultra vires in that the rule-making authority has exceeded its limit in including in the Form the said two paragraphs **[*86 ITR 282]***

In this behalf	1992	Kar-HC	Southern Veneers and Wood Works Ltd. V/s. CIT

The income that is to be excluded under section 10(15) of the Income-tax Act, 1961, is the interest payable on any moneys borrowed in respect of the purchase of raw materials to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf. The term **in this behalf** is indicative of the idea that the approval of the Central Government should be on behalf of or pertaining to the subject-matter referred to therein. In other words, the Central Government has to approve the rate of interest for the purpose of section 10(15)(iv)(c). The term in this behalf is a term frequently found in several provisions of the Income-tax Act. In fact, in the very section 10 of the Act, some of the clauses use this term. The idea behind section 10 and the requirement of the approval of the Government of India is that the exemption is available only when the Government of India deems it necessary and fit to grant exemption. It is because of this that, wherever specific approval or a notification is necessary, the term in this behalf had been used. For example, under clause (10B), the particular notification has to specify the amount in this behalf. Under clause (10C), a similar terminology is used. Several sub-clauses under section 88(2) which require issuance of a notification by the Government also refer to the specification in the notification in this behalf. Hence, the approval under section 10(15)(iv)(c) by the Central Government will have to be a specific approval concerning the subject stated therein and not a general approval for any other purpose. **[196 *ITR 718]***

Incharge	1981	SC	State of Karnataka V/s. Pratap Chand

A person **in charge** must mean that the person should be in overall control of the day to day business of the firm. **[128 *ITR 573]***

Income	1938	All-HC	Major A.U. John

The element of periodical receipt or regularity or expected regularity of monetary return is an essential ingredient of **income** under the Indian Income-tax Act. **[6 *ITR 434]***

Income	1938	Lah-HC	Nagin Chand Shiv Sahai V/s. CIT

The word '**income**' is not used in section 28 of the Indian Income-tax Act in the popular meaning of money received, but is used in a much wider sense and connotes the assessable figure arrived at after accounting for all the legitimate deductions and exemptions. **[6*ITR 534]***

Income	1951	Ass-HC	Jyotirendra Narayan Sinha Choudhury V/s. State of Assam

Income is generally though not necessarily a recurrent return from a definite source. Receipts from capital which is exhausted in the process of realisation may none the less be income. The fact that the receipts are from a source which is a wasting asset like that of a mine is an irrelevant consideration and anything which can properly be described as income would be taxable unless expressly exempted from taxation. **[19 *ITR 379]***

Income	1952	Bom-HC	Seth Lalbhai Dalpatbhai V/s. CIT

Interest on securities only becomes **income** when it is actually received and not when it is due or capable of being received by the assessee. **[22 *ITR 13*]**

Income	1954	SC	Navinchandra Mafatlal V/s. CIT

The word **income……..**should be given its widest connotation in view of the fact that it occurs in a legislative head conferring legislative power and it includes a capital gain. It will be wrong to interpret the word in the light of any supposed English legislative practice. **[26 *ITR 758]***

Income	1973	All-HC	CIT V/s. Shanti Meattle

The word **income** as used in the Income-tax Act, 1961, is wide and vague in its scope. It is a word of elastic import and its extent is not controlled and is not governed by the words profits and gains in section 10 of the Indian Income-tax Act, 1922. Every receipt generally may be described as income unless it is expressly exempt. There is nothing to indicate that the source must be one which is recognised under the law. Even income derived from an illegal business could be liable to tax. **[*90 ITR 385]***

Income	1976	P&H-HC	Raja Ragavendra Singh V/s. State of Punjab

Section 2(6C) of the Indian Income-tax Act, 1922, and section 2(24) of the Income-tax Act, 1961, give inclusive definitions of the word **income**. Whenever a term is given such a definition in a statute, it means not only the things mentioned therein but also includes in its ambit the meaning of the term as generally understood. The word income has thus to be given a very wide meaning. **[102 *ITR 40]***

Income	1977	Bom-HC	Mehboob Productions Pvt. Ltd. V/s. CIT

Income is a monetary return expected by the assessee for the labour and/or skill bestowed, and/or capital invested by him; coming in from a definite source, which need not be a legal source, in the sense that the failure to pay the same need not be enforceable in a court of law; and excluding a receipt in the nature of a mere windfall, which would mean a windfall in regard to its very nature and not in regard to its extent or quantum. **[106 *ITR 758]***

Income	1981	SC	Bhagwan Dass Jain V/s. Union of India

The expression **income**, according to the dictionary, means a thing that comes in. Income may also be defined as the gain derived from land, capital or labour or any two or more of them. Even in its ordinary economic sense, the expression income includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it one self. That which can be converted into income can be reasonably regarded as giving rise to income. **[128 *ITR 315]***

Income	1985	SC	CIT V/s. J.H. Gotla

The word **income** in section 16(3) would include loss. **[48 CTR 363, 156 I*TR 323]***

Income	1988	SC	Chuharmal V/s. CIT

that the expression **income** as used in section 69A of the Income-tax Act, 1961, had a wide meaning which meant anything which came in or resulted in gain. **[70 *CTR 88, 172 ITR 250]***

Income	1989	Ker-HC	Father Epharam V/s. CIT

….the word **income** is an inclusive definition. It is not exhaustive. It has a wide import. It has

got a legal concept. The scheme of section 2(24) of the Act read with sections 4 and 10 of the Act is that, given its ordinary and natural meaning, the word income will take in any monetary return coming in. It will take in voluntary and gratuitous payments which are connected or linked with any office, vocation or occupation. Any amount received by an assessee by virtue of his profession, vocation or occupation will constitute his income. Section 10(3)(ii) of the Act takes within its fold any receipts arising from the exercise of a profession or occupation in the total income. The receipts may be casual or of a non-recurring nature. The word occupation generally means the trade or calling by which a person seeks to get his livelihood. The word vocation also means the same thing. **[75 *CTR 142, 176 ITR 78]***

Income	**1989**	**SC**	**Elel Hotels and Investments Ltd. V/s. Union of India**

The expression **income** in entry 82, List I, cannot be subjected by implication, to any restriction by the way in which that term might have been deployed in a fiscal statute. A particular statute enacted under the entry might, as a matter of fiscal policy, seek to tax some species of income alone. The definition would, therefore, be limited by the consideration of the fiscal policy of a particular statute. But the expression income in the legislative entry has always been understood in a wide and comprehensive connotation to embrace within it every kind of receipt or gain either of a capital nature or of a revenue nature. The taxable receipts as defined in the statute cannot be held to fall outside such a wider connotation of income in the wider constitutional meaning and sense of the term as understood in entry 82, List I…….. The word income is of elastic import. In interpreting expressions in the legislative lists, a very wide meaning should be given to the entries. In understanding the scope and amplitude of the expression income in entry 82, List I, any meaning which fails to accord with the plenitude of the concept of income in all its width and comprehensiveness should be avoided.

[*77 CTR 168, 178 ITR 140, 44 TAXMAN 304]*

Income	**1990**	**Bom-HC**	**CIT V/s. Central Bank of India Ltd.**

Income under section 2(24) includes any capital gains chargeable under section 45. The words average rate of income-tax and income, for the purposes of section 85A, have the same meanings as set out in sections 2(10) and 2(24), respectively. **[185 *ITR 6]***

Income	**1990**	**P&H-HC**	**Sat Pal and Co. V/s. Excise and Taxation Commissioner**

The Income-tax Act defines the expression **income** in clause (24) of section 2, but that definition cannot be read back into entry 82 of List I of the Seventh Schedule to the Constitution. Even the said definition is an inclusive one and has been expanding from time to time. Several items have been brought within the definition from time to time by various amending Acts. The said definition cannot, therefore, be read as exhaustive of the meaning of the expression income occurring in entry 82 of List I in the Seventh Schedule. This, of course, does not mean that an amount which can, by no stretch of imagination, be called income can be treated as income and taxed as such by Parliament. It must have some characteristics of income as broadly understood. So long as the amount taxed as income can rationally be called income as generally understood, it is competent for Parliament to call it income and levy tax thereon.*(Section 44AC and 206C)* **[185 *ITR 375]***

Income	**1993**	**SC**	**CIT V/s. G.R. Karthikeyan**

The definition of **income** in section 2(24) was inclusive, the purpose of the definition was not to limit the meaning of income but to widen its net, and the several clauses therein were not

exhaustive of the meaning of income; even if a receipt did not fall within the ambit of any of those clauses, it might still be income if it partook of the nature of income ……The word income is of the widest amplitude and it must be given its natural and grammatical meaning **[112*CTR 302, 201 ITR 866, 68 TAXMAN 145]***

Income	**2001**	**Del-HC**	**CIT V/s. Avinash Pasricha**

The word **income** is of the widest amplitude and it must be given its natural and grammatical meaning. The principles culled out from the decision are as follows : (i) since the definition of income in section 2(24) of the Income-tax Act, 1961, was an inclusive one, its ambit should be the same as that of the word income in entry 86 of List I of Schedule VII to the Constitution of India; (ii) the words other games of any sort in section 2(24)(ix) were of wide amplitude and their meaning was not confined to games of a gambling nature alone, and therefore, section 2(24)(ix) was not confined to mere gambling or betting activities; (iii) assuming that the expression winnings had acquired a particular meaning, viz., receipts from activities of a gambling or betting nature only, it did not follow that monies received from non-gambling or non-betting activities were not included within the ambit of income; (iv) the definition of income in section 2(24) was inclusive, the purpose of the definition was not to limit the meaning of income but to widen its net, and the several clauses therein were not exhaustive of the meaning of income; even if a receipt did not fall within the ambit of any of those clauses, it might still be income if it partook of the nature of income. **[170*CTR 287, 251 ITR 360]***

Income	**2004**	**All-HC**	**CIT V/s. Motor and General Sales (P.) Ltd.**

The definition of **income** is inclusive. The purpose of the inclusive definition is not to limit the ordinary meaning of the word income but to widen its net, and the several clauses therein are not exhaustive of the meaning of the word income. It is the true nature and quality of the receipt and not the head under which it is entered in the account books, that would prove decisive. If a receipt is a trading receipt, the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as a trading receipt.
[*188 CTR 42, 266 ITR 261, 135 TAXMAN 426]*

Income	**2006**	**Kar-HC**	**CIT V/s. Industrial Credit and Dev. Syndicate Ltd**

The inclusive definition of the word **income** in section 2(24) of the Income-tax Act, 1961 adds several artificial categories to the concept of income, but on that account, the expression does not lose its natural connotation. It has to be construed as comprehending only such things which are income according to the natural import of the term……It is the income which has really accrued or arisen to the assessee that is taxable. Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation. When in reality there is neither accrual nor receipt of income by the assessee, even though an entry to that effect might in certain circumstances have been made in the books of account, it would not constitute income for the purpose of levy of tax. A rebate obtained by the purchaser or remission of debt by a creditor would not result in the creation of income in the hands of the purchaser or debtor. **[203 CT*R 413, 285 ITR 310]***

Income and profits and gains	**2002**	**Cal-HC**	**Aryasthan Corporation Ltd. V/s. CIT**

The words **income and profits and gains** should be understood as including losses also so that in one sense profits and gains represent positive income whereas losses represent negative income. In other words, loss is negative profit. Both positive and negative profits are of revenue

character. Both must enter into computation, wherever it becomes material, in the same mode of the taxable income of the assessee. **[172** ***CTR 640, 253 ITR 401, 124 TAXMAN 516]***

Income as returned by such person	**1965**	**Bom-HC**	**Mansukhlal and Brothers V/s. CIT**

The words **income as returned by such person** mean income as stated by such person in his return and do not mean income computed or assessed by the income-tax authorities minus the income aided on the ground of concealment. The maximum penalty does not depend on the amount of concealed income. **[57** ***ITR 270]***

Income assessed in the foreign country	**1978**	**SC**	**CIT V/s. Clive Insurance Co. Ltd.**

The expression **income assessed in the [foreign] country** in paragraph (iii) of the Explanation to section 49D, in the context in which it was used, meant subjected to tax in the foreign country **[7*CTR 68, 113 ITR 636]***

Income from house property	**1984**	**Kar-HC**	**CIT V/s. K.N. Guruswamy**

From a plain reading of section 22 of the Income-tax Act, 1961, it is clear that it is the owner of a house property who becomes liable to be charged under the head **Income from house property** unless the house property is used by him for the purpose of his own business or profession. The section, which provides for exemption, should be strictly construed. Under section 22 it is only the owner of the property who can claim exemption and that owner must be an assessee and the property concerned must have been used or occupied for the assessee's business. The occupation of the property, in the context, must mean occupation as owner or his own occupation. **[*146 ITR 34, 17 TAXMAN 87]***

Income or profits and gains	**1994**	**Cal-HC**	**Eastern Aviation and Industries Ltd. V/s. CIT**

The words **income or profits and gains** should be understood as including losses also, so that in one sense profits and gains represent positive income whereas losses represent negative income. In other words, loss is negative profit. Both positive and negative profits are of revenue character. Both must enter into the computation, wherever it becomes material, in the taxable income of the assessee. **[208** ***ITR 1023, 74 TAXMAN 641]***

Income profit or gains which have escaped assessment	**1960**	**All-HC**	**Bhawani Prasad Girdhar Lal V/s. ITO**

The expression **income, profits or gains which have escaped assessment** in section 34(1A) of the Income-tax Act covers not only cases where income, profits or gains have totally escaped assessment but also cases where part of the income, profits or gains have been assessed and part only has escaped assessment. **[40** ***ITR 407]***

Income tax	**1979**	**Kar-HC**	**Soma Sumdaram (Pvt.) Ltd.**

Section 2(43) of the Income-tax Act, 1961, (as it stood at the relevant time), defined "tax" as income-tax and super-tax chargeable under the provisions of that Act. Therefore, what is levied under the charging provisions of that Act, i.e., section 4 thereof alone can be called "income-tax". Interest, penalties and fines, which are payable under the other provisions of that Act, cannot be termed as "income-tax". They are imposed in addition to income-tax for the purpose of enforcing the levy of income-tax. Therefore, the penalty levied under section 271(1)(a) of the

Income-tax Act, 1961, is not deductible under rule 2(i) of the first Schedule to the Super profits Tax Act, 1963, when computing the chargeable profits under the Super Profits Tax Act.
[116 *ITR 620]*

Income -tax free dividend	**1964**	**Mad-HC**	**Barjor Hoshangji Vakil V/s. Mettur Chemical and Ind. Corp. Ltd.**

A stipulation contained in the articles or memorandum of association of a company that preference shareholders will be given **income-tax-free dividend** at a certain rate does not amount to a guarantee on the part of the company that such dividend would be free from income-tax in the hands of the recipient himself. It only means that the stipulated percentage of dividend will be paid by the company to the shareholders in full without any deduction therefor on account of tax payable by the company. **[*50 ITR 128]***

Income which has escaped assessment	**1937**	**Bom-HC**	**CIT V/s. Pirojbai N. Contractor**

Section 34 of the Indian Income-tax Act, 1922 (which empowers an Income-tax Officer to assess **income which has escaped assessment** is wide enough to include cases where no notice under section 22(2) had been issued to the assessee and his income had not been assessed at all under section 23. **[5 *ITR 338]***

Income, profits and gains	**1951**	**Bom-HC**	**Ambalal Himatlal V/s. CEPT**

The expression **income, profits and gains** in sub-section (4) of section 25 of the Indian Income-tax Act, 1922, means the profits and gains of the business, profession or vocation contemplated by section 10 and not the total income of the assessee. **[20 *ITR280]***

Income, profits and gains of the business	**1960**	**Mad-HC**	**CIT V/s. Express Newspapers Ltd.**

That the words profits and gains of a business had a distinct meaning under the Income-tax Act and they could not include another equally distinct concept recognised by the Act, viz., a capital gain…… Further section 26(2) which made the successor vicariously liable for the profits earned by the predecessor had to be strictly construed. The **income, profits and gains of the business** referred to in section 26(2) were therefore limited in their meaning to the head of income referred to in section 6(iv) and did not include a capital gain. **[*40 ITR38]***

Income-tax authority	**2001**	**Cal-HC**	**Reckitt Colman of India Ltd. V/s. ACIT (TDS)**

The power of survey is given to an income-tax authority under section 133A. Under section 116 of the Act **income-tax authority** means a Commissioner, a Joint Commissioner, a Director, a Joint Director, an Assistant Director or Deputy Director or an Assessing Officer and for the purposes of clause (i) of section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax. **[172 *CTR 499, 252 ITR 550, 124 TAXMAN 496]***

Income tax Officer	**2001**	**Cal-HC**	**Keshab Narayan Banerjee V/s. CIT**

The expression **Income-tax Officer** under section 263 shall include any officer empowered to assess any nature of the proceeding under the Act and it has been defined in clause (25) of section 2 which means a person appointed to be an Income-tax Officer under section 117. The authorities mentioned in sub-section (1) of section 117 include an Income-tax Officer. A reference made to a particular officer is to be treated as ejusdem generis which includes such officers

who are empowered to make assessment in respect of the income. Therefore, the application under section 263 cannot be excluded in respect of a person mentioned in section 132 of the Act. **[173*CTR 61, 252 ITR 888, 125 TAXMAN 299]***

Incur	**1994**	**Ori-HC**	**Belpahar Refractories Ltd. V/s. CIT**

The word **incur** means to become liable to, e.g., to incur debt, loss, etc. When an expenditure is said to have been incurred, it may connote actual payment or it could be that the person concerned has merely become liable for payment but has not actually made payment. When a person has made advance payment but has not become liable for the payment, he cannot be said to have incurred any expenditure. **[207 *ITR 144]***

India	**2001**	**Bom-HC**	**CIT V/s. Indo Oceanic Shipping Co. Ltd.**

……..the circular issued by the Board bearing No. 586, dated November 28, 1990, though in the context of deductions in the hands of employees, specifically lays down that, **India** as defined under section 2(25A) of the Act, does not extend to Indian ships operating beyond the Indian territorial waters. Indian ships operating beyond Indian territorial waters do not come within the term India as defined in section 2(25A) of the Act. Similarly, the word India has also been defined under the General Clauses Act, 1897, under section 3(28). It does not include Indian ships outside territorial waters of the country. Merely because the contract is entered into in India it will not be the conclusive test to decide as to whether an employee was employed in India or outside India. The terms of the contract, the nature of the work, the nature of business and all other relevant facts are required to be considered to decide as to whether the employment was in India or outside India. The provisions of the Merchant Shipping Act are not in pari materia with the provisions of the Income-tax Act. The said Merchant Shipping Act is not even a fiscal legislation. The provisions of the Merchant Shipping Act are essentially invoked in cases of accidents. The provisions are not applicable to the Income-tax Act. The international law refers to the law of the flag in order to decide the nationality of the vessel……
[*165 CTR 404, 247 ITR 247, 114 TAXMAN 722]*

Indian concern	**1994**	**Bom-HC**	**CIT V/s. Dorr-Oliver (India) Ltd.**

The word **Indian concern** means a concern which is Indian in character. A concern, which is not Indian, cannot be termed as Indian concern merely by reason of its location in India. The branches of a foreign concern situated in India cannot be held to be an Indian concern. The expression Indian company has been defined in section 2(26) of the Income-tax Act, 1961, to mean a company formed and registered under the Companies Act, 1956. The above definition clearly goes to show that the Legislature by the use of the expression Indian company really intended to mean companies which are registered in India and not companies which are carrying on business in India. If one takes the analogy of the above definition of Indian company into consideration, the expression Indian concern will also mean a concern Indian in character.
[116 *CTR 428, 209 ITR 691, 75 TAXMAN 8]*

Individual	**1939**	**Bom-HC**	**CIT V/s. Ahmedabad Millowners' Association**

Individual' in section 3 means a human being and does not include a company, and the expression 'other association of individuals' does not therefore include an association of companies and the assessee could not be charged to income-tax as an association of individuals under section 3. **[7 *ITR 369]***

Individual	1964	Mys-HC	Sarjerao Appasaheb Shitole V/s. WTO

The word **individuals** in entry 86 of List I includes undivided families also, as an undivided family is only a collection of individuals; and Parliament has, therefore, power to impose wealth-tax on undivided families under entry 86. **[52 *ITR 372]***

Individual	1971	All-HC	Priti Lata Samanta V/s. CIT

The view that **individual** contemplated in section 64(i) of the Income-tax Act, 1961, is an individual who has a spouse and, therefore, in section 64(ii) also the individual should be such who has a spouse, is not correct. **[79 *ITR 18]***

Individual	1971	Ker-HC	Kerala Financial Corporation V/s. WTO

The term **individua**l in section 3 of the Wealth-tax Act is not restricted to human beings and includes a corporation constituted under a Central, Provincial or State Act. **[82 *ITR 477*]**

Individual	1981	SC	Wealth-tax Officer V/s. C.K. Mammed Kayi

The expression **individual** in section 3 of the Wealth-tax Act, 1957, includes within its ambit Mappilla Marumakkathayam arwards and they are well within the purview of the taxing provisions of the enactment. Even after their inclusion in the term individual, section 3 is not violative of article 14 of the Constitution of India. **[21*CTR 345, 129 ITR 307, 10 TAXMAN 489]***

Individual	1986	MP-HC	CIT V/s. Prakashchandra Basantilal

An **individual** referred to in section 64(1)(i) can only be an assessee who is being assessed in his individual capacity and not one who is being assessed in a representative capacity, such as the karta of a Hindu undivided family. **[162 *ITR 536]***

Individual	1993	Cal-HC	CIT V/s. Shri Krishna Bandar Trust

It is now well-settled that the word **individual** does not necessarily and invariably always refer to a single natural person. A group of individuals may as well come in for treatment as an individual under the tax laws if the context so requires. **[201 *ITR 989]***

Individual	1999	Mad-HC	State Bank of Travancore Employees Union V/s. CWT

The charge of wealth-tax is on the net wealth of three classes of persons, viz., individuals, Hindu undivided family and companies. The three categories of assessee mentioned in section 3 of the Wealth-tax Act, 1957, are clearly mutually exclusive. While the categories of persons subjected to wealth-tax remained the same in section 3 of the Act, the definition of the word company, one of the three categories of persons liable for wealth-tax has been greatly expanded. The context in which the word individual occurs provides the clue for ascertaining the meaning to be assigned to that term in a statute. No single definition can be adopted or applied in all contexts and to all statutes. The fact that the word **individual** in some circumstances may be wide enough to include an artificial juristic entity like a corporation created by a statute does not lead to the conclusion that the word individual in section 3(1) of the Act includes all juristic persons. If the intention of Parliament was always to regard all juristic entities whose existence in law is traceable to their incorporation under a statute as covered by the word individual, the

amendments effected to the definition of the word company would become inexplicable and a futile exercise in redundancy and no such intention can be attributed to Parliament when it brought about those changes in the definition of the word company. Incorporated bodies can be taxed under the Wealth-tax Act, only if they fall within the definition of the word company and not otherwise. The term individual as it is used in the section, is distinct from the artificial incorporated juristic entities and it is only on account of that fact that Parliament considered it necessary to amend the definition of the word company from time to time and expand its coverage with a view to bring incorporated legal entities into the fold of wealth-tax for the purposes of taxation. **[*149 CTR 418, 238 ITR 466]***

Individuals	**1965**	**Ori-HC**	**Vysyaraju Badri Narayanamurthy V/s. CWT**

The word **individuals** in entry 86 of List I takes within its scope also a Hindu undivided family. Parliament is therefore competent to impose wealth-tax on a Hindu undivided family.

[*56 ITR 298]*

Industrial company	**1978**	**Mad-HC**	**Addl. CIT V/s. Chillies Export House Ltd.**

…..a reading of the definition of **industrial company** in section 2(6)(c) of the Finance (No. 2) Act, 1971, suggests that it is the company which should engage itself in what should be the business of the company and that company must do the processing of goods.

[7 CTR 230, 115 I*TR 73]*

Industrial company	**1980**	**Cal-HC**	**National Planning and Construction Ltd. V/s. CIT**

In order to be an **industrial company** within the meaning of the said Finance Acts, the assessee would have to establish that it was manufacturing and selling processed items in the open market for profit or income. **[116 *ITR 811]***

Industrial company	**1990**	**Cal-HC**	**CIT V/s. Peerless Consultancy Services (Pvt.) Ltd.**

The term **industrial company** has been described as including a company engaged in the processing of goods. The word processing has not been defined in the Act and so it has to be assigned its dictionary meaning according to which it refers to the treatment to which a commodity is subjected in order to prepare it for the market. The nature and extent of processing may vary from case to case. In one case, the processing may be slight and in another, it may be extensive. **[186 *ITR 609*]**

Industrial company	**1995**	**Bom-HC**	**Vita Pvt. Ltd. V/s. CIT**

A company cannot be held to be an **industrial company** merely by virtue of its ownership of plant or machinery or factory premises. For that purpose, it must be mainly engaged in the manufacture or processing of goods. Neither the ownership or possession of the manufacturing plant or machinery nor the ownership of the raw materials or the manufactured goods is the determinative factor for that purpose. A company engaged in the manufacture of goods would continue to be an industrial company even if it manufactures or processes goods for a third party for remuneration or consideration, if the income therefrom is not less than 51 per cent. of its total income. But it would cease to be an industrial company if it suspends or stops the manufacturing activity and hands over the manufacturing apparatus to some third person for

use in the manufacture or processing of goods. In that event, it cannot claim to be itself engaged in the manufacture or processing of goods. **[211 *ITR 557]***

Industrial machinery	**1998**	**Mad-HC**	**CIT V/s. Indian Textile Paper Tube Co. Ltd. (No. 1)**

In considering the meaning of the word **industrial machinery** used in item No. 8 of the Ninth Schedule to the Income-tax Act, 1961, the description of industrial machinery spoken to in item No. 4 of the Fifth Schedule cannot be imported at all. The very fact that the Legislature has chosen to use the expression industrial machinery in one way in one Schedule and in another way in another Schedule, shows that the Legislature itself intended to give different meanings to the same term in the said two Schedules. If really, the Legislature wanted to have the same meaning in both the Schedules, it would have accordingly worded the said expression in the same way in both the Schedules. Therefore, the meaning of the term industrial machinery used in item No. 8 of the Ninth Schedule could not be the same as the meaning of the said term under item No. 4 of the Fifth Schedule. **[149 *CTR 117, 234 ITR 47]***

Industrial or commercial profits	**1998**	**Kar-HC**	**AEG Telefunken V/s. CIT**

Under article III of the Double Taxation Avoidance Agreement between Germany and India tax shall not be levied on the industrial or commercial profits of an enterprise in that other territory. Sub-clause (3) of article III defines the expression **industrial or commercial profits**. According to the said definition, it shall not include income in the form of rents, royalties, interests, dividends, management charges, remuneration for labour or personal services or income from the operation of ships or aircraft but shall include rents or royalties in respect of cinematographic films. The remuneration or the amount towards rendering technical services is not specifically excluded from the definition of the term industrial or commercial profits. Once the same is not excluded, it cannot be inferred that there is exclusion. Management charges are quite different from the amounts paid towards technical services. Management charges are paid for managerial supervision or managerial functions done by the concerned person or the company. Management charges would not include charges for rendering technical services unless a particular agreement is shown that management charges include the technical services as managerial duty. In this case there was no such agreement. Service rendered through other technical personnel will not amount to personal service. **[*151 CTR 222, 233 ITR 129, 101 TAXMAN 109]***

Industrial undertaking	**1987**	**Ker-HC**	**P. Alikunju, M.A. Nazeer Cashew Industries V/s. CIT**

Section 54D of the Income-tax Act, 1961, which grants an exemption must be construed liberally and the exprssion **industrial undertaking** occurring in section 54D must be given its popular meaning. An undertaking mentioned in section 54D must be one maintained by a person for take purpose of carrying on his business. Undertaking for the purpose of this section, however, must be an industrial undertaking. The demonstrative adjective industrial qualifying the word undertaking unmistakably and with precision shows that the undertaking must be one which partakes of the character of a business. The word business connotes some real, substantial and systematic or organised course of activity with a set purpose. The word business is a word of wide import and in fiscal statutes must be construed in a broad rather than a restricted sense. The words industrial undertaking, therefore, should be understood to have been used in section 54D in a wide sense, taking in its fold any project or business a person may undertake. **[166 *ITR 804]***

Industrial undertaking	1991	Kar-HC	Shankar Construction Co. V/s. CIT

The expression **industrial undertaking** has not been defined in the Income-tax Act, Industry is a term of wide import. Where there is (i) systematic activity; (ii) organised by co-operation between employer and employee; (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie there is an industry. Undertaking is in actual effect an activity of man which, in commercial or business parlance, means an activity engaged in with a view to earn profit. **[*189 ITR 463, 56 TAXMAN 98]***

Industrial undertaking	1994	Cal-HC	CWT V/s. Urmila Rungta

The expression **industrial undertaking** for the purpose of the several clauses of section 5(1) of the Wealth-tax Act, 1957, is defined by an Explanation as meaning an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. The Explanation contains a definition which is exhaustive. Therefore, unless a particular activity pertains to any of the three broad divisions, it cannot be said to be the activity of an industrial undertaking in terms of the said definition. The Explanation covers a construction company, but such coverage is only for construction undertaking engaged in construction of ships. No other type of construction has a place in it. By necessary implication, all constructions as well as repair of buildings is not comprehended by the expression construction of ships. **[208 *ITR 552]***

Industrial undertaking	1994	Raj-HC	CWT V/s. Asha Mittal

The Explanation to section 5(1)(xxxi) of the Wealth-tax Act, 1957, defines an **industrial undertaking** to mean an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. The manufacturing or processing of goods refers to movable property and there should be a manufacturing or processing of goods as the end product by the industrial undertaking. If an industrial undertaking is engaged in the manufacture or processing of any other item which does not fall in the category of goods, then the exemption cannot be claimed. What constitutes goods has not been defined in the Wealth-tax Act, 1957. But if the definition in the Sale of Goods Act, 1930, of goods is taken into consideration, which refers only to movable property, a dam cannot be considered as goods. Therefore, a firm engaged in the construction of dams does not constitute an industrial undertaking. **[209 *ITR 368]***

Industrial undertaking	1995	Mad-HC	CWT V/s. V.O. Ramalingam

The meaning of the expression **industrial undertaking** used in section 5(1)(xxxii) of the Wealth-tax Act, 1957, has to be understood as defined in the Explanation to section 5(1)(xxxi) of the Act. According to this definition, the term industrial undertaking for the purpose of the business activity of the assessee means an undertaking engaged in the business of manufacture or processing of goods. The expression engaged in manufacturing postulates the assessee's direct involvement in the manufacture. It may not be necessary that the assessee himself should be personally engaged but it is enough that he employs his own labourers. The expression processing of goods, does not predicate that the assessee should be engaged in all the processes resulting in the end-product. If the assessee has done any processing, i.e., if he is directly involved at any stage of the processing, resulting in the end-manufacture, he is entitled to avail of the exemption. **[216 *ITR 566]***

Industrial undertaking	1995	Bom-HC	CIT V/s. Chanda Diesels

The Income-tax Act, 1961, does not define the expression **industrial undertaking**. Section

80HH is intended to encourage the setting up of new industrial enterprises and hence will have to be construed liberally in a broad commercial sense keeping its object in view. The basic concepts of industrial undertaking, manufacture, produce occur even in section 32A. If a unit having new machinery amounted to industrial undertaking and the process amounted to manufacture for the purposes of section 32A, it is difficult to see how any different legislative intent could be attributed to identical expressions used in section 80HH. Sub-section (2) of section 80HH refers to industrial undertaking and not to the assessee or his other business. If a new industrial unit is established as a part of an already existing industrial establishment and if the newly established unit is itself an integrated independent unit in which new plant and machinery is put up and that by itself is capable of production of goods independently of the old unit, the said unit could be classified as a newly established industrial undertaking and will qualify for the relief. **[216 *ITR639]***

Industrial undertaking	**1999**	**Ker-HC**	**CIT V/s. Indian Resins and Polymers**

Though there is no definition of the term **industrial undertaking** in the Income-tax Act, 1961, it is defined under the Wealth-tax Act, 1957. The Explanation to section 5(1)(xxxi) of the Wealth-tax Act defines the term as an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. There is nothing in the language of section 80HH or 80J which would suggest that a different meaning is contemplated for the term industrial undertaking when it relates to a unit engaged in manufacture or production. On the other hand, the conditions to be fulfilled by the industrial undertaking as provided under sub-section (2) of section 80HH would indicate that a unit which is manufacturing or producing articles can be treated as an industrial undertaking without any further qualification.

[148 *CTR 143, 235 ITR 5]*

Industrial undertaking	**1999**	**Mad-HC**	**CWT V/s. P. Devasahayam**

Under section 5(1)(xxxii) of the Wealth-tax Act, 1957, the value of the interest of the assessee in the assets forming part of an **industrial undertaking** belonging to a firm or an association of persons of which the assessee is a partner or, as the case may be, a member, shall not be included in the net wealth of the assessee. Industrial undertaking had been defined, by way of a definition in the Explanation appended to section 5(1)(xxxi) thereof. The term industrial undertaking, according to the said Explanation, means an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. The first part of the said definition is relatable to generation or distribution of electricity or any other form of power or in the construction of ships. The second part of the definition is relatable to the manufacture or processing of goods or in mining. The expression manufacture or processing of goods, however, is not defined in the Wealth-tax Act. The term manufacture has to be considered with reference to the context of the enactment. Manufacture is a process which results in an alteration or change in the goods which are subjected to such manufacture. A commercially new different article is produced. **[144 *CTR 313, 236 ITR 885]***

Industrial undertaking	**2001**	**AP-HC**	**CIT V/s. Hemsons Industries**

…..the expression **industrial undertaking** occurring therein must be given its popular meaning. An undertaking mentioned in section 54D must be one maintained by a person for the purpose of carrying on his business.The demonstrative objective industrial qualifying the word undertaking unmistakably and with precision shows that the undertaking must be one which partakes of the character of a business. The word business connotes some real, substantial and systematic or

organised course of activity with a set purpose. Since the word business is of wide import, the words industrial undertaking should be understood to have been used in section 54D in a wide sense, taking in its fold any project or business a person may undertake.

[171 ***CTR 527, 251 ITR 693, 118 TAXMAN 903]***

Industrial undertaking	**2001**	**Bom-HC**	**Ship Scrap Traders V/s. CIT**

The Income-tax Act does not define the expression **industrial undertaking**. Therefore, reference to its definition in similar enactments or adoption of its ordinary meaning is inevitable. Considering the object of the enactment of sections 80HHA and 80-I, the said expression will have to be construed liberally in a broader commercial sense keeping its object in mind. The concept of industrial undertaking need not necessarily be confined to manufacture and production of articles and even in the absence of either of them there could be an industrial undertaking.

[168 ***CTR 489, 251 ITR 806, 122 TAXMAN 29]***

Industrial undertaking	**2003**	**Bom-HC**	**Insight Diagnostic & Oncological Research Ins. P. Ltd. V/s. DCIT**

The expression **industrial undertaking** in the context of the Income-tax Act and not in the context of the Industrial Disputes Act and if so read, it is clear that the activity should be of production of any article or thing and any activity which primarily concerns production of any article or thing would fall in the category of industrial undertaking.

[262 ***ITR 41, 129 TAXMAN 510]***

Information	**1963**	**All-HC**	**Jawahar Lal Mani Ram V/s. CIT**

A judgment of the Income-tax Appellate Tribunal or even of the Appellate Assistant Commissioner in an appeal from an assessment order, taking a different view on the facts of the case, constituted **information** within the meaning of section 34. On principle there can be no distinction in this respect between information derived from a judgment of the Privy Council rendered on appeal either from an order of the Tribunal or from an answer given in a reference by the High Court and a judgment recorded by the Tribunal 'or an Appellate Assistant Commissioner against an assessment order in the same assessment proceedings. **[48** ***ITR 837]***

Information	**1964**	**Mys-HC**	**Canara Industrial and Banking Syndicate Ltd. V/s. CIT**

If income had escaped assessment owning to the failure of the Income-tax Officer to understand the true implication of a notification, and the Income-tax Officer later on finds that on a correct interpretation of the notification the income was liable to be assessed, he can take proceedings under section 34 for assessment of such income; the word **information** in section 34 is wide enough to apply to such a case. **[51** ***ITR 479]***

Information	**1964**	**Bom-HC**	**Rajputana Textiles (Agencies) Pvt. Ltd. V/s. Das Gupta, ITO-EPT**

The in fact he came to know of it subsequently. **Information** means something that the mind has acquired. In order that an officer should be incapacited from acting under section 34 or section 15 he must have actual knowledge of certain facts, which knowledge he is again using for the purpose of acting under those sections. If actual knowledge was absent-it is immaterial how that actual knowledge was absent-then when the actual knowledge does come about it confers jurisdiction upon the officer to act under those two sections. **[52** ***ITR 1]***

Information	1971	Guj-HC	Kasturbhai Lalbhai V/s. ITO

Information, in the context in which it occurs in section 147(b) of the Income-tax Act, 1961, must mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment. Mere change of opinion on the part of the Income-tax Officer cannot constitute information so as to entitle him to initiate proceedings under section 147(b). If the information is as to any fact, it may be received from any person who knows the fact, and it cannot be limited to any particular person, body or authority since such fact may be within the knowledge or possession of anyone and it may be received by the Income-tax Officer from any source. But, in the case of information as to the correct state of the law, the external source from which it may be received must necessarily be of a limited character. Though it may not be possible to define precisely the cases where intimation received by the officer as to the correct state of the law may be regarded as information, opinion as to the state of the law by any and every person cannot constitute information for the purpose of the section. It must be a statement or the expression of the correct state of the law by a person or body or authority competent and authorised the pronounce upon the law so that it is invested with some definiteness and authority. **[80 *ITR 188]***

Information	1972	Del-HC	CIT V/s. Chand Kanwarji

That the scrutiny note of the Revenue Audit and the letter of the Inspecting Assistant Commissioner constituted **information** within the meaning of section 147(b) from an external source and the assessments were, therefore, valid. **[84 *ITR 584]***

Information	1974	Cal-HC	ITO V/s. Panama Private Ltd.

In order to be **information** in terms of clause (b) of section 147, the following conditions require to be fulfilled-1. It must be knowledge or instruction concerning facts or particulars or as to law relating to a matter bearing on the assessment;2. Such knowledge or instruction must come into the possession of the Income-tax Officer after the previous assessment; 3. The knowledge or information must be such which leads to the formation of the belief that the income of the assessee had escaped assessment or had been under-assessed;4. The proximate or immediate source of such information and knowledge must be external. 5. The fact that such knowledge or information could have been derived during the previous assessment from an investigation of the materials on record but was not in fact derived would not prevent such knowledge or instruction from being information in terms of section 147(b). **[*97 ITR 210]***

Information	1975	P&H-HC	H.L. Sibal V/s. CIT

The word **information** which has been used in section 132(1) of the Income-tax Act, 1961, has been defined in the dictionary as that of which one is apprised or told. The word reason has been defined as a statement of fact employed as an argument to justify or condemn some act. The word conclusion is defined as the judgment arrived at by reasoning; an inference; deduction, etc. In other words, when the information received or the basic facts are harnessed in support of an argument, the resultant effect assumes the shape of a reason and when a number of reasons are considered in relation to each other, the final result is a conclusion.A necessary concomitant of this approach is that the facts constituting information must be relevant to the enquiry. They must be such that a reasonable and prudent man can come to the requisite belief or conclusion therefrom. If either of the aforementioned elements is missing, the action of the authority shall be regarded as lying outside the ambit and scope of the law and such an action would be liable to be struck down on the basis of what is commonly known as legal malice. **[101 *ITR 112]***

Information	1976	SC	Kalyanji Mavgy & Co. V/s. CIT

The word **information** in section 34(1)(b) is of the widest amplitude and comprehends a variety of factors. Nevertheless, the power under section 34(1)(b), however wide it may be, is not plenary because the discretion of the Income-tax Officer is controlled by the words reason to believe. Information may come from external sources or even from the materials already on record or may be derived from the discovery of new and important matter or fresh facts.

[102 ***ITR 287]***

Information	1977	Guj-HC	CWT V/s. Arundhati Balkrishna Trust

The word **information** in section 17(1)(b) of the Wealth-tax Act, 1957, is of the widest amplitude and comprehends a variety of factors. Information may come from external sources or even from the materials already on the record. It may consist of oversight or inadvertent mistake committed by the Wealth-tax Officer or he may discover an error apparent on the face of the record from further enquiry or research into facts or law. **[108** ***ITR 78]***

Information	1979	Ker-HC	CIT V/s. Kerala State Industrial Dev. Corp. Ltd.

The dividing line between information and change of opinion is rather thin and while their distinction is easy of exposition its practical application is difficult. The expression **information** which was introduced into the Indian Income-tax Act, 1922, by an amendment of 1939, has not been defined either in the 1922 Act or the 1961 Act. To inform means to impart knowledge and a detail available to the Income-tax Officer in the paper filed before him does not by its mere availability become an item of information. It is transmitted into an item of information in his possession only if and only when its existence is realised and its implications are recognised.

[*116 ITR 158]*

Information	1980	All-HC	Sterling Machine Tools V/s. CIT

The term **information** signifies instruction or knowledge derived from an external source concerning facts or particulars or as to law, relating to a matter bearing on the assessment. In so far as the term information means instruction or knowledge concerning facts or particulars there is little difficulty, the reason being that, by its inherent nature, a fact has concrete existence. It influences the determination of an issue by the mere circumstance of its relevance. It requires no further authority to make it significant. **[*122 ITR 926]***

Information	1980	Cal-HC	Stewarts & Lloyds of India Ltd. V/s. CIT

In order to be **information** in terms of section 8(b) of the Companies (Profits) Surtax Act, 1964, the following conditions must be fulfilled: (a) it must be knowledge or instruction concerning facts or particulars or as to law relating to a matter bearing on the assessment, (b) such knowledge or instruction must come into the possession of the Income-tax Officer after the previous assessment, (c) the knowledge or information must be such which leads to the formation of the belief that the income of the assessee had escaped assessment or had been under-assessed, (d) the proximate or immediate source of such information and knowledge must be external, but the fact that such knowledge or information could have been derived during the previous assessment from an investigation of the materials on record or facts disclosed thereby or from other enquiry but was in fact not derived would not prevent such knowledge or instruction from being information in terms of the section. Where the Income-tax Officer on his own initiative and on material which was before him at the time of the original

assessment changes his opinion and comes to a different conclusion, he would not be acting on "information" in terms of the section. **[125 *ITR 270]***

Information	1982	Guj-HC	K. Mansukhram and Sons V/s. CIT

Information means instructive knowledge concerning a matter bearing on the assessment received after the completion of the original assessment. Information may be as to the correct state of facts or of law relating to the taxable income. When section 147(b) of the Income-tax Act, 1961, is read as referring to information as to law, what is contemplated is information as to law created by a formal source. **[*19 CTR 117, 133 ITR 65]***

Information	1982	Bom-HC	CIT V/s. H.D. Dennis

Information within the meaning of section 147(b) may consist of fact or of law. The information must be fresh or subsequent to the original assessment. The factual information may be derived from external sources or may be gleaned from the material which was already on record at the time of the original assessment. A mere change of opinion on the material already considered by a reappraisal of the same material is not information. The change must be supported by fresh information obtained from the record. Opinion expressed by the department or by the Central Board of Direct Taxes is not law. Law is that which is laid down either by the Legislature or judicial decisions and it is the change in such law which constitutes a fresh information. **[26 *CTR 107, 135 ITR 1, 7 TAXMAN 231]***

Information	1984	MP-HC	Arvind Kumar V/s. ITO

The word **information** as occurring in section 147(b) means not only facts or factual material but includes information as to the true and correct state of the law. The word has been defined to connote instruction or knowledge derived from an external source concerning facts or particulars or as to law relating to a matter bearing on the assessment. But the information as to law, to fall within section 147(b), must be from a formal source, i.e., a competent Legislature or a competent judicial or quasi-judicial authority. Decisions of superior authorities under the Income-tax Act, constitute information relating to law for reopening an assessment under section 147(b). **[146 *ITR 437, 13 TAXMAN 291]***

Information	1994	Cal-HC	CIT V/s. Union Carbide Corporation

The expression **information** in the context in which it is used in section 147(b) of the Income-tax Act, 1961, means instruction or knowledge. When section 147(b) is read as referring to information as to law, what is contemplated is information as to the law created by a formal source. Any statement by a person or body not competent to create or define the law cannot be regarded as law. **[206 *ITR 402]***

Information	2001	Cal-HC	ITO V/s. Jiyajeerao Cotton Mills Ltd.

The internal audit cannot pronounce the law nor can such pronouncement of law be an **information** within the meaning of section 147(b) of the Income-tax Act, 1961. The opinion of the Central Board of Direct Taxes interpreting the law does not constitute information within the meaning of section 147(b). **[*164 CTR 619, 247 ITR 122, 116 TAXMAN 16]***

Information	2002	Del-HC	Bawa Abhai Singh V/s. Deputy CIT

Information means the communication or reception of knowledge or intelligence. It includes knowledge obtained from investigation, study or instruction. To inform means to impart knowledge. A detail available in the papers filed before the Income-tax Offer does not by its mere presence

or availability become an item of information. It is transmuted into an item of information only if and when its existence is realised and its implications are recognised. Whether a particular fact or material constitutes information in a particular case has to be decided with reference to the facts of that case and there cannot be a definite rule of universal application as to when a particular material will be taken to be an information. Information must be something more than a rumour or gossip or hunch. There must be some material which can be regarded as information, on the basis of which the Assessing Officer can have reason to believe that action under section 147 is called for. Jurisdiction of the court to interfere is very limited, as the court does not act as an appellate authority. No meticulous examination of the information by the court is permissible to decide for itself as to whether action under section 147 is called for.

[*168 CTR 521, 253 ITR 83, 117 TAXMAN 12]*

Information	**2003**	**Raj-HC**	**CIT V/s. Sambhar Salt Ltd.**

Once a possible view has been taken while allowing the liability on the basis of the provision made and another view is also possible, that does not constitute **information**, within the meaning of section 147(b) of the Income-tax Act, 1961.

[*183 CTR 50, 262 ITR 675, 131 TAXMAN 241]*

Installed	**1960**	**Mad-HC**	**CIT V/s. Sri Rama Vilas Service (Private) Ltd.**

….. the word installed in relation to machinery or plant must be considered to mean such installation as that machinery or plant is capable of. **Installed** means to place an apparatus in position for service or use. **[38 *ITR 25]***

Installed	**1964**	**SC**	**CIT V/s. Mir Mohammad Ali**

The expression **installed** in the second paragraph of clause (vi) and clause (via) did not necessarily mean fixed in position but was also used in the sense of induct or introduce or placing an apparatus in position for service or use. **[53 *ITR 165]***

Installed	**1970**	**All-HC**	**CIT V/s. Indian Turpentine and Rosin Co. Ltd.**

The expression **installed** did not necessarily mean fixed in position but was also used in the sense of induct or introduce or placing an apparatus in position for service or use.**[75 *ITR 533]***

Installed	**1993**	**Raj-HC**	**CIT V/s. Instrumentation Ltd.**

The expression **installed** in section 32 of the Income-tax Act, 1961, would include placing the apparatus in position for service or use. **[201 *ITR 117]***

Institution	**2001**	**Del-HC**	**CIT V/s. Charat Ram Foundation**

The expressions founder and institution have not been defined in section 13 of the Income-tax Act, 1961. The term **institution** is sometimes used as descriptive of an establishment or place where the business or operation of a society or association is carried on. At other times, it is used to designate an organised body. **[168 *CTR 261, 250 ITR 64, 116 TAXMAN 255]***

Instrument	**1981**	**Del-HC**	**Jagdamba Charity Trust V/s. CIT**

The word **instrument** used in section 26 of the Specific Relief Act has a very wide meaning and includes every document by which any right or liability is, or is purported to be created,

transferred, limited, extended, extinguished or recorded. There is no reason to exclude a trust deed from its purview. **[18 *CTR 317, 128 ITR377]***

Instrument	1991	Gau-HC	CIT V/s. Rajmohan Saha

The word **instrument** has been used in section 184(1) of the Income-tax Act, 1961, in the sense of a writing a document or a formal expression in writing of some agreement or obligation, or of some act upon which the rights of the parties are dependent. The word instrument cannot be given too narrow a construction to mean only a regular deed of partnership. A partnership may be evidenced by one document or several documents. In the case of several documents, all such documents together shall constitute the instrument of partnership. The number of documents is not determinative. So long as the terms of the partnership are specified in any document or documents which go to constitute the instrument of partnership, the condition of section 184(1) is fulfilled. It will be a partnership evidenced by an instrument. For the purpose of section 184, it is not necessary that, with every change in the constitution of a firm, a fresh deed of partnership should be executed. The change may be effected by an agreement which may refer to the terms contained in the original deed of partnership and agree to run the partnership in accordance therewith subject to the modification or changes made by such agreement. In such a case, both the agreement and the original deed of partnership would constitute an instrument of partnership within the meaning of section 184(1).

[94 *CTR278, 190 ITR 236]*

Interest	1999	Bom-HC	CIT V/s. Hindustan Conductors Pvt. Ltd.

Interest is the return or compensation for the retention by one person of a sum of money belonging to or owed to another. The essence of interest is that it is a payment which becomes due because the creditor has not had his money at the due date. It may be regarded either as representing the profit he might have made if he had had the use of the money, or conversely, the loss he suffered because he had not that use. The general idea is that he is entitled to compensation for the deprivation. It is only interest in the above sense which is deductible under section 36(1)(iii) of the Income-tax Act, 1961. If in the garb of interest, something more is paid over and above interest, that something cannot be allowed as deduction under this section. What is allowable as a deduction under section 36(1)(iii) of the Act is any sum paid by way of interest in the commercial sense. There can be no straitjacket formula. The Income-tax Officer cannot refuse to allow the deduction of interest on the ground that the rate of interest is high or that the assessee could have borrowed money at a lower rate of interest. But if the Income-tax Officer comes to a finding that what is claimed as deduction by way of interest is, in fact, not wholly payment by way of interest but partly interest and partly payment for non-commercial considerations, he may allow the deduction of the amount which is interest and disallow the balance which is for extra commercial consideration.

[149 *CTR 169, 233 ITR 251]*

Interest	2001	Del-HC	CIT V/s. Saraswati Chemicals and Allied Industries (P.) Ltd.

The word **interest** has a basic meaning of advantage or profit and with reference to a loan it means the profit or advantage of the creditor which he gets by giving to another the use of his money. Interest can be described as a consideration paid either for use of money or for forbearance in demanding it after it has fallen due. It is a compensation allowed by law or fixed by parties or permitted by custom or usage, for use of money belonging to another or for delay in paying the money after it has become payable. **[*240 ITR 762, 108 TAXMAN 258]***

Interest	2002	Del-HC	CIT V/s. Prem Nath Motors (Pvt.) Ltd.

Interest is a consideration paid either for use of money or for forbearance in demanding it, after it has fallen due. It is a compensation allowed by law or fixed by parties or permitted by custom or usage for use of money belonging to another, or for the delay in paying the money after it has become payable. **[170** ***CTR424, 253 ITR 705, 120 TAXMAN 584]***

Interest	2002	Mad-HC	Viswapriya Financial Services and Securities Ltd. V/s. CIT

The definition of **interest** in section 2(28A) of the Income-tax Act, 1961, after referring to interest payable in any manner in respect of any moneys borrowed or debt incurred, proceeds to include in the term moneys borrowed or debts incurred, deposits, claims and other similar right or obligation and further includes any service fee or other charge in respect of the moneys borrowed or debt incurred, which would include deposit or claim or other similar right or obligation as also in respect of any credit facility which has not been utilised. This statutory definition regards amounts which may not otherwise be regarded as interest as interest for the purpose of the Act. Even amounts payable in transactions where money has not been borrowed and debt has not been incurred are brought within the scope of the definition as in the case of a service fee paid in respect of a credit facility which has not been utilised.
[179 ***CTR 334, 258 ITR 496, 127 TAXMAN 385]***

Interest	2003	All-HC	CIT V/s. Sahara India Savings and Investment Corp. Ltd.

… **interest** means interest on loans and advances. Secondly, it includes two other items in the definition of the word interest. The two items are commitment charges on unutilised portion of any credit sanctioned for being availed of in India, and discount on promissory notes and bills of exchange drawn or made in India. An extended meaning cannot be given to the term interest. *(Interest-tax Act, 1974, Sec-4)* **[181** ***CTR 134, 261 ITR 113, 129 TAXMAN 120]***

Interest	2003	Guj-HC	CIT V/s. Vijay Ship Breaking Corporation

Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised. The meaning of the word interest is thus very wide and would include interest on unpaid purchase price payable in any manner which would include by means of irrevocable letter of credit. **[185** ***CTR 136, 264 ITR 646, 134 TAXMAN 14]***

Interest chargeable in this act	1964	Cal-HC	Jalan & Sons (Private) Ltd. V/s. CIT

The words **interest chargeable under this Act** in the proviso mean interest which is not exempt from taxation and the words payable without the taxable territories refer to interest which is due to be paid outside the taxable territories. **[50** ***ITR 111]***

Interest of the individual in the property of the family	1982	Guj-HC	Kalyanbhai Trikamlal Shah V/s. CWT

The expression **interest of the individual in the property of the family** which has been defined for the purpose of section 4 of the Wealth-tax Act, 1957, by clause (d) of the Explanation to the section, means the proportion to which the individual would be entitled in the property

of the Hindu undivided family if there had been a total partition in the Hindu undivided family as on the valuation date. ***[135 ITR 750]***

Interested to deny	**1945**	**Nag-HC**	**Governor-General in Council V/s. Mulla Mohommad Bhai**

The words **interested to deny** in section 42 of the Specific Relief Act mean that the person interested to deny a legal character or a right to any property is a person with a rival claim of some sort and with some interest resembling in its nature that of the person whose legal character or right is denied. They cannot be interpreted to mean any person who might stand to gain financially or otherwise if some person's legal character or right to property were held to be not established. **[13 *ITR 10]***

Interlocutory order	**1995**	**Guj-HC**	**Alkesh Subodhchandra Shah V/s. State of Gujarat**

The term **interlocutory order** in section 397(2) of the Criminal Procedure Code, 1973, has been used in a restricted sense and any order which substantially affects the right of the accused or decides certain rights of the parties, cannot be said to be an interlocutory order so as to bar a revision to the High Court. The orders compelling the appellant to face a trial, without proper application of mind, cannot be held to be an interlocutory matter but one which decides a serious question as to the rights of the appellant to be put on trial. An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will not be an interlocutory order within the meaning of section 397(2). Section 397(3) while eliminating the scope of two successive revision petitions by the same party says that, if a revision application under the section has been made by any person either to the High Court or to the sessions judge, no further application by the same person shall be entertained by either of them. But when once the revision application has been accepted by the sessions court and a finding adverse to the case of the petitioner accused had been recorded, in all fairness and under the law also, it could not be urged that the petitioner accused cannot come before the High Court under a revision. The power to discharge is exercisable under section 245(1) of the Code when the magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction.

[*212 ITR 255]*

Invest	**1988**	**Cal-HC**	**CIT V/s. Birla Charity Trust**

The expression **invest** in section 13(2)(h) connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit or financial advantage or return. It has to be established that a trust having assets in the form of money or cash or a credit balance in a bank account or in any other form capable of being invested was by a positive act and pursuant to a decision of the trust laid out or committed in a concern of a nature specified, before it can be held that such an investment comes within the mischief of section 13(2)(h). This interpretation is supported by the mode of amendment of section 13 by the Finance Act, 1983. Under the amended section, the benefit conferred by section 11 stands withdrawn not only where the funds of the trust are invested or remain invested in a manner other than that prescribed but also where the trust holds any shares in a company other than a Government company or a statutory corporation after a specified date. A positive distinction has been made between a case where the funds of the trust are, or remain, invested in a manner other than prescribed and a case where the trust continues to hold shares in companies other than those excepted.

[66 *CTR 172, 170 ITR 150, 34 TAXMAN 504]*

Invest	1994	Guj-HC	Sarabhai foundation V/s. CIT

The expression **invest** in section 13(2)(h) of the Income-tax Act, 1961, connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning profit or financial advantage or return. It has to be established that a trust having assets in the form of money or cash or a credit balance in the bank account or in any other form capable of being invested was, by a positive act and pursuant to a decision of the trust, laid out or committed in a concern of a nature specified, before it can be held that such an investment comes within the mischief of section 13(2)(h). Section 13(2)(h) will be attracted only in cases where funds, that is, moneys from actual or available money or cash resources of the trust itself are invested or continue to remain invested for any period during the previous year in any concern in which any person referred to in sub-section (3) of section 13 has substantial interest: **[*209 ITR 390]***

Invest	2001	Del-HC	CIT V/s. Sir Shri Ram Foundation

The expression **invest** connotes a positive act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit or financial advantage or return. What is contemplated is the trust having assets in the form of money or cash or balance in a bank or any other form capable of being invested or by a positive act which pursuant to a decision of the trust is laid out or committed in a concern of a nature specified before it can be held that such an investment comes within the mischief of section 13(2)(h). **[*167 CTR 349, 250 ITR 55, 116 TAXMAN 113]***

Investment	1966	Bom-HC	CIT V/s. Bombay State Co-operative Bank Ltd.

The word **investments** used in item 1 of the Explanation to the Notification has been deliberately used in order to make it clear that not all income, profits and gains from securities but only such income, profits and gains from securities which are held as investment is excluded from the exemption. **[59 *ITR 31]***

Investment	1980	Bom-HC	CIT V/s. Aloo Investment Co. P. Ltd.

The word **investment** must be understood in the sense in which businessmen understand it: it is a form of income-yielding property. Investment contemplates acquisition of some species of property by laying out money. **[123 *ITR 132]***

Investment	1982	Cal-HC	Phillips Carbon Block Ltd. V/s. CIT

The expression **investment** used in r. 19(4) of the I.T. Rules, 1962, has not been defined and hence the meaning of the word in common parlance should be taken. The expression investment, normally and in the commercial world, is not treated as synonymous with either bank deposits or short-term deposits. Hence, where amounts are deposited in a bank, they would not be investments and the first limb of r. 19(4) would not be satisfied, and even if they were investments these amounts would not become ineligible for capital computation, unless it could be shown that income in respect thereof was not taken into consideration in computing the profits of the business. Whether a particular income was part of the income from business would fall to be decided not on the basis of classification of incomes under different heads for purposes of taxation but on commercial principles. **[*28 CTR 333, 136 ITR 205]***

Investment	1994	Cal-HC	J.K. Trust V/s. CWT

The expression **investment** in section 13(2)(h) of the Income-tax Act, 1961, denotes a positive

act on the part of the trust whereby the funds of the trust are laid out or committed in any particular property or business or transaction with the object of earning a profit. Therefore, where the assessee-trust receives shares of a company by way of donation, it cannot be said that the assessee-trust has dealt with or committed or laid out any part of its existing assets to acquire the said shares. **[205 *ITR 524]***

Investment	**2002**	**Del-HC**	**Anand Charitable Trust V/s.CWT**

The word **investment** means to lay out money in business with a view to obtain income or profit. In order to constitute an investment the amount laid down should be capable of resulting in an income or return or profit to the investor and in every case of investment, the intention and positive act on the part of the investor should be to earn such income, return or profit to the investor. The words invest and investment are to be taken in the business sense of laying out of money for interest or profit. **[257 *ITR 275, 123 TAXMAN 494]***

Investment	**2005**	**All-HC**	**CIT V/s. Shri Radha Krishna Temple Trust**

The words funds and **investment** have different meanings and the investment ought to be made by the trust out of its funds as per the requirement under section 13(2)(h) of the Act and not those investments which have already been made. The value of the investment received by the trust by way of donation cannot be treated as investment within the meaning of section 13(2)(h). **[277 *ITR 158]***

Investment company	**1976**	**Cal-HC**	**Great Pyramid Insurance Co. Ltd. V/s. CIT**

Section 104 of the Income-tax Act, 1961, read with section 105(ii) and the definition of **investment company** in section 109(ii) of the Act (as it stood at that time) applied to a company whose business consists wholly or mainly in dealing in or holding of investments. A company which comes within the scope of those provisions must be one whose primary business must be dealing in or holding of investments. If a company engaged itself in two or more equally or nearly equally important business activities, then it could not be said that the business consisted wholly or mainly in dealing in a particular activity. Even in cases where a company has more than one business activity and one of its activities is more substantial than the others, unless that activity is the primary activity of the company, it could not be said that the company is engaged wholly or mainly in any of its business activities. Section 104 applies only to cases where the primary activity of the company is in dealing in or holding of investments. Where the legislature speaks of the business of holding of investments, it referred to real, substantial or systematic or organised course of activity of investment carried on by the assessee for a set purpose such as the earning of profits. **[*102 ITR 394]***

Investment company	**1977**	**Cal-HC**	**Charmugaria Trading Co. Ltd. V/s. CIT**

Before a company can be stated to be an **investment company** under section 109(ii) of the Act, the following have to be found as a fact: (a) that the assessee is carrying on a business, i.e., it is carrying on a systematic or an organised activity with the set purpose, inter alia, of making profits; (b) that the business consists of either dealing in investments, that is dealings in shares, securities, etc., or holding of investments; and (c) that such business is its primary business. **[110 *ITR 715]***

Investment company	1980	Cal-HC	CIT V/s. I.B. Sen and Sons P. Ltd.

In order to treat a company as an **investment company** under section 23A of the Indian Income-tax Act, 1922, the company should have carried out real, substantial or systematic or organised course of activity of investment for a set purpose such as earning of profits. Section 23A applies only in cases when the primary activity of the company is in the dealing in or holding of investments. **[121 *ITR 664]***

Investment company	1980	Bom-HC	CIT V/s. Aloo Investment Co. P. Ltd.

The determination of the question as to whether a company is an **investment company** within the meaning of the definition in section 109(ii) of the Income-tax Act, 1961, prior to its amendment in 1966, would fall in three parts. First, it must be determined as a fact whether any investments as contemplated by the definition were made by the company; second, it has to be determined whether the company could be said to be holding investments, and third, it has to be found whether the business of the company consisted wholly or mainly in the holding of investments. **[123 *ITR 132]***

Investment company	1994	Cal-HC	Eastern Aviation and Industries Ltd. V/s. CIT

The expression **investment company** means a company whose gross total income consists mainly of income which is chargeable under the heads Interest on securities, Income from house property, Capital gains and Income from other sources.

[*208 ITR 1023, 74 TAXMAN 641]*

Investment company	1995	Bom-HC	CIT V/s. Amritlal and Co. Ltd.

Section 109 of the Income-tax Act, 1961, defines the expression **investment company** for purposes of sections 104, 105 and 107A. From the definition it is evident that in order to term a company an investment company, its gross total income should consist mainly of income from securities, house property, capital gains, etc. The expression mainly appearing in the definition of investment company in clause (ii) of section 109 means substantially or primarily. If the business of the company consists mainly in dealing in goods or merchandise, it cannot be held to be an investment company within the meaning of clause (ii) merely because, for one reason or the other, its income from business happens to fall short of its income from investments, etc., in a particular previous year. The decisive factor for determining whether a company is an investment company or any other company is, therefore, the true nature of the primary activities of the company. If the activities of the company are such that its total gross income mainly consists of income from securities, etc., it would be termed an investment company. The word mainly is somewhat akin to wholly and has been used to mean the whole or a substantial portion of the total gross income of the assessee. It cannot be construed to mean not less than fifty-one per cent. **[*126 CTR 142, 212 ITR 540]***

Investment company	2006	Guj-HC	Barkha Investment and Trading Co. V/s. CIT

Sub-clause (ii) of clause (c) of the Explanation to section 40A(8) of the Act which defines an **investment company** states that one of the principal business could be acquisition of maketable securities of a like nature, in other words, securities which are in the nature of shares, stock, debentures, etc., or securities issued by a Government.

[200 *CTR 342, 281 ITR 316, 150 TAXMAN 523]*

Involved	1971	Ker-HC	CIT V/s. Indian Chamber of Commerce

In order to take an object of general public utility outside the scope of the definition in section 2(15) of the Income-tax Act, 1961, on the ground that it involves the carrying on of an activity for profit, that object must involve the carrying on of any activity for profit. **Involve** means comprise or imply and the object must, therefore, imply the carrying on of any activity for profit. It is not sufficient, if there is some activity carried on which results in profit. There must be an activity in the form of business because the activity must be for profit and that activity for profit must be involved in the objects of general public utility. Even when an activity is in furtherance of the objects of a trust and even if such activity results in profits, the definition will not be attracted unless the objects involve carrying on of an activity for profit. **[*80 ITR 645]***

Iron and steel (metal)	1989	P&H-HC	CIT V/s. Ludhiana Steel Rolling Mills

In order to determine whether the assessee is entitled to development rebate at the higher rate of 25 per cent. on the ground that it manufactures **iron and steel (metal**) within the meaning of item No. (1) of the Fifth Schedule to the Income-tax Act, 1961, the nature of the article manufactured should be taken into consideration. If iron and steel bars or other raw material has been used for making an article which is known and accepted in common parlance or in the commercial world as a specific article different from iron and steel and that article can no more be treated or understood basically as iron and steel, that article cannot be termed iron and steel (metal). To illustrate, if iron is used for manufacture of shovels or pickaxes, no one would understand, treat or name the shovels or pickaxes as iron and steel. So, the question is whether the finished article can be said to be something basically different from iron and steel. **[*180 ITR 155, 45 TAXMAN 446]***

Irregularity	2005	Del-HC	Remfry & Sons V/s. CIT & V. Sagar V/s. CIT

Irregularity is an expression of lesser effect as an act which is improper or inefficient by reason, or departure from the prescribed act. It primarily connotes the neglect of order or method and may not be according to regulations. One of the basic distinctions between the two expressions is the resultant effect of its being curable or incurable. Normally, an illegality which goes to the very root of the matter or jurisdiction could hardly fall in the class of those cases, but an irregularity is merely procedural and where it has even been substantially complied with, to bring such a case within the class of cases where irregularity is curable, ould be a fair and just interpretation of the relevant rule. **[*195 CTR 66, 276 ITR 1, 145 TAXMAN 22]***

Is	1990	SC	F.S. Ghandhi V/s. CIT

The word **is** cannot be construed to mean has been. The question as to whether the interest in property should be included or excluded from the assets of the assessee under section 2(e)(2)(iii) has to be considered in the light of the nature of the interest on the relevant date, viz., the date on which the interest vests in the assessee. **[84 *CTR 35, 184 ITR 34]***

Is admitted and pending	2003	MP-HC	Shree Amarlal Kirana Stores V/s. CIT

. . .The use of the words **is admitted and pending** in section 95(i)(c) is important and significant. The deliberate use of the word admitted prior to the words and pending can never be regarded as redundant or otiose; it being a settled rule of interpretation that every word in the statute has its definite meaning. The words admitted and pending used in sub-clause (c) have their application to all the three types of cases, namely, appeal, reference and writ

petition. Indeed, the Legislature was quite aware of the procedure for prosecuting appeals, references and writs provided under the Act and the rules applicable to these three statutory remedies prescribed under the Act and the Constitution. It is for this reason that it specifically used the words admitted and pending after these three types of cases in section 95(i)(c).*(KVSS)*
[180 *CTR 35, 259 ITR 572, 126 TAXMAN 512]*

Is included in the profit	**1962**	**SC**	**State of Madhya Pradesh V/s. Binod Mills Co. td.**

The words **is included in the profits** did not mean either included by the managing agent in his return or included by the assessing authority in an order of assessment against the managing agent, but meant liable under the terms of the Ordinance to be charged to tax as part of the profits of the managing agent. **[*46 ITR 159]***

Issue	**1962**	**Guj-HC**	**Madanlal Mathurdas V/s. Chunilal, ITO**

The word **issue** in the first proviso to section 34(1) of the Indian Income-tax Act, 1922, as amended in 1956, cannot be equated to serve. **[44 *ITR 325]***

Issue and serve	**1962**	**Cal-HC**	**Belland V/s. Banarasi Debi**

The two words **issue** and **serve** used in section 34 have been used as interchangeable or equivalent expressions and the same meaning has to be given to the word issued as used in section 4. **[46 *ITR 28]***

Issue and serve	**1964**	**SC**	**Banarsi Debi V/s. ITO**

The expressions **issued** and **served** are used as interchangeable terms and in the legislative practice of our country they are sometimes used to convey the same idea. **[*53 ITR 100]***

Issue and serve	**1986**	**Pat-HC**	**CIT V/s. Sheo Kumari Debi**

The words **issue and serve** are not synonyms. Their plain dictionary meanings runs directly contrary to any such assumption. The gap between the two may be wide both in point of time and place. A statute may require that the issuance of a general order be conveyed by publication in the locality without individual service. The word issue is to be construed in the context of Section 149 which is an express limitation provision creating a precise bar with regard to reopening of assessments. In sub-section (3) of section 149, the word employed is served in the first line while in the penultimate line the word employed is issued . Thus, in the same short sub-section, the Legislature has used these words as distinct and separate. The hallmark of a limitation provision is that the same must have clear cut and fixed termini at both ends. Section 149 fixed the terminus a quo from the end of the relevant assessment year, i.e., on the 31st March of the said year. On the other hand, the terminus ad quem under clauses (a) and (b) is fixed at 4 years, 8 years and 16 years, from the fixed date of 31st of March of the relevant assessment year. Clearly enough, if the terminus a quo is fixed as the relevant assessment year, namely, 31st March of the said year, the other terminus must equally be fixed with regard to the fixed date of the issuance of the notice, which is precise and predictable. The plain scheme of sections 148 and 151 is that the satisfaction and the sanction of the Commissioner or the Board on the reason recorded by the Income-tax Officer is necessary before the notice under section 148 is sent out. If the word issued used in both these sub-sections is read as served, it will lead to the strange phenomenon that even after the Income-tax Officer has recorded his reason and issued the notice, the sanction therefor may be recorded before its service on the assessee. **[157 *ITR 13, 24 TAXMAN 77]***

Issued	1970	Cal-HC	M.M. Ispahani Ltd. V/s. CIT

The word **issued** used in section 297(2)(d)(i) of the Income-tax Act, 1961, should be interpreted in its wider meaning as including the service of a notice under section 34. Therefore, the issue of a notice under section 34 of the Indian Income-tax Act, 1922, can be said to initiate a proceeding which could be said to be pending when the Act of 1961 came into force so as to bring it within the scope of section 297(2)(d)(i) of the later Act. **[75 *ITR 479]***

Issued and served	1975	P&H-HC	Tikka Khushwant Singh V/s. CIT

The words **issue and serve** are interchangeable and the word issue has been used in section 148 of the Income-tax Act, 1961, in the same sense in which the word serve has been used. Therefore, a notice of reassessment issued against the assessee within the period of limitation but served on the assessee after the period would be without jurisdiction and void.

[*101 ITR 106]*

Issued and served	1976	AP-HC	CIT V/s. Kailasa Devi and Rukmini Bai

Under section 148 read with section 149 of the Income-tax Act, 1961, a notice under section 148 for reassessment should not only be issued but also served within the period prescribed under section 149 of the Act.The words **issued and served** were consistently interpreted as interchangeable under section 34 of the Indian Income-tax Act, 1922. Section 148 of the Income-tax Act, 1961, is in similar terms and there is no difference between section 34 of the Indian Income-tax Act, 1922 and the 1961 Act except that the old section 34 had been split into various sections. **[*105 ITR 479]***

* *The method of accounting cannot be substituted by the Assessing Officer merely because it is unsatisfactory. What is material for the purpose of section 145 of the Income-tax Act, 1961, is, the method should be such that the real income, profits and gains can be properly deduced therefrom. If the method adopted does not afford a true picture of the profits, it would be rejected, but such rejection should be based on cogent evidence and would be done with caution. The power can be exercised by the Assessing Officer to choose the basis and manner of computation of income but he must exercise his discretion and judgment judicially and reasonably.*

* *Choice of the method of accounting lies with the assessee but the assessee would be required to show that he has followed the chosen method regularly. The Department is bound by the assessee's choice of the method regularly employed unless by this method the true income or profits cannot be arrived at. The assessee's regular method would not be rejected as improper merely because it gives him the benefit in certain years or because as per the Assessing Officer the other method would have been more preferable.*

J

Jewellery	1981	MP-HC	CWT V/s. Smt. Sonal K. Amin

The ordinary meaning of the word **jewellery** does not embrace gold and silver ornaments which do not contain precious stones and it is in this sense that the word has to be understood in clause (viii) of section 5(1) of the Wealth-tax Act, 1957, before 1st April, 1972. By the Explanation.which was added with effect from 1st April 1972, a wider meaning was given to the word jewellery by including within it all ornaments whether or not containing any precious or semi-precious stones. But as this meaning became effective only from 1st April, 1972, it cannot be used for restricting the exemption for any assessment year prior to that date. Further, the fact that the words but not including jewellery were retrospectively added with effect from 1st April, 1963, by the Finance (No. 2) Act, 1971, and the Explanation was added only with effect from 1st April, 1972, by the same Finance Act, gives out the clear intention of Parliament that the wider meaning given in the Explanation is not to be applied for any assessment year before 1st April, 1972. **[*102 ITR 105]***

Jewellery	1981	MP-HC	Nandkishore Girdharilal Modi V/s. CWT

The word **jewellery**, as commonly understood, includes ornaments made of precious metals which are not studded with any jewels and Expln. 1 to section 5(l)(viii) of the Wealth-tax Act, 1957, inserted by the Finance Act, 1971, only makes explicit what was implicit in the provision from its inception. Gold ornaments not studded with gems are jewellery and are liable to be included in the net wealth of an assessee for the assessment year 1968-69.

[16 *CTR 391, 127 ITR 427]*

Jewellery	1983	MP-HC	CWT V/s. Smt. Tarabai Kanakmal

The ordinary meaning of the word **jewellery** is not so wide as to cover all ornaments. The ordinary meaning of the word as known now will only embrace precious and semi-precious stones and gold and silver ornaments which contain precious or semi-precious stones. It is in this sense that the word jewellery as used in clause (viii) of section 5(1) of the Wealth-tax Act, 1957, has to be understood before 1st April, 1972. The inclusive definition contained in the Expln. to clause (viii) of section 5(1), which became effective from 1st April, 1972; was not added merely as a matter of abundant caution. It was clearly intended to give a wider meaning to the word jewellery w.e.f. April 1, 1972. The very fact that the words but not including jewellery were retrospectively added in section 5(1)(viii) w.e.f. April 1, 1963, by the same Finance Act, gives out the clear intention of Parliament that the wider meaning of the word jewellery as contained in the Expln. was not to be applied for any assessment year prior to 1st April, 1972.

[132 *ITR 868]*

Jewellery	1988	Bom-HC	CWT V/s. Godavaribai R. Podar

Jewellery is defined in the Oxford English Dictionary as jeweller's work; gems or ornaments made or sold by jewellers; especially precious stones in mountings. The New Webster's English Dictionary defines jewellery as jewels; articles made of gold, silver, precious stones or similar materials for personal adornment. As the Oxford English Dictionary suggests, the word jewellery may be derived from either the word jewel or the word jeweller. As derived from the word jewel, jewellery suggests an ornament that contains a precious stone or stones. As derived from the word jeweller, jewellery suggests an ornament made by a jeweller. Whereas the former derivation

excludes ornaments of gold, silver and the like not containing precious stones from the ambit of jewellery, the latter does not, for, ornaments of gold, silver and the like, though devoid of precious stones, are still the handiwork of a jeweller. The word jewellery, then, is capable of two meanings, one embracing only ornaments made of precious metals which contain precious stones and the other embracing ornaments made of precious metals regardless of whether or not they contain precious stones. **[31 *CTR297, 140 ITR 374]***

Jwellery	1989	MP-HC	CWT V/s. Meghaji Girdharilal

Jwellery will not include gold ornaments not studded with precious or semi-precious stones for any assessment year prior to 1-4-1972. **[63 *CTR152, 169 ITR 245, 32 TAXMAN 416]***

Jewellelry	1995	Pat-HC	CWT V/s. Suresh Mohan Thakur

In the absence of any statutory definition, **jewellery** had to be given its natural meaning, and understood in the same way as in ordinary parlance. Therefore, if without reference to Explanation 1, it could be held that jewellery includes not only ornaments studded with gems, precious stones, etc., but also includes ornaments made of gold, silver, platinum, or any other precious metal, the subsequent insertion of Explanation 1 must be understood to be by way of abundant caution. The fact that the amendment to section 5(1)(viii) was effected retrospectively, while Explanation 1 was added prospectively, cannot be of much significance in interpreting the word jewellery in section 5(1)(viii). The dictionary meaning of jewellery is wide enough to include articles of gold and other precious metals used for personal adornment. The fact that jewels or precious stones are embedded in such articles will not make any difference. The distinction sought to be made between ornament and jewellery is artificial. There is no reason to impute an intention to the Legislature that by excluding the jewellery from the exemption clause, it purported to exclude only ornaments studded with precious or semi-precious stones and not ornaments made of gold, silver or other precious metal. The word jewellery has been used in a generic sense as to include both the above categories. In the context of the Wealth-tax Act, it stands to reason that the Legislature did not intend to include within the purview of exemption valuable articles such as jewellery while granting exemption for the value of furniture, household utensils, wearing apparel intended for personal or household use of the assessee. **[*177 ITR297]***

Jewellery	1976	Guj-HC	CWT V/s. Jayantilal Amratlal

The dictionary meaning of the term **jewellery** is clear enough to include ornaments. Therefore, it does not mean that ornaments made of gold, silver or platinum and studded with precious stones can be considered to be jewellery only from April 1, 1972. It cannot, therefore, be contended that ornaments would be entitled to exemption from wealth-tax under section 5(1)(viii) for assessment years subsequent to the year 1962-63 on the ground that such ornaments are included in the definition of jewellery only from April 1, 1972. **[*211 ITR 811]***

Jewellery	1995	SC	CWT V/s. Smt. Binapani Chakravarty

The term **jewellery** is not confined in ordinary parlance to only those ornaments which have precious stones embedded in them. It covers all articles of value used for adornment. Explanation 1 to section 5(1)(viii) of the Wealth-tax Act, 1957, has been introduced by the Finance (No. 2) Act, 1971, partly to clarify this position. The Explanation provides an extensive definition of jewellery. It includes ornaments made of gold, silver, platinum or any other precious metal whether or not containing any precious or semi-precious stones. It covers such items which may or may not be sewn into any wearing apparel. It also includes precious and semi-precious stones whether or not set in any furniture, utensils or other article, or worked or sewn into any wearing apparel. The Explanation may have extended the meaning of jewellery to cover, for

example, precious stones by themselves or precious stones set in furniture or utensils. But in so far as it includes ornaments made of gold, silver, platinum or any other precious metal or alloy, it is merely clarificatory in nature. ..Jewellery, even before the coming into force of Explanation 1, would include gold ornaments. **[*125 CTR 119, 214 ITR 712]***

Jewellery held for personal use	**1985**	**AP-HC**	**CIT V/s. Trustees of HEH The Nizam's Wedding Gifts Trusts**

Under section 2(14) of the Income-tax Act, 1961, prior to its amendment with effect from April 1, 1973, **jewellery held for personal use** by the assessee was excluded from the definition of capital asset. A close scrutiny of the context in which the expression jewellery held for personal use occurred showed that it should be an article that should be associated with the person of the possessor. It was, therefore, clear that an intimate connection between the effects and the person of the assessee must be shown to exist to render them personal effects. According to this expression, any jewellery held by the assessee did not come under personal effects. It was only such jewellery that was normally, ordinarily and commonly used that came under personal effects but not the jewellery calculated to give a pride of possession on special ceremonial occasions. **[*40 CTR 88, 154 ITR 573, 18 TAXMAN 99]***

Journal	**2003**	**Bom-HC**	**Ethnor Ltd. V/s. CIT**

Printing and distribution of journals ordinarily involves publication of article/articles on any subject written by one or many. A **journal** is ordinarily published periodically and would contain information in general on any topic or any research work done in a particular field.
[181 *CTR 550, 260 ITR 401, 126 TAXMAN]*

Jurisdiction	**1995**	**Ker-HC**	**CIT V/s. S.M. Syed Mohamed**

Jurisdiction is the power, right or authority to take cognizance and decide any matter according to law. An authority can take cognizance of conferment of jurisdiction or power only when it is brought to its notice or when it is consciously made known to it. The cognizance of conferment of jurisdiction is a pre requisite for the exercise of the power. **[216 *ITR 331]***

Jurisdiction	**2004**	**SC**	**CIT V/s. Pearl Mech. Engg. & Foundry Works P. Ltd.**

……..**jurisdiction** has reference to the power of the court or tribunal over the subject matter, over the res or property in contest, and to its authority to render the judgment or decree it assumes to make. It is in this sense that publication of the notice in the Official Gazette confers jurisdiction on the competent authority……. **[*189 CTR 289, 267 ITR 1, 136 TAXMAN 586]***

Jurisdictional fact	**2006**	**SC**	**Arun Kumar V/s. Union of India**

A jurisdictional fact is a fact which must exist before a court, Tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on the existence or non-existence of which depends the jurisdiction of a court, a Tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming the existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess. The existence of the jurisdictional fact is thus the sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.

If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of the jurisdictional fact, it can decide the fact in issue or adjudicatory fact. A wrong decision on a fact in issue or on an adjudicatory fact would not make the decision of the authority without jurisdiction or vulnerable provided the essential or fundamental fact as to existence of jurisdiction is present **[*205 CTR 193, 286 ITR 89, 155 TAXMAN 659]***

* *The principle of prospective overruling is too well enshrined in our jurisprudence for it to be disturbed……..…Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation.*

* *The doctrine of precedents, that is, being bound by a previous decision, is limited to the decision itself and not as to what is necessarily involved in it.*

* *Opinion expressed by the department or by the Central Board of Direct Taxes is not law. Law is that which is laid down either by the Legislature or judicial decisions.*

* *It is a well established rule of law that the income-tax authorities are the sole arbiters of fact and that the conclusions reached by them on question of fact are not liable to be disturbed by any outside authority. It would, therefore, be entirely for the Income-tax authorities to determine what evidence they consider relevant for the purposes of their enquiry and to contend that a certain piece of evidence which they considered to be relevant was not relevant at all to the matter at issue would be in a way to encroach upon their domain.*

* *In construing the provisions of a statute, courts should be slow to adopt a construction which tends to make any part of the statute meaningless; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute.*

K

Karta of the Hindu undivided family	1999	SC	CIT V/s. Shri Om Prakash

When the karta of a Hindu undivided family is a partner in a partnership firm, he has a dual capacity; qua the partnership, he functions in his personal capacity and qua third parties, in his representative capacity. Under the Income-tax Act, 1961, when he is assessed in respect of the income derived by him from the partnership firm as a partner, it is in his representative capacity as **karta of the Hindu undivided family** and not as an individual as such. That is because his capacity vis-a-vis his spouse/minor children who are members of the Hindu undivided family is that of karta and not as individual though vis-a-vis other partners of the partnership firm he functions in his personal capacity. This being the position, the income of a karta's spouse/minor child cannot be included in the computation of his total income for that is the income of the Hindu undivided family and, not his individual income. Section 64 of the Income-tax Act, 1961, will be attracted only when an assessees' own income is being assessed and not that of a Hindu undivided family. If a karta is brought within the ambit of individual in section 64(1), the share income of the spouse of the karta and his minor children will, in effect, be included in the income of the Hindu undivided family which is not what is contemplated by section 64(1)(i) and (ii) which is impermissible. **[155 *CTR 206, 238 ITR 1044, 105 TAXMAN 619]***

* *The question whether a particular sum received is of the nature of an annual profit or gain or is of a capital nature does not depend upon the language in which the parties have chosen to describe it. It is necessary in each case to examine the circumstances and see what the sum really is.*

* *There is no immunity to companies and corporate bodies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment. When imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against such companies and bodies corporate.*

* *The Department has no right to challenge a circular issued by the Board on any ground whatsoever including the ground that it was inconsistent with the statutory provision.*

L

Land appurtenant thereto	1985	AP-HC	CIT V/s. Zaibunnisa Begum

The expression **land appurtenant thereto** occurring in section 54 has not been defined. It must, therefore, be understood in its popular and non-technical sense. It is not possible to accept the contention that clause (b) of the Explanation to section 5(1)(ivc) of the Wealth-tax Act, 1957, defining land appurtenant for the purpose of that clause should be considered equally applicable for the purpose of understanding that expression occurring in section 54 of the Income-tax Act. The Explanation in the Wealth-tax Act is only for the purpose of section 5(1)(ivc) because it is specifically stated so. The meaning assigned to that expression in the Urban Ceiling and Regulation Act is also not relevant. The tax authorities will have to determine the extent of land appurtenant to a building transferred, taking into consideration a variety of circumstances that may be relevant for the purpose. It is not possible to lay down infallible tests to be applied as the tests would vary depending upon the facts and circumstances of each case. For instance: (1) If the building together with the land is treated as an indivisible unit and enjoyed as such by the persons occupying the building, it is an indication that the entire extent of land is appurtenant to the building; (2) If the building has extensive lands appurtenant thereto and even if the building and the land have been treated as one single unit and enjoyed as such by the occupiers, an enquiry could be made to find out whether any part of the land contiguous to the building can be put to independent user without causing any determent to the enjoyment of the building as such. Such an enquiry should be conducted not based on any artificial considerations but from the point of view of the persons occupying the building.The number of persons or different branches of families residing in the building, the requirements of the persons occupying the building, consistent with their social standing, etc., are relevant for the purpose. If any surplus is arrived at on such enquiry, then the extent of such surplus land may not qualify to be treated as land appurtenant to the building; (3) if there is any evidence to indicate that any portion of the land contiguous to the building was applied to user other than the enjoyment of the building, then that provides a safe indication regarding the extent of land applied for such user. For instance, the land used by the occupiers for commercial or agricultural purposes although forming part of the land adjacent to the building, does not qualify to be treated as land appurtenant to the building; (4) if the owner or occupier is deriving any income from the land which is not liable to be assessed as income from house property under section 22 of the Income-tax Act, then the extent of such land does not qualify to be treated as land appurtenant to the building; and (5) any material pointing to the attempted user of the building for purposes other than the effective and proper enjoyment of the house would also afford a safe guide to determine the extent of surplus land not qualifying to be treated as land appurtenant to the building. The above tests are illustrative and by no means exhaustive. It is for the tax authorities to apply their mind properly to the facts of each case and to devise tests suitable and appropriate to each case. ***[151 ITR 320, 20 TAXMAN 120]***

land appurtenant thereto	2005	All-HC	P.K. Lahiri V/s. CIT

A perusal of section 54 of the Income-tax Act, 1961, makes it clear that the exemption under the provision is available only where a building or **land appurtenant thereto** is sold and within two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his mainly for the purposes of his own or the parent's own residence and the assessee has within a period of one year before or after that date purchased, or has within a period of two years after the date constructed, a house property for the purpose of his own residence. Land appurtenant to the building implies that the ownership of the

building and the land appurtenant should be of the same person. If the building is owned by one person and the land is owned by another person then it will be the case of land adjoining the building and by no stretch of imagination can it be called land appurtenant to the said building. **[*275 ITR 17, 146 TAXMAN 349]***

Land appurtenant to	**1997**	**Mad-HC**	**CIT V/s. Smt. M. Kalpagam**

The question whether certain **land is appurtenant to** a house is one of fact. The following five tests can be applied to understand the meaning of the words land appurtenant more precisely : (1) If the building together with the land is treated as an indivisible unit and enjoyed as such by the persons occupying the building, it is an indication that the entire extent of land is appurtenant to the building **[*143 CTR 336, 227 ITR 733, 93 TAXMAN 283]***

Landscape	**2004**	**Raj-HC**	**CIT V/s. Udaipur Distillary Co. Ltd. (No.1)**

The word **landscape** had multiple meanings. However, the term was not used for making the land. Therefore, the expenses described as landscaping expenses would ordinarily refer to expenses incurred for laying ground to give the effect of natural scenery. It was ordinarily capital in nature resulting in improvement of the land value and also was not connected in any sense with research and development activity relating to the business of the assessee. It was an expense not in the regular course of cultivation activity but related to making permanent improvement of uneven land to level it for future cultivation for the assessee's purposes. **[186 *CTR 1, 268 ITR 305, 134 TAXMAN 398]***

Legal representative	**1981**	**Ker-HC**	**Rajeevi R. Hegde V/s. ITO (Agrl Addl)**

The term **legal representative** means one who stands in the place of and represents the interests of another, i.e., one who is entitled to take by descent or distribution. It denotes one on whom the status of a representative is fastened by reason of the death of his ancestor. If on the death of a person, some of his rights fell on or accrue to another as successor, that another is a legal representative. If there is an executor or administrator for the estate of the deceased, he is the legal representative, and, in other cases, the heirs or legatees on whom his proprietary rights devolve are the legal representatives. **[*20 CTR 34, 127 ITR 855]***

Letting	**1995**	**Bom-HC**	**CIT V/s. Bhandara Zilla Sahakari Kharedi Vikri Sangh Ltd.**

Normally, co-operative societies which have storage facilities receive goods from their members, agriculturists or others for storage and charge certain fees depending upon the quality of the goods delivered for storage. In such cases the godowns are not let out to the others but possession of the godowns is retained by the societies and the societies merely take charge of the goods brought by the member, agriculturists or others and stores the same. Thus, most of the activity of the society consists in taking custody of the goods of others and storing the same in their godowns or warehouses. It must be taken that the Legislature when it introduced the above provisions was quite aware of the usual activities of co-operative societies which maintained the godowns and warehouses for storage purposes. It cannot be taken to be the intention of the Legislature to except only the rents received from letting out of the godowns and not the amounts received by the co-operative society for permitting the user of the godowns for storage by its members, agriculturists or others. In the setting in which the word **letting** occurs, it should be understood as having a wide and comprehensive sense so as to include even the mere user of the godowns either by the society or others. **[*212 ITR 124]***

Levy	1955	Bom-HC	CIT V/s. Zoroastrian Building Society Ltd.

Levy as used in the third proviso to section 9(2) of the Indian Income-tax Act, 1922, means impose and not collect. **[27 *ITR 218]***

Levy	1958	SC	Lakshman Shenoy V/s. ITO

The three expressions **levy, assessment and collection** are of the widest significance and embrace in their broad sweep all such proceedings for raising money by the exercise of the power of taxation. **[34 *ITR 275]***

Levy	1981	Mad-HC	CIT V/s. L. Kuppuswamy Chettiar

The language of the proviso to section 23(1) of the Income-tax Act, 1961, shows that there must have been a levy by the local authority in respect of the property, which is in the occupation of a tenant and to the extent to which such a levy is borne by the owner, he would be eligible for the deduction envisaged by the proviso. The word **levied** is a significant one in the construction of this provision. Its import cannot be ignored. Section 104 of the Madras City Municipal Act, 1919, also contemplates a levy . The property tax is not automatic so as to require the property owner to pay the tax voluntarily. Hence, the liability to tax arises at the time of actual levy and the deduction under the proviso to section 23(1) is justified only in the year in which the levy is made. **[*132 ITR 416]***

Levy	1989	SC	Ujagar Prints V/s. Union of India

The term **levy** is an expression of wide import: it includes both imposition of a tax as well as its quantification and assessment…... The word levied is a wide and generic expression. One can say with as much appropriateness that the Income-tax Act levies a tax on income as that the Income-tax Officer levies the tax in accordance with the provisions of that Act. It is an expression of wide import and takes in all the stages of charge, quantification and recovery of duty, though in certain contexts, it may have a restricted meaning. In the context of section 3(1), the word levied, admittedly, means charged as well as assessed . The words levy and collection in section 3(3) cannot be construed differently from the words levied and collected used in section 3(1). Section 3(3), therefore, also covers the entire gamut of section 3(1) and cannot be construed as becoming operative at a somewhat later stage. Its operation cannot be excluded in determining the scope of the charge…. **[*179 ITR 317]***

Liability	1982	Del-HC	Addl. CIT V/s. Minerals & Metals Trading Corp. of India

In view of the second sub-para of rule 7(1) of Part III of Schedule VI to the Companies Act, 1956, the expression **liability** should be understood to mean all liabilities including disputed or contingent liabilities. **[*25 CTR 228, 134 ITR 78]***

Liable to tax	2005	AAR	Abdul Razak A. Meman

That **liable to tax** connoted that a person was subject to one of the taxes mentioned in article 2 of the Double Taxation Avoidance Agreement in a Contracting State and it was immaterial whether the person actually paid the tax or not. Article 4(1) postulated the existence of tax liability in praesenti by reason of domicile, residence, place of management, place of incorporation or other criteria of a similar nature on the date of making that claim under the law of the State of which the person is claiming to be a resident. Where, however, the tax liability of a person

in the concerned State was to arise in the future, the person would become resident as and when the tax net of the State was so spread as to cover such person.

[195 *CTR 534, 276 ITR 306, 146 TAXMAN 115]*

Likely to amount to	1970	Cal-HC	Manik Chand Nahata V/s. ITO

The expression **likely to amount to** a lakh of rupees or more in section 34 of the Indian Income-tax Act, 1922, means that the Income-tax Officer must form some kind of belief or even a suspicion that the amount of escaped income for the year may amount to rupees one lakh or more in the aggregate before the notice under section 34 is issued. Where there is no material in the records of the case to establish that the amount of escaped income amounted to rupees one lakh or more, the Income-tax Officer would have no right to reopen the proceedings under the old Act beyond the expiry of eight years from the relevant assessment year.

[*78 ITR 204]*

Lineal descendant	1956	Raj-HC	CIT V/s. Dhannalal Devilal

A son or a grandson is a **lineal descendant** of his mother or grandmother respectively, within the meaning of condition (b) of clause (i) in the proviso of Part I(A) of Schedule I to the Finance Act, 1951.The words lineal descendant have to be interpreted in their natural meaning without importing any notion as to whether a Hindu female can form a line of succession. A son will be a lineal descendant of the mother as well as of his grandmother irrespective of whether the mother or the grandmother can form a line of succession in Hindu law.Wives or widows of male members of an undivided Hindu family and unmarried daughters of male members are members of the family, though they may not be coparceners. **[*29 ITR 165]***

Lineal descendant	1960	Pat-HC	Byomkesh Chakravarty V/s. CIT

For the purposes of Schedule I of the Finance Act, 1955, a son or a grandson was a **lineal descendant** of his mother or grandmother, respectively, irrespective of the question whether the mother or the grandmother could form a line of succession in Hindu law. A son is lineally descended from his mother within the meaning of condition (b) of clause (i) of the proviso to Paragraph A(ii) of Part I of the First Schedule to the Finance Act, 1955. **[39 *ITR 303]***

Loan and Deposit	2000	Mad-HC	A.M. Shamsudeen V/s. Union of India

There is a distinction between a **loan and a deposit**. In the case of a loan, it is the duty of the debtor to seek the creditor and repay the money to him or to repay the money.

[*164 CTR 466, 244 ITR 266, 103 TAXMAN 286]*

Local authority	1965	Mad-HC	CIT V/s. R.Venugopala Reddiar

The expression **local authority** appearing in the third proviso to section 9(2) of the Indian Income-tax Act, 1922, must be interpreted in the context in which it appears. The fact that it is not defined in the Income-tax Act can only mean that there can be no rigid restraint in interpreting the expression. The term property used in the provision includes property situate outside the taxable territory and as such the local authority referred to in the same provision must mean the local authority which can exercise the power of levying tax in respect of that property. **[*58 ITR439]***

Local authority	1977	Cal-HC	Calcutta State Transport Corporation V/s. CIT

The expression **local authority** has not been defined in the Income-tax Act and so the definition

given in section 3(31) of the General Clauses Act will hold good for construing the expression. The definition given in section 3(31) of the General Clauses Act is as follows: 'Local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund. A municipal committee, district board or a body of port commissioners come squarely within the definition of a local authority. The position as regards other authorities is not so clear. Such other authorities must first be shown to be authorities. The term authority has not been defined by the General Clauses Act. The dictionary meaning of the word authority is a person or body having a legal right to command and be obeyed. **[108 *ITR 922]***

Local authority	**1986**	**Bom-HC**	**Krishi Utpanna Bazar Samiti V/s. ITO**

The expression **local authority** has not been defined in the Income-tax Act. The meaning given to it in the General Clauses Act, therefore, applies. In order that an authority may be termed ''local authority, it is essential that the authority must have separate legal existence as a corporate body. They must not be mere governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the areas. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of dependence may vary considerably, but there must be an appreciable measure of autonomy. Next, they must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies. Broadly they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have power to raise funds for the furtherance of their activities by levying taxes, rates, charges or fees. This may be in addition to moneys provided by the Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority. **[158 *ITR 742]***

Local authority	**1996**	**SC**	**Calcutta State Transport Corporation V/s. CIT**

Section 10(20) of the Income-tax Act, 1961, applies to a **local authority**. Even if a body is an authority within the meaning of article 12 of the Constitution, it would not be enough to attract the exemption in section 10(20) of the Act. It must be a local authority. The expression local authority is not defined in the Income-tax Act. Its definition is, however, contained in the General Clauses Act, 1897, in clause (31) of section 3. An authority, in order to be a local authority, must be of like nature and character as a municipal committee, district board or body of port commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a municipal committee, district board or body of port commissioners, but, possessing one essential feature, viz., that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. The authority must have separate legal existence as a corporate body, it must not be a mere governmental agency but must be a legally independent entity, it must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. It must also enjoy a certain degree of autonomy either complete or partial, must be entrusted by statute with such governmental functions and duties as are usually entrusted to municipal bodies such as those connected with providing amenities to the inhabitants of the locality like health and education, water and sewerage, town planning and development, roads, markets, transportation, social welfare services, etc. Such a body must have the power to raise funds for furtherance of its activities and fulfilment of its objects by levying taxes, rates, charges or fees. It must have

the power to affect persons and their rights even where they do not choose to deal with it, the power of compulsion. **[*132CTR283, 219 ITR515, 85 TAXMAN 402]***

Lorry	1992	Mad-HC	CIT V/s. Popular Borewell Service

The rig and compressor mounted on a lorry and used by the assessees for drilling bore-wells, consist of three distinct items, viz., rig, compressor and lorry, and the rig and compressor do not form an integral part of the motor **lorry**. Further, the rig and compressor are not necessary for operating a motor lorry. Again, the rig and compressor are mounted on a lorry for the purpose of conveniently transporting them from place to place for sinking bore-wells. Merely because the rig and compressor are mounted on a lorry to facilitate their easy and convenient transport from one place to another, it cannot be said that the rig and compressor either constitute integral parts of a lorry by themselves or can be appropriately called or known as a lorry, as understood in common parlance. Therefore, the rig and compressor used for drilling bore-wells, though mounted on a lorry, cannot be held to fall under motor lorry occurring in entry No. III(ii)D(9) of Part I of Appendix I to the Income-tax Rules, 1962.

[94 CTR 240, *194 ITR 12]*

Lorry	2002	Guj-HC	Gujco Carriers V/s. CIT

The origin of the word **lorry** is uncertain. Lorry means (i) a large strong motor vehicle for transporting goods, etc., (ii) a long flat low wagon, or (iii) a truck used on railways or tramways, as per the Concise Oxford Dictionary. Lorry or truck would mean not only any motor vehicle designed to carry freight or goods but also to perform special services like fire fighting. Motor vehicles like fire trucks, fork lift trucks and crane trucks which are designed for special services fall within the category of motor trucks (also called motor lorries).

[*174 CTR 324, 256 ITR 50, 122 TAXMAN 206]*

Lottery	1980	P&H-HC	CIT V/s. Sanjiv Kumar

The element of chance is one of the important relevant factors for considering whether a particular scheme falls within the definition of the word **lottery** . A lottery and a wagering contract are two distinct things. A scheme may amount to a lottery though none of the competitors is a loser. A scheme would be a lottery even if the prize money came out of the interest earned from the subscribers' contribution. **[123 *ITR 187*]**

Lottery	1991	Kar-HC	Visveswaraiah Lucky Centre V/s. CIT

The term **lottery** has been defined in the Corpus Juris Secundum which says that pooling the proceeds derived from chances or tickets taken or purchased and then allotting such proceeds or a part of them or their equivalent by chance to one or more such takers or purchasers are indicia of a lottery. Hence, it is necessary that the winner must be not only a contributor to the prize amount, but must also be a participant in the lottery. All the ingredients which are set out in the definition in Corpus Juris Secundum must be present to identify the winner and the winnings of the lottery. **[*93 CTR 261, 189 ITR 698, 56 TAXMAN 80]***

Lottery	2001	Del-HC	G.N. Pant V/s. CIT

The word **lottery** embraces the elements of procuring through lot of chance, by the investment of a sum of money or something of value, some greater amount of money or value. The expressions winnings from lotteries and winnings from horse races have been used in different contexts at different places in the statute**.** **[161 *CTR 326, 248 ITR 718, 116 TAXMAN 30]***

Lottery	2004	Mad-HC	CIT V/s. Deputy Director of Small Savings

Before a scheme can be regarded as a **lottery**, there must be the element of distribution of prizes which should be by chance or lot and such distribution should be among those who had paid a price for participating in the scheme. Mere gratuitous distribution without any price having been paid by the participants for acquiring the chance and receiving a prize that is ultimately distributed, would not amount to a lottery. That appears to be the reason why the Explanation was added under section 2(24)(ix) of the Income-tax Act, 1961, with effect from April 1, 2002, to bring within the purview of section 194B, winnings from prizes awarded to any person by a draw of lots under any scheme or arrangement, whether or not the persons taking part in that arrangement, had paid a price for acquiring the chance of winning the prize. The Explanation lays emphasis on the winnings awarded by a draw of lots or chance.

[266 *ITR 27, 136 TAXMAN 261]*

* *The existence of an alternative remedy is not an absolute bar to the granting of a writ under article 226 but "is a thing to be taken into consideration in the matter of granting writs". It is a self-imposed limitation and cannot oust the jurisdiction of the court. In exceptional circumstances, the High Court may grant relief under article 226, even if an alternative remedy is available to the aggrieved person. The existence of an alternative remedy is no ground for refusing prohibition or certiorari where (a) the absence or excess of jurisdiction is patent and the application is made by the party aggrieved, or ; (b) there is an error apparent on the face of record ; (c) there has been violation of the rules of natural justice ; (d) where there has been a contravention of fundamental rights ; (e) where the Tribunal acted under a provision of law which is ultra vires. The question whether the alternative remedy is equally efficacious or adequate is a question of fact to be decided in each case and the onus lies on the petitioner to show that it is not adequate. Where the petitioner had already availed of the remedy of appeal under the ordinary law, no petition under article 226 will ordinarily be entertained on the same questions, at least so long as those proceedings of appeal are not disposed of.*

* *Normally the High Court will entertain a writ petition, if there is no other alternative efficacious remedy to the petitioner. In other words, the existence of an effective alternative remedy is normally a ground for dismissing the original petition in limine. No doubt, if an inferior authority commits any jurisdictional error, the High Court has the power to interfere notwithstanding the existence of an alternative remedy.*

M

Machinery	1964	Mys-HC	Mangalore Ganesh Beedi Works V/s. CIT

As the word **machinery** is not defined in the Income-tax Act, the word must be understood in its ordinary sense, and the word machinery when used in ordinary language prima facie means some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances by the combined movement and interdependent operation of their respective parts generate power or evoke, modify, apply or direct natural forces with the object in each case, of effecting so definite and specific a result. **[*52 ITR 615]***

Machinery	1989	AP-HC	India Leaf Spring Mfg. Co. P. Ltd. V/s. CIT

In order to be termed **machinery**, it is essential that there must be some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts, generate power or evoke, modify, apply or direct natural forces. **[175 *ITR 639, 40 TAXMAN 123]***

Machinery	1994	Cal-HC	CIT V/s. Technico Enterprise Pvt. Ltd.

Machinery is that which produces goods, articles or things, or that which assists the manufacturing process. **[119 *CTR 25, 206 ITR 36, 73 TAXMAN 204]***

Machinery	1999	Mad-HC	CIT V/s. Indian Textile Paper Tube Co. Ltd.

The word **machinery** when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting definite and specific result. The word machinery must mean more than a collection of ordinary tools. **[138 *CTR 342, 234 ITR 47]***

Machinery and plant used in any business	1977	Bom-HC	CIT V/s. Indian Card Clothing Co. Pvt. Ltd.

The words **machinery or plant used in any business** occurring in section 15C means machinery or plant used in a business in India and not machinery or plant used in a business anywhere else in the world. The words in India do not occur in the relevant provision but the provision refers to a building the transfer of which is contemplated and such transfer contemplated is of a thing existing in India. Since the word building has been used together with the words machinery and plant, the machinery and plant the transfer of which is contemplated, must be of machinery or plant which has been used in India. Secondly, the object of the provision appears only to be that the benefit of section 15C should not be made available twice.
[6 *CTR 202, 110 ITR 103]*

Made	2005	Del-HC	Tea Consultancy and Plantation Services (India) Pvt. Ltd. V/s. Union of India

The expression **made** should be given its normal meaning and there is no scope for giving it

a restricted meaning or substituting it by the expression received. If the intent of the Legislature was that the application would be entertained by the Board as valid and in time only if it was received before the 1st day of October of the relevant assessment year then it was expected to use the word received or at least submitted in place of the word made. This only indicates that an act which is within the control of the assessee should be completed and he should not be able to exercise any control or tamper with the required documents after the cut-off date. Once the application is sent by the assessee by registered post through the post office he obviously loses control over the applications and cannot in any way interject or interfere with the delivery of the documents to the addressee. This aspect of the case can also be examined from another point of view. The applications to the Board are to be submitted by different persons/assessees from all over the country. It would be impracticable to expect every assessee to travel from various parts of the country and deliver the documents by hand to the office of the Board. The practice of the Board in the past has been to receive such applications by post. Practice which has prevailed over a long period and has been accepted by all concerned without violation of any specific provision would be a good practice. A good practice in law can be a ground for providing protection to the person who has acted as per the practice.

[194 *CTR 481, 278 ITR 356, 144 TAXMAN 604]*

Made for the first time	**1966**	**All-HC**	**Bela Singh Daulat Singh V/s. CIT**

Made for the first time means made before the grant of registration; every application made before the grant of registration is an application made for the first time under the Act and every application made subsequently is for renewal. **[*62 ITR 250]***

Mainly	**1990**	**Mad-HC**	**CIT V/s. Kamala Ranganathan**

The word **mainly** in section 54 of the Income-tax Act, 1961, means in the main, principally or chiefly. **[82 *CTR 251, 186 ITR 536]***

Mainly	**1996**	**Ker-HC**	**CIT V/s. A.R. Mathavan Pillai**

A perusal of section 54 of the Income-tax Act, 1961, shows that the word **mainly** is not to be confused with wholly and has to be understood as principally.A careful consideration of the language of section 54 of the Act shows that it cannot be restricted only to new construction but must be extended to constructions which are in the nature of remodelling.

[132 *CTR 374, 219 ITR 696, 88 TAXMAN 292]*

Maintains a dwelling place	**1952**	**Mad-HC**	**S.M. Zackariah Sahib V/s. CIT**

The expression **maintains a dwelling place** in section 4A(a)(ii) of the Indian Income-tax Act, 1922, connotes the idea that the assessee owns or has taken on rent or on a mortgage with possession a dwelling house which he can legally and as of right occupy if he is so minded.The expression has maintained for him a dwelling place would cover a case where the assessee has a right to occupy or live in a dwelling place though the expenses of maintaining the dwelling place are not met by him in whole or in part. **[22 *ITR 359]***

Maintains a dwelling place	**1963**	**Mad-HC**	**J.M. Abdul Aziz V/s. CIT**

The expression **maintains a dwelling place** in section 4A(a)(ii) of the Income-tax Act, 1922, connotes a system, or course of conduct on the part of the assessee, by which he either keeps up a dwelling place at his expense, or has a dwelling place kept up for him by others. Neither the de jure title, nor the de facto possession of the dwelling would by itself constitute a setting

apart and keeping ready of a dwelling place to be used as a residence or home.To maintain a dwelling place is different from having a dwelling place. The concept of a residence or home ready in hand is implicit in the section. What is referred to as dwelling is not a physical structure, or a brick and mortar construction but the organisation of a household.The word is in the second part of section 4A(a)(ii) does not necessarily refer to the place of dwelling mentioned in the first part, nor does it merely contemplate a bare physical presence of the individual. The real meaning of the section is that the individual must have maintained or had maintained for him a residence in the taxable territories for 182 days or more and must have resided in the territories at any time in the year of account, however short the duration of the residence might have been. A common thread of animus of residence in the taxable territories holds both the parts of the section together. **[48 *ITR 620]***

Maintenance	**2003**	**Mad-HC**	**CIT V/s. South India Viscose Ltd.**

Maintenance is not defined in section 37(4)(i) of the Income-tax Act, 1961, which provides for disallowance of expenditure incurred by the assessee after February 28, 1970, on the maintenance of any residential accommodation in the nature of a guest house. The term maintenance normally refers to keeping a thing in the condition that it was and keeping it in a condition that enables the thing to be used in the way in which it was intended to be used.
[165 *CTR 11, 248 ITR 103, 116 TAXMAN 202]*

Maintenance/Gift	**2001**	**SC**	**CGT V/s. B.S. Apparao**

…….by reason of section 20 of the Hindu Adoptions and Maintenance Act, 1956, a Hindu was bound during his lifetime to maintain his daughter. His obligation extended to providing **maintenance** which was defined under section 3(b) of that Act to include provision for food, clothing, residence, education and medical attention and treatment, and in the case of an unmarried daughter, the duty also extended to reasonable expenses incidental to her marriage. The transfers by the assessee to meet his obligation under the law were not gifts within the meaning of the Gift-tax Act, 1958. **[*259 ITR 107, 134 TAXMAN 727]***

Making an assessment	**1953**	**Bom-HC**	**Maneklal Chunilal & Sons Ltd. V/s. CIT**

The expression **making an assessment** in section 26(2) of the Indian Income-tax Act, 1922, before its amendment by the Income-tax (Amendment) Act, 1939, does not merely mean passing an order of assessment but it means initiating proceedings necessary for making an assessment and it covers the whole period during which assessment is being made.
[*24 ITR 375*]

Making up an accounts	**1968**	**Guj-HC**	**Bhailal Tribhovandas and Co. V/s. CIT**

Making up of accounts means ascertaining the profits or loss of a particular period.
[68 *ITR 136]*

Making up of an account	**2000**	**Mad-HC**	**CIT V/s. John Peter**

In the absence of any definition of the words **making up of an account** in the Income-tax Act, 1961, it is open to find out the meaning of the words used with reference to the dictionary, keeping in view the purposes of the Income-tax Act.
[162 *CTR 283, 243 ITR 561, 118 TAXMAN]*

Manufacture	1980	Cal-HC	CIT V/s. Radha Nagar Cold Storage (P.) Ltd.

In defining an industrial company the Legislature has advisedly used different expressions, viz., manufacture, processing or mining. Therefore, the Legislature is not treating the manufacture of goods as the same as processing of goods. **Manufacture** implies a transformation or an alteration of goods. **[18** ***CTR 166, 126 ITR 66]***

Manufacture	1989	SC	Ujagar Prints V/s. Union of India

The prevalent and generally accepted test to ascertain that there is **manufacture** is whether the change or the series of changes brought about by the processes take the commodity to the point where commercially it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be border line cases where either conclusion with equal justification may be reached. Insistence on any sharp or intrinsic distinction between processing and manufacture results in an oversimplification of both and tends to blur their interdependence…. **[179** ***ITR 317]***

Manufacture	1991	Bom-HC	CIT V/s. D.K. Kondke

Manufacture, in its ordinary connotation, meant production of an article which was commercially different from the basic component by which the item was manufactured, that the activity of the assessee amounted to manufacturing or processing of goods and that the assessee was an industrial undertaking entitled to the benefit of deduction under section 8…..the production of a cinematograph film amounted to manufacture of an article or goods within the meaning of section 104(4)(a) (as it then stood) and the activity of the assessee was an 'industrial undertaking within the meaning of section 80J. Further, even from a common sense point of view, film production had to be considered as a manufacturing activity and the undertaking had to be considered as an industrial undertaking. **[1***92 ITR 128, 57 TAXMAN 13]*

Manufacture	1992	Cal-HC	CIT V/s. Sky Room Pvt. Ltd.

The Legislature has used the word **manufacture** and also the word processing to indicate two different types of activities. There may be some overlapping in certain cases. It may be that certain activities may fall within the meaning of the word processing as well as manufacture. But, generally, the two expressions must not be used as synonymous so as to make the word processing otiose and meaning less. **[***195 ITR 763, 62 TAXMAN 236]*

Manufacture	1993	Ker-HC	CIT V/s. Kanam Latex Industries (P.) Ltd.

The prevalent and generally accepted test to ascertain whether there is **manufacture** is to find whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be borderline cases where either conclusion with equal justification may be reached. **[***203 ITR 542]*

Manufacture	1994	Cal-HC	Appeejay Pvt. Ltd. V/s. CIT

The words **manufacture** and production apply to a case which brings into existence something different from its components. The Legislature has used different expressions, manufacture,

processing or mining and, therefore, it is apparent that the Legislature is not treating manufacture of goods as the same as processing of goods. Manufacture implies a transformation or alteration of goods. Manufacture means production of an article for use from raw, semi-raw or prepared materials by giving these materials new form, quantities or properties or combination, whether by hand, labour or machinery. **[*206 ITR 367]***

Manufacture	**1996**	**Ker-HC**	**CIT V/s. Oceanic Products Exporting Co.**

The word used in the section is **manufacture**. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. **[131 *CTR 305, 219 ITR 293, 85 TAXMAN 554]***

Manufacture	**1996**	**Ker-HC**	**CIT V/s. Kanam Latex Industries P. Ltd.**

The prevalent and generally accepted test to ascertain whether there is **manufacture** is to find out whether a change or the series of changes brought about by the application of processes to the commodity, are such where commercially, it can no longer be regarded as the original commodity, but is, instead recognised as a distinct and new article that has emerged as a result of the processes. **[132 *CTR 178, 221 ITR 1, 86 TAXMAN 466]***

Manufacture	**1997**	**AAR**	**Arthur E. Newell V/s. CIT**

The expression **manufacture** involves the concept of changes effected to a basic raw material resulting in the emergence of, or transformation into, a new commercial commodity. Whether an article is converted into a different article depends on several criteria and one of the essential tests is whether in a commercial sense, the original article has ceased to exist and a new article has taken its place. It is, however, not necessary that the original article or material should have lost its identity completely: all that is important is whether, what has emerged as a result of the operations is a different commercial commodity, having its own name, identity, character or end use. This determination is essentially one of fact and has to be arrived at on a consideration of all relevant factors such as the quality and nature of the original article, the extent and magnitude of the operations carried out on, or in relation to, it and the commercial identity, character and use of the article produced.

[137 *CTR 47, 223 ITR 776, 90 TAXMAN 26]*

Manufacture	**1997**	**Raj-HC**	**CIT V/s. Lucky Mineral Pvt. Ltd.**

Manufacture implies a change but every change is not manufacture, although every change in the article is the result of treatment, labour and manipulation. To bring about change qualifying as manufacture something more is necessary and that something is transformation, i.e., a new and different article, having a distinct name, character or use, must emerge. Where the commodity retains a continuing substantial identity through the processing stage it cannot be said that it has been manufactured. **[134 *CTR 541, 226 ITR 245, 87 TAXMAN 215]***

Manufacture	2000	Mad-HC	CIT V/s. Sacs Eagles Chicory

Commonly, **manufacture** is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. But it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Manufacturing thus involves the consumption of one or more articles in order to produce a different article. Consumption is necessary in the process of manufacture and there can be no manufacture without consumption.

[164 ***CTR 455, 241 ITR 319, 107 TAXMAN 463]***

Manufacture	2001	Kar-HC	CIT V/s. Darshak Ltd.

The word **manufacture** is to be understood in a wide sense. Manufacture would imply a change and a transformation. A new and a different article must emerge having a distinct and different character and use. **[165** ***CTR 17, 247 ITR 489, 118 TAXMAN 863]***

Manufacture	2001	SC	Indian Poultry V/s. CIT

That extracting granite from quarry and cutting it to various sizes and polishing was **manufacture** or production of any article or thing and the assessee's business activity was an industrial undertaking for the purpose of granting reliefs under sections 32A and 80-I.

[166 ***CTR 503, 250 ITR 664, 116 TAXMAN 193]***

Manufacture	2001	SC	Aspinwall and Co. Ltd. V/s. CIT

The word **manufacture** has not been defined in the Income-tax Act. In the absence of a definition, the word manufacture has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity. **[170** ***CTR 68, 251 ITR 323, 118 TAXMAN]***

Manufacture	2001	Bom-HC	Ship Scrap Traders V/s. CIT

The expression **manufacture** has in ordinary acceptation a wide connotation. It means the making of articles, or material commercially different from the basic components, by physical labour or mechanical process. However, the word manufacture appears in the company of the word production which has a wider connotation than the word manufacture. The word production or produce when used in juxtaposition with the word manufacture takes in, bringing into existence new goods by a process which may or may not amount to manufacture. The associated words are indicative of the mind of the Legislature. Where a word is doubtful or ambiguous in nature the meaning has to be ascertained by considering the company in which it is found and the meaning of the word associated with it. **[*251 ITR 806, 122 TAXMAN 29]***

Manufacture	2003	Ori-HC	CIT V/s. Vinay Kumar Sigtia

In the definition of the word **manufacture** in a taxing statute, it should be understood in its commercial sense. Manufacture is complete, as soon as by the application of one or more processes, the raw material undergoes some change and a new substance or article is brought into existence. **[*262 ITR 686, 134 TAXMAN 528]***

Manufacture	2006	All-HC	Kanodia and Sons V/s. CIT

The word **manufacture** can be used both as a verb and as a noun. When it is used as a verb it refers to the process or a centering action having a starting point and an end point. The expression manufacture when used as a noun, has a fixed point, namely, when the process culminates into the end-point, i.e., the process ends up in the final result. The expression to produce article is used in the very same section. This clearly shows that the Legislature has in mind the production of articles. There is no doubt, that the use of the word or between two expressions, viz., begins to manufacture and begins to produce articles shows that they are interchangeable and denote the same meaning. The Legislature has not used the expression to include process of manufacturing, as is evident on comparing the expression used in section 80P(2)(f). The intention is clear, namely, the expression begins to manufacture is used as a noun and that is when the undertaking achieves the end product out of the process of manufacture. **[*201 CTR 442, 281 ITR 255]***

Manufacture	2006	Mad	CIT V/s. Premier Tobacco Packers P. Ltd.

The word **manufacture** has not been defined in the Income-tax Act. In the absence of a definition, the word manufacture has to be given a meaning as is understood in common parlance. It is to be understood as meaning the production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combinations whether by hand labour or machines. If the change made in the article results in a new and different article then it would amount to manufacturing activity. **[203 *CTR 1, 284 ITR 222]***

Manufacture	2006	Mad	CIT V/s. Jamal Photo Industries (I) P. Ltd.

The expression **manufacture** involves the concept of changes effected to a basic raw material resulting in the emergence of, or transformation into, a new commercial commodity. But it is not necessary that the original article or material should have lost its identity completely. All that is required is to find out whether as a result of the operation in question, a totally different commodity had been produced having its own name, identity, character or end use.

[*285 ITR 209]*

Manufacture and produce	1990	Mad-HC	CIT V/s. S.S.M. Finishing Centre

Under the Income-tax Act, 1961, there is no definition of the expressions **manufacture and produce**. It, therefore, follows that those expressions have to be understood as words of ordinary import so as to mean to bring into being or existence a product falling under item No. 32 of the Fifth Schedule to the Income-tax Act, 1961. **[85 *CTR 189, 186 ITR 597]***

Manufacture and produce	2001	J&K-HC	CIT V/s. Abdul Ahad Najar

The expressions **manufacture and produce** have not been defined in the Income-tax Act. The dictionary meaning of manufacture is transform or fashion new materials into a changed form for use. In common parlance, manufacture means production of articles from raw or prepared materials by giving these materials new forms, qualities, properties or combinations, whether by hand labour or by machinery. In other words, it means making of articles or materials commercially different from the basic components by physical labour or mechanical process. In its ordinary connotation, manufacture signifies emergence of new and different goods as understood in relevant commercial circles. So far as the meaning of the word produce is con-

cerned, though the word produce has a wider connotation than the word manufacture, when used in juxtaposition with the word manufacture, it takes in bringing into existence new goods by a process which may not amount to manufacture.

[16 ***CTR273, 248 ITR 744, 114 TAXMAN]***

Manufacture or process	**1999**	**Guj-HC**	**CWT V/s. Mohinibai Kanaiyalal**

A plain reading of the Explanation to section 5(1)(xxxii) of the Wealth-tax Act, 1957, shows that in order that the assessee's share in the value of assets forming part of an industrial undertaking belonging to a firm can be exempt from inclusion in his taxable wealth, the pre-requirement is that the firm must be engaged in the business of (i) generation of electricity or any other form of power, or distribution of electricity or any other form of power, or (2) construction of ships, or (3) manufacture of goods, (4) or processing of goods or (5) in mining. Though the definition is of an industrial undertaking, no definition has been given of the words **manufacture or processing**. According to the ordinary dictionary meaning, the term manufacture means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. The word process means anything done requiring continuous and regular action or succession of actions leading to the accomplishment of some result but one of the requirements is that the activity should involve some operation on some material for conversion into some other stuff. What is necessary in order to characterise an operation as processing is that the commodity must, as a result of the operation, experience some change. The words engaged in the manufacture in the said Explanation postulate the assessee's direct involvement in the manufacture. However, it may not be necessary that the assessee should be personally engaged in the manufacture. It is sufficient if he employs his own labourers. In cases where the assessee gets the goods manufactured by an outside agency, he cannot be said to manufacture the goods, merely because the assessee pays for the manufacture.

[157 ***CTR 298, 240 ITR 636, 105 TAXMAN 69]***

Manufacture or processing of goods	**1999**	**Ker-HC**	**Hotel and Allied Trades P. Ltd. V/s. CIT**

The assessee, running a hotel business, is not eligible to be assessed to tax at the concessional rate of tax as an industrial company as the activity carried on in preparing articles of food from raw materials in a hotel would not constitute **manufacture or processing of goods.**

[*149 CTR 224, 238 ITR 226, 102 TAXMAN 470]*

Manufacture or production	**1985**	**Mad-HC**	**CIT V/s. Veena Textiles Pvt. Ltd.**

Mere purchase of textiles already manufactured by another and dyeing or printing or otherwise processing it resulting in the retention of its identity as a cloth material would not be comprehended within the expression **manufacture or production** of textiles. **[155** ***ITR 794]***

Manufacture or production of articles.	**1993**	**Pat-HC**	**CIT V/s. Natraj Processing Industries**

A new industrial undertaking can claim special deduction under section 80J of the Income-tax Act, 1961, if it is engaged in the **manufacture or production of articles.** The broad test for determining whether a process is a manufacturing process is whether it brings about a complete transformation of the old components so as to produce a commercially different article or commodity. **[*203 ITR 833]***

Manufacturing	1980	Bom-HC	CIT V/s. Pressure Piling Co. (India) P. Ltd.

The essence of a **manufacturing** process is the conversion of raw material into entirely a new commodity or a new thing. The place or the site where the manufacturing process or the process of production of something is carried out is not relevant for determining whether the product produced or manufactured is an article. The mere fact that an article is manufactured or brought into being at the site itself would not be material for determining whether the thing produced or manufactured is an article. It is not necessary that an article should be manufactured in a factory alone.It is also not necessary that all articles must necessarily have the quality or the possibility of being sold and purchased across the counter or that they must necessarily be transportable in order to be classified as an article. **[*126 ITR 333, 1 TAXMAN 406]***

Manufacturing	1992	Ori-HC	CIT V/s. S.L. Agarwala and Co.

Whether a particular activity is manufacturing activity or not is dependent upon several factors, and no strait-jacket formula or general principle can be applied. Though manufacture implies a change, every change is not a manufacture. There must be a transformation of some kind and a new and different article must emerge having distinctive features. **[*197 ITR 239]***

Manufacturing	1994	Raj-HC	CIT V/s. Best Chem and Limestone Industries Pvt. Ltd.

Manufacture involves the bringing into existence of a new product which may have a different physical or chemical composition and is understood differently in common and commercial parlance. **[*210 ITR 883]***

Manufacturing	1996	Mad-HC	Chillies Export House Ltd. V/s. CIT

If a new substance is brought into existence or if a new or different article having a distinctive name, character or use results from particular process or processes, such process or processes would amount to **manufacture**. **[140 *CTR9, 220 ITR 411]***

Manufacturing process	2005	All-HC	CIT V/s. Sultan and Sons Rice Mill

The expression **manufacturing process** should be interpreted in its ordinary sense and should not be confined or restricted to the actual manufacturing alone. The processes which are intimately connected with actual manufacturing process will also be within the expression. The words employed ten or more workers in the manufacturing process normally would cover the entire process carried on by the industrial undertaking of converting the raw material into finished goods. The work of ten or more persons employed in the manufacturing process should be integrally connected with the manufacturing process. The work should be reasonably connected with and be part of the manufacturing. The various processes starting from purchase of the raw material till the sale of finished goods form an integral part of the manufacturing process and the workers and labourers employed in these processes are workers employed in the manufacturing process. **[193 *CTR 444, 272 ITR 181, 145 TAXMAN 506]***

Market value	1952	Mad-HC	Asher Textiles Ltd. V/s. CIT

The **market value** means market value at the commencement of the year when the opening stock has to be valued and at the close of the year when the closing stock has to be valued and not any intermediate valuation. **[*22 ITR 125]***

Market value	1977	Ori-HC	Joseph Vallooran V/s. CIT

The expression **market value** has not been defined in the Act. Market value means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid out in its most advantageous manner. In order to exercise the power of acquisition of immovable property under section 269C of the Income-tax Act, 1961, burden lies on the revenue to prove and establish that the apparent value adopted in the sale deed fell short of the fair market value by more than fifteen per cent. **[*108 ITR 544]***

Marketing	1978	Kar-HC	Addl. CIT V/s. Ryots Agrl. Produce Co-op. Marketing Soc. Ltd.

The expression **marketing** appearing in clause (c) of section 81(i) (now section 80P) of the Income-tax Act, 1961, is of wide import and generally means the performance of all business activities involved in the flow of goods and services from the point of initial agricultural production until they are in the hands of the ultimate consumer. In order to make agricultural produce fit for marketing, it may have to be transported or processed, but all the activities involved are understood as amounting to a single activity, namely, marketing, and not independent activities such as transporting, processing, selling, etc. The marketing functions may involve exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial functions such as standardisation, financing, market, intelligence, etc. **[115 *ITR 709]***

Marketing	1990	P&H-HC	CIT V/s. Haryana State Co-op Supply & Marketing Federation Ltd.

The term **marketing** cannot be restricted to the buying and selling activity. It includes all activities connected with the process of taking over the agricultural produce of its members and handing over the marketable commodities to the purchasers and all the intermediate processes connected with the marketing of the agricultural produce of the members.

[*79 CTR 94, 182 ITR 53]*

Marketing	1998	SC	Kerala State Co-operative Marketing Federation Ltd. V/s. CIT

For the purposes of section 80P(2)(a)(iii) of the Income-tax Act, 1961, so long as agricultural produce handled by the assessee belonged to its members it is entitled to exemption in respect of the profits derived from the marketing of the same. Whether the members came by the produce because of their own agricultural activities or whether they acquired it by purchasing it from cultivators is of no consequence for the purpose of determining whether the assessee is entitled to the exemption. The only condition required for qualifying the assessee's income for exemption is that the assessee's business must be that of marketing, the marketing must be of agricultural produce and that agricultural produce must have belonged to the members of the assessee-society before they came up for marketing by it, whether on its own account or on account of the members themselves. Section 80P does not in effect limit the scope of the exemption to agricultural produce raised by members alone but includes agricultural produce raised by others but belonging to co-operative societies. The contrast in the said provision is with reference to the marketing of agricultural produce of the members of the society against that purchased from non-members.....The expression **marketing** is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and

other commercial activities such as standardisation, financing, marketing intelligence, etc. Such activities can be carried on by an apex society rather than a primary society….Section 80P of the Income-tax Act, 1961, is introduced with a view to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax what has to be seen is whether the income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. **[147 *CTR 29, 231 ITR 814, 98 TAXMAN 413*]**

Marketing	**2002**	**P&H-HC**	**Karnal Co-operative Sugar Mills Ltd. V/s. CIT**

Marketing means the transfer of goods from the point of agricultural production to the hands of the consumer. So long as the end-product which reaches the consumer is an agri-cultural produce, the assessee will be entitled to special deduction. Marketing is a comprehensive term. It does not mean merely buying and selling. It includes processing which may be necessary for making the agricultural produce marketable.

[*170 CTR 590, 253 ITR 659, 119 TAXMAN 795]*

Marketing of commodities	**1980**	**Kar-HC**	**Addl. CIT V/s. Karnataka State Warehousing Corp.**

The expression **marketing of commodities** in section 10(29) of the Income-tax Act, 1961, must not be construed in a narrow sense; it includes every activity of purchase, selling and distribution as also warehousing. **[*125 ITR 136]***

Marketing of commodity	**1974**	**All-HC**	**U.P. State Warehousing Corporation V/s. ITO**

The term **marketing of commodities** as used in section 10(29) excludes an activity done by the assessee for its own benefit, because it refers to income from letting of godowns or warehouses for purposes, inter alia, of facilitating the marketing of commodities. Obviously, if the owner of the warehouse does the activity for facilitating for his own benefit, he will not get any income from letting of the warehouse. In the last clause, the term marketing clearly excludes the idea of an activity done for one's own self. The word marketing has been used in the wider sense to include the various activities which generally go to form the trade of marketing. **[*94 ITR 129]***

Maximum marginal rate	**2002**	**Ker-HC**	**CIT V/s. C.V. Divakaran Family Trust**

Maximum marginal rate is defined in Explanation 2 thereto as the rate of tax applicable in relation to the highest slab of income provided for associations of persons in the relevant Finance Act. The definition is not capable of any doubt, and the only meaning that it admits of is that the rate on the maximum slab of income for associations of persons is to be treated as the maximum marginal rate of tax for the purposes of section 164.

[173 *CTR 399, 254 ITR 222, 122 TAXMAN 405]*

May	1979	Cal-HC	Imperial Chemical Industries Ltd. V/s. CIT

The expression **may** must normally be construed as an enabling provision unless the expression is coupled with certain duty to the donee of the power when it becomes obligatory for him to exercise the enabling power. In those circumstances the expression may is construed to mean must. Parliament has deliberately used the expression may only in some sub-clauses of section 297(2) of the Income-tax Act, 1961. Due significance and weight must be given to the choice of language by Parliament. In clause (a) of section 297(2), though a power has been given to the Income-tax Officer to proceed under the provisions of the Indian Income-tax Act, 1922, there is no duty, as such, cast upon him in the sense that he must proceed only under the old Act and not under the new Act if the situation in a particular case so warrants. There is no compelling obligation on the revenue authorities to proceed only under the old Act in case a return is filed under the old Act. Hence, the expression may in section 297(2)(a) must be construed only as an enabling provision. It entitles the Income-tax Officer to resort to the Indian Income-tax Act, 1922, but where he chooses to proceed under the Income-tax Act, 1961, his action is not illegal. Where a return of income for the assessment year 1961-62 is filed before April, 1962, and the assessment is made under the Act of 1961 the rectification of the assessment under section 154 of the Act of 1961 is legal. It need not be treated as an action under section 35 of the Act of 1922 to confer validity. An appeal from such an order of rectification is competent. **[*116 ITR 516]***

May become due	1964	Mad-HC	Buddha Pictures V/s. ITO (Fourth)

The essential criterion for notice under section 46(5A) is that on the date of service of notice the person should be under an existing obligation to pay amounts to the assessee. A notice issued under section 46(5A) upon an alleged garnishee cannot prevent him from entering into contract with the assessee thereafter and from paying him any money under that contract. The words **may become due** in section 46(5A) mean may become payable and not may become entitled. **[*52 ITR 321]***

May pass such orders thereon as it thinks fit	1964	Guj-HC	Natwarlal and Co. V/s. CIT

The words **may pass such orders thereon as it thinks fit** in section 33(4) of the Indian Income-tax Act, 1922, refer to the order that the Appellate Tribunal may pass in the appeal and do not give power to the Tribunal to give a direction to the Income-tax Officer to take action in respect of a completed assessment of any earlier assessment year. **[*50 ITR 783]***

May presume	2006	SC	P.R. Metrani V/s. CIT

May presume leaves it to the discretion of the court to make the presumption according to the circumstances of the case. **[287 *ITR209]***

Mean	1985	Kar-HC	Patil Vijaykumar V/s. Union of India

There are two forms of interpretation clauses. In one, when the word defined is declared to **mean** something, the definition is explanatory and prima facie restrictive. In the other, where the word defined is declared to include something, the definition is extensive. A definition or interpretation clause which extends the meaning of a term does not take away its ordinary meaning. The words salary and profits in lieu of salary have, therefore, to be understood as comprehensive of not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. **[151 *ITR 48]***

Member	2004	Bom-HC	Jalgaon District Central Co-op. Bank Ltd. V/s. Union of India

The expression **member** is not defined in the Income-tax Act. A co-operative society has to be established under the provisions of law made by the State Legislature. The definition of the expression member is given under section 2(19) of the Maharashtra Co-operative Societies Act, 1960. As per the definition, member means a person joining an application for registration of a co-operative society, which is subsequently registered or a person duly admitted to membership of a society after registration and includes a nominal, associate or sympathiser member. The rights and privileges of a duly registered member under the Maharashtra Co-operative Societies Act, 1960, and the rights and privileges of a co-operative society under section 194A(3)(v) of the Act are two distinct things. **[*184 CTR 343, 265 ITR 423, 134 TAXMAN 1]***

Metal	1979	Mad-HC	Addl. CIT V/s. Trichy Steel Rolling Mills Ltd.

The addition of the word **metal** after the words iron and steel in item I of the Fifth Schedule to the Income-tax Act, 1961, is for the purpose of emphasising that the change should not be such as to alter the character of the iron and steel used from iron and steel to any other specified finished article. If there is no such change, iron and steel will continue as iron and steel (metal). **[7 *CTR 316, 118 ITR 39]***

Method employed	1937	Lah-HC	Ganga Ram Balmokand V/s. CIT

There is no warrant for restricting the interpretation to be put on the words '**method employed**' as used in the second alternative dealt with in the proviso to section 13. In ordinary parlance these words convey the idea of 'the manner in which accounts are kept' and they are used in the same sense in the said proviso. If the accounts tendered by the assessee are found to be incorrect or incomplete, if they are 'cooked' or 'fictitious', it will not be wrong to say that the method of accounting is such that it is not possible to deduce the total income of the assessee there from. **[*5 ITR 464]***

Minerals	1999	SC-HC	Stonecraft Enterprises V/s. CIT

The word **minerals** in sub-section (2)(b) of section 80HHC must be read in the context of mineral oil and ores with which it is associated. These three words taken together are intended to encompass all that may be extracted from the earth. All minerals extracted from the earth, granite included, must, therefore, be held to be covered by the provisions of sub-section (2)(b) of section 80HHC, and the exporter thereof is, therefore, disentitled to the benefit of that section. **[153 *CTR 86, 237 ITR 131, 103 TAXMAN 490]***

Mines and Mining	1999	AAR	John A. Sayre V/s. CIT

In order to qualify for the exemption granted under clause (5B) of section 10 of the Income-tax Act, 1961, a technician must have specialised knowledge and experience in any one of the three categories of activities mentioned in clauses (i), (ii) and (iii) of the Explanation to the provision. The Income-tax Act has not defined **mines or mining**. The other tax Acts like the Wealth-tax Act, the Gift-tax Act, etc., have also not provided any definition of mines. But if the provisions of the Income-tax Act are examined, it will be seen that special provision has been made for petroleum and gas which have not been treated as part of mines or mining. Mineral has not been used in a broad sense so as to include mineral oil and mining does not include exploration or extraction of oil. It cannot be laid down as a general proposition that mining

includes prospecting for and extraction of mineral oil. It cannot also be said that legislative practice in this country is to use mineral in this sense. In the Constitution itself in the Seventh Schedule mines and minerals have not been used as inclusive of oil fields and mineral oil. Schedule VII, List I, entry 53 deals with regulation and development of oil-fields and mineral oil resources, petroleum and petroleum products, and other liquids and substances declared by Parliament by law to be dangerously inflammable, whereas entry 54, List I, deals with regulation of mines and mineral development. **[*151 CTR 651, 236 ITR 652, 103 TAXMAN 78]***

Mistake	**1958**	**Ker-HC**	**M. Kumaran V/s. First Addl. ITO**

A **mistake** is an omission made not by design, but by mischance, and a mistake apparent is a mistake that is manifest, plain or obvious, a mistake that can be realised without a debate or dissertation.Section 35 will not enable a general revision or review of the order passed or a reconsideration of the factual conclusions reached in a case. **[*33 ITR 290]***

Mistake	**1995**	**Mad-HC**	**CIT V/s. E.I.D. Parry Limited**

Mistake is an ordinary word, but in taxation law, it has a special signification. It is not an arithmetical error alone that comes within its purview. It comprehends errors which, after a judicious probe into the record from which it is supposed to emanate, are discerned. It does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. The line of demarcation is neither firm nor fixed. Sometimes, an evident error which does not require any extraneous matter to show its incorrectness is confused with an erroneous view of law on a debatable point or a wrong exposition of the law or a wrong application of the law or a failure to apply the appro-priate law. In the former case, it is an error apparent from the record and in the latter case, it is not so apparent. Discovery of an error on the basis of assessment due to initial mistake, say, in determining the written down value which happened on account of misapplication of the law can provide a ground for rectification, but where it is debatable whether there was any mistake or misapplication of the law, rectification may not be permissible. It is different from the provisions under Order XLVII, rule 1, of the Code of Civil Procedure, in the sense that rectification of any mistake in the case of the Revenue is when the mistake is apparent from the record and in the case of a review, as in the said provision of the Code of Civil Procedure, it is in the case of an error apparent on the face of the record. **[216 *ITR 489, 131 TAXMAN 495]***

Mistake apparent from the record	**1962**	**SC**	**Second Addl. ITO V/s. Atmala Nagaraj**

…a mistake which becomes apparent only from the record of the firm is not a **mistake apparent from the record** so far as the assessment of the partner is concerned. **[46 *ITR 609]***

Mistake apparent from the record	**1966**	**Pun-HC**	**Ram Bhagat V/s. CIT**

Though section 35(1) of the Act empowered the income-tax authorities to rectify mistakes apparent from the record within four years from the date of the assessment order sought to be rectified, a mistake which becomes apparent only from the record of the firm was not a **mistake apparent from the record** so far as the assessment of the partner was concerned.

[61 *ITR 146]*

Mistake apparent from the record	**1973**	**AP-HC**	**Mrs.Freny Rashid Chenai V/s. CED (Asst.)**

The scope of the expression **mistake apparent from the record** is much wider than the expression mistake apparent on the face of the record. The valuation of the lands was based

on the award and since the award was modified by the civil court on a reference made to it, the award of the civil court formed part of the record and the Assistant Controller had jurisdiction to rectify the mistake apparent from such record under section 61 of the Act. **[90 *ITR 31]***

Mistake apparent from the record	1975	All-HC	Anchor Pressings (P.) Ltd. V/s. CIT

Section 154 of the Income-tax Act, 1961, is not meant for preferring a claim which the assessee had omitted to prefer in the assessment proceedings. The section can operate only on the facts which are already on the record and cannot be resorted to to introduce new facts. Therefore, where an assessee had failed to claim the rebate allowed under the Act, in its return or even at the appellate stage, it cannot be held that there was any mistake, much less a **mistake apparent from the record**, which would enable the assessee to resort to section 154 of the Act. **[100 *ITR 347]***

Mistake apparent from the record	1976	Guj-HC	Padmavati Jaykrishna V/s.CWT

It is a well-settled position of law that in order to be a **mistake apparent from the record** of the case, it must be an error apparent, obvious and glaring. Mere complexity of the problem or that some genuine argument is necessary to discover the error may not be sufficient to oust the jurisdiction of the taxing authorities to rectify such a mistake. None the less, it should be one which could be discerned with some precision after a judicial probe into the assessment records without long drawn process of reasoning and on which no two reasonable contrary opinions are conceivable. **[105 *ITR 115]***

Mistake apparent from the record	1980	Guj-HC	Lilavatiben Harjivandas Kotecha V/s. J.V. Shah ITO

A **mistake apparent from the record** must for the purpose of section 154 of the Income-tax Act, 1961, be an obvious and patent mistake and not something which could be established by a long drawn process of reasoning on points on which there might conceivably be two opinions. **[11 *CTR 97, 122 ITR 863]***

Mistake apparent from the record	1980	Mad-HC	CIT V/s. N.D. Georgopoules

As the assessee, who had been previously assessed, was taken to be one who had not been previously assessed and penal interest charged on that basis for not filing the estimate of advance tax, it was a **mistake apparent from the record** liable to be rectified. **[125 *ITR 630]***

Mistake apparent from the record	1983	Cal-HC	Stadmed P. Ltd. V/s. CIT

A **mistake apparent from the record** must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. If there are two views and the mistake is required to be substantiated by lengthy arguments and by placing reliance on decisions, it will not be an error or mistake that can be said to be either apparent on the face of the record or apparent from the record. **[140 *ITR 361]***

Mistake apparent from the record	1984	Mad-HC	CIT V/s. Sundaram Textiles Limited

The application of a wrong provision of the Act or the erroneous application of the same to the facts of the case, which do not call for such application, will amount to a **mistake apparent from the record** for the purpose of section 154 of the Income-tax Act, 1961. **[149 *ITR 525]***

Mistake apparent from the record	1976	P&H-HC	Ved Parkash Madan Lal V/s. CIT

The jurisdiction of the Income-tax Officer to make an order of rectification under section 154 of the Income-tax Act, 1961, depends upon the existence of a mistake apparent on the face of the record. A mistake is apparent on the face of the record when it is glaring, obvious or self-evident. The language of section 154 makes it clear that a mistake capable of being rectified under this provision is not confined to clerical or arithmetical mistakes only. The provision would not, however, cover a case where a mistake has to be discovered by a complicated process of investigation, argument or proof. **[1*02 ITR 213]***

Mistake apparent on the face of the record	1985	P&H-HC	Maya Ram Jia Lal V/s. CIT

Where, by misreading a section, a wrong view is taken and a wrong calculation is made, it would certainly come within the purview of section 154 of the Income-tax Act, 1961, as a **mistake apparent on the face of the record.** **[*43 CTR 138, 152 ITR 608, 18 TAXMAN 512]***

Mistake apparent on the face of the record	1988	Cal-HC	CIT V/s. Calcutta Steel Co. Ltd.

The jurisdiction of the Income-tax Officer to make an order of rectification depends upon the existence of a **mistake apparent on the face of the record**. Such a mistake must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law cannot be a mistake apparent from the record. If the determination of the mistake depends on the interpretation of the provisions of the Act, it cannot be a mistake. **[72 *CTR 185, 174 ITR 521, 41 TAXMAN 117]***

Mistake apparent on the record	1971	Bom	Nandlal Mangaram Pamnani V/s.G. Lakshminarasimhan

A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record. **[82 *ITR 1]***

Mistake apparent on the record	1994	Cal-HC	Pieco Electronics and Electricals Ltd. V/s. CIT

A **mistake apparent on the record** must be an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record. **[205 *ITR 469]***

Money	1999	SC	CIT V/s. Kasturi and Sons Ltd.

the word **money** used in section 41(2) of the Act has to be interpreted only as actual money or cash and not as any other thing or benefit which could be evaluated in terms of money. **[153 *CTR 1, 237 ITR 24, 103 TAXMAN 342]***

Money lent at interest and brought into India in cash or kind	1990	Kar-HC	Meturit A.G. V/s. CIT

The expression **money lent at interest and brought into India in cash or kind** would not mean only currency in various forms. Cash and kind are always understood to mean one as

ready money and the other as not merely other types of currency but as goods or commodities as distinguished from money. **[82 *CTR345, 184 ITR 257]***

Month	1974	All-HC	CIT V/s. Laxmi Rattan Cotton Mills Co. Ltd.

The word **month** occurring in section 271(1)(a) must be taken to mean a period of thirty days. Section 271(1)(a) was enacted for the purpose of imposing a penalty on an assessee who has not filed his returns within the prescribed time and its object was to serve as a deterrent for such lapses. Penalty is imposable for every month during which the default continues. If the meaning ascribed to this word in the General Clauses Act, i.e., if the English calendar month is adopted, it may in some cases lead to a defaulting assessee escaping penalty altogether. For example, if the time given to an assessee to file his returns is up to the 31st of January of a particular year and he files it on the 27th of February, he would not be liable to pay any penalty. Such a result is not contemplated by the sub-section. The sub-section in clear and unambiguous terms makes every assessee liable for penalty during the period of default. In the circumstances, month should be taken to mean a period of thirty days and not an English calendar month. **[*97 ITR 285]***

Month	1977	Mad-HC	CIT V/s. Kadri Mills (Coimbatore) Ltd.

The word **month** occurring in section 271(1)(a) of the Income-tax Act, 1961, has to be reckoned according to the British calendar according to section 3(35) of the General Clauses Act, 1897. Accordingly, when an assessee who was granted time for filing his return for the assessment year 1961-62, till January 15, 1962, actually filed his return on February 15, 1962, it had filed its return on the last day of the default, and hence the default had not lasted for a month for the purpose of levying penalty under section 271(1)(a) of the Income-tax Act, 1961, and therefore, no penalty can be imposed on such assessee under section 271(1)(a). **[106 *ITR 846]***

Month	1980	Cal-HC	CIT V/s. Brijlal Lohia and Mahabir Prasad Khemka

The expression **month** has not been defined in the Income-tax Act, 1961, and it has been used in different contexts in different sections of the Act. Therefore, the word month occurring in section 271(1)(a) has to be reckoned according to the English calendar month, according to section 3(35) of the General Clauses Act, 1897. **[*124 ITR 485]***

Month	1985	Kar-HC	B.V. Aswathaiah and Brothers V/s. ITO

The term **month** occurring in the Income-tax Act, 1961, and the Income-tax Rules, 1962, has not been defined and, therefore, the definition of that term, if any, found in the General Clauses Act, 1897, has to be applied in ascertaining the meaning of that term occurring in the Act and the Rules. Section 3(35) of the General Clauses Act, 1897, defines the term month as a month reckoned according to the British Calendar. The context of the Act and the Rules do not provide for not applying the term month occurring in the General Clauses Act. On the definition of the term month occurring in section 3(35) of the General Clauses Act, the British calendar for the month of August, 1976, would also include August 31, 1976. **[*155 ITR 422]***

Month	2005	Guj-HC	CIT V/s. S.L.M. Maneklal Industries Ltd.

The word **month** occurring in section 271(1)(a) of the Income-tax Act, 1961, has to be reckoned according to the British calendar according to section 3(35) of the General Clauses Act, 1897. **[274 *ITR 485]***

More reliable data	1945	Bom-HC	CIT V/s. Great Eastern Life Insurance Co. Ltd.

The scope of the expression **more reliable data** occurring in rule 8 of the Schedule is not confined to the data required for arriving at the higher of the two computations under rules 2(a) and 2(b) of the Schedule.The separate actuarial valuation statement for the Indian business of such a company must be regarded as containing more reliable data for the purpose of rule 8. **[*13 ITR 141]***

More reliable data	1949	PC	CIT V/s. Great Eastern Life Assurance Co. Ltd.

In assessing the profits and gains of the Indian branch of an insurance company not resident in British India recourse must be had in the first instance to rule 8 of the Schedule to the Indian Income-tax Act, 1922, which is the only rule dealing specifically with the subject. In the absence of **more reliable data** the profits and gains must be computed on the proportionate basis laid down in the rule. In that case no other rule is relevant except for the purpose of computing the total world income which has to be apportioned. If there is more reliable date, that is data more reliable for computing the profits and gains of the Indian business of the assessee than those on which the proportionate rule is based, then rule 8 passes out of the picture and by virtue of section 10(7) of the Act, the computation of profits and gains must be made under the other rules in the Schedule which are appropriate. **[17 *ITR 173]***

Mutual concern	1995	Guj-HC	CIT V/s. Adarsh Co-op. Housing Society Ltd.

Where the assessee is found to be a mutual concern, the income which it receives from its members is not liable to tax. This is founded on the principle that no one can make a profit by transacting with oneself. The primary condition of mutuality between the assessee and its members is that the assessee which collects money from its members, must apply the same for their benefit not as shareholders having an interest in its profits but as persons themselves who have put up the fund by contributing to it. There must be a thread of agency for acting for the contributors for achieving the objectives. The identity of individuals as contributors and participants is not essential but what is essential is the identity of character of contributors and participants. **[*213 ITR 677]***

Mutuality	2000	SC	Chelmsford Club V/s. CIT

Where a number of persons combine together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to those persons cannot be regarded in any sense as profit. There must be complete identity between the contributors and the participators. If these requirements are fulfilled, it is immaterial what particular form the association takes. Trading between persons associating together in this way does not give rise to profits which are chargeable to tax. Where the trade or activity is mutual, the fact that, as regards certain activities, certain members only of the association take advantage of the facilities which it offers, does not affect the mutuality of the enterprise. The law recognises the principle of mutuality excluding the levy of income-tax from the income of such business to which the above principle is applicable. A perusal of section 2(24) of the Income-tax Act, 1961, shows that the Act recognises the principle of mutuality and has excluded all businesses involving such principle from the purview of the Act, except those mentioned in clause (vii) of that section. The three conditions, the existence of which establishes the doctrine of **mutuality** are (1) the identity of

the contributors to the fund and the recipients from the fund, (2) the treatment of the company, though incorporated as a mere entity for the convenience of the members, in other words, as an instrument obedient to their mandate, and (3) the impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves. **[*159 CTR 235, 243 ITR 89, 109 TAXMAN]***

* *It is a settled rule of interpretation of statutes that the expression used therein should ordinarily be understood in a sense in which they best harmonize with the object of the statute and which effectuates the object of the legislation.*

* *It is a recognised principle of interpretation that the administrative authority or the court should not whittle down the plenitude of the exemption or relief granted by the legislation by laying stress on any ambiguity here or there.*

* *It is well-settled that where the definition of a word has not been given in the statute, it must be construed in its popular sense if it is a word of every day use. Popular sense means "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it…… The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include.*

* *It is a cardinal principle in the construction of enactments that, unless the context otherwise requires, the meaning of an expression contained in the Act should prevail throughout the Act. Therefore, whenever a different meaning is sought to be given to that expression occurring at different places in the act, it is necessary to point out why the context requires different meanings to be given to the same expression occurring at different places in the Act.*

N

Net wealth	1981	Bom-HC	Seth Ramnath K. Daga V/s. CWT

Interest in property which is available to the assessee for a period not exceeding six years from the valuation date is not an asset within the meaning of section 2(e) of the Wealth-tax Act, 1957, prior to its amendment w.e.f. April 1, 1965, and the value thereof cannot be included in the **net wealth** of the assessee. **[17 *CTR 11, 127 ITR 371]***

Net wealth tax	1993	SC	CWT V/s. P.C. Oswal

The Wealth-tax Act, 1957…….is a **net-wealth tax** Act imposed upon individuals, groups of individuals like Hindu undivided families and companies. The tax is not upon the assets as such but is upon individuals and companies with reference to the capital value of the assets held by them and falls wholly within entry 86 of List I of Schedule VII to the Constitution of India.
[110*CTR221, 200 ITR 614, 67 TAXMAN 3*]

New	1963	Ker-HC	CIT V/s. Cochin Company

The word **new** when used with reference to a machine means new-made, or brought into existence for the first time, and stands in antithesis to the word used. **[*49 ITR 310]***

New	1968	SC	Cochin Company V/s. CIT

The word **new** in the context of section 10(2)(vi) and (via) must be construed as meaning not existing before, new made, or brought into existence for the first time, and in contradistinction and antithesis to the word used. **[*67 ITR 199]***

No income liable to tax	1983	Bom-HC	CIT V/s. Allied Silk Mills

The expression **no income liable to tax** contemplated by section 271(3)(b) of the Income-tax Act, 1961, is the income which the assessee believes to be his income and not the income as finally assessed by the Income-tax Officer. It i s possible that an assessee may not consider a particular item to be his income and the Income-tax Officer may hold otherwise. In such a case if what the assessee considers to be his income is less than the maximum not chargeable to tax, he is not required to file a voluntary return even if his income as finally assessed is more than such maximum and he will not be liable to penalty for failure to file his return. It is essential that the belief of the assessee must be bona fide. **[26 *CTR 132, 140 ITR 428]***

No profits or gains chargeable for that year	1995	SC	CIT V/s. Virmani Industries Pvt. Ltd.

The words **no profits or gains chargeable for that year** in section 32(2) of the Income-tax Act, 1961, are not confined to profits and gains derived from business. They refer to the totality of the profits or gains computed under the various heads and chargeable to tax. It is, therefore, clear that effect must be given to depreciation allowance first against the profits and gains of the particular business whose income is being computed under section 28 and if the profits of that business are not sufficient to absorb the depreciation allowance, the allowance to the extent to which it is not absorbed would be set off against the profits of any other business and if a part of the depreciation allowance still remains unabsorbed, it would be liable to be set off against the profits and gains chargeable under any other head and it is only if some part of the depreciation allowance still remains that it can be carried forward to the next assessment year. But where any part of the depreciation allowance remains unabsorbed after being set off

against the total income chargeable to tax, it can be carried forward to the following year and set off against the year's income and so on for succeeding years. The method adopted by the statute for achieving this result is that the carried forward depreciation allowance is deemed to be part of and stands on exactly the same footing as the current depreciation for the assessment year. **[*129 CTR 189, 216 ITR 607, 83 TAXMAN 343]***

Non recovery receipt V/s. CIT	**1977**	**Bom-HC**	**Mehboob Productions Pvt. Ltd.**

The words **non-recurring receipt** in section 4(3)(vii) of the Indian Income-tax Act, 1922, do not mean that the receipt is a single one or which has, in fact, not been repeated, but only that there is no claim or right in the recipient to expect its recurrence. Merely because the mode of payment is one that would ensure to the assessee receipt of the amount in driblets, it would not necessarily characterise the receipt as a recurring receipt. **[*106 ITR758]***

Non recurring nature	**1946**	**All-HC**	**Rani Amrit Kunwar V/s. CIT**

The words **non-recurring nature** in section 4(3)(vii) means not that the payments have as a matter of fact not recurred but that they are not bound to recur. **[*14 ITR 561]***

Non-resident	**1985**	**Guj-HC**	**Chimanbhai K. Patel V/s. CWT**

The term **non-resident** has not been defined in the Wealth-tax Act. However, if the term is construed in its popular sense or as having the same meaning as is ascribed to it in the Income-tax Act, it would clearly not include within its ambit a person who is not ordinarily resident. A person not ordinarily resident is not entitled to the rebate under rule 3 of Part II of Schedule I to Wealth-tax Act. **[49 *CTR 104, 156 ITR 373]***

Non-resident	**2001**	**Guj-HC**	**Rambhai L. Patel V/s. CIT**

…..the term **non-resident** as defined in section 2(30) of the Act has to be read in the contextual setting of section 10(4A) of the Act and if read in that manner the term non-resident will have to include within its fold the meaning as prescribed under the provisions of the Foreign Exchange Regulation Act and the rules thereunder. Thus, section 10(4A) of the Act will apply to a person who is not resident in India, that is to say, a non-resident will be a person residing outside India. **[171 *CTR 16, 252 ITR 846, 129 TAXMAN 866]***

Not being a charge created by the assessee voluntarily	**1993**	**Bom-HC**	**CIT V/s. Tarachand Kalyanji**

The phrase in section 24(1)(iv) of the Income-tax Act, 1961, as amended in 1968 **not being a charge created by the assessee voluntarily** has reference to the charge which comes into being by operation of law or by virtue of an order of the court or by an act of parties other than the assessee, such as when the assessee gets a property already subject to a charge. The question whether the charge was voluntary or involuntary will have to be decided with reference to the acts relating to the creation of such charge. If the charge is created voluntarily, it remains so, whether it is created before the amendment or after the amendment. If the benefit of the deduction is taken away as a result of the amendment, then from the date of the amendment such a deduction cannot be allowed. **[204 *ITR 43]***

Not resident in the territories	**1956**	**Cal-HC**	**Anglo-Indian Jute Mills Co. Ltd. V/s. S.K. Dutt**

The word resident in the expression **not resident in the territories** in section 18(3B) must be construed in accordance with the definition of the word resident in section 4A(c) of the Act and cannot be read as meaning residence in the physical or any other sense. **[*30 ITR 525]***

Not involving the carrying on of any activity for profit	1980	SC	Addl.CIT V/s. Surat Art Silk Cloth Mfg. Asso.

The true meaning of the last ten words in section 2(15), viz., **not involving the carrying on of any activity for profit**, is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not.

[13 ***CTR 378, 121 ITR 1, 2 TAXMAN 501]***

Not involving the carrying on for profit	1981	All-HC	Addl.CIT V/s. Etawah Dist Exhibition & Cattle Fair Asso.

It is well established that the expression **not involving the carrying on of any activity for profit** qualifies or governs the fourth category of charitable purposes mentioned in the definition clause, viz., the advancement of any other object of general public utility and further that it is the object of general public utility and not its advancement or accomplishment which must not involve the carrying on of any activity for profit. **[68** ***CTR13, 171 ITR 677, 37 TAXMAN 230]***

Not involving the carrying on of any activity for profit	1988	MP-HC	CIT V/s. MP Anaj Tilhan Vyapari Mahasangh

The true meaning of the words **not involving the carrying on of any activity for profit** used in section 2(15) of the Income-tax Act, 1961, is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit. It has to be seen whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity.

[*180 ITR 648]***

Not involving the carrying on of any for profit	1989	Gau-HC	CIT V/s. Sec. Regional Comm., National Sports Club

In section 2(15) of the Income-tax Act, 1961, the words **not involving the carrying on of any activity for profit** qualify or govern only the last head of charitable purpose and not the earlier three ones. If the purpose of a trust or institution be relief of the poor, education or medical relief, the requirement of the definition of charitable purpose would be fully satisfied, even if an activity for profit is carried on in the course of the actual carrying out of the primary purpose of the trust or institution. **[***19 CTR337, 131 ITR 461]***

Not ordinarily resident	1955	T&C-HC	Bava (P.B.I.) V/s. CIT

A person is **not ordinarily resident** in any year if he has not been resident in nine out of the ten years preceding that year; he need not establish that he was not resident in nine out of the ten years.In order to be ordinarily resident in any year an individual has to be resident in nine out of the ten years preceding that year. **[27** ***ITR 463]***

Notification	1985	Mad-HC	Asia Tobacco Co. Ltd. V/s. Union of India

The intendment of a **notification** in the Official Gazette is that in the case of either grant or withdrawal of exemption, the public, must come to know of the same. Notify, even according to ordinary dictionary meaning, would be to take note of, observe, to make known, publish, proclaim, to announce, to give notice to, to inform. It would be a mockery to state that it would suffice the purpose of notification if the notification is merely printed in the Official Gazette, without making the same available for circulation to the public or putting it on sale to the public. Neither the date of the notification nor the date of printing, nor the date of the Gazette counts for notification within the meaning of the rule, but only the date when the public gets notified in the sense, the concerned Gazette is made available to the public. The date of release of the publication is the decisive date to make the notification effective. Printing the Official Gazette and stacking them without releasing to the public would not amount to notification at all.

[45 *CTR 306, 155 ITR 568]*

Notwithstanding anything contained in	2002	Raj-HC	Kalpana Lamps and Components Ltd. V/s. DCIT

When a clause begins with **notwithstanding anything contained in this Act or in some particular provision/provisions in the Act**, it is with a view to give the enacting part of the section, in case of conflict, an overriding effect over the Act or provision mentioned in the non obstante clause. It conveys that in spite of the provisions or the Act mentioned in the non obstante clause, the enactment following such expression shall have full operation. It is used to override the mentioned law/provision in specified circumstances.

[175 *CTR 549, 255 ITR 413, 125 TAXMAN 1045]*

Notwithstanding anything to the contrary in sections 30 to 39	1986	Bom-HC	CIT V/s. ONGC

Section 40 commences with the words **Notwithstanding anything to the contrary in sections 30 to 39**. This takes in section 32 which deals with depreciation. Section 32 provides that in respect of depreciation of, inter alia, buildings owned by an assessee and used for the purposes of its business, a deduction on account of depreciation would be allowed in the manner provided therein. The deduction on account of depreciation is, therefore, an allowance. The words of section 40(a)(v) indicate that what shall not be deducted in computing income chargeable under the head of profits and gains of business and profession in the case of any assessee shall be, inter alia, any allowance in respect of assets of the assessee used by an employee. There is nothing in those words which can lead to the conclusion that an allowance in the form of a deduction for depreciation is not within the ambit of section 40(a)(v). **[*162 ITR 565]***

* *So long as the language employed in the statutory provision and more so in the fiscal statute is clear, the court should interpret it on the face value and there is no warrant to go behind it. Nothing should be added or subtracted to interpret the plain language and the semantic view alone should be taken…..In fiscal matters there is no res judicata and no estoppel.*

O

Object of general public utility	1938	Bom-HC	CIT V/s. Grain Merchants' Association of Bombay

The expression **object of general public utility** in section 4(3) of the Indian Income-tax Act means an object of public utility which is available to the general public as distinct from any section of the public. **[6 *ITR 427]***

Object of general public utility	1954	All-HC	CIT V/s. Radhaswami Satsang Sabha

The Satsangis, being followers of one religion, are a cross section of the public, and a charitable trust for the benefit of Satsangis as such must be deemed to be a trust for **an object of general public utility**. **[25 *ITR 472]***

Object of general public utility	1965	SC	CIT V/s. Andhra Chamber of Commerce

The expression **object of general public utility** was not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of the public was an object of general public utility. To serve as a charitable purpose, it was not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province. **[*55 ITR 722]***

Object of general public utility	1977	Bom-HC	CIT V/s. Bombay Suburban Electric Supply Co. Pvt. Ltd.

The expression **object of general public utility** in section 2(15) would include only those objects which promote the welfare of the general public and not the personal and individual interests of some persons. **[*106 ITR 725]***

Obtained	1999	Ker-HC	Travancore Chemical and Manufacturing Co. Ltd. V/s. CIT

….the term **obtained** used in sub-section (1) of section 41 of the Act could not be given the meaning capable of being obtained. While considering the provisions of section 41(1), the system of accounting followed by the assessee was of no relevance or consequence.
[150 *CTR 256, 237 ITR 821, 101 TAXMAN 639]*

Occupation	1969	Guj-HC	CET V/s. Ambalal Sarabhai

The word **occupation** is a word of large and indefinite import and its meaning is not susceptible of any precise or definite formulation. No universal test can be laid down for determining when an activity amounts to an occupation and when it does not. But there are certain features which are definitely indicative of what is occupation. Activity in a specific line of endeavour which engages or occupies time and attention of a person and which is carried on with a certain amount of continuity or regularity in the sense that it is not momentary—not an isolated or semi-occasional and temporary adventure in that line of endeavour—would certainly constitute occupation. The absence of profit-making motive will not take an activity out of the category of occupation. **[*73 ITR 78]***

Occupation	1971	AP-HC	P.V.G. Raju V/s. CET

Since an **occupation** is that with which a person occupies himself, there is no reason why politics cannot be an occupation provided it is taken up as a career. Though a profit motive is

absent in politics, profit motive is not an essential requisite of occupation, for a person, well endowed with the goods of the world, may prefer to pursue a profession or occupation without receiving any remuneration for his services. **[79 *ITR 430]***

Occupation	**1972**	**AP-HC**	**P.V.G. Raju, Raja of Vizianagaram V/s. CET**

Occupation is of wider import than vocation or profession. Occupation is that with which a person occupies himself either temporarily or permanently or for a considerable period with continuity of activity. The profit motive or earning of income is not an essential ingredient to constitute the activity termed as business, profession, vocation or occupation. **[*86 ITR 267]***

Occupy	**1994**	**Del-HC**	**CIT V/s. Modi Industries Ltd.**

The term **occupy** appearing in section 22 of the Income-tax Act, 1961, refers to occupation directly by the assessee or through an employee or an agent but such occupation by the employee, etc., must be subservient to and necessary for the performance of the duties in connection with the business of the assessee. **[128 *CTR 315, 210 ITR 1, 73 TAXMAN 691]***

Of its members	**1998**	**SC**	**Kerala State Co-op. Marketing Federation Ltd. V/s. CIT**

For the purposes of section 80P(2)(a)(iii) of the Income-tax Act, 1961, so long as agricultural produce handled by the assessee belonged to its members it is entitled to exemption in respect of the profits derived from the marketing of the same. Whether the members came by the produce because of their own agricultural activities or whether they acquired it by purchasing it from cultivators is of no consequence for the purpose of determining whether the assessee is entitled to the exemption. The only condition required for qualifying the assessee's income for exemption is that the assessee's business must be that of marketing, the marketing must be of agricultural produce and that agricultural produce must have belonged to the members of the assessee-society before they came up for marketing by it, whether on its own account or on account of the members themselves. Section 80P does not in effect limit the scope of the exemption to agricultural produce raised by members alone but includes agricultural produce raised by others but belonging to co-operative societies. The contrast in the said provision is with reference to the marketing of agricultural produce of the members of the society against that purchased from non-members. **[147*CTR 29, 231 ITR 814]***

Office appliance	**2002**	**Guj-HC**	**Mehsana District Co-op. Milk Producers Union Ltd. V/s. CIT**

Unless an appliance is capable of being primarily used in an office, it cannot be termed **office appliance**. **[*171 CTR 350, 256 ITR 322, 121 TAXMAN 689]***

Omission	**1956**	**Bom-HC**	**Pannalal Nandlal Bhandari V/s. CIT**

Omission is a colourless word which merely refers to the not doing of something, and if the assessee in fact does not make a return, it is an omission on his part, whether the law casts any obligation upon him to make a return or not. **[*30 ITR 57]***

On behalf of	**1964**	**Mys-HC**	**G.T. Rajamannar V/s. CIT**

The words **on behalf of** in section 41(1) and the proviso must be construed as equivalent to for the benefit of. **[*51 ITR 339]***

On or before a particular day	1973	Mad-HC	N.S. Balasubramaniam V/s. State of Madras

The use of the phrase **on or before a particular day** in a lease deed indicates that the lessee has the option of paying the rent before that date but the lessor can demand and enforce payment only on that date but not before. The rent will, therefore, accrue to the lessor only on that date and not earlier. **[*90 ITR 377, TAXMAN]***

On the occasion of the marriage	1987	Mad-HC	CGT V/s. Dr. Neelambal Ramaswamy

the expression **on the occasion of the marriage** in section 5(l)(vii) could not be given any restricted meaning and if the gift was associated with the event of the marriage or if the reason for the gift or the immediate cause thereof was the marriage, it would be covered by the said expression. The relationship between the gift and the marriage was as the relevant factor and not the time of making the gift. Therefore, the gifts made by the assessee were entitled to exemption under section 5(l)(vii) of the Gift-tax Act. **[*52 CTR 411, 164 ITR 369]***

On the occasion of marriage	1993	Ori-HC	CGT V/s. K.B.B. Subudhi

Though the word occasion has reference to the time of the marriage, it conveys the idea of association with the event, for example, the marriage event. The expression **on the occasion of marriage** is not equivalent in meaning to the phrase on the same date as. A daughter-in-law is not a dependent at the time the marriage is solemnized. She is certainly not a dependent at that juncture of time. The relationship starts after the marriage is solemnized. Before solemnisation of the marriage, there is no relationship stricto sensu. Even though the word relative is to be understood in a broader sense that cannot be said to include a prospective relative. Therefore, a gift to the daughter-in-law even subsequent to the marriage cannot be said to be a gift to a relative dependent for support and maintenance on the occasion of marriage. At the time of marriage, there is no question of a prospective daughter-in-law being dependent for support and maintenance. This thin line of distinction is to be made, otherwise the purpose of enactment of section 5(1)(vii) would be rendered illusory. Hence, a gift made to a daughter-in-law immediately after marriage would not be entitled to exemption under section 5(1)(vii). **[201 *ITR 741]***

On which a penalty has been imposed Sec. 271	1973	Del-HC	V.S. Malhotra V/s. Union of India

The words in section 288(4), **on which a penalty has been imposed under this Act other than a penalty imposed on him under clauses (i) and (ii) of sub-section (1) of section 271** contemplate a penalty imposed for an actual infringement of the Income-tax Act, 1961, and not a deemed infringement of that provision brought about by the fiction created in section 297(2)(g). **[*88 ITR 110]***

One house used for residential purposes by	1977	All-HC	Shiv Narain Chaudhari V/s. CWT

Exemption can be claimed under section 5(1)(iv) of the Wealth-tax Act, 1957, in respect of only **one house used for residential purposes by** the assessee. Two separate buildings situate in two different localities cannot be regarded as one house even if the assessee-Hindu undivided family were using both these buildings exclusively for residential purposes.Several self-contained dwelling units which are contiguous and situate in the same compound and within common boundaries and having unity of structure could be regarded as one house. **[108 *ITR 104]***

Operation	1950	Mad-HC	Anglo-French Textile Co. Ltd. V/s. CIT

It cannot be contended that the word **operation** in section 42(3) connotes a cross-section of the entire business including the purchase, manufacture and sale of goods resulting in the realisation of profits. Systematic and regular purchases of raw materials through an established agency in British India would come within the import of the term "operation". **[*18 ITR 888]***

Operation	1953	SC	Anglo-French Textile Co. Ltd. V/s. CIT

It is not every business activity of a manufacture that comes within the expression **operation** to which the provisions of section 42(3) are attracted. These provisions have no application unless according to the known and accepted business notions and usages the particular activity is regarded as a well-defined business operation. Activities which are not well defined or are of a casual or isolated character would not ordinarily fall within the ambit of this rule.

[*23 ITR 101]*

Opinion	2000	Del-HC	VLS Finance Ltd. V/s. CIT

Opinion means something more than mere retailing of gossip or hearsay; it means judgment or belief, that is, a belief or a conviction resulting from what one thinks on a particular question. It means : judgment or belief based on grounds short of proof. If a man is to form an opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him. **[163 *CTR 343, 246 ITR 707, 112 TAXMAN 295]***

Or otherwise	1997	Ker-HC	Narayanan and Co. V/s. CIT

The words **or otherwise** should be given the widest possible meaning and import. In its general sense, the expression transfer of property connotes the passing of rights in the property from one person to another. In the case of sale, the entire bundle of rights of the transferor passes on to the transferee. There are transactions wherein there may be a reduction of the exclusive interest in the totality of rights of the original owner in favour of others.

[195 *CTR375, 273 ITR126]*

Order	1959	Bom-HC	Petlad Bulakhidas Mills Co. Ltd. V/s. Raj Singh

The expression **order** in section 33A(2) of the Indian Income-tax Act means an order of which the party affected has actual or constructive notice. The right to make an application for revision is given to an assessee against an order, and that right can only be effectively exercised if the party affected had knowledge, either actual or constructive, of that order. If the assessee had neither actual nor constructive knowledge, it cannot be said that there is an order within the meaning of section 33A(2) against which the assessee could possibly make an application for revision. Limitation should not be computed under section 33A(2) from a date earlier than that on which the assessee actually knew of the order or had an opportunity of knowing of the order.

[*37 ITR 264]*

Order	1998	Mad-HC	Salem Co-operative Spg. Mills Ltd. V/s. CIT

The word **order** in the expression from the date of the order sought to be amended in section 154 of the Income-tax Act, 1961, is not qualified in any way. It does not necessarily mean the original order; it could be any order including an amended or rectified order.

[*148 CTR 112, 230 ITR 139, 93 TAXMAN 534]*

Order of assessment	1999	Mad-HC	CIT V/s. T.V. Sundaram Iyengar and Sons Ltd.

The expression **order of assessment** under section 244(1A) of the Act should be given a wider meaning to envelop an order passed under section 104 of the Act as well. In so far as the assessee who paid the money in pursuance of the order under section 104 of the Act is concerned, whether the liability was imposed by virtue of the provisions of the Income-tax Act or by virtue of an order passed under section 104 of the Act, he is deprived of the use of the money as long as the order remains in force and when the said order is set aside or modified, the assessee is entitled to the refund of the amount. Though liability under section 104 is imposed by an order of the Income-tax Officer, the order has a statutory backing and further there is a statutory compulsion to pay the tax by virtue of the order and hence, there is absolutely no reason to restrict the meaning of the expression, order of assessment found in section 244(1A) of the Act only to an order of assessment made under section 143 or 144 of the Act. That apart section 104 of the Act uses the expression assessee is liable to income-tax and the marginal note of the section also indicates that it is an income-tax on undistributed income of certain companies. When the Act itself postulates that the payment made under section 104 of the Act is income-tax, the denial of interest under section 244(1A) of the Act on the ground that the order under section 104 of the Act is not an order of assessment is not justifiable in law. **[147 *CTR 15, 236 ITR524]***

Order passed by the ITO	2003	SC	T.N. Civil Supplies Corporation Ltd. V/s. CIT

There is no scope for limiting the phrase **order passed by the Income-tax Officer** in section 263 to exclude orders passed by the Income-tax Officer on the directions of a superior authority either under section 144A or under section 144B.

[180 *CTR 307, 260 ITR 82, 129 TAXMAN 69]*

Order prejudicial	2005	Cal-HC	Smt. Phool Lata Somani V/s. CIT

The expression **order prejudicial** means the prejudicial effect of an order passed by the revising officer on the merits. **[*276 ITR 216]***

Ordinarily	1978	Cal-HC	Charki Mica Mining Co. Ltd. V/s. CIT

Section 30(1) gives a statutory right of appeal to the assessee relating to the amount assessed under section 23 of the Act. Section 30(2) provides that such appeal shall **ordinarily** be presented within 30 days of the receipt of the notice of demand. The word ordinarily only means that appeals should be filed within 30 days from the receipt of the notice of demand relating to the assessment and that, if under special circumstances, it cannot be filed within the prescribed time, the Appellate Assistant Commissioner can condone the delay in filing the appeal. It cannot be held to mean that in some cases the time will not begin to run until the receipt of the assessment order by the assessee. In all cases the period of limitation starts to run from the date of receipt of the notice of demand. **[111 *ITR 193]***

Ordinarily resident	1999	Mad-HC	V.E. Periannan V/s.CWT

Section 5(1)(xxxiii) of the Wealth-tax Act, 1957, is a provision meant to encourage persons of Indian origin or citizens of India who have lived abroad for a long time and acquired assets there and who decide ultimately to settle down in India permanently. Such persons have been granted exemption under the Wealth-tax Act in respect of the assets brought by them to India and reinvested in India. Section 5(1)(xxxiii) uses the words **ordinarily resident** in a foreign

country with reference to the persons who are eligible to claim the benefit under the section and the further qualification required to be met by them is couched in language which leaves no doubt about the intention of the Legislature. The second qualification required for such persons is that they should return to India with the intention of permanently residing therein. Those words employed in the section clearly indicate that it was not a provision made to benefit persons who ordinarily reside in India who choose to go abroad for a short time and return to their original permanent home. Such persons are not those contemplated by the Legislature when this provision was incorporated. Though the word ordinarily is not defined under the section or elsewhere in the Act, the true scope of that word does not pose any major problem of interpretation as that word has to be understood in the light of the other words used in the section. Ordinarily resident in a foreign country must be read along with the other words which require an intention to permanently reside in India after return. Ordinarily in this context refers to residence of long duration outside the country. The duration being long enough for the person to regard himself as being ordinarily resident in the country outside India and not to regard India as his permanent place of residence. A person who normally resides in India and for whom India is a permanent residence cannot claim the benefit of the section merely by travelling abroad and residing abroad for a period of one year and thereafter returning to his own country. **[*240 ITR 723]***

Ordinarily resident in India	**2002**	**Guj-HC**	**Pradip J. Mehta V/s. CIT**

Section 6(6) of the Income-tax Act, 1961, does not define **ordinarily resident in India**, but describes not ordinarily resident in India. It resorts to the concept of resident in India for which the criteria are laid down in section 6(1) of the Act. Ordinarily resident for the purposes of income-tax connotes residence in a place with some degree of continuity and apart from accidental or temporary absences. When an individual has been a resident in India for nine out of ten preceding years, then in order to escape tax on his foreign income, he must not have been in India for seven hundred and thirty days or more in the aggregate during the preceding seven years. The test is one of presence and not absence from India and the length of presence will determine when an individual is not ordinarily resident in India. In order that an individual is not an ordinarily resident, he should satisfy one of the two conditions laid down in section 6(6)(a) of the Act, the first condition is that he should not be resident in India in all the nine out of ten years preceding the accounting year and the second condition is that he should not have during the seven years preceding that year, been in India for a total period of seven hundred and thirty or more days. **[175 *CTR 394, 256 ITR 647, 123 TAXMAN 118]***

Original cost price	**1952**	**Mad-HC**	**Asher Textiles Ltd. V/s. CIT**

When valuing the closing stock of a trader according to the market value or cost price, whichever is lower at the option of the trader, the cost price should be taken as meaning **original cost price** and not a notional cost price. **[*22 ITR 125]***

Other assets	**1952**	**Cal-HC**	**Calcutta Insurance Ltd. V/s. CIT**

Organisation expenses are not **other assets** within the meaning of rule 3(b) and setting off a portion of the profits against organisation expenses cannot be regarded as writing off the amount to meet loss on the realisation of those assets.Other assets contemplated by rule 3(b) are assets of the nature of investments which may appreciate or depreciate about which it is appropriate to speak of realisation and realisation of which may result in gain or loss.
[*21 ITR 404]*

Other association of individual	1937	Cal-HC	Keshardeo Chamria

The words **other association of individuals** in section 3 of the Indian Income-tax Act must be construed according to the ejusdem generis rule with reference to the word firm preceding it and they do not cover the members of an undivided Hindu Mitakshara family after a preliminary decree for partition has been made. The members of such family are in the same position as members of a Dayabhaga family and can be individually assessed in respect of their shares.

[*5 ITR 246]*

Other association of ...	1948	Mad-HC	K.P.G.B.U.G.M.S.S.A Mohamad Abdul Kareem & Co. V/s. CIT

The words **other association of persons** in section 3 of the Indian Income-tax Act, 1922, have to be construed in their plain ordinary meaning and not ejusdem generis with the word firm immediately preceding or the other words going before that word. An association which produces income, profits or gains is assessable to tax by force of section 3. It is unnecessary in order to constitute an association that there should be any mutual rights or obligations among the members enforceable in a court of law. So long as the object and purpose of an association is to carry on business which is not illegal (the case of an association to commit crime being distinguishable as an instance of an association formed for a criminal or unlawful object) its income is not immune from taxation because of the employment of unlawful means for achieving the income. The only test to be applied is whether the income falls within the purview of the charging section.

[*16 ITR 412]*

Other legal proceeding	1972	SC	S.V. Kondaskar-Official Liquidator V/s. ITO

The expression **other legal proceeding** in sub-section (1) and the expression legal proceeding in sub-section (2) of section 446 of the Companies Act, 1956, convey the same sense and the proceedings contemplated by both the sub-sections must be such as can appropriately be dealt with by the winding up court. The liquidation court cannot perform the functions of the Income-tax Officer while assessing the amount of tax payable by the assessee, even if the assessee be a company which is being wound up by the court. There is no principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income-tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law the amount of income-tax determined by the department should be accepted as a lawful liability on the funds of the company in liquidation. At that stage the winding up court can fully safeguard the interests of the company and its creditors.

[83 *ITR 685]*

Other place of their work	2003	Cal-HC	CIT V/s. Chemcrown (India) Ltd.

The expression **other place of their work** used in Explanation 2 to section 37(2A) of the Income-tax Act, 1961, would include any place where any of the employees of the assessee is asked to perform his work in connection with the employer's business. It has to be read in its context and given a simple meaning. It is not limited to expenditure on food and beverages provided to the employees of the assessee including any expenses either in the regular course or at the normal place of work or by way of terms of employment or otherwise.

[182 *CTR 133, 262 ITR 177, 133 TAXMAN 579]*

Other sources	1955	Ori-HC	Ramachandra Mardaraj Deo V/s. CIT

Under section 2(6AA) (c) of the Income-tax Act, income from **other sources** can be earned income only if it is attributable to the direct personal effort of the assessee. The income must have been brought into being immediately by the personal exertion of the assessee and not by the exertion of an intermediate agency. **[*27 ITR 667]***

Otherwise transferred	1997	Mad-HC	CIT V/s. P.K. Ramaswamy Raja

On a reading of the provisions of section 32A(5), 34(3)(b), 155(4A) and 155(5) of the Income-tax Act, 1961, it is clear that the intention of the Legislature is to withdraw the benefit of development rebate given to the assessee in respect of certain machinery if it is sold or **otherwise transferred** by the assessee within the stipulated period. The expression otherwise transferred is a very wide expression and takes within its sweep transfer of the assets from the assessee to another person by any means or mode whatsoever.

[141 *CTR 250, 223 ITR 324, 95 TAXMAN 173]*

Otherwise transferred	2003	Guj-HC	CIT V/s. Nipa Twisting Works

The words **otherwise transferred**occurring in section 32A(5)(a) should bear an appropriate meaning in the context of the main provision, i.e., section 32A of the Act. Section 32A(5)(a) is closely linked to section 32A(1) of the Act. Keeping in view the purpose for which the relief by way of investment allowance is afforded under section 32A(1) of the Act, in cases where the machinery or plant is not wholly used by the assessee for the purpose of business carried on by him, for the specified period and such user is given over to another, it can be stated that the machinery or plant is otherwise transferred by the assessee to another person.

[183 *CTR 465, 263 ITR 697, 130 TAXMAN 649]*

Out house	1970	Cal-HC	Consolidated Tea and Land Co. (India) Ltd. V/s. CWT

If there is a dwelling house or a main building and there is a house near that building or adjacent to that building and that will qualify for the expression **out-house** as contemplated by the section. It may also be that the main building may not be the dwelling house of the person who is entitled to exemption of the out-house. **[76 *ITR 589]***

Outstanding	1970	Cal-HC	CWT V/s. Banarashi Prasad Kedia

In order to be **outstanding** the amount must be such which the assessee was obliged to pay prior to the relevant valuation date and not an amount which the assessee had the right to pay subsequent to the valuation date. An amount which according to the instalment scheme the assessee has an option or right to pay on a date subsequent to the relevant valuation date cannot in that context be said to be outstanding on the relevant valuation date.Though the expression outstanding according to the dictionary meaning is unsettled or unpaid, the expression outstanding, in the context of section 2(m)(iii)(b) of the Wealth-tax Act, would require careful handling and should be construed in relation to the expression amount payable in consequence of an order by the Income-tax Officer. **[*77 ITR159]***

Outstanding	1984	SC	CWT V/s. J.K. Cotton Manufacturers Ltd.

The expression **outstanding** in s. 2(m)(iii)(a) and (b) has to be construed in the background of the phrase amount of tax . . . payable in consequence of an order and in that context it must mean remaining unpaid after the obligation to pay is incurred.

[*39 CTR 158, 146 ITR 552, 16 TAXMAN 18]*

Own, ownership and owned	1999	SC	Mysore Minerals Ltd. V/s. CIT

Section 32 of the Act allows certain deductions, one of them being depreciation of buildings, etc., owned by the assessee and used for the purposes of the business or profession. The terms **own, ownership and owned** are generic and relative terms. They have a wide and also a narrow connotation. The meaning would depend on the context in which the terms are used. CIT V/s. Podar Cement Pvt. Ltd. 226 ITR 625 (SC), is a case under the Income-tax Act and has to be taken as a trend-setter in the concept of ownership. Assistance from the law laid down therein can be taken for finding out the meaning of the term owned as occurring in section 32(1) of the Act. The term owned as occurring in section 32(1) of the Income-tax Act must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the building though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc. Building owned by the assessee, the expression as occurring in section 32(1) of the Income-tax Act, means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act, etc. Generally speaking depreciation is an allowance for the diminution in the value due to wear and tear of a capital asset employed by an assessee in his business. The very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset and is utilising the capital asset and thereby losing gradually the investment caused by wear and tear, and would need to replace the same by having lost its value fully over a period of time. It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time-being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. **[156 *CTR 1, 239 ITR 775, 106 TAXMAN 166]***

Own, ownership and owned	2001	J&K-HC	CIT V/s. Jammu and Kashmir Tourism Dev. Corp.

The terms **own, ownership and owned** have meanings, both wide and narrow, and the term owned as occurring in section 32(1) must be assigned a wider meaning. Anyone in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc. The expression building owned by the assessee as occurring in section 32(1) means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act, etc., but nevertheless is entitled to hold the property to the exclusion of all others. The very concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset, is utilising the capital asset and thereby losing gradually investment caused by wear and tear and would need to replace the same by having lost the value fully over a period of time.

[166 *CTR 554, 248 ITR 94, 114 TAXMAN 734]*

Owned by the assessee	1997	AP-HC	CIT V/s. Orient Longman (P.) Ltd.

A plain reading of section 32 of the Income-tax Act, 1961, shows that to claim depreciation in respect of buildings, machinery, plant or furniture, they must be **owned by the assessee** and they must be used by the assessee for the purpose of his business or profession. For purposes of claiming benefit under section 32 of the Income-tax Act, the requirement of ownership by the assessee will be deemed to be fulfilled if the assessee has the dominion and control over the property in his own right. Where the assessee has paid full consideration and has been put in possession of the property and has been in exclusive possession and enjoyment of the property as absolute owner thereof, the mere fact that no title deed has been executed in his favour, will not deprive him of the right to claim depreciation under section 32.

[*145 CTR 142, 227 ITR 68, 98 TAXMAN 189]*

Owned by the assessee	1999	All-HC	CIT V/s. Navdurga Transport Co.

That the expression **owned by the assessee** in section 32 of the Act had not been used in the sense of the property, complete title in which vested in the assessee. The assessee would be considered to be an owner under section 32 if he was in a position to exercise the rights of an owner not on behalf of the person in whom the title vested, but in his own right.

[*149CTR 219, 235 ITR 158]*

Owner	1937	Cal-HC	Official Assignee for Bengal (Estate of Janendra Nath Pramanik)

In view of the provisions of section 17 of the Presidency Towns Insolvency Act, the Official Assignee was the **owner** of the property and he could rightly be assessed in respect of the income from such property under section 9 of the Indian Income-tax Act. **[5 *ITR 233]***

Owner	1937	Cal-HC	Keshardas Chamaria

Before a person can be taxed as an **owner** under section 9 of the Indian Income-tax Act, 1922, it must be decided that he is in fact the owner of the property in question and this decision rests with the Income-tax Officer subject to the rights of appeal under sections 30 and 31.

[*5 ITR 246]*

Owner	1939	Lah-HC	CIT V/s. Diwan Bahadur Diwan Krishan Kishore

Though the word **owner** in section 9 of the Indian Income-tax Act, might very well cover the legal owner, the equitable owner or even the owner of a limited estate carved out of a larger estate, it is not correct to say that in that section the expression the 'owner of the property' means the owner of the annual value of the property. In the case of a Hindu impartible estate, the 'owner of the property' for the purposes of section 9 is the Hindu undivided family and not its encumbent for the time being. **[*7 ITR 427,*]**

Owner	1948	Pat-HC	Raja P.C. Lall Choudhary V/s. CIT

Owner in section 9 of the Act means the owner of the property itself and not the owner of the annual value. A receiver appointed by court is merely managing the property for the time being under orders of the court and the property in his hands is in custodia legis for the person who can make a title to it. The receiver cannot therefore be assessed as owner of the property under section 9. His position is different from that of a trustee or official assignee. **[*16 ITR 123]***

Owner	1962	Cal-HC	Sri Ganesh Properties Ltd. V/s. CIT

A person may be assessed as the **owner** of a property under section 9 of the Act even though he has no right to alienate the property or his full right of ownership is in some other way subject to contractual or other limitations. **[*44 ITR 606]***

Owner	1992	Cal-HC	CWT V/s. Satyabama Ganeriwalla

The flat which has been allotted to the assessee by the promoter of the multi-storeyed building against payment and of which the assessee had the full user and possession and from which the assessee cannot be evicted by the promoter must be held to be belonging to the assessee**.** **[1*96 ITR 401]***

Owner	1996	Cal-HC	CIT V/s. General Marketing and Manu. Co. Ltd.

The expression **owner** used in section 32 of the Act has been considered by taking into account all its phases and aspects. The owner need not necessarily be a lawful owner entitled to pass on the title of the property to another. **[*132 CTR 50, 222 ITR 574, 86 TAXMAN 488]***

Owner	1997	Gau-HC	CIT V/s. A.B.C. India Ltd.

In order to get the benefit of depreciation allowance in respect of a building or property, the assessee must be the **owner** of the property. Without a valid registered document, the right, title and interest in immovable property does not pass to the transferee. Therefore, even where the assessee has paid the full consideration and is in exclusive possession, in the absence of a registered deed of conveyance in the assessee's favour, the assessee is not entitled to get the benefit of depreciation under section 32 of the Income-tax Act, 1961.
[*143 CTR 155, 226 ITR 733, 94 TAXMAN 7]*

Owner	1998	AP-HC	A.P. Small Scale Industries Dev. Corp. V/s. CIT

The liability to pay income-tax as owner is on the person who receives or is entitled to receive the income from the property in his own right. The requirement of registration of the sale deed in the context of section 22 of the Income-tax Act, 1961, is not warranted. Although under the common law **owner** means a person who has got a valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act, etc., in the context of section 22 of the Income-tax Act having regard to the ground realities and further having regard to the object of the Income-tax Act, namely, to tax the income, owner is a person who is entitled to receive income from the property in his own right.
[*233 ITR 453]*

Owner	1999	Del-HC	Gowersons Publishers (Pvt.) Ltd. V/s. CIT

Section 22 of the Income-tax Act, 1961, which uses the word **owner** deals with assessment of income from house property while section 32(1) deals with allowing depreciation on buildings, etc., owned by an assessee. In both the provisions, the words owner or owned by are used in the context of enjoyment of the property by the owner. So long as a person continues to enjoy the property as an owner, he can make out the case for assessment of the income from the property under section 22 and claim depreciation thereon as per the provisions of section 32(1). Thus, the context in which the words owner or owned by are used, relates to deriving benefit by way of income or by personal use of the property. The real test is the right to enjoy

the property as owner. This interpretation advances the object of the provision. Secondly, this interpretation also upholds the principle that in taxing statutes, when there is need for interpretation, it should be in a manner favouring the assessee. ……that though under the common law owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, the Registration Act, etc., in the context of section 22 of the Income-tax Act having regard to the ground realities and having regard to the object of the Income-tax Act, namely, to tax the income, owner is a person who is entitled to receive income from the property in his own right. ……the requirement of registration of sale deed in the context of section 22 is not warranted. What is to be seen is who is in a position to enjoy the property or reap benefits from it as owner. An assessee seeks to have the income from his property assessed under section 22 only because he derives the income in his own right. The right to sell the property does not come in the picture. It is not germane to the issue. If for all practical purposes the assessee has a right to enjoy a property as owner he will be deemed to be the owner of the property even if a formal document conferring the title to the property in his favour is yet to be executed. The provisions of the Act have reference to the enjoyment of the property by the assessee as owner and nothing else…….. the term owned as occurring in section 32(1) of the Act must be assigned a wider meaning. Any one in possession of property in his own title exercising such dominion over the property as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the owner of the buildings though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc. Building owned by the assessee, the expression as occurring in section 32(1) of the Act, means the person who having acquired possession over the building in his own right uses the same for the purposes of the business or profession though a legal title has not been conveyed to him consistently with the requirements of laws such as the Transfer of Property Act and the Registration Act but nevertheless is entitled to hold the property to the exclusion of all others. **[239 *ITR 142]***

Owner	**1999**	**Mad-HC**	**Tamilnadu Dairy Development Cororation Ltd. V/s. CIT**

The meaning of the term **owner** in section 32 of the Income-tax Act, 1961, cannot be any different from what it is for the purpose of section 22. The object of the Act is to tax the income. The manner of computation of income is laid down in the Act. Under section 32 depreciation is one of the items to be considered in computing income. The allowance permitted under that provision is available to the person whose income is sought to be taxed. A person cannot be held to be an owner for the purpose of taxing his income under section 22 even when he is not the complete owner but be denied the benefit of depreciation under section 32 by restricting the meaning of the term owner in section 32 to persons who are complete legal owners.

[156 *CTR 409, 240 ITR 191, 107 TAXMAN 298*]

Owner	**2000**	**Cal-HC**	**Ledo Tea Co. Ltd. V/s. CIT**

The word **owner** has not been defined in the Income-tax Act. Under the general law a person derives right, title and interest in respect of an immovable property only when a registered instrument is executed in his favour. However, registration of the deed alone does not make a person the holder of title if the same had been done in violation of any statute or if certain formalities as required under the statute have not been complied with. …Owner is a person who is entitled to receive income from the property in his own right. Although the aforementioned decision was rendered in the context of section 22 of the Act having regard to the underlying principles enumerated therein, the same principles would also apply in the matter of interpretation of section 32. **[*241 ITR 605]***

Owner	2001	Cal-HC	CIT V/s. Ajit Kumar Roy

Owner means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act, etc. But in the context of section 22 of the Income-tax Act, 1961, having regard to the object of the Act, namely, to tax the income, owner is a person who is entitled to receive income from the property in his own right. ***[170 CTR 187, 252 ITR 468, 121 TAXMAN 240]***

Owner	2002	Del-HC	Balraj V/s. CIT

The meaning of the word **owner** in the context of section 22 has been held to be a person who is entitled to receive income in his own right. **[173** ***CTR 452, 254 ITR 22, 123 TAXMAN 290]***

Owner	2002	Del-HC	National Industrial Corporation Ltd. V/s. CIT

The concept of depreciation suggests that the tax benefit on account of depreciation legitimately belongs to one who has invested in the capital asset, is utilising the capital asset and is gradually losing investment thereby caused by wear and tear and would need to replace the same having lost its value fully over a period of time. There cannot be two **owner**s of a property simultaneously and in the same sense of the term. Where the possession of a property is acquired, with a right to exercise such necessary control over the property acquired which it is capable of, it is the intention to exclude others which evinces an element of ownership.
[177 CTR 194, 258 ITR 575, 124 TAXMAN 413]

Owner of house property	1996	AP-HC	CIT V/s. Nandanam Constructions

The definition of **owner of house property** as contained in section 27 of the Income-tax Act, 1961, was amended by inserting clause (iiia) by the Finance Act of 1987 so as to make the position clear and explicit. The amended provision reads as under:(iiia) A person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, shall be deemed to be the owner of that building or part thereof. ***[137CTR501, 222 ITR737,]***

Owner of property	1987	AP-HC	CIT V/s. Sahney Steel and Press Works (P.) Ltd.

An **owner of property** is the person who can exercise the rights of the owner not on behalf of the owner but in his own right. ***[63 CTR 275, 168 ITR 811, 32 TAXMAN 96]***

Owner of the building	2006	Mad-HC	Universal Radiators Ltd. V/s. CIT

Anyone in possession of property in his own title exercising such dominion over the property, as would enable others being excluded therefrom and having the right to use and occupy the property and/or to enjoy its usufruct in his own right would be the **owner of the building** though a formal deed of title may not have been executed and registered as contemplated by the Transfer of Property Act, the Registration Act, etc. ***[281 ITR261]***

Owner of the property	1981	P&H-HC	Kala Rani V/s. CIT

Before a person can be assessed under section 22 of the Income-tax Act, 1961, it is not necessary that he must be the **owner of the property** by virtue of a sale deed in his favour. What is being taxed under section 22 is the income from house property or the annual value of the property of which the assessee is the owner. The focus of the section is on the receipt

of income from house property. If, in a given case, it is found as a fact that the assessee is in occupation of the building as owner to all intents and purposes, except the sale deed in his favour, then he is liable to tax under section 22. **[*130 ITR321]***

Owner of the property	1982	Mad-HC	Mrs. M.P. Gananambal V/s. CIT

It is not necessary for the purpose of assessment under section 22 of the Income-tax Act, 1961, that an assessee should be the absolute owner of the properties and in given cases even a life estate holder can be equated to the **owner of the property** so long as he or she was in a position to enjoy the property or the income therefrom. However, even a life estate holder must have some vestige of rights in the property before he or she can be treated as the owner of the property. **[*136 ITR 103, TAXMAN]***

* *Discretion must be a sound one governed by law and guided by rule, not by humour. There is nothing like unfettered discretion immune from judicial reviewability. Courts stand between the executive and the subject, alert, to see that discretionary power is not exceeded or misused. Discretion is a science of understanding to discern between right or wrong, between shadow and substance, between equity and colourable glosses and pretence and not to do according to one's will and private affections. The action of the State, an instrumentality, any public authority or person whose actions bear the insignia of public law element or public character are amenable to judicial review.*

* *The Commissioner of Income-tax is bound to function strictly in accordance with the provisions contained in the Income-tax Act, 1961. Being a statutory functionary he has no power, jurisdiction or discretion to go beyond the provisions of the statute. He cannot assume any power that is not specifically conferred on him by the statute. If there is a lacuna in the statute or an amendment is required in the statute for preventing institutions from misusing the benevolent provisions in the statute, only the Legislature can remedy it…*

* *It is basic that the authorities created under the Income-tax Act, 1961, have to function within the four corners of the powers and duties assigned to them under the Act. They cannot claim to themselves any inherent power howsoever benevolent or plausible the purpose it is intended to serve. The power to issue clarifications of purportedly ambiguous statutory provisions lies only with the Legislature or its delegate under specified conditions. In the absence of any such delegation such a power cannot be exercised by any person and if it is so exercised then it will be nothing but a nullity.*

* *The income-tax authorities while discharging their quasi-judicial functions having bearing on the rights and obligations of the taxpayers under the provisions of the Act may take such views on the interpretation of a particular statutory provision as may be permissible which will be always subject to the statutory remedies under the Act…*

P

Paid	1953	Cal-HC	Calcutta Co. Ltd. V/s. CIT

The provision in section 10(5) of an Explanation of the word **paid** and the omission of a similar Explanation in the case of the words laid out or expended in section 10(2)(xv) cannot be ignored and the omission appears to be a key to the intention of the Legislature that in the case of business expenditure proper, nothing except expenses actually made in the year of account were to be allowed. **[*24 ITR 454]***

Paid	1965	Bom-HC	R.R. Khandelwal V/s. CIT

A dividend is not **paid** within the meaning of section 16(2) of the Income-tax Act, 1922, as soon as it is declared, nor does it remain unpaid until it is actually received in cash by the shareholder. It is paid when the company discharges its liability and makes the amount of the dividend unconditionally available to the shareholder entitled to it. **[58 *ITR 14]***

Paid	1995	Mad-HC	CIT V/s. Gurunathan

Word **paid** has been defined in section 43(2) to mean actually paid or incurred according to the method of accounting on the basis of which the profits and gains of business are computed. **[*211 ITR 174]***

Paid	1996	Bom-HC	CIT V/s. Tata Hydro Electric Supply Co. Ltd.

The term **paid** appearing in section 36(1)(iv) of the Act means not only actually paid but also incurred according to the method of accounting upon the basis of which profits and gains are computed under the head Profits and gains of business or profession. The assessee was following the mercantile system of accounting. Paid occurring in section 36(1)(iv) has to be given the same meaning as has been assigned to it by the Legislature in section 43(2) of the Act unless the context otherwise requires. **[132 *CTR 137, 219 ITR 178, 85 TAXMAN 444]***

Paid	2003	Bom-HC	Taparia Tools Ltd. V/s. Joint CIT

The word **paid** in section 36(1)(iii) should be construed to mean paid in accordance with the method of accounting followed by the assessee. **[*260 ITR 102]***

Paint	1998	Bom-HC	CIT V/s. Hardcastle and Waud Manu. Co. Ltd.

The definition of the word **paint** makes it clear that paints are necessarily in liquid form. The opinion of experts in the field is also that powder coating for appliances, electrical equipment and other products to protect them from corrosion and improve their looks are essentially plastics. Ordinary paints are applied with brush, while powder coatings are applied by electrostatic spray or by fluidized techniques.. **[142 *CTR 168, 233 ITR 732, 97 TAXMAN 532]***

Particular source	1966	All-HC	Shiv Narain Sarraf V/s. CIT

The proviso to section 2(11)(i)(a) refers to the case where an assessee was assessed for an earlier assessment year on income from a particular source. The words **particular source** in the proviso refer to a known or disclosed source; an undisclosed source can never be said to be a particular source. Therefore, the latter clause of the proviso is not applicable when an assessee was assessed for an earlier assessment year on income from an undisclosed source. **[62 *ITR 711]***

Partition	1995	AP-HC	Satish Chandra Modi (HUF) V/s. CIT

A transaction can be recognised as a **partition** under section 171 only if, where the property admits of a physical division, a physical division of the property has taken place; and where the property does not admit of a physical division, then such division, as the property admits of, should take place to satisfy the test of a partition under section 171; and if a transaction does not satisfy the above additional conditions it cannot be treated as a partition under the Act even though under the Hindu law there has been a partition total or partial. This means that the first basic requirement that has to be satisfied before the additional conditions are satisfied, is that the transaction should be a valid partition under the Hindu law applicable to the Hindu undivided family. Sub-sections (2) and (3) of section 171 of the Act state how such a finding of total or partial partition is to be given. A claim of partition should be made by the petitioner at the time of making the assessment in respect of the relevant assessment year.

[*128 CTR 155, 216 ITR 717, 82 TAXMAN 208]*

Pass and pronounce	2005	Del-HC	CIT V/s. Sudhir Choudhrie

The fine distinction between the expressions **pass and pronounce** should not be stretched to the extent that it offends the basic rule of law. The expression pass in common parlance or its usual sense means to deliver. The term pronounce means to proclaim, to utter formally, to utter rhetorically, to declare, to utter articulate. Pronouncement in relation to a judgment requires the authority to apply its mind and arrive at a conclusion whether there is any cause to modify or remit the award. Further, the phrase pronounce judgment would itself indicate judicial determination by reasoned order, for arriving at a conclusion that decree in terms of the award be passed. **[196 *CTR 528, 278 ITR 490, 147 TAXMAN 306]***

Passes	1980	SC	CED V/s. Aloke Mitra

The word **passes** in section 5 may be taken as meaning changing hands on death regardless of its destination. Whenever property changes hands on death, the State is entitled to step in and take a toll of the property as it passed without regard to its destination or to the degree of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding. **[*126 ITR 599, 4 TAXMAN 19]***

Passing of an order	2001	All-HC	Dilip Kumar Agarwal V/s. CIT

In order to find out the meaning of the phrase **passing of an order**, we have to keep in mind that the nature of the order means a direction or a command. An order which is not communicated to the person who is obliged to comply with or execute the order, is no order in the eyes of law and becomes an order only when it is communicated to such person. The word pass, inter alia, means to put in circulation, to transfer from one person to another. Therefore, the use of the word passing makes the intention clear that the order has to be communicated to the declarant and the order would be deemed to have been passed only when it is communicated to the declarant… the mere preparing of the draft and signing it in the authority's own office did not amount to passing of an order. The order would legally stand passed when it was passed over to the declarant for compliance for payment of the amounts determined payable by the designated authority… **[166 *CTR 334, 247 ITR 765, 117 TAXMAN 335]***

Payable	1938	Lah-HC	Vir Bhan Bansi Lal V/s. CIT

Where notice under section 28 of the Indian Income-tax Act for the imposition of penalty has been issued before the assessment order is made, a penalty under the section may be imposed on a date subsequent to the date of the assessment order and even after the income-tax

assessed has been paid by the assessee. The word **payable** in the latter portion of the section means to which he has been assessed, whether the amount has been paid or not. **[*6 ITR 616]***

Payable	**1995**	**Guj-HC**	**Garden Silk Weaving Factory V/s. CIT**

The word **payable** is somewhat indefinite in import and its meaning must be gathered from the context in which it occurs; payable generally means that which should be paid. In the context of section 273A the word payable would mean that the assessee is liable to pay a particular sum as penalty. Even if the liability to pay penalty is discharged, it would not mean that he is not entitled to get relief under section 273A as otherwise no assessee would pay the penalty till the proceedings under section 273A are over. **[213 *ITR 10]***

Payable and chargeable	**2002**	**Del-HC**	**CIT V/s. Vasavi Pratap Chand**

The words **payable and chargeable** occurring in section 2(m)(ii) of the Wealth-tax Act, 1957, before and after its amendment in 1964, are not interchangeable and they carry different meanings. Wealth-tax shall not be payable in respect of certain assets and such assets shall not be included in the net wealth of the assessee. Even in the Income-tax Act, the words chargeable and payable have been used in different provisions thereof. The assets and property may be chargeable to tax but tax may not be payable having regard to the exemption provided for in the Schedule appended to the Act. The exemption clause is to be strictly construed and cannot be interpreted in such manner so as to take away a benefit to which the assessee may otherwise be entitled. **[172 *CTR 190, 255 ITR 517, 122 TAXMAN 792]***

Payment	**1977**	**Mad-HC**	**CIT V/s. Alagusundaram Chettiar**

The word **payment** in section 2(6A)(e) of the Act means the act of paying and does not either expressly or by necessary implication restricted to payment of a sum of money towards a pre-existing liability or by way of discharge of an existing obligation or by way of payment to a person by way of hire or wages to which the payee was already entitled.

[6 *CTR 410, 109 ITR 508]*

Penalty	**1984**	**SC**	**Shiv Dutt Rai Fateh Chand V/s. Union of India**

….the word **penalty** used in article 20(1) of the Constitution could not be construed as including a penalty levied under the sales tax laws by the departmental authorities for violation of statutory provisions. A penalty imposed by the sales tax authorities was only a civil liability though penal in character. **[148 *ITR 664]***

Pending	**2001**	**Guj-HC**	**CIT V/s. Kashiram Textile Mills (P.) Ltd.**

A proceeding is in pendency from the date of its institution and remains pending until its conclusion before the concerned authority. The entire period is to be treated as pendency of the proceedings concerned. That is the ordinary meaning of the word **pending**. Proceedings for assessment which commence from the date of filing or issuing the notice to file a return remain pending until a final effective order is passed by the assessing authority on the basis of which tax can be recovered or the aggrieved party can exercise his right of appeal or challenge it in whichever forum permissible. Until that stage is reached, it cannot be said that the assessment proceeding before the Income-tax Officer has come to an end.

[170 *CTR 1, 252 ITR 162]*

Pending	2003	Guj-HC	Shatrushailya Digvijaysingh Jadeja V/s. CIT

. . . the expression **pending** in section 95(i)(c) in relation to revisions, means factually pending and merely because the revision petitions were not commenced within the period of limitation did not detract from the fact that the proceedings were pending;

[*177 CTR 508, 259 ITR 149, 132 TAXMAN 644]*

Pension	1985	Cal-HC	CIT V/s. Dipali Goswami

Pension generally is paid in consideration of past services. Pension is paid to an employee following his retirement from service due to age or disability or to the surviving dependants of an employee entitled to such pension. It may also represent a portion of employee's retirement income accumulated in the pension fund to which the employee had to contribute. Pension is one of the very important terms and conditions of employment which is earned by an employee by rendering requisite period of service and its receipt is one of the incidents of employment. In a sense, the benefits by way of pension and gratuity are in the nature of deferred wages which are paid at the time of retirement or thereafter. The fact that the amount is paid to the widow of an employee does not alter the nature of the payment and the widow is merely the recipient as a nominee of her husband. The right to pension either to the employee or to his widow necessarily flows from past employment of the employee. It flows as part of the consideration of the contract of employment and not de hors or independent of the contract of employment. **[*156 ITR 36]***

Per annum	1985	Cal-HC	CIT V/s. Oyster Packagers (P.) Ltd.

The relief under section 80J of the Income-tax Act, 1961, to a new industrial undertaking is available only for the first five years and that is the reason why the words per annum have been used. **Per annum** means for each year or annually. The exemption or concession will be available for each year to the extent of 6 per cent. of the capital employed. There is no warrant for the proposition that the expression per annum postulates the relief being granted only for the periods during which the assets were actually in use during the relevant previous year.

[*152 ITR 471]*

Performing specific services	1956	Cal-HC	Calcutta Stock Exchange Association Ltd. V/s. CIT

Performing specific services is an expression, for stronger and more definite than rendering service and it connotes the actual doing of definite acts in the nature of services. One may confer a benefit on another by some act or omission or even by merely maintaining a particular altitude and in such circumstances it may well be said that he has rendered a service to the latter. But in order that a person may be correctly described as performing specific services for another, he should execute certain definite tasks in the interest and for the benefit of the latter under an arrangement of a direct character. **[29 *ITR 687]***

Period within which the ITO has to complete one	1954	Mad-HC	R.M.P.R.Viswanathan Chettiar V/s. CIT

The time limit of four years which sub-section (2) of section 34 provides is the **period within which the Income-tax Officer has to complete one stage of the proceedings**, that is, the assessment of the income and the determination of the tax payable. That stage can be completed by the Income-tax Officer himself within that period and it is not necessary that the terms of the order of assessment should be communicated to the assessee within that period.

[25 *ITR 79]*

Periodically / ultimately	1994	Raj-HC	CIT V/s. Aditya Mills Ltd.

Section 43(5) of the Income-tax Act, 1961, lays down that a speculative transaction means a transaction in which a contract for the purchase or sale of any commodity is periodically settled otherwise than by the actual delivery or transfer of the commodity. The said section is not restricted to a contract where the settlement is only in respect of the entire contract. The word **periodically or ultimately** makes it clear that the provisions of section 43(5) are applicable where a part of the contract or the entire contract has been settled otherwise than by actual delivery of the goods. **[*209 ITR 933]***

Permanent establishment	2005	AAR	Dun and Bradstreet Espana S.A.

.the term **permanent establishment** means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

[193 *CTR 9, 272 ITR 99, 142 TAXMAN 284]*

Perquisite	1980	Guj-HC	CIT V/s. S.G. Pgnatale

A **perquisite** is something which arises by reason of a personal advantage. A mere reimbursement of a necessary disbursement would not amount to a perquisite. **[124 *ITR 391]***

Perquisite	1985	AP-HC	M. Krishna Murthy V/s. CIT

The definition of **perquisites** in section 17(2) begins with the words perquisite includes. The definition is, therefore, comprehensive. Cash allowances are included in the ordinary meaning of perquisites and would fall under section 17(2). City compensatory allowance, bad climate allowance, shift allowance and incentive bonus are perquisites within the meaning of section 17(2) and, therefore, they constitute taxable receipts. **[75 *CTR 36, 152 ITR 163]***

Perquisite	2004	Uttaranchal	National Fed. of Insurance Field Workers of India V/s. Union of India

The word **perquisite** covers the value of rent free accommodation, the value of any benefit or amenity granted or provided free of cost or at concessional rate in certain stipulated cases. Parliament inserted clause (vi) in section 17(2) by the Finance Act No. 14 of 2001 with effect from April 1, 2002, by stating that even the value of any fringe benefit as may be prescribed by the Central Board of Direct Taxes be included within perquisite as defined under section 17(2). The words as may be prescribed not only refer to value, but also to itemisation/ identification of a particular benefit or amenity. Hence, the entire policy of Parliament is to cover all types of benefits/amenities, including substantial and fringe benefits within the word perquisite. The policy is discernible from the scheme of sections 14, 15, 16 and 17 of the Income-tax Act. Further, the Legislature has left it to the Central Board of Direct Taxes as the Central Board of Direct Taxes is an expert rule making authority. The concept of perquisite, so as to include benefit, can be understood, but not defined. Hence the Legislature has left it to the Central Board of Direct Taxes to define the benefit or amenity and to assign it a value so that the latter could form part of the total income. **[*187 CTR 180, 265 ITR 84, 135 TAXMAN 307*]**

Perquisite	2006	SC	Arunkumar V/s. Union of India

A **perquisite** is a privilege, gain or profit incidental to an employment in addition to regular salary or wages. It is a benefit or an advantage received by the holder of an office over and above his salary. The benefit received by an employee is incidental to employment in excess of or in addition to the salary.In computing a perquisite in the matter of residential accommodation, the fundamental question of applicability of section 17(2) of the Act still remains. It cannot be

gainsaid that section 17(2) would apply only if there is a perquisite. Indisputably, the definition of perquisite is inclusive in nature and takes within its sweep several matters enumerated in clauses (i) to (vii). Section 17(2)(ii) declares that the value of any concession in the matter of rent respecting any accommodation provided to the employee by his employer would be a perquisite. Nevertheless, it must be a concession in the matter of rent respecting any accommodation provided by the employer to his employee. It is, therefore, clear that before section 17(2)(ii) can be invoked or pressed into service and before calculation of concession as per rule 3, even after its amendment in 2001, is made, the authority exercising power must come to a positive conclusion that it is a concession…… A benefit or facility which furthers the commercial interest of the employer would not per se become a perquisite. Such facility of accommodation furthers the commercial interest of the employer by having a satisfactory work force which but for such accommodation, would not have been available.

[*205 CTR 193, 286 ITR 89, 155 TAXMAN 659]*

Perquisites	**1996**	**Ker-HC**	**Aspinwall and Co. Ltd. V/s. CIT**

Section 17(2) of the Income-tax Act, 1961, provides what is known as an inclusive definition of the term **perquisites** as distinguished from the provisions of clause (b) of Explanation 2 to section 40A(5) of the Income-tax Act, 1961, which is self-explanatory. It would appear that five categories of situations which are understood to be perquisites show that the term perquisites has certain essential characteristics and features. Rent-free accommodation and concession in the matter of rent in regard to accommodation provided to the employee by the assessee would be a perquisite. **[132 *CTR 365, 220 ITR 611]***

Person	**1969**	**SC**	**Kapurchand Shrimal V/s. TRO**

The expression **person** in sections 276, 276A and 277 of the Income-tax Act, 1961, is not used in the sense in which it is defined in section 2(31) of the Act. **[*72 ITR 623]***

Person	**1972**	**Del-HC**	**Bhai Sunder Dass and Sons V/s. CIT**

The definition of **person** in section 3(42) of the General Clauses Act, 1897, applies to the word person occurring in section 4 of the Indian Income-tax Act, 1922, and an unincorporated association or a body of persons, like a firm, is a person for the purposes of income-tax.

[85 *ITR 28]*

Person	**1977**	**P&H-HC**	**Rodamal Lalchand V/s.CIT**

The description of **person** in section 2(31) of the Income-tax Act, 1961 makes no distinction between a firm or its partners, association of persons or body of individuals, whether incorporated or not, or the members of the association or the body of individuals in their individual capacity. The charging section of the Act, that is, section 4, views each category of the taxable entity alike as a distinct and different unit. In the case of a firm it would mean a firm or a partner. Similarly, in the case of an association of persons or body of individuals, it would mean the association of persons or the body of individuals or the members. **[109 *ITR 7]***

Person	**1977**	**Mad-HC**	**M.R. Pratap V/s. V.M. Muthukrishnan, ITO**

In the context in which the expression **person** occurs in section 277 of the Income-tax Act, 1961, it is evident that it must be given its ordinary dictionary meaning which would include any individual who fails to carry out the duty imposed on him by the specific provisions of the Act. It is not used in reference only to an assessee as defined in the Act. **[110 *ITR 655]***

Person	1979	All-HC	CGT V/s. S.B. Sugar Mills

The word **person** which has been defined in section 2(xviii) of the Gift-tax Act, 1958, includes a Hindu undivided family or a company or association or a body of individuals or persons, whether incorporated or not. This definition of the word person is not an exhaustive one and the categories specified therein do not exhaust the category of other persons, who answer the description of a person. **[120 *ITR 126]***

Person	1988	AP-HC	CIT V/s. Dredging Corporation of India

…….. the definition of the expression **person** occurring in section 2(31) of the Income-tax Act, 1961, is a very crucial definition because it is with reference to the categories of entities specified in section 2(31) that the liability to tax under the Act is determined. If a person is not capable of being considered as a person within the meaning of section 2(31), then no liability attaches. If the State or the Government cannot be regarded as a person for the purpose of section 2(31) and, consequently, is immune from taxation, whether on the grounds of sovereignty or otherwise, it is natural to extend the same logic to understand the expression person wherever it occurs in the Act. There is no reason to give a different expression to the word person which occurs in the Explanation to section 32(1)(vi). The Explanation to section 32(1)(vi) does not use the expression person in isolation. It uses that expression in the company of the other qualification, namely, person resident in India. Therefore, what we have to understand for the purpose of the Explanation is the consolidated expression person resident in India. A peremptory look at the expression person resident in India itself would indicate that the person referred to in the Explanation must be one who is capable of residing in India or, in the alternative, is a person resident in India as provided in section 6 of the Act. The Government is not a person capable of having residence either on its own or in terms of section 6.

[1*74 ITR 682, 39 TAXMAN 301]*

Person	1991	Ker-HC	CWT V/s. Mulam Club

Section 3 of the Wealth-tax Act, 1957, imposes a charge for every year commencing on and after the 1st day of April, 1957, of a tax in respect of net wealth on the corresponding valuation date of every individual, Hindu undivided family and company. The difference between the definition of a **person** contained in section 2(31) of the Income-tax Act, 1961, and the persons who are taxable under section 3 of the Wealth-tax Act has to be noted. An association of persons or a body of individuals, whether incorporated or not, comes within the definition of person for the purpose of the Income-tax Act, whereas only three categories of persons are contemplated under section 3 of the Wealth-tax Act. **[191 *ITR 370]***

Person	2001	Mad-HC	CGT V/s. A.C. Mahesh

Section 22(1) of the Gift-tax Act, 1958, deals with a class of persons who can prefer appeals under that section. Section 22(1) in the opening part gives such right subject to the provisions of sub-section (1A) to any **person**. In contrast, the other sections in the Chapter which deal with appeals and revisions confer the right only on assessees. The marked difference in the expression used in the provisions indicates the legislative intention to confer the right of appeal under section 22 to a larger class than assessees. The term any person used in section 22(1) of the Act is therefore required to be construed as comprising persons other than assessees if they object to orders of the nature referred to in sub-section (1) of section 22 which orders affect them adversely.. . . the term person in section 22(1) would include the donee against whom recovery proceedings were taken under section 29 of the Act.

[172 *CTR 647, 252 ITR 440, 122 TAXMAN 269]*

Person concerned	1975	Mad-HC	Gulab and Co. V/s. Supdt. of Central Excise (Prev.), Trichy

The words **person concerned** in section 132(5) can refer only to the person against whom a warrant is issued and not the person who was in actual possession. That does not mean that the person who was in physical possession and from whom the actual seizure was effected need not be given any opportunity of being heard. He is a person who is entitled to be heard both under the provisions of the Act and under the principles of natural justice.**[98 *ITR 581]***

Person responsible for paying	1993	P&H-HC	Baldeep Singh V/s. Union of India

Section 194A(1) of the Income-tax Act, 1961, refers to **person responsible for paying** any income by way of interest. Section 204 defines the expression person responsible for paying . According to this section, the person responsible for paying, in the case of payments of income chargeable under the head Salaries other than payments by the Central Government and the Government of a State, is the employer himself, in the case of interest on securities, the borrower, and regarding any other sum chargeable under the Act, the payer himself.
[199 *ITR 628]*

Person who is substantially interested in the company	1999	Mad-HC	CIT V/s. T.P.S.H. Sokkalal

The expression **person who is substantially interested in the company** is defined in section 2(32) of the Income-tax Act, 1961, to mean a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent. of the voting power. The definition is relevant in considering the applicability of section 2(22)(e) as the said provision would apply only in the case of advance or loan made by a company in which the public are not substantially interested, to a person having a substantial interest in the company. Section 153 of the Companies Act, 1956, provides that no notice of any trust, express, implied or constructive, shall be entered on the register of members or of debenture-holders. There is no provision of law which would deprive the shareholder from exercising the right of voting when the shares are standing in the name of the guardian for the benefit of minors and the right to vote is an essential and important characteristic of a share. The expression voting power found in section 2(32) is significant and it signifies the right to vote which is inherent in the shares. **[236 *ITR 981]***

Personal effect	1976	SC	H.H. Majaraja Rana Hemant Singhji V/s. CIT

An intimate connection between the effects and the person of the assessee must be shown to exist to render them **personal effects** within the meaning of that expression used in clause (ii) of the exceptions in section 2(4A) of the Indian Income-tax Act, 1922. The legislature intended only those articles to be included within the expression personal effects which were intimately and commonly used by the assessee. **[*103 ITR 61]***

Personal effect	1990	Cal-HC	CIT V/s. Benarashilal Kataruka

The Legislature intended only those articles to be included within the expression **personal effects** which were intimately and commonly used by the assessee. **[185 *ITR 493]***

Personal effects	1970	Raj-HC	Maharaja Rana Hemant Singhji (H.H.) V/s. CIT

In order to constitute an article part of **personal effects**, it is necessary that the article must

be associated with the person of the possessor and must more or less have intimate relation with the possossor. Merely because gold sovereigns, silver coins and bullion are placed before Goddess Lakshmi at the time of Puja, they do not became articles of personal use of the assessee. **[*77 ITR 1007]***

Personal expenses	**1964**	**SC**	**State of Madras V/s. G.J. Coelho**

Every expense to discharge a personal obligation did not become a personal expense within section 5(e). **Personal expenses** included only expenses on the person of the assessee or to satisfy his personal needs such as clothes, food, etc., or for purposes not related to the business for which the deduction was claimed. **[53 *ITR 186]***

Personally	**1946**	**Mad-HC**	**CIT V/s. Rao Bahadur Ravula Subba Rao**

The word **personally** in rule 6 of the Income-tax Rules as framed under section 59 of the Indian Income-tax Act, 1922, would exclude a duly authorised agent of a partner from signing an application on behalf of the partner under section 26A of the Indian Income-tax Act.
[*14 ITR 232]*

Persons	**1990**	**Cal-HC**	**Aminchand Pyarelal V/s.CGT**

A firm is not included in the definition of **persons** under section 2(xviii) of the Gift-tax Act, 1958. Hence, a firm is not assessable as an entity under the Gift-tax Act and a notice issued to a firm would not be valid. **[*185 ITR 264]***

Persons interested	**1980**	**Guj-HC**	**CIT V/s. Premanand Industrial Cooperative Service Society Ltd.**

The definition of **persons interested** in section 269A(g) of the Income-tax Act, 1961, is an inclusive definition. In section 3(b) of the Land Acquisition Act, 1894, the expression person interested includes all persons claiming an interest in the compensation to be made on account of the acquisition of land. The first part of section 3(b) of the Land Acquisition Act is in pari materia with the definition in section 269A(g) of the I.T. Act, and since both these definitions occur in the context of acquisition of property whatever interpretation has been given to the words persons interested in the context of the Land Acquisition Act will also help in considering the meaning to be attributed to the words persons interested in the context of Chapter XXA of the I.T. Act. **[16 *CTR 6, 214 ITR 772]***

Philanthropy	**1994**	**Ker-HC**	**CIT V/s. Pulikkal Medical Foundation Pvt. Ltd.**

The word **philanthropy** is not defined in the Income-tax Act. The meaning of the words philanthropic purposes includes activities promoting goodwill to mankind or activities beneficial to humanity at large as opposed to activities solely for the benefit of a few individuals. …….. In order to achieve the main philanthropic objects, the hospital may do some profit earning business provided such profit is appropriated towards the expansion and development of the hospital or to start another institution with the same philanthropic objectives. The real test is to find out what the dominant or primary purpose of the institution is. If the primary purpose is philanthropic, the inclusion of some objects for earning profit for the implementation of the primary object would not alter the character of that primary object. In other words, this will not be a ground for holding that the hospital is not existing solely for philanthropic purposes. All cumulative factors will have to be taken into consideration in order to decide whether the

institution exists for philanthropic purposes and not for purposes of profit. Neither the fortuitous factor of having large surplus in any particular year, nor the fact of diverting some income to objects which are not philanthropic in themselves would be decisive of the matter.

[210 *ITR 299]*

Plant	**1962**	**Bom-HC**	**Jayasingrao Piraji Rao Ghatge V/s. CIT**

The primary meaning of the word **plant** is machinery, apparatus, fixtures, etc., employed in carrying on a business or trade or a mechanical or other industrial business. The primary meaning of the word, therefore, has connection with mechanical or industrial business or manufacture of finished goods from raw materials. Even in the extended meaning of the word, it would only cover an asset representing capital investment in a manufacturing trade or business because, according to the said extended meaning, it must be something which represents capital invested in the means of carrying on business exclusive of its raw materials or the manufactured product. Neither the primary meaning nor the extended meaning of the word plant given in the dictionary will cover the container of the stock-in-trade of a business as a plant within the meaning of section 10(2)(vi) of the Indian Income-tax Act. **[46 *ITR 1160]***

Plant	**1969**	**Mad-HC**	**Sundaram Motors Private Ltd. V/s. CIT**

The word **plant** in section 10(2)(vib) of the Income-tax Act, 1922, should be given the same popular meaning as machinery. If the plant in combination with other appliances in the business effectuates and perpetuates the trade or commerce in question, then such induction or introduction of such a plant should be deemed to be such that they are placed in a position for service or use in the business. **[*71 ITR 587]***

Plant	**1970**	**All-HC**	**CIT V/s. Indian Turpentine and Rosin Co. Ltd.**

The definition of **plant** in section 10(5) is very wide and poles, cables, conductors and switch-boards for distribution of electricity can be treated as plant within the meaning of section 10(2)(vib) of the Act. **[75 *ITR 533]***

Plant	**1974**	**Guj-HC**	**CIT V/s. Elecon Engineering Co. Ltd.**

The word **plant** in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles like books and surgical instruments are expressly included in the definition of plant in section 43(3) of the Act. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. It would not, however, cover the stock-in-trade, that is, goods bought or made for sale by a businessman. It would also not include an article which is merely a part of the premises in which the business is carried on. An article to qualify as plant must furthermore have some degree of durability and that which is quickly consumed or worn out in the course of a few operations or within a short time cannot properly be called plant. But an article would not be any the less plant because it is small in size or cheap in value or a large quantity thereof is consumed while being employed in carrying on business. In the ultimate analysis the enquiry which must be made is as to what operation the apparatus performs in the assessee's business. The relevant test to be applied is: does it fulfil the function of plant in the assessee's trading activity ? Is it the tool of the taxpayer's trade ? If it is, then it is plant, no matter that it is not very long lasting or does not contain working parts

such as a machine does and plays a merely passive role in the accomplishment of the trading purpose. **[*96 ITR 672*]**

Plant	1975	All-HC	CIT V/s. Kanodia Cold Storage

In common parlance the word **plant** includes within its ambit buildings and equipment used for manufacturing purposes. The definition of plant in section 43(3) is inclusive and does not exclude things normally included in it. **[*100 ITR 155]***

Plant	1976	Bom-HC	CIT V/s. Union Bank of India Ltd.

The definition of **plant** in section 43(3) of the Income-tax Act, 1961, is only inclusive and not exhaustive. Adopting the dictionary meaning of plant, a safe deposit vault in a bank is apparatus or fixture employed in carrying on a trade or business which is not its stock-in-trade and would fall within the meaning of a plant. Therefore, such safe deposit vault will be entitled to development rebate as provided in section 35 of the Income-tax Act, 1961. **[*102 ITR 270]***

Plant	1977	Mad-HC	Additional CIT V/s. Madras Cements Ltd.

The definition of **plant** in section 43(3) of the Income-tax Act, 1961, being an inclusive definition, the term should be given its ordinary meaning as understood by the common man. The various decisions also go to show that the expression plant has to be construed in the context of particular kind of trade or manufacture carried on by the assessee and if in the context it could be taken as plant as understood in the popular sense it would be eligible for the allowance of depreciation and development rebate. The dictionary meaning of the word plant comprehends buildings employed in carrying on trade or other industrial business and hence the special reinforced concrete foundation for the purpose of locating or installing the rotary kiln in the assessee's factory would come within the scope of the expression plant and would be entitled to depreciation and development rebate. **[*110 ITR 281]***

Plant	1979	Cal-HC	CIT V/s. Swadeshi Mining and Manu. Co. Ltd.

In view of the Supreme Court decision in CIT V/s. Taj Mahal Hotel (82 ITR 44) where the term **plant** has been construed in a wide manner, the assessee was entitled to development rebate in respect of capital items like coal tubs, cast iron pipes, winding and guiding ropes, etc., subject to the assessee's compliance with the requirements of law in respect of appropriate reserves. **[*116 ITR 259]***

Plant	1979	AP-HC	CIT V/s. Warner Hindustan Ltd.

The definition of **plant** in section 43(3) of the Income-tax Act, 1961, is of wide amplitude so as to take in even a well, provided that the well was dug for the purpose of carrying on the business of the assessee. **[*7 CTR 228, 117 ITR 15]***

Plant	1979	Bom-HC	CIT V/s. Bank of India Ltd.

Plant has been held to include whatever apparatus or instrument used by a businessman for carrying on his business—not his stock-in-trade which he buys or makes for sale or the place where the business is carried on; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. **[*8 CTR 230, 118 ITR 809]***

Plant	1980	All-HC	CIT V/s. Kanodia Warehousing Corporation

In order to find out if a building or structure or part thereof constitutes **plant**, the functional test must be applied. It must be seen whether the subject-matter involved, that is, the building or structure or part thereof, constitutes an apparatus or a tool of the taxpayer or whether it is merely a space where the taxpayer carries on his business. If the building or structure or part thereof is something by means of which the business activities are carried on, it would amount to a plant but where the structure plays no part in the carrying on of those activities but merely constitutes a place within which they are carried on, it cannot be regarded as a plant.

[*121 ITR 996]*

Plant	1980	Bom-HC	CIT V/s.Tata Hydro Electric Power Supply Co. Ltd.

The word **plant** in section 33 of the Income-tax Act, 1961, must be given a wide meaning. The fact that even books have been included in the definition of plant in section 43(3) shows that the meaning intended to be given to plant is wide. It is well-settled that neither the word plant nor the word machinery is confined to a self-contained unit—plant includes part of a plant, e.g., the engine in a vehicle; machinery includes part of a machinery and building includes part of a building. The word includes is often used in an interpretation clause in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, these words and phrases must be construed as comprehending not only such things as they signify, according to their nature and import, but also those things, which the interpretation clause declares, that they shall include. **[122 *ITR 288]***

Plant	1980	Del-HC	CIT V/s. National Air Products Ltd.

The word **plant** in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles like books and surgical instruments are expressly included in the definition of plant in section 43(3) of the Act. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. It would not, however, cover the stock-in-trade, that is, goods bought or made for sale by a businessman. It would also not include an article which is merely a part of the premises in which the business is carried on. An article to qualify as plant must, furthermore, have some degree of durability and that which is quickly consumed or worn out in the course of a few operations or within a short time cannot property be called plant. But an article would not be any the less plant because it is small in size or cheap in value or a large quantity thereof is consumed while being employed in carrying on business. In the ultimate analysis, the inquiry which must be made is as to what operation the apparatus performs in the assessee's business. The relevant test to be applied is: does it fulfil the function of plant in the assessee's trading activity ? Is it the tool of the taxpayer's trade ? If it is, then it is plant, no matter that it is not very long-lasting or does not contain working parts such as a machine does and plays a merely passive role in the accomplishment of the trading purpose. **[*18 CTR 300, 126 ITR 196]***

Plant	1981	P&H-HC	CIT V/s. Yamuna Cold Storage

The word **plant** includes within its ambit buildings and equipment used for manufacturing purposes. The definition of plant in section 43(3) of the Income-tax Act, 1961, is inclusive and does not exclude things normally included in it. Where a building with insulated walls is used

as a freezing chamber, though it is not machinery or part thereof, it is part of the air-conditioning plant of the cold storage and will be entitled to depreciation at 15 per cent. on its written down value. Therefore, the thermocole insulation in a cold storage is plant and is also entitled to depreciation at 15 per cent. ***[129 ITR 728]***

Plant	**1981**	**Guj-HC**	**CIT V/s. Mcgaw Ravindra Laboratories (India) Ltd.**

The word **plant** in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles like books and surgical instruments are expressly included in the definition of plant in section 43(3) of the Act. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. It would not, however, cover stock-in-trade, that is, goods bought or made for sale by a businessman. It would also not include an article which is merely a part of the premises in which the business is carried on. An article to qualify as plant must furthermore have some degree of durability and that which is quickly consumed or worn out in the course of a few operations or within a short time cannot properly be called plant. But an article would not be any the less plant because it is small in size or cheap in value or a large quantity thereof is consumed while being employed in carrying on business. In the ultimate analysis, the inquiry which must be made is as to what operation the apparatus performs in the assessee's business. The relevant test to be applied is, does it fulfil the function of plant in the trading activity ? Is it the tool of the taxpayer's trade ? If it is, then it is plant, no matter that it is not very long lasting or does not contain working parts such as a machine does and plays merely a passive role in the accomplishment of the trading purpose.

[132 ITR 401]

Plant	**1982**	**Ker-HC**	**Catalysts and Chemicals India (West Asia) Ltd. V/s. CIT**

The definition of **plant** in section 43(3) of the Income-tax Act, 1961, includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. Books would fall within the definition of plant provided they satisfied the qualification that they were tools of the business or profession. In the larger sense, sheets of paper written or unwritten brought together in a form would be a book, but in the definition of plant books are referred to in a more restricted sense, restricted by the indication of the functional use of the books. In the sense in which it is used in the Income-tax Act it must be one used for the purpose of the business or profession. In the case of a lawyer books relating to law and allied subjects would fall within the definition. In the case of a medical practitioner books relating to medicines and allied subjects would similarly fall within the definition of books. Therefore, the definition must satisfy a dual test, viz., that it should be a book in form as well as functionally.

[137 ITR 110]

Plant	**1983**	**Bom-HC**	**CIT V/s. Sandvik Asia Ltd**

Roads constructed by the assessee in the premises of the factory would not constitute **plant** as defined in section 43(3) of the Income-tax Act, 1961. They must be treated as building for purposes of section 32. ***[33 CTR 128, 144 ITR 585, 15 TAXMAN 286]***

Plant	**1985**	**Guj-HC**	**CIT V/s. Tarun Commercial Mills Ltd.**

The word **plant** includes apparatus or instruments used by a businessman in carrying on his business. The intention of the Legislature was to give a wide meaning to the term plant as it

included articles like books and surgical instruments within the term. In determining whether an article is a plant, the enquiry must be as to what operation it performs in the assessee's business and whether it fulfills the function of a plant. Air conditioners or electric fans are instruments which would advance the performance of business of the assessee. They are entitled to be included within the term plant. The part of the structural premises where the business is carried on is excluded from the purview of the plant. Office premises are no doubt part of the premises where the business is carried on. But all the fixtures and fittings in the office premises cannot be said to be part of the premises in which the business is carried on. Fixtures like air-conditioners or fans cannot be said to be part of the premises in which the business is carried on. They cannot also be considered to be office appliances. The word appliance is a qualified by the word office and, therefore, some meaning must be given to the word office and unless an appliance is capable of being primarily used in the office, it cannot be termed as office appliance. It must be, therefore, an appliance which is generally used in office as an aid or facility for the proper functioning of the office. It is difficult to lay down any formula for determining what are office appliances, but the initial test for determining the nature of the article is what is known as the test of common or popular parlance as understood by a person dealing with those articles. The second test would be the principal and primary use for which the goods are required and for which the same are capable of being used. The third test is what is known as the commercial test in seeing how the articles or goods are known in the world of trade and commence. On application of any of these tests it is difficult to agree that the electrical fans and air-conditioners would be office appliances. By no stretch of imagination in trade and commerce or in popular parlance can they be said to be office appliances or equipments. Merely because these appliances are fixed in office premises they do not become, by that fact, office appliances. They are capable of being adopted for the purposes for which they are meant, namely, for maintaining a particular bearable climatic temperature in laboratories, workshops, surgical and nursing homes and even in private residential buildings.

[38 *CTR 148, 151 ITR 75, 16 TAXMAN 18]*

Plant	**1985**	**AP-HC**	**CIT V/s. Coromandel Fertilisers Ltd.**

The term **plant** is a term of wide import. The definition in section 43(3) itself is an inclusive definition and must be given a liberal construction and not a literal construction. One of the tests to be applied to determine whether a particular item is plant or not, is to ascertain whether it is an item by which business is carried on or only an item used in carrying on the business. That determination depends upon the type of business the assessee is carrying on. The question whether roads laid by an assessee constitute plant has to be determined on the facts and circumstances of each case. It depends upon the particular situation of the roads, the use to which they were put and in particular whether they were an integral part of the factory in which the business was carried on. **[*156 ITR 283, 18 TAXMAN 411]***

Plant	**1986**	**SC**	**Scientific Engineering House (Pvt.) Ltd. V/s. CIT**

…**plant** was not necessarily confined to an apparatus which was used for mechanical operations or process or was employed in mechanical or industrial business. But in order to qualify as plant, the particular article had to have some degree of durability. The test to be applied was: Did the article fulfil the function of a plant in the assessee's trading activity ? Was it a tool of his trade with which he carried on his business ? If the answer was in the affirmative, it would be a plant . (ii) that the drawings, designs, charts, plans, processing data and other literature comprised in the documentation service as specified in clause 3 constituted a book and fell within the definition of plant in section 43(3) of the Income-tax Act, 1961. The purpose of

rendering such documentation service by supplying these documents to the appellant was to enable it to undertake its trading activity of manufacturing theodolites and microscopes and these documents had a vital function to perform in the manufacture of these instruments; in fact, it was with the aid of these complete and up-to date set of documents that the appellant was able to commence its manufacturing activity and these documents really formed the basis of the business of manufacturing the instruments in question. That by themselves these documents did not perform any mechanical operations or processes did not militate against their being a plant since they were in a sense the basis tools of the assessee's trade having a fairly enduring utility, though owing to technological advances they might or would in course of time become obsolete. The capital asset acquired by the appellant, viz., the technical know-how in the shape of drawings, designs, charts, plants, processing data and other literature, fell within the definition of plant and was, therefore, a depreciable asset.

[49 CTR 386, 157 ITR 86, 23 TAXMAN 66]

Plant	**1988**	**Raj-HC**	**CIT V/s. Jai Drinks (P.) Ltd.**

The definition of **plant** in section 43 of the Income-tax Act, 1961, is an inclusive definition and the intention of the Legislature to give it a wide meaning is evident from the fact that articles like books and surgical instruments have been expressly included in the definition of plant . This inclusive definition of plant must be understood to mean, in its ordinary sense, as including all apparatus used by a businessman for carrying on his business but not as stock-in-trade.

[68 CTR 41, 173 ITR 100, 36 TAXMAN 330]

Plant	**1988**	**Kar-HC**	**CIT V/s. Motor Industries Co. Ltd.**

The term **plant** has not been defined in the Act, though section 43(3) defines that term for the purposes enumerated in that section and other allied sections as including ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. An inclusive definition enlarges the ordinary meaning and brings into its fold what may not normally fall within its ordinary meaning. Storage tanks and bore-wells are not included in the definition of the term plant occurring in section 43(3) of the Act. Whether bore-wells and storage tanks are plant or not depends on their relation to the nature of the business carried on by an assessee. There cannot be any hard and fast rule in such matters and each case has to be decided on the facts and circumstances of that case only but with due regard to the above principle. When this test is properly applied to each case, it may turn out that in the case of one assessee, they may be plant but in the case of another they may not be plant.

[173 ITR 374]

Plant	**1989**	**P&H-HC**	**Porritts and Spencer (Asia) Ltd. V/s. CIT**

…. the books, designs and formulae constituted **plant** and the assessee was entitled to depreciation and development rebate in respect of them. ***[180 ITR 211, 47 TAXMAN 45]***

Plant	**1991**	**All-HC**	**S.K. Tulsi and Sons V/s. CIT**

In order to find out whether a building or structure or a part thereof constitutes **plant**, the functional test must be applied. If it is found that the building or structure constitutes an apparatus or a tool of the taxpayer by means of which the business activities are carried on, it would amount to plant but where the structure plays no part in the carrying on of those activities but merely constitutes a place within which they are carried on, the building cannot be regarded as a plant. ***[90 CTR 99, 187 ITR 685]***

Plant	1991	Cal-HC	Tribeni Tissues Ltd. V/s. CIT

In its ordinary sense **plant** includes whatever apparatus is used by a businessman for carrying on his business; not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. In order to decide whether a particular object is an apparatus, an enquiry has to be made as to what operation it performs. The functional test is, therefore, essential at any rate as a preliminary. In other words, the test would be: Does the article fulfil the function of plant in the assessee's trading activity ? Is it a tool of his trade with which he carries on his business? If the answer is in the affirmative, it will be plant. It is not necessary that, to constitute plant, the asset should be directly engaged in the manufacture of articles. What is properly to be regarded as plant can only be answered in the context of the particular industry concerned. **[*190 ITR 487]***

Plant	1991	Bom-HC	CIT V/s. Mazagaon Dock Ltd.

The definition in section 43 of the Income-tax Act, 1961, does not, in any way, restrict the purport and scope of the expression **plan**t. On the other hand, it widens it. The principles applicable are as follows: (1) The definition of plant in section 43(3) should be given a wide meaning as it is an inclusive definition. (2) All buildings are not plant despite the dictionary meaning which includes buildings; but a building or structure is not per se to be excluded from the ambit of the expression plant. (3) If the concrete construction or building is used as the premises or setting in which the business is carried on in contradistinction to the fulfilling of the function of a plant, the building or construction or part thereof is not considered a plant. The true test is in whether it is the means of carrying on the business or the location for so doing. (4) In order for a building or concrete structure to qualify for inclusion in the term plant, it must be established that it is impossible for the equipment to function without the particular type of structure. (5) The particular apparatus or item must be used for carrying on the assessee's business and must not be his stock-in-trade. The matter has to be considered in the context of the particular business of the assessee, e.g., books are a lawyer's plant but a bookseller's stock-in-trade. **[191 *ITR 460]***

Plant	1991	Kar-HC	CIT V/s. Electronics Research Industries Pvt. Ltd.

The definition of **plant** in section 43(3) of the Income-tax Act, 1961, is an inclusive definition as the very definition indicates that articles like books are also included in the definition of plant. Under the provisions of section 32A, the plant should be owned by the assessee and should be wholly used for the purpose of business and the purpose of the business is again a phrase of wide import. The concept of plant cannot be limited to the actual installation of machinery which produces goods by itself. Anything which is used for the purpose of business including any installation which facilitates the production or increases the efficiency of the business will be plant. **[*97 CTR 51, 192 ITR 20, 59 TAXMAN 46]***

Plant	1992	Cal-HC	CIT V/s. Oil India Ltd.

There is no definition of **plant** in the Income-tax Act, 1961; but in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business—not his stock-in-trade which he buys or makes for sale; but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. **[*198 ITR 701]***

Plant	1993	Kar-HC	Santosh Enterprises V/s. CIT

There is no definition of **plant** in the Income-tax Act, 1961; but, in its ordinary sense, it includes whatever apparatus is used by a businessman for carrying on his business, -not his stock-in-trade which he buys or makes for sale, but all goods and chattels, fixed or movable, live or dead, which he keeps for permanent employment in his business. The definition of plant is an inclusive one. The very fact that even books have been included shows that the meaning intended to be given to plant is wide. ……. the screening wall and the ceiling of the auditorium having been constructed with requisite installations so as to have a proper control of the sound effect and for the efficient screening of the films had to be treated as part of plant but no other part of the building could be included in the said term. The furniture, fittings and fixtures consisting of wooden walls including false ceiling and wooden panelling of the walls and the chairs would come within the purview of plant ……. However, the case of the chairs outside the auditorium would be different and they would not come within the definition of plant …… ***[200 ITR 353]***

Plant	1994	Cal-HC	CIT V/s. Technico Enterprise Pvt. Ltd.

The Act has defined **plant** in an inclusive manner. Conceptually speaking, anything that is a tool of trade is plant. But one thing is clear, viz., that the term tool of trade signifies close and direct connection between the tool and the assessee's trade, that is to say, the plant must be employed directly in the manufacture or production of goods, etc. If a particular item can properly be called a tool of trade, then it is plant. On the contrary, a particular item, even though called plant in popular parlance, will not be plant if it is just a part of the setting in which the trade is conducted. For example, an air-conditioner installed in the office premises of an assessee cannot be called plant ……. If, on the contrary, an air-conditioner is indispensable for the manufacture of, say, medicines, then the air-conditioner becomes the tool of the assessee's trade and can properly be regarded as plant. ***[119 CTR 25, 206 ITR36]***

Plant	1994	Kar-HC	Pathange Poultry Farm V/s. CIT

For any article or thing, component or object to be termed as **plant** …the article or component, as the case may be, must be used by the assessee as a self-contained unit and not as a part or attachment of a bigger unit. This, however, does not mean that the article or object would cease to be plant for the purpose of depreciation as a part of the bigger unit. All that it would mean is that while it may qualify for depreciation as a part or extension of the bigger plant of which it becomes a part, it would not be entitled to be termed as a plant in itself to qualify for the allowance in its own right. ***[210 ITR 668]***

Plant	1995	Bom-HC	CIT V/s. Parke Davis (India) Ltd.

Plant will mean and include apparatus used by a businessman for carrying on his business. It is not confined to apparatus used for mechanical operations or processes or industrial business. Hence, fans installed in the office premises of the assessee constituted plant which was eligible for depreciation. ***[128 CTR, 214 ITR 587]***

Plant	1997	Pat-HC	CIT V/s. Lawly Enterprises (P.) Ltd.

The principles applicable with regard to **plant** are : (1) The definition of plant in section 43(3) of the Income-tax Act, 1961, should be given a wide meaning, as it is an inclusive definition. (2) All buildings are not plant despite the dictionary meaning which includes building; but a building or structure is not per se to be excluded from the ambit of the expression plant. (3) If the concrete construction or building is used as the premises or setting, in which the

business is carried on, in contradistinction to the fulfilling of the function of a plant, the building or construction or part thereof is not considered a plant. The true test is whether it is the means of carrying on the business or the location for so doing.
(4) In order for a building or concrete structure, to qualify for inclusion in the term plant, it must be established, that it is impossible for the equipment to function without the particular type of structure.
(5) The particular apparatus or item must be used for carrying on the assessee's business and must not be his stock-in-trade. The matter has to be considered in the context of the particular business of the assessee, e.g., books are a lawyer's plant but a book seller's stock-in-trade.
[225 *ITR 154, 88 TAXMAN 320]*

Plant	**1998**	**All-HC**	**Harijan Evam Nirbal Varg Avas Nigam Ltd. V/s. CIT**

The word **plant** in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles like books and surgical equipment are expressly included in the definition of plant in section 43(3) of the Act. It includes any article or object, fixed or movable, live or dead, used by a businessman for carrying on his business. It is not necessarily confined to an apparatus which is used for mechanical operation or processing or is employed in mechanical or industrial business. It, however, does not cover the stock-in-trade or an article which is merely a part of the premises in which business is carried on. To reach a correct conclusion whether a given item is plant or not, the inquiry which must be made is as to the operation the apparatus performs in the assessee's business. The relevant test to be applied is : does it fulfil the functions of plant in the assessee's trading activities ? is it the tool of the taxpayer's trade ? If it is, then it is plant. No matter that it is not very long-lasting or does not contain working parts such as a machine does and plays merely a passive role in the accomplishment of the trading purpose. So, the main test is whether a given item is such that without it business cannot be carried on. **[*131 CTR 178, 229 ITR 776, 85 TAXMAN 456]***

Plant	**1998**	**Ker-HC**	**CIT V/s. Hotel Luciya**

Section 43(3), Income-tax Act, 1961, gives only an inclusive definition of the word **plant**. Therefore, the word plant is of wider amplitude and cannot be construed in a narrow fashion. The inclusive definition under section 43(3) is indicative of the fact that the terms building, machinery and plant are not mutually exclusive. **[*147CTR 332, 231 ITR 492, 100 TAXMAN 438]***

Plant	**1998**	**Guj-HC**	**CIT V/s. Saurashtra Bottlings Pvt. Ltd.**

….the expression **plant** has not been extensively defined and section 43(3) of the Income-tax Act, 1961, provides only an inclusive definition, which has the effect of adding items mentioned thereunder to the meaning of the word plant as understood in its ordinary sense. The word plant as defined in the Oxford English Dictionary means fixtures, implements, machinery and apparatus used in carrying on any industrial process. The word apparatus would mean the equipment needed for a particular purpose or function, and the word equipment would mean the necessary articles, etc., for a purpose. The word plant in its ordinary sense would, therefore, mean the equipment needed for a particular purpose or function. Such equipment can be any article, which may be necessary for a purpose. In the context of business, therefore, a plant would mean any equipment or article necessary for the purpose of that business. The articles or equipment which it may become doubtful to read into the plain meaning of the word plant are added to that meaning so that no doubt may arise in that regard.
[*147 CTR 115, 232 ITR 270]*

Plant	1999	Bom-HC	CIT V/s. Bharat Radiators P. Ltd.

Plant is a word of wide import. Plant would include an article or object, fixed or movable, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. The test would be : does the article fulfill the function of a plant in the assessee's trading activity ? Is it a tool of his trade with which he carries on his business ? If the answer is in the affirmative patterns and dies, and electrical installations would fall within the definition of plant. The expression installed in clause (b) of sub-section (2) of section 32A of the Income-tax Act, 1961, does not necessarily mean fixed in position. It is used in the sense of induct or introduce or placing an apparatus in position for service or use. **[1*58 CTR 519, 239 ITR 608]***

Plant	1999	Bom-HC	CIT V/s. Hoechst Dyes and Chemicals P. Ltd.

Plant as such has not been defined in the Act. Section 43(3) of the Act merely contains an inclusive definition which says that plant shall include ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession. Obviously it is an inclusive definition. Its intention is to enlarge the meaning of the expression plant occurring in the Act to include not only such items as are commonly known as plant but also those which are enumerated therein. To decide whether a particular item is plant or not, one of the tests applied is the common parlance or trade or commercial parlance test. Another test that is often applied for that purpose is the functional test. In common parlance electrical fittings, etc., are never regarded as plant. They are ordinarily described and referred to as fittings. Even applying the dictionary meaning, these items cannot be regarded as plant.

[1*57 CTR 58, 240 ITR 1, 106 TAXMAN 684]*

Plant	2002	Del-HC	CIT V/s. Hindustan Insecticides Ltd.

Section 43(3) of the Income-tax Act, 1961, defines **plant** in very wide terms. Plant would include any article or object fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant, the article must have some degree of durability.

[171 *CTR 370, 253 ITR 520, 120 TAXMAN 605]*

Plant	2005	Raj-HC	CIT V/s. R.G. Ispat Ltd.

Where a particular structure is merely helpful for carrying on the activities of the assessee it may not be a **plant** but if it is an integral part of the plant and machinery or a portion of that building is an integral part of the plant and machinery that should be considered as plant

[*186 CTR 262, 272 ITR 383, 135 TAXMAN 456]*

Plant	2005	P&H-HC	CIT V/s. Shivalik Poultries

The word **plant** is given an inclusive meaning in section 43(3) of the Income-tax Act, 1961, which nowhere includes buildings. There is a well-established distinction between the premises in which the business is carried on and the apparatus with which the business is carried on. The latter category would fall within the ambit of the phrase plant. The premises cannot be termed as plant. The building in which the business is carried on might be well suited to the business or it could have been built for the business but it would not be a plant. The suitability is the reason why the business is carried on there but it does not make it a thing with which the business is carried on. If a building is merely a setting or place to accommodate some

apparatus, it cannot be termed as plant but if it plays an important role in carrying on the business then it will fall within the definition of the term plant. It would be a plant if it is a tool of the trade with which one carried on his business. **[*274 ITR 529]***

Plant	2006	Bom-HC	Associated Bearing Co. Ltd. Vs. CIT

The word **plant** must be given a very wide meaning and it includes whatever apparatus is used by a person for carrying on his business. **[*280 ITR 452]***

Plant	2006	SC	CIT V/s. Hoogly Mills Co. Ltd.

…..no depreciation was allowable in respect of gratuity liability even if it was regarded as capital expenditure. Gratuity liability was neither building, machinery, plant or furniture nor an intangible asset of the kind mentioned in section 32(1)(ii). Even the deeming meaning given to plant in section 43(3) did not include gratuity liability. **[*203 CTR 356, 287 ITR 333]***

Plant installed	1992	Bom-HC	CIT V/s. Baker Mercer India P. Ltd.

Technical know-how constitutes plant and expenditure incurred for acquiring technical know-how is entitled to investment allowance under section 32A of the Income-tax Act, 1961. The expression **plant installed** does not necessarily mean something fixed in position, but it should be construed widely in the sense of inducted or introduced. **[*196 ITR 667]***

Point of law	1983	Gau-HC	CIT V/s. Basanta Kumar Agarwalla

A **point of law** cannot be equated with the expression question of law . The question must be a disputed or disputable question of law. The object of a reference is to get a decision from the High Court on a problematic or debatable question and not on an obvious and simple point of law, although somehow the determination is somewhere linked up with a provision of law. The meaning of the term question, in the context, means a subject or point of investigation, examination or debate, a problem, as a delicate or doubtful question. The Tribunal need not refer every point of law . The Tribunal is obliged to refer only a question of law which calls for investigation, examination, debate or when it is a dubious problem. However, if a point of law decided by the Tribunal is positive, certain, definite and sure, there is no obligation on the part of the Tribunal to refer the matter, as the point cannot be termed as a question of law. When a decision is apparently correct and there is no scope for any debate or dispute or difference, it does not fall within the expression a question of law . **[25 *CTR 117, 140 ITR 418]***

Power	1998	Mad-HC	CIT V/s. V. Saraswathi

An industrial undertaking engaged in the business of generation or distribution of electricity or any other form of power is entitled to exemption under section 5(1)(xxxii) of the Wealth-tax Act, 1957. According to the Oxford Dictionary, **power** means vigour of energy, mechanical energy as opposed to hand labour, the capacity for exerting mechanical force. It is no doubt true that power would include any form of energy as commonly understood. But, power would not include the source of power. Power can be generated through various sources. Coal, kerosene, oil and gas constitute sources of power and they would not by themselves become power or energy. If it is power, it can be directly applied to get energy and if it is fuel, it should be oxidised for getting energy. Therefore, gas which is fuel cannot be considered as power.
[142 *CTR 175, 229 ITR 82]*

Power	2004	Ker-HC	K.V. Kader Haji V/s. CIT

Power means authority to give one to another to act for him or to do some specified acts. The

expression power is not always synonymous with jurisdiction. Section 120 uses the expression jurisdiction and section 127 uses the expression power having different meaning and content. While exercising the powers under section 127 the Chief Commissioner is not exercising any jurisdiction but exercising power of transferring a case from one officer to another. Section 158BG also confers power on the Assistant Commissioner or Deputy Commissioner, as the case may be, to make block assessment. Power under section 127 has to be exercised in public interest and in the best interest so as to facilitate effective and co-ordinated investigation.
[189 *CTR 313, 268 ITR 465, 140 TAXMAN 527]*

Power to assess	**1955**	**Bom-HC**	**Navinchandra Mafatlal V/s. CIT**

The expression **power to assess** in the heading of section 23A refers to the power conferred upon the Income-tax Officer and not to the mode of assessment. **[27 *ITR 245]***

Practicable	**1978**	**Guj-HC**	**Hasanand Pinjomal V/s. CIT**

Clause (j) of rule 6DD sets out four circumstances in which the rigour of the rule contained in sub-section (3) of section 40A has to be relaxed. We are concerned in this case with one of these conditions, namely, where payment in the manner provided in section 40A(3) is not practicable. The meaning of the word **practicable** in the ordinary parlance must prevail in the context of rule 6DD(j). If the object of the enactment, namely, to relax the rigour of sub-section (3) of section 40A in genuine and bona fide cases to avoid hardship and harassment, is borne in mind, the adoption of the ordinary meaning which is quite wide would be justified, because it would advance the cause rather than defeat it. Accordingly, the word practicable in rule 6DD(j)(2) must be held to signify, as stated in the dictionary and in Corpus Juris Secundum, that which is feasible, that is to say, capable of being put into practice, done, or accomplished with the available means and resources. In determining the practicability for the purposes of rule 6DD(j)(2), regard will have to be had to the facts and circumstances of each case002E
[6 *CTR 486, 112 ITR134]*

Preferring an appeal	**1979**	**SC**	**CIT V/s. B.N. Bhattachargee**

Purpose fully interpreted, **preferring an appeal** means more than formally filing it but effectively pursuing it. **[10 *CTR 354, 118 ITR 461, 1 TAXMAN 348]***

Prejudice to the interests of the Revenue	**2003**	**AP-HC**	**CWT V/s. N.T. Rama Rao**

The expression **prejudice to the interests of the Revenue** have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue to the State has not been realised or cannot be realised. It can mean nothing else. **[182 *CTR 625, 261 ITR 611, 129 TAXMAN 430]***

Prejudicial	**1939**	**Mad-HC**	**Voora Sreeramulu Chetty V/s. CIT**

An order which dismisses an application asking for the revision of a prejudicial order must be deemed to be **prejudicial** within the meaning of section 66(2). **[*7 ITR 263]***

Prejudicial	**1940**	**Lah-HC**	**Nanhe Mal Janki Nath V/s. CIT**

The word **prejudicial** in section 33 need not have the same meaning as it has in section 66(2). In the former section it is obviously used in the narrower sense of prejudice occasioned to the assessee by the order of the Commissioner himself. **[8 *ITR 437]***

Prejudicial	1948	PC	CIT V/s. Tribune Trust

An order made by the Commissioner under section 33 can only be said to be **prejudicial to the assessee** when he is, as a result of it, in a different and worse position than that in which he was placed by the order under review. **[16 *ITR 214]***

Prejudicial to the assessee	1976	Ker-HC	K.C. Luckose V/s. ITO

The term **prejudicial to the assessee** in section 33 of the Indian Income-tax Act, 1922, corresponding to section 264(1) of the l961 Act, was explained by the Privy Council in the case of Commissioner of Income-tax V/s. Tribune Trust 16 ITR 214 -"It appears that an order made by the Commissioner under section 33 can only be said to be prejudicial to the assessee when he is, as a result of it, in a different and worse position than that in which he was placed by the order under review. As the incidence of the tax on the assessee after the order passed on revision did not certainly leave him in a worse position than what he was in prior to the revision, it cannot be said that the order of the Commissioner was prejudicial to the assessee."

[*105 ITR 418]*

Prejudicial to the interest of the revenue	1978	All-HC	Addl. CIT V/s. Saraya Distillery

….section 142 of the Act, read with section 215, indicates that at the time of regular assessment, interest has to be charged from persons who have paid advance tax on their own estimate in an amount which falls short of the assessed tax by more than 75 per cent. thereof, and the officer is not required to pass a formal order to that effect. The officer has only to calculate the interest and make a demand for it. If the officer does not calculate the interest and make a demand for it, the revenue would be deprived of the interest and that would be prejudicial to the interest of the revenue. The words **prejudicial to the interest of the revenue** must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been fixed or cannot be realised. **[7*CTR 382, 115 ITR 34]***

Prejudicial to the interest of the revenue	1992	Ker-HC	Malabar Industrial Co. Ltd. V/s. CIT

The words **prejudicial to the interests of the Revenue** are of wide import and they should not be limited to a case where the order passed by the Income-tax Officer can be considered to be one prejudicial to the Revenue administration as such. The question whether an order of the Income-tax Officer is prejudicial to the interests of the Revenue would depend upon the facts of each case and there can be no universal formula applicable to finding out any such prejudicial error. **[*198 ITR 611, 62 TAXMAN 25]***

Prejudicial to the interest of the revenue	1995	Guj-HC	CIT V/s. Minalben S. Parikh

What is meant by the words **prejudicial to the interests of the Revenue** has not been defined. However, giving the ordinary meaning to the words used in the statute, they must mean that the orders under consideration are such as are not in accordance with law and, in consequence whereof, the lawful revenue due to the State has not been realised or cannot be realised. The well settled principle in considering the question as to whether an order is prejudicial to the interests of the Revenue or not is to address oneself to the question whether the legitimate revenue due to the exchequer has been realised or not or can be realised or not if the orders under consideration are allowed to stand. For arriving at this conclusion, it becomes

necessary and relevant to consider whether the income in respect of which tax is to be realised has been subjected to tax or not or if it is subjected to tax, whether it has been subjected to tax at the rate at which it could yield the maximum revenue in accordance with law or not. If the income in question has been taxed and legitimate revenue due in respect of that income had been realised, though as a result of an erroneous order having been made in that respect, the Commissioner cannot exercise the powers for revising the order under section 263 merely on the basis that the order under consideration is erroneous. If the material in that regard is available on the record of the assessee concerned, the Commissioner cannot exercise his powers by ignoring that material which links the income concerned with the tax realisation made thereon. The two questions are inter-linked and the authority exercising the powers under section 263 is under an obligation to consider the entire material about the existence of income and the tax which is realisable in accordance with law and further what tax has in fact been realised under the assessment orders. **[*215 ITR 81]***

Prejudicial to the interests of the revenue	**2003**	**Guj-HC**	**CIT V/s. Arvind Jewellers**

The phrase **prejudicial to the interests of the Revenue** has to be read in conjunction with an erroneous order passed by the Assessing Officer and every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. When an Assessing Officer adopts one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law. **[177 *CTR 546, 259 ITR 502, 124 TAXMAN 615]***

Prejudicial to the interests of the revenue	**2006**	**Cal-HC**	**Simplex Concrete Piles (India) P. Ltd. V/s. CIT**

The provisions of section 263 of the Income-tax Act, 1961, cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer. It is only when an order is erroneous that the section will apply and an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. If due to the erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully it will be **prejudicial to the interests of the Revenue**. The phrase prejudicial to the interests of the Revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the Revenue. **[*261 ITR 611*]**

Premium	**2003**	**Ker-HC**	**Baby Marine (Eastern) Exports V/s. ACIT**

Bruton's Legal Theasaurus defines **premium** as a noun as under : Bruton's Legal Theasaurus defines "premium" as a noun as under :

"Amount over par, bonus, bounty, charge, beyond normal, charge to excess, excessive charge, extra, incentive, increased value, overcharge, prize."

Collins Cobuild English Language Dictionary more graphically defines "premium" to mean as under :

"A premium is a sum of money that is added to something, for example to someone's earnings or to the price of goods, in order to encourage people to work hard or to produce the goods."

Likewise, we may advert to other dictionaries as well. As for instance in Black's Law Dictionary "premium" is defined as :

"A reward for an act done. Brown v. Board of Police Commissioner's of City of Los Angeles (58 Cal. App. 2d 473, 136 p.2d 617, 619). See also Bonus.
A bounty or bonus; a consideration given to invite a loan or a bargain, as the consideration paid to the assignor by the assignee of a lease, or to the transferer by the transferee of shares of stock, etc. So stock is said to be 'at a premium' when its market price exceeds its nominal or face value. The excess of issue (or market) price over par value. See Par."

[184 *CTR 151, 262 ITR 88, 131 TAXMAN 546]*

Prescribed	**1991**	**MP-HC**	**Suresh Deole V/s. Chief CIT**

A perusal of section 34AB of the Wealth-tax Act, 1957, makes it clear that power rests with the authorities to prescribe different qualifications for valuers of different classes of assets, and, therefore, a person who possesses the qualifications as prescribed can be registered as a valuer. Now, the word **prescribed** should always be construed to mean prescribed by rules by the rule-making authority. When the Legislature uses the word prescribed in an enactment, it is always a normal expression for conferring power on the executive to make rules.

[91 *CTR 178, 188 ITR 741, 61 TAXMAN 240]*

Presumption	**2006**	**SC**	**P.R. Metrani Vs. CIT**

A **presumption** is an inference of fact drawn from other known or proved facts. It is a rule of law under which courts are authorized to draw a particular inference from a particular fact. It is of three types, (i) may presume, (ii) shall presume and (iii) conclusive proof.

[203 *CTR 290,* 287 *ITR 209, 155 TAXMAN 186]*

Previous year	**2002**	**Mad-HC**	**Parry Agro Industries Ltd. V/s. State of T. N.**

The term **previous year** is now defined as : previous year means twelve months ending on the 31st day of March of next preceding the year for which the assessment is to be made.

[176 *CTR 314, 255 ITR 194]*

Previous year	**2002**	**Mad-HC**	**CIT V/s. Fab Exports (P.) Ltd.**

The reference to **previous year** in sub-section (2), in the context, can only refer to every previous year in which the assessee seeks to carry forward the loss and other adjustable sums.

[176 *CTR 129, 258 ITR 56, 131 TAXMAN 790]*

Previously used for any purpose	**1985**	**Raj-HC**	**Kanhiyalal Rameshwar Das V/s. CIT**

The words **previously used for any purpose** are wide enough and cover all old and used machinery, no matter who used such machinery previously and from which source it was acquired. There is no justification for reading into sub-section 4(ii), the words by the assessee himself after the last word purpose occurring therein. Had sub-section 4(ii) been intended to mean that machinery previously used by a person other than the assessee, if acquired by the assessee for his new business would qualify for tax relief, the Legislature would not have felt the necessity of inserting Explanation 1, for this Explanation has obviously been inserted by way of an exception to sub-section 4(ii) to provide tax relief to an assessee who acquires old machinery from another person who had used it outside India. **[156 *ITR 463, 22 TAXMAN 455]***

Prima facie case	**1991**	**P&H-HC**	**ITO V/s. Emerson Paul Plastic Company**

A **prima facie case** is not made out where the evidence is totally unworthy of credit or the

same is patently absurd or inherently improbable. It is not possible to define the expression prima facie case because it will vary from case to case. The standard of test, proof and judgment which are to be applied finally before finding the accused guilty or otherwise is not exactly to be applied. At this stage, even a very strong suspicion founded upon materials before the Magistrate which lead him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of a charge. In determining whether a prima facie case had been made out, the evidence of the witnesses is entitled to a reasonable degree of credit. **[191 *ITR 560]***

Proceedings	**2001**	**Cal-HC**	**Keshab Narayan Banerjee V/s. CIT**

Since **proceeding** has not been qualified in section 263, it cannot exclude any proceeding and cannot be confined only to mean a proceeding for assessment by the Income-tax Officer. **[173 *CTR 61, 252 ITR 888, 125 TAXMAN 299]***

Proceedings for the assessment	**1966**	**Cal-HC**	**Kalawati Devi Harlalka V/s. CIT**

The expression **proceedings for the assessment** in section 297(2)(a) has a wide connotation and embraces within its scope the various proceedings relating to assessment as envisaged in Chapter IV of the Act of 1922 including proceedings by way of appeal, reference and revision in a case where the return of income has been filed before the commencement of the Act of 1961. Clause (c) of section 297(2) does not restrict the scope of clause (a) to proceeding for original assessment. **[*62 ITR 544]***

Process	**1995**	**Bom-HC**	**CIT V/s. Ravi Ratna Exporters**

Every **process** does not amount to manufacture of articles or goods. In order to constitute manufacture, as a result of the processing of a commodity, a commercially different and distinct commodity should emerge. The test to be applied is whether the commodity subjected to the process can no longer be regarded as the original commodity but is recognised in the trade as a new and distinct commodity. **[212 *ITR 588]***

Process	**1995**	**Guj-HC**	**CIT V/s. Ashwinkumar Gordhanbhai and Bros. Pvt. Ltd.**

There is no statutory definition of term **process** in the Income-tax Act. The plain dictionary meaning of the term is to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking. **[212 *ITR 614]***

Processing	**1984**	**Cal-HC**	**G.A. Renderian Ltd. V/s. CIT**

The word **processing** used in the definition of industrial company in section 2(7)(c) of Finance Act, 1978, has not been defined in the I. T. Act, 1961, and it must, therefore, be interpreted according to its own natural meaning. Websters' Dictionary gives the following meaning of the word process: to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking . Where, therefore, any commodity is subjected to a process or treatment with a view to its development or preparation for the market, as, for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity. The nature and extent of processing may vary from case to

case; in one case the processing may be slight and in a another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. The question is not whether there is manual application of energy; or there is application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing .

[*32 CTR 318, 145 ITR 387, 12 TAXMAN 160]*

Processing	**1985**	**Kar-HC**	**Koshy's P. Ltd. Vs.CIT**

The word **processing** has in one sense a wider meaning than the term manufacture. At some point, processing and manufacturing may merge, but where the commodity retains its substantial identity through the processing stage, it will be said to have been processed and not manufactured. In a manufacture, a commodity undergoes a change as a result of some operation. It should be so transformed as to lose its original character. A manufacture may involve several processes but the ultimate product that emerges can no longer be regarded as the original commodity, but is a new and distinct commodity. Whenever a commodity undergoes a change as a result of some operation performed on it such operation would amount to processing of the commodity. It is immaterial whether there is manual application of energy or mechanical force is employed. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation is processing or manufacture. **[*154 ITR 53]***

Processing	**1985**	**Kar-HC**	**CIT V/s. Datacons (P.) Ltd.**

The word **processing** has not been defined and must, therefore, be interpreted according to its plain natural meaning. According to the dictionary meaning of the term, where any commodity is subjected to a process or treatment with a view to its development or preparation for the market, as for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity. The nature and extent of processing may vary from case to case; in one case, the processing may be slight and in another, it may be extensive; but with each process suffered, the commodity would undergo a change.

[47 *CTR 162, 155 ITR 66, 21 TAXMAN 341*]

Processing	**1985**	**Del-HC**	**Delhi Cold Storage (P.) Ltd. V/s. CIT**

What is necessary in order to characterise an operation as **processing** is that the commodity must, as a result of the operation, experience some change. Keeping of goods in a cold storage plant does not bring about any change, whatsoever, in the goods stored therein. On the contrary, they are kept intact, in the same nature and form in which they are originally stored. Hence, running of a cold storage plant does not involve the processing of goods stored therein.

[*45 CTR 24, 156 ITR 97, 19 TAXMAN 412]*

Processing	**1987**	**Guj-HC**	**CIT V/s. Kutch Oil and Allied Industries Pvt. Ltd.**

Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to **processing.** **[50 *CTR 237, 163 ITR 237]***

Processing	1991	Bom-HC	CIT V/s. Ahmed A. Fazalbhoy (P.) Ltd.

What is necessary in order to characterise an operation as **processing** is that the commodity must, as a result of the operation, experience some change. However, the nature and extent of processing may vary from case to case; in one case, the processing may be slight and in another it may be exclusive; but, with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. **[189 *ITR 663]***

Processing	1991	SC	Delhi Cold Storage P. Ltd. V/s. CIT

In common parlance, **processing** is understood as an action which brings forth some change or alteration of the goods or material subjected to the act of processing. **[191 *ITR 656]***

Processing	1992	Cal-HC	CIT V/s. S.P. Jaiswal Estates (P.) Ltd.

Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to **processing** of the commodity. The nature and extent of the change is not material. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing. **[*196 ITR 179]***

Processing	1996	Mad-HC	Chillies Export House Ltd. V/s. CIT

Processing is a continuous and regular action or succession of actions leading to the accomplishment of some results. **[*140 CTR 9, 220 ITR 411]***

Processing	1997	Pat-HC	North Koel Kendu Leaves and Mahulam Leaves V/s. Union of India

The word **processing** has been used in different contexts in different Acts. The said word is of wide amplitude. It has various shades of meaning and it has been interpreted in different ways under various enactments. The word processing has not been defined under the Act. The Supreme Court has laid down in Chowgule V/s. Union of India 47 STC 124 that wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material.*(Section 206C)* **[228 *ITR 630, 100 TAXMAN 172]***

Processing	1998	MP-HC	Natwarlal V/s. Union of India

Tendu leaves are natural forest produce. The general features of trade in tendu leaves consist of the purchase of tendu forest units from the State Governments and thereafter by processing the tendu leaves they are marketed. The business of processing of tendu leaves comprises obtaining the rights of collection and purchase of raw tendu leaves from the concerned forest department. There are other processes undertaken like collection of tendu leaves, pruning, prevention of diseases, plucking of green leaves, arrangements of pudas at collection centres, drying the same by solar energy, classification/gradation of bidi leaves, putting them in the bags and thereafter their transportation. These activities do not amount to **processing** of tendu leaves within the meaning of section 206C of the Income-tax Act, 1961.

[*151 CTR 644, 233 ITR 490, 102 TAXMAN 49]*

Processing, manufacture and production	1995	Bom-HC	CIT V/s. Sterling Foods (Goa)

The three expressions **processing, manufacture and production** used in various taxing statutes, are not inter-changeable expressions. Though often used in juxtaposition, they convey different concepts and refer to different activities. Processing is a much wider concept. The nature and extent of processing may vary from case to case. Every process does not tantamount to manufacture. It is only when the process results in the emergence of a new and different article having a distinctive name, character or use, that manufacture can be said to have taken place. Similarly, production is wider than manufacture. As a result, every production need not amount to manufacture though every manufacture can be characterised as production. On a careful reading of section 80HH of the Income-tax Act, 1961, in the light of the scheme thereof and other provisions of the Act, it is clear that the Legislature intended to extend the benefit of deduction under section 80HH only to the industrial undertakings which manufacture or produce articles. This section was not intended to be applied to industrial undertakings which are engaged in processing of goods not amounting to manufacture or production of articles.

[*213 ITR 851, 79 TAXMAN 381]*

Processing and production	1987	Cal-HC	S.B. Cold Storage and Industries P. Ltd. V/s. CIT

The expressions **processing and production** are not identical. The Legislature in different statutes has used the said expressions in different contexts and has made a distinction between the two. Section 32A of the income-tax Act, 1961, lays down that there should be manufacture or production of an article or thing. An assessee which stores potatoes in its cold storage plant carries out an operation of processing within the meaning of the said expression as understood in legal parlance. The object of putting the goods in cold storage is mainly to preserve their original condition and not to produce any thing new. By such preservation no new article is brought into existence. It also cannot be said that by reason of such processing, something which was not marketable to start with becomes marketable.

[59 *CTR 235, 166 ITR 646, 30 TAXMAN 418]*

Processing of goods	1981	Del-HC	Addl. CIT V/s. Kalsi Tyre P. Ltd

The expression **processing of goods** used in section 2(6)(d) of the Finance Act, 1968, refers to a wide category of activities. The expression means the subjection of the goods to some special process or treatment. It may be for the purpose of manufacture, for the purpose of development, for preparation for the market or for conversion into marketable form such as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasturizing and fruits and vegetables by sorting and repacking. **[131 *ITR 636]***

Processing of goods	1982	Cal-HC	CIT V/s. Radhey Mohan Narain

In the **processing of goods** the original article need not lose its identity altogether but some changes are brought into it. When a cloth is dyed, printed and cut into pieces, the original identity of the cloth is not lost but a change is brought about as a result of going through the different processes and the end product is different from the feed-in material. **[*135 ITR 372]***

Processing of goods	1985	Bom-HC	CIT V/s. Oricon P. Ltd.

In respect of **processing of goods**, it is not necessary that all the processes resulting in the end product must be carried out by the assessee himself. If an assessee has done some

process which ultimately has brought about the end product, such an assessee will be an industrial company entitled to the concessional rate of tax.

[*38 CTR 212, 151 ITR 296, 16 TAXMAN 100*]

Produce	**1988**	**AP-HC**	**CIT V/s. Sri Venkateswara Hatcheries (P.) Ltd.**

The word **produce** as used in ordinary parlance and its dictionary meaning shows that in the case of the word, no distinction is made between animate and inanimate objects. Even if a living object is brought forth by human effort, it can be said to have been produced.

[71 *CTR 80, 174 ITR 231, 39 TAXMAN 279]*

Produce	**2002**	**Ker-HC**	**CIT V/s. Vijaya Retreaders**

The word **produce** means bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all by-products, intermediate products and residual products which emerge in the course of manufacture of goods. The next word to be considered is articles. The word is not defined in the Act or the Rules. It must, therefore, be understood in its normal connotation-the sense in which it is understood in the commercial world. It is equally well to keep in mind the context since a word takes its colour from the context. The word articles is preceded by the words manufactures or produces.

[*170 CTR 307, 253 ITR 53, 119 TAXMAN 395]*

Production	**1993**	**Cal-HC**	**CIT V/s. Shaw Wallace and Co. Ltd.**

The word **production** has not been defined in the Act. The expression production of an article means, among other things, that which is produced, a thing that results from any action, process or effort, a product, a product of human activity or effort. The word manufacture has also not been defined in the Act. The expression manufacture is generally understood to mean bringing into existence a new substance and does not mean merely to produce some change in a substance. **[*201 ITR 17]***

Production	**2000**	**Ker-HC**	**CIT V/s. Ceo Tech Foundations and Constructions**

The word **production** has a wider connotation than the word manufacture. While every manufacture can be characterised as production, every production need not amount to manufacture. The expressions manufacture and produce are normally associated with movables articles and goods but they are never employed to denote construction activity of the nature involved in construction of a dam or a building. The word article is not defined in the Income-tax Act, 1961, or the Income-tax Rules, 1962. It must, therefore, be understood in its normal connotation, i.e., the sense in which it is understood in the commercial world. It is equally well-settled that a word takes its colour from its context.

[158 *CTR 586, 241 ITR 90, 128 TAXMAN 253]*

Production	**2005**	**SC**	**CIT V/s. Sesa Goa Ltd.**

Extraction and processing of mineral ore amounts to **production** within the meaning of the word in section 32A(2)(b)(iii) of the Income-tax Act, 1961.

[192 *CTR 577, 271 ITR 331, 142 TAXMAN 16]*

Production	**2006**	**All-HC**	**CIT V/s. Jansons and Co.**

The word **production** has a wider connotation than the word manufacture. While every

manufacture can be characterised as production, every production need not amount to manufacture. **[*202 CTR 528, 283 ITR 175, 152 TAXMAN 59]***

Production and manufacturing process	2006	Cal-HC	Simplex Concrete Piles (India) P. Ltd. V/s. CIT

…… **production and manufacturing process** means putting in raw materials and emergence of a new thing. **[206 *CTR 219, 286 ITR 470]***

Production of mineral	1996	AP-HC	CIT V/s. Singareni Collieries Co. Ltd.

The expression produce used in section 32A of the Income-tax Act, 1961, must be understood in its normal connotation and according to commercial usage. The word production has a wider connotation than the word manufacture. While every manufacture can be characterised as production, every production need not amount to manufacture. The activity of winning or excavating the coal from the mines can be aptly described as production activity. The expression **production of mineral** is used in the allied provision of the Act (section 35E) and this is a definite pointer that Parliament employed the expression production to the minerals extracted from underneath the surface. **[*221 ITR 48]***

Production or produce	1999	Mad-HC	CIT V/s. Madurai Pandian Engineering Corp. Ltd.

The word **production** or produce has been used in section 80HH of the Income-tax Act, 1961, in juxtaposition with the word manufacture and it would take in bringing into existence new goods by a process which may or may not amount to manufacture. The article referred to in the section, therefore, has reference to new articles and brought into existence by a process of manufacture or by any other mode, which can be regarded as production. The resultant article whether it is by manufacture or by way of production must be a new article. The term new is not found in the section. It must be held to be implicit in the word manufacture. Having regard to the fact that the word production or the word produce is used in juxtaposition with the word manufacture these terms also must be regarded as referring to production, which brings into existence a new article. **[239 *ITR 375]***

Profession	1995	Raj-HC	CIT V/s. Bhagwan Broker Agency

The word **profession** has been defined in section 2(36) to include vocation, which refers to a way of living and not necessarily a course of activity indulged in, for earning one's livelihood or making any income. Business is a term with a wider import than profession. All professions are businesses but all businesses are not professions. There should be some special qualification of a person apart from skill and ability, which is required in carrying on any activity which could be considered as profession. This could be by having education in a particular system either in a college or university or it may be even by experience. In the case of a broker, the activities are carried on either under a written agreement or even verbal agreement in respect of different constituents and the activities, therefore, would amount to business. **[*212 ITR 133]***

Profession	2000	Mad-HC	CIT V/s. International Clearing and Shipping Agency

The distinguishing feature of a **profession** is the possession by the practitioner of the profession of specialised knowledge involving intellectual skill and higher education and learning. The services rendered by a professional while practising the profession, are services for which he has been trained. The practice of a profession cannot be regarded as a commercial activity

though the practice is not without compensation or profit. The compensation earned by the practitioner of a profession is by reason of the personal qualification possessed by him.....assistance rendered by the clearing and shipping agent to those who import or export, by attending to the documentation and ensuring the clearance of goods cannot be regarded as a profession based on intellectual attainment or personal service rendered on account of possession of specialised skill and knowledge based on higher learning and intellectual skill. **[*158 CTR 672, 241 ITR 172, 118 TAXMAN 730]***

Profession, vocation or occupation	1968	All-HC	B. Malick V/s. CIT

Section 4(3)(vii) of the Act obviously refers to an exercise of something more than and distinct from the faculties of the assessee. The use of faculties of the assessee must be so directed and bear such a character as to give the assessee a **profession, vocation, or occupation**. An activity of the assessee, before the assessee has actually acquired a profession, vocation, or occupation, either by a habitual pursuit of the activity or by engaging in it as a result of a design to pursue an occupation, cannot be considered the exercise of a profession or occupation. The activity of the assessee, however, disorganised or irregular or desultory, must assume or acquire the form of or flow from an occupation before the resulting income becomes taxable under the provisions of section 4(3)(vii) of the Act. Whether it has assumed that character or not will be a question of fact, which could only be determined by taking the intention with which, the number of times on which, and the whole set of attendant circumstances in which an activity, which may produce some monetary gain, is carried on. In every case, however, it is the exercise of a profession, vocation or occupation by an assessee which has to be established and not the mere use of the faculties or energies of an assessee which may result in an income. **[67 *ITR 616]***

Profit	1963	Cal-HC	CIT V/s. Mugneeram Bangur and Co.

For the purpose of income-tax, a transaction must be looked at from a commercial point of view and in trying to determine whether a certain transaction resulted in profits, we must come to a conclusion that the transaction resulted in real **profits**, profits which from the commercial point of view meant a gain to the person who entered into the transaction, not profits from any narrow, technical or legalistic point of view. **[*47 ITR 565]***

Profit	2005	Ker-HC	CIT V/s. A.M. Moosa, Bharath Sea Foods

The word **profit** has to be given its natural meaning. The profit mentioned in the proviso is clearly a profit and not loss. When there is no difficulty in understanding the word used in the statute, it is not necessary to find out the nature of the provisions.

[191 *CTR 441, 272 ITR 29, 141 TAXMAN 99]*

Profit in lieu of salary	1985	AP-HC	Krishna Murthy (M.) V/s. CIT

The receipt which is in the nature of addition to the remuneration of the employee and not a casual and non-recurring receipt, which is exempt from tax under section 10(3). It is a **profit in lieu of salary** within the meaning of section 17(3)(ii). **[75 *CTR 36, 152 ITR 163]***

Profits	1992	Raj-HC	Jaipur Udhyog Ltd. V/s. CIT

Section 84 of the Income-tax Act, 1961, is similar to section 15C of the Indian Income-tax Act, 1922. Rule 19 of the Income-tax Rules, 1962, seeks to give effect to the provision of section 84 and so the term **profits** in rule 19(5) must have the same meaning as in section 84. The term profits has to be construed to mean taxable profits, i.e., profits arrived at in accordance

with the provisions of the Act, i.e., after deducting the depreciation permissible under the Act, and, therefore, the amount of depreciation cannot be added back for the purposes of determining the profit under rule 19(5). ***[198 ITR 282]***

Profit	**1950**	**Bom-HC**	**Devkaran Nanjee Banking Co. Ltd. V/s. CEPT**

The word **profits** used in rule 5 of Schedule II must be construed to mean statutory profits as defined in section 2(19) of the Act. It cannot mean book profits or actual profits. ***[18 ITR 47]***

Profit	**2004**	**SC**	**IPCA Laboratory Ltd. V/s. Deputy CIT**

The word **profit** in sub-sections (1) and (3)(a) and (b) of section 80HHC means a positive profit. In other words, if there is a loss then no deduction would be available under sub-section (1) or sub-section (3)(a) or sub-section (3)(b). In arriving at the figure of positive profit, both the profits and the losses will have to be considered. If the net figure is a positive profit then the assessee will be entitled to deduction; if the net figure is a loss then the assessee will not be entitled to deduction. **[187** ***CTR 513, 266 ITR 521, 135 TAXMAN 594]***

Profits	**2006**	**SC**	**ITO V/s. Induflex Products P. Ltd.**

The expression **profits** used in the section connotes positive profit. It is a profit earned from the business of export of goods alone which can be the subject matter of exemption thereunder. A fortiori, if a profit is not earned, the question of claiming exemption under that section would not arise. **[199** ***CTR 712, 280 ITR 1, 149 TAXMAN 687]***

Profits and gains	**1949**	**Cal-HC**	**Kilburn Properties Ltd. V/s. CIT**

The words **profits and gains** in section 23A(1) of the Indian Income-tax Act, 1922 should not be given the limited meaning of profits and gains of business. They also include income derived from property assessable under section 9 of the Act…… .Consequently the provisions of section 23A(1) can be applied to a company even if its entire income is derived from property assessable under section 9 of the Act. **[17** ***ITR 134]***

Profits in lieu of salary	**2005**	**Kar-HC**	**CIT V/s. P. Surendra Prabhu**

Profits in lieu of salary would mean a gain or advantage that the assessee would receive instead of or in place of salary. The Legislature again uses the expression includes immediately after the expression profits in lieu of salary to include any amount of compensation due or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of the terms and conditions relating thereto. ***[198 CTR 209, 279 ITR 402, 149 TAXMAN 82]***

Profits whichever is greater	**1954**	**Bom-HC**	**Zenith Assurance Co. Ltd. V/s. CIT**

The expression profits and gains in rule 2 of the Schedule to the Indian Income-tax Act, 1922, covers not only profits and gains of the business but also losses of that business. Rule 2 plus profits and gains of life insurance business on the same footing as the losses of life insurance business and the mode of computation for both is the same. It is either under sub-clause (a) or sub-clause (b), whichever is the greater.The expression **whichever is the greater** is used by the Legislature in order that advantage should ensue to the revenue by computing the profits and gains or losses under sub-clause (a) or sub-clause (b). The option is left to the taxing department and it can avail itself of the option from the point of view of benefit to the revenue. **[26** ***ITR 256]***

Property	1957	SC	CIT V/s. J.K. Trust

Property is a term of the widest import, and subject to any limitation or qualification which the context might require, it signifies every possible interest which a person can acquire, hold and enjoy. Business would undoubtedly be property, unless there is something to the contrary in the enactment. There is nothing in section 4(3)(i) of the Income-tax Act, 1922, which restricts in any manner the normal and accepted meaning of the word property and excludes business from its connotation. Business would, therefore, be property for the purposes of section 4(3)(i). The managing agency of a company is business and is property for the purposes of section 4(3)(i). **[32 *ITR 535]***

Property	1960	Bom-HC	Dharma Vijaya Agency V/s. CIT

Property is a term of widest import and, subject to any limitation or qualification which the context may require, signifies every possible interest which a person can acquire, hold and enjoy. **[38 *ITR 392]***

Property	1974	All-HC	CWT V/s. Rani Kaniz Abid

Property is a term of the widest import and subject to any limitation which the context may require, it signifies every possible interest which a person can hold or enjoy. Therefore, excluding the exceptions enumerated in the Act, all movable and immovable property, no matter of what description, is an asset for purposes of the Wealth-tax Act. Ordinarily, property includes the right to transfer it but because of the peculiar incidents of a property or because of statutory or contractual restrictions that right may be abridged or excluded altogether. Nonetheless, what remains would still be property. Section 7 is merely concerned with the mode of valuing an asset and does not indicate what is an asset for purposes of charge to wealth-tax.The right to remuneration granted to a mutawalli under a wakf deed is not transferable. Nevertheless, it is an asset under section 2(e) and assessable as such to wealth-tax. **[93 *ITR 332]***

Property	1980	Bom-HC	CIT V/s. Tata Services Ltd.

Under section 2(14) of the Income-tax Act, 1961, a capital asset means property of any kind held by an assessee, whether or not connected with his business or profession. The word **property** used in section 2(14) of the Act is a word of the widest amplitude and the definition has re-emphasised this by the use of the words of any kind. Any right which can be called property will be included in the definition of capital asset. A contract for sale of land is capable of specific performance. It is also assignable. Therefore, a right to obtain conveyance of immovable property is clearly property as contemplated by section 2(14)…. **[122 *ITR594]***

Property	1988	SC	CWT V/s. Arvind Narottam

It is true that the expression **property** must bear a comprehensive sense; but there must be a right, present or contingent, before it can be said that the assessee has an interest in property. **[72 *CTR 94, 173 ITR 479, 39 TAXMAN 368]***

Property	1992	Mad-HC	M.K. Mathivathanan Vs. ITO

…the word **property** is used in the Indian Penal Code in a much wider sense than the expression movable property. The word property in a particular section covers only that type of property with respect to which the offence contemplated in that section can be committed. It is not necessary that a false pretence should be made in express words, but may be inferred from circumstances, including the conduct of the accused. **[194 *ITR 503]***

Property	1995	Bom-HC	CWT V/s. Vidur V. Patel

The meaning of **property** is well-settled that it is a term of the widest import and, subject to any limitation which the context may require, it signifies every possible interest which a person can hold or enjoy. **[208 *ITR 541]***

Property	2005	All-HC	CWT V/s. Narendra Kumar Gupta

Property is a term of the widest import and subject to any limitation which the context may require, it signifies every possible interest which a person clearly holds and enjoys. There is no justification or reason to give any restricted meaning to the word asset as defined by section 2(e) of the Wealth-tax Act, 1957, when the language employed shows that it was intended to include property of every description. Merely because an item of expenditure is 100 per cent. allowable under the Income-tax Act while computing the income that does not automatically mean that such item ceases to be an asset or that it has no value. It will still remain an asset and will have some market value which in appropriate cases may be brought to tax under the provisions of the Wealth-tax Act. **[124 *CTR 343, 215 ITR 30, 79 TAXMAN 289]***

Property of which he is owner	1941	PC	CIT V/s. Dewan Bahadur Dewan Krishna Kishore

The words **property of which he is the owner** in section 9 of the Act cannot be read as meaning of which annual value he is the owner. **[9 *ITR 695]***

Property passed on the death the...	1986	AP-HC	Nawab Mir Barkat Ali Khan of Bahadur V/s. CED

In determining whether a particular **property passed on the death of the deceased**, one has to see whether the deceased had any beneficial interest in that property and whether that interest passed to someone on his death. **[47 *CTR 229, 158 ITR 259, 22 TAXMAN 180]***

Provided credit facility	1978	All-HC	Addl. CIT V/s. U.P. Co-operative Cane Union

The expression **providing credit facilities** in section 81(i)(a) of the Income-tax Act 1961 takes its colour from the preceding expression viz. business of banking. In order that banking or providing of credit facilities may constitute a business it is necessary that these activities must be the chief source of income. A trader may earn interest from his customers to whom goods are supplied on credit but that is only incidental to the main business he carries on. The intention of the Legislature is to grant exemption to the income of co-operative societies engaged in the business enumerated in clauses (a) to (f) of section 81(i). These are the only kinds of business which are exempt. To hold that a co-operative society which sells goods on credit to its members is engaged in the business of providing credit facilities would amount to extending the exemption to businesses other than those mentioned in clauses (a) to (f) of section 81(i) of the Act. **[*114 ITR 70]***

Providing credit facilities	1980	All-HC	CIT V/s. U.P. Co-op. Cane Union Federation Ltd.

The expression **providing credit facilities** in section 80P(2)(a)(i) of the Income-tax Act, 1961, would comprehend the business of lending money on interest. It would also comprehend the business of lending services on profit for guaranteeing payments, because guaranteeing payment is as much a part of banking business for affording credit facility as advancing loans.
[*9 CTR 160, 122 ITR 913]*

Providing credit facilities	1982	Mad-HC	Rodier Mill Employees' Co-op. Stores Ltd. V/s. CIT

The expression **providing credit facilities** in section 80P(2)(a)(i) cannot include the mere sale of goods on credit by an out-and-out consumer co-operative society. **[*135 ITR 355]***

Providing credit facilities	1993	Raj-HC	CIT V/s. Co-op. Supply and Commission Shop Ltd.

In order to constitute the business of banking, it is necessary that these activities must be the main source of income of the society. It is equally true that the words which are used in one particular clause have to be given the same colour and understood as forming part of one genus of which they may be different species. The words **providing credit facilities** would, therefore, have to be interpreted to comprehend the business of lending services of credit facilities in connection with the business of banking. **[*204 ITR 713]***

Providing credit facility	1988	Ker-HC	Kerala Co-op.Consumers' Federation Ltd. V/s. CIT

The words **providing credit facilities**, occurring in section 80P(2)(a)(i) of the Income-tax Act, 1961, should be construed as similar to, or akin to the carrying on the business of banking, the preceding clause in the same subsection. The words providing credit facilities to its members means providing credit by way of loans and not selling goods on credit.

[*67 CTR 73, 170 ITR 455, 35 TAXMAN 441]*

Provision	1980	Del-HC	CIT V/s. Orissa Cement Ltd.

In the definition of **provision** enunciated by the Supreme Court in Metal Box Co.'s case 73 ITR 53 viz., that if any amount is retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy it would amount to a provision and not reserve, the expression known liability, in the context of the Super Profits Tax Act, should be taken to refer only to a liability existing on the relevant date and not a future liability. So long as the assessee has not estimated the current liability and set it apart or charged it to the current year and claimed a deduction therefore for purposes of income-tax, it cannot be said that a provision has been made by it towards an existing liability. **[*124 ITR 251]***

Provision	1986	Cal-HC	CIT V/s. Gramophone Co. of India Ltd.

Though the term **provision** is defined positively by specifying what it means, the definition of reserve is negative in form and not exhaustive in the sense that it only specifies certain amounts which are not to be included in the term reserve. There could be no dispute about the principle that if provision for a known or existing liability is made in excess of the amount that would be reasonably necessary for the purpose, the excess shall have to be treated as a reserve and, therefore, would be includible in the capital computation. The question whether the concerned amounts in fact constituted reserves or not will have to be decided by having regard to the true nature and character of the sums so appropriated depending on the surrounding circumstances particularly the intention with which and the purpose for which such appropriations had been made. **[52 *CTR 316, 162 ITR 725, 26 TAXMAN 250]***

Provision made by the assessee	1985	SC	Shree Sajjan Mills Ltd. V/s. CIT

The expression **provision made by the assessee** is not used in any artificial sense, e.g., of setting apart specifically by the assessee for meeting the liability for gratuity his in account books but in him in its ordinary sense. **[49 *CTR 193, 156 ITR 585, 23 TAXMAN 37]***

Public	1953	Bom-HC	Raghuvanshi Mills Ltd. V/s. CIT

The expression **public** in the Explanation to section 23A(1) of the Indian Income-tax Act, 1922, is used in contradistinction to the directors and it cannot be given its ordinary natural meaning. The whole object of the third proviso to section 23A(1) is that there must be voting power exercised which must be independent of the control of the directors. If members of the public who are shareholders are under the control of the directors and if their voting power is controlled by the directors and if the votes cast by them are not their own votes but in substance the votes of the directors, then for the purpose of the third proviso the shares in effect are not held by the public at all but are held by the directors.In India, unlike in England, there is no statutory presumption as to control and therefore in each particular case it must be found as a fact that a director exercises de facto control over a shareholder. If that is found as a fact, then that particular shareholder for the purposes of section 23A will not be considered as a member of the public. **[24 *ITR 338]***

Public	1961	SC	Raghuvanshi Mills Ltd. V/s. CIT

The word **public** is used in contradistinction to one or more persons who act in unison and among whom the voting power constitutes a block. If such a block exists and possesses more than seventy-five per cent. of the voting power, the company cannot be said to be one in which the public are substantially interested. Such a group may be formed by the directors of a company acting in concert, or by some directors acting in concert with others, or even by some shareholder or shareholders, none of whom may be a director.The test is first to find out whether there is an individual or a group which controls the voting power as a block. If there be such a block, the shares held by it cannot be said to be unconditionally and beneficially held by members of the public. In the category of shares held by the public, only those shares can be counted which are unconditionally and beneficially held by the public, or, in other words, which are uncontrolled by the group which controls the affairs of the company. The group itself may be composed of directors or their nominees or relations in different combinations, but none can be said to belong to that group, be he a director or a relative, unless he does not hold the shares unconditionally and beneficially for himself. It is only such a person, who can fall properly outside the word public. **[41 *ITR 613*]**

Public	1978	Mad-HC	Yercaud Coffee Curing Works Ltd. V/s. CIT

The word **public** has not been defined in the statute but is of a very wide connotation and sweep and capable of taking in even an incorporated company if the context in which the said expression is used warrants such connotation. The expression public occurring in sub-clause (i) of clause (b) of the Explanation to section 23A will include companies other than companies to which section 23A applies and hence will take in a company in which the public are substantially interested. Further, in view of the two decisions of the Supreme Court in Shree Changdeo Sugar Mills Ltd.V/s. CIT (41 ITR 667) and Pilani Investment Corporation Ltd. v/s. CIT (89 ITR 53) when a company in which the public are substantially interested has been allotted unconditionally, or has acquired unconditionally, or was throughout the previous year beneficially holding not less than 50 per cent. of the voting power, it can be said that the public themselves were allotted or acquired the said voting power and they beneficially held the same throughout the previous year. **[111 *ITR 787]***

Public	2001	Guj-HC	CIT V/s. Light Publication Ltd.

The word **public** has not been defined under the Income-tax Act. The word public is used in

contradistinction to one or more persons who act in unison and among whom the voting power constitutes a block. Thus, when a shareholder is constrained to transfer his shares to another shareholder, he is not freely transferring his shares to a member of the public. If a shareholder is permitted to transfer his shares to a person of his choice who is not a shareholder of the company without any unreasonable restriction, then alone can it be said that the shares are freely transferable to members of the public. ***[167 CTR 450, 251 ITR 120, 119 TAXMAN 1106]***

Public interest	**1977**	**Guj-HC**	**Wood Polymer Limited and Bengal Hotels Pvt. Ltd.**

If the only purpose discernible behind the amalgamation is defeating tax by creating a paper company and transferring an asset to such company which can without consequence be amalgamated with another company to whom the capital asset was to be transferred so that on amalgamation it may pass on to the amalgamating company, it would distinctly appear that the provision for such a scheme of amalgamation was utilised for the avowed object of defeating tax. It is true that the parties may so arrange their affairs that it may amount to avoidance of tax liability and not evasion of tax; law frowns upon tax evasion and not on tax avoidance. But such a benefit cannot be permitted to be enjoyed when it could not be done without the aid of the court. The court is charged with a duty, before it finally permits dissolution of the transferor-company by dissolving it without winding up, to ascertain whether its affairs have been carried on, not only in a manner not prejudicial to its members but in even public interest. The expression **public interest** must take its colour and content from the context in which it is used. The context in which the expression public interest is used, enables the court to find out why the transferor company came into existence, for what purpose it was set up, who were its promoters, who were controlling it, what object was sought to be achieved through creation of the transferor company and why it was being dissolved by merging it with another company. That is the colour and content of the expression public interest as used in the second proviso to section 394(1) of the Act which have to be enquired into. If the only purpose appears to be to acquire certain capital asset through the intermediary of the transferor-company created for that very purpose to meet the requirement of law, and in the process to defeat tax liability which would otherwise arise, it could not be said that the affairs of the transferor-company sought to be amalgamated, created for the sole purpose of facilitating transfer of capital asset through its medium, have not been carried on in a manner prejudicial to public interest. Public interest looms large in this background and the machinery of judicial process is sought to be utilised for defeating public interest and the court would not lend its assistance to defeat public interest. The court would, therefore, not sanction the scheme of amalgamation.

[6 ***CTR 431, 109 ITR 177]***

Public Limited Co.	**1961**	**Mad-HC**	**Amrutanjan Ltd. V/s. CIT**

A public limited company would not come within section 23A of the Income-tax Act, if any one of the two conditions were satisfied: (1) that no member of the company possessed more than 50 per cent. of the voting power, and (2) that even if a member of the company possessed more than 50 per cent. of the voting power, the public held at least 25 per cent. of the voting power. The term **public** meant all members of the company other than the person having control, i.e., more than 50 per cent. of the voting power. **[41** ***ITR 21]***

Public policy	**1993**	**Kar-HC**	**CIT V/s. Bangalore Arrack Co.**

Public policy is the principle which declares that no man can lawfully do that which has a tendency to be injurious to public welfare and public policy comprehends only the protection and promotion of public welfare. The question whether elimination of competition in trading is

opposed to public policy cannot be considered in isolation de hors the nature of the trade, privilege or the right with respect to which an auction is held. **[*201 ITR 25]***

Public servant	**1942**	**Bom-HC**	**Emperor V/s. Osman Chotani**

The **public servant** referred to in Section 54 of the Income-tax Act is a public servant to whom disclosure has been made under the Income-tax Act. **[*10 ITR 429]***

Purchase	**1985**	**Bom-HC**	**Vidarbha Co-op. Marketing Society Ltd. V/s. CIT**

The first requirement before exemption from tax can be claimed under clause (d) of section 81(i) is that the co-operative society must be engaged in the purchase of the specified articles. Secondly, those articles must be intended for agriculture and, thirdly, the purchase must be for the purpose of supplying them to its members. The provision clearly implies that there must be purchase and the purchase of the articles must be for the purpose of supplying them to the members. It is only when the articles are purchased at a lesser cost and sold at a higher cost that a question of profit arises. It is this profit which is sought to be exempted under section 81(i). While dealing with a taxing statute which deals with income from business, the word **purchase** will, therefore, have to be construed in the commercial sense. In the commercial sense, a transaction of purchase is a part of a transaction of sale. A transaction of sale can never be complete unless there is a transfer of property from the seller to the buyer and the buyer who is the purchaser, must, therefore, acquire the property before he can claim to have purchased the property. **[*36 CTR 400, 156 ITR 422]***

Purchase	**2002**	**Del-HC**	**Balraj V/s. CIT**

The word **purchase** occurring in section 54(1) of the Act had to be given its common meaning, viz., buy for a price or equivalent of price by payment in kind or adjustment towards a debt or for other monetary consideration. **[*173 CTR 452, 254 ITR 22, 123 TAXMAN 290]***

Purpose	**1962**	**Mad-HC**	**CIT V/s. A.M.M. Mohammad Ibrahim Sahib**

The word **purpose** of section 44D(3)(a) signifies an intention or design to achieve a particular result, namely, the avoidance of liability to taxation. Where the purpose is shown to be other than the avoidance of liability to taxation the exemption given by the section would apply.The mere fact that the transfer results in the avoidance of the tax liability cannot mean that there was an intention to avoid such liability. **[45 *ITR 166]***

* *It is an indisputable proposition that fiscal statutes must be interpreted for the benefit of the subject rather than the State. Furthermore, fiscal statutes must be construed strictly.*

* *….. It is also well-settled that where there are two possible interpretations of a taxing provision the one which is favourable to the assessee should be preferred.*

* *In case of doubt, a fiscal statute should be construed in favour of the assessee.*

Q

Qualification	1994	Bom-HC	Dr. J.M. Mokashi V/s. CIT

The word **qualification** simpliciter is a word of very wide import and, in the absence of any qualifying words or expression, conveys the idea of any quality which makes a man fit for any job or any activity in life. But the word qualification in the proviso to section 64(1)(ii) is qualified by the words technical or professional. In that view of the matter, its broad meaning will not be relevant for the purpose of section 64(1)(ii). The word profession does not take within its ambit any and every activity or employment undertaken by a person for his livelihood. The word qualification occurring in section 64(1)(ii) must be such which makes a person eligible for technical or professional work. A person can, therefore, be said to be in possession of requisite technical qualification when, by virtue thereof, he is eligible to perform that function. Similarly, professional qualification must mean qualification which is necessary for carrying on the particular profession. A spouse, well-versed in law and experienced in the working of the legal profession, cannot be said to be in possession of professional qualification for carrying on the legal profession if he or she does not possess the requisite degree or diploma. Payments made to a spouse in such a case for any legal services cannot be brought within the purview of the proviso to section 64(1)(ii) by reference to the words knowledge and experience occurring in the latter part thereof. Therefore, the possession of technical or professional qualification is a condition precedent on fulfilment of which that part of the income which falls in the second part of the proviso is excluded from the operation of the clubbing provision.

[115 ***CTR 73, 207 ITR 252, 72 TAXMAN 98]***

Question	2006	AAR	Morgan Stanley & Co.

Having regard to the context of the first proviso to section 245R(2) the term **question** would mean a point of investigation or theme of enquiry.

[201 CTR 67, 284 ITR 260, 152 TAXMAN 1]

Question of law arising out of such order	1970	SC	CIT V/s. Indian Molasses Co. P. Ltd.

The expression **question of law arising out of such order** in section 66(1) is not restricted to take in only those questions which have been expressly argued and decided by the Tribunal. If a question of law is raised before the Tribunal, even if an aspect of that question is not raised, that aspect may be urged before the High Court. **[78** ***ITR 474]***

Quoted share	2003	Mad-HC	CWT V/s. A.S. Ananth

Quoted share is defined in rule 2(9) of Schedule III to the Wealth-tax Act, 1957, which Schedule sets out the rules for determining the value of assets. Quoted share or quoted debenture in relation to any equity share or a preference share or, as the case may be, a debenture is defined as meaning a share or debenture quoted on any recognised stock exchange with regularity from time to time, where the quotations of such shares or debentures are based on current transactions made in the ordinary course of business. The only mode of valuation of these shares therefore is the rate quoted at the exchange.

[181 ***CTR 505, 261 ITR 763, 131 TAXMAN 342]***

R

Rate applicable to the total income of the Company	1963	Mad-HC	M.CT. Bank Ltd. V/s. CIT

The words **rate applicable to the total income of the company** in section 16(2) of the Income-tax Act, which provided for the grossing up of dividends for the purpose of determining the tax payable thereon, do not refer to the abstract statutory rate contained in the Finance Act but to the concrete rate at which the company pays tax on its assessed income after all allowance of rebates, exemptions and reliefs provided for in the statute, the Income-tax Act and the Finance Act. Therefore, if a company has received relief from double taxation under section 49D of the Act, dividends received from the company should be grossed up and given tax credit, not at the rates prescribed in the respective Finance Acts but at the lower rate arrived at by deducting the relief given under section 49D. ***[48 ITR 678]***

Rate applicable to the total income of the Company	1964	All-HC	Saraswati Devi Lohia V/s. CIT

That the words **rate applicable to the total income of the company** which appears in section 16(2) of the Act relating to the grossing up of dividends, means the rate actually applied and if the company had no total income in the relevant year there is no occasion for grossing up the dividends. **[51** ***ITR 491]***

Raw material	1990	SC	Collector of Central Excise V/s. Ballarpur Ind. Ltd.

The expression **raw material** is not a defined term. The meaning to be given to it is the ordinary and well-accepted connotation in the common parlance of those who deal with the matter.For an item of material used in the manufacture of goods to qualify as raw material, it need not necessarily and in all cases go into, and be found, in the end-product, or endure, either in its original or in an altered form, as a composite element of the end-product.
[186 ITR 244]

Ready to commence	1982	Guj-HC	Hotel Alankar V/s. CIT

When a business is established and is ready to commence business then it can be said of that business that it is set up. The words **ready to commence** would not necessarily mean that all the integrated activities are fully carried out and/or wholly completed. The requirement is also complied with in a given case where an assessee had undertaken the first of the kind of integrated activities of which the business is overall comprised of. The question whether a business has been set up or not is always a question of fact which has to be decided on the facts and in the circumstances of each case, subject to the broad guidelines provided by different decisions in that behalf. **[22** ***CTR 252, 133 ITR 866, 6 TAXMAN 183]***

Reason to believe	1959	Pun-HC	R.S. Chiranji Lal and Sons V/s. CIT

The words **reason to believe** suggest something more than the satisfaction of the Income-tax Officer. The expression suggests reasonable grounds on which the Income-tax Officer may take action. Power under this section cannot be exercised on mere rumours or suspicion.
[*36 ITR 407*]

Reason to believe	1970	AP-HC	Y. Rajan V/s. ITO

The expression **reason to believe** in section 34 (corresponding to section 147) of the Income-tax Act does not mean a purely subjective satisfaction on the part of the Income-tax Officer. That belief must be held in good faith; it cannot be merely a pretence. Consequently, it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. **[*77 ITR 839*]**

Reason to believe	1980	Raj-HC	Purushottam Das Bangur V/s. ITO

The words **reason to believe** in section 147(b) of Income-tax Act, 1961, which states the conditions to be satisfied before the Income-tax Officer resorts to reassessment, suggest that the belief must be that of an honest and reasonable person based upon reasonable grounds. The Income-tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income-tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section and the court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the court. If there was no new material before the Income-tax Officer, unknown to him previously, which could provide reasons for his belief under section 147(b) when he issued the notice of reassessment, it would be a case of mere change of opinion which cannot be a ground for reopening the assessment. **[14 *CTR 161, 126 ITR 580*]**

Reason to believe	1983	All-HC	Ganga Prasad Maheshwari V/s. CIT

Under the Act of 1922, the only circumstance in which the Commissioner could authorise search of any building or Inspecting Assistantn Commissionere under section 37(2) was when he had reason to believe that books of account or other documents which may be found would be useful in proceedings pending under the Act. …… Section 132 was amended in 1964, 1965 and 1975 and in 1975 section 132A was added, which widened the scope of the provision. The widening was, however, in respect of items in respect of which authorisation could be issued to seize them. It did not expand the power in respect of the ground or material on which it could be exercised. The conditions precedent for action under section 132 or section 132A are: (i) information in the possession of the Director of Inspection or Commissioner; (ii) in consequence of which he should have reason to believe; (iii) that any person is in possession of any money, bullion, jewellery or other valuable article or thing; (iv) and such jewellery, bullion, etc., must represent either wholly or partly undisclosed income. If any of these conditions is not fulfilled the officer concerned can have no jurisdiction to proceed. The information mentioned in condition (i) must relate to conditions (iii) and (iv) so as to empower the authority concerned to reach the conclusion contemplated in condition (ii). **Reason to believe** has been considered to be the most salutary safeguard on the exercise of power by the officer concerned. It is made up of two words reason and to believe . The word reason means cause or justification and the word believe means to accept as true or have faith in it. Before the officer has faith or accepts a fact to exist there must be a justification for it. The belief may not be open to scrutiny as it is the final conclusion arrived at by the officer concerned as a result of mental exercise made by him on the information received. But the reason due to which the decision is reached can always be examined. When it is said that the reason to believe is not open to scrutiny, what is meant is that the satisfaction arrived at by the officer concerned is immune from challenge, but, where the satisfaction is not based on any material or it cannot withstand the test of reason, which is an integral part of it, then it falls through and the court is empowered to strike it down. **[21 *CTR 83, 139 ITR 1043*]**

Reason to believe	1985	MP-HC	Lokendra Singh Rathore V/s. WTO

The expression used is **reason to believe** and not reason to suspect. Action can be taken only when there is an honest and reasonable presumption based on reasonable grounds and not mere guess, gossip, suspicion or rumour. There should be a direct link or nexus with the information or material with the officer and the formation of the belief as to the escapement of net wealth in a particular assessment year. **[155 *ITR 629]***

Reason to believe	1999	Guj-HC	Praful Chunilal Patel V/s. M.J. Makwana ACIT

The word reason in the phrase **reason to believe** would mean cause or justification. If the Assessing Officer has a cause or justification to think or suppose that income had escaped assessment, he can be said to have a reason to believe that such income had escaped assessment. The words reason to believe cannot mean that the Assessing Officer should have finally ascertained the facts by legal evidence. Unless the ground or the material on which his belief is based, is found to be so irrational as not to be worthy of being called a reason by any honest man, his conclusion that it constitutes a sufficient reason, cannot be overridden. If the Assessing Officer honestly comes to a conclusion that a mistake has been made, it matters nothing so far as his jurisdiction to initiate the proceedings under section 147 is concerned, that he may have come to an erroneous conclusion whether on law or on facts. The court will not in exercise of its extraordinary jurisdiction under the Constitution, examine the sufficiency of the reason which led the Assessing Officer to believe that the income had escaped assessment. **[*148 CTR 62, 236 ITR 832]***

Reason to believe	2001	Bom-HC	IPCA Laboratories Ltd. V/s. Gajanand Meena, DCIT

The expression **reason to believe** refers to the belief which prompts the Assessing Officer to apply section 147 of the Income-tax Act, 1961, to a particular case. It will depend on the facts of each case. The belief must be of an honest and reasonable person based on reasonable grounds. The Assessing Officer is required to act, not on mere suspicion, but on direct or circumstantial evidence. The expression reason to believe does not mean a subjective satisfaction on the part of the Assessing Officer. **[170 *CTR 585, 251 ITR 420]***

Reason to believe	2005	Del-HC	Sony India Ltd. V/s. CIT

The expression **reason to believe** in common parlance would mean to have sufficient cause to believe. It is not synonymous with subjective satisfaction as it would be open to the court to examine the matter whether reason to believe has a rational connection or a relevant bearing to the formation of the belief. The belief must be held in good faith and cannot be merely pretence. It must be stronger than mere satisfaction. The belief entertained by the Assessing Officer must not be arbitrary or irrational but should be reasonable and in other words it must be based on reasons which are relevant and material. Adequacy or sufficiency of reasons can hardly be investigated by the court. Reasonableness, relevancy and good faith are factors which should be demonstrated in the order itself or at best the record in support thereof. Reason to suspect is not reason to believe. They are terms of apparent definition and cannot be permitted to be interchanged in operation of fiscal provisions. Reasons are the link between the material on which the conclusions are based and they alone can exhibit how the mind is applied to the subject-matter for arriving at a decision. Rational nexus between the facts considered and conclusions reached is the main consideration. Reason to believe must relate to the standards of belief of a reasonable man and not to a prejudicial or biased mind.
[196 *CTR 81, 276 ITR278, 146 TAXMAN 98]*

Reason to believe	2005	Sik-HC	Sikkim Subba Associates V/s. Union of India

The expression **reason to believe** in section 132 of the Income-tax Act, 1961, means a genuine satisfaction arrived at upon an honest and reasonable evaluation of information coming to the authority. There must be a reasonable nexus between the satisfaction and the situation contemplated in any of the clauses (a), (b) and (c) of section 132(1). The meaning of the expression reason to believe is stronger than satisfaction. There should be reasons to believe and such reasons to believe must be on the basis of information which is in the possession of the concerned officer. The information on the basis of which the concerned officer forms reason to believe should be in the possession of the concerned officer. The expression possession means hold as own property, actual holding or occupancy. **[276 *ITR 456]***

Reason to believe	2006	Mad-HC	Vinbros and Co V/s. ITO

The words **reason to believe** suggest that the belief must be that of an honest and reasonable person based on reasonable grounds, relevant, and available materials on record.

[206 *CTR 371, 286 ITR 439]*

Reasonable	1989	All-HC	CWT V/s. S.L.Khunnah

A thing is generally considered **reasonable** if it is not actuated by bad faith, dishonesty or false grounds. No hard and fast rule can be laid down for governing or deciding when a certain ground would be considered reasonable and when it would not be so held. Each case has to be decided on its own merits and facts by the authority. If the decision is based on relevant grounds by the authority which has power to condone the default, the appellate court cannot interfere with the same. **[79*CTR 229, 180 ITR 340, 46 TAXMAN 240]***

Reasonable cause	1985	Raj-HC	Addl.CIT V/s. Mohammed and Sons

Penalty can be imposed under section 271(1)(a) of the Income-tax Act, 1961, for failure to furnish returns in time without **reasonable cause**. Before a cause can be said to be reasonable, it must be found as a fact that a particular cause operated upon the mind of the assessee which prevented him from filing the return in time. The onus is on the assessee to show that he was prevented by sufficient cause from complying with the statutory requirement of filing the return in time. **[43*CTR 114, 154 ITR 220]***

Reasonable cause	1993	Raj-HC	CWT V/s. Taranath Tondon

The **reasonable cause** has to be explained by the assessee and the cause should be so reasonable that a person instructed under law should believe the explanation as plausible. If the explanation is supported by evidence, then the veracity of such evidence is to be examined and, in case of doubt, the benefit has to be given to the assessee. **[*203 ITR 871]***

Reasonable cause	1995	Pat-HC	CWT V/s. Jagdish Prasad Choudhary

The words **reasonable cause** have not been defined under the Act but they could receive the same interpretation which is given to the expression sufficient cause. Therefore, in the context of a penalty provision, the words reasonable cause would mean a cause which is beyond the control of the assessee. Reasonable cause means cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides from furnishing the return in time. **[123 *CTR 200, 211 ITR 472, 80 TAXMAN 42]***

Reasonable cause	2002	Del-HC	Woodward Governor India P. Ltd. V/s. CIT

Reasonable cause as applied to human action, is that which would constrain a person of average intelligence and ordinary prudence. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead an ordinary, prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do. The cause shown has to be considered and only if it is found to be frivolous, without substance or foundation, would the prescribed consequences follow. **[168** ***CTR 394, 253 ITR 745, 118 TAXMAN 433]***

Reasons beyond his control	2005	All-HC	Mehra International V/s. CIT

The expression **reasons beyond his control** is not defined in the Act. It should be interpreted keeping in view the context in which is appears. The intention of the Legislature in enacting the aforesaid provision should also be kept in mind. The purposive interpretation of a statute is one of the recognised principles of interpretation of statute.

[195 ***CTR 368, 273 ITR 8, 143 TAXMAN 206]***

Reassessment	1963	All-HC	Jawahar Lal Mani Ram V/s. CIT

The word **reassessment** is not confined to a fresh assessment being made of an income in the hands of the same person but is wide enough to include a fresh assessment of an income in hands different from those in which it had been assessed originally……. Whether an assessment in pursuance of a direction of the Tribunal be treated as a separate class of assessment or an assessment under section 23 or 34, the fresh assessments were not barred by limitation and were valid even though they were made after the expiry of four years from the end of the various assessment years. **[*48 ITR 837]***

Rebate	1960	Bom-HC	Harihar Cotton Pressing Factory V/s. CIT

Rebate is a remission or a payment back and of the nature of a deduction from the gross amount. It is sometimes spoken of as a discount or a drawback. The dictionary meaning of the term includes a refund to the purchaser of a thing or commodity of a portion of the price paid by him. It is not confined to a transaction of sale and includes any deduction or discount from a stipulated payment, charge or rate. It need not necessarily be taken out in advance of payment but may be handed back to the payer after he has paid the stipulated sum. The repayment need not be immediate. It can be made later and in case of persons who have continuous dealings with one another it is nothing unusual to do so. **[*39 ITR 594,]***

Receipt	1991	All-HC	CIT V/s. Gulab Chand

The word **receipt** must be understood as synonymous with income. The expression income has been defined in clause (24) of section 2 of the Income-tax Act, 1961, to include capital gains. It is precisely for this reason that proviso (i) to clause (3) of section 10 of the Act expressly excludes capital gains chargeable under the provisions of section 45 from the ambit of the said clause. **[192** ***ITR 495]***

Received	1948	Bom-HC	CIT V/s. Bai Navajbai N. Gamadia

Received in section 4(3) means not only actual receipt but also what is deemed to be received under the Act. **[*16 ITR 109]***

Received	1962	Cal-HC	CIT V/s. Moon Mills Ltd.

The word **received** in the fourth proviso to section 10(2)(vii) does not mean receivable. If what is not a trading receipt is taxed as a result of a fiction, the scope of the same ought to be strictly limited.The assessee is not liable to pay tax on amounts deemed to be profits under the fourth proviso to section 10(2)(vii) if they have not been actually received by him, though the assessee keeps his accounts on the mercantile system and the amounts are credited in his accounts. **[*46 ITR 771]***

Reconstruction	1982	Del-HC	CIT V/s. Hindustan General Industries Ltd.

It is not every alteration in the mode, method or scope of the activities of a business and it is not every transfer of assets from one unit to another that will involve **reconstruction**. The expression is no doubt very wide but it does not take in a case of a company setting up or establishing a totally independent and viable industrial unit for carrying on the same or similar business even though it might be so set up by way of expanding the already existing business. The emphasis in section 84 is not on business but on undertaking. The exemption is granted to new undertakings and the essence of the exemption is that it is a new industrial unit that is established and that it is not merely a rehash of an already existing unit.

[23 *CTR 73, 137 ITR851]*

Reconstruction	1994	Ker-HC	Kerala State Cashew Dev. Corporation V/s. CIT

Reconstruction is the rejuvenation or rehabilitation of an existing undertaking. The original business or undertaking continues to exist without its identity being lost. **[205 *ITR 19]***

Reconstruction of a business	1959	Bom-HC	CIT V/s. Gaekwar Foam and Rubber Co. Ltd.

The **reconstruction of a business** or an industrial undertaking must necessarily involve the concept that the original business or undertaking is not to cease functioning, and its identity is not to be lost or abandoned. The concept essentially rests on changes but the changes must be constructive and not destructive. The underlying idea of a reconstruction is of a business already in existence: there must be a continuation of the activities and business of the same industrial undertaking. The undertaking must continue to carry on the same business though in some altered or varied form. If the alterations and changes are substantial, there would be little scope for describing what emerges as a reconstruction of the business. For instance, if the ownership of a business or an undertaking changes hands not ostensibly but in reality and effectively, that would not be reconstruction. Or, if the very nature of the business is changed, that again would not be reconstruction. On the other hand, reorganisation of the business on sounder lines or alterations in the mode or method or scope of the activities of the business or in its personnel or infusion of new blood in the management or control of the business which may even be by some changes in the constitution of persons interested in the undertaking would be no more than reconstruction of the business if it is substantially the same business carried on by substantially the same persons. In these matters, we have to look at the substance of the transaction and not the form. If, looking at the substance of the transaction, it is a sale, then the concept of reconstruction must be ruled out for in such a case there is no scope for speaking about any reconstruction of an existing business . **[35 *ITR 662]***

Reconstruction of a business	1973	Del-HC	CIT V/s. Ganga Sugar Corporation Ltd.

In the **reconstruction of a business**, as in the reconstruction of a company, there is an element of transfer of assets and of some change, however partial or restricted it may be, of ownership of the assets. The transfer, however, need not be of all the assets. It is nonetheless imperative that there should be continuity and preservation of the old undertaking though in an altered form. The concept of reconstruction of business would not be attracted when a company which is already running are industrial unit sets up another industrial unit. The new industrial unit would not lose its separate and independent identity even though it has been set up by a company which is already running an industrial unit before the setting up of the new unit.

[92 *ITR 173]*

Reconstruction of a business already …	1971	Cal-HC	CIT V/s. Textile Machinery Corporation

The change of producing one's own goods systematically used in the existing business instead of buying them from outside would only be a **reconstruction of a business already in existence.** **[80 *ITR 428*]**

Reconstruction of business	1987	AP-HC	CIT V/s. U Foam Private Limited

In order to attract sub-section (4)(i) of section 80J, there must be transfer of any assets of the old business to the new industrial undertaking to resuscitate the undertaking. It must be a new one in the sense that new machinery and plant are erected to produce the same or distinct goods by preservation of the old one to continue the old undertaking in the altered form so that the persons carrying on the business will substantially do the same or similar business. It is only in such a case that it can be considered to be a **reconstruction of business**.

[63*CTR 204, 167 ITR 586, 31 TAXMAN 491]*

Record	1959	SC	Maharana Mills (Pvt.) Ltd. V/s. ITO

The **record** contemplated by section 35 does not mean only the order of assessment but it comprise all proceedings on which the assessment order is based and the Income-tax Officer is entitled for the purpose of exercising his jurisdiction under section 35 to look into the whole evidence and the law applicable to ascertain whether there was an error. If he doubts the written down value of the previous year it is open to him to check up the previous calculations and if he finds any mistake it is open to him to make fresh calculations in accordance with the law applicable including the rules made thereunder. If, for instance, the Income-tax Officer finds that in an earlier assessment year there was an apparent arithmetical mistake in the account of the written down value of the properties of the assessee which resulted in a corresponding mistake in the assessment of the relevant assessment year he can take the corrected figure for the purposes of the assessment and it cannot be said that the mistake was not apparent from the record.A fortiori if he discovers that the very basis of the different earlier assessments was erroneous because of an initial mistake in determining the written down value it cannot be said that this would not be a mistake apparent from the record. And if in order to determine the correct written down value the Income-tax Officer makes correct calculations, it cannot be said that that is not rectifying a mistake apparent from the record but is dehors it.

[*36 ITR 350]*

Record	1991	Cal-HC	CIT V/s. S.M. Oil Extraction Pvt. Ltd.

The **record** contemplated in section 263(1) of the Income-tax Act, 1961, does not mean only

the order of assessment but it comprises all proceedings on which the assessment is based. The Commissioner is entitled for the purpose of exercising his revisional jurisdiction to look into the whole evidence. The expression record as used in section 263 of the Act is comprehensive enough to include the whole record of evidence on which the original assessment order was based. All proceedings which constitute evidence on which the assessment order is based must normally be regarded as part of the record. ***[190 ITR 404, 61 TAXMAN 205]***

Record	**1998**	**SC**	**CIT V/s. Shree Manjunathesware Packing Products and Champhor Works**

It has been provided that **record** shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. It cannot be said that the correct and settled legal position, with respect to the meaning of the word record till June 1, 1988, is that it meant the record which was available to the Income-tax Officer at the time of passing of the assessment order. Such a narrow interpretation of the word record is not justified in view of the object of the provision and the nature and scope of the power conferred upon the Commissioner. The revisional power conferred on the Commissioner under section 263 is of wide amplitude. It enables the Commissioner to call for and examine the record of any proceeding under the Act. It empowers the Commissioner to make or cause to be made such enquiry as he deems necessary in order to find out if any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. After examining the record and after making or causing to be made an enquiry, if he considers the order to be erroneous, then he can pass the order thereon as the circumstances of the case justify. Obviously, as a result of the enquiry he may come into possession of new material and he would be entitled to take that new material into account. If the material, which was not available to the Income-tax Officer when he made the assessment could thus be taken into consideration by the Commissioner after holding an enquiry, there is no reason why the material which had already come on record though subsequent to the making of the assessment, cannot be taken into consideration by him. Moreover, in view of the clear words used in clause (b) of the Explanation to section 263(1), it has to be held that while calling for and examining the record of any proceeding under section 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination.

[143 *CTR 406, 231 ITR 53, 96 TAXMAN 1]*

Record	**1998**	**Mad-HC**	**India Forge and Drop Stampings Ltd. V/s. CIT**

The **record** contemplated by section 154 of the Income-tax Act, 1961, does not mean only the order of assessment, but it comprises all proceedings on which the assessment order is passed and the Income-tax Officer is entitled for the purpose of exercising his jurisdiction under section 154 of the Act, to look into the whole evidence and the law applicable to ascertain whether there was an error. Sections 147 and 154 of the Act are mutually exclusive in their operation and in a given case, where the statutory requirements are satisfied, the Income-tax Officer can have recourse to either of the two provisions and it cannot be said that they are overlapping and either of the sections at the choice of the assessing authority would not bar the officer to have recourse to the other provision of law. **[146 *CTR 28, 233 ITR 112]***

Record	**1999**	**Mad-HC**	**CIT V/s. M.R.M. Plantations (P.) Ltd.**

The term **record** is not defined in the section or in the definition section of the Act. For determining the true scope of this provision and the meaning to be properly assigned to the

term record it is necessary to keep in view the object of the provision and the nature of the power conferred on the authorities under that provision. The absence of definition cannot have the consequence of limiting its meaning to a very narrow and limited sphere of the record of the original proceedings alone. The object with which power is conferred by section 154 is as stated in the marginal heading rectification of mistake. The principal condition for exercising the power under section 154 is the existence of a mistake in the record. The mistake is not to be a mistake which requires in-depth probing to discover but is a mistake which is apparent from the record. The power conferred by this provision is only to enable the authorities to rectify the apparent mistakes in the record. The record referred to is the record which the authorities are required to examine for the purpose of rectifying mistakes in the orders mentioned in sub-clauses (a), (b) and (c) of section 154(1). The section does not either expressly or implicitly require that the authorities exercising power under this provision should limit their attention only to the order sought to be rectified. The requirement that the mistakes in the record be apparent does not imply that no other relevant document should be looked into. If in the light of other legally valid orders it is found that the original order contains mistakes which are apparent, the rectification of such mistakes is not barred under section 154. It is neither necessary nor possible to set out exhaustively all the material that can possibly be regarded as forming part of the record for the purpose of examination under section 154(1).

[153 *CTR 71, 240 ITR 660, 102 TAXMAN 1]*

Record	**2000**	**Cal-HC**	**CWT V/s. P.P. Ghosh**

The term **record** is not confined to the material available to the Assessing Officer. It would include material available on record at the time of examination by the Commissioner of Wealth-tax. The valuation report received after completion of the assessment forms part of the assessment record and the Commissioner can consider the report for the purpose of revision of the assessment orders under section 25 of the Wealth-tax Act, 1957.

[161CTR 365, 244 ITR 574, 115 TAXMAN 606]

Record	**2001**	**Mad-HC**	**CWT V/s. S.L. Chitale**

The term **record** in section 25(2) of the Wealth-tax Act, 1957, has been defined in Explanation, clause (b), as including records relating to any proceeding under the Act at the time of examination by the Commissioner **[252 *ITR 586, 121 TAXMAN 459]***

Record	**2002**	**Guj-HC**	**CIT V/s. Vallabhdas Vithaldas**

The **record** would include all records relating to any proceedings under the concerned direct tax laws available at the time of examination by the Commissioner. The Legislature again stepped in through the Finance Act, 1989, so as to clarify that the provisions of the Explanation to section 263(1) of the Income-tax Act, 1961, shall be deemed to have always been in existence. **[172 *CTR 728, 253 ITR 543, 123 TAXMAN 110]***

Record	**2002**	**P&H-HC**	**CIT V/s. Export House**

The expression **record** in section 263 means the record available at the time of examination by the Commissioner of Income-tax and is not confined merely to the material available to the Income-tax Officer. **[175 *CTR 137, 256 ITR 603, 122 TAXMAN 879]***

Record	**2003**	**Mad-HC**	**Annamallais Agencies V/s. CIT**

The **record** . . . . . does not merely mean the assessment order. The return, the things which accompanied the return are also part of the record and if there has been omission on the part

of the Assessing Officer to take note of the contents of that record, while making his order, the mistake in the assessment can be regarded as apparent.

[189 *CTR 73, 260 ITR 478, 134 TAXMAN]*

Record	2005	All-HC	CIT V/s. Prakashwati

...the clear words used in clause (b) of the Explanation to section 263(1) of the Income-tax Act, 1961, while calling for and examining the **record** of any proceeding under section 263(1), it is and it was open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination.

[*276 ITR 575, 144 TAXMAN 313]*

Record	2005	All-HC	CWT V/s. Smt. Phoolwati Agarwal

The provisions of section 263(1) of the Income-tax Act, 1961, and section 25(2) of the Wealth-tax Act, 1957, are analogous. While calling for and examining the **record** of any proceeding under section 25(2) it is open to the Commissioner not only to consider the record of that proceeding but also the record relating to that proceeding available to him at the time of examination.

[276 *ITR 623, 145 TAXMAN 436]*

Records	1986	Pat-HC	Bihar State Road Transport Corporation V/s. CIT

The power of rectification is confined to mistakes apparent from the record. The **record** is not confined to the order of assessment. It comprises all proceedings on which the assessment order is based and the Income-tax Officer is entitled to look into the whole evidence and the law applicable to ascertain whether there was an error and if he doubts the written down value of the previous year, it is open to him to check up the previous calculations and if he finds any mistake, it is open to him to make fresh calculations in accordance with the law applicable including the rules made thereunder. If he discovers that the very basis of the different earlier assessments was erroneous because of an initial mistake in determining the written down value, it cannot be said that this mistake would not be a mistake apparent from the record and if in order to determine the correct written down value, the Income-tax Officer makes correct calculations, it cannot be said that that is not rectifying a mistake apparent from the record but is dehors it. The limit to which the Income-tax Officer can go does not stop at the written down value of the previous year but extends to the figure of the original cost.

[55 *CTR 270, 162 ITR 114]*

Records	1996	Guj-HC	CWT V/s. Amichand C. Shah (HUF)

A reading of sub-section (2) of section 25 of the Wealth-tax Act, 1957, makes it clear that the basis of jurisdiction to revise an order is not the examination of **records** simpliciter or the examination of the record of the assessee: the requirement is to examine the record of any proceedings under this Act in relation to any order passed therein. Therefore, the first limitation envisaged under sub-section (2) of section 25 of the Act is that the Commissioner cannot travel beyond the record of the proceedings in which the order has been made.

[131 *CTR 471, 218 ITR 659, 85 TAXMAN 272]*

Reduce	1984	Ker-HC	Kerala State Cashew Dev. Corp. Ltd. V/s. ITO

Reduce means to diminish or decrease and, waive means to refrain from insisting on, or claiming or demanding or to relinquish or forgo or give up, etc.

[*35 CTR 391, 145 ITR 266, 14 TAXMAN 451]*

Reduced by the amount of tax deductible	1999	Guj-HC	CIT V/s. Ranoli Investment P. Ltd.

The words **reduced by the amount of tax deductible** which appear in sub-section (5) of section 215 also occur in clause (iii) of section 209(1)(a) dealing with computation of advance tax. The amount of tax deductible in accordance with section 194A would obviously mean the tax as was required to be deducted in respect of the interest income at the time of credit to the account of the payee or payment whichever is earlier. **[146 *CTR 745, 235 ITR 433]***

Regular Assessment	1961	Mad-HC	M.R.M.M.N. Natarajan Chettiar V/s. ITO

The words **regular assessment** which occur in sub-section (6) of section 18A of the Income-tax Act must bear the same meaning attributed to them in sub-section (5) of that section. **[*42 ITR 29]***

Regular assessment	1963	Mad-HC	K. Gopalaswami Mudaliar V/s. ITO (Fifth Addl)

In cases where no return has been submitted by the assessee, the expression **regular assessment** in section 18A(6) refers to an assessment made under section 23 after the issue of a special notice under section 22(2) during the year of assessment itself, as well as an assessment by the issue of a notice analogous to one under section 22(2) in proceedings initiated under section 34(1)(a). **[*49 ITR 322]***

Regular assessment	1976	Bom-HC	Deviprasad Kejriwal V/s. CIT

If the provisions of section 18A(9) are read in the context of the last portion of section 34(1) it is clear that the expression **regular assessment** occurring in section 18A(9) would cover reassessment proceedings. Penalty can be initiated by issuing a notice under section 18A(9)(a) read with section 28(3) in the course of reassessment proceedings. In section 18A(9) it is a question of levying penalty on the assessee for having furnished estimates of the tax payable by him which he knew or had reason to believe to be untrue which aspect in a given case could be brought home to the assessee only after proceedings under section 34(1) are commenced. The nature of the subject-matter dealt with by section 18A(9) and the purpose served thereby necessitate the adoption of a different meaning of the expression regular assessment occurring therein than the meaning attributed to similar expression while considering the provisions of section 18A(5) and (6). Regular assessment in section 18A(9) would, therefore, cover cases of reassessment undertaken under section 34(1). **[*102 ITR 180]***

Regular assessment	1977	Cal-HC	Chloride India Ltd. V/s. CIT

The obligation under section 214 is to pay interest on the amount by which the advance tax paid exceeds the tax determined on **regular assessment**. An order which is made by the Income-tax Officer to give effect to the order of the Appellate Assistant Commissioner is an order of assessment under section 143. If that is the position, then, in view of section 2(40) of the Act, the regular assessment as contemplated by section 214(1) should be the assessment made by the Income-tax Officer initially or the first assessment made by the Income-tax Officer if there is no appeal therefrom, but in a case where there is an appeal, the order passed by the Income-tax Officer finally to give effect to the direction, if any, of the appellate authority. Having regard to the scheme of the Act and the context in which the expression has been used, regular assessment under section 214 would include in the particular facts and circumstances of the case an assessment made by the Income-tax Officer pursuant to the direction of the Appellate Assistant Commissioner. **[*106 ITR 38]***

Regular assessment	1977	All-HC	Lala Laxmipat Singhania V/s. CIT

There is nothing in the context of section 214 of the Income-tax Act, 1961, which requires the expression **regular assessment** not being understood as the first or original assessment according to the definition in section 2(40) of the Act. **[2 *CTR 160, 110 ITR 289]***

Regular assessment	1980	Bom-HC	Binod Mills Co. Ltd. V/s. Kadre (S.A.), Excess Profits Tax Officer

The words **regular assessment** in section 14A(7) referred not only to the initial order of assessment but also covered the assessment orders passed pursuant to the orders of the appellate authorities. The provisions of section 14A(7) were attracted not only when the regular assessment was made but also when directions were given by the higher authorities and, in consequence of such directions, orders of refund were passed by the officer who had passed the initial assessment order. **[*122 ITR 778]***

Regular assessment	1981	Del-HC	National Agr. Coop. Marketing Federation of India V/s.Union of India

That the expression **regular assessment** in section 214 should be construed as referring only to the first or initial regular assessment and not to subsequent modifications thereof.

[130 *ITR 928, 6 TAXMAN 123]*

Regular assessment	1981	AP-HC	Nizam's Religious Endowment Trust (HEH) V/s. ITO

The words **regular assessment** used in section 214 refer to the assessment made by the Income-tax Officer under section 143 or section 144 on the first occasion and do not include the consequential order passed by him as a result of an order in appeal.

[15 *CTR 239, 131 ITR 239, 2 TAXMAN 110]*

Regular assessment	1984	Kar-HC	Charles D'souza V/s. CIT

The expression **regular assessment** as defined by section 2(40) means assessment made under section 143 or section 144 in contradistinction to assessments under section 140A, a provisional assessment before its abolition in 1971 and an assessment/reassessment under section 147. When the expression regular assessment is defined to mean only assessments made under certain sections of the Act, it would be beyond the jurisdiction of any court to give it a wider and comprehensive meaning so as to include all assessments done under the Act, whether under section 143/144 or completed after issue of notice under section 148.

[*147 ITR 694]*

Regular assessment	1985	Guj-HC	Bardolia Textile Mills V/s. ITO

When the first assessment of the Income-tax Officer is final, that is the **regular assessment** for purposes of section 214(1). **[*151 ITR 389]***

Regular assessment	1985	Ker-HC	CIT V/s. G.B. Transports

……The context and setting in which the term **regular assessment** appears in s. 214 only warrants the conclusion that it connotes the assessment made by the Income-tax Officer for the first time when he is bound to determine the sum payable by the assessee or refundable to him on adjustment of the advance tax paid before such assessment **[155 *ITR 548]***

Regular assessment	1988	AP-HC	CIT V/s. Padma Timber Deopt

The expression **regular assessment** has been defined in section 2(40) as an assessment made under section 143 or 144. The definition contained in section 2 prevails unless the context requires otherwise. Only orders passed by the Income-tax Officer under sections 143 and 144 could be considered as regular assessments within the meaning of section 2(40) of the Act and it is not possible to expand the scope of the expression regular assessment to include other orders. **[67** ***CTR 109, 169 ITR 646, 35 TAXMAN 117]***

Regular assessment	1988	MP-HC	CIT V/s. Mamta Tiwari

The expression **regular assessment** occurring in section 273 has been defined by section 2(40) of the Act to mean, unless the context otherwise requires, the assessment made under section 143 or section 144 of the Act. The clause used in section 273 of the Act in the course of any proceedings in connection with the regular assessment for the assessment year is wide enough to include within its ambit proceedings under section 155 of the Act for amendment of the assessment made under section 143 or section 144 of the Act, which is the regular assessment, as defined by section 2(40) of the Act, in contradistinction to a self-assessment under section 140A, a provisional assessment under section 141 (before its deletion in the year 1971) and an assessment or reassessment under section 147 of the Act.

[66 ***CTR 83, 171 ITR 59, 35 TAXMAN 237]***

Regular assessment	1988	AP-HC	Warner Hindustan Ltd. V/s. CIT

The words **regular assessment** occurring in section 214 of the Income-tax Act, 1961, refer only to the original assessment or the first assessment made by the Income-tax Officer and not to any order which may be passed pursuant to an appellate order.

[*171 ITR 224, 36 TAXMAN 106]*

Regular assessment	1989	Cal-HC	Calcutta Electric Supply Corporation Ltd. V/s. CIT

The words **regular assessment** used in section 214 of the Income-tax Act, 1961, do not connote the first assessment only. Where the entire assessment itself has been set aside by the Commissioner of Income-tax under section 263 of the Act, it cannot be the intention of the Legislature that interest payable under section 214 of the Act alone will remain intact while the assessment itself is non-existent in the eye of law. Unless interest is quantified, no payment can be made. Such quantification can only be made after assessment is made and the tax payable is determined. It cannot be the intention of the Legislature to enjoin the Central Government to pay interest under section 214 even in the absence of an order of assessment.

[179 ***ITR 580]***

Regular assessment	1990	Cal-HC	CIT V/s. Chloride India Ltd.

In the Income-tax Act, 1961, **regular assessment** has been defined by referring to the assessment made under section 143 or section 144. The legislative intent was not to confine the meaning of regular assessment to the initial or first assessment. Hence regular assessment as contemplated under section 214(1) should be the assessment made by the Income-tax Officer initially or the first assessment made by the Income-tax Officer if there is no appeal therefrom. But, in a case where there is an appeal, the order passed by the Income-tax Officer finally to give effect to the direction, if any, of the appellate authority should be the regular assessment **[*186 ITR 217]***

Regular assessment	1992	Ker-HC	Lally Jacob V/s. ITO

A perusal of sections 147 and 148 makes it clear that at any rate an assessment for the first time made by resort to section 147 is a **regular assessment**. Section 148 enjoins the Income-tax Officer before making an assessment under section 147 to serve a notice to the assessee, containing all or any of the requirements which may be included in a notice under section 139(2). The further provision in that section is very significant which provides that the aforesaid notice has to be treated as if it is a notice under section 139(2) and that all the provisions of the Act shall apply to the subsequent procedure and the final assessment. In other words, the notice issued under section 148 has to be deemed to be a notice under section 139(2) and if the other provisions of the Act have to be applied, an assessment in pursuance of that can be made only under section 143 or section 144. There is no other provision by which the Income-tax Officer is authorised to make an order of assessment under the Act. The provisions contained in section 140A also give an indication that an assessment made in pursuance of a notice under section 148 is a regular assessment under section 143 or section 144, for section 140A(2) provides that any admitted tax paid in pursuance of section 140A(1) shall be deemed to have been paid towards the regular assessment under section 143 or section 144. It is pertinent to note that section 140A(1) deals with a return required to be furnished under section 139 or section 148. That makes the provision clear that an assessment made under section 147 also will be a regular assessment under section 143 or section 144. This is also made explicit by sub-section (6) of section 215 added with effect from April 1, 1985. Even in the absence of sub-section (6) of section 215, such assessments will be regular assessments. Sub-section (6) of section 215 is only a clarification of the earlier law as different High Courts have expressed different opinions on the question and by the inclusion of that sub-section alone it cannot be said that for the assessment year in question such assessments cannot be treated as regular assessments. Any observation made in a decision has to be understood in the context in which it is made. **[*197 ITR 439]***

Regular assessment	1993	Mad-HC	Super Spinning Mills Ltd. V/s. CIT

The words **regular assessment** in section 214 of the Income-tax Act, 1961, would include not only the order of assessment made by the Income-tax Officer initially if the matter rests at that stage, but also any order passed by the Income-tax Officer finally to give effect to the directions, if any, of the appellate or revisional authority or competent court. The scope and applicability of section 214(2) cannot, therefore, be said to have been excluded by section 240 or section 244 of Chapter XIX of the Act. These provisions are supplementary in nature and give the assessee a further right. **[*199 ITR 832]***

Regular assessment	1998	SC	CESC LTD V/s. CIT

The first order of assessment under section 143 or 144 of the Income-tax Act, 1961, will be the **regular assessment**. Any order passed in consequence of a finding or a direction given by a higher authority will not be a regular assessment. The higher authority may direct the Income-tax Officer to modify his order. The higher authority may also set aside the order and direct the Income-tax Officer to pass a fresh order of assessment. In neither of these two cases will the consequential order be a regular assessment order. It will be an assessment made pursuant to a direction given by a higher authority. The date up to which interest under section 214 will be paid is the date of the regular assessment, i.e., the date of the first order of assessment under section 143. The quantum of interest, however, may be varied as a result of subsequent orders modifying the assessment pursuant to the direction of any higher authority.
[150 *CTR 607, 233 ITR 50]*

Regular assessment	1998	Bom-HC	CIT V/s. Harihar Jethalal Jariwalla

It is clear from sub-section (1) of section 215 of the Income-tax Act, 1961, that the liability to pay interest arises if, in any financial year, the advance tax paid by the assessee falls short of seventy-five per cent. of the assessed tax. In that event, interest is payable on the deficient amount from the first day of April of the next financial year up to the date of regular assessment. Assessed tax has been defined in sub-section (5) to mean the tax determined on the basis of the **regular assessment**. Thus, both for the purposes of determining the liability of the assessee to pay interest under this section and also the date up to which interest is to be charged, the material assessment is the regular assessment. Regular assessment means and refers to the original assessment made under section 143 or 144 of the Act.

[147 ***CTR 381, 234 ITR 1, 98 TAXMAN 404]***

Regular assessment	1998	Ker-HC	CIT V/s. K.P. Baburaj

Any assessment made for the first time by resort to section 147 will also be a **regular assessment** for the purpose of section 217 of the Act. **[*148 CTR 215, 234 ITR 718]***

Regular assessment	2001	Cal-HC	CIT V/s. Mahalaxmi Rice Mill

The expression **regular assessment** has been used in the provisions of sections 215 and 214 of the Income-tax Act, 1961, which are pari materia so far as the interest for the period is concerned, that is from the first day of April next following the said financial year up to the date of regular assessment. A reassessment under section 147 is not a regular assessment for the purpose of section 215. **[*168 CTR 194, 249 ITR 456, 118 TAXMAN 663]***

Regular assessment	2003	Raj-HC	CIT V/s. Ghewar Chand Soni

Regular assessment means the original assessment made under section 143 or 144 of the Income-tax Act, 1961. If any consequential order has to be passed by the Income-tax Officer to give effect to an order passed by the higher authority that consequential order cannot be treated as regular assessment nor can the date of the consequential order be treated as the date of the regular assessment. Where no regular assessment has been made under section 143 or 144 in the first instance, the assessment under sections 147 and 148 is also to be treated as regular assessment **[177** ***CTR 499, 263 ITR 650, 132 TAXMAN 915]***

Regular assessment	2004	MP-HC	CIT V/s. Udhoji Shri Krishandas

In section 214 of the Income-tax Act, 1961, the words regular assessment have been used. The expression clearly means and refers to the original assessment made under sections 143 and 144. It does not speak about any assessment after the year of regular assessment. The words **regular assessment** in section 214 are clear. Section 214 contains unmistakable and irrefutable indications that regular assessment therein means the original assessment alone. The amendments made to section 214 from time to time also go to indicate that regular assessment was used in the sense of the first assessment.

[186 ***CTR 26, 268 ITR 244, 136 TAXMAN 465]***

Regular assessments	1984	Bom-HC	CIT V/s. Carona Sahu Co. Ltd.

…..the words **regular assessment** in s. 215 mean only the first order of regular assessment and not the last operative order of regular assessment at any given point of time passed in appellate or revisional proceedings. **[38** ***CTR 219, 146 ITR 452, 16 TAXMAN 32]***

Regular assessments	1992	Cal-HC	Calcutta Electric Supply Corp. (India) Ltd. V/s. ITO

Under section 214 of the Income-tax Act, 1961, **regular assessment** includes the final effect-giving assessment order. There is nothing contrary to this to be found in the definition of regular assessment which is at clause (40) of section 2 of the Act. In fact regular assessment is defined with reference to section 143, and, on the view that the assessment under section 143(3) still continues when the Income-tax Officer gives effect to the appellate decision, regular assessment would clearly also include, by the definition clause, this effect-giving order. ***[197 ITR 563]***

Reheard	1995	Pat-HC	CWT V/s. Jagdish Prasad Choudhary

Reasonable opportunity of hearing mentioned in section 18(2) means a reasonable opportunity of oral hearing and similarly **reheard** mentioned in section 39 would mean reasonable opportunity of reheard. This construction flows from a combined reading of the safeguards given in section 18(2) read with section 39 of the Act. In other words, if the legislative intent of giving a reasonable opportunity of hearing is confined merely to a consideration of the written representation without an oral hearing, there would be no meaning in giving an opportunity of reopening of the case or an opportunity of being reheard before the succeeding officer and in that case the succeeding officer could continue the proceeding on the basis of the materials on record and there would be no purpose in giving a right to the assessee to demand a reopening of the proceedings or demand a rehearing. The legislative intent behind giving to the assessee a right of reopening of the proceeding or a right of rehearing becomes meaningful only if the right of hearing given in section 18(2) of the said Act is construed as a right of oral and personal hearing. ***[211 ITR 472]***

Relative	1977	Cal-HC	Bhagwati Trading Co. Ltd. V/s. CIT

Section 23A of the Act of 1922 and section 104 of the Act of 1961 read with sections 2(18)(b)(iii) and 2(41) are in identical terms and being of a penal nature must receive strict construction. Under these provisions a company will be considered to be one in which the public are substantially interested only if the shares of the company carrying more than 50% of its total voting power are held by more than six persons. In computing the six persons there is a specific provision that persons related to one another will be treated as a single person. **Relative** has been defined as meaning husband, wife, lineal ascendant or descendant, brothers and sisters . Therefore, the persons must be related to one another by one of the relationships indicated in the definition. The provision requires not only that one must be related to the other, but also that the other must be related to the next person. Each must be related to the other in view of the expression one another . If there are two brothers the wife of one of them would not be related to the other in terms of this definition. The expression relative has been defined and it is not proper to construe the relationship by some other notion because there cannot be two different meanings to the same expression. ***[109 ITR 353]***

Relative	2000	Del-HC	Addl. CIT V/s. Motor and General Finance Ltd.

Clause (ii) of Explanation 1 to section 2(18) of the Income-tax Act, 1961, is categorical and definite that unless two or more persons are relatives of one another, they cannot be treated as a single person. The expression **relative** as appearing in section 2(41) is in relation to an individual and the persons who are included in the category of relatives have been spelt out in the provision itself, i.e., husband, wife, brother or sister or any lineal ascendant or descendant

of that individual. The expression that individual is the key to the intention of the Legislature. It has link with the expression an individual which appears in the earlier part of the provision. Therefore, while husband, wife, brother and sisters or lineal ascendant of an individual is concerned, merely because another person who is relative being one of the indicated categories, relatives of that person are not covered by the expression relative under section 2(41), so far as the other individual is concerned. **[163 *CTR 92, 246 ITR 471, 112 TAXMAN 183]***

Religious community	**1999**	**Guj-HC**	**Shantagauri Ramniklal Trust V/s. CIT**

In order to reach a conclusion whether a community is a **religious community**, there must be something to show that the community denotes abiding by a particular faith to be considered as a member of that community, or its identification is on account of practicing or following customs or practices. Merely by adhering to distinct cultural practices in its social interactions may not be sufficient to treat a community, as a religious community. The question also requires to be considered whether a caste in order to be excluded from the benefit of registration must be also a religious caste or a part of a religious community as an identifiable mark. Without any such material, it is not possible to reach a concrete conclusion.

[*153 CTR 145, 239 ITR 528]*

Relinquishment	**1974**	**Bom-HC**	**CIT V/s. Rasiklal Maneklal (HUF)**

In a transaction of **relinquishment** the interest of a person in a property is either given up, abandoned or surrendered; but the property in which interest is relinquished continues to exist and the property continues to be owned by some person or persons after the transaction of relinquishment **[*95 ITR 656]***

Relinquishment	**1989**	**SC**	**CIT V/s. Rasiklal Maneklal (Huf)**

A **relinquishment** takes place when the owner withdraws himself from the property and abandons his rights thereto. It presumes that the property continues to exist after the relinquishment. Where, upon amalgamation, the company in which the assessee holds shares stands dissolved, there is no relinquishment by the assessee. **[*77 CTR 31, 177 ITR 198, 42 TAXMAN 259]***

Remand	**1960**	**Mad-HC**	**M.R.M. Periannan Chettiar V/s. CIT**

A **remand** implies a termination of the proceedings, so far as the appellate authority is concerned, and no question would arise about the continuation of the appeal thereafter. **[39 *ITR 159]***

Remuneration	**1994**	**Guj-HC**	**Alembic Glass Industries Ltd. V/s. CIT**

Remuneration would include all that is quantifiable in money and paid to a person for his services or work. It will be noticed from the provisions of section 309(2) of the Companies Act, 1956, dealing with the topic of remuneration of directors, that a director may receive remuneration by way of a fee for each meeting of the board, or a committee thereof, attended by him. Thus, the fee which a director receives for attending any board or a committee meeting thereof is described by the statute itself as his remuneration. The provisions of sub-section (2) of section 198 of the Companies Act, 1956, under which fees are to be excluded while computing the maximum managerial remuneration to be given to its directors cannot control the provisions of the Income-tax Act, 1961, which operate in an independent and separate field. Even though the remuneration payable by way of a fee to a director for attending a board or committee meetings may not be included while calculating the overall maximum managerial remuneration payable to the directors under section 309 of the Companies Act, 1956, it cannot be said that such

remuneration would not be taxable under the Income-tax Act. Such fees would fall within the meaning of the word remuneration under section 40(c)(i) of the Income-tax Act, 1961.

[112 *CTR 68, 205 ITR 200, 69 TAXMAN 165]*

Remuneration	1998	Guj-HC	Ambica Mills Ltd. V/s. CIT

The word **remuneration** is defined in section 198 of the Companies Act and it includes any expenditure incurred by the company in providing any other benefit or amenity free of charge or at concessional rate or any expenditure incurred in respect of any obligation or service which, but for such expenditure by the company, would have been incurred by any of the persons specified in sub-section (1) of section 198, i.e., directors and manager of the company. This is why when expenditure incurred by the managing director on medical treatment is to be paid by the company, it has to be approved by the Central Government under section 310 of the Act. **[146 *CTR 195, 231 ITR 583, 99 TAXMAN 341]***

Renewal	1993	Cal-HC	CIT V/s. Borhat Tea Co. Ltd.

The word **renewal** must be interpreted in its popular sense. In common parlance renewal does not mean extension, it means repetition of the earlier contract. In that sense every repeat deposit is a new deposit. The word renewed or renewal, as applied to promissory notes in commercial and legal parlance, means something more than the substitution of another obligation for the old one. It means re-establishment of a particular contract for another period of time, to restore to its former condition an obligation on which the time of payment has been extended. A deposit is repayable either on the maturity date fixed therefor or according to the terms of the agreement relating to the demand on the making of which the deposit will become repayable. It, therefore, logically follows that the renewal of a deposit is a fresh contract of deposit because the first deposit falling repayable has to be construed as having been repaid and renewal is recycling the fund in a fresh deposit. It cannot be said that renewal is a continuation of the contract of the first deposit. It is more so when the renewal is effected by execution of a fresh contract under the terms and conditions of the deposit rules. **[203 *ITR 987]***

Renovate	2002	P&H-HC	CIT V/s. Porrits and Spencer (A) Ltd.

Renovate in its ordinary sense means to restore to life, to a former state (as of freshness, soundness, purity or newness of appearance). The process of renovation involves expense. But it does not mean acquisition of a new asset. The amounts spent on renovation cannot be the sole measure for deciding the nature of expense. Various relevant factors have to be taken into account. The basic test is-has a new asset come into being?

[*176 CTR333, 257 ITR 49, 124 TAXMAN 155]*

Rent	1996	Cal-HC	Smt. Bishaka Sarkar V/s. Union of India

The term **rent** has been defined in the Explanation to section 194-I of the Income-tax Act, 1961, as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building (including factory building), together with furniture, fittings and the land appertaining thereto, whether or not such building is owned by the payee. The definition for the purpose of this Act of the nomenclature rent as expounded in the Explanation column of the section itself, amply reveals that the same is projected as the generic term which includes within its ambit payment made on any account whatsoever for occupation of a tenanted portion. It appears to be a composite concept. Once the rent is comprehended as a composite concept then it is not capable of being fragmented. It is comprehended in the section itself that the person who is responsible for such payment

to the landlord is required to deduct at source (a) 15 per cent. if the payee is an individual or a Hindu undivided family; and (b) 20 per cent. in other cases. **[139 CTR, *219 ITR327]***

Rent	**2006**	**AAR**	**United Airlines V/s. CIT**

Explanation (i) to section 194-I of the Income-tax Act, 1961, states that rent means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee. A perusal of the provision shows that the word **rent**, as defined has a wider meaning than rent in common parlance. **[*287 ITR 281, 157 TAXMAN 368]***

Repair	**1956**	**Bom-HC**	**New Shorrock Spinning and Manu. Co. Ltd. V/s. CIT**

The expression **repairs** must be understood in contradistinction to renewal or restoration. The test that has to be applied is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of such expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. **[*30 ITR 338]***

Repair	**1962**	**All-HC**	**Simbholi Sugar Mills Ltd. V/s. CIT**

Renewal is a repair if it is only restoration by renewal or replacement of subsidiary parts of a whole. If, on the other hand, it amounts to a reconstruction of the entirety or of substantially the whole of the subject-matter it is not a repair but a reconstruction. The test, therefore, which ecides the question whether a thing is a **repair** or not is to see whether the act actually done is one which in substance is a replacement of defective parts or a replacement of the entirety or a substantial part of the subject-matter.Replacements can be of two different types. There can be replacements which amount to repair and there can also be replacements which cannot be treated as repair. **[*45 ITR 125]***

Repair	**1973**	**All-HC**	**Sir Shadi Lal and Sons, Shamli V/s. CIT**

Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repairs, is re-construction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion. **[92 *ITR 453]***

Repair	**1980**	**AP-HC**	**Nathmal Bankatlal Parikh and Co. V/s. CIT**

Repair means restoration by replacement of subsidiary parts or the whole. Current repair does not mean petty repair. Repairs may be small or major. If it is a major repair, it may involve considerable amount of money. But the amount of money spent alone cannot be a factor to determine whether the expenditure falls under current repairs or not. It is the nature of the repairs carried out by the assessee that matters for grant of deduction.

[*122 ITR 168, 3 TAXMAN 97*]

Repair	**1988**	**SC**	**Sir Shadi Lal and Sons V/s. CIT**

The idea of **repair** may include replacement or even a renewal. But the converse may not be true. All replacements or renewals need not necessarily be repairs . In the case of a building, restoration of stability or safety of a subordinate or subsidiary part of it or any portion of it can

be considered as repair while the reconstruction of the entirety of the subject matter may not be so regarded. **[67 *CTR 1, 169 ITR 510, 35 TAXMAN 400]***

Repair	**2002**	**Ker-HC**	**Deputy CIT V/s. S.T.N. Textiles Ltd.**

In the case of repair or replacement of certain parts to set right the equipment may be current repairs. The expression **repair** in ordinary connotation means a restoration by renewal, or replacement of subsidiary parts of a whole and it is also understood that it should be allowed to make good the effect of the equipment. When we say to make good the effect of the equipment, it should be understood to mean that with the repair the defective condition of the equipment is cleared and the equipment is restored to the position to be used as it was a new one. If the equipment as a whole is to be replaced, it would mean that it is not repaired and it may be a case of replacement. **[*175 CTR 543, 257 ITR 161, 131 TAXMAN 73]***

Repair and renew	**1977**	**Guj-HC**	**Additional CIT V/s. Desai Bros.**

Repair and renew are not words expressive of a clear contract. Repair always involves renewal; renewal of a part. **Repair** is restoration by renewal or replacement of subsidiary parts of a whole. In finding out whether expenses are for current repairs deductible under section 31 of the Income-tax Act, 1961, the real test is the aim and object of the expenses. If the expenses are incurred in bringing into existence a new asset or in achieving an advantage or benefit of an enduring nature or in substantially replacing plant or machinery, the expenditure would not be allowable. If the expenditure is incurred in the continuous process of use or employment of plant or machinery it would be deductible. **[*108 ITR 14]***

Repairs	**1988**	**Kar-HC**	**CIT V/s. Motor Industries Co. Ltd.**

the term **repairs** has a special meaning. What is necessary for the upkeep and maintenance of a building which necessarily includes periodical color/white washing and painting can be treated as repairs. But, amounts lavishly or even unnecessarily spent just to satisfy the ego or the eccentricities of an employee cannot be treated as amounts spent on repairs. **[*173 ITR 374]***

Repairs	**1993**	**Raj-HC**	**CIT V/s. Udaipur Mineral Developement Syndicate Pvt. Ltd.**

Repair means restore (building, machine, garment, tissue, strength, etc.) to good condition, renovate or mend by replacing or refixing parts or compensating loss or exhaustion. **[*203ITR556*]**

Repairs and maintenance	**1997**	**Gau-HC**	**George Williamson (Assam) Ltd. V/s. CIT**

In section 43 of the Income-tax Act, 1961, the expression motor vehicle has not been specifically mentioned, but the expression plant includes motor vehicle. Section 31 speaks about amounts spent on repairs, whereas section 37(3A) speaks about running and maintenance. The expressions **repairs and maintenance** are two different expressions. The expression repair presupposes certain injury or partial destruction. But the expression maintenance does not do so. It means to keep a particular thing in its similar state. The Legislature being fully aware of the difference of expressions, dealt with the expenses on repairs in section 31 and expenses for running and maintenance in section 37(3A) and (3B).

[*139 CTR 194, 223 ITR 203, 91 TAXMAN 308]*

Replacement	**2002**	**Mad-HC**	**CIT V/s. Madras Cements Ltd.**

Replacement is different from repair. **Replacement** implies the removal or discarding of the

thing that was in use, by a different or new thing capable of performing the same function with the same or greater efficiency. The replacement of a section in a series of machines which are interconnected, in a segment of the production process which together form an integrated whole may in some circumstances, be regarded as amounting to repair when without such replacement that unit in that segment will not function. That logic cannot be extended to the entire manufacturing facility from the stage of raw material to the delivery of the final finished product. **[175** ***CTR 551, 255 ITR 243, 123 TAXMAN 412]***

Representative assessee/Individual	1996	Mad-HC	CIT V/s. Venu Suresh Sanjay Trust

A plain reading of sections 160 to 162 of the Income-tax Act, 1961, would go to show that a **representative assessee** has either to be an individual or an artificial juridical person, who is also equated with an individual. Under section 160(1)(iv) it is the trustee, who is the representative assessee. The trustee, therefore, has to be an individual or a group of individuals. Section 164 omits from its provisions section 161 which shows that section 164(1) does not supersede section 161 or section 162. A reading of section 164(1)(i) would go to show that it is by fiction of law that the income of the beneficiary is to be treated as income of an association of persons for the purpose of charging tax. This legal sanction is available only for the purpose of charging the tax on the total income that is determined in the case of a trust. Section 164 does not provide how the total income of the representative assessee is to be computed. Therefore, the provisions relating to computation of income would be applicable even in a case where the representative assessee has to be assessed under section 164.

[138 ***CTR 97, 221 ITR 649, 90 TAXMAN 486]***

Representative-assessees	1982	MP-HC	CIT V/s. G.B.J. Seth

In the case of **representative-assessees** they take their status from the beneficiaries they represent and it is wholly immaterial whether there is one representative-assessee or there are two or more of them representing the same beneficial interest or interests. In the case of executors, under section 168 of the Income-tax Act, 1961, if there is only one executor, he will be assessed as if the executor were an individual or if there are more executors than one, then, as if the executors were an association of persons. But this difference is of no consequence as the assessee or assessees are assessed as representing the estate of the deceased.

[*133 ITR 192, 6 TAXMAN 318]*

Requisition	2006	All	Chandra Prakash Agrawal V/s. ACIT

The word requisition means taking of actual possession. The requisition is complete only when the seized books of account and other documents, which have been requisitioned, have been delivered to the requisitioning authority. The provisions of Chapter XIV-B of the Act would come into play only when the books of account or other documents or assets are actually received by the Assessing Officer pursuant to the requisition made under section 132A.

[203 ***CTR 125, 287 ITR 172, 154 TAXMAN 372]***

Reserve	1958	Lah-HC	Lyallpur Cotton Mills Ltd. V/s. CIT

The word **reserve** should be construed only in its ordinary grammatical meaning, in which sense it denotes the sum which is merely withheld from distribution of dividend, and is not confined to an amount specifically so named. All profits which a company decides to withhold from distribution as dividend, though such withholding be only for a year, are reserves within the meaning of rule 2(1) of Schedule II to the Business Profits Tax Act, 1947.In order to constitute a reserve, however, there must be a conscious act by the company withholding an

amount, and the word reserve can have no application to profits with respect to the application of which there is as yet neither a proposal nor a decision. **[*33 ITR 127]***

Reserve	1958	Cal-HC	Indian Steel and Wire Products Ltd. V/s. CIT

A **reserve** is by its very nature a fund which is created and maintained for the purpose of being drawn up in future, and nothing can be reserved unless it has been reserved or laid by or stored for use or application in a future contingency which is anticipated as certain or likely. Payments which are made in discharge of a present liability in the course of the year to which the balance-sheet and profit and loss account relate cannot be said to be made by way of creating a reserve; they are clearly of the nature of expenditure, although it may not be expenditure in the income-tax sense allowable in an assessment. A reserve is created only out of the whole or a part of the surplus profits as they are found to be in the hands of the company at the end of the year. **[*33 ITR 579]***

Reserve	1968	Ker-HC	Aluminium Industries Ltd. V/s. CIT

A **reserve** may be a general reserve or a specific reserve, but in order to constitute a reserve there must be a clear indication to show that it was a reserve either of the one or the other kind. A mass of undistributed profits is not a reserve, even though it is shown in the balance-sheet as a reserve. **[68 *ITR 125]***

Reserve	1977	Guj-HC	CIT V/s. Mafatlal Chandulal & Co. Ltd.

In its ordinary meaning, the expression **reserve** meant something specifically kept apart for future use or for a specific occasion. **[107 *ITR 489]***

Reserve	1978	Cal-HC	Braithwaite and Co. (India) Ltd. V/s. CIT

In computing the capital of a company for the purpose of surtax, the true nature and character of a sum designated as a reserve is to be determined with reference to the substance of the matter. A reserve created in regard to a payment to be made on account of liabilities which have already arisen cannot be properly termed as **reserve**. The accounts of a company may be made up for a year up to a particular date at a later point of time. A company can, similarly, finalise its appropriations for various purposes including reserves and provisions at a later date with retrospective effect. A company can take advantage of retrospective effect of its determination of appropriations but it cannot then contend that, by being retrospective, the nature of the appropriation will change. **[*111 ITR 825]***

Reserve	1984	Mad-HC	CIT V/s. Peirce Leslie and Co. Ltd.

In order to create a **reserve** there must be a positive and overt act on the part of the company and in the case of a secret reserve there cannot be any overt act of creating a reserve by segregating or setting apart of profits appropriated for a given purpose. Consequently, a mere excess provision for depreciation allowance or writing down of the trade investments on the assets side of the balance-sheet cannot be considered to be a reserve.

[38 *CTR 309, 147 ITR 157, 16 TAXMAN 8]*

Reserve	1986	Bom-HC	Richardson and Cruddas Ltd. V/s. CIT

A mass of undistributed profits cannot automatically became a **reserve**. Somebody possessing the requisite authority must clearly indicate that the amount has been separated from the

general mass of profits with a view to constituting it either as a general or a special reserve and it should be apparent from the surrounding circumstances that the amount so earmarked or set apart is, in fact, a reserve to be utilised in future for a specific purpose or on a specific occasion.Where a provision has been made on an ad hoc basis which could have been made fairly accurately on a scientific basis, it should be determined on a scientific basis and the excess, if any, should be regarded as a reserve. **[50** ***CTR 1, 162 ITR 753, 27 TAXMAN 65]***

Reserve	**1989**	**Kar-HC**	**CIT V/s. Industrial Credit and Dev. Syndicate Ltd.**

Reserves are amounts set aside out of profits and other surpluses, not designed to meet a particular liability, contingency, commitment or diminution in the value of assets known to exist at the date of the balance-sheet. **[*177 ITR 51]***

Reserve	**1990**	**Mad-HC**	**CIT V/s. Gordon Woodroffe and Co. (Madras) Pvt. Ltd.**

A mass of undistributed profits cannot automatically become a **reserve** and somebody possessing the requisite authority must clearly indicate that a portion thereof has been earmarked or separated from the general mass of profits with a view to constituting it either as a general reserve or as a specific reserve. The surrounding circumstances should make it apparent that the amount earmarked or set apart is in fact a reserve to be utilised in future for a specific purpose and on a specific occasion. A clear conduct on the part of the directors in setting apart a sum from out of the mass of undistributed profits avowedly for the purpose of distribution as dividend in the same year would run counter to any intention of making that amount a reserve. Thus, any amount set apart for diminution in the value of the assets which is a known liability can only be taken to be a provision and not a reserve. **[*183 ITR 465]***

Reserves	**1979**	**Kar-HC**	**Addl. CIT V/s. Indian Telephone Industries**

The expression **reserves** has not been defined in the Act. It has, therefore, to be understood in the manner in which it is used in commercial practice. As observed by the Supreme Court in Metal Box Company of India Ltd. V/s. Their Workmen (73 ITR 53) it is an amount which is set apart to meet a contingency which is not known at the time when the balance-sheet is prepared. It need not always be created out of profits. **[10** ***CTR 44, 118 ITR 291]***

Residence	**2002**	**Guj-HC**	**Harsutrai J. Raval V/s. CIT**

The word **residence** has a variety of meanings, according to the statute in which it is used and position in which it is found. The word residence ……refers to a place of permanent and not merely temporary abode. The word permanent here, is a relative term and is not synonymous with everlasting. A stop gap arrangement for stay in a house property not intended to be purchased or constructed for permanent residence, that is as an abode where the assessee would ordinarily dwell, cannot deny the entitlement to the benefit of the provisions of section 54(1). **[*174 CTR 540, 255 ITR 315, 122 TAXMAN 165]***

Residence of Hindu Undivided Families	**1951**	**SC**	**V.Vr.N.M. Subbayya Chettiar V/s. CIT**

The test for deciding the **residence of Hindu undivided families** laid down in section 4A(b) of the Income-tax Act, 1922, is based very largely on the rule which has been applied in England to cases of corporations. In order to bring the case under the exception, the court has

to ask whether the seat of the direction and control of the affairs of the family is inside or outside British India. **[19 *ITR 168]***

Resident	1982	Bom-HC	Dhirajlal Haridas V/s. CIT

A plain reading of section 6(1)(b) of the Act of 1961 shows that what it requires, in order that the assessee may be considered as a **resident** in India, is that the assessee must have maintained or caused to be maintained for him a dwelling place in India for the period stated in the said clause and also resided in India for a period of 30 days or more during the relevant previous year. It is not sufficient in order to satisfy this test that there is a dwelling place in the taxable territories in which the assessee goes and lives. There must be in him a right to live in such a dwelling place maintained for him, because without that right, it could not be said that he has either maintained a dwelling place or a dwelling place has been maintained for him. The volition on the part of the assessee is essential. Whether the assessee maintains a dwelling place or causes it to be maintained, the maintenance of the dwelling place has to be at his instance or behest and, when it is maintained by someone other than the assessee, it has to be for the assessee or for his benefit. **[*138 ITR 570]***

Retained profits	1982	Bom-HC	CIT V/s. Hindustan Antibiotics Ltd.

A company, which accumulates and retains, for the purposes of its future expansion, large amounts out of the profits earned during the year, can be said to have accumulated the amounts for purposes of its business. These are what are known in business parlance as **retained profits**. Retained profits may be retained for the purpose either of meeting and reducing the present liabilities or for meeting the working capital required in prasenti or for reduction of loans and borrowings or for the future expansion of the company. Regarded in any, of these ways such retained amounts must be treated as moneys required for the purpose of the business of the company. **[26 *CTR 129, 137 ITR 42]***

Retirement	1998	Bom-HC	CIT V/s. D.P Malhotra

Retirement is a word of wide import. In the context of employment, it means conclusion of a career. One of the meanings of the word retire is resign. Both retirement and resignation result in the conclusion of the service career. In fact, resignation from service is also one of the modes of retirement from service. Resignation is a voluntary act of the employee to retire from service. Once an employee resigns, his service stands terminated from the date on which his letter of resignation is accepted by the appropriate authority, unless there is any law or statutory rule governing the conditions of service to the contrary. In other words, on acceptance of resignation, the employee stands retired from service. The word retirement has not been used in clause (10AA) in the restricted sense to mean retirement on superannuation. On the other hand, it is clear from the language of clause (10AA) itself that it has been used in the widest possible terms to mean and include all cases of retirement, whether on superannuation or otherwise. What is relevant is retirement—how it took place is immaterial for the purpose of this clause. It is therefore, clear that if on retirement. **[229 *ITR 394, 98 TAXMAN 110*]**

Return	1984	Bom-HC	Princess Maheshwari Devi of Pratapgarh V/s. CIT

The word **return** could not be interpreted as meaning only a return for labour or skill employed or capital invested. Such a definition of return would be too narrow and would exclude the case of voluntary payments, when it is the settled position in law that in some cases even voluntary payments could be regarded as income. **[*33 CTR 117, 147 ITR 258, 12 TAXMAN 220]***

Right to receive	2001	Mad-HC	S. Khader Mohideen V/s. ITO

The words **right to receive** in section 44AC(1)(b) of the Income-tax Act, 1961, have to be construed having regard to the object of the provision and its place in the scheme of the Act. The provision is a special provision for computing the profits and gains from the business of trading in certain goods. One of the items of the goods specified is forest produce. The transfer of title of the forest produce from one person to another in the course of trade is, therefore, to be governed by this provision. It covers not only the actual sale of the goods but also the right to receive the goods of the nature specified in the table including forest produce. The word receive therefore, in the context has to be construed as including the gathering of the forest produce from the forest, as immediately after such gathering it is to be appropriated by the person who has been given the right to gather, as his own property. The words right to receive have been used in the statutory provision to indicate the right to become the owner of the goods and not merely an instance of one person delivering goods to another without any intent to transfer the ownership therein. What is material is the transfer of title. The auction of the right to gather the forest produce is, therefore, an auction in relation to the right to receive forest produce by going into the forest and gathering the produce.

[*167 CTR 444, 248 ITR 554, 102 TAXMAN]*

Road transport	2006	Guj-HC	CIT V/s. Gujarat Narmada Valley Fertilizer Co. Ltd.

Road transport vehicles would in common parlance mean vehicles which were used for transportation of people at least though in a given set of circumstances they may be involved in transportation of goods **[195 *CTR404, 281 ITR 297,]***

Road transport vehicle	2003	Cal-HC	CIT V/s. Birla Jute and Industries Ltd.

. . . **road transport vehicle** is defined in the Road Transport Corporations Act, 1964, to mean a service to carry passengers or goods or both by road in vehicles for hire or reward. It clearly means a service by road, whereas vehicle is defined in the 1964 Act to mean a vehicle capable of being used for road transport and includes tram car, trolley vehicle or trailer. It does not include rail. The stress is on road and includes tram car but not rail or train. If a statute in an inclusive definition refers to one item distinct from the other and omits that other item, then the intention of the Legislature appears to be clear. While including one by special reference without referring to the other the omission is deliberate.

[180 *CTR 399, 260 ITR 55, 133TAXMAN 337]*

Road transport vehicle	2003	All-HC	CIT V/s. U.P. Paschimi Kshetriya Vikas Nigam Ltd.

The expression **road transport vehicles** is not defined in the Income-tax Act. In the absence of a statutory definition, the meaning in common parlance has to be adopted. Road transport vehicles would mean vehicles which are used for transportation of goods or passengers on roads. A tractor is not basically used for transportation of goods or passengers on roads. It is machinery used for tilling agricultural land. People can ride on a tractor but that is not its main purpose. Hence investment allowance can be claimed on tractors.

[188 *CTR 40, 264 ITR 273, 137 TAXMAN 378]*

Royalty	1983	Guj-HC	CIT V/s. Ahmedabad Manu.and Calico Printing Co.

In the case of secret processes, patents, special inventions, when right of exploitation is given

by the owner of the inventions, patents, etc., to a third party instead of outright sale, then for the right to exploit these inventions, secret processes, some amount may be paid and the amount paid may be correlated to the extent of the exploitation. It is in this sense that licence agreements for the exploitation of patents, inventions, etc., are being entered into in modern commercial world and as part of such agreements, even knowledge derived from his own experience and technical know-how for the most economical and efficient user of the patents, inventions, etc., are parted with by the licensor to the licensee. Payments of this kind are known as royalties. This is also evident from several double taxation avoidance agreements between the Govt. of India and foreign countries such as Sweden in which the term **Royalty** has been defined. That such payments are royalties is also evident from the definition of the word Royalty in section 9(1)(vi), Explanation 2, which was subsequently introduced by the Finance Act, 1976, with effect from June 1, 1976. **[139 *ITR 806]***

Royalty	**1988**	**Cal-HC**	**N.V. Philips V/s. CIT**

The dictionary meaning of the term **royalty** makes it clear that the said term connotes payments periodic or at a time for user by one person of certain exclusive rights belonging to another person. The examples of such exclusive rights are rights in the nature of a patent mineral rights or rights in respect of publications. It is possible for a person carrying out operations of manufacture and production of a particular produce to acquire specialised knowledge in respect of such manufacture and production which is not generally available. A person having such specialised knowledge can claim exclusive right to the same as long as he chooses not to make such specialised knowledge public. It is also conceivable that such a person can exploit and utilise such specialised knowledge in the same way as a person holding a patent or owning a mineral right or having the copyright of a publication to allow a limited user of such specialised knowledge to others in confidence against payment. There is no reason why payment for the user of such specialised knowledge though not protected by a patent should not be treated as royalty or in the nature of royalty. **[*65 CTR 103, 172 ITR 521]***

Royalty	**1998**	**AP-HC**	**CIT V/s. Klayman Porcelains Ltd.**

A plain reading of section 9(1)(vi)(b) of the Income-tax Act, 1961, shows that any amount paid by a person who is a resident by way of royalty will fall within the phrase income deemed to accrue or arise in India. The expression **royalty** is defined in Explanation 2 of the clause. The Explanation defines royalty to mean consideration including any lump sum consideration paid for imparting any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property and also the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience orskill. A lump sum consideration paid which is in the nature of income chargeable under the head Capital gains, is excluded from the meaning of royalty.

[229 *ITR 735, 96 TAXMAN 221]*

Royalty	**2000**	**Mad-HC**	**CIT V/s. Neyveli Lignite Corporation Ltd.**

……..the term **royalty** normally connotes the payment made by a person who has exclusive right over a thing for allowing another to make use of that thing which may be either physical or intellectual property or thing. The exclusivity of the right in relation to the thing for which royalty is paid should be with the grantor of that right. Mere passing of information concerning the design of a machine which is tailor-made to meet the requirement of a buyer does not by itself amount to transfer of any right of exclusive user, so as to render the payment made therefor being regarded as royalty. **[162 *CTR 206, 243 ITR 459]***

Rural area	1987	SC	Om Parkash Agarwal V/s. Giri Raj Kishori

That the definition of the expression **rural area** in section 2(h) was vague. The expression meant an area the population of which did not exceed 20, 000 persons: it need not necessarily be a local area. Any geographical area the population of which did not exceed 20, 000 could be conveniently brought within the scope of section 2(h). **[*164 ITR 376]***

* *In interpreting a sentence the meaning of words should be confined to the subject which immediately precedes them.*

* *A provision for exemption or relief in a fiscal statute should be construed liberally and in favour of the assessee. Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than their narrow legal or technical sense.Loquitur ut vulgus, that is, according to the common understanding and acceptation of the terms, is the doctrine that should be applied in construing the words used in statutes dealing with matters relating to the public in general. The Income-tax Act is of a general application. It, therefore, follows that the words used therein should be given their popular meaning.*

* *It is now a well-settled principle of law that although exemption provisions are to be construed strictly as regards the applicability thereof to the case of the assessee, once it is found that the exemption is applicable, the provisions are required to be interpreted liberally. An exemption is to be granted unless it is expressly taken away.*

* *A person who makes a positive averment is required to establish the same. It is not for the person against whom the averment is made to establish negatively that the state of affairs averred by the other person does not exist.*

* *Compounding of an offence is not a right of the accused nor is it his unilateral act. It can only be done with the consent of the authorities enumerated in the provision. No additional right can be created in favour of an accused to enable him to save himself from the "disgrace and ignominy of the prosecution."*

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Salaries	1995	Raj-HC	CIT V/s. Pramod Kumar Jai

Section 15 of the Income-tax Act, 1961, has provided for the income chargeable to income-tax under the head **Salaries**. The provisions of section 15 of the Income-tax Act, 1961, contemplate the jural relationship of employer and employee. In the case of an employment the existence of a relationship of master and servant has to be established. A firm is not a legal person and has no legal existence apart from its partners. Though under the income-tax law, it is a unit of assessment by virtue of the special provisions it cannot be considered that the firm is the employer of its partner. There cannot be a contract of service, in strict law, between a firm and one of its partners. Payment of salary to a partner represents a special share of the profits. Salary paid to a partner retains the same character of the income of the firm as profit. Explanation 2 added by the Finance Act, 1992 from April 1, 1993, in section 15 makes it clear that the salary received by a partner of a firm shall not be regarded as salary.

[*125 CTR 154, 216 ITR 598, 80 TAXMAN 333]*

Salary	1941	Sin-HC	CIT V/s. Mills Store Co.

Before a payment from one party to the other can be regarded as salary within the meaning of section 7 of the Act some relationship of employer and employee or of principal and agent is essential. A restrictive covenant, whereby a person undertakes for consideration to abstain from doing a particular act or from following a particular course of conduct, is something quite outside an ordinary contract of employment and the word **salary** cannot be held to include the consideration of such a contract. **[9 *ITR 642*]**

Salary	1979	SC	Gestetner Duplicators P. Ltd. V/s. CIT

Entire remuneration determined partly by reference to time and partly by reference to the volume of work done partook of the character of salary and, therefore, the commission paid by the appellant to its salesmen clearly fell within the expression **salary** as defined in rule 2(h) of Part A of Schedule IV to the Act, and the proportionate contributions appertaining to the commission paid by the appellant to its salesmen were deductible under section 36(1)(iv):(ii) ……Conceptually there is no difference between salary and wages, both being a recompense for work done or services rendered, though ordinarily the former expression is used in connection with services of non-manual type while the latter is used in connection with manual service. The expression wages does not imply that the compensation is to be determined solely upon the basis of time spent in service; it may be determined by the work done; it could be estimated in either way. If conceptually salary and wages mean one and the same thing then salary could take the form of payment by reference to the time factor or by the job done. In fact, in the case of salary, the recompense could be determined wholly on the basis of time spent on service or wholly by the work done or partly by the time spent in service and partly by the work done. In other words, whatever be the basis on which such recompense is determined it would all be salary.If under the terms of the contract of employment remuneration or recompense for the services rendered by the employee is determined at a fixed percentage of turnover achieved by him, then such remuneration or recompense will partake of the character of salary, the percentage basis being the measure of the salary and, therefore, such remuneration or recompense must fall within the expression salary as defined in rule 2(h) of Part A of the Fourth Schedule to the Act. **[8 *CTR 371, 117 ITR 1, 1 TAXMAN 1]***

Salary	1994	Mad-HC	K. Gopalakrishnan V/s. CBDT

There is no general definition of the word **salary** applicable for all the provisions of the Income-tax Act. The Explanation to section 10(10) states that, In this clause and in clause (10AA) salary shall have the meaning assigned to it in clause (h) of rule 2 of Part A of the Fourth Schedule to the Income-tax Act. Clause (h) of rule 2 of Part A of the Fourth Schedule reads that salary includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites. There is no ambiguity whatever in the definition contained in the above clause, and it is the said definition which should be applied while construing section 10(10) and section 10(10AA). **[206 *ITR 183]***

Salary	1995	Ori-HC	CIT V/s. Govind Chandra Pani

Section 17(1) of the Income-tax Act, 1961, provides that for the purposes of sections 15 and 16, **salary** includes any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. Salary means to recompense, reward; to pay for something done. If under the terms of the contract of employment remuneration or recompense for the services rendered by the employee is determined at a fixed percentage of the turnover achieved by him then such remuneration or recompense will partake of the character of salary, the percentage basis being the measure of the salary. **[*126 CTR 359, 213 ITR 783, 83 TAXMAN 364]***

Salary	1999	Guj-HC	CIT V/s. Kiranbhai H. Shelat

….The definition of **income** in section 2(24) of the Income-tax Act, 1961, though inclusive, includes also the receipts which would be income in their normal sense and it is not a mere catalogue of receipts which otherwise would not be income. Under the head **Salaries**, to be chargeable income, it should not only be income, but it should also be income of the nature indicated in section 15 read with section 17, which defines **salary**. Under section 17(1)(iv), salary would include any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages. Any special allowance or benefit other than perquisite which are treated as income by virtue of section 2(24) have not been separately mentioned in the definition of salary and can be classified as salary only if they are covered by the expression profits in lieu of or in addition to salary or wages. The use of the word profit in the expression profits in lieu of or in addition to salary or wages, itself involves a deduction of expenses properly incurred in realising the proceeds out of which the profit arises. Section 2(24) of the Act speaks of benefits and allowances granted to the assessee to meet the expenses for the performance of duty and not the expenses incurred in the performance of duty. To the extent that such amount granted to the assessee for meeting his expenses wholly necessarily and exclusively for the purpose of his duties are not actually spent by him, that portion of such income included in section 2(24) will result in profits to the assessee in addition to his salary or wages. Certain types of expenses falling within this artificial definition of income which are incurred out of the amount so granted are specifically exempted from being included in the total income by virtue of section 10(14). The type of such incurred allowances or benefits granted to the assessee if not exempted under section 10(14) would not thereby automatically become his salary. The receipt has to fall under the head Salaries in order to become chargeable to tax. The deductions contemplated under section 16 of the Act are to be made while computing the income chargeable under the head Salaries and these statutory deductions are quite distinct from the removal of expenses incurred for the purpose from the receipts for working out the profits in lieu of or in addition to salary under clause (iv) of section 17(1). **[*147 CTR 43, 235 ITR 635, 99 TAXMAN 63]***

Salary	2000	Mad-HC	CIT V/s. T. Abdul Wahid and Co.

A contract of employment necessarily involves the rendering of services by the employee to the employer and the use of his skill, energy and time for the benefit of the business in which he is employed. If the employer chooses to remunerate those services by adopting different measures for different aspects of the services received from the employee, the payments nevertheless retain the character of compensation to the employee for the skill, labour and the time put in by the employee for the benefit of the employer. The definition of salary in section 17 of the Act is couched in wide terms to take into account the remuneration paid to the employee, whether it is labelled as salary or otherwise by the employer. It is not the label given to the payment that is determinative of the question as to whether it is salary. The definition of salary in section 17(1) of the Act is an inclusive definition. Sub-clause (iv) of section 17(1) of the Act makes a specific reference to commission paid in lieu of, or in addition to, any salary or wages. **[243 *ITR 467, 125 TAXMAN 702]***

Salary	2002	Ker-HC	CIT V/s. T.K. Ginarajan, Development Officer, LIC of India

The definition of **salary** under section 15 of the Income-tax Act, 1961, is so wide and is only an inclusive one taking in all receipts from the employer in the form of wages, commission, bonus, profits in lieu of or in addition to salary, etc. Therefore, any payment by the employer to the employee towards consideration for services rendered in the course of employment comes within the description of salary which includes perquisites as well.

[253 *ITR 463, 120 TAXMAN 646]*

Salary	2002	P&H-HC	CIT V/s. Dr. Mrs. Usha Verma

According to Corpus Juris Secundum the word **salary** is usually applied to the reward paid to a public officer for the performance of his official duties . . . It is paid at stated intervals. Under the Income-tax Act, 1961, it is not merely defined to mean the compensation for services rendered but by providing an inclusive definition the scope of the provision has been widened. The legislation does not confine salary within the narrow limit of compensation for services rendered during the subsistence of a relationship of employer and employee but even includes the benefits which may become available at the end of that relationship. In clause (iv) of section 17 of the Income-tax Act it has been provided that even fees, commissions, perquisites or profits which are paid to a person in lieu of or in addition to any salary or wages shall be included in income taxable under section 15. **[172 *CTR 98, 254 ITR 404, 120 TAXMAN 738]***

Salary, Profit	2000	SC	Karamchari Union V/s. Union of India

…..A reading of clause (1) of section 17 of the Act makes it abundantly clear that the word salary is given an exhaustive meaning as stated in sub-clauses (i) to (vii). The inclusive definition of the word **salary** given in section 17 provides that apart from salary received by the employee, it includes wages, any annuity or pension, any gratuity, any fees, commissions, perquisites or profits in lieu of or in addition to, any salary or wages, any advance of salary, any payment received by an employee in respect of any period of leave not availed of by him and other payments mentioned in sub-clauses (va), (vi) and (vii). These sub-clauses (i) to (vii) of clause (1) indicate that the Legislature intended to include in salary, the specified or named amount paid to the employee in respect of the services rendered by him. Sub-clause (iv) of clause (1) provides for inclusion of four types of payments in the word salary-(i) fees, (ii) commissions, (iii) perquisites, and (iv) profits in lieu of, or in addition to, salary. In common parlance fees, commissions, perquisites or payments of profits in lieu of salary may not be considered to be

salary. But by this inclusive definition it has been provided so. Clause (3) provides for an inclusive definition of the phrase profits in lieu of salary…..The Income-tax Act is a self-contained code and the taxability of the receipt of any amount or allowance is to be determined on the basis of the meaning given to the words or phrases in the Act. Section 2(24) of the Act gives a wide and inclusive definition to the word income. Similarly, for levying tax on salary income, an exhaustive definition is given under section 17, which includes perquisites and profits in lieu of salary. The only exclusion provided under clause (3) is any payment referable to clauses (10), (10A), (10B), (11), (12), (13) or (13A) of section 10. In view of this specific inclusion and exclusion in the meaning of the word income and salary, the payment received by an employee has no connection with the profits of the employer. The word profits is used only to convey any advantage or gain by receipt of any payment by the employee. Webster's Comprehensive Dictionary gives the meaning of the word profit, inter alia, as advantage or benefit. Applying the general meaning of the word profits and considering the dictionary meaning given to it under sections 17(1)(iv) and 17(3)(ii), it can be said that advantage in terms of payment of money received by the employee from the employer in relation or in addition to any salary or wages would be covered by the inclusive definition of the word salary. Because of the inclusive meaning given to the phrase, profits in lieu of salary would include any payment due to or received by an assessee from an employer, even though it has no connection with the profits of the employer. It is true that the Legislature might have avoided giving an inclusive meaning to the word salary by stating that any payment received by the employee from an employer would be considered to be salary except the payments which are excluded by section 17(3)(ii), i.e., those referable to clauses (10), (10A), (10B), (11), (12), (13) or (13A) of section 10. However, it is for the Legislature to decide the same. This would not mean that by giving an exhaustive and inclusive meaning, the word **profits** can be given a meaning only when it pertains to sharing of profits by the employer. For the assessee, the receipt of such amount would be a profit, gain or advantage in addition to salary, even though it is not named as salary. Therefore, the word profits in the context is required to be understood as a gain or advantage to the assessee. May be that to the extent that Government or statutory corporations do pay something less than what is required to be reimbursed, the receipt of city compensatory allowance cannot be termed as profit in common parlance. However, for income, salary, and its taxability under the Act, the meaning given by the Legislature is to be taken into consideration, as for that purpose, it is a complete code. **[159 *CTR 148, 243 ITR 143, 109 TAXMAN]***

Sale	**1951**	**Cal-HC**	**Calcutta Electric Supply Corp. Ltd. V/s. CIT**

The ordinary meaning of the word **sale** is a transaction entered into voluntarily between two persons known as the buyer and the seller by which the buyer acquires property of the seller for an agreed consideration known as a price. **[19 *ITR 406]***

Sale	**1972**	**Del-HC**	**CIT V/s. Meatles Ltd.**

The word **sale** had become a word of well-recognised legal import at the time when it was introduced in the Act, and in that sense a sale could be made only by a registered instrument in the case of immovable property of the value of Rs. 100 and upwards. **[*84 ITR 37]***

Sale and barter	**1967**	**SC**	**CIT V/s. Motors and General Stores (P.) Ltd.**

Sale is a transfer of property in goods or of the ownership in immovable property for a money consideration. But in exchange there is a reciprocal transfer of interest in immovable property, a corresponding transfer of interest in movable property being denoted by the word **barter**. The

difference between a sale and an exchange is this, that in the former the price is paid in money, whilst in the latter it is paid in goods by way of barter. **[*66 ITR 692]***

Sale and sold	1972	Ker-HC	CIT V/s. Nataraj Motor Service

The expressions **sale** and sold are not defined in the Act but are used in their ordinary meaning. Sale according to its ordinary meaning is a transfer of property for a price. Adjustment of the rights of partners in a dissolved firm is not a transfer nor is it for a price.

[*86 ITR 109]*

Sale or disposal	1991	SC	Goodyear India Ltd. V/s. State of Haryana

The mere despatch of goods by a manufacturer to his own branches outside the State does not in any way amount to a **sale** or disposal of goods as such; the consignment or despatch of goods is neither a sale nor a purchase. **[*188 ITR 402]***

Sale proceeds . . . receivable by the assessee	2001	SC	Sea Pearl Industries V/s. CIT

The phrase **sale proceeds . . . receivable by the assessee** in section 80HHC cannot be construed to mean sale proceeds ultimately received.

[*165 CTR 395, 247 ITR 578, 114 TAXMAN 618]*

Sales promotion	1991	Cal-HC	CIT V/s. Hindusthan Motors Ltd.

Sales promotion is a phrase of wide amplitude. In fact, advertisement and publicity may well come within the ambit of the phrase sales promotion. By using the phrase advertisement, publicity and sales promotion in section 37(3A) of the Act, the Legislature clearly indicated that a certain type of expenditure will not be allowed as deduction beyond the limit specified in that section. Sales promotion must be construed ejusdem generis with the earlier two expressions advertisement and publicity. It appears from the dictionary meaning of the word promote that costs incurred to sell goods simpliciter will not come within the meaning of the word promotion. In order to sell the goods manufactured, selling costs have to be incurred. The seller may engage middlemen or wholesalers to sell the goods; commission and brokerage will have to be paid to them for this purpose. These expenditures will have to be incurred for the purpose of selling the goods. But every type of expenditure incurred in connection with sale of goods will not come within the phrase advertisement, publicity and sales promotion. Selling costs may include many types of expenditures. Only those expenditures which are of the nature of sales promotion such as fashion shows, consumer gift offers, etc., will come within the mischief of section 37(3A) of the Act. The position has been made clear by the circular issued by the Central Board of Direct Taxes in this connection after the introduction of section 37(3A) in the statute by Circular No. 240 dated May 17, 1978. **[63 *CTR 110, 192 ITR 619]***

Sales promotion	1992	Cal-HC	CIT V/s. The Statesman Ltd.

The expression **sales promotion** used in section 37(3B) of the Income-tax Act, 1961, though one of wide amplitude, is not defined. It has, therefore, to be understood in its meaning in the setting in which it occurs. Sales promotion necessarily involves an element of advertisement and publicity. A manufacturer of a product may intend to further the popularity or sales by publishing and advertising or by several other modes, but the cost incurred to sell the product will not come within the purview of sales promotion . The expression sales promotion is preceded by the words advertisement and publicity in clause (i) of sub-section (3B) of section 37. Here,

the legal maxim, ejusdem generis, is of aid. The maxim serves to restrict the meaning of a general word to things or matters of the same genus as the preceding particular words. Where the statute imposes restriction on advertisement, publicity and sales promotion, the expression sales promotion cannot include the selling expenses incurred in the ordinary course of the business. It only restricts such expenses as are of like nature as advertisement and publicity…….. The provision cannot be construed as restricting anything and everything connected with sale, such as transportation of goods for sale, collection of sale proceeds and so on. **[*198 ITR 582]***

Sales promotion	**1993**	**Cal-HC**	**CIT V/s. Bata India Ltd.**

The expression **sales promotion** in section 37(3A) of the Income-tax Act, 1961, though of wide amplitude and undefined, is to be understood in its meaning in the setting in which it occurs. Sales promotion necessarily involves an element of advertisement and publicity. A manufacturer of a product may intend to further the popularity of his product by advertising or by several other like promotional methods. But the cost incurred in the ordinary course of sale of the product will not come within the purview of the expression sales promotion.

[120 *CTR 139, 201 ITR 884]*

Sales promotion	**2003**	**Mad-HC**	**CIT V/s. Tuticorin Alkali Chemicals and Fertilizers**

The term **sales promotion** is not to be confused with the sales actually effected. While sales promotion means the measures taken by the assessee to promote generally the sales of the products manufactured by it, or dealt with by it, individual sales made in the normal course of business on commercial terms either directly to the customer, or through its wholesale and other dealers to whom, under the terms of trade, discounts and commissions are allowed, cannot be regarded as sales promotion. **[*261 ITR 80, 136 TAXMAN 625]***

Scholarship	**1984**	**Mad-HC**	**CIT V/s. V.K. Balachandran**

Section 10 sets down various items of income which are wholly outside the purview of taxable total income. The opening words of the section show very clearly that the items listed thereunder are undoubtedly receipts of an income-character, but they are nevertheless to be excluded from the computation of taxable income. Scholarship to meet the cost of education falling under clause (16) has been included in s. 10, not because scholarship bears an income-character. By **scholarship**, as ordinarily understood, we mean anything which makes education free of charge, or at a concessional rate of fees. In s. 10(16), however, scholarship is not used in that sense of something in education opportunity which is given free. The basis postulate of a scholarship in cl. (16) is that it is an income receipt. Nevertheless it is excluded from the total income by being brought under s.10. The view of the income-tax statute of a scholarship, therefore, differs from the popular, or dictionary, view of a scholarship. Whereas under the popular view, scholarship is education made available gratis, the sense in which the same expression is used in the I.T. Act is positive payment made to a scholar for pursuit of his education. The considerations which make up the concept of a "scholarship for meeting the cost of education" in s. 10(16) are that the payment is intended to be an income receipt in the hands of the scholar and that whatever is paid is intended to meet the cost of education of the recipient. Since the purpose of the payment is to meet the cost of education, the question whether the quantum of payment is adequate or inadequate, or, is or is not in excess of the requirements are all beside the point. It is enough if the whole object of the payment is to meet the cost of education of a person and no further enquiry is called for in order to exclude the amount from the taxable income under s. 10(16). If the payment is only for the cost of education,

the fact that the recipient does not spend the whole of the amount or saves something out of it or utilises it for other purposes would not detract from the character of the payment being one for scholarship. **[*147 ITR 4]***

Science	1980	Del-HC	E.P.W. Da Costa Vs. Union of India

The word **science** is a very general word. Statistical tables complied after analysing masses of numerical data can be said to be commercial or scientific knowledge. **[121 *ITR 751]***

Search	1974	P&H-HC	CIT V/s. Ramesh Chander

….. The word **search** is used because, in the nature of things, in a given case, when section 132 of the Act applies, the articles to be searched and seized have been concealed by the person concerned from the income-tax department for the purpose of assessment of income-tax. The word search has been used in this sense and not in any other sense. **[*93 ITR 450]***

Search	1975	Ker-HC	Assainar V/s. ITO

The word **search** in section 132(1)(c)(i), considering the object and scope of the section, should not be given a far too technical meaning. The word search has varied meanings and it should be given the general meanings, to look for or seek which are well-known meanings attributable to the word. **[*101 ITR 854]***

Security	1991	All-HC	CWT V/s. Janki Kishori Devi

The word **security** occurring in clause (xxii) of section 5(1) of the Wealth-tax Act, 1957, has not been defined in the Act. In construing the term, those provisions of law which specifically regulate the various types of Government securities can be considered. In order to remove the difficulties in the working of the Indian Securities Act, 1920, a comprehensive enactment, namely, the Public Debt Act, 1944, was enacted. Under section 2 of the Public Debt Act, the expression Government in relation to any Government security means the Central or State Government issuing the security **[*192 ITR 229, 59 TAXMAN 206]***

Seizure	1974	P&H-HC	Ramesh Chander Vs. CIT

Seizure is an expression which implies a forcible exaction or taking possession from either the owner or one who has the possession and who is unwilling to part with possession. In this case the custody was with the police. It would be inappropriate to accept the position that the income-tax department, which is another department of the Union of India, had to be armed with authority to take forcible custody from another department of the same Government or had to be armed with authority to gain custody from an unwilling person. It would be wholly inappropriate in the context to use the expression seizure. Having regard to the context in which the expression possession and seizure have been used, there cannot be an order under section 132 in respect of goods or moneys or papers which are in the custody of a department of Government under a legal authority. **[*93 ITR 244]***

Seizure	1975	Mad-HC	Gulab and Co. V/s. Supdt. of Central Excise (Preventive), Trichy

Though the word **seizure** normally implies taking possession forcibly, it also means taking possession under the authority of law. That the person who is in possession may not object to the handing over is no criterion for holding that such an authority is not necessary to deprive a person of his right to be in possession. Even if such other department is holding the property in its own right and in enforcement of any other provision of law still, on the authority of a

warrant, section 132(3) could be invoked and such other department prohibited from handing over the same to any other person when the purpose for which they were holding the same was no longer available. Hence it is not correct to state that because the goods are known to be in a particular place and in the custody of another department of the Government the power under section 132 cannot be invoked. **[98 *ITR 581]***

Seller	**1993**	**Pat-HC**	**State of Bihar V/s. CIT**

The word **seller** as referred to in section 44AC of the Income-tax Act, 1961, has to be read not only in the context of the word buyer but also upon taking into consideration the purpose for which the said provision as also section 206C had been inserted by Parliament.
[*202 ITR 535]*

Separate business	**1982**	**Mad-HC**	**Sri Ranga Vilas Ginning and Oil Mills V/s. CIT**

If in the course of carrying on any business, speculative transactions are entered into along with non-speculative transactions, by reason of the statutory fiction in Explanation 2 to section 28 of the Income-tax Act, 1961, the speculative transactions will constitute a **separate business**. In other words, where a trader carries on a regular business in spot dealings in a commodity and also indulges in speculative transactions in the same commodity, while in point of fact the business of the assessee may be regarded as an integrated business combining in itself not only spot transactions but also forward dealings, by virtue of Explanation 2 to section 28, the speculative transactions must be separated and regarded as constituting a separate business.
[133 *ITR 85]*

Servant & agent	**1972**	**SC**	**Ram Prashad V/s. CIT**

There is no doubt that for ascertaining whether a person is a **servant or an agent**, a rough and ready test is whether, under the terms of his employment, the employer exercises a supervisory control in respect of the work entrusted to him. A servant acts under the direct control and supervision of his master. An agent, on the other hand, in the exercise of his work is not subject to the direct control or supervision of the principal, though he is bound to exercise his authority in accordance with all lawful orders and instructions which may be given to him from time to time by his principal. But this test is not universal in its application and does not determine in every case, having regard to the nature of employment, that he is a servant.
[*86 ITR 122]*

Serve	**1956**	**All-HC**	**Sri Niwas V/s. ITO**

The retention of the word **serve** in sub-section (1) by the Legislature even though section 34 was amended several times leads also to the inference that the Legislature did not intend that serve must be read as equivalent to issue.Under section 63 of the Income-tax Act, a notice to an association of persons had to be addressed to the principal officer thereof. A notice served on the son of one of the members of the association would not be a proper service of notice on the association, **[*30 ITR 381]***

Service of notice	**1974**	**Guj-HC**	**Shanabhai P. Patel V/s. R.K. Upadhyaya, ITO**

The words **service of notice** or issuance of notice in section 34 have no fixed connotation but are inter-changeable. The same meaning should be given to the words issue of notice in section 148 and service of notice in section 149. Under the Act of 1961 also there are no two

distinct and separate stages of issue of notice and service of notice. Notice of reassessment is issued to the assessee when it is served on him. A notice of reassessment issued against the assessee before limitation but served on the assessee after limitation would be without jurisdiction, void and ineffective. ***[96 ITR 141]***

Set up	**1967**	**SC**	**CWT V/s. Ramaraju Surgical Cotton Mills Ltd.**

The word **set up** in the principal clause of section 5(1)(xxi) is equivalent to the word established, but operations for establishment cannot be equated with the establishment of the unit itself or its setting up. The applicability of the proviso has, therefore, to be decided by finding out when the company commenced operations for establishment of the unit, which operations must be antecedent to the actual date on which the unit is held to have been set up for the purpose of the principal clause. ***[63 ITR 478]***

Set up	**2002**	**Mad-HC**	**CIT V/s. Ponds India Ltd.**

The words **set up** in the context in which they are used refer to an industrial undertaking which commenced manufacture in the year in which the claim for deduction is made or had commenced such manufacture within a period of three years preceding the year of claim. An industrial undertaking which had been set up long prior, and which had commenced manufacture several years earlier, clearly cannot be regarded as an industrial undertaking set up in the year in which the ownership changes. It is not the year in which the legal entity that owns the undertaking is formed that matters; what is material is the year in which the industrial undertaking is set up. Every change in the ownership of that undertaking does not result in the same industrial undertaking being set up over and over again.**[174** ***CTR 235, 253 ITR 686, 122 TAXMAN 706]***

Setting up of a business	**1973**	**Guj-HC**	**CIT V/s. Sarabhai Sons Pvt. Ltd.**

There is a clear distinction between commencing a business and setting it up. For the purpose of section 3(1)(d) what is required to be considered is the **setting up of a business**. When a business is established and is ready to start business it can be said to be set up. The business must be put into such a shape that it can start functioning as a business or a manufacturing organisation. ***[90 ITR 318]***

Settled	**1974**	**Mad-HC**	**R.Chinnaswami Chettiar V/s. CIT**

There is no basis for construing the word **settled** in the definition of the term speculative transaction in section 43(5) of the Income-tax Act, 1961, as restricted to the settlement of a contract before its breach. Though on the breach of a contract, the cause of action for the claim of damages is based on its breach, it does not mean that when the claim is settled, the settlement is not of the contract itself but of the breach alone. The rights and liabilities of the parties flow from the contract which was broken. The emphasis in section 43(5) of the Income-tax Act, 1961, is on the words periodically or ultimately settled otherwise than by actual delivery . The word settled is used in this part of the section without any restriction as to whether it was before or after breach of a contract. Whether the settlement was before or after breach of the contract is immaterial if actual delivery of the goods is absent. Even where the contract is highly speculative and amounts to a wagering contract, if it is settled by actual delivery, it will not be a speculative transaction for the purpose of section 43(5). The section dispenses with all other tests except whether there was actual delivery or transfer of the commodity when the contract is settled. **[96** ***ITR 353]***

Settlement	2001	SC	CIT V/s. Anjum M.H. Ghaswala

Though the term **settlement** may have a very wide dictionary meaning and, in the absence of a statutory definition, generally the word settlement could give the Settlement Commission sufficient power to arrive at a settlement which it deems fit, when the statute qualifies the expression with the mandatory words in accordance with the provisions of this Act, the width of the term settlement becomes subject to the mandate found in the section, which would mean that while the Commission has sufficient elbow-room in assessing the income of the applicant under section 245D(4) it cannot make any order with a term of settlement which would be in conflict with the mandatory provisions of the Act.**[171** ***CTR 1, 252 ITR 1, 119 TAXMAN 352]***

Set-up	1962	Mad-HC	Ramaraju Surgical Cotton Mills Ltd. V/s. CWT

Unless a factory is erected and the plant and machinery are installed therein, it cannot be said to have been set up. The resolutions of the board of directors, the orders placed for purchasing the machinery and the licence obtained from the Government for constructing the factory, are merely initial stages towards the setting up, however, necessary and essential they may be to further the achievement of the end. It is not, however, the actual functioning of the factory or its going into production that can alone be called setting up of the factory. The setting up is a stage anterior to the commencement of the factory. The proper meaning of the expression **set up** would be ready to commence business. **[*46 ITR 820]***

Shall	1976	Ker-HC	CIT V/s. Malayalam Plantations Ltd.

….the term **shall** need not in all contexts, circumstances and situations be treated as indicating a mandatory rule is a proposition by now well settled. That, in every case, where the question is one of consequence of non-observance of a provision, the court has to decide the legislative intent, and to decide this, the court has to consider not only the actual words used but the scheme of the statute, the intended benefit to the public of what is enjoined by the provisions and the material danger to the public by the contravention of the scheme, was observed by the Supreme Court in Banwarilal Agarwalla V/s. State of Bihar.The examination of the provision, therefore, must be with a view to ascertain the intent of the legislature where it is the provision of a statute that arises for consideration and that of the rule making authority when it is a rule that calls for consideration. (Section 33 A rule 8.) **[103** ***ITR 835]***

Shall	1992	Kar-HC	CWT V/s. S. Jindal

Where the question is whether a provision which uses the word **shall** is mandatory, one of the principles is to find out the consequences of reading the provision as mandatory and, if the consequence is to render the statutory provision harsh, onerous or arbitrary, such a reading should be avoided. Another principle is to read down a statutory provision, so as to make it a valid provision and prevent its nullification as unconstitutional; the third principle applicable is to read the provision in consonance with the object and scheme of the statute and thus limit the operation of the particular provision to effectuate the said statutory object.

[100 ***CTR 217, 194 ITR 539]***

Shall	1992	Cal-HC	CIT V/s. Rai Bahadur Bissesswarlal Motilal Malwasie Trust

The construction of the expression **shall** depends on the provisions of a particular Act, the setting in which the direction is given the consequences that would flow from the infringement of the direction and such other considerations. Having regard to the other provisions of the Act

regarding filing of the return or revised return or rectifying the defects in the return, the provisions of section 12A of the Income-tax Act, 1961, are directory in the sense that the Assessing Officer is not powerless to allow an assessee to file the audit report, if not filed along with the return, any time before the completion of the assessment. **[195 *ITR 825]***

Shall	1994	Gau-HC	Ajay Kumar Saharia V/s.CWT

Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they are in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. While the expression **shall** need not always be indicative of the mandatory nature of a provision and the word may need not always be indicative of its directory nature, ordinarily the word shall may be taken to be indicative of the intention of the Legislature or the rule-making authority to make the provision mandatory. The intention has to be gathered on the basis of the general purpose of the statute, the purpose of the particular provision, the inter-relationship between the two, the language used and the consequences of interpreting the provision to be mandatory or directory and the mischief, if any, sought to be avoided. **[*113 CTR 44, 206 ITR 98]***

Shall	1995	Cal-HC	Modern Fibotex India Ltd. V/s. Deputy CIT

It is true that the word **shall** has been used in connection with the issuance of an intimation but it is well-established that the construction of the expression shall depends upon the provisions of the Act, the setting in which the direction is given and the consequences that would follow from the infringement of the direction and other such considerations. The context in which the word shall has been used in section 143(2) has to be read in the background of the proviso to the section and that is that where there is no scope for any adjustments in terms of the proviso, there would be no scope for sending any intimation. **[*125 CTR 323, 212 ITR 496]***

Shall	2000	Ker-HC	CIT V/s. Dhanalakshmy Weaving Works

Section 201(1A) of the Income-tax Act, 1961, makes it clear that the levy of interest is mandatory. It is true that use of the expression **shall** is not always determinative of the fact whether a provision is directory or mandatory in nature, but the context in which expression shall is used in section 201(1A) makes it clear that the levy is mandatory. The purpose of the levy is to claim compensation on the amount which ought to have been deducted and deposited and has not been done. The ultimate liability for tax being not there (since the firm which received the interest from the assessee had paid tax on such interest) did not dilute the requirements for the non-compliance of which interest is levied under section 201(1A).

[*160 CTR 374, 245 ITR 13, 109 TAXMAN 395]*

Shall	2001	SC	CIT V/s. Anjum M.H. Ghaswala

The expression **shall** used in sections 234A, 234B and 234C cannot be construed as may. Prior to the Finance Act, 1987, the corresponding sections pertaining to imposition of interest used the expression may; but the change brought about by the Finance Act, 1987, is a clear indication that the intention of the Legislature was to make the collection of statutory interest mandatory. That expression is used deliberately. **[*170 CTR 424, 252 ITR 1, 119 TAXMAN 352]***

Shall	2002	Del-HC	CIT V/s. Prem Nath Motors (Pvt.) Ltd.

The word **shall** is ordinarily mandatory, but it is sometimes not so, if the context or intention

otherwise demands. When a statute uses the word shall, prima facie, it is mandatory, but the court may ascertain the real intention of the Legislature by carefully attending to the real scope of the statute. ….There are several provisions where the Legislature has made a distinction between interest payable and penalty imposable. Under section 201(1A) of the Income-tax Act, 1961, the levy of interest is a compensatory measure for withholding tax which ought to have gone to the exchequer. The provision makes it clear that the levy is mandatory. It is true that the use of the expression shall is not always determinative of the fact whether a provision is directory or mandatory in nature. But the context in which the expression shall is used in section 201(1A) makes it unambiguously clear that the levy is mandatory.

[170 ***CTR 424, 253 ITR 705]***

Shall	**2002**	**P&H-HC**	**CIT V/s. Punjab Financial Corporation**

The use of the word **shall** in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word may has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceedings invalid.

[*172 CTR 561, 254 ITR 6, 121 TAXMAN 656*]

Shall	**2003**	**Cal-HC**	**CIT V/s. Magnum Export (P) Ltd.**

The word **shall** in a statutory provision though generally taken in a mandatory sense, does not necessarily have that effect in every case. **[*183 CTR 75, 262 ITR 10, 130 TAXMAN 702]***

Shall	**2004**	**Pat-HC**	**Mrs. Prabha Lal V/s. CIT**

The expression **shall** used in the section cannot be considered as may. The intention of the Legislature by bringing the provisions of section 234C by the Amending Act, 1987, was to make the collection of statutory interest mandatory. To judge the constitutionality of the provision, the generality of its provisions are to be looked into and not by the freaks and exceptions.

[*190 CTR 99, 269 ITR 212, 137 TAXMAN 277]*

Shall not be allowed	**1987**	**Kar-HC**	**Addl. CIT V/s. India Tin Industries P. Ltd.**

The expression **shall not be allowed** in section 34(3)(a) of the Act is a clear indication of the intention of the Legislature that compliance with the conditions specified therein is mandatory and has, therefore, to be fulfilled. The conditions laid down are: (i) the amount specified therein has to be debited to the profit and loss account of the relevant previous year and credited to the reserve account, and (ii) this reserve fund so created has to be used by the assessee in the manner and for the period specified therein.In order to attract the provisions of section 154 of the Act, there must be a mistake and it must be a mistake apparent from the record.

[*57 CTR 70, 166 ITR 454, 29 TAXMAN 128]*

Shall Presume	**2006**	**SC**	**P.R. Metrani V/s. CIT**

Shall presume leaves no option with the court not to make the presumption. The court is bound to take the fact as proved until evidence is given to disprove it. In this sense such presumption is also rebuttable. **[203** ***CTR 290, 287 ITR 209, 155 TAXMAN 186]***

Share	1966	Cal-HC	Bankim Ch. Datta V/s. CIT

The word **share** in the expression definite shares in section 41(1) of the Indian Income-tax Act, 1922, includes not only a definite fraction or proportion of the income, but also a definite portion or part of the income, e.g., a fixed sum of money out of the income. **[62 *ITR 239]***

Share	1967	Cal-HC	Shree Gopal Paper Mills Ltd. V/s. CIT

Share is a right to receive a proportion of the profits of the company and it is assessed on winding up and all other benefits to membership combine the obligation to contribute to its liabilities, all measured by a certain sum of money which is the nominal value of the share, and all subject to control by the regulations of the company. Therefore, a share can be either in the first phase or stage or in the second phase or stage. It remains either in its shell as a part of the capital or resides in a shareholder. It cannot lie suspended in any intermediate phase or stage.Hence it is necessary to find out the modus operandi of the transit from one phase or stage to another to appreciate the meaning of the word issue, which ordinarily means sending out or putting out .Section 30 of the Companies Act furnishes the modus operandi or mechanism for the transformation and ultimately the completion of the transit.Therefore, though the subscription to the memorandum or an agreement to take a share may keep the share in preparedness by fulfilling the preliminary requirements for its exit and transit to the owner, it still remains in the womb or shell of the company, though it may be then in an animated condition. The exit and transit, however, takes place when the entry in the register is made. Hence….. issue of the share takes place when entry of the name of the subscriber or the successful offeror is made in the register of members. It follows from the foregoing observation that a share is issued when it finds an owner……The word share has more than one meaning in common parlance.The Indian Companies Act defines shares: Share means under section 2(16) share in the share capital of the company and includes stock except when a distinction between stock and shares is expressed or implied .Therefore the statutory meaning of share covers the three phases of the share, share when it is a part of the share capital still remaining unexploited by the company, share when it is exploited by the company finding a share-holder and lastly when the share is converted into stock.The first phase arises because under the company law Every company limited by shares has nominal or authorised or registered share capital. This capital is one of the essential features in the company's constitution.It is to be mentioned in the memorandum of association and the capital so mentioned is to be divided into shares of a fixed amount. The capital is usually fixed at some round figures according to the requirements of the company assessed by the promoters of the company. ……. first part of the definition of the word share in the Companies Act refers to the share in this limited sense when the share is still in the womb of the company or in the shell of the company and has no shareholder.The second phase arises when it attracts section 28 of the Indian Companies Act.Section 28 of the Indian Companies Act is as follows: (1) The shares or other interests of any member in a company shall be movable property, transferable in the manner provided by the articles of the company.(2) Each share in a company having a share capital shall be distinguished by its appropriate number. Therefore, the share when it becomes associated with a member becomes a movable property. It is however not movable property whose transfer is solely regulated by the Sale of Goods Act. Its transfer is also governed by the Companies Act and/or articles of the company. Each share again bears a distinguishing number.It may be noticed that certificate of share is not the shares or a share. **[*64 ITR 233]***

Share holder	1948	Bom-HC	Shree Shakti Mills Ltd. V/s. CIT

The **shareholder** mentioned in section 18(5) of the Indian Income-tax Act is the person who owns certain shares and who is shown as a shareholder in the register of the company and

it is only the shareholder of a company to whom dividends are paid who is entitled to the procedure of processing permissible under sections 16(2) and 18(5). **[16 *ITR 187]***

Share holder	1952	Nag-HC	Jaluram Bhikulal Firm of Itwara V/s. CIT

The **shareholder** mentioned in section 18(5) of the Indian Income-tax Act, 1922, is a person who owns shares and who is shown as a shareholder in the register of the company. A person who had purchased certain shares but did not get his name registered in the books of the company is not entitled to the benefits of section 16(2) and 18(5) in respect of the income from dividend on these shares because he is not registered as a shareholder. **[*22 ITR 490]***

Share holder	1953	Cal-HC	Bikaner Trading Co. V/s. CIT

The **shareholder** contemplated by section 18(5) of the Indian Income-tax Act, 1922, is the holder of the shares, and the holder of the shares is the person whose name stands registered in the share register of the company. **[*24 ITR 419]***

Share holder	1959	SC	Howrah Trading Co. Ltd. V/s. CIT

A person who has purchased shares in a company under a blank transfer and in whose name the shares have not been registered in the books of the company is not a **shareholder** in respect of such shares within the meaning of section 18(5) of the Income-tax Act, notwithstanding his equitable right to the dividend on such shares, and is not, therefore, entitled to have this dividend income gross up under section 16(2) of the Act by the addition of the income-tax paid by the company in respect of those shares, and claim credit for the tax deducted at source, under section 18(5) of the Act. **[36 *ITR 215]***

Shareholder	1972	SC	CIT V/s. Sarathy Mudaliar

Section 2(6A)(e) of the Indian Income-tax Act, 1922, must receive a strict construction. When the section speaks of **shareholder**, it refers to the registered shareholder and not to the beneficial owner. **[*83 ITR 170]***

Ship	1996	Mad-HC	Chola Fish and Farms P. Ltd. V/s. CIT

The word **ship** is not defined in the Income-tax Act, 1961. Normally, in such circumstances, the word should not be understood in any technical sense, but it has to be construed in the popular sense. The word will have to be understood in the context in which it occurs in the statute, the purpose of the provision and other relevant considerations. For the purpose of section 32 of the Income-tax Act, 1961, which provides for depreciation in respect of certain classes of vessels, Part I of Appendix I to the Income-tax Rules, 1962, describes ship as a class of vessel and under the heading of Ships, four different classes of ships are mentioned: (1) Ocean-going ships — (i) Fishing vessels with wooden hull; (ii) Other ships, (2) Vessels ordinarily operating on inland waters — (i) Speed boats; (ii) Other vessels. It is evident from the description of ship that trawlers would come within the meaning of the word ship. Except that section 33 is applicable to priority industries whereas depreciation is allowed in respect of every category and not restricted to priority industries there is no distinction between sections 32 and 33 in so far as the meaning of the word ship is concerned. Trawlers are covered by the expression ship in section 33 . **[*132 CTR 358, 217 ITR 609,]***

Ship	1997	Bom-HC	Gammon India Ltd. V/s. CIT

…the word **ship** has to be interpreted as per the natural meaning which it conveys. Section

3(55) of the General Clauses Act, 1897, gives an inclusive definition of the word ship which is as follows : 'Ship' shall include every description of vessel used in navigation not exclusively propelled by oars. Thus ship means all types of vessels which have one common factor or feature and this common factor or feature is that it is used in navigation. The most important and significant word, therefore, is navigation, since navigation is the crux of the whole thing. The meaning of the verb navigate is given as to sail over or up or down (sea, river). Hence, conveying goods, men and material from one place to another is the sine qua non for being qualified as a ship. Pontoons are not used to go from one place to another place alone. Their main use is that they serve the purpose of a platform, on which the work of constructing bridges can be undertaken. Their usefulness commences after they reach that workspot. In contradistinction to the pontoon, for other vessels, their main and indeed the only use is to transport across the water. These vessels navigate from one point to some other point across the water. Thus, they navigate in the fullest sense of the word. A pontoon, on the other hand, is nothing but a platform for work. Just because it floats on water, it cannot be described as a ship. Pontoons are platforms used for working in the water and nothing else. Many things float in the water, but just because they float, they cannot be described as ships. A contrary legislative intent cannot be attributed or inferred, and such a broad meaning cannot be given to the word ship so as to include pontoons within its sweep. **[228 *ITR 691]***

Ship	**1998**	**SC**	**CIT V/s. Digvijay Cement Co. Ltd.**

..the word **ship** has not been defined in the Income-tax Act, 1961. However, in the table of rates at which depreciation is admissible, the meaning of ship has been given in the Appendix to the Income-tax Rules, 1962, where ship is defined to include : 1. Ocean-going ships(i) Fishing vessels with wooden hull; (ii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes; (iii) Other vessels; and (2) Vessels ordinarily operating on inland waters (i) Speed boats; (ii) Other vessels. This definition makes it clear that ships would include tugs. However, pontoons have not been specifically included within the meaning of ship. However, having regard to the types of vessels that are entitled to depreciation like dredgers, tugs, barges, etc, an expanded meaning has to be given to ships, and pontoons will come within the expanded meaning. According to the Concise Oxford Dictionary, 1976 edition, a 'pontoon' is a flat-bottomed boat used as ferry boat or to carry lifting-gear, etc. Having regard to the width of the meaning given to the word ships in the depreciation table of the Income-tax Rules, 1962, it is clear that a flat-bottomed boat used as ferry-boat will clearly come within the description vessels ordinarily operating on inland waters. Therefore, pontoons and tugs are ships. **[*150 CTR 206, 232 ITR 709, 100 TAXMAN 374]***

Similarly apportioned	**1975**	**SC**	**CIT V/s. T.V. Sundaram Iyengar and Sons (P.) Ltd.**

The words **similarly apportioned** in Explanation 2 to section 23A mean apportioned with reference to the amounts of profits and gains attributable to the two parts of the company's business. Similarly apportioned means simply similarly split up. The dividends have to be split up in the same ratio as the industrial and non-industrial profits bear to each other after the total profit is split into two parts, industrial and non-industrial. It is not open to the company to split up and apportion the dividends to the profits of the two segments in such manner as it finds convenient or thinks fit **[101 *ITR 764]***

Six per cent. per annum	**1980**	**Mad**	**CIT V/s. Simpson & Co.**

The words **six per cent. per annum** are ordinarily applied to calculation of interest and in similar contexts but the words per annum could be inappropriate in a taxing statute levying tax

on the income earned during the previous year which is not necessarily a period of twelve months though it would ordinarily be a period of twelve months. The words per annum in section 84 of the Income-tax Act, 1961, have been added only to ensure that the assessee would get for each of the five years during which the relief under section 84 is available, six per cent. on the capital employed. These words cannot be understood as indicating any broken period during which the assets were used. ***[122 ITR 283]***

Smallness of profit made	**1958**	**Cal-HC**	**Indra Singh and Sons Ltd. V/s. CIT**

Where with respect to a company to which section 23A of the Income-tax Act, 1922, would otherwise apply, the Income-tax Officer has to consider whether having regard to the **smallness of profit made** the payment of a dividend or a larger dividend than that declared would be otherwise unreasonable, in judging the reasonableness of the company's action in distributing dividend at the rate at which it actually made the distribution or in making no distribution at all, the Income-tax Officer must pay regard to the accountable profits of the company actually at its disposal, which alone are contemplated by the words profit made and not profits, of which it might be deemed to be possessed composed partly of the accounting profits and partly of notional income, coming in either as disallowed items of expenditure or as income computed on some artificial basis. The evil which the section aims at checking is unreasonable withholding of profits from distribution as dividend in spite of money for distribution being available.At the point of time when the Income-tax Officer has to consider under section 23A(1) whether the failure or omission to distribute as dividend at least sixty per cent. of the assessable income was caused by the smallness of the profit made, what he has to pay regard to is the profit which was available to the company for distribution as dividend or, in other words, the size of the distributable fund which the company had in its hands. Dividend is distributable only out of revenue profits, but all profits derived from whatever source contribute to the fund out of which the dividend may be declared. The Income-tax Officer has to consider the whole fund available for distribution and not merely a portion of that fund contributed by a particular source. The profit contemplated is not limited to profit from business assessable under section 10 but it also includes income from interest on securities assessable under section 8, income from property assessable under section 9, and income from dividend assessable under section 12.

[33 ITR 341]

Small-scale industrial undertaking	**1998**	**Ker-HC**	**CIT V/s. Travancore Mats and Mattings Co.**

The definition of **small-scale industrial undertaking** in clause (2) of the Explanation below sub-section (2) of section 32A, which is applicable for purposes of section 35B(1A), it is with regard to the machinery and plant installed that the value should not exceed Rs. 10 lakhs. The importance of the requirement of installation is made more specific by the words appearing in the brackets to exclude tools, jigs, dies and moulds.

[142 CTR 445, 229 ITR 93, 92 TAXMAN 10]

Sold	**1984**	**Bom-HC**	**Cement Agencies Ltd. V/s. CIT**

……though under Expln. (2) to sub-s. (1) of s. 32, the term **sold** included, inter alia, a compulsory acquisition under any law for the time being in force, yet confiscation meant appropriation to public treasury by way of penalty or seizure as if by authority

[32 CTR 99, 146 ITR 136, 12 TAXMAN 110]

Sole selling agent	**2005**	**All-HC**	**CIT V/s. Arkay Wires P. Ltd.**

The phrase **sole selling agent** has not been defined under the Companies Act, 1956. In

common parlance and in ordinary sense it would mean the exclusive and sole right to sell all the products of the principal to the exclusion of all others. **[193 *CTR697, 277 ITR 225]***

Source	1984	Kar-HC	Sterling Foods V/s. CIT

Source means not a legal concept but something which a practical man would regard as a real source of income. The assessee may have separate sources of income. All taxable income must necessarily have a definite source**.** **[150 *ITR 292]***

Source	1995	AP-HC	CIT V/s. B. Murali Mohan Rao

Source means not a legal concept but which a practical man would regard as a real source of income. Therefore, to find out whether any particular income is in respect of a source different from the one for which the previous year has already been opted for by the assessee, a more practical approach has to be made. **[*124 CTR 198, 216 ITR 166, 81 TAXMAN 116]***

Source of income	1972	All-HC	Seth Shiv Prasad V/s. CIT

A **source of income** may be described as the spring or fount from which a clearly defined channel of income flows. It is that which by its nature and incidents constitutes a distinct and separate origin of income capable of consideration as such in isolation from other sources of income and which by the manner of dealing adopted by the assessee can be treated so.
[*84 ITR 15]*

Source of income	2002	Bom-HC	Sheraton Appearels V/s. ACIT

The term **source of income**, as understood in the Income-tax Act is to identify or classify income so as to determine under which head, out of the various heads of income referred to in section 14 of the Act, it would fall for the purposes of computation of the total income for charging income-tax thereon. Thus the term books of account referred to in sub-clause (1) of clause (a) of Explanation 5 would mean those books of account whose main object is to provide credible data and information to file the tax returns. The credible accounting record provides the best foundation for filing return of both direct and indirect taxes.
[175 *CTR 651, 256 ITR 20, 123 TAXMAN 238]*

Specify	1980	Cal-HC	CIT V/s. Shyam Narain Mehrotra

The word **specify** has not been defined either in the Income-tax Act or in the Rules. So, the word specify must be interpreted reasonably and fairly. In fact, section 26A of the Indian Income-tax Act does not indicate that the specification of shares of the partners is for distribution of profits and losses. But that is normally implied. Having regard to this, the word specify under section 26A of the Indian Income-tax Act and rule 2 means mentioning or describing or defining in detail but does not mean expressly set out in fractional or other shares. **[*122 ITR 362]***

Specifying the individual share of the partners	1961	Bom-HC	Parekh Wadilal Jiwanbhai

The words **specifying the individual shares of the partners** in section 26A of the Income-tax Act meant expressly and definitely mentioning the individual shares of the partners in the profits of the firm.Section 13 of the Partnership Act, which provided that there being no agreement to the contrary in the deed the partners were entitled to share equally in the profits, could not be called in aid for the purposes of section 26A. **[*42 ITR 266]***

Speculation business	1984	AP-HC	CIT V/s. Puttaiah Seshaiah and Co.

The definition of **speculation business** makes it clear that the intention of the parties is made immaterial and irrelevant. If a contract is settled otherwise than by the actual delivery or transfer of the commodity or scrips it will be a speculative transaction notwithstanding the fact that at the time the transaction was entered into the parties intended to effect delivery of the commodity or scrips, as the case may be. Explanation 2 to s. 28, s. 43(5) and s. 73 are parts of a single scheme. Parliament has first defined what is a speculative transaction and in doing so, they have totally excluded from consideration the intention of the parties. Having so defined speculative transactions, Parliament provided that if these transactions are business transactions they must be treated as a separate and distinct business and then declared that the losses arising from speculative business can be set off only against the profits of any other speculative business. ***[37 CTR 69, 146 ITR 168, 15 TAXMAN 47]***

Speculative transaction	1964	Cal-HC	Hoosen Kasam Dada (India) Ltd. V/s. CIT

The definition contained in Explanation 2 of section 24 has severely restricted the meaning of the expression **speculative transaction** and in a sense simplified it for the purposes of computation of income-tax. Where there is no delivery under a settlement contract, it is a speculative transaction. On the other hand, however speculative the transaction might be, if there is delivery, it cannot be considered as a speculative transaction for the purposes of section 24. ***[52 ITR 171]***

Speculative transaction	1979	MP-HC	Thakurlal Shivprakash Poddar V/s. CIT

…… the legislature, while defining a **speculative transaction** in Explanation 2 to section 24(1) of the Indian Income-tax Act, 1922, used words which people conversant with speculative transactions and stock exchange employ. In a stock exchange, there are certain days marked out for settlement, called clearing days. On the clearing date, the settlement is effected with reference to the price fixed by the stock exchange. That is why the expression setting day is understood to mean the day on which transactions for the account are made up on the stock exchange. By the use of the expression settled in the definition of a speculative transaction, the legislature meant to deal with the performance of a contract by the parties and not with its non-performance. If the contract is performed by actual delivery of the contracted commodity, such a transaction falls outside the purview of a speculative transaction, as defined by Explanation 2 to section 24(1) of the Act. If the contract is, however, performed otherwise than by actual delivery or transfer of the contracted commodity, then the contract is so settled as to constitute it a speculative transaction as defined by the aforesaid provision. Therefore, the expression contract settled, occurring in Explanation 2 to section 24(1) of the Act, has to be understood as contract performed. It cannot be held to cover a case where, in consequence of non-performance of a contract, parties resolve their disputes arising out of the breach of contract. Such a settlement, in the sense of arranging matters in dispute, as ordinarily understood would not make it a settlement of the contract in the sense in which the expression contract settled is used in Explanation 2 to section 24(1) of the Act. ***[116 ITR 190]***

Speculative transaction	1980	Bom-HC	Seksaria Riswan Sugar Factory Ltd. V/s. CIT

For income-tax purposes, **speculative transaction** means what the definition of the expression in Explanation 2 to section 24(1) of the Indian Income-tax Act, 1922, says. Whether a transaction

is speculative in the general sense or under the Contract Act is not relevant for the purpose of the Explanation. Thus, a transaction which is otherwise speculative, would not be a speculative transaction within the meaning of Explanation 2 …..if actual delivery of the commodity takes place and, on the other hand, a transaction which is not otherwise speculative in nature may be required to be considered speculative according to Explanation 2 if there is no actual delivery of the commodity **[*11 CTR 274, 121 ITR 196]***

Speculative transaction	**1985**	**AP-HC**	**CIT V/s. Sri Venkateswara Rice and Oil Mills**

The artificial definition of **speculative transaction** in section 43(5) renders every transaction, in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips, a speculative transaction. A contract is speculative if it is settled without actual delivery. If the contract is broken, i.e., for any reason one party is unable to give delivery or the other is unable to take delivery, it is a case of breach of the contract. It depends, therefore, on the facts and circumstances of the case as to whether there has actually been a breach of the contract or a settlement of the contract. A breach takes place on account of repudiation of the contract or failure to perform it or a contract may be terminated through frustration, impossibility or through any other cause which ends the contract under the Contract Act or the Sale of Goods Act. When the obligation to supply or take delivery, as the case may be, comes to an end by operation of law, it does not make the transaction speculative. However, if the parties mutually settle the contract without any intervening circumstances, then it may be a speculative transaction if all the other conditions of section 43(5) are satisfied. The material question is: Why was the contract settled ? If it was settled by mutual consent to avoid delivery, then it would be speculative. If it was settled because of inability of the assessee to supply or on account of the fact that it did not have the necessary resources to give the delivery, then it would be a breach of contract. **[*154 ITR 756]***

Speculative transactions	**1991**	**Cal-HC**	**CIT V/s. Arvind Investments Ltd.**

The provisions of the Explanation to section 73 have to be contrasted with the provision of section 43(5), which defines **speculative transaction** to mean a transaction in which a contract for the purchase or sale of any commodity, including any stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. …….. For the purpose of setting off and carrying forward of loss, the buying and selling of shares by certain companies are regarded by the statute as speculation business, even though the transaction of purchase and sale was followed up by delivery of scrips and as such cannot be treated as speculative transaction as defined in section 43(5).

The opening words of the Explanation to section 73 are where any part of the business of a company. Any is a word which excludes limitation or qualification. A restricted meaning should not be given to the phrase any part of the business. The object of Circular No. 204, dated July 24, 1976, is to curb devices to manipulate and reduce the taxable income of a company under the management of a controlling group of persons. But the circular has clearly stated in paragraph 19.1 that the business of purchase and sale of shares by companies which are not investment or banking companies or companies carrying on business of granting loans and advances will be treated on the same footing as speculation business. The phrase in the Explanation to section 73 to the extent to which the business consisted of purchase and sale of such shares also does not indicate that the Legislature had several other actual and existing non-speculative activities of business in mind. It merely indicates that the business activity which consists of purchase and sale of shares will be treated as speculation business. If the

entire business activity of a company consists of purchase and sale of shares of other companies, then the entire business will be treated as speculation business. But, if, apart from purchase and sale of shares, the company has other business activities, then those other activities will not be treated as speculation business. **[94 *CTR 263, 192 ITR 365, 58 TAXMAN 216]***

Speculative transaction	1993	Bom-HC	CIT V/s. Ramachandra Shivnarain

A bare reading of section 43(5) of the Income-tax Act, 1961, makes it clear that though a transaction in which a contract for the purchase or sale of a commodity is settled otherwise than by actual delivery or transfer of the commodity….. **speculative transaction** has been defined as certain species of such transactions entered into under specific circumstances have been taken out of the definition by virtue of the three provisos thereto. Proviso (a) clearly states that for the purposes of this clause a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him shall not be deemed to be a speculative transaction. This proviso is not confined to contracts in respect of raw materials entered into by persons in the course of their manufacturing business. It applies equally to cases of persons carrying on manufacturing as well as persons carrying on business of selling goods. There is no scope to confine it to manufacturers. **[201 *ITR 862]***

Speculative transaction	1994	Guj-HC	CIT V/s. Panachand Khemchand

A transaction cannot be described as a **speculative transaction** within the meaning of sub-section (5) of section 43 of the Income-tax Act, 1961, where there is a breach of the contract and on a dispute between the parties damages are awarded as compensation. **[210 *ITR 1053]***

Speculative transaction	1996	AP-HC	CIT V/s. Lakshminarayana Trading Co.

….reading of the definition of **speculative transaction** in section 43(5) of the Income-tax Act, 1961, shows that where a contract for the purchase or sale of any commodity, which includes stocks and shares, is settled, periodically or ultimately, otherwise than by way of actual delivery or transfer of the commodity or scrips, it would be treated as a speculative transaction. There are various modes of entering into business transactions. For example, forward contracts, hedging contracts, etc., are contracts where the goods do not pass from the seller to the purchaser but only an account of the sale is maintained on purchase and sale of the goods and such transactions are settled periodically or ultimately without involving the delivery or transfer of the commodity or the scrips. They are dealt with for the purposes of setting off and carrying forward of losses. The effect of treating such transactions as speculative transactions is that loss suffered in such transactions can only be set off against the income earned from speculative business and not against income from other business as contemplated in section 73 of the Act. Any trader in commodities generally intends to buy and sell the commodity with a stipulation that the delivery of the commodity by the seller to the purchaser is an essential ingredient of that transaction. Under the Sale of Goods Act such delivery can be made either by physical delivery of the commodity directly to the purchaser or to the carrier for him or by transferring the document of title to the commodity. In the expression otherwise than by actual delivery or by transfer of the commodity in section 43(5), these two modes of delivery must be contemplated. Taking this expression along with the previous phrase settled periodically or ultimately, it would mean that in such a settlement of the contract delivery of the commodity was never contemplated at all. Where the nature of transaction entered into between the parties is such that under the contract the seller parts with possession of the goods and while the goods were in transit the

buyer enters into a subsequent transaction, then so far as the first seller and the first buyer are concerned, there would be actual delivery of the goods and the transaction cannot be a speculative transaction. **[134 *CTR 499, 219 ITR 90, 82 TAXMAN 301]***

Speculative transaction	**2001**	**Del-HC**	**CIT V/s. Hans Machoo and Co.**

A transaction cannot be described as a **speculative transaction** within the meaning of section 43(5) of the Income-tax Act, 1961, where there is a breach of contract and on a dispute between the parties damages are awarded as compensation, e.g., by an arbitration award. What is really settled by the award of such damages and their acceptance by the aggrieved party is the dispute between the parties. Section 43(5), however, speaks of a settlement of the contract and a contract is settled when it is either performed or the promisee dispenses with or remits, wholly or in part, the performance of the promise made to him or accepts, instead of it, any satisfaction which he thinks fit. A contract can be said to be settled if instead of effecting the delivery or transfer of the commodity envisaged by the contract, the promisee, in terms of section 63 of the Indian Contract Act, 1872, accepts any satisfaction which he thinks fit. It is quite another matter when instead of such acceptance the parties raise a dispute and no agreement can be reached for a discharge of the contract. There is a breach of the contract and by virtue of section 73 of the Indian Contract Act, 1872, the party suffering by such breach becomes entitled to receive from the party who broke the contract compensation for any loss or damage caused to him thereby. The award of damages for breach of a contract is not the same thing as a party to the contract accepting satisfaction of the contract otherwise than in accordance with the original terms thereof. What is really settled by the award of such damages and their acceptance by the aggrieved party is the dispute between the parties.

The word settled or settlement in connection with the contract has not been defined in the Income-tax Act or in the Contract Act or in the Sale of Goods Act, or in any other statute. The proper meaning to be given to the words contract settled in the definition clause would be a contract determined or concluded or disposed of. By the use of the expression settled, what is intended to be dealt with is a case of performance of contract and not non-performance.

[164 *CTR 93, 247 ITR 79, 113 TAXMAN 427]*

Splitting or reconstruction of ..	**1976**	**Guj-HC**	**Nagardas Bechardas and Brothers P. Ltd. V/s. CIT**

The expressions new industrial undertaking and **splitting up, or reconstruction of a business already in existence** in section 84 (now section 80J) must be understood in a broad commercial sense from a common sense point of view. Interpreting these expressions the purpose of the provision, i.e., to encourage the setting up of new industries must be borne in mind. A comparison between the cost of establishment and the totality of turnover of the new undertaking with that of the previously running business may assume importance in some cases but does not provide a proper guideline in every case. Though every case must depend upon its own peculiar facts, a broadly correct solution can be arrived at by asking two questions: (1) Whether there was any activity in the existing business which could have been reconstructed and could have assumed a new form on such reconstruction; and (2) Whether the nature of the business which has assumed a new form as a result of the change which is introduced is the same as the nature of the business which was existing before the change was introduced. If either of these two questions is answered in the negative, it would mean, prima facie, that there is no reconstruction which would attract clause (i) of section 84(2) [now section 80J(4)(i)] of the Act. **[*104 ITR 255]***

Splitting up of the business already in..	1982	Del-HC	CIT V/s. Hindustan General Industries Ltd.

The expression **splitting up of the business already in existence** in section 84 of the Income-tax Act, 1961, indicates a case where the integrity of a business earlier in existence is broken up and different sections of the activities previously conducted are carried on independently. **[*23 CTR 73, 137 ITR 851]***

Splitting up or reconstruction of business	1974	Cal-HC	CIT V/s. Orient Paper Mills Ltd.

The expression new industrial undertaking and **splitting up or reconstruction of business already in existence** in section 15C must be understood in a broad commercial sense from a commonsense point of view. In interpreting the expression, the purpose of the provision, i.e., to encourage the setting up of new industries, must be borne in mind. Reconstruction of the business or splitting up of a business already in existence must be in relation to the new industrial undertaking. Further, the new industrial undertaking must not be formed by transferring building, plant or machinery of the existing business. Sub-section (1) requires separate capital but not new or different capital. But whether a new industrial undertaking is entitled to exemption under section 15C must depend upon the facts of each case. **[*94 ITR 73]***

Standing to the credit of the share premium account	1969	SC	CIT V/s. Allahabad Bank Ltd.

The words **standing to the credit of the share premium account** do not mean that the share premium shall be maintained in a separate account apart from the reserve. **[73 *ITR 745]***

Stock	1991	Gau-HC	CIT V/s. Hardware Exchange

Stock means the goods and wares of a merchant or tradesman kept for sale and traffic and, in a larger sense, the capital of a merchant or other person including his merchandise, money and credits, or, in other words, the entire property employed in business. A careful consideration of the meaning of the two expressions, expenditure and stock-in-trade makes it abundantly clear that payments made for purchase of stock-in-trade cannot be termed as expenditure. Money does not go irretrievably in such a case. What is acquired by such payments, namely, for stock-in-trade, forms part of the business assets of the assessee. Such assets are sold in due course and the money paid is ordinarily recovered with some profit. Stock-in-trade which remains unsold at the end of the year is reflected as assets in the balance-sheet. It is, therefore, difficult to hold that the payments made on account of purchase of stock-in-trade is expenditure. Besides, a careful reading of the section also makes it clear that it applies only to payments made on account of expenditure incurred. This is the expenditure which is claimed as deduction in computing the profits and gains of business of the assessee and it is such expenditure which the Assessing Officer may not allow if the conditions set out in the said section are not fulfilled. The result of disallowance under this section is that the fact of incurring the particular expenditure itself is disregarded. **[95 *CTR 183, 190 ITR 61]***

Subject of an appeal	1948	Mad-HC	A.V. Sreenivasalu Naidu V/s. CIT

An order is made the **subject of an appeal** within the meaning of clause (c) of the first proviso to sub-section (2) of section 33A only when it is the subject-matter of an effective appeal. If an appeal to the Appellate Tribunal under section 33 is not admitted and is disposed of on the ground that it was filed after the prescribed time the order cannot be said to be the subject of an appeal. **[*16 ITR 341]***

Subject of dealing in any stock exchange	1965	Cal-HC	Star Company Ltd. V/s. CIT

The expression **subject of dealing in any stock exchange** emphasises that the shares are actually sold and purchased in the open market by members of the public. Quotations in the stock exchange bulletin are prima facie evidence of dealings in shares in the stock exchange, but it can be established by other evidence that in fact there were no such dealings.

[58 *ITR 149]*

Subsidiary company	1999	Bom-HC	Petrosil Oil Company Ltd. V/s. CIT

The expression **subsidiary company** has not been defined in the Income-tax Act. The expression subsidiary company has been defined in section 4 of the Companies Act. Under the Companies Act, a subsidiary company of a subsidiary is also deemed to be a subsidiary of another company of which such company is a subsidiary. Once we import the definition of the expression subsidiary company appearing in section 4(1) of the Companies Act to find out the true meaning of the word subsidiary company in clause (b) of section 108 of the Income-tax Act, it will have to be read in the context of the requirements of clause (b) of section 108. In order to get the benefit of the lower rate of income-tax prescribed in clause (1) of sub-paragraph I of Paragraph F of the First Schedule to the Finance (No. 2) Act, 1971, which is applicable to domestic companies, every company, whether holding company as well as the subsidiary or subsidiary of a subsidiary company must be a domestic company and should also meet the requirements of section 2(6)(b) of the Finance Act read with section 108 of the Income-tax Act. In order to get the benefit of the lower rates of income-tax applicable to a company in which the public are substantially interested in the capacity of a subsidiary of a company in which the public are substantially interested by reference to clause (b) of section 108 of the Act, it is necessary that the parent company or the holding company should also be a domestic company……Section 108(b) of the Act is satisfied only if the entire share capital of such subsidiary is held by the company falling under section 108(a) of the Act. Section 4 of the Companies Act, 1956, defines the expression holding company and subsidiary company for purposes of the Companies Act only. The artificial extension of the meaning of the word subsidiary company by the Companies Act is for purposes of the Companies Act only and it cannot be imported in section 108(b) of the Income-tax Act. A sub-subsidiary company does not fall under section 108(b) of the Act…..Section 108(b) of the Act does not state that the said section shall be applicable only to subsidiary companies of which the holding company is a domestic company.

[155 *CTR 445, 236 ITR 220]*

Substantial	1961	SC	Raghuvanshi Mills Ltd. V/s. CIT

The Explanation to section 23A(1) of the Income-tax Act (prior to its amendment in 1955), which provides when a company shall be deemed to be a company in which the public are substantially interested, lays down, among the tests, the minimum interest which can be called **substantial** by saying that shares of the company carrying not less than 25 per cent., of the voting power must be allotted unconditionally to, or acquired unconditionally by, the public and they must be beneficially held by the public. The essence of the Explanation lies not in the percentage which only shows the limit of the minimum holding by the public, but lies in the words unconditionally and beneficially. These words underline the fact that no person who holds a share or shares not for his own benefit, but for the benefit of another and who does not exercise freely his voting power, can be said to belong to that body, which is designated public.

[*41 ITR 613]*

Substantial contribution	2001	Del-HC	CIT V/s. Charat Ram Foundation

The expression **substantial contribution** may mean something quite different to a person who is affluent from what it may mean to a person who is not so. But the language of a taxing statute does not recognise such a differentiation.

[168 ***CTR 261, 250 ITR 64, 116 TAXMAN 255]***

Substantial interest	1994	Bom-HC	Dr. J.M. Mokashi V/s. CIT

…the expression **substantial interest** appearing in section 64(1)(ii) read with Explanation 2(ii) referred only to a proportion of the whole interest and not the whole interest and as such section 64(1)(ii) had no application to a proprietary concern in which the assessee had 100 per cent. interest. **[115** ***CTR 73, 207 ITR 252, 72 TAXMAN 98]***

Substantial question of law	2000	Del-HC	Mahavir Woollen Mills V/s. CIT

The words **substantial question of law** have not been defined. But the expression has acquired a definite connotation through a catena of judicial pronouncements. Usually five tests are used to determine whether a substantial question of law is involved. They are as follows : (1) whether, directly or indirectly, it affects substantial rights of the parties, or (2) the question is of general public importance, or (3) whether it is an open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or Privy Council or by the Federal Court, or (4) the issue is not free from difficulty, and (5) it calls for a discussion for alternative view. A question of fact becomes a question of law, if the finding is either without any evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between the conclusion of fact and the primary fact upon which that conclusion is based. But, it is not possible to turn a mere question of fact into a question of law by seeking to find whether as a matter of law the authority came to a correct conclusion upon a matter of fact. **[*162 CTR 267, 245 ITR 297, 111 TAXMAN 566]***

Substantial question of law	2001	Cal-HC	West Bengal State Electricity Board V/s. DCIT

The phrase **a substantial question of law** means any question of law which affects the substance of the case. If the High Court is satisfied that the question is one of law, and if decided in favour of the prospective appellant will substantially affect the tax liability or some other matter of substance in the case. **[165** ***CTR 502, 248 ITR 152, 128 TAXMAN 535]***

Substantial question of law	2001	Cal-HC	CIT V/s. Agarwal Hardware Works Pvt. Ltd.

The words **substantial question of law** mean a question of law which affects the substance of the case, e.g., money liability, and not merely those questions which the court thinks to be somehow specially serious. **[248** ***ITR155, 117 TAXMAN 249]***

Substantial question of law	2001	Del-HC	Bhagat Construction Co. (P.) Ltd. V/s. CIT

The expression **substantial question of law** is not defined. The following five tests have been used to determine whether a substantial question of law is involved. They are : (a) whether directly or indirectly it affects substantial rights of parties; (b) the question is of general public importance; (c) whether it is an open question in the sense that the issue has not been settled by pronouncement of the Supreme Court or the Privy Council or by the Federal Court; (d) the

issue is not free from difficulty; (e) if it calls for a discussion for alternative view……Section 260A is analogous to the provisions of section 100 of the Civil Procedure Code, 1908. Under section 100 of the Code, a second appeal could be entertained only when a substantial question of law is involved. A question of fact becomes a question of law if the finding is either without any evidence or material, or if the finding is contrary to the evidence or is perverse or there is no direct nexus between the conclusion of fact and the primary facts upon which that conclusion is based. But it is not possible to turn a mere question of fact into a question of law by asking whether as a matter of law the authority came to a correct conclusion upon a matter of a fact. **[250 *ITR291, 114 TAXMAN 606]***

Substantial question of law	**2001**	**SC**	**Santosh Hazari V/s. Purushottam Tiwari**

A point of law which admits of no two opinions may be a proposition of law but cannot be a **substantial question of law.** To be substantial, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law involved in the case there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by the court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. Any entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter.
The word **substantial** as qualifying question of law, means having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. The expression substantial question of law has not been suffixed by the words of general importance as has been done in other provisions such as section 109 of the Code of Civil Procedure or article 133(1)(a) of the Constitution of India. The substantial question of law, on which a second appeal shall be heard, need not necessarily be a substantial question of law of general importance. **[170 *CTR 160, 251 ITR 84]***

Substantial question of law	**2003**	**J&K-HC**	**Nek Ram Sharma and Co. V/s. ITAT**

Though the expression **substantial question of law** has not been defined in the Act or in any of the statutes where this expression appears, e.g., section 100 of the Civil Procedure Code, 1908, the true meaning or connotation of this expression is now well settled by various judicial pronouncements. There is a difference between a question of law and a substantial question of law. **[262 *ITR 692, 115 TAXMAN]***

Succession	**1962**	**Mad-HC**	**M. Subbaraya Iyer V/s. CIT**

For the purposes of income-tax, a firm is a distinct entity from the persons who compose it and there is a **succession** when a business carried on by a person is transferred to a firm, even though the transferor continues as a partner of the firm; and the assessee was accordingly entitled to relief under section 25(4) of the Act.The view that in all cases where the exercise of a profession or vocation depends on the skill or ability of the person who carries it on, the profession or vocation could not be succeeded to, is fundamentally opposed to the provisions of section 25(4) of the Act. **[44 *ITR 801]***

Succession	**2000**	**Del-HC**	**Oriental Fire and General Insurance Co. Ltd. V/s. CIT**

Succession implies that there is an end of an entity carrying on the business, and its place

has been taken by an entirely new entity to run in continuity and as a going concern, the same business. Substantial identity and continuity of the business must be preserved. The tests of change of ownership, integrity, identity and continuity of a business have to be satisfied before it can be said that a person succeeded to the business of another.

[162 *CTR 2, 244 ITR 631, 111 TAXMAN 571]*

Such assets	**1978**	**Ker-HC**	**M.G. Kollankulam V/s. CIT**

The words **such assets** occurring in sub-clauses (i) and (ii) of section 4 connote assets which have been mentioned earlier in the section, viz., properties falling within the definition of assets which, on the valuation date, are held by the spouse or minor child of the assessee. If the properties held by the spouse or minor child are assets under section 2(1)(e) of the Act on the valuation date and if they are found to have been transferred by the assessee to the spouse or minor child directly or indirectly otherwise than for adequate consideration, the requirements of sub-clauses (i) and (ii) are satisfied. It is not necessary that the properties concerned should have been assets as defined in the Act on the date the transfers were effected by the assessee.(W.T.) **[*7 CTR 16, 115 ITR 160]***

Such capital	**1969**	**Cal-HC**	**Shewkissen Bhatter V/s. CIT**

The expression **such capital** in the last part of section 9(1)(iv) of the Indian Income-tax Act, 1922, which provides for the allowance of interest on borrowed capital refers to capital employed for the acquisition or construction or repair or renewal or reconstruction of the property and it is this capital which is borrowed capital indicated by the expression such capital. It does not include interest on that capital or interest on interest. **[*74 ITR 331*]**

Such income	**1956**	**Mad-HC**	**S.A.S. Marimuthu Nadar V/s. CIT**

The expression **such income** in section 2(6AA) of the Income-tax Act means the income on which the assessee has to be assessed to tax, and includes the income of any other person if that income has to be treated as the assessee's income for the purposes of taxation, under any of the provisions of the Act. **[30 *ITR 670]***

Such income	**1962**	**SC**	**CIT V/s. S.A.S. Marimuthu Nadar**

The words **such income** in the latter part of section 2(6AA) of the Indian Income-tax Act, 1922, refer to the whole definition of earned income given by the Act before it says what is to be included in it, and mean earned income determined in the same manner in which that income is to be determined under the earlier part of the definition. **[*44 ITR 1]***

Such orders as it thinks fit	**1968**	**Mad-HC**	**T.M.S. Mohamed Abdul Kader V/s. CGT**

The term **such orders as it thinks fit** in section 23(5) of the Gift-tax Act, 1958, is sufficiently wide to include a power to direct the lower authorities to collect fresh evidence and submit findings on such evidence, if necessary, pending the disposal of the appeal. The power is not restricted to making an order of remand for fresh disposal by the lower court. **[*70 ITR 237]***

Such other material or...as are available with A.O.	**2006**	**Mad-HC**	**CIT V/s. G.K. Senniappan**

The expression **such other materials or information as are available with the Assessing Officer** in section 158BB of the Income-tax Act, 1961, cannot be bisected or taken in isolation for the purpose of computation. Such other materials or information as are available with the

Assessing Officer should be relatable to "such evidence". The word "such" used as a prefix to the word "evidence" assumes much significance in this provision as it indicates only the evidence found as a result of search or requisition of books of account or other documents, at the time of search. Any other material cannot form the basis for computation of undisclosed income of the block period. ***[284 ITR 220]***

Such person	1984	Kar-HC	Srimathi Indira V/s. ITO

Whenever a person proposes to transfer, assign, limit or extinguish his right, title or interest in any property the value of which exceeds Rs. 50, 000 which is compulsorily registrable under the Indian Registration Act, 1908, the Registering Authority is prohibited from registering such document unless that person produces before him a certificate issued by the concerned Income-tax Officer certifying that taxes due by him under that Act and other Acts referred to in that section, if any, have been paid or satisfactory arrangements for their payment have been made. The words **such person** occurring in the section refer to the transferor or the person creating interest in favour of another. In the context, the words such person cannot be read as any and every person comprehending both the transferor and the transferee. The section requires the Income-tax Officer to issue a certificate only to the person that proposes to transfer or create an interest in favour of another and to no other person. If the Legislature in its wisdom creates a right on the transferor only, the court cannot create that right in favour of the transferee also. Any such attempt will really amount to legislation in the guise of interpretation, which is impermissible. ***[150 ITR 351]***

Such profits	1982	Cal-HC	CIT V/s. Belliss and Morcom (I.) Ltd.

The legislative intent in enacting section 80-I of the Income-tax Act, 1961 (before it was deleted by the Finance Act 1972), was to give relief to certain priority industries and develop them. The expression where the gross total income includes any profits and gains attributable to any priority industry is descriptive of the types of income or profits which will be entitled to relief and the expression **such profits** must relate to the quality of the profits, that is to say, profits of the priority industry. It would be improper to interpret the section in such a manner as would run contrary to the legislative intent. The expression such profits in section 80B cannot be understood in the light of sub-section (5) of section 80B which enjoins deduction of carried forward depreciation losses from non-priority industries. Hence, the deduction under section 80-I should be given on the profits of the priority industry without deducting therefrom any loss arising in any other business activity under section 70 or section 71.

[26 ***CTR 76, 136 ITR 481]***

Such sum	1946	Bom-HC	Loyal Motor Service Co. Ltd. V/s. CIT

Section 10(2)(x) of the Indian Income-tax Act must be strictly construed in favour of the subject. The sum excepted under the expression **such sum** in this clause must be the same sum as is described by the expression any sum paid as bonus or commission. It refers to the quantum and not the character of the payment **[14** ***ITR 647]***

Sum	1980	Ori-HC	CIT V/s. Aloo Supply Co.

The word **sum** has no statutory definition and must have the common parlance meaning. While legislating, Parliament tries to convey its intention through express words. It is one of the well-settled rules of interpretation that where a word used in a statute carries more than one meaning, that meaning which makes the provision workable and is nearest to the legislative intention, has to be adopted. The word sum in section 40A(3), second proviso, of the Income-

tax Act, 1961, is used only to indicate an amount of money and does not refer to the totality of the expenditure. **[*121 ITR 680]***

Sums paid as donations	1968	Bom-HC	CIT V/s. Associated Cement Co. Ltd.

In order that an assessee may be entitled to the rebate under section 15B in respect of **sums paid as donations**, the donations need not be in the shape of actual cash. **[*68 ITR 478]***

Sums paid by the assessee	1991	SC	H.H. Sri Rama Verma V/s. CIT

The context in which the expression **sums paid by the assessee** has been used makes the legislative intent clear that it refers to the amount of money paid by the assessee as donation. The Act provides for assessment of tax on the income derived by an assessee during the assessment year, and the income relates to the amount of money earned or received by an assessee. Therefore, for purposes of claiming deduction under section 80G(2)(a), the donation must be a sum of money paid by the assessee. The plain meaning of the words used in the section does not contemplate donations in kind. Donations may be made by supplying goods of various kinds including building, vehicle or any other tangible property but such donations, though convertible in terms of money, do not fall within the scope of section 80G(2)(a) and will not entitle an assessee to deduction. Donation of shares of a company does not amount to payment of any amount though the shares, on their sale, may be converted into money, and the donation so made does not fall within the ambit of section 80G(2)(a). Since the expression and language used in section 80G(2)(a) is plain and clear, it is not open to the courts to enlarge the scope by its interpretative process founded on the basis of the object and purpose underlying the provision for granting relief to an assessee. **[*187 ITR 308]***

Survey	1994	Mad-HC	Madras Fertilizers Ltd. V/s. CIT

The word **survey** occurring in section 35D(2)(a)(iii) of the Act should be understood in the context of the nature of the business carried on by the assessee. There is no point in attributing a mere dictionary meaning to this word. The word survey does not mean a mere onlooking or overlooking of what happened, but would also include attracting customers to a particular spot demonstrating to them the utility and value of the assessee's products and studying therefrom the business possibilities or determining the action necessary to extend the business.
[209 *ITR 174]*

* *The word inaccurate signifies a deliberate act or omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing inaccurate particulars. The term inaccurate particulars is not defined. Furnishing of an assessment of the value of property may not by itself be furnishing inaccurate particulars. Even if the Explanations are taken recourse to, a finding has to be arrived at-having regard to clause (A) of Explanation 1-that the Assessing Officer is required to arrive at a finding that the explanation offered by the assessee, in the event he offers one, was false. He must be found to have failed to prove that such explanation is not only not bona fide but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not bona fide, it should have been found as a fact that he has not disclosed all the facts which were material to the computation of his income. The explanation must be preceded by a finding as to how and in what manner he furnished the particulars of his income. It is beyond any doubt or dispute that for the said purpose the Assessing Officer must arrive at a satisfaction in this behalf.*

T

Taken into custody	2000	MP-HC	Samta Construction Co. V/s. Pawan Kumar Sharma, DDIT (Invs.)

The expression **taken into custody** is different from the expression in custody. The words taken into custody when given the natural and objective meaning do convey that possession of the asset is taken over by an authority without the consent/volition of the person who is in possession or control of the same. The authority or officer who has taken into custody gains control over it. A person from whose custody it is taken cannot get it back as and when he desires. The officer or authority exercises the lawful control over the asset and it is taken into custody with a purpose. Quite apart from the above, the provision also stipulates that the officer or authority must have power or jurisdiction under any other law for the time being in force. On a plain reading of the provision it is clear that power must be vested in the authority or the officer under some law to take the asset into custody. While analysing the concept taken into custody it is also appropriate to scan the provision in sub-section (2) of section 132A. It postulates that when a requisition is made, the officer or authority shall deliver the books of account, other documents or assets to the requisitioning officer…A banker cannot take into custody a draft from the possession or control of a person. It is the owner or the title holder or the person in possession who voluntarily parts with it for carrying out some transaction with the bank. It is presented before the bank for definite purposes. At any point of time the person who has presented the draft can withdraw or bring it back. The bank has no power to retain it under any provision of law unless the person concerned gives his consent. It is well known that in the case of a fixed deposit, it cannot be adjusted in respect of a loan unless there is an agreement to that effect, as they form two different transactions. Thus, the banker has no control or authority over the draft. It only accepts the instrument for a limited purpose. When it is in the custody of the banker, the banker retains it on behalf of the customer. The banker cannot utilise the draft for any purpose other than what has been desired by the customer. The bank draft when presented for clearing by the customer to the bank cannot be said to have been taken into custody by the bank to attract the applicability of section 132A.

[155 ***CTR 405, 244 ITR 845, 107 TAXMAN 198]***

Tax	1972	SC	Union of India V/s. Harbhajan Singh Dhillon

The requisites of a **tax** under entry 49 of List II are: (a) it must be a tax on units, that is, lands and buildings separately as units; (b) the tax cannot be a tax on totality, i.e., it is not a composite tax on the value of all lands and buildings; (c) the tax is not concerned with the division of interest in the buildings or lands. In other words, it is not concerned whether one person owns or occupies the land or building or two or more persons own or occupy it.

[83 ***ITR582*****]**

Tax	1975	AP-HC	CIT V/s. Sreerama and Co.

The word **tax** in section 221 includes advance tax and the failure to pay advance tax amounts to default for which penalty can be levied. **[101** ***ITR 531]***

Tax	2006	SC	Jindal Stainless Ltd. V/s. State of Haryana

In the generic sense, **tax**, toll, subsidies, etc., are manifestations of the exercise of the taxing power. The primary purpose of a taxing statute is the collection of revenue. Tax is levied as a

part of the common burden. The basis of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the State's action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use or capital, but its payment is not a condition precedent. It is not a term or condition of licence. A fee is generally a term of licence. A tax is a payment where the special benefit, if any, is converted into common burden.On the other hand, a fee is based on the principle of equivalence. This principle is the converse of the principle of ability to pay. In the case of a fee or compensatory tax, the principle of equivalence applies. The basis of a fee or a compensatory tax is the same. The main basis of a fee or compensatory tax is the quantifiable and measurable benefit. In the case of a tax, even if there is a benefit, the same is incidental to the Government action and even if such benefit results from the Government action, the same is not measurable. Under the principle of equivalence, as applicable to a fee or a compensatory tax, there is an indication of a quantifiable data, namely, a benefit which is measurable.A tax can be progressive. **[283 *ITR 1]***

Tax due	**1998**	**SC**	**Harshad Shantilal Mehta V/s. Custodian**

Tax due usually refers to an ascertained liability. However, the meaning of the words taxes due will ultimately depend upon the context in which these words are used. . . . In the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, the words taxes due occur in a section dealing with distribution of property. At this stage, the taxes due have to be actually paid out. Therefore, the phrase taxes due cannot refer merely to a liability created by the charging section to pay the tax under the relevant law. **[*231 ITR 871, 99 TAXMAN 216]***

Tax outstanding	**1985**	**SC**	**CWT V/s. Kantilal Manilal**

Section 2(m)(iii)(a) of the Wealth-tax Act, 1957, comes into play only after a demand of payment of tax has been made. The clause speaks of **tax outstanding** in consequence of an order passed under the relevant taxing statute. Tax becomes payable in consequence of such an order when a notice of demand is served on the assessee. Where the notice of demand is served on the assessee subsequent to the relevant valuation date, it cannot be said that on the valuation date the amount is outstanding and, in such a case, a material requirement of section 2(m)(iii)(a) is not satisfied and, therefore, that provision cannot be invoked by the Department to deny deduction of such an amount of tax as a debt in the computation of the net wealth of the assessee. Parliament intended, in enacting section 2(m)(iii)(a), that if the amount of tax payable in consequence of an order was challenged by the assessee as not being payable by him by recourse to any of the statutory remedies, by way of an appeal or other proceedings, such claim to deduction would be barred. Plainly, in order to give effect to that intent, it is immaterial whether the statutory remedy is being availed of on the valuation date or has been taken thereafter. A challenge by the assessee that the amount outstanding is not payable by him is sufficient to bar his claim to deduction of the amount whether the challenge is subsisting on the valuation date or is initiated after the valuation date has passed. In order to invoke the bar prescribed by section 2(m)(iii)(a), it is necessary for the Revenue to establish that both the above requirements are satisfied, that is to say, that an amount of the tax is outstanding on the valuation date and further that the amount is claimed by the assessee in appeal as not being payable by him. **[152 *ITR 447]***

Tax payable	**1937**	**Mad-HC**	**Chengalvaroya Chettiar V/s. CIT**

The words **tax payable** in the said section mean tax which the firm or partnership would be

liable to pay if it had not been discontinued, tax either found to be due already or that will be found to be due in the future.(Section 44 of the1922 Act related to discontinued business profession or vocation of a firm) **[5 *ITR 70]***

Tax payable	**1972**	**Del-HC**	**Orissa Cement Ltd. V/s. CBDT**

The expression **tax payable** in section 280ZB of the Income-tax Act, 1961, cannot mean the tax payable on self-assessment under section 140A or provisional assessment under section 141: it can only mean the tax payable upon regular assessment by the Income-tax Officer for the base year or the succeeding base year. Entitlement to the grant of a tax credit certificate accrues only upon such regular assessment and the right to adjustment of any existing tax liability or to refund accrues only after the grant of the tax credit certificate. A manufacturing company is not, therefore, entitled, while paying tax upon self-assessment for any assessment year subsequent to the base year or the succeeding base year, to adjust the amount of tax credit on the basis of its liability for that earlier year unless regular assessment for that year has been made. **[84 *ITR 451]***

Tax so assessed	**1980**	**MP-HC**	**Kaushal Construction Co. V/s. CIT**

In the case of reassessment following an assessment, the quantification of tax cannot be on the income which is found to have escaped assessment because the escaped income has to be added to the income earlier determined for finding out the total tax liability, as the rate of tax is affected by the increase in the total income. So, at the stage of assessment of tax, even in cases under section 147, the tax is assessed not only on the income that had escaped assessment but on the total income. Out of the **tax so assessed** any tax that had already been paid would be deducted and the tax payable would be the tax assessed minus the tax already paid. But the assessed tax even in cases of reassessment would be that tax which is assessed on the total income including the income that had escaped assessment. This is clear from the Explanation to section 271(1) which says that assessed tax means the tax as reduced by the sum, if any, deducted at source under Chapter XVII-B or paid in advance under Chapter XVII-C. If the intention of the law-makers was that assessed tax should mean the difference between the tax assessed at the stage of reassessment and the tax originally assessed, the Explanation would have said so. **[15 CTR 146, 126 *ITR 466]***

Technical know-how	**1980**	**Del-HC**	**Lurgi India Co. P. Ltd. V/s. CBDT**

The meaning of **technical know-how** is the knowledge which would enable a company receiving such know-how to do the project: **[121 *ITR 287*]**

Technical or professional qualification	**1999**	**Mad-HC**	**CIT V/s. Smt. R. Bharathi**

The words **technical or professional qualification** do not necessarily connote a qualification conferred by a recognised university after examining the candidate who has undergone a course of study in the technical subject or a course of study preparing him for a profession like law, accountancy, etc. The term qualification must be given a wide meaning as referring to the qualities which are required to be possessed by a person performing the work that he does, so long as that work is capable of being regarded as technical or professional. The word professional is a term capable of very broad meaning and would encompass varieties of occupation, although the term is also capable of being given a limited meaning where the context so requires. In the context in which the words professional qualifications are used in the Act, it is not possible to hold that Parliament intended to confine the scope of the proviso only to the professions such as medicine, law, engineering or accountancy. A large number of

occupations that are being practised and which form a source of livelihood are capable of being regarded as professions, so long as they require a degree of skill. The degree of skill required is a matter for examination in each case. A person having skill, experience and competence in that line of work can be regarded as professionally qualified for the purpose of section 64(1)(ii), proviso. **[158** ***CTR 127, 240 ITR 697, 107 TAXMAN 93]***

Technical services	**1979**	**Del-HC**	**J.K. (Bombay) Ltd. V/s. CBDT**

Technical services in section 80-O would not include commercial services or managerial services. Managerial service may be professional, service like legal or medical service, but it would not be technical service like engineering service. The main reason why the word technical in section 80-O cannot be given a wider meaning to include managerial or commercial is that the performance of managerial or commercial services by an Indian company for a foreign enterprise would amount to virtually managing or running the foreign company and remuneration obtained by the running or managing of a foreign company would be in the nature of profits, while section 80-0 deliberately restricts itself to income by way of royalty, commission or fees and excludes other types of remuneration. **[118** ***ITR 312, 1 TAXMAN 537]***

Technical services	**2001**	**Bom-HC**	**Goa Carbon Ltd. V/s. V.M. Muthuramalingam**

Explanation 2 to section 9 of the Income-tax Act has clearly defined what is **technical services**. Technical services have been defined as managerial, technical or consultancy services including the provision of services of technical or other personnel. **[251** ***ITR 348]***

Technician	**1999**	**AAR**	**John A. Sayre V/s. CIT**

Under the Explanation to section 10(5B) a **technician** may also mean person who has specialised knowledge and experience in, inter alia, construction or manufacturing operations. In order to succeed on this point, the applicant has to establish that not only has he specialised knowledge and expertise in constructional and manufacturing operations but he was also employed in India for this purpose. On the question whether the applicant was eligible for the benefit of section 10(5B) of the Income-tax Act, 1961, the authority on the stated facts ruled :

[151 ***CTR 651, 236 ITR 652, 103 TAXMAN 78]***

Technician	**2000**	**AAR**	**P.36 of 1998**

…..technician has been defined as a person having specialised knowledge and experience in constructional or manufacturing operations . . . It may be that in the course of marketing, the company would have to install the machinery at the working place of the customer but the installation of a machinery which had been manufactured abroad in the laboratory or in the office of a customer would not amount to constructional activity either by the company or by the individual employee of the company. Affixation of an instrument at a place where it is expected to function cannot amount to construction.

[*158 CTR 364, 242 ITR 698, 109 TAXMAN 39]*

Termination of service	**2006**	**Ker-HC**	**State Bank of Travancore V/s. CBDT**

The word **termination of service** is used in section 17(3)(i) in a liberal sense so as to take all categories of cases such as voluntary retirement, superannuation, compulsory retirement, resignation, dismissal and so on. **[282** ***ITR 587, 151 TAXMAN 133]***

Terms	2001	SC	CIT V/s. Anjum M.H. Ghaswala

The expression **terms** used in sub-section (6) does not contemplate any power to waive or reduce tax, penalty or interest : all that the expression means is that the Commission can stipulate the conditions of payment like instalments, last date for payment, etc. Beyond that, sub-section (6) does not authorise waiver or reduction of tax, penalty or interest settled under sub-section (4). **[*171 CTR 1, 252 ITR 1, 119 TAXMAN 352]***

Textiles	2000	SC	CIT V/s. Sundaram Spinning Mills

The word **textiles** in it is not used in isolation but is stretched by bringing in more in its company through the following words including those dyed, printed or otherwise processed made wholly or mainly of cotton including cotton yarn, hosiery and rope. Thus textiles as is understood at common parlance or as is understood in its natural sense which is limited, is not indicated here. The Legislature has deliberately widened its sphere for the purpose of giving larger benefit to other items included in it by extending it to include even cotton yarn, hosiery and rope to be understood as textiles. It is always open for a Legislature to stretch or shrink or to give an artificial projection to any word including one used for goods, to make it more meaningful to subserve the objectives it intends to achieve. That is why this inclusive clause brings in more goods, which may not strictly come within the field of such goods. This is in order to give them similar benefit or to make them equally treated. Similarly, hosiery and rope could not but for their inclusion under this item have been classified as textiles. Similarly may be cotton yarn. It is true that manufacture of cotton yarn is a stage earlier than manufacture of textiles as understood commonly. In fact, cotton is the first stage, next comes cotton yarn which finally produces textiles. But here the Legislature intended to give the higher rate of initial depreciation even to the manufacture of goods which commonly understood could not have been included as textiles. So, this entry has to be interpreted to subserve the intended objective of the Legislature. **[241 *ITR 350, 108 TAXMAN 337]***

Textiles made wholly or mainly of cotton	1985	Mad-HC	Premier Mills Ltd. V/s. CIT

The very wording of item 32, Fifth Schedule to the Income-tax Act, 1961, clearly shows that the expression **textiles made wholly or mainly of cotton** is meant to be exhaustive and not expansive. It is not possible to effect a division of item 32 into four categories. A reading of items 32 and 33 would clearly show that Parliament kept in mind a clear distinction between textiles made wholly or mainly of cotton including cotton yarn and textiles made wholly or mainly of jute including jute twine. Hence, the words cotton yarn found in item 32 have to be read in a restrictive sense and cannot be applied to any yarn made out of material other than cotton such as staple fibre. **[152 *ITR 457]***

The and such	1940	Mad-HC	CIT V/s. Bosotto Brothers Ltd.

The use of the definite article **the**, and the word **such** in section 10 makes it clear that the business contemplated in clause (vi) of the section is the business carried on by the assessee, and not by any person or person other than the assessee, and what it is in respect of a building belonging to the assessee, and used for his business, that he claim a depreciation allowance. **[8 *ITR 41]***

The amount of tax, if any, payable by him	1973	SC	CIT V/s. Vegetable Products Ltd.

Tax payable is not the same thing as tax assessed. The tax payable is the amount for which

a demand notice is issued under section 156 of the Income-tax Act, 1961. In determining the tax payable, the tax already paid has to be deducted. Hence, the expression **the amount of tax, if any, payable by him** in the earlier part of section 271(1)(a)(i) refers to the tax payable under a notice of demand. The words the tax in the latter part of the provision can only refer to the tax, if any, payable by the assessee mentioned in the earlier part of sec.271(1)(a)(i).

[88 *ITR 192]*

The application is in order	1947	All-HC	Hajie Saeed and Sons V/s. CIT

The expression **the application is in order** in rule 6A relates to the form of the application and not to the correctness of the statement made therein. **[15 *ITR 51]***

The date of assessment	1957	Bom-HC	Sarangpur Cotton Manufacturing Co. Ltd. V/s. CIT

The date of the assessment under section 23 up to which interest is payable to an assessee on the advance tax paid by him under section 18A, refers to the date of the assessment under section 23 in fact. The mere fact that an assessment made under section 23 was set aside on appeal by the Appellate Assistant Commissioner, and a fresh assessment was made at a subsequent date, would not entitle the assessee to interest on the advance tax up to the date of the subsequent assessment. **[31 *ITR 698]***

The date of assessment	1971	AP-HC	Merla Sitarama Prasad V/s. CED (Asst.)

The plain meaning of the words **the date of assessment** occurring in section 73A(b) is the date on which assessment is made by the primary authority under section 58 of the Act and not the date of disposal of the appeal, revision, etc. **[80 *ITR 672]***

The person liable to penalty	1981	Gau-HC	CIT V/s. Maskara Tea Estate

The expression **the person liable to penalty** in section 271(2) refers to persons who are liable to penalty under section 271(1)(a) read with section 271(1)(i). The expression refers to the persons who are liable to penalty under sections 271(1)(a)/271(1)(i) and no other person. Those exempted from liability to penalty cannot be described as the person liable to penalty under section 271(2) of the Act. If a person liable to penalty under section 271(1)(i) happens to be a registered firm its case squarely falls under section 271(2). A registered firm is denuded of the advantage of registration when it is liable to penalty under section 271(1). It takes the colour of an unregistered firm and the penalty imposable shall be the same as would be imposable on that firm if that firm were an unregistered firm. The penalty imposable shall be in the manner and method provided in section 271(1)(i)…

[*21 CTR 47, 130 ITR 955, 6 TAXMAN 191]*

The public	1975	Ker-HC	CIT Vs. Aspinwall and Co. Ltd.

A company in which the public are substantially interested is included in the expression **the public**. When two categories of persons, namely, a director or a company to which section 2(18(b)(B)(i) does not apply, are said to be not included in the expression the public under sub-clause (d) thereof, every other category of persons must, by implication, be deemed to be included by the expression the public. Otherwise, the exclusion of certain persons or companies alone becomes meaningless. Thus understood, a company in which the public are substantially interested clearly comes within the expression the public in section. **[98 *ITR 291]***

The same business	1968	All-HC	Shadi Ram Ganga Prasad V/s. CIT

The same business in section 24(2) means a business that is carried forward as a whole, without keeping any distinction inter se between the several kinds of business that an assessee may be carrying on. **[68 *ITR 701]***

The same business, profession or vocation	1951	Cal-HC	CIT V/s. Jiwanmal Bhuturia

The words **the same business, profession or vocation** in section 24(2) could not be held to cover more than one business or more than one profession or vocation. **[19 *ITR 444]***

The subject of an appeal	1963	Bom-HC	Jagmohandas Gokaldas V/s. CWT

An order can be said to be **the subject of an appeal** within the meaning of proviso (b) to sub-section (1) of section 25 of the Wealth-tax Act (which prohibits the Commissioner from revising an order where the order is the subject of an appeal to the Assistant Commissioner or the Appellate Tribunal), only if the Appellate Court has considered the order on the merits.
[50 *ITR 578]*

The subject of an appeal	1965	Mys-HC	Krishna Flour Mills Ltd. V/s. CIT

An order is made **the subject of an appeal** within the meaning of clause (c) of the first proviso to sub-section (2) of section 33A only when it is the subject-matter of an effective appeal. If an appeal to the Appellate Tribunal under section 33 is not admitted and is disposed of on the ground that it was filed after the prescribed time, the order cannot be said to have been made the subject of an appeal, and the Commissioner can entertain an application for revision under section 33A. **[55 *ITR 259]***

The tax, if any, payable by him	1972	Del-HC	CIT V/s. Hindustan Industrial Corporation

The words **the tax, if any, payable by him**, as used in clause (i) of section 271(1) means the tax which has been assessed on the assessee and is chargeable and not the residue of the tax to be paid by him after making adjustment of the tax already deposited by him. **[86 *ITR 657]***

Thenceforward	1951	Mad-HC	Chandrasekhara Reddi (G.) V/s. CIT

Section 61(3) of the Indian Income-tax Act, 1922, does not by itself prevent the Income-tax authorities (including the Central Board of Revenue) from permitting a person against whom they had passed an order under that provision to appear before the authorities on behalf of the assessees at a later date, provided, of course, there was nothing in the original order itself, which precluded them from so doing. An order in terms of the language in section 61(3) without mentioning the period of disqualification would not be such an order as to preclude reconsideration on a subsequent date. The word **thenceforward** in that sub-section-prima facie- fixes only one limit, namely, the limit from which the order begins to have effect. By itself it does not necessarily fix the other limit. Thenceforward cannot be read as thenceforward and forever.
[19 *ITR 616]*

Thereon	2003	Ker-HC	Mrs. Lucy Kochuvareed V/s. CWT

The expression **thereon** restricts the jurisdiction of the Tribunal to the subject matter of the appeal, and the words pass such order as the Tribunal thinks fit include all the powers (except

possibly the power of enhancement), which are conferred on the Appellate Assistant Commissioner. **[183** ***CTR 308, 263 ITR 215, 131 TAXMAN 159]***

Thereon	2006	Gau	The Assam Tribune V/s. CIT

It is evident from the provisions of section 254 of the Income-tax Act, 1961, and rule 11 of the Income-tax (Appellate Tribunal) Rules, 1963, that the power of the Tribunal while dealing with an appeal is in the widest possible terms and the word **thereon** occurring in section 254 of the Act, restricts the jurisdiction of the Tribunal to the subject matter of the appeal only. The Tribunal therefore has jurisdiction to go into every aspect of the assessment proceedings before the taxing authorities and into the question whether such assessment was made in accordance with law provided a ground is taken before the Tribunal in that respect or an additional ground by way of amendment is allowed by the Tribunal. The Tribunal also has the jurisdiction to examine a question of law which arose from the facts as found by the taxing authorities which has a bearing on the tax liability of the assessee. **[285** ***ITR 452]***

Thing	1997	Raj-HC	CIT V/s. Trinity Hospital

The dictionary meaning of the word **thing** is a product of work or activity; useful or appropriate object. **[131** ***CTR 328, 225 ITR 178, 87TAXMAN 127]***

To account	2002	Bom-HC	Sheraton Appearels V/s. ACIT

…. to account means to reckon, and it is difficult to conceive of any accounting which does not involve either additions or subtractions or both of these operations of arithmetic.
[256 ***ITR 20]***

To assess	1958	SC	ITO V/s. K.N. Guruswamy

In the normal sense **to assess** means to fix the amount of tax or to determine such amount. The process of reassessment is to the same purpose and is included in the connotation of the term assessment.Section 34 of the Indian Income-tax Act contemplates different cases in which the power to assess escaped income has been given. Where there has been no assessment at all, the term assessment may be appropriate and where there was assessment at too low a rate or with unjustified exemptions, the term reassessment may be appropriate, and it may have been necessary to use the two different terms to cover with clarity the different case dealt with in the section. But this does not mean that the two terms should be treated as mutually exclusive or that the word assessment should be given a restricted meaning. **[34** ***ITR 601]***

To inform	1967	Ker-HC	United Mercantile Co. Ltd. V/s. CIT

To inform means **to impart knowledge** and a detail available to the Income-tax Officer in the papers filed before him does not by its mere availability become an item of information. It is trasmited into an item of information in his possession only if, and only when, its existence is realised and its implications are recognised. **[64** ***ITR 218]***

To the extent	1974	SC	CED V/s. Parvati Ammal

The words **to the extent** in section 10 cannot that, if the donee does not assume immediate bona fide possession and enjoyment of a part or fraction of the gifted property and thenceforward retain it to the entire exclusion of the donor or of any benefit to him by contract or otherwise, it shall be that part or fraction of the gifted property which shall be deemed to pass on the death of the donor. Those words thus seek to restrict the liability to pay estate duty in respect of only the aforesaid part or fraction of the property. **[97** ***ITR 621]***

Too low a rate	1967	SC	Sundaram and Co. (Pvt.) Ltd. V/s. CIT

The word rate in the expression **too low a rate** in section 34(1)(b) of the Indian Income-tax Act, 1922, does not mean a fraction of the total income. By the use of the word rate in the context in which it occurs, undoubtedly a relation between the taxable income and the tax charged is intended. But the relation need not be of the nature of proportion or fraction. The word rate is often used in the sense of a standard or measure. Provided, the tax is computable by the application of a prescribed standard or measure, though not directly related to taxable income, it may be called tax computed at a certain rate. The rebate of tax and the reduction of such rebate are essentially matters of measure or standards of rate. **[66 *ITR 604]***

Tools and implements of agriculture	1968	Cal-HC	Kanan Devan Hills Produce Co. Ltd. V/s. CWT

Tools and implements of agriculture include not only all instruments used in ancient times but also those used in modern times, such as bullock-drawn ploughs, manually operated spades, shovels and sickles as well as power-driven tractors, earth movers, mechanism for irrigating fields and lifting water by electrically operated water pumps from deep tube wells, mechanical sprayers and insecticidal instruments, etc. If electrical transformers and switch gears supply energy for raising agricultural produce, they will be implements used for raising agricultural produce. **[67 *ITR 823]***

Total income	1981	All-HC	Mohammad Ibrahim Azimulla V/s. CIT

The expression **total income** referred to in the Explanation to section 271(1)(c) refers to the total income disclosed by the assessee in his original return filed under section 139(1). Whatever is disclosed subsequently by way of filing a revised return may relate back and become part of the total income provided it is covered by section 139(5). In a case where the disclosure is not bona fide, as for example, where the revised return is filed on coming to know that the Income-tax Officer was investigating certain transactions, although it may not be necessarily fraudulent or wilful, the difference of 80 per cent. has to be reckoned with reference to the income as shown in the return filed under section 139(1). **[131 *ITR 680]***

Total turnover of the business	2002	Mad-HC	CIT V/s. Madras Motors Ltd./M.M. Forgings Ltd.

The words **total turnover of the business** would be controlled by and have to be read in the colour of the opening clause. The sub-section has been created only to see the ratio of the income out of the export to the total income out of the business in respect of those goods because of the obvious difficulty of segregating the profits earned out of export alone. The total turnover of the business would contemplate only the business regarding such goods part of which are exported and the others are not so exported. Hence, it is impermissible to apply the section even to goods which are outside the limits of clause (a) of sub-section (2).

[174 *CTR 221, 257 ITR 60, 122 TAXMAN 516]*

Towards purchase	1995	Bom-HC	CIT V/s. Dr. Laxmichand Narpal Nagda

Taking into consideration the letter as well as the spirit of section 54 of the Income-tax Act, 1961, and the word **towards** used before the word **purchase** in sub-section (2) of section 54, it is clear that the said word is not used in the sense of legal transfer and, therefore, the holding

of a legal title within a period of one year is not a condition precedent for attracting section 54 of the Act. **[211 *ITR 804]***

Trade	1968	SC	State of Punjab V/s. Bajaj Electricals Ltd.

Trade in its primary meaning is the exchanging of goods for goods or goods for money; in its secondary meaning it is repeated activity in the nature of business carried on with a profit motive, the activity being manual or mercantile, as distinguished from the liberal arts or learned professions or agriculture. The question whether trade is carried on by a personal at a given place must be determined on a consideration of all the circumstances. No test or set of tests which is or are decisive for all cases can be evolved for determining whether a person carries on trade at a particular place. The question, though one of mixed law and fact, must in each case be determined on a consideration of the nature of the trade, the various steps taken for carrying on the trade and other relevant facts. **[70 *ITR730]***

Trade	1977	Guj-HC	H. Mohmed & Co. V/s. CIT

Trade means that particular business activity where the person engaged in the profession buys or sells. All businesses may be carried on for the purpose of earning profit but only that particular kind of business where the business man buys and sells a commodity can be designated as trade. **[107 *ITR 637]***

Trade	1997	Gau-HC	CIT V/s. Assam Hard Board Ltd.

Trade means a business which a person has learnt or carries on for procuring subsistence or profit; occupation or employment. The commission received in the real estate transaction was, therefore, income arising out of business. **[*141 CTR 187, 224 ITR 318]***

Transaction	1945	Mad-HC	Ramaswamier (G.S.) and Sons V/s. CIT

The word **transaction** has a very wide meaning. It can be applied to any particular act done in the carrying on of a business; but one of its meanings is the carrying on or completion of an action or a course of action. **[13 *ITR 24]***

Transaction	1968	Ker-HC	P.K. Subramania Iyer V/s. CGT

A **transaction** entered into by a person, should be an act which is bilateral or multilateral in character, and not a mere unilateral action which is all that occurs when a coparcener throws his self-acquisitions into the hotchpot of his joint family. A transaction by a person must be a transaction with some other person; to interpret the words enter into a transaction as if they had the same meaning as do an act or abstain from doing an act gives no real effect to the words enter and transaction. **[67 *ITR 612]***

Transaction	1968	AP-HC	G.V. Krishna Rao V/s. GTO (First Additional)

Throwing of self-acquired property into joint family property amounts to transfer of property and does not cease to be a **transaction** within the meaning of section 2(xxiv)(d) of the Gift-tax Act, simply because it is unilateral in nature. **[70 *ITR 812]***

Transaction	1971	SC	CGT V/s.N.S. Getti Chettiar

The word **transaction** in clause (d) of section 2(xxiv) takes its colour from the main clause; it must be a transfer of property in some way.Section 2(xxiv) deals with transfer of properties in

various ways and not any other transactions. The words disposition, conveyance, assignment, settlement, delivery and payment, are all used to indicate some of the modes of transfer of property. **[82 *ITR 599]***

Transaction	**1988**	**Raj-HC**	**Vidyawati Devi Rathi V/s. CGT**

The expression **transaction** referred to in clause (d) of section 2(xxiv) takes its colour from the main clause. It must be a transfer of property in some way. A partition in a Hindu undivided family does not effect any transfer as generally understood in law and it cannot be considered to be a disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property within the meaning of these words in section 2(xxiv) and, therefore, it does not constitute a gift under section 2(xii). **[*64 CTR 241, 169 ITR 708, 35 TAXMAN 242]***

Transaction	**2000**	**SC**	**Jagatram Ahuja V/s. CGT**

The word **transaction** in clause (d) of section 2(xxiv) of the Gift-tax Act, 1958, takes its colour from the main clause; it must be a transfer of property in some way. The words disposition, conveyance, assignment, settlement, delivery and payment are all used to indicate some kind of transfer of property. **[164 *CTR 1, 246 ITR 609, 113 TAXMAN 459]***

Transaction entered into	**1970**	**SC**	**Goli Eswariah V/s. CGT**

The **transaction entered into** by one person with another, contemplated by clause (d) of section 2(xxiv) of the Gift-tax Act, 1958, cannot apply to a unilateral act. The act must be one to which two or more persons are parties. The declaration by a coparcener whereby he impresses the character of joint family property on his self-acquired property does not fall within clause (d) of section 2(xxiv). **[76 *ITR 675]***

Transfer	**1964**	**Mad-HC**	**Wilfred Pereira Ltd. V/s. CIT**

The word **transfer** in section 12B includes both a transfer by act of parties and a transfer by operation of law. **[53 *ITR 747]***

Transfer	**1970**	**SC**	**Goli Eswariah V/s.CGT**

The unilateral declaration of a Hindu coparcener, whereby he throws his self-acquired property into the common stock of joint family property, does not amount to a **transfer** so as to attract the provisions of the Gift-tax Act, 1958. **[76 *ITR 675]***

Transfer	**1973**	**Guj-HC**	**CIT V/s. Mohanbhai Pamabhai**

Section 2(47) defines **transfers** in relation to a capital asset. This definition gives an artificially extended meaning to the term by including within its scope and ambit two kinds of transactions which would not ordinarily constitute transfer in the accepted connotation of that word, namely, relinquishment of the capital asset and extinguishment of any rights in it. But, even in this artificially extended sense, there is no transfer of interest in the partnership assets involved when a partner retires from the partnership.The interest of a partner in a partnership is not interest in any specific item of the partnership property. It is a right to obtain his share of profits from time to time during the subsistence of the partnership and on dissolution of the partnership or on his retirement from the partnership to get the value of his share in the net partnership assets which remain after satisfying the debts and liabilities of the partnership. When, therefore, a partner retires from a partnership and the amount of his share in the net partnership assets after deduction of liabilities and prior charges is determined on taking accounts on the footing of notional sale of the partnership assets and given to him, what he receives is his share in

the partnership and not any consideration for transfer of his interest in the partnership to the continuing partners. His share in the partnership is worked out by taking accounts in the manner prescribed by the relevant provisions of the partnership law and it is this, namely, his share in the partnership which he receives in terms of money. There is in this transaction no element of transfer of interest in the partnership assets by the retiring partner to the continuing partners.The transfer of a capital asset in order to attract capital gains tax must be one as a result of which consideration is received by the assessee or accrues to the assessee. When a partner retires from a partnership what he receives is his share in the partnership which is worked out and realised and does not represent consideration received by him as a result of the extinguishment of his interest in the partnership assets. **[91 *ITR 393]***

Transfer	**1978**	**SC**	**Mangalore Electric Supply Co. Ltd. V/s. CIT**

If an existing title in a capital asset is extinguished and a new one created, there is within the meaning of section 12B(1) of the Indian Income-tax Act, 1922 (as reintroduced by the Finance (No. 3) Act, 1956) a **transfer** of a capital asset. The fact that the divestiture of title takes place under a law relating to compulsory acquisition of property would make no difference. The word transfer is comprehensive and is regarded generally as comprehending within its scope transfers both voluntary and involuntary. In the absence of a distinct genus or category in section 12B(1), no presumption can arise that the word transfer in section 12B(1) must be construed in the sense of a voluntary transfer, because the words sale, exchange and relinquishment are in the normal acceptation of those terms voluntary acts. The words sale, exchange, relinquishment and transfer must be given their plain and actual meanings and there is no justification for restricting the wide comprehension of the word transfer to voluntary transfers by the application of the ejusdem generis rule. The deletion of the clause in the third proviso to section 12B(1) as originally introduced in 1947, which carved out an exception in relation to transfers of capital assets by reason of compulsory acquisition, also reflects indelibly the true legislative intent, viz., that transfers of capital assets by reason of compulsory acquisition are comprehended within the meaning of the word transfer. **[7 *CTR 61, 113 ITR 655]***

Transfer	**1981**	**P&H-HC**	**S.P. Jaiswal V/s. CIT**

The word **transfer** occurring in sections 60, 61 and 62 is not limited to its connotation and meaning given in the Transfer of Property Act, 1882, or other Acts. Section 63(b) defines transfer as including any settlement, trust, covenant, agreement or arrangement. The word arrangement has not been used as a term of art but has been used in a business sense. The factum of advance carrying or not carrying any interest is not decisive of the fact as to whether the advance qualified to be called a loan or not. What is decisive is the circumstance as to whether the advance was made to meet some genuine need for loan.

[130 *ITR 643, 2 TAXMAN 313]*

Transfer	**1981**	**Guj-HC**	**CIT V/s. Kartikey V. Sarabhai**

The expression **transfer** in section 45 of the Income-tax Act, 1961, will have to be read in the light of its definition in section 2(47). A combined reading of section 45 with section 2(47) shows that any profits or gains arising from the transfer of a capital asset, which expression includes sale, exchange or relinquishment of the asset or the extinguishment of rights therein, will be chargeable to tax as capital gains. The conditions precedent for the operation of section 45 are: (i) There should be a transfer of a capital asset, and (ii) As a result of such transfer, gains should have accrued or arisen to the transferor. **[131 *ITR 42]***

Transfer	1982	Bom-HC	CIT V/s. Indian Expanded Metals P. Ltd.

The word **transfer** in section 84(2)(ii) of the Income-tax Act, 1961, cannot be restricted to a case where the full rights of ownership were transferred and that it would include a transfer also of some limited right or interest in or to the property and, therefore, where a transfer is effected by the creation of a lease in a building in favour of the new business or the person carrying on the new business, it would amount to a transfer within the meaning of that expression. It is not necessary that the building transferred to the new industrial undertaking must have been previously used by the assessee himself in any other business and a building earlier used for business by a stranger would come within the ambit of section 84(2)(ii).

[21 ***CTR 143, 134 ITR 483]***

Transfer	1985	Mad-HC	Baldevji V/s. CIT

The expression **transfer** occurring in section 155(5) has not been defined. However, in legal parlance, it bears a wide connotation. Even the transfer of a mere fractional interest in property would come within the conception of transfer of property. There is an indication in section 155(5) itself that Parliament intended the term transfer to be understood in the widest sense possible. This is seen from the expression sold or otherwise transferred . The transfers, as it were, are divided into two categories, sales and non-sales. The expression otherwise exhausts all the categories of transfers other than sales which are transfers of a kind for consideration. The expression otherwise occurring in a combination of words has sometimes been regarded as indicating the application of the ejusdem generis rule. The subject and context of section 155(5) clearly point to the intention of Parliament that the machinery which has obtained a grant of development rebate by reason of its having come under the ownership of the assessee should continue to remain in the same ownership and should not be parted with by him for a period of at least eight years from the date of installation. In this context, therefore, any parting with that asset would involve a breach of the statutory condition, subject to which alone development rebate is originally granted. It stands to reason, therefore, that the expression otherwise transferred must be given such wide amplitude of meaning as is consistent with its ordinary connotation. There can be no warrant for cutting down that meaning, to any extent.

[*40 CTR 120, 156 ITR 776]*

Transfer	1987	Guj-HC	CIT V/s. Ramanbhai B. Amin

The contribution of joint stock by a partner to the firm would amount to a **transfer** within the meaning of section 2(47) of the Income-tax Act, 1961, and gains arising therefrom would be liable to tax as capital gains. **[163** ***ITR 125, 24 TAXMAN 639]***

Transfer	1987	All-HC	CIT V/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd.

The word **transfer** has been given an artificial definition in section 2(47) of the Income-tax Act, 1961, different from its meaning in the ordinary popular and natural sense. The words extinguishment of rights therein have a wider meaning than mere destruction as used in section 41(2) of the Act. These words have very wide amplitude covering every possible transaction and situation which results in the destruction, annihilation, extinction, termination, cessation or cancellation of any bundle of rights, either qualitative or quantitative, that the assessee had in the capital asset comprising either movable or immovable property. The word transfer spoken of in respect of extinguishment of any rights therein clearly includes a case where there is extinguishment of the capital asset itself. A right in any property could be extinguished even

when the property ceases to exist. It cannot be doubted that when a capital asset ceases, the right is also extinguished therein. When an assessee receives money from an insurance company as compensation for the extinguishment of his capital asset, he receives that money in lieu of the capital asset and not in lieu of the premia paid to the insurance company. This amounts to a transfer within the meaning of section 2(47) and the amount received would be liable to be taxed as capital gains. **[164 *ITR 18]***

Transfer	**1987**	**Kar-HC**	**Jayakumari and Dilharkumari V/s. CIT**

The **transfer** contemplated under section 2(47) of the Income-tax Act, 1961, envisages, no doubt, sale, exchange or relinquishment of the asset, etc. But mere conversion of one currency into another currency cannot be considered as exchange. The exchange in the context must mean transfer of one capital asset for another capital asset. Like a sale, it requires two persons. There cannot be a sale or exchange to oneself. **[165 *ITR 787]***

Transfer	**1987**	**Ker-HC**	**Blue Bay Fisheries (P.) Ltd. V/s. CIT**

The definition of **transfer** is an inclusive definition. It specifically refers to sale, exchange, relinquishment, extinguishment or compulsory acquisition. These five categories are specified by way of illustration or by way of abundant caution and not to exclude other categories which naturally come within the expression transfer . The expression must be read widely and not narrowly. The definition denotes extension and cannot be treated as restricted. The expression otherwise transferred occurring in sections 34(3)(b) and 155(5) is wide enough to include a transfer where under the right to exclusive possession and enjoyment stood transferred, albeit subject to a right of reversion in favour of the transferor.

[62 *CTR 66, 166 ITR 1, 31 TAXMAN 393]*

Transfer	**1991**	**Bom-HC**	**D.S. Joshi V/s. CIT**

Section 2(47) of the Income-tax Act, 1961, applies to **transfer** in relation to a capital asset. It is not possible to accept that the definition clause, i.e., section 2(47), does not or will not apply while considering the word transfer as used in section 34(3)(b). The contribution by a partner of a capital asset to the firm as capital amounts to transfer within the meaning of section 34(3)(b). **[95 CTR 5, *191 ITR 302, 57 TAXMAN 18]***

Transfer	**1994**	**Ker-HC**	**Kerala State Cashew Dev. Corp. V/s. CIT**

Section 2(47) of the Act states that, in relation to a capital asset, **transfer** includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law. This is an inclusive definition, which should not ordinarily bear a restrictive or limited construction. The five categories of transfer mentioned therein are by way of illustration or for abundant caution, and were not intended to exclude other categories which naturally come within the expression transfer. The expression has to be read broadly and not narrowly. The transfer contemplated by section 80J4(ii) comprehends leases as well (except to the extent excluded by the parenthesis therein). There is nothing in the Explanation to section 80J to exclude the value of building or machinery forming part of the lease in computing the value of the building, machinery or plant previously used for any purpose. Even the parenthesis which appears in clause (ii) of sub-section (4) of section 80J not being a building taken on rent or lease does not find a place in the Explanation. Therefore, the value of the building, machinery and plant leased out has to be taken into consideration for the purposes of the Explanation. **[205 *ITR 19]***

Transfer	1994	Bom-HC	CIT V/s. Tata Iron and Steel Co. Ltd.

The word **transfer** in section 2(47) of the Income-tax Act, 1961, has a very wide meaning. Its meaning cannot be narrowed down by referring to the provisions of other statutes which are quite different and applicable in different contexts.

[113 ***CTR 95, 206 ITR 196, 71 TAXMAN 188]***

Transfer	1995	Bom-HC	CIT V/s. Dandeli Ferro Alloys Pvt. Ltd.

The expression **transfer** is used in varying senses in different statutes, depending on the context. In a broad sense, it will include acquisition of an asset by a person from whatever source. But the scheme of section 80J of the Income-tax Act, 1961 indicates that what is being aimed at is to prevent exemption to those industrial undertakings which are formed by the splitting up or by reconstruction or by transfer to a new business, of plant or machinery of the old business. Transfer, in this context, must mean a transfer of plant or machinery which is essential for the formation of the new industrial undertaking and that must again mean a transfer to the new business of the transferee of any machinery used by the said transferee in his old business. **[*129 CTR 44,* 212 *ITR 1, 89 TAXMAN 292]***

Transfer	1996	SC	CIT V/s. Narang Dairy Products

The definition of **transfer** in section 2(47) is an inclusive one and does not exclude the contextual or the ordinary meaning of the word, transfer. The words otherwise transferred occurring in section 34(3)(b) should bear an appropriate meaning, in the context of the main provision, section 33(1)(a) of the Act. Section 34(3)(b) is closely linked to section 33(1)(a) of the Act. Keeping in view the purpose for which the relief by way of development rebate is afforded under section 33(1)(a) of the Act, in cases where the machinery or plant is not wholly used by the assessee for the purpose of business carried on by him, for the specified period, and such user is given over to another, it can be stated that the machinery or plant is otherwise transferred by the assessee to another person. **[133** ***CTR 65, 219 ITR 478, 85 TAXMAN 375]***

Transfer	1997	SC	Kartikeya V/s. Sarabhai V/s. CIT

Section 2(47) of the Income-tax Act, 1961, defines **transfer** in relation to a capital asset. It is an inclusive definition which, inter alia, provides that relinquishment of an asset or extinguishment of any right therein amounts to a transfer of a capital asset. It is not necessary for a capital gain to arise, that there must be a sale of a capital asset. Sale is only one of the modes of transfer envisaged by section 2(47) of the Act. Relinquishment of the asset or extinguishment of any right in it, which may not amount to a sale, can also be considered as a transfer and any profit or gain which arises from the transfer of a capital asset is liable to be taxed under section 45. A company, under section 100(1)(c) of the Companies Act, 1956, has a right to reduce the share capital and one of the modes which can be adopted is to reduce the face value of the preference shares. Section 87(2)(c) of the Companies Act, inter alia, provides that where the holder of any preference share has a right to vote on any resolution in accordance with the provisions of this sub-section, his voting right on a poll, as the holder of such share, shall, subject to the provisions of section 89 and sub-section (2) of section 92, be in the same proportion as the capital paid up in respect of the preference share bears to the total paid-up equity capital of the company. Hence, when as a result of the reducing of the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend on his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such reduction of the right

in the capital asset would clearly amount to a transfer within the meaning of that expression in section 2(47) of the Income-tax Act, 1961. **[228 *ITR 163, 94 TAXMAN 164]***

Transfer	2001	SC	CIT V/s. Mrs. Grace Collis

The definition of **transfer** in section 2(47) clearly contemplates the extinguishment of rights in a capital asset distinct from and independent of such extinguishment consequent upon the transfer thereof. It is not correct to view the expression extinguishment of any rights therein as not extending to mean the extinguishment of rights independent of or otherwise than on account of transfer. To read so is to render the expression ineffective and its use meaningless. The expression includes the extinguishment of rights in a capital asset independent of and otherwise than on account of transfer. **[*248 ITR 323, 115 TAXMAN 326]***

Transfer	2001	Guj-HC	CIT V/s. Mormasji Mancharji Vaid

Transfer, as defined in section 2(47), has to be given a simple meaning, taking into consideration the object of the Act. There cannot be different criteria to ascertain the meaning of the expression in the case of sale and lease. **[168 *CTR 565, 250 ITR 542]***

Transfer	2006	Guj-HC	Patel Brass Works V/s. CIT

….for the purposes of transfer of a capital asset, it would suffice if there is extinguishment of any rights in a capital asset. **[*193 CTR 578, 273 ITR 1, 142 TAXMAN 713]***

Transfer of property	1985	SC	Sunil Siddharthbhai V/s. CIT

In its general sense, the expression **transfer of property** connotes the passing of rights in property from one person to another. In one case, there may be a passing of the entire bundle of rights from the transferor to the transferee. In another case, the transfer may consist of one of the estates only out of all the estates comprising the totality of rights in the property. In a third case, there may be a reduction of the exclusive interest in the totality of rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest than a share in that property. To the extent to which the exclusive interest is reduced to a shared interest, there is a transfer of interest.

[*49 CTR 472, 156 ITR 509, 23 TAXMAN 14]*

Transportation	1997	Gau-HC	A.B.C. India Ltd. V/s. CIT

The expression **transportation** means the movement of goods or persons from one place to another, by a carrier. Carrier, according to the dictionary meaning, is individual or organisation engaged in transporting passengers or goods for hire. **[145 *CTR 914, 226 ITR 914]***

Travelling	2000	Mad-HC	Beardsell Ltd. V/s. CIT

The word **travelling** is no doubt capable of being construed in a narrow way as to limit it to the actual time spent on travel, i.e., the time actually spent on road, rail or air while travelling from one destination to another. In the Income-tax Rules, 1962, rule 6D and section 37 of the Income-tax Act, 1961, however, that term has been used in a wider sense to include the entire period of absence from the headquarters including the period from the time of the departure till the time of the return, and including the time spent on actual travel and the time spent staying in hotels or elsewhere during the period when the person was not actually travelling, but remained outside the headquarters and had incurred expenditure on such stay. In other words, travelling, for the purpose of these provisions, includes the entire period of absence after the travel commences. It includes the periods spent on actual travel as also the periods spent

while staying away from the headquarters before completing the route which brings the person back to the place that he started from **[150 *CTR 620, 246 ITR 505, 110 TAXMAN 265]***

Tribunals	**1989**	**Cal-HC**	**Garg Glass Tubes (P.) Ltd.**

Apart from statutory **Tribunals** set up by the Legislature, authorities set up under the statute who perform quasi-judicial functions can also be termed Tribunals for the purposes of article 227 of the Constitution of India. Article 265 of the Constitution of India requires that all taxing officers and, or authorities must levy tax according to the provisions of the particular taxing statute under which they operate, and in order to levy or assess such tax, they have to act judicially. They, therefore, perform quasi-judicial functions and are Tribunals within the meaning of the term in article 227 of the Constitution. The High Court can interfere, under article 227, in order to keep such Tribunals within the bounds of their authority and to see that they do their duty in a legal manner. **[175 *ITR 422]***

Trust for any public purpose of a	**1968**	**Bom**	**Trustees of Gordhandas G. Family Charity Trust V/s. CIT**

The expression **trust for any public purpose of a charitable or religious nature** connotes a trust for charitable objects involving an element of public utility. Marriage expenses do not normally involve any element of public utility. **[70 *ITR 600]***

Trustee	**1967**	**Cal-HC**	**Sri Sri Sridhar Jiew V/s. ITO**

The word **trustee** in section 41(1) of the said Act has been used in the larger sense and would include the shebait of a Hindu deity, and the view that the Act of 1922, did not provide a machinery for the assessment of, or realising the tax from, a Hindu deity is not correct.
[63 *ITR 192]*

Turnover	**2002**	**Cal-HC**	**CIT V/s. Chloride India Ltd.**

The general definition of the word **turnover** or the case law dealing with it in the Sales Tax Act cannot be imported into section 80HHC. **[*178 CTR 432, 256 ITR 625, 130 TAXMAN 352]***

Turnover	**2003**	**Ker-HC**	**ACIT V/s. South India Produce Company**

The word **turnover** is not defined in the Income-tax Act. In the absence of a definition the term has to be understood only in the popular sense as defined in the dictionaries. The dictionary meaning of the term is the total amount of business done in a given time; also the amount of goods produced and disposed of by a manufacturer; also the turning over of the capital involved in a business; also the net profit derived from a business in a given time.
[262 *ITR 20]*

Turnover	**2004**	**Ker-HC**	**CIT V/s. Rajendranathan Nair**

The word **turnover** is not defined in the Act. Going by the definition in the Sales Tax Act of the word turnover it is clear that the consideration received must be for the sale of goods and it must be available with the assessee for being turned over, or in other words, it must come to the assessee's till as money belonging to him. It has got relation to the capital employed in the business; turnover has also got relationship with profits of the business. In order that an amount can be included in the total turnover it must either be the purchase price or the sale price or something incidental to the transfer of the goods dealt with by the assessee. In other words, the turnover must relate to the purchase or the sale of the goods made by the assessee. What

is includible in the total turnover is only the consideration for the transfer of goods effected by the assessee and the expenses incurred in connection with the said transfer, of course excluding the eight or insurance attributable to the transport of goods or merchandise.

[*187 CTR 201, 265 ITR 35, 135 TAXMAN 360]*

* *In considering the validity of a statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a court may take into consideration matters of common knowledge, reports, preamble, history of the times, object of the legislation and all other facts which are relevant. It must always be presumed that the Legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well-settled that courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on an authority can be construed in conformity with the legislative intent of exercise of power within constitutional limitations. Where a statute is silent or is inarticulate, the court would attempt to transmute the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to the rule of "reading down" the provisions if it becomes necessary to uphold the validity of the law.*

* *No general rule can be laid down for deciding as to when a particular provision of a statute is mandatory or directory. It must ultimately depend upon the facts of each case and for that purpose the object of the statute in making the provision would be the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to the other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision would also have to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.*

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Under	1982	Del-HC	Addl. CIT V/s. Mrs. Avtar Mohan Singh

The only meaning of the word **under** in section 47(iii) can be involving or by way of : to the extent to which there is a shortfall of consideration the transfer can be said to be under or by way of a gift, the word gift being used in its ordinary meaning in common parlance and not in the sense in which it is used in the Gift-tax Act or the Transfer of Property Act. **[*136 ITR 645]***

Under the Act	1966	Guj-HC	Union of India V/s. Casam Mohmad Ajam Ismail

To give too wide a construction to the expression **under the Act** in section 67 might lead to the serious consequence of attributing to the Legislature, which owed its existence itself to the Constitution, the intention of affording protection to unconstitutional activities by limiting challenge to them only by resort to the special machinery provided by it in place of the normal remedies available under the Code of Civil Procedure. **[62 *ITR 367]***

Undisclosed income	2001	Guj-HC	Rushil Industries Ltd. V/s. Harsh Prakash

The expression **undisclosed income** has been defined in section 158B(b) of the Income-tax Act, 1961, to include income based on an entry in the books of account or other documents which has not been or would not have been disclosed for the purposes of this Act. The definition would also include any entries in the books of account or other documents showing concealment of the real source of income. The requirement of section 158BD of the Income-tax Act, 1961, is only a prima facie satisfaction by the Assessing Officer that in the search operation there is material to show undisclosed income of a person other than the one who is searched. **[*166 CTR 300, 251 ITR 608, 120 TAXMAN 67]***

Undisclosed income	2005	MP-HC	Smt. Harbans Kaur Bhatia V/s. CIT

The definition of **undisclosed income** in section 158B(b) of the Income-tax Act, 1961, would show that it not only includes within its sweep property which has not been disclosed by an assessee in his/her return but it also includes within its fold that property which would not have been disclosed for the purpose of this Act by the assessee. **[193 *CTR 725, 274 ITR 298]***

Undisclosed income	2006	MP-HC	Dr. Brijesh Lahoti V/s. CIT

A reading of clause (b) of section 158B of the Income-tax Act, 1961, shows that **undisclosed income** includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions mentioned therein which represents wholly or partly, income or property which has not been disclosed or which would not have been disclosed for the purposes of the Act. Thus, a case where the income has not been disclosed for the purposes of the Act will also be a case of undisclosed income. If the assessee does not disclose any income in the return filed before the due date of filing such return under section 139(1) of the Act, notwithstanding the fact that his income is reflected in books of account at the time of search, his income is to be assessed as undisclosed income. **[*200 CTR 499, 282 ITR 349, 151 TAXMAN 216]***

Unit has been set up	1994	Bom-HC	CIT V/s. Piem Hotel Pvt. Ltd.

A unit cannot be said to have been set up unless it is ready to discharge the function for which it is being set up. It is only when the unit has been put into such a shape that it can start functioning as a business or a manufacturing organisation that it can be said that the **unit has been set up**. If the unit is ready to start functioning, it does not matter that it has not actually started its business on the relevant date. Once the business is set up, expenditure incurred concerning such business can be claimed as business expenditure subject to other applicable conditions of the Act being satisfied. ***[116 CTR 401, 209 ITR 616, 73 TAXMAN 295]***

Unless he is himself liable to pay income-tax asan	2002	Del-HC	National Industrial Dev. Corp. Ltd. V/s. CIT

The expression **unless he is himself liable to pay income-tax as an agent** was introduced as an exception for the benefit of the person sought to be made liable for deduction under section 195(1) of the Income-tax Act, 1961. It was not necessary that the status of a person paying any sum chargeable to a non-resident who was sought to be made liable for deduction of tax should first be determined under section 163 before deciding whether the other requisites under section 195(1) were or were not satisfied. ***[253 ITR 489, 119 TAXMAN 721]***

Urban Consumer Co. op. Society	1970	Mys-HC	Mysore Co-operative Society Ltd. V/s. CIT

The Explanation to section 14(3)(iv) of the Indian Income-tax Act, 1922, and to section 81(v) (now section 80P(2)(f)) of the Income-tax Act, 1961, is a complete definition of an **urban consumers' co-operative society** and the definition of the term in other enactments should not be read into the Income-tax Act. If a society carries on the activity of an urban consumers' co-operative society it is for that reason alone an urban consumers' co-operative society and the mere fact that it carries on some other kind of business does not make available to it an argument, that it is not an urban consumers' co-operative society. An urban consumers' co-operative society is, therefore, not entitled to the exemption contained in the above provisions notwithstanding that its operations are not confined to those mentioned in the Explanation. **[75 I*TR 445]***

Use	1980	Del-HC	E.P.W. Da Costa V/s. Union of India

In order to qualify for a deduction under section 80-O of the Income-tax Act, 1961, the royalty, etc., received by an Indian company from a foreign enterprise must be in consideration for the supply of information for use outside India, and the information must concern industrial, commercial or scientific knowledge, experience or skill. The word **use** is a very general word. It is not necessary that the use to which the information is to be put must be practical, that is to say, it must result in the manufacturing or making of some concrete thing. **[121 *ITR 751]***

Use	2005	Cal-HC	Multican Builders Ltd. V/s. CIT

The word **use** means the employment or using a particular article or thing for profitable purpose in relation to business or trade. In relation to a trade or business, the expression used, for the purpose of business is to be construed in consonance with the kind or character of the business or trade followed by the assessee. It cannot be interpreted without the context of the purpose of the business. While interpreting the word use for the purpose of section 32 in order to allow depreciation, the object and purpose of acquisition of the article or thing and its employment for profitable purpose or its use for taking advantage of would be material and relevant. The leasing of the article or thing would amount to employment of the article or thing for profitable

use, since the advantage of the possession or acquisition of the article or thing is being obtained by reason of such leasing. Whether the rent is payable at a later date or the profit will accrue at a later point of time would not be relevant for the purpose of determining the use of the article or thing. In a business of leasing the moment the article or thing is leased out, the article or thing is put to use for the purpose of leasing or is used for leasing, the business. The rent or profit, which will accrue, will accrue on account of grant of lease from the date when the lease is granted, even though the profit or the rent may accrue at a later point of time.

[*199 CTR 124, 278 ITR 142, 147 TAXMAN 103]*

Used	**1937**	**Bom-HC**	**CIT V/s. Viswanath Bhaskar Sathe**

The word **used** in section 10(2)(vi) of the Indian Income-tax Act, should be understood in a wide sense so as to embrace passive as well as active user. **[5 *ITR 621]***

Used	**1945**	**Pat-HC**	**CIT V/s. Dalmia Cement Ltd.**

The word **used** in section 10(2)(vi) of the Indian Income-tax Act should be understood in a wide sense so as to embrace passive as well as active user. Consequently depreciation may be allowable in certain cases even though the machinery was not in use or was kept idle.

[13 *ITR 415]*

Used	**1996**	**Gau-HC**	**CIT V/s. India Tea and Timber Trading Co.**

The expression **used** should have a wider meaning so as to include not only actual but also passive user and depreciation was allowable. **[*137 CTR 334, 221 ITR 857, 90 TAXMAN 181]***

Used	**2005**	**MP-HC**	**CIT V/s. Vindhyachal Distilleries Pvt. Ltd.**

The word **used** should be understood in a wide sense, so as to include passive as well as active user. **[272 *ITR 583]***

Used for agricultural purposes	**1948**	**PC**	**Raja Mustafa Ali Khan V/s. CIT**

In order to decide the question whether land is **used for agricultural purposes** no assistance is to be got from the meaning ascribed to the word agriculture in other statutes. Though it must always be difficult to draw the line, yet, unless there is some measure of cultivation of the land, some expenditure of skill and labour upon it, it cannot be said to be used for agricultural purposes within the meaning of the Income-tax Act. **[16 *ITR 330]***

Used for the purpose of the business	**1937**	**Nag-HC**	**Central Provinces Manganese Ore Co. Ltd. vsCIT**

The expression '**used for the purposes of the business**' in section 10(1)(iv) means 'used for the purposes of the business during the account year' and not merely that the machinery must not have been used for other purposes, and depreciation allowance could not be allowed merely because the stocks sold during the account year were the result of the use of the machinery in previous years. **[*5 ITR 734]***

Used for the purpose of business	**1954**	**SC**	**Liquidators of Pursa Ltd. V/s. CIT**

The words **used for the purposes of the business** in section 10(2)(iv) of the Indian Income-tax Act, 1922, mean used for the purpose of enabling the owner to carry on the business and

earn profits in the business. In other words, the machinery or plant must be used for the purpose of that business which is actually carried on and the profits of which are assessable under section 10(1). **[*25 ITR 265]***

Used for the purpose of business	**1963**	**All-HC**	**Niranjan Lal Ram Chandra V/s. CIT**

The expression **used for the purposes of the business** in section 10(2)(vii) of the Income-tax Act, 1922, does not necessarily imply that the machinery or plant referred to must have been in active use up to the date of sale. **[49 *ITR 177]***

Used for the purpose of the business	**1980**	**Del-HC**	**Capital Bus Service P. Ltd. V/s. CIT**

….the expression **used for the purpose of the business** (used in section 10(2)(iv) read with section 10(2)(vi) of the Indian Income-tax Act, 1922), comprehended cases where the machinery was kept ready by the owner for its use in his business and the failure to use it actively in the business was not on account of its incapacity for being used for that purpose or its non-availability. And the language used in rule 8 of the Indian Income-tax Rules, 1922, was not inconsistent with this interpretation. **[123 *ITR 404]***

Utilised	**2000**	**Mad-HC**	**CIT V/s. M.Ct. Muthiah Chettiar Family Trust**

Though the word **utilised** has different shades of meaning, in the context of section 11(3)(c), it means application of income, that is, where the trustees had not applied the income for the purposes for which it was accumulated. The later amendment in section 11(3A) of the Act, which was introduced by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976, also gives a clue that the word, utilisation in section 11(3)(c) should be interpreted to mean application. Under section 11(3A) of the Act, it is permissible for the Income-tax Officer to change the purpose of application of income, if the trustees state before the Income-tax Officer that the income accumulated cannot be applied for the purposes due to the reasons mentioned therein. Though the word utilisation in normal connotation would connote spending of money for the purposes for which the income was accumulated, in the context of section 11(3)(c), the more appropriate meaning that can be assigned to that expression utilisation is application of the income. The section deals with three successive stages in the application of the accumulated income. The first stage is non-application of income and the second stage is conversion of the approved Government securities or deposits before the period mentioned in section 11(2) and the third stage is the non-utilisation or utilisation of the accumulated income for some other purposes either during or after the expiry of the period mentioned in section 11(2). The emphasis given under the provisions of sections 11(1) and 11(2) is application of income for charitable or religious purposes and it is only in this context, that the courts have taken the view that the handing over of the money by one trust to another trust having similar objects would amount to application of income. There are no weighty reasons to give a different meaning to the expression utilised as spent in section 11(3)(c) of the Act and it cannot be assumed that the Legislature has postulated a different test for utilisation of the accumulated income. **[*162 CTR 63, 245 ITR 400, 114 TAXMAN 69]***

V

Valuation date	1964	Mys-HC	CWT V/s. Lt. Col. D.C. Basappa

The liability to pay income-tax arises not later than the close of the previous year, though the quantification of the amount payable is postponed. A provision for payment of agricultural income-tax in respect of an accounting year which has expired on or before the **valuation date** is therefore a debt owed by the assessee on the valuation date within the definition of net wealth contained in section 2(m) of the Wealth-tax Act and is allowable in computing the net wealth of the assessee for purposes of levy of wealth-tax under the Act. **[51 *ITR 790]***

Valuation date	1997	Cal-HC	CWT V/s. Karan Thapar

The **valuation date** under the Wealth-tax Act, 1957, in relation to any year means the last day of the previous year as defined in section 3 of the Income-tax Act, 1961. Therefore, the year cannot be taken as completed on the valuation date and thus, where a reference is made to any year immediately preceding the valuation date, it is to be taken as a completed year.
[*143 CTR 185, 223 ITR 531]*

Value so declared	1981	Kar-HC	Sanjiv V. Kudva V/s. CIT

The words consideration declared by the assessee and the words **value so declared** used in sub-section (2) and in particular the word declared at both places presuppose that the actual value received is the undeclared value which is something different from and higher than the value declared in the sale deed. Any doubt in this regard is removed by the marginal note to the section which reads consideration for transfer in cases of understatement, because it is only in a case where the vendor, having received a higher amount as consideration for the transfer of a capital asset, makes an understatement of consideration in the sale deed to avoid capital gains tax on the difference of amount and to retain it as unaccounted money, the amount mentioned in the sale deed can be regarded as the declared value and the amount actually received as the undeclared value. In a case, where the consideration actually recorded in the sale deed is also the amount actually received by the vendor, merely because the fair market value exceeds by 15 per cent. of the actual sale consideration, it could not be said that it was a case of understatement or that the consideration declared is different from the undeclared consideration which is non-existent. Therefore, the word declared used in section 52(2) attracts a case in which it is established that a vendor has declared a lower consideration in the deed transferring his capital asset having received a higher amount as consideration.
[*20 CTR 1, 127 ITR 354]*

Vocation	1964	Mad-HC	Rajagopalachariar (C.) V/s. CIT

A **vocation** is only a way of living or a sphere of activity for which one has special fitness. It is not necessary that such activity should be one indulged in for earning a livelihood before it can be called vocation. Nor can it be said that a person cannot have more than one vocation. A motive for making a profit is not an essential requisite of a vocation. A vocation does not involve any organised or systematic activity like business. **[*50 ITR 196]***

Vocation	1978	Del-HC	CIT V/s. Ram Parshad

Vocation is a sphere of activity for which one has special fitness. It is not necessary that such activity should be one indulged in for earning a livelihood before it can be called vocation. A motive for making a profit is not an essential requisite of a vocation. **[*7 CTR 146, 113 ITR 462]***

Void	1993	Ker-HC	K.R. Narayana Iyer V/s. CIT

While section 531 of the Companies Act, 1956, treats certain transactions as invalid and section 532 treats another category of transfers as void, section 531A stands in between treating the transfers covered thereby as void against the liquidator. The expression is often used: void as against a person or persons. In strict terminology, a thing cannot be void and valid at the same time. As **void** denotes a nullity, a thing which is void must be a nullity for all. It is totally non-existent. Therefore, void as against A can mean only that A can treat it as void; or, in other words, A can avoid it. It is, strictly speaking, voidable at the option of A. The fact that a transfer falling within section 531A is void as against the liquidator implies that it is not a nullity in the absolute sense. Since it is void only as against the liquidator, it means that the court will invalidate or ignore the transfer only if the relief is sought by the right person, namely, the liquidator and in appropriate circumstances. For instance, it may be avoided only if it is necessary to satisfy the creditors of the company, or to the extent necessary for that purpose. Therefore, when the liquidator himself does not choose or find it necessary to avoid a particular transfer, or to recover the property concerned, it is not open to a stranger like the Income-tax Officer to ignore it and treat the transferred asset as remaining with the liquidator relying on section 531A of the Act. **[*202 ITR 774]***

Voidable	2000	Cal-HC	Jaymac Lasetron (P.) Ltd. V/s. CIT

When the word **voidable** in a particular section of the Act is available it is the duty of the court to decide in a civil suit or proceedings as to whether such act is voidable or not. But when the statute prescribes that a transaction is void there is no scope of ascertainment by way of suit to be instituted by the authority concerned to prove that such a transaction is void. The word void itself gives power to the authority to declare a transaction void. Where a transaction is declared void under section 281 there is no occasion for the authority concerned to go before the civil court for further declaration. It is open to the aggreived party to take appropriate proceedings for the purpose of nullfying such declaration. There is also a scope of decision of the disputed questions about garnishee by way of trial which is as good as suit under Order 21, rule 46(c), of the Code of Civil Procedure. **[*164 CTR 366, 245 ITR 734, 116 TAXMAN 231]***

Voluntarily	1985	AP-HC	CIT V/s. Rajah Dhanrajgirji

The word **voluntarily** cannot be understood as signifying a meaning opposite to the words by operation of law. If that was the intention of Parliament, it would have used the words by act of parties, which is the expression generally understood as the opposite of the words by operation of law……. the expression must be understood as distinct from, and as opposed to, the expression involuntarily. The word involuntarily means, without there being any option, i.e., under an enforceable obligation. Hence, where a person creates an annual charge to meet an existing, genuine, legal or contractual obligation, it would not be a case of creating a charge voluntarily. **[45 *CTR 53, 154 ITR 719, 19 TAXMAN 552]***

Voluntarily	1992	AP-HC	Sujatha Rubbers V/s. ITO

The word **voluntarily** cannot be construed in isolation with reference to the general animus or state of mind of the assessee. From the legal obligation to file a return, no element of fear could be either attributed or inferred. The word voluntarily in the context of section 273A(1), therefore, has to be construed as filing of the return by the assessee without being prompted by the animus to avoid or pre-empt adverse exposure or penal action. The Commissioner, before rejecting the returns as not voluntary, must have material based upon which it is reasonable to infer that, in all probability, but for the filing of the voluntary return, the assessee would have

been subjected to penal action or adverse exposure. Fear on the part of the assessee, without anything more, cannot be a ground for not exercising the discretion under section 273A. The fear must be traceable to the imminent or proximate exposure of the assessee to penal action but for the filing of the voluntary return under section 273A and, in order to enquire into this subjective element, there must be in existence objective facts warranting such an inference. **[102 *CTR 152, 194 ITR 355, 62 TAXMAN 13]***

Voluntarily	**1998**	**All-HC**	**Bhairav Lal Verma V/s. Union of India**

The word **voluntarily** in section 273A of the Income-tax Act, 1961, means out of free will without any compulsion. Disclosure of concealed income after the Department has seized the incriminating material with regard to the income so disclosed, cannot be voluntary disclosure, because it is made under the constraint of exposure to adverse action by the Department. But it cannot be held as a principle of law that the disclosure of income made after the search/raid cannot be voluntary. It is a question which has to be decided by the Department in each case on the basis of the material on the record. The criteria for deciding the question is to find out as to whether the Department has any incriminating material with regard to the disclosed income. If there is incriminating material on record with regard to the disclosed income, the disclosure cannot be voluntary. But if the Department has no incriminating material with regard to the income disclosed, the disclosure is liable to be treated as voluntary having been made without any compulsion or constraint of exposure to adverse action by the Department. In a case where the assessee has disclosed not only the income regarding which the Department has incriminating material, but has also disclosed income with regard to which no incriminating material was seized by the Department, the disclosure of the income with regard to which the Department has no incriminating material, is liable to be treated as voluntary. If an assessee for example, has five accounts and the Department has incriminating material with regard to one of those accounts only, the disclosure of income relating to four accounts with regard to which the Department has no incriminating material, is voluntary, because it was made without any constraint or compulsion, even though the disclosure of the income relating to the account regarding which the Department has incriminating material, is liable to be treated as non-voluntary. **[*146 CTR 16, 230 ITR 855, 97 TAXMAN 489]***

Voluntary	**1980**	**All-HC**	**Hakam Singh V/s. CIT**

The term **voluntary** in section 273A of the Income-tax Act, 1961, has been used to indicate an action free of any constraint. A return filed under the constraint of exposure to adverse action by the I.T. department will not be voluntary within the meaning of section 273A. The action of an assessee in filing a return after the books of account had been seized at a raid would be impelled by the compelling circumstances that the assessee was likely to be dealt with under the penal provisions of the I.T. Act. The action of an assessee in filing a return under such a constraint cannot be said to be voluntary. **[1*24 ITR 228]***

Voluntary	**1999**	**Kar-HC**	**K.L. Swamy V/s. CIT**

The term **voluntary** has to be understood as anything done intentionally and without coercion, compulsion or constraint. Coercion may in turn be direct or positive as in cases where physical force is used to compel an act against one's will or it may be implied. That would not however mean that a mere legal obligation to do something should constitute a constraint of the kind which would render any such action involuntary. It follows that the circumstances, conditions or constraints that make a disclosure under the Act involuntary must be constraints other than obligations that arise under the Act, requiring the assessee to take a particular action. The

expression good faith means an act done honestly even if the same be tainted with negligence or mistake. Section 2(22) of the General Clauses Act, 1897, lends a similar meaning to the said expression. In order that a disclosure is termed as having been made in good faith, the same must be demonstrably honest. A disclosure which is made under the compulsion of a possible penalty or other proceedings cannot be termed honest or one made in good faith, the underlying object of any such disclosure being not to come clean on the subject but to avoid the adverse consequences that may follow a non-disclosure. **[157 *CTR 489, 239 ITR 386]***

Voluntary	**2001**	**AP-HC**	**K.S.N. Murthy V/s. Chairman, CBDT**

The term **voluntary** means without compulsion; it has to be understood as anything done intentionally and without coercion, compulsion or constraint. A mere legal obligation to do something would not constitute a constraint of the kind as would render any such action involuntary. Therefore, it becomes necessary for the Commissioner before rejecting an application under section 273A on the ground that the return filed by the assessee is not voluntary, to satisfy himself, on the basis of the materials before him, that it is reasonable to infer that, in all probability, the assessee would have been subjected to penal action or adverse exposure. Mere fear on the part of the assessee, without anything more, cannot be a ground for not exercising the discretion : such fear must be traceable to imminent or proximate exposure of the assessee to penal action, but for the filing of the return.

[171 *CTR 563, 252 ITR 269, 119 TAXMAN 310]*

Voluntary disclosure	**2003**	**Cal-HC**	**CIT V/s. Bimal Kumar Damani**

...the **voluntary disclosure** scheme was applicable to an assessee who, for the first time, disclosed his income, the assessment whereof was neither complete nor pending..... Any disclosure made within the stipulated time before detection would be a voluntary disclosure once it was so claimed by the assessee while disclosing the income.

[*180 CTR 452, 261 ITR87, 129 TAXMAN 564]*

* *What is levied under the charging provisions of that Act, i.e., section 4 thereof alone can be called "income-tax". Interest, penalties and fines, which are payable under the other provisions of that Act, cannot be termed as "income-tax". They are imposed in addition to income-tax for the purpose of enforcing the levy of income-tax.*

* *The intention of the Legislature has to be gathered from the language used in the statute, which means that attention should be paid to what has been said as also to what has not been said…It is the bounden duty and obligation of the court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the Legislature in its wisdom has deliberately not incorporated.*

W

Waiver	1985	Del-HC	P.C. Puri V/s. CIT

Waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be an intentional act with knowledge. The Income-tax Officer must direct himself properly to the statutory provisions. He must call to his attention all relevant matters which he is bound to consider. He must exclude from his consideration all irrelevant matters. There must be some indication of the application of mind to these considerations. The Income-tax Officer is given a discretion under the law to reduce or waive the interest. The reduction can only be by an overt act of first determining the interest payable and then reducing it. **[151 *ITR 584]***

Welfare centre	2001	Ker-HC	CIT V/s. Upasana Hospital and Nursing Home

The expression **welfare centre** is not defined in the Act or Rules. Hence, the meaning of welfare centre should be that as commonly understood.*(Item No.(2) of Part I of Appendix I to the Income-tax Rules, 1962)* **[168 *CTR 348, 250 ITR 78, 117 TAXMAN 687]***

When a question is raised before the Tribunal	1961	SC	CIT V/s. Scindia Steam Navigation Co. Ltd.

(1) **When a question is raised before the Tribunal** and is dealt with by it, is clearly one arising out of its order. (2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order. (3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order. (4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it.A question of law might be a simple one, having its impact at one point, or it may be a complex one, trenching over an area with approaches leading to different points therein. Such a question might involve more than one aspect, requiring to be tackled from different standpoints. ……To import in the meaning of the expression any question of law arising out of such order the concept that the question must have been argued before and dealt with it by the Tribunal in its judgment deciding the appeal, is to impose a fetter upon the jurisdiction of the High Court not warranted by the plain intendment of the statute.A concrete question of law having a direct bearing on the rights and obligations of the parties which may be founded on the decision of the Tribunal is one which arises out of the order of the Tribunal even if it is not raised or argued before the Tribunal at the hearing of the appeal. **[42 *ITR 598]***

Where in respect of a particular source of income, ... assessed	1962	MP-HC	CIT V/s. Kanchanbai

The expression **whether in respect of a particular source of income, profits and gains, an assessee has once been assessed** in section 2(11)(i)(a) implied that the income, profits and gains of a particular source had been computed in the manner laid down in the Act and included in the total income. The assessment was on the total income, and there could not be an assessment in respect of a particular source of income, profits and gains unless the income, profits and gains therefrom were included in the total income. Therefore, the assessment spoken of in the proviso to section 2(11)(i)(a) in respect of a particular source of income, profits

and gains meant the computation of the income from the source for the purpose of its inclusion in the total income. **[44 *ITR 242]***

Where no such return has been made	**2006**	**P&H**	**CWT V/s. Anil Tayal (HUF) (No. 1)**

The object of section 16A of the Wealth-tax Act, 1957, is to enable the Wealth-tax Officer to refer the issue relating to the value of any asset to a Valuation Officer for the purpose of making assessment. The expression any other case in clause (b) of section 16A(1) is wide enough to include a case where no return has been filed by the assessee. If a narrow view is taken that a reference under section 16A(1) can be made only where the return has been filed, then the expression any other case in clause (b) of section 16A(1) and the expression **where no such return has been made** in sub-section (4) of section 16A would become redundant. **[*195 CTR 420, 285 ITR 243, 146 TAXMAN 239]***

Where tax has been paid	**1955**	**Bom-HC**	**Navinchandra Mafatlal V/s. CIT**

The expression **where tax has been paid** in section 23A(4) merely indicates the liability in respect of which tax has been paid. It makes no reference to the mode of payment of the tax or the process of assessment that has to be followed before a liability arises to pay the tax. **[27 *ITR 245]***

Where order is the subject of an appeal before	**1987**	**Bom-HC**	**R.H. Muttoo V/s. Kasturbai Walchand**

The phrase **where the order is the subject of an appeal before the Appellate Tribunal** occurring in proviso (b) to section 25(1) of the Wealth-tax Act, 1957, should be read as meaning that the order is the subject of an effective appeal by the aggrieved party and the reason is that the scheme of the relevant provisions clearly give two remedies to the assessee who may feel aggrieved by the order passed by the authorities subordinate to the Commissioner of Wealth-tax and the scheme also suggests that he should not have recourse to the two remedies concurrently. Implicit in the scheme is the position that the Commissioner shall refrain from exercising his revisional powers when an appeal is pending before the Tribunal and he may exercise his powers in such a way as not to get in conflict with the orders passed by the Tribunal. **[166 *ITR 392]***

Who has substantial interest in the concern	**1999**	**Mad-HC**	**CIT V/s. R. Jayalakshmi**

The proviso under section 64(1) of the Income-tax Act, 1961, declares that the salary paid to the spouse will not be treated as the income of the spouse **who has substantial interest in the concern**, in cases where the employed spouse possesses technical or professional qualifications and the income is attributable to the application of his or her technical or professional knowledge and experience. The fact that the spouse has a qualification is insufficient. What is much more important is that the salary paid to that spouse has been paid for the application of the knowledge and experience of a technical or professional nature possessed by the spouse for the purpose of the concern of which the other spouse is the holder of a substantial interest…..So long as the spouse who is employed is qualified by his knowledge and experience to render service by using that knowledge and experience, to the benefit of the business of the firm, the firm benefits from such service and the payment made to that spouse is genuine and bona fide, the benefit of the proviso is available to such a spouse.

[158 *CTR 264, 240 ITR 773, 101 TAXMAN 350]*

Who shall ..have powers .... for the imposition of penalty	1981	P&H-HC	Dayawanti V/s. CWT

The words **who shall, for the purpose, have all the powers conferred under this section for the imposition of penalty**, occurring in section 18(3), indicate that the section does not cast upon the Inspecting Assistant Commissioner an absolute duty of proceeding with the case. All that the section provides is that the Inspecting Assistant Commissioner shall have the powers of imposing penalty which implies that, if at the time when the case comes up for final hearing, the Inspecting Assistant Commissioner is satisfied that the condition precedent for the exercise of his jurisdiction are lacking, it is open to him to decline the reference. A necessary corollary of this is that the IAC is under an obligation to entertain and to decide the question whether a penalty of more than Rs. 25, 000 is imposable or not before he makes a final adjudication upon the case. If he comes to the conclusion that such a penalty is not imposable, then the very basis of his jurisdiction goes. In that event, he has to decline the reference leaving it to the Wealth-tax Officer to decide the matter. **[20 *CTR114, 128 ITR 504]***

Wholly and exclusively	1963	Mad-HC	Sree Meenakshi Mills Ltd. V/s. CIT

The words **wholly and exclusively** in section 10(2)(xv) pointedly signify that the expenditure should be completely devoted to the business. It need not be essential, necessary or compelling; it may be optional and purely voluntary. But it must be commercially expedient and should have the aim of the continuance and furtherance of the business and an eventual augmentation or stabilisation of profits. **[*49 ITR 156]***

Wholly and exclusively	1979	SC	Sassoon J. David and Co. (P.) Ltd. V/s. CIT

The expression **wholly and exclusively** used in section 10(2)(xv) of the Indian Income-tax Act, 1922, does not mean necessarily. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under section 10(2)(xv) of the Act even though there was no compelling necessity to incur such expenditure. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under section 10(2)(xv) of the Act if it satisfies otherwise the tests laid down by law. **[*10 CTR 383, 118 ITR 261, 1 TAXMAN 485]***

Wholly and exclusively	2005	Raj-HC	Addl.CIT V/s. Rajasthan Spinning and Weaving Mills Ltd.

The expression **wholly and exclusively** used in section 37(1) of the Income-tax Act, 1961, does not denote necessarily. It refers to quantum of expenditure. The expression refers to motive, objective or purpose with which the particular expenses have been incurred. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business. Such expenses can be incurred voluntarily and without necessity. If they are incurred for promoting the business and to earn the profits, the assessee can claim the deduction. It is also not necessary to show that expenses were not profitable or no benefit was actually derived. The receipt of actual benefit is also not necessary. Any contribution made by an assessee to a public welfare fund which is directly connected or related with the carrying on of the assessee's business or which results in benefit to the assessee's business has to be regarded as an allowable deduction under this section. Such a donation, whether voluntary or at the instance of the authorities concerned, when made to a relief fund or a welfare fund or

any other fund for the benefit of the public and with a view to secure benefit to the assessee's business cannot be regarded as payment opposed to public policy. There is no law which prohibits the making of such a donation. The mere fact that making of a donation for a charitable or public cause or in public interest results in the Government giving partronage or benefit can be no ground to deny the assessee a deduction of that amount under this section. **[*186 CTR 117, 274 ITR 465, 137 TAXMAN 367]***

Wholly and mainly	**1972**	**SC**	**CIT V/s. Baroda Distributors (P.) Ltd.**

Clause (i) of Explanation 2 to section 23A of the Indian Income-tax Act, 1922, concerns itself with a company whose business consists **wholly or mainly** in the dealing in or holding of investments. The word mainly in that clause as well as in the main section 23A must necessarily take its colour from the word wholly preceding that word in those provisions. A company which comes within the scope of these provisions must be one whose primary business must be in the dealing in or holding of investments. If a company engages itself in two or more equally or nearly equally important business activities, then it cannot be said that the company's business consists wholly or mainly in dealing in a particular activity. Even in cases where a company has more than one business activity and one of its activities is more substantial than the others, unless that activity is the primary activity of the company, it cannot be said that the company is engaged wholly or mainly in any one of its business activities. Section 23A applies only to cases where the primary activity of the company is in the dealing in or holding of investments. **[83 *ITR 377]***

Wholly for religious or charitable purpose	**1971**	**Del-HC**	**CIT V/s. Jaipur Charitable Trust**

The words **wholly for religious or charitable purposes** in section 4(3)(i) show that the income from trust property would only be exempt if all the objects of the trust are of a religious or charitable nature. In case a trust has ten distinct objects and nine of them are of a religious or charitable nature, but the tenth is not and there is nothing to prevent the trustees from applying the property of the trust in carrying out any of the objects of the trust including the object which is not of a religious or charitable nature, the income derived from the property of the trust would not be exempt from taxation under section 4(3)(i). The reason is that the trustees in such an event can apply the property of the trust exclusively for that object of the trust which is not of a religious or charitable nature. The only relaxation which has been permitted, in such cases, is that if all the primary objects of the trust are of a religious or charitable nature, the existence of an ancillary or secondary object which is not of a religious or charitable nature but which is intended to subserve the religious and charitable objects, would not prevent the grant of the exemption. **[*81 ITR 1]***

Wholly situated	**1946**	**Bom-HC**	**Bhimji R. Naik V/s. CIT**

The control and management mentioned in section 4A(b) of the Indian Income-tax Act must be de facto control and management and not de jure control and management.A liberal meaning is to be given to the words **wholly situated** and it must be ascertained in every case where in fact the control and management of the business is situated apart from the temporary journeyings of the active partners or the residence of the dormant ones.In the case of a firm the problem ought to be approached from the same angle as in the case of a company. **[*14 ITR 334]***

Wholly used for the purpose of business, profession	1945	Pat-HC	CIT V/s. Dalmia Cement Ltd.

The words **not wholly used for the purposes of the business, profession or vocation** in section 10(3) do not mean not used throughout the year or during the whole of the year. They mean that the building, machinery etc., have not been used exclusively for the purpose of the business, profession or vocation, i.e., they have been used for other purposes also.

[13 *ITR 415]*

Wilful default	1994	MP-HC	Narayan V/s. Union of India

Wilful default means that it must be intentional, deliberate, calculated and conscious with full knowledge of the legal consequences flowing from them. **[*208ITR 82]***

Windfall	1977	Bom-HC	Mehboob Productions Pvt. Ltd. V/s. CIT

When talking of a **windfall** receipt in connection with the consideration of the question whether such receipt would be income or not, one has to restrict the concept of such a windfall to a case where the unexpectedness of the advantage pertains to the factum of receipt and not to the quantum of receipt. What we are considering as windfall is some unexpected receipt not in the contemplation of the assessee and not directly attributable to or occurring by way of its business profits. On the other hand, where there was clear expectation, though small, of receiving such advantage or profit, then it cannot be properly regarded as windfall merely because the advantage of receipt is much more than could have been reasonably anticipated.

[106 *ITR 758]*

Winning	1980	Mad-HC	CIT V/s. G.R. Karthikeyan

……the word **winning** in its plural form was chiefly applied in modern usage to money won by gaming or betting. The race in the instant case involved skill in performance of driving of the vehicle with the least number of penalty points. Accordingly, the ordinary use of the expression winnings would not comprehend the winning of a prize in a case of this kind. The Tribunal was, therefore, right in its conclusion. **[*124 ITR 85]***

Within such period not being less than 30 days	1945	Bom-HC	CIT V/s. Ekbal and Co.

Section 22(2) of the Indian Income-tax Act which provides that a notice may be served on an assessee requiring him to furnish a return of his income **within such period, not being less than thirty days** gives him an interval of thirty clear days from the date of the receipt of the notice to the date on which return is to be furnished. A notice requiring an assessee to furnish a return of his income within thirty days of the receipt thereof is not a valid notice within the meaning of the sub-section. ……within thirty days is within two points of time, one at which the period begins and the other at which it expires, not less than thirty days is outside these two points of time. **[13 *ITR 154]***

Without prejudice	1978	SC	Supdt.(Tech. I), Central Excise, I.D.D. Jabalpur V/s. Pratap Rai

The implication of the term **without prejudice** means (i) that the cause of the matter has not been decided on merits, (ii) that fresh proceedings according to law were not barred.

[114 *ITR 231]*

Without prejudice	2004	Bom-HC	CWT V/s. Apar Ltd.

The expression **without prejudice** signifies that the mere filing of a return will not be allowed to be used against the assessee implying its admission. Without prejudice implies future rectification in accordance with law. **[*175 CTR 312, 267 ITR 705, 140 TAXMAN 222]***

Without prejudice to the provisions of section 143(2)	2001	Del-HC	CIT V/s. Punjab National Bank

The expression **without prejudice to the provisions of section 143(2)** in section 143(1) means that the right of the Assessing Officer to proceed under section 143(2) despite intimation to the assessee of the sum payable as tax or interest is preserved and not taken away.
[*166 CTR 340, 249 ITR 763, 116 TAXMAN 310]*

Work	1996	Cal-HC	Calcutta Goods Transport Asso. V/s. Union of India

The word **work** has been used as a noun in section 194C, not as a verb. The word work may be used in two senses; it may mean either the labour which a man bestows upon a thing, or the thing upon which the labour is bestowed. The fact that two meanings are possible to be given to a word means that there is an ambiguity in the word itself. Even assuming that the decision of the Supreme Court is not restricted to the facts of the case before it, it is clear that without the word any work being defined, the applicability of section 194C to a given situation cannot be determined. The Supreme Court had observed that any work means any work. This does not take the matter any further. The Supreme Court has not gone on to clarify or explain or define the sense in which the word was being used by the Supreme Court. That the word work does not have the widest possible connotation is also clear from the fact that Parliament had sought to bring professional services and other such works in the wider sense within the net of tax deduction at source. If such work were already covered by section 194C it was wholly unnecessary to introduce separate statutory provisions in this regard. The only conclusion that follows from this is that the word work is to be understood in the limited sense as product or result. The carrying out of work indicates doing something to conduct the work to completion or an operation which produces such result. That being so the mere transportation of goods by a common carrier does not affect the goods carried nor are the goods affected thereby and as such cannot be brought within the scope of section 194C of the Act. Common carriers of goods by road are not liable to deduction of tax at source under section 194C of the Income-tax Act, 1961, and the provisions of the section are not applicable to them.
[*134 CTR 132, 219 ITR 486]*

Work of art	2003	AP-HC	CWT V/s. SB. Zainab Noorul Sayeeda

Work of art is not defined under the provisions of the Wealth-tax Act, 1957. The expression art treasure is defined under the provisions of the Antiquities and Art Treasures Act, 1972, according to which art treasure means any human work of art. **[*184 CTR 596, 262 ITR 306]***

Worked	1963	Pun-HC	CIT V/s. Sarveshwar Nath Nigam

The expression **worked** in the second proviso does not mean worked continuously for the entire year. **[*48 ITR 853]***

Worker	1988	Mad-HC	P.R.CIT V/s. Alagappan

Worker, as commonly understood, is undoubtedly a person who works and according to the definition of worker under the Factories Act, 1948, a worker may be a person who works for

wages or without wages. But such a meaning will not include the person who is the owner of the establishment in which other people are working. The owner himself is never referred to as a worker. Merely because a person can work without wages, it does not mean that every person who works will become a worker for the purpose of a statutory provision because whether a person is a worker within the meaning of the statutory provision will have to be ascertained with reference to the phraseology used in that provision.

[69 CTR 43, 173 *ITR 82, 38 TAXMAN 203*]

Writing off	**2002**	**Bom-HC**	**CIT V/s. General Insurance Corp. of India (No.2)**

The expression **writing off** is a technical term used by the auditors….there are two methods of dealing with a debt which has been written off in the books of account, viz., by giving corresponding credit to the debtor's account or by giving corresponding credit to the bad and doubtful debts account. The first method is only employed where it is desired to close the account of the debtor. The second method is employed where there are some chances of recovery. That, when we talk of writing off, we are not concerned with the credit to be given to an account. That, writing off means raising a debit entry. This can only be to the debit of the profit and loss account. ….. this is the only debit which can be raised as a result of writing off a bad debt. **[254 *ITR204, 114 TAXMAN 13]***

Written down value	**1984**	**Cal-HC**	**CIT V/s. East Asiatic Co. Ltd.**

The expression **written down value** in section 43(6) of the Income-tax Act, 1961, means in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under the various Indian Income-tax Acts. Where ships belonging to a non-resident acquired earlier had not come into Indian waters and income from such ships was not subject to assessment in India and so depreciation was not allowed, there is no question of the assessee enjoying double depreciation once in the computation of its world income and again in the computation of its Indian income. The mere fact that the ships had been acquired earlier will not make any difference because of the clear wording of sections 32, 34(3) and 43 of the Act. The assessee would be entitled to claim depreciation on such ships in spite of the fact that they were acquired more than twenty years ago. If any of the ships are sold, in computing the balancing charge, the depreciation not actually allowed in India, cannot be taken into account in arriving at the written down value of the ships.

[*35 CTR 220, 148 ITR 124, 13 TAXMAN 20]*

* *Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside. ..Once penalties imposed on the assessee under section 271(1)(c) of the Income-tax Act, 1961, are cancelled on the basis of the conclusive finding of the Appellate Tribunal that there is no concealment of income, prosecution of the assessee for an offence under section 276C for wilful evasion of tax cannot be proceeded with thereafter : quashing of the prosecution is automatic.*