

## ITAT Bar Group Judgments

<u>S.No</u>	<u>Particulars</u>	<u>Judgment</u>
1.	<p><b>Rajinder Kumar [TS-973-HC-2022(DEL)]; order dated 16.12.2022:</b></p> <p>Delhi HC dismisses Assessee's Criminal Miscellaneous Application seeking quashing of complaint for prosecution for undisclosed foreign bank account under Section 276C(1), 276D and 277 and all consequential proceedings arising therefrom; HC relies on the co-ordinate bench ruling in <a href="#">Pradip Burman</a> and holds that the Assessee cannot be permitted to take benefit of <a href="#">CBDT Instruction dt. Feb 7, 1991</a>, whereby prosecution is not allowed to be initiated against a person above the age of 70 years; HC holds that age of the Assessee relevant for applicability of the CBDT Instruction is the age at the time of commission of offence and not the age at the time of initiation of prosecution.</p>	
2.	<p><b>VIJAY KANSAL PROP. AARTI STEELS V. ITO, W.P.(C) 14173/2022&amp;CM Nos.43309-10/2022 (Delhi HC) Decision delivered on: 02.12.2022:</b></p> <p>When reassessment proceedings were taken out because of the information available with the Investigation Wing; although the impugned order under Section 148A (d) of the Act was passed based on the report, without examining the underlying material which was available with the Investigation Wing. Also the Assessee submitted before the AO and the HC that he has had nothing to do with Mr Prem Rattan i.e., the proprietor of Shree Shyam Industries, during the period under consideration and he further claimed that reassessment proceedings on the same facts were triggered for AY 2011-2012 and AY 2012-2013, which were dropped, once the assessee pointed out this aspect to the concerned assessing officer. Considering the given circumstances, <b>Delhi HC quashed the order passed u/s 148A(d) and notice issued u/s 148 of the Income Tax Act, 1961</b></p>	
3.	<p><b>Shri Sanjay Marotrao Modak v. DCIT, NFAC Mumbai ITA No.2041/Mum/2021(Mum Trib); order dated 21.11.2022 :</b></p> <p><b>Penalty u/s 271B on contravention of provisions of section 44AB of the Act-</b></p>	

	<p><b>Held:</b> In case of Future &amp; Option transactions where there are neither physical goods involved nor any delivery of shares or securities involved in the said transaction. The entries in the books of accounts of such transactions are not made on the contracted notes issued, but are made only of the differences. For the said purpose, ICAI has prescribed the method of computing the turnover in such cases through ‘Guidance Note on Tax Audit’. Upon consideration of the said method of calculating the turnover in transactions related to future and options, the assessee’s case does not fall under the provisions of section 44AB of the Act which mandates auditing of books of accounts and furnishing audited statement of accounts. Hence, penalty u/s 271B is deleted.</p> <p><b>Legal sanctity of Guidance Note Issued by ICAI :</b></p> <p><b>Held</b> that ICAI is an expert body of accountants and the guidance note on tax audit issued by them can be relied upon in the absence of any statutory provision for computation of turnover in cases of trading in future and options/derivative transactions.</p> <p>[ Decisions of Supreme Court in the case of <i>CIT vs. Punjab Stainless Industries</i> [2014] 364 ITR 144 and Hyderabad Tribunal in case of <i>CIT vs. Pact Securities and Financials Ltd.</i> [2003] 86 ITD and co-ordinate bench in case of <i>Sachin Maratrao Rangari vs. ACIT</i> [2022] 143 taxmann.com 318 (Rajkot – Trib) followed.]</p>	
4.	<p><b><u>M/s P R Packaging Service v. ACIT vide ITA No.2376/Mum/2022 (Mum Trib.); order dated 07.12.2022:</u></b></p> <p><b>Disallowance of the employees’ contribution to Provident Fund while processing the return u/s 143(1) of the Act</b> on the basis of Tax Audit Report wherein it was reported that contribution was deposited after the due date prescribed under Provident Fund Act but before the due date of filling of the return u/s 139(1), is against the provisions of the Income Tax Act as it would not fall within the ambit of prima facie adjustments mentioned u/s 143(1) (a) (iv).</p> <p><b>Decision of the Supreme Court in the case of Checkmate Services Pvt Ltd vs CIT reported in 143 taxmann.com 178 (SC) dated 12/10/2022</b> has been</p>	

	<p>distinguished on the ground that it was rendered in the context where assessment was framed under section 143(3) of the Act and not under section 143(1)(a).</p>	
<p><b>5.</b></p>	<p><b>Supreme Court in the case of M/S Mepco Industries Ltd. Madurai vs Commr. Of Income Tax &amp; Anr on 19 November, 2009 CIVIL APPEAL NOS.7662-7663 OF 2009 (Arising out of S.L.P. (C) Nos.9979-9980 of 2008):</b></p> <p>Commissioner of Income Tax cannot rectify its own order under Section 154 of the Income Tax Act, 1961, on the basis of later judgement of this Court in the case of Sahney Steel and Press Works Limited &amp; Ors. vs. CIT, reported in [1997] 228 I.T.R.253 which has distinguishable facts and the same does not apply to the facts of the case of the assessee. This rectification exercise of Commissioner would tantamount to change of opinion.</p>	
<p><b>6.</b></p>	<p><b><u>PMLA:</u></b></p> <p><b>Supreme Court in the case of RANA AYYUB v DIRECTORATE OF ENFORCEMENT THROUGH ITS ASSISTANT DIRECTOR [2023 Live Law (SC) 86]; judgement dated February 07, 2023</b></p> <p><b>Territorial Jurisdiction of Special PMLA Court - Prevention of Money Laundering Act (Act 15 of 2003); Sections 3 and 44 - Place of commission of the offence of money-laundering - The involvement of a person in any one or more of certain processes or activities connected with the proceeds of crime, namely, concealment, possession, acquisition, use, projecting as untainted property, or claiming as untainted property, constitutes the offence of money-laundering - All the places where any one or more of these processes or activities take place are the places where the offence of money-laundering has been committed - Triable by the special court(s) constituted for the area(s) in which the offence of money-laundering has been committed - Held, the petition could not be entertained since the issue of territorial jurisdiction could not be decided in a writ petition, especially in the presence of a serious factual dispute about the place or places of commission of the offence - Petition dismissed. (Paras 38 to 40)</b></p>	

	<p><b>Prevention of Money-laundering Act, 2002; Section 44</b> - It is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering. <i>(Para 36)</i></p> <p><b>Code of Criminal Procedure, 1973 - Prevention of Money-laundering Act, 2002; Section 46(1), 65, 71</b> - The provisions of the Cr.P.C. are applicable to all proceedings under the Act including proceedings before the Special Court, except to the extent they are specifically excluded. Hence, Section 71 of the PMLA providing an overriding effect, has to be construed in tune with Section 46(1) and Section 65. <i>(Para 28-29)</i></p> <p><b>Prevention of Money-laundering Act, 2002; Section 3</b> -The area in which the property is derived or obtained or even held or concealed, will be the area in which the offence of money laundering is committed. <i>(Para 39-40)</i></p> <p><b>Constitution of India, 1950; Article 32, 226 - Prevention of Money-laundering Act, 2002; Section 3</b> - The issue of territorial jurisdiction cannot be decided in a writ petition, especially when there is a serious factual dispute about the place/places of commission of the offence - This question should be raised by the petitioner before the Special Court, since an answer to the same would depend upon evidence as to the places where any one or more of the processes or activities mentioned in Section 3 were carried out. <i>(Para 46)</i></p>	
<p><b>7.</b></p>	<p><b>Vinod Fabrics Private Limited vs ACIT R/ SPECIAL CIVIL APPLICATION NO. 1695 of 2023 Gujarat High Court; order dated 8 February, 2023:</b></p> <p><b>A.Y 2013-14 and 2014-15</b> -In view of judgment in case of <b>Union of India Vs. Ashish Agarwal (2022) 138 Taxmann. Com</b>, the respondent issued a notice under Section-148A(b) for the A.Y.2013-14 on 18.05.2022, which have been replied to eventually and the respondent passed an order under section-148A(d) on 26.08.2022. A notice under Section-148 as per Finance Act, 2021 came to be passed on the very day.</p>	

	<p><b>Held:</b></p> <p>In wake of decision of this Court in case of <b>Keenara Industries Private Limited Vs. The Income Tax Officer, Surat and allied matters; Special Civil Application No.17321 of 2022; decided on 07.02.2023, C/SCA/1695/2023 ORDER DATED: 08/02/2023</b> where this Court on the issue of limitation has allowed the plea of petitioner and quashed the notices for the A.Y. 2013- 14 and A.Y.2014-15 issued by the respondent, this petition is also allowed applying the very reasonings without elaborating the same.</p> <p>Resultantly, the notice impugned dated 27.08.2022 issued u/s-148 of the Act along with the order dated 26.08.2022 issued u/s-148A(d) of Act is quashed and set aside.</p>	
<p><b>8.</b></p>	<p><b><u>Vedanta Resources Ltd. v. ACIT W.P.(C) Nos. 6372, 6375, 6377, 6378 and 6395 of 2022; judgement dated 09.02.2023 (Orissa HC)</u></b></p> <p><b>Issue: The issue raised was whether the CIT International Taxation, Bhubaneswar can exercise jurisdiction over the VRL which is a non-resident company incorporated in UK.</b></p> <p>The Orissa High Court has quashed the reassessment notice u/s 148 issued against Vedanta Resources Ltd. (VRL) on the grounds of an invalid assumption of jurisdiction.</p> <p>The division bench observed that under Section 127(2)(a), no transfer of jurisdiction can take place without affording the Assessee a reasonable opportunity of being heard in the matter.</p> <p>The petitioner, VRL submitted that the web portal of the Department where on the page titled 'Know Your Jurisdictional AO', the jurisdiction of the petitioner is indicated as 'Circle International Taxation (1)(1)(1)' with its address at New Delhi. The e-mail id displayed corresponds to the DCIT.</p> <p>VRL contended that ACIT International Taxation, Bhubaneswar could not have issued the notices to the petitioner. The VRL has not been made aware of or provide any order passed under Section 127 of the Income Tax Act transferring</p>	

	<p>the jurisdiction from Delhi to Bhubaneswar.</p> <p>VRL stated that at no point in time did VRL have a place of business at Jharsuguda. It is clarified that the lower deduction certificate had been applied for only because the payment was to be received at Jharsuguda and in any event the certificate was not acted upon. The certificate pertained to a transaction of 2020 whereas the reassessment proceedings pertain to AYS 2013-14 to 2017-18.</p> <p>The department contended that ACIT International Taxation, Bhubaneswar would have jurisdiction over the petitioner since “the place of activity/operation of the Petitioner is at Jharsuguda, Odisha”.</p> <p>The petitioner pointed out that in the absence of an order under Section 127, the jurisdiction could not have been transferred by the CIT (IT)-I, New Delhi to his counterpart in Kolkata and much less to ACIT International Taxation in Bhubaneswar.</p> <p>The Court was not satisfied that the Department has been able to explain the legal basis for ACIT at Bhubaneswar exercising jurisdiction over the Petitioner and issuing the notices under Section 148 of the Income Tax Act.</p> <p>The court held that notices issued by ACIT at Bhubaneswar were without jurisdiction and, therefore, are unsustainable in law.</p>	
<p><b>9.</b></p>	<p><b>Debashis Sinha v. M/s R.N.R. Enterprise rep. by Its Proprietor/Chairman, Kolkata; Civil Appeal No. 3343 of 2020. D/d. 09.02.2023</b></p> <p><b><u>Consumer Protection Act, 1986, Sections 2 and 23</u></b></p> <ul style="list-style-type: none"> <li><b>a.</b> Completion Certificate: It is the duty of the Builder and not Flat Owners</li> <li><b>b.</b> Promise made by Builder in Brochure or Advertisement - By taking possession, a flat owner does not forfeits his right to claim promised services.</li> </ul>	

<b>10.</b>	<p><b>Nutan Growth Fund Pvt. Ltd. v. PCIT ITA No. 658/Del/2021; order dated 28.02.2023 (Delhi Tribunal)</b></p> <p><b>Section 263 of the Act : Revisionary Power</b></p> <p><b>Facts:</b> The present case was selected for limited scrutiny and was never converted into a full scrutiny. Scrutiny of share premium and investment in unlisted securities was one of the reasons for selection of the case for limited scrutiny. It was argued that the ld. PCIT failed to appreciate that the AO has made due enquiries within the boundaries scrutiny before completing assessment and the ld. PCIT has not undertaken any inquiry on its own accord and the initiation of proceedings under Section 263.</p> <p><b>Held that</b></p> <p>Section 263 of the Act vests revisionary power in a superior officer and, therefore by the very inherent nature of such power, it does not allow for substitution of the view taken by the AO. The appreciation of the material placed on record before the AO is exclusively within the four corners of its domain and it cannot overlap with exercising revisionary powers under Section 263 of the Act, on the ground that the AO should have arrived at a different conclusion basis the material on record. The order of the PCIT passed u/s 263 is thus quashed.</p>	