FURTHER AMENDMENTS FOR CA FINAL/CMA FINAL NOV 2020/ DEC 2020 EXAM

INCOME TAX

NOTIFICATION AND CIRCULARS ISSUED BETWEEN 1.11.2019 TO 30.04.2020

[PLEASE NOTE THAT THE AMENDMENTS BY THE FINANCE ACT, 2019 IS ALREADY COVERED IN THE EARLIER AMENDMENT NOTES/STUDY MATERIAL]

Sl.No	Particulars
1.	***Notification No.8/2020, dated 29.1.2020: Prescribed other electronic modes [Rule 6ABBA]***
	W.r.e.f 1.9.2019: For the purpose of section 35AD, 40A(3)/(3A), 43(1), 43CA, 44AD,50C, 56(2)(x), 80JJAA and *(Section 13A, 269SS, 269ST, 269T), the following shall be the other electronic modes – (a) Credit Card; (b) Debit Card; (c) Net Banking; (d) IMPS (Immediate Payment Service); (e) UPI (Unified Payment Interface); (f) RTGS (Real Time Gross Settlement); (g) NEFT (National Electronic Funds Transfer), and (h) BHIM (Bharat Interface for Money) Aadhar Pay **[Note 1]**
2.	***Notification No.8/2020, dated 29.1.2020: Rule 6DD amended***
	Rule 6DD provides circumstances when payment exceeding ₹10,000 other than Account payee cheque /Account payee DD/prescribed e-mode is permissible. *The following is omitted from the list of circumstances provided in rule 6DD* w.e.f 29.1.2020:- "Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike". Therefore, in such case payment exceeding ₹ 10,000 other than Account payee cheque /Account payee DD/prescribed e-mode are not permissible now.
3.	***Notification No. 96/2019, dated 11.11.2019: Section 56(2)(x)***
	Section 56(2)(x) provides that in case of purchase of land or building or both, if the purchase price is lower than the value of stamp authority then, if the difference exceeds ₹ 50,000 and 5% of consideration, then such difference amount is taxable in the hands of the buyer under the head other sources. However, proviso to section 56(2)(x) provides list of circumstances where nothing shall be taxable in the hands of recipient if money/property is received from notified class of person. Accordingly following class of person is notified where provisions of *section 56(2)(x) shall not apply to any immovable property, being land or building or both, received by a resident of an unauthorised colony in the National Capital Territory of Delhi.* Condition: the Central Government by notification in the Official Gazettee, regularised the transactions of such immovable property in favour of such resident based on latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident. *[Rule 11UAC]* Explanation: (a) "resident" means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or

	permissive user; (b) "unauthorised colony" means a colony or development comprising of a contiguous area, where no permission has been obtained for approval of layout plan or building plans and has been identified for regularisation of such colony in pursuance to the notification of the Delhi Development Authority, dated the 24th March, 2008.
4.	***Notification No. 98/2019, dated 18.11.2019: Section 194M and 194N***
	(1) TDS u/s. 194M shall be paid within 30 days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QD. Further, The Deductor shall furnish the certificate of deduction of tax at source in Form No.16D to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No.26QD (2) The deductor at the time of preparing statement of TDS shall furnish particulars of amount paid or credited on which tax was not deducted in view of the exemption provided u/s. 194N.
5.	***Notification No.11/2020, dated 13.2.2020:*** **Section 139AA read with rule 114AAA (Quoting of Aadhaar)**
	Every person who has been allotted permanent account number on 1st July, 2017, and who can get Aadhaar number, shall intimate his Aadhaar number on or before **31.3.2021.** However, in case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be *made inoperative on or after 1.4.2021 and it is deemed that NO PAN is furnished/quoted* and he shall be liable for all the consequences under the Act for not furnishing, intimating or quoting the permanent account number. Further, PAN shall become re-operative from date of intimation of Aadhaar.

Note 1:

Section -	**Mode of payment by – A/C payee Cheque/draft or ECS though Bank account/prescribed e-mode**
35AD -Deduction allowed to specified business.	For Payment exceeding ₹ 10,000
43(1)- Cost of asset added to WDV.	For payment exceeding ₹10,000.
40A(3)- Expenses in cash not allowed.	For payment exceeding ₹10,000 (₹35,000 for freight)
43CA – Special provisions for sale of land or building held as stock in trade	Stamp value on the date of agreement to be considered, if advance made in above specified mode.
44AD – Presumptive taxation scheme	Rate of PTS- 6%, if payment received in above specified mode
50C- Special provisions for sale of land or building held as capital assets	Stamp value on the date of agreement to be considered, if advance made in above specified mode.
56(2)(x) – Taxability of Gift.	Stamp value on the date of agreement to be considered, if advance made in above specified mode.
80JJAA : Deduction for new employment	Salary paid to employee for claiming 30% additional deduction.

Note: Section 13A, 269SS, 269ST, 269T are relevant in Final level.

Question 1: Mr. Suraj, has purchases a Building for ₹ 5,00,000 in 1995 through agreement to sale. The building was constructed without approval from Delhi Development Authority. Consequently, the properties are not registered by registrar. As a result of which even though Mr. Suraj has in possession of the property but he does not have legal ownership right. In order to regularise such unauthorised colony the Ministry of Housing and Urban Affairs has notified the regulation 'the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Regulations, 2019'. Accordingly, the stamp duty

value of ₹20,00,000 for registration of such property. Mr. Suraj, has paid required stamp duty and get the legal right of such property on 15.3.2020. Determine taxability u/s. 56(2)(x) in the hands of Mr. Suraj on getting a right in an immovable property on 15.3.2020.

Answer: In view of ***Notification No. 96/2019, dated 11.11.2019*** nothing shall be taxable u/s. 56(2)(x) in the hands of Mr. Suraj on getting legal right on the property 'the National Capital Territory of Delhi (Recognition of Property Rights of Residents in Unauthorised Colonies) Regulations, 2019'.

Question 2: Mr. Agarwal, a chartered Accountant, having professional set up in Kolkata. During the year he has carried out an Audit work in World Bank, London. All the audit work is carried out in London and audit fees of ₹ 20 lakhs also received in London and deposited in a bank account maintained in London. Determine the taxability of his audit fees, if he a –

(i) Resident and ordinarily resident of India
(ii) Resident but not ordinarily resident of India
(iii) Non-resident of India

Answer:If he a resident and ordinarily resident of India: ₹20 lakhs is taxable in India [global income taxable]

(i) If he is a resident but not ordinarily resident of India: ₹20 lakhs is taxable in India [since profession is set up in India even though accrued outside India]

(ii) If he is a Non-resident of India: not taxable, neither accrued nor received in India.

6.	***Notification No. 16/2020, dated 5.3.2020: Exempted transfer u/s. 47(viiab)***
	Transfer of following notified securities made by a Non-resident on a recognized stock exchange located in any International Financial Service Centre (IFSC) and where the consideration for such transaction is paid or payable in foreign currency shall be treated as exempted transfer. (i) foreign currency denominated bond; (ii) unit of a Mutual Fund; (iii) unit of a business trust; (iv) foreign currency denominated equity share of a company; (v) unit of Alternative Investment Fund, which are listed on a recognised stock exchange located in any IFSC. Note – Income received by a Category III Alternative Investment Fund by way of transfer of above securities held by a non-resident in IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange, shall be exempt u/s. 10(4D).
7.	**Notification No. 15*/2020, dated 05.03.2020 – Notified mode of investment us.11(5)***
	Investment made by National Payment corporation in the equity share capital*/bonds/debentures of* its subsidiary companies which is engaged in operations of retail payment system or digital payment settlement or similar activities in India and abroad and is approved by the RBI for this purpose, is a permissible form of investment us. 11(5).
8.	**Notification No.105/2019, dated 30.12.2019 -*Permissible e-modes of payment for the purpose of section 269SU***
	Where turnover from business exceeds ` 50 crores during immediately preceding financial year, the businessman shall provide following additional payment facility for accepting payment us. 269SU- (i) Debit Card powered by RuPay (ii) Unified Payments Interface (UPI) (BHIM-UPI) and (iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code) ***[Already given in our Study MAT]***
9.	**Notification No. 3*/2020, dated 6.1.2020 - Changes in Rule 10DA and 10DB***
	(i) Master Files [Section 92D read with Rule 10DA]- the word "Director General of Income Tax (Risk Assessment)" wherever used is replaced with the word "Joint Commissioner as may be designated by the Director General of Income Tax (Risk Assessment)"
	(ii) Country by country report section 286 read with rule 10DB – The prescribed income tax authority for section 286 is Joint Commissioner as may be designated by the Director General of Income Tax (Risk Assessment).Accordingly, in our study mat the word "Director General of Income Tax (Risk Assessment)" wherever used is replaced with the word "Joint Commissioner as may be designated by the Director General of Income Tax (Risk Assessment)"

RECENT JUDICIAL PRONOUNCEMENTS

N.B – CASE LAWS GIVEN IN THE STUDY MAT AND DISCUSSED IN THE CLASS ARE EQUALLY IMPORTANT IN ADDITION TO THESE CASE LAWS

1.	**Dalmia Power Ltd. & Anr. (2020)(SC)**
Synopsis	***Delay in filing revised return after amalgamation approved by NCLT is valid and seeking condonation of delay u.s 119(2)(b) is not required.***
Facts	The assessee-transferee company gets amalgamated with 9 companies (transferor). The appointed date of the scheme was 1.1.2015. The Scheme of amalgamations were finally approved and sanctioned by NCLT on 1.05.2018. The assessee filed original return for A.Y 2016-17 on 30.9.2016. On 27.11.2018 the assessee filed revised return claiming losses to be c/f based on the revised computation of the transferor companies. The Department denied the loss stating that the revised return is belatedly filed without obtaining condonation of delay u/s 119(2)(b) from CBDT.
Issue	**Whether filling of revised return on account of amalgamation after the due date u/s. 139(5) is permissible without obtaining condonation of delay u/s 119(2)(b) from CBDT, where scheme of amalgamation is approved and sanctioned by NCLT ?**
Relevant provisions	• Section 170(1) of the Income Tax Act, provides that the successor of an assessee shall be assessed in respect of the income of the previous year after the date of succession. • Section 119(2)(b) empowers CBDT for condonation of delay to avoid genuine hardship to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim. • Section 139(5) provides to file revised return where he discovers an omission or mistake in the original return at any time before ~~the expiry of one year from~~ the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.
Observation	• The scheme of amalgamation enabled the assessee to file revised return after the due date and without incurring any liability towards interest, penalty or any other sums. Further, the department has not raised any objection within 30 days from the date of service of notice issued in compliance with section 230(5) of the companies Act. • Since, there was no objection from Department or other statutory authority's likely to be affect by the Scheme, the scheme was sanctioned by NCLT and attained statutory force retrospectively from the appointed date i.e 1.12015.The consequence of amalgamation is that the amalgamating companies lose their separate identity and cease to exist. The successor (assessee) is obliged u/s 170 to file a revised return to reflect the effect of the amalgamation. • Provisions of section 139(5) is not applicable as the revised return was not filled on account any omission or wrong statement in the original return but the delay was due to time taken to obtain sanctions from NCLT. Hence, the fact that the revised return is filed after the due date specified in Sec. 139(5) is irrelevant as the scheme approved by the NCLT provides for it. • Further, section 119(2)(b) is not applicable in case of revised return filed on account of restructuring of business with prior approval and sanction of the NCLT,without any objection from Department. Therefore, the assessee is not required to seek condonation of delay u/s 119(2)(b).

2.	**Genpact India Pvt. Ltd. (2019)(SC)**
Synopsis	***Appeal before the Commissioner (Appeal) u/s 246A is maintainable against demand made u/s 115QA [20% of distributed of income in case of buy-back of shares], Writ under Article 226 cannot be entertained where adequate appellate remedy is available.***
Facts	Assessee bought back 7,50,000 shares for a total consideration of ` 2625 crores from its holding company pursuant to a scheme of arrangement approved by the Delhi High Court. The assessee filed its return of income without offering tax on distributed income u/s. 115QA on the ground that since the buy back is pursuant to a scheme approved by the HC, therefore it is not a buy-back in terms of section 115QA. The Department denied the plea of the assesee and passed assessment order u/s. 143(3) with a demand u/s. 115QA @ 20% on distributed income. The assessee filed a writ petition on the ground that demand u/s. 115QA is not considered as forming part of assessment order, therefore not appealable u/s.246A . The department argued that since appellate remedy is available therefore writ petition should not be entertained.
Issue	**Whether the denial of liability u/s 115QA is covered in section 246A or it is confined only to liability assessed us. 143(3)?**
Relevant provisions	(1) Section 246A (1), provides that, any assessee aggrieved by any of the following orders of an Assessing Officer may appeal to the Commissioner (Appeals) against such order– **(a) an order against the assessee, where the assessee denies his liability to be assessed under this Act, or** (b) an intimation u/s 143(1) or (1B), where the assessee objects to the making of adjustments, or (c) any order of assessment u/s 143(3)/ 144, where the assesse objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed; (2) Section 115QA, provides that a domestic company shall be liable to pay tax @ 20% on the amount paid in excess of the issued price on buy-back of shares from a shareholder.
Observation	The expression "denies his liability to be assessed" referred to in Point (a) is a standalone postulate and is not dependent on assessment made u/s 143(3) or 144. Therefore, the expression "denies his liability to be assessed" in Sec. 246A [refer point (a)] takes within its fold every case where the assessee denies his liability to be assessed under the Act. It is not confined to the liability to be assessed u/s. 143(3) but applies also to the liability separately computed u/s 115QA. In the given case, writ under Article 226 cannot be entertained since adequate appellate remedy is available.
3.	**Chetak Enterprises Pvt. Ltd (2020)(SC)**
Synopsis	
Facts	The erstwhile partnership firm M/s. Chetak Enterprises entered into an agreement with the Government of Rajasthan for construction of road and collection of road/toll tax. On 27.3.2020 the construction of road was completed by the firm and the same was inaugurated on 1.4.2000. On 28.3.2020, the firm gets converted into company. On conversion of the firm into company, the PWD department changed the agreement and cancelled the registration of the firm and granted a fresh registration code to the assessee Company to collect toll tax. For the relevant assessment year, the assessee Company claimed deduction under Section 80IA of the Income Tax Act, 1961.
Issue	Whether the company upon succeeding the firm has satisfied the conditions of sub-section (a) and (b) of section 80IA(4)(i), so as to claim deduction?
Relevant provisions	Section 80IA(4)(i), provides that this section applies to (i) Any enterprise carrying on the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility which fulfils all the following conditions, namely:

	(a) it is owned by a company registered in India or by a consortium of such companies; (b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating a new infrastructure facility (c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:
Observation	The main object of the company as per MOA is to acquire a going concern and continue the partnership business. As per section 575 of the companies Act, all the properties of the firm, in law, vest in the company and the firm is succeeded by the company. The firm ceases to exist and assumes the status of a company after its registration as a company. In the given case, the conditions given in clause (a) is fulfilled as construction of the road was completed on 27.3.2000 and the same was inaugurated on 1.4.2000, where after toll tax was being collected by the Company and the company is engaged in the said business. Further, condition of clause (b) also satisfied as the PWD authority changed the name in the agreement and authorised the company to collect toll. Hence, it was held that since the business of the firm is carried on by the company therefore the company is eligible for the benefits of Sec. 80IA (4).
4.	**Seshasayee Steels P. Ltd (2020)(SC)**
Synopsis	***Mere granting of license or permission to construct on land does not amount to transfer.*** ***Capital gains arises in the year when agreement to sell and power of attorney were made upon receipt of part payment and not in the year when permission to builder given under a land-license to start advertising, selling, and make construction on the land.***
Facts	The assessee entered into an "agreement to sell" with Vijay Santhi Builders Ltd on May 15, 1998 for a total sale consideration of Rs. 5.5 crores. Under the agreement the assessee gave permission to the builder to start advertising, selling, and make construction on the land. Pursuant to the agreement, a power of attorney was executed on November 27, 1998, by which the assessee appointed a director of the builder-company to execute, and join in execution of, the necessary number of sale agreements or sale deeds in respect of the schedule mentioned property after developing it into flats. The power of attorney also enabled the builder to present before all the competent authorities such documents as were necessary to enable development on the property and sale thereof to persons. Subsequently, a memorandum of compromise dated July 19, 2003 was entered into between the parties, under which the agreement to sell and the power of attorney were confirmed, and a sum of Rs. 50 lakhs was reduced from the total consideration of Rs. 6.10 crores. Clause 3 of the compromise deed confirmed that the assessee had received a sum of Rs. 4,68,25,644 out of the agreed sale consideration. Clause 4 recorded that the balance Rs. 1.05 crores towards full and final settlement in respect of the agreement entered into would be paid by seven post-dated cheques. Clause 5 stated that the last two cheques would be presented only upon due receipt of the

	discharge certificate from one Pioneer Homes. The assessee not having filed any return for the assessment year 2004-05 the assessment of the assessee for this year was reopened. Since the assessee did not respond to notices and the Assessing Officer passed an order of best judgment assessment treating the entire sale consideration as capital gains and bringing it to tax.
Issue	***What constitute transfer in case of an immovable property which is contracted to be sold?***
Relevant provisions	Section 2(47) provides that transfer, in relation to capital asset, inter –alia includes - (ii) the extinguishment of any rights therein (v) any transaction involving possession in part performance of the contract of the nature referred to in section 53A of the Transfer of Property Act (vi) provides that any transaction which has the effect of transferring, or enabling the enjoyment of any immoveable property.
Observation	Held that, (i) On agreement to sell, such licence could not be said to be "possession" within the meaning of section 53A of the Transfer of Property Act, 1882, which is a legal concept, and denotes control over the land and not actual physical occupation of the land. (ii) Further, the expression "enabling the enjoyment of" must take colour from the earlier expression "transferring", and it is clear that on the date of the agreement to sell (15.5.1998), the owner's rights were completely intact both as to ownership and to possession, therefore section 2(47)(vi) of the Act could not be said to be attracted. (iii) The assessee's rights in the immovable property were extinguished on the receipt of the last cheque i.e on 25.1.2004, and the compromise deed could be stated to be a transaction which had the effect of transferring the immovable property. Hence, the transaction fell under Sec. 2(47)(ii) and (vi) of the Act in 2003-04.

CASE LAWS GIVEN IN MAY 2020 AMENDMENTS NOTES

Case Laws	Relevant Section	Synopsis
1. **Laxman Das Khandelwal (2019) (SC)**	Section 292BB (Notice deemed to be valid)	• Non-issuance of notice u/s. 143(2) is not a curable defect u/s. 292BB even if the assessee has participated in the proceedings. • Section 292BB does not save complete absence of issue of notice.
2. Maruti Suzuki India Ltd. (2019) (SC)	Section 292B (curing defect of technical nature in assessment, notice etc.)	• Issue of notice u/s. 143(2) and initiation of proceedings in the name of erstwhile amalgamating company is void-ab-initio and cannot be protected u/s. 292B • the amalgamating company ceased to exist and therefore is not a person u/s. 2(31) against which assessment proceedings is to be initiated.
3. A.A Estate Pvt. Ltd. (2019)(SC)	Section 260A (Appeal to High Court)	• High court must formulate substantial question of law by itself and heard it on merit. Appeal cannot be heard based on the question proposed by the appellant.
4. Metal and Chromium Plater (P) Ltd. (2019)(Mad)	Section 115JB (MAT on Book profit)	• Capital gains in respect of which exemption u/s. 54EC is available and which form part of net profit shall be excluded in computing book profit by virtue of section 115JB(5).
5. Smt. Ritha Sabapathy (2019)(Mad)	Section 254 read with Rule 24 (Appeals to Tribunal)	• If the assessee fails to appear in the hearing, the tribunal should decide the appeal only on merits and cannot dismiss the appeal.
6. Sunil Vasudeva & Others Vs. Sundar Gupta & Others (2019)(SC)	Section 260A (Appeal to High Court)	• The High Court is justified in recalling and reviewing its own order to correct an apparent error from record i.e directing civil suit against an Income tax authority which was is prohibited u/s. 293 of the Income Tax Act and left both parties remediless.
7. Eurotech Maritime Academy Pvt. Ltd. (2019) (Ker)	Section 271C (penalty for non-deduction of tax at sources) and 273B(waiver of penalty)	• Penalty u/s. 271C is applicable for both non-deduction and non-remittance of TDS. • Section 273B is not applicable for non-remittance of TDS
8.Valsad District Central Co-operative Bank Ltd. (2019)(Guj)	Section 147 and 148	• Mere failure to produce commissioner's order of approval of Gratuity Scheme in long year back 1976 does not amount to non-disclosure of materials facts, since the assessee has produced the documents pertaining to the contribution made towards the fund and a copy of agreement between the trustees of the Gratuity Scheme and LIC to manage the fund and based on which deduction u/s. 36(1)(v) was allowed in earlier years. Therefore, issue of notice u/s. 148 after 4 years is not justified.
9. Reham Foundation (2019) (ALL)	Section 12AA and 254	• Tribunal can direct the CIT for registration of a trust without remanding the case to CIT only if it disagrees with the opinion of the CIT as regards to the genuineness of the activities of the trust and object(s) of the trust on the basis of material already on record before the CIT. However, Tribunal has to remand the case to the CIT, where material or documentary evidence produce before the tribunal for the first time or in case the CIT rejects the application on technical ground without recording its opinion on facts/genuineness of the activities and such decision is overturned by the tribunal.
10.Aaraham Softronics (2019)(SC)	Section 80-IC	• 100% of profit and gains is allowed as deduction for the first five year and for remaining 5 years deduction @ 25%/30%(for company) is allowed u/s. 80IC. However, in case of substantial expansions after 5 years then deduction 100% shall be allowed for the remaining period of 10 years.

DETAIL CASE LAWS

1. Laxman Das Khandelwal (2019)(SC):

Issue: Whether omission of issue of notice u/s. 143(2) is a defect curable u/s. 292BB, on the ground that the assessee has participated in the proceedings?

Relevant Provisions: Section 292BB provides that where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him.

Observation of the court:
(i) Issue of notice u/s. 143(2) is mandatory for making a regular assessment u/s. 143(3)
(ii) Non-issuance of notice u/s. 143(2) is not a curable defect u/s. 292BB even though the assessee has participated in the proceedings.
(iii) For application of section 292BB notice must have been emanated from the department and it does not save complete absence of issue of notice.
(iv) Only the infirmities in the manner of service of notice can be cured u/s. 292BB.

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2. Maruti Suzuki India Ltd. (2019) (SC)

Facts: on 29th Jan 2013, The High Court approved the Scheme for Amalgamation w.e.f 1.4.2012. on 2.4.2013, the amalgamated (called MSIL) company intimated the AO of the amalgamation. On 26.9.2013 assessment notice was issued against the amalgamating (called SPIL) company, and accordingly, order with the direction of Dispute resolution panel is passed in the name of amalgamating. The amalgamated company has participated in all the proceedings.

Issue:

(i) Whether issue of notice in the name of amalgamating company after the intimation of amalgamation to the AO is a defect curable u/s. 292B?

(ii) Whether participation of the amalgamated company would operate as an estoppel against law?

Relevant Provisions: Section 292B provides that, return of income, assessment, notice, summons, other proceedings, not to be invalid merely by reason of any mistake, defect or omission in such return etc. if such return of income etc., is in substance and effect in conformity with or according to the intent and purpose of the Income tax Act, 1961.

Observation of the court:
(i) In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in the name of amalgamating company.

(ii) The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation (u/s. 393 of the Companies Act, 1956/section 232 of the Companies Act, 2013) and therefore is not a person u/s. 2(31) against which assessment proceedings is to be initiated.

(iii) This is a substantive illegality and not a clerical error/ procedural violation of the nature adverted to in Section 292B.

(iv) Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law.

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3. A.A Estate Pvt. Ltd. (2019)(SC):

Issue: Whether the action of the High Court is justified without framing substantial question of law by itself and deciding the appeal merely on the question put forth by the appellant?

Relevant provisions of the Act:

Section 260A(1)	An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.
Section 260A(2)(c)	The appellant aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.
Section 260A(3)	Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.
Section 260A(4)	The appeal shall be heard only on the question so formulated
Section 260A(5)	The High Court shall decide the question of law so formulated

Observation of the Court: The question proposed by the appellant is fall u/s. 260A(2)(c), whereas the question framed by the High Court I fall u/s. 260A(3). Section 260A(4) provides that the appeal shall be heard only on the question so formulated by the High Court u/s. 260A(3). In the given case, appeal is heard on question proposed by the appellant and not on question framed by the High Court. Therefore, the decision is not in conformity with the mandatory requirement prescribed u/s. 260A. Hence, the Apex Court remand back the case to the High Court for deciding the appeal afresh.

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4. Metal and Chromium Plater (P) Ltd. (2019)(Mad):

Relevant provisions –

(1) Section 115JB

(a) Section 115JB is a self-contained code; (b) sub-section (1) lays down the manner in which income tax payable is to be computed; (c) Sub-section (2) provides for computation of "book profit"; (d) Sub-section (5) provides that "Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company, mentioned in this section"

(2) **Circular No. 13/2001 dated 9.11.2001:** clarifies that that except for *substitution of tax payable under the provision and manner of computation of book profit*, all the provisions of the tax including the provisions relating to charge, definitions, recoveries, payment, assessment, etc. would apply in respect of the provisions of the Income Tax Act.

Thus, exemption and deductions allowable under normal provisions of the Act would not be allowed while computing book profit unless expressly provided [Such as income exempt u/s. 10,11, and 12 is deducted while computing book profit]

Decision of the high court:
(i) Section 115JB(5) allows for application of all other provisions of the income tax Act except if specifically barred in section 115JB itself.

(ii) Therefore, the book profit shall be further eligible for adjustment to the benefit (exemption/deduction) provided in other provisions of the Act that are specifically brought into play u/s. 115JB(5).

(iii) AO's reliance on Judgement of Apollo Tyres Ltd (2002)(SC) and Veekaylal Investment Co. (P.) Ltd(2001) (Bom.) were rendered in the context of erstwhile section 115J which does not contain a provision similar to section 115JB(5).

Therefore, Capital gains in respect of which exemption u/s. 54EC is available and which form part of net profit shall be excluded in computing book profit by virtue of section 115JB(5).

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5. Smt. Ritha Sabapathy (2019)(Mad):

Facts: The assessee fails to appear on the appointed date of hearing. The Tribunal dismissed the appeal due to such non-appearance. The assessee filed an appeal to High Court u/s. 260A.

Relevant provisions:
Section 254: The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon **as it thinks fit.**

Rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963, in case the appellant not appeared on the date of hearing the Tribunal shall dispose the appeal on merits, *ex parte*, after hearing the respondent.

Decision: The Tribunal being the final fact-finding body is legally bound to decide the appeal on merits. Cryptic orders (without touching the merit of the case) would not give rise to any substantial question of law for consideration before the High Court. Therefore, the High Court set aside the order of the Tribunal and directed to decide the appeal afresh on the basis of merits as accorded u/s. 254 read with rule 24.

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6. Sunil Vasudeva & Others Vs. Sundar Gupta & Others (2019)(SC):

Facts:

The Property (including one in new Delhi) of the assessee was with a receiver of the Calcutta High Court. The Property of New Delhi was sold by Income tax department for recovery of tax due. The assessee filed a writ petition on the ground that no leave was obtained from the Calcutta High Court by the department. However, the Calcutta High Court, while dismissing the writ direct the parties to file a civil suit against the property at Delhi without noticing that the civil suit was not maintainable in view of section 293 of the Act. Therefore, the said order was recalled for review and after review the Court restore the writ to be heard on its own merit.

Relevant Provisions: Section 293 of the Income-tax Act, 1961 puts a complete bar on filing civil suits in any civil court against the Income-tax authority.

Issue: Whether the High Court is justified in reviewing its own order to correct the mistake on the face of the record i.e overlooking of section 293 while passing the order?
Observation of the Apex Court:

• If the civil suit was not maintainable in view of section 293 of the Act and in consequence both the respondents and of the Department was left remediless. Therefore, the grievance raised before the Calcutta High Court, had to be examined on its own merits.

• Hence, there was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference.

Further, the Supreme Court by referring its own ruling in the case of Kamlesh Verma vs. Mayawati (2013) has drawn the following principles:

(1) Cases for which review application is maintainable/non-maintainable: cases in which the review application could be entertained	cases in which a review will not be maintainable

(i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;	(i) repetition of old and overruled argument;
(ii) mistake or error apparent on the face of the record;	(ii) minor mistakes of inconsequential import. (iii for an error on face of the record which has to be fished out and searched
(iii) any other sufficient reason.	(iv) mere possibility of two views on the subject
	(v) when the same relief sought at the time of arguing the main matter had been negative

2. Other relevant guiding principles: -

• Review proceedings cannot be equated with the original hearing of the case.

• A review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

• A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

• The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

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7. <u>Eurotech Maritime Academy Pvt. Ltd. (2019) (Ker.)</u>:

<u>Facts</u>:

The assessee a charitable trust u/s. 12AA deducted TDS u/s. 194I on rent paid for building occupied by it. However, it deposited the TDS belatedly and accordingly, penalty u/s. 271C was imposed.

The assessee offer explanation that the clerk failed to discharge her duties properly and also, since it is a trust therefore not liable for audit u/s. 44AB and therefore not responsible to deduct tax at source u/s. 194I. Hence, levy of penalty is not justified.

<u>Relevant provisions</u>:

(i) If any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B, penalty equal to the amount of tax which such person failed to deduct or pay shall be leviable u/s. 271C.

(ii) Further, section 273B no penalty shall be imposable for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

(iii) Second proviso to section 194I: an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.

<u>Observation of the High Court</u>:

(i) A trust is neither an Individual nor a HUF, therefore the trust is liable to deduct tax at source, irrespective of whether or not it was covered u/s. 44AB.

(ii) Penalty is leviable not only for failure to deduct tax at source but also for non-deposit of TDS to Govt.

(iii) There cannot be any justifying ground for delay in payment of tax deducted at sources because the assessee cannot divert tax recovered for the Government towards working capital or any other purpose. Hence, the relaxation available u/s. 273B is not applicable in case of failure pay the TDS.

(iv) Hence, levy of penalty u/s. 271C is justified.

[Note: U/s. 276B imprisonment (3months to 7 years and with fine) shall also be leviable in case of non-remittance of TDS)

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8. Valsad District Central Co-operative Bank Ltd. (2019)(Guj):

Facts:

1. An employee Gratuity Scheme was framed in 1976, which was approved by the commissioner. Based on this order, LIC had accepted the responsibility to manage the Fund but at this point of time the assessee did not have the approval order.

2. However, it has produced the documents pertaining to the contribution made towards the fund and a copy of agreement between the trustees of the Gratuity Scheme and LIC to manage the fund.

3. In original assessment u/s. 143(3) after examining these documents deduction u/s. 36(1)(v) [contribution to approved Gratuity Fund] was allowed in earlier years. However, after 4 years, AO issued notice u/s. 148 on the ground that the assessee failed to produce Commissioner's Order of approval of the Gratuity Fund and therefore to the extent of such deduction the income of the assessee has escaped assessment u/s. 147.

Provisions:

Proviso to section 147: Where an assessment u/s. 143(3) has been made for the relevant assessment year, no action shall be taken u/s. 147 after the expiry of 4 years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to **disclose fully and truly all material facts necessary for his assessment, for that assessment year.**

Issue: Whether re-opening of assessment is on account of mere change of opinion of the assessing officer or on account of failure on the part of the assessee to disclose fully and truly all material facts?

Observation:

1. At the time of assessment u/s. 143(3), the A.O did not pointedly examine this aspect of gratuity nor raised any queries thereto. Therefore, the question of change of opinion does not arise.

2. In the given case notice was issued after 4 years, therefore the crucial additional element i.e failure on the part of the assessee to disclose fully and truly all material facts must be examined.

3. Mere failure to produce commissioner's order of approval of Gratuity Scheme in long year back 1976 does not amount to non-disclosure of materials facts on the following ground-

(i) in none of the earlier years since 1976 any such issue was raised by the AO

(ii) in the relevant assessment year, the assessee had produce the same document what it had been producing all along i.e, the documents pertaining to the contribution made towards the fund and a copy of agreement between the trustees of the Gratuity Scheme and LIC to manage the fund.

(iii) Based on the above document deduction u/s. 36(1)(v) was allowed in earlier years.

4. Hence, issue of notice u/s. 148 after 4 years is not valid

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9. Reham Foundation (2019) (ALL):

Issue: Whether the Tribunal has the power to direct for registration of a trust u/s. 254(1) or the tribunal has to remand the case to the CIT for deciding the matter afresh?

Observation:
Under section 12AA the principal Commissioner of Income tax (CIT)/CIT is empowered to grant registration of a trust. Where registration is not granted appeal lies to the Tribunal u/s. 254.

By virtue of power given u/s. 254(1), the tribunal can pass such orders, as it think fit. However, such power is to be read along with other provisions of the Act such as section 12AA. If the tribunal is given wide powers to direct registration in all or any circumstances, it would render the provisions of section 12AA, which cannot be the intention of the Legislature.

Where the CIT refused to accept for registration of trust after recording its findings that the activities and object(s) of the trust is not genuine on the basis of the material on record before him and the tribunal, on the basis of same material comes to the conclusion that the order of the CIT is perverse and passed by ignoring, misconstruing or misinterpreting such evidence, tribunal can direct for registration without remand to the CIT.
However, in the following cases the tribunal has to remand the case to the CIT for deciding the matter afresh –

(i)where material or documentary evidence produce before the tribunal for the first time and was not available before the CIT.

(ii) in case the CIT rejects the application on technical ground without recording its opinion on facts/genuineness of the activities and such decision is overturned by the tribunal.

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10. Aaraham Softronics (2019)(SC):

Facts: The assessee was engaged in manufacture of specified article in the State of Himachal Pradesh and eligible to claim deduction @100% of profit for the first 5 years and 25% of profit for the next 5 years u/s. 80IC(3). The assessee claimed 100% deduction for the first 5 years. Further, it has claim 100% instead of 25% from the year of substantial expansion till 10 years.

Issue: Can substantial expansion render the assessee eligible to claim 100% of profit u/s. 80-IC (3) once again even after completion of first 5 years?

Observation:
1. Section 8O-IC allow deduction for manufacturing of specified article by setting up a new factory in special Category States such as North Eastern States including Himachal Pradesh. The deduction is allowed @ 100% of profit and gains for 5 years commencing from the "initial assessment year" and, @ 25% (30% for company) of profit and gains for the next 5 year. As per section 8o-IC(6) the total period of deduction is restricted to 10 years.

2. The term "Initial assessment year" is defined in that section as the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation **or completes substantial expansion;**

3. The moment substantial expansion takes placed another initial year triggered which enables for 100% deduction. However, because of section 80IC(6) a new period of 10 years does not start. Therefore, the assessee shall be eligible for 100% deduction from the year of substantial expansion for remaining period out of 10 years.
For Example: If substantial expansion is taken place in 7th year, then deduction shall be allowed as under-
For first 5 years -100%
For 6th year- 25%/30%
From 7th year to 10th Year- 100%

Note: Case of Classic Binding Industries (2018)(SC) given in the study mat/last term case law sheets is no longer relevant for exam.