

# Comprehensive Digest

## Judgments of Gujarat High Court

June 2016 to May 2017

Compiled by:

Tushar Hemani  
Parimalsinh Parmar  
Mohit Balani  
Aditi Sheth

*Lexperts Advocates*  
103, 2nd Floor, Shanay - I,  
Opp. Shivalik Plaza,  
Near AMA, IIM Road,  
Ambawadi,  
Ahmedabad - 380 015.  
Tele: +91-79-26307734-35, 40037736  
Email: [info@lexpertsonline.com](mailto:info@lexpertsonline.com)  
[www.lexpertsonline.com](http://www.lexpertsonline.com)

**Comprehensive Digest of Judgments of  
Gujarat High Court passed in June 2016**

**Compiled by: Tushar Hemani, Parimalsinh Parmar,  
Mohit Balani & Aditi Sheth.**

<b>SR. NO.</b>	<b>SECTION</b>	<b>CATCH NOTE</b>	<b>JUDGMENT</b>
1	2	Where gross interest receipts are much more than service charges, assessee is held to be a credit institution and a financial company u/s.2(5B)(iv) of the Interest Tax Act, 1974 earning chargeable interest even though interest was earned from advances to associate and sister concerns.	<a href="#">JJ Leasing &amp; Finance Pvt. Ltd.</a>
2	2(1A)	Once assessee has shown that agricultural operations were carried out, then income from sale of agricultural produce would amount to agricultural income.	<a href="#">Puransingh M. Verma HUF</a>
3	2(22)(e)	Where assessee is not a shareholder in the company from which it receives disputed amount, S.2(22)(e) is not applicable.	<a href="#">Biotech Ophthalmic Pvt Ltd.</a>
4	2(24)	Incentive in the form of sales tax waiver /deferment not meant to give any benefit on day-to-day functioning of business or to make it more profitable but aimed at covering capital outlay for undertaking modernization of existing industry is capital receipt not chargeable to tax.	<a href="#">Nirma Ltd.</a>

## Lexperts Advocates

---

5	4	Paying almost 80% of sale consideration of land to a third party, who neither has ownership nor possession of such land, without offering any explanation is nothing but a sham transaction for diversion of income.	<a href="#">Hemal B. Vaghela</a>
6	4	Interest on deposits kept with bank for opening LC used for purchase of Plant & Machinery is a capital receipt which would go to reduce cost of asset.	<a href="#">Steelco Gujarat Ltd.</a>
7	10B	If certification by STPI is not questioned in initial year of claiming 10B as well as in subsequent years, the same cannot be questioned in a particular year out of block of ten consecutive years.	<a href="#">Quality BPO Services Pvt. Ltd.</a>
8	11	Once certificate is granted u/s 12AA, conditions u/s 12A stand fulfilled; AO, thereafter, cannot ignore such certificate and question eligibility of assessee for grant of benefit u/s 11 & 12.	<a href="#">Stock Exchange Of Ahmedabad</a>
9	12A	Registration u/s 12A cannot be denied to a trust created for the benefit of "Sindhi" community since it not a religious community but it represents a socio economic group of people belonging to a particular geographic location.	<a href="#">Samast Sindhi Samaj Surakhsha Foundation</a>
10	12AA	In all cases of bonafide conduct, applications for registration u/s 12A arising only in consequence to a statutory	<a href="#">The Bhabhar Deodar Agri. Produce</a>

## Lexperts Advocates

		amendment ought to be viewed liberally so that genuine applications, where delayed, are fit for condonation of delay.	
11	14A	Foreign dividend being taxable in India, no disallowance is called for u/s 14A.	<a href="#">Arvind Ltd.</a>
12	14A	Rule 8D is applicable from AY 2008-09.	<a href="#">Mastek Ltd.</a>
13	14A	Where assessee had sufficient interest free funds, disallowance u/s 14A is unjustified.	<a href="#">UTI Bank Ltd.</a>
14	28	Assessee can avail deductions in respect of business expenses from the year in which business was first set up and need not wait till completion of project.	<a href="#">Sardar Sarovar Narmada Nigam Ltd.</a>
15	28	Non-compete fees received before insertion of S.28(va) was a capital receipt.	<a href="#">Virendra J. Patel.</a>
16	28 & 45	Gain on sale of few scrips must be treated as capital gain and not as business income provided other criteria are satisfied.	<a href="#">Shah Investors Home Ltd.</a>
17	32	Equipments, which are integral part of “Pollution Control Equipment’s”, are also eligible for depreciation at 100%.	<a href="#">Alembic Chemical Works Co. Ltd.</a>
18	32	Receipt of Subsidy, subsequent to asset entering the Block and becoming part of WDV cannot be reduced from “actual cost” and/or WDV by applying <i>Explanation 10</i> to S.43(1) of the Act.	<a href="#">Alpha Lab</a>
19	32	Depreciation, not claimed by the assessee, cannot be foisted upon for the	<a href="#">Gujarat Fluorochemicals</a>

## Lexperts Advocates

---

		period prior to 01.04.02 i.e. prior to insertion of <i>Explanation</i> 5 to S.32(1) of the Act.	
20	32	“High efficiency boilers” having thermal efficiency of more than 75% are entitled to depreciation at 100%.	<a href="#">Halar Salt &amp; Chemical Works</a>
21	32	Depreciation is optional and once assessee chooses not to claim it, AO cannot allow it while computing income.	<a href="#">Indo Swiss Embroidery Industries Ltd.</a>
22	32	Moulds used for manufacturing plastic goods being plastic switches and sockets qualify for depreciation @ 30%.	<a href="#">L. K. India Pvt. Ltd.</a>
23	32	Depreciation is allowable on assets acquired through genuine sale and lease back transactions.	<a href="#">Lok Prakashan Ltd.</a>
24	32	Electric Installation & Sanitary fitting should be considered as “Plant” for the purpose of S.32 of the Act.	<a href="#">Marwar Hotels Ltd.</a>
25	32	100% depreciation is allowable on items of assets costing less than Rs.5,000/-.	<a href="#">Pinnacle Finance Ltd.</a>
26	32	Depreciation is allowable on acquired Goodwill.	<a href="#">Vimalachal Print</a>
27	32 & 43(6)(c)	Provisions pertaining to adjustment of WDV in respect of “Slump Sale of undertaking” while computing WDV of “block of assets” are not applicable for the period prior to 01.04.00.	<a href="#">Rakshak Chemicals Pvt. Ltd.</a>

## Lexperts Advocates

---

28	36(1)(iii)	No disallowance is called for u/s 36(1)(iii) in respect of “Investment” in subsidiaries (not “Advance”) if assessee has substantial interest free funds.	<a href="#">Dinesh Mills Ltd.</a>
29	36(1)(iii)	Interest paid on non-convertible portion of debentures is allowable u/s 36(1)(iii) of the Act.	<a href="#">Torrent Pharmaceuticals</a>
30	36(1)(va)	Employees’ contribution to PF is allowable as expenses only if deposited on or before the due date referred to under the respective Act.	<a href="#">Gujarat Telephone Cables Ltd.</a>
31	36(1)(vii)	Claim of bad-debts written off as irrecoverable in books is allowable.	<a href="#">Anagram Capital Ltd.</a>
32	36(1)(vii)	Claim of bad-debts written off as irrecoverable in books is allowable.	<a href="#">Kalpataru Power Transmission Ltd.</a>
33	36(1)(vii)	Claim of bad-debts written off as irrecoverable in books is allowable.	<a href="#">Kamleshkumar Natvarlal Mehta</a>
34	36(1)(vii)	Claim of bad-debts written off as irrecoverable in books is allowable.	<a href="#">Kevin Process Technologies</a>
35	36(1)(vii)	Loss incurred by share broker due to downfall in market and subsequent unpaid liabilities of share investors is allowable as bad debts.	<a href="#">Khandwala Integrated Financial Services</a>
36	36(1)(vii)	Claim of bad-debts written off as irrecoverable in books is allowable.	<a href="#">Vadilal Industries Ltd.</a>

## Lexperts Advocates

37	36(1)(viiia) 36(1)(viii)	Deduction u/s 36(1)(viiia) and 36(1)(viii) is to be granted on “Gross total income of all heads” and not only the income under the head “business or profession”.	<a href="#">Gujarat Industrial Investment Corporation Ltd.</a>
38	37	Penalty paid to NSE for non-compliance of by-laws is an allowable expenditure.	<a href="#">Anagram Capital Ltd.</a>
39	37	Expenditure incurred on conversion of convertible debentures into equity shares is capital expenditure.	<a href="#">Ashima Syntex Ltd.</a>
40	37	Salt washing loss is to be allowed when Central Slat and Marine Chemical Research Institute has certified loss up to 10% and insurance company has also recognized such loss while settling claims.	<a href="#">Gujarat Heavy Chemicals Limited</a>
41	37	Expenses incurred for presentation of articles/gifts is allowable.	<a href="#">Gujarat Heavy Chemicals Ltd.</a>
42	37	Where addition on account of alleged bogus job work expenses was deleted in earlier year after appreciating evidences, no addition is called for in current year.	<a href="#">Jhawar International</a>
43	37	Expenses incurred in connection with expansion of existing business are allowable u/s 37. Such expenses cannot be disallowed merely because the same have been capitalized in books.	<a href="#">Kayal Syntex Ltd.</a>
44	37	Expenditure in respect of free samples of medicines to doctors is allowable u/s 37.	<a href="#">Liva Healthcare Ltd.</a>

## Lexperts Advocates

---

45	37	Disallowance w.r.t bogus purchases is to be restricted to 25%.	<a href="#">Vijay Trading Co.</a>
46	40(a)(ia)	No disallowance is called for u/s 40(a)(ia) if TDS is deposited before due date of filing ITR. Amendment to S.40(a)(ia) by Finance Act of 2010 would apply w.r.e.f. 01.04.2005.	<a href="#">Pushkar Construction Co.</a>
47	40(a)(ia)	In case of non-deduction of tax at source on payments to contract laborers, disallowance u/s 40(a)(ia) is warranted.	<a href="#">Satish D. Patel</a>
48	40A(2)	Once income is taxed in hands of recipients at the same rate of tax at which assessee-company is taxed, no disallowance is called for u/s 40A(2).	<a href="#">PWS Engineers Ltd.</a>
49	40A(2)	Disallowance u/s section 40A(2) cannot be made without determining comparative market value of goods/services provided.	<a href="#">Rushabh N. Patel</a>
50	43B	Adjustment of refund claim by Excise Department towards excise duty liability amounts to payment of duty. Hence, no disallowance can be made u/s 43B.	<a href="#">Gujarat Borosil Ltd.</a>
51	48 & 55(2)(aa)	In case of bonus shares issued prior to amendment u/s 55(2)(aa), cost is to be taken based on “average share price” and shouldn’t be taken as “NIL”.	<a href="#">Rakshak Chemicals Pvt. Ltd.</a>
52	57	Deduction u/s 57 is allowable when there is direct nexus between expenses and earning of income from other sources.	<a href="#">Sardar Sarovar Narmada Nigam Ltd.</a>

## Lexperts Advocates

---

53	68	In case of gift received, assessee cannot be asked to prove source of source. Moreover, Gift Tax Act does not provide that a gift by somebody who is not creditworthy is not a gift. Accordingly, addition u/s 68 is not justified.	<a href="#">Anil Gajanan Sane</a>
54	68	Share application money cannot be added u/s 68 once identity of the subscriber is proved.	<a href="#">Associated Transrail</a>
55	68	Addition can be made u/s 68 in respect of deposits in bank account. Moreover, unless it is established that deposits and withdrawals in such bank account are in respect of some business, benefit of peak credit can't be availed.	<a href="#">Rejesh D. Prajapati</a>
56	68	Assessee can be asked to prove source of credits in its books of account but not source of source.	<a href="#">Shanti Enterprise</a>
57	69	In absence of evidences, addition in respect of unexplained capital investment as partner in firm needs to be confirmed.	<a href="#">Farashram H Pandit</a>
58	69	No addition can be made u/s 69 unless it is conclusively established that such expenditure has been incurred.	<a href="#">Gujarat Heavy Chemicals Limited</a>
59	69	No addition can be made in respect of difference between book-stock and stock as submitted to bank for procuring credit facilities.	<a href="#">Jay Jalaram Pulse Mills</a>

## Lexperts Advocates

---

60	69	Cash found with the person who receives commission for delivering cash from one person to another person cannot be added in his hands.	<a href="#">Patel Madhavlal Maganlal &amp; Co.</a>
61	69	No addition can be made only on the basis of receipts mentioned in builder's diary in absence of any proof as to payment of unaccounted money by assessee to builder for purchase of shop.	<a href="#">Sureshkumar H. Chugh</a>
62	69B	Addition u/s 69B cannot be made based on provisions of S.50C.	<a href="#">Om Sai Metals</a>
63	80HH & 80I	While calculating deduction u/s 80HH and 80I, only "income component" of insurance claim received is to be excluded.	<a href="#">Bell Ceramics Ltd.</a>
64	80HH & 80I	Only "net income" not derived from industrial undertaking should be excluded; Income from job work charges and sales tax refund is derived from industrial undertaking for S.80HH & 80I.	<a href="#">Nirma Ltd.</a>
65	80HH & 80I	While computing deduction u/s 80HH and 80I, loss from one unit need not be adjusted against profits from another unit.	<a href="#">Nirma Ltd</a>
66	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC.	<a href="#">Deversons Industries Ltd.</a>
67	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC.	<a href="#">Metrochem Industries Ltd.</a>

## Lexperts Advocates

68	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC.	<a href="#">Nirma Ltd.</a>
69	80HHC	Interest received from debtors on late payment of sale consideration is not required to be excluded from profits of industrial undertaking.	<a href="#">Nirma Ltd.</a>
70	80IA	Where lab sample test income (i.e. “other income”) is not included in the first place in Net Profit as per P&L a/c, it cannot be reduced while computing net profit for the purpose of deduction u/s 80IA.	<a href="#">Metrochem Industries Ltd.</a>
71	80IB(8A)	Once Prescribed Authority has granted approval, AO cannot hold that prescribed conditions are not fulfilled. However, power of AO to verify claim of deduction u/s 80IB(8A) is not taken away.	<a href="#">B.A. Research India Ltd.</a>
72	80IB(10)	In case of a “composite housing project” developed on a land of more than one acre, deduction u/s 80IB(10) cannot be denied merely because there were separate development agreements for separate blocks, land area for blocks was below specified limits and separate BU permissions were obtained.	<a href="#">Pushkar Construction Co.</a>
73	80M	Deduction u/s 80M is allowable on gross dividend.	<a href="#">Gujarat Industrial Inv.</a>
74	80P(2)	Deduction u/s 80P(2) cannot be denied on capital gain arising on sale of approved	<a href="#">Umreth Urban Co. Op. Bank</a>

		investments on the count that such capital gain is not attributable to normal banking business since sale proceeds of such investments were parked with institutions which are not approved.	<a href="#">Ltd.</a>
75	127	Power of transfer of cases u/s 127 can be exercised only when there is sufficient material on record to justify such action.	<a href="#">Hindhusthan M-I Swaco Ltd.</a>
76	132 & 69B	No addition can be made u/s 69B if no incriminating material is found during search action u/s 132.	<a href="#">Dinesh Tarachand Kasat</a>
77	132 & 69B	No addition can be made u/s 69B if no incriminating material is found during search action u/s 132.	<a href="#">Dinesh Tarachand Kasat</a>
78	143(3) & 153C	When addition made in regular assessment u/s 143(3) form part of larger addition made in block assessment u/s 153C which has been accepted by assessee, such addition is to be deleted since same income can't be taxed twice.	<a href="#">Shailesh D. Prajapati</a>
79	144 r.w.s 263	When Revenue's appeal challenging ITAT's order setting aside CIT's order u/s 263 is dismissed, tax appeal in respect of consequential Asst. order passed u/s 144 r.w.s 263 also needs to be dismissed.	<a href="#">Prerak Trading Pvt Ltd.</a>
80	145	Books cannot be rejected where no discrepancies or defects in books of accounts are pointed out.	<a href="#">Evergreen Synthetics P. Ltd.</a>

## Lexperts Advocates

---

81	145	Addition in respect of understatement of closing stock is not justified if such difference is duly reconciled.	<a href="#">Kaushikkumar V. Patadia</a>
82	145	In case of suppression of sales, only profit element embedded therein can be added.	<a href="#">Priyam Trading Investment</a>
83	145A	Excise duty is to be excluded from closing stock of finished goods at the end of accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	<a href="#">Alembic Glass Industries Ltd.</a>
84	145A	Excise duty is to be excluded from closing stock of finished goods at the end of accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	<a href="#">Jyoti Ltd.</a>
85	147	Reopening based on change of opinion is not permissible.	<a href="#">Arvind Mills Ltd.</a>
86	147 & 158BC	Reopening in relation to an issue which was subject matter of block assessment is not permissible.	<a href="#">D. V. Salt Works</a>
87	147	When both, “artificially inflated profit” and “correct profit as per AO”, are fully exempt u/s 80-IA, reopening beyond four years and that too in absence of any failure on assessee’s part to disclose material facts is not permissible.	<a href="#">Eros for Sanitary Wares</a>
88	147	Reopening beyond four years based on mere verification of case records is not permissible unless there is failure on assessee’s part to disclose material facts.	<a href="#">Gandhidham Mercantile</a>

## Lexperts Advocates

89	147	Reopening beyond four years based on mere verification of case records is not permissible unless there is failure on assessee's part to disclose material facts.	<a href="#">GMDC Science and Research Centre</a>
90	147	Reopening based on show cause notice issued by Excise Dept. is permissible.	<a href="#">Gokul Ceramics</a>
91	147	Where AO, at original asst. stage, treated income as "capital gain" and consequently disallowed expenses for earning such income, reopening on the basis that such income was "business income" is not permissible.	<a href="#">Gujarat Flurochemicals Ltd.</a>
92	147	If true value of land is not reflected in sale consideration received by assessee, reopening is permissible.	<a href="#">J P Iscon Ltd.</a>
93	147	Opinion of DVO per se is not information for the purposes of reopening u/s 147.	<a href="#">Jalaram Developers</a>
94	147	Reopening based on change of opinion is not permissible.	<a href="#">Jalaram Developers</a>
95	147	AO, merely based on transactions as to purchase & sale of immovable properties, cannot presume that there must be escapement of income.	<a href="#">Jayesh G. Balar</a>
96	147	Reopening based on change of opinion is not permissible.	<a href="#">Kalupur Commercial</a>
97	147	Reopening w.r.t. an issue which was never examined at assessment stage is permissible.	<a href="#">Late Chunibhai R. Dalwadi</a>

## Lexperts Advocates

98	147	Reopening is permissible in case where assessee has received accommodation entries.	<a href="#">Manoj C. Rathod</a>
99	147	Reopening is not permissible on the basis of change of opinion. Further, reopening is also not permissible beyond 4 years when there is no failure on the part of the assessee as to full and true disclosure.	<a href="#">M/s. Home Depot India Pvt. Ltd.</a>
100	147	Once AO is convinced that audit objection is not valid but still case is reopened, reopening is not permissible.	<a href="#">Mundra International Containers</a>
101	147	Reopening is not permissible on the basis of change of opinion.	<a href="#">M/s Nova Dye Stuff Industries</a>
102	147	Reopening is not permissible on the basis of change of opinion. Further, reopening is not permissible beyond 4 years when there is no failure on the part of the assessee as to full and true disclosure.	<a href="#">Opel Securities Pvt. Ltd.</a>
103	147	Reopening notice issued during pendency of assessment proceedings is invalid.	<a href="#">Pranav Dhanjibai Patel</a>
104	147	Reopening beyond four years based on mere verification of case records is not permissible unless there is any failure on assessee's part to disclose material facts.	<a href="#">Premium Polycot Pvt. Ltd.</a>
105	147	Reopening is permissible where assessee has received accommodation entries in respect of share application money.	<a href="#">Pushpak Bullion Pvt. Ltd.</a>

## Lexperts Advocates

106	147	Reopening based on change of opinion is not permissible.	<a href="#">Pushpak Bullion Pvt. Ltd.</a>
107	147	Where assessment is framed u/s 143(1), reopening is permissible.	<a href="#">Sabic Research &amp; Technology</a>
108	147	Reopening within four years to examine receipt of share capital & share premium is permissible especially when no scrutiny assessment has been framed earlier.	<a href="#">Sagun Construction Pvt. Ltd.</a>
109	147	Once AO disagrees with audit objection but still reopens the case since being compelled, such an action of reopening is unjustified.	<a href="#">Sahjanand Technologies</a>
110	147	Reopening is not permissible on the basis of change of opinion.	<a href="#">Sahjanand Technologies</a>
111	147	When entire income is exempt u/s 10AA, there can be no escapement of income on account of bogus purchases and hence, reopening is not permissible.	<a href="#">Sajani Jewels Ltd.</a>
112	147	Reopening cannot be resorted to for roving and fishing inquiries or for mere verification.	<a href="#">Sampatraj D. Jain</a>
113	147	Reopening is permissible in case where assessee has received accommodation entries in respect of LTCG on sale of shares.	<a href="#">Vicky Rajesh Jhaveri</a>
114	147	Reopening is not permissible where the issue has been examined at original assessment stage even if there is no discussion in Asst. Order.	<a href="#">Vishal Fabrics Pvt. Ltd.</a>

## Lexperts Advocates

115	147	Reopening based on change of opinion is not permissible	<a href="#">Waves Food Pvt. Ltd.</a>
116	147	Difference between price to be paid to sugarcane growers and purchase price declared by the Govt. under Sugar Control Order cannot be said to be distribution of profits. Reopening based on such reasons is unjustified since there is no belief at AO's end as to escapement of income.	<a href="#">Maroli Vibhag Khand Udhog Sahakari Mandli Ltd.</a>
117	147	Difference between price to be paid to sugarcane growers and purchase price declared by the Govt. under Sugar Control Order cannot be said to be distribution of profits. Reopening based on such reasons is unjustified since there is no belief at AO's end as to escapement of income.	<a href="#">Sahkari Khand Udhog Mandal Ltd.</a>
118	147	Difference between price to be paid to sugarcane growers and purchase price declared by the Govt. under Sugar Control Order cannot be said to be distribution of profits. Reopening based on such reasons is unjustified since there is no belief at AO's end as to escapement of income.	<a href="#">Shree Madhi Vibhag Khand Udhog Sahkari Mandali Ltd.</a>
119	158BA	Income assessed in regular assessment u/s 143(3) cannot be assessed u/s 158BA.	<a href="#">Smt. Indubala B. Bhandari</a>
120	158BC	Credit for tax paid under VDIS must be given against tax demanded by virtue of order u/s 158BC.	<a href="#">M/s. Rajiv Enterprise</a>

## Lexperts Advocates

121	158BC	Once valid certificate is granted under VDIS, assessee is entitled to immunity and proceedings u/s 158BC are illegal.	<a href="#">M/s. Rajiv Enterprise</a>
122	158BC(a)	Where AO, for any reason, repudiates return filed by assessee in response to notice u/s 158BC(a), he must necessarily issue a notice u/s 143(2) within time prescribed in proviso to S.143(2).	<a href="#">Karadia D. Solanki</a>
123	158BD	Provisions of S.158BD cannot be invoked based on the material or evidence found during the course of survey u/s 133A at third party's premises.	<a href="#">Jagdishsingh S Saluja</a>
124	158BFA(2)	No penalty can be levied u/s 158BFA(2) on mere disallowance of business loss claimed against income from illegal business.	<a href="#">Bipinchandra K Bhatia</a>
125	194C	194C is not applicable on payments made to contractors transporting goods at the gate of assessee's factory if such supply is part of "composite sale transaction".	<a href="#">Kamrej Vibhag Sahakari Khand Udhyog Mandali Ltd.</a>
126	194C	When agreement with farmers provides for ex-factory rates and transportation charges are paid by farmers, question of TDS u/s 194C by assessee on such transportation charges doesn't arise.	<a href="#">Khedut Sahkari Khand Udhyog Mandali Ltd.</a>
127	201(1A)	In absence of complying with TDS provisions, if recipient has paid tax on such income when it had become due, Dept. can't levy interest u/s 201(1A).	<a href="#">M/s. J. M. Baxi &amp; Co.</a>

## Lexperts Advocates

128	201(3)	Amendment to S.201(3) w.e.f. 01.10.14 enlarging the period of limitation to pass order u/s 201(1) to seven years cannot be applied retrospectively.	<a href="#">Eris Life Sciences Pvt. Ltd.</a>
129	206C(1) & 206C(7)	Mere belated filing of buyer's declaration in Form No.27C cannot be a ground for addition u/s 206C(1) & 206C(7).	<a href="#">Siyaram Metal Udhyog Pvt. Ltd.</a>
130	226	Credit in respect of TDS reflected in Form 16A must be given even if the same is not reflected in Form 26AS. No recovery can be made by denying benefit of such TDS credit.	<a href="#">Ramsangbhai B. Chaudhary</a>
131	226(3)	No recovery can be made in terms of S.226(3) from cash-credit accounts or term loan accounts held with a bank.	<a href="#">Kaneria Granito Ltd.</a>
132	234B	Levy of interest u/s 234B is automatic when conditions of S.234B are met.	<a href="#">Innovate Securities</a>
133	244A	Department is not liable to pay Interest on "Interest on refund".	<a href="#">Gujarat Narmada Valley Fertilizers</a>
134	244A	Department is not liable to pay Interest on "Interest on refund".	<a href="#">Gujarat State Fertilizers &amp; Chemicals Ltd.</a>
135	245D(2D)	Settlement Commission must, on assessee's request, adjust "cash seized during search" against "liability of tax by virtue of S.245D(2D)" and thereafter proceed further with offer of settlement.	<a href="#">Maheshbhai Shantilal Patel</a>

## Lexperts Advocates

136	250-254	New claim can be raised before CIT(A) & ITAT other-wise then filing revised ITR when material is already there on record.	<a href="#">Gujarat Gas Trading Co. Ltd.</a>
137	250-254	New claim can be raised before CIT(A) & ITAT other-wise then filing revised ITR when material is already there on record.	<a href="#">UTI Bank Ltd.</a>
138	254	ITAT doesn't have powers of enhancement.	<a href="#">Fidelity Shares &amp; Securities Ltd.</a>
139	254	When ITAT recalls its earlier order remitting appeals of assessee & Department to AO pursuant to rectification application, it must put the Revenue to notice, hear both the sides and thereafter pass final order instead of recalling earlier order and dismissing Revenue's appeal in one go.	<a href="#">Pathik Developments</a>
140	254	ITAT has jurisdiction to decide question raised before it for the first time.	<a href="#">Sugam Construction P. Ltd.</a>
141	260A	Issue w.r.t. appreciation of evidences will not be interfered with by High Court.	<a href="#">Pareshbhai B Patel</a>
142	263	CIT cannot exercise revisionary jurisdiction u/s 263 for issues already examined by AO.	<a href="#">Harmony Yarns Pvt. Ltd</a>
143	263	CIT cannot exercise revisional powers when AO made enquiries and when two views are possible.	<a href="#">Prakash B. Khatri</a>
144	271(1)(c)	If Revenue's quantum appeal is dismissed, penalty appeal is also to be dismissed.	<a href="#">Amit Corporation</a>

## Lexperts Advocates

145	271(1)(c)	When necessary declaration w.r.t gain on sale of shares was made, difference of opinion as to taxability of such gain cannot give rise to penalty u/s 271(1)(c).	<a href="#">Bilakhia Holdings Pvt. Ltd.</a>
146	271(1)(c)	Where issue on quantum is decided in favor of assessee, penalty u/s 271(1)(c) doesn't survive.	<a href="#">Dineshkumar H. Chugh</a>
147	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on additions made on estimated basis.	<a href="#">Hariyana Textile Industries Pvt. Ltd.</a>
148	271(1)(c)	Where assessee's claim of bad and doubtful debts u/s.36(1)(vii), being highly debatable, had to be resolved by a third member of the tribunal and where there was no concealment, no penalty could be levied.	<a href="#">Jamnagar District Co. Operative Bank Ltd</a>
149	271(1)(c)	No penalty can be levied on addition made on account of non-compete fees duly disclosed in capital account.	<a href="#">Piruz A. Khambhatta</a>
150	271(1)(c)	Where quantum additions are deleted, penalty u/s 271(1)(c) on such additions cannot be sustained.	<a href="#">Punjab Steel Rolling Mills (Baroda) Pvt. Ltd</a>
151	271AAA	No penalty can be levied u/s 271AAA if assessee substantiates the manner in which undisclosed income is earned and pays tax thereon with interest.	<a href="#">Surya Prakash Organisers</a>
152	271D	No penalty shall be levied u/s 271D if there is a reasonable cause.	<a href="#">Dr. Rajaram Lakhani</a>

153	271E	When AO accepts assessee's explanation justifying action of borrowing loans in cash in contravention of S.269SS and no penalty is levied u/s 271D, then no penalty can be levied u/s 271E as well.	<a href="#">Kamleshkumar D. Dholakia</a>
-----	------	--	--

**Comprehensive Digest of Judgments of Gujarat High Court passed in July 2016**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	2(22)(e)	Where assessee is not a shareholder in the company from which it received deposit, no addition can be made as "deemed dividend".	<a href="#">Amigo Brushes (P) Ltd.</a>
2	2(22)(e)	Where assessee is not a shareholder in the company from which it received deposit, no addition can be made as "deemed dividend".	<a href="#">K.P.H. Industries</a>
3	4	Amount transferred to reserve fund account as per S.67 of Gujarat State Co-Operative Societies Act, 1957 is not diversion of income at source by over-riding title. Hence, such amount is liable to be taxed.	<a href="#">Gujarat Co-Op. Milk Marketing Federation Ltd.</a>
4	4	Additions made merely on the basis of a letter by a third party cannot be sustained once such third party states on affidavit that such letter was written out of sheer anger & anxiety and contents of such affidavit remain uncontroverted by Department.	<a href="#">Karshanbhai K. Patel</a>

## Lexperts Advocates

5	4	Notional interest on Non-Performing Assets is not taxable.	<a href="#">Motrix Investment</a>
6	4	No addition can be made on mere suspicion.	<a href="#">Somabhai &amp; Co.</a>
7	10 (20)	Where assessee fulfills all the attributes of “local authority” within the meaning of section 3(31) of the General Clauses Act, it is entitled to exemption u/s 10(20).	<a href="#">Gujarat Maritime Board</a>
8	10B	Process of segregating metal scrap from cable scrap is “manufacture or produce” within the meaning of S.10B.	<a href="#">Siyaram Metals</a>
9	10B	“Export incentives” would come within the purview of profit derived from export of articles or things of a 100% EOU within the meaning of S.10B.	<a href="#">Vimal Agro Products Pvt. Ltd.</a>
10	12A	At the time of application for registration, when the assessee trust has not even commenced its activities, it would not be possible to apply the proviso of S.2(15) and its applicability would arise at a later stage while actually granting exemption.	<a href="#">IMC Society of ITI Vadia</a>
11	14A	Rule 8D is prospective and is applicable from Asst. Year 2008-09.	<a href="#">Alembic Ltd.</a>
12	14A	In absence of any exempt income, no disallowance can be made u/s 14A.	<a href="#">Gujarat State Petronet Ltd.</a>
13	14A	In absence of any exempt income, no disallowance can be made u/s 14A.	<a href="#">Harish K. Bhatt</a>

14	17(2) & 192	Medical allowances to employees within prescribed limits shall not be considered as “perquisites” when such reimbursement is not in excess of actual medical expenses incurred by employees. Hence, TDS provisions u/s 192 of the Act would not apply.	<a href="#"><u>Gujarat Alkalies &amp; Chemicals Ltd.</u></a>
15	28	Non-compete fees, being capital receipt, is not liable to tax.	<a href="#"><u>Anjum G. Balakhia</u></a>
16	28	Profit declared by way of development charges in accordance with development agreement entered into with members of co-operative housing society cannot be estimated unless such development agreement is declared to be bogus or sham.	<a href="#"><u>Gordhan Becharbhai Patel</u></a>
17	28 & 37	Amount transferred to reserve fund account as per S.67 of Gujarat State Co-Operative Societies Act, 1957 cannot be treated as business expenditure.	<a href="#"><u>Gujarat Co-Op. Milk Marketing Federation Ltd.</u></a>
18	28 & 45	Where land acquired many years ago was sold in two parts and there were no other transactions in relation to such land, such transactions cannot be termed as business adventure. Resultant gain is to be taxed as capital gain.	<a href="#"><u>Arjundev K. Khanna Huf</u></a>
19	28 & 45	If Dept. has accepted assessee’s status as an “Investor” in earlier year, the mere fact that in current year, assessee bought shares of six companies and sold shares of three	<a href="#"><u>Deepali Ajaybhai Patel</u></a>

## Lexperts Advocates

		companies as a prudent investor will not convert assessee's status from "investor" into a "dealer".	
20	28 & 45	Where assessee is treated as investor in the past and there is no evidence that shares in question have been converted into stock in trade, gain on sale of shares shall be chargeable as capital gain and not as business income.	<a href="#">Kum. Mital C. Koticha</a>
21	28 & 45	Where assessee is involved in sale and purchase of shares within short time (i.e. within a period of 12 months), resulting income would be business income.	<a href="#">Shashikant H. Koticha</a>
22	32	Depreciation, if not claimed, cannot be foisted upon the assessee prior to insertion of Explanation 5 to S.32 (1) of the Act (i.e. from 01.04.02) while calculating deduction under Chapter VI-A of the Act.	<a href="#">Gujarat Flurochemicals Ltd.</a>
23	32	Depreciation can be claimed on air pollution control equipment purchased and leased back once genuineness of such claim established.	<a href="#">Gujarat Gas Financial Services Ltd.</a>
24	32	"Mineral oil wells' will form part of "Plant and machinery" for drilling of oil for the purpose of depreciation u/s 32.	<a href="#">Niko Resources Ltd.</a>
25	32	"Mineral oil wells' will form part of "Plant and machinery" for drilling of oil for the purpose of depreciation u/s 32.	<a href="#">Niko Resources Ltd.</a>

## Lexperts Advocates

26	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) in respect of interest on capital borrowed for expansion of existing business. (Note: Not applicable after insertion of proviso to S.36(1)(iii) by Finance Act, 2003 w.e.f. 01.04.04)	<a href="#"><u>Akar Laminators Ltd.</u></a>
27	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) where interest free advances to sister concern are made either out of commercial expediency or assessee has surplus interest free funds.	<a href="#"><u>Core Health Care Ltd.</u></a>
28	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) in respect of interest capitalized to work in progress since the Act makes no distinction between capital borrowed for revenue purpose or capital purpose. (Note: Not applicable after insertion of proviso to S.36(1)(iii) by Finance Act, 2003 w.e.f. 01.04.04).	<a href="#"><u>Gujarat Ambuja Exports Ltd.</u></a>
29	36(1)(iii)	Pre-operative expenses are allowable u/s.36(1)(iii).	<a href="#"><u>Mardia Steel Ltd.</u></a>
30	36(1)(iii)	No disallowance is called for u/s 36(1)(iii) of the Act when there are sufficient interest-free funds.	<a href="#"><u>Riddhi Siddhi Gluco Boils Ltd.</u></a>
31	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) in respect of interest expenses incurred on funds borrowed for the purpose of business of making share application money.	<a href="#"><u>Vijaykumar D. Gupta</u></a>

## Lexperts Advocates

32	36(1)(va)	Employees' contribution to PF & ESI deposited within the extended/grace period is allowable.	<a href="#">Sayaji Industries Ltd.</a>
33	36(1)(va)	Employees' contribution to PF & ESI deposited within the extended/grace period is allowable.	<a href="#">Shriram Mathurbhai Patel</a>
34	37	Prior period expenditure cannot be disallowed when assessee-company is liable to pay tax at a uniform rate for all the years and when prior period income is considered as taxable income.	<a href="#">Adani Enterprises Ltd.</a>
35	37	Actual payment made is allowable u/s 37 despite the fact that contractual liability itself is in dispute before SC.	<a href="#">Alembic Ltd.</a>
36	37	Trial run expenses are allowable as revenue expenditure even if incurred before the commencement of commercial production	<a href="#">Alembic Ltd.</a>
37	37	Trial run expenses for expansion of manufacturing activity in the existing line of business are revenue expenses and are allowable u/s 37.	<a href="#">Bell Ceramics Ltd.</a>
38	37	Loss arising on account of fluctuations in foreign exchange rates is allowable.	<a href="#">Bosch Rexroth (India) Ltd.</a>
39	37	Amount paid to bank in forward exchange contract extension charges partake the character of loss arising on account of fluctuations in foreign exchange rates and hence, is an allowable expenditure.	<a href="#">G L Rexroth India Ltd.</a>

## Lexperts Advocates

40	37	Loss arising on repayment of loan by the overseas Joint Venture Company to the assessee company on account of fluctuations in foreign exchange rates is allowable.	<a href="#">Samrat Namkeen Ltd.</a>
41	37	“Revenue expenditure” in connection with technical know-how is allowable u/s 37. Provisions of S.35AB are restricted to only capital expenditure.	<a href="#">Sayaji Industries Ltd.</a>
42	37	Expenses incurred for raising “temporary structures”, which are to be removed after completion of project, are revenue expenses.	<a href="#">Skanska Cementation</a>
43	37	Reimbursement of expenses to Head Office, wholly and exclusively for the business of the assessee, is allowable u/s 37.	<a href="#">Skanska Cementation</a>
44	37	Reimbursement of expenses to sub-contractor, incurred wholly and exclusively for the business of the assessee, is allowable u/s 37.	<a href="#">Skanska Cementation</a>
45	37	Entire lump sum payment for “non-compete fees” is allowable as revenue expenditure even though in the books, such expenditure is apportioned over a period of 5 years (i.e. the period during which the agreement was to remain in force) and only 1/5th is actually written off.	<a href="#">Smartchem Technologies Ltd.</a>
46	40(a)(i)	No disallowance can be made u/s 40(a)(i) in respect of reimbursements of expenses to non-resident when there is no operation in India which would give rise to tax liability in	<a href="#">Skanska Cementation</a>

## Lexperts Advocates

		India as far as such foreign party is concerned.	
47	40(a)(i)	No disallowance can be made u/s 40(a)(i) in respect of reimbursement of expenses to non-resident sub-contractor for further payment to others especially in absence of any material to prove that ultimate recipients (i.e. persons who got payments through sub-contractor) are liable to be taxed in India.	<a href="#">Skanska Cementation</a>
48	40(a)(ia)	Once the conditions of Provisos to S.194C(3) are satisfied, disallowance u/s 40(a)(ia) cannot be made merely because Form 15J were not furnished before 30 <sup>th</sup> June as required under Rule 29D.	<a href="#">Thakkar Upendra HUF</a>
49	41(1)	No addition can be made u/s 41(1) in respect of outstanding closing balance especially when expenses relating to trucks are not disputed and sufficient records are maintained by assessee.	<a href="#">Shankar U. Jatwani</a>
50	43B	No disallowance can be made u/s 43B in respect of sales tax liability deferred for a particular period and such deferred payment is treated as loan in favor of assessee when such issue was decided by ITAT in assessee's favor in earlier year against which revenue did not prefer an appeal.	<a href="#">Riddhi Siddhi Gluco Boils Ltd.</a>
51	43B	Omission of second proviso to S.43B by Finance Act 2003 w.e.f 01.04.04, being curative in nature, has retrospective effect and hence, if employer's contribution to	<a href="#">Shriram Mathurbhai Patel</a>

## Lexperts Advocates

		PF/ESI is deposited before due date of filing return of income, no disallowance is called for u/s 43B.	
52	44C	Expenditure incurred by Head Office for supervisory personal deputed to oversee the project executed in India and in respect of guarantees, sundry expenses, insurance, legal expenses, etc. would not fall under the definition of “Head Office Expenditure” for the purpose of S.44C. and hence, limits prescribed u/s 44C would not apply.	<a href="#">Skanska Cementation</a>
53	45 & 48	No capital gain tax can be levied when cost of acquisition of asset is unascertainable.	<a href="#">Estate of Late Vikramsinji</a>
54	45	Revised jantri rates w.e.f. 01.04.08 cannot be applied retrospectively while working out capital gain on land sold in FY 07-08 especially when sale consideration declared by assessee is higher than sale consideration as per other instances of sale of similar land.	<a href="#">Haresh Jagmohan Mehta</a>
55	55A, 69 & 145	AO cannot make reference to DVO for ascertaining cost of construction in absence of recording any defect in books of accounts or without rejecting the books.	<a href="#">Aggarwal Buildcon Pvt. Ltd.</a>
56	68	No addition can be made u/s 68 in respect of unsecured loans from sister concern once assessee has discharged its liability to establish that transactions were genuine.	<a href="#">Ilakshi Synthetics P. Ltd.</a>
57	68 &	While deciding issue as to whether assessee had moved application under Rule 46A to	<a href="#">Shanti Medical Stores</a>

## Lexperts Advocates

---

	Rule 46A	produce additional evidences w.r.t. addition u/s 68 and whether such permission must be granted or not, ITAT cannot hold that in absence of books, it can't be said that assessee has any evidence regarding explanation of opening balance.	
58	69	No addition can be made in respect of difference between book-stock and stock as submitted to bank for procuring higher credit facilities.	<a href="#">Avi Polymers Ltd.</a>
59	69	No addition can be made in respect of difference between book-stock and stock as submitted to bank for procuring higher credit facilities.	<a href="#">Patel Proteins Pvt. Ltd.</a>
60	69	Merely because some amount is mentioned in the assessee's name in loose papers found during search, it cannot be presumed that such amount is his undisclosed capital unless there is sufficient material to hold so.	<a href="#">Vallamji Ravjibhai Patel</a>
61	69 & 133A	No addition can be made in respect of alleged advance to truck owners as unaccounted investment based on statement u/s 133A especially when such statement is retracted within 3 days and there are evidences that such trucks are in the name of original truck owners.	<a href="#">Devrajibhai L. Prajapati</a>
62	69	No addition can be made w.r.t. difference between book-stock and stock as submitted to bank for procuring credit facilities.	<a href="#">Vrundavan Roller Floor Mill</a>

## Lexperts Advocates

63	69B	No addition can be made u/s 69B on differential valuation of construction costs.	<a href="#">Lalitbhai P. Sorathiya</a>
64	80HH & 80I	Process of obtaining “refined cotton seed oil” by refining raw cotton seed oil obtained from crushing cotton seeds by ginning factories is “manufacturing” and assessee is eligible for deduction u/s 80HH & 80I.	<a href="#">Hynoop Food &amp; Oil Ind. Ltd</a>
65	80HH & 80IA	Interest income cannot be included in eligible profits for computing deduction u/s 80HH and 80IA.	<a href="#">Rubamin Ltd.</a>
66	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC even after insertion of S.145A.	<a href="#">Alembic Ltd.</a>
67	80HHC	Sales Tax and Excise Duty are to be excluded from total turnover while calculating deduction u/s 80HHC even after insertion of S.145A.	<a href="#">Dishman Pharmaceuticals Ltd.</a>
68	80HHC	Only “Net amount” of the receipts is to be reduced under clause (baa) of S.80HHC and not “Gross amount”.	<a href="#">Gujarat Narmada Valley Fertilizers</a>
69	80HHC	90% of insurance claim is to be excluded from the profit of the business for calculation of deduction u/s. 80HHC.	<a href="#">Jay Chemicals Industries Ltd.</a>
70	80HHC	90% of net amount of interest, freight and commission is to be reduced as per the <i>Explanation</i> (baa) to S.80HHC.	<a href="#">Jeevan Products</a>

## Lexperts Advocates

71	80HHC	Commission and insurance, being business profits, need not be reduced while calculating deduction u/s 80HHC.	<a href="#">Jeevan Products</a>
72	80HHC	“Net interest income” is to be excluded while computing deduction u/s 80HHC.	<a href="#">Nirma Ltd.</a>
73	80HHC	“Net interest income” to be excluded for the purpose of deduction u/s 80HHC.	<a href="#">Nirma Ltd.</a>
74	80HHC	Deduction u/s 80HHC is not permissible in case of loss or negative profit.	<a href="#">Rubamin Ltd.</a>
75	80HHC	“Net interest” is to be considered while computing deduction u/s 80HHC and not “Gross interest”.	<a href="#">Rubamin Ltd.</a>
76	80HHC	Excise Duty is to be excluded from total turnover while calculating deduction u/s 80HHC.	<a href="#">Shah Alloys Ltd.</a>
77	80HHC	90% of “profit” of sale of licence computed in the proportion of export turnover to the total turnover is to be deducted while computing deduction u/s 80HHC of the Act.	<a href="#">Suresh Zaveri Exports</a>
78	80HHC & 80IA	Deduction u/s 80HHC and 80IA cannot be claimed on same Gross Total Income without reducing each other.	<a href="#">Atul Intermediaries</a>
79	80IA	Deduction u/s 80IA is allowable on power generation for captive consumption.	<a href="#">Alembic Ltd.</a>
80	80IA	Workers engaged through labor contractors are to be considered while counting	<a href="#">Babul Products</a>

## Lexperts Advocates

		“Number of Workers” for the purpose of S.80IA.	<a href="#">Private Limited</a>
81	80IA	Assessee is eligible to claim deduction u/s 80IA on subsidy received from Government since there is a direct nexus between such subsidy and profits of industrial undertaking.	<a href="#">Kishan Discretionary Family Trust</a>
82	80IA	Conversion of “milk” into “milk powder” amounts to “Manufacture”. Hence, assessee is eligible for deduction u/s 80IA.	<a href="#">Mehsana Dist. Co-Op. Milk Producers</a>
83	80IA	Income derived by an assessee on sale of packing scrap is eligible for deduction u/s 80IA of the Act.	<a href="#">Mehsana Dist. Co-Op. Milk Producers</a>
84	80IA	Provisions of S.80IA(9) do not restrict deductions under other sections of Chapter VIA to the extent of eligible income for deduction u/s 80IA.	<a href="#">Nirma Ltd.</a>
85	80IA	Deduction u/s 80IA can be availed even when workers employed are casual laborers.	<a href="#">Parekh Power Corporation</a>
86	80IA(4)	Deduction u/s 80IA(4) is available to an enterprise generating power for “captive consumption” and such deduction is to be worked out at “market rate” at which electricity is supplied by State Electric Board to industrial customers.	<a href="#">Alembic Ltd.</a>
87	80IB	Profits, for deduction u/s 80IB, cannot be estimated by adopting different rate without pointing out any defect in the books of accounts maintained by the assessee.	<a href="#">Chandrakant R. Patil</a>

## Lexperts Advocates

88	80IB & 80HHC	Deductions u/s 80IB and 80HHC should be computed independently and with an only rider that total deduction should not exceed more than 100% of eligible profit computed under any of the provisions independently as well as cumulatively.	<a href="#">Transpek Silox Industry Ltd.</a>
89	80P(2)(a)(i)	Interest on income tax refund is not eligible for deduction u/s 80P(2)(a)(i).	<a href="#">Rajkot Nagarik Sahakari Bank</a>
90	80P(2)(d)	“Gross interest” received from co-operative banks is deductible u/s 80P(2)(d) and not “Net interest” especially when such claim has been accepted in earlier years coupled with the fact that the concerned loan was taken to purchase yarn and not for making fixed deposits.	<a href="#">Surat Vankar Sahakari Sangh Ltd.</a>
91	94(7)	Short Term Capital Loss on sale of mutual funds shortly after earning tax free dividend income is allowable even though the assessee had full knowledge about fall in NAV after record date as the assessee had merely made use of S.10(33) and it is not a case of abuse of the law. (Note: Not applicable after insertion of S.94(7) by Finance Act, 2001 w.e.f. 01.04.02).	<a href="#">Munoth Investment</a>
92	115JB & 14A	While computing MAT liability u/s 115JB, no adjustment can be made in respect of disallowance u/s 14A.	<a href="#">Alembic Ltd.</a>
93	115JB & 80HHC	While computing MAT liability, downward adjustment as per clause (iv) of S.115JB in	<a href="#">Alembic Ltd.</a>

		respect of deduction u/s 80HHC is to be made w.r.t. “adjusted book profit” and not w.r.t. income assessable under the head “profits and gains from business and profession”. (Note: Such provision has been omitted by Finance Act 2011 w.r.e.f. 01.04.05)	
94	115JB & 80HHC	Book-profit must be reduced by amount of profit eligible for deduction u/s 80HHC while computing MAT liability. (Note: Such provision has been omitted by Finance Act 2011 w.r.e.f. 01.04.05)	<a href="#">Rubamin Ltd.</a>
95	115JB	Provisions for gratuity liability based on actuarial valuation, ONGC liability and provision for diminution in the value of investment are not unascertained liabilities so as to add back the same in terms of clause (c) of Explanation 1 to S.115JB.	<a href="#">Alembic Ltd.</a>
96	127	Transfer order u/s 127 is to be set aside where prima facie reasons for transfer are not mentioned in notice u/s 127.	<a href="#">Genus Electrotech Ltd.</a>
97	131	In absence of any cogent evidence, no addition can be made based on statement of a third party unless opportunity of cross examination is afforded. Such addition also cannot be made on the count that assessee admitted having earned such income in his statement u/s 131 if such statement is retracted subsequently.	<a href="#">Ramanbhai B Patel</a>

## Lexperts Advocates

---

98	132(4)	In absence of any cogent evidence, addition in respect of speculation income cannot be made merely on account of admission in statement u/s 132(4) which has been subsequently retracted.	<a href="#"><u>Chetnaben J. Shah</u></a>
99	132(4)	Once statement u/s 132(4) is retracted, addition made solely on the basis of such statement cannot be sustained in absence of any other evidence.	<a href="#"><u>Narendra Garg.</u></a>
100	132(4)	No addition can be made in respect of undisclosed income merely based on statement u/s 132(4) which has been retracted after 2½ months.	<a href="#"><u>Shah Bhimani Chemicals</u></a>
101	143(3) r.w.s 263	Revenue's tax appeal arising out of consequential order passed by AO pursuant to revisionary powers exercised by CIT is to be dismissed when Revenue's tax appeal against ITAT's order setting aside order u/s 263 has been dismissed.	<a href="#"><u>Babulal K. Daga</u></a>
102	145	Low profits and absence of regular stock register are not sufficient reasons for rejecting books of accounts.	<a href="#"><u>Babul Products Private Limited</u></a>
103	145	Change in method of accounting on account of Modvat cannot be a reason for rejecting the books of account especially when there is nothing to hold that the change in accounting method of Modvat is a mala fide act on the part of the appellant.	<a href="#"><u>Jaytick Intermediates</u></a>

## Lexperts Advocates

---

104	145	Books of account cannot be rejected without pointing out any major defects.	<a href="#">Jaytick Intermediates</a>
105	145	Addition in respect of debit of an amount on account of prior period adjustments which is a consequential effect due to declaration under VDIS in respect of closing stock for preceding year is not justified in the eye of law.	<a href="#">L.M. Patel And Sons</a>
106	145	Valuation of closing stock in accordance with method consistently followed for several years and accepted by Department cannot be rejected all of a sudden. Further, opening stock as well as closing stock must be valued as per the same method.	<a href="#">M/s. D Subhashchandra &amp; Co.</a>
107	145	When proprietorship is converted into a partnership firm with the proprietor also being a partner, stock-in-trade of proprietary concern is to be valued at cost or market price whichever is lower.	<a href="#">Rajendra J Ladla</a>
108	145	In absence of any proof, no addition can be made in respect of profit on alleged unaccounted sales estimated on the basis of electricity consumption.	<a href="#">Royal Marwar Tobacco Product Private Limited</a>
109	145	If accounting system consistently followed by assessee is in accordance with established norms and has been accepted by Dept., then the same cannot be disturbed.	<a href="#">Sadashiv Shetty.</a>
110	145A	Excise duty is to be excluded from closing stock of finished goods at end of accounting	<a href="#">Broach Textile</a>

## Lexperts Advocates

		period. [Not applicable after insertion of S.145A w.e.f. 01.04.99]	<a href="#">Mills Ltd</a>
111	145A	Excise duty is to be excluded from closing stock of finished goods at the end of accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	<a href="#">Diamond Cables</a>
112	145A	Excise duty is to be excluded from closing stock of finished goods at the end of accounting period. [Note: Not applicable after insertion of S.145A w.e.f. 01.04.99]	<a href="#">Gujarat Metal Cast Industries</a>
113	147	Reopening beyond four years is not permissible in absence on any failure on assessee's part as to full and true disclosure.	<a href="#">Adani Exports</a>
114	147	Reopening based on change of opinion is not permissible.	<a href="#">Akshar Enterprises</a>
115	147	Reopening is valid if AO, on the basis of material supplied to it by Investigation wing, independently arrives at a belief that some income has escaped assessment.	<a href="#">Amit Brothers</a>
116	147	Reopening based on change of opinion is not permissible.	<a href="#">Aryan Arcade Ltd.</a>
117	147	Reopening is not permissible on the basis of materials outside of the reasons recorded.	<a href="#">Asharam Ashram</a>
118	147	Reopening based on change of opinion is not permissible.	<a href="#">Fuse Media Pvt. Ltd.</a>
119	147	When a case is reopened for taxing bogus share application money but assessee points	<a href="#">Gujarat Eco Textile Park Ltd.</a>

		out that such receipt is in respect of unsecured loan which has been repaid in same year and such fact remains undisputed by Department, reopening is not justified.	
120	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee's part as to full and true disclosure.	<a href="#">Gujarat Narmada Valley Fertilizers</a>
121	147	Reopening is also not permissible when the entire issue was threadbare examined at the original assessment stage. This case was reopened so as to disallow business loss and depreciation of a company which amalgamated with the assessee company. It was observed that once scheme of amalgamation is sanctioned by High Court prior to passing of the assessment order, it would relate back to the appointed date and hence, assessee should not be denied benefit of such development merely on the ground that during the accounting period and when the return was filed, High Court's order sanctioning the scheme was yet not passed.	<a href="#">IRM Limited</a>
122	147	Reopening beyond four years is not permissible in absence on any failure on assessee's part as to full and true disclosure.	<a href="#">Jivraj Tea Ltd.</a>
123	147	Reopening based on change of opinion is not permissible.	<a href="#">Manishkumar T. Kaneria</a>
124	147	Reopening is invalid if there is no escapement of income.	<a href="#">National Dairy</a>

## Lexperts Advocates

125	147	Reopening beyond a period of four years is not permissible unless there is any failure on the assessee's part as to full and true disclosure. Reopening is also not permissible when the entire issue was threadbare examined by the Assessing Officer at the original assessment stage.	<a href="#">Nishith S. Soni</a>
126	147	Reopening beyond four years is not permissible in absence on any failure on assessee's part as to full and true disclosure.	<a href="#">Quintiles Research (India) Pvt. Ltd.</a>
127	147	Reopening beyond four years is valid if the assessee fails to disclose all material facts.	<a href="#">Ravjibhai Nagarbhai Patel</a>
128	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee's part as to full and true disclosure.	<a href="#">Swetaben T. Sadhani</a>
129	153A	While framing assessment u/s 153A, AO cannot make addition in respect of a claim, which was part of original assessment proceedings which have abated, if no incriminating material is found in respect of the same during the course of search.	<a href="#">Desai Construction Pvt. Ltd.</a>
130	153A	While framing assessment u/s 153A, where an assessment has been framed earlier and no assessment or reassessment is pending on the date of initiation of search, addition in such years can be made only based on incriminating material found during search.	<a href="#">Khemani Distillers (P.) Ltd.</a>
131	154	Decision on a debatable point of law is not a mistake apparent from record; Review of	<a href="#">Meghmani</a>

## Lexperts Advocates

		earlier order is not permissible u/s 154 of the Act.	<a href="#">Organics</a>
132	154 & 244A	Question as to the time period for which interest is to be paid u/s 244A requires detailed consideration and examination of facts & law and would not fall within the scope of rectification proceedings.	<a href="#">Ajanta Manufacturing Ltd.</a>
133	158BD	While framing assessment u/s 158BD, addition can be made only in respect of incriminating material discovered during the course of search.	<a href="#">Priya Blue Industries Ltd.</a>
134	194C	Assessee, manufacturer of sugar is not liable to deduct tax at source from payments made to Mukadams and Transporters as that is an integral part of the sale transaction.	<a href="#">Khedut Sahakari Khand Udyog Mandli Ltd.</a>
135	194C & 194J	S.194C applies to “Port charges” paid to clearing & forwarding agents and not S.194J of the Act.	<a href="#">Gujarat Ambuja Exports Ltd.</a>
136	194LA	(1) S.194LA would not apply to compensation for “agricultural land”. Facts that land is treated as agricultural land in revenue records since long and invites land revenue are strong prima facie factors to suggest that it is agricultural land, but this is a rebuttable presumption; (2) S.194LA would not apply to separate compensation for ‘trees’; (3) S.194LA would apply in case of “buildings” standing on agricultural land in	<a href="#">Special Land Acquisition Officer</a>

## Lexperts Advocates

---

		absence of any proof showcasing that such buildings are small farm houses or go-downs for agricultural operations.	
137	206C	Deoiled cake, raw cotton waste and maize husk are not in the nature of “scrap” within the meaning of S.206C.	<a href="#">Gujarat Ambuja Exports Ltd.</a>
138	234A/B/C & 245D	Settlement Commission can charge interest only up to the stage of passing order u/s 245D(1) and not beyond that.	<a href="#">Settlement Commission</a>
139	234D	Provisions of S.234D in respect of interest on excess refund would not be applicable in a case where assessment has been completed prior to 01.06.03.	<a href="#">Nirma Ltd.</a>
140	244A	AO can make a reference to the CIT for determination of period to be excluded while granting refund as prescribed u/s 244A(2) even during rectification proceedings u/s 154.	<a href="#">Ajanta Manufacturing Ltd.</a>
141	244A	Revising a return or raising a claim during the course of the assessment proceedings cannot be said to be reasons for delaying the proceedings which can be attributable to the assessee u/s 244A(2).	<a href="#">Ajanta Manufacturing Ltd.</a>
142	244A	Assessee is eligible for interest u/s 244A on refund of self-assessment tax paid u/s 140A.	<a href="#">Indian Petrochemical</a>
143	245C	Revised marginal upward declaration of income before Income Tax Settlement Commission should be considered in the	<a href="#">Settlement Commission</a>

## Lexperts Advocates

---

		spirit of settlement and would not render initial declaration as not being true and full.	
144	250-255	Additional ground can be raised before appellate authorities for the first time.	<a href="#">Alembic Ltd.</a>
145	250-255	Appellate authorities must condone delay in filing appeals if there is sufficient cause for such delay and thereafter decide the appeals on merits.	<a href="#">Kalpesh Hiralal.</a>
146	250-255	New claim can be raised before CIT(A) & ITAT for the first time even though the same has not been raised before AO.	<a href="#">Nilesh R. Desai</a>
147	252-255	ITAT cannot go beyond the scope of directions issued by the High Court in the earlier round of litigation.	<a href="#">J. R. Dying &amp; Printing Mills</a>
148	252-255	ITAT is duty bound to decide application for additional evidences, if any, prior to deciding the appeals finally.	<a href="#">Mahalaxmi Housing</a>
149	252-255	ITAT is not justified in dismissing Revenue's appeal due to non-service of notice on the assessee. Matter was thus remitted to ITAT.	<a href="#">Mihir Textiles Ltd.</a>
150	254	ITAT has the power to review its own order and rectify any "mistake apparent from the record".	<a href="#">Shailesh C. Mehta</a>
151	263	Instead of quashing ex-parte order passed u/s 263 passed, ITAT must remit the issue back to CIT for deciding it on merits.	<a href="#">Alpine Chemicals</a>

## Lexperts Advocates

152	263	When two views are possible and AO adopts one of the two possible views, powers u/s 263 cannot be exercised.	<a href="#">Babulal K. Daga</a>
153	263	Inadequacy of inquiry by AO cannot be a ground for revisionary proceedings u/s 263 of the Act.	<a href="#">Ginger Properties</a>
154	263	CIT cannot exercise powers u/s 263 for non-compliance of provisions of S.194I leading to consequential levy of interest.	<a href="#">Golden Tree Plantation Ltd.</a>
155	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on debatable issues when all primary facts have been supplied by the assessee.	<a href="#">Camphor &amp; Allied Products Ltd.</a>
156	271(1)(c)	Additional income in respect of on-money receipts declared during search would not be covered by <i>Explanation 5</i> to S.271(1)(c).	<a href="#">Jignesh V. Koralwala</a>
157	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on additions made in respect of undervaluation of closing stock and disallowance of deduction u/s 80I when complete details have been furnished by the assessee.	<a href="#">Mehsana District Co - op Milk Producers Union Ltd.</a>
158	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on disallowance of deduction u/s 80IA when such claim is highly debatable coupled with the facts that assessee has made full disclosures and accounts are duly audited.	<a href="#">Sadbav Engineering</a>
159	271(1)(c)	Penalty u/s 271(1)(c) can be levied on addition made in respect of unexplained cash deposits in bank account.	<a href="#">Sanjay Kumar Bucha</a>

## Lexperts Advocates

160	271(1)(c)	Where income declared by the assessee in the return is accepted by AO, penalty u/s 271(1)(c) cannot be levied.	<a href="#">Shree Ram Corporation</a>
161	271(1)(c)	Merely because assessee's claim was not acceptable to the Revenue, that, by itself, would not attract penalty u/s 271(1)(c).	<a href="#">Silk City Petrofiles Co. Ltd.</a>
162	271(1)(c)	Where substantial additions on merits have been deleted, penalty u/s 271(1)(c) cannot be levied.	<a href="#">Skanska Cementation</a>
163	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on addition made u/s 68 once assessee gives a plausible explanation in respect of the same.	<a href="#">Soma Textiles &amp; Industries Ltd.</a>
164	271(1)(c)	When assessment is made on "Protective basis", penalty u/s 271(1)(c) of the Act cannot be levied.	<a href="#">Vinay Kumar Yadav</a>
165	271D	Penalty u/s 271D cannot be levied on cash loan taken from son to meet business exigencies especially when such loan has been repaid by cheque and entries in respect of the same are reflected in books.	<a href="#">Luhar B. Hakamsingh</a>
166	271D	When genuineness of transaction is not in dispute and so also the importance and urgency of raising cash loan, penalty levied u/s 271D cannot be sustained.	<a href="#">Panchsheel Owners Association</a>
167	2(ea)(i) – Wealth Tax Act	"Commercial establishments or complexes" need to be excluded from assets as defined u/s 2(ea) of The Wealth Tax, Act.	<a href="#">Baroda Packaging Pvt. Ltd.</a>

168	2(ea)(i) - Wealth Tax Act	Property let-out on rent bears the character of “Commercial establishment”. Hence, it is an “asset” as defined u/s 2(ea)(i) of The Wealth Tax Act if it doesn’t fall within exceptional categories. (Note: Post amendment vide Finance Act, 1998 w.e.f. 01.04.99, “Commercial establishments” are excluded from definition of “asset”].	<a href="#">Narayan T. Baddi</a>
-----	---------------------------------	---	--------------------------------------

**Comprehensive Digest of Judgments of  
Gujarat High Court passed in August 2016**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	4	Where ITAT has given a finding that assessee has neither advanced any loan to any of the parties nor has received any interest coupled with the fact that the concerned loose-papers were not in the hand-writing of the assessee or his staff, it cannot be presumed that assessee must have advanced loan and received interest which has not been accounted.	<a href="#">Jagdish L. Mehta</a>
2	4	Where assessee was never a partner in the concerned partnership firm, then even if a retirement deed was executed, assessee was not legally entitled to any receipt or consideration and hence, no addition can be	<a href="#">Jagdish L. Mehta</a>

		made in assessee's hands in respect of any cash received from such partnership firm.	
3	4	Principles of mutuality would apply to a transaction between members and the club and therefore, "Entrance fees" received from members would not be liable to tax.	<a href="#">Karnavati Club Ltd.</a>
4	4	Merely because Joint Venture (JV) is existing, it doesn't necessarily lead to inference that Association of Persons (AOP) would also be existing. JV and AOP are two distinct legal concepts. JV is a concept for accounting purpose whereas AOP is a concept under the Income-tax Act. For an AOP to exist, there are two important ingredients viz. (1) Parties should come together to work and (2) Such parties should have intention to earn income from such work. Once a party to JV ceases to have interest in earning income from the JV, AOP comes to an end. JV may continue even after AOP ceases to exist. In such a scenario, income of JV cannot be taxed in the hands of the party which ceases to have interest in earning income from JV. Rather, such income must be taxed in the hands of the party which continues to do the work of JV and due credit of TDS must also be given to such party.	<a href="#">LGE&amp;C Patel JV</a>
5	4 & 132	No addition can be made on the basis of rough jottings on loose papers found during search. Here, AO, based on some loose	<a href="#">Bharatkumar R Joshi</a>

## Lexperts Advocates

		papers, presumed that assessee might have received interest on some loan advanced but revenue was not in a position to furnish any finding w.r.t. amount of loan advanced, to whom it has been advanced, source of loan, etc. In such a case, addition in respect of alleged interest was rightly deleted.	
6	11 & 13(1)(c)	S.13(1)(c) does not prohibit normal transactions between the trust and persons referred to in S.13(3). Mere payment of lease rent or interest on borrowed funds, without there being any element of such payments being excessive or unreasonable compared to the normal rates prevailing, would not fall within the mischief of section 13(1)(c).	<a href="#">Shree Kamdar Education Trust</a>
7	12A & 13(1)(b)	S.13(1)(b) cannot be invoked in the case of a charitable and religious trust so as to deny registration u/s 12A if such trust does not benefit any specific religious community.	<a href="#">Dawoodi Bohra Masjid &amp; Kabrastan</a>
8	28 & 36(1)(vii)	In the business of cheque discounting, there is a big risk of dishonor of cheque for which payments are already made at the time of discounting after deducting commission. Loss so arising on account of dishonor of cheque is, thus, revenue loss and not a capital loss. (Note: Here, such sum was originally claimed as bad-debts).	<a href="#">Kashyap R. Chokhawala HUF</a>
9	28 & 37	Amount transferred to reserve fund account as per section 67 of The Gujarat Co-operative Societies Act, 1961 is not	<a href="#">GCMMF</a>

## Lexperts Advocates

---

		diversion of income at source by overriding title nor can such transfer be treated as a business expenditure deductible either under Section 28 or Section 37 of the Act.	
10	28 & 45	Mere conversion of shares from “stock-in-trade” to “investment” does not result into any immediate taxable income.	<a href="#">Aditya Medisales</a>
11	28 & 254	AO made addition in respect of alleged on-money received by assessee which was confirmed by CIT(A) with the aid of material in case of some another assessment proceedings without confronting the same to the assessee. ITAT restored the matter to CIT(A) with a direction to re-adjudicate the issue after affording adequate opportunity to the assessee. Since assessee conceded before High Court that there is no requirement of placing additional material or seeking cross examination and that it would be satisfied if ITAT decides all legal contentions, the matter was remitted to ITAT.	<a href="#">Nishant Construction Pvt. Ltd.</a>
12	32	Depreciation is allowable on assets leased out by assessee where the “sale and lease back transaction” is genuine and lease rental received by the assessee is taxed as business income which is not disputed even by AO.	<a href="#">Sandesh Ltd.</a>
13	36(1)(iii)	There is no prohibition in granting interest free loans to sister concern. Hence, no disallowance can be made u/s 36(1)(iii) of the Act.	<a href="#">Cadila Pharmaceuticals Ltd.</a>

## Lexperts Advocates

14	37	<p>“Pre-operative expenses” in respect of certain business/divisions which have not become functionally operational are allowable u/s 37 where there is total and complete unity, interlacing, interdependence and interconnection of management, financial and administrating aspects. Entries in the books of account cannot determine whether expenditure is allowable or not.</p>	<p><a href="#">Cadila Pharmaceuticals Ltd.</a></p>
15	37	<p>Where there are convincing reasons for variation in advertisement and sales promotion expenditure every year and the net profit is not found to be low and unreasonable, entire advertisement expenditure cannot be disallowed. In the present case, ITAT restricted such disallowance to Rs.5 lakhs out of total disallowance of Rs.3.26 crores and the same was confirmed by High Court as well.</p>	<p><a href="#">Dharmendra Marketing Co.</a></p>
16	37	<p>Expenditure on replacement of membrane is revenue in nature and is allowable u/s 37. Further, following the principles of consistency also, such expenditure was to be treated as revenue in nature.</p>	<p><a href="#">Gujarat Alkalies And Chemicals Ltd.</a></p>
17	37	<p>Secret Commission paid to certain parties to further the business cannot be allowed as revenue expenditure more so when neither recipients of such commission nor receipts from such recipients could be produced. In the facts of the case, High Court confirmed order of the Tribunal which restricted the</p>	<p><a href="#">Patel Brothers</a></p>

## Lexperts Advocates

		allowance of secret commission up to only 1% of the turnover.	
18	40(a)(ia)	Amendment in S.40(a)(ia) by Finance Act, 2010 is retrospective in nature having effect from 01.04.05 i.e. from the date of insertion of S.40(a)(ia).	<a href="#">M/s. Farmsons Fibres</a>
19	40A(2)(b)	No disallowance can be made u/s 40A(2)(b) on the count that there is disproportionate increase in expenses vis-à-vis turnover unless AO establishes that payments to sister concerns are unreasonable and excessive.	<a href="#">Jivraj Tea Ltd.</a>
20	40A(3)	Payment of freight charges in cash to transporters cannot be disallowed u/s 40A(3) as it is general practice that transporters do not accept payments otherwise than in cash.	<a href="#">Shree Vallabh Glass Works Ltd.</a>
21	45	Where capital gain on sale of shares is not disclosed in books and explanation in respect of the same is found to be false, such capital gain is liable to be taxed.	<a href="#">Jagdish L. Mehta</a>
22	45 & 50C	AO, while computing capital gain on sale of land, cannot enhance the sale price of such land by applying rates fetched at the time of public sale conducted by SUDA (Surat Urban Development Authorities) and jantri rates revised subsequent to sale of land by assessee especially when such revised jantri rates were not applicable retrospectively.	<a href="#">Vijay Jagmohan Mehta</a>

23	48 & 50C	Assessee declared capital gain as per sale consideration mentioned in “unregistered Agreement to Sale” whereas “registered sale deed” was executed in subsequent year. It was held that in absence of registered sale deed, provisions of S.50C will not be applicable. Hence, the matter was set-aside to AO for reassessment after taking into consideration provisions of S.48.	<a href="#">Kaushik Sureshbhai Reshamwala</a>
24	57(iii)	Once interest expenses are allowed u/s 57(iii) in the earlier year and there is no change in the facts, then interest expenses cannot be disallowed u/s 57(iii) in subsequent years.	<a href="#">Virendra R. Gandhi</a>
25	68	Addition can be made u/s 68 in respect of share application money when the same is found to be a managed affair for routing assessee’s unaccounted money and such fact is admitted by Chairman of the assessee. However, where such Chairman has already owned up certain amount as his income, the same cannot be taxed again as income of the assessee-company. Accordingly, <i>qua</i> such contention, assessee was directed to produce evidences before AO who shall decide the same in accordance in law.	<a href="#">Anand Credit Ltd.</a>
26	68	No addition can be made u/s 68 when the disputed amount has already been offered to tax by group companies before the Settlement Commission and such declarations have been accepted.	<a href="#">Ashok O Bhalodia</a>

## Lexperts Advocates

27	68	When ample evidences w.r.t. loan received by cheque are produced, the mere fact that the concerned bank has gone into liquidation is not a sufficient reason to doubt the bank transaction.	<a href="#"><u>Hiral Pharma</u></a>
28	69B	The onus to prove that assessee has expended more than amount recorded in the books of accounts is on the Department failing which, no addition can be made u/s 69B. Payment made by a third party who is not subject to Indian Income-tax Act cannot be regarded to have been made by the assessee.	<a href="#"><u>Transatlantic Packaging Pvt Ltd.</u></a>
29	69B & 69C	No addition can be made u/s 69B in respect of alleged unexplained investment in purchase of raw materials or u/s 69C in respect of alleged bogus purchases of raw materials merely on account of variation in actual input-output consumption ratio as compared to the prescribed norms.	<a href="#"><u>1. SDBPL</u></a>  <a href="#"><u>2. SDBPL</u></a>
30	69C	Job work Charges - Assessee gave name, address and invoices – Job work is essential part for processing of grey clothes – Purchase and sale of grey cloth is not in dispute – No defects in purchase bills, sales bills or job work charges bills – 25% of job work expenses disallowed by AO – CIT (A) restricted to 2.5% considering low gross profit – ITAT dismissed both the appeals filed by assessee and revenue- HC held that no further interference is required.	<a href="#"><u>Ajay Kailashchandra Kanodia HUF</u></a>

## Lexperts Advocates

31	69C	Provisions of S.69C cannot be invoked in the case of “bogus/unproved purchases” if there is no dispute as to source of funds used for making payment in respect of such purchases. In the present case, source of expenditure was explained since payment was made through banking channel. It was thus held that S.69C will not apply.	<a href="#">Vardhman Exports</a>
32	72 & 143(1)	Set-off of brought forward loss on account of unabsorbed depreciation against current year’s short term capital gain cannot be denied while passing intimation u/s 143(1).	<a href="#">Integrated Proteins</a>
33	73	<i>Explanation</i> to S.73 is not applicable to shares acquired in IPO and hence, loss on sale of such shares shall not be treated as “Speculation loss”.	<a href="#">AMP Spinning And Weaving Mills</a>
34	73	Dividend income earned out of shares held as stock in trade should be adjusted against speculation loss earned out of share trading business.	<a href="#">Torrent Finance Pvt. Ltd.</a>
35	80HHC	90% of commission received from export houses in respect of which the assessee has processed the exports is to be excluded while computing deduction u/s 80HHC of the Act.	<a href="#">Cham Ice &amp; Cold Storage</a>
36	80HHC	Interest income from sources other than FDR may not be included u/s 80HHC of the Act.	<a href="#">Chemical &amp; Dyestuff Ind.</a>

## Lexperts Advocates

37	80HHC	90% of net amount of interest, freight and commission is to be reduced as per the <i>Explanation</i> (baa) to S.80HHC.	<a href="#">Gujarat Apollo Equipments Pvt. Ltd.</a>
38	80HHC	Operating and Hiring charges are to be included in profits while calculating profits for deduction u/s 80HHC.	<a href="#">Gujarat Apollo Equipments Pvt. Ltd.</a>
39	80HHC	Sales and excise duty is to be excluded from total turnover while computing deduction u/s 80HHC.	<a href="#">Rajratna Metal Industries Ltd.</a>
40	80HHC	Deduction u/s 80HHC is not permissible in case of loss or negative profit.	<a href="#">Rubamin Ltd.</a>
41	80-IA	Deduction u/s 80-IA is allowable on interest received on margin money.	<a href="#">Shah Alloys Ltd.</a>
42	80-IA, 80IB & 80HHC	Since there is a difference of opinion among their Lordships as regards the question as to whether while considering deduction u/s 80-IA/80-IB, assessee is also entitled to deduction in respect of profits and gains under the provisions of S.80HHC or whether assessee is entitled to deductions under all three sections in respect of same profits, the matter has been referred for consideration by a Larger Bench. Hence, such issue was remitted to the file of AO to be decided in accordance with law.	<a href="#">Bloom Décor Pvt. Ltd.</a>
43	80-IB	Exchange rate difference earned out of exports, DEPB sale proceeds and duty draw-back are eligible for 80IB deduction.	<a href="#">Jay Chem</a>

44	80IB(10)	Where approval by the local authority as well as completion certificate was not granted to the assessee but to the landowner and the rights and the obligations under the said approval were not transferable, and when the transfer of dwelling units in favour of the end-users was made by the landowner and not by the assessee, deduction u/s 80IB(10) cannot be allowed to the assessee in light of the ratio laid down in CIT vs. Radhe Developers – 341 ITR 403.	<a href="#"><u>Super Construction</u></a>
45	80M	Deduction u/s 80M is available on gross dividend. [Note: S.80M is omitted by the Finance Act, 2003 w.e.f. 01.04.04]	<a href="#"><u>Aakar Leasing &amp; Financial Services Ltd.</u></a>
46	90	India-Singapore DTAA - Where freight receipts of a Singaporean shipping company are taxable in Singapore on “accrual” basis and not on the basis of “remittance”, benefit of Article 8 (which provides for income from shipping operations) cannot be denied by invoking Clause 1 of Article 24 (which provides for taxability on the basis of “remittance” to Singapore) merely on the count that concerned remittance was made to London and not to Singapore.	<a href="#"><u>MT Maersk Mikage</u></a>
47	92	Transfer Pricing adjustment made in respect of commission paid to Associated Enterprise on the basis that no services have been rendered is beyond the provisions of Chapter 10 (i.e. Provisions pertaining to TP adjustment). Under Chapter 10, AO can	<a href="#"><u>Sun Pharmaceutical Industries Ltd</u></a>

		only ascertain whether the international transaction is at Arm's Length Price or not and cannot go into the genuineness of the transaction for which there are other provisions.	
48	92C	Where a company's financial results indicated widely fluctuating and erratic results, it would be unsafe to assess Arm's Length Price based on TNMM taking into account results of the said company.	<a href="#">Allscripts (India) Pvt. Ltd.</a>
49	113	Amendment w.r.t. levy of surcharge by way of insertion of Proviso to S.113 by Finance Act, 2002 w.e.f. 01.06.02 is prospective in nature.	<a href="#">Naresh Kumar Agarwal</a>
50	115JA	While computing "book profit" for the purpose of S.115JA, AO does not have jurisdiction to go behind the net profit shown in P & L A/c. Thus, book-profit cannot be increased by amount of "capital receipt" on account of sale of goodwill even if addition has been made in respect of the same by treating it as profit of business under normal provisions.	<a href="#">Parle International Ltd.</a>
51	132(4)	Where director of the assessee retracted his statement and explanation behind such retraction is found to be bona fide, no addition can be made on the basis of such statement recorded during the course of search.	<a href="#">Mistry Builders Pvt. Ltd.</a>

52	132(4) & 69B	If assessee, in one of the sheets of statement u/s 132(4), admits payment of on-money but such sheet doesn't bear the signature of the assessee whereas in the subsequent sheet, duly signed by the assessee, such assessee admits having paid lesser sum as on-money and categorically points out that earlier recording of on-money was not his statement, then in absence of any material found during the course of search, no addition can be made in respect of undisclosed investment based on amount admitted in the earlier unsigned sheet of the said statement.	<a href="#"><u>Naresh Kumar Agarwal</u></a>
53	143(1)	No adjustments w.r.t. profit on sale of investments and proportionate premium of redemption of debentures can be made u/s 143(1).	<a href="#"><u>Atul Limited.</u></a>
54	145	Project Completion Method is a well-known and well accepted method of taxing income arising from construction business and if such method is followed consistently, it is not open for the revenue authorities to tax income from such business by applying Work-in-progress method.	<a href="#"><u>Manjusha Estates Pvt. Ltd.</u></a>
55	145	ITAT confirmed rejection of books and restricted GP addition to 1% of sales. High Court, upon finding that GP rate in the preceding year was 6%, estimated the GP rate @ 5%.	<a href="#"><u>Mardia Copper Extrusion Pvt. Ltd.</u></a>

## Lexperts Advocates

---

56	145	In case of undisclosed turnover, addition needs to be restricted to profit embedded therein. In this case, addition was confirmed by adopting NP rate @ 10%.	<a href="#"><u>Rameshwar Textile Mills Ltd.</u></a>
57	145	If accounting system consistently followed by assessee is in accordance with established norms and has been accepted by the Department, then the same cannot be disturbed.	<a href="#"><u>Sadashiv Shetty</u></a>
58	147	Where AO has, in reasons recorded for reopening, merely made a brief reference that interest component of shares was not disallowed by assessee but has not built on his case for reopening w.r.t. such issue any further and has also not included the interest expenditure in the figure of income escaping assessment, reopening is invalid. (Note: The present case was reopened on the count that conversion of shares held as “stock-in-trade” into “investment” resulted into escapement of income which was also held to be invalid).	<a href="#"><u>Aditya Medisales</u></a>
59	147	Until assessment, be it original or reopened, is pending before AO, question of issuing notice for reopening would not arise.	<a href="#"><u>Aditya Medisales Ltd.</u></a>
60	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee’s part as to full and true disclosure coupled with fact that the issue on hand was examined at the original assessment stage.	<a href="#"><u>Avadh NIPL JV</u></a>

61	147	Reopening is permissible where AO receives information from Investigation Wing that some third party has, during the course of search, confessed having provided accommodation entries to various persons without making actual sales and assessee is found to have made purchases from such third party.	<a href="#">Choksi Vacchaaarraj Makanji &amp; Co.</a>
62	147	AO found that cash sales were made by the assessee to a person who had already expired on the date of such sales and hence, such cash sales were bogus resulting into escapement of income and hence, assessee's case was reopened. However, it was not the case of revenue that assessee did not offer such sale proceeds to tax. Thus, there was no basis to hold that income chargeable to tax had escaped assessment and hence, reopening was unjustified.	<a href="#">CVM Jewels Pvt Ltd.</a>
63	147	Reopening based on change of opinion is not permissible.	<a href="#">CVM Jewels Pvt Ltd.</a>
64	147	Reopening is not permissible beyond 4 years when there is no failure on the part of the assessee to disclose all material facts at original assessment stage.	<a href="#">Deep Recycling Industries</a>
65	147	Reopening cannot be resorted to for fishing or rowing inquiry on a mere suspicion that income chargeable to tax may have escaped assessment. In the present case, AO reopened the case on the count that assessee	<a href="#">Deep Recycling Industries</a>

## Lexperts Advocates

---

		had accepted loan but since mode of acceptance of such loan was not specified, such loan may have been accepted in cash or otherwise than account payee cheque / bank draft which may result in non-levy of penalty u/s 271D.	
66	147	Reopening is valid where AO, after receiving information from the audit team, independently applies his mind and forms a belief that income chargeable to tax has escaped assessment.	<a href="#">Elecon Engineering Company Ltd.</a>
67	147	Reopening based on change of opinion is not permissible.	<a href="#">Freshtrop Fruits Ltd.</a>
68	147	Reopening based on change of opinion is not permissible.	<a href="#">Kaira Dist.</a>
69	147	Reopening based on change of opinion is not permissible.	<a href="#">Mastek Ltd.</a>
70	147	Reopening is not permissible based on change of opinion.	<a href="#">NDDB</a>
71	147	AO resorted to reassessment proceedings so as to disallow premium paid on debentures treating the same as capital expenditure but the fact is that the same has never been claimed as revenue expenditure by the assessee. In such a case, reopening is not permissible since the essential requirement of income chargeable to tax having escaped assessment fails.	<a href="#">NDDB</a>

72	147	Reopening is not permissible on the mere possibility that MAT provisions would apply in the event assessee succeeds in appeal preferred against additions made under the normal provisions.	<a href="#">NDDDB</a>
73	147	When interest on Deep Discount Bonds was disallowed at the original assessment stage on the count that liability to pay interest had not accrued, AO cannot resort to reopening on the count that since no TDS was made on such expenses, disallowance was called for u/s 40(a)(ia) especially when AO was aware about non deduction of tax at source at the original asst. stage. Hon'ble the High Court held that there cannot be reopening of assessment for rejecting a claim on an additional ground which, for whatever reason, AO did not did not press in service during original asst. stage.	<a href="#">Nirma Ltd.</a>
74	147	Reopening based on change of opinion is not permissible.	<a href="#">Pratik Enterprise</a>
75	147	Reopening is permissible in a case where assessee has received share application money from a company which is indulged in issuance of cheque on receiving equivalent cash amounts. Further, when original return of income was accepted u/s 143(1), question of change of opinion doesn't arise at all.	<a href="#">Sheth Multi Link Pvt. Ltd.</a>
76	147	Where a case is reopened to tax bogus purchases but assessee offers such sum to	<a href="#">Torrent Pharmaceuticals</a>

		tax in revised return consequent to which no addition is made in the reassessment order in respect of such bogus purchases, reopening is held to be invalid.	<a href="#">Ltd.</a>
77	147	In absence on any failure on assessee's part as to full and true disclosure, reopening beyond four years is not permissible.	<a href="#">Vipul Park</a>
78	154	AO, while giving effect to CIT(A)'s order holding that sales tax incentives received by assessee were capital receipts not chargeable to tax, reworked assessee's income under normal provisions but did not touch computation of book profit u/s 115JB. AO further denied rectifying the same under rectification proceedings. High Court held that whether CIT(A)'s direction would cover normal as well as MAT computation of income was a debatable issue and hence, AO's order taking one of the views was not open to rectification.	<a href="#">Ajanta Manufacturing Limited</a>
79	154	Jurisdiction u/s 154 cannot be exercised in a matter related to interpretation of provisions.	<a href="#">Sun Pharmaceuticals Industries Ltd.</a>
80	154	"Note" filed by assessee with its statement of income asking the AO to be considered as rectification application cannot be ignored by AO. ITAT was right in sending the matter back to AO to consider the "Note" and relevant documents.	<a href="#">Vikshara Trading &amp; Investment Pvt. Ltd.</a>

## Lexperts Advocates

81	158BC	In respect of search initiated on or after 01.01.97, notice issued u/s 158BC compelling assessee to file return of income “within fifteen days” of service of notice is invalid since the provision mandates the time of “not less than fifteen days”.	<a href="#"><u>Amit K. Jain</u></a>
82	158BC r.w.s 143(3)	If an assessment is to be completed under S.143(3) r.w.s. 158BC, notice u/s 143(2) should be issued within one year from the date of filing of the block return.	<a href="#"><u>Mardia Steel Limited</u></a>  <a href="#"><u>(In Liquidation)</u></a>
83	158BC r.w.s. 132(4)	Statement recorded u/s 132(4) can form basis for a block assessment only if such statement relates to any incriminating evidence of any undisclosed income unearthed during the course of search and seizure.	<a href="#"><u>K.P.M. Nair</u></a>
84	158BD	Once notice issued u/s 158BC is withdrawn, proceedings initiated u/s 158BC stand concluded on the date of withdrawal of such notice. Such proceedings cannot, thereafter, be revived by subsequently issuing notice u/s 158BD. Accordingly, notice issued u/s 158BD and consequential assessment framed u/s 158BD r.w.s. 158BC are illegal.	<a href="#"><u>Super Construction Co.</u></a>
85	201(1) 201(1A)	Since no limitation period is prescribed u/s S.201(1) & S.201(1A), AO must pass order within reasonable time. An order passed beyond a period of four years from the end of relevant Financial Year is held to be	<a href="#"><u>Anagram Wellington Assets Management Co Ltd.</u></a>

## Lexperts Advocates

---

		invalid and time-barred. (Note: Time limit for passing such order has now been prescribed vide S.201(3) w.e.f. 01.04.10).	
86	234A/B/C	Levy of interest u/s 234A/B/C is automatic even though the same is not initiated by AO in the body of assessment order.	<a href="#">Gujarat Apollo Equipments Pvt. Ltd.</a>
87	234B & 234C	No interest u/s 234B and 234C can be levied when income is computed by invoking provisions of S.115J of the Act. (Note: Hon'ble the Apex Court has taken a contrary view in the case of "JCIT vs. Rolta India Ltd. – 196 Taxman 594 (SC)").	<a href="#">Cornerstone Brands Ltd.</a>
88	234D	In case of assessment completed after 01.06.03, regardless of year of assessment, provisions of S.234D would apply.	<a href="#">Gujarat Apollo Equipments Pvt. Ltd.</a>
89	245C	Where disclosures revised during the course of settlement proceedings are substantial and far greater than initial disclosure made, it is not good on the part of the Settlement Commission to completely ignore the opposition of Revenue in respect of the same on the ground that that it is difficult to ascertain with degree of accuracy the undisclosed income on the basis of impounded documents. In view of the above, order of Settlement Commission was set-aside. [Note: In the present case, initial disclosure along with application for settlement was Rs.34 lac but later on, assessee offered additional income of Rs.56	<a href="#">Shree Nilkanth Developers</a>

		lac which can be categorized as substantial revision].	
90	252 – 255	When two appeals in the nature of cross contentions concerning the same issue arises before the ITAT, it would be desirable and advisable to club them together for common consideration. In the present case, issue of tax effect involved would have immediately arisen if two appeals were allowed to be split up for disposal by ITAT. Hence, assessee's appeal was restored to ITAT with a direction to be heard and decided along with Revenue's cross appeal.	<a href="#">Vijay Chandulal Shah</a>
91	254	Tribunal, while making major modifications in the orders passed by the revenue authorities, should give cogent reasons and any degree of estimation should be on some basis and not on ad hoc basis. Accordingly, matter was remitted to ITAT.	<a href="#">Arvind Ltd.</a>
92	254	Subsequent decision of High Court, when not straightaway applicable to the assessee's case, does not call for rectification of ITAT's order as it is not an error apparent on the record.	<a href="#">Atul Ltd.</a>
93	254	Order passed by ITAT in a Miscellaneous Application recalling its original order deserves to be quashed if reasoning in such order doesn't demonstrate nature of error apparent on record which was committed while disposing off the appeal originally.	<a href="#">Madhav Cotton Ginning and Pressing Factory</a>

94	254	Where Tribunal omitted to look into the material already on record and concluded that no such material was produced, it is permissible for ITAT to recall its order so as to decide the issue afresh in light of the evidences.	<a href="#">Nirma Ltd.</a>
95	254	When all the relevant facts were available on record, ITAT must decide the issue on merits rather than remanding it to the file of lower authorities.	<a href="#">Shree Rama Multitech Ltd.</a>
96	260A	Where ITAT doesn't give any reasons while reversing CIT(A)'s order and restoring the matter to the file of AO, such order of ITAT deserves to be set aside and matter deserves to be remanded to ITAT.	<a href="#">Shreeji Silk Corporation</a>
97	263	Revisional powers cannot be exercised for making better or further inquiry pertaining to an issue which has already been examined by AO.	<a href="#">Maruti Ginning and Pressing Industries</a>
98	264	Initially, assessee filed an appeal before CIT(A) against order passed by AO while processing return of income filed u/s 172 but such appeal was withdrawn subsequently since there was a <i>bona-fide</i> apprehension about maintainability of such appeal in view of language used in S.246 & S.246A. Thereafter, revision petition was filed u/s 264. Such revision petition is very well maintainable.	<a href="#">MT Maersk Mikage</a>

## Lexperts Advocates

99	271(1)(c)	When disallowance u/s 14A is completely not allowed, there cannot any concealment & thereby no penalty can be levied in such circumstances.	<a href="#">Gujarat Fusion Glass Ltd.</a>
100	271(1)(c)	In case of a bona-fide difference in interpretation of law, it cannot be said that details supplied by assessee were incorrect or false. Hence, no penalty can be levied u/s 271(1)(c).	<a href="#">Gujarat Gas Co. Ltd.</a>
101	271(1)(c)	Penalty cannot be levied in a case where assessee has made full disclosure about his claim which was certified by CA. The mere fact that such claim was rejected does not mean that assessee had concealed its income.	<a href="#">Gujarat Machinery Manufacturers</a>
102	271(1)(c)	Penalty u/s 271(1)(c) cannot be levied on provision for bad and doubtful debts as well as provision for diminution in the value of investments made by assessee, an NBFC, in accordance with the Accounting Standards when the same is duly disclosed in the return of income and such stand taken by the assessee is duly supported by judicial opinion by way of Tribunal decisions.	<a href="#">Gujarat State Financial Services Ltd.</a>
103	271(1)(c)	When loan advanced to Managing Director for his medical treatment is subsequently written off after his death and such facts are duly disclosed in the books, penalty u/s 271(1)(c) cannot be levied on the count that the assessee made a wrong claim.	<a href="#">Interlink Petroleum Ltd.</a>

## Lexperts Advocates

104	271(1)(c)	If AO, instead of arriving at a final conclusion as to whether assessee is guilty of concealment of income or assessee is guilty of furnishing inaccurate particulars of income, uses the word “and” in the order levying penalty, then penalty do levied deserves to be deleted.	<a href="#">N Suseelan</a>
105	271(1)(c)	No penalty can be levied on income disclosed during the course of survey and later on shown in return of income and further being accepted by AO in assessment proceedings.	<a href="#">R Umedbhai Jewellers Pvt. Ltd.</a>
106	271(1)(c)	No penalty u/s 271(1)(c) can be levied on addition of bogus purchases made on estimated basis.	<a href="#">Rameshchandra A. Shah</a>
107	271(1)(c)	No penalty can be levied on disallowance of a claim which has been made on the basis of the genuine opinion of a Chartered Accountant.	<a href="#">Rinki Hydro Carbons Ltd.</a>
108	271(1)(c)	Where the quantum addition has been deleted, penalty also has to be deleted.	<a href="#">Schutz Dishman Biotech Pvt Ltd.</a>
109	271(1)(c)	When substantial questions in quantum proceedings are answered in favor of the assessee, penalty u/s 271(1)(c) doesn't survive.	<a href="#">Torrent Pharmaceuticals Ltd.</a>
110	271C	Assessee, while making provision in its books in respect of service charge in favor of certain non-residents, was under a bona fide belief that amount credited to	<a href="#">Bombardier Transportation (India) Ltd.</a>

		provisions did not represent income accrued to the concerned non-residents and tax was required to be deducted only when service charge was determined and was actually paid. Later, when invoices were raised against the assessee by such non-residents, assessee voluntarily deducted tax at source much before the Department could initiate any proceedings. Thus, there was a reasonable cause for failure to deduct tax at source and hence, no penalty can be levied u/s 271C.	
111	271E	Provisions of S.269T are not applicable where loans are paid in cash to agriculturalists residing in remote areas. Thus, penalty can't be levied u/s 271E.	<a href="#">Patel Gokal Jeram &amp; Co.</a>
112	272A(2)(g) r.w.s 273B	Late payment of tax deducted into the Government treasury is not a reasonable cause for late issuance of TDS certificate.	<a href="#">Labh Construction Pvt. Ltd.</a>
113	25(1) & (2) –Wealth Tax Act	S.25(1) and S.25(2) operate in different spheres and one does not prevent operation of the other. However, where AO has passed an order pursuant to Commissioner's directions u/s 25(1), Commissioner cannot exercise powers of revision u/s 25(2) against such order passed by AO as that would amount to encroachment and revision of Commissioner's own order.	<a href="#">Shatrushlyasinji D Jadeja</a>

**Comprehensive Digest of Judgments of  
Gujarat High Court passed in September 2016**

<b>SR. NO.</b>	<b>SECTION</b>	<b>CATCH NOTE</b>	<b>JUDGMENT</b>
1	10(14)(i) r.w.r. 2BB(1)(f)	TDS is to be made from “uniform allowance” given to employees if only “dress-code” is prescribed for the employees by the assessee-employer and not the “uniform”.	<a href="#">ONGC</a>
2	10(23C)	Requirement of filing Audit Report under the 10 <sup>th</sup> Proviso to S.10(23C) would arise at the time of “filing of the return” and not at the time of “filing of application for approval for exemption u/s 10(23C)”. Hence, application cannot be rejected on the basis that assessee did not file Audit Report u/s 10(23C).	<a href="#">Ganpat University</a>
3	10(23C)	Generating certain surplus after carrying out educational activities by itself would not indicate that the institution did not exist for educational purposes but for the purposes of making profit. Hence, application for approval for exemption u/s 10(23C) cannot be rejected on that ground.	<a href="#">Ganpat University</a>
4	17 & 115WA	Any fringe Benefit liable to be taxed in the hands of the employer under chapter XII-H (w.r.t. FBT) cannot be taxed in the hands of the employee as perquisite u/s 17(2).	<a href="#">Kamlesh K Singhal</a>

## Lexperts Advocates

5	36(1)(iii)	No disallowance is called for u/s 36(1)(iii) when interest-bearing funds are advanced to sister-concern for business purpose.	<a href="#">Lalbhai Realty Finance Pvt. Ltd.</a>
6	37	Assessee's exported goods were found to be defective and were not feasible for reimport, so assessee sold the same to a retail chain in UK by giving huge discounts. Buyers raised debit notes on the assessee which were claimed as "Quality Claim Expenses." Details regarding item wise and code wise defect furnished. Held, "Quality Claim expenses" not to be considered unascertained or "contingent liability" merely because they were mentioned as a provision in the accounts. Such sum had been charged to the P/L Account. As the liability was certain, discharged and not differed, expenses were held to be allowable.	<a href="#">D R Garments(India) Pvt Ltd.</a>
7	37	Expenditure on replacement of membrane is revenue in nature and is allowable u/s 37. Further, following the principles of consistency also, such expenditure was to be treated as revenue in nature.	<a href="#">Gujarat Alkalies</a>
8	40(a)(i)	When non-resident payee is not liable to pay any tax in India on the amounts received from the assessee, act of assessee of not deducting tax at source would not invite disallowance envisaged u/s 40(a)(ia).	<a href="#">Economic Traders (Gujarat) Pvt. Ltd.</a>
9	40(a)(ia)	TDS deposited after the end of the relevant year but before the due date for filing return	<a href="#">Jigna Construction</a>

## Lexperts Advocates

---

		is an allowable deduction as the amendment to S.40(a)(ia) vide Finance Act, 2010 is retrospective in nature.	
10	40(a)(ia) r.w.s. 194C	In case of transporters, no disallowance can be made u/s 40(a)(ia) in respect of expenditure incurred on transportation or carriage of goods merely on the count that Form J was submitted long after passing of the due date being 30 <sup>th</sup> June.	<a href="#">Paras A. Modi</a>
11	50C	Validity of valuation by the DVO cannot be examined in a writ petition jettisoning the appeal provisions contained in the Act.	<a href="#">Shri Indrajeet Singh Rathore</a>
12	80IB(10)	While granting deduction as one composite project, lower authorities merely relied on the recording of the land development permission which contained a condition that the owner would not be allowed to divide the land and committed a serious error in ignoring the evidence with the AO that the two societies were situated nearly 500 meters apart. Matter remanded for fresh consideration.	<a href="#">Geet Gunjan Builders</a>
13	119 & 139	In absence of any justifiable reason for filing belated return, revenue authorities cannot entertain application u/s 119 requesting to treat such original return as having been filed in time and accordingly, accept the revised return. Amendment to S.139 permitting revised return even in case of a	<a href="#">Laljibhai M. Ghori</a>

## Lexperts Advocates

		belated return doesn't not, in any manner, suggest either explicitly or by necessary implication that the same is meant to apply to all pending proceedings.	
14	142(2A)	No direction for special audit u/s 142(2A) can be given without any proposal in show cause notice. Here, AO gave proposal for special audit in show cause notice for AY 12-13 only which was found to be in order by Hon'ble High Court. However, no such proposal was given for "other assessment year" or "other entities". Hence, direction for special audit for such "other asst. years" and "other entities" was quashed.	<a href="#">Takshashila Realities Pvt. Ltd.</a>
15	143(2)	"Statute of limitation" is a "procedural statute" and is applicable to "pending proceedings". In this case, notice u/s 143(2) was served within the time limit as per law amended vide Finance Act, 2008 w.e.f. 01.04.08 but beyond the time limit as per the unamended law. It was held that AO was not bound by unamended provision since the same had already been amended long before final date for serving of notice even as per unamended provision. Thus, petition challenging notice u/s 143(2) was dismissed.	<a href="#">Udhna Udhyog Sahkari Sangh Ltd.</a>
16	147	During the assessment proceedings, the issue of TDS was examined and details including working of foreign agent commission were submitted, making it was clear that no tax had been deducted on the	<a href="#">ABM Steels Private Limited.</a>

## Lexperts Advocates

---

		commission. Reopening to examine the very same issue would amount to a change of opinion which is not permissible.	
17	147	Even though the audit party can bring to the notice of AO relevant aspects which may have been overlooked during the assessment, the belief that income has escaped assessment must be of the AO alone. If AO shows his unwillingness towards such audit objection in writing but still reopens the case later on, then such reopening is invalid.	<a href="#">Binori Buildcon Private Limited</a>
18	147	Where the entire issue was examined during assessment proceedings, and specific queries were raised, reopening on the same issue beyond four years amounts to a change of opinion and is not permissible.	<a href="#">Binori Buildcon Private Limited</a>
19	147	Reopening is not permissible where the concerned issue has been examined at the original assessment stage. Further, reopening beyond a period of four years is also not permissible in absence of any failure on assessee's part as to full and true disclosure.	<a href="#">Ganesh Housing Corporation Ltd.</a>
20	147	Retrospective amendment cannot be a ground for reopening an assessment beyond a period of four years from the end of relevant assessment year. In the present case, AO resorted to reopening based on insertion of <i>Explanation</i> to S.80IB(10) with retrospective effect.	<a href="#">Ganesh Housing Corporation Ltd.</a>

## Lexperts Advocates

---

21	147	Reopening beyond a period of four years, in absence of any failure on the part of the assessee to disclose all material facts, is invalid.	<a href="#"><u>Gujarat State Petroleum Corp. Ltd.</u></a>
22	147	Where reasons do not demonstrate failure on the part of the assessee to disclose true and full facts, and on the contrary, reasons established that the AO was referring to the material already on record (P/L Account), notice of reopening beyond four years is invalid.	<a href="#"><u>Meghmani Energy Ltd.</u></a>
23	147	Where an audit party not only brings certain issue to the notice of AO but also compels AO to issue notice of reopening despite AO's clear opinion that such issue is not valid and that there is no escapement of income on the grounds so urged by the audit party, action of reopening is invalid.	<a href="#"><u>N. K. Proteins Ltd.</u></a>
24	147	Erroneous decision of AO is widely different from non-consideration of an issue at the time of assessment. It, therefore, cannot be said that the issue was not scrutinized by AO. Accordingly, reopening was held to be invalid.	<a href="#"><u>N. K. Proteins Ltd.</u></a>
25	147	Once an issue has been thoroughly examined at the original assessment stage, it is not permissible to reopen an assessment for re-examining the very same issue without there being any suggestion that AO was in possession of some external material	<a href="#"><u>Prudent Finance Pvt. Ltd.</u></a>

## Lexperts Advocates

		which would show that assessee had failed to disclose, truly and fully, all material facts.	
26	147	<p>AO reopened assessment for AY 08-09 based on information that assessee had received share capital from bogus entities engaged in providing accommodation entries. Hon'ble the High Court observed that the material in possession of AO pertained to AY 09-10 and accordingly, AO made sheer mistake in reopening AY 08-09. Department's counsel contended that notice u/s 148 merely carried a reference to wrong AY through a typographical error. Hon'ble the High Court didn't entertain such contention since AO himself had not treated such notice as to referring to AY 09-10 wrongly typed as AY 08-09. In fact, AO acted as if through such notice, assessment for AY 08-09 was reopened, multiple notices were issued to the assessee for supplying documents for AY 08-09 and even assessment was framed u/s 143(3) r.w.s. 147 for AY 08-09 making multiple additions which obviously AO couldn't have done had he treated notice for reopening as relatable to AY 09-10. Thus, reopening notice for AY 08-09 was based on completely wrong reasons. Reasons lacked validity. Since notice itself was defective, the same was quashed and so also the reassessment order.</p>	<p style="text-align: center;"><a href="#">Sunbarg Tradelink Pvt. Ltd.</a></p>
27	147	Duty to disclose true and full facts is not only at the stage of filing return but	<p style="text-align: center;"><a href="#">Surat Dist. Co- Op. Milk</a></p>

		<p>continues throughout the assessment. In this case, AO reopened assessee's case in order to invoke S.50C. When notice of reopening was challenged, High Court observed that AO raised query w.r.t. applicability of S.50C at the original assessment stage which was replied by the assessee in a very vague manner. Petitioner did not deny higher valuation adopted by the stamp valuation authority or the application of S.50C but merely opposed such action in a general manner. High Court turned down assessee's contention that AO was aware of such difference in valuation on the count that the concerned letter, wherein such valuations were mentioned, was written not by AO but by the Investigation Wing in the course of inquiring further in this respect. Thus, Petitioner failed to discharge the duty as to full and true disclosure and hence, notice of reopening was held to be valid.</p>	<p><a href="#"><u>Producers Union Ltd.</u></a></p>
28	147	<p>If AO has a doubt that a group, to which assessee belongs, has transferred a particular technology through circuitous route to avoid taxation and consequently, AO reopens cases of various persons belonging to such group based on the very same transaction of transfer of technology taking an inconsistent stand in all the cases as to "the person which actually developed the technology" and "the person which didn't have infrastructure and wherewithal necessary to develop such technology", then reopening of all such</p>	<p><a href="#"><u>Unimed Technologies Ltd.</u></a> &amp; <a href="#"><u>Sun Pharmaceutical Industries Ltd.</u></a></p>

## Lexperts Advocates

---

		persons is not valid. Rather, reopening in case of only one person, which could be the developer of such technology, is permissible.	
29	147	Assessee during the course of original assessment proceedings claimed that the land sold by him was an agricultural land after placing a certificate from an Assistant Engineer (AE) indicating that such land was situated beyond 8 kms of municipal limits. Thereafter, the then AE stated before AO that such land was situated within 8 kms of municipal limits and it was further found that the certificate originally relied upon by the assessee was not genuine. In light of such facts, AO resorted to reopening which was found to be in order by Hon'ble the High Court.	<a href="#">Thakorbhai Maganbhai Patel</a>
30	153C &	Writ petition challenging the notices u/s.153C is not maintainable at such an early stage and the assessee has to file a response to the AO.	<a href="#">Ashit Jain</a>
31	154	Against the assessment order wherein AO made disallowance u/s 40(a)(ia) for late deposit of TDS, assessee filed a revision petition u/s 264 pursuant to which CIT did not grant deduction of expenses in the said year but directed AO to rectify orders of subsequent years u/s 154 and allow deduction of expenses in such years. Subsequently, on the basis of a retrospective amendment to S.40(a)(ia), assessee is entitled	<a href="#">Jigna Construction</a>

## Lexperts Advocates

---

		to seek rectification of original assessment order wherein disallowance u/s 40(a)(ia) was made.	
32	226(3)	Where, as per earlier agreement between assessee and a third party w.r.t. assignment of factory premises, an amount was to be paid to such third party towards balance sale consideration, but as per the subsequent agreement, it was decided that nothing was to be paid and relationship with such third party was brought to an end, Tax Recovery Officer was wrong in contending that assessee owed an amount to such third party which could be recovered directly for the tax dues of such third party u/s 226(3).	<a href="#">NK Industries</a>
33	260A	No question of law arises when the issues require appreciation of evidence. The issues pertained to under valuation of closing stock, disallowance u/s 40A(2)(b) and addition of bad debts.	<a href="#">Thankys Exports Pvt. Ltd.</a>
34	263	If CIT has, in revisional order u/s 263, made any conclusive remarks or given directions which would finally decide the rights of the parties, assessee without challenging such findings, cannot dispute the same when it comes to AO giving effect to such directions. However, if CIT merely remands the proceedings before AO for de novo assessment consequent to which AO makes certain additions, assessee can carry such issues in appeal.	<a href="#">Thankys Exports Pvt. Ltd.</a>

35	264	<p>Delay of 3 years and 7 months in filing the revision petition u/s 264 was not properly explained and hence, Hon'ble the High Court held that CIT was justified in not condoning the delay. As regards maintainability of revision petition before CIT, Hon'ble the High Court reserved answer to such question for a better case. However, it was observed that the assessee did not state any ground as to why Asst. Order requires interference and hence, Hon'ble the High Court even did not remand the proceedings to CIT to complete an empty formality.</p>	<p><a href="#"><u>Jayantilal Pravin Kumar No Co.</u></a></p>
36	264	<p>When CIT, while passing revisional order u/s 264, accepts assessee's contention that concerned income is taxable in earlier year and not in the year under consideration, CIT's direction to AO to tax such income in earlier year cannot be said to be prejudicial to the interest of the assessee. Direction to adopt correct cost of acquisition of the property is also in assessee's favor. Direction for obtaining DVO's report can be seen as a passing remark as it flows from S.50C itself. Thus, such revisional order u/s 264 is not prejudicial to the interest of the assessee. Consequent to such order, AO reopened earlier year, called for DVO's report and made addition u/s 50C. Thereafter, assessee challenged order passed u/s 264 to the extent adverse to the assessee by way of writ</p>	<p><a href="#"><u>Shri Indrajeet Singh Rathore</u></a></p>

		petition and also challenged the reopening notice as well as valuation by DVO. High Court refused to interfere in the order passed u/s 264 since it was not prejudicial to the interest of the assessee.	
--	--	--	--

**Comprehensive Digest of Judgments of Gujarat High Court passed in October 2016**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	37	Expenditure on replacement of membrane cells is revenue in nature. Nature of expenditure is relevant for chargeability of tax and not the amount.	<a href="#">Gujarat Alkalies and Chemicals</a>
2	37	Amortization of lease rent is a revenue expense eligible for deduction u/s 37.	<a href="#">Gujarat Alkalies and Chemicals</a>
3	37	Expenditure in connection with “Corporate Debt Restructuring” is revenue expenditure and is allowable in the year in which it has been incurred.	<a href="#">Gujarat Alkalies and Chemicals</a>
4	80IA	Rate to be adopted for transfer of electricity from eligible unit to non-eligible unit for captive consumption shall be the rate at which GEB supplies power to its consumers and not the rate at which power generating company has supplied power to GEB.	<a href="#">Gujarat Alkalies and Chemicals</a>

5	80IB(10)	The term “balcony” would not include an “open terrace” adjoining a bedroom or any other constructed area of a penthouse. The “terrace” is not a “projection”. Hence, such “open terrace area” cannot be included in the “built-up area” for the purpose of deduction u/s 80IB(10). [Note: As per S.80IB(14), “built-up area” means inner measurements of the residential units at the floor level including the “projections” and “balconies”, as increased by the thickness of walls but does not include common areas shared with other residential units].	<a href="#">Amaltas Associates</a>
6	147	Where S.80IB(10) claim was examined in detail and appellant had made true and full disclosures, reopening within four years is not permissible to examine another facet of the same claim.	<a href="#">Amaltas Associates</a>
7	147	Reopening is invalid beyond the period of 4 years if the assessee has not failed to disclose all the material facts at the time of original assessment stage.	<a href="#">Anupam Rasayan India</a>
8	147	When tax payable as per reasons recorded is same as tax paid by assessee under assessment framed under section 143(3), question of any income having escaped assessment does not arise.	<a href="#">Ban Labs</a>
9	147	Reopening is invalid beyond the period of 4 years if the assessee has not failed to disclose all material facts at original assessment stage.	<a href="#">Bhavin S. Vakil</a>

## Lexperts Advocates

10	147	Where AO examined claim of deduction u/s 80IB(10) and there was full disclosure, reopening on the basis that a particular aspect of the deduction was not examined would amount to a change of opinion and was is permissible.	<a href="#">Kamleshkumar Gandadal Shah</a>
11	147	Reopening is invalid if it is based on change of opinion.	<a href="#">Kaniyalal B. Dodani</a>
12	147	Where AO examined claim of deduction u/s 80IB(10) and there was full disclosure, reopening would amount to a change of opinion and is not permissible.	<a href="#">Trilok Associates</a>
13	147	Where there is full disclosure, reopening on the basis of a later retrospective amendment amounts to a change of opinion and is not permissible as the assessee could not have anticipated the amendment while filing ITR.	<a href="#">Trilok Associates</a>
14	153A & 2(22)(e)	In absence of any incriminating material, proceedings u/s 153A cannot be initiated in respect of concluded assessments i.e. Asst. Years where time limit for issuance of notice u/s 143(2) has already expired or assessment order u/s 143(3) has already been passed. Here, AO made addition u/s 2(22)(e) in absence of any seized material w.r.t. the same. Hence, such addition came to be deleted by ITAT and High Court.	<a href="#">Jay Infrastructure and Properties Pvt. Ltd.</a>
15	153C	The seized document pertained to a related party of the assessee and had a handwritten	<a href="#">Rajesh Sunderdas</a>

		note concerning a third party. This correlated with the ledger of the assessee maintained with that third party. It cannot be said that the satisfaction recorded was based on no evidence and no reliable materials. Writ petition was dismissed.	<a href="#">Vaswani</a>
16	153C & Art.226	At the stage of issuance of notice u/s 153C, assessee must reply to AO. Assessee's writ petition is not maintainable as there is an alternate remedy.	<a href="#">Rajesh Sunderdas Vaswani</a>

**Comprehensive Digest of Judgments of Gujarat High Court passed in November 2016**

<b>SR. NO.</b>	<b>SECTION</b>	<b>CATCH NOTE</b>	<b>JUDGMENT</b>
1	4 & 194LA	Where assessee's income being additional compensation and interest awarded for acquiring land to be used for public purpose is not subject to tax, there lies no question of deducting tax at source.	<a href="#">Muktandgiri Maheshgiri.</a>
2	14A	Where AO did not record how the expenditure was unsatisfactory and assessee had sufficient interest free funds at its disposal out of which investment had been made, no addition can be made u/s 14A.	<a href="#">Gujarat State Petronet Ltd.</a>
3	28 & 45	Where CIT(A) had held the income from share transactions as business income after	<a href="#">Sureshchandra G. Kachhadia</a>

## Lexperts Advocates

		considering the substantial nature of the transactions, manner of maintenance and audit of books, magnitude of shares purchased and sold and the ratio between purchases and sales and holdings coupled with earnings on same day transactions, and the ITAT had confirmed such finding of fact, Hon'ble the HC upheld the same, being a factual aspect.	
4	32	Where in the earlier years, the ITAT had deleted the disallowance of depreciation w.r.t the same plant and machinery and there was nothing on record for a contrary decision to be taken, the disallowance is to be deleted.	<a href="#">M/s. Petronet V.K. Ltd.</a>
5	32AB	Prior to amendment in S.32AB w.e.f. 01.04.91, by which the word "eligible" used in S.32AB(1)(b)(ii) was deleted, only profits from "eligible business or profession" could be taken into consideration for computing deduction u/s 32AB. However, post such amendment, profits of the business or profession of the assessee as a whole is required to be considered.	<a href="#">Harsiddh Specific Family Trust</a>
6	40(a)(ia)	Amendment in S.40(a)(ia) by Finance Act, 2010 is retrospective in nature having effect from 01.04.05 i.e. from the date of insertion of S.40(a)(ia).	<a href="#">AKP Infrastructure</a>
7	56	Interest on deposit required to be placed for opening of Letter of Credit for import of	<a href="#">Steelco Gujarat Ltd.</a>

## Lexperts Advocates

		plant and machinery is not income from other sources as it is a requirement to open the Letter of Credit. The interest is a capital receipt which goes to reduce the cost of the asset and income earned on such deposit is incidental to the acquisition of assets.	
8	92CA	Where AO did not pass a speaking order dealing with the objection of the assessee, reference to TPO is liable to be quashed, being in violation of CBDT Instruction No.3/2016 dated 10.03.2016. Matter was thus remanded to AO to pass a speaking order while making reference to TPO.	<a href="#">M/s. Alpha Nipon Innovatives Ltd.</a>
9	147	Reopening based on audit objection is not permissible especially when AO justifies the assessment order and requests to drop the audit objections but somehow, reopens the case as a remedial action.	<a href="#">L B Estate Pvt. Ltd.</a>
10	147	Reopening is invalid beyond the period of 4 years if the assessee has not failed to disclose all the material facts at the time of original scrutiny assessment.	<a href="#">Mihir J. Thakore</a>
11	147	Reopening of case is invalid if it is based upon change of opinion.	<a href="#">Mihir J. Thakore</a>
12	147	Where there is full disclosure on the part of the assessee, reopening beyond 4 years is not permissible.	<a href="#">Navkar Share and Stock Brokers P. Ltd.</a>
13	148	Reopening notice issued in the name of “dead” person is to be quashed.	<a href="#">Rasid Lala.</a>

14	154 & 234B	<p>AO passed an assessment order in the body of which, there was no mention of charging of interest u/s 234B – However, AO charged interest u/s 234B in demand notice – On appeal, CIT (A) directed AO to delete interest u/s 234B – Thereafter, AO passed order u/s 154 wherein unpaid PF was disallowed u/s 43B and interest u/s 234B was charged on account of such disallowance – Assessee filed rectification application before AO against order passed u/s 154 pointing out that interest u/s 234B was erroneously charged but AO dismissed such application by passing an order u/s 154 - Against such order u/s 154, assessee preferred appeal before CIT (A) - CIT (A) held that once levy of interest u/s 234B was already set-aside by CIT(A) in earlier round and the said order was not challenged by the Revenue, thereafter it was not open for AO to levy interest u/s 234B in exercise of powers u/s 154 – The said view came to be confirmed by Hon’ble ITAT and Hon’ble the High Court as well.</p>	<p style="text-align: center;"><a href="#"><u>Amol Decalite Ltd.</u></a></p>
15	220(6)	<p>Action of CIT(A) as to granting conditional stay by depositing only 15% of demand cannot be said to be erroneous or illegal.</p>	<p style="text-align: center;"><a href="#"><u>M/s. Karmvir Builders</u></a></p>

**Comprehensive Digest of Judgments of  
Gujarat High Court passed in December 2016**

<b>SR. NO.</b>	<b>SECTION</b>	<b>CATCH NOTE</b>	<b>JUDGMENT</b>
1	68	When credit entries are duly explained in the audit report furnished by the Special Auditor appointed u/s 142(2A), no addition can be made u/s 68 in respect of the same.	<a href="#">Unipon (India) Ltd.</a>
2	69	Once assessee furnishes necessary evidences along with affidavit of a third person to whom income on account of the concerned transactions belong to, onus shifts on revenue to conduct further inquiries and in absence of the same, no addition can be made in the assessee's hands in the guise of unexplained investment.	<a href="#">Unipon (India) Ltd.</a>
3	69C	When an assessee specifically submits that no expenditure, as alleged by AO, has actually been incurred, onus is upon the AO to disprove the same by collecting material evidence. Without bringing any material evidence in support of the allegation that assessee has actually incurred any such expenses, no addition can be made u/s 69C.	<a href="#">Unipon (India) Ltd.</a>
4	80IB(10)	Where construction has already been completed and even BU Permission applied for before the relevant date (here, 31.03.12), S.80IB(10) deduction cannot be denied	<a href="#">Poddar Developers</a> &

## Lexperts Advocates

---

		merely because BU Certificate was granted after the relevant date.	<a href="#">Shaurya Infrasturcture.</a>
5	142A	Before making a reference to the DVO u/s 142A, if AO has not rejected the books of accounts, reference u/s 142A itself is bad in law and such DVO's report cannot be the basis for making any addition. [Note: Hon'ble the High Court further made an observation that S.142A has been amended subsequently, however, as per the law prevailing at the given point of time, reference u/s 142A without rejection of books was not permissible as held by Hon'ble the Apex Court in "Sargam Cinema – 328 ITR 513 (SC)".].	<a href="#">Sanjay Hiralal Thakkar</a>
6	147	Once scheme of merger is sanctioned by the Court from a particular date, "amalgamating company" would not be in existence from that date and hence, reopening notice issued thereafter in the name of such non-existent company is liable to be quashed.	<a href="#">Adani Properties</a>
7	147	Where assessee had two divisions – Electronic Appliance Manufacturing and Windmill but did not apportion and debit financial and administrative expenses to the Windmill Division in ITR and P/L a/c, reopening beyond four years is permissible for non-disclosure even though S.80IA claim was examined in the original proceedings.	<a href="#">Ajanta Private Limited</a>

## Lexperts Advocates

8	147	Reopening beyond four years on the ground that separate P & L a/c and Balance-sheet of the undertaking was not submitted for S.80IA claim is not permissible where S.80IA deduction is granted to the assessee in a different AY despite same accounting.	<a href="#"><u>Ajanta Private Limited</u></a>
9	147	Reopening is valid where assumption of jurisdiction on the part of AO was based on fresh information [Information from Pr. DIT(Inv.)]	<a href="#"><u>Ankit Financial Services Ltd.</u></a>
10	147	Reopening is valid where the department has prima facie “some material” which indicates escapement of income.	<a href="#"><u>Bankin Mohanlal Desai</u></a>
11	147	Reopening is invalid beyond a period of 4 years if the assessee has not failed to disclose all the material facts at the time of original scrutiny assessment.	<a href="#"><u>Bharti Bakuleshbhai Mehta</u></a>
12	147	Reopening is invalid if it is based on borrowed opinion.	<a href="#"><u>Harikishan Virmani.</u></a>
13	147	Reopening is invalid beyond a period of 4 years if the assessee has not failed to disclose all material facts at the original asst. stage.	<a href="#"><u>Harikishan Virmani.</u></a>
14	147	AO cannot resort to reopening on the basis of a mere information that assessee has issued shares at unreasonably high premium resulting into unentitled benefit without indicating that such benefit is unexplained cash credit in assessee’s hands.	<a href="#"><u>Kothi Steel Ltd.</u></a>

## Lexperts Advocates

15	147	Reopening in invalid beyond a period of 4 years if the assessee has not failed to disclose all the material facts at the time of original scrutiny assessment.	<a href="#">Laxmi Shelters</a>
16	147	When directions of CIT(A), based on which AO has issued notices u/s 148 for other Asst. Years, have been set-aside by ITAT and Revenue has not challenged such order before Hon'ble the High Court, such reopening notices are liable to be quashed.	<a href="#">Raghunath D. Patil</a>
17	147	Reopening is not permissible for making roving inquiries or for deep verification of any claims.	<a href="#">Rushil International</a>
18	147	Where issue of depreciation of goodwill is examined during assessment proceedings, reopening on the same ground amounts to change of opinion and is not permissible.	<a href="#">Sujag Fine Chemicals Pvt Ltd.</a>
19	147	Reopening notice u/s 148 cannot be issued against a non-existing company (amalgamating) company.	<a href="#">Takshashila Realities Ltd.</a>
20	147	When an audit objection is raised and AO initially submits to his superior officer that that such audit objection does not survive but, later reopens the assessee's case solely on the basis of such audit objection, there is no independent formation of opinion as to escapement of income at the AO's end and thus, reopening is impermissible.	<a href="#">Torrent Power S.E.C. Limited</a>

21	147	Reopening was challenged solely on the ground that assessee did not receive opportunity to raise objections against reasons. As it was not in dispute that the reasons were sent to assessee's new address but returned to AO as "unclaimed," assessee's writ petition was dismissed.	<a href="#">VRN Investment Pvt. Ltd.</a>
22	260A	Estimation of profit, when audit report cannot be relied upon, doesn't give rise to any substantial question of law.	<a href="#">Todays Writing Products Ltd.</a>

**Comprehensive Digest of Judgments of Gujarat High Court passed in January 2017**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	2(22)(e)	No addition can be made u/s 2(22)(e) in a case where recipient of the loan is not a shareholder of the company advancing such loan. The mere fact that one of the shareholders is common in both such companies (viz. recipient and payer) cannot be ground for invoking S.2(22)(e).	<a href="#">Mahavir Inductomelt.</a> & <a href="#">Mahavir Inductomelt.</a>
2	4 & 133A	No addition can be made in respect of undisclosed income merely on the basis of statement recorded during survey, which has been subsequently retracted.	<a href="#">Gopal Glass Works Ltd.</a>

## Lexperts Advocates

---

3	14A	No disallowance is called for u/s 14A r.w.r 8D, where assessee has interest free funds in excess of its investments creating exempt income.	<a href="#">Axis Bank</a>
4	14A	Rule 8D is applicable prospectively from Asst. Year 2008-09.	<a href="#">Gujarat State Investment Ltd.</a>
5	32(1)(ia)	Additional depreciation u/s 32(1)(ia) can be claimed on machinery “acquired” before 31.03.2005 but “installed” after 31.03.2005. S.32(1)(ia) is to be interpreted reasonably and purposively since its strict and literal interpretation would result into absurd and unjust results.	<a href="#">IDMC Limited</a>
6	35D	Where preliminary expense is allowed in earlier years, department cannot disallow it in later year.	<a href="#">Adani Gas Ltd.</a>
7	36(1)(iii)	When interest free advances exceed interest free funds, proportionate disallowance u/s 36(1)(iii) must be made based on excess of investments over interest free funds.	<a href="#">Rajeshbhai Jivraj Desai</a>
8	36(1)(iii)	No disallowance can be made u/s 36(1)(iii) where assessee has made advances for the purpose of business and charged interest, even if interest is charged at a lower rate.	<a href="#">Rajeshbhai Jivraj Desai</a>
9	36(1)(vii) r.w.s. 36(2)	When assessee is engaged in money lending business and interest income is earned from the same, bad debts written off in the course of such business are allowable.	<a href="#">Rajeshbhai Jivraj Desai</a>

## Lexperts Advocates

10	37	Premium paid by assessee on plot taken on lease for business purposes is fully deductible as revenue expense in the year of payment. It is not a capital expense and is not to be spread over the lease period.	<a href="#">Mahavir Inductomelt Pvt Ltd.</a>
11	37 r.w.s. 143(3) r.w.s 254	If AO, in set-aside proceedings, doesn't collect any further material, disallowance of consulting expenses made merely based on observations in the first round, which were set-aside by ITAT, deserves to be deleted.	<a href="#">Applitech Solutions</a>
12	69	No addition in respect of on-money paid for purchase of land can be made solely on the basis of statements of original owners of land to the effect that on-money was received by them especially when such on-money is stated to have been received from some third party and not the assessee. Here, even the land was purchased by the assessee from some other person and not the original land owners.	<a href="#">Rajeshbhai Jivraj Desai</a>
13	80HHC	Interest charged from purchasers for late payment of sale consideration is business income and hence, need not be excluded while computing deduction u/s 80HHC of the Act.	<a href="#">Atul Limited</a>
14	80M	Deduction u/s 80M cannot be rejected after invoking provisions of S.115-O(5). [Note: S.80M has been omitted by the Finance Act, 2003 w.e.f. 01.04.04]	<a href="#">Kargil Holdings</a> & <a href="#">LEH Holding</a>

## Lexperts Advocates

---

15	133A	Addition cannot be made solely on the basis of a loose paper (provisional P&L a/c) in absence of any corroborative evidence supporting such loose paper.	<a href="#">Pragati Industries</a>
16	143(3) r.w.s. 254	In set-aside proceedings, AO cannot travel beyond the issues set-aside by ITAT.	<a href="#">Applitech Solutions</a>
17	145	When prior period income is taxed, then prior period expenses must also be allowed.	<a href="#">Adani Gas Ltd.</a>
18	145	No addition can be made in respect of suppression of sales after rejecting books merely based on fall in GP as compared to earlier year. Here, suppressed sales were worked out based on consumption of various raw materials and production ratio.	<a href="#">Parth Laboratories</a>
19	147	AO is duty-bound to dispose-off objections raised against reopening by passing a speaking order, prior to passing the final reassessment order. In this case, since objections were not so disposed-off, Assessing Officer was directed to dispose-off the same.	<a href="#">E Infochips Ltd.</a>
20	147	Where the issue w.r.t. excess payment to sister concerns was examined at the original assessment stage, reopening on the same ground is not permissible as it amounts to a change of opinion.	<a href="#">Jivraj Tea Company</a>
21	147	Reopening based on change of opinion is not permissible.	<a href="#">Manan Exports Pvt. Ltd.</a>

22	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee's part as to full and true disclosure.	<a href="#">Micro Inks Pvt. Ltd.</a>
23	147	Where grounds for reopening were examined at original asst. stage, reopening within four years is not permissible as it amounts to a change of opinion.	<a href="#">Orient News Prints Ltd.</a>
24	147	Where the issue of S.54B exemption was examined during S.143(3) proceedings and again during reassessment proceedings without being disturbed, reopening beyond four years on the same ground is not permissible as it amounts to a change of opinion and also there was full & true disclosure by the assessee.	<a href="#">Parimal Sureshbhai Patel</a>
25	147	Reopening in invalid beyond a period of four years if assessee has not failed to disclose all the material facts at the time of original scrutiny assessment.	<a href="#">Sopan Infrastructure Pvt. Ltd.</a>

**Comprehensive Digest of Judgments of Gujarat High Court passed in February 2017**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	2(47), 45 & 147	Capital gain u/s 45 arises in the year in which sale deed is "executed" and not in the	<a href="#">Rajendra Kantilal Patel</a>

## Lexperts Advocates

		year in which the same is “registered” with the Sub-registrar’s office. Here, since sale deed was executed on 27.03.08 (AY 08-09) but registered on 25.07.08 (AY 09-10), reopening notice for AY 09-10 was quashed since if at all any income had escaped assessment, the same could be for AY 08-09 and not for AY 09-10.	
2	14A	No interest disallowance shall be made u/s 14A if the assessee has sufficient interest free funds.	<a href="#">Gujarat Gas Co. Ltd.</a>
3	28 & 36(1)(vii)	Once a bad-debts/trading loss is written off in the books of accounts, no disallowance can be made in respect of the same.	<a href="#">H Nyalchand Financial Services Ltd.</a>
4	28 r.w.s. 45	Where assessee, in the past, has shown shares as investments, and AO accepted holding of such shares as investment in past completed assessments, it was not open for him to deviate from his view where shares have been purchased on delivery basis.	<a href="#">Jayantibhai M. Patel</a>
5	28 & 45	Though assessee was engaged in trading shares, few shares were listed as investment in the balance sheet, interest on funds borrowed attributable to such converted shares was not claimed as business expenditure and only a few scripts sold from such holding during the year were claimed as capital transaction. Held, gain was short term capital gain.	<a href="#">Tejas J. Amin</a>

6	28 r.w.s. 45	Assessee has been showing income from sale of shares as “Capital Gains” in earlier years. Moreover, investments have always been reflected at cost price in the balance sheet. Further, where the partnership deed bars partners to trade in shares and mutual funds and in absence of any trading activity carried out by the assessee, action of AO as to treating gain on sale of shares as “business income” is not correct.	<a href="#">Tejas Securities</a>
7	32	Depreciation can be claimed on “stock exchange card” acquired by the assessee on or before 01 <sup>st</sup> April 1998.	<a href="#">Madhur Shares and Stock Pvt. Ltd.</a>
8	36(1)(vii)	Assessee is required to establish only that the concerned debt was written off. It is not necessary to establish that the debt, in fact, had become irrecoverable.	<a href="#">Gujarat Gas Co. Ltd.</a>
9	37	Expenditure incurred on software stock and maintenance charges is revenue expenditure allowable u/s 37.	<a href="#">H Nyalchand</a>
10	40(a)(ia)	Amendment u/s 40(a)(ia) brought in vide Finance Act 2010 w.e.f. 01.04.10 is having retrospective effect.	<a href="#">Kirti Construction Co.</a>
11	80HHC	Insurance claims received and exchange rate fluctuations are to be allowed while computing deduction u/s 80HHC.	<a href="#">Cadila Pharmaceuticals Ltd.</a>
12	80HHC	“Net interest” to be excluded from profits while computing disallowance u/s 80HHC.	<a href="#">Madhusudan Industries</a>

## Lexperts Advocates

13	80HHC	Only “Net interest” is to be excluded from profits while computing disallowance u/s 80HHC.	<a href="#">Raj Ratna Metal Industries</a>
14	80HHC & 80IA	Deduction u/s 80IA must be taken into account while computing deduction u/s 80HHC.	<a href="#">Madhusudan Industries</a>
15	80IA	90% of “net interest”, and not gross interest, is to be deducted while determining profits of the business.	<a href="#">Kishan Discretionary Family Trust</a>
16	115JB	Where AO allowed similar adjustments to book profit u/s 115JB in earlier assessment years, it was not open for him to take a different stand thereafter.	<a href="#">Surat Textile Mills Ltd.</a>
17	142(2A)	Assessing Officer, looking to the complexity and multiplicity of the transactions vis-a-vis the requisitioned material, can give a direction for special Audit u/s 142(2A). Here, 40,000 papers were found at the premises of one searched party and such papers connect the assessee with the searched party.	<a href="#">Ulhas Securities P. Ltd.</a>
18	143(3) r.w.s. 158BD r.w.s. 254	Where ITAT’s order remanding the matter to the file of AO has itself been recalled by ITAT pursuant to an MA, subsequent block assessment order passed by AO pursuant to ITAT’s order is without jurisdiction.	<a href="#">Bipinchandra C. Doshi</a>
19	145	Addition in respect of unaccounted local sales was made following earlier AY for discrepancy in quantity of gold received	<a href="#">Subodhchandra and Co.</a>

## Lexperts Advocates

---

		from manufacturer and quantity exported. Where there is no change in facts, the new evidences are not contemporaneous and do not show actual consumption of gold, disallowance has rightly been made by following earlier year.	
20	145A	No addition can be made u/s 145A in respect of unutilized Modvat credit when there is corresponding less debit to purchase account since income to that extent has already been offered to tax.	<a href="#">Gujarat Gas Co. Ltd.</a>
21	147	In absence of any failure as to full and true disclosure, reopening beyond a period of four years is not permissible.	<a href="#">Dr. Raviraj Ranbirsingh Choudhary</a>
22	147	AO cannot reopen assessee's case merely on the basis of a "sauda-chitthi" entered into between some "third parties" w.r.t. land sold by the assessee on the pretext that since the sale consideration mentioned in such sauda-chitthi is higher than that mentioned in the sale deed, differential sum must have been received by the assessee as on-money resulting into escapement of income.	<a href="#">Rajendra Kantil Patel</a>
23	147	Reopening proceedings are invalid if the assessment order is passed without disposing of the objection raised by the assessee. Here, Hon'ble the High Court remitted the matter to AO with a direction to pass order disposing off objections and	<a href="#">Simanben Vinodrai Ravani</a>

## Lexperts Advocates

		thereafter, proceed further in accordance with law. Cost of Rs.5,000/- was also imposed on the concerned officer.	
24	147	When reopening is for making disallowance u/s 40(a)(i) but the Revenue has no tangible material in support of the belief that the concerned payment, on which TDS was required to be made, has actually been made to the non-resident, reopening is unjustified.	<a href="#">Transperk Industry Ltd.</a>
25	147	Assessee executed “sauda chitthi” as seller which got cancelled. Subsequently, sale deed was executed by original land owners in favor of a third person for a lesser consideration. AO reopened assessee’s case on the count that differential amount was received by the assessee as on-money. Hon’ble High Court held that when assessee is not the owner of land and also in absence of the fact that assessee has received any consideration, reopening is invalid.	<a href="#">Vinodbhai S. Ravani</a>
26	153A	AO, while framing assessment u/s 153A, for the block period can make addition considering only the incriminating material found during search.	<a href="#">Devangi Alias Rupa</a>
27	153A	AO, while framing assessment u/s 153A, for the block period can make addition considering only the incriminating material found during search.	<a href="#">Deepak Jasvantlal Panchal</a>
28	153C	Where there is no separate satisfaction note in the case of the searched person before	<a href="#">Anilkumar G</a>

## Lexperts Advocates

		initiating S.153 proceedings, S.153C proceedings are liable to be quashed. CBDT Circular No.24/2015 mandates that satisfaction note is a prerequisite before AO transmits record to other AO who has jurisdiction over such other person.	<a href="#">Darji</a>
29	158BD	“Satisfaction note” in case of the person “other than the searched person” can be prepared after the completion of assessment in the case of the “searched person”.	<a href="#">Bipinchandra C. Doshi</a>
30	158BFA	Where quantum proceedings are remitted to the file of AO, penalty appeal deserves the same treatment.	<a href="#">Panchratna Jewellers.</a>
31	S.222 & Rule 16, 48 & 60 of The Second Schedule	When the entire amount payable under a “Certificate” drawn up by TRO u/s 222, for which the concerned property was attached under Rule 48, has been paid by original defaulter with interest, TRO’s order under Rule 16 declaring transaction as to sale of such property in favor of some other person (“Petitioner” in the present case) as null and void deserves to be quashed even if such dues have been paid subsequent to passing of the order under Rule 16.	<a href="#">Nitaben Harishbhai Shah</a>
32	S.222 & Rule 16, 48 & 60 of The Second Schedule	Order of “attachment” under Rule 48 can be passed only w.r.t. amount due and payable under the “Certificate” drawn up by TRO u/s 222. Such attachment order cannot be said to be continued w.r.t. amount due and payable under the “penalty	<a href="#">Nitaben Harishbhai Shah</a>

		order” passed subsequent to such attachment order.	
33	263	Where two views were possible at the time of framing assessment and AO chooses one of the views, it cannot be said that the order passed by AO was erroneous. Assuming jurisdiction u/s 263 under such circumstances is invalid.	<a href="#">A. Menarini India P. Ltd.</a>
34	Cross examination	No addition can be made on the basis of material/statement which has not been confronted to the assessee. Here, addition was made on the basis of statements of two persons and such statements were neither provided to the assessee nor an opportunity of cross examination was granted.	<a href="#">Kanubhai Maganbhai Patel</a>

**Comprehensive Digest of Judgments of Gujarat High Court passed in March 2017**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	2(47), 45 & 147	Capital gain u/s 45 arises in the year in which sale deed is “executed” and not in the year in which the same is “registered” with the Sub-registrar’s office. Here, since sale deed was executed on 27.03.08 (AY 08-09) but registered on 25.07.08 (AY 09-10), reopening notice for AY 09-10 was quashed since if at all any income had escaped	<a href="#">Chintan Jadav Patel</a>

## Lexperts Advocates

		assessment, the same could be for AY 08-09 and not for AY 09-10.	
2	28	Carbon credits are taxable in the year in which the same are actually transferred, and not in the year of accrual/generation.	<a href="#">Kalpatru Power Transmission</a>
3	32	Where claim of depreciation on non-compete fees was allowed in the earlier years, the same has to be allowed in accordance with the Rule of Consistency.	<a href="#">Zydus Wellness Ltd.</a>
4	32(1)(ia)	Assessee installed windmill, which were controlled by GEB. AO disallowed additional depreciation on such "Plant & Machinery" holding that the unit was controlled by GEB. Held, assessee was owner of the plant and hence, was eligible to claim depreciation.	<a href="#">Jalaram Ceramics Ltd.</a>
5	37	Assessee claimed provisions for expected loss/defect liability. AO disallowed the same after holding that it was not ascertained liability. Held that in the facts and circumstances looking upon historical and future trends, large number of sophisticated goods were being manufactured and defects existed in some of items manufactured and sold, then provision made for warranty in respect of army of such sophisticated goods would be entitled to deduction from gross receipts under section 37(1), provided data is systematically maintained by assessee.	<a href="#">JMC Projects India Ltd.</a> & <a href="#">JMC Projects India Ltd.</a>

## Lexperts Advocates

6	37	Where foreign travel expenses are supported by documentary evidences, the same are allowable u/s 37.	<a href="#">Zydus Wellness Ltd.</a>
7	37	Web designing charges, trademark expenses and survey expenses for market research are allowable as revenue expenditure as there is no change in the fixed assets, no advantage of enduring nature and were incurred to improve business efficiency respectively.	<a href="#">Zydus Wellness Ltd.</a>
8	37 & 40(a)(ia) r.w.s.194C	Purchase of gift article with company logo to promote business is not a work contract requiring TDS. It is business expenditure.	<a href="#">Zydus Wellness Ltd.</a>
9	142(2A)	While forming an opinion to get assessee's books audited u/s 142(2A), there need not be any books before the AO. Opinion can be formed based only on the multiplicity of transactions in the accounts, complexity of issues, specialized nature of business activity of the assessee and the interests of the Revenue.	<a href="#">Takshashila Realities P. Ltd- I</a> & <a href="#">Takshashila Realities P. Ltd- II</a>
10	142(2A)	Proceedings u/s 142(2A) can be initiated during pendency of reopening proceedings. Here, notice u/s 142(2A) issued after five days from notice u/s 148 was valid.	<a href="#">Takshashila Realities Pvt. Ltd</a>
11	145	Claim of reduction from stock of packing material and stock of finished goods is justified where assessee has followed due procedure and maintained details of unusable goods and damaged stock.	<a href="#">Zydus Wellness Ltd.</a>

12	147	Once AO fails to convince CIT(A) to enhance addition in respect of “unexplained investment” based on DVO’s report received subsequent to framing of the assessment, it is not open for AO to reopen the assessment on the very same ground i.e. based on DVO’s report.	<a href="#"><u>Akshar Infrastructure Pvt. Ltd.</u></a>
13	147	AO cannot reopen assessee’s case merely on the basis of a “sauda-chitthi” entered into between some “third parties” w.r.t. land sold by the assessee on the pretext that since the sale consideration mentioned in such sauda-chitthi is higher than that mentioned in the sale deed, differential sum must have been received by the assessee as on-money resulting into escapement of income.	<a href="#"><u>Chintan Jadav Patel</u></a>
14	147	In absence of any failure as to full and true disclosure at the assessee’s end, reopening beyond a period of four years is unjustified.	<a href="#"><u>Sandeepkumar M. Mehta</u></a>
15	147	Where claim was examined in detail during assessment proceedings and there was no failure to disclose material facts, reopening beyond four years is bad in law.	<a href="#"><u>Seabird Marine Service Pvt. Ltd.</u></a>
16	156 & 220	There is no requirement under the modified instruction dated 29 <sup>th</sup> February, 2016, to deposit 15% of disputed demand before applying for stay. Matter was remitted to AO with a direction to decided stay application in accordance with law.	<a href="#"><u>Jagdish Gandabhai Shah</u></a>

17	254	When first rectification application was rejected by Tribunal, second rectification application on same issue is not maintainable at all.	<a href="#"><u>Navjivan Roller Flour &amp; Pulse</u></a>
18	263	Where the issue was considered by the AO in detail, CIT was not right in suo moto setting aside the order in exercise of revisional powers. Moreover, since ITAT held that, on merits, assessee's claim is allowable, revision order is to be quashed.	<a href="#"><u>GSEC – I</u></a> & <a href="#"><u>GSEC - II</u></a>
19	263	Where no deduction was claimed u/s 40A(7), CIT was not justified in passing revision order u/s 263 directing AO to disallow the same.	<a href="#"><u>GSEC</u></a>
20	271(1)(c)	Where all the material facts w.r.t. interest income on bank deposit/staff loan have been disclosed, penalty u/s 271(1)(c) cannot be levied on disallowance u/s 80IB in respect of the same.	<a href="#"><u>Sun Pharmaceuticals Ltd.</u></a>
21	271(1)(c) & 275(1A)	ITAT deleted penalty u/s 271(1)(c) since the concerned additions were deleted in quantum appeals. Revenue challenged ITAT's order and submitted that quantum appeals were pending before High Court. Hon'ble the High Court held that in light of proviso to S.275(1A), if Revenue succeeds in quantum appeals, Revenue can initiate penalty proceedings within six months from the end of the month in which such quantum order is received. With a liberty to	<a href="#"><u>Sun Pharmaceuticals Ltd.</u></a>

		initiate penalty proceedings afresh after the decision of High Court in quantum appeals, penalty appeals came to be disposed off.	
--	--	---	--

**Comprehensive Digest of Judgments of Gujarat High Court passed in April 2017**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	9(1)(vi) r.w.s. 195	Where a “non-resident” (M/s. Naimisha) becomes absolute owner of certain designs by purchasing the same from another “non-resident architect firm” (M/s. Bob) outside India and in turn, sells the very same designs to an “assessee in India”, it is case of “outright purchase” of designs and hence, payment made to M/s. Naimisha for supply of designs cannot be treated as “royalty”. Accordingly, provisions of S.9(1)(vi) r.w.s. 195 are not attracted.	<a href="#">Creative Infocity Ltd.</a>
2	9(1)(vi)/(vii) r.w.s. 195	Where assessee merely “reimburses” expenses incurred by a non-resident for marketing assessee’s project in foreign market, such reimbursement does not involve any “income element”, no services have been rendered by such non-resident to the assessee and also such non-resident does not have any business activity or PE in India, then payment towards such	<a href="#">Creative Infocity Ltd.</a>

		reimbursement is not taxable in the hands of the non-resident u/s 9(1)(vi)/(vii) and hence, provisions of S.195 would not apply.	
3	11	Where exemption u/s 11 has been allowed in preceding as well as in subsequent year, exemption u/s 11 cannot be denied in a given year especially when issue in such other years has attained finality.	<a href="#">Entrepreneurship Development Institute Of India</a>
4	12AA	DIT(E) cancelled registration u/s 12AA(3) broadly on the counts that assessee was “generating surplus from sale of plots which is in the nature of trade” and “no separate books were maintained individual plot-wise”. Held, selling plots was in consonance with the objects and since income from sale of plots was used for objects of general public utility, which was charitable in nature, DIT(E) could not have cancelled the registration. Further, since books were audited and income from plots was specifically disclosed, DIT(E) could not have cancelled registration for non-maintenance of books individual plot-wise since there is no requirement as to maintaining books individual plot-wise.	<a href="#">AUDA</a>
5	28 r.w.s. 45	Assessee has been showing income from shares as “Capital Gains” in earlier years. Investments have been reflected at cost in balance sheet. Further, where partnership deed debars partners from trading in shares and mutual funds and also in absence of	<a href="#">Vowel Sec. I</a> & <a href="#">Vowel Sec. II</a>

		any trading activity carried out by assessee, action of AO as to treating gain on sale of shares as “business income” is not correct.	
6	32	Unabsorbed depreciation pertaining to AY 1997-98 could be allowed to be carried forward and set off after a period of eight years without any limit whatsoever in accordance with section 32(2) as amended by Finance Act, 2001.	<a href="#">Shree Benzophen Industries Ltd.</a>
7	37	Genuineness of commission cannot be questioned where the assessee produced documentary evidence in the form of confirmation letters of foreign commission agents and invoices on which commissions have been paid, commission has been paid through banking channel and claim of commission to the very same foreign agents has been accepted in the past.	<a href="#">Kershi Homi Tangri.</a> & <a href="#">Pradip Polyfils Pvt. Ltd.</a>
8	40(a)(i) r.w.s. 195	TDS liability u/s 195 cannot be fastened where commission has been paid to non-residents who do not have a Permanent Establishment in India and are, therefore, not liable to be taxed in India. Accordingly, no disallowance can be made u/s 40(a)(i).	<a href="#">Kersi Homi Tangri.</a>
9	40(a)(ia)	Amendment to S.40(a)(ia) vide the Finance Act, 2010 is applicable retrospectively.	<a href="#">Diptiben S. Naik</a>
10	48	Where, for LTCG computation, CIT(A) estimated market value of land as on 01.04.81 after taking into account the rate accepted by the Department for land in the	<a href="#">Bhaskar Krishnaji Barve (HUF)</a>

		vicinity and locational advantage of the assessee's land, such rate cannot be said to be erroneous.	
11	80IA(4)	“Container freight stand” (CFS) is an “inland port” as it carries out functions of warehousing, customs clearance and transport of goods from its location to sea port and vice versa by rail or by trucks in containers. Hence, income derived from CFS is eligible for deduction u/s 80IA(4) of the Act.	<a href="#">Seabird – I;</a> <a href="#">Seabird - II;</a> <a href="#">Seabird - III;</a>
12	119(2)(b)	Where assessee filed a defective Form 10 belatedly along with an application for condonation of delay in submitting Form 10 in exercise of powers u/s 119(2)(b), and thereafter filed rectified Form 10, the concerned authority has to consider the rectified form and cannot reject the original form on the basis that it was defective and hence question of condonation also does not arise. Matter was remanded.	<a href="#">Shree Jain Swetamber Sangh</a>
13	127	Where transfer of a case takes place within the “same city”, reasons need not be recorded nor does an opportunity of hearing have to be given to the assessee. Being an administrative order, it cannot be prejudiced. Here, all the procedural requirements were followed and case was transferred for “coordinated investigation” at the Central office of all the locations.	<a href="#">Nilesh Natwarlal Sheth.</a>

14	132B	For release of asset/cash seized during search u/s 132, an application must be moved before AO in accordance with the provisions of S.132B instead of directly approaching Hon'ble the High Court.	<a href="#"><u>Hashmukh Purshottamdas Soni.</u></a>
15	142(2A)	Proceedings u/s 142(2A) can be initiated during pendency of reopening proceedings. S.148 notice and objections to be raised against it are altogether different and distinct proceedings than order u/s 142(2A). Here, notice u/s 142(2A) was issued five days after notice u/s 148.	<a href="#"><u>Sant Asharamji Ashram</u></a>
16	142(2A)	Looking at the huge material requisitioned and looking to the complexity and multiplicity in transactions, when AO has thought it fit to get the accounts audited by the Special Auditor and when the order of special audit u/s 142(2A) has been passed after following due procedure and after giving an opportunity to the assessee, it cannot be said that AO has committed any error and/or illegality.	<a href="#"><u>Sant Asharamji Ashram</u></a>
17	142(2A)	While forming an opinion to get assessee's books audited u/s 142(2A), there need not be any books before the AO.	<a href="#"><u>Sant Asharamji Ashram</u></a>
18	143(2)	Assessment proceedings are invalid if the notice u/s 143(2) was not served within the prescribed time limit of 6 months from the end of the relevant assessment year.	<a href="#"><u>Nexus Software Ltd.</u></a>

19	147	Reopening based on mere change of opinion is not permissible.	<a href="#">Aakash Oilfield Services P. Ltd.</a>
20	147	Reopening beyond a period of four years is not permissible in absence of any failure on assessee's part as to full and true disclosure. Here, in addition to full and true disclosure, the issue was thoroughly examined at the original assessment stage. Hence, reopening notice was quashed.	<a href="#">Alps Technologies</a>
21	147	When reopening is based solely on an order cancelling registration u/s 12AA and such order has been, subsequently, quashed by ITAT as well as High Court, then the ground on which AO sought to reopen assessee's case itself does not exist any further and hence, reopening is invalid.	<a href="#">AUDA</a>
22	147	Reopening based on change of opinion is impermissible. Further, reopening beyond 4 years is impermissible in absence of failure on assessee's part as to full and true disclosure.	<a href="#">E-Infochips Limited</a>
23	147	Reopening solely on the basis of DVO's report, without there being any further inquiry by AO to form opinion as to escapement of any income chargeable to tax, is not permissible.	<a href="#">Munir Ismail Voraji</a>
24	S.222 & Rule 68B of The Second Schedule	Attachment order gets vacated if property attached is not sold within three years from the end of the financial year in which order giving rise to tax, interest, etc., for which property has been attached, has become	<a href="#">Nutanben Jagdish Shah</a>

		conclusive. Here, property was attached in 1979 but no steps were taken to recover demand or auction/sell the property. HC quashed attachment order and by interim order directed revenue authorities to refund amount deposited by Petitioner towards tax dues. However, Department was given liberty to recover tax dues if permissible under current law.	
25	244A r.w.s 132	Where tax has already been recovered from the amount of cash seized during search u/s 132, balance amount must be returned to the assessee since there is no justification in withholding the same. Hon'ble the High Court directed the Department to return such amount with interest starting from 3 months after date of assessment order.	<a href="#">Rajesh Vachhani.</a>
26	271(1)(c)	Mere wrong claim cannot be a ground for levy of penalty u/s 271(1)(c).	<a href="#">Torrent Pharmaceuticals</a>

**Comprehensive Digest of Judgments of Gujarat High Court passed in May 2017**

SR. NO.	SECTION	CATCH NOTE	JUDGMENT
1	14A	Where assessee has substantial interest-free funds, no disallowance can be made u/s 14A w.r.t. interest expenses.	<a href="#">Sintex Industries Ltd.</a>

2	28 & 45	Where assessee had shown income arising from sale of shares as long-term capital gain and she had treated purchase and sale of shares as investment, AO was wrong in treating said income as business income on plea that assessee was indulged in frequent purchase and sale of shares and magnitude of some transactions was very high.	<a href="#">Mulchand Shankarbhai Amin</a>
3	43A	Gain, on account of fluctuations in foreign exchange rates, attributable to borrowings made for acquiring shares of foreign subsidiary is to be excluded from taxable income since it is required to be adjusted against the cost of acquisition of shares. Here, when loss was incurred in the past on similar count, the same was not allowed from taxable income but when there was gain in the year under consideration, the same was added to taxable income. CIT(A), ITAT as well as High Court held that since loan was borrowed on capital account, any gain/loss on account of fluctuations in foreign exchange rates should be treated on capital account and the same cannot have any impact on revenue account.	<a href="#">Sintex Industries Ltd.</a>
4	80IB & 40(b)	AO partially disallowed deduction u/s 80IB on the count that since the partnership agreement did not provide for “interest” and “remuneration” to partners, assessee-firm claimed higher profits resulting into higher claim of deduction u/s 80IB. Held, disallowance is to be deleted since mere	<a href="#">Alidhra Taxspin Engineers</a>

		incorporation of interest and remuneration to partners does not signify that the same are mandatory.	
5	CBDT's Circular No. 21 of 2015 (Low tax effect)	Where CIT(A) passes "separate and independent order" for a particular year and tax effect involved for such year is less than prescribed monetary limits, then even if common issue has arisen in another appeal for another assessment year falling within the block period, Revenue's appeal for such year is liable to be dismissed.	<a href="#">Devendranath G. Chaturvedi</a>

**Disclaimer:** The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although Team Lexperts has taken due care and precautions in providing accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Errors can occur. Team Lexperts assumes no liability or responsibility for any errors or omissions in the contents contained herein neither does it give any guarantee of completeness, accuracy or timeliness. The information and data contained herein may be used at your sole risk after ensuring its accuracy, correctness or completeness.