



UNITY IS STRENGTH

THE

NEWSLETTER

Bulletin of the Income Tax Gazetted Officers' Association, WB Unit

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Vol - 4

May 2014

Editorial

It could have been the time for a few of us to go up in the ladder of hierarchy; it could have been the time for some of us to have at least a humble career prospect; it could have been the time for most of us to have a birth in a new cadre; it could have been the time for all of us to congratulate ourselves. But the things came differently.

The motto was to create a motivated workforce in the Income Tax Department. And the objective was to sensitise the existing workforce for diversification of work and augmentation of revenue. For the last five years, it loomed largest in the minds of 55,000 employees of the department. Yes! Cadre-restructuring, 2013.

A department like ours, with all its vice and version, stands responsible to the country for earning its means. And so, the country affords boost to augment earning and add new manpower in the hierarchy as an obvious measure. But, as always, the fruit of the collective wisdom is consumed by only a few. The collective wisdom of the entire political and bureaucratic hierarchy of the country is being defeated by the exercise of prejudice by some sitting at the top of our beloved department.

CRC, 2013 has been finalised, but not the career prospect barring a few apex cadres; new posts are sanctioned but effectively implemented for the cadres at the top only; the goal to minimize stagnation is set but exercised for the senior management level only; posts are allocated country wise only to place some higher officers at their chosen places.

And thus the resentment occurs. It's neither the career prospect nor the stagnation but the anger and frustration of all, irrespective of rank and file, aims at the well-planned defeat to a well-conceived betterment.

The post-allocation, above all, declares the defeat of the scheme as a measure to augment revenue creating a motivated and effective workforce. The regions like West Bengal, for the reasons best known to those who prepared post-allocation, are trimmed like anything at the cost of some other regions where the higher-ups dream to be placed.

Can this be tolerated for all time to come? No, and that is proved by the comrades of WB charge. That is proved beyond doubt even when the rest of the Tax-India is playing oblivious to the cause.

Let us put all efforts to thrive together.

-Bhaskar Bhattacharya
(General Secretary)

Bi-annual General Meeting at Chennai

The 42nd All India BGM of ITGOA, scheduled to be held in January, 2014 was held from 21-23rd February, 2014 in order to provide some preparation time to the newly elected body of Tamil Nadu Unit, who were hosting the event.

This BGM was of most crucial importance to us as we had become totally fed up in the manner the CHQ had been functioning since the last 7-8 years. Not only had ITGOA, CHQ ceased to function, all the forums developed over the years for joint movements like Joint Council of Action (JCA), Co-ordinating Committee of the Associations in the Department of Revenue (C-O-C), and the Confederation of Central Government Gazetted Officers' Organisation (CCGGOO) had also gradually become defunct. The biggest blow came once the CRC, 2013 was formally notified in May, 2013. The penta-furcation of all ACIT posts arising out of the Cadre Restructuring, that too after sharing 1:1 with the direct recruits probably has sealed the career prospects of a majority of our members forever. So before leaving for Chennai, the executive Committee of WB Unit unanimously decided that we would go for complete change in CHQ leadership in the BGM

irrespective of any post coming our way or not. The BGM was attended by a majority of the EC members of our Unit. No praise is enough for the newly elected executive body of Tamil Nadu and its members for the excellent and efficient way in which they organized the BGM in such a short period.

The tone of the BGM was probably set by our General Secretary at the Secretariat Meeting on 21st Feb, morning which continued for the rest of the event. The BGM was formally inaugurated on 21st afternoon in the presence of the Member (P&V), the Member (Inv.) and the CCIT (CCA), TN. The Secretary General welcomed the guests with an emotive speech. Secretary General's report was placed in the morning session of 22nd February. Sri Sayantan Banerjee, our Jt. Secretary in his deliberation over the Secretary General's report delivered an extremely vibrant and passionate speech, which tore into the vicious campaigns going round the corners against WB in connection with post allocation in the last CRC. By the time, the organization was going for vote, on 23rd February, the writing on the wall was clear that the change was inevitable as well as most welcome. The members of the newly constituted CHQ for the year 2014-16 elected in the BGM are:

Sl.	Name& Phone	State	Portfolio
1.	Shri Ajay Goyal (09013853783)	Delhi	President
2.	Shri Amitava Dey (09401991106)	NER	Vice President
3.	Shri K. Sarvanan (09445955014)	Chennai	Vice President
4.	Shri Bhaskar Bhattacharya (08902198888)	WB	Secretary General
5.	Shri Aravind Trivedi (07599101090)	NWR	Additional Secretary
6.	Shri G.S. Raghav (09406718272)	MP & CG	Joint Secretary
7.	Shri Shailendra Lodha (09408793200)	Gujarat	Joint Secretary

8.	Shri Srikant Pandey (07588180358)	Pune	Assistant Secretary
9.	Shri Mohnish Sood (09013853386)	Delhi	Assistant Secretary
10.	Shri Raghavendra Singh (09648372717)	UP (West)	Treasurer
11.	Shri Satish Bhalla (09530755550)	NWR	Zonal Secretary (North)
12.	Shri Sanjay Kumar Pandey (08902196305)	WB	Zonal Secretary (East)
13.	Shri P.V.N. Sharma (08762300250)	Karnataka & Goa	Zonal Secretary (South)
14.	Shri Atul Ahuja (09422812540)	Nagpur	Zonal Secretary (West)
15.	Shri Vijay Bhaskar (08986911104)	Bihar	Zonal Secretary (Central)
16.	Shri Ritesh Kumar (08005446104)	UP(E)	Auditor

A great number of resolutions were passed at the BGM relating to the issues like all-India transfer policy and cooling off period, promotional matters, publishing of seniority list of AOs & PS cadres, immediate allotment of laptops and internet data card to all the ITOs/Senior PS/AOs/PS, early settlement of vigilance matters, immediate implementation of Supreme Court's decision in the case of N.R.Parmar, uniform application of S.K. Shukla, digitization of APAR and other service matter, formulation of a more secure procedure for issue of refunds to protect the Assessing Officers, reduction of the burden of reports from the Assessing Officers, ensuring a better and effective performance of TARANG Scheme (both mobile and internet), making an effort at avoiding court cases and litigations initiated both by the department as well as by our members etc. The change was the need of the hour and now this is time to perform. There are a plethora of problems and issues awaiting the new committee. We wish all the success to them and hope that the rejuvenated and vibrant ITGOA will overcome all the odds and reinvent its old glory.

Cadre Restructuring and West Bengal

Amidst much euphoria the cadre restructuring of the Income Tax Department was finally approved by the cabinet. To the upper echelon of the department this was a step ahead towards bagging more promotions and more and more of financial benefits. To the vast majority upon whom the basic functioning and day to day operations of the department depend, this was a crude shock. In particular, the Income Tax Officers, Group B, were just duped. The concept of penta furcation, i.e., spreading out the newly created posts of ACIT, Group A officers over a period of 5 years meant end of all career prospects for the group B officers. Subsequently in due course, stagnation in the Cadres below would also become inevitable.

But for West Bengal, this was only the beginning. A sub-committee was formed for finalizing the allocation of the new/ additional posts created vide restructuring all over India. Though initially ITGOA, CHQ had not taken any interest in the proceedings of this committee, eventually, it supported the formula proposed by ITEF to the Board, for the allocation of the posts. However, the Board did not follow the proposal and based on incorrect data and inconsistent parameters, adopted a faulty formula for allocation of the posts and came out with a proposal which made Bengal poorer by around 500 posts including vital Group A posts from the existing strength. The JCA, WB unit immediately swung into action and explored all the avenues for redressal of this injustice starting from submitting of its proposals before the local implementation committee, to filing memorandum to the Board, to presenting its case before the visiting sub-committee delegation and so on. Not only had we brought the discrimination meted out to this region to the notice of the authority, agitational programme was launched from 18.12.2013. To make matters worse, at this point of time the core committee report was published which was further detrimental to the interest of Bengal as more posts were destined to be diverted from the state. Reassurances came from the Chairman, (CBDT), the DG, HRD and the Revenue Secretary that no posts would be reduced at all from the sanctioned strength of the Bengal cadre with the request to suspend the agitation. Unfortunately at this juncture, there was no support at all forthcoming from the then Central Head Quarters of ITGOA, who appeared to be quite amused at the unpleasant turn of events for West Bengal. ITEF (CHQ) had initiated a movement in protest against the core committee report. But after getting categorical assurance from the Board regarding just and fair allocation of posts, ITEF (CHQ) called off the agitation and we too were compelled to suspended our agitational programme, though we continued with our efforts of all-round persuasion and explored every possible avenue to get our issue across.

After a prolonged hibernation, the Board came out with the final post allocation notification on 31.03.2014. The existing strength of West Bengal was kept

almost intact with very marginal increase but the entire allocation to this region were shown inclusive of temporary posts liable to be transferred out in future. As we had bitter experience of diversion of various CCIT and CIT posts in the past, we immediately demanded the complete detail of such temporary posts. But even in our worst nightmare we couldn't imagine that the small asterisk placed in the notification against WB region would eventually turn into a catastrophic shower of asteroids. A total 1,633 posts were suggested by the Board for phasing out in coming four years from this region, which include posts of 2 CCIT, 4 Pr. CIT, 4 CIT (SAG), 21 Addl/JCIT, 47 A/DCIT, 17 ITO, 3 AO & 26 PS. This time, the attack was direct without any camouflage that the WB charge had to be cut into size. However, no clarification came from the Board, in spite of repeated requests as to the basis or the standard or the formula that was followed for determining the final allocation.

The West Bengal JCA immediately revived the suspended agitational programme and aggressively intensified it. But this is a very difficult time. The country is presently going through the process of electioneering. The Government in charge is naturally acting as a caretaking one. So we can't expect any policy decision or reversal in this interim period unless the newly elected Government takes over. The Board has also waited for this opportunity sitting over the core-committee report for so long and got its final decision approved only when the Government started acting as caretaking one.

The Board has been playing its usual dirty game of divisive policies aiming at creating a division amongst the members of JCA. In the name of man power allocation, the strife created was between the regions and in the prolonged issue of N.R. Parmar, through selective inaction the Board has been pitting direct recruits against the promotees. Hence our agitation in any form will have to be continued for a much longer period without any immediate gain or result. So we appeal to all to be patient as well as united in the current period of crisis. Congratulations to all the Income Tax Officers who have joined the grade pay of Rs. 5,400/- after completion of 4 years. Details in this matter are available on our website at www.itgoawbunit.org.

Annual General Transfer :

In view of re-structuring and impending revision of jurisdiction, some changes might be required to be invoked in the existing Transfer Posting Policy of WB Unit. All members are requested to offer their suggestions, if any, to the members of the T& P Committee or their respective building representatives. However, it appears that in order to accommodate the ensuing changes, the general transfer orders might suffer a delay this year.

The Transfer Posting Committee 2014-15:

(1) Shri Sumit Ray, Chairman & Convenor (943377 6270) **(2)** Shri Sanjay Pandey (890219 6305) **(3)** Shri Biplab Gangapadhyay (890219 8603) **(4)** Shri Sanjib Roy (890219 5020) **(5)** Shri Sanmay Das Ghosh (890219 6515) **(6)** Shri Arindam Mukherjee (890219 6578) **(7)** Shri Bhaskar Deb (890219 9466) **(8)** Shri Debashis Sau (94328 67488) **(9)** Shri Bishnu Pada Mandal (890219 8099)

7th Pay Commission

As you may be aware the Seventh Central Pay Commission was constituted by the Government on 28 February 2014 with a view to go into various issues of emoluments' structure, retirement benefits and other service conditions of Central Government employees and to make recommendations on the changes required. The terms of reference of the Seventh Central Pay Commission are available on the <http://7cpc.india.gov.in> .

A Questionnaire seeking the considered views of all stakeholders was issued by the Commission, excerpts of which are reproduced below. Members are requested to offer their valuable suggestions in this matter, so that the compiled view of all may be forwarded by the ITGOA, WB Unit to ITGOA, CHQ.

1. Salaries

1.1 The considerations on which the minimum salary in case of the lowest Group 'C' functionary and the maximum salary in case of a Secretary level officer may be determined and what should be the reasonable ratio between the two.

1.2 What should be the considerations for determining salary for various levels of functions falling between the highest level and the lowest level functionaries?

2. Comparisons

2.1 Should there be any comparison/parity between pay scales and perquisites between Government and the private sector? If so, why? If not, why not?

2.2 Should there at all be any comparison/parity between pay scales and perquisites between Government and the public sector? If so, why? If not, why not?

2.3 The concept of variable pay has been introduced in Central Public Sector Enterprises by the Second Pay Revision Committee. In the case of the Government is there merit in introducing a variable component of pay? Can such variable pay be linked to performance?

3. Attracting Talent

3.1 Does the present compensation package attract suitable talent in the All India Services & Group A Services? What are your observations and suggestions in this regard?

3.2 To what extent should government compensation be structured to attract special talent?

4. Pay Scales

4.1 The 6th Central Pay Commission introduced the system of Pay Bands and Grade Pay as against the system of specific pay scales attached to various posts. What has been the impact of running pay bands post implementation of 6th CPC recommendations?

4.2 Is there any need to bring about any change?

4.3 Did the pay bands recommended by the Sixth CPC help in arresting exodus and attract talent towards the Government?

4.4 Successive Pay Commissions have reduced the number of pay scales by merging one or two pay scales together. Is there a case for the number of pay scales/ pay band to be rationalized and if so in what manner?

4.5 Is the "grade pay" concept working? If not, what are your alternative suggestions?

5. Increment

5.1 Whether the present system of annual increment on 1st July of every year uniformly in case of all employees has served its purpose or not? Whether any changes are required?

5.2 What should be the reasonable quantum of annual increment?

5.3 Whether there should be a provision of variable increments at a rate higher than the normal annual increment in case of high achievers? If so, what should be transparent and objective parameters to assess high achievement, which could be uniformly applied across Central Government?

5.4 Under the MACP scheme three financial up-gradations are allowed on completion of 10, 20, 30 years of regular service, counted from the direct entry grade. What are the strengths and weaknesses of the scheme? Is there a perception that a scheme of this nature, in some Departments, actually incentivizes people who do not wish to take the more arduous route of qualifying departmental examinations/ or those obtaining professional degrees?

6. Performance

What kind of incentives would you suggest to recognize and reward good performance?

9. Allowances

9.1 Whether the existing allowances need to be retained or rationalized in such a manner as to ensure that salary structure takes care not only of the job profile but the situational factors as well, so that the number of allowances could be at a realistic level?

9.2 What should be the principles to determine payment of House Rent Allowance?

10. Pension

10.1 The retirement benefits of all Central Government employees appointed on or after 1.1.2004 are covered by the New Pension Scheme (NPS). What has been the experience of the NPS in the last decade?

10.2 As far as pre-1.1.2004 appointees are concerned, what should be the principles that govern the structure of pension and other retirement benefits?

11. Strengthening the public governance system

11.1 The 6th CPC recommended upgrading the skills of the Group D employees and placing them in Group C over a period of time. What has been the experience in this regard?

11.2 In what way can Central Government organizations functioning be improved to make them more efficient, accountable and responsible? Please give specific suggestions with respect to:

a) Rationalisation of staff strength and more productive deployment of available staff;

b) Rationalisation of processes and reduction of paper work; and

c) Economy in expenditure.

12. Training/ building competence

12.1 How would you interpret the concept of "competency based framework"?

12.2 One of the terms of reference suggests that the Commission recommend appropriate training and capacity building through a competency based framework.

a) Is the present level of training at various stages of a person's career considered adequate? Are there gaps that need to be filled, and if so, where?

b) Should it be made compulsory that each civil service officer should in his career span acquire a professional qualification? If so, can the nature of the study, time intervals and the Institution(s) whose qualification are acceptable, all be stipulated?

c) What other indicators can best measure training and capacity building for personnel in your organization? Please suggest ways through which capacity building can be further strengthened?

13. Outsourcing

13.1 What has been the experience of outsourcing at various levels of Government and is there a case for streamlining it?

13.2 Is there a clear identification of jobs that can be outsourced?

14. Regulatory Bodies

14.1 Kindly list out the Regulators set up under Acts of Parliament, related to your Ministry/ Department. The total number of personnel on rolls (Chairperson and members + support personnel) may be indicated.

14.2 Regulators that may not qualify in terms of being set up under Acts of Parliament but perform regulatory functions may also be listed. The scale of pay for Chairperson /Members and other personnel of such bodies may be indicated.

14.3 Across the Government there are a host of Regulatory bodies set up for various purposes. What are your suggestions regarding emoluments structure for Regulatory bodies?

15. Payment of Bonus

One of the terms of reference of the 7th Pay Commission is to examine the existing schemes of payment of bonus. What are your suggestions and observations in this regard?

Use of case laws in assessment proceedings and the assessment orders

(Nilay Baran Som)

1. The function of the courts is to interpret the law. Assessing Officers are expected to be abreast of the important decisions of at least the apex court and the High Courts. While they are bound to follow judicial discipline, they should also be analytical in as far as application of the decisions to his case in hand, since facts of one case may be different from the other. Judicious and correct application of the decisions favourable to revenue can not only effectively counter the citations used by the counsels of the assessee, it can strengthen the point of view adopted by the assessing officer.

2. While there is no second opinion regarding the necessity of the Assessing Officers to be aware of the various judicial decisions, there are two schools of thought on the issue, whether Assessing Officers should suo motu make reference to case laws while establishing his point of view. According to one school of thought, case laws should be referred to and applied, wherever possible. The second approach is a bit cautious. According to this view, carte

blanche use of cases laws is fraught with an inherent danger. The danger stems from possible difference in the finer interpretation of law or in the factual matrix between the subject case and the case under reference.

3. However, case laws cited by the counsel of the assessee have to be countered analytically, if the point made by him is not acceptable to the assessing officer. The inapplicability of the case laws cited has to be established by the Assessing Officer by careful analysis of the legal provision as well as the factual distinction of the case at hand. Sweeping remarks like 'the cases laws cited by the assessee are not applicable since they do not fit squarely to the facts of this case' should be avoided.

4. Having said as above, a few important decisions involving a few issues commonly encountered by the Assessing Officers are discussed below. The following issues have been considered for discussion:

- Assessment reopened under section 147 under various circumstances
- Disallowance under section 40(a)(i)
- Addition on the basis of difference between difference between stock statement filed before the Income Tax Authorities and the Banking Authorities

Sl.	Citation	ACIT vs Rajesh Javeri Stock Brokers Pvt Ltd (SC); 291ITR 500
I	Regarding	Issue of notice under section 148 in cases processed u/s 143(1)
	Ratio in brief & Remarks	<p>Held,</p> <p>So long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 even where an intimation under section 143(1) has been issued. It was observed that since intimation under section 143(1) is not assessment, there is no question of treating reassessment in such a case as based on change of opinion.</p> <p>Point to remember:</p> <p>This case law may be effectively used while disposing of objections to reassessment proceeding and if need be, in the assessment order also.</p>
II	Citation	CIT vs Sun Engineering Works Pvt Ltd (1992) 198 ITR 297 (SC)
	Regarding	Whether expenses not originally claimed in the original return of income can be claimed in the return under section 148
	Ratio in brief & Remarks	<p>Held,</p> <p>On reassessment under section 147, the original assessment is not wiped off but it remains. Matters lost in the original assessment proceedings which have since acquired finality cannot be claimed in the reassessment proceedings. Expenses not claimed in the original assessment cannot be claimed in the reassessment proceedings u/s 147. However, expenses pertaining to the income which has escaped assessment can be claimed. If ROI was filed and no assessment was made and the case is taken up u/s 147, then the expenses not claimed in the original return cannot be claimed u/s 147.</p> <p>U/s 147, the income cannot be reduced below the income originally assessed. Similarly, u/s 147, losses cannot be assessed above the losses originally assessed. The section 147 is for the benefit of revenue and not for the benefit of the assessee.</p> <p>Point to remember: This case law may be effectively issued while dealing with fresh claims made by the assessee during reassessment proceedings.</p>
III	Citation	CIT vs Kelvinator India Ltd 320 ITR 561(SC), confirming the ruling of the Delhi High Court in 256 ITR 1
	Regarding	Issuance of notice u/s 148 in cases originally completed under scrutiny assessment.
	Ratio in brief & Remarks	<p>In the opinion of the Honourable Delhi High Court, when a regular order of assessment is passed in terms of section 143(3), a presumption can be raised that such an order has been passed on application of mind. In terms of section 114(e) of the Indian Evidence Act, judicial and official acts are presumed to have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without applying further, this would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong.</p> <p>A corollary of this decision is that once a case has been subject to scrutiny, reopening the case will be subject to the strict test that there must be some failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment.</p>
IV	Citation	CIT v Usha International Ltd; (2012) 348 ITR 485
	Regarding	Issuance of notice u/s 148 in cases originally completed under scrutiny assessment
	Ratio in brief & Remarks	The following questions were before the Court:

		<p>"(i) What is meant by the term "change of opinion?"</p> <p>(ii) Whether assessment proceedings can be validly reopened under Section 147 of the Act, even within four years, if an assessee has furnished full and true particulars at the time of original assessment with reference to income alleged to have escaped assessment and whether and when in such cases reopening is valid or invalid on the ground of change of opinion?</p> <p>(iii) Whether the bar or prohibition under the principle "change of opinion" will apply even when the Assessing Officer has not asked any question or query with respect to an entry/note, but there is evidence and material to show that the Assessing Officer had raised queries and questions on other aspects?</p> <p>(iv) Whether and in what circumstances Section 114(e) of the Evidence Act can be applied and it can be held that it is a case of change of opinion?"</p>
		<p>Held:</p> <p>(i) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion;</p> <p>(ii) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assessee. Reassessment proceedings in the said cases will be hit by principle of change of opinion.</p> <p>(iii) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reason.</p> <p>(iv) The observation in Kelvinator 256ITR1(FB)-Delhi that when an assessment order is passed, a presumption is raised u/s 114(e) of the evidence act that the order was passed after application of mind and that otherwise there would be a premium on the authority exercising its jurisdiction to take advantage of its own wrong does not mean that even if the AO does not examine a particular issue and had not formed an opinion, it must be presumed that he must have formed an opinion.</p> <p>Points to note :</p> <p>(i) This ratio gives a breather to the assessing officers particularly in cases where the returns were originally only processed under section 143(1)(a). Following Kelvinator, there was propensity of holding the view that even an opinion is formed even if the return is processed under section 143(1)</p> <p>(ii) This decision, in this regard has made some limited, analytical departure from the Kelvinator case and followed the ratio of the Rajesh Javeri case, supra.</p>
V	Citation	Indian and Eastern Newspaper Society vs CIT(SC) 119 ITR 996
	Regarding	Reopening on the basis of Audit Objection, particularly on points of law
	Ratio in brief & Remarks	<p>Whether it is the internal audit party of the IT Department or an audit party of the Comptroller and Auditor General, they perform essential administrative or executive functions and cannot be attributed the power of judicial supervision over the quasi-judicial acts of IT authorities. The IT Act does not contemplate such power in any internal audit organization of the IT Department; it does not recognize it in those authorities only which are specially authorised to adjudicatory functions. Nor does s. 1 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, envisage such a power for the attainment of the objectives incorporated therein. Neither statute supports the conclusion that an audit party can pronounce on law, and that such pronouncement amounts to 'information' within the meaning of section 147(b) of the Income Tax Act.</p> <p>Although this judgement is in the context of the pre-amended version of section 147 (before 1.4.89.), every subsequent judgement relating to the post amendment version of the law has adopted the essence of the ruling that if on a certain point, two views are possible and the Assessing Officer has taken one such view, it is to be presumed that the Assessing Officer has applied his mind while taking one of the views. Such an action cannot be reviewed in the garb of reassessment.</p> <p>However, in a subsequent judgement [CIT vs First Leasing Company Ltd of India 241 ITR 248 (Mad)] the above proposition of the apex court has been distinguished. It has been held that, in the facts of the cited case, Audit Report brought to the attention of the A.O. the relevant provision of law but has not interpreted the said provision. Audit Report should be regarded as a communication of law and not of interpretation of law.</p>
VI	Citation	CIT vs P.V.S Beedies Ltd; 237 ITR 13
	Regarding	Reopening on the basis of Audit Objection – involvement of points of fact
	Ratio in brief & Remarks	Audit party can point out a fact which has been overlooked by the Income Tax Officer in the assessment. Though there cannot be any interpretation of law by the audit party, it is entitled to point out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under the law.

VII	Citation	CIT v. Dhariya Construction Co. (2010) 328 ITR 515 (SC)
	Regarding	Reassessment on the basis of valuation report
	Ratio in brief & Remarks	Audit party can point out a fact which has been overlooked by the Income Tax Officer in the assessment . Though there cannot be any interpretation of law by the audit party, it is entitled to pint out a factual error or omission in the assessment and reopening of a case on the basis of factual error or omission pointed out by the audit party is permissible under the law .
VIII	Citation	CIT vs Crescent Export Syndicate (Cal -28.3.2013)
	Regarding	Disallowance under section 40(a) (ia)
	Ratio in brief & Remarks	<p>The Honourbale Calcutta High court has held that the Vishakapattanam Special Bench decision in the Marilyn Shipping case [46 TTJ 1 (Viz) (SB)] is not good law.</p> <p>In the majority judgement of the special bench, it was held that disallowance under section 40(a)(ia) was applicable only to amounts outstanding or provisions made on the date of balance sheet on which there was a default in complying with TDS provisions. In other words , in the view of the special bench , no disallowance under section40(a) (ia) if tax is not deducted from a payment otherwise exigible for deduction, if the amount is paid during the year.</p> <p>In its ruling, the honourable Calcutta High Court has laid emphasis on the concept that the operation of section 40(a)(ia) depends on the key words, “on which tax is deductible at source under Chapter XVII –B”. The court further held that “this makes it clear that it applies to all expenses. Nothing turns on the fact that the legislature used the word ‘payable’ and not ‘paid or credited.”</p> <p>Point to remember: Assessing Officers should be on guard regarding the latest judicial decision mentioned above. The Honourable Gujrat High Court has given a similar ruling in the case of CIT vs Sikandarkhan N Tunver. Earlier, the Andhra Pradesh High Court stayed the SB verdict on application by the Department.</p>
IX	Citation	Coimbatore Spinning and Weaving Co. Ltd. v CIT[1974
	Regarding	Difference between Valuation of stock as represented before the Income Tax Department and that presented before the banking authorities,
	Ratio in brief & Remarks	It was held by the Madras High court that “the alleged practice said to be followed by business houses of declaring larger stocks to the banks for the purpose of getting higher loans or overdraft facilities has neither been shown to exist nor recognized in commercial circles or by courts, and even assuming that such a practice exists, the Tribunal is not expected to take judicial notice of such sub-standard morality on the part of the assesseees so as to enable them to go back on their own sworn statements given to the banks as to the stocks held or hypothecated by them in the banks

To sum up, the assessing officers should continuously update themselves on the decisions , particularly of the High Courts including the jurisdictional High Court and the Apex Court so that they can use the decisions whenever the situation calls for. Please also note that the opinions expressed are only advisory. One must look into the facts of the case, the law applicable and one judgement before applying any of the case laws as cited above.

Points to be Noted:

1. CBDT has issued a Central Action Plan for the first quarter of the F-Y 2014-15. Members are requested to take due cognizance of it.
2. Instruction no. 4/2014 dated 07.04.2014 has been issued by CBDT specifying the Standard Operating Procedure for verification and correction of Demand available or uploaded by AOs in CPC. Members are requested to adhere to it for demand management purpose.