JUDICIAL UPDATE FOR NOVEMBER 2026 EXAMINATION

PAPER 4: DIRECT TAX LAWS & INTERNATIONAL TAXATION

Super Interlinking

1.	***Prakash D. Koli v ITAT, (WP No. 10075 of 2024, Order dated 08.07.2025, Bombay High Court)***	
	Issue	**Facts, Analysis and Decision**
	Whether a subsequent ruling of the Court can be a ground for invoking provisions of section 254(2) by the Tribunal to rectify its own order?	**Facts of the Case:** The Assessing Officer disallowed ₹ 24.74 lakhs under Section 36(1)(va) on the ground that the employee's share of EPF and ESI was deposited belatedly. The Tribunal, in its order passed under section 254(1) dated 22nd June 2022, allowed the deduction, holding that the amounts were paid before the due date of filing the return under section 139(1). Subsequently, the Supreme Court in *Checkmate Services Pvt. Ltd. v. CIT [(2022) 448 ITR 518]*, held that deductions in respect of employees' contribution to EPF and ESI are permissible only if the amounts are deposited within the due dates prescribed under the respective statutes and not merely

Sec 254(2) only mistake apparent from Record can be Rectified
+
Infant Securities Case
subsequent SC Judgement also not a basis of Rectification
Rectification ≠ Review.

Ao disallowed EE Contribution to PF deposited After the due date under EPF Act → But ITAT allowed (Because it was deposited Before filing ROI) → Supreme Court
Checkmate Services Pvt Ltd.
↓
To take deduction Pay Before due date in respective Act (not Before ITR)
→ Dept Filled Rectification & ITAT allowed rectification & reversed Earlier order

Question :- Do ITAT has power to allow rectification on the basis of subsequent amendment in law.

HC :- Infantary Security & Facilities v. ITO

a subsequent Judgement Even of Supreme Court is not a mistake apparent from Record.

Held :- order of ITAT to rectify its Earlier order is not right.

		by the due date of filing return of income. Based on this judgment, the Revenue filed an application for rectification under section 254(2), which was allowed by the ITAT, thereby reversing its earlier decision. **Analysis and Decision:** The High Court, relying on its earlier Division Bench ruling in *Infantry Security and Facilities v. ITO*, held that a subsequent judgment, even of the Supreme Court, cannot by itself form the basis for rectification under section 254(2). Such rectification is limited to apparent mistakes and does not extend to reviewing or reconsidering decisions based on subsequent legal developments. Accordingly, the ITAT's rectification order was found to be without jurisdiction. ***Note –** Explanation 2 below section 36(1)(va) has been inserted w.e.f. 1.4.2021 vide Finance Act, 2021 to provide that the provisions of section 43B permitting deduction in respect of employer's contribution to provident fund or superannuation fund or any fund for the welfare of the employee if deposited upto the due date of filing return of income would not apply to employee's contribution. The same is to be deposited on or before the due date specified for the relevant fund.*

Simple u/s 264 PCIT can Grant Relief, Even where mistake is made by Assessee.

		This case law pertains to the period prior to the aforesaid amendment in the Income-tax Act, 1961. However, the question of law in the present case with respect to sustainability of rectification of its earlier order by the Tribunal based on subsequent court ruling, continues to remain relevant.
2.	***Crown Electromechanical (P.) Ltd. v PCIT, (WPO No. 343 of 2025, Judgment dated 15.07.2025, Calcutta High Court)***	
	Issue	**Facts, Analysis and Decision**
	Whether an inadvertent omission in the income tax return can be rectified by the Principal Commissioner under section 264 of the Income-tax Act, 1961?	**Facts of the case:** The assessee filed its return of income in ITR-6 for A.Y. 2022–23 declaring total income at ₹ 9,54,872. However, inadvertently failed to include certain figures in the Profit and Loss account under Part A of the return. This error led to the assessed total income being determined at ₹ 3,58,76,000 instead of the correct amount of ₹ 9,54,872, resulting in a tax demand of ₹ 1,02,60,400 under section 143(1). By the time the assessee received the intimation, the time limit to file a revised return had expired. Consequently, the assessee filed a revision petition under section 264 before the PCIT, relying on the tax audit report to support the correct profit figure. Having regard to tax audit reports

There is a mistake in filing ITR. figure were not Entered in P&L (Part A of ITR) → ITR processed and time to file Revised return Lost. (Income wrongly Assessed → Tax Demond Raised ↓ $\boxed{10260400}$ ✓ → Assessee filed Revision Petition u/s 264 and Demanded relief

Instead of — Income Assessed

₹ 954872 3,58,76,000 PCIT Rejected Petition

only Assessee can alter the RoI filled. (PCIT cannot)

Held :- Revisionary Power u/s 264 can be used even when mistake is committed By Assessee. → Bonafide Error can be rectified u/s 264. → matter again given to PCIT for Consideration

		submitted, it was contended that the profit of the assessee is only ₹ 9,54,872 as against ₹ 3,58,76,000 determined in the intimation issued u/s 143(1). PCIT rejected the application on the ground that apart from the assessee, none is competent to alter the return filed by the assessee. **Decision:** The High Court held that under the scheme of section 264, the revisional authority is empowered to grant relief even in cases where the mistake is committed by the assessee. Citing the consistent view of various High Courts, the Court observed that such *bona fide* mistakes are rectifiable under section 264. The Principal Commissioner of Income-tax erred in rejecting the petition without considering this principle. The matter was remanded back for reconsideration in light of this observation.
3.	***Pride Foramer S.A. v CIT (2025) 481 ITR 1(SC)***	
	Issue	**Facts, Analysis and Decision**
	Whether mere failure to obtain a business contract, by itself, would be sufficient to hold	**Facts of the Case:** The appellant, a non-resident company incorporated in France engaged in oil drilling activities, had a 10-year contract for drilling operations in offshore Mumbai from 1983 to 1993 and

Assessee NR French company ↓ Get contract with ONGC 1983-1993 ↓ No contract for some year But Business Continued and → new contract obtained in 1998 ↓ During Intervening Period losses, Exp. Setoff against Int on Income tax refund. → AO disallowed the claim as no Business was carried out By Assessee ↓ ITAT → Allowed ↓ HC → FC, No PE Hence → no Business so disallowance ↓

⇒ Supreme Court:-

There was only Temporary Lull and not cessation of Business

↓

→ co allowed to take deduction, setoff of loss and unabsorbed dep.

→ Temporary lull ≠ closure

	that the assessee had ceased its business activities in India?	obtained another drilling contract in October 1998. During the intervening years, it carried on business corresponded with the Oil and Natural Gas Corporation (ONGC) from abroad and submitted a bid for oil exploration in 1996. During this period, it incurred administrative and audit expenses and filed Nil return income, wherein it credited only interest on income-tax refunds and set-off such business expenditure, and claimed set-off of unabsorbed depreciation against the said income. The AO and CIT(A) disallowed business expenditure and set-off of unabsorbed depreciation on the ground that no business was carried on by the assessee during the relevant AYs. The Tribunal, taking note of the continued correspondence and the bid submitted in 1996, treated the relevant period as a temporary lull in business activities and accordingly allowed the claims. However, the High Court reversed the order of the Tribunal on the ground that the appellant did not have a permanent establishment and corresponded with ONGC from its foreign office, it cannot be said to carry on business in India'.

		Analysis and Decision: The Supreme Court observed that during the intervening years the non-resident company had continuous business correspondences with the ONGC with regard to hiring of manpower services in respect of expert key personnel for drilling in deep waters and had even unsuccessfully submitted a bid in 1996. The Tribunal rightly noted that a business going through a lean period of transition which could be revived if proper circumstances arose, must be termed as lull in business and not a complete cessation of the business. The Apex Court held that the inference that the assessee could not be said to carry on business in India because it did not have a permanent establishment and corresponded with the ONGC from its foreign office, was wholly fallacious and contrary to the very scheme of the Act which does not require a non-resident company to have a permanent office within the country to be chargeable to tax on any income accruing in India. The Supreme Court also held that, in an era of globalisation whose life blood is trans-national trade and commerce, the High Court's restrictive interpretation that a non-resident company making business communications with an Indian entity from

		its foreign office cannot be construed to be carrying on business in India is wholly anachronistic with India's commitment to Sustainable Development Goal relating to 'ease of doing business' across national borders. Accordingly, the Supreme Court allowed the appeals and held that appellant could be regarded as 'carrying on business' in India and was therefore entitled to deduction of business expenditure as well as carry forward and set off of unabsorbed depreciation.
4.	***CIT v. Salesforce.com Singapore Pte. Ltd. (2025) 479 ITR 219 (SC)***	
	Issue	**Facts, Analysis and Decision**
	Whether subscription fees received for providing access to a customer relationship management (CRM) application to Indian customers is taxable in India as royalty under section 9 of the	**Facts of the Case:** The assessee, a tax resident of Singapore, provided customer relationship management related services through a business application to the Indian customers by paying subscription fees. **Analysis and Decision:** The High Court held that since the copyright in the application was never transferred nor vested to the subscriber, the fees is not assessable under section 9 of the Income-tax Act, 1961. Further, since the customer was merely

Foreign co Provided CRM services in India
↓
Indian customer Paid subscription Fees to Access the application
↓
Is subscription Fees taxable?

⇒ customer received only access Right
Copyright is not Transfered.
↓
Hence subscription Fees ≠ Royalty u/s 9.

⇒ further customer merely used software Feature
Hence subscription Fees ≠ FTS

∴ Held :- Subscription Fees is not taxable in India

	Income-tax Act, 1961 or as fees for technical services (FTS) under Article 12(4)(b) of the India–Singapore DTAA?	accorded access to the application and take advantage of the analytical attributes of the software by providing requisite data, the subscription fees would not fall within the ambit of Fees for technical services as per Article 12(4)(b) of the Double Taxation Avoidance Agreement between Singapore and India and therefore, the amount is not taxable in India. The Supreme Court, on a petition for special leave to appeal, did not interfere with the decision of the High Court. Consequently, the ruling of the Delhi High Court attained finality.
5.	***Sharp Business System vs. CIT (2025) 484 ITR 509***	
	Issue	**Facts, Analysis and Decision**
	Whether a non-compete fee paid by an assessee to its joint venture partner, as consideration for the latter refraining from competing in the same business, constitutes	**Facts of the Case:** The assessee, a Joint venture between Sharp Corporation, Japan and Larsen & Tourbo (L&T), was engaged in importing, marketing and selling electronic office products in India. During A.Y 2001-02, it paid ₹ 3 crores to L&T as non-compete fee, being consideration for L&T not setting up order taking competing business activities. The Assessing Officer treated the said payment as capital

Assessee Paid ₹3cr. to L&T as non compete Fees

AO, CIT, ITAT, HC all treated the Payment as Capital Expenditure

⇒ Supreme court Analysis

Non Compete Fees is a revenue Exp Because

✓ it Help to carry out Business efficiently. ✓

✓ does not create new Assets ✓

✓ it merely remove Competition.

	allowable revenue expenditure under section 37 of the Income Tax Act, 1961 or whether the same is to be treated as capital expenditure on account of the enduring benefit it confers upon the assessee ?	expenditure and made an addition to the assessee's income. This was affirmed by the CIT(A), ITAT and the Delhi High Court, all of which held the expenditure to be capital in nature. **Analysis and Decision**: The Apex Court noted that the payment was made purely to enable the assessee to operate its existing business more efficiently and profitably, without resulting in the acquisition of any capital asset or the creation of a new profit-earning apparatus. The non-compete arrangement did not bring into existence any new asset or business structure; it merely removed a competitive obstacle from the assessee's existing commercial field. The Supreme Court further noted that the length of time over which an enduring benefit may accrue to the payer is not determinative of the character of the expenditure. Where a payment facilitates the more efficient and profitable conduct of the existing business without touching the fixed capital structure, it retains its revenue character even if the benefit persists over a period of time. Accordingly, The Supreme Court reversed the order of the Delhi High Court and held

		that the non-compete fee paid by the assessee is an allowable revenue expenditure under section 37(1) of the Income Tax Act, 1961.