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In this issue

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The best articles published in this Journal in the categories of 'Direct Taxes', 'Company Law and Auditing' and 'Allied Laws and Others' will be awarded the Trophies/ Certificates of Appreciation after being vetted by experts in the profession.

Articles and reading literatures are invited from members as well as from other professional colleagues.

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Editor's Views

Knowledge > Information

Albert Einstein had once quoted, "I do not need to know everything. I just need to know, where to find it, when I need it". This quote by one of the greatest scientist reminds an idiom – "One has to learn a lot, to admit that, one does not know certain things"! In the current scenario, it is perhaps a matter of fact that all have the information of, 'where to find information, when needed'. Yes, it is the omnipresent rectangular box – Google!, which is an access to information on fingertips and provides a sense of security and saves one from a charge that – 'one does not know certain things'. In this era of 'e-living ', this Google Gyan has slowly but steadily, made some serious losses to the process of gaining the knowledge.

Current is an ICE Age, which denotes the convergence of Information + Communication + Entertainment. But at the same time, all must understand that ICE is an 'edge' and that too, a double-edged sword!

Today everyone around appears be *knowledgeable*. This is because of the fact that in a conversation, people normally throw certain information which is gathered through wide ranging sources, thereby making the people sanction their knowledge. However, on a detailed inquisition of such person's *'apparent wisdom'*, the real facts come out. This is because of the fact that, information might have been gathered from sources available across the board; however in-depth cognition of the said facts may be missing. This discussion surely leads to decide as to, what indeed is the difference between knowledge and information.

What an information is? It is something that is derived from various sources and interactions. Sitting around and 'googling' something, or chatting with a friend or watching a prime time show on the small screen is something which leads to derivation of information. But this is not knowledge. The Information derived is not specific to a categorical field of study but it is in a generic form. The basic and preliminary data about new handsets or cars or sports or political news is information gatherings. However this does not happen to be actually the field of study of the persons. Information is a raw material or one can say first step for gaining knowledge.

As opposed to this, knowledge happens to be the end result of information. Knowledge connects the bits and pieces or precisely the fragments of information. To say it the other way, information is the base on which knowledge sprouts upon.

What Knowledge is ? It is something or anything which has been derived through sustained efforts, in depth study, getting conceptual clarity and a befitting attitude and aptitude. Knowledge is gained also by studies and removing trash out of information. People many times wrongly construe information as knowledge. Knowledge basically relates to application of the derived information and end result thereof. Information can be present in the absence of knowledge, but not vice – versa. For eg. There can be two types of investors. One who gathers information related to finance and converts his information to knowledge with the help of technical or financial analysis and thereby invests his money. While the other, keeps on gathering irrelevant information, which at the end of the day does not help his cause. Out of the above, quite predictably, the former shall outperform the latter. Thus, it is quite clear that decision should be knowledge based and not information based.

Today, in this professional, competitive and dynamic environment, simply possessing some information makes one 'well informed' but not 'well rounded'. Information is relevant for a short span of time while knowledge once derived is permanent. Information needs to be churned into expertise. Normally, when one flips through the facts, one certainly has an over all view of the same but not necessary an in-depth clarity on the matter. However, if one is not able to analyse and interprete and apply the same when the urgency to apply the same arises, such gathering of information happens to be nothing but a waste of time and energy. Knowledge must be acquired, accumulated and integrated and which is to be held over a span of time so as to apply the same when the situation arises.

Even in professional careers, monstrous amount of information is gathered on various laws and other related matters from 'journals' or 'news letters' or latest judgments by the courts or the grass root – 'Bare Act'. However, the knowledge can be said to have been gained only when one is able to analyze, interpret and implement the same according to the facts and circumstances.

The acquisition of knowledge requires great enterprise and zeal on the part of the acquirer. However, this attitude and aptitude is probably missing amongst the present day professionals, more particularly younger ones. The magnitude of efforts required to acquire knowledge is not being accepted, as a result of which, the irrelevant information are collected which may demonstrate such persons as **'well informed'**. But in this process their careers are misdirected and thereby leading an 'ordinary life' instead of the 'extra ordinary professional life'. The information on latest inventions, news or happenings does not in any way help to promote the professional careers. The worriment with the present day generation is that, people spend a colossal amount of time in gathering nonessential and redundant information.

Two keyboard characters @' and letter 'F' in a cobalt blue square - symbol of Facebook have gained a global acknowledgement and acceptance. But one does not understand as to why, the general people (and they happen to be exceeding 500 million!) keep on writing so many things and share their personal things on a global platform? Today, anybody or everybody – from educated professionals in board rooms to the daily-wage earning construction site worker standing at the 'nukkad' – is heard to be delivering free advice on how to run the government or handle the terrorists with the others listening to him as his disciples and the other persons also share similar information as a counter.

Further, a major issue is that of 'the problem of plenty'. Today, internet costs almost negligible or nothing perhaps, and 'everybody' and 'anybody' who is 'somebody' is bound to have his/her mailbox flooded, all the time and gathering humongous proportion of information.

Today, people keep on chatting endlessly on social networking sites, gathering nothing but most of the time rubbish information but, they do not have time to accumulate information to be converted into knowledge. We are surely able to discover the 'price' of anything and everything but, struggling to realise value of so many important things. People are surely the most happening 'netizens' but, need to be equally good citizens. Extra ordinary time to read and write blogs on some paltry issues are spent but, a sufficient time not spared to gather 'knowledge, that is perhaps the irony of today's propagation.

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09.06.2013

Erratum

Thanks to some agile readers for drawing our attention to the fact that in the May 2013 issue of the journal, the letter 'Z' had not been printed wherever used in the words due to some technical problem in the printing process. The error is sincerely regretted. The Chartered Accountants' Association welcomes the readers' comment, suggestions. Readers may send their constructive opinions to the editor @ rmshah@satyam.net.in

Editor

Articles Invited

The Chartered Accountants Association, Ahmedabad invites articles from members, academicians, students and others for inclusion in the Journal published by the Association. Please note that the article/column should be **ORIGINAL** and it should not have been published elsewhere. It has been the policy of CAA to bring out original articles/columns with the author's own comments and analysis.

President's Message

CA. Prakash B. Sheth
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Dear Reader,

By the time the Journal for the month of June 2013 is received by you, we all are going to be busy in preparation and filing of returns of income. This year e-filing of return is made compulsory for the assessees having income of Rs. 5 lacs and more. Moreover, it is also made compulsory to file tax audit report along with the return of income. To set the problems related to filling up downloaded form no. 3CA/3CB/3CD and to upload it with the return of income, a study circle meeting is arranged on 08/06/ 2013.

The government is examining the possibility of putting in place a formal framework for resolving tax disputes, notably the one with Vodafone, similar to the advance pricing agreements used to resolve transfer pricing cases. While no final decision has been taken, one option is to amend the Income Tax Act to provide for a negotiated settlement mechanism on the lines of advance pricing arrangements (APAs), a recently introduced route to resolve transfer pricing disputes that has become very popular with multinationals. Under advance pricing agreements, the method of determining the transfer pricing for transactions between a subsidiary and its foreign parent can be fixed in advance to minimise the possibility of a dispute. The other option is to amend the Arbitration Act itself to allow tax disputes to be resolved through negotiations.

The another event in May 2013 apart from spot fixing in IPL cricket matches happened in the state of Chhattisgarh in form of an attack by Maoist on congress party convoy that killed about two dozen people, including the president of the party's state unit and maimed others. The Maoists used landmines and guns. It is tempting to identify their prime target as Mahandra Karma, the man who founded the tribal vigilante group Salwa Judum, a hated force armed and licensed by the state to establish a reign of terror over tribal people. Trying to combat Maoism by use of force alone is like trying to eliminate a mosquito menace by killing individual mosquitoes. However sophisticated the weapons used to zap those mosquitoes, the menace will continue till their breeding is stopped, till the cesspool where they grow is cleaned up. Development and democracy are to combating Maoism what DDT is to combating mosquitoes, essentially removing the conditions that enable the problem to grow. Building a new factory or township or opening a new mine would certainly count as development, creating new incomes, jobs and infrastructure. But do tribal people, who have to give up land for the new development to come up, share in the gains?

Such victims of development are only too willing to buy into a vision of the world in which the state is their enemy and their salvation lies in waging war against the state.

If modernity spells destruction of their traditional life, reducing them to refugees within their own country, tribal people would become enemies of modernity and its agents. Tribal people need salvation both from the Maoists and from the paradigm of development and democracy that marginalises their existence and alienates their land. Maoist menace can be eliminated by a combination of ruthless policing, unleashing a special force called the Greyhounds on the Maoists, and expanding and extending the benign presence of the state in the form of schools, primary health centres, irrigation and employment schemes and other welfare, besides police stations.

The Association has geared up its activities in full swing. Many changes are made in form and substance of the mouth piece of the Association and efforts are being put to make it more useful in day to day practice of the members. The month of June 2013 is going to be of full of academic programs and entertainment ones.

1st Brain trust meeting which is on Issues in Income Tax – A Mixed Bag is scheduled on 15th June. As mentioned above, 2nd Study circle meeting is on very important topic of E-filing of income tax returns and tax audit report. 1st Knowledge Clinic was very successful where in the experts on the subject resolved the queries and problems of the members to their satisfaction. 2nd Knowledge Clinic is arranged on 28th June for which the members are requested to send their practical problems to the Association. To take relief from filing of returns and study, a comic play is scheduled on 29th June. I hope it will provide boost to the members to equip them for the more cumbersome month of July, 2013.

With best regards,
CA. Prakash B. Sheth
President
07.06.2013

Analysis of Section 80P and applicability of Totgars Co-operative Society Limited's decision for disallowing claim of deduction u/s 80P

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1. Introduction:

The Co- operative sector has played an important role in development of rural and semi urban areas of country. It has played major role in development of people engaged in the activity of agriculture, milk production and small business people. Through Co-operative societies, exploitation of farmers, milk vendors, small traders and poor people was possible to be avoided. Farmers got better price of their farm products by avoiding middle men, better awareness about getting best price and best time to sell products were provided through co-operative societies. Even finance was provided for purchase of seeds, fertilizers and other means for better farming like to purchase tractor, for bore well, canals etc. Finance was provided at right time, in right amount and at affordable rates by which exploitation by money lenders was also possible to be avoided. The Co-operative societies also helped in avoiding migration of people from rural areas to urban areas. The Co-operative societies also reduced the gap between rich and poor. Amul dairy in Anand, Gujarat is best example of achieving objectives enumerated hereinabove through Co-operative sector. The Government also realized that this sector should be given utmost importance for which various measures were taken for providing finance at cheaper rate, benefit in tax by giving deduction u/s 80P of Income tax Act when activities prescribed in said section are carried out. Such initiatives helped in growth of Co-operative sector and ultimately upliftment of rural India, poor people, farmers, milk producers, craftsmen etc.

2. Deduction u/s 80P:

The said section was introduced in Income tax Act vide Finance (No.2) Act,1967 w.e.f 1-4-1968. Prior to said amendment, vide Finance (No.2) Act,1967, the income tax on such income was not payable vide Chapter VII, Section 81 of Income tax Act which were omitted by the Finance (No.2) Act,1967 w.e.f 1-4-1968.

The provisions of section 80P can be broadly interpreted as under.

- The deduction is available to an assessee being Co-operative society.
- The deduction is available from gross total income if income includes any income referred to in sub section (2) of section 80P.
- The deduction as per sub section(2)(a) of section 80P is available if Co-operative society is engaged in:
  - (i) Carrying on the business of banking or providing credit facility to its members, or
  - (ii) a cottage industry, or
  - (iii) the marketing of agricultural produce grown by its members, or
  - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
  - (v) the processing, without the aid of power, of the agricultural produce of its members, or
  - (vi) the collective disposal of the labour of its members, or
  - (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

  The deduction in above cases shall be the whole of the amount of profits and gains of business attributable to any one or more of such activities.

  There are certain conditions to be fulfilled for claiming deduction u/s 80P(2)(a) (vii) or (vii) as per proviso to said section.
- The deduction as per sub section (2)(b) of section 80P is available if a co operative society is primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or by a members to-
  - (i) A federal co operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) The Government or a local authority; or

(iii) A Government company as defined in section 617 of the Companies Act,1956 (1 of 1956) or a Corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

The deduction in above cases shall be the whole of the amount of profits and gains of such business.

- The deduction as per sub section (2)(c) of section 80P for co operative societies engaged in business other than those specified in 80P(2)(a) and 80P(2)(b) the deduction u/s 80P(2)(c) shall be as under.

(i) Where such Co operative society is a consumer Co operative society, Rs. 1,00,000/ or so much of the profits attributable to said business whichever is lower.

(ii) In any other case Rs.40,000/ or so much of the profits attributable to said business whichever is lower.

- The deduction as per sub section (2)(d) of section 80P is available from income by way of interest or dividends derived by the co operative society from its investments with any other co operative society and the deduction shall be whole of income referred to in this provision.

- The deduction as per sub section (2)(e) of section 80P is available from income from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities and the deduction shall be whole of income referred to in this provision.

(i) The deduction as per sub section (2)(f) of section 80P is available in the case of co operative society, not being a housing society or an urban consumers' society or a society engaged in the performance of any manufacturing operations with the aid of power, Rs.20,000/ or so much of the profits attributable to said business whichever is lower, the amount of any income by way of interest on securities or any income from house property chargeable u/s 22

- As per provisions of section 80P(4), the deduction u/s80P shall not be allowable to co operative bank other than primary agriculture credit society or a primary co operative agriculture and rural development bank. This provision was inserted by Finance Act,2006, w.e.f 1-4-2007.

- The definition of consumers' co operative society, urban consumers' co operative society, co operative bank, primary agriculture co operative society, and primary co operative agriculture and rural development bank have been defined in said section by way of Explanation.

- From referring said section, it can be concluded that legislature intends to promote co operative sector for various activities and accordingly some benefit by way of deduction u/s 80P has been given which can help in reducing the tax liability and promote the sector in the areas enumerated in this section. This sector has achieved various objectives envisaged while giving deduction under this section.

3. The decision in the case Totgars Co operative society Ltd. and its applicability:

It is witnessed that whenever any deduction or exemption is given, litigation is bound to be there. The Assessing officer interprets the section in a manner, the deduction is least and assessee intends to claim the deduction as high as possible. Now a days it has been noticed that relying upon Totgars Co operative society Ltd. VS ITO (2010) 1 Taxmann 71 (SC), the deduction u/s 80P(2)(a)(i) is denied in number of cases. It has been noticed that addition has been made in number of cases by not allowing deduction to co operative society engaged in the business of giving credit facilities to its members relying on the decision of Totgars (supra).

On careful perusal of disallowance of deduction u/s 80P claimed by co operative society engaged in the business of giving credit facilities to its members, it has been noted that facts are not taken into consideration and the decision of Totgars (Supra) is relied upon and additions are made. In view of the reliance of decision of Apex court for making disallowance of deduction u/s 80P(2)(a)(i), it is

necessary to know the facts of the case of Totgars (supra) case and to distinguish the facts where the facts are different, the same should not be applied. In following cases, generally disallowance is made by disallowing deduction u/s 80P.

(i) Interest earned on fixed deposit placed by Co operative society with other banks and interest on investments made by co operative society.

(ii) Locker rent received by co operative society.

(iii) Bill discounting charges levied by co operative society.

(iv) Collection charges for bills.

(v) Draft/cheque charges

(vi) Bill collection charges

Now let us take issue (i) and issue number (ii) to (vi) in two categories and then discuss possibility whether above referred income can be disallowed saying that it is not the income referred to in section 80P(2)(a)(i) of Income tax Act,1961.

· Issue pertaining to Interest earned on fixed deposit placed by Co operative society with other banks and interest on investments made by co operative society.

(A) Discussion on Facts of the case:

(a) It is contended by the revenue that the income by way of interest on fixed deposit with banks by co operative society and interest on investments made in Government bonds etc. invested by co operative society engaged in giving credit facility to its members is not eligible for deduction u/s 80P(2)(a)(i) of Income tax Act,1961 relying on decision of Totgars (supra). Before we go into legal issues, first we should discuss the issue on facts and then on legality. Therefore it is necessary to discuss the facts like how the credit facility to its members is provided by Co - operative society.

(b) The society procures the deposits by way of recurring deposit, monthly income deposit, fixed deposit, savings deposits and interest is paid on Bonds, deposits collected. The society has to pay the interest on the deposits and it is not possible that all the deposits which are collected may be advanced at a same point of time. It is also possible that some deposits may be withdrawn prior to its maturity so far as fixed deposit accepted are concerned and any withdrawals are possible from savings bank deposits or recurring deposits at any point of time for which society cannot go and recover the amount from the borrowers and then pay to the deposit holders and hence, some surplus funds by way liquid funds are always required to be kept for smooth functioning of the society. Even in case of bank, RBI prescribes SLR and CLR for this purpose and hence, for meeting such requirements banks have to keep the funds by way of liquid assets to meet such requirements. To maintain such surplus funds, is part and partial of the banking/lending activity and hence, it cannot be said that the income by way of interest from other banks is not for carrying on the business of banking or providing credit facility to its members.

(c) It is also to be noted that the surplus fund invested in Fixed Deposits with bank, the Co operative society engaged in the business of providing credit facility to its members obtains Over Draft facility and has to pay interest as Over Draft Interest. From the Over Draft on FD's invested out of the surplus funds of deposits received and other reserves, the society uses the funds from the FD's by taking overdraft and said overdraft is used the purpose of lending to its members. So in a way the society earns interest from fixed deposit with bank. The balance in bank overdraft account is kept for repaying the Fixed Deposit on maturity, before maturity, withdrawals from savings banks and recurring deposits and to meet day to day expenses of the society. Thus the Fixed Deposit interest is for the purpose of carrying on the business of banking or providing credit facility to its members and nothing else and hence no inferences can be drawn that the deduction claimed U/s 80P(2)(a)(i) is not in consonance with the provisions of the law and is not for carrying on the business of banking or providing credit facility to its members.

(B) Discussion on legal grounds:

· Decisions relating to interest earned by Co operative society engaged in providing finance to its members:

(a) In case of CIT vs Karnataka State Coop. Apex Bank (2001) 251 ITR 194 (SC), it was held that the investment made by Coop. Bank in compliance with statutory provisions and to enable to carry on banking business are part and partial of carrying on the business of banking for providing credit facility to its members and recognizing such income for the purpose of the business of banking or providing credit facility to its members and said income is eligible deduction U/s 80P of the I. T. Act, 1961. The Honorable Supreme Court also observed that the income from Stock in Trade or circulating capital are also eligible for deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

(b) Another decision of the Supreme Court on the same point is in the case of Mehsana Dist. Co-op. Bank Ltd. vs. ITO (2001) 251 ITR 522 (SC), which says that all such income having close links or nexus with carrying on of banking business or business providing credit facility to its members qualify for the relief and deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

(c) It is also to be noted that in the case of CIT vs Ratnagiri Dist. Central Coop. Bank Ltd. (2002) 254 ITR 697 (Bombay), CIT vs. Nawanshahar Central Coop. Bank Ltd. (2003) 263 ITR 320 (Pune), Shri Ram Sahakari Bank Ltd. (2004) 266 ITR 632 (Karnataka), it has been held that interest earned by a Coop. Credit Society from Indira Vikas Patra and other Bonds is eligible for deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

· Decisions relating to income other than interest earned by Co operative society engaged in providing credit facility to its members:

(a) So far as the income of Draft / Cheque Charge, Bill Collection charges income is concerned it is to be noted that the society collects such income against which the society has to incur the expenses for earning the income and same nature of expenses are paid and profit margin only is claimed as deduction U/s 80P(2)(a)(i) of I. T. Act, 1961. It was also noted by the Honorable Gujarat High Court in the case of Mehsana Dist. Coop. Bank Ltd. vs ITO (2001) 251 ITR 520 (Gujarat) that the hiring of Safe Deposit Vault and Other Allied activities pertaining to business of banking are income derived by the assessee from banking business within meaning of section 6(i)(a) of the Banking Regulation Act, 1949 and hence, the income as referred hereinabove is also eligible for deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

(b) It is also to be noted that in the case of CIT vs. Ahmednagar Dist. Central Coop. Bank Ltd. (2003) 264 ITR 38 (Bombay), it has been held that commission and fees received for collecting electricity charges on behalf of customers by a co operative bank could also be treated as banking activity so as to qualify for deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

From the study of the above decisions, the following inferences can be drawn so as to know the allowability of the deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

a. The Income should be derived from the business of banking or of providing credit facilities to members.

b. The surplus funds available out of the reserves or from the deposits for circulating capital and interest earned on such stock-in- trade or circulating capital is eligible for deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

c. The activities like draft commission, bills collection charges etc. which are allied to banking and providing credit facilities to the customers and income earned thereon are also eligible for deduction U/s 80P(2)(a)(i) of I. T. Act, 1961.

Now let us discuss how Totgars (supra) decision can be distinguished so as to claim the deduction u/s 80P(2)(a)(i).

On careful perusal of decision of Honorable Supreme court in the case of The Totgars Co operative society Ltd. VS ITO (2010) 1

Taxmann 71 (SC), it is necessary to know the facts of the case of decision of Totgars (supra) and the facts of the case in other cases. The details of such possible differences are enumerated herein below.

(a) The Totgars Co Operative society referred herein above in decision was carrying two businesses viz. trading and giving finance to members. The surplus funds from which activity is invested in bank deposits were not possible to be known and hence, the same may be treated as income from other source. Whereas in other cases, the society may be engaged only in one business activity of providing finance to its members and hence, the decision of Totgars (supra) may not be applicable in all cases especially in the case of society which is engaged in one activity only viz. providing credit facility to its members.

(b) It is also necessary to analyse the decision of Ahmedabad ITAT in the case of The ITO, Ward-2, VS M/S Jafari Momin Vikas Co-Op Patan, C.O No.138/Ahd/2012 and ITA No. 1491/Ahd/2012 for AY 2009-10 wherein it has been held that as the assessee had placed the fixed deposits for maintaining liquidity and there was no surplus funds with the assessee as attributed by the Revenue, the interest cannot be considered as income under the head Income from other source u/s 56 of I T Act,1961 but such interest income is liable to be taxed u/s 28 of I T Act,1961. In the case of Totgars Co Op sale Society Ltd. vs ITO- 322 ITR 233(SC) which is relied upon by the Revenue, Totgars (supra) had surplus funds as admitted before AO and such surplus funds were retained out of amounts on marketing of agricultural produce of its members. In the case of Jafari Memon there was only one activity i.e of lending to its members and no sale of agricultural produce and hence, Titagars (supra) is not applicable. In the case of Jafari Memon (supra) following conclusion was drawn and accordingly concluding para was as under.

" In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Honorable Supreme court in the case of Totgars Co Op Society Ltd. (supra) cannot in any way come to the rescue of either Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to conclusion that the sum of Rs. 9,40,639/ was to be taxed u/s 56 of the Act. It is ordered accordingly"

It was said that assessee's cross objection is allowed and Revenue's appeal is dismissed. It was also said in concluding para in Jafari Memon (supra) case that the ruling of the Honorable jurisdictional High Court in the case of CIT Vs Manekbaug Co Op Housing Society Ltd. as reported in (2012) 22 Taxmann. Com 220 (Guj) has been kept in view while deciding the issue.

(c) It is also to be noted that to keep circulating capital for repayment of fixed deposit and recurring deposit on maturity and prior to maturity, for withdrawal from savings account and for meeting day to day expenditure is integral part of business of providing loan to members and hence, interest out of bank fixed deposits meant for circulating capital is business income and not income from other source and hence the facts relied upon the decision (supra) are much different than the facts of other cases.

4. Conclusion:

From above analysis and discussion, it can be concluded that the department also should not apply Totgars (Supra) case in all cases without verifying details of each case. The Assessing officer is passing the assessment order as quasi judicial authority and hence, due care is required to be taken while disallowing the deduction claimed under section 80P(2)(a)(i) where facts of the case are different than the facts of the case prevailing in Totgars (supra) case. Now a days cost of litigation has increased so much and if small or medium societies engaged in lending to its members have to spend on such costs, it would be difficult to achieve the objectives for which such deduction is allowed and it is adversely affected and it leads to unnecessary hardships to the assessee.

IS Audit - Related Issues

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Off late it is perceived that the professional opportunities for practicing Chartered Accountants are slowly drying. Traditional and conventional areas of practice are Audit, Taxation and Finance. By and large the professional opportunities have sprang from mandatory statutory compliance requirements. The use of information technology has increased leaps and bounds in current age and had led people to be more aware about the same. Almost all the routine financial and commercial transactions are executed online. With the introduction of cyber laws and increased use of technology in every facet of life, it has become necessary to regularly check systems and more particularly their integrity, reliability, confidentiality, efficiency and availability. In the current E-Era, the scope and opportunities have also increased for the professionals.

Realising people's dependence on system and increased use of technology, wrong doers found good scope and have become active and have started misusing the knowledge of technology by stealing password, bank account details and confidential information. In this age, the threats to systems have tremendously increased and incidents of computer crime have been increasing significantly. To understand this, first, one has to understand what computer crime is.

Computer Crime- deliberate actions to steal, damage or destroy computer data without authorization, as well as accessing a computer system and/or account without authorization. There may be scams within the organization, if systems are not fully secured. Due to this situation, the requirement to seek the help of Security experts has increased in the organization at the time of development and execution stages of the system. This has created a new area of System Audit, the prime function of which is to ensure security of the data and information system assets of the organization.

Due to the above reasons (Compliance, integrity, strengthening of system and protection of system), IS audit has become necessary. In this backdrop, a Chartered Accountant can play a vital role and new opportunity can be explored in this field. Even ICAI, has taken initiative and introduced a course known as "DISA" (Diploma in Information System Audit) and many organizations are required get IS Audit conducted in the present scenario which is to be performed by a person who is qualified as either DISA or CISA (Certified Information System Auditor). This course is a good mechanism to learn the subject. The basic difference between the two is that CISA is focusing more on practical aspects of the problems than the theoretical knowledge. It is high time for ICAI to make the DISA course more purposeful so that there will be not gap in deliverables. There are ample professional opportunities in this area but because of lack of interest, initiative and meaningful training, the opportunities remained unearthed.

How IS audit is different from Financial Audit?

Many people are considering IS audit as financial audit done through the system or around the system. But it is not so. To better understand this, one must know what IS audit is.

- **As defined by Leicester Business School** - IS Auditing is an analysis of an organizations computer and information systems in order to evaluate the integrity of its production system as well as potential security cracks.
- **Definition of IS auditing system - Weber (1988) "** - IS auditing is a function that has been developed to assess whether computer system safeguards assets, maintain data integrity, and achieve the goals of an organization effectively and efficiently**".**
- **Kaveri (1996) defines** that the IS audit is a process of collecting and evaluating evidences to ensure whether the computer system provides for the safeguard of the assets through adoption of security and control measures, data integrity and optimum use of assets.

Accordingly, Information System is established through an organization to process data speedily, efficiently and economically. IS auditing is a process of gathering and assessing evidence to ensure that a computer system safeguards it's IS assets, including hardware, software, and data, by adequate auditing techniques. Auditor should ensure about the maintenance of data integrity so that the pre-determined objectives, set by the management can be achieved effectively and efficiently with the best use of the resources.

Scope of IS Audit

The IS audit function has matured over the last several years. A significant number of companies now have well established IS audit department. Given this level of maturity, the next logical question is, "What is future of IS audit?".

On one hand, the future appears bright and unlimited. On the other hand, the rapid changes in data processing, information systems, and office automation tend to cloud the future of IS audit. Changes in data processing place a tremendous burden and efforts to keep audit program up to date. How an auditor can be prepared for such changes or anticipate such changes? How he can audit or review a given operation, when the entire function changes or becomes a part of large systems?

IS Audit involves organizing, performing and/or overseeing the examination, analysis and verification of information systems and related records, reports, files and procedures of the organizations, institutions and data centers to ensure appropriate internal and administrative controls and systems integrity are in compliance with applicable laws and regulations. It can be done in the following manner:

- Organize, perform and/or oversee information systems audits in accordance with auditing standards, methods and procedures.
- Participate in the development and determination of audit scope and objectives. Prepare audit plans and coordinates work with appropriate personnel.
- Develop audit programs to determine the adequacy of the controls in complex information systems and data centers.
- Document, test, review and analyze information system applications, controls, procedures, management, access and control of records, reports and files generated by the systems. Identify system and control deficiencies and incidents of actual and suspected fraud, waste, and abuse/ misuse. Recommend and ensure corrective actions.
- Conduct interviews to collect technical data from technical staff to understand and evaluate various information systems and program codes.
- Report progress of audits to administrative superior. Conduct update conferences and meetings with agency staff.
- Prepare routine and special letters, reports and analyses.
- Write programs to copy, summarize and extract data. Utilize audit software to perform analysis, statistical samples, and file comparisons.
- Assist in providing training in the area of information systems auditing.
- Review working papers and/or reports of other staff for technical accuracy and adequate documentation and adherence standards regarding information systems auditing.

IS/ EDP Audit function :- assess the extent to which computer systems can be relied upon to Safeguard assets, Maintain data integrity, Achieve organizational goals and Preserve confidential information.

It is pertinent to note that the auditor is a watchdog not a bloodhound, implying that it is not his responsibility to implement fraud prevention and detection procedures. An awareness of the new risk prevented by the computerization and the implementation of appropriate controls to mitigate this risk by management, would provide reasonable assurance to the auditor on the legitimacy of transactions and reliability of the records. An information systems security policy is an essential starting point to achieve this.

Effects of IS on Auditing:

The audit function in an IS environment would seek to evaluate the adequacy and reliability of the control environment set up by management to protect business information before forming a professional opinion. The adequacy and appropriateness of controls will depend on the degree of risk involved in particular types of electronic activities. The audit function in IS environment will entail an understanding / awareness on the part of the auditor of IS risks; IS controls, IS Auditing standards and procedures/guidelines issued by the regulating bodies. Regularly update and maintain his skills in line with changing technology

The auditing may be done by performing two types of test

1) Compliance Test 2) Substantive Test.

1. Compliance Test – Auditors need to verify that information system procedures are being followed while entering data into data processing system. These procedures act as an underlying evidence of whether the data is correctly fed into processing system. Compliance test are being used to verify the correct functioning of internal controls. Then they are carried out to indicate whether such internal controls are working properly. This provides the auditor with the overall picture of the truthfulness of the data entered in to processing system.

2. **Substantive Test** – Auditors should obtain evidence to verify the completeness, validity and accuracy of client's records. The evidences are an important factor in determining auditor's opinion on the records.

IS Audit Opportunities

As of today, every bank is required to get done the IS audit due to mandatory requirement by RBI. Till today, the approach is to get IS audit done only for the sake of compliance requirement of RBI. But many multinational organizations and particularly those who are CMM5 (following Capability Maturity Model) voluntarily carry out IS audit done through professionals for strengthening their system.

1. RBI has come out with Master Circular on inspection & Audit Systems in Primary (Urban) Co-operative Banks vide no. RBI/2012-13/60-UBD. CO. BPD. (PCB). MC. No. 9/12.05.001/2012-2013 dated July 2, 2012 in which thrust has been put upon to develop separate IS department within the bank and to carry out IS audit on On-Going basis.
2. SEBI has mandated system audit for all the exchanges vide its circular MRD/DMS/13/2011 date 29th November, 2011.
3. SEBI has came out with master circular vide SEBI/ IMD/MC No.2/836/2011 dated January 07, 2011 which require all mutual funds to get System audit by an independent CISA/CISM qualified or equivalent auditor.
4. Many large corporate are seeking help and assistance of DISA and CISA in order strengthen their system.
5. Recently, BSE has issued a circular according to which Trading Members who have availed of the IML/ Internet Trading facility from the Exchange are advised to submit the System Audit Report in the prescribed format & SSL (Secured Socket Layer) certificate for the year ending March 31, 2013 latest by April 30, 2013. The link & system audit report format for FY 2012-13 of BSE and MCX-SX for reference is given hereunder:

   http://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20130319-19
6. NSE has required its trading members for Annual System Audit having NNF facility vide its circular no. 24/2013 dated April 3, 2013.

   ISACA has identified some opportunity for which link is http://www.isaca.org/Journal/Past-Issues/2002/Volume-3/Pages/New-Opportunities-for-Information-Systems-Auditors-Linking SysTrust-to-COBIT.aspx
7. "Recently, SEBI has came out with circular no CIR/ MRD/DP/ 16 /2013 dated May 21, 2013, revising the requirement of system audit and decided as under :

   The stock brokers / trading members that provide the facility of algorithmic trading shall subject their algorithmic trading system to a system audit every six months in order to ensure that the requirements prescribed by SEBI / stock exchanges with regard to algorithmic trading are effectively implemented. Such system audit of algorithmic trading system shall be undertaken by a system auditor who possess certifications as prescribed in this circular and one of the qualification prescribed is DISA (Post Qualification Certification in Information Systems Audit) from Institute of Chartered Accountants of India (ICAI)."

Contents of Audit Report

After completion of IS audit, Audit report is to be prepared which should consist of Executive Summary which comprises of important points covered in the report. The user of audit report should be able to have an overall idea about the audit conducted and the required details noted down thereon, by having bird's eye view on the report.

It should contain client's name, auditors name, visit date, name of persons visited, report date. It should also give table of contents as below.

Table of contents:

A. Organisation and administration
B. Program maintenance
C. System development
D. Purchased software
E. Access to data files
F. Computer processing
G. Database
H. Password
I. Application controls
J. Viruses
K. Internet
L. Continuity of operations
   a) physical protection
   b) access control
   c) personnel policies

d) insurance

e) back-up procedures

f) disaster recovery plans

The above contents are briefly explained as below.

A. Organisation and Administration

The auditor should report the platform under which system is operating. It may be window based, java, linux etc. It is advisable to obtain formal chart of the organization and systems before the start of the audit. The auditor should also inquire as to whether the organization has developed formal IT policy and it is operating with IT strategy

B. Program Maintenance

It is foremost important that IS department take all the necessary steps to maintain various libraries for IT assets including data, programmes, executable, packages, patches, records for various program changes etc. The IS auditor must examine whether the IS department is maintaining test data for verification of several application and/or executables provided by the vendors.

C. System Development

IS department itself can deliver in time reporting by developing small programs rather than depending on the system vendor. After a system is developed and put to use, it is necessary to prepare manual to be given to the operators to use the system and it should be periodically reviewed to include some missing points. The IS auditor has to report system development life cycle.

D. Purchased Software

The auditor should examine the agreement with vendors and should know about the terms and conditions including Escrow agreement. The auditor should investigate as to necessary actions/steps to be taken by the executives while actual delivery held including acceptance criteria, delivery deadlines, plan of implementation or establishment of the system, warranty, penalty in case of delay etc.

E. Access to Data Files

It is necessary to have formal written data security policy. The same policy should contain topics such as data ownership, confidentiality of information, and use of password etc. This security policy must be communicated to individuals in the organisation. Policy also specifies control statements for offline and /or online data file access by the personnel. It is better and in the interest of the organisation to implement some encryption techniques to protect against unauthorised disclosure or undetected modification of sensitive data.

F. Computer Processing

The auditor should report about computer processing which should be done at a level of satisfaction in the organisation.

G. Date Base

The auditor should report on whether IS department has performed the following jobs:

1. Defining user and program access
2. Mediating between users who share data
3. Maintaining the integrity of the database
4. Setting standards of backup and recovery
5. Setting standards for packing and deletion of the data.
6. Maintenance of logs of the use of utilities.
7. Running the integrity checking programs periodically for checking the accuracy and correctness of linkages between records
8. Password and other online controls for the database.

H. Password

There should be a formal procedure for the issue and subsequent control of passwords. The procedure also depicts rules for maintenance of log of password usage and its periodical review and reporting

I. Application Controls

Input

Controls that provide reasonable assurance that for each transaction type, input is authorised, complete and accurate and those errors are promptly corrected, if any. The auditor should see the training programs of respective employees for using edit checking e.g. check digits, range and feasibility checks, limit tests, etc

Output and Processing

The controls provide reasonable assurance that transactions are properly processed by the computer and output (hard copy or other) is complete and

accurate, and that calculated items have been accurately computed.

J. Viruses

The auditor should know and report about proper steps taken to avoid virus prone action in the organization. There should be formal anti-virus policy.

K. Internet

The auditor should report about the internet connection which may be lease line or broad band or any other. He should also see that internet connection is given to limited users and it is not connected with LAN or if it is connected it should be with adequate security.

L. Continuity of Operations

a) Physical Protection

The auditor has to see that information system assets are adequately protected from external threats like fire, earthquake, robbery, flood etc. Organization should develop emergency plan for various hazards, natural calamities to safeguard the assets and loss of data, system etc

b) Access Control

Computer server space should be assigned separately and its access should be limited to the people working in that section. The auditor should see that CCTV and alarm system installed in the premises are of level of satisfaction and are installed in critical areas in the premises to have general/specific watch on the movements in those areas. The IS cabin at head office, should be with strong lock and key facility which will provide proper means for security.

c) Personnel Policies

The IS auditor should ask the Management to have written personnel policies specifying job description, job specification, issue of identification tag, responsibilities and authorities and report accordingly. There should be regular rotation of the employees on the different roles and locations of the organizations.

d) Insurance

The auditor should report on whether the insurance policies do covers almost all risk of assets. The organization has to take proper steps to insure its property against various types of risk. The auditor should report, if the assets are underinsured. The auditor should also see that software and its documentation are put at proper place, storage media, consequential loss etc are under proper and adequate insurance cover too.

e) Back Up Procedures

The IS auditor should report on whether Proper backup procedure (onsite – offsite and offline/ real-time) is followed by the organization and it is periodically verified for its validity. It is advisable to have proper steps for testing of the backup facility. In absence of such regular testing, it will not assure the organization for better business continuity in case of any hazardous events or in the events of natural calamities. After giving due consideration as to secrecy of the data, organization can also outsource such critical job to the outside agency.

f) Disaster Recovery Plans

The IS auditor should see that comprehensive contingency plan is developed, documented and periodically tested to ensure continuity in data processing services. It should also provide for recovery and extended processing of critical applications in the event of catastrophic disaster. The auditor should decide whether the organization has identified critical processing priorities for each activity. The auditor should check whether there is back up infrastructure facility for continuance of the business, if normal operation from any of premises is get halted for some time, a parallel server processing facilities or offsite server processing facilities are good options. A team of Disaster recovery should be established and responsibilities of individuals within disaster recovery team be defined and time be allocated for completion of their task.

Disclaimer:

Some of the information narrated above in the article are taken from few websites for the benefits of the readers.

Due to shortage of space, the checklist of IS AUDIT is not published here. It will be uploaded at the website of CAA. An attempt is made to give an overall idea in the area of IS Audit and its related issues. Technical details are avoided so as to make this article easy to understand.

More Unknown Than Known

CA. Rajni M. Shah

Is a company dealing in shares/securities, a Non Banking Finance Company?

The sanity behind penning down this article emanates from the fact that off late, when a new company whose object encompasses trading or dealing in shares or securities, applies with the Registrar of Companies ("ROC" for short) for getting registered with the Ministry of Corporate Affairs, the ROC asserts for a minimum capital requirement of Rs. 2 crores i.e. it adduces registration of the proposed company as a "Non Banking Finance Company" ("NBFC" for short)

Off late, not only the newly incorporated companies, but even the existent companies face the situation when it approaches the Registrar of Companies for change in its objects, if any or some part of their name comprises of words like *'Finserve', 'lease', 'finance', 'share'* to name a few.

The matter of contention that oozes out from the above discussion is why ROC is so stringent with regard to registration of new companies or alteration of object of a subsisting company whose principal business may embody acquisition of shares, stock, bonds, debentures or securities issued by government or a local authority or other marketable securities of like marketable nature.

To decide whether a company dealing in the above business would constitute an NBFC or not, we need to have a reference to clause (c) of Section 45 I of the RBI Act, 1934 ("The Act" for short). Section 45 I of the Act defines "Financial Institutions". The relevant extracts have been reproduced herewith for ready reference:

"[(c) "financial institution" means any non-banking institution which carries on as its business or part of its business any of the following activities, namely:–

*****

*****

(ii) the acquisition of shares, stock, bonds, debentures or securities issued by a Government or local authority or other marketable securities of a like nature:"

On a closer scrutiny of the above provision, various questions relating to the phrases used in the said clause get mooted viz.

i. ..as its business or part of its business

ii. …the acquisition of

iii. …shares, stock, bonds, debentures or securities issued by a Government or local authority

iv. …other marketable securities of a like nature:"

Each of the above points is taken up for consideration as under:

I. "as its business or part of its business"

The basic thread running in all the points specified in clause (c) of section 45 I of the Act is the principal business of the companies must be dealing with what is known as "finance". In the case of an investment company, the acquisition of shares is one of the spicy transactions. It can be called a principal business only when it **deals in business** of acquisition of shares, stocks, bonds and such other marketable securities issued by government or local authority. The term principal business can be construed to be carrying on such business for which the company has primarily been incorporated for.

Since the term 'principal business' has not been defined in law, the Reserve Bank has decided the description of principal business for the purpose of identification of an NBFC. The RBI has vide a press release 1998-99/1269 dated April 8, 1999 has stated a company will be treated as an NBFC if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) and income from financial assets should be more than 50 per cent of the gross income. Both these tests are required to be satisfied as the determinant factor for principal business of a company.

It is more relevant in view of the statutory provisions that an NBFC requires compulsory registration with the Reserve Bank to commence or carry on the financial business as the case may be. NBCFs incorporated on or after January 9, 1997 are not allowed to commence the business of financial activities without obtaining a Certificate of Registration from the Reserve Bank.

Auditor's Duties

The auditors of all NBFCs are required to report directly to the Reserve Bank the non-compliance by any company of the above statutory provisions.

II. "the acquisition of"

Looking to the phrase "the acquisition of" used in the clause, the question that would arise is: does the term 'acquisition' mean only acquiring of securities and not sale thereof, so as to distinguish an investment company from a trading company and on a plain reading the said meaning might appear to flow from the provision. However, a closer scrutiny reveals that the same cannot be the legislative intent considering the context in which the provision appears and the scheme of the Act.

The question that remains to be answered, despite the aforesaid legal position, what is the distinguishing line which can be drawn in case of investment and trade simpliciter, considering the language employed by the provisions, namely, "acquisition" of shares or securities, etc. The section writes that one of the principal businesses could be acquisition of marketable securities of a like nature. In other words, securities which are in the nature of shares, stock, debentures, etc. or securities issued by a Government. Furthermore, such securities have to be marketable. The concept of marketability cannot be lost sight of when one talks of acquisition of marketable securities. To put it differently, any kind of security when acquired has to be marketable. It would be a paradox if one ascribes the narrow view adopted to the term 'acquisition' of shares etc. so as to mean acquiring of shares and securities only for the purposes of receiving dividend or interest there from. In these circumstances, there would be no business.

III. "shares, stock, bonds, debentures or securities issued by a Government or local authority"

The issue that becomes apparent from the above phrase is whether only trading in shares or securities or bonds issued by the government or local authority are to be considered or even trading in shares or stock of other companies are also covered within its purview.

In the humble opinion of the author, the above provision should be read or construed as:

(a) Shares, stocks, bonds, debentures or

(b) Securities issued by government and local authority or

(c) Other marketable securities of like nature

Thus, it becomes crystal clear that any company whose principal business comprises of trading in shares, stock, bonds or debentures of other companies fall within the purview of section 45 I (c) of the RBI Act, 1934.

However, what a layman may understand is that only trading in shares, stock, bonds, debentures, or securities issued by the government or local authority is to be considered for the purpose of section 45 I of the Act.

However, this view is not permissible looking to the way the phrase has been drafted. General English grammar rules stipulate placing of **a comma before "or" when what follows it means the same as what precedes it. Thus the intention of the legislation is crystal clear. The clause has been reproduced here for a better reference:**

*"...the acquisition of shares, stock, bonds, **debentures or securities** issued by a Government or local authority or other marketable securities of a like nature:"*

Thus it is very much evident that all the phrases viz.

(a) Shares, stocks, bonds, debentures or

(b) Securities issued by government and local authority or

(c) Other marketable securities of like nature

shall be construed separately and not as a single phrase.

IV. "...other marketable securities of a like nature"

Thus "marketable securities" covers securities other than those mentioned in (a) and (b) above. "Shares" mentioned in (a) covers shares of all companies, whether private or public and whether listed or unlisted.

However, the accustomed understanding which prevails all over the map is that companies dealing in shares or stocks are outside the gambit of Section 45 I of the RBI Act, 1934. What a novice understands to be an NBFC is "something related to lease or lending money or acceptance of deposits".

Conclusion

Ironically many companies, who are engaged in the business of trading of shares or securities, still carry on their business peacefully without the need for getting registered as an NBFC. Such companies manage to have their way out through the escape clauses present in our legal system.

However, the system is slowly undergoing an "about face" whereby new companies whose principal business comprise of trading in shares or securities are required to get themselves registered with the Apex Bank as an NBFC. The recent actions on part of the ROC, which compels the new companies to get registered as an NBFC, if their object comprises of trading or dealing in shares or stock, has suggested that the view adopted by the department is very clear and that trading in shares or stock or debentures actually requires registration of the company as an NBFC.

Hence looking to the above discussion, a point that emerges out is that henceforth if a new venture in the form of a company needs to be started, with an object of trading in shares, securities or stock etc. necessary cognizance shall be taken in respect of the requirements of a minimum capital of Rs. 2 crore, compliance with the stringent terms and conditions and above all getting themselves "*Registered*" as an NBFC.

Procedures

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Obtaining Registration Number under Gujarat VAT Act 2003 & Central Sales Tax Act 1956

Introduction:

Vat was introduced in 2006 however its bill was laid first in 2003 and thus the ACT was called the Gujarat Value Added Tax Act 2003 and there were necessary amendments made. The first step is to get registration under the VAT. In the year 2005 the procedure was started to change the old Sales Tax Number into VAT TIN (Tax Payer's Identification Number). The existing numbers were modified to make TIN of eleven digits with the initial digit being the state code i.e. 2 and then the next two digits identifying the district and the next three numbers the jurisdiction and the remaining digits being the unique number. Those who after the given date wished to apply registration shall be asked to register under the VAT Act. Through this article I shall try to highlight the major points and requisition trying to explain the litigation as necessary.

Provision of the Act

When the total turnover of a dealer in particular financial year exceeds Rs. 5 lacs (Including OGS) and turnover of purchase or sales of taxable goods exceeds Rs. 10000/- except for casual dealer, whose threshold limit is taxable turnover exceeding Rs. 10,000/- then such dealer has to obtain registration compulsorily under Gujarat Value Added Tax ACT 2003 (Sec. 21).

A dealer who is selling only tax free goods specified in Schedule 1 of Gujarat Value Added Tax ACT 2003, 2003 does not require registration. A dealer whose total turnover of purchase or sales is less than Rs. 5 lacs and turnover of purchase and sales of taxable goods is less than Rs. 10000/- also does not require registration. The dealer shall have to make the application to the jurisdiction officer within one month from the date of the turnover crossing the threshold limit.

A provision is also made in the ACT 2003 to obtain Voluntary registration. (Sec. 22)

To Obtain voluntary registration under sec.22 one must deposit Rs.25, 000/-

In challan once the primary check of registration is completed. This is the major difference between the Compulsory Registration and Voluntary registration. Rule 5 was amended on 1st Dec 2011 with regards to submission of documents and deposit

(A) Following forms need to be filled.

(1) Form No. 101 - Application form for obtaining Registration under VAT ACT 2003..

(2) Form No. 101A- Details of Additional places of Business, branches and Godown in the State of Gujarat...

(3) Form No. 101-B – Additional places of Business, branches, Godown outside the state of Gujarat along with Tin Numbers

(4) Form No. 101C – Form for informing name, address, etc. and specimen signature of the persons authorized to sign invoice, delivery challan, credit note, debit note, various forms or declarations. (Separate form for each person need to be filled.)

(5) From No. 101D – Form for information of partners, directors and persons responsible for business

(6) Form No. 101E – Form for manufacturing concern for submitting information of capacity etc

(7) Form No. 106 – Declaration/revised declaration regarding Manager or Managers of Business

Details required for filling the form.

(a) Name of Business

(b) Address of Principal Place of Business

(c) Telephone number, Fax Number. Email id, Website

(d) Address of additional places of business / branches , godown within the state of Gujarat

(e) Address of additional places of business / branches, Godown outside the state of Gujarat with TIN of respective branches.

(f) Nature of Business

(g) Name of commodities relating to Business

(h) Name, residential address , birth date, telephone number, fax number, email id of proprietor or karta of HUF, and names of members of HUF, In case of

partnership firm details of all partners and their extent of share of profit/ loss. In case of a company the details of all directors

(i) If partners/ directors have interest in any other business then details thereof including his percentage of interest and TIN of that business.

(j) Permanent Account Number of Proprietor /karta of HUF/ Partnership firm and all its partners/ Company & all its directors and in branch the branch manager.

(k) Import Export Code Number

(l) Central Excise Registration Number

(m) Professional Tax Enrolment Number and Registration Number

(n) Electricity Supply service Number

(o) Date on which the Total Turnover of Sales or Purchases exceeded Rs. 5 lacs

(p) Date on which the turnover of purchase and sales of taxable goods exceeded Rs. 10000/-

(q) Name of Bank, address of Branch, Type of Account, Account Number

(r) Details of Property held

(s) Name, Date of Birth, address, telephone number, & PAN of all people other then those mentioned above who shall be authorized to sign the invoices.

(t) Name and address of the person who will act as manager of the business.

(u) List of Purchases/ Sales made

Documents to be Attached along with Application Forms

(a) In case of Partnership firm Partnership deed

(b) In case of Company Memorandum and Articles of Association and also the resolution for obtaining registration number under the ACT 2003, and appointment of some Manager in case it is a Branch of the company

(c) Proof of Place of Business

If owned - Copy of document with index, Municipal Tax Bill, Allotment letter, possession letter, Share Certificate, Electric bill, Telephone bill,

If rented - Documentary proof of ownership of landlord, rent

Receipt, rent agreement

If owned but not in the name of business - Proof of Original owner and consent letter regarding permission to use the place.

(d) PAN card of the Proprietor / Karta of HUF/ Partner & Firm/ Company & its directors. If Card not received Copy of Form 49A along with acknowledgment

(e) Residential address proof of proprietor / Karta of HUF / all the partners / all the directors and of Branch Manager

If residence is owned - Copy of document with index, Municipal Tax Bill, Allotment letter, possession letter, Share Certificate

If owned but not in the name of proprietor or partner or director – Proof of Original Owner and Consent letter

If residence is rented - Documentary proof of ownership of Landlord, rent receipt, rent agreement,

(f) Ration Card, Election Card, Electric Bill of Residence, Telephone Bill of Residence, Passport, Proof of Domicile Notarized Passport Copy of Each Partner/ Proprietor/ Director

(g) Two copies of recent passport size photographs

Proprietary business - of Proprietor

HUF proprietor - of Karta

Partnership Firm - of all the partners

(h) Certificate of Shop and Establishment or acknowledgement for application made with Shop and Establishment Department

(i) Copy of TIN No. /CST No. Certificates of Head office, branches outside the state of Gujarat.

(j) Authority letter in favor of Authorized representative Form 603.

(B) The dealer who is making an application for obtaining VAT number voluntarily then he has to deposit an amount of Rs. 25000/- in Govt. treasury. This means he has to fill VAT Challan and pay Rs. 25000/- . In the Challan, at the place of Registration number and at the place of period, he has to write "For New Registration- Advance Deposit". The amount so deposited is eligible to be adjusted against the future liability of VAT. It is most important to note that it cannot be setoff against any liability to pay CST.

(C) A dealer applying for registration voluntarily or compulsory has to furnish a security will not exceed

Rs. 10000/- The said needs to be deposited vide challan in the government treasury. Rs.10000/- needs to be first deposited and then originals of the documents must be taken for proper verification. The Security so collected is to be returned within 2 years from the date of which the number is granted

Documents required to be submitted and for Original verification:

(a) Last paid electricity bill in his name or in the name of parents or spouse Of Business or Residential Property

(b) Last paid telephone bill in his name or in the name of parents or spouse Of Business or Residential Property

(c) PAN Card

(d) Proof of ownership of place of business in his name or in the name of his parents or spouse

(e) Proof of ownership of residential property in his name or in the name of his parents or spouse

(f) Notarized photocopy of passport of proprietor, Managing partner, Managing Director or karta of HUF

(g) Certificate of Registration under Shops and Establishment ACT 2003

(h) Certificate of registration under Central Excise ACT 2003.

The application is to be signed by proprietor, Karta of HUF, Partner of a Firm or Director or principal officer or duly authorized person of a Company. One proof with regards to Business establishment, One proof with regards to any one Director or Partner or of Sole Proprietor or Karta. One Proof with regards to Business Property needs to be got in original for verification purpose

(D) The application for registration is to be made to the SRU commercial tax officer having jurisdiction to the place of business of a dealer. However, if the dealer has more than one places of business in the state of Gujarat then the application is to be made to the commercial tax officer having jurisdiction over the principal place of business and the copy of the same can be given at all additional places or one can ask for additional copy of certificate

(E) The copies of all the documents mentioned above are required to be certified as true copies by a Gazetted officer or a STP or an Advocate.

(F) Even if there are more than one branch in Gujarat the registration can be got only at the principal place of business and the subordinate places or branches will either ask for a copy of additional registration number which shall be provided to them by adding 01 or so forth. The branches shall intimate the Jurisdiction officer of being have registered at the principal place and that all returns shall be submitted at the principal place

(G) There is a unique provision with regards to NLD (Non Localized Dealer). They are such dealers who do not have business place in Gujarat and wish to apply for registration under GVAT or have carried out business in Gujarat and have crossed the threshold limit. The procedure to be followed is same. The registration Number shall be granted to them after proper checking of papers necessary. In such cases appointment of one local person as Manager is a must. If such dealer happens to buy a place of business then the NLD number shall be cancelled and the dealer shall have to apply a fresh under the GVAT Act.

Procedures for obtaining Registration Number under Central Sales Tax Act, 1956

Introduction:

Just like GVAT 2003 Central Act also provides for compulsory or voluntary registration under the Central Sales Tax Act 1956. However here there is no threshold limit thus the dealer has to apply for compulsory registration under the CST Act 1956 within one month from the date of sale or purchase in interstate trade or commerce

Provision

(A) If the dealer is applying for the Registration under Central Sales Tax ACT along with Registration number under Gujarat Value Added Tax ACT 2003 then he has to fill up the following forms

(a) Form No. A – Main Application for obtaining C.S.T. Number...

Additional Details required for filling the form

(a) Court fee stamp of Rs. 25/- is to be affixed on application form

(b) Language in which books of accounts are kept

(c) Date of commencement of business

(d) Date on which the first transaction of inter state trade and commerce entered.

(e) List of items required to be bought in the course of interstate trade and commerce for the purpose of resale, manufacturing process or for packing.

(b) Form No. 5B -

Details regarding the name of person who will act as manager of Business

(c) Guarantee:-

Just like VAT Guarantee is to be furnished of Rs. 10000/- which is returned after 24 months

(B) If the dealer is applying for the registration after having registered under GVAT he shall have to furnish the details such as PAN, Name of Proprietor/ Partners with their share/ Directors etc,

(C) The CST application must be signed by all partners and directors in presence of a witness

Procedures for Submission of Application

The application forms as above suggested must be properly filled either online or manually. On filling the application a receipt is generated and the same is considered the acknowledgment of being the number granted till the date of receipt of registration number or an express note denying the registration. If one has filled the registration on online basis then the documents to be attached along with the application shall be submitted at the time of first hearing or even can be sent across to the jurisdiction officer along with the receipt on any future date before the date of first hearing. The application can also be send via post to the jurisdiction officer in which case the acknowledgment shall be couriered. However it is always advisable to file the application in manual format..

Procedures after Submission of Application

After receipt of application of obtaining VAT Registration number and/or Central Sales Tax number, the commercial tax officer give the date for hearing. On the date of hearing, the dealer and the authorized representative shall have to remain present with books of accounts, bills, vouchers and original papers of the copies submitted with the application form. Please note once the application is prepared and filled with the department then first it is verified by CTO. In manual application the data entry is done by CTO. Once the same is done then the assessee has to be physically present with necessary original documents for verification in front of the Assistant Commissioner of SRU of the ward where the assessee attempts to make a registration. Once it is so done and he finds everything proper and on being satisfied he approves the application which is further sent for Spot verification. Meanwhile a temporary number is granted. After issuing the temporary registration number to such dealer, the procedure of Spot verification shall be carried out in accordance with the provisions under rule 5 and if the registering authority is satisfied, a certificate of registration shall be issued within thirty days from the date of application. However if the During the procedure of post verification in accordance with the provisions under rule5, if the registering authority is not satisfied with any detail furnished by the dealer, the registration number issued earlier shall be cancelled with effect from its date of issue

Tatkal Registration

If someone wants to go for tatkal registration then first of all the details are to be filled online under tatkal registration with that log in id created one must log in and first make epayment. Please note epayment is compulsory under the Act. Remaining all provisions are same only additional Rs.1000/- needs to be paid if a dealer opts for tatkal registration. Here the temporary number is received on the same day without verification of documents. The documents are to be submitted with the ecopy within 2 working days. However Nonlocalized Dealers are not allowed to do Tatkal Registration. If an application for registration is in order and the registering authority is satisfied with reference to above requirements, a registration number shall be issued within five working days from the date of online application

Printing of Certificate

Once the data entry is done and the papers verified a Provisional Number is available within 2 days of the application and such provisional certificate can be printed online by making registration on the govt website. The effective date will be in Provisional Case is the date on which the application is made and in the case of Compulsory Case is the date on which the limit of Rs. 5lacs is crossed. Once the spot verification is done then the certificate is made available. In general case it is done in 5 days however it has to be done by 30 days max. Once the approval is received then the certificate needs to be printed online

Glimpses of Supreme Court Rulings

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9 Right to Information – Exemption from disclosure:

The performance of an employee / officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which would have no relationship to any public activity or public interest but the disclosure of which would cause unwarranted invasion of that individual. The information disclosed by a person in his income tax returns are 'personal information' which stands exempted from disclosure under clause (j) of Section 8(1) of the Right to Information Act, 2005, unless involving a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

Held accordingly, dismissing the petition, that the memos issued to the third respondent, show-cause notices and orders of censure / punishment were personal information as defined in clause (j) of Sec.8(1) of the Act. The details of gifts received, investments and assets and liabilities were found in the income-tax return.

[Girish Ramchandra Deshpande vs. Central Information Commissioner and others (351 ITR 472)]

10 Reference to Larger Bench:

It is evident that before making a reference to a larger Bench, the Court must reach a conclusion regarding the correctness of the judgment delivered by it previously, particularly that which has been delivered by a Bench of nine Judges or more, and adjudge the effect of any error therein upon the public, what inconvenience, hardship or mischief it would cause, and what the exact nature of the infirmity or error that warrants a review of such earlier judgments. In the instant case, we do not find any such compelling circumstances that may warrant a review, and thus, taking into consideration the facts of the present case, we are not convinced that this matter requires a reference to a larger Bench.

[State of Gujarat and another vs. Justice R. A. Mehta (retired) and others (2013) (3 SCC 1)]

11 Judicial Process :

This Court has consistently observed that Judges must act independently and boldly while deciding a case, but should not make atrocious remarks against the party, or a witness, or even against the subordinate court. Judges must not use strong and carping language, rather they must act with sobriety, moderation and restraint as any harsh and disparaging strictures passed by them against any person may be mistaken or unjustified and in such an eventuality they do more harm and mischief than good, therefore resulting in injustice. Thus, the courts should not make any undeserving or derogatory remarks against any person, unless the same are necessary for the purpose of deciding the issue involved in a given case. Even where criticism is justified, the court must not use intemperate language and must maintain judicial decorum at all times keeping in view always the fact that the person making such comments is also fallible. Maintaining judicial restraint and discipline are necessary for the orderly administration of justice and courts must not use their authority to 'make intemperate comments, indulge in undignified banter or scathing criticism'. Therefore, while formation and expression of honest opinion and acting thereon, is a necessity to decide a case the courts must always act within the four corners of the law. Maintenance of judicial independence is characterized by maintaining a cool, calm and poised mannerism, as regards every action and expression of the members of the judiciary and not by using inappropriate, unwarranted and contumacious language. The Court is required 'to maintain sobriety, calmness, dispassionate reasoning and poised restraint. The concept of *loco parentis* has to take foremost place in the mind of a Judge and he must keep at bay any uncalled for, or any unwarranted remarks.'

[State of Gujarat and another vs. Justice R. A. Mehta (retired) and others (2013) (3 SCC 1)]

12 Precedents – Ratio decidendi – Binding effect of the judgment :

There can be no dispute with respect to the settled legal proposition that a judgment of this Court is binding, particularly when the same is that of a coordinate Bench or of a larger Bench. It is also correct to state that even if a particular issue has not been agitated earlier or a particular argument was advanced but was not considered the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced has actually been decided. The decision therefore, would not lose its authority 'merely because it was badly argued, inadequately considered or fallaciously reasoned'. The case must be considered taking note of the ratio decidendi of the same i.e. the general reasons or the general grounds upon which the decision of the court is based, or on the test or abstract from the specific peculiarities of the particular case which finally gives rise to the decision.

[State of Gujarat and another vs. Justice R. A. Mehta (retired) and others (2013) (3 SCC 1)]

13 Criminal Trial – Practice and procedure :

The fundamental requirement is that a Judge presiding over a criminal trial has the sacrosanct duty to demonstrate that he applies the correct principles of law to the facts regard being had to the precedents in the field. A Judge trying a criminal case has a sacred duty to appreciate the evidence in a seemly manner and is not to be governed by any kind of individual philosophy, abstract concepts, conjectures and surmises and should never be influenced by some observations or speeches made in certain quarters of the society but not in binding judicial precedents. He should entirely ostracise prejudice and bias. The bias need not be personal but may be an opinionated bias.

A criminal court while deciding criminal cases shall not be guided or influenced by the views or opinions expressed by Judges on academic platforms. The views or opinions expressed by Judges, jurists, academicians, law teachers may be food for thought. Even the discussions or deliberations made at the State Judicial Academies or the National Judicial Academy at Bhopal, only update or open new vistas of knowledge for judicial officers. Criminal courts have to decide the cases before them examining the relevant facts and evidence placed before them, applying binding precedents. Judges' or academicians' opinions, predilections, fondness, inclinations, proclivity on any subject, however eminent they are, shall not influence a decision-making process, especially when Judges are called upon to decide a criminal case which rests only on the evidence adduced by the prosecution as well as by the defence and guided by settled judicial precedents. The National Judicial Academy and the State Judicial Academies should educate judicial officers in this regard so that they will not commit such serious errors in future, as in the instant case.

It is the judge's obligation to understand and appreciate the case of the prosecution and the plea of the defence in the proper perspective, address the points involved for determination and consider the material and evidence brought on record to substantiate the allegations and record his reasons with sobriety sans emotion. He must constantly keep in mind that every citizen of this country is entitled to a fair trial, and further if a conviction is recorded it has to be based on the guided parameters of law. And, more importantly, when the sentence is imposed, it has to be based on sound legal principles, regard being had to the command of the statute, nature of the offence, collective cry and anguish of the victims and, above all, the 'collective conscience' and doctrine of proportionality. Neither his vanity nor his pride of learning in other fields should influence his decision or imposition of sentence. He must practice the conscience of intellectual honesty and deal with the matter with all the experience and humility at his command. He should remind himself that some learning does not educate a man and definitely not a Judge. The learning has to be applied with conviction which is based on proper rationale and without forgetting that human nature has imperfect expression when founded bereft of legal principle. He should usher in his individual satisfaction but adjudge on objective parameters failing which the whole exercise is likely to be named 'monstrous legalism'. A Judge, while imposing sentence, should not be swayed away with any kind of sensational aspect and individual predilections.

[Om alias Omprakash and another vs. State of Tamilnadu (2013) (3 SCC 440)]

From the Courts

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15 Payment of expenses to a Trust : Sec.40A (2) not applicable

Shanker Trading (P) Ltd. v/s. CIT
(2012) 254 CTR 44 (Del), (2012) 208 Taxman 528 (Delhi)

Issue :-

Whether provisions of Sec. 40A(2) are applicable to amount paid as expenses to a Trust?

Held :-

Assessee was paying lease rental to a Trust which was increased. A.O. invoked provisions of Sec.40A(2)(b) and disallowed certain amounts.

On the above facts High Court has held as under:-

A trust is neither a company, nor firm, nor HUF, nor an AOP within the meaning of cl(V) of Sec.40A(2)(b). It cannot be said that either the trustees or the beneficiaries of a trust come together and form an association for a common purpose or to take a common action. Beneficiaries merely enjoy the benefit of the trust whereas function of the trustees is to administer the trust in terms of the provisions of the trust deed. Therefore, the trust is not an AOP within the meaning of Sec.40A(2) and the said provision is not attracted to the payment of lease rent by the assessee company even though it is owned and controlled by the trustees of the trust and their family members.

16 Validity of reference to D.V.O.

Goodluck Automobiles (P) Ltd. v/s. ACIT
(2012) 254 CTR 1 (Guj)

Issue :-

Without rejecting books of account, whether a reference can be made to D.V.O.?

Held :-

Expression used by the legislature in the heading of Sec.142-A as well as in the opening part of the said section is "estimate". Question of estimate arises only when the books of account of the assessee are not reliable. For the purpose of resorting to the provisions of Sec.142-A, the A.O. is first required to record a satisfaction, that the assessee has made investments which are not recorded in the books of account. As a necessary corollary, he would then reject the books of account as not reflecting the correct position and then proceed to make the assessment on the basis of the estimation. Thus, it is apparent that the question of estimating the value of any investment would arise only when the books of account are not reliable. Accordingly, the A.O. is first required to reject the books of account before making a reference to the Valuation officer. Report of the Valuation Officer cannot from the foundation for rejection of the books of account.

17 Seizure of Stock in Trade is illegal

Sri Puspa Rajan Sahoo v/s. ADIT
(2012) 252 CTR (Ori) 113

Issue :-

Whether stock in trade can be seized during search proceedings?

Held :-

Section 132(1) (iii) empowers the authorised officer to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search which represent either wholly or partly undisclosed income or property of the person. However the proviso carves out an exception. It provides that bullion, jewellery or other valuable article or thing, being stock in trade of the business, found as a result of such search shall not be seized but the authorised officer should make a note or inventory of such stock-in-trade of the business. Therefore, even if the authorised officer is of the view that any bullion, jewellery or other valuable article or thing which is in form of stock-in-trade either wholly or partly represents the undisclosed income or property of the person / assessee searched, he cannot seize the same. But he shall make a note or an inventory of such stock-in-trade of business.

Therefore the seizure of jewellery being sock-in-trade by the authorised officer is wholly without authority of law and contrary to the statutory provision contained in proviso to section 132(1)(iii) and third proviso to section 132(1)(v).

18 RTI Act and Personal Income Tax Details :-

Girish Ramchandra Deshpande v/s CIC
(2012) 211 Taxman 46 (SC) & Ors

Issue :-

Whether personal income tax details can be divulged under the provisions of RTI Act? If yes when and under what circumstances?

Held :-

On the above issue Supreme Court in the above case, has held as under:-

The details disclosed by a person in his income tax returns are 'personal information" which stand exempted from disclosure under clause (i) of Section 8(1) unless involves a larger public interest and the Central Public Information Officer or State Public Information Officer or the the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

The petitioner in the instant case has not made any case of bonafide public interest in seeking information and, thus the disclosure of such information would cause unwarranted invasion of privacy of the individual under section 8(1)(i).

19 Adjustment u/s 143(1)(a)

Easter Industries Ltd. v/s. Union of India
(2012) 349 ITR 324 (Delhi)

Issue :-

What adjustments are permissible in intimation u/s 143(1)?

Held :-

No power is given to the I.T.O to disallow a claim for the reason that there is no proof in support of the claim made by the assessee. Only where it was evident from the return filed, along with the documents in support thereof, that a claim of the assessee was inadmissible, can an adjustment under the proviso be made. If proof in support of the claim was not furnished by the assessee, then for the lack of the proof, no disallowance or an adjustment could be made. The only option which was open to the I.T.O., in such a case, was to require the assessee to furnish proof in which case he would have to issue notice u/s 143(2). Adjustment could be made only if there was information available in such return that prima facie a claim or allowance was inadmissible.

20 Registration of Trust u/s 12 AA: Commencement of activity is not a pre-condition

DIT v/s. Foundation of Ophthalmic and Optometry Research Foundation Centre
(2012) 254 CTR 133 (Del), (2012) 210 Taxman 36 (Delhi)

Issue :-

Is commencement of activity a precondition for granting registration u/s 12AA of the I.T. Act?

Held :-

The provisions of Sec. 12AA would suggest that there are no restrictions of the kind which the revenue is reading into this case, in other words, the statute does not prohibit or enjoin CIT from registering trust solely based on its objects, without any activity, in case of a newly registered trust. The statute does not prescribe waiting period, for a trust to qualify itself for registration. If the Revenue's contentions are correct then, necessarily, a condition would have to be read into the provision that the CIT should be satisfied that the trust is in fact engaged in charitable activities which would in turn inject considerable deal of subjectivity. It is quite possible if such flexibility is introduced, it would be susceptible to varied interpretation by the different authorities in that some would be satisfied with activity of few months, while others may wish to examine the activity of the organisation for longer time. Tribunal was therefore right in holding that while examining the application u/s 12AA(1)(b) read with section 12A, the concerned CIT / Director is not required to examine the question whether the trust has actually commenced, and has, in fact, carried on charitable activities.

21 Disallowance made by assessee u/s 14-A can be disturbed? When?

CIT v/s Consolidated Photo and Finvest Ltd.
(2012) 211 Taxman 184 (Delhi)

Issue :-

Whether disallowance made by assessee u/s 14A can be disputed? If yes When?

Held :-

It was for the Assessing Officer to examine whether the disallowance offered by the assessee itself was sufficient on facts and circumstances of the case, notwithstanding the view he took regarding the applicability of rule 8D. It is not expected of him to take piecemeal decisions regarding the merits of the disallowance. In any case, when the disallowance was taken in appeal before the Commissioner (Appeals), the judgment of the Bombay High Court (Godrej & Boyee Mfg. Co. Ltd. v/s Dy. CIT (2010) 194 Taxman 203 (Bom) was available and it was for the A.O. to take out a plea before the CIT(Appeals) that the disallowance offered by the assessee was not sufficient even if rule 8D was not applicable, but this was not done. When the matter reached the Tribunal, the Tribunal specially called upon department representative to point out any error in the computation of disallowance made by the assessee, but he was not able to point out any error in the same. In these circumstances, no strong ground has been made out for disturbing the decision of the Tribunal. The Tribunal was not in error in not remitting the matter to the A.O. for fresh consideration.

Tribunal News

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15 ITO vs. Interrserve Travels (P.) Ltd. 55 SOT 356 (Delhi) Asst. Year 2006-07, Order Dated: 18th May 2012

Basic Facts

The assessee, was engaged in the business of travel agents. It entered into a consortium agreement with 12 other members who were travel agents for booking air tickets through the platform provided by 'A' Ltd. The consortium members also agreed that the assessee would act as a lead member and authorized it to enter into contracts with 'A' to make collections and distribute monies to each of the consortium travel agents in proportion to the segment bookings effected by each of the travel agents. The assessee was required to collect the commission for services rendered by other members and distributed the said commission amongst the members on priority basis. The assessee accordingly distributed the amount of commission received amongst the members for services rendered by them in booking tickets etc. Since the assessee did not deduct tax at source while making payment of commission to the travel agents, referring to provisions of section 40(a)(ia), the AOdisallowed the amount. On appeal, the CIT(A) held that since the amount was not received for any services rendered by the assessee to 'A', the amount could not be treated as income of the assessee. Moreover, since the assessee did not claim the said amount as expenditure in its accounts, no tax was deducted at source by the assessee. Accordingly the CIT(A) concluded that no disallowance could be made in terms of provisions of section 40(a)(ia).

Issue

Whether TDS is applicable to mere distribution of the collected amount of commission and whether provisions of section 40(a)(ia) are applicable when amount is not claimed as expenditure?

Held

As is evident from the terms and conditions of the consortium agreement, the payment by the assessee to other consortium members is not voluntary. The assessee is under a legal obligation in terms of the agreement to pay the amount to other consortium members in accordance with settled terms. There is nothing to suggest that the assessee rendered any service to 'A'. It is the settled legal position that income accrues when an enforceable debt is created in favour of an assessee. In other words, income accrues when the assessee acquires the right to receive the same. The terms of the consortium agreement do not reveal any such right in favour of assessee. The income distributed rightfully belonged to the other consortium members, to whom the amount was distributed by the assessee. Thus, the CIT(A) rightly concluded that the said amount cannot be treated as income of the assessee. Since the assessee only distributed the income in terms of the agreement and this did not amount to incurring of an expenditure nor the assessee claimed any, there was no infirmity in the findings of the CIT(A) in deleting the disallowance under section 40(a)(ia).

16 Natraj vs. DCIT 56 SOT 23 (Ahd. Trib.) Asst. Year 2007-08, Order Dated: 4th January, 2013

Basic Facts

The assessee had taken land on lease for 98 years vide registered deed dated 15-9-1966. The assessee had committed in lease agreement that it would construct a cinema hall on or before 31-12-1966 at minimum cost of Rs. 4 lakhs. The land was sold on 11-5-2006 after demolition of the cinema building and in accordance with the agreement, 60 per cent of the sale price was received by the assessee (lessee) and the remaining 40 per cent was taken away by the lessor. To compute amount of long term capital gain, the revenue authorities took the cost of acquisition of the land at NIL by invoking the provisions of section 48 read with sec. 55(2)(a). Assesse thus filed an instant appeal contending that in accordance with sec. 48,it was entitled to adopt fair market value as on 1-4-1981 and the indexed cost of acquisition.

Issue

Whether list of capital assets mentioned in section 55(2)(a) is exhaustive and thus, provisions of said section cannot be applied to any other capital asset such as land?

Held

The Revenue has relied on provision of section 55(2)(a)(ii) and have submitted that according to amended provision of law, in case of the assessee, the cost of acquisition shall be taken at NIL. The provision of section 55(2)(a) shall apply in relation to the capital assets mentioned in section 55(2)(a) of the Act only. The capital assets as mentioned in section 55(2)(a) are exhaustive and all inclusive of capital assets, such as goodwill, trade mark brand name, right to manufacture, tenancy rights and being an exhaustive list of capital assets, any other capital assets such as land etc. could not be included for the purpose of valuation of 'cost of acquisition' for sections 48 and 49.The Legislature has intentionally not added word 'land' in the provision of section 55(2)(a), and therefore, the provision of section 55(2)(a)(ii) would not be applicable while valuing the 'cost of acquisition' of the land for the purpose of computation of 'long term capital gain' of the assessee. Accordingly, the value of the leasehold rights in the land in question of the assessee, has to be determined in accordance with the provision of section 48 by valuing 'fair market value' of the land as on 1-4-1981 and the index cost of acquisition has to be determined in order to assess long term capital gains in the hands of the assessee. Matter was remanded to AO.

17 Siemens Ltd. V. CIT(A) 142 ITD 1 (Mum.) Order Dated: 16th March, 2012

Basic Facts

The assessee made payment to PTL located in Germany for carrying out tests of the circuit breakers manufactured by it in order to establish that the design and the product meet the requirement of the International Standard - IEC 62271-100. For the purpose of making remittance to PTL, the assessee moved an application under section 195(2) before the ADIT. It was submitted that as per the provisions of Explanation 2 to section 9(1)(vii), the payment did not fall in the nature &category of fees for technical services (FTS). According to assessee the payment was purely for standard facility provided by the laboratory which was done automatically by the machines without any human intervention. The AO however, held that payment made by the assessee would qualify as fees for technical services under section 9(1)(vii). Thus, he directed the assessee to deduct the tax at the rate of 10 per cent under section 195 on the gross amount of payment to be made to PTL. The CIT(A) upheld the order of the AO and hence the assessee is in appeal before the Tribunal.

Issue

Whether when any technology or machinery operates without much of human interface or intervention, then can usage of such technology per se be held as rendering of 'technical services' as contemplated in Explanation 2 to section 9(1)(vii) ?

Held

The Tribunal held that it has to be seen as to whether standard service provided at the Laboratory of PTL for the purpose of testing the equipment's is done automatically by the machines or purely by human intervention. If a standard facility is provided through a usage of machine or technology, it cannot be termed as rendering of technical services. Once in this case it has not been disputed that there was not much of the human involvement for carrying out the tests of circuit breakers in the laboratory and it was mostly done by machines and was a standard facility, it could not be held that PTL was rendering any kind of technical services to assessee. Thus payment made by the assessee to the PTL in Germany was not a consideration for rendering of any kind of 'technical services' either in the nature of managerial or technical or consultancy services. Therefore, it does not fall within the ambit of section 9(1)(vii). Therefore, the contention raised by the revenue cannot be accepted. In view of above, assessee's appeal was to be allowed.

18 SKOL Breweries Ltd. vs. ACIT 142 ITD 49 (Mum) Asst. Year 2007-08, Order Dated: January 18, 2013

Basic Facts

The assessee was engaged in the manufacturing and marketing of beer in Indian market. During the year it entered into international transaction with its Associated Enterprise (AE). In the TP study, the assessee had adopted CUP method as most appropriate method for

benchmarking the international transactions relating to the payment of license fee, cost reimbursement payable and cost reimbursement receivable. The TPO rejected the CUP method adopted by the assessee in relation to license/royalty and adopted the TNMM as most appropriate method for benchmarking the transactions by selecting its own comparables. In transfer pricing proceedings the TPO made an adjustment to the ALP in relation to international transactions of royalty entered into by the assessee with the AE. The DRP set aside the assessee's objections and confirmed the impugned adjustment.

Issue

Whether FDI policy permitting certain percentage of payment of royalty can be considered as relevant for determination of ALP under the provisions of the Act?

Held

The assessee did not furnish the comparable data in respect of uncontrolled transactions which are similar to the transaction of the assessee as to that of AE. The assessee has merely relied upon the Press Note No. 9 of 2000 issued by the Ministry of Commerce and Industry in respect of FDI policy allowing the percentage of royalty in foreign exchange. The press note issued regarding FDI policy and prescribing the percentage of the royalty to the sales allowed under automatic route cannot substitute as ALP to be determined under the provisions of the Act and Rules. FDI policy permitting certain percentage of payment of royalty is only for remittance of the amount in foreign exchange and therefore, such permission given in an entirely different context and purpose cannot be considered as relevant for determination of the ALP under the Act.

19 Shiva Cargo Movers Ltd. vs. DCIT 152 TTJ 74 (Chennai)

Asst. Year 2005-06, Order Dated: 15th JUNE, 2012

Basic Facts

The assessee was engaged in the business of transport of spirit and molasses. It acquired a new windmill during the previous year and claimed depreciation thereon. The assessee also claimed additional depreciation under section 32(1) (iia) on such windmill. The AO denied additional depreciation on ground that original business of the assessee was not manufacturing or producing any article or thing, but only transporting; and that wind energy undertaking of the assessee could not be treated as an undertaking engaged in manufacture of article or thing. On appeal, the CIT(A) confirmed the order passed by the AO.

Issue

Whether assessee which was not in a business of manufacture or production, was eligible to claim additional depreciation under section 32(1)(iia)?

Held

It is necessary that an assessee must be engaged in a business of manufacture or production when making a claim for additional depreciation on new machinery.The assesse was not into any business of manufacture or production but only transportation of molasses and spirit. Thus the first condition in the enacting provision that assesse has to be engaged in the business of manufacture or production of an article or thing is not satisfied. Therefore assesse was not eligible for claiming additional depreciation under section 32(1)(iia).

20 ADIT (INT. TAXATION) v. ADANI ENTERPRISES LTD. 153 TTJ 476 (AHM.)

Asst. Yr. 2009-10, Order Dated: 18th January, 2013

Basic Facts

The assesse hadmade remittance to the Bank of New York, Mellon towards the interest payable on Foreign Currency Convertible Bonds (FCCBs). No tax has been deducted prior to this remittance. The AO issued a show cause notice to the assesse in proceedings u/s.201(1) & u/s.201(lA) r.w.s. 196C. Not agreeing with the explanation given by the assessee in response to this show cause notice, the AO held that the Bonds have been issued by an Indian company and the interest has been paid by an Indian company from India only and further the obligation to pay the interest rested with the assesse only. Therefore, according to him the interest has accrued or arisen in the hands of non-resident bondholders in India as soon as the interest became due to the Bondholders. The interest on FCCBs was thus chargeable to tax u/s 5(2) itself and the assessee's assertion that the same is covered by section 9 was incorrect. According to him, when the income is actually received or accrued in India, the provisions, contained in

section 5(2) is sufficient to create a charge in respect of a non-resident's income and resort to deeming provisions of section 9(l)(v) is not warranted. The AO held that once income is covered u/s.5(2) section 9(1)(v)(b) is not applicable. Accordingly he treated the assesse as an assesse in default as per section 201. Being aggrieved, the assessee carried the matter before ld. CIT(A), who has decided the issue in favour of the assessee and held that assessee was not liable to deduct tax at source u/s 196C read with Section 115AC.Accordingly the Revenue is in appeal before us against this decision of ld. CIT(A).

Issue

Whether interest paid by the assessee on FCCBs to non-resident investors is said to have accrued or arisen in India as it falls within the ambit of exclusionary clause (b) of Section 9(1)(v).

Held

The Tribunal held thatdeeming of income accruing or arising in India are those situations where income has not actually accrued or arises in India but still it will be deemed to accrue or arise in India. Hence, both the situations are mutually exclusive. If one case is falling within the ambit of income accrued and arisen in India, it cannot fall within the ambit of income deemed to accrue or arise in India and vice versa. In the present case, a specific exclusion is provided in clause (b) of Section 9(1)(v) to exclude interest payment to non-resident investors by an Indian resident if such interest payment is in respect of amount borrowed outside Indian and is used outside India for investment or for business carried out outside India. It could not be established or shown by the revenue that the facts of the present case are not falling within this exclusion clause of Section 9(1)(v)(b) of the Act and the only argument of the revenue is that as per the A.O., it is falling within the ambit of income accrued and arisen in India and, therefore, it is not required to examine the provisions of Section 9(1)(v)(b). There cannot be an exclusion clause if it is not falling within that provision but for the exclusion. Hence, the presence of exclusion in Section 9(1)(v)(b) proves that it is falling within the ambit of deeming provision. It cannot be accepted that the same income can also fall within the ambit of income accrued and arisen in India. Consequently, the issue is allowed in the favour of the assessee and thus the appeal of the revenue is dismissed.

Tickle the Funny Bone

A young accountant spends a week at his new office with the retiring accountant he is replacing. Each morning, as the more experienced accountant begins the day, he opens his desk drawer, takes out a worn envelope, removes a yellowing sheet of paper, reads it, nods his head, looks around the room with renewed vigor, returns the envelope to the drawer, and then begins his day's work. After he retires, the new accountant can hardly wait to read for himself the message contained in the envelope. Surely, he thinks to himself, it must contain the great secret to his mentor's success, a wondrous treasure of inspiration and motivation. His fingers tremble anxiously as he removes the mysterious envelope from the drawer and reads the following message: "Debits in the column toward the file cabinet. Credits in the column toward the window."

Unreported Judgements

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In this issue we are giving gist of two decisions of Ahmedabad Income Tax Appellate Tribunal [ITAT] relating to the issues viz whether there can be second Miscellaneous Application against the same order of Tribunal and whether non- service of valid notice u/s 143(2) is fatal to the proceedings.We hope the readers would find the same useful.

I. IN THE ITAT, AHMEDABAD "D" BENCH

Before : Shri Mukul Kumar Shrawat, Judicial Member and Shri A.K. Garodia, Accountant Member

M.A. No. 15 to 18/A/09 arising out of ITA No. 1909 to 1911 & 1653/A/07

(Assessment Year : 1999-2000 to 2002-03)

Uday Gas Agency..... Appellant
Versus
Income Tax Officer ....Respondent(s)

Department by : Shri Y.P. Verma, Sr. D.R.
Assessee by : Shri Deepak Soni, A.R.

Date of Hearing : 04/01/2013
Date of Pronouncement : 18/02/2013

Facts of the Case

The assessee filed four Miscellaneous Applications (MAs) against the Tribunal Order dated 21/9/2007. The assessee had also earlier filed four Miscellaneous Applications against same ITAT Order, which were dismissed by Tribunal vide order dated 7/11/2008.

Issue :

Whether when Tribunal had already dismissed Miscellaneous Applications earlier, whether second lot of MAs can be considered against the same Tribunal order?

Held :

Following operative part of the Tribunal order in Miscellaneous Application is reproduced hereunder:

"From the contents of the old M.A. No.117 to 120/Ahd/ 2008, as reproduced above, we find that these MAs were on these aspects that the Tribunal order had been passed without giving the assessee an opportunity of being heard. It was pointed out in the old MAs that hearing took place only on one aspect as to whether the assessee has submitted certified true copy of the deed of partnership before the A.O. before the assessment was completed and in reply it was submitted by the assessee that the same was submitted and on this it was commented by ld. A.M. in course of hearing of the appeal that in that situation the assessee was entitled to the registration in appeals and the appeals deserve to be allowed. In the present MAs, the claim of the assessee is this that the Tribunal in the impugned order has reproduced only ground of appeal for A.Y. 2002-03 but as per ground no.2 to the remaining three years i.e. 1999-2000 to 2001-02 in ITA Nos. 1909 to 1911/Ahd/2007, the assessee has contested the validity of re-assessment u/s 147 but this issue was not decided as per the impugned Tribunal order. In the present MA, it is also pointed out that in ground No.5 for A.Y. 2001-02 and A.Y. 2002-03, the issue involved was regarding computation of tax/demand and this was also not disposed of by the impugned Tribunal order.... ..... Under these facts, we are of the considered opinion that the issues raised by the assessee in old MAs and in the new MAs are different and although the assessee's old MAs were dismissed, the new MAs are still maintainable because the mistakes pointed out in these fresh MAs are different as well as arising from the order of the Tribunal dated 21/09/2007. Hence, we are admitting these new MAs and since we find that the Tribunal has not decided the issue regarding validity of the reassessment proceedings in A.Y. 1999-2000 to A.Y. 2001-02 and regarding correct computation of tax demand in all the four years, we recall the impugned Tribunal order for deciding these two aspects in A.Y. 1999-2000 to 2001-02 and for deciding only one aspect in A.Y. 2002-03 i.e. regarding the correct computation of tax liability. The Registry is directed to fix these appeals for hearing for the limited purpose of deciding the issue as discussed above."

"In the result, MAs of the assessee stand allowed in the terms indicated above".

Thus the Miscellaneous Applications filed by assessee were allowed.

II. **IN THE ITAT, AHMEDABAD "B" BENCH**

Before : Shri G.C. Gupta, Vice-President and Shri Tej Ram Meena, Accountant Member

ITA No.1419/A/2006 – Asst. Year : 2001-02

M/s Devansh Enterprise ..... Appellant
Versus
Income Tax Officer .... Respondent

Assessee by : Shri A.L. Thakkar
Revenue by : Shri Y.P. Verma

Date of Hearing : 24/01/2013
Date of Pronouncement : 01/02/2013

Facts of the Case:

In the facts of this case, an order u/s 144 of the Act came to be passed against the assessee. According to the assessee, there was no service of valid notice u/s 143(2) upon the assessee and therefore the entire assessment order wasliable to be quashed. The stand of the A.O. was that the notice u/s 143(2) dated 29/10/2002 was served on 31/10/2002 with Chartered Accountant, who had audited the accounts of the assessee firm. According to A.R., the said Chartered Accountant was never authorized to receive the said notice and represent before department on behalf of assessee. According to A.O., however, he had sent second notice through speed post on 15/12/2003.

The objection of the D.R. was that the validity of the service of the notice u/s 143(2) has been challenged for the first time before Tribunal. He submitted that the assessee firm was closed and the assessee has not intimated the closure of the firm to the department. He relied on the decision of the Trilok Singh Dhillon v/s CIT 332 ITR 185 and submitted that under these circumstances, no fault can be found with the A.O. In rejoinder, the A.R. submitted that the assessee firm was closed on 15/5/2003, i.e. much after the service of the first notice of hearing on 31/10/2002. He distinguished the decision cited by D.R. and also relied on the ITAT Cochin Bench decision in the case of Vamadeven Bhanu v/s DCIT 8 SOT 147, wherein it is held that service of notice on the Chartered Accountant is not a valid service, when he is not authorized to accept the notice on behalf of the assessee.

Issues:

Whether assessment completed without valid service of notice u/s 143(2) within statutory time limit is a valid assessment?

Held :

The Tribunal after considering the submissions, held as under:

i) It is mandatory to issue notice of hearing u/s 143(2) of the Act within the stipulated period of 12 months from the end of the month in which assessee has filed the return of income. In this case, return of income was filed on 30/10/2001and therefore the notice u/s 143(2) could have been served on or before 31/10/2002. It is an admitted fact that the notice of hearing u/s 143(2) of the Act dated 29/10/2002 fixing the date of hearing on 14/11/2002 was served on 31/10/2002 on the Chartered Accountant, who had audited the accounts of the assessee firm. But A.O. has not claimed the said Chartered Accountant was authorized to receive any notice on behalf of the assessee firm or was the representative of the assessee or that any power of attorney was executed by the assessee firm in favour of the said Chartered Accountant. Under these facts, it could not be said that the notice u/s 143(2) dated 29/10/2002 was validly served within the statutory period.

ii) The subsequent notice issued by A.O. u/s 143(2) was after the expiry of the statutory period of 12 months. The assessee firm was closed on 15/5/2003 i.e. after the end of the statutory period of valid service of notice. The non-service of notice u/s 143(2) within the statutory period goes to the root of the matter and since the jurisdiction was not validly assumed by A.O., the assessment has to be cancelled. The Tribunal also relied on the decision of Allahabad Bench of ITAT in the case of Shubham Enterprises v/s ITO 3 SOT 250, wherein it is held that the service of valid notice u/s 143(2) is mandatory and not doing the same, make the assessment null and void.

In the result, the appeal of the assessee was allowed.

FEMA & NRI Taxation

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The Chartered Accountants' Association, Ahmedabad has taken new initiatives as a part of its continuous endeavor to support and assist the new and young professionals. A knowledge clinic has been started which has found very good response from the members. Also, a separate column concerning various procedural aspects has been started. Efforts have been made to include such articles/columns which are useful in the day to day practice.

Continuing the same effort, we are starting a new column on Issues relating to Non – Residents, since the professionals need to advice on such issues, day in and day out. We hope, you will find the same useful and the said column shall continue over the next year.

Editor

NRI - Definition under I. T. Act and FEMA

A "Non Resident Indian", popularly known as NRI has numerous definitions coined by Bankers and New Delhi Blocks ranging from "Now Required Indian"; "Neo Rich Indian" ; "Newly Respected Indian" to "Never Return to India" for few harassed overseas Indians.

Jokes a-part, an NRI's governing definition is found under Foreign Exchange Management Act (FEMA), 1999 and FEMA defines a Non Resident as person residing outside India and an NRI as an Indian citizen or foreign citizen settled and living abroad and another definition in Income Tax Act, 1961 [I.T. Act] which is based on NRI's stay in India during current financial year wedded with stay in preceding 4, 7 and 10 financial years. As most of the economic activities and investments of an NRI are governed by FEMA, CAs should invariably examine the provisions of FEMA while dealing with the NRI's as also returnee NRI's issues.

I. NRI under FEMA : The most relevant definitions governing an NRI's bank accounts and investments in movable and immovable properties in India is provided under FEMA which is enacted since 1st June,2000 replacing the Foreign Exchange Regulation Act , 1973 [FERA] .

1. "Person Residing Outside India " [PROI] is term used for an individual who has gone out of India for the purpose of employment or carrying on business, profession or vocation or any other circumstances which indicate his intention to stay outside India for an uncertain period or a person who is settled abroad.

2. "Non Resident Indian " [NRI] not defined under FERA is now defined under Deposit Regulations as a citizen of India or a person of Indian Origin residing outside India.

3. "Person of Indian Origin " [PIO] is defined as foreign citizen other than citizen of Pakistan and Bangladesh who held an Indian Passport at any time or who himself or either of his parents or any of his grand parents were citizens of India or is a spouse of an Indian citizen or a spouse of a person covered herein..

   02 Restrictions for citizens of specified countries are scriptured for notified activities in relevant Regulations. Hence PIO doesnot include citizens of Bangladesh & Pakistan for banking facilities and investment in securities ; for investment in proprietorship and partnership firms citizens of Bangladesh, Pakistan & Sri Lanka and for investment in immovable properties in India citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan.

   Therefor it can be summarised that the definition of an NRI is secular and embraces foreign citizens of Indian origin upto the third generation along with Indian citizens. RBI has clarified that students studying abroad also be treated as NRIs under FEMA and accordingly they can maintain bank accounts and investments abroad and NRE, NRO &FCNR accounts in India.

4. Conditions of number of days stay in India : No doubt, FEMA has incorporated an NRI's stay in India of 182 days or more during preceding year as a condition for Person Resident in India [PRII] but this seems to be a draftsmen's error and an anomaly which creates impractical situations and severe difficulties for an NRI returning to India for settlement.

   02 Going by books Deposit Regulations require a returning NRI immediately upon return to designate Non-Resident External (NRE) and Non-Resident Ordinary (NRO) Rupee accounts as Resident accounts but as per the definition one would become a PRII only in the succeeding year once stay exceeds 182 days or more in the year of return or following year . .

   03 So here is a returnee NRI who in the year of return continues to be defined as a PROI having Resident bank accounts but who can not initiate investments in mutual funds; stocks or avail insurance policy as a PRII nor can make such investment as PROI writing cheques out of Resident Bank accounts. Morale of the story is to adopt practical view and be a PRII from the date of return for settlement.

5. Definitions under FEMA 1999 :.

   01 PRII ; Section 2 (v) "person resident in India" means –

      (I) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include :

         (A) a person who has gone out of India or who stays outside India, in either case

            (a) for or on taking up employment outside India, or

            (b) for carrying on outside India a business or vocation outside India, or

            (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period ;

         (B) a person who has come to or stays in India, in either case, otherwise than–

            (a) for or on taking up employment in India, or

            (b) for carrying on in India a business or vocation in India, or

            (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period ;.

   02 PROI : Section 2(w) "person resident outside India" means a person who is not resident in India ;.

   03 NRI : Regulation 2 (vi) :Definitions. [Foreign Exchange Management (Deposit) Regulations, 2013] 'Non-Resident Indian (NRI)' means a person resident outside India who is a citizen of India or is a person of Indian origin; .

   04 POI : Regulation 2 (xii): Person of Indian Origin' means a citizen of any country other than Bangladesh or Pakistan, if -

      a) he at any time held Indian passport; or

      b) he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

      c) the person is a spouse of an Indian citizen or a person referred to in sub-clause(a) or (b);

II. NRI under I.T.Act :

Next set of important definitions of an overseas Indian are found in Income Tax Act, 1961 (I.T. Act). Simple for CAs at large but complex enough to make one read and apply carefully :

1. Sec. 2 (30) of I.T.Act defines 'Non Resident' as a person who is not a 'Resident' & in relation to Sec. 92, 93 & 168 includes a 'R but NOR' too.2. 'Resident' is defined vide Sec.

2 (30) r.t.w. Sec. 6 of I.T.Act and distinguishes an individual as "Resident"; 'Non Resident' and "Resident but Not Ordinarily Resident (R but NOR)".

3. "Resident" - is a person who has :.01 stayed in India for 182 days or more in a financial year, or.02 stayed in India for 60 days or more in a financial year and also stayed in India for 365 days or more in 4 years preceeding that year..03 However, in case of an Indian citizen who leaves India for the purpose of taking up employment outside India and an Indian citizen or foreign citizen of Indian origin being an NRI visiting India this period of 60 days is to be substituted by 182 days or more.

4. The CBDT has clarified that in computing stay in India the date of arrival in and departure from India will also be included.

5. But in case of an NRI returning to India for settlement it is utmost important to note that the condition of 60 days will apply in the year of return.

6. "Resident but Not Ordinarily Resident (R but NOR)" : per Sec. 6(6) is a "Resident" person who :.01 has not been Resident in 9 out of 10 previous years preceding the financial year or.02 has not stayed in India for 730 days or more .in 7 previous years preceding the financial year.

7. "Resident and Ordinarily Resident (R & OR) " : Although this is not an enacted definition, but is a popular jargon coined as an opposite of RbutNOR for a Resident who fulfills the conditions of :.

   01 not being a non- resident in 9 out of 10 Financial Years preceding the current year" AND .

   02 whose stay in India totals to 730 days or more in 7 financial years preceding the current year.

III. FEMA & ITAct distinguished :

A couple of real life examples should clear the confusions of FEMA VsITAct and make the definitions crystal clear.

1. If Lakshminarayan Mittal of Arcelor Mittal Group being a Brithish citizen of Indian Origin visits India to examine mining opportunities and stays for all 365 days in a financial year although a Resident under the IT Act he will continue to be a PROI under FEMA as he has not returned to India for settlement.

2. But when Greg Chappell the Australian cricket champ came to India in December 2005 being appointed the Coach of Indian Cricket Team ; having stayed for 121 days in India in 2005-06 he was a Non Resident under ITAct but became a PRII as he came to India to take up employment .

3. And when Sachin Tendulkar plays abroad hitting out sixers and fours even all the365 days of a year although he will be a "Non-Resident" under I.T.Act , he will continue to bea "Resident" under FEMA as he has not gone abroad for settlement.

   An important relief after this criss-cross definitions is that income-tax exemption of interest income earned on Non Resident (E) [NRE] Rupee accounts is granted to NRIs covered by the broader definition of an NRI under the erstwhile FERA and not the Income Tax Act,1961.[IT Act] and the interest on FCNR forex accounts is exempt from tax so long as he does not become R&OR.

IV. DICEY FALLACIES :

1. Foreign Citizens in India are not NRIs :

   PIOs and many US citizens having returned to India for settlement presume themselves to be NRIs and continue to hold NRE and FCNR accounts and also exclude interest income of these accounts to be exempt from tax in India. . 02 FEMA definitions are quite clear and citizenship has no relationship with residential status of an individual. Therefor if a US Citizen or Green Card holder has returned to India for taking up employment or commencing business or profession or for permanent settlement by way of retirement also he is covered by definition of PRII

2. Green Card holders are not NRIs :

   GC holder and Resident Permit holders staying permanently in India fail to redesignate NRE bank accounts and also open and operate

bank & investment accounts abroad..02 Such persons are resident under FEMA and often ITAct too.

3. Returning NRIs under I.T.Act :

Back home residents are skeptical about India's growth story but in global context India is indeed shining luring many NRI businessmen and technocrat executives to return to India for business or employment. .02 Their residential status under ITAct needs to be examined based on 60 days of stay in the year of return together with 365 days stay in preceding 4 years and not only the condition of stay exceeding 181 days alone.

4. Migrating Indians :

Under the I.T.Act a resident going abroad for settlement is eligible for substitution of 181 days in place of 59 days for determining the residential status . .02 But this exception applies only to an Indian citizen going abroad to take up employment and an Indian Citizen sea-farer joining as a crew member of an Indian ship. .03 The same does not apply to other migrants like students; businessmen ; house-wives etc. who will be treated as Resident in the year of migration if the stay exceeds 59 days in the year of departure and also 364 days in earlier 4 years and if R&OR their overseas income will be taxable in India. .04 Under FEMA an individual going abroad for employment , business or settlement will be a PROI from the very first day of his landing abroad.

5. Visiting NRIs :

Overseas Indians coming to India for personal or business reasons are defined as Residents under I.T.Act if their stay exceeds 181 days in India in a financial year. .02 It should be remembered that the governing Law is FEMA wherein an NRI's physical stay in India is not significant . Therefor such NRIs can continue NRE/FCNR accounts and all investments as NRIs so long as they have not returned to India for permanent settlement..02 And unless their status under ITAct is determined as R&OR their overseas income & interest on FCNR deposits will continue to enjoy tax exemption while interest on NRE account will be tax exempt even for R&OR so long as they donot return to India for settlement and are resident under FERA,1973. .

6. PIO / OCI :

Person of Indian Origin card or Overseas citizenship of India are basic needs of a frequently flying foreign citizen of Indian origin and for some a status symbol too. But it better be clear that these cards have no direct relation to the factors determining residential status under the ITAct and also FEMA.

6. Deputed employees :

Many MNCs have been deputing NRIs and foreigners to work at their Indian subsidiaries or client's sites in India. .

02 Normally such MNCs treat these employees as say US tax Residents and do not ponder over their tax liabilities in India .

03 If such expat employee's stay in India exceeds 181 days in a financial year he would be Resident under I.T.Act and as services are rendered in India the same would be liable to tax in India on accrual basis. .

04 In such cases Article-16 of India-US Tax Treaty should be applied whereby such salaries are taxable in India only if the stay exceeds 183 days in a financial year. .

05 Of course a Pandora's Box will open regarding TDS by employers ; their TAN , PAN etc but as they say ignorance is indeed Bliss but ignorance of Law cannot be an excuse for breach of Law.To conclude it may be said that although the FEMA and I.T.Act donot see eye to eye defining an NRI a CA needs to have a microscopic view of facts while dealing with Overseas Indians.

Controversies

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Capital Gain Transferred to Capital Reserve (An update)

Issue

Whether capital gain i.e. profit on sale of capital asset can be credited to capital reserve directly in the balance sheet so as to avoid the liability of the tax on book profit u/s 115JB of the IT Act?

Proposition

It is proposed that when there is a profit on sale of capital asset & such profit i.e. capital gain is directly credited to the balance sheet as capital reserve; no adjustment is possible so as to attract liability of tax on book profit u/s 115JB of The Income-Tax Act, 1961.

View against the proposition

It is submitted that when the assets are sold & capital profit is earned such capital gain must be credited to the P&L Account. This is also the requirement of Schedule VI of the Companies Act, 1956. It is further submitted that even if the profit on sale of assets is directly credited as capital reserve in the balance sheet the same will have to be consider for the purpose of liability of tax on book profit u/s 115JB of the Income Tax Act.

In a decision by the Bombay High Court in the case of *Veekaylal Investment Co. (P) Ltd & Hotel Hiramani Pvt Ltd 249 ITR 597* it was held that the important thing to be noted is that while calculating the total income under the Income-tax Act, the assessee is required to take into a account income by way of capital gains under section 45 of the Income-tax Act. In the circumstances, while computing the book profit under the Companies Act, the assessee has to include capital gains for computing the book profits under section 115J. Even under clause 3(xii) (b) of Part II of the Schedule VI to the Companies Act,1956, profits or losses in respect of transactions of an exceptional or non-recurring nature are to be disclosed. This shows clearly that capital gain should be included for the purpose of computing the book profit.

In the case before *Kerala High Court in N. F. Fose and Co. (P) Ltd. v. Asst. CIT [2010] 321 ITR 132 (Ker.),* it appears the assessee availed the benefit of Section 54E by re-rolling the sale proceeds by reinvesting the proceeds in approved bonds, so as to be not liable for tax on capital gains in computation of its statutory income. It appears that the assessee had included the same in the P&L account prepared under Schedule VI of the Companies Act, 1956, but claimed exclusion of capital gain from its books profits, so that assessee could claim the benefit of the decision in *Apollo Tyres Ltd.'s v. CIT [2002] 255 ITR 273 (SC)*. The High Court found that there was no provision for exclusion of such income included in the Profit & Loss Account & the fact that it was exempt under section 54E would not be relevant for tax on book profit u/s 115JB.

The same issue came up before the High Court in *CIT v. Brindavan Beverages Ltd. [2010] 321 ITR 197 (Karn),* in respect of transfer of business by way of slump sale. Even in the case of a slump sale of business, it was held, that liability could not be avoided for MAT under section 115JA. It was, therefore, remanded to the assessing officer for computation.

In the case of *Growth Avenue Securities P. Ltd v. Dy. CIT [2010] 1 ITR (Trib) 807 (Delhi)*, The tribunal justified the inclusion of capital gains on the ground that net profit should have been arrived at under Part II & Part III of the Schedule VI to the Companies Act & that the inference as to whether it is capital gains or whether it is short-term or long-term is not relevant for computation of profits under the Companies Act. Since Notes on Accounts indicate the capital gains, the assessing officer, it was held, was justified in treating such notes as a part of accounts for the purpose of computation of taxable book profit. The tribunal did notice another decision of the Tribunal in *ITO v. Frigsales (India) Ltd. [2005]4 SOT 376 (Mum),* where it was laid down that capital gains not included in profit & loss account could not have been brought to tax. All the same, it did not think it proper to refer the matter for constitution of a larger bench & chose not to follow the same for the reason that Notes on

Accounts when treated as part of accounts should justify the inclusion. Capital gains when taken to reserve is bound to be a matter of information in the account themselves or Notes on accounts, so that this by itself could not have any difference

The Special Bench of the Hyderabad Tribunal in *Rain Commodities Ltd v. Dy. CIT [2010] 4 ITR 551 (Hyd) (SB)* apparently felt that it was bound to follow the decision in *Veekaylal Investment Co. (P) Ltd 249 ITR 597* , but it did give its own reasons to support the conclusion. In this case, the assessee has credited to in its P&L Account an amount described as extraordinary item, which inter-alia, included capital gain of about Rs. 149crores. Having credited the same, it was the view of the assessee, that it could be excluded, so that computation of taxable book profits did not include the same. The AO had accepted assessee's computation of negative book profits, but his order was subjected to an order of revision under Section263 of the Act. The tribunal reviewed the case law on the subject indicating that there were conflicting decisions of the Tribunal. But then, the decision of *Sutlej Cotton Mills Ltd* case (supra) was also of a Special Bench, so that there is a possible technical objection, that this could not have been overruled by another Special Bench of three members, unless the plea is that *Veekaylal Investment Co. (P) Ltd* case supersedes the decision of the Special Bench, a plausible argument. The fact, that the assessee had shown the amount in the P&L Account, could also be an argument, since the decision of the Supreme Court in *Apollo Tyres Ltd.'s v. CIT [2002] 255 ITR 273 (SC)* should be against the assessee in such cases.

View favor the proposition

It is respectfully submitted that when capital gain is directly credited in the balance sheet as capital reserve the same cannot be adjusted to include to the book profit for taxability u/s 115JB of the Income tax Act, 1961. Such adjustment is neither covered nor authorized adjustment under *Explanation* sub-section (2) of 115JB.

A full bench of the Income-Tax Appellate Tribunal had occasion to consider the issue in *Sutlej Cotton Mills Ltd. (1993) 199 ITR (AT) 164 (Cal)*. It found that the capital gain need not to be treated as book profit & direct credit to reserve was justified. The general rule is that the Assessing Officer is to start from the book profits in the accounts. But the same cannot be applied if the above disclosure is not in accordance to Schedule VI. But the Special Bench also clearly indicated that this may not apply where the profit & loss account is not prepared in accordance with Schedule VI of the Companies Act. This decision was followed in *Oswal Agro Industries Ltd v. Dy. CIT (1994) 51 ITD 447* but not noticed by the Cochin Bench in *Indo Marine Agencies (Kerala) Pvt. Ltd. v. Asst. CIT [1995]51 TTJ 18 (Coch.)*, where it held the capital gains can be included. There is a normal accounting practice that such items can be adjusted against are reserve or provisions are passed through P&L Account or Appropriation Account, but that is not a requirement of company law. Sub-item (xii) in Part II of the Schedule VI requires only what cannot be adjusted to reserve or provision has to be charged in P&L Account. The amounts under consideration could have been debited to P&L Account or P&L Appropriation Account with corresponding credit the same extent from reserves/share premium account.

In *Oswal Agro Industries Ltd v. Dy. CIT (1994) 51 ITD 447* (Del), the assessee had taken short term capital gain to P&L Account for purposes of declaring dividend, but even so the tribunal held that it is had to be excluded from purview of book profits tax following Sutlej Cotton Mills Ltd.

The Calcutta High Court in *CIT v. N. Guin and Co. P. Ltd. [1979] 116 ITR 475 (Cal),* where surplus arising out of transfer of capital assets was taken directly to the reserves, held that such accounting treatment could not be faulted. Palmer's "Company Law" & Spicer & Pelger's "Accountancy" also would support such view. Where the assessee treats the same in its books without bringing it to P&L Account, the decision in *Apollo Tyres Ltd. V. CIT [2002] 255 ITR 273 (SC)* should also support asseesee's accounts, since it is a not a permitted authorized adjustment under *Explanation* in sub-section(2) of the Section 115JB.

It is possible as decided in *CIT v. Indo Marine Agencies (Kerala) Pvt. Ltd. [2005] 279 ITR 372 (Ker),* Where the assessee had accounted for surplus by way of capital gains as part of book profits in the accounts, the High Court upheld the inclusion only because the assessee had credited the gain in the profit and loss account in the view that only permitted adjustments under

Explanation to the section could be made and not otherwise.

The Tribunal in *Harrisons Malayalam Ltd. v. Asst. CIT [2009] 315 ITR (AT) 1 (Cochin)* decided the issue on the basis that the sale of rubber estate was by way of slump sale of agriculture land, so that it had character of agriculture income, so as to be not includible as part of book profits. The tribunal adverted to the decision of several High Court decisions including that the Supreme Court in *Snghai Rakesh Kumar v. Union of Inida [2001] 247 ITR 150* for its inference. It was pointed out that agricultural income was exempt u/s 10, so as to be outside the purview of Minimum Alternate Tax under section115JB in the view, it was not necessary to consider the larger question whether capital gains could be treated as part of income for the purpose of MAT, a subsisting controversy. However, the inference that capital gains on sale of agricultural estate would be agricultural income is controversial as such income is not from agricultural operations

Summation

It appears that there is no bar for crediting the capital profit on sale of the asset to the capital reserve. All the decisions referred to in view against the proposition, are in the context of the fact that such profits were credited to the profit and loss account and having regard to the decision in the case of ***Apollo Tyres Limited 255 ITR 273 (SC)***, it was held that the same could not be excluded from the computation of book profits under Section 115 JB of the Act.

However, if the capital profits are credited to capital reserve in the published accounts the fact that the capital profits have been credited to capital reserve, will have to be disclosed in the financial statements by way of notes so as to conform to AS4.

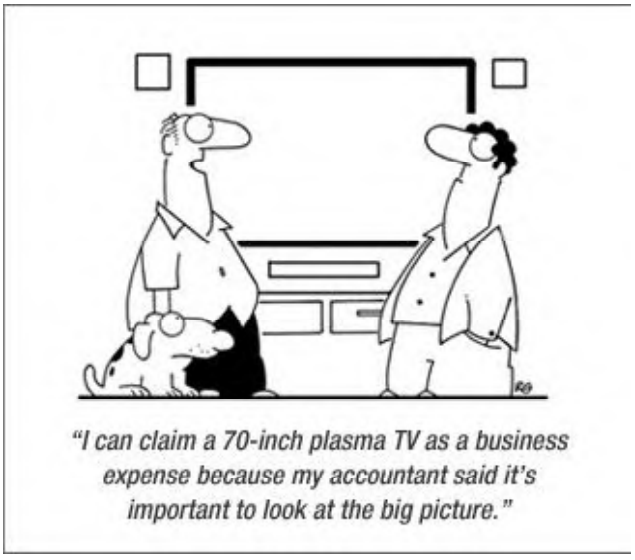
It will also be better to disclose the treatment of taking the capital profit to capital reserve under the balance sheet in the Directors' Report also.

The following decisions should also be referred to which are favorable to assessee & which support the proposition in favour of assessee that when capital gain is directly credited to capital reserve the same is not liable to tax u/s 115JB of the I.T. Act

1. 304 ITR 401 (Bom) in the case of Akshay Textiles.
2. 309 ITR 146 (AT) Mumbai in the case of Kopran Pharmaceuticals.

Attention is also invited to the decision of the ITAT Mumbai Bench F in the case of Vijay Furniture and Manufacture Company Limited in ITA No. 7104/MBM/2005 dated 9th July, 2008, where Para 9, it has been held as under :

"In view of the facts and circumstances of the case, respectfully following the ratio laid down by the Hon.ble Supreme Court in Apollo Tyres Ltd., Vs CIT (supra) and the decision of Hon.ble Bombay High Court in the case of CIT Vs. M/s. Akshay Textiles Trading & Agencies Pvt. Ltd., (supra), we do not find any merit in interfering with the order of the CIT (A) in holding that the Assessing Officer has no power to recast the profits once it is certified by the Statutory Auditors of the company and only those adjustments which are permitted by Explanation to sub-section 2 of Section 115JA of the Act are to be made. Therefore, we uphold the order of CIT (A) and dismiss the grounds of appeal raised by the Revenue."



"I can claim a 70-inch plasma TV as a business expense because my accountant said it's important to look at the big picture."

Judicial Analysis

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Gujarat High Court lays down important Principles of Law under the VAT Act which can also be useful under the Income Tax Act.

6 Futura Ceramics Pvt. Ltd. Vs. State of Gujarat (SCA No. 6500 of 2012, dated 20th December, 2012)

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The petitioner has challenged the impugned order passed in re-assessment proceedings on the ground that only on the basis of show cause notice issued by the Excise Department, additions are made. Counsel submitted that this would be wholly impermissible. On the other hand, Department has contended that the order is appealable and this Court therefore, should not interfered at this stage in the present case.

We may reproduce entire order of re-assessment which is rather brief and reads as under :-

"The regular assessment under section 34 of Gujarat Value Added Tax Act of the Trader is completed on 2/6/2009. At place of business of Trader is of Trader Inspection of place was held on 17/1/2008 by Directorate General of Central Excise Department, Ahmedabad. Regarding this inspection show cause notice was given vide No. F. No. DGCEI/AZU/12 (4) 131/2008-09 dated 19.10.2010. Show cause notice in inquiry and statement obtained in context of inquiry and on perusing evidences, in assessment year 2006-07 you have shown Rs. 5,97,82,816/= sell less in turn over of total taxable sell. In this regard on 12/3/2010 show cause notice was given to you.Regarding above show cause Notice yourwritten submission dated 23/3/2012considered. In your case at the time ofassessment in taxable turn over of sell turnover stated in above show cause is notincluded. Therefore, from here by taking decision of re-assessment under Section 35 ofthe Gujarat Value Added Tax order is passed.Order of assessment and notice of demand to be served to Trader."

From the above, it can be seen that the assessment which was previously concluded was re-opened on the premise that during the Excise raid, it was revealed that the petitioner had clandestinely removed goods without payment of excise duty. The Sales Tax Department, therefore, formed a belief that the value of goods plus excise duty evaded should form part of the turnover of the assessee for the purpose of tax under the Value Added Tax Act.

It may be that the raid carried out by the Excise duty and the material collected during such proceedings culminating into issuance of a show cause notice for recovery of unpaid excise duty and penalty in a given case sufficient to re-open previously closed assessment. In this case, however, we are not called upon to judge this issue and would therefore not give any definite opinion. The question, however, is whether on a mere show cause issued by the Excise Department, the Sales tax Department can make additions for the purpose of collecting tax under the Gujarat Value Added Tax Act without any further inquiry. If the Assistant Commissioner of Commercial Tax has utilized the material collected by the Excise Department; including the statements of the petitioner and other relevant witnesses and had come to an independent opinion that there was in fact evasion of excise duty by clandestine removal of goods, he would have been justified in making additions for the purpose of VAT Act. In the present case, however, no such exercise was undertaken. All that the Assessing Officer did was to rely on the show cause notice issued by the Excise Department. Nowhere did he conclude that there was a case of clandestine removal of goods without payment of tax under the VAT Act. Merely because the Excise Department issued a show cause notice, that cannot be a ground to presume and conclude that there was evasion of excise duty implying thereby that there was also evasion of tax under the VAT Act. It is not even the case of the Department that such show cause notice proceedings has culminated into any final order against the petitioner. We wonder what would happen to the order of re-assessment, if ultimately the Excise Department were to drop the proceedings without levying any duty or penalty from the petitioner. All in all, the Asstt. Commissioner has acted in a mechanical manner

and passed final order of assessment merely on the premise that the Excise Department has issued a show cause notice alleging clandestine removal of the goods. Such order, therefore, cannot be sustained and is accordingly quashed. When the order is ex facie illegal and wholly untenable in law, mere availability of alternative remedy would not preclude us from interfering at this stage in a writ petition.

7 Ravi Electronics vs. Asst. Commercial Tax Commissioner (SCA No. 3832 of 2012, dated 26th December, 2012)

In all these writ petitions, the petitioners have challenged Notices issued by the competent officer of the Sales Tax Department of the State of Gujarat for the purpose of reopening of previously closed assessments. Such notices are challenged on two grounds – Firstly, that the same were time barred, and further that the authority issuing such notices had no reason to believe that the dealer has concealed any sales, or purchases, or provided inaccurate and incorrect declaration or return. In other words, the second limb of the argument of the petitioners is that the notices for reopening are invalid for want of necessary satisfaction required under the law.

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The central question is whether such modified time limit would apply to all cases which were not instituted by the time the Sales Tax Act was repealed and the VAT Act was enacted. Section 100 of the VAT Act provides for "Repeal and Savings" and reads as under:

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It is undoubtedly true that the provisions containing period of limitation are construed as procedural in nature, and therefore, any changes made in the statute regarding the period of limitation is ordinarily applied to all pending and future cases. In other words, amendments in the period of limitation are ordinarily considered retrospective in nature.

In case of C. Beepathuma & Ors. vs. Velasari Shankaranarayana Kadamboliathaya & Ors., reported in AIR 1965 SC 241, it was observed that there is no doubt that the law of limitation is a procedural law and the provisions existing on the date of the suit would apply to it.

One well recognized exception, however, is when in the earlier statute, as per the previous statutory provision, a cause had become barred by limitation, the same would not be revived by amendments, providing for larger period of limitation. In case of J.P Jani, Income Tax Officer, Circle IV, Ward G, Ahmedabad & Anr. vs. Induprasad Devshanker Bhatt [Supra], the Supreme Court considered the effect of introduction of Income Tax Act, 1961 replacing the old Income Tax Act, 1922, on the power of reopening of assessment. When it was found that such right in the old law was barred by limitation, introduction of Section 148 of the Income Tax Act, 1961 providing longer period of limitation cannot be resorted to for reopening the assessment. In case of S.S Gadgil v. Messrs. Lal & Company, reported in AIR 1965 SC 171 also, the Apex Court held that when the period of one year for issuing notice had expired, subsequent amendment enlarging the period of limitation would not revive the cause.

Statute of limitation is thus ordinarily made applicable with retrospective effect to apply to legal proceedings brought to the Court after the operation of such amendments, even for causes which might have accrued earlier. In cases where the cause had become barred by limitation by the time longer period of limitation is prescribed by amendment would however not be revived. There would still be some doubt whether, if the statute provides for shorter period of limitation by amendment, the same would have an effect of extinguishing right of action subsisting on the date of such amendment. Had this been the only angle, we would have further probed the legal position in this respect. In the present case, however, the situation is some what different. It is not a simple case of a statutory provision being amended by a subsequent legislation providing for a shorter period of limitation, as compared to theearlier statute. This is a case where the entire machinery provision has undergone significant changes.

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It is well recognized that upon repeal of the Statute, all actions pending on the date of repeal do not survive. To obviate such unpleasant consequences, the successor statute ordinarily provides for "Repeal & Savings" clauses. In any case, Section 6 of the General Clauses Act contains a plenary provision of saving an action taken under the repealed statute, unless different intention appears.

In case of State of Punjab v. Mohar Singh Pratap Singh [Supra], the Apex Court observed that whenever there

is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But, when the repeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of inquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them.

In case of Keshavan Madhava Menon v. State of Bombay, reported in AIR 1951 SC 128, the Constitution Bench of the Supreme Court in the context of effect of Article 13 (1) of the Constitution held that the same can have no retrospective operation but is wholly prospective. If an act was done before the commencement of the Constitution in contravention of the provisions of any law which after the constitution become void, with respect to the exercise of any of the fundamental right, the inconsistent law is not wiped out so far as the past act is concerned.

In case of Gujraj Singh etc. vs. The State Transport Appellate Tribunal & Ors., reported in AIR 1997 SC 412, the Apex Court held and observed that effect of repeal of the Act would be that the repealed Act stands completely obliterated from the record of the Parliament; except for actions past and closed or those which are saved.

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From the above what emerges is that ordinarily period of limitation is considered as a procedural provision and any change in the period of limitation by an amendment in the Act or by enactment of a new statute repealing the original one, is made applicable also retrospectively. This is of course subject to the exception that if under the repealed provision, the cause of action had become time barred as per the period of limitation prescribed any subsequent change or extension in period of limitation would not revive such a cause. Another area where the Courts have taken slightly different view is where in the successor statute, a shorter period of limitation is prescribed and by virtue of the existing provisions of the earlier Act, the limitation has not yet expired but by application of the shorter period of limitation prescribed in the successor Act, the cause would stand barred by limitation. In such cases, the question would arise whether the period of limitation of the successor Act should be applied thereby taking away the right of the party to file proceedings for asserting his right.

Had the effect of VAT Act been only to modify the period of limitation, the different set of considerations would apply. In the present case, however, the entire provision for reopening of previously closed assessment has undergone significant changes. In the predecessor Act ie., the Gujarat Sales Tax Act, 1969, reassessment was permitted by issuance of a notice within eight years, if the same was based on any suppression, etc. For other class of cases, such notice could be issued within five years from the relevant date. In the successor Act ie., the Gujarat Value Added Tax Act, 2003, the period that is prescribed is uniformly of five years obliterating any distinction between the reopening being based on misrepresentation, etc., or for any other reason, of a case of turnover escaping assessment. More significantly the terminal point was shifted from issuing of notice to passing of the final order. In other words under the VAT Act, it was not enough to issue notice for reassessment within five years but that the entire reassessment had to be completed within the said period.

Thus, the replaced statute did not only make changes in the period of limitation but made significant other changes as well. In that view of the matter, it would be of considerable importance for us to ascertain what the repeal and savings provision of the VAT Act provides. Under subsection (1) of Section 100 of the VAT Act, as already noted, the Sales Tax Act was repealed Proviso to Section 100 of the VAT Act however makes certain provisions for saving and provides that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred there under and subject thereto, anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in exercise of any powers conferred by or under the said Act shall be deemed to have been done or taken in exercise of the powers conferred by or under the VAT Act.

In the present case, it would therefore be necessary to ascertain for ourselves whether it can be stated that by the time VAT Act was enacted, the petitioners had under the Sales Tax Act acquired, accrued or incurred any

obligation or liabilities. If the case of the petitioners fall within such expression, the Department would be justified in pursuing such cases under the VAT Act with reference to period of limitation contained in the Sales Tax Act despite repeal of the Sales Tax Act.

We may recall that the petitioners had filed the returns at the relevant time under the Sales Tax Act. Such returns were also processed as per the provisions of the said Act. Till the Sales Tax Act was repealed by the VAT Act, no further action was taken by the Department. To be precise, no notices for reopening such assessment were issued till the Sales Tax Act was repealed. It is true that the Sales Tax Act permitted period of eight years from the end of the period to which such turnover related for issuance of notice of reassessment, if the Commissioner had reason to believe that the dealer had concealed such sales or any material particulars thereof or knowingly furnished incorrect declaration or returns. However, in our opinion, mere right to issue notice within the said period cannot be equated with accrual or incurring of any obligation or liability. If notices were already issued, it may have been possible for the Department to contend that the assesses having already been visited with such notices, their liability to be so reassessed having already accrued, any repeal of the Sales Tax Act would not obliterate such liabilities by virtue of proviso to subsection (1) of Section 100 of the VAT Act.

In case of Kanaiya Ram &Ors.Vs. Rajender K. Kumar &Ors. Reported in AIR 1985 SC 371, the Apex Court had an occasion to interpret the term "acquiring of " or "accrual of " a right. It was the case wherein the original landholder had purportedly made an oral sale of the land in favour of his near relatives. Such sale not being registered, did not create any right or title in favour of the transferees. The tenant of the land filed application under Section 18 of the T. P. Act for purchase of their holdings. Application of the tenant was allowed by the Assistant Collector but the said order was reversed in appeal. In the meantime, the landlord had expired. His legal representatives filed a suit for declaration of title and for the declaration that the transfer was benami. Such suit was decreed. In that context, the Supreme Court observed that when the tenant made an application under Section 18, he had a mere "hope of " or "expectation of liberty to apply for acquiring a right" and not a "right acquired or accrued". It was observed that ever since the leading case of Abbot Vs. Minister for Lands, 1895 AC 425 that a mere right to take advantage of the provisions of an Act is not an "accrued right".

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From the above, it can be seen that a mere right to take advantage of the provisions of a Act is not an "accrued right ". In the present case, it may be that when the Sales Tax Act was in operation, it was open for the authorities to reopen an assessment previously framed within eight years from the end of the period to which the escaped turnover related, if the commissioner had reason to believe that the dealer had concealed such sales, etc. However, mere right to issue such a notice to reopen the assessment cannot be equated with any accrued or acquired right. Correspondingly, it cannot be said that in absence of any notice having been issued, the assessees had any obligation or liability which they acquired, accrued or incurred for being subjected to reopening of the assessment as per the old provisions. Their cases therefore were, necessarily in absence of any notices having been issued when the Sales Tax was in operation to be governed by the provisions made for such purpose in the successor Act i.e. the VAT Act. We are fortified in our view by the decision of with this view in case of Kumagai Skanska Hcc Itochu Group Vs. The Commissioner of Value Added Tax & Another decided on 22.05.2012, wherein the Devision Bench of Delhi High Court was considering the effect of enactment of Delhi Value Added Tax Act, 2004 replacing the Delhi Sales Tax Act, 1975. In such Successor Act also, similar provisions of repeal and savings were made. The Court was confronted directly with the issue of effect of shorter period of limitation prescribed in the successor Act for taking orders of assessment in revision.

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Considering the discussion above, we hold that in the present group of cases for reopening the assessment, provisions contained in the VAT Act and in particular Section 35 thereof, would apply. Admittedly, when such provisions do not permit reopening beyond the period of five years from the end of the period to which the sales relate, and admittedly when no notices much less final orders were passed, the action of the authorities must be held to be lacking jurisdiction. All the cases of reassessment are, therefore, declared invalid.

Statute Updates

(A) Service Tax Judgements

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In this issue, judgement on Works Contract Service, Input Services and Claim for Refund are reproduced below for the benefit of Members.

1) Whether any service rendered in relation to execution of a works contract in respect of Metro Rail Corporation, viz., Railways would be liable for service tax?

[2013] 31 taxmann.com 381 (Karnataka) High Court of Karnataka Bangalore Metro Rail Corporation Ltd. *V* .Ministry of Finance, Government of India

Facts:-

Assessee entered into execution of a works contract in respect of metro rail with Metro Rail Corporation. So whether such services rendered in relation to execution of a works contract in respect of Railways is taxable . Also question involved in this case was whether 'metro rail corporation is railways' for the purpose of exclusion under section 65(105)(zzzza).

Held :-

It was held that any service rendered in relation to execution of a works contract in respect of Railways, which is excluded under sub-clause (zzzza) of section 65(105) is outside definition of taxable service and consequently no service tax is leviable.

Also as per section 2(31) of the Railways Act, 1989, "railway" means a railway, or any portion of a railway, for the public carriage of passengers or goods. It doesn't include a tramway wholly within a municipal area.

2) Whether assessee was eligible for credit of insurance services ?

[2013] 31 taxmann.com 345 (New Delhi - Cestat)Cestat, New Delhi Bench,DSCL Sugar *v* .Commissioner of Central Excise, Lucknow

Facts:-

Assessee carrying on a business took cenvat credit of service tax paid for the following services:-

a) Insurance of company-owned vehicles;

b) Insurance of finished goods inventory lying in the godowns located inside as well outside the factory;

c) Transit insurance covering insurance of finished goods under transportation from factory premises to the company's depot (place of removal) maintained outside factory;

d) Insurance of cash in box, cash in transit, cash at various counters, personal insurance of cashier.The department denied the cenvat credit stating that the assessee has failed to establish the nexus of input services with the output.

Held:-

It was held that it can't be said that services of risk insurance shall not enjoy cenvat credit. The insurance service may be indirectly connected to the manufacturing or other activity and may be in relation to manufacture or various other business activities enumerated in rule 2(l) of cenvat credit Rules, 2004 which in turn establishes the dependability of input to the output. It was further held that unless the vehicle is used otherwise than serving the purpose of manufacture or providing of service, the insurance paid to cover risk should not go out of consideration to grant cenvat credit. Therefore, considering inevitability of insurance to make the assessee risk free for carrying out its manufacturing operation and other activities related thereto or to the services relating to inclusive aspects under Rule 2(l), the appellant has a case to succeed. Accordingly, appeal is allowed and the stay application disposed.

3) Whether assessee can take Cenvat Credit of service tax paid on input services availed by it prior to date of its registration?

[2013] 31 taxmann.com 344 (Ahmedabad - CESTAT) CESTAT, AHMEDABAD BENCH, C. Metric Solution (P.) Ltd. *v.* Commissioner of Central Excise, Ahmedabad

Facts:-

Assessee, a unit engaged in export of softwares, obtained service tax registration on 23-3-2009 and took Cenvat Credit of service tax paid on input services availed during April 2008 to March 2009. Department denied credit holding that credit could not be taken for period prior to date of registration.

Held :-

It was held that the appellant is eligible to avail Cenvat credit of the service tax paid on input services after getting registration. In this case, it is recorded that the appellant has shown or recorded the service tax paid on input services in a register which is considered as a cenvat account. If the appellant is eligible for Cenvat credit, post registration, this availment or showing the account being credited by the service tax paid on input services, but not availing the same for the purpose of discharge of duty, would be more or less the same or an identical situation to indicate that as STP appellant is eligible for refund of unutilised credit. Also relying upon the decision of the Tribunal in the case of *J.R. Herbal Care India Limited* v. *CCE, Noida* - 2010 (253) E.L.T. 321 (Tri.-Del.) were in it was held that there is no provision in the rules that credit was not available to unregistered manufactures. Therefore, in respect of the goods manufactured during the period when the appellant was not registered, credit can be taken subsequently also. This view is further supported by the consistent stand taken by various judicial forums in the case of clandestine removals, even if the duty is paid subsequently, Cenvat credit on inputs used will be available to the assessee/manufacturer subject to the conditions that proper documents showing the payment of duty are available.

4) Whether refund of service tax paid erroneously on the fees received from non-members is available ? CST, Ahmedabad vs. Sun-N-Step Club Ltd.

2013 (29) STR 521 (Tri-Ahmd.)

Facts:-

The assessee (Sun-N-Step Club Ltd) filed a refund claim for the amount paid by them mistakenly on the amount collected from non-members of the club. The adjudicating authority issued a show-cause notice for rejection of the claim, but dropped the proceedings subsequently and allowed the refund. The Commissioner reviewed that order and issued another show-cause notice indicating revision thereof.

Held:-

It was held by the tribunal that, in invoices they had not charged service tax and therefore it was found that, the assessee was not liable to service tax on non-members under Club & Association Service. In that view it was further held that, assessee is entitled to refund and there could be no unjust enrichment, as fee was fixed, and service tax was paid out of total consideration received.Also as regards the provisions of section 73A of the Finance Act, 1994, when there was no invoice raised or issued for collection of an amount as service tax, the question of depositing the same with the Government did not arise. Thus the question of unjust enrichment would not arise and the respondent was eligible for the refund claim.

Statute Updates

(B) Foreign Exchange Management Act (FEMA)

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Export of Goods and Software – Realisation and Repatriation of export proceeds – Liberalisation

Ref.: A. P. (DIR Series) Circular No. 105 dated May 20, 2013

Attention is invited to A.P. (DIR Series) Circular No. 52 dated November 20, 2012 extending the enhanced period for realization and repatriation to India, of the amount representing the full value of goods or software exported, from six months to twelve months from the date of export. This relaxation was available up to March 31, 2013.

2. The issue has since been reviewed and it has been decided, in consultation with the Government of India, to bring down the above stated realization period from twelve months to nine months from the date of export, with immediate effect, valid till September 30, 2013.

3. The provisions in regard to period of realization and repatriation to India of the full export value of goods or software exported by a unit situated in a Special Economic Zone (SEZ) as well as exports made to warehouses established outside India remain unchanged.

Liberalised Remittance Scheme for Resident Individuals – Reporting

Ref.: A. P. (DIR Series) Circular No. 106 dated May 23, 2013

Attention is invited to A. P. (DIR Series) Circular No.36 dated April 04, 2008, in terms of which, AD Category -I banks were required to furnish information on the number of applications received and the total amount remitted under the Liberalised Remittance Scheme (the Scheme), on a monthly basis, in the prescribed format in both hard copy as well as soft copy in Excel format. All AD banks were also advised to submit the monthly statement before 5th of the succeeding month to the Reserve Bank of India.

2. Since October 2008, AD Banks were required to submit the LRS data through the Online Returns Filing System (ORFS) of Reserve Bank, in addition to submitting the same in hard copy.

3. It has now been decided, to collect the data in soft form only and to dispense with the submission of hard copies of the monthly statements by the AD banks. Accordingly, with effect from July 01, 2013, AD Category – I banks are required to upload the data (LRS data of June 2013) in ORFS on or before fifth of the following month. Where there is no data to furnish, AD banks are advised to upload 'nil' figures in the ORFS system.

Import of Gold by Nominated Banks /Agencies

Ref.: A. P. (DIR Series) Circular No. 107 dated June 4, 2013

Attention is invited to A.P. (DIR Series) Circular No. 103 dated May 13, 2013 on the captioned subject in terms of which, it was decided to restrict the import of gold on consignment basis by banks, only to meet the genuine needs of the exporters of gold jewellery. It has now been decided to extend the provisions of this circular to all nominated agencies/ premier / star trading houses who have been permitted by Government of India to import gold. Accordingly, any import of gold on consignment basis by both nominated agencies and banks shall now be permissible only to meet the needs of exporters of gold jewellery.

2. It has further been decided that all Letters of Credit (LC) to be opened by Nominated Banks / Agencies for import of gold under all categories will be only on 100 per cent cash margin basis. Further, all imports of gold will necessarily have to be on Documents against Payment (DP) basis. Accordingly, gold imports on Documents against Acceptance (DA) basis will not be permitted. These restrictions will however not apply to import of gold to meet the needs of exporters of gold jewellery.

3. The above instructions will come into force with immediate effect. ADs may bring the contents of this circular to the notice of their constituents and customers concerned. They are also advised to strictly ensure that foreign exchange transactions effected by / for their constituents are compliant with these instructions in letter and spirit.

Review of the policy on foreign direct investment in the Multi Brand Retail Trading Sector – amendment of paragraph 6.2.16.5(2) of "Circular 1 of 2013 – Consolidated FDI Policy"

Ref.: Press Note No. 1 (2013 Series) issued by DIPP

1.0 Present Position:

1.1 As per paragraph 6.2.16.5 of "*Circular 1 of 2013 – Consolidated FDI Policy*", effective from 5.4.2013, FDI, up to 51%, under the government approval route, is permitted in the multi-brand retail trading sector, subject to specified conditions.

1.2 The list of States/ Union Territories which have conveyed their agreement for the policy in Multi-brand retail trading is contained in Paragraph 6.2.16.5(2) of the said Circular, as under:

6.2.16.5 (2) LIST OF STATES/ UNION TERRITORIES AS MENTIONED IN PARGRAPH 6.2.16.5(1) (viii)

1. Andhra Pradesh
2. Assam
3. Delhi
4. Haryana
5. Jammu & Kashmir
6. Maharashtra
7. Manipur
8. Rajasthan
9. Uttarakhand
10. Daman & Diu and Dadra and Nagar Haveli (Union Territories)

2.0 Revised Position:

2.1 The Government of Himachal Pradesh has given its consent to implement the policy on multi-brand retail trading in Himachal Pradesh in terms of paragraph 6.2.16.5 (1) (viii). The list of States/ Union Territories as at paragraph 6.2.16.5(2) therefore, is amended to read as below:

S.No.	Sector/ Activity	% of FDI Cap/Liquidity	Entry Route
6.2.16.5	Multi-Brand Retail Trading	51%	Government
	(1) FDI in ….		
	(2) LIST OF STATES / UNION TERRITORIES AS MENTIONED IN PARAGRAPH 6.2.16.5(1) (viii) 1. Andhra Pradesh 2. Assam 3. Delhi 4. Haryana 5. Himachal Pradesh 6. Jammu & Kashmir 7. Maharashtra 8. Manipur 9. Rajasthan 10. Uttarakhand 11. Daman & Diu and Dadra and Nagar Haveli (Union Territories)		

Foreign Direct Investment Policy – definition of "group company"

Ref.: Press Note No. 2 (2013 Series) issued by DIPP

1.0 The Government has decided to incorporate the following definition of 'group company' in the FDI Policy contained in '*Circular 1 of 2013 – Consolidated FDI Policy'*, effective from 05-04-2013:

2.1	Definitions
2.1.15 *bis*	"Group Company" means two or more enterprises which, directly or indirectly, are in a position to: (i) Exercise twenty-six per cent, or more of voting rights in other enterprise; or (ii) Appoint more than fifty per cent, of members of board of Directors in the other enterprise.

Statute Updates

(C) Value Added Tax (VAT)

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[I] **Important Circular for Section 11 (7A) of the GVAT Act:**

A Public Circular is issued by the Commissioner Office for the clarification in respect of provision inserted in sub-section 7A of section 11 of the Vat Act. In the issue of April 2013 an attention was drawn to the irksome provision inserted through an amendment made in section 11 by inserting the new sub-section 7A which speaks about "in no case the amount of tax credit on any purchase of the goods shall exceed the amount of tax in respect of same goods actually paid into the Government Treasury." In short, if the selling dealer does not pay the tax collected by him from purchasing dealer, the purchasing dealer will not be entitled for tax credit. With regard to the said amendment, a clarificatory circular is issued by the commissioner office on 21st May 2013. The gist is reproduced as under.

[i] The new sub-section 7A of section 11 will be effected to the transaction entered after 1st April 2013.

[ii] The registered dealer who has not filed the returns as per the schedule date or the dealer who has not paid the tax to the government treasury or the details submitted with the return by the dealers which are mismatched with the transaction of either selling dealer or purchasing dealer, in above all cases, the dealers are considered to be defaulters and the department will notify such dealers separately. The department will take harsh action for collection of tax from the selling dealer and after verifying that the selling dealer has paid the tax then and then the tax credit will be allowed to the purchasing dealer.

[iii] The dealer defaulter in return, in challan and in mismatch, the list of such dealers will be published on website of the department with a view to the purchasing dealer can verify that the selling dealer has paid the tax or not?

[iv] In case of billing transaction, no tax credit will be given if the dealer is found to be defaulter.

[v] An alternative way is suggested in the circular that to secure the tax credit it has been suggested that the purchasing dealer has to issue two cheques one is for the purchase value, in favour of selling dealer and another in favour of commercial tax department for the value of tax portion and both the cheques are to be delivered to the selling dealer on the strength of the separate cheques issued, the tax credit will be given.

This circular is issued for the purpose of clarification of new sub-section 7A of section 11 and therefore this circular may not be quoted for the purpose of interpretation of any legal issue.

As stated earlier in last month's journal, there will be tremendous difficulties in receiving the tax credit because of this amendment and representations have been made by various Associations for roll back of this amendment from the statute.

[II] **Important Judgements :**

[1] Whether in absence of Tax Invoice, Input Tax Credit is available ?

The Hon. Gujarat Vat Tribunal has given two important judgments in this respect. One is in the case of M/s. Gill & Co. and other of M/s. Abdulkarim Kaji Umarbhai Rasulbhai.

In absence of Tax Invoice, the claimant dealer has to satisfy the following three conditions.

[i] The retail invoice, debit note or cash memo obtained in lieu of tax invoice should contain all the essential ingredients of that of tax invoice; and

[ii] The selling dealer should have actually paid to the exchequer, the amount of tax collected from the buyer; and

[iii] The selling dealer, in relation to the transaction, should have been prohibited under the Act from issuance of tax invoice by any of the circumstances enumerated in proviso to sec. 60(1) of the Act.

[2] The Hon'ble Tribunal has discussed the importance of principle of natural justice and recording of the reasons while deciding any matter by quasi-judicial authority.

While delivering the judgment in case of M/s. Ardor Drug Pvt. Ltd., the Hon'ble Tribunal has observed as under, (The Hon'ble Tribunal has relied on

Hon'ble Supreme Court in case of M/s. Kranti Associates P. Ltd. Reported in 9 SCC 496).

In all common law, jurisdictional judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'.

We often receive orders from the departmental authorities passing of ex-party assessment order, rejecting the tax credit, imposing of penalty, dismissing appeals and other records in which no reasons are given by the respective authority. The orders passed without recording reasons or without assigning any reasons or without recording their own findings are not legal, because they are passed in violation of principle of natural justice. Such orders are liable to be quashed and set aside. The Hon. Tribunal set aside the order of cancellation of registration certificate and restored registration certificate.

[3] **The claim of seller for the sales against declaration forms cannot be denied since the burden of proof is not on selling dealer.**

An important judgment is given in case of Delhi Sales Tax Act in case of Milk Food Ltd. v/s. Commissioner of Vat reported in 59 VST 001. The gist of the decision of Delhi High Court is as under.

Referring to the case laws on the subject, the Hon. High Court held that it is not the burden on the selling dealer to show that declaration in Form ST-1 submitted by the purchasing dealer was not spurious or were genuine or that the conditions subject to which the forms were issued to the purchasing dealer by the department were complied with. The burden will shift to the selling dealer only if it is shown that the selling dealer had acted in collusion and connived with purchasing dealer in order to evade tax by obtaining spurious forms of declarations.

The Hon. High Court further held that the difference in colour in the forms can be the base of suspicion and further inquiry can be conducted but in the present matter, it appears that no further inquiry has been made to prove that the forms are spurious; neither is there any evidence to show that the assessee was in any way connected with the alleged fraud committed by the purchasing dealer.

In view of the above, the Hon. High Court set aside the assessment order and allowed the appeal filed by the assessee.

[4] <u>Cancellation of Registration:</u>

The court set aside the order of cancellation of registration as registration was cancelled without granting an opportunity of personal hearing to the petitioner as provided in Section 39(15) of the TNVAT Act, 2006. Moreover, nothing had been shown to substantiate the claim that Dept. had authority to cancel the registration with retrospective effect.

[FKM Steels & Ors v. Asst. Commissioner (2013) 58 VST 58 (Mad)]

[5] <u>Forfeiture – Excess collection of CST not liable:</u>

A Provision for forfeiture of tax is a substantive provision and since the CST Act has no such provision, no forfeiture can be done by resorting to the provisions of the State Act.

[State of A. P. v. Hindustan Cables Ltd. (2013) 57 VST 284 (A.P)]

[6] <u>Franchise arrangements – Royalty liable to VAT.</u>

<u>Question whether service tax is also applicable is not decided.</u>

The Petitioner was the owner of Trademark and entered into Franchise arrangements with various companies for allowing them to use the said trademark and as consideration therefore received royalty. It was held that it was a 'deemed sale' as defined in section 2(xliii) of the Act with Explanation V thereof. Trade mark was 'goods' and grant of right to use the same was eligible to tax under the Act. The Petitioner relied on para 98 in 145 STC 91 of the apex court judgment in the case of BSNL to contend that one of the attributes that the transfer of right should be to the exclusion of the transferor during the relevant period. However, this fact was not proved by submission of Franchise agreements that the Franchisee had no exclusive right within the territory allotted to it. No copies of the agreement were produced and only the specimen franchise agreement had been provided to the counsel. Hence, this contention did not merit acceptance according to the Court. Reliance was also placed on Imagic Creative (2008) 12 VST 371 (SC) to contend that service tax and Vat being mutually exclusive, since service tax was being paid, the Court observed that it was not called upon to decide the legality of service tax and it was open for the petitioner to challenge the levy of service tax in appropriate proceedings.

[Malabar Gold Private Limited v. C.T.O. (2013) 58 VST 191 (Ker)].

Statute Updates

(D) Circulars and Notifications (Income Tax and Service Tax)

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Income Tax

1) CBDT notified cost inflation index for the financial year 2013-14 as 939

2) Amendment in rule 30 ,31 and 31A of the Income Tax Rules, 1962 and Insertion of Form No. 16B and 26QB and Substitution of form No. 24Q

The Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

a) Insertion of sub-rule (2A) and (6A)(rule 30):-

Any sum deducted under section 194-IA shall be paid to the credit of the Central Government by remitting it electronically in RBI or SBI or any authorized bank within a period of seven days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No.26QB.

b) Insertion of sub-rule (3A)(rule 31) :-

Every person responsible for deduction of tax under section 194-IA shall furnish the certificate of deduction of tax at source in Form No.16B to the payee within fifteen days from the due date for furnishing the challan-cum-statement in Form No.26QB under rule 31A after generating and downloading the same from the web portal specified by the Director General of Income-tax (System) or the person authorised by him.

c) Insertion of sub-rule (7A)(rule 30) :-

The Director General of Income-tax (Systems) shall specify the procedure, formats and standards for the purposes of remitting the amount electronically to the Reserve Bank of India or the State Bank of India or any authorised bank and shall be responsible for the day-to-day administration in relation to the remitting of the amount electronically in the manner so specified.

d) Insertion of sub-rule (6A)(rule 31) :-

The Director General of Income-tax (Systems) shall specify the procedure, formats and standards for the purposes of generation and download of certificates and shall be responsible for the day-to-day administration in relation to the generation and download of certificates from the web portal specified by him or the person authorised by him.

e) Insertion of sub-rule (4A) (rule 31A):-

Every person responsible for deduction of tax u/s 194IA shall furnish to the Director General of Income-tax (System) or the person authorized by the Director General of Income-tax (System) a challan-cum-statement in form no. 26QB electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within seven days from the end of the month in which the deduction is made.

(For form no. 16B, 26QB 24Q refer notification No- 39, dated 31-05-2013)

3) The CBDT has notified new Form 3CEB which includes reporting on specified domestic transactions. The said notification also amends Rule 10A, 10AB, 10B, 10C, 10D and 10E.

Following are the additional international transactions required to be reported in new Form 3CEB:

- Guarantee
- Purchase or sale of marketable securities, issue and buyback if equity shares, optionally convertible debentures/preference shares
- transactions arising out of business restructuring or reorganization
- Transactions having a bearing on the profit, income, losses or assets
- Deemed international transactions

(Notification No. 41/2013/F No. 142/42/2012- TPL dated 10 June 2013)

From Published Accounts

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AS-19 Leases

Reliance Industries Limited Annual Report 2012-2013.

Financial Statements & Notes

2. Significant accounting policies

D. Leased Assets:

a) Operating Leases: Rentals are expensed with reference to lease terms and other considerations.

b) (i) Finance leases prior to 1st April,2001 : Rentals are expensed with reference to lease terms and other considerations.

(ii) Finance leases on or after 1st April, 2001: The lower of the fair value of the assets and present value of the minimum lease rentals is capitalized as fixed assets with corresponding amount shown as lease liability. The principal component in the lease rental is adjusted against the lease liability and the interest component is charged to Profit and Loss account.

c) However, rentals referred to in (a) or (b) (i) above and the interest component referred to in (b) (ii) above pertaining to the period upto the date of commissioning of the assets are capitalized.

d) All assets given on finance lease are shown as receivables at an amount equal to net investment in the lease. Initial direct costs in respect of lease are expensed in the year in which such costs are incurred. Income from lease assets is accounted by applying the interest rate implicit in the lease to the net investment.

HDFC Bank Limited Annual Report 2012-13

Schedule-17 Notes forming part of the Financial Statements

C. Principal accounting policies

12. Lease Accounting:

Lease payments including cost escalation for assets taken on operating lease are recognized in the statement of profit and loss over the lease term in accordance with the As-19, Leases.

Tata Consultancy Services Limited Annual Report 2012-13

Notes forming part of the Financial Statements

2. Significant accounting policies

f) Lease:

Where the Group, as a lessor, leases assets under űnance lease, such amounts are recognised as receivables at an amount equal to the net investment in the lease and the űnance income is based on a constant rate of return on the outstanding net investment.

Assets taken on lease by the Group in its capacity as lessee, where the Group has substantially all the risks and rewards of ownership are classiűed as űnance lease. Such leases are capitalised at the inception of the lease at lower of the fair value or the present value of the minimum lease payments and a liability is recognised for an equivalent amount. Each lease rental paid is allocated between the liability and the interest cost so as to obtain a constant periodic rate of interest on the outstanding liability for each year.

Lease arrangements where the risks and rewards incidental to ownership of an asset substantially vests with the lessor, are recognised as operating lease. Lease rentals under operating lease are recognised in the statement of proűt and loss on a straight-line basis.

Infosys Annual Report 2012-13

Significant accounting policies and notes to accounts

1. Significant accounting policies

1.19 Lease:

Lease under which the Group assumes substantially all the risk and rewards of ownership are classified as finance lease. Such assets acquired are capitalized at fair value of the asset or present value of the minimum lease payments at the inception of the lease, whichever is lower. Lease payments under operating lease are recognized as an expense on a straight line basis in the consolidated statement of Profit and Loss over the lease term.

CMC Limited Annual Report 2012-13

Notes forming part of the Financial Statements

2. Significant accounting policies

q. Leases:

Where the Group as a lessor leases assets under finance leases, such amounts are recognised as receivables at an amount equal to the net investment in the lease and the finance income is recognised based on a constant rate of return on the outstanding net investment.

Assets leased by the Group in its capacity as lessee where substantially all the risks and rewards of ownership vest in the Group are classified as finance leases. Such leases are capitalised at the inception of the lease at the lower of the fair value and the present value of the minimum lease payments and a liability is created for an equivalent amount. Each lease rental paid is allocated between the liability and the interest cost so as to obtain a constant periodic rate of interest on the outstanding liability for each year.

Lease arrangements where the risks and rewards incidental to ownership of an asset substantially vest with the lessor are recognized as operating leases. Lease rentals under operating leases are recognised in the Statement of profit and loss on a straight-line basis.

Kingfisher PLC Annual Report 2012-13

Notes to the company Financial Statements

1. Principal accounting policies

d. Operating Lease:

Rentals under operating leases are charged to the proűt and loss account in the period to which the payments relate. Incentives received or paid to enter into lease agreements are released to the proűt and loss account on a straight line basis over the lease term or, if shorter, the period to the date on which the rent is űrst expected to be adjusted to the prevailing market rate.

On the Website of CAA

Following latest information / judgements are available on the website of the Association www.caa-ahm.org

ITAT Judgements

1. ADIT v. Friends of WWB India (Ahmedabad)

Deduction of Capital Expenditure as well as Depreciation, both permissible in Public Charitable Trust.

2. ACIT v. Gala Gymkhana Pvt. Ltd. (Ahmedabad)

Entrance fees received by a club is Capital Receipt

High Court Judgements

1. CIT v. Syed Ali Adil (AP)

Purchase of two adjacent residential flats are 'a residential house' and entitled to exemption u/s 54.

The May-2013 issue of ACA Journal is also available on the website.

News Lounge

Compiled by :
CA. Arpit T. Shah

Government agrees to deal with Vodafone in a tax row

The government's decision to opt for a non-binding attempt at conciliation and under Indian law in its tax dispute with telecom multinational Vodafone is understandable, note experts.

Vodafone suggested conciliation under international law and the legal provisions are similar; however, refusing to abide by the process if it didn't like the outcome would have been embarrassing in that case. "They (Vodafone) wanted it to be binding. What the government has offered them is a non-binding conciliation process," said Sandeep Parekh, managing partner, Finsec Law Advisors.

"If the government wants to wriggle out, it can do it under the UN rules as well but it creates a bad image internationally and diplomatically," said Abhimanyu Bhandari, managing partner, Axon Partners.

Abhishek Dutta, partner, HSA Legal, said the Arbitration and Conciliation Act, 1996, freed the conciliator here from the formalities of the code of civil procedure and the Evidence Act. This means more leeway in the process. The Act also makes the settlement agreement under the conciliation process at par with the award of an arbitration tribunal.

The Parthasarathi Shome committee had later recommended that a retrospective change in tax laws was not preferable. And, even if there was to be taxation in such deals, it was the seller (Hutchison in this case) which should be taxed, not the buyer of shares (Vodafone). The I-T department had sent a notice for payment of Rs 14,000 crore, including interest of Rs 6,000 crore for Vodafone's deal with Hutchison to acquire its assets in Hutch Essar (now Vodafone India). There is a provision of imposing a penalty of 100 per cent of the tax demand, or Rs 7,900 crore in this case.

All three agreed that the process of settlement would be long-drawn. The outcome of the conciliation process would be taken to the cabinet and then to Parliament to amend the I-T Act. Once then could the government sign it. All this could take more than a year, during which another government would be formed.

N.R. Narayanmurthy re-appointed as Executive Chairman of Infosys

Narayana Murthy's appointment as Executive Chairman could be game changer for Infosys stock as well as for the company, which is facing structural as well as cyclical issues for over a year, say analysts.

Infosys on Saturday announced that the company's board has appointed N R Narayana Murthy as Executive Chairman of the Board and Additional Director with effect from June 1, 2013.

According to analysts, Murthy's appointment is indeed positive for the company; however, the IT major has to still do a lot of work before it can regain its leadership position.

"Infosys, which has been an underperformer quarter on quarter on the back of internal challenges, may see some positive reaction on Monday, when the markets open," said Bhavin Shah of Equirus Securities. The decision of the Infosys management to get back the father figure at the helm of affairs will clearly send out positive vibes across shareholders, say analysts.

"As the company struggles to beat expectations, this unusual change is definitely a positive for the stock price," said Shardul Kulkarni, senior technical analyst at Angel Broking.

"While it is obvious that a gap up opening will be seen in Monday's trading session, the sustainability of the pullback is difficult to assess at this juncture," he added.

According to Kulkarni the stock may test Rs 2500 / 2592 levels in the coming week on the back of positive news. However, it must be remembered that in the short term, the market focuses on sentiment, while in the longer run it is only earnings that create shareholder wealth.

(*Source: Economic Times)*

Cabinet approves changes in land title laws

India's cabinet has approved changes in titling law that will make ownership of land more transparent, in a move that could eventually make it easier for industrial projects to acquire land and also reduce the quantum of litigation related to the subject that is clogging up the country's legal system.

The cabinet approved for introduction in Parliament key amendments to the Registration Act, 1908, which governs the registration of documents and sales transactions for both movable and immovable property within the country.

"The proposed amendments ensure that the process of registration becomes more transparent and the information available to the public at large is more detailed and accurate," a statement from the rural development ministry said.

The main focus of the amendments is on transparency and digitization that will help establish land ownership, which, in India, is a complex issue given the lack of documentation and the absence of contemporary land records.

The difficulty of acquiring land is a significant deterrent to investments, especially in infrastructure.

Several industrial and infrastructure projects, including Posco's $12 billion steel plant in Orissa, have been delayed for years—eight in the case of the South Korean company—on this count. There are 69 infrastructure projects that are facing time and cost over-runs due to land acquisition problems, according to data posted on the website of the ministry of statistics and programme implementation.

The amendments, if legislated, could also help combat, to some extent, the prevalence of so-called black (or unaccounted) money in any land transaction, said a real estate consultant.

(*Source: The Mint)*

Government hikes import duty on gold:

In a desperate bid to rein in the widening current account deficit (CAD) owing to a spiralling demand for gold, the government late on Wednesday raised the import duty on the yellow metal by two percentage points to eight per cent from six per cent. Alongside, the import duty on platinum was increased from six per cent to eight per cent, according to the Customs notification.

The hike in customs duty with immediate effect — the second in six months — has come a day after the Reserve Bank of India (RBI) took a number of steps to restrain the demand for gold for speculative and investment purposes and restrict its imports to meet genuine domestic demand for jewellery and export purposes.

Through another notification issued by the Central Board of Excise and Customs, the government also raised the excise duty on gold ore from five per cent to seven per cent following its decision to hike import duty on gold yet again.

No gainsaying that the is making all-out efforts to discourage gold purchases buying as the precious metal is the biggest contributor to the import bill, after crude oil. Clearly, the economic situation is alarming as gold imports touched an alarming 162 tonnes in May and accounted for a whopping $ 15 billion in the last two months. In fact, the steep fall in the price of gold in recent months led to a renewed surge in buying by households which further aggravated the CAD level and resulted in a steep fall in the value of the rupee against the US dollar.

It may be recalled that the CAD — the difference between inflow and outflow of foreign currency mainly owing to higher imports and lower exports — touched a historic high of 6.7 of the GDP (gross domestic product) in the third quarter of 2012-13 ended December last year. During the entire fiscal year, it is presumed to have touched five per cent which is way above the RBI's comfort level of 2.5 per cent.

(*Source: The Hindu)*

The salient features of the Draft Real Estate (Regulation & Development) 2013 Bill :

- Establishment of a 'Real Estate Regulatory Authority' in each State by the Appropriate Government (Centre for the UTs and State Governments in the case of the States), with specified functions, powers, and responsibilities to facilitate the orderly and planned growth of the sector;
- Mandatory registration of developers / builders, who intend to sell any immovable property, with the Real Estate Regulatory Authority as a system of accreditation;
- Mandatory public disclosure norms for all registered developers, including details of developer, project, land status , statutory approvals and contractual obligations;
- Obligations of promoters to adhere to approved plans and project specifications, and to refund moneys in cases of default;
- Obligation of allottee to make necessary payments and other charges agreed to under the agreement and payment of interest in case of any delay;
- Provision to compulsorily deposit a portion of funds received from the allottees in a separate bank account, to be used for that real estate project only;
- The Authority to act as the nodal agency to co-ordinate efforts regarding development of the real estate sector and render necessary advice to the appropriate Government to ensure the growth and promotion of a transparent, efficient and competitive real estate sector; as also establish dispute resolution mechanisms for settling disputes between promoters and allottees/ buyers;
- Authorities to comprise of one Chairperson and not less than two members having adequate knowledge and experience of the sector;
- Establishment of a 'Real Estate Appellate Tribunal' by the Central Government to hear appeals from the orders of the Authority and to adjudicate on disputes. Tribunal to be headed by a sitting or retired Judge of Supreme Court or Chief Justice of High Court with 4 judicial and at-least 4 administrative/ technical members;
- Chairperson of the Tribunal to have powers to constitute Benches, for exercising powers of the Tribunal;
- Establishment of a Central Advisory Council to advise the Central Government on matters concerning implementation of the Act.
- Council to make recommendations on major questions of policy, protection of consumer interest and to foster growth and development of the real estate sector;
- Penal provisions to ensure compliance with orders of the Authority and Tribunal;
- Jurisdiction of Civil Courts barred on matters which the Authority or the Tribunal is empowered to determine;
- Both Centre and States to have powers to make rules over subjects specified in the Bill, and the Regulatory Authority to have powers to make regulations;
- Powers to Central Government to issue directions to States on matters specified in the Act have also been specified.

The Economics of Health

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Today's State of Health

Early to bed and early to rise makes a man healthy, wealthy and wise. How many of us have narrated and rather preached these famous words to young ones in our life? Almost Everyone! For all those who have preached it, are they living up to it? The point is not just of waking up or going to bed early but being conscious of maintaining good health.

Recently, a leading daily carried the news that 15% of doctors in Gujarat are dying young, below the age of 55. The more shocking part is that the life span of Indian Doctors has gone down by 10 years. The concern is not just restricted to the medical professionals but to every professional and for that matter to every individual, considering the competitive age we are dwelling in. As per International Diabetes Federation, India has 63 million diabetic patients and is just next to China, the diabetes capital of the world with 92.3 million diabetics.

What could be the major reason of this serious state? One of the important causes is the adaptation to so called "Modern Lifestyle". Late night hang outs, untimely and unhealthy eating and drinking habits, addiction to television and internet are some of the few instances. Such life style has brought its' disadvantages along. We have been so dependent on the technology, equipments, gadgets and what not that we have even forgotten to keep ourselves physically fit. Now a days, a ten minutes walk way stretches so long that one does not even dare to start with. Commutation is possible only on a motor vehicle. Non-working air conditioners stall the life system of a person. The young population has fallen prey to social networking websites and electronic gadgets. Everyone today appears to be busy and for all the wrong reasons but somehow the busiest of all is able to very well manage time for a three hour movie or weekend outdoor dinners.

Blissful Ignorance?

The idea is in no way to deny, devoid or restrict oneself of these worldly enjoyments but a conscious effort to make a point, are we are turning our eyes off towards something more important? We have abundance of time for activities that allow instant pleasures but unable to devote some portion of the same time to the body to maintain proper health. Can we afford to be so ignorant towards the importance of physical fitness and rather start enjoying and indulging in habits that are deterrent for good health? Good health is the key that not only enables a long span of life but also increases avenues to enjoy life much better and much more apart from assuring financial prosperity and wisdom. For those who are ignoring their health, the acknowledgement to this fact could be the first step to change and put a conscious effort towards maintaining proper health. An old story beautifully demonstrates the act of acknowledgement of being ignorant.

A learned scholar once approached a guru for higher revelations than anywhere else available. On the first day, the guru said to the scholar, "Go out in the rain and raise your head and arms towards sky. That will be the first revelation". The scholar did as the guru said and next day came to report to the guru. He said, "I followed your advice and water flowed down my neck and I felt like a perfect fool". "Well for the first day that's quite a revelation, isn't it", the guru said.

Swami Vivekananda's views on Health

It is important to understand that a strong body is one of the most important aspects of prosperity. The concern is much more as far as today's young generation is concerned. Swami Vivekananda, the man of originality and leader of the youth today who practiced and taught the importance of strong body, has given his guidance on the subject with an audacious statement. He said, "First of all, our young men must be strong, Religion will come afterwards. Be strong, my young friends; that is my advice to you. You will be nearer to Heaven through football than through the study of Gita. These are bold words; but I have to say them, for I love you. I know where the shoe pinches. I have gained a little experience. You will understand Gita better with your biceps, your muscles, a little stronger. You will understand the might genius and the mighty strength of Krishna better with a

little of strong blood in you. You will understand Upanishads better and the glory of Atman when your body stands firm upon your feet, and you feel yourselves as men. Thus we have to apply these to our needs."

Being health conscious is not a new phenomenon. It has been since ages. The *Upanishidic rishis* prayed:

"May my limbs, speech, vital force, eyes ears, as also strength and all the organs become well developed." (*Kena Upanishad).*

In *Taittiriyopanishad* also there is an indication of the need to have a healthy body and mind. While describing perfect human happiness it has been stated that a young man, in the prime of life, good, most expeditious, most strongly built, and most energetic and disciplined can be the enjoyer of true happiness.

The importance of health has been recognized over the years. Even to be happy and prosperous, one needs to have good health. That's what the scriptures say. The economic prosperity of every individual is dependent on good health. Again, the story of a wood cutter is a fine example to understand this. A young man was employed in a forest to cut trees. On the first day he could cut good number of trees. Gradually, with each passing day the output reduced for the obvious reason that he did not sharpen his tool, axe. Similarly, this body is beautiful god-gifted tool with which we are able to perform all our activities. The more we sharpen it, the more and longer is bound to be the output.

Direct Relation of Good Health and Economic Prosperity

There is a direct relation between good health and economic prosperity. It is on two major counts. One, a good healthy body ensures a longer span of working life resulting in extended earning capacity and secondly, allows to keep the high ridden medical expenses to almost negligible. Two instances, generally easy to gather from the daily life, clearly explain the direct relation of economic prosperity and good health.

There were two families, family A and family B. Both families consisted of four members. Mr. A and Mr. B were the earning members, respectively. Both the families had almost similar income, lifestyle, household and educational expenditure. However the only difference was that Mr. A was health conscious. He daily devoted sufficient time to his body to remain physically fit. However, on the other hand, Mr. B was always busy in his professional work, enjoying life and did not make any effort to take care of his body. At 50, Mr. B suffered from blood pressure and diabetes. The reason attributed by the doctors for the ill health was none else but the life style. Regular expenditure on medicines started for Mr. B. As often, such diseases bring along other health related issues. After the age of 55, Mr. B was not able to carry out his professional work properly and before he could reach 60 he almost reached his age of retirement, left with no option but to quit the professional work. The financial equation of any family gets disturbed when the flow of income stops. So it happened to family B. With hardly any income, medical expenses kept on increasing.

As against family B, family A turned more prosperous economically. All the members of the family enjoyed good health. There were hardly any expenses on medicines. Mr. A could easily manage his professional work up to the age of 70 without any hindrance, including health. This brought in the vast difference in the financial condition of the two families that at one point time started almost together.

Conclusion

Many would have noticed numerous live examples where families have either grown or have been ruined only because of one aspect, "Health". Are these not the indicators or warning signs stating something is going wrong somewhere in our lifestyle? The rule cannot be taken in its entirety and there can be exceptions as several other factors play an important role in the economic prosperity of a person. Many times, things are not in control of a human being but being concerned about health definitely helps. Sparing some time for body with physical workouts is the call of the day. If a thumb rule can be applied, at least 1.5 times of the age in minutes be allotted everyday to take care and maintain proper health. A well maintained and a healthy body is a source of not just long lasting economic prosperity but also true happiness.

Association News

CA. Chintan M. Doshi
Hon. Secretary

CA. Abhishek J. Jain
Hon. Secretary

Forthcoming Programmes

Date/Day	Time	Programmes	Speaker	Venue
15.06.2013 Saturday	09.00 am to 01.00 pm	1st Brain Trust cum Worshop on "Issues in Income Tax - A Mixed Bag"	CA. Kapil Goel	ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad.
29.06.2013 Saturday	09.00 pm	Gujarati Drama "Rahi Gayo Hu Kuwaro"		Jai Shankar Sundari Hall, Raikhad, Ahmedabad.
02.08.2013 to 05.08.2013		40th Residential Refresher Course	Various Speakers	The Golden Palms Hotel & Spa, Bangalore.
14.08.2013 Wednesday	07.00 pm	Entertainment Evening		Fire & Flames, Alpha One Mall, Vastrapur, Ahmedabad.

2nd Knowledge Clinic

2nd Knowledge Clinic on the subject of Direct taxes is to be held on Friday, 28th June 2013 at the Association's office from 4.00 pm to 5.00 pm Members having queries on the subject may send by email or by hand delivery on or before 17th June 2013.

Glimpses of events gone by:

On 06.06.2013, 1st Professional Development Committee meeting was held on the topic of **"VCES – The Service Tax"**

The Speaker for the meeting was **Dr. Nilesh V. Suchak.**

(L to R – CA. Chintan M. Doshi, CA. Mukesh K. Shah, CA. Shailesh C. Shah, Faculty Dr. Nilesh V. Suchak, CA. Prakash B. Sheth, CA. Rakesh G. Gupta)

On 08.06.20131 2nd Study Circle meeting was held on the topic of "**Documentation Requirements under Peer Review for Tax Audit** and "**Technical aspect under New system of E-Filing of Tax Audit Report.** The Speakers for the program were **CA. Aniket S. Talati** and **CA. Pathik B. Shah.**

(L to R – CA. Shailesh C. Shah, CA. Abhishek J. Jain, CA. Chintan N. Patel, CA. Ronak M. Khandwala, Faculty CA. Aniket S. Talati, Faculty CA. Pathik B. Shah, CA. Chintan M. Doshi, CA. Prakash B. Sheth, CA. Kunal A. Shah)

40th Residential Refresher Course at Bangalore

Dear Member,

The Residential Refresher Course (RRC) of the Association is always eagerly awaited by all the members. Over the years, RRC, with a fine blend of studies and recreation, has been one the best ways to get rejuvenated and revitalized before gearing up for the hectic schedule of tax audit assignments. The Residential Refresher Course Committee is pleased to announce 40th consecutive Residential Refresher Course of 3 nights and 4 days at The Golden Palms Hotel & Spa, Bangalore from 2nd August 2013 to 5th August, 2013.

The Golden Palms Hotel & Spa is a 5 star deluxe hotel which is built in the rugged grandeur of the Moorish - Spanish casitas. Capturing the breath of fresh air with lush foliage, sprawling lawns and experience the exquisite architecture and landscaping which create an ambience of a perfect paradise.

Papers at RRC

Sr.No.	Topic	Faculty
1	Interaction with CPC	Team from CPC Bangalore
2	Reporting under CARO – Various Issues	CA. Sunil Bhumralkar
3	Domestic Transfer Pricing	CA. K.K.Chythanya
4	Wealth Tax & Section 56 of the Income Tax Act.	CA. Jayesh C. Sharedalal
5	Assessment, Reassessment & Sec.263	Shri Saurabh N. Soparkar

CA. K. Raghu, Vice President (ICAI), has consented to grace the inaugural session.

Programme Outline

Particulars	Day & Date	Flight Details	Departure Time	Arrival Time
Ahmedabad to Bangalore	Friday, 2nd August 2013	Indigo 6E-155	09.10 am	11.15 am *
Bangalore to Ahmedabad	Monday, 5th August 2013	Indigo 6E-166	05.15 pm	07.20 pm

* Reaching "The Golden Palms Hotel & Spa" from Bangalore Airport by A.C. coach at around 01:30 pm.

COURSE FEES:

All RRC arrangements have been coordinated by Rainbow Tours and Travels. The course fee is payable by cheque in favour M/s. Rainbow Tours and Travels as under:

Particulars	Amount (Rs.)
Members (Including costs of material, travelling, stay on twin sharing basis, all meals and sight seeing)	19,750/-
Accompanying Spouse	18,750/-

ELIGIBILITY:

- The Residential Refresher Course is open for members of Chartered Accountants Association, Ahmedabad and accompanying spouse of the members.

PARTICIPANT SUBSTITUTION & REFUND POLICY:

- Once enrolled, request for the refunds will not be entertained. However, the Committee reserves the right to grant refund/ substitution in case of unavoidable / special circumstances of the applicant.
- The participant may substitute any other member in his/her place with the prior permission of the RRC Chairman. It may be noted that the substitute needs to be a member of Chartered Accountants Association, Ahmedabad. ***Flight tickets with the name of participants will be confirmed 20 days prior to the date of travel. No application of substitution will be entertained once the tickets are finalized and confirmed.***

Members who wish to join the 40th Residential Refresher Course may fill in the registration form and send it to the Association's Office along with the course fee. **The cheque for the course fee is to be drawn in the name of "Rainbow Tours and Travels"**.

Enrolment is restricted to — **90 persons only on a 'first come first served' basis.**

The Golden Palms is too majestic to let go the opportunity. Hurry up before it gets late. Visit www.goldenpalmshotel.com

For and on behalf of RRC Committee

CA. C.H.Pamnani — Chairman

CA. Ashok C. Kataria — Convenor

For and on behalf of CAA

CA. Prakash B. Sheth — President

CA. Chintan M. Doshi — Hon. Secretary

Address of the Venue for RRC

The Golden Palms Hotel & Spa, Golden Palms Avenue, Nagarur Village, Dasanpura Hobli, Off Tumkur Road, Bangalore 562123 - Contact + 91 80 2371222