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In this issue

Attention

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2. You are requested to intimate change of address to the Association's Office.
3. Subscription for the Financial Year 2013-14 is ` 400/-. Single Copy (if available) ` 40/-.
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Life Membership	` 7500/-
Entrance Fees	` 500/-
Ordinary Membership Fees for the year 2013-14	` 600/- / ` 750/-
Financial Year : April to March	

Professional Awards

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

CPE - 'Continuing' or 'Compulsory' ?

It's 2014 and the editor wishes all the readers a very Happy New Year!

The hangover of Christmas and New Year has settled down. And yet the threat of completing the '**Compulsory'** CPE hours would be spooking out most of the practicing Chartered Accountants.

CPE which stands for 'Continuing Professional Education' is the means by which the members of any profession harness their knowledge and skills. CPE is a structured approach to ensure that the core competencies of the members are up to date so that they can deliver what is expected from them by the society at large.

Every profession including ours mandates sound knowledge, sharp interpretation skills and practical approach towards the assignment. With the significant changes taking place in the legislations, staying current has become the need of the hour. May it be the recently passed Companies Act, 2013 or the 'in-waiting' Goods and Service Tax bill or the most awaited Direct Tax Code, require the members to gain a complete new understanding of the legislations.

Even the Institute of Chartered Accountants of India has recognized this importance of continuous learning, as a result of which it has introduced the requirement of 'CPE hours' on mandatory basis for about five years back. However, respecting the Institute's intentions, the moot question that arises is why should there be a **compulsion** on the professionals to acquire knowledge or education. Should one feel the necessity to succeed in his/her professional lives, he/she should *suo motu* try and acquire the knowledge from varied sources. On the other hand, what would be the guarantee that a person **would** gain, should he complete the CPE hours requirement? The question is left unanswered.

The situation that has come to light today is that most of the members are merely '**completing'** this compulsory requirement without much enthusiasm or zeal and thereby resulting in nothing fruitful. It is the '**attendance**' that such member gains and not the **knowledge** that he was supposed to acquire. It is a known fact that the attendance on record vis-a-vis the actual presence during the sessions do not even reconcile. Those who really intend to acquire knowledge do so, irrespective of the compulsions.

Apart from what has been opined in the preceding, the system of CPE hours also faces some serious lacunae. On one hand, the registrations are way more than the capacity of the hall or the auditorium where the assemblage take place, while on the other hand, the hall is not found filled up to its capacity. There happens to be absolutely no check on the physical attendance of the members during the seminars. The proxies in such programs would remind the most of us of the college days.

What must be contemplated is that it is not the number of seminars that are held, but the quality of the program and the speaker that matters the most. An eloquent speaker or a prominent faculty might do well to attract the members to attend the program. The hyper technical seminars grossly fail in generating interest among the members attending the. One might not agree to this observation but this remains a bitter reality. The professionals are fast converting into 'Knowledge workers' thereby erasing the thin line between 'Knowledge' and 'Education'. The real knowledge is normally gained at the small group meetings where the members discuss their problems which they face day in and day out. To illustrate this, members might be more interested in finding the solutions to the problems they face in e-filing of the tax audit report rather than knowing its technicalities or the lacunae. The voluntary associations like Chartered Accountants Association, Ahmedabad (CAA) and Bombay Chartered Accountants Society (BCAS) work towards providing such practical knowledge to the members. However, since such programs are not recognized for the purpose of Structured CPE credits, the importance and participation at such value-addition programs is slowly declining.

Further, an unstructured programme for acquiring the CPE credits has been implemented for members other than in practice and for senior citizens. However, merely reporting of the knowledge acquired over a year might be good in its intention but not in practice. This system has been made purposeless and ought to be redefined.

Yet, the CPE requirements can be made effective through effort and endeavor by ICAI as well the members. What is required is to systematize the whole concept. Discussion of the 'current' and inviting eloquent professionals would certainly comfort the cause. Strict exertion of the attendance obligation would assist to bail out the CPE requirement from being merely a matter of mockery and ridicule.

The hypocrisy is at its worst. At the fag-end of every calendar year, the Institute arranges the CPE MELA which is no better than the END OF SEASON SALE. Just a few days back, the last date for completing the requirement of the compulsory CPE hours has been extended to the end of the financial year. Such measures hit hard on those agile members who are genuinely interested in gaining knowledge. Every year the deadline is extended which proves that even after five years of introduction of mandatory CPE, the members are not taking the same seriously and are complacent about actions which might be taken by ICAI against them. Moreover, the said actions are governed by a mere circular by the Secretary of CPE Committee and do not seem serious in nature per se. I could not lay my hand on any legal support based on which whole CPE structure is introduced, may it be a section of an Act, or a circular or a notification. The reason for complacency in the minds of those who have not completed CPE hours might be that there is no penalty for non compliance except that the names of such members will be hosted on the website and regulating authorities may not allot the professional assignments or audits to such members. **It is a myth that if one does not complete CPE, the Certificate of Practice will not be renewed.**

Over the years, ICAI has come up with various mandatory trainings for the students like Information Technology, Orientation, GMCS-1 and 2. Also, many voluntary courses for members like ISA and DIRM has been initiated by the Institute. However, the same has not received the expected zeal and momentum from the students and members as its implementation and management is ineffective and mostly because its usefulness in practical world is still not clear. The introduction of all such schemes has definitely created a healthy revenue centre for ICAI.

The **Compulsory** '**Continuing** Professional Education' hours is surely turning out to be an oxymoron. Honestly, in my humble opinion one cannot attach the word '**Compulsory'** with the process of acquisition of knowledge. It is the inner zeal and thirst for knowledge that would help the members to achieve their goals. One cannot be mandated to acquire knowledge. It is up to the members on how they pursue their professional lives. As they say, ***we can take a horse to water, but cannot make it drink.***

There is no doubt that the initiative taken by the Institute is in fact commendable. But to ensure that the same achieves the desired results, major restructuring would be required to be done and the success would not be possible without the efforts and interest of the members. With this January 2014 Issue, let us strive to work with conviction and advent towards the same cause. It is here we remember, what has always been professed: ":"Deeds, not Words"....

Anyways, as it is customary to talk about the New Year resolutions, I only wish that all of us resolve to serve the profession and respect the fraternity. What more but – '***Sabko Sanmati de Bhagwan'***

Let's broaden our minds to learn effectively and not just to observe the formality.

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03.01.2014

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President's Message

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Dear Professional Colleague,

Wish you a very Happy New Year.

The second week of December – 2013, all news channels were buzzing with the results of assembly elections of five states. Where on one hand the Congress could retain only Mizoram, BJP came victorious in Madhya Pradesh, Chhatisgarh and Rajasthan. Though BJP remained the single largest party in Delhi, the show was stolen by a new entrant, Aam Admi Party (AAP) led by Arvind Kejriwal not just bagged second highest votes and seats but has been able to form the Government in Delhi with the support of Congress. A new chapter has been written in the political history of the Independent India where a new party in the political arena has been able to surge ahead of the two national parties. The AAP has made its mark in Delhi assembly elections and now it has declared to go national in the coming Loksabha Elections. The Delhi elections were fought on the agenda of corruption by AAP against Congress and BJP; it would be interesting to know about the views of AAP on national issues.

Last month, an Indian diplomat was subjected to strip and cavity searches and treated like a "common criminal" by US authorities. Devyani Khobragade, India's deputy consul general in New York was arrested on 12th December, 2013 on charges that she lied in a visa application. The row over her treatment while in custody has led to a cooling of relations between the two countries with India revoking some privileges for US diplomats in retaliation. The way the consul general was treated can be known from an email she wrote and published by Indian media. "I broke down many times as the indignities of repeated handcuffing, stripping and cavity searches, swabbing, in a holdup with common criminals and drug addicts were all being imposed upon me despite my incessant assertions of immunity".

After a very long time the Indian Government has taken a tough stand on the issue. The government has demanded an apology and the foreign minister Salman Khurshid has said that we have put in motion what we believe would be an effective way of addressing the issue but also put in motion such steps that need to be taken to protect her dignity." India also revoked diplomatic ID cards that brought certain privileges, demanded to know the salaries paid to Indian staff in US embassy households and withdrew some import licenses. In addition police removed the traffic barricades near the US embassy in New Delhi. Indeed, this time India has not just kept quiet on the issue and has been able to respond sternly.

January is the month whereby all professionals practicing Income Tax have to gear up for the assessment proceedings. The assessments need to be completed before March and therefore the number of visits before the Income Tax Officers is on the rise.

As announced the online payment facility has become operative for all payments to be made to the Association. Members are requested to take maximum benefit to save on cost and time. Third Brain Trust Meeting of the year, though not on traditional topic of Income Tax, received a very good response. The meeting was held on the topic of Use of RTI in Income Tax Proceedings and also FEMA and Non Resident. The cricket season at the Association has arrived. The first matched between President XI and Secretary XI had a nail biting finish where President XI dramatically clinched the match on the last ball of the game. The second match was played between CA Association and Income Tax Bar Association on 28/12/2014. My heartiest congratulation to the cricket team of the Association on convincing victory by 46 runs. For the match of the Association against Baroda Branch of ICAI to be played on 9th February 2014 at Baroda, I wish all the team members and the Association a great game and they continue the winning record.

The month of December is the month of Vat Audit. Keeping this in mind, 8th study circle meeting was held to discuss the topic of Issues under VAT Audit. Knowledge Clinic is getting a very good response from the members various interesting queries are being received from the members and being addressed and resolved by the panelists. The next Knowledge Clinic is to be held on 31-01-2014. Member may take maximum advantage of the same.

With best regards,
CA. Prakash B. Sheth
President
03.01.2014

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Letter to the Editor

Dear Sir,

Sub: "Section 234E A Genuine Hardship" article published in December' 2013 issue of ACA journal.

At the outset I heartily compliment you and the entire team at the Journal Committee for coming up with useful articles and columns in the monthly journal of the Association and also ensuring timely publication of the Journal and its delivery to the members.

I refer to the article published titled" **Section 234E A Genuine Hardship"** in December'2013 issue**.** I congratulate the author of the article for coming up with a lucid explanation of the provisions of section 234E and also the manner in which the levy of fee u/s 234E is turning out to be a hardship for all the tax deductors.

The article nicely explains the time constraint faced by the tax deductors under which all the TDS statements are required to be filed. I would like to add that even a default of one day, be it on account of the last day of the due date being a holiday, attracts fee of Rs 200/-. For all practical purposes it is impossible to pay fee of Rs 200/- and file the statement on the very same day. If I can elaborate this with an example:

If the due date of filing TDS statements for Q3 (01/10/2013 to 31/12/2013) of F.Y. 2013-14 is missed on 15-01-2014 and the deductor pays fee of Rs 200/- on 16-01-2014 and is ready with all the details of TDS statements, still he will not be able to file the TDS statement on 16-01-2014. This is because the challan for fee paid on 16-01-2014 will not be available online and it would not be possible to file the TDS statement. It is understood that the Income Tax Department expects all the tax deductors to anticipate the delay in filing of TDS statements well in advance and pay the fee for default in advance so that the challan can be available online to file TDS statements on the date up to which the fee for default is paid.

The important question arises that when Income Tax Department is issuing notices levying fee u/s 234E, whether all government departments including Income Tax, Judiciary are able to file their TDS statements in time? It has been found that various government offices including Income Tax Department at Ahmedabad, Palanpur, Gandhidham, CPC Bangalore, Office of CAG, Gujarat, Hon'ble Gujarat High Court have all defaulted in filing the TDS statements in time, for the FY 2012-13. The said information has been obtained under RTI Act by responsible citizens of Ahmedabad. In certain cases, the extent of default in filing TDS statements by Income Tax Departments is more than 10 months. If so is the case, who shall bear the levy of fee u/s 234E in all these government offices? The issue of accountability of the officer of the Income Tax Department in delaying the filing of TDS statements was also taken by me at length, in my column in Divya Bhaskar about a month back.

Even if the fees is paid by the offices of Income Tax Department, I would like to raise a simple question that when the Department itself is not in a position to file TDS statements in time despite the luxury of extra 15 days, at least for the first three quarters, what moral right does it have to collect fees from other assessees/ deductors?

Thanking you,

Yours truly,

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Reader's Views

After reading the Editorial on Current Political Scenerio, published in December, 2013 a reader has expressed his inspiring views which are of utmost concern for all of us. The Editor finds it worth sharing with all the readers.

Amidst serious concerns of corruption, distrust, despair and frustration at the state of affairs of our country, (whether it be the manner in which the politics of this country is run or the innumerable scams that we witness), penned below are some thoughts and concerns. IS IT TIME TO WAKE UP NOW?

1. Party politics has built up an army of mercenaries whose undoubted might is being deployed to shake the very foundations of democracy... **Shouldn't we rise?**
2. No mature nation's Constitution has ever provided that a MP / MLA should mortgage his vote, surrender his judgement, and sell his conscience to his party, in advance, and that members of the legislature should become like herds of sheep driven by the party whip in any directions chosen by the party high command... **Shouldn't we rise?**
3. The present crises has been created by self-seeking leaders, hungry as locusts for power and office, who put the good of the country nowhere on their list of priorities... **Shouldn't we rise?**
4. We need to break the tradition of being collectively foolish, despite being individually intelligent... **Shouldn't we rise?**
5. It is not the MP / MLA, dressed in brief authority, who are supreme. It is the Constitution which is supreme... **Shouldn't we rise?**
6. The men leading us have reduced this country to a cesspool for degradation... **Shouldn't we rise?**
7. There are two major crises we are facing today: moral and economic... **Shouldn't we rise?**
8. Honesty and truthfulness in our leaders is like silence in a discotheque... **Shouldn't we rise?**
9. Murderers, rapists, economic offenders, etc. represent you in the Parliament, and the leaders come together to save their face when the Supreme Court tries to cleanse the system... **Shouldn't we rise?**
10. For how long will we stay in the shackles of political feudalism... **Shouldn't we rise?**
11. Our country can never prosper or be saved through the efforts of only ministers and civil servants... Its people must be associated at all stages with the formulation and implementation of policies. **Shouldn't we rise?**
12. India is being perceived as "potentially great, but in a state of moral decay"... **Shouldn't we rise?**
13. We have enough religion to hate one another, but not enough to love one another... **Shouldn't we rise?**
14. Men with their eyes glued on the vote bank have been whipping up insane confrontations... **Shouldn't we rise?**

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Accounting for Real Estate Transactions

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Real estate transactions are unique as they are spread over more than one accounting period and they have diverse format of transaction structure.AS 9 does not provide adequate clarity on timing and basis for recognizing revenue for real estate transaction.The organization also faces the challenges to make accounting estimates like project cost, percentage completed, etc

This article attempts to highlight the key aspects in the field of accounting for Real Estate transactions. We have incorporated the Guidance note on Accounting for Real Estate Transactions (Revised 2012) issued by ICAI and also covered various aspects of recognition & measurement derived from Accounting Standards (AS 7 Construction Contracts & AS 9 Revenue recognition)

Authority of Guidance Notes:

"Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should **ordinarily follow recommendations in a guidance note** relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, **while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary".**

Objective & Applicability:

The objective of the "Guidance Note on Accounting for Real Estate Transactions (Revised 2012)" is to recommend the accounting treatment by enterprises dealing in 'Real Estate' as sellers or developers. The term 'real estate' refers to land as well as buildings and rights in relation thereto. This Guidance Note is applicable to all projects in real estate which are commenced on or after April 1, 2012 and also to projects which have already commenced but where revenue is being recognized for the first time on or after April 1, 2012.It also covers all types of real estate transactions – land, plots with and without development, development agreement, building, TDR, etc.

An enterprise may choose to apply this Guidance Note from an earlier date provided it applies this Guidance Note to all transactions which commenced or were entered into on or after such earlier date.

Transactions Covered:

i) Sale of plot of land (including long term leases),

ii) Sale of plots of land (including long term leases) with common facilities like laying of roads, drainage lines, water pipelines, electrical lines, sports facilities, club house, etc.

iii) Development and sale of residential and commercial units, row houses, independent house,

iv) Acquisition, utilization and transfer of development rights.

v) Redevelopment and Joint development agreements for any of the above activities.

What is Project ,Project Cost & Project Revenue:

Project: Project is the smallest group of units/plots/ saleable spaces which are linked with a common set of amenities in such a manner that unless the common amenities are made available and functional, these units/ plots / saleable spaces cannot be put to their intended effective use.

Project Cost consist of

- Cost of land & development rights including rehabilitation cost, brokerage cost, stamp duty etc
- Borrowing cost – directly incurred on the project or which are apportioned to the project

- Construction & development cost relating to project
- Materials and Labour
- Approval cost
- Depreciation of plant & machinery
- Insurance cost
- Cost like general administration, selling expenses etc should not be included in the cost of construction

Project Revenues:

Project revenues include revenue on sale of plots, undivided share in land, sale of finished and semi finished structures, consideration for construction, consideration for amenities and interiors consideration for parking spaces and sale of development rights.

Method of Accounting:

i) The application of principles of AS 9 in respect of sale of goods requires recognition of revenues on completion of the transaction/ activity when

(a) The seller has transferred all significant risks and rewards of ownership and retains no effective control of the real estate (including ownership),

(b) The seller has handed over the possession of the real estate unit to the buyer,

(c) The amount of sale consideration can be reasonably measured,

(d) It is not unreasonable to expect ultimate collection of revenue from buyer,

(e) Where the transfer of legal title is a condition before the buyer taking over significant risks and rewards of ownership, revenue should be recognized when legal title is transferred.

ii) The percentage completion method should be applied in the accounting of all real estate transactions/activities where the economic substance is similar to construction contracts.

(a) Indicators for applicability of Percentage of completion method:

(i) The agreement for sale is entered into between the buyer and seller, which has the effect of transferring significant risks and rewards of ownership to the buyer, provided the agreement is legally enforceable though the legal title is not transferred or the possession of the real estate is not given to the buyer. And any acts on the real estate, performed by the seller, are in substance, performed on behalf of the buyer in the manner similar to a contractor.

(ii) The duration of such projects is beyond 12 months,

(iii) Most features are common to construction contract, viz., land development, structural engineering, architectural design, construction, etc.

(iv) When individual units in the project are dependent upon or interrelated to completion of common facilities / amenities,

(v) The construction activities form a significant proportion of the project activity.

(b) Conditions to be fulfilled before applying the Percentage of completion method:

(i) the outcome of the real estate project can be measured reliably,

(ii) the total project revenue can be estimated reliably,

(iii) the project costs to complete the project can be measured reliably,

(iv) the project costs incurred till reporting date can be clearly identified and measured reliably,

(v) it is probably that the economic benefits associated with the project will flow to the seller.

(c) Conditions to be fulfilled before revenue to be recognized under Percentage of completion method:

(i) All critical approvals for commencement of the project have been obtained,

(ii) The expenditure incurred on construction and development costs, till reporting date, is at least 25% of total estimated construction and development cost, as defined earlier,

(iii) At least 25% of saleable area is secured by agreement to sale with buyers,

(iv) At least 10% of total revenue, of the contracts or agreements entered into with the buyers, is realized at the reporting date in respect of each of the contracts

A few points to remember

(A) Onerous contract

When it is probable that total project costs will exceed total eligible project revenues, the expected loss should be recognized as an expense immediately. The amount of such a loss is determined irrespective of:

(i) Commencement of project work, or

(ii) The stage of completion of project activity.

(B) The percentage completion method is applied on a cumulative basis in each reporting period to the current estimate of project revenue and project cost.

(C) Guidance Note does not prohibit methods like survey of work, technical estimation, etc for determining of stage of completion provided the revenue as per other methods is not higher than the revenue on the basis of project cost incurred.

Disclosure

An enterprise should disclose:

(i) Project revenue recognized & method used

(ii) Method of determination of stage of completion

(iii) Aggregate amount of cost incurred and profit recognized,

(iv) Amount of advances received, work in progress, inventory

(v) Unbilled revenue i.e. excess of revenue over actual bills raised

Accounting Policies of some Real Estate Companies

DLF Limited:

Revenue from constructed properties is recognized in accordance with the provisions of Accounting Standard (AS) 9 on Revenue Recognition, read with Guidance Note on "Recognition of Revenue by Real Estate Developers".

Revenue is computed based on the "percentage of completion method" and on the percentage of actual project costs incurred thereon to total estimated project cost, subject to such actual cost incurred being 30 per cent or more of the total estimated project cost .

Housing Development and Infrastructure Limited:

The Company follows completed project method of accounting ("Project Completion Method of Accounting"). Allocable expenses incurred during the year are debited to work in progress account. The income is accounted for as and when the projects get completed or substantially completed. The revenue is recognized to the extent it is probable and the economic benefits will flow to the Company and the revenue can be reliably measured.

Orbit Corporation Limited:

Income from real estate sales is recognized on the transfer of all significant risks and rewards of ownership to the buyers and it is not unreasonable to expect ultimate collection and no significant uncertainty exists regarding the amount of consideration.

Determination of revenues under the percentage of completion method necessarily involves making estimates by the Company. Revenue from construction and project related activity is recognized by applying Percentage Completion Method (PCM) to sale of tenements. Percentage of completion is determined as a proportion of cost incurred to date (excluding property acquisition cost) to the total estimated project cost (excluding property acquisition cost). Project becomes eligible for revenue recognition when the percentage of completion of project exceeds 25%.

Comparison between Old Guidance Note & New Guidance Note

Particulars	Old Guidance Note	Revised Guidance Note
Objective	- Recommended principles of revenue for real estate transactions	- More broader - also provides the basis in which principles as AS 7 and AS 9 to be applied, more detailed principles for recognizing revenue, etc.
Definition of term real	- Referred to land as well as building	- Refers to land as well as buildings and rights in estate relation thereto
Scope	- No specific scope but only covered	- Covers all forms of real estate principles of revenue recognition transactions like sale of plots of land with or without development, development and sale of residential and commercial premises, Acquisition, utilization and transfer of TDS, joint Development, Redevelopment etc.
Definitions	- No definitions provided	- Definition of various terms used in the guidance note are provided [example project, project cost etc.]
Revenue Recognition	- If conditions specified by AS-9 for revenue recognition satisfied than revenue to be recognized	- If economic substance of transactions is like construction contract revenue should be recognized using principles of AS-7 - If the economic substance is similar to sale of goods than principles of AS-9 should be used
Application of POCM	- No guidance provided	- Detailed guidance note provided. Also additional conditions like threshold limit, collection, minimum sales etc defined
Calculation of threshold	- No guidance provided - AS-7 was required to referred to for guidance	- Guidance provided as to what items should be considered for calculation of threshold limit of 25%
Acquisition, Utilization and sale of TDR	- Not covered	- Covered
Disclosure requirements	- No disclosure requirements prescribed other than disclosure of accounting policy	- Additional disclosure requirements have been prescribed

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General Principles on Drafting of Agreements Relating to Real Estate Transactions

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A. PRINCIPLES OF GOOD DRAFTING

Documentation is an art, which is acquired by learning its skill and experience. The principles of good drafting are as under:-

- **Documents should be clear**

Simple words should be used in drafting, so that there is no ambiguity. Technical words may be used in the document in such a way, that it conveys the intention of the executor. The legal, French and Latin terms should be used discreetly. The word with more than one connotation should never be used in a legal document.

- **Logical Arrangement**

It is necessary to sketch the draft document into a logical order after collecting the ideas, facts, the information necessary for drafting. The ideas should be arranged in such a way that the final product should be clear.

- **Words should be used consistently**

The same words, terms or expressions should not be used in more than one sense.

- **Legal requirement should be complied**

A document that is void ab-initio has no existence in the eye of law. However, while drafting a document, the legal requirements of the transaction should be incorporated

- **The document should be concise and brief.**

The draftsman should express himself clearly in the smallest possible number of words. Repetition and redundancy should be avoided.

- **The expression in the document should be direct**

In a legal document the expression should be direct and nothing should be implicit that can be explicit.

B. PRECAUTIONS TO BE TAKEN WHILE DRAFTING A DEED

The following precautions should be taken while drafting any document:

i. The document should be properly divided into paragraphs.

ii. The punctuation should be done properly.

iii. The word like 'less than' or 'more than' should be avoided. Instead the word like 'not exceeding' should be used.

iv. The dates, sums and numbers should be stated in words or both in words and figure e.g. Rs.1000/- (Rupees one thousand only).

v. The blank space in the document should be filled in before execution.

C. PARTS OF DEED

The parts of deed are as follows:

1. Name of the deed

The deed commences with its name e.g. "THIS AGREEMENT" or "THIS DEED OF PARTNERSHIP" or "THIS DEED OF SALE". The name given to the deed is not conclusive of the nature of the deed. The true nature of the deed has to be ascertained on reading the document.

2. Place and date

After the name of the deed, the place of the execution of the document is stated. Although the mentioning of the place is not necessary but as a matter of practice, the name of the place is stated e.g. "THIS DEED OF SALE MADE AT AHMEDABAD".

After the place, the date on which the document is executed, is stated e.g. "THIS DEED OF SALE MADE AT AHMEDABAD ON THE FIRST DAY OF APRIL, TWO THOUSAND AND THIRTEEN". Though giving a date to the document is not essential, dating becomes important for many purposes. Under the Indian Registration Act, 1908, the deed takes effect from the date of the execution. Any deed should be presented for registration within a period of four months from the date of execution. Similarly, the date is important for the purpose of Limitation Act. The date also becomes important in the case of deeds of transfer of immovable properties, in which the date of execution becomes relevant for the purpose of mutation.

However, the deed does not become invalid on the account of the fact that it does not contain the date.

The date of execution can be proved by leading evidence. But, in view of its importance for

various purposes, it should be ensured that the deed is dated. The date of the deed is the date on which the deed is executed by the party or parties to it. If different parties execute the deed on different dates, the date on which the deed was last executed is taken as the date of the deed.

3. Parties and description

After the place and date, the names and description of the necessary parties to the deed are mentioned. Necessary parties to a deed depend on the nature of the deed. The full description of the parties such as parentage, occupation, domicile and full residential address should be given, so that there may not be any difficulty in identification of the parties. The description should be such, as is sufficient to identify the party to the deed.

(a) Juridical persons

Many times, the party to the deed is not living person but may be ay juridical person e.g. a company, an idol, corporation or an association. When any juridical person is a party to the deed, the names and description are written as under: "ABC Ltd., a company registered under the Companies Act, 1956 and having a registered office at Ahmedabad". "Industrial Development Bank of Indian, statutory corporation incorporated under the Industrial Development Bank of India Act, 1964 and having its central office at ……. Bombay".

(b) Minor

Minors are not competent to contract. A contract by a minor is void ab-initio. Hindu Minority and Guardianship Act, 1956 (see 8) provides that the natural guardian of a Hindu minor shall not, without the previous permission of the Court:-

i. mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor; or

ii. lease any part of such property for a term exceeding five years or for a term exceeding more than one year beyond the date of which the minor will attain majority. In other cases i.e. Jews, Christians, etc. the guardian of the minor can transfer the minor's property with the Court's previous permission.

(c) Trusts

As the trust property vests in trustees, the transfer of the trust property can be made by the trustees in their own names. The description of the trustee can be written as under: "XY and Z, trustees of the estate of A".

(d) Partnership firm

Partnership Act restricts the authority of a partner. According to Sec. 19(2) of the Partnership Act, 1932 in absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to do many acts including transfer of immovable property of the firm and acquire immovable property of the firm. All the partners should sign for acquiring or transfer of immovable property. The description of the Partnership firm can be written as under: M/s. …… , a partnership firm,

(e) Insolvent

The property of the insolvent can be transferred by the Official Assignee or Receiver appointed by the Court. The Official Assignee or Receiver should be made party in own name and the fact of vesting of property due to insolvency of the owner should be referred to in recitals.

(f) Government

The Constitution of India (Article 299) provides that all contracts made in exercise of the power of the Union and all assurances of the property vested in the Union are to be expressed in the name of the President of India. Those relating to a State should be made in the name of the Governor of that State. Such contracts and assurances of the property should be executed on behalf of the president or the Governor by such person and in such a manner as he may direct or authorize.

Neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution, or for the purposes of any enactment relating to the Government of India. The provisions of Article 299 are mandatory and contracts not made in accordance with the provisions

of the Article will be void.

4. Recital

Recitals state the facts on which the deed is based. It should be written in a logical and chronological order. It has to be drafted carefully. It ascertains the operative parts. Recitals are of two kinds:

(a) Narrative Recital: It relates to the history of the property and explains the devolution of title upon the transferor. If the transferor is the absolute owner, then there may not be any necessity to put a recital. But, if the transferor is not the absolute owner of the property, then it should be explained in the recitals, about the his role in the transfer of property.

(b) Introductory Recital: It explains the motive or intention of the parties to the execution of the deed. These recitals are put after the narrative recitals. It can be said that it connects the narrative recital to the rest of the deed.

5. Testatum

After recitals, the operative part of the deed commences with the testatum. The testatum is usually written in the following form: "NOW THIS DEED WITNESSETH AS FOLLOWS"; or "IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS", "IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS".

6. Operative words

After the tastatum, operative words follow, which express the nature of the transaction. The operative words should be clear and unambiguous. The operative words also include covenant on the part of the parties.

Example:

In a Lease Deed, the lessor and lessee covenant to perform duties. In a Sale Deed, the seller covenants that he has the title to the property being transferred and the purchaser will have peaceful possession of the property being transferred to him.

7. Parcels

After the operative words, the description of the property being transferred has to be given. The description of the property should be given so that the property to be transferred may be identified. If the description of the property is not very long, it may be given at the end of the deed. However, inaccurate or insufficient description of the property in document does not invalidate the document. The full description of the property in the deed is given under:-

"All that the piece or parcel or plot of land measuring ……. Sq. mtrs. …….. sq. yards or thereabout bearing survey No. …….. of village …….. and city Survey No. …….. Of the area of …….. City survey, 5 situated inTaluka and Sub-Registration District …….. And District and Registration District …….. and within the …….. Municipal Corporation limits and bounded as follows: On or towards the East: Plot No. …… S. No. …….. belonging To Sri ……

On or towards	Plot No. ……
the West:	S. No. …….. belonging
	To Sri ……..…
On or towards	Plot No. ……
the North:	S. No. …….. belonging
	To Sri ……..……
On or towards	Plot No. ……
the West :	S. No. …….. belonging
	To Sri ……

8. Schedule of the property

As the description of the property is generally very long, it is given in a Schedule appended to the deed and the words "and more particularly described in the schedule hereunder written".

9. Map

In the deed of transfer, the map of the property to be transferred is annnexed, to identify the property properly. The map should be referred to in the parcel of the deed as under: "The house delineated on the plan annexed hereto and thereon surrounded by red coloured boundary line". If the map is annexed to the deed, it is treated as part of the deed.

10. All Estate Clause

After the description of the property, all estate clauses expressing that the transferor conveyed all estate, interest, title, claim, rights, and demands whatsoever into or in the said property or any part thereof, is put. This clause is slightly long and it is put as under:-

"Together with all fences, trees, plants, shrubs,

water course rights, liberties, privileges, easement, advantages, including all perspective rights and title acquired by adverse possession and appertaining thereto or with the same or any of them now or hereto occupied or enjoyed or known as part ad parcel of them or appurtenant thereto and also together with all deeds ad documents, writings, vouchers and other evidence of the title relating to the said demarcated portion or any part thereof AND ALL, estate, title, interest, claim and demand of the vendor upon the said demarcated portion."

11. Exception and Reservation

An exception is a part of the thing grated, which is in existence and reservation is a thing, not in existence, but created or reserved out of land granted. If the transferor intends to retain some part of the estate transferred, it should be specifically mentioned after the description of the property. If the exceptions are not specifically mentioned in the deed, all rights will be deemed to be transferred to the transferee.

Reservations are the rights reserved with the owner out of the thing granted e.g. right of rent, right of way or fishing right. In a lease deed, the lessor reserves the right of rent or right of re-entry with him.

12. Consideration

The consideration should be mentioned in the deed. The Indian Stamp Act, 1899 (see 27), provides that the consideration should be fully and truly set forth in the deed and the omission to mention correct consideration is punishable with fine, which may extend to Rs.5000/-. However, the validity of the deed is not affected by not mentioning the consideration. The consideration need not be adequate, if the consent of the promisor was freely given.

13. Receipt

After the consideration, the acknowledgment of consideration by the transferor is also incorporated. The receipt of consideration is made within parenthesis in the deed. If part consideration is paid and the balance is being paid at the time of execution of deed, the fact should be stated in the receipt clause. An illustration of testatum clause along with the consideration and receipt clause will be as under:-

"NOW THE DEED WITNESSETH THAT IN PURSUANCE OF THE SAID AGREEMENT AND I CONSIDERATION OF Rs.1,00,000 (Rupees One Lakh only) paid by the transferee to the transferor does hereby acknowledge".

14. Habendum

Habendum limits the granted estate and it mentions the liabilities or incidents subject to which the property is transferred. If the interest transferred for ever or for life, it should be mentioned in habendum. This clause appears as under:

"TO HAVE AND TO HOLD FOREVER". OR "TO HOLD THE SAME TO THE LESSEE FOR A TERM OF NINETY NINE YEARS FROM THE DATEOF THESE PRESENTS"

15. Reddendum

In reddendum, the rent that is to be paid by the lessee is specified. It also specifies the time and mode of the payment of lease rent. This clause appears as under:

"PAYING THEREFORE Rs.5000 (Five thousand) rent per month by the 7th day of the month of the following month, to that it relates"

16. Covenants

Covenant is an agreement by which the parties or some of them agree to do or not to do a specified thing or act. No particular form is necessary for making a covenant in the deed. The words used in the covenant should be clear. A covenant may also be implied, if by the instrument it is clear that the party to the deed shall be bound to do or not to do a certain act, though it is not expressly provided in the deed.

The covenant may be positive or negative. A positive covenant requires the covenanter to perform any act of positive nature, whereas negative covenant contemplates that one of the parties will abstain from doing some act.

A covenant annexed to the land binds the land and it can be enforced against. A covenant may be made by several persons jointly or severally. If two or more persons covenant to do something without any words of severance, the covenant will be regarded as joint covenant.

17. Delivery of the Title Deed

After the covenant clause, the clause regarding delivery of title deeds by the transferor to the transferee is incorporated. When the transferor transfers the property, he is required to deliver all the title deeds in the possession to the transferee. The title deeds delivered to the

transferee are mentioned in a separate schedule annexed to the deed. In case, the transferor does not give the original title deeds in the possession to the transferee an undertaking has to be given.

18. Testimonium

The testimonium is the concluding part of the deed. The testimonium states that the parties have signed the deed in witness of what is written therein. The testimonium is in the following form:

"IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET THEIR RESPECTIVE HANDS THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN."

In case, the company is a party to the deed, the testimonium clause will be as follows:-

IN WITNESS WHEREOF THE VENDOR has caused it seal to be affixed to these presents and to a duplicate thereof, and the purchaser has hereunto set his hands the day, month and year first hereinabove written.

In case, the statutory authority is a party, the testimonium clause will be as under:

IN WITNESS WHEREOF THE LICENSOR AND LICENSEE have through their respective officials set their respective hands to these presents and on duplicate thereof, on the day, month and year first hereinabove written.

In case, the deed is executed by an attorney of the vendor, the testimonium clause will be as under:

IN WITNESS WHEREOF THE SAID SHRI …… BY …… HIS POWER OF ATTORNEY HAS SIGNED THESE PRESENTS ON THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

19. Execution

After testimonium, the deed is executed by the parties in the presence of witnesses. Execution of the document does not mean merely signing it. It should accompany the intention of the executant to give effect and operation to the document signed. Here the signature means to write one's name so as to make it appear that a person signing it is its author. When all the parties sign the deed, it is said to have been executed. If a person is not able to write himself, he may put his mark on the document. The left thumb impression for male and right thumb for female should be obtained on the document in the presence of the witnesses. This is normal convention. The thumb impression should not be attested on the document. It may be attested on a separate piece of paper that may be kept with the document. The following words should be written below the thumb:

Left/right thumb impression of Shri/Smt. ……

If a person signs a document on behalf of an illiterate executant, at his request, it will be held that he has signed, under the authority of an illiterate executant.

A literate person cannot allege that he has executed the document without reading it.

If a company is a party to the deed, the seal of the company is required to be put on the deed, under the signature of the directors or officers of the company. When the company's seal is affixed on the deed, it is said to be executed by the company.

If the deed is executed by weak/disabled person, the person in whose favour transfer has been made should prove that the contents of the document were explained to such person and he/she fully understood the same.

20. Attestation

When two or more witnesses, each of whom has seen the executant sign/ affix their mark to the instrument, or seen some other person sign the instrument in the presence and by the direction of the executant, or received from the executant personal acknowledgement, then the instrument is said to be executed. Attestation is necessary in bond, gift, mortgage, will and codicil and in some case of transfer of property. But, as a precautionary measure, it is a practice to get the execution attested by at least two witnesses. The name and description of the attesting witnesses is also mentioned below the signature of the witness.

If the executant cannot read the deed himself, as he is illiterate or blind, the contents of the deed should be explained to the executant before the executes the deed. The deed should be explained to the pardanashin ladies. The attestation clause in such a case will be as under:

Signed and delivered by the said Shri ……., we having first truly and audibly read over to him the contents of the above-written deed, when it appears to

us that he has understood the same and made his mark thereto in our presences:

1. Witness .....
   Name .....
   Address .....
2 Witness .....
   Name .....
   Address .....

Signed and delivered by the within named Shri ..... , the same having been carefully read over to him (he being blind) by us, when it appears to us that he has perfectly understood the contents of this deed in our presence.

1. Witness .....
   Name .....
   Address .....
2 Witness .....
   Name .....
   Address .....

21. Error and Omissions

If errors or omissions are corrected in the engrossment, the same should be initialed by the parties signing the deed. Alternatively, the corrections may be noted in a memorandum under the testimonium and a covenant added in a post script after the testimonium.

22. Endorsements and Supplemental Deeds

When after the execution of the deed, some additions or alterations to a deed are required to be made; the same can be done either by endorsement on the deed or by a "supplemental deed". If the writing is short, it can be done by endorsement on the deed.

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Updates from ICAI

Compiled by CA. Uday I. Shah

Extension of last date for complying with the CPE hours requirement for the block period 2011- 2013 - from 31st December, 2013 to 31st March, 2014. - (01-01-2014)

This is for kind information of the members that it has been decided to extend the last date for complying with the CPE hours requirement for the block period 2011-2013 - **from 31st December, 2013 to 31st March, 2014**

Annual Improvements to IFRSs 2012–2014 Cycle (Last date for sending comments: January 28, 2014) - (18-12-2013)

The International Accounting Standards Board (IASB) has published this Exposure Draft of the proposed amendments to International Financial Standards (IFRSs) as part of its Annual Improvements project. The project provides a streamlined process for dealing efficiently with a collection of non-urgent amendments to IFRSs. These amendments meet the criteria for the IASB's Annual Improvements process and which are included in the IFRS Foundation Due Process Handbook published in February 2013.

The Exposure Draft includes a chapter for each Standard for which an amendment is proposed. Each chapter includes:

a. an explanation of the proposed amendment;

b. when necessary, any specific additional questions that are unique to that proposed amendment;

c. the paragraphs of the Standard or Implementation Guidance that are affected by the proposed amendment;

d. the proposed effective date of each proposed amendment; and

e. the basis for the IASB's conclusions in proposing the amendment.

Invitation to comment

ASB invites comments on the Exposure Draft from the public. The downloadable version of the draft is available at:

http://www.ifrs.org/Current-Projects/IASB-Projects/Annual-Improvements/Exposure-Draft-December-2013/Documents/Exposure-Draft-Annual-Improvements-2012-2014-December-2013.pdf

Comments would be most helpful if they indicate the specific paragraph or group of paragraphs to which they relate, contain a clear rationale and, where applicable, provide a suggestion for alternative wording.

Comments should be submitted in writing to the Secretary, Accounting Standards Board, The Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi-110002, so as to be received not later than **January 28, 2014**. Comments can also be sent by e-mail at **asb@icai.in** or**commentsasb@icai.in.**

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Glimpses of Supreme Court Rulings

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29 Review of final judgments of Supreme Court:

The following grounds of review are maintainable as stipulated by the statute;

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him.

(ii) Mistake or error apparent on the face of the record.

(iii) Any other sufficient reason. The words ' any other sufficient reason' have been interpreted to mean ' a reason sufficient on grounds, at least analogous to those specified in the rule.

The mere fact that different view on the same subject are possible is no ground to review the earlier judgment passed by this Bench. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. A judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

[Union of India vs. Sandur Manganese and iron ores Ltd. and others (2013) (8 SCC 337)].

30 Hindu law – Joint family/ joint family property/Joint property:

Coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. 'Coparcenary' is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and it enlarges by deaths and diminishes by births in the family. It is not static. So long as on partition a share of ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property.

[Rohit Chauhan vs. Surinder Singh and others (2013)(9 SCC 419)]

31 Property Law – Ownership and title:

A revenue record is not a document of title. It merely raises a presumption in regard to possession. Presumption of possession and/or continuity thereof both forward and backward can also be raised under Section 110 of the Evidence Act. Possession may prima facie raise a presumption of title no one can deny but this presumption can hardly arise when the facts are known. When the facts disclose no title in either party, possession alone decides.

The maxim 'possession follows title' is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of wastelands, or where nothing is known about possession one way or another. Presumption of title as a result of possession, can arise only where facts disclose that no title vests in any party. Possession of the plaintiff is not prima facie wrongful, and title of the plaintiff is not proved. It certainly does not mean that because a man has title over some land he is necessarily in possession of it. It in fact means, that if at any time a man with title was in possession of the said property, the law allows the presumption that such possession was in continuation of the title of the title vested in him. A person must establish that he has continued possession of the suit property, while the other side claiming title, must make out a case of trespass/encroachment, etc.

[State of Andhra Pradesh and others vs. Star Bone Mill and fertilizer Co. (2013) (9 SCC 219)]

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From the Courts

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64 Disallowance u/s 14-A : No nexus

CIT v/s. Gujarat Power Corporation Ltd. (2013) 352 ITR 583 (Guj)

Issue :-

Whether disallowance u/s 14A can be made when own funds are invested in shares from which income arises?

Held :

The Tribunal held that there was no dispute that the assessee had utilized its own funds for the purpose of making investment in shares etc from which tax free income was earned and there was also no dispute that the interest bearing borrowed funds were utilized for its own business proposes from which taxable income was earned by the assessee. The nexus between the interest bearing funds and the interest free investment as claimed by the A.O. was not correct when it was not in dispute that the assessee's own funds were utilized for making tax free investment.

High Court held that :-

When the CIT(A) and the Tribunal had on the facts found that the assessee did not invest the borrowed funds for earning tax free income, the invocation of the provisions of Sec. 14A for taxing such interest was not justified.

65 Scope of "Explanation" to a section :

Katira Construction Ltd : v/s. Union of India (2013) 353 ITR 513 (Guj)

(2013) 352 ITR 513 (Guj)

Issue :

What is the scope of 'Explanation' to a section?

Held :

Ordinarily an Explanation is introduced by the Legislature for clarifying some doubts or removing confusion which may be possible from the existing provisions. Normally, therefore, an Explanation would not expand the scope of the main provision and the purpose of Explanation would be to fill a gap left in the statute, to suppress a mischief, to clear a doubt or as is often said to make explicit what would be implicit.

Parliament has power to legislate with respect to the subject matter on hand, but also with retrospective effect, if so found necessary. In the field of taxation, parliament enjoys considered latitude in framing and implementing policies. The wisdom of parliament in enacting a statute cannot be questioned in a court of law.

The Explanation inserted below – sub section (13) of section 80IA of the I.T. Act, 1961 by the Finance (No.2) Act 2009 with retrospective effect from April 1, 2000, which provides that nothing contained in the section shall apply in relation to a business, refund to in sub section (4) which is in the nature of a works contract awarded by any person and executed by an undertaking or enterprise, is valid.

66 Transfer of a case from one city to another city : Opportunity of hearing:

Shikshana Prasaraker Mandli v/s. CIT

(2013) 258 CTR 289 (Bom) (2013) 352 ITR 53 (Bom)

Issue :

Whether is it mandatory to grant an opportunity of hearing, before transfer of a case from one city to another?

Held :

The entire proceeding transferring the case from Pune to Mumbai is in breach of principles of natural justice. This is for the reason that the impugned order dt. 2nd August, 2012 gave various reasons supporting/justifying conclusion therein. However, while calling upon the assessee to show cause on 8th February , 2012 to the proposed transfer none of the reasons found in support of the impugned order dt 2nd August 2012 were mentioned in the show cause notice. The giving of notice containing the reasons for the proposed action is a basic postulate for compliance of the audi alteram pertum rule. It is axiomatic that unless a party is informed to impugned of the reasons for the proposed action, it would be impossible for the noticee to put forth its point of view with regard to the reasons for the proposed action. The views of the noticee are to be considered by authority

before taking any decision to confirm or drop the notice. A show cause notice to be effective must be adequate so asto enable a party to effectively object /respond to the same. The authority concerned is obliged to consider the objections, if any, and thereafter reach a finding one way or the other. This alone ensures absence of arbitrary exercise of powers by the authorities. Thus, there has been failure of audi alteram partum rule and the case of the assessee has been transferred in breach of natural justice dehors the non giving of personal hearing to the assessee. In the view of the matter also, the order dt. 2nd August 212 passed by the respondent cannot be sustained.

No complaint on account of the conduct of the assessee can be made as it had moved the court with reasonable expedition and therefore, the contention that if the impugned order is set aside, the jurisdiction of the Pune CIT is restored then in such an event, the normal assessment for the A.Y. 2010-11 would become time barred is not sustainable.

67 Whether depreciation provision is a must before giving interest to partners?

Shri Venkataswara Photo Studio v/s. ACIT

(2013) 215 Taxman 119 (Mag) (Mad)

Issue :

Whether provision of depreciation is a must before provision of interest to partners? Sec. 40(b)(iv) v/s. Sec. 40(b)(v).

Held :

Depreciation is given a charge on the profits, but then when working out section 40(b) disallowance, particularly with reference is Cl. (iv), when there is no specific reference to book profit as a basis on which an interest has to be paid, unlike in the case of salary, the mere score that depreciation is made a charge on the profit, per se would not justify the claim of the revenue that granting of such relief on the gross profit would lead to distorted figures in the matter of working out real income of the assessee for the purpose of taxation.

Legislature has provided such differential treatment in the matter of granting deduction and disallowance on the payment of interest and salary, it is difficult to accept the plea of the revenue that sec. 40(b) disallowance has to be worked out only on the book profit, meaning thereby the net profit after working out the depreciation.

As per provision of Sec. 40(b)(iv) there being no restriction placed on the working of interest before working out the depreciation, the revenue cannot insist on deprecation being a charge on profit, has to be deducted first before considering any interest payment on the capital of the firm.

As section 40(b)(iv) stands in contrast to section 40(b)(v), it is difficult to accept the case of the revenue.

68 Expense on advertisement and third party benefit :

CIT v/s. Khambhatta Family Trust

(2013) 215 Taxman 602 (Guj)

Issue :

Whether expenses on advertisement can be disallowed on the ground that it benefits third party also?

Held :

It is apparent that while examining a claim for deduction u/s 37 what has to be seen is whether the expenditure had been incurred wholly and exclusively for the purpose of the assessee's business and whether it falls under any of the exemptions carried out under sub section 2(B) thereof, and nothing more. Once it is found that the expenditure had been incurred by the assessee for publicity or advertisement, it is not for the department to consider what commercial expediency justified such expenditure. It is, therefore, not permissible for the A.O. to scrutinize the claim any further to examine as to whether in the process any third party has also benefited. The mere fact that on account of the expenditure incurred by the assessee wholly and exclusively for its business, incidentally some third party is also benefited is no ground to disallow any part of such expenditure.

69 Sec. 263 and twin conditions :

CIT v/s. Jain Construction Co.

(2013) 215 Taxman 127 (Mag)(Raj) : (2013) 257 CTR (Raj) 336

Issue :

What are the safeguards for invoking provisions of Sec. 263?

Held :

The settled legal position for limitation on the revisional powers of Commission u/s 263 is that, firstly, they are

contd. on page no. 556

Tribunal News

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57 HYUNDAI HEAVY INDUSTRIES CO. LTD vs. ADIT 145 ITD 158(DELHI)

Assessment Year 2008-09, Order Dated: 30TH JULY, 2013

BASIC FACTS

The assessee company a tax resident of South Korea entered into contracts with different Indian parties for construction of offshore platform and pipelines. It had an installation Permanent Establishment in India. It contended that the portion of receipts pertaining to designing, fabrication and supply of material i.e. activities carried out outside India were not taxable in India. The AO held that the contracts entered into by the assessee company were indivisible in nature and receipts pertaining to pre-engineering services, designing, fabrication, and procurement have element of income attributable to permanent establishment of the assessee in India and hence taxable in India.

ISSUE

Whether the contracts entered into by Assessee Company were divisible in nature and whether receipts pertaining to the said activities were taxable in India?

HELD

The contracts entered into by Assessee Company with different Indian parties were divisible in nature. Moreover, the receipts from designing, fabrication and supply of materials were carried out outside India much before date of arrival of structure. Accordingly Tribunal held that contracts were divisible in nature and receipts of those activities which were carried out outside India was not taxable in India.

58 ESSAR OIL LTD. Vs. ACIT 157 TTJ 785(MUM.)

Assessment Year 2004-05, Order Dated: 28thAugust, 2013

BASIC FACTS

The assessee, an Indian company, is carrying out work of drilling oil wells through it energy division in Oman and Qatar. The assessee claimed that business profits and LTCG earned in Oman & Qatar were taxed in accordance with the taxation laws of Oman & Qatar, and hence were not chargeable to tax in India. The AO did not accept the assessee's contentions on the ground that Indian resident is taxed on his global income in India in view of s.5(1) of the Act and therefore the income earned by the assessee from foreign countries has to be included in the total income of the assessee to determine the liability for tax purposes. If tax is paid as per taxation law of that country then relief for tax paid or tax credit is to be given in India. He accordingly added the income to the total income and granted credit for the taxes paid. Based on earlier year's decision, the CIT(A) held that business profit was not taxable in India in view of Article 7 of the DTAA. He also held that capital gain was also not taxable in India since the use of the phrase 'may' in DTAA has a permissive connotation and does not give an option to tax capital gain in India as well.

ISSUE

Whether the phrase "may be taxed in that other Contracting State" givens an option to the source country to tax the income?

HELD

The law laid down by the Courts on the interpretation of the expression "may be taxed" that once the tax is payable or is paid in the country of source, then the country of residence is denied the right to levy tax would no longer be applicable after the insertion of Section 90 (3) w.e.f. 1.4.2004, i.e. AY 2004-05. Pursuant to this Notification No.91 dated 28.08.2008 has been issued whichclearly specifies that where the DTAA entered into by the Central Government with the Government of any other country provides that any income of a resident of India 'may be taxed' in the other country, such income has to be included in his total income chargeable to tax in India in accordance with the provisions of the Act and relief is to be granted as per DTAA. Also, as the phrase "may be taxed" is not appearing in the statute but is appearing in the DTAA, the interpretation as understood and intended by the negotiating parties should be adopted. Here one of the parties i.e., Government of

India has clearly specified the intent and the object of this phrase and the meaning assigned by the Government of India for a phrase or term used in the DTAA notification will prevail. The result is that the business income from the P.E. in Oman and Qatar and also the capital gain from sale of assets in these countries will be chargeable to tax in India.

59 SUBASH VINAYAK SUPNEKAR Vs. ACIT158 TTJ 237(PUNE)

Assessment Year 2008-09, Order Dated: 28thJune, 2013

BASIC FACTS

Assessee an individual had sold a property on 5th April, 2007. In the return of income he had claimed exemption under section 54F for amount invested in construction of new residential property and under section 54EC by investing the amount in the Rural Electrification Corporation Ltd (REC). AO noted that the assessee has invested the amount of Rs. 50 lakhs in REC Ltd. before the date of sale i.e. on 2nd February, 2007. The assessee justified the claim of exemption on the basis of CBDT circular no.359 dated 10th May 1983 & other judicial decisions. However, the AO was not convinced with the explanation given by the assessee. He noted that the CBDT Circular refers to exemption under 54E whereas the claim of the assessee is under section 54EC.On further appeal, CIT (A) also disallowed the claim of the assessee on the fact that the assessee neither at assessment stage nor during the appeal proceedings has brought any evidence or documents on record to indicate that any prior agreement for sale has taken place.

ISSUE

Whether the assessee is entitled to claim the exemption on the amount invested in REC Bonds prior to the date of sale out of the advance money received by him against the sale of property on the basis of agreement of sell?

HELD

Tribunal relied upon the CBDT Circular No.359 dated 10th May, 1983.As the circular the earnest money or advance is a part of the sale consideration and therefore if the assessee invests the earnest money or the advance received in specified assets before the date of transfer of asset, the amount will qualify for exemption under section 54E. Although in the instant case the issue is regarding exemption under section 54EC, but the language in the above section is similar to that of Section 54E.Therefore, relying upon the above stated facts, Tribunal concluded that earnest money or advance money is a part of sale consideration. Following the spirit of the CBDT circular the Tribunal held that the assessee is entitled to deduction under section 54EC.

60 OIL INDIA LTD. Vs. DCIT 158 TTJ 1(JD)

Assessment Years 2008-09 & 2009-10, Order Dated: 31st July, 2013

BASIC FACTS

Assessee is engaged in the business of exploration, development, extraction, transportation of finished petroleum products and production of liquified petroleum gas for which it engaged contractors having expertise in the respective fields. It treated the contracts with the service provider as works contracts and accordingly deducted TDS u/s 194C. AO was of the view that the contract with the service providers was a technical service contract and therefore, provisions of s.194J will be applicable. CIT(A) has also confirmed the action of AO.

ISSUE

Whether contracts made by the assessee are liable to TDS under Section 194C or Section 194J?

HELD

The work envisaged in s.194C has wide import and covers any work which can be got carried through a contract. Therefore, the AO was not justified in observing that s.194C applies only to simple works contract. Moreover, as per instruction No. 1862 dt. 11th October, 1990 issued by the CBDT the services sought by the assessee were not the technical services. Also, from circular dated 5th July, 1976, it is clear that the expression 'fees for technical services' is not applicable to any mining or like project undertaken by the recipient. Contracts entered into by the assessee with various parties for exploration or extraction of mineral oil and natural gas cannot be treated as contracts for technical services and therefore, payments made to the contractors are liable for TDS under s. 194C and not under s. 194J, more so when the Department has treated such contracts as works contracts liable to TDS under s. 194C in all the earlier years.

61 ANL SINGAPORE PTE LTD. Vs. DDIT 145 ITD 93(MUMBAI)

Assessment Year 2007-08, Order Dated: 24thJuly, 2013

BASIC FACTS

Assessee was a shipping company incorporated in and tax resident of Singapore. The assessee had claimed exemption of the freight income under Article 8 of the DTAA between India & Singapore. The AO noted that assessee earned shipping income from pool arrangement in respect of 37 voyages and in case of 61 voyages freight income was from slot hiring charges. Hence according to him the income of the voyages was not entitled to relief under DTAA. The AO also held that assesses' agent CMA to be dependent agent and hence it constituted its permanent establishment in India as per terms of Article 5 of DTAA. The AO accordingly computed income of 98 voyages (37+61) under section 44B @ 10% and did not grant exemption under DTAA. For the balance 80 voyages, he computed income under section 44B @ 7.5% and granted exemption under DTAA. The DRP directed the AO to examine fresh evidence in respect of 98 voyages and allow benefit if conditions of Article 8 were fulfilled. The AO granted further relief in respect of 77 voyages in the final assessment and taxed income in respect of 21 voyages.

In the proceedings before the Tribunal, the assessee accepted that CMA may be considered as the dependent agent of the assessee and hence constituted permanent establishment in India

ISSUE

Whether the business income of Non- resident is taxable even if its dependent agent is remunerated on ALP basis?

HELD

The income in respect of 21 voyages which has been considered as chargeable to tax in India as per Article 7 of the DTAA is the amount on which the assessee paid commission etc. to CMA, which is its AE and also a dependent agent. The receipt in the hands of the CMA has been determined at ALP under due process of law. Relying upon the cases of Set Satellite (Singapore) Pte. Ltd. and Delmas France , it was held that where the associated enterprise (that also constitutes a PE) is remunerated on ALP, then nothing further would be left to attribute to the PE. Hence, the income in respect of 21 voyages cannot be included in the hands of the assessee.

62 GENESIS INDIAN INVESTMENT COMPANY LTD. Vs. CIT(A) 158 TTJ 67 (MUM).

Assessment Year 2002-03, Order Dated: 14th August, 2013

BASICS

The assessee is a company incorporated in Mauritius and has obtained registration with the Securities & Exchange Board of India as a sub-account of Genesis Asset Managers Ltd. Open offer was announced for acquisition of 20 percent of the issue capital of Castrol India Ltd where the assessee was the shareholder. The assessee opted for the offer and there was delay in payment of proceeds of shares tendered under the open offer and compensation was received for the same by the assessee. The compensation was taxed by the AO as well as CIT (A) as interest income as SEBI directed the merchant banker to pay interest @ 15% p.a on offer price period till the actual date of payment. The interest received is related to the delay in completing the process of buy-back of shares under open offer.

ISSUE

Whether the compensation received by the assessee should be taxed as interest income or capital gain?

HELD

The delay for which the interest has been received by the assessee is in the process of buy back of shares in the open offer after the announcement of the intention of acquiring of shares. It is not a case of delay in making the payment of the determined consideration after the transaction of purchase of sale (shares) is over. Therefore Tribunal held that amount of interest which relates to the period prior to tendering and acceptance of the shares falls within the ambit of consideration received by the assessee against the shares tendered in the open offer. It will be treated as part of capital gain and not the income from interest.

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Unreported Judgements

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In this issue we are providing gist of a decision rendered by Ahmedabad ITAT in the case of Sadbhav Engineering Ltd in relation to the deduction u/s 80IA and on the point as to which year is considered as initial assessment year and also whether loss suffered by other units are to be deducted before calculating deduction u/s 80IA in respect of eligible unit. We hope readers would find the same useful.

Before ITAT 'A" Bench, Ahmedabad

Before Shri N.S.Saini AM and Shri Kulbharat J.M.

Appeal Nos. 610/A/2008 1834/A/2009, 2054/A/ 2009, 1835/A/2009 and others for Asst years 2005-06 to 2007-08

Assessee represented by	: Shri MehulK.Patel and Shri Tushar P. Hemani
Revenue represented by	: Ms. IlaVarshi Sr. D.R.
Date of pronouncement	: 19-12-2013

Gist only

Issues :

(i) The assessee had four undertakings viz. Udaipur, Viramgam, Malvan and Banassyphone undertaking. In respect of Udaipur and Viramgam undertaking deduction u/s 80IA(4) was claimed for the first time in A.Y.2005-06. Both these units had brought forward losses in the earlier assessment years whereas other two undertakings had no such brought forward losses relatable to those undertakings.

The A.O. allowed the deduction u/s 80IA(4) in respect of Udaipur and Viramgam undertakings after reducing the eligible profit by the brought forward losses of earlier years of these units notionally. Whether the stand of A.O. is correct?

(ii) Whether the loss suffered by other undertakings are to be reduced from the income of eligible undertaking for computing deduction u/s 80IA(4).

Contentions of the Assessee :

1. Udaipur and Viramgam undertaking had claimed deduction u/s 80IA(4) for the first time in A.Y.2005-06 and hence it is the initial assessment year for both these units. The language of section 80IA(5) says that only the losses from the initial assessment year onwards are to be considered for deduction notionally in subsequent year & not the losses incurred prior to initial assessment year. Assessee also relied on the decision of Herecules Hoist Ltd. 22 ITR 527 (Mum. Tribunal) and Madras High Court decision in case of Velayudhaswamy spinning mills reported at 340 ITR 463 in this regard.

2. As regards second issue the assessee placed reliance on the decision of Chennai bench of ITAT in the case of M/s. Shivam properties pvt. Ltd. reported in 36 Taxmann.com 398 wherein it is held that profit derived from a particular eligible industrial undertaking qualifies for deduction u/s 80IB without reduction of loss suffered by any other eligible undertaking subject to gross total income of assessee. Thus where gross total income of the assessee, after adjusting losses suffered by the assessee in other projects was more than the claim of deduction u/s 80IB deduction could not be disallowed by reducing the losses of other units from the income of eligible undertaking.

Contentions of the Revenue :

1. Revenue mainly relied on the decision of Ahmedabad special bench in the case of Gold mine shares & finance pvt. Ltd. 302 ITR(AT) 208, Mumbai bench of ITAT in the case of Pidilite industries ltd. 46 SOT 263 & Hyderabad ITAT in the case of Hyderabad chemicals supplies ltd. 137 TTJ 732 to buttress the point that losses of eligible undertaking for past years are to be notionally brought forward for setoff even in the first year when such claim is made by assessee

2. For second issue, revenue relied on the orders of lower authorities

Decision by ITAT:

1) As regards first issue, the tribunal observed as under:

" 6.1.We find that section 80IA of the Act which has been substitutedwith effect from 01/04/2000

provides that where the gross total income of an assessee includes any profits and gains derived by an undertaking from any eligible business referred to in sub-section 4, there shall, inaccordance with an subject to the provisions of this section, be allowed incomputing the total income, the deduction of an amount equal to 100% ofthe profits and gains derived from such business for 10 consecutive years. Substituted sub-section (2) of section 80IA, provides that an option is given to the assessee for claiming any 10 consecutive assessment years out of 15 years beginning from the year in which the undertaking or the enterprise develops and begin to operate. The 15years is the outer limit within which the assessee can choose the period ofclaiming the deduction. Sub-section (5) is a non-obstante clause which deals with the quantum of deduction for an eligible business. The relevant provisions of sub-section (5) of section 80IA, reads as under:-

"(5) Notwithstanding anything contained in any other provision of this Act, the profits and gains of an eligible business to which theprovisions of sub-section (1) apply shall, for the purposes of determining the quantum of deduction under that sub-section forthe assessment year immediately succeeding the initial assessment year or any subsequent assessment year, be computed as if such eligible business were the only source of income of the assessee during the previous year relevant to the initial assessment year andto every subsequent assessment year upto and including the assessment year for which the determination is to be made."

6.2 From a plain reading of the above, it can be gathered that it is an on-obstante clause which overrides the other provisions of the Act and itis for the purpose of determining the quantum of deduction under section 80IA, for the assessment year immediately succeeding the initial assessment year and any subsequent assessment year to be computed as if the eligible business is the only source of income. Thus, the fiction created is that the eligible business is the only source of income and the deduction would be allowed from the initial assessment year or any subsequent year. It nowhere defines as to what is the initial assessment year. Prior to 1st April 2000, the initial assessment year was defined forvarious types of eligible assessees under section 80IA(12). However, after the amendment brought in statute by the Finance Act, 1999, the definition of "initial assessment year" has been specifically taken away. Now, when the assessee exercises the option of choosing the initial assessment year as culled out in sub-section(2) of section 80IA from which it chooses its 10 years of deduction out of 15 years, then only thelosses of the years starting from the initial assessment year alone are to be brought forward as stipulated in section 80IA(5). The loss prior tothe initial assessment year which has already been set off cannot be brought forward and adjusted into the period of 10 years from the initial assessment year as contemplated or chosen by the assessee. It is only when the loss have been incurred from the initial assessment year, thenthe assessee has to adjust loss in the subsequent assessment years and ithas to be computed as if eligible business is the only source of income and then only deduction under section 80IA can be determined. This is the true import of section 80IA(5).

6.3. In the decision of Goldmine Shares and Finance Pvt.Ltd. (supra), decided by the Special Bench of the Tribunal, the claim of deduction by the assessee had started from assessment year 1996-97 onwards and the assessee had claimed deduction under section 80IA starting from the first year itself i.e., assessment year 1996-97. Thus, the Special Bench was dealing with the operation of section 80IA(5) where the assessee had first claimed the deduction in the assessment year 1996-97 and for subsequent assessment years. This aspect of the matter has been very well elaborated by the Hon'ble Madras High Court in the case of Velayudha swamy Spinning Mills Pvt.Ltd.(supra) after considering the Special Bench decision of the Tribunal in the case of ACIT vs. Goldmine Shares & Finance (P) Ltd. reported at 302 ITR (AT) 208 and the relevantprovisions of the Act, i.e., pre-amendment and post-amendment have come to the same conclusion:-

"From reading of the above, it is clear that the eligible business were the only source of income, during the previous year relevant to initial assessment year and every subsequent assessment years. When the assessee exercises the option, the only losses of the years beginning from initial assessment year alone are to be brought forward and no losses of earlier years which were already set off against the income of the assessee. Looking forward to a period of ten

years from the initial assessment is contemplated. It does not allow the Revenue to look backward and find out if there is loss of earlier years and bringforward notionally even though the same were set off against other income of the assessee and the set off against the current income of the eligible business. Once the set off is taken place in earlier year against the other income of the assessee,the Revenue cannot rework the set off amount and bring it notionally. Fictioncreated in sub- section does not contemplates to bring set off amount notionally. Fiction is created only for the limited purpose and the same cannot be extended beyond the purpose for which it is created.

14. In the present cases, there is no dispute that losses incurred by the assessee were already set off and adjusted against the profits of the earlier years. During the relevant assessment year, the assessee exercised the option under s. 80-IA(2).In Tax Case Nos. 909 of 2009 as well as 940 of 2009, the assessment year was2005-06 and in the Tax Case No. 918 of 2008 the assessment year was 2004-05. During the relevant period, there were no unabsorbed depreciation or loss of the eligible undertakings and the same were already absorbed in the earlier years. There is a positive profit during the year. The unreported judgment of this Courtcited supra considered the scope of sub-s. (6) of s. 80-I, which is the corresponding provision of sub-s. (5) of s. 80-IA. Both are similarly worded and therefore we agree entirely with the Division Bench judgment of this Court citedsupra. In the case of CIT vs. Mewar Oil & General Mills Ltd. (2004) 186 CTR(Raj) 141 : (2004) 271 ITR 311 (Raj), the Rajasthan High Court also considered the scope of s. 80-I and held as follows:-

"Having considered the rival contentions which follow on the line noticed above, we are of the opinion that on finding the fact that there was no carry forward losses of 1983-84, which could be set off against the income of the current asst. yr. 1984-85, the recomputation of income from the new industrial undertaking by setting off the carry forward of unabsorbed depreciation or depreciation allowance from previous year did not simplyarise and on the finding of fact noticed by the CIT(A), which has not been disturbed by the Tribunal and challenged before us, there was no errormuch less any error apparent on the M/s. Shevie Exportsface of the record which could be rectified. That question would have been germane only if there would have been carry forward of unabsorbed depreciation and unabsorbed development rebate or any other unabsorbed losses of the previous year arising out of the priority industry and whether it was required to be set off against the income of the current year. It is not at all required that losses or other deductions which have already been setoff against the income of the previous year should be reopened again for computation of current income under s. 80-I for the purpose of computing admissible deductions thereunder.

In view thereof, we are of the opinion that the Tribunal has not erred in holding that there was no rectification possible under s. 80-I in the present case, albeit, for reasons some what different from those which prevailed with the Tribunal. There being no carry forward of allowable deductions under the head depreciation or development rebate which needed to be absorbed against the income of the current year and, therefore, recomputation of income for the purpose of computing permissible deduction 1under s. 80-1 for the new industrial undertaking was not required in the present case. Accordingly, this appeal fails and From reading of the above, the Rajasthan High Court held that it is not atall required that losses or other deductions which have already been set off against the income of the previous year should be reopened again for computation of current income under s. 80-1 for the purpose of computing admissible deductions thereunder. We also agree with the same. We see noreason to take a different view."

6.4. This judgement has been followed by the same High Court in thecase of CIT vs. Emerald Jewel Industry (P) Ltd. (2011) 53 DTR 262(Mad.). From the above ratio of the High Court, it is amply clear that sub-section (5) of section 80IA will come into operation only from theinitial assessment year or any subsequent assessment year. The option of choosing the initial assessment year is wholly upon the assessee in the post amendment period i.e. after 1st April 2000 by virtue of section 80IA(2). "

The tribunal also distinguished the decisions relied upon by the revenue :

2) As regards the second issue, the tribunal observed as under:

" 13. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below.The undisputed facts of the case in the years under appeal is that the assessee claimed deduction u/s.80-IB of the Act. The AO computed the claim for deduction allowable u/s.80-IA to the assessee by allocating the losses of other units against the profits of the eligible units in proportion to the turnover of the assessee. On appeal, the CIT(A) confirmed theaction of the AO on the ground that in the appeal for AYs 2003-04 &2004-05, the CIT(A) has confirmed the action of the AO. The ld.AR hassubmitted that due to smallness of the amount involved, the assessee though filed the appeal before the Tribunal in AYs 2003-04 & 2004-05 but had withdrawn the same and, therefore, the appeals of the assessee were dismissed as withdrawn. Thus, as the Tribunal has dismissed the appeals of the assessee for want of prosecution, it cannot be a decision onmerits which can be applied in the subsequent years in the case of the assessee. We find force in the argument of the ld.AR of the assessee since the appeal of the assessee for AYs 2003-04 & 2004-05 was dismissed *in limine* by the Tribunal, therefore the ratio in the said decision is not a binding precedent to be applied to the assessee for the subsequent years on the same issue. We find that the issue as pointed outby the ld.AR of the assessee is covered in favour of the assessee by thedecision of Chennai Bench of the Tribunal in the case of M/s. Shriram Properties Pvt.Ltd. vs. ACIT (supra), wherein it was held that the profit derived from a particular eligible Industrial undertaking is qualified fordeduction u/s.80IB without reduction of loss suffered by any othereligible industrial undertaking, subject to gross total income of assessee. Thus, this ground of the appeal of the assessee is allowed for all the years under appeal."

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contd. from page 549

From the Courts

limited in nature and secondly, such revisional powers are not to be invoked merely for reviewing the order passed by the Assessing Authority on a mere change of opinion. The safeguard provided to the assessee in the said provision is that mere erroneous orders are not revisable but the revisional authority has to further establish with the material on record that such erroneous order is also prejudicial to the interest of revenue. The twin conditions of assessment order being erroneous and it also being prejudicial to the interest of revenue, keeps the initial burden on the Revenue itself, namely, the Commissioner who invokes such jurisdiction. From the following (Various) legal precedents it would be clear that such powers are not allowed lightly to be invoked for the fall of hat as it were, and merely because the revisional authority is of different opinion on the given set of facts or on the ground that assessing authority did not hold a sufficient inquiry during the course of assessment proceedings unless the aforesaid twin conditions for invoking the said jurisdiction under section 263 are satisfied.

70 Interest on margin money is business income :

CIT v/s. K AND Co.
(2013) 259 CTR 398 (Del) : (2013) 88 DTR (Del) 166

Issue :

Whether interest earned on margin money is business income or income from other sources?

Held :

Assessee had to place certain funds as margin money in order to obtain the bank guarantee which was required by the State Government of Sikkim for the purpose of enabling the assessee to carry on the business of printing lottery tickets and for conducting lotteries on behalf of the State Governments of Sikkim. The funds which were placed as margin money earned interest. The question which arose was whether these amounts would be placed under the head of 'business income' or where income is received from deposits made by the assessee which are inextricably linked to the business of the assessee, such income cannot be treated as income received from other sources.

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ITAT, Delhi, passes Severe Strictures on the Assessing Officer

Dear Reader,

The following important judgement, passing severe strictures on the AO, is available for download at itatonline.org. The Judgement is reproduced for benefit of readers.

DCIT vs. Motorola Solutions India Pvt. Ltd (ITAT Delhi)

Severe strictures passed on the AO for acts of "*malfeasance by pleading apparent ignorance and acting in subterfuge and an underhand manner*". CBDT requested to train officers properly to avoid them taking the law into their own hands with complete impunity and disregard for the law

The AO made a transfer pricing adjustment for the AMP expenditure incurred by the assessee and raised a demand of Rs. 210 crore. The assessee filed an appeal before the Tribunal and a stay application. The Tribunal granted a stay on recovery of the demand on the condition that the assessee would not seek an adjournment of the hearing. When the matter came up for hearing, the assessee pointed out that a similar issue was pending before the Special Bench (now decided as **L. G. Electronics** 152 TTJ 273) and so the Bench adjourned the appeal to await the judgement of the Special Bench. The AO took the view that the assessee had sought an adjournment and violated the stay order and so he attached the bank account u/s 226(3) and recovered some part of the demand. The assessee filed an application before the Tribunal and claimed that it had not sought an adjournment and that the AO had acted in defiance of the stay order and should be directed to vacate the attachment and refund the moneys recovered. The Tribunal accepted the plea that the assessee had not sought an adjournment and directed the AO to refund the sums collected (*order attached*). The AO filed a MA against the order and also a Writ Petition before the High Court. In the Writ Petition, the AO did not disclose the fact that the MA had been filed. The High Court granted an interim stay (**now finally decided**) against the Tribunal's order directing refund. During the pendency of the Writ petition, the AO argued in the MA that the recovery of the demand was justified and that as the appeal was "*in the process of final hearing*", "*judicial propriety demanded that the interim order directing a refund should not have been passed*". HELD by the Tribunal dismissing the MA:

(i) "*It alarms us that unfortunately with complete impunity and disregard of the factual position, the AO repeatedly makes apparently naive misplaced, mis-guiding and factually incorrect assertions that the Tribunal was in the process of final hearing of the appeal*". These assertions indicate either a gross ignorance or ineptitude of the Department or a deliberately calculated belief that even misstatement of facts before the Tribunal could be accepted as gospel truth on a mere assertions of the government officers. Both or either of these situations are equally dangerous and fraught of dangers as vast powers have been given by the Act to the AO in order to exercise its powers and discharge the functions under the Income Tax Act;

(ii) An AO cannot claim to be in constant and perpetual ignorance nor can the officers under whom she was functioning themselves feign ignorance of this actual factual position on the issue where on the grounds of judicial propriety the Department was constantly seeking adjournments in almost all stay granted appeals on the said issue over the years;

(iii) Being ignorant of relevant facts shows a pattern which needs to be considered before such laxity becomes endemic and plays havoc with "*the interest of the revenue*" which the AO most vociferously seeks to uphold;

(iv) The actions of the AO, which earlier appeared to be wrongful acts of misfeasance by a public official were actually serious acts of malfeasance. In our adversarial system, one or the other side will probably be lying, if only to exaggerate their position and hence perjury is likely to be far more common place then we would choose to admit. In either case and especially in the case of the Revenue, apparently when swearing falsely or referring to wrong facts, the concerned officers may be under the belief that he or she is doing so in a good cause that is "*protecting the interest of revenue*." Judges and judicial authorities are not so unrealistic that they do not recognize that a substantive portion of the population displays a lack of respect for or otherwise merely pays lip service on oath to tell the truth. But unlike in the Courts having "*lay litigants*", the litigants in tax matters are invariably of a class which recognize the solemnity of the occasion and understand the consequences of swearing to an affidavit or affirmation as a serious act outside the course of their everyday lives and it is hoped that the deponents understand the sanction for breach of such oath and the seriousness with which such a breach will be normally regarded by adjudicating authorities. In the present case, the acts of malfeasance by pleading apparent ignorance or acting in a subterfuge and underhand manner in apparently trying to achieve their objectives and targets of higher tax collection are required to be understood and addressed by the appropriate authorities;

(v) The CBDT is requested to ensure that proper legal knowledge and training is imparted to the officers addressing the appropriate interpretation of orders of higher forums and instead of resorting to underhand manner in achieving the targets set. Such an exercise will go a long way in addressing identical situations where the AO may be tempted to take matters in his or her own hands with complete impunity and disregard for the laws of the land.

Detailed order available on www.itatonline.org

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FEMA & NRI Taxation

Posers
Residential Status under IT Act & FEMA

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P:1 R.U.Desai, an Indian Citizen left India for the first time on 1st November 2012 to join Microsoft as Software Manager in California. What would be his residential status under the Income Tax Act , 1961 [ITAct] and Foreign Exchange Management Act, 1999 [FEMA]?

On the same day his friend M.I.Desai also goes abroad for the first time to commence business in Dubai. What would be his residential status under the ITAct and FEMA?

R :1. As R.U. Desai is an Indian Citizen leaving India for taking up employment outside India he will be covered by the provisions of Explanation (a) to Section 6(1) of ITAct.

.02 As his stay in India does not exceed 181 days in F.Y. 2012-13 he is Non Resident [NR] under ITAct.

.03 Although M.I. Desai is also an Indian Citizen as he is leaving India to commence business he is not covered by Explanation (a) to Section 6(1) of ITAct.

.04 Even though his stay does not exceed 181 days in said year ,as his stay in India exceeds 59 days in F.Y. 2012-13 and also 364 days in immediately preceding 4 years he will be covered by the definition of "Resident" as per provisions of Section 6(1)(c) of ITAct.

.05 More over as he has left India for the first time ; being Resident in all 10 preceding financial years he will be Resident and Ordinarily Resident (R & OR) under ITAct whereby business income from Dubai for F.Y. 12-13 will be liable to tax in India.

.06 As R.U. Desai has left India to take up employment outside India he will be covered by the provisions of Section 2(w) r.t.w. 2(v)(i) of FEMA and will be a Person Residing Outside India (PROI) i.e. Non-Resident Indian (NRI).

.07 As M.I. Desai has left India to commence business outside India he too will be covered by the provisions of Section 2(w) r.t.w. 2(v)(i) of FEMA and be a PROI i.e. NRI under FEMA.

P:2 Shyam , an Indian citizen , after 12 years of stay in UK returns to join Microsoft, Bangalore as administrative manager on 6th November, 2011. During these years he had visited and stayed in India for utmost 14 days each year. What will be his status under the ITAct for F.Y. 2011-12 ; 2012-13 and 2013-14 if after return he has visited UK in 2013-14 for 4 weeks?

R :2. As Shyam is returning to India to take up employment in India , he wil be covered by both the conditions of determining the status provided in Section 6(1)(a) as also Section 6(1)(c) of ITAct.

.02 Although his stay in India exceeds 59 days in F.Y. 2012-12 as his stay in immediate preceding 4 years totals less than 365 days i.e. 56 days only ; he will "Non-Resident" in the year of return i.e. F.Y. 2011-12.

.03 As his stay in F.Y. 2012-13 and 2013-14 exceeds 181 days , Shyam will be "Resident" under ITAct .

.04 However as he has been "Non-Resident" in 9 years out of 10 preceding financial years relevant to F.Y. 2012-13 & 2013-14 ; he will be R but NOR under ITAct.

P.3 Bill and Melinda Gates have been regularly visiting India since their first visit in May 2010 for philanthropic activities when they stayed for 7 months at one go and thereafter have been staying more than 6 months in following years. During their visit they do not attend to Microsoft India business at all.

If in earlier 10 years their stay has not exceeded 2 weeks in any year , what will be their residential status under ITAct and FEMA ?

R:3. Bill and Melinda Gates will be covered by the definition of Resident under the ITAct as their stay exceeded 181 days for all 3 years.

.02 But for F.Y. 2010-11 and 2011-12 as they are NR in 9 of the 10 preceding financial years they will be RbutNOR.

.03 For F.Y. 2012-13 although they are not NR in 9 of the 10 preceding years they will still be RbutNOR as their stay doesnot exceed 729 days in immediately preceding 7 financial years as per Section 6(6)(a).

R : FEMA :- As Bill and Melinda have not come to India for settlement i.e. taking up employment or carrying own business in India nor there is no indication about their stay in India for an indefinite period as provided in Section 2(v) r.t.w. Section (2)(w) of FEMA. They will be PROI under FEMA.

P : 4 Jamanbhai, a retired SBI Manager joined his son in USA in January 2011 upon acquiring Green Card . Not being comfortable he returned to India in December 2012. Is he still a Non-Resident under ITAct or NRI under FEMA for F.Y.2012-13 ?

R : 4 The ITAct determines residential status of an individual on the basis of the number of days of stay in India.i.e. physical stay basis.

.02 Citizenship ; immigration rights or nature of visa do not determine the residential status under ITAct.

.03 By virtue of availing Green Card Jamanbhai has been granted rights of staying in USA which are subject to certain conditions.

.04 Being a permanent resident of India , although his physical stay in F.Y. 2012-13 doesnot exceed 181 days in India ; as his stay exceeds 59 days in said year and 364 days in preceding 4 years he is "Resident" under ITAct vide Section 6 (1)(c).

.05 As Jamanbhai tried to migrate in October '11 only , being Resident in 9 years out preceding 10 years and stay in preceding 7 years also exceeding 729 days he is R&OR.

.06 Under FEMA the residential status is determined by the intention of an individual which is eventually proved by actual conduct of residence ,Citizenship or immigration status are not relevant factors for determining residential status under FEMA also.

.06 As Jamanbhai has not gone to USA for settlement he continues to be PRII under FEMA.

.07 Therefore he can not open and operate bank accounts in USA . Ofcourse he can do so under the Liberalised Remittance Scheme (LRS) i.e. transfer of funds from India to USA through his Bank account in India.

P :5. Mahesh & Mala has returned to India in May 2011 after 25 years and since then have been going to USA twice a year and stay for total of 4 months or so. Till then their stay during visits totaled to 30 days. They are retired from service and have rental and interest income in USA and India. What will be their residential status under the ITAct and FEMA?

R :5. This will create a dicey situation as they have returned to India for settlement in F.Y. 2010-11 as they stay in India if Mahesh & Mala had returned to India in November then and stay in India thereafter for 8 months 2012-13 and 2013-14 they would be PRII only 2013-14 as they stay exceeds 182 days in 2012-13 only.

R : 5.Mahesh & Mala have come to India for retirement which is permanent settlement.

.02 As their stay in India totals to 8 months i.e. 240 days they will be Resident under ITAct for F.Y. 2011-12 & 2012-13 as per Section 6(1).

.03 The status will be RbutNOR for F.Y. 2011-12 and 2012-13 on account of them being NR in 9 of the preceding 10 financial years as per Section 6(6) of ITAct.

.04 For F.Y. 2013-14 also they will be RbutNOR as their stay in preceding 7 years doesnot exceed 729 days.

.05 Section 2(v)(i) of FEMA defines a returning NRI as PRII if his stay exceeds 182 days during preceding financial year .

.06 Now as Mahesh & Mala have returned to India for settlement in May,2011 they will be treated as PRII in F.Y. 2012-13 only after fulfillment of the condition of stay in India exceeding 182 days in F.Y. 2011-12.

.07 However this seems to be serious drafting error as Section 2(v)(i) requires stay of 183 days or more in preceding year all other relevant provisions and in particular Foreign Exchange Management (Deposit) Regulations, 2000 require a returning NRI to re-designate NRE and NRO accounts as resident accounts immediately upon return to India for settlement.

.07 The problem will be how Mahesh and Mala claim to be PROI / NRI while maintaining resident bank accounts and how is it possible to make mutual fund investments ; avail life insurance and invest in stocks as NRI from these resident bank accounts .

.08 Therefore practically returning NRIs should treat themselves as Person Resident In India upon return to India for permanent settlement and should not religiously follow the definition of Section 2(v)(i) which suffers from a birth defect of paradox.

P:6. Suresh, an Indian Citizen employed by USCorporation [USCorp] New York arrives for the first time in India on 1st October , 2012 being deputed for 3 years to supervise Software Development at UPSoftware Pvt. Ltd. [UPSoft] Noida,

Suresh's salary is paid by SCCorp in USA and monthly allowance is paid in India. What is Suresh's residential status under ITAct and FEMA for F.Y. 2012-13 and 2013-14 if he had continually stayed till 31st December '13 ? Is his salary taxable under ITAct as the same is earned in India ?

R:6. As Suresh's stay in India totals to 182 days in F.Y. 2012-13 and 275 days in F.Y. 2013-14 he is Resident as per Section 6(1)(a) of ITAct for both the years.

.02 However as he has been Non Resident in 9 of the 10 preceding financial years , he will be RbutNOR for both the years following Section 6(6) of ITAct.

.03 As he has come to India for employment , technically he will be PRII in F.Y.2014-15 as his stay exceeds 182 days in F.Y. 2013-14 only. But practically he should embrace status of PRII under FEMA otherwise his banking and financial transactions in India will be painted grey and practical difficulties will make his financial life impossible.

.04 Now although his salary is taxable in India by virtue of Section 5(1)(b) of ITAct as the same is earned in India for discharge of duties in India the same will be taxable only in USA for F.Y. 2012-13 as Article-16(2) of India-USA Tax Treat provides that salary of USCorp employee working in India is taxed only in USA provided employee's stay in India does not exceed 183 days in relevant financial year and the same is paid by USA company and not deducted from taxable profits in India.

.05 As Suresh is paid salary by USCorp and his stay doesnot exceed 183 days the same will be taxable only in USA.

.06 For F.Y. 2013-14 his salary will be taxed both in India and USA as his stay exceeds 183 days.

P : 7.Emerging batsman Ravindra Jadeja played Onedays and Test Matches for 320 days abroad in F.Y. 2012-13. What is his Residential status under ITAct and FEMA?

R:7. As Ravindra Jadeja's stay in India does not exceed 59 days he will be Non-Resident under ITAct for F.Y. 2012-13 whereby his global income will be exempt from tax in India.

.02 However as he continues to be permanent resident of India i.e. as he has not left India for settlement abroad he will be a PRII under FEMA. His stay abroad for the an entire year will also not change the position and as such he cannot credit his global income abroad.

P:8. Ace Cricketer Sachin Tendulkar is selected as Cricket Coach of England Under21 Cricket Team and is expected to stay 9 months in U.K. What will be his residential status under ITACT and FEMA ?

R:8. Sachin's being appointed as Coach of England Under21 Cricket Team , he is an Indian Citizen going abroad to take up employment outside India and as such he is covered by Explanation(a) to Section (6)(1) of ITAct.

.02 As his stay in India doesnot exceed 181 days he wil be a "Non-Resident" for F.Y. 2014-15.

.03 Under FEMA also leaving India for taking up employment abroad ; i.e. settlement Sachin will be covered by definition of PROI.

P:9. Haresh Mehta , a US Citizen comes to India on 2nd January, 2012 and stays for the entire calendar year being retired Doctor. He wants to enjoy his retirement traveling across the World ; spend winter with his parents in India and summer time with grandchildren in USA. He has own homes in India and USA. What will be his Residential status under ITAct. Earlier he used to spend 4 weeks a year with parents in India.

R:9. The residential status under the ITAct will be dicey if it is determined that his reasons for travel to India is to settle down in India in which case both the conditions of 181 days and 59 days will apply. If he is visiting India to meet parents the conditions of 181 days only will apply.

contd. on page no. 576

Controversies

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Whether building owned by a partner and used by the partnership firm is exempt under section 22 of the Income Tax Act, 1961

Issue:

Mr.Prakash is a partner in a firm and he is also owner of a house property, he claims that the house property is used by the employees of the firm in which he is partner and hence it should be considered to have been used for the business carried on by him and hence the house property is not liable to be included in his total income under section 22 of the Income Tax Act, 1961.

Proposition:

It is proposed that when the building owned by the assessee is occupied by the partnership firm for the business or profession, the annual value thereof cannot be taxed under the head income from house property. When building is owned by a partner and is occupied by the firm for the purpose of business, the exemption should be available to the partner owner even where a firm where such an owner is a partner is occupying property for the business of the firm as business carried on by the partnership firm is the business carried on by the partner.

View against the proposition:

It is submitted that section 22 makes an exception to the charge in respect of such building or part thereof which is used for the purpose of business. It provides that annual value of such portion of the property as is occupied for the purpose of any business or profession carried on by the assessee, shall not be chargeable under the head Income from house property, provided the income of such business or profession is chargeable to tax. Let me now refer to decision in the case of Prodip Kumar Bothra, 244 CTR 366 (Calcutta),wherein it was held that the house property income is not taxable only if the property is used for one's own business and is not exempt if used for the business of the firm in which the assessee is a partner.

Let me now refer to the decision of the Karnataka High Court in the case of CIT V/s K.N. Guruswamy, 146 ITR 34. In that case, the Court took the view that, where the house property was owned by a partner but was used by the partnership firm for its business, the occupation of the property was not by the owner for his business and therefore the annual letting value was taxable in the hands of the owner.

There is a decision of honorable Allahabad High Court, viz., CIT v/s Shiv Mohan Lal 202 ITR 60 (All.), wherein HUF was the owner of the property and the property was used for the business purpose by partnership firm in which the assessee as Karta was partner. The property was used by the partnership firm. No rent was charged by the assessee HUF. According to honorable Court, the assessee HUF was not the user of the property for its own business. The annual letting value was, therefore, held as assessable in the hands of the assessee HUF.

View in favor of the proposition:

Section 22 specifically excludes from its scope portions or the entire property, which the owner may occupy for the purpose of any business or profession carried on by him, the profits of which are chargeable to income tax. The exclusion is subject to the following two conditions:

1. The assessee occupies the property for the purposes of business or profession;
2. The profits of such business or profession are chargeable to income tax.

Where the property belonging to one or more of the partners is being used for the purposes of the business of the partnership, it was held by Gujarat High Court in CIT V/s Rasiklal Balabhai 119 ITR 303 (Gujarat) that its annual value is to be excluded from the operation of section 22 if the income of the partnership business is chargeable to tax. Similar view has been taken by Madras High Court in CIT V/s K. M. Jagannathan 180 ITR 191 (Madras), the Pathna High Court in CIT v/s Sayed Anwar Husian 186 ITR 749 (Pat), the Kerala High Court in CIT v/s P.T. Thomas 181 ITR 256 (Ker) and the Orissa High Court in CIT v/s Rabindranath Bhol 211 ITR 799 (Ori).

In CIT v/s K. Narendra 143 ITR 418 (Del), the assessee and his son constituted a partnership firm. The firm took over a portion of the building belonging to the assessee as also the machinery of a printing installed there by the

assessee. The firm let out such building together with the machinery, etc., of the printing press to a third person. It was held that the rental income of such composite letting cannot be taxed in the hands of the assessee u/s 22, treating him as the owner thereof.

In Saligram & Co. v/s CIT 185 ITR 82 (Gau), the assessee form carried on its vehicles repair business in a house property belonging to it. The first floor of that property was occupied by two partners of the firm as the business of the firm required round the clock attention. It was held that no income u/s 22 resulted from such occupation.

In CIT v/s Vazir Sultan Tabacco Co. Ltd., 173 ITR 290 (A.P.), the building belonging to the assessee company was occupied by its employees. It was held that the occupation by the employees was for the purpose of the assessee's business and such property falls within the exception contained in section 22.

Similarly, in CIT v/s New India Maritime Agencies P. Ltd. 207 ITR 392 (Mad), the user of the house property, owned by the assessee company, by the directors of the company has been held to be user for the business of the company and, therefore, that the notional income from such property cannot be assessed u/s 22.

In CIT v/s Modi Industries Ltd. 210 ITR 1 (Del) (FB), the Delhi High Court held as under:

"1. The term "occupy" appearing in section 22 of the Income Tax Act, 1961, refers to occupation directly by the assessee or through an employee or an agent but such occupation by the employee, etc., must be subservient to and necessary for the performance of the duties in connection with the business of the assessee.

2. To fall within the ambit of the exemption in section 22 it is not necessary that the property must be as such in the occupation of the assessee himself or necessarily used for carrying on his business activity and not used for residential purposes.

3. When a house property is occupied as residence by employees or directors, etc., of the assessee company, if concerned with the promotion of the business of the assessee company, whether on payment of rent or otherwise, to enable them to discharge their functions efficiently and the letting out of the property is subservient and incidental to the main business of the assessee, such an occupation amounts to occupation and user of the property by the assessee itself for the purpose of its business, even though no business is actually run in such premises."

Summation:

Recently, honorable ITAT C bench Ahmedabad has delivered a very debatable decision in the case of Shri Prakash Vasanthbhai Golwala V/s ACIT Circle-5 Surat in ITA No. 558/Ahd/2013.In this case, the residential flats of the assessee was used by the partnership firm for the purpose of its business as the flats in question was used by the employees of the firm in which assessee is a partner and hence no rental income was charged. The assessee claimed that the income from house property owned by an assessee and used in business carried on by firm in which the assessee is a partner would qualify for exemption as provided in Income Tax Act, 1961.Before the honorable tribunal it was claimed that the case of the assessee is covered by the decision of the jurisdictional High Court in CIT V/s Rasiklal Balabhai 119 ITR and in the case of the Kerala High Court in CIT V/s P M Thomas 188 ITR 256, where the courts have held that the annual letting value of a property belonging to the assessee, which was in the occupation of a partnership firm in which the assessee was a partner, was not includible in the income of the assessee u/s 22. The honorable ITAT referred to the decision of honorable Calcutta High Court in the case of Prodip Kumar Bothra 244 CTR 366 where in it was held that the exemption in respect of house property can not be allowed to assessee if the property is used by the partnership firm because in the opinion of the honorable High Court the owner of the house property and the occupier of the property must be the same person. The Court has held that having regard to the language of section 22, there is no scope of any argument that the owner of a property can get the benefit of occupation of partnership in a particular thereof simply because the owner is also a partner of the said firm. A partner has no individual right over the property owned by the firm, similarly the firm has no right over the properties owned by the partners. The decision of the Gujarat High Court was, thereof, dissented. There is another decision of honorable Karnataka High Court pronounced in the case of CIT V/s K N Guruswamy, 146 ITR 34, wherein the property was owned by the assessee which was used by a firm in which the assessee was a partner for the purpose of the firm's business. The Court

has held that notional income from the house property was to be included in the total income of the partner. The decision of Gujarat High Court was dissented.

The honorable tribunal then referred to the decision in the case of CIT V/s Shiv Mohan Lal 202 ITR 60.This decision in my opinion is not relevant at all to the facts of the case of the assessee. In the case before the Allahabad High Court the property was owned by HUF partner which was given to the partnership firm for the purpose of its business. The Allahabad High Court distinguished the decisions of the Gujarat and Kerala High Courts cited before it, and observed that those decisions dealt with a different set of facts, in which the partner was the owner of the property in individual capacity proposing that an HUF, being a fluctuating body of individuals, could not enter into a partnership with other individual partners. If the Karta or any other member of the HUF joined a partnership, he could do so only as individual, and his rights and obligations vis-à-vis other partners were determined by the Partnership Act in force and not by Hindu Law and hence exemption cannot be claimed by HUF partner.

The honorable tribunal then refers to the decision of Allahabad High Court in the case of CIT V/s Mustafa Khan276 ITR 602 wherein their lordships of Allahabad High Court held that a partner owning house property used by the firm for business purposes in which he is also a partner is entitled to exemption in respect of the property occupied by the firm in view of section 22 thereafter the honorable tribunal held "since the honorable High Courts have expressed different views, therefore, we have to apply a thumb rule in respect of the applicability of the precedents cited. A thumb rule is that a latest decision of the honorable High Court is required to be followed to maintain the judicial discipline. " We have noted the decision of honorable Calcutta High Court pronounced in the case of Prodip Kumar Bothra,244 ITR 366 (Calcutta) is dated 15th July,2011 wherein the decision of the honorable Gujarat High Court pronounced in the case of Rasiklal Balabhai (Supra) was dissented from. The honorable Calcutta High Court has followed the decision of Karnataka High Court and several other decisions and thereafter came to the conclusion that the assessee can not pray for the exclusion of the income of the property occupied by a partnership firm." Which are these several other decisions?

Let me now refer to the decision of Delhi High Court in the case of CIT V/s H S Singhal & Sons 170 CTR 217 decided on 31st July, 2001. In the said case, the assessee, a HUF, owned a house property which was partly used by a firm in which the assessee family itself was a partner. The assessee claimed that income from the property should not be assessed in its hands as it was used by the firm and the business was carried on by the firm which also included the assessee itself. This plea was not accepted by the Assessing Officer as well as by the appellate authority. On further appeal, the Tribunal held that the department was not justified in assessing the notional income of the part of the property used by the firm for its business in which the assessee family was a partner. On reference, the revenue submitted that in law an HUF can not be a partner and even if the family's nominee was a partner, it could not be held that the business carried on by the firm was in reality a business carried on by the partner.

An HUF is not a juristic person for all purposes and cannot enter into an agreement of partnership with either another HUF or individual. It is open to the manager or karta of a joint HUF as representing the family to agree to become a partner with another person. The partnership agreement in that case is between the manager or the karta and the other person and by the partnership agreement no member of the family except the said person acquires a right or interest in the partnership. Requirement of section 22 are that: (i) a person who is the owner of the property is carrying on business or profession and for the purpose of such business or profession carried on by him the property is used; (ii) the income of such business or profession is chargeable to tax. Section 22 is in essence an exception to the charging or taxing provision and provides for exemption in a case where the property is used for the purpose of business or profession and the owner of the property and the owner of the business or profession are the same person. That being the situation, the Tribunal was justified in its conclusions by allowing the assessee's claim.

It appears that the decisions of the Gujarat, Madras and Delhi High Courts represents a better view of the subject, as they favor a harmonious construction of the various views.

Interesting Issues:

The decision of the honorable tribunal in the case of the Shri Prakash Vasanthbhai Golwala (Supra) raises two important issues as under:

1. Whether decision of the Jurisdictional High Court is binding?
2. Whether it is the duty of the counsel to cite decisions rendered by other Courts which are not binding.

Binding nature of Jurisdictional High Court decisions:

It appears that the decision of the Jurisdictional High Court is binding on the tribunals and CIT (A). we can have reference to the decisions of their lordships of Gujarat High Court in the case of CIT Mrunalinidevi Puar of Dhar 305 ITR 263 and also decision of Gujarat High Court in the case of New Sorathia Engineering Company V/s CIT 282 ITR 645 wherein their lordships Gujarat High Court held As under: "The tribunal having failed to take into consideration and deal with the decisions of jurisdictional High Court would constitute an error in law which goes to the very basis to the controversy involved and hence the impugned order of the tribunal can not be upheld"

Let me refer to the decision of honorable Bombay High Court in the case of M/s Garware Polyster Ltd. & Others v/s The state of Maharashtra & Others in Writ petition No. 1085 of 2010.Their lordships of Bombay High Court held as under:

"At this stage, it is relevant to note that learned counsel for the petitioner has brought to our notice the assessment order dated 25th August, 2009 passed by Mr.Moreshwar Nathuji Dubey, Dy.Commissioner, LTU, Aurangabad, wherein, Shri Dubey has interalia; recorded that the judgment of this Court in the case of Commissioner of Sales Tax v/s Pee Vee Textiles Ltd. (26 VST 281) is not accepted by the Sales Tax Department and legal proceeding is initiated against the said judgment. Parties have informed this Court that the decision of this Court in Commissioner of Sales Tax v/s Pee Vee Textiles Ltd. (Supra) is not stayed. In view thereof, the refusal to follow and implement the judgment of this Court by Mr.Dubey in our considered view prima facie; amounts to contempt of this Court. In view thereof, issue show cause notice to Mr.Moreshwar Nathuji Dubey, Dy.Commissioner, LTU, Aurangabad, returnable after four weeks to show cause, as to why action under the provisions of the contempt of Courts Act should not be initiated against him."

In the case of State of Andhra Pradesh v/s CIT 169 ITR 564 A.P, tribunal not following the judgment of high court. On the ground that an appeal is pending before Supreme Court tribunal to be proceeded against for contempt of court.

In the case of NICCO CORPORATION LIMITED V/S CIT 251 ITR 791 Calcutta, CIT could not ignore the relevant decision of the jurisdictional High Court simply on the ground that since a special leave petition was contemplated to be filed against that judgment it was not a binding precedent.

Duty of the Counsel

Now as regards whether it is the duty of the counsel to cite decisions which are not binding. Reference can be made to the observations of the honorable ITAT Bench which were later expunged. "At this juncture, it is worth to mention that a litigant, especially the learned counsel, who is an expert, is expected to place before the Court all the decisions either in favor or against him. We are constrained to note that this fair approach was not adopted in this case."

Let me refer to the opinion of the learned senior advocate S E Dastur on Lawyers' Duties and Accountability. The learned senior advocate is of the opinion which is reproduced here under

"A related issue is to what extent the duty of a lawyer to the Court compels him to cite all possible decisions which he is aware of even though some of them may be contrary to what he is briefed to argue. Whilst the lawyer must bring to the notice of the judge any judgment which is binding on the judgelike that of the Supreme Court of India or of the Federal Court or the Privy Council (when the opinion of the Privy Council is as of a point of time when the same was binding on the Indian Courts). He will also have to disclose to the Court any judgment of the High Court of the state where he is arguing the matter as the same may be binding or if the judge wants to take a contrary view he may have to refer the matter to a larger bench. It is not the duty of the lawyer to cite decisions rendered by other courts which are not binding. It is for the opposing lawyer, if he so thinks fit, to bring such decisions to the notice of the court. This shows that the lawyer can honor his duty both to the Court and to the client in respect of a particular matter without infringing either."

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Judicial Analysis

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While performing a transport contract, if an assessee hires vehicles without subletting the work, payments made towards such hiring charges would not attract S. 194C.

1 Chartered Logistics Limited vs ACIT (IT(SS)A No.37 to 40/Ahd/2013)

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15. We have heard rival submissions and perused the orders of the lower authorities and material available on record. In the instant case, the AO has observed that the assessee had made following payment of freight charges, during the year in which no TDS was deducted by the assessee.

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    The contention of the assessee was that the assessee had entered into contract with companies such as Hindustan Lever Ltd., Reliance, Kalpataru etc. for whom the transporting of goods was done by the assessee under contract. The assessee was liable to carry out the work of transportation of goods itself, and was not allowed to sub-contract the same to other persons. It was explained that the assessee used its own trucks and in case of need, also took trucks of other truck owners for the purpose of transporting goods. Since the responsibility was of the assesseefor transporting the goods, loss or damage to the goods was to beborne by the assessee, therefore, it was only hiring of the trucksof other truck owners by the assessee, and thus, there was no subcontractof the work, and hence, the assessee has no liability to deduct TDS under section 194C from the payment made to thetruck owners, whose trucks were hired by the assessee. This explanation of the assessee did not find favour with the AO, whomade the disallowance by invoking the provisions of section40(a)(ia) of the Act for non-deduction of TDS.

16. On appeal, the learned CIT(A) deleted the disallowance on the ground that the company had entered into various contracts Hindalco Industries, Hindustan Lever ltd. and Sterlite Industries Ltd. for transportation of goods, and the assessee alone was responsible for executing these contracts. It was only for fulfillment of these contracts that the vehicles were hired from outside parties, and in such a case, it cannot be held that these outside parties were sub-contractors of the assessee. He place dreliance on the decision of the Mumbai Bench of the Tribunal in the case of Ratnakar Sawant, Dinesh N. Shah & Co. Vs. ITO, in ITA No.29412(Mum) of 2011 and held that the AO was not justified in holding that the disallowance under section 40(a)(ia) was required to be made in the case of the assessee.

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    In the instant case also, the assessee has carried out the contract for transportation of goods for various companies by using itsown vehicles as well as hired vehicles of other truck owners. The role of the owners of the vehicles is limited to providing vehicles along with staff to the assessee on payment of hire charges. The movement of the vehicles with goods was in the control of the assessee. The assessee undertakes the risk involved in the work of transportation with the help of hired vehicles. Further,relevant ingredients in the contract to establish that the assessee was assigned the job of transportation and it had performed thejob of transportation of its own trucks, can be summarized asunder as per the contract entered into by the assessee.

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19. A reading of the above clauses of the agreement for transportation of goods entered into by the assessee shows that the facts of the present case of the assessee are similar to the factsof the case in the case of M/s.Parishram Transport Vs. ITO(supra), therefore, the said decision squarely applies to the facts of the case of the assessee. Respectfully following the same, weconfirm the order of the learned CIT(A) in deleting thedisallowances of Rs.54,00,379/- for A.Y.2007-2008, for A.Y.2008-2009 Rs.51,55,864/-, for 2009-2010 Rs.1,26,94,479/

- and for A.Y 2010-2011 Rs.76,08,948/- under section 40(a)(ia) of the Act and dismiss the grounds of the appeal of the Revenue.

2 Parishram Transport vs ITO (ITA No.351/Ahd/2009 & 255/Ahd/2010)

7. We have heard the rival submissions and carefully perused the material on record. From the facts of the case it is apparent that the assessee was hiring trucks for the purpose of his business of providing transportation services to his client M/s. HPCL. Section 194C of the Act makes it clear that TDS is deductible only in the case when the recipient contractors renders the work of carriage of goods or passengers by any mode of transport other than railways. In the case before us, it is evident that the assessee had only hired out the vehicles and rendered the services of transportation of goods i.e. LPG cylinders by itself at its own risk and reward. At this juncture we may peep into the decision of the Hon'ble Madras High Court in the case of CIT VsPoompuhar Shipping Corporation Ltd. [2006] 282 ITR 3 (Mad). The gist of the aforesaid decision is reproduced herein under:

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8. From the above decision it is evident that the provisions of section 194C of the Act will not be applicable when vehicles are hired out for conducting ones business of transportation by itself and when no work of transportation is assigned to the owners of the vehicles. The owner of the vehicle's role extends only to the limited function of providing the vehicles along with staff to the appellant for hire charges. The movements of the vehicles with the goods are at the command of the appellant. The appellant also undertakes the risk involved in the work of transportation it renders with the help of the hired vehicles. All these facts can be clearly established in the present case before us from the contract executed between the appellant and M/s. HPCL contained in page No.2 to 27 of the paper book. This contract in Para 9 also specifically provides that the appellant shall not sub-let any work entrusted to him. Further, relevant ingredients in the contract to establish that the appellant is assigned the job of transportation and it had performed the job of transportation by itself can be summarized as under:-

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9. Thus, following the decision of the Hon'ble Madras High Court referred supra and based on our above discussions, we are of the considered view that in the present case before us, it is clearly established that the appellant had performed the work of transportation by itself by hiring of vehicles and without subletting the work and therefore, the provisions of section 194C of the Act is not applicable and accordingly provisions of section 40(a) (ia) of the Act cannot be invoked. The Revenue has not brought out any material to establish that the owner of the vehicles have performed any work other than hiring their vehicles to the appellant. For the above said reasons we allow the appeal of the assessee in its favour and delete the addition of Rs.1,05,83,555/- made by the learned AO which was further confirmed by the learned CIT(A).

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3 CIT v. Ess Kay Construction Co. (267 ITR 618 (PUNJ. & HAR.))

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3. The brief facts of the case are that the respondent herein is a firm and is stated to have entered into a contract with MES for construction of certain buildings. It allotted wholly/partly the construction work to M/s. Ess Kay Construction Co., Unit-II, M/s. Manoj Hemant Trust (MHT) and M/s. ShaliniMohit Trust (SMT), which are stated to have completed constructions and received payments in lieu thereof. The assessee being the contractor received the contract from MES, from which the tax was deducted by the former under the 1961 Act. The assessee did not deduct any tax from the payments made to MHT, SMT and Ess Kay Construction Co., Unit-II, as is required by the provisions of section 194C(2) of the 1961 Act. On the premise aforesaid, the Income-tax Officer held the assessee to be a defaulter under section 201(1A) of the 1961 Act and levied penalty under section 221 of the 1961 Act vide three separate orders of default dated February 7, 1985. Being aggrieved by the aforesaid orders, the assessee filed appeals, which were dismissed by the Commissioner of Income-tax (Appeals). The second appeal of the assessee before the Income-tax Appellate Tribunal

was allowed vide impugned order dated June 24, 1988. The applicant being aggrieved by the order aforesaid, prayed to the Tribunal for referring the questions of law as reproduced above but the said application was rejected. Hence, the present application under section 256(2) of 1961 Act.

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5. A finding of fact has been recorded by the Income-tax Appellate Tribunal that none of the units, namely, M/s. Ess Kay Construction Co., Unit-II, M/s. Manoj Hemant Trust and M/s. ShaliniMohit Trust had any contract with the assessee, i.e., the main firm. It was only by way of mutual arrangements that the aforesaid concerns executed some works and received payment in lieu thereof. It is not denied that so far as the assessee is concerned, with regard to work executed by it or by its sister concerns, tax was paid under section 194C(1) of the 1961 Act. For arriving at the aforesaid conclusion in I.T. A. No. 646, it has been mentioned that the arrangement was between Ess Kay Construction Company (Ganga Nagar Works) on the one hand and ShaliniMohit Trust on the other hand as is apparent from page No. 24 of the paper book. Ess Kay Construction Company was not registered with MES authorities and did not enter into any contract. This concern was not a contractor within the meaning of section 194C(1) of the 1961 Act and, therefore, the question of default in sub-contract did not arise.

6. A further finding of fact has been recorded that the assessee did not charge any commission from its alleged sub-contractors and as mentioned above, whatever tax was payable has since been paid by the main concern, i.e., the assessee, under section 194C(1) of the 1961 Act.

7. Mr. N.L. Sharda learned counsel appearing for the Department, however, vehemently contends that there was a contract between the assessee and its sister concerns and that being so, the provisions of section 194C(2) of the 1961 Act would be attracted to the facts of this case. He is absolutely unable to substantiate this plea on any material that may have been brought on the record of the case. He is also unable to show from any material on the record that the assessee had charged any commission from its sister concerns. As to whether there was a contract between the assessee and its sister concerns, in our view, otherwise also is a question of fact. Once a finding has been recorded that there was no contract between the assessee and its sister concerns, there shall be no applicability of section 194C(2) of the 1961 Act. The particular question in the present case appears to be a question of fact. Once we are upholding the findings recorded by the Income-tax Appellate Tribunal, no question of law as framed in these cases arise. Dismissed.

4 CIT v. Poompuhar Shipping Corpn. Ltd. (282 ITR 3 (MAD.))

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4. We heard the arguments of learned counsel. Under section 194C, the tax is to be deducted when a contract was entered into for carrying out any work in pursuance of a contract between the contractor and the entities mentioned in sub-section (1) of section 194C. In the present case, there was no contract between the assessee, and the shipping companies to carry out any work. On the other hand, the assessee-company hired the ships belonging to other shipping companies for a fixed period on payment of hire charges. The hired ships were utilised by the assessee in the business of carrying the goods from one place to another in pursuance of an agreement entered into between the assessee and the Tamil Nadu Electricity Board. There was no agreement for carrying out any work or transport any goods from one place to another between the assessee and the other shipping companies. The assessee-company simply hired the ships on payment of hire charges and it was utilised in the business of the assessee at their own discretion. It is not the case of the revenue that the assessee entered into the said contract with the shipping company for transport of coal from one place to another. The hiring of ships for the purpose of using the same in the assessee's business would not amount to a contract for carrying out any work as contemplated in section 194C. The term 'hire' is not defined in the Income-tax Act. So, we have to take the normal meaning of the word 'hire'. Normal hire is a contract by which one gives to another temporary possession and use of the property other than money for payment of compensation and the latter agrees to return the property after the expiry of the agreed period. Therefore, in our view, when the assessee entered into a contract for the purpose of taking temporary possession of ships in the shipping

company it could not be construed as if the assessee entered into any contract for carrying out any work, and when the contract is not for carrying out any work, the revenue cannot insist the assessee ought to have deducted tax at source under section 194C of the Act. Further, the other argument of counsel was, section 194C was amended with effect from 1-7-1995, incorporating the Explanation and the said Explanation clarifies the existing provision of section 194C of the Act. Hence, it would be applicable retrospectively. We are concerned with the assessment year 1994-95. In a recent judgment, the Supreme Court in the case of SedcoForex International Drill Inc. v. CIT [2005] 279 ITR 3101, considering the scope of the Explanation, held that there is no principle of interpretation which would justify reading the Explanation as operating retrospectively, when the Explanation comes into force with effect from a future date. In this case, the Explanation introduced is with the effect from 1-7-1995. Hence, it will be applicable only for the future assessment orders and it will not be applicable to the assessment year in consideration. The Tribunal also considered the fact that the shipping companies which received the hire charges are also income-tax assessees and they had shown the hire charges in their respective income-tax returns and paid the taxes on the same. The said fact was also not disputed by the revenue. So, we are of the view that the payment of hire charges for taking temporary possession of the ships by the assessee-company would not fall within the provision of section 194C and, hence, no tax is required to be deducted, and there is no error or infirmity in the order of the lower authorities. Hence, no substantial question of law arises for consideration of this Court. Hence, we dismiss the above tax case. No costs. Consequently, the connected TCMP No. 1253 of 2005 is closed.

5 CIT v. United Rice Land Ltd. (322 ITR 594 (PUNJ. & HAR.))

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7. As per provisions of section 194C of the Income-tax Act, any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract shall at the time of credit of such sum or at the time of payment thereof in cash or by cheque deduct a tax thereon at a prescribed rate. However, no such deduction at source is required to be made, if the sum paid or credited do not exceed Rs. 20,000. In the present case, the Assessing Officer had held, the assessee liable for deduction of tax only on the assumption that assessee was having agreement with the parties through whom trucks were arranged for transportation of goods. However, the CIT(A) has recorded a finding of fact that there was neither any oral or written agreement between the assessee or transporters for carriage of goods nor it has been proved that any sum of money regarding freight charges was paid to them in pursuance of a contract for specific period, quantity or price. This finding of fact was recorded by the CIT(A) after considering the certificate furnished by the transporters. The Tribunal has also recorded a finding of fact that the Department has not controverted the said finding of the CIT(A) even before the Tribunal. While recording this finding of fact, the Tribunal has clearly stated that nothing has been brought on record by the Assessing Officer to prove that there was no written or oral agreement between the alleged parties for carriage of the goods.

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Statute Updates

(A) Service Tax Judgements

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In this issue, judgements on various issues in Service tax are reproduced below for the benefit of Members.

1) Whether recipient can be asked to pay service tax under reverse charge, if service tax is discharged by service provider

[2013] 35 taxmann.com 621 (Ahmedabad - CESTAT) CESTAT, AHMEDABAD BENCH Angiplast (P.) Ltd. *v.* Commissioner of Service Tax, Ahmedabad

Facts:-

Assessee-company paid freight charges for outward transportation of goods and did not discharge service tax thereon under reverse charge - Assessee claimed that Rs. 40,850 out of total demand had been paid by transporters/service-providers themselves for which requisite certificates were enclosed and only balance Rs. 22,349 was payable by them, which was, accordingly, paid - Assessee argued that since service tax had been paid by service provider, tax liability could not be fastened upon them as recipient

Held:-

It was held that "If service tax due on transportation of a consignment has been paid or is payable by a person liable to pay service fax, service tax should not be charged for the same amount from any other person, to avoid double taxation." . Also in view of judgments in Navyug Alloys (P.) Ltd. v. CCE [2008] 17 STT 362 (Ahd. - CESTAT) ,Mandev Tubes v. CCE [Final Order No A/912/2009-WZB/Ahd, dated 20-5-2009] and CST v. Geeta Industries (P.) Ltd. and Circular No. 341/18/2004-TRU (Pt.) dated 17-12-04, assessee could not be made liable to pay any service tax - Hence, demands were set aside .

2) Where assessee has disclosed his receipts in his invoices, bank statements as well as balance sheet, then whether he can be held guilty of suppression merely because of non-disclosure in ST-3 returns.

[2013] 35 taxmann.com 78 (Kolkata - CESTAT) CESTAT, KOLKATA BENCH Manpasand Manpower (P.) Ltd. *v.* Commissioner of Service Tax, Kolkata

Facts:-

Assessee was providing cleaning services and manpower recruitment and supply agency's services.In course of audit, it was found that there was difference in receipts shown in Bank Statement and that shown in ST-3 Returns, on which assessee had not paid service tax. Assessee paid service tax with interest thereon . Department sought levy of penalty under section 78. Assessee claimed that difference was due to EPF/ESI contribution collected from service receivers, which were paid to respective statutory authority in respect of which there was bona fide belief that such reimbursements were not includible in taxable value. Further, since amount was reflected in respective invoices and also in balance sheet and bank statements, there was no suppression or mis-statement of facts. Department argued that non-reflection of correct value received in ST-3 Returns amounted to suppression.

Held:

It was held that the fact that receipt was disclosed in invoices as well as in Bank statements, itself indicates that approach of assessee was bona fide and hence, penalty imposed under Section 78 was set aside .

3) Whether tolls collected from users of road in consideration for construction/ widening

of highways/ roads is liable to service tax under Business Auxiliary Services

[2013] 32 taxmann.com 354 (Mumbai - CESTAT) CESTAT, MUMBAI BENCH Ideal Road Builders (P.) Ltd. *v.* Commissioner of Service Tax, Mumbai

Facts:-

Assessee was engaged in construction/widening of highways under contract received from Public Works Department (PWD) of Government of Maharashtra. To compensate assessee for undertaking said work, it was authorised to collect tolls from users of road. Department sought levy of service tax on such collections.

Held :

It was held that as per Circular No. 152/3/2012-ST, dated 22/02/2012, in case of Build-Own-Operate-Transfer (BOOT) agreement between State authority and the concessionaire for construction of roads, toll charges collected by authorised contractor is not chargeable to service tax .

Thus the intention of the Government is to keep out road construction activity from the purview of service tax. If that be so, how can service tax be levied on the very same activity under Business Auxiliary Service? Such a view does not appeal to any reason or logic. Thus the appeal was allowed and the stay application was also disposed of.

4) Whether service tax paid in advance can be adjusted towards liability in the subsequent period.

2013 -TIOL-1550-CESTAT-MUM VARUN SHIPPING CO LTD Vs COMMISSIONER OF SERVICE TAX, MUMBAI

Facts:-

Appellant paying ST of Rs.1,26,80,302/- in the month of December, 2008 even though they had not received consideration for the services rendered and the said payment was reflected as 'advance tax paid' in the return filed for the period October 2008 to March 2009 but not separately intimated to the jurisdictional Superintendent in terms of rule 6(1A) of STR, 1994. Thereafter upon receipt of consideration in April 2009, appellant adjusted the advance payment towards the tax liability and showed the same in the returns for April 2009 to September 2009. The Department alleging that the payment made in December 2008 is not advance tax but an excess payment and, therefore, they could not suo motu adjust the excess payment and the same was in violation of rule 6(4B) of the STR, 1994 and demanding ST.

Held :

It was held that since liability to pay tax arose only in April, 2009, the payment made in December 2008 can only be an advance payment of tax and not an excess payment. Even though they had not intimated this payment to the jurisdictional range Superintendent in terms of Rule 6 (1A) of the Service Tax Rules, 1004, in return which they had filed for the period October 2008 to March, 2009, they had given the particulars and shown the payment as advance tax payment. Similarly, when they received the consideration in April to September, 2009 they have adjusted this amount and in the said return also it was shown that the payment made in December 2008, has been adjusted against the liability for the period April to September, 2009. From the details given in the service tax returns it can be easily seen that the payment made by them was an advance tax . The order of the adjudicating authority reflects complete non-application of mind and thus the impugned order was set aside and the appeal was allowed.

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Statute Updates

(B) Foreign Exchange Management Act (FEMA)

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External Commercial Borrowings (ECB) by Holding Companies/ Core Investment Companies for the project use in Special Purpose Vehicles (SPVs)

- To strengthen the flow of resources to infrastructure sector, it has been decided to permit Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of the Reserve Bank to raise ECB under the automatic route/approval route, as the case may be, for project use in Special Purpose Vehicles (SPVs)
- The business activity of the SPV should be in the infrastructure sector where "infrastructure" is defined as per the extant ECB guidelines;
- The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project;
- The ECB proceeds is utilized either for fresh capital expenditure (capex) or for refinancing of existing Rupee loans (under the approval route) availed of from the domestic banking system for capex as per the extant norms on refinancing;
- The ECB for SPV can be raised up to 3 years after the Commercial Operations Date of the SPV;
- The SPV should give an undertaking that no other method of funding, such as, trade credit (if for import of capital goods), etc. will be utilized for that portion of fresh capital expenditure financed through ECB proceeds;
- The ECB proceeds should be kept in a separate escrow account as per the extant guidelines on parking of ECB proceeds pending utilization for permissible end-uses and use of such proceeds should be strictly monitored by the ADs for permissible uses;
- In case of Holding Companies that come under the Core Investment Company (CIC) regulatory framework of the Reserve Bank, the additional terms and conditions for raising ECB for project use in SPVs will be as under:
  a) The ECB availed is within the ceiling of leverage stipulated for CICs, i.e., their outside liabilities including ECB cannot be more than 2.5 times of their adjusted net worth as on the date of the last audited balance sheet; and
  b) In case of CICs with asset size below Rupees 100 crore, the ECB availed of should be on fully hedged basis.

For full text refer to: A.P. (DIR Series) Circular No. 78

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8616&Mode=0

Borrowing and Lending in Rupees- Investments by persons resident outside India in the tax free, secured, redeemable, non-convertible bonds

- Attention of Authorized Dealer Category - I (AD Category - I) banks is invited to the Regulation No. 6 (2) of Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 (Notification No. FEMA 4/2000-RB dated May 03, 2000) which imposes restrictions on person resident in India who have borrowed in Rupees from a person resident outside India to the effect that such borrowed funds cannot be used for any investment, whether by way of capital or otherwise, in any company or partnership firm or proprietorship concern or any entity, whether incorporated or not, or for relending.
- On a review, it has been decided to permit such resident entities / companies in India, authorised by the Government of India, to issue tax-free, secured, redeemable, non-convertible bonds in Rupees to persons resident outside India to use such borrowed funds for the following purposes:
  (a) for on lending / re-lending to the infrastructure sector; and
  (b) for keeping in fixed deposits with banks in India pending utilization by them for permissible end-uses.

For full text refer to: A.P. (DIR Series) Circular No. 81

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8648&Mode=0

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Statute Updates

(C) Value Added Tax (VAT)

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[I] **IMPORTANT NOTIFICATIONS/CIRCULARS:**

[1] Vide Notification dated 2nd Nov. 2013 the Government has amended the Notification No. 35 dated 31.3.2006 and Entry at Sr. No.79, is substituted as under.

79	Toys including Rubber Balloons (Except Electronic & Battery Operated)	Tax Free (Whole of Tax)

[2] Vide order of Commercial Tax Department dated 2nd Nov. 2013, the Commissioner of Commercial Tax has amended the list of Specified Goods and from that list Jeera and Variali is deleted from the said goods.

[3] Vide Public Circular dated 20th Dec. 2013, the Commissioner of Commercial Tax has extended the date for obtaining the Audit Report u/s. 63 till 31st Jan. 2014 instead of 31st Dec. 2013. Similarly for filing of the Annual Return in Form No. 205, the date is extended to 31st Jan. 2014 instead of 31st Dec. 2013.

[II] **Important Judgments: (Gujarat High Court)**

[1] The Hon. Gujarat High Court in case of Tudore India Ltd. v/s. State of Gujarat Appeal No. 711/2013 dated 30.08.2013 has decided that the Tribunal can not take any decision on the issue if Appeal Officer does not take decision on the grounds of appeal. In case of Appeal Officer has summarily dismissed the appeal on the ground of non-payment of deposit and dealer has made a further appeal to the Hon. GVAT Tribunal and in that case Hon. Tribunal only takes the decision on the issue of payment of advance deposit and not on the grounds of the appeal, the Hon. Tribunal has no alternative but remand the case to the Appellate Officer.

[2] The Hon. Gujarat High Court has decided in case of Mukti Exports P. Ltd. Tax Appeal No. 835/2013 dated 24.10.2013 that the interest is to be given on the provisional refund issued by the Vat Department. The important paragraphs are reproduced hereunder for the benefit of the readers.

[i] Sub-section (1) of Section 38 of the Act provides that where refund of any amount of tax becomes due to the dealer by virtue of an order of assessment under section 34 (audit assessment), he shall be entitled to receive in addition to the amount of tax, simple interest @ 6% per annum on the said amount of tax from the date immediately following the date of the closure of the accounting year to which the said amount of tax relates till date of payment on amount of said refund. However, the same shall be subject to the proviso to sub-section (1) of section 38.

[ii] Sub-section (2) of Section 38 provides that a registered dealer shall be entitled to refund in pursuance of any order other than referred to under sub-section (1) (audit assessment) or in pursuance of any order by any court, be entitled to receive in addition to refund, simple interest @ 6% p.a. on the amount of such refund from the date immediately following the date of closer of the accounting year to which the said amount of refund relates till the date of payment of amount of such a refund. It is further provided that interest shall be calculated on the amount of refund due after deducting there from any tax, interest, penalty or any other dues under this Act, or under the Central Act, if as a result of any order passed under the Act, the amount of such refund is enhanced or reduced, such interest shall be enhanced or reduced accordingly.

[iii] Thus on plain reading of sub-section (2) of section 38 a registered dealer shall be entitled to receive simple interest @ 6% p.a. on the amount of such refund in pursuance of any order than the audit assessment order or in pursuance of any order by any court. Thus, on plain reading of sub-section (2) of section 38 "order" includes provisional assessment order / provisional refund order. Under the circumstances, as such Hon. Tribunal has not committed any error and/or illegality in holding that the dealer shall be entitled to interest @ 6% p.a. on the provisional refund i.e. Rs. 2,74,253/-.

[iv] Now, so far as reliance placed upon the decision of Hon. Supreme Court in case of Gurudevdatta Vksss Maryadit (supra) is concerned, as such there cannot be any dispute with respect of proposition of law laid down by the Hon. Supreme Court in the said decision.

However, on facts the said decision shall not be of any assistance to the appellant. Provision of section 38(2) is very clear and it specifically provides that a dealer shall be entitled to receive simple interest @ 6% p.a. on the amount of refund in pursuance of any order other than referred to in section 38(1) or in pursuance of any order by any court and as observed herein above "order" referred to in.

[v] The impugned order passed by the learned Tribunal is on correct interpretation of law. We are in complete agreement with the view taken by the learned Tribunal that dealer shall be entitled interest as provided under sub-section (2) of section 38 of the Act on the amount of provisional refund also. We see no reason to interfere with the impugned order passed by the learned Tribunal. No question much less any substantial question of law arise in the present appeal. Hence, present appeal deserves to be dismissed and is accordingly dismissed.

DECISIONS OF VAT TRIBUNAL:

[3] The Gujarat Vat Tribunal in case of Hotel Fountain & Guest House Appeal No. 234/2011 dated 11.11.2013 has decided two important issues.

[i] In case if the Provisional Assessment is made by the Vat Department and no Audit Assessment is undertaken, then provisional assessment is to be considered as a final assessment and not the annual return.

[ii] The penalty cannot be levied u/s. 34(7) on the enhancement made by the Ld. A. O. in Turnover of sales. The penalty can only be levied on the additional sales confirmed by the Appellate Officer and not on enhancement.

[4] The Hon. GVAT Tribunal in case of Umang Marketing Appeal No. 380/2011 dated 08.10.2013 has decided that if the dealer has collected the tax @ 12.5% and the same has been paid to the Government and afterwards on account of determination u/s. 80, the tax rate at 4% is applicable on the same goods, the penalty cannot be levied u/s. 31(4) of the Act i.e. on excess collection.

So far as Second Appeal No. of 380 of 2011 is concerned, the learned C. A. of the appellant has submitted that there was no malafide intention on the part of the appellant to collect the tax and the appellant has not pocketed such excess amount of tax sop collected. The appellant has shown his liability in the returns and paid whole amount of tax to the Govt. Treasury. He has further submitted that the Gujarat Vat Act was made applicable w.e.f. 1.4.2006 and this being the new provision, the appellant was of the bonafide view that the sales for the polyester film is liable to be taxed @ 12.5%. He has further submitted that the tax was collected at the rate applicable to residuary entry 87 of Schedule-IIA to the Gujarat Vat Act and paid to the Government. Subsequent order of determination holding that the tax is payable at the applicable rate of 4% would not justify the stand of the department to forfeit the excess tax collected and also to levy the penalty u/s. 31(4) of the Act.

In support of this submission, he relied upon the decision of Tamilnadu Sales Tax Appellate Tribunal (Additional Bench) in the case of Eltex Super Castings Ltd. (2011) 40 VST 49 (MAD). He has further relied on the decision of Hon. Madras High Court in the case of M/s. Modern Printers vs. The State of Tamilnadu (2010) 30 VST 474(MAD), wherein it is held that Section 22(2) of the Tamilnadu Sales Tax Act, 1959 which existed prior to the amendment with effect from May 28, 1993, contemplated a reasonable opportunity of being heard to be provided to the dealer before invocation of the provision for penalty. Invocation of that provision was not automatic and the dealer was entitled to satisfy the authorities with regard to its stand, meaning thereby that there might be an occasion for not invoking that provision in the event the dealer was able to satisfy with the sufficient explanation. Such explanation might also include the bonafide belief on the part of the dealer in collecting the tax i.e. the tax collected by the dealer which otherwise would not have been collected and had been repaid. A careful reading of the assessment order passed on the petitioner did not indicate any such application of mind satisfying the assessing officer for imposition of penalty and neither the first appellate authority nor the Tribunal had independently applied their mind to this respect. Accordingly, the Hon. Madras High Court has set aside the penalty and remitted the entire issue back to the assessing officer for fresh consideration. The learned CA of the appellant has, therefore, submitted that in the present case also the learned assessing officer has not discussed anything in the order nor considered appellant's explanation and straightway levied the penalty of Rs. 70,529/- u/s. 31(4) of the Act, over and above the forfeiture of excess tax collected u/s. 31(3) of the Act. He has, therefore, submitted that the penalty u/s. 31(4) of the Act deserves to be quashed and set aside.

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Statute Updates

(D) Corporate Laws

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(A) SEBI Updates:

1. Investments by FIIs/QFIs in Credit Enhanced Bonds

On September 10, 2012, Government of India decided to permit Foreign Institutional Investors (FIIs) to invest in "Credit Enhanced INR Bonds" up to an equivalent of US$ 5 billion within the overall Corporate Bond limit of US$ 51 billion. The Reserve Bank of India vide circular RBI/13-14/368 dated November 11, 2013 had permitted FIIs and QFIs to invest in the credit enhanced bonds, as per paragraph 3 and 4 of the RBI A.P. (DIR Series) Circular No. 120 dated June 26, 2013, up to a limit of USD 5 billion within the overall limit of USD 51 billion earmarked for corporate debt.

The depositories shall monitor FII/QFI investments in credit enhanced bonds; so as to ensure that aggregate investments by FIIs/QFIs in such bonds shall not be more than 90% of the US $ 5 billion limit i.e. US $ 4.5 billion.

[CIR/IMD/FIIC/ 19 /2013 dated November 28, 2013]

2. SEBI Circulars No. CIR/CFD/DIL/3/2013 dated January 17, 2013 and -CIR/CFD/DIL/7/2013 dated May 13, 2013- Extension of time line for alignment

The SEBI has decided to extend the time line for alignment of existing employee benefit schemes with the SEBI (ESOS and ESPS) Guidelines, 1999, to June 30, 2014. Accordingly, in Clause 35C (ii) of the Equity Listing Agreement, the words "December 31, 2013" shall be replaced with "June 30, 2014".

All other requirements including the disclosures specified under the earlier circulars dated January 17, 2013 and May 13, 2013 shall continue to apply to the listed companies.

[CIR/CFD/POLICYCELL/14/2013 dated November 29, 2013]

3. Circular on Infrastructure Debt Fund (IDF), Foreign Institutional Investors (FIIs) which are long term investors:

SEBI, vide Circular CIR / IMD / DF / 7 / 2013 dated April 23, 2013, has designated the following categories of FIIs as long term investors for the purpose of IDF:

a. Foreign Central Banks

b. Governmental Agencies

c. Sovereign Wealth Funds

d. International/Multilateral Organizations/ Agencies

e. Insurance Funds

f. Pension Funds

Now the SEBI has decided that regulated foreign feeder funds, having at all times, at least 20% of their assets under management held by investors belonging to one of more of the above categories of FIIs, shall also be categorized as FIIs which are long term investors, for the purpose of IDF.

[CIR/IMD/DF/20/2013 dated November 29, 2013]

4. Simplification of demat account opening process:

The SEBI has decided to simplify and rationalize the demat account opening process. Now, the existing Beneficial Owner-Depository Participant Agreements shall be replaced with a common document "Rights and Obligations of the Beneficial Owner and Depository Participant".

This will harmonize the account opening process for trading as well as demat account. This will also rationalise the number of signatures by the investor, which he is required to affix at present on a number of pages.

[CIR/MIRSD/12/2013 dated December 04, **2013]**

(B) IPR UPDATES:

1. Registrar of trade-marks has published the detailed classification of goods and services under section 8(1) of Trade-Marks Act, 1999 for the purpose of registration of trademarks:

[**GOODS**]:

If a product cannot be classified with the aid of the List of Classes, the Explanatory Notes and the Alphabetical List, the following remarks set forth the criteria to be applied:

a) A finished product is in principle classified according to its function or purpose. If the function or purpose of a finished product is not mentioned in any class heading, the finished product is classified by analogy with other comparable finished products, indicated in the Alphabetical List. If none is found, other subsidiary criteria, such as that of the material of which the product is made or its mode of operation, are applied.

b) A finished product which is a multipurpose composite object (e.g., clocks incorporating radios) may be classified in all classes that correspond to any of its functions or intended purposes. If those functions or purposes are not mentioned in any class heading, other criteria, indicated under (a), above, are to be applied.

c) Raw materials, un-worked or semi-worked, are in principle classified according to the material of which they consist.

d) Goods intended to form part of another product are in principle classified in the same class as that product only in cases where the same type of goods cannot normally be used for another purpose. In all other cases, the criterion indicated under (a), above, applies.

e) When a product, whether finished or not, is classified according to the material of which it is made, and it is made of different materials, the product is in principle classified according to the material which predominates.

f) Cases adapted to the product they are intended to contain are in principle classified in the same class as the product.

[SERVICES]:

If a service cannot be classified with the aid of the List of Classes, the Explanatory Notes and the Alphabetical List, the following remarks set forth the criteria to be applied:

(a) Services are in principle classified according to the branches of activities specified in the headings of the service classes and in their Explanatory Notes or, if not specified, by analogy with other comparable services indicated in the Alphabetical List

(b) Rental services are in principle classified in the same classes as the services provided by means of the rented objects (e.g., Rental of telephones, covered by Class 38).

(c) Services that provide advice, information or consultation are in principle classified in the same classes as the services that correspond to the subject matter of the advice, information or consultation, e.g., transportation consultancy (Cl. 39), business management consultancy (Cl.35), financial consultancy (Cl. 36), beauty consultancy (Cl.44). The rendering of the advice, information or consultancy by electronic means (e.g., telephone, computer) does not affect the classification of these services.

Details can be viewed at the following link: ***http://www.ipindia.nic.in/tmr_new/tmr_notice/classification_Goods Services_29 November2013.pdf***

(C) Latest Judgements:

1. Ambalal Sarabhai Enterprises Limited vs Rajeev Daga and another [CALCUTTA HIGH COURT, 05th December, 2013]:

The H'ble Court has decided that whether the original tenant being a body corporate, incorporated under the Companies Act, 1956 could still be considered as "tenant" despite having merged with the transferee company by virtue of an Order of Amalgamation.

It was held that be it assignment, be it transfer, be it sub-letting, the tenancy is a non-transferable object that could only extend to others either by an explicit contract or by a clear statute. When the law would prevent sub-letting and the parties decided to contract otherwise such contract must be explicit. Mere payment of rent would not create any tenancy. The order of Amalgamation was never served upon the landlord. Hence, the appeal was dismissed.

A.P.D. No. 271 of 2013, C.S. No. 297 of 1989, Ambalal Sarabhai Enterprises Limited Vs. Rajeev Daga & Anr.

2. Sunita Gupta Vs. SEBI, [SECURITIES APPELLATE TRIBUNAL, 12th December, 2013]:

While investigation in the trading of the scrip of the company, it was found that an individual had applied for registration as sub-broker but had commenced trading for her clients through another stock-broker and hence, penalties of Rs. 3 lac u/s. 15HB of the Act for trading as sub-broker without being registered and penalty of Rs. 2 lac u/s. 15A(a) of the Act for the non compliance of summonses had been imposed upon the appellant.

It was held that the person who violated provisions of the Act and the Regulations made there under could not escape penalty merely because that person had not made unlawful gains or that the investors have not suffered or that the violations were committed for the first time. These factors were relevant for determining the quantum of penalty and could not be made basis for imposition of penalty.

3. P. B. Jain & Others Vs. SEBI, [SECURITIES APPELLATE TRIBUNAL, 13th November, 2013]:

It was held that that the concept of principles of acquirer acquiring 5% voting rights has not changed in the Takeover Regulations of 2011and remains the same as it was in Takeover Regulations,1997 except minor variation that Regulation 2(1)(a) of Takeover Regulations, 2011 provides that an acquirer means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.

In the present case the appellants have attracted the provisions of Regulation 3(2) of the Takeover Regulations, 2011 and have consequently incurred an obligation to make a combined public announcement to acquire shares of the target company as per law.

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contd. from page 560

FEMA & NRI Taxation

.02 Of course for determining residential status under India USA Tax Treaty the Tie Breaker rule will apply and although he has home and investments both in India and USA , on the grounds of Citizenship and entire family i.e. children and grandchildren residing in USA. he can be said to be a Tax Resident of USA in which he will be Non Resident under ITAct for F.Y. 2012-13 as his stay in India does not exceed 181 days .

.03 For Financial Year.2013-14 he will be a Resident as his stay totals 9 months but on being NR in all 10 preceding years he will be RbutNOR.

.04 Under FEMA he will be PROI as he has not returned to India for permanent settlement.

P:10. Kishan and Shila have sold off their business in Africa and reside few months each in Kenya, India, UK & Dubai and thereby enjoy status of Non-Resident in each country. They have rental , royalty and interest income of NRE deposits in India. They wish to enjoy the benefits of India-UK Tax Treaty for lower tax on royalty income. What will be their residential status under ITAct and FEMA and can they enjoy lower tax rate for royalty?

R:10. As Kishan & Shila are not to return to India for settlement they are covered by Section 6(1)a) of ITAct .

.02 As they plan to stay for less than 181 days in India they will be NR under ITAct.

.03 Under FEMA they will be PROI as they are not to return to India for settlement.

.04 However for availing lower tax on royalty income in India they need to produce Tax Residency Certificate (TRC) from UK Tax Authorities.

.04 As they wish to be Non-Resident in all these countries they can not avail TRC from UK and therefore cannot avail benefits of lower tax of 20% as granted in Article-13 of India-UK Tax Treaty.

The author acted as a trustee at 3rd Brain Trust Meeting of the Association. The replies to the posers of the meeting are published hereinabove for the benefit of readers.

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Statute Updates

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

CA. Kunal A. Shah
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Income Tax

1 Notification regarding Rajiv Gandhi Equity Saving Scheme, 2013

CBDT here by introduces Rajiv Gandhi Equity Saving Scheme 2013 which shall apply for claiming deduction in the computation of total income of the assessment year relevant to a previous year beginning on or after the 1st day of April, 2013 on account of investment in eligible securities under sub-section (1) of section 80CCG of the Income-tax Act, 1961(43 of 1961). The objective of the Scheme is to encourage investment of savings of small investors in the domestic capital market.

The deduction under the Scheme shall be available to a new retail investor who complies with the conditions of the Scheme and whose gross total income for the financial year in which the investment is made under the Scheme is less than or equal to twelve lakh rupees.

(For full text refer notification No.94,dated 18/12/2013)

2. Notification regarding revised list of documents required for allotment of PAN:-

CBDT hereby amends the Income –tax rules,1962 by revising the list of documents required for application in form 49A and in form 49AA for allotment of PAN and also notifies the certification format for address/ID proof.

(For full text refer notification No.96, dated 23/12/2013)

Service Tax

1) Notification No. 17/2013, dated 26/12/2013

The Central Government vide this notification hereby amends the notification no.06/2013, dated 18/04/2013 regarding Exemption under (Focus Market Scheme) by inserting the following entries:-

(a) in the first proviso, after serial number (xv) and the entry relating thereto, the following serial numbers and entries shall be inserted, namely,-

"(xvi) Export of Meat and Meat Products;

(xvii) Export of Cotton;

(xviii) Export of Cotton Yarn;

(xix) Export which are subject to Minimum Export Price or Export Duty:";

(b) in the second proviso, after serial number (xvii) and the entry relating thereto, the following serial numbers and entries shall be inserted, namely,-

"(xviii) Cotton (for the paragraph 3.14.5 of the Foreign Trade Policy);

(xix) Cotton Yarn (for the paragraph 3.14.5 of the Foreign Trade Policy);

(xx) Export which are subject to Minimum Export Price or Export Duty (for the paragraph 3.14.5 of the Foreign Trade Policy);".

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From Published Accounts

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AS-26 Intangible Assets

Godavari Power & Ispat Limited - Annual Report 2012-2013.

Notes to Financial statements For The Year Ended 31st March, 2013

2.1 Summery of significant accounting policies

c) Intangible Assets:

Intangible assets acquired separately are measured on initial recognition at cost. Following initial recognition, intangible assets are carried at cost less accumulated amortization and accumulated impairment losses, if any. Internally generated intangible assets, excluding capitalized development costs, are not capitalized and expenditure is reflected in the statement of profit and loss in the year in which the expenditure is incurred.

Intangible assets are amortised on a straight line basis over the estimated useful economic life. The company uses a rebuttable presumption that the useful life of an intangible asset will not exceed ten years from the date when the asset is available for use. If the persuasive evidence exists to the affect that useful life of an intangible asset exceeds ten years, the company amortizes the intangible asset over the best estimate of its useful life. Such intangible assets and intangible assets not yet available for use are tested for impairment annually, either individually or at the cash-generating unit level. All other intangible assets are assessed for impairment whenever there is an indication that the intangible asset may be impaired.

The amortization period and the amortization method are reviewed at least at each financial year end. If the expected useful life of the asset is significantly different from previous estimates, the amortization period is changed accordingly. If there has been a significant change in the expected pattern of economic benefits from the asset, the amortization method is changed to reflect the changed pattern. Such changes are accounted for in accordance with AS 5 Net Profit or Loss for the Period, Prior Period items and Changes in Accounting Policies.

Gains or losses arising from derecognition of an intangible asset are measured as the difference between the net disposal proceeds and the carrying amount of the asset and are recognised in the statement of profit and loss when the asset is derecognized.

Indian Oil Corporate Limited - Annual Report 2012-2013.

Notes to Financial statements For The Year Ended 31st March, 2013

Note-1 Significant Accounting Policies

3) Intangible Assets:

3.1 Technical know-how / license fee relating to production process and process design are recognised as Intangible Assets and amortised on a straight line basis over a period of ten years or life of the underlying plant/ facility, whichever is earlier.

3.2 Expenditure incurred on Research & Development, other than on capital account, is charged to revenue.

3.3 Costs incurred on computer software purchased/ developed resulting in future economic benefits, are capitalised as Intangible Asset and amortised over a period of three years beginning from the quarter in which such software is capitalised. However, where such computer software is still in development stage, costs incurred during the development stage of such software are accounted as "Intangible Assets Under Development".

3.4 Cost of Right of Way for laying pipelines is capitalised and amortised on a straight line basis over the period of such Right of Way or 99 years whichever is less.

Allsec Technologies Limited - Annual Report 2012-2013.

Notes For The Year Ended 31st March, 2013

2.1 Summary of Significant accounting policies

d) Intangible Assets:

Intangible assets acquired separately are measured on initial recognition at cost. Subsequent to initial recognition, intangible assets are carried at cost less accumulated amortization and accumulated impairment losses, if any.

Computer software

Costs incurred towards purchase of computer software are depreciated using the straight-line method over a period based on management's estimate of useful lives of such software (4 years), or over the license period of the software, whichever is shorter.

Goodwill

Goodwill is amortized using the straight-line method over a period of five years based on management estimates.

Renaissance Jewellery Limited - Annual Report 2012-2013.

Notes to the Financial Statements For The Year Ended 31st March, 2013

2.1 Summary of Significant Accounting Policies

d) Intangible Assets:

Intangible assets acquired separately are measured on initial recognition at cost. Following initial recognition, intangible assets are carried at cost less accumulated amortization and accumulated impairment losses, if any.

Intangible assets are amortized on a straight line basis over the estimated useful economic life.

Gains or losses arising from derecognition of an intangible asset are measured as the difference between the net disposal proceeds and the carrying amount of the asset and are recognized in the statement of profit and loss when the asset is derecognized.

A summary of amortization policies applied to the company's intangible assets is as below:

Computer software	20%

Thinksoft Global Services Limited - Annual Report 2012-2013.

Notes to the Financial Statements For The Year Ended 31st March, 2013

2.1 Summary of Significant accounting policies

d) Intangible Assets:

Intangible assets are carried at cost less accumulated amortization and impairment losses, if any. These assets are amortized on straight line basis over the estimated useful economic life. The amortization period and amortization method are reviewed at each financial year end. If the expected useful life of the asset is significantly different from previous estimates, the amortization period is changed accordingly. Gain or losses arising from derecognition of an intangible asset are measured as the difference between the net disposal proceeds and the carrying amount of the asset and are recognized in the statement of Profit and loss, when the asset is derecognized.

Asset description	Percentage
Intangible assets – Computer software	33.3%
Intangible assets – Software tools	20%

Pearl Global Industries Limited - Annual Report 2012-2013.

Notes to the Financial Statements For The Year Ended 31st March, 2013

2.3 Summary of Significant accounting policies

f) Intangible Assets:

Intangible assets such as technical know how fees, etc. which do not meet the criterions laid down, in the terms of Accounting Standard 26 on "Intangible Assets" as issued by the Companies (Accounting Standards) Rules, 2006, are written off in the year in which they are incurred. If such costs/ expenditure meet the criterion, it is recognized as an intangible asset and is measured at cost. It is amortized by way of a systematic allocation of the depreciable amount over its useful life and recognized in the balance sheet at net of any accumulated amortization and accumulated impairment losses thereon.

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News Lounge

Compiled by :
Mr. Manthan Khokhani

You can get landlord's PAN details on plain paper for HRA claim

Salaried taxpayers, who want to claim I-T exemption on house rent allowance exceeding Rs 1 lakh per annum, will have to obtain the PAN card number and other details of their landlord on a plain A-4 size paper before submitting it to their employer.

A number of tax department officials PTI spoke to said the circular does not state that such a document has to be a 'sworn affidavit' or a 'notarised document'. Hence, an individual should obtain the information from his or her landlord on a simple plain A-4 size paper.

The tax returns and exemptions filing season will gather momentum in the coming days as the financial year closes on March 31 (2013-14).

"The department has a number of technical platforms to check the authenticity of this information that is provided to it by a salaried taxpayer. The circular has not stated explicitly about the kind of document so it is considered that a plain piece of paper would do," a senior department officer said.

(Source: The Business Standard)

Why is there so much nervousness on the Street? Top five reasons

The S&P BSE Sensex reversed gains quickly in mid-morning trade on Tuesday to mark its worst New Year start since 1996, weighed by losses in banks, realty, power and IT stocks.

Tracking the momentum, the 50-share Nifty index slipped below its 50-DMA and is now trading nears its crucial support level of 6,150.

Contrary to expectations, Sensex has lost over 300 points so far in the year 2014 in a matter of four trading sessions.

According to analysts, markets have become a lot more cautious ahead of key events such as general elections, US FOMC meet, RBI policy, earnings season. Also, populist measures introduced by Aam Adami Party (AAP) are making markets cautious.

However, experts still feel that the Indian markets are relatively cheap and the real rally in markets will be seen post elections when there is some clarity on who's at the Centre.

The Sensex now trades at a 12M forward P/E multiple of about 15x, at par with the historical average, thanks to the liquidity-driven rally. However, valuations appear expensive given the macro conditions and weak corporate profitability.

"Further re-rating is unlikely unless growth meaningfully surprises on the positive side or if BJP comes to power at the Centre," Religare Institutional Research said in a report.

(Source: The Economic Times)

Direct tax collections up 12.5% in April-December

The revenue department is likely to miss its tax target for the current financial year as direct tax collections, net of refunds, in April-December this year increased only by 12.5 per cent to Rs 4.15 lakh crore, compared with Rs 3.7 lakh crore in the nine-month period of last year.

Though the collections have improved a little in the last few months, the pace is still slow. With this slower-than-projected growth due to economic downturn, the tax department is faced with a humongous task of collecting Rs 2.5 lakh crore in the next three months to meet the Budget Estimate of Rs 6.7 lakh crore that represented a growth of 19 per cent over last year's mop-up.

Concerned about muted tax collections, Finance Minister P Chidambaram took a review meeting with officials from the Central Board of Excise & Customs and Central Board of Direct Taxes on Monday. Ways to augment collections in the coming months were discussed.

Gross direct tax collections (before paying income tax refunds) during April-December of 2013-14 were up 12.3 per cent at Rs 4.8 lakh crore, against Rs 4.3 lakh crore in the same period of 2012-13, the finance ministry said on Monday. "Gross collections of corporate taxes have shown an increase of 9.35 per cent and stood at Rs 3.1 lakh crore, against Rs 2.8 lakh crore during the same period last year. Gross collection of personal income tax was up by 18.5 per cent and stood at Rs 1.7 lakh crore, against Rs 1.4 lakh crore during the same period in the last year," it said.

Collection of securities transaction tax stood at Rs 3,427 crore, showing a growth of 4.04 per cent. Wealth tax collection posted a growth of 11.92 per cent and stood at Rs 742 crore, against Rs 663 crore during the same period in last year.

Collections in June, September, December and March are usually higher as quarterly advance tax payments by companies is made during these months. Contribution by way of advance tax up to the December quarter has been Rs 2.02 lakh crore, representing an overall growth of 8.8 per cent.

(Source: The Business Standard)

CAG gets Delhi high court nod to audit private telecom companies

In a ruling that could significantly affect the country's telcos, and possibly any company that contributes a share of revenue or profit to the consolidated fund of India, the Delhi high court (HC) on Monday ruled in favour of the government conducting audits of telcos that pay a revenue share to the government.

The telcos are likely to appeal the decision. "The ruling says they can and will audit the licencees, on the revenue side. The next step has not yet been decided as we need to take a consensus of our members," Ashok Sud, secretary general, Association of Unified Telecom Service Providers of India (Auspi), one of India's telecom lobby groups. Auspi, along with Cellular Operators Association of India (COAI), another telecom lobby group, were the petitioners in the case in the high court. They had argued that private companies were outside the purview of the Comptroller and Auditor General of India (CAG).

In November, a high court bench comprising Pradeep Nandrajog and V. Kameswar Raoreserved their verdict on the case. The case first went to the Telecom Disputes Settlement and Appellate Tribunal and then on appeal to the Supreme Court, which sent the case to the high court.

The ruling has been received with apprehension by the industry, mainly on account of its larger ramifications across sectors.

"They say that the CAG can audit any company that contributes to the consolidated fund of India. This means every company that pays some form of tax or the other," Sud said.

Analysts said Sud could be overstating his case, but admitted that the ruling does give the government's auditor significant powers to look into the books of private companies.

The country's telcos pay 6-10% of their annual revenue as licence fee and another 2-6% as spectrum usage charges

(Source: The Livemint)

NSEL scam: Mumbai police files 9000-page charge sheet

The Mumbai police on Monday filed a 9,600 page chargesheet in the Rs. 5,600 crore National Spot Exchange Ltd (NSEL) payment scam in the special Maharashtra Protection of Interest of Depositors (MPID) Act court.

The chargesheet was filed against the five accused arrested by the Economic Offences Wing (EOW), an elite agency of the Mumbai police probing the case.

Amongst those chargesheeted are the company's CFO , Mr. Anjani Sinha, two vice presidents – Mr. Amit Mukherjee and Mr. Jay Bahukhundi and two borrowers of the beleaguered NSEL- Mr. Nilesh Patel, Managing Director, NK Proteins and Mr.Arun Sharma, film financer and chairman of Lotus Refineries. While NSEL founder Mr.Jignesh Shah has been shown as an accused but he has not been chargesheeted so far. Sources in the Mumbai police say that they might file a supplementary chargesheet against the remaining accused who are yet to be arrested in the near future.

The accused have been chargesheeted under various sections of the IPC and also under certain provisions of the Maharashtra Protection of Interest of Depositors (MPID) Act.

On 30th September, one of the investors had filed an FIR against the directors and key management persons of NSEL for cheating, forgery, criminal breach of trust and conspiracy. The FIR stated that the accused hatched a criminal conspiracy to defraud the investors and misrepresented that they were investors and induced them to trade on the platform of NSEL by creating forged documents like bogus warehouse receipts thereby defrauding the clients.

According to the chargesheet, Mr. Sinha was the kingpin who masterminded the multi crore scam. Mr. Bahukhundi, Assistant VP, Warehouses, created a web of false stocks of commodities and generated bogus bills. Police claims that he received kickbacks to the tune of Rs. 5 crore. Mr. Mukherjee, Assistant VP, Business Development, got many of the default borrowers and generated fake warehouse receipts. Mr. Mukherjee is alleged to have received a kick-back of Rs. 12 crore.

The police have so far recovered Rs. 4,449 crores which amounts to 80 percent of the scam money through attachment of properties of the accused. The police has also sought from the court under section 173 of the Code of Criminal Procedure (CrPc) the power to continue with its investigations.

(Source: The Hindu)

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Life's Little Instruction Book

Compiled by : CA. Jainee R. Shah
march.jainee@gmail.com

1. Have a firm handshake.
2. Look people in the eye.
3. Sing in the shower.
4. Own a great stereo system.
5. If in a fight, hit first and hit hard.
6. Keep secrets.
7. Never give up on anybody. Miracles happen everyday.
8. Always accept an outstretched hand.
9. Be brave. Even if you're not, pretend to be. No one can tell the difference.
10. Whistle... Learn it, if you don't know how to.
11. Avoid sarcastic remarks.
12. Choose your life's mate carefully. From this one decision will come 90 percent of all your happiness or misery.
13. Make it a habit to do nice things for people who will never find out.
14. Lend only those books you never care to see again.
15. Never deprive someone of hope; it might be all that they have.
16. When playing games with children, let them win.
17. Give people a second chance, but not a third.
18. Be romantic.
19. Become the most positive and enthusiastic person you know.
20. Loosen up. Relax. Except for rare life-and-death matters, nothing is as important as it first seems.
21. Don't allow the phone to interrupt important moments. It's there for your convenience, not the caller's.
22. Be a good loser.
23. Be a good winner.
24. Think twice before burdening a friend with a secret.
25. When someone hugs you, let them be the first to let go.
26. Be modest. A lot was accomplished before you were born.
27. Keep it simple. Beware of the person who has nothing to lose.
28. Don't burn bridges. You'll be surprised how many times you have to cross the same river.
29. Live your life so that your epitaph could read, No Regrets
30. Be bold and courageous. When you look back on life, you'll regret the things you didn't do more than the one's you did.
31. Never waste an opportunity to tell someone you love them.
32. Remember no one makes it alone. Have a grateful heart and be quick to acknowledge those who helped you.
33. Take charge of your attitude. Don't let someone else choose it for you.
34. Visit friends and relatives when they are in hospital; you need only stay a few minutes.
35. Begin each day with some of your favorite music.
36. Once in a while, take the scenic route.
37. Send a lot of Valentine cards. Sign them, 'Someone who thinks you're terrific.
38. Answer the phone with enthusiasm and energy in your voice.
39. Keep a note pad and pencil on your bed-side table. Million-dollar ideas sometimes strike at 3 a.m.

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Association News

CA. Chintan M. Doshi
Hon. Secretary

CA. Abhishek J. Jain
Hon. Secretary

Forthcoming Programmes

Date/Day	Time	Programmes	Venue
22.01.2014 Wednesday	5.00 pm to 7.00 pm	9th Study Circle Meeting on "Overview and Issues in Wealth Tax" by CA. Rutvij P. Shah	H. K. College Conference Hall, Ashram Road, Ahmedabad
09.02.2014 Sunday	07.30 am onwards	Cricket Match - C. A. Association, Ahmedabad Vs. Vadodara Branch of WIRC of ICAI	Vadodara

Knowledge Clinic

Knowledge Clinic is to be held on Friday, 31st January 2014 at the Association's office from 4.00 pm to 5.00 pm. Members having queries on the subject of professional interest may send it by email or by hand delivery on or before Monday, 24th January 2014.

Glimpses of events gone by:

Cricket match - President XI v/s Secretary XI on 14.12.2013 President XI won the Match

Cricket Match - C. A. Association, Ahmedabad v/s I. T. Bar Association on 28.12.2013
C. A. Association, Ahmedabad won the match

3rd Brain Trust cum workshop Meeting on the topic of "Use of RTI in Income Tax Proceedings and FEMA & Non Residents – Some Practical issues" on 18.12.2013

(L to R CA. Chintan M. Doshi, CA. Surya Chhabria, CA. Ashok C. Kataria, Faculty CA. S. K. Sadhwani, Faculty CA. Rajesh Dhruva, CA. Prakash B. Sheth, CA. Shailesh C. Shah, CA. Abhishek J. Jain)

8th Study Circle Meeting on the topic of "VAT Audit Recent Controversies under VAT Act." on 26.12.2013

(L to R CA. Shailesh C. Shah, CA. Kunal A. Shah, CA. Ajit C. Shah, CA. Priyam R. Shah, Faculty , CA. Prakash B. Sheth, CA. Ronak M. Khandwala, CA. Chintan M. Doshi,)

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Life's Little Instruction Book

40. Show respect for everyone who works for a living, regardless of how trivial their job.
41. Send your loved ones flowers. Think of a reason later.
42. Make someone's day by paying the toll for the person in the car behind you.
43. Become someone's hero.
44. Marry only for love.
45. Count your blessings.
46. Compliment the meal when you're a guest in someone's home.
47. Wave at the children, on a school bus.
48. Remember that 80 per cent of the success in any job is based on your ability to deal with people.
49. Don't expect life to be fair.

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