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Attention

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Life Membership	` 7500/-
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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.

Published By

CA. Rajni M. Shah,
on behalf of Chartered Accountants Association, Ahmedabad, 1st Floor, C. U. Shah Chambers, Near Gujarat Vidhyapith, Ashram Road, Ahmedabad - 380 014.
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Fax : 91 79 27545442

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Editor's Views

Heading towards 'Democranarchy' ?

The political heat has started all across the map as the Election Commission declares the dates for the 16th Lok Sabha elections. At this juncture, the verbalism passed down at British Parliament way back in the year 1653 quite aptly befits the present day Indian scenario in 2014….

"You have sat too long for any good you have been doing. Depart, I say and let us have done with you. In the name of God, go!"

With the elections forthcoming, the edge of tolerance of the common man to put up with hostility and infamy is being surpassed day in and day out. People at large come across disgraceful politics, shrug the shoulders and move a head. The young of India are dumb founded to understand, how the ignorant and overpowered politicians are devastating the very thread and values of Indian democratic culture. What it seems is that for more than a few, being an MP is a medium for more lucre, authorizations, charter and immunity. Part III of the Indian Constitution specifies fundamental duties of the citizens. These include **"to abide by the Constitution and respect its ideals and institutions"**, and also **"to cherish and follow the noble ideals which inspired our national struggle for freedom"**. As it surfaces, a substantial number of MPs seem to be completely unaware of this fact, while they continue exercising their rights. **It seems India is not a practicing democracy but only an elected aristocracy.**

The hooliganism ('*Rowdiness*' would be more appropriate!) that we witnessed in the Lower House, in the month that went by, lowered down our heads. **'Enough is enough'** is what the Nation went through. We observed words like 'Shame', 'ill repute', 'Disgust', 'Dishonor', 'blot' hearing which, irony died a hundred deaths. Even before any punishment, things went back to triviality in the temple of democracy (that is to say, new means of disrupting the house, tearing of bills, taking out the mikes, spraying peppers and so on!). Probably, every day the Parliament is in session, the chain of events goes as - The Lok Sabha meets. Noise. Confusion. Lok Sabha adjourns. "**The Government's Law of Motion seems to be "Every action has an equal and opposite inaction."**

The generality is aghast and upset by the wickedness in the Parliament, but is anyone surprised? And do we postulate that this is the last time such backdrop of humiliation was noticed in the House? The fact that remains is **'The day law breakers became law framers; Indian Democracy breathed its last.**

In the current scenario, it is nothing but the electoral canvassing that matters. The horrid and the atrocious become the representatives of the people. They play falsely with the voters and discredit the Nation that nurtures them. **Our Parliament must be a place of policies and not a house of quarrels.** This may sound blunt but our representatives have become more ungracious. Not one but grossly all the parties are answerable for this sorry state especially when they tried to the extent to supersede the Supreme Court ruling that people in jail or police custody should be disqualified from contesting elections. Fortunately for all, they were unsuccessful. **As you sow, so shall you reap**. Amorality multiplied since the impeached were never sentenced. On the highest side, the delinquents get away with just a suspension or a warning. **Big deal!** Even the shed of repentance is not found on the faces of convicted senior politicians.

As if their decorum and etiquettes in the house are just a teaser, the MPs do not even care a damn about the political 'six window' debates on the news channels. *(While news papers are having columns, news channels have started to have rows!)* . The seriousness of this issue can be inferred from various incidents that took place which involve physical violence as well. **Is this not 'democranarchy' that we are heading towards?**

The reason of such sorry state of affairs seems to be many including a spurt in the number of regional parties where morale and values seem to have been left far behind. Surprisingly, though more shockingly there are a large number of people who do not understand the nitty gritties of politics which eventually results into caste and religion based voting and we get nothing but communalism as a byproduct. From apathy, to shock, to rage, to indignation, to disgust, to weariness, back to apathy. The cycle continues. Same issues being talked over on loop. The same band-aid being put over. Each of us asks questions. Each of us has solutions. The same old solutions. Ignore and Move on. We envelop ourselves in the Tri color. We decide to vote the next time. We light candles. We dress in white attire. But do we know what in actual we are doing? We are just misguiding our own selves that our anger and patriotism will somehow create a mythical force which would result in the formation of an efficient government.

The error that we have made is not electing the lousy politicians but over powering and over respecting them. The time has come when political will has to be nothing but upliftment of the nation while striving to make it a better place to reside. The time has come when the benumbed and hard hearted politicians should be shown their way out. 'All the politicians are same and no need to vote' is a wrong proposition. At least we should elect lesser evil from given choices. Fortunately our systems and democracy are quite robust and let us not lose the hope. The country has been through traumatic years recently. But let us resolve to overcome all these. Rolling of a few moronic faces and a billion symbolic indications are for sure not going to help the cause. Let's not forget the world is watching. Let's just hope that the other side of 00:00 hours on May 16, 2014 revives the true Indian Culture and establish a new trend to be continued for decades thereafter.

CA. Rajni M. Shah
Editor
rmshah@satyam.net.in/rajni.shah@rsaca.in

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Clarification:

"With reference to the Editorial published in the issue for the month of February 2014 titled as "Let's Bell the Cat", the President of the C. A. Association has informed that various representations were made before various authorities by different Legal and Representative Committees of C. A. Association during the year.

The view was also expressed by the President that the word "Associations and professionals jogs" has been understood as "C. A. Association, Ahmedabad" by the Executive Committee of C.A. Association.

Your Editor clarifies herewith that the thoughts and views described and narrated in the Editorial were meant for all Professional and Other Associations in general and not C.A. Association, Ahmedabad in particular as understood by President and Executive Committee of C. A. Association. "

CA. Rajni Shah
Editor

Mail to Editor

My dear Rajnibhai,

I really congratulate you for your **'Editor's View'** in our Ahmedabad Chartered Accountants Journal. You have been very nicely taking-up the issues of professional interest and having a good courage to write **'Let's Bell the CAT'**, in February, 2014 issue which is an example to this. Even retiring CBDT Chairperson Dr. Sudha Sharma has also given importance to ethical values and human dignity in her last communication.

The Professional Associations are definitely taking up the issues concerning the members, however the representations must be frequent, forceful, result oriented creating better mutual environment.

The role of professionals is always helpful to the Government as they act as a bridge between Society and Government. May it be compliance, implementation or procedures; the professionals always play active role and the Government too is benefited. This is also one of the reasons why there has to be regular representative meetings with the government officials.

I am really glad that you are taking this initiative and enhancing the value of profession and professionals and wish that you will continue with the same efforts.

Moreover, the column FEMA and NRI Taxation of CA. Rajesh H. Dhruva is found very helpful and purposeful in the day to day practice.

I have been regularly reading your editorials.

Thanks & regards
CA. Nimish B. Shah

President's Message

CA. Prakash B. Sheth
shethpb@rediffmail.com

Dear Professional Colleague,

When I assumed the office of the President of the Chartered Accountants Association, Ahmedabad, I pressed upon the importance of changing with the changing times. The couple of important changes at the Association that can be taken note are, implementing the web based application for collection of fees from the members and secondly the complete facelift of the journal, considering the content, timely publication and the quality. Another important procedural change that has been adopted with regard to publishing of journal is that from current year the Journal for the month of April would be brought out by the existing committee as against the precedent of being published by the new committee. I believe this would ensure timely publication and delivery of the forthcoming journals. As a President I would consider myself fortunate to communicate with members for one extra time.

Generally, during the month of March most of the members are busy with the time barring assessments. It is also the time to discuss the provisions of Union Budget. However, as Union Elections are round the corner, the Union Budget is deferred and the same is likely to be presented in the month of July 2014. This time around, the members are appearing busy in complying with the TDS provisions. As the TDS statements are being processed by the Central Processing Centre, TDS, Ghaziabad, intimations are received u/s 200A of the Income Tax Act. Various issues including mismatch of challans, short deductions on account of incorrect PAN and levy of fee u/s 234E is causing a lot of hardship on the deductors. It is found that most of the members are in a dilemma whether to pay the fees u/s 234E or not after stay being granted to the petitioners by Kerala High Court and Karnataka High Court.

The Association also received a letter from one of the member to make appropriate representation on the issue of section 234E and also the challenge the provisions at appropriate judicial forum. The issue was elaborately discussed by the Legal and Representation Committee and the Association also consulted a Senior Advocate to file a writ petition before the Hon'ble Gujarat High Court. After considering the advice of Senior Advocate and all other the aspects, the committee has thought fit that a strong representation should be made to the Central Government in this regard and simultaneously a writ should be filed by the aggrieved party, preferably. Sometime back, at the open house held jointly with Gujarat Chamber of Commerce, a strong representation was made to the chairperson of CBDT on section 234E. It is a matter of pleasure in informing the members that the petition challenging the provisions of section 234E has been filed by the aggrieved asessees and same has been admitted by the Hon'ble Gujarat High Court.

The Association has always been pro-active for the cause of the members and the office bearers of the Association are making regular efforts to make proper representation before the Government Authorities whenever needed. On another occasion when the Association received a complaint form members regarding notices being issued by the offices of ITO, TDS, Ahmedabad with objectionable language, the office bearers of the Association along with chairman of L.R. Committee met CIT (TDS) and made strong representation. The Association has been assured that necessary correction would be made in the notices. When the Association is taking measures to make ongoing necessary representations, the members of the Association should also come forward and express the difficulties faced by them. Many a times it is found that when we do not receive any response from the members on various issues requiring representation. The time demands that all the members and the Association should join hands to solve various grievances arising in day to day practice.

At the Association, after a long period of time a unique program of Mock Income Tax Tribunal was held jointly with A'bad Branch in which more than 175 members were present. 10th study circle meeting was held on 04-03-2012 at the office of the Association on the topic Capital Gains. An open house with Income Tax Department was held jointly with Gujarat Chamber of Commerce and other Professional Association where many issues which we face in our day to day practice were discussed and strong representation was made to resolve them with a very good positive response from the Income Tax Department. 4th Brain Trust was held on the topic of Recent Judgments in Income Tax on 08-03-2014.

With best regards,
CA. Prakash B. Sheth
President
09-03-2014

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A case study : House property under Income Tax, Wealth Tax and FEMA

CA. Pradip K. Modi
pkm@pkmodi.com

The recent trend of Income Tax department is to make an assessment of income based on certain specific and guided issue like deemed dividend [2(22)(e)], disallowances under section 40(a)(i), House property Income [23(1)(c)], Cash credit under section 68, rejection of books of accounts under section 145(3), low gross profit etc. This article deals with income from House property under Income tax Act-1961.

Income From House Property :

In this article the discussion on income from house property is based on provisions effected by Finance Act 2001 i.e. A Y 2002-03. The major changes made in section 23 and 24 and inserted new section 25AA. Some of minor amendments have also been carried out in sections covered under chapter IV –C i.e. Income from House property. if it is loosely talk then the scope of House property income under section 22 is equated with Annual Value of house property other than used in Business or profession. The Annual value of property is determined under section 23,which has sub section (1) having 3 clauses, sub section(2), (3) and (4) each one has further 2 clauses. Section 24 deals with deductions from Annual value =Income from House property. Interesting issue is controversy in case of House property remains vacant for the whole year and interest paid on borrowings, which are used in acquisition, construction or repair. Following case study will examine the legal provisions for determination of Annual value and interest claim thereon.

Property	Use	Municipal value/ Standard Rent	Actual rent	Vacancy p/y	p/y to p/y occupied
A	5 star House Self occupied	5,00,000	nil	NA	S/O
B	Let out house	4,00,000	6,00,000	NA	Let out
C	7 Star house	10,00,000	nil	Vacant	Part of year occupied
D	Offices	16,00,000	14,00,000	NA	Fully Occupied
E	Office complex	30,00,000	22,00,000	Some offices are vacant, which were occupied in p/y	Some offices are vacant and left vacant during year
F	Office	7,00,000	NIL	vacant	Vacant

Sections 22 , 23 and 24 are reproduced herein below for ready reference and case study discussion:

Section 22:

Income from house property.

The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

Section 23:

Annual value how determined.

*(1) For the purposes of section **22**, the annual value of any property shall be deemed to be—*

*(a) the sum for which the property might reasonably be expected to let from **year to year**; or*

*(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is **in excess of the sum referred** to in clause (a), the amount so received or receivable; or*

(c) where the property or any part of the property is let and was vacant during the whole or any

part of the pervious year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), ***the amount so received or receivable*** *:*

*Provided that the taxes levied by any local authority in respect of the property shall be deducted (**irrespective** of the previous year in which the **liability to pay such taxes was incurred** by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.*

Explanation. *: For the purposes of clause (b) or clause (c) of this sub-section the amount of actual rent received or receivable by the owner shall not include, subject to such rules as may be made in this behalf, the amount of rent which the owner cannot realise.*

(2) Where the property consists of a house or part of a house which—

(a) is in the occupation of the owner for the purposes of his own residence; or

(b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be nil.

(3) The provisions of sub-section (2) shall not apply if—

(a) the house or part of the house is ***actually let*** *during the whole or any part of the previous year; or*

(b) any other benefit there from is derived by the owner.

(4) Where the property referred to in sub-section (2) consists of more than one house—

(a) ***the provisions of that sub-section shall apply only in respect of one of such houses, which the owner may, at his option, specify in this behalf****;*

(b) the annual value of the house or houses, other than the house in respect of which the owner has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.]

Section 24

Deductions from income from house property.

Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—

(a) a sum equal to thirty per cent of the annual value;

(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:

Provided *that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees :*

Provided further *that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed [within three years from the end of the financial year in which capital was borrowed], the amount of deduction under this clause shall not exceed one lakh fifty thousand rupees.*

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal installments for the said previous year and for each of the four immediately succeeding previous years:]

*[**Provided also** that no deduction shall be made under the second proviso unless the owner furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the owner for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.*

Explanation.—For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the owner subsequent to the capital borrowed, for the purpose of repayment of such capital.

Case(Property) by case basis discussion:

Property	Use	Municipal value/ Standard Rent Rs	Actual rent Rs	Vacancy p/y	p/y to p/y occupied	Income to be offered Rs
A	5 star House Self occupied	5 lacs	nil	NA	S/O	NIL
B	Let out house	4 lacs	6 lacs	NA	Let out	6 lacs
C	7 Star house	10 lacs	nil	Vacant	Part of year occupied	NIL
D	Offices	16 lacs	14 lacs	NA	Fully Occupied	16 lacs
E	Office complex	30 lacs	22 lacs	Some offices are vacant,which were occupied in p/y	Some offices are vacant and left vacant during year	22 lacs
F	Office	7 lacs	NIL	vacant	Vacant	NIL

Reasoning for offering respective Income :

House property A is self occupied and therefore it is excluded from the scope of taxability under section 23(2) (a) . The claim of self occupied property is valid even it is not been occupied for physical stay by owner and remained vacant due to owner's Business, profession or employment and he has to stay in other house there ,which is not belonging to him. Thus for property A, income is offered NIL.

House property B is let out and actual rent received is Rs 6 lacs . The case is referred under section 23(4). Under this section, where house property is consist of more than one house and one of them is used as self occupied, rest other houses shall be valued under section 23(1). Under section 23(4), owner has right to select any one house as self occupied irrespective of actual occupation . Therefore in the present case owner may select out of Houses A, B Or C any one as self occupied property. Considering the actual rent received which is higher than municipal rental value/ Standard rent , owner has to offer Rs 6 lacs as Annual value under 23(1) (b). whether owner can select House B as self occupied and House A and C may offer for valuation under section 23(1). However section 23(3)(a) comes in play while exercising the right by owner. Owner can not exercise the right for selection of house, if that house is ACTUALLY LET OUT or any benefit derived from such property. Therefore owner has now choice to select one house out of A and C. The beneficial things for owner is to select C under section 23(4) (a) and offer house A for Annual value determination. *The underlying principle in the whole interpretation is,* ***owner can put all houses (Residential) at par with actual self occupied and others, if those are remained vacant through out the year.*** The important section in this case is 23(1) (c). if the facts of case is read under section 23(2) (a) with section 23(4)(a), Annual Value for selected House C is Nil and for House A, read section 23(4)(b) with section 23(1) (c) , rent receivable is NIL due to said property occupied by owner for the whole year. Therefore income for House A is also NIL.

House Property D, commercial property, is fully let out and Annual Rent as per Municipal value is Rs 16 lacs while actual rent received is Rs 14 lacs. Owner can not have access to section 23(1)(c) for reduction in Annual value . The reduction in annual value compare to 23(1)(a) with 23(1)(c) is permitted in the situation, where property remains vacant for the whole or part of the year. Here in this case, facts are clear that property is fully let out and not remained vacant during the previous year and therefore Annual value should be Rs 16 lacs.

House property E is a office complex comprises of various floors/offices. The facts of the case is the whole office complex is not been occupied by tenants/ Leassees in the previous year as well as previous to previous year. Therefore it remained vacant in part for the year. Here owner has two options to deal with situation. Option one is , owner can determine Annual value office by office if all offices are occupied by different tenant .The option 2 is, take composite value of the complex if occupied by one tenant. In either of situation Annual value determination process will end with same answer. If option one is exercised by Owner then he has to find out annual value of fully occupied each office and compare actual rent received, and take whichever is higher under section 23(1)(b). For the vacant offices or left vacant offices during the year, Annual value may be any amount but rent receivable/ received due to vacant situation of premises for the whole

or part of the year need to be calculated under section 23(1)(c) .In other words those offices remained vacant for the whole year , rent receivable is Zero ,which supersedes the amount determined under 23(1)(a). In case of offices left vacant, the treatment will remain the same as discussed above because both situation are envisaged under section 23(1)(c). The other most important point to be noted is that the valuation of Annual rent or rent receivable/ Received is year to year basis and neither previous year's data nor estimate is considered for determination of annual value.

House property F is a singular office and remained vacant for the whole year. Owner may offer NIL Annual value, based on foregoing discussion for property E. This interpretation is based on various judgments of tribunals. I may refer following Citations for reader's ready reference.

(1) (2012) 139 ITD 504 (Delhi), Assistant Commissioner of Income Tax vs. Dr. Prabha Sanghi

(2) (2012) 31 CCH 032 BangTrib, Shakuntala Devi vs. Deputy Director of Income Tax

(3) (2007) 110 TTJ (Mumbai) 89, Premsudha Exports (P) Ltd. vs. Assistant Commissioner of Income Tax

In case of Assistant Commissioner of Income Tax vs. Dr. Prabha Sanghi the decision was held in following words:

Held:

" *S. 23 (1)(c) requires that where the property was vacant during the year and due to such vacancy, the actual rent received or receivable in respect thereof is less than the sum for which the property might reasonably be expected to be let from year to year, the amount so received or receivable shall be deemed to be the annual value of such property.* "

(Para 13)

" *The provisions of s. 23 (4) (b) are very clear that where the property consists of more than one house, the annual value thereof shall be determined u/s 23 (1), as if such property had been let. This re-directs the court to s. 23 (1). Applying s. 23 (1) to the facts of the present case, it is s. 23 (1) (c) which shall again come into play inasmuch as it remains undisputed, as observed hereinabove, that the property was let, but was vacant during the year, due to which vacancy, the actual rent received or receivable by the owner in respect of such property was nil. Nil rent, then, it cannot be gainsaid, is evidently less than the sum for which the property might reasonably be expected to let from year to year*."

(Para 15)

In furtherance to this I my place reliance on circular 14 of 2001. In para 29 whole discussion on amended provisions under section 23 and 24 has been explained. The relevant para for discussion is 29.2, which is reproduced as under:

"**29.2** *The substituted section 23 retains the existing concept of annual value as being the sum for which the property might reasonably be expected to let from year to year i.e., annual letting value (ALV). However, in case of let out property, the concept of "annual rent" has been removed. The new section provides that where the property or any part of the property is let and the actual rent received or receivable is in excess of the ALV, the amount so received or receivable shall be the annual value. This will be the case even if the property (or part of the property) was vacant for a part of the year, but the actual rent received or receivable during the year is still higher than the ALV. Where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy, the actual rent received or receivable is less than the ALV, the sum so received or receivable shall be the annual value. In case the actual rent received or receivable during the year is less than the ALV, but not because of vacancy, it is the ALV which shall be taken to be the annual value."*

Very interestingly, the judgment of Premsudha Exports (P) Ltd. vs. Assistant Commissioner of Income Tax clearly interpret the word used " *property is Let"* in section 23(1)(c). The relevant part of judgment is as follow:

Held :

"*The sole dispute is regarding the interpretation of the words 'property is let' in s. 23(1)(c). One interpretation suggested by the Departmental Representative is that the property should be actually let out in the relevant previous year. This interpretation is not correct because as per this clause, the property can be vacant during whole of the relevant previous year. Hence, both these situations cannot co-exist that the property is actually let out also in the relevant previous year and the property in the same year is vacant also during whole of the same year. The second interpretation suggested by the Departmental Representative is that the property should be actually let out during any time prior to the relevant previous year and then only, it can be said that the property is let and this clause will be applicable. First of all, the tense of the verb used prior to the word 'let' is present tense and not past tense. It means that the provisions of above clause*

talk regarding the relevant previous year and not of any earlier period and if that be so, this contention of Departmental Representative is also not acceptable. Secondly, even if this contention of Departmental Representative of the Revenue is accepted, the provisions of this cl. (c) cannot be made applicable in the first year, when the property is acquired and the same remained vacant because it could not be let out for want of tenant. This is so because there is no earlier period in that case prior to the start of the relevant previous year. This cannot be the unsaid intention of the legislatures that the provisions of this clause are not be applied in the first year if the property remained vacant for whole of the first year in spite of efforts to let it out. Moreover, if this interpretation suggested by the Departmental Representative is accepted, it will lead to disastrous result because in that event, if a property was let out in one year for any period, which can be even 1 month, then after that, such property will enjoy the benefit of this cl. (c) for any number of years if the property remains vacant even if the same was not intended to be let out in the subsequent years including the relevant previous year. This cannot be the intention of legislature. In sub-s. (3) of s. 23, the legislatures in their wisdom have used the words 'house is actually let'. This shows that the words 'property is let' cannot mean actual letting out of the property because had it been so, there was no need to use the word 'actually' in sub-s. (3) of the same s. 23. These words do not talk of actual let out also but talk about the intention to let out. If the property is held by the owner for letting out and efforts were made to let it out, that property is covered by this clause and this requirement has to be satisfied in each year that the property was being held to let out but remained vacant for whole or part of the year. The words 'property is let' are used in this clause to take out those properties from the ambit of the clause in which properties are held by the owner for self-occupation i.e. self-occupied property (i.e. SOP) because even income on account of SOP, excluding one such SOP of which annual value is to be adopted at nil, is also to be computed under this head as per cl. (a) of s. 23(1) if one sees the combined reading of sub-ss. (2) and (4) of s. 23. One thing is more important because where the legislatures have considered that actual letting out is required, they have used the words 'house is actually let'. This can be seen in sub-s. (3) of same s. 23. But in cl. (c) above, 'actually let' words are not used and this also shows that meaning and interpretation of the words 'property is let' cannot be 'property actually let out'. It talks of properties, which are held to letting out having intention to let out in the relevant year coupled with efforts made for letting it out. If these conditions are satisfied, it has to be held that the property is let and the same will fall within the purview of this clause."

(Paras 12 to 14 & 16)

There is one more judgment from Andhra Pradesh High court , (2011) 202 TAXMAN 499 VIVEK JAIN vs. ASSISTANT COMMISSIONER OF INCOME TAX, wherein it was held "*In cases where the property has not been let out at all, during the previous year under consideration, there is no question of any vacancy allowance being provided thereto under s. 23(1)(c)."[Para 15]*

In para 11 of above referred judgments it was held "*In order to attract s. 23(1)(c), the following requirements must be fulfilled (i) the property, or any part thereof, must be let; and (ii) it should have been vacant during the whole or any part of the previous year; and (iii) owing to such vacancy the actual rent received or receivable by the owner in respect thereof should be less than the sum referred to in cl. (a). It is only if these three conditions are satisfied would cl. (c) of s. 23(1) apply in which event the amount received or receivable, in terms of cl. (c) of s. 23(1), shall be deemed to be the annual value of the property. Clause (c) does not apply to situations where the property has either not been let out at all during the previous year or, even if let out, was not vacant during the whole or any part of the previous year."*

With due respect of High court Judgment, if it is interpreted based on para 11, following anomalies should be resolved:

(1) The word let and vacant is mutually exclusive for owner. If it is vacant ,no one can say is let and if it is let, on one can say it is vacant. Since vacancy and letting of property has to be seen from stand point of owner. Twin conditions as enumerated in judgment can not be satisfied together. Why should owner bother for occupancy of tenant for the purpose which it is taken on rent. Once property is let out , owner is concerned with rent and not with occupancy. Section 25AA for unrealized rent taxability and section 25B for arrears of rent receipt are in statute to take care of it .Therefore it requires purposive interpretation of words "Property is Let" and "Vacant".

(2) One more weird interpretation comes out of judgment. If owner enters into agreement to let out property and no part of rent at all received during the year on the basis of vacancy. The argument of Tenant is that during the whole year premise remains

vacant and therefore no rent is payable. If contention of tenant is accepted on its face , rent receivable is NIL and therefore Annual value will be NIL for section 22. If Revenue is of the opinion that as per contract value of rent to be considered as receivable and therefore comparison between 23(1) (a) and (c) has to be carried then provision of section 25AA states contrarily for unrealized rent . It is stated that unrealized rent would be taxable in the year in which it is actually received.

(3) The difficulty may arise in the third situation is, when property is let out for say Godown, which normally remains closed with storage and tenant will say it is vacant, no evidence of rent payment to owner registered, whether owner can offer rent receivable NIL ?

No one can challenge constitutionality of section 23 as enacted in 1961. Some of the concepts related to charging taxation on notional income are already tested before supreme court in case of (1981) 128 ITR 315 (SC), BHAGWAN DASS JAIN vs. UNION OF INDIA & ORS. Before the supreme court's judgment Gujarat High Court held similar view in case of, :(1975) 100 ITR 97 (GUJ), SAKARLAL BALABHAI vs. INCOME TAX OFFICER. The judgment reported at (1981) 128 ITR 315 (SC) covers the constitutional validity to charge notional income in the context of then provisions based on saving made by owner due to non payment of rent since owner is occupying his own property for his residence where by creating capability to earn income out of such notional income.

However the amendment in section 23 brought out by Finance Act 2001 is very important. The amendment in section was to simplify the provisions for working out Income from House property. Words should be interpreted in a purposive manner and not in a strict statutory way.

Purposive Construction of Taxing Statutes

There is a need for purposive construction of taxing statue for justice and equities. It would be worthwhile to quote some of the landmark judgments,which carry important observation of Judges.

(1) Smt. Saroj Aggarwal vs. CIT *(1985) 49 CTR (SC) 183* "*Facts should be viewed in natural perspective, having regard to the compulsion of the circumstances of a case. Where it is possible to draw two inferences from the facts and where there is no evidence of any dishonest or improper motive on the part of the assessee, it would be just and equitable to draw such inference in such a manner that would lead to equity and justice. Too hypertechnical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered. Courts should, whenever possible, unless prevented by the express language of any section or compelling circumstances of any particular case, make a benevolent and justice-oriented inference. Facts must be viewed in the social milieu of a country....*"

(2) *R.S. Nayak vs. A.R. Antulay (1984) 2 SCC 183*

" it has been held that a construction which leads to absurdity must be avoided"

(3) In *Seaford Court Estate Ltd. vs. Asher (1949) 2 All ER 155*, Denning L.J. spelt out the principle of interpretation of statutes in the following terms :

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give force and life to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heydon's case (1584) 3 Co. Rep 7a, and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his note Eyston vs. Studd (1574) 2 Plowden, 463. Put into homely metaphor it is this : A

judge should ask himself the question : If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases."

(4) *Northman vs. Barnet London Borough Council (1978) 1 WLR 220 at p. 228 (CA),* Lord Denning M.R. observed thus :

"The literal method is now completely out of date. It has been replaced by the approach which Lord Diplock described as the 'purposive approach'.... In all cases now in the interpretation of statutes we adopt such a construction as will 'promote the general legislative purpose' underlying the provision. It is no longer necessary for the judges to wring their hands and say : 'There is nothing we can do about it.' Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it—by reading words in, if necessary—so as to do what Parliament would have done, had they had the situation in mind."

It is well settled principle that interpretation of statute should give purposeful meaning rather than absurd outcome. If interpretation is made based on AP High court, of course the judgment has also considered circular number 14 of 2001, the result is coming very weird and absurd. It would be penalty to buy a property and remained vacant for the whole year, which is beyond the control of owner. Under this interpretation, If property is given on rent even for a day, owner will be saved from huge liability. We can say controversy may get settled only after Supreme court or high court's judgments will come for above referred High court or tribunal judgments.

The proviso to section 23 enables an owner to reduce Annual Value by actual payment of Municipal Taxes of any previous years. it may be noted that any amount paid in advance for coming years will not be deductible, since allowable if it liability is incurred

After determining Annual value under section 23, deductions from house property income are claimed under section 24 . The first deduction is 30% of Annual value as determined under section 23 . Second deduction is interest PAYABLE on borrowed capital for acquisition, construction or repair of property. In all circumstances the borrowings need to be correlated with housing activity. Interest payable on change of lender 's amount is also deductible to the extent of original borrowed amount. The nexus need to be established with original borrowed amount and repayment with fresh borrowing. There is a cap of amount on interest payable and deductible for property covered under section 23(2) i.e. Residential property as self occupied property. However there is no restriction on amount interest payable and deductible, if same is borrowed for property other than covered under section 23(2).

A case study as discussed above is further taking up for interest claim for better understanding.

Property	Use	Municipal value/Standard Rent Rs	Actual rent Rs	Vacancy p/y	p/y to p/y occupied	Income to be offered Rs	Interest claimed (deductible)
A	5 star House Self occupied	5 lacs	nil	NA	S/O	NIL	2 lacs (2 Lacs) /(1.5 lacs)
B	Let out house	4 lacs	6 lacs	NA	Let out	6 lacs	3 lacs (3Lacs)
C	7 Star house	10 lacs	nil	Vacant	Part of year occupied	NIL	4 lacs (1.50 Lacs)/ (4 lacs)
D	Offices	16 lacs	14 lacs	NA	Fully Occupied	16 lacs	5 lacs (5 Lacs)
E	Office complex	30 lacs	22 lacs	Some offices are vacant, which were occupied in p/y	Some offices are vacant and left vacant during year	22 lacs	12 lacs (12 Lacs)
F	Office	7 lacs	NIL	vacant	Vacant	NIL	4 lacs (4 Lac)
G	Office premise	NA	NIL	Self business occupied	Self business occupied	NIL	8 lacs (8 Lacs)

House property B, D and E are able to get full interest deduction and may not get into further controversy as assumed. However House property A can claim deduction of interest to the full extent as owner has offered House property C as self Occupied . Therefore eligible interest claim for deduction under House property A would be Rs 2 lacs and for House property C is restricted to Rs 1.50 lacs in place of Rs 4 lacs payable. Therefore Owner is losing claim of Rs 3 lacs . if he continues to claim House property A is self occupied his claim would be 1Rs 1.50 lacs and he can claim Rs 4 lacs for House property C , provided correct interpretation of section 23(1) (c) is done.

In case of House property F is concerned , asessee can claim deduction to the extend Rs 4 lacs even property remained vacant for the whole year. Let us assume time being if it is occupied for 2 months and rent received is Rs 40,000. If we give vacancy deduction by doing misinterpretation of section 23(1)(c) , Annual value would be Rs 40,000 and he can get interest deduction of Rs 4 lacs. IN case owner fails to get tenant, Annual value will be his income and he has to pay tax on Rs 3 lacs. In other words if this interpretation is carried out the result is absurd, which compels owner to let out property even for few days he can claim interest deduction in full on nominal amount of rent received. Therefore conclusion should be drawn as , even office remained vacant during the previous year, Annual value should be ZERO as rent receivable is Nil.

In case of House Property G , Office Premise ,which is used for Business, concept of Annual value is not applicable as self business is conducted from the same premise and such property is excluded under section 22 for Income from House property computation.

Section 25AA and 25B i.e. unrealised rent and arrears of rent respectively are taxable on actual receipt basis.

Conclusion:

It is fact of case the words used in Section 23 (1) (c) " Property to let" and " vacant" require some legislative aid to interpret for justice and equality. There are three Rules for interpretations of legislation . Mind well these rules are useful servant and masters. They are applied to remove ambiguity and absurdity of word or language used in a statute. When there is no ambiguity ,Rule of Literal interpretation is applied. When there is some ambiguity in language used in legislation ,, Rule of Mischief is applied. And when there is obscurity and inconsistency owing to the interpretation of the grammatical and ordinary sense of the words then Golden Rule is applied. The rules of interpretation is not rule of law but they are mere aid to construction of statute.

Certain observation of Apex court may assist in getting justice.

Navinchandra Mafatlal vs. CIT *(1954) 26 ITR 758 (SC):*

"The cardinal rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a constitutional enactment conferring legislative power, the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude"

In *State of Tamil Nadu vs. Kodaikanal Motor Union (P) Ltd. AIR 1986 SC* 1973:

"The Courts must always seek to find out the intention of the legislature. Though the Courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression, of human thought. As Lord Denning said, 'it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity'. As judge Learned Hand said, 'we must not make a fortress out of the dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship'. We need not always cling to literalness and should seek to Endeavour to avoid an unjust and absurd result. We should not make a mockery of legislation."

With the observation of Supreme Court , I place before you my person view on controversial issues that the words used in section 23(1) (c) " Property is let and "Vacant" should be interpreted by modern approach of purposive interpretation of statute.

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Penalty on Undisclosed Income unearthed during the Search & Survey - Analysis in present scenario

CA. Vidhan Surana
vidhansurana@suranamaloo.com

CA. Sunil Maloo
sunilmaloo@suranamaloo.com

The legislature has inserted the provisions relating to Search and Survey in the statue book of Income Tax Act, 1961 with the target of unearthing the undisclosed income of any person in form of any money, bullion, jewellery or other valuable article or thing.

Search carried out u/s 132 of the Income Tax Act is looked upon by the assessee as a thorough invasion of his privacy. The Powers of the Search operation u/s 132 are much wider than the Survey proceedings as prescribed u/s 133A of the Act.

Most primary reason for Search being far more feared is that it empowers the authorities to make assessments/ reassessment for Six Assessment Years immediately preceding the Assessment year in which the search is conducted, whereas in Survey only those Assessment years are assessed / reassessed for which the information is collected during the survey belongs to.

Even though the ultimate objective of both, Search and Survey is same, i.e. to curb the practice of having undisclosed incomes, yet the scope of powers attributed to the officers investigating illustrates the wide dissimilarity. Not only the authority of the officers but even the penalty provisions relating to the undisclosed income detected during the Search and Survey is different.

Under the Income Tax Act, 1961 penalty is to be levied on the amount of "tax sought to be evaded" in respect of the concealment of particulars of income or furnishing inaccurate particulars of the income. **Nevertheless, in case of SEARCH, penalty is also levied in respect of "Undisclosed Income" too.**

"Penalty in case of Search"– Whether the disclosures made during the Search safeguards Assessee from Penalty???

Presently the Income Tax Act, 1961 contains special provisions in respect of penalty where the Search has been initiated. These provisions are summarized as under:-

Sr. No.	Section	Applicability
1	271(1)(c) read with Explanation 5A	Applicable to Search carried out on or after 01/06/2007
2	271AAA	Applicable to Search carried out on or after 01/06/2007 but before 01/07/2012
3	271AAB	Applicable to Search carried out on or after 01/07/2012

In the course of Search operations, generally the Assessee declares his undisclosed income in the statement recorded u/s 132(4) under the impression that if the disclosure of undisclosed income is made, then penalty shall not be initiated / levied.

The Search action of the department inclines the Assessee towards making maximum disclosure of the undisclosed income, which might result into timely targeted recovery of taxes on the disclosure made by the Assessee.

Let's analyze**, the real question which is that " Whether under the amended law, is there any direct provision which enables the Assessee an immunity from the penalty provisions, if the undisclosed income is admitted in statement u/s 132(4) of the Act during the search?"**

The coup de grâce regarding which most assessee are unaware about is that once the disclosure of additional / undisclosed income is made and unaccounted income is admitted in the statement u/s 132(4) of the Act, same shall be the minimum binding commitment made by him to the department with respect to his unaccounted income, **which could not and should not be retracted subsequently except in the extra ordinary circumstances**. Mere act of retraction on part of the Assessee shall not serve the purpose and the department can still proceed on the basis of the statement so recorded and corroborative evidences collected during the search. **Therefore, the Assessee must be cautious and well aware as to the commitment he is making by admitting the additional undisclosed income in the statement u/s 132(4) of the Act.**

The penalty provisions are being regularly strengthened. Counter to this, the immunity provisions built in the sections levying the penalty are being made fully non-operative or non-practicable. This fact is clearly apparent from the Memorandum explaining the provisions of the Finance Bill 2012:-

Penalty on undisclosed income found during the course of Search

Under the existing provisions of section 271AAA of the Income-tax Act, no penalty is levied if the assessee admits the undisclosed income in a statement under sub-section (4) of section 132 recorded in the course of search and specifies the manner in which such income has been

derived and pays the tax together with interest, if any, in respect of such income. As a result, undisclosed income (for the current year in which search takes place or the previous year which has ended before the search and for which return is not yet due) found during the course of search attracts a tax at the rate of 30% **and no penalty is leviable.In order to strengthen the penal provisions,** it is proposed to provide that the provisions of section 271AAA will not be applicable for searches conducted on or after 1st July, 2012. It is also proposed to insert a new provision in the Act (section 271AAB) for levy of penalty in a case where search has been initiated on or after 1st July, 2012. The new section provides that,-(*i*) If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10% of undisclosed income subject to the fulfillment of certain conditions.(*ii*) If undisclosed income is not admitted during the course of search but disclosed in the return of income filed after the search, the taxpayer will be liable for penalty at the rate of 20% of undisclosed income subject to the fulfillment of certain conditions.(*iii*) In a case not covered under (*i*) and (*ii*) above, the taxpayer will be liable for penalty at the rate ranging from 30% to 90% of undisclosed income.These amendments will take effect from the 1st day of July, 2012 and will, accordingly, apply to any search and seizure action taken after this date.*[Clauses 89, 95, 96]*

As a result, now both the immunity provisions i.e. Explanation 5 to Section 271(1)(c) and Section 271AAA of the Act, have been made non-operative and accordingly now entire undisclosed income as detected in the Search shall be subject to the penalty provisions irrespective of the fact whether the same is duly disclosed or admitted by the Assessee at the time of Search. **Nonetheless, a small relief is made available by Finance Act, 2012 in by inserting section 271AAB by providing payable penalty slab rates of 10%, 20% and 30% to 90% of the undisclosed income, subject to fulfillment of some difficult conditions.**

By going through the conditions prescribed for applicability of the lower slab of penalty on undisclosed income, it is apparent that fulfillment of such conditions is not only impracticable but also unfeasible in most of the cases. The unrealistic conditions are as follows:-

Section	Conditions for applicability of lower slab of the penalty	Quantum of Penalty	Remarks
271AAB(1)(a)	a) Admission of such income in statement u/s 132(4) b) Specified and **SUBSTANTIATE** the manner in which such undisclosed income was derived c) Pays the tax and interest on such undisclosed income before the specified date; d) Furnish the return of income for specified previous year and declare such undisclosed income therein	Penalty Leviable @ 10% of undisclosed income	This clause is practically not possible in each and every cases, because even after the disclosure of income in the statement u/s 132(4), ***most of the Assessee could not substantiate the same.*** And also the discretion always lies with the department whether to appreciate the manner so substantiated by the Assessee or to outright reject the same stating it to be a **"Make believe Story"**
271AAB(1)(b)	a) Such Undisclosed Income **NOT** admitted in statement u/s 132(4); and b) Furnish the return of income for specified previous year and declare such undisclosed income therein c) Pays the tax and interest on such undisclosed income before the specified date;	Penalty Leviable @ 20% of undisclosed income	In this clause, there is no condition to substantiate the manner in which such undisclosed income was derived. Only covers subsequent disclosure prior to assessments with higher quantum.
271AAB(1)(c)	a) Undisclosed income of specified previous year not covered in clause (a) and (b) of section 271AAB(1).	Penalty Leviable @ 30% to 90% of undisclosed income	Quantum of penalty same as per section 271(1)(c) r.s. Expl. 5A

The definition of the term "Specified Previous Year" has been provided in explanation (b) to section 271AAB, which reads as under:-

Definition	Remark
(b) "specified previous year" means the previous year—	Technically there cannot be any undisclosed income for any assessee till he is lawfully having prescribed time for filing of return and has not yet filed the return.*(as the law does not specifically prescribes maintaining day to day books, but practically the Assessee should)*It is the prerogative of assessee as its always open for him to include any income before the due date of filing the return.
(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or	
(ii) in which search was conducted;	Here also, the question ofundisclosed income does not arise as the income is generally declared in the return of income, and return shall be filed after the end of the year in which search is carried out. Hence, once again the Assessee can still disclose all such incomes in his return.

On an in-depth reading of the above explanation which is definition of the term "Specified previous year", one may conclude that the same is defined to include only those periods for which the Assessee already had a lawful right to disclose any such income into its return of income yet to be filed. This neutralizes the so-called relief of lower penalty, based on slab rate as per section 271AAB as there is no extra benefit even if a taxpayer admits and declares his undisclosed income of such "Specified previous year" in the statement recorded u/s 132(4) of the Act. Accordingly, this makes the above condition totally impracticable.

Similarly, explanation 5A to section 271(1)(c) of the Act, covers the period other than the period already covered by the "Specified Previous Year", in this provision also there is no immunity available to the Assessee for the undisclosed income. This explanation 5A reads as under:-

[Explanation 5A.—Where, in the course of a search initiated under section 132 ***on or after the 1st day of June, 2007****, the assessee is found to be the owner of —(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,* ***which has ended before the date of search and, —****(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,*

[Explanation 5A.—Where, in the course of a search initiated under section 132 ***on or after the 1st day of June, 2007****, the assessee is found to be the owner of —(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,* ***which has ended before the date of search and, —****(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,*

Thus, under the amended provisions of the Income Tax Act with respect to the penalty in cases of Search as applicable today, there is no immunity as such, even if the full disclosure of such income is made in the statement u/s 132(4) of the Act and also taxes has been paid thereon.

The legislative language of explanation 5A to section 271(1)(c) of the Act is so strict that it provides no escape route from levy of penalty. This provision is strictly applicable even if the Assessee is duly disclosing the additional unaccounted income as admitted in statement u/s 132(4) by paying appropriate tax in the **return of**

income filed u/s 153A of the Act and the assessment u/s 153A is made without any deviation from the returned income.

Recently, a case with such facts was decided by the ITAT CHANDIGARH BENCH in case of Shri Rajnish Vohra Vs. DCIT, in ITA number ITA No. 516/CHD/2012, and it was held as under:-

30. Further, the provisions of Section 153A are specifically brought on the Statute book, for assessment, in case of search u/s 132(1) or requisition of books of account u/s 132A of the Act. The opening sentence of Section 153A of the Act, overrides the provisions of Section 139, 147, 148, 149, 151 and 153 of the Act. **The assessee has declared undisclosed income, in the return filed, in response to notice u/s 153A of the Act and the CIT(Appeals), having regard to the facts of the case, invoked the currently applicable Explanation 5A Section 271(1) (c) of the Act and upheld the penalty, levied by the AO.** In such a fact-situation, the CIT(Appeals) has acted in accordance **with the currently operative and relevant penal provisions**, with reference to the return of income, f i led in response to Section 153A of the Act.31. In view of the above legal and factual discussions, and having regard to the express statutory provisions of Section 271(1) (c) of the Act read with Explanation 5A thereunder, as inserted by the Finance (No. 2) Act, 2009, with retrospective effect from 01.06.2007, we do not find any infirmity, in the findings of ld CIT(Appeals) . Therefore, the findings of the CIT(Appeals) are upheld and, consequently, the grounds of appeal of the assessee are dismissed.

However, still the applicability of explanation 5A can be ruled out based on the interpretation of the term "*due date for filing the return of income*" as used in clause (b) of this explanation. The clause (b) can be termed as a saving clause wherein penalty u/s 271(1)(c) can not be levied.

For the purpose of clause (b), one has to see whether or not the assessee has shown the income in the return of income which is filed on the "due date". Provision of section 139(1) provides for various types of assesses to file return of income before the due date and such due date has been provided in the Explanation 2, which varies from year–to–year.

Whereas, provisions of section 139(4) and section 139(5) provides for extension of period of "due date" as per the circumstances mentioned therein and it enlarges the time frame provided in section 139(1). The operating line of sub–section 4 of section 139 provides that "any person who has not furnished the return within the time allowed", here the time allowed refers to time limit prescribed under section 139(1), and hence in such case, the time limit is extended.

Wherever in the legislature the term "due date" has been specified or the date for any compliance has been specified, the same has been categorically specified in the Act. For e.g., under section 44AB where the assessee is required to get his accounts audited before the specified date and furnish by that date, the specified date has been specifically mentioned as the date provided in section 139(1). Similarly, in section 43B also, the "due date" has been specifically provided as the date mentioned in sub–section (1) of section 139. In the aforesaid Explanation 5A, the legislature has not specified the due date as provided in section 139(1) but has merely envisaged the words "due date".

This "due date" can be very well inferred as due date of the filing of return of income filed under section 139, which invariably includes section 139(4) as well as section 139(5) of the Act. Where the legislature has provided the consequences of filing of the return of income under section 139(4), then the same has also been specifically provided. For e.g., section 139(3), provides that for the purpose of carry forward losses under sections 72 to 74A, the return of income should be filed within the time limit provided under section 139(1), otherwise losses cannot be set–off. In absence of such a restriction, the limitation of time of "due date" cannot be strictly reckoned with section 139(1) only. **Thus, the meaning of the words "due date", sans any limitation or restriction as given in clause (b) of Explanation 5A, cannot be read as "due date" as provided in section 139(1).** The words "due date" therefore, can also safely mean date of filing of the return of income under section 139(4) and section 139(5) of the Act.

In this connection kind attention is invited to the recent judgment of Mumbai ITAT in case of **ITO Vs Mr. Gope M. Rochlani** in ITA Number ITA no. 7737/Mum./2011, which has been rendered after placing reliance on judgments of various high courts delivered in context of exemption u/s 54 of the Act. In case of Mr. Gope M. Rochlani (Supra), it was held as under:-

14. In our considered opinion, once the legislature has not specified the "due date" as provided in section 139(1) in Explanation 5A, then by implication, it has to be taken as the date extended under section 139(4). In view of the above, we hold that the assessee gets the benefit / immunity under clause (b) of Explanation to section 271(1)(c) because the assessee has filed its return of income within the "due date" and, therefore, the penalty levied by the Assessing Officer cannot be sustained on this ground. Even though we are not affirming the findings and the conclusions of the learned Commissioner (Appeals), however, as per the discussion made above,

penalty is deleted in view of the interpretation of Explanation 5A to section 271(1)(c). Consequently, the ground raised by the Revenue is treated as dismissed.

Following are the citations of the judgments of high courts delivered in context of exemption u/s 54 of the Act based on above analogy (and no contrary decision of any other high court or of Supreme Court):-

1. Fathima Bai Vs. ITO {Karnataka High Court in ITA No. 435/2004}
2. CIT Vs. Ms. Jagriti Aggarwal {Punjab & Haryana HC in 15 Taxmann.com 146}
3. CIT Vs. Rajesh Kumar Jalan {Gauhati High Court in [2006] 157 TAXMAN 398}
4. CIT v. Jagtar Singh Chawla* [2013] 33 taxmann.com 38 (Punjab & Haryana)

However, overall, it can be concluded that the penal provisions as provided in explanation 5A of the Act are very strict and does not provide for any way out for the Assessee to resist the levy of penalty u/s 271(1)(c).

Still, on perusal of the Income Tax Act, 1961 there are 3 different provisions whereby the Assessee can be granted immunity from the penalty even in cases of Search. There provisions are summarized as under:-

Particulars	Alternate 1	Alternate 2	Alternate 3
Section Competent Authority	**245H(1) Settlement Commission**	**273A Commissioner with prior approval of CCIT or DGIT**	**273AA***w.e.f. 1-4-2008.* **Commissioner after abatement from settlement commission**
Conditions prescribed therein	a. co-operated with the Settlement Commission b. has made a full and true disclosure of his income and *the manner in which such income has been derived*	a. prior to the detection by the [**Assessing**] Officer, of the concealment of particulars of income or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars b. has co-operated in any enquiry relating to the assessment of his income c. and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year	a. he has made an application for settlement under section 245C and the proceedings for settlement have abated under section 245HA b. the penalty proceedings have been initiated under this Act c. if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and *has made a full and true disclosure of his income and the manner in which such income has been derived*

All the above three sections of the Income Tax Act, 1961 provides for immunity from penalty subject to fulfillment of conditions prescribed therein.The Assessee should apply for any of the above 3 options which best suits to the facts and circumstances of his case.**Pertinent to note that all the above three options are available to the Assessee on once in the lifetime basis.**

"When one door closes, another opens; but we often look so long and so regretfully upon the closed door that we do not see the one which has opened for us."

Alexander Graham Bell

Same nuances of the quote applies here as when an Assessee has made an application u/s 245C of the Act, praying for immunity from penalty etc. before the Income Tax Settlement Commission and the proceedings for settlement have been abated under section 245HA whatsoever cause / findings. **Even for the cases, where the settlement commission has rejected the application for settlement of the case at any stage, then there is one more specific option available to the Assessee in form of Section 273AA of the Act introduced with effect from 01/04/2008.**

Due importance is to be given to the sections 245H and 273AA where stress is given on full and true disclosure of undisclosed income and disclosure of the manner in which such income has been derived, however these sections does not mandate the Assessee to **SUBSTANTIATE** the manner in which such income is derived, unlike the mandatory unambiguous wording of section 271AAA and section 271AAB of the Act. **Below is the summary of the phrase "*manner in which such income has been derived*" wherever occurred in Income Tax Act:-**

Sections where only requirement of is to Disclose the manner	**Sections where TWIN requirements are prescribed Disclose the manner as well as SUBSTANTIATE the same**
245C: Application for settlement of cases	271AAA: Penalty where search has been initiated
245H Power of Settlement Commission to grant immunity from prosecution and penalty 271(1)(c) Explanation 5 273AA Power of Commissioner to grant immunity from penalty 278AB: Power of Commissioner to grant immunity from prosecution	Section 271AAB Penalty where search has been initiated.

Further, the **HIGH COURT OF GUJARAT** in case of **COMMISSIONER OF INCOME TAX vs. MAHENDRA C. SHAH, reported in (2008) 299 ITR 305 (Guj)** has held that if the income is declared and taxes have been paid thereon, there would be substantial compliance not warranting any further denial of the benefit, even if the statement u/s 132(4) does not specify the manner in which the undisclosed income is derived.

Similar view was also taken by Allahabad High Court in the case of COMMISSIONER OF INCOME TAX vs. RADHA KISHAN GOEL, held as under:-

Much importance should not be attached to statement about the manner in which such income has been derived—In the absence of anything to the contrary, it can be inferred from the facts—Thus, non-statement of the manner in which such income was derived would not make Expln. 5(2) inapplicable

Therefore, unless and otherwise the Assessee is required to substantiate the manners of earning the undisclosed income by virtue of provisions of the Income Tax Act, the manner as disclosed by the Assessee should be accepted by the department unless the facts of the case suggests anything contrary there to. **This approach of the department shall promote the Assessees to disclose their undisclosed / unaccounted income truly and fully in the statement u/s 132(4) of the Act and/or also during the pendency of Assessment u/s 153A r.w.s. 143(3) of the Act and also in making timely payment of the taxes thereon.**

However, at the same time, the manner in which the income is so disclosed by the Assessee should be considered in its true spirit otherwise the Assessee will hesitate in making any disclosures, as same shall not grant them immunity from penalty.

Penalty on Disclosure made during the Survey

Survey action is taken u/s 133A of the Act, wherein the Authorized Officers are authorized to make survey at the business premises / related places. The basic purpose of the survey is to check the business activities of the Assessee and also tax related compliance. This is done

with a view to expose the unaccounted income as a result of such discrepancies. The powers during the survey are comparatively lesser than as conferred in section 132 of the Act.

The disclosure during the survey may relate to:-

- current Assessment year in which the survey action is executed; and / or
- Earlier Assessment years

If the disclosure of additional income during the survey is made for the current Assessment year in which the survey action is executed, then the penal provisions are not applicable as the due date for filing the return for such AY has not expired. Such transactions can easily be incorporated in the books of accounts of the current year and can be considered while filing the return of income for such year. **As explanation 5A of section 271(1)(c) of the Act is applicable only in relation to Search u/s 132, the same cannot be extended to survey actions u/s 133A of the Act. Thus there cannot be any deemed concealment as referred in such explanation 5A in cases of survey.** Kind attention is invited on the case of Vasavi Shelters vs ITO, ITAT BANGALORE BENCH 'B' IT APPEAL NOS. 499 & 500 (BANG.) OF 2012 dated 22/02/2013, in which it was held as under:-

It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the IT return filed by it. The assessee can furnish the particulars of income in his return and everything would depend upon the IT return filed by the assessee. This view gets supported by Explanations 4 as well as 5 and 5A of s. 271. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Sec. 271(1)(c) has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the IT return and offered the surrendered amount for the purposes of tax**14.Explns. 5 and 5A are also an exception to the rule that when an income which is ultimately brought to tax is declared in a return of income, there can be no question of treating the Assessee as having "concealed particulars of income or furnished inaccurate particulars of income" Those Explanations will also not apply in the present case because those Explanations are applicable only when there is a search u/s.132 of the Act and to a case of Survey u/s. 133A of the Act.**15. For the reasons given above we hold that there can be no justification for imposition of penalty on the income offered in the return of income by the Assessee for both the A.Ys., because there cannot be any penalty on income which is declared in a return of income, on the facts and circumstances of the present case.

However, the additional income disclosed during the survey for any earlier assessment years shall always be subject to regular penal provisions as stipulated in section 271(1)(c) read with explanations there under on a case to case basis having regard to the peculiar facts of each and every case.

Therefore, having regard to the law as applicable in the statue book, it can be summarized that the penalty provisions are frequently made stringent to discourage the practice of keeping unaccounted income / assets amongst the Assessee's. Therefore, now there is no immunity route available in the sections levying the penalty, which was earlier available in form of Explanation 5 to section 271(1)(c) and also in section 271AAA. **But it is worthwhile to mention that the legislature is taking care of the Assessees who come forward and make true and full disclosure of undisclosed income and disclose even the manner in which such income is earned, by way of special immunity provisions in form of section 245H (by settlement Commission), Section 273A and Section 273AA (By Commissioner).**

Prosecution proceedings may follow, once penalty is confirmed.

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Updates from ICAI

Compiled by CA. Uday I. Shah

Guidance Note on Audit of Banks released by Auditing and Assurance Standards Board.

The Auditing and Assurance Standards Board of the Institute of Chartered Accountants of India has today issued Guidance Note on Audit of Banks 2014 edition. For the benefit of members, complete text of the Guidance Note along with the accompanying appendices etc. can be downloaded at:

· Guidance Note on Audit of Banks (2014 Edition)

· Contents of accompanying CD

Please note that the soft copy of the accompanying CD as uploaded on the website contains only list and link of Master and other relevant Circulars of RBI. However, the CD that will come with the book will contain complete text of Master Circulars as well as General Circulars.

To download ZIP file of Guidance Note on Audit of Banks 2014 edition and contents of accompanying CD, please click on the below link:

· ZIP - Guidance Note on Audit of Banks (2014 Edition)

· ZIP - Contents of accompanying CD

Tax Audit Limit Increased From 45 to 60 for audits conducted during the financial year 2014-15 and onwards.

In view of the enhancement of professional competence of members to perform quality services in an IT-enabled environment, the Council of the Institute at its 331st meeting held from 10th to 12th February, 2014 has decided to increase the "specified number of tax audit assignments" for practicing Chartered Accountants, as an individual or as a partner in a firm , from 45 to 60. The said limit will be effective for the audits conducted during the financial year 2014-15 and onwards. Accordingly, the Council Guidelines No.1-CA(7)/02/2008, dated 8th August,2008 stands amended **from** 1.4.2014 as under:-

In the Council General Guidelines, 2008, the Council Guidelines No.1-CA(7)/02/2008, dated 8th August,2008, in Chapter VI "*Tax Audit assignments under Section 44AB of the Income-tax Act, 1961* ", in *Explanation* given in Para **6.1, in sub-para(a) and sub-para(b), the figure "45" be substituted with the figure "60"**.

Supply of Certified Copies of Evaluated Answer Books in Soft Form

Currently, certified photo copies of evaluated answer books are being provided to the examinees who apply for the same, in accordance with a scheme formulated for the purpose.

With a view to ensure faster delivery of certified copies to the applicants, it has now been decided to make available scanned copies of evaluated answer books to examinees who apply for the same, through a website, in soft form, as against the current practice of dispatching physical photocopies. Physical copies of the answer books shall not be dispatched to the applicants, henceforth.

This new initiative will commence from the Intermediate (IPC) and Final examination held in November 2013.

Answer books sought by an applicant (both through online as well as physical applications) will be scanned and the scanned images will be hosted on a website and the applicant will be sent an email, at the email address provided by him, in his request, informing him the URL link of the website where they are hosted and the user ID and password required for accessing the same.

Applicants can enter the site where the answer books are hosted only through the URL in the email sent to them.

They can view and take print out of the scanned copies of the answer books sought by them, at their convenience, but not later than 10 days from the date of hosting.

Students can continue to check the status of their applications at **http://icaiexam.icai.org** as usual. (Candidates may please note that scanned copies of answer books will not be hosted on **http://icaiexam.icai.org**)

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Glimpses of Supreme Court Rulings

Advocate Samir N. Divatia
sndivatia@yahoo.com.

36 **Appeal to appellate authority – Maintainability – Pre-deposit of tax :**

In the writ appeal, it was contended that the appellate authority could not have returned the memorandum of appeal on the ground that Section 51 uses the term 'entertain' and second, the amount that was due to the appellant from the Department was to be adjusted for the purpose of deposit as envisaged Section 51 of the Act. The Division Bench came to hold that the proof of deposit of tax has to be produced at the time when the appeal is taken for consideration but not at the time of presentation of the appeal. As far as issue of adjustment is concerned, it is objected that the amount had properly been adjusted.

As far as the first issue is concerned, it is needless to say that the conclusion arrived at by the Division Bench is absolutely justified, for a condition to entertain an appeal does not mean that the memorandum of appeal shall be returned because of such non-compliance pertaining to pre-deposit. The only consequence is that the appeal shall not be entertained which means the appeal shall not be considered on merits and eventually has to be dismissed on that ground.

As far as the adjustment is concerned, the learned counsel for the appellant submitted that the adjustment has not been appositely done. In the course of hearing, a suggestion was given that the assessee should deposit the amount demanded by the first appellate authority under Section 51 of the Act and the cavil over proper adjustment should be agitated in a proper proceeding before the authorities. The Ld. Counsel for the assessee accepting the said decision submitted that in that event the finding recorded by the Division Bench to the effect that there had been proper adjustment should be set aside.

[Ranjit Impex vs. Appellate Deputy Commissioner and another (2013) 10 SCC 655)]

37 **Study leave:**

The purpose of granting study leave with salary and other benefits is for the interest of the institution and also the person concerned so that once he comes back and joins the institute the students will be benefited by the knowledge and expertise acquired by the person at the expense of the institute. A candidate who avails of leave but takes no interest to complete the course and does not furnish the certificate to that effect is doing a disservice to the institute as well as the students of the institute.

[Sant Longowal institute of Engg. & Technology vs Suresh Chandra Verma (2013) (10 SCC 411)]

38 **Evidence Act, 1872 – Sec.17 – Admission:**

As far as the principle to be applied in Section 17 is concerned, the section as it reads is an admission, which constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts incorporated therein. When once the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion.

[Vathsala Manickavasagam and others vs. N. Ganesan and other (2013) (9 SCC 152)]

39 **Issue estoppel :**

The principle of issue estoppel is also known as 'cause of action estoppel' and the same is different from the principle of double jeopardy or autrefois acquit, as embodied in Section 300 CrPC. This principle applies where an issue of fact has been tried by a competent

court on a former occasion, and a finding has been reached in favour of an accused. Such a finding would then constitute an estoppel, or res judicata against the prosecution but would not operate as a bar to the trial and conviction of the accused, for a different or distinct offence. It would only preclude the reception of evidence that will disturb that finding of fact already recorded when the accused is tried subsequently, even for a different offence, which might be permitted by Section 300(2) CrPC. Thus, the rule of issue estoppel prevents re-litigation of an issue which has been determined in a criminal trial between the parties. If with respect to an offence arising out of a transaction, a trial has taken place and the accused has been acquitted, another trial with respect to the offence alleged to arise out of the transaction, which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial, is prohibited by the rule of issue estoppel. In order to invoke the rule of issue estoppel, not only the parties in the two trials should be the same but also, the fact in issue, proved or not, as present in the earlier trial, must be identical to what is sought to be reagistated in the subsequent trial. If the cause of action was determined to exist i.e. judgment was given on it, the same is said to be merged in the judgment. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per *rem judicatam.*

[Ravinder singh Vs. Sukhbir Singh (2013) (9 SCC 245)]

40 Limitation :

The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means 'the law is hard but it is the law', stands attracted in such a situation. It has consistently been held that, 'inconvenience is not' a decisive factor to be considered while interpreting a statute.

As the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the Limitation Act, 1963 would not apply and, therefore, the application under section 28-A, LA Act has to be filed within the period of limitation as prescribed under section 28-A, LA Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award.

[Popat Bahiru Govardhane and Others vs. Special Land Acquisition officer and another (2013)(10 SCC 765)]

41 Practice and procedure – Statements by Counsel:

When a statement is made before the court it is, as a matter of course assumed that it is made sincerely and is not an effort to overreach the court. Numerous matters even involving momentous questions of law are very often disposed of by the Supreme Court on the basis of the statement made by the learned counsel for the parties. The statement is accepted as it is assumed without doubt, to be honest, sincere, truthful, solemn and in the interest of justice. The statement by the counsel is not expected to be *flippant, mischievous, misleading and certainly not false.* This confidence in the statements made by the Ld. Counsel is founded on the assumption that the counsel is aware that he is an officer of the Court. There is a very high standard of moral, ethical and professional conduct expected to be maintained by the members of legal profession.

[Himachal Pradesh Scheduled Tribes Employees Federation and another vs. Himachal Pradesh Samanaya Varg Karamchari Kalayan Mahasangh and others (2013)(10 SCC 308)]

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From the Courts

CA. C. R. Sharedalal
jcs@crsharedalalco.com.

CA. Jayesh C. Sharedalal
jcs@crsharedalalco.com.

78 Scope of Rectification :

CIT v/s. Mysore Breweries Ltd.

(2013) 356 ITR 346 (Kar) : (2013) 215 Taxman 704 (Kar)

Issue :

Whether order can be rectified if the issue is debatable?

Held :

The opening words of sec. 154 gives an indication of the scope of rectification proceedings. It is only with a view to rectify the mistake apparent from the record. The Income Tax authority may amend any order passed by it under the provisions of Income Tax Act or amend any intimation or deemed intimation under sub section (1) of section 143. Therefore, this section is very much limited. The error should be apparent from the record. If there exists a debatable issue, if two views are possible, it is not open to the authorities under this proviso to initiate proceedings and revise its opinion. All that it can do in these proceedings is to rectify the mistake apparent from the record.

79 Benefit u/s 54F and source of investment in new property :

Gouli Mahadevappa v/s. ITO and ANR

(2013) 356 ITR 90 (kar) : (2013) 259 CTR 579 (Kar)

Issue :

Whether investment in new house to get benefit u/s 54F out of other funds than sale price would entitle the asseseee to claim relief ?

Held :

The assessee had stated that he has invested Rs. 20,00,000/- out of the sale consideration and further investment of Rs. 4,00,000/- of agricultural income towards construction of the new house. The total amount shown to be invested for construction of new house is Rs. 24,00,000/-. The assessing authority has disallowed the benefit of exemption of Rs. 4,00,000/-. That part of the order of the assessing authority and the appellate authority does not appear to be sound and proper. When the capital gain is assessed on notional basis (sec. 50C), whatever amount invested in new residential house within the prescribed period u/s 54F of the Act, the entire amount invested, should get the benefit of deduction, irrespective of the fact that the funds from other sources are utilized for new residential house.

80 Applicability of Sec. 41(1) :

CIT v/s. Shivali Construction Pvt. Ltd.

(2013) 355 ITR 218 (Delhi)

Issue :

When no allowance or deduction is allowed in any previous year, can provisions of sec. 41(1) be invoked ?

Held :

The A.O. for ITAY 2007-08 treated the unclaimed unsecured loans of Rs. 48,03,481/- as income of the assessee on the grounds that the assessee has not been carrying any business activity for the last many years and since the loans were long outstanding and there did not appear to be any obligation on the assessee to repay these loans, it clearly implied that there was cessation of liability to pay these loans.

CIT(A) and Tribunal deleted the additions.

On appeal Hon. High Court has held as under :-

The very first condition for invoking section 41(1) of the I.T. Act, 1961 is that an allowance or deduction ought to have been made in the assessment for any year in respect of any loss, expenditure or trading liability incurred by the assessee. No allowance or deduction had been made in the assessment of the assessee in any earlier year. Consequently, there was no question of invoking section 41(1).

81 Estimate of income and penalty :

CIV v/s. V. P. Rojes

(2013) 356 ITR 703 (Mad)

Issue :

Whether penalty u/s 271(1)(c) can be levied when income is determined on estimate basis?

Held :

The Tribunal has categorically found that in the Return, the assessee has shown the income on estimate basis and such estimation of income was enhanced by the A.O. and consequently imposed penalty.

From the above facts it is clear that levy of penalty was based on the estimation of income. There cannot be any imposition of penalty based on estimation of income.

When the revenue itself has not come out with clear case of suppression of turnover and where there was no specific finding with regard to such factual aspect, imposition of penalty u/s 271(1)(c) is not warranted.

82 Retention money in a contract is not income.

DIT (International Tax) v/s. Bellast Nedam International

(2013) 216 Taxman 69 (Guj)

Issue :

Whether amounts retained by contractee as per agreement for completion of work, is income and consequently to be taxed ?

Held :

A company awarded a contract to the assessee for construction project. In terms of contract certain amount was withheld by contrctee towards retention money for satisfactory execution of contract. Assessee's claim that it had no right on such retention money till completion of work and submission of mechanical certificate, therefore such amount did not form part of its income. A.O. held that retention money in question represented assessee's accrued income.

High Court held that in view of the decision viz. Anup Engineering Ltd. v/s. CIT (2001) 247 ITR 457 /114 Taxman 584 retention money could not be said to have accrued to assessee and hence the said amount did not represent assessee's accrued income.

83 Reopening : Change of Opinion :

Maruti Suzuki India Ltd. v/s. Deputy CIT

(2013) 356 ITR 209 (Del)

Issue :-

Whether notice for reopening assessment can be issued on change of opinion ?

Held :

A.O. had clearly raised a specific querry with regard to the bad debts/advances written off and the assessee had given details in respect thereof. It was obvious that since no such addition was made on that account, the A.O. had considered and examined the position and held in favour of the assessee.

On a notice being issued for reopening, when assessee approached High Court, it is held that :-

When a claim for deduction has not been examined by the A.O, it cannot be a case of change of opinion. However, where a claim or deduction has infact been examined by the A.O. it would amount to formation of opinion despite the fact that no addition had been made or reason therefore had been given in the original assessment order. Thus, when, after an examination in the first round, the matter is sought to be reopened by issuing of notice u/s 148 of the I.T. Act, 1961, it would clearly be a case of change of opinion and the reassessment proceedings would be invalid.

84 Meaning of "derived from" and "attributable to" in Income Tax

Pine Packaging P. Ltd. v/s. CIT

(2013) 356 ITR 222 (Delhi)

Issue :

What is the meaning of the terms "derived from" and "attributable to" in Income Tax ?

Held :

High Court has dealt with the terms "derived from" and "attributable to" in Income tax matters as under :

The expression "derived from" in taxation laws means something which has direct or immediate nexus with the specified activity which in the present case means manufacture or production of article or thing. Manufacture or production of article or thing should be the direct and proximate cause of the said receipt and not the indirect causation and reason for the said income. Mere second /third connection is not sufficient; the manufacture / production should be the causa causaus. The expression "Derived from" is a narrower expression than the words "attributable to" which includes direct as well indirect receipts which may not have immediate or direct nexus with the specified activity.

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Tribunal News

CA. Yogesh G. Shah
yshah@deloitte.com

CA. Aparna Parelkar
aparelkar@deloitte.com

69 NTPC, Simhadri Super Thermal Power Project (VSP) Vs. Income-tax Officer, Ward-6(2) 145 ITD 314 (Visakhapatnam)

Assessment Year 2008-09 to 2010-11 Order Dated: 22nd July, 2013

Basic Facts

The assessee has entered into two separate contracts namely, supply contract and installation contract for procurement and installation of plants and equipments required for commissioning 1000MW SSTPP Stage-II. Assessee treated the second contract as "contract of work" and deducted tax at source u/s 194 C but treated the first contract as "contract for sale" because the first contract was entered up to the stage of making plant and equipment ready at the site of the manufacturer and accordingly did not deduct tax at source u/s 194C. The A.O. and the Commissioner(Appeals) concluded that both the contracts were composite contracts and were inseparable and held that assessee was liable to deduct tax at source on the first contract also and levied interest under sections 201(1) and 201(1A).

Issue

Whether when property continued to remain with the supplier till they were inspected and tested by supplier and then dispatched to assessee, supply contract was a contract of sale and not a works contract and will not require deduction of tax at source u/s 194C?

Held

The machineries supplied by the assessee were huge in size and had to be necessarily dismantled for the purpose of easy transportation. All the parts had to be assembled at the work place of the assessee to make it functional. So, the assessee had split the total contract into two separate contracts viz. supply contract and installation contract. ITAT concluded that the 'supply contract' entered into by the assessee was in the nature of 'contract of sale' and hence the provisions of section 194C shall not apply to it. Accordingly, the orders passed by the Commissioner(Appeals) in all the three years are set aside and the A.O. is directed to delete the relevant demands raised in the hands of the assessee under sections 201(1) and 201(1A) in all the three years.

70 Reliance International Vs. Income Tax Officer (2013) 157 TTJ (Lucknow) 766

Assessment Year 2008-09, Order Dated: 28th May, 2013

Basic Facts

The assessee was a 100 per cent export oriented unit exporting leather saddlers. It procured and executed orders outside India through agents and paid commission to them.The A.O. made disallowance u/s 40(a)(ia) of commission payment on account of non-deduction of TDS by assessee. The A.O. made the disallowance only on the basis of entry in the books of account made in India.

Issue

Whether the assessee was liable to deduct tax at source on the payment of commission to non-resident outside India and whether disallowance under section 40(a)(ia) is rightly made?

Held

The revenue argued that payments were made in India as it is recorded in the books of accounts made in India but there was no evidence placed in this regard. Thus, keeping in view the totality of facts and circumstances of the case, the payment of commission to non-resident was made outside India for the services rendered outside India and merely an entry in the books of account is made in India, for which it cannot be held that non-resident has received any payment in India. Therefore, ITAT held that assessee was not required to deduct tax at source from the payment of commission to the agent and consequently, it could not be disallowed under s. 40(a)(i).

71 Bhati Auto Products V. Commissioner of Income Tax-II (2013) 145 ITD 1/37 taxmann.com 37(Rajkot-Trib.)(SB)

Asst. Year 2009-10 & 2010-11, Order Dated: 6th September, 2013

Basic Facts

The assessee imported brass scrap and sold it without collecting tax at source. The assessee's case was that the brass scrap sold by him was not generated from the manufacture or mechanical working of material and therefore, it was not 'scrap' within the meaning of Explanation (b) to section 206C. The AO rejected the assessee's explanation. He held that since the assessee had failed to collect the tax at source as required by section 206C(6) on the sale of scrap made by him to various dealers, he was liable to pay certain amount under section 206C(6) along with interest under section 206C(7). The CIT(A) upheld the order of the AO.

Issue

Whether for section 206C is it necessary that seller should himself generate scrap from manufacture or mechanical working of materials undertaken by him?

Held

Section 206C as originally enacted did not provide for collection of tax at source on sale of scrap. By the Finance Act 2003, "scrap" has been included and placed in the Table in sub-section (1) of section 206C as a result of which every seller (as defined in Explanation (c) to section 206C) of scrap is required to collect tax at the rate of 1 per cent at the time of debiting the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier. Explanation (c) to section 206C does not require that a seller of scrap must himself generate scrap from the manufacture or mechanical working of materials. Therefore, such a requirement cannot be read in section 206C for its applicability to sale of scrap. Three, the subject matter of sale on which tax is required to be collected at source from the buyer is, inter alia, scrap, which is defined in Explanation (b) to section 206C to mean waste and scrap from the manufacture or mechanical working of materials. It does not further require that the scrap, in order to be covered by Explanation (b) to section 206C, should also be generated by the assessee from the manufacture or mechanical working of materials undertaken by the assessee himself.

72 Income Tax Officer-9(2)(2) vs. Pubmatic India (P.) Ltd. (2013) 36 taxmann.com 100(Mumbai-Trib.)

Asst. Year 2008-09, Order Dated: 26th July, 2013

Basic Facts

The assessee, engaged in the business of providing services of internet advertising and marketing services, including e-commerce, showed purchases of online advertisement space and reimbursement of expenses for use of software license to its holding company (associate enterprise), 'K' of USA. The assessee claimed that 'K' did not have a Permanent Establishment (PE) in India and the remittance was towards the invoices raised by K; which was doing independent business. Therefore, the remittance was claimed to be towards the business income of parent company, and as per article 7 of Indo-US DTAA, business income of non-resident company is taxable in India only if it has a PE in India. Thus, it was contended by the assessee that in the absence of a PE in India, the business income of parent company was not taxable, and therefore, there was no question of withholding tax in respect of remittance made by the assessee. The A.O. did not accept the contention of the assessee and held that the assessee was a PE of its parent company in India through which the parent company was doing its business on the ground that one of the directors was common in both companies and that both were engaged in similar kind of business activities. Accordingly, the A.O. treated the assessee as an agency PE of 'K' and held that the assessee was required to withhold the tax in making payment to its AE, and consequently, the expenditure claimed towards purchase of online space and reimbursement expenses for use of software license was disallowed under section 40(a)(i).On appeal, the Commissioner (Appeals) deleted the addition by holding that the assessee and parent company were independent parties transacting on arm's length, and therefore, the assessee did not constitute a PE to 'K'. As regards the reimbursement of expenses for use of software license, the Commissioner (Appeals) held that the said payment was pure reimbursement and would not constitute a reward or compensation paid for the service rendered. Accordingly, the Commissioner (Appeals) held that there was no requirement as per law to deduct tax under section 195.

Issue

Whether, remittance towards purchase of advertisement space fell under article 7 of India -USA DTAA, and in absence of a PE of holding company in India, profit was not taxable in India?

Held

Regarding the transaction of purchase of space on foreign website through its parent company, the same is a transaction of purchase of space by the assessee in which the parent company first booked the space on the foreign website and then sold the same to the assessee at cost plus 33.33 per cent profit. This arrangement itself shows that neither of the party was acting or doing the business activity on behalf of other but the transactions were independent business transactions, wherein the respective margins were recovered from each other. Moreover, the transaction of payment towards purchase of space on foreign website by the assessee for its client did not constitute a transaction carried out by the assessee on behalf of its parent company. The assessee was doing the business transaction on behalf of its client and offering the income earned from the said business transaction, which had been accepted by the Assessing Officer. Therefore, nothing was brought on record by the Assessing Officer to show that the transaction of purchase of space on foreign website by the assessee from its parent company constituted the assessee as its PE.The Assessing Officer referred various reasons for treating the assessee as PE of the parent company. Out of which, one of the reason was that one of the directors was common in both the companies. Merely because one of the directors was common in both the companies, does not constitute the assessee as PE. Even otherwise, the common director and holding of the company by itself does not constitute company as a PE of the other as per of article 5 of Indo-US DTAA.

73 Sandoz (P.) Ltd. V. Deputy Director of Income Tax (Mum) 34

Taxmann.com 28

Asst. Year 2008-09, Order Dated: 5th April, 2013

Basic Facts

Assessee is a subsidiary of Novarties Holdings AG, Switzerland is engaged in pharmaceutical business in India and its operations includes manufacture and sale of APIs, manufacture and sale of Finished Drug Formulations and trading of APIs/FDFs and providing support services to its Associated Enterprises. Assessee filed return of income for A.Y 2008-09 declaring a total loss of Rs. 53,82,33,224/-. AO disallowed Rs.26,55,50,308/- by invoking the provisions of section 14A of the Act in respect of net loss incurred by the unit of appellant, which is eligible for deduction under 10B of the Act.AO had also disallowed deduction of Rs.10,33,40,093/- form profit and gain of business as claimed u/s. 10B. In appeals the issue was decided in favour of assessee.

Issue

Whether Provisions of section 14A are attracted in case of unit suffering losses eligible for deduction under section 10B and further assessee is entitled to set off of loss of STP unit under section 10B against other business income?

Held

The issue also stands covered by the orders of ITAT in earlier years. ITAT relied on the decisions of Hindustani Unilever Ltd., Galaxy Surfactants Ltd. and Patni Computers System Ltd. where its stated that s. 10B as it stands is not a provision in the nature of an exemption but provides for a deduction. It also states that assessee was entitled to a deduction in respect of the profits of the eligible units loss of eligible unit can be set off against other business income. Relying on the same it is held that provision of s. 14A are not attracted in the case of the unit suffering losses eligible for deduction under s.10B and further the assessee is entitled to set off of loss of STP unit under section 10B against other business income.

74 Pino Bisazza Glass (P.) Ltd. V. Assistant Commissioner of Income Tax (Ahd.) 36 Taxmann 43

Asst. Year 2005-06; Order Dated: 28th June,2013

Basic Facts

The assessee-company was engaged in manufacturing glass mosaic. For benchmarking its international transactions with its associated enterprise, assessee took twelve comparables who were engaged in producing glass products and applied Transactional Net Margin Method. As the product being manufactured by the comparables selected by the assessee was different, the Transfer Pricing Officer selected one comparable instance, 'BIPL' and made analysis.The assessee contended that as there was no shifting of profits by it to its associated enterprise, transfer pricing provisions were not applicable. It also challenged rejection of its economic analysis and use of data of BIPL, whose data was not available in the public domain as it was a private limited company. The assessee also claimed that only one company could not be taken as a comparable, and that the company chosen by the

TPO had controlled transactions. However, the Commissioner (Appeals) rejected the assessee's appeal.

Issue

Whether the foreign AE having losses or otherwise not benefitted by way of tax savings in its country is not a matter of examination in Chapter X?

Held

Chapter X applies where in an, international transaction, the AEs enter into a mutual agreement or arrangement for the allocation or apportionment of any cost or expense so incurred then such allocation or apportionment is to be determined having regard to the ALP. Rather Section 92(3) is very specific that these provisions are applicable to the assessee in India because in case the effect of such adjustment reduces the income chargeable to tax or increases the loss then no such adjustment is required in the case of the said Indian entity. Thus, an analogy can be drawn that the entire Chapter X in the Act is devoted to determine the ALP in respect of a cross border transaction made by an Indian entity, which is to be taxed in India. Whether the said foreign AE is having losses, or otherwise not benefited in any tax savings in that country is not the matter of examination in chapter X of the Act.

ITAT also held that controlled transactions are not taken into account for the comparability analysis. However, considering practical difficulty, filter is to be applied in respect of related parts transaction and then profitability is to be computed.

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Updates from ICAI

For any assistance in this regard, applicants may get in touch with the Exam Dept. on the following e-mail IDs

For Final students: **final_abc@icai.in**

For Intermediate (IPC) students: **inter4@icai.**

Announcement for Revision in Fee of Expert Advisory Committee.

The Council, at its 331st meeting held on 10th to 12th February, 2014, has approved an upward revision in fee charged by the Expert Advisory Committee for giving its opinion. The approved fee is given below:

- Rs. 75,000/- per query where the query relates to:
  - an enterprise whose equity or debt securities are listed on a recognised stock exchange, or
  - an enterprise having an annual turnover exceeding Rs.50 crore based on the annual accounts of the accounting year ending on a date immediately preceding the date of sending the query.
- Rs. 37,500/- per query in any other case.

Accordingly, Rule 5 of Advisory Service Rules stands changed with effect from 1st April, 2014, which are hosted under the head 'Resources' on the main page of the Institute's website and also under the head 'Knowledge Sharing' on the main page of the Committee.

Announcement inviting application for empanelment as examiner of Chartered Accountants Examinations

Applications for empanelment as examiner of Chartered Accountants examinations are invited from eligible members of the Institute and other professionals including academicians of reputed educational institutions, tax and legal practitioners etc., having a flair for academic activities including valuation of answer books and willing to be a dedicated examiner. The duly filled in application form with all required enclosures may be sent by speed post or registered post to:

The Additional Secretary (Exams.)

'ICAI BHAWAN'

The Institute of Chartered Accountants of India

Indraprastha Marg

New Delhi – 110 002

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Unreported Judgements

CA. Sanjay R. Shah
sarshah@deloitte.com

In this issue we are giving gist of the decision rendered by the Hon'ble Rajasthan High Court, Jaipur Bench, in connection with section 68 of the Income Tax Act. We have experienced that many a times at the assessment level, Assessing Officers are making addition u/s 68 in respect of the deposits accepted by the assessee in spite of assessee satisfying the Assessing Officer that the deposit is received by account payee cheque, depositors are assessedto tax and that the veracity of these facts could be further established by summoning the depositors. The Assessing Officer many a times makes the additions on the basis of the fact that prior to giving cheque by the depositor to the assessee there was cash deposit in the account of the depositors and so he feels it can be presumed that the money belonging to the assessee were deposited in cash in the account of the depositor and then cheque is given to the assessee to create an impression that genuine transaction of the deposit has taken place.

The Hon'ble Rajasthan High Court has dealt with these issues in detail and also adverted to various decisions connected with the issue. The decision can be very helpful as the additions u/s 68 are very frequently made by the Assessing Officer either in the ignorance of the legal position or a many times without appreciating the legal position.

In the High Court of Judicature for Rajasthan Bench at Jaipur

D.B. Income Tax Appeal No. 269/2011
The Commissioner of Income Tax, Ajmer

v/s

Shri Jai Kumar Bakliwal

Date of Order : 06/02/2014

Present

Hon'ble Mr. Justice Ajay Rastogi
Hon'ble Mr. Justice J.K. Ranka

Smt. Parinitoo Jain, for the Appellant

Gist Only

Facts :

1. The brief facts, as emerging on the fact of record, are that the respondent -assessee is carrying on the business of finance and earns income by way of interest and during the course of work of financing and money lending, had raised loans from certain parties and as per the Assessing Officer (for short, "AO") most of the parties are relatives of the respondent-assessee and they are said to be unsecured loans. It has been claimed by the AO that in most of the cases, though the amount was received by account payee cheque and most of the creditors are assessed to Income Tax Act and had even provided their permanent account number but on the desire of the AO of producing the said parties, it transpired that none of the parties were able to prove the source of amount advanced to the respondent-assessee. It is further claimed by the A.O. that immediately before the amount was advanced to the respondent-assessee by account payee cheque, cash was deposited in their respective bank accounts and thereafter the cheque could be cleared and the total amount is Rs.17,27,250/- in the name of the several creditors.

2. The respondent-assessee submitted that all the cash creditors are assessed to Income tax Act, they are people of means, they have their own bank accounts and they had their sources of income through which they deposited the money and advanced money by account payee cheque and permanent account number had also been provided. It was further submitted that the identity, capacity and genuineness of the transaction stands proved by the respondent-assessee and he is not required to prove source of the amount which had been deposited by the creditors in their respective bank accounts. However, they stood to the testimony in the cross-examination and primary facts were proved and therefore, no adverse interference be drawn, however, the A.O.

was not satisfied and made addition of Rs.17,27,250/- u/s 68 as income from undisclosed sources.

3. Both CIT(A) as well as Tribunal decided the issue in favour of the assessee and hence department has filed appeal before Hon'ble High Court challenging the order of the Tribunal.

Held :

4. The High Court held as under:

"9. In our view as well, three things are required to be proved by recipient of money i.e. (1) identity of the creditor (2) capacity of the creditor to advance money and (3) genuineness of the transaction. From the facts emerging on the face of record, we notice that it is an admitted fact that all the above cash creditors (12 in number) are assessed to income tax and they provided a confirmation as well as their permanent account number, they have their own respective bank accounts which they have been operating and it is not the claim of the AO that the respondent-assessee was operating their bank accounts rather they have categorically stated that they issued cheque to the respondent-assessee. It is also an admitted fact that most of the cash creditors appeared before the AO and their statements u/s 131 were also recorded on oath. The cash creditors appeared to be from small place and it is quite possible that they may not be in a position to pin pointedly or specifically say about everything but by and large stood to the testimony and were able to explain various issues as per the question and answer reproduced by the AO himself in the assessment order. It may be that most of the cash creditors are relatives of the respondent-assessee and heavy burden lay on the respondent-assessee to prove about the cash credit but once all the cash creditors appeared before the AO, their statements having been recorded u/s 131, then in so far as the respondent-assessee is concerned, the onus, which lay upon him (assessee), in our view, stood discharged as he was able to prove identity of the creditors. Once the amount was advanced by account payee cheque from their respective own bank accounts and were being assessed to income tax, then in our view, capacity of the creditor and genuineness of the transaction stood proved. In so far as the respondent-assessee is concerned, it is correct that he is not required to prove source of the source and if the AO had any doubt, then the AO, assessing the respondent-assessee, could have sent the information to the AO, assessing the cash creditors for appropriate action in their cases but in so far as the respondent-assessee is concerned, in our view, the respondent-assessee has been able to discharge the burden which lay upon him.

10. Certainly, deposit of cash and immediate transfer of cheque or clearance of the cheque within a day or two casts a doubt as the transaction appears to be somewhat doubtful but suspicion howsoever strong it may be is not sufficient itself. On perusal of the facts in the present case, we observe is that the amounts advanced are not substantial and in most of the cases, the amounts are ranging from 25,000/- to 90,000/- and in some cases, it is exceeding Rs.1,50,000/-. On perusal of the facts, it is also apparent that in some of the cases (Uttan Chand Jain, HUF) even the Karta of the HUF had produced the cash book and their ledger account before the AO. Smt. Anju Gangwal had also produced her cash book so also Mr. Vinay Kumar Gangwal as well as Mr. Akhilesh Kumar Ankur Jain (HUF) and the AO has drawn adverse inference finding some discrepancies in their respective cash books but as observed herein above, the doubt, if any, may be true but in so far as the respondent-assessee is concerned, that issue cannot be converted in to an addition of income u/s 68 of the Act in the hands of the assessee and appropriate course, as observed herein above, was that the AO could have

informed the AO, assessing the respective cash creditors for appropriate action in their case."

5. The High Court also adverted to the following decisions:

i)	CIT v/s Orissa Corporation P. Ltd.	[159 ITR 78 (SC)]
ii)	CIT v/s Daulat Ram Rawatmull	[87 ITR 349 (SC)]
iii)	Nemi Chand Kothari v/s CIT	[264 ITR 254 (Gauhati H.C.)]
iv)	Shankar Industries v/s CIT (Central)	[114 ITR 689 (Calcutta H.C.)]
v)	KanhailalJangid v/s ACIT	[217 CTR 354 (Raj. H.C.)]
vi)	Aravali Trading Co. v/s ITO	[220 CTR 622 (Raj. H.C.)]

and held further as under:

"17. As observed herein above, though u/s 68, AO is free to show with the help of the enquiry conducted by him into the transaction which has taken place between the creditor and the sub-creditor that the transaction between two were not genuine and that the sub-creditor had no creditworthiness, it will not necessarily mean that loan advanced by the sub-creditor to the creditors was income of the assessee from undisclosed sources unless there is evidence direct or circumstantial, to show that the amount which had been advanced by the sub-creditor to the creditor had actually been received by the sub-creditor from the assessee.

18. The logical interpretation will be that while the assessee has to prove as special knowledge i.e. from where he has received the credit and once he disclosed the source from which he has received money, he must also establish that so far as his transaction with his creditor is concerned, the same is genuine and his creditor had the creditworthiness to advance the loan which the assessee had received. When the assessee discharges the burden so placed on him, onus then shifts to the AO, f the AO assessees the said loan as the income of the assessee from undisclosed source he has to prove either by direct evidence or indirect/ circumstantial evidence that the money which the assessee received from the creditor actually belong to and was owned by the assessee himself.

19. If there is direct evidence to show that the loan received by the assessee actually belong to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source but if there is no direct evidence in this regard, then the indirect or circumstantial evidence has to be conclusive in nature and should point to the assessee as the person from whom the money has actually flown to the hands of the creditor and then from the hands of the creditor to the hands of the creditor.

20. When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to none but the assessee himself. The action of the AO appears to be based on mere suspicion."

Accordingly, the appeal of the department was dismissed.

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FEMA & NRI Taxation

External Commercial Borrowings (ECB)

CA. Rajesh H. Dhruva
rajesh@femaonline.com

But for the External Commercial Borrowings (ECB) Route, Debt option of investments by Non-Resident Indians (NRIs); Persons of Indian Origins (PIOs) ; Foreigners and Overseas Corporate Body (OCB) in Indian Companies is almost closed. Although the Company Law permits acceptance of deposits from shareholders ; the provisions of Foreign Exchange Management Act, 1999 [FEMA] Private and Public Limited Companies from accepting deposits from NRIs ; PIOs ; Foreigners or Overseas Corporate Body (OCB) even if they are shareholders of the Company. Public Company can offer debentures to NRIs and all but a Private Company cannot do so as under FEMA issuance of debentures is to be made by way of Public Offer as the same is not permissible under the Company Law.

The ECB finance can be availed only to meet capital expenditure and is to meet stringent reporting requirements including monthly reporting during the entire life of the loan period. Such loans can be accepted from shareholders holding 25% or more of the paid up capital of the Company or from foreign Banks ; collaborators or suppliers of plant & machinery.

ECB can be availed under the Automatic Route subject to prior registration or in some cases subject to prior permission under the Approval Route. Most cases of Small & Medium Enterprises (SMEs) as also great many large Companies can opt for Automatic Route for borrowings upto US$ 750 mn i.e. app. INR 4500 crores.

Salient features of ECB scheme under Automatic Route are highlighted herein :

I. Eligible Borrowers :-

1. Corporate Entities undertaking manufacturing and processing industries ; hospital ; hotels ; Infrastructure Sector and software services.
2. Infrastructure finance Company.
3. NGO's engaged in Micro Finance activates.
4. Micro Finance Institutions (MFIs) engaged in micro finance activities.
5. Units in Special Economic Zones [SEZ] . Such Units cannot however lend to its sister concern or units in Domestic Tariff Area.
6. Infrastructure sector including power ; telecommunication ; railways ; roads including bridges ; sea port and airport ; industrial parks; urban infrastructure (water supply, sanitation and sewage projects) ; mining, exploration and refining and cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

II. Non- Eligible Borrowers :-

1. Banks, Financial Institutions, housing finance companies and a non banking finance companies are not eligible to borrow under the Automatic Route.
2. Individuals, Trusts and Non- Profit making organizations are not eligible to raise ECB.
3. Individual lenders from countries wherein banks are not required to adhere to Know Your Customer (KYC) guidelines are not eligible to extend ECB.

III. Eligible Investors :-

1. Foreign Equity holder provided he holds minimum paid-up equity of 25% in the borrower company.
2. International Banks.
3. International Capital Markets.
4. Multilateral Financial Institutions / regional financial institutions and Government owned development financial institutions.
5. Export credit agencies.
6. Suppliers of plant & machinery & equipments.
7. Foreign collaborators.

IV. Corporate ECB Limits :-

1. Corporates other than Service sector can avail ECB upto USD 750 million or its equivalent during a financial year.
2. Companies in Services sector such as Hotels, hospitals and software sectors can raise ECB upto USD 200 million.
3. Companies seeking ECB exceeding US$ 5 mn need to maintain ECB to Paid-Up Equity ratio of 4:1.

V. ECB Maturity :-

1. For ECB upto USD 20 mn. minimum maturity period is 3 years and
2. For ECB above USD 20 mn upto USD 750mn , minimum maturity period is 5 years.

VI. All-in-cost ceilings :-

1. Company availing ECB lis subject to total cost ceiling linked to the maturity period.

.02 The cost ceiling includes rate of interest, other fees and expenses.

.03 Payment of Tax deduction at source is excluded for calculation of All-in-cost.

2. The interest cost is linked to London Inter Bank Offered Rate (LIBOR) and is allowed as specified 6 months margin over and above the LIBOR.
3. ECB at fixed rate of interest is also permissible wherein the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.
4. Floating rate ECB cost ceiling is :

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five years	350 basis points
More than five years	500 basis points

VII. Purpose & Utilisation :-

ECB can be raised for Capital Expenditure and investment such as :

1. Import of Capital goods
2. Capital cost of New Project including cost of Factory Premises ;Plant and Machinery ; Equipments etc.
3. Expansion or modernisation of existing facilities.
4. Import of services, technical knowhow and payment of license fees subject to fulfillment of conditions.
5. Overseas Direct Investment in Joint Ventures (JV)/ Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/ WOS abroad.
6. First stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of PSU shares.
7. For lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building by NGOs engaged in micro finance activities.
8. Infrastructure Finance Companies (IFCs) i.e. Non-Banking Financial Companies (NBFCs)
9. Capital expenditure forming part of the original project for maintenance and operations of toll systems for roads and highways .
10. Refinancing of Bridge Finance (including buyers' / suppliers' credit) availed of for import of capital goods by companies in Infrastructure Sector.

VIII. ECB utilization not permitted for :-

1. Acquisition of land
2. Working Capital
3. For relending or investment in capital market
4. For general corporate purpose and repayment of existing rupee loans ; (permissible for limited purposes subject to specified conditions)
5. Investment in Real Estate sector

IX. Parking of ECB proceeds :-

1. The proceeds of the ECB raised abroad for Rupee expenditure in India should be repatriated immediately for credit to the borrowers' Rupee account with banks in India.
2. ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilization.
3. ECB proceeds parked overseas can be invested in deposits or Certificate of Deposit with banks rated not less than AA (-) by Standard and Poor or Aa3 by Moody's; Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and deposits with overseas branches / subsidiaries of Indian banks abroad.
4. Its primary responsibility of the Borrower to ensure that the ECB proceeds meant for Rupee expenditure in India are repatriated for credit to their banks in India and any contravention of the ECB guidelines will be viewed seriously and will invite penal action under FEMA, 1999.

contd. on page no. 678

Controversies

CA. Kaushik D. Shah
dshahco@gmail.com.

Whether unclaimed liabilities are liable to be taxed u/s 41(1) even though it is not written back in the profit and loss statement?

Issue:

M/s XYZ Ltd. has purchased goods from M/s AB, a partnership firm in A.Y. 2001-02 on credit. Somehow or other the creditors remained outstanding till 31st March 2011. The AO during the course of assessment proceeding noticed that this creditor is outstanding for a very long period and hence issued show cause notice for taxing the amount outstanding u/s 41(1). M/s XYZ contended that sec 41(1) will apply only when trading liabilities are written back and in our case so long as liabilities are not written back sec 41(1) has no application.

Proposition:

Let us first refer to the language of sec 41(1) which reads as under:

Section 41(1) "where an allowance has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (herein referred to as the first mentioned person) and subsequently during any previous year,

(a) The first mentioned person has obtained, whether in cash to in any other manner whatsoever, any amount in respect of such loss, or expenditure or some benefit in respect of such trading liability, by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect if which the allowance, IT deduction has been made in the existence in that year or not

(b) The successor in business has obtained, whether in cash to in any other manner whatsoever, any amount in respect of such loss, or expenditure which was incurred by the first mentioned person or some benefit in respect of such trading liability referred to in clause (a), by way of remission or cessation thereof, the amount obtained successor or the value of benefit accruing to him shall be deemed to be profits and gains of business shall be deemed to be the profits and gains of the business or profession, and accordingly chargeable to income tax as the income of that previous year.

It is proposed that looking to the language of the section unless the liabilities are written back, there cannot be any liability to tax u/s 41(1)

View against the proposition:

Let me refer to the case of *Dy. CIT v. Bhagwandas Shobhalal Jain* referred in 60 ITD page 118, the ITAT's Jabalpur Bench has added the unpaid creditors to the assesse's income as the assessee was not aware of the addresses of the creditors and the credits were outstanding for more than 10 years.

In the case of *Kesoram Industries & Cotton Mills Ltd. V. CIT 196 ITR 845* the Calcutta High Court held that the liability in such cases had to be added back.

"Whether the liability of the assessee has been fully discharged is within the special knowledge of the assessee. He has to prove that fact the liability subsists. When the assessee itself comes to the conclusion that the amount in question would not be claimed by the concerned persons and thereafter, it proceeds to forfeit such amount and does not take such amount to a reserve account but writes it back in the profit and loss account, the reasonable inference that will follow from these fact ad circumstances and the conduct of the assessee is that the amount which was provided for was in fact not necessary and it was an excess provision. No longer was there any liability. It is always possible that a creditor, if he so chooses, may agree to accept a smaller amount in full discharge of the whole amount due to him. An employee, casual or regular, who is entitled to wages or salary, will not allow his claim to remain unsatisfied. If the employer does not pay, he can move the authorities under the Payment of Wages Act. In his own interest, he will not permit the employer to withhold the wages, if it is due to him. When an assessee has obtained a benefit of deduction of trading liability, it is for the assessee to establish whether such trading liability has been fully discharged or not. Further it was held in *CIT v. Agarpara Co. ltd. (1986) 158 ITR 78,* that if there be any excess over the requirement of the assessee in respect of liability

claimed and allowed, such liability must be deemed to have ceased. It has also been laid down that it may be inferred from surrounding circumstance that there has been cessation or remission of the liability of the assessee. It has also been laid down that if unclaimed bonus being a portion of the bonus allowed as deduction in computing the income of the assessee if carried forward from year to year and there after written back in the account and no tax is levied thereon, the assessee would be getting a benefit to which he was not entitled."

Let me refer to the recent case of *CIT v. Shailesh D. Shah,* dated 11th December 2013 where the Hon'ble Mumbai ITAT observed as follows:

The AO had observed that a liability of labour charges was outstanding for more than three years which was unusual as labour charges do not remain outstanding for such a long period. Despite of being asked for, the assessee could not submit the addresses and labour for the labour charges. He assessee failed to prove the genuineness of this liability and the same ceased to exist. The AO therefore added the same into the income of the assessee u/s 41(1). However it was further observed that AO had not proved that there was any cessation or remission of the liability during the assessment year under consideration and thus the same could not be taxed u/s 41(1) merely because the liability was outstanding for more than three years. Therefore the addition made by the AO was deleted.

Reliance was made on a recent case of *CIT v. Chipsoft Technology (P) Ltd 210 Taxman 173*, wherein it has been held that in the case and employer, omission to pay the dues/ liability to employee over a period of time and resultant benefit derived by the employer/assessee would qualify as a cessation of liability albeit by operation of law and that a debtor or an employer, holding on to unpaid dues, should not be given the benefit of his showing the amount as a liability, even though he would be entitled in law to say that a claim for its recovery is time barred, and continue to enjoy the same.

Looking intothe case of *CIT v. Shailesh D. Shah*it was observed that the assessee cannot be allowed to show and amount as liability even though he has no intention to pay it back but to enjoy the same for unlimited period without being added to his income only on the excuse that he has not written of the same in his books of accounts. However, if the facts of the case establish that the liability has been genuinely shown by the assessee and his subsequent conduct shows the he has paid back the said credit and his intention was not hto enjoy the amount for unlimited period without any intention to pay back the same, the m it cannot be said to be a cessation of liability. However, from the facts of the case it reveals that not only the existence of outstanding liability of labour charges for so many years is improbable in the normal course of business but he assessee has also failed to give any evidence regarding the genuineness of the creditors, identity of the creditors or any payment of the liability subsequently till date. Under such circumstances it is held to be a case of cessation of liability and accordingly the labour charges are added into the income of the assessee.

View in favour of the proposition:

Ahmedabad 'C' Bench of ITAT in he case of New commercial mills cp. Ltd v. Dy. CIT 73 TTJ 893 held as under:-

"The assessing officer has admitted the fact that these liabilities were carried forward since the last 10-15 years, then why the year under consideration has been chosen to tax these liabilities. There is no cogent reason and material evidence in support that these liabilities have been ceased in the year under consideration in the orders of revenue authorities. With this fact, it is very difficult to agree with the revenue authorities to tax such liabilities under section 41(1) in the year under consideration. Where ever there is remission of an amount or cessation of a trading liability, the amount received under the previous year can be assessable to tax. Hence the important words are "remission" and "cessation". Remission has to be granted by the creditors or contract between the parties or by the discharge of the debts the debtor making payment thereof to his creditor. In the year under consideration, no onus has been discharged by the revenue in proving that the impugned liabilities have been ceased in the year under consideration. In the view of the totality of the facts and the circumstances of the case in the view of the above discussions and observations, the orders of the revenue authorities are set aside and the addition made under section 41(1) is deleted"

In the case of CIT v. *Bharat Iron and steel industries* 199 ITR 67 (Guj.) and in the case of CIT v. *Rashmi Trading* 103 ITR 312 (Guj.) the Hon'ble Gujarat High Court had observed that the receipt must be received in cash. The only meaning that can be attached to the words "obtained whether in cash or in any other manner" is the actual receiving cash. The amount may be actually received or it may be adjusted by the way of an

adjustment entry which is contemplated by the legislature when in used the words "obtained".

Summation:

It is submitted that unless the outstanding liabilities are not written back to the profit and loss statement sec. 41(1) is not applicable. The language of the section is very clear where it is specifically provided that where and allowance or deduction had been made in the assessment for any year, in respect of loss, expenditure it trading liability incurred by the assessee and subsequently during the previousyearthe assessee has obtained cash of some benefit, then only section 41(1) will apply. So when the liability is not written back in a particular previous year, how can section 41(1) apply? The AO will have to decide as to the year of taxability if he wants to apply section 41(1). Let me now reproduce provision of section 41(1).

Profits chargable to tax: (1) "where an allowance has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (herein referred to as the first mentioned person) and subsequently during any previous year,

(a) The first mentioned person has obtained, whether in cash to in any other manner whatsoever, any amount in respect of such loss, or expenditure or some benefit in respect of such trading liability, by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income tax as the income of that previous year, whether the business or profession in respect if which the allowance, IT deduction has been made in the existence in that year or not

(c) The successor in business has obtained, whether in cash to in any other manner whatsoever, any amount in respect of such loss, or expenditure which was incurred by the first mentioned person or some benefit in respect of such trading liability referred to in clause (a), by way of remission or cessation thereof, the amount obtained successor or the value of benefit accruing to him shall be deemed to be profits and gains of business shall be deemed to be the profits and gains of the business or profession, and accordingly chargeable to income tax as the income of that previous year.

For the purpose of this sub section, the expression "loss or expenditure some benefit in respect of any such trading liability by the way of remission or cessation thereof "shall include the remission or cessation of any liability by a unilateral act by the first mentioned person under clause (a) of the successor in the business under clause (b) of that sub-section by the way of writing off such liability in his accounts.

There is also authority in favor of the proposition that there is neither remission nor cessation of its trading liability in such cases since there is neither any unilateral act of the creditor amounting to remission nor any bilateral act of the partues resulting the liability ceasing to exist in law, merely because the recovery of the same has become time barred. (J.K. Chemicals Ltd. V. CIT [1966] 62 ITR 34 (Bom), CIT v Sadabhakti Prakashan Printing Press (P.) Ltd. [1980] 125 ITR 326 (Bom), CIT v. V.T. Kuuttappu & Sons [1974] 96 ITR 327 (Ker), Liquidator, Mysore agencies Pvt. Ltd. V CIT [1978] 114 ITR 853 (Kar), & Bhagwad prasad and Co. V. CIT [1975] 99 ITR 111 (All). It was also held in those judgements that the mere fact that the assessee did not show the amount as his trading liability in his account books did not affect the consequence since such unilateral act of the assessee was neither remission notr cessation of his trading liability.

For the purpose of invoking sub-section (1) of section 41there has to be remission or cessation of the trading liability in the previous year and in the light of explaination 1 thereto, such remission or cessation shall include remission or cessation of any liability by a unilateral act of the assessee by the way of writing off such liability in his accounts.

3. Let me now refer to the decision of their lordships of Gujarat high court in CIT vs. GK patel and Co. [2013] 29 taxmann.com 248 (Gujarat) it was held by the Hon'ble Gujarat High Court as under:

   - In the present case there is no unilateral act of the assessee of making any entry in respect of the trading liabilities in the books of accounts. Therefore a sine qua non for attracting section 41 in the present case is that the assessee should have obtained a benefit by the way of remission or cessationof a particular amount in the previous year corrosponding to the assessment year in the question. As n oted by the tribunal there was no poisitive act on part of either the assessee or the creditors which would amoun tto the assessee having gained the benefit of remission or cessation of the liabilities in question. The case of revenue is that several years havin gpassed

the recovery of the debts in question have become time barred and hence by operation of law there is cessation of the liability thereby, attracting section 41(1).

- As regards debt becoming timebarred by the operation of law, the apex court in CIT v Sugauli Sugar Works (P.) Ltd. [1999] 236 ITR 518/102 taxman 713 recorded with approval the observations made by the bombay high court in J.K. chemical Ltd, V. CIT [1966] 62 ITR 34. The bombay high court held that the cessation of liability has to be either by the reason of operation of law, i.e. on the liability becoming unenforcable at law by the creditor and the debtor declaring unequivocally his intention not to honor his liability when the payment is by a creditor or a contract between the parties, or by discharge of the debt. In the aforesaid premisis as no event had taken place in the year under consideration to indicate remission or cessation of the liabilities in question, the provisions of section 41(1) could not have been invoked. The reasonong adopted by the tribunal while holding that section 41(1) would not be applicable to the facts of the present case is in lines with the principles enunciated in the above discussion. The tribunal therefore committted no legal error so as to give rise to any question of law warranting interference by the high court.

Let me now refer to the decision of their lordships, Delhi high court in the case of CIT v. Shri Vardhan overseas Ltd. [2011] 16 taxmann.com 350 [Delhi]. Where it was clearly held that unless the liabilities are written back to the P/L statement section 41(1) cannot apply.

Finally it is submitted that unless outstanding liabilities are written back during a particular previous year, Section 41(1) cannot apply.

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contd. from page 674

FEMA & NRI Taxation

X. Prepayment :-

1. Prepayment of ECB up to USD 500 million may be allowed by AD banks without prior approval of Reserve Bank.
2. Prepayment is to be subject to compliance with the stipulated minimum average maturity period of the loan.

XI. Procedure :-

1. Loan agreement complying ECB guidelines for raising ECB be signed by the Borrower and the Lender
2. Borrower is required to avail Loan Registration Number (LRN) from RBI prior to draw down.
3. Borrower required to make LRN Application through Authorised Dealer Bank in Form 83
4. Appropriate certificates of Chartered Accountant or Company Secretary certifying compliance .
5. In case of lender being Overseas Organisation , Due Diligence Certificate from Overseas Banker certifying lender's banking relationship exceeding two years ; lending entity adhering to domestic laws and holding good esteem and no criminal action pending against the Lender is required.
6. In case of Individual Lender Due Diligence Certificate of the Overseas Bank certifying lender's banking relationship exceeding two years is required.
7. Many Banks insist for corporate guarantee in case of the Lender being a Overseas Corporate Body.

XII. Reporting Requirements :-

1. Borrower is required to file monthly ECB - 2 returns to the Bank disclosing details of borrowing; spending & other specified information in foreign currency of the borrowing.
2. Chartered Accountants or Company Secretary is required to certify the amounts received and expended.
3. After the drawl is complete, its expenditure is to be reported on monthly basis.
4. Monthly return are to be filed even if there is no borrowing or spending in a given month.
5. ECB-2 returns are to report payment of interest as also Principal amount from time to time.
6. ECB-2 returns is to be submitted to Bank within seven working days from the close of month to which it relates.There is a fear of the unknown and more often heavy jargons and special terms scare professionals from venturing into new areas of practice. FEMA and NRI tax do require detailed updates but are indeed simple and ofcourse an attractive professional practice – both in terms of goodwill as also income ! And with majority of assignments being undertaken by Lawyers and Chartered Secretaries scope of FEMA related practice for Chartered Accountants are a plenty . All that is needed is learning and persistent updates!!

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Judicial Analysis

Advocate Tushar Hemani
tusharhemani@gmail.com

Useful decisions on stay of recovery of demand

1 Deloittee Consulting India Pvt.Ltd. vs. ACIT (WRIT PETITION (L) NO.235 OF 2014, dated 12/02/2014)

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10. Having heard the learned counsel for the parties, we find that the impugned order of the Tribunal has been passed in total disregard of the principles laid down in ***KEC International Ltd. Vs. B.R.Balakrishnan and others {(2001)251-ITR-158 (Bom)}*** wherein a Division Bench of this Court laid down the following parameters to be observed by the Authorities while considering the stay application :

11. Instead of giving some short prima facie reasons recording the Petitioner's case, the Tribunal has merely observed as under :

> "6. The learned counsel for the assessee no doubt has made an attempt to show that the assessee has a good prima facie case to succeed on merit in its appeal filed before the Tribunal. However, this matter can be decided finally only after hearing both the sides while disposing of the appeals of the assessee by the Tribunal.... ... "

12. Having heard learned counsel for the parties, we find that the Petitioner has a strong prima facie case on merits before the Tribunal. Thus, having regard to the fact that the Petitioner has already paid the full tax amount and also approximately 25% of the penalty amount earlier, the Tribunal ought not to have required the Petitioner to deposit a further sum of Rs.50.00 lakhs. In fact, the Tribunal while passing the impugned order has not only ignored the directions in KEC (supra) but also the observations made by this Court in the order dated 30 January 2013 in the petitioner's own case.

13. In view of the above discussion, the writ petition is allowed and the impugned order dated 3 January 2014 passed by the ITAT for the A.Y.2004-05 is set aside only to the extent it directs the petitioner to deposit a further amount of Rs.50 lakhs. The other directions contained in the impugned order dated 3 January 2014 are not disturbed. The writ petition is accordingly allowed to the above extent.

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2 KEC International Ltd. *v.* B.R. Balakrishnan [2001] 251 ITR 158 (BOM.)

xxx...

At the outset, it may be mentioned that the impugned order is passed by the respondent No. 2 on the administrative side. It does not give any reason. However, it is important to bear in mind that in this case even the Assessing Officer has not given any reasons for rejecting the stay application. As a result of the impugned order, a garnishee notice has been issued under section 226(3) to the Central Bank of India, J.B. Nagar Branch, Andheri (East), Mumbai. About 500 workers have not been paid salary because of the garnishee notice. This is the consequence of an order being passed without giving any reasons. Hence, we intend to lay down certain parameters which are required to be followed by the authorities in cases where a stay application is made by an assessee pending appeal to the first appellate authority.

Parameters :

(*a*) While considering the stay application, the authority concerned will at least briefly set out the case of the assessee.

(*b*) In cases where the assessed income under the impugned order far exceeds returned income, the authority will consider whether the assessee has made out a case for unconditional stay. If not, whether looking to the questions involved in appeal, a part of the amount should be ordered to be deposited for which purpose, some short *prima facie* reasons could be given by the authority in its order.

(*c*) In cases where the assessee relies upon financial difficulties, the authority concerned can briefly

indicate whether the assessee is financially sound and viable to deposit the amount if the authority wants the assessee to so deposit.

(*d*) The authority concerned will also examine whether the time to prefer an appeal has expired. Generally, coercive measures may not be adopted during the period provided by the statute to go in appeal. However, if the authority concerned comes to the conclusion that the assessee is likely to defeat the demand, it may take recourse to coercive action for which brief reasons may be indicated in the order, and

(*e*) We clarify that if the authority concerned complies with the above parameters while passing orders on the stay application, then the authorities on the administrative side of the department like respondent No. 2 herein need not once again give reasoned order.

4. The above parameters are not exhaustive. They are only recommendatory in nature.

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3 LG Electronics India (P.) Ltd. *v. CIT* [2012] 21 taxmann.com 13 (All.)

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9. The Apex Court in the aforesaid judgment has observed that it is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no leg to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. From the perusal of materials brought on record, we are of the view that the Commissioner having himself expressed opinion in the order that there is enough strength in the plea of the assessee for stay of the demand, there was no occasion to direct for deposit of 30 percent. Thus the judgment relied by learned counsel for the petitioner also supports his submission. However, looking to the fact that we are only considering the stay application our any observation be not treated as concluded opinion on the issue and it shall be open for the Commissioner while deciding the appeal, to decide the appeal on merits without being influenced by any of our observation made in this order.

10. In view of the above, ends of justice be served in setting aside the order dated 19th March, 2012 and directing the appellate authority to decide the appeal finally on merits. We provide that during pendency of the appeal the demand against the petitioner shall be kept in abeyance. It is ordered accordingly. However, the petitioner shall furnish adequate security to the satisfaction of the respondent No. 4 for the amount to be deposited under the order of the Commissioner Income Tax (Appeals) *i.e.* 30% of the total demand within ten days. We make it clear that in case the security as directed above is not furnished, the petitioner shall not be entitled for any benefit of this order.

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4 UTI Mutual Fund *v.* ITO [2012] 19 taxmann.com 250 (Bom.)

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9. At the present stage, it would be necessary for the Court to clarify that the issue in these proceedings is confined to whether the Revenue should be permitted to enforce the demand of Rs. 9.63 crores and to take coercive steps under Section 226(3) in the form of a garnishee notice which has been issued to the bankers of the petitioner. The Court is not called upon to adjudicate at this stage on the merits of the rival contentions. From the record before the Court however it now emerges as an admitted position that the demand against the Trust is sought to be enforced against the petitioner on the basis of the provisions of Section 177(3). The Petitioner has not been independently assessed and the issue which falls for determination is whether the petitioner has made out a substantial *prima facie* case to seek protection against coercive proceedings at this stage pending an appeal filed by the Trust against the assessment made in respect of the Trust. Sub-section (3) of Section 177 provides that where a business which has been carried on by an association of persons has been discontinued, every person who was at the time of such discontinuance or dissolution a member of the association of persons, shall be jointly and severally liable for the amount of tax, penalty or other sum payable and all the provisions of the Act, so far as may be, shall apply to any such assessment or imposition of penalty, or other sum. *Prima facie*, the submission of the petitioner that the Trust itself cannot be regarded as being an

association of persons finds support from a judgment of a Division Bench of this Court in *CIT* v. *Marsons Beneficiary Trust* [1991] 188 ITR 224/[1990] 52 Taxman 454 (Bom.). The Division Bench of this Court in that case held that the beneficiaries of a trust cannot be construed as having set up the trust nor had they authorised the trustees to carry on business. The beneficiaries who are named in the trust as recipients of the income of the trust cannot be considered as an association of persons. Therefore, ruled the Division Bench, the trustees also cannot take on the character of an association of persons. The judgment of the Division Bench was followed subsequently by another Division Bench of this Court in *L.R. Patel Family Trust* v. *ITO* [2003] 262 ITR 520/ 129 Taxman 720 (Bom.). We are indicating the nature of the controversy making it expressly clear that we are not rendering any conclusive determination of the Court on the merits of the issue which will arise in the appeal which has been filed by the trust and which, the Court is informed, is pending before the Commissioner (Appeals). The second submission which has been urged on behalf of the petitioner, based on the provisions of Section 61, is equally a matter which would require careful consideration at the appellate stage. As we have noted earlier, the submission of the petitioner is that under Section 61, all income arising to a person by virtue of a revocable transfer of assets is chargeable to income tax as the income of the transferor. Under Section 63(a)(i) a transfer is deemed to be revocable if it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor. The submission of the petitioner is that if at all, an assessment could have only been made in the hands of the petitioner as the transferor of a revocable trust, in which event the income would be exempt under Section 10(23D). Whether the submission should be accepted is again a matter which would have to be determined in the course of the appellate proceedings arising from the order of assessment. The petitioner has intervened before the appellate authority. In our view, the Revenue has made an unfortunate and hasty attempt to make a recovery of the demand which has been imposed on the trust pursuant to the order of assessment, against the petitioner without enabling the petitioner to take reasonable recourse to the remedies available in law. As we have noted earlier, the petitioner received the letter of demand dated 29 February 2012 on 7 March 2012. On the very same day, the petitioner moved an application for stay before the Assessing Officer. The next day, 8 March 2012, was a public holiday. The petitioner moved the CIT on 9 March 2012 with a request for intervention in the matter. The petitioner received a communication recording that the application had been disposed of, only on 13 March 2012. In the mean time a garnishee notice dated 12 March 2012 was addressed to the bankers of the petitioner calling upon them to deposit an amount of Rs. 26.70 crores. Administrative directions for fulfilling recovery targets for the collection of revenue should not be at the expense of foreclosing remedies which are available to assessees for challenging the correctness of a demand. The sanctity of the rule of law must be preserved. The remedies which are legitimately open in law to an assessee to challenge a demand cannot be allowed to be foreclosed by a hasty recourse to coercive powers. Assessing Officers and appellate authorities perform quasi-judicial functions under the Act. Applications for stay require judicial consideration. Rejecting such applications without hearing the assessee, considering submissions and indicating at least brief reasons is impermissible. The judgment of the Division Bench of this Court in *KEC International Ltd.* v. *B.R. Balakrishnan* [2001] 251 ITR 158 / 119 Taxman 974 (Bom.), lays down guidelines in regard to the manner in which applications for stay should be disposed of. The parameters which were laid down by the Division Bench presided over by Hon'ble Mr. Justice S.H. Kapadia (as the Learned Chief Justice of India then was) are as follows:

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Unfortunately these guidelines are now being breached by the Revenue. In a subsequent decision in *Coca Cola India (P.) Ltd.* v. *Addl. CIT* [2006] 150 Taxman 359 / 285 ITR 419 (Bom.), another Division Bench of this Court, while deprecating the conduct of the Revenue in ignoring the parameters laid down in *KEC International Ltd.* (*supra*) in disposing of stay applications also noted that the practice of attaching bank accounts even before communicating the order passed on the stay application was high handed. The Court expressed the hope that the Revenue shall ensure that such instances do not occur in future.

contd. on page no. 695

Statute Updates

(A) Service Tax Judgements

CA. Ashwin H. Shah
ashwinshah.ca@gmail.com

In this issue, judgement on various issues of Service tax are reported for the benefit of Members.

1. Whether the activity of merely supervising loading of coal and co-coordinating with railway authorities without any supervision work being carried out at coal mines amounts to 'clearing' and/or 'forwarding' of coal ? and liable to service tax under Clearing and Forwarding Agent's Services?

[2014] 41 taxmann.com 344 (Ahmedabad - CESTAT) CESTAT, AHMEDABAD BENCH M.R. Patel & Sons *v.* Commissioner of Service Tax, Ahmedabad.

Facts:-

Department sought levy of service tax under Clearing and Forwarding Agent's services on ground that assessee had received goods/coal from premises of supplier and made suitable arrangement for dispatch of said coal as per direction of Gujarat Electricity Board by engaging railway wagon. Assessee argued that it had not carried out any clearing activity.

Held:-

It was held that assessee had not done any activity of clearing coal from mines; assessee was only supervising loading of coal in railway yard and was not doing supervision at mines end. In order to get covered under Clearing & Forwarding Agent services, assessee must have 'cleared' as well as 'forwarded' goods. In this case, both clearing and forwarding activities were absence and, prima facie, therefore, assessee had made out a case for full waiver of pre-deposit .

2. Whether the activity of Transfer of invention, design, idea, process, patent and other technical know-how in terms of sale and purchase agreement as a going concern is liable to service tax under Scientific or Technical Consultancy Services or Intellectual Property Services?

[2014] 41 taxmann.com 347 (Ahmedabad - CESTAT) CESTAT, AHMEDABAD BENCH Gharda Chemicals Ltd. *v.* Commissioner of Central Excise & Service Tax, Surat

Facts:-

Assessee transferred entire property viz. invention, design, idea, process, patent and other technical know-how in terms of sale and purchase agreement as a going concern - Department sought levy of service tax thereon under scientific or technical consultancy services.

Held:-

It is held that from definition of 'scientific or technical consultancy services' there should be an advice given by person or an institution to another person, while in this case it had not been brought out by Revenue as to what advice has been given by seller to buyer and hence no service tax was leviable under this service and demand was stayed accordingly.

Further Intellectual property service is treated to have been rendered only if there is a temporary transfer of some intellectual property or permitting its use while in this case, there was not any temporary transfer of intellectual property and hence no service tax was leviable under this service and demand was stayed accordingly.

3. Whether services of recruitment and supply rendered to students after charging a consideration for ensuring employment attracts service tax under 'Manpower Recruitment or Supply Agency'?

[2014] 41 taxmann.com 371 (Bangalore - CESTAT) CESTAT, BANGALORE BENCH Alchemist HR Services (P.) Ltd. *v.* Commissioner of Customs & Central Excise, Hyderabad

Facts:-

Assessee was engaged in : (a) enrolling students who have completed courses conducted by Institute of Chartered Financial Analysts of India (ICFAI) and

its affiliates and (b) after course was completed, students were assured of employment with various companies/firms with a specified minimum remuneration and was collecting fee of Rs. 3300 from each student in advance. Department sought levy of service tax on such amounts under 'Manpower Recruitment Services'.

Held:-

It was held that to attract Service Tax under category of 'Manpower Recruitment or Supply Agency', services should be rendered to a client . Prima facie, students cannot be treated as clients to whom services of recruitment and supply are being rendered and hence requirement of pre-deposit was waived in entirety .

4. **Whether services of chit fund liable to service tax?**

[2014] 42 taxmann.com 52 (SC) SUPREME COURT OF INDIA Union of India *v.* Delhi Chit Fund Association

Facts:-

Assessee an association of chit funds, challenged Entry 8 of Notification No. 26/2012-ST on ground that since services of chit fund were transaction in money and not liable to service tax, there was no question of exempting whole or any part thereof. Delhi High Court vide its judgment in Delhi Chit Fund Association v. Union of India [2013] 32 taxmann.com 332/32 STT 955 held that : (a) exclusion of 'activity which constitutes transaction merely in money' implies exclusion of "service rendered in connection with activity which constitutes merely a transaction in money" and, therefore, chit funds (including business chit funds), which are 'transactions in money' and are not specified in Explanation 2 to section 65(44), are not liable to service tax; (b) Entry 8 of Notification No. 26/2012-ST, dated 20-6-2012, providing partial exemption/abatement in relation to chit fund business, which itself is not chargeable to service tax, was liable to be quashed

Held:-

The court dismissed the Special Leave Petition against judgment of Delhi High Court .

5. **Where service tax demanded under reverse charge on foreign commission agent's services would be available as Cenvat credit to assessee ?**

[2013] 40 taxmann.com 370 (Madras) HIGH COURT OF MADRAS Loomtex Exports *v.*Commissioner of Central Excise & Service Tax

Facts:-

Assessee, a manufacturer of textile made ups, engaged services of agents outside India for procurement of orders and paid commission for same. Department demanded service tax thereon under reverse charge. Assessee argued that : (a) services had not been rendered in India but were rendered outside India, (b) even otherwise, said services were exempt under Notification No. 14/2004-ST, read with Annual Supplement to Foreign Trade Policy 2004-09, (c) amount of service tax, if paid, would be eligible as Cenvat Credit, thus, making entire exercise revenue neutral, and (d) demand was barred by limitation and, accordingly, no service tax was payable. Assessee deposited a part of demand under protest. Tribunal ordered partial pre-deposit .

Held:-

It was held that even though relevance or otherwise of Notification relied on by assessee, and Foreign Trade Policy is a matter for consideration in appeal filed before Tribunal, considering prima facie plea of assessee that entire exercise ultimately, would be only revenue neutral and considering balance of convenience, requirement of pre-deposit was liable to be set aside. Hence, Tribunal was directed to hear appeal on merits without insisting on pre-deposit.

6. **Whether PVC cables and panel boards used to provide electric connection in factory establishment are eligible for credit as 'capital goods'?**

[2014] 41 taxmann.com 66 (Madhya Pradesh) HIGH COURT OF MADHYA PRADESH Commissioner of Central Excise, Bhopal *v.* Bhopal Sugar Industries Ltd.

Facts:-

Assessee, a manufacturer of sugar, with a view to provide electric connection in entire establishment, used PVC cables and panel boards. Assessee took

credit of said items but department denied the said credit .

Held:-

It was held that definition of "capital goods" is comprehensive in nature and Panel Board and PVC cables which are used in manufacturing business are eligible for credit as 'capital goods'. In fact, it was held in CCE v. Jawahar Mills Ltd. [2001]6 SCC 274 power cables, capacitors, control panels, cable distribution boards, switches, starters, air compressors and electric wires and cables are eligible for credit as 'capital goods', only requirement being that same should be used in factory of manufacturer and hence credit on said goods was allowed as 'capital goods' .

7. [2014] 41 taxmann.com 535 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Gobind Castings (P.) Ltd. *v.* Commissioner of Central Excise, Chandigarh

Facts:-

Department sought reversal of Cenvat credit on ground that assessee had perpetuated a fraud while availing Cenvat credit on raw material allegedly procured from various sources, though no such material was procured. Out of ten transporters, seven were found non-existent and another three had denied any transportation carried out for assessee. A majority of purchases were not backed by goods/ transport receipts. On assessee's appeal, Tribunal ordered part-pre-deposit and dismissed appeal for want of compliance with pre-deposit .

Held:-

It was held that facts of present case prima facie disclosed an unmitigated fraud perpetuated by assessee while availing cenvat credit on raw material allegedly procured by them from various sources. One of suppliers had stated that no inputs/goods were supplied by them but cheques issued in respect thereof were encashed and cash was returned to assessee. Hence, there was no error on part of Tribunal in directing part pre-deposit and dismissing appeal in default thereof .

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Statute Updates

(B) Foreign Exchange Management Act (FEMA)

CA. Savan Godiawala
sgodiawala@deloitte.com

Facilities for Persons Resident outside India – Clarification

Clarification regarding remittance of funds on cash/TOM/ spot basis to a bank other than AD Category I bank:

- It is clarified that a foreign investor is free to remit funds through any bank of its choice for any transaction permitted under FEMA, 1999 or the Regulations / Directions framed thereunder.
- The funds thus remitted can be transferred to the designated AD Category -I custodian bank through the banking channel. However, KYC in respect of the remitter, wherever required, is a joint responsibility of the bank that has received the remittance as well as the bank that ultimately receives the proceeds of the remittance.
- The first bank will be privy to the details of the remitter and the purpose of the remittance, the second bank, will have access to complete information from the recipient's perspective.
- The remittance receiving bank is required to issue FIRC to the bank receiving the proceeds to establish the fact the funds had been remitted in foreign currency.

For full text refer to: A.P. (DIR Series) Circular No. 96

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8699&Mode=0

Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards / Combating the Financing of Terrorism (CFT) Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009 Money changing activities

It has been decided to rationalise the difficulties in submitting documentation to conduct forex transactions on behalf of a company:

- The requirement of submitting a Resolution of the Board of Directors is being done away with and a corporate may now submit to the AMC a list of officials with names and signatures authorized by the Managing Director / Chief Financial Officer of the company to conduct forex transactions on its behalf. The amended instructions are given in the Annexure to the circular.

For full text refer to: A.P. (DIR Series) Circular No. 97

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8700&Mode=0

Foreign investment in India by SEBI registered Long term investors in Government dated Securities

Revision in present sub-limit for investments by FIIs, QFIs and long term investors in Government securities out of the total USD 30 billion:

- The existing sub-limit of USD 5 billion available to long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds and Foreign Central Banks for investment in Government dated securities is enhanced to USD 10 billion, within the total limit of USD 30 billion available for foreign investments in Government securities.

For full text refer to: A.P. (DIR Series) Circular No. 99

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8721&Mode=0

Third party payments for export / import transactions

Amendment in condition to allow third party payments for export of goods & software / import of goods:

- Requirement of "firm irrevocable order backed by a tripartite agreement should be in place" specified in the Circular may not be insisted upon in case where documentary evidence for circumstances leading to third party payments / name of the third party being mentioned in the irrevocable order/ invoice has been produced. This shall be subject to conditions as under:
  - (i) AD bank should be satisfied with the bona-fides of the transaction and export documents, such as, invoice / FIRC.
  - (ii) AD bank should consider the FATF statements while handling such transaction.

- Further, with a view to liberalising the procedure, the limit of USD 100,000 eligible for third party payment for import of goods, stands withdrawn.

For full text refer to: A.P. (DIR Series) Circular No. 100

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8731&Mode=0

Foreign Direct Investment – Reporting under FDI Scheme: Amendments in form FC-GPR

- Indian companies are required to report the details of the amount of consideration received for issuing shares and convertible debentures under the Foreign Direct Investment (FDI) scheme to the Regional Office of the Reserve Bank within 30 days of receipt of the amount of consideration in form FC-GPR.
- In order to further capture the granular details of FDI as regards Brownfield/Greenfield investments and the date of incorporation of Investee Company, Form FC-GPR has been revised. Accordingly, the details of FDI should, henceforth, be reported in the revised Form FC-GPR, enclosed as Annex-I to this circular.

For full text refer to: A.P. (DIR Series) Circular No. 102

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8742&Mode=0

Foreign investment in India by SEBI registered FII, QFI and long term investors in Corporate Debt

In terms of A.P.(DIR Series) Circular No.94 dated April 1, 2013, the present limit for investment by SEBI registered FIIs, QFIs and long term investors in Corporate debt stands at USD 51 billion with a sub-limit of USD 3.5 billion available for investment in Commercial Paper (CP). This sub-limit is being presently utilised only to the extent of around 58% of the limit put in place by SEBI.

- To encourage long term investors, it has now been decided, to reduce, with immediate effect, the existing Commercial Paper sub-limit of USD 3.5 billion by USD 1.5 billion to USD 2 billion. The balance USD 1.5 billion shall, however, continue to be part of the total Corporate debt limit of USD 51 billion and will be available to eligible foreign investors for investment in Corporate debt.

For full text refer to: A.P. (DIR Series) Circular No. 103

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8746&Mode=0

External Commercial Borrowings (ECB) – Reporting arrangements

In order to capture details of the financial hedges contracted by corporates, of their foreign currency exposure relating to ECB and their foreign currency earnings and expenditure, the format of ECB-2 Return has been modified (Part-E) and the same has been given in the Annexure to this circular. The reporting in the modified ECB-2 Return will be applicable from the return of the month April 2014 onwards.

For full text refer to: A.P. (DIR Series) Circular No. 104

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8747&Mode=0

Foreign Direct Investment (FDI) into a Small Scale Industrial Undertakings (SSI) / Micro & Small Enterprises (MSE) and in Industrial Undertaking manufacturing items reserved for SSI/MSE

With the promulgation of the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, the extant policy for foreign direct investment (FDI) in Small Scale Industrial unit and in a company which has de-registered its small scale industry status and is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, has since been reviewed and it has been decided that;

- A company which is reckoned as Micro and Small Enterprises (MSE) (earlier Small Scale Industries) in terms of MSMED Act, 2006 and not engaged in any activity/sector mentioned in Annex A to schedule 1 to the Notification, ibid may issue shares or convertible debentures to a person resident outside India, subject to the limits prescribed in Annex B to schedule 1, in accordance with the entry routes specified therein and the provision of Foreign Direct Investment Policy, as notified by the Ministry of Commerce & Industry, Government of India, from time to time.
- Any Industrial undertaking, with or without FDI, which is not an MSE, having an industrial license under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for manufacture in the MSE sector may issue shares in excess of 24per cent of its paid up capital with prior approval of the Foreign Investment Promotion Board of the Government of India.

For full text refer to: A.P. (DIR Series) Circular No. 107

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8750&Mode=0

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Statute Updates

(C) Value Added Tax (VAT)

CA. Bihari B. Shah
biharishah@yahoo.com.

[I] **Important Determination given u/s. 80 of the Act which is important for day to-day practice:**

Ques.

The dealer is purchasing the blank CD and in that CD, songs, poets, pictures are inserted. Whether this activity of insertion is a manufacturing or not?

Reply

In case of Shriji Impex P. Ltd. it has been determined that looking to the definition of manufacturer u/s. 2(14) of the GVAT Act, the word 'altering' is used, however, in this procedure there is no altering is involved and therefore this insertion is not a manufacturing.

Ques:

In this case, the dealer is also gifting CD with the purchase of the book to the customers, whether CD given as a gift is a sale?

Reply

The CD given as a gift is not a sale but if CD is purchased and tax credit is claimed, the tax credit will not be available on such gifts.

[II] **Important Judgments:**

[A] The Hon. High Court of Gujarat in case of Abdul Karimhaji Umarbhai Rasulbhai has given a good decision on Penalty issue.

[i] Penalty u/s. 34(12) levied after issuing notice in Form No. 309 set aside since notice did not contain any proposal to impose penalty under section 34(12) of GVAT Act, 2003.

The Hon'ble Gujarat High Court after taking into consideration submissions of both the parties on point (i) remanded the matter to the Tribunal for fresh decision. With respect to point no. (ii), the High Court after perusing notice in Form 309 observed that there is a reference to the penalty u/s. 34(7) and u/s. 12(7) of the Act only. However, there is no reference of penalty u/s. 34(12) of the Act. Thus, before imposing the penalty u/s. 34(12) of the Act neither any statutory notice has been served upon the assessee nor the assessee has been called upon to show cause as to why the penalty u/s. 34(12) of the Act may not be levied/imposed.

The Hon'ble Gujarat High Court accordingly held that the order passed by the first Adjudicating Authority, partly confirmed by the First Appellate Authority and confirmed by the Appellate Tribunal imposing the Penalty u/s. 34(12) of the Act cannot be sustained and the same deserves to be quashed and set aside as the same is in breach of principle of natural justice.

The Hon'ble High Court consequently quashed and set aside the order passed by the First Adjudicating Authority imposing penalty u/s. 34(12) of the Act, partly confirmed by the First Appellate Authority and further confirmed by the Appellate Tribunal.

[B] **Input Tax credit and billing transactions:**

The Hon'ble GVAT Tribunal in case of Shah Enterprise has given a decision on the issue "the appellant was not eligible to claim input tax credit as the purchases were made by the appellant from the vendors whose registration has been cancelled abinitio or whose were alleged to have been engaged in billing activity and the appellant was not argued about it when the appellant has purchased the goods, the appellant has all documentary evidences like Invoices, Bank details etc. however the A. O. has taken the view that as only bills have been issued and there were no actual transaction of sales and purchases and therefore amount collected by the

appellant on sales was forfeited as unauthorized collection and penalty @ 100% was levied.

The Tribunal has considered the rival submissions and facts of the case. They have also gone through the recent judgment in the case of M/s. KFC Industries Pvt. Ltd. For the reasons stated in the said decision and finding recorded in the said decision, they are of the view that both the authorities below have committed a serious mistake of law and fact. The appellant has shown sales and purchase in its return and books of accounts were also maintained, on the basis, that the appellant has entered into real and genuine transactions of sale and purchases. The assessing officer should not have taken absolutely converse view and invoked the provisions of sec., 31(3) and 31(4) of the Act. Once having presented its case in the returns as well as books of accounts that the appellant has entered into real and genuine transactions of sales and purchases it is not open for the assessing officer to take altogether a different stand. Hence, while not approving the stand of the department and deleting the penalty levied u/s. 31(3) and 31(4) of the Act, the Tribunal, however, does not absolve the appellant from its liability that may be really arising out of the transactions undertaken by the appellant. The appellant has claimed the input tax credit on the purchases made from the so called registered dealers. If the transactions were not real and genuine and if such transactions were merely based on billing activities, the appellant could not be held to be entitled to claim any input tax credit as per the decision of this Tribunal in the case of Madhav Steel Corporation which is confirmed by the Hon'ble Gujarat High Court. Similarly while disapproving the levy of penalty u/s.31(4) of the Act, the Tribunal is also of the view that by disallowance of input tax credit, a huge liability of tax will arise and the appellant was also be liable to pay interest on that amount. Similarly, by entering into such false transactions and filing false returns, the appellant could be liable to penalty and prosecution under the different provisions of GVAT Act. Even the appellant's case as well as the case of other dealers with whom the appellant has entered in fake transactions must be examined from the point of view as to whether their registrations are liable to be cancelled abinitio. Prima facie it appears to the Tribunal that the appellant has not utilized the registration certificate obtained by him to carry out any real, genuine or bonafide business. Such registration certificates might have been used by him for some oblique motives. If the registration certificates of the appellant as well as other dealers with whom the appellant has entered into transactions either by way of sale or purchase are not cancelled. In that case, all these dealers involved in such fake transactions are liable to be deprived of their respective registrations. Since the assessing officer has not undertaken this exercise, though in the order it was observed that the appellant is not entitled to claim input tax credit on such fake transactions, all these issues are however required to be examined very minutely and thoroughly and hence this matter will have to go back to the assessing officer to pass de novo assessment order, keeping in mind the observations made by this Tribunal herein above as well as in the case of Madhav Steel Corporation and in the case of M/s. KFC Industries Pvt. Ltd.

Order:

This appeal is allowed for statistical purpose. The order passed by the learned assessing officer as well as by the learned Deputy Commissioner of Commercial Tax are hereby quashed and set aside and the matter is remanded to the assessing officer to pass fresh order by examining the whole issue in light of the appellant's claim regarding input tax credit on the alleged purchase made by the appellant and other consequential issues such as levy of tax, interest and penalty and prosecution as well as the cancellation of registration if not done so far, as indicated above after according sufficient opportunity of being heard to the appellant and after considering the explanation that may be offered by the appellant.

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Statute Updates

(D) Corporate Laws

CA. Naveen Mandovara
naveenmandovara@gmail.com

(A) MCA updates:

1. Taking accounts of comments/inputs from Income Tax Dept. & other sectoral regulators by the Regional Directors (RDs) for Report U/S. 394A of the Companies Act, 1956.

The MCA has decided that the RDs shall invite specific comments from Income Tax Dept. within 15 days of receipt of Notice before filing his response to the Court. The RDs shall also see if in a particular case feedback from any other sectoral regulator is to be obtained and if it appears necessary to obtain such feedback, then they shall obtain the same.

(**F. No. 2/1/2014-CL-V & General Circular No. 1/2014 dated 15/01/2014**)

2. Restriction on use of word National, Bank, Stock Exchange or Exchange in the names of Companies/ LLPs.

The MCA has directed as under:

- The word "**National**" should not be used unless it's a Govt. Company & the Central/State Govts. have a stake in it.
- The word "**Bank**" should not be used unless the NOC from RBI is produced.
- The word "**Stock Exchange or Exchange**" should not be used unless the NOC from the SEBI is produced by the Promoters before the ROCs.

(**F. No. 2/2/2014-CL-V & General Circular No. 2/2014 dated 11/02/2014**)

3. Clarification with regard to Section 185 of the Companies Act, 2013.

The Ministry has examined the applicability of Section 372A of the Companies Act, 1956, vis-a-vis Section 185 of the Companies Act, 2013.

Section 372A of the Companies Act, 1956, specifically exempts any loans made, any guarantee given or security provided or any investment mode by d holding company to its wholly owned subsidiary. Whereas, Section 185 of the Companies Act, 2013, prohibits guarantee given or any security provided by a holding company in respect of any loan taken by its subsidiary company except in the ordinary course of business.

In order to maintain harmony with regard to applicability of Section 372A of the Companies Act, 1956, till the same is repealed and Section 185 of the Companies Act, 2013 is notified, it is hereby clarified that any guarantee given or security Provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company, exemption as provided in clause (d) of sub-section (8) of section 372A of the Companies Act, 1956 shall be applicable till section 186 of the Companies Act, 2013 is notified.

This clarification will, however, be applicable to cases where loans so obtained are exclusively utilized by the subsidiary for its principal business activities.

(**F. No. 1/12/2013-CL-V & General Circular No. 3/2014 dated 14/02/2014**)

(B) Latest Judgements:

1. Colorband Dyestuff Private Limited Vs. Hotz Industries Limited (Delhi High Court, Co. Pet. No. 201/2013, 28.01.2014)

A petition was filed by the petitioner under Section 433 (e) of the Companies Act, 1956, alleging that the respondent company is unable to pay its debts as the respondent has failed and neglected to pay the invoices raised by the petitioner for the goods supplied by the petitioner to the respondent.

The case of the petitioner was that the petitioner had supplied certain dyes from time to time to the respondent company who is engaged in the business of, inter alia, dying yarn for its customers. Accordingly, the petitioner was claiming that a sum of Rs. 5,60,562/- is due and payable by the respondent. Since the respondent was disputing that the said amount was due and payable, the petitioner sent a notice under Section 434 (1) (a).

The court held that the facts clearly indicate that the debt claimed by the petitioner is not an admitted debt but is stoutly disputed by the respondent. It is settled law that the proceedings under Section 433 are not proceedings for recovery of amounts due or claimed by a creditor.

Proceedings for winding up of the company are premised on the inability of a company to pay its admitted debts. These proceedings cannot be converted to proceedings for resolution of contentious issues and recourse to such proceedings under Section 433 of the Act cannot be taken either to adjudicate or resolve existing between the parties. The present case is clearly a case where a pre-existing dispute exists between the petitioner and the respondent and, accordingly, this present petition under Section 433 is mis-conceived, hence the petition was dismissed.

2. **Satish Sharma Vs. Vrinda Realtors Ltd. and Ors. (Delhi High Court, CO. A (SB) 37/2013 & CA 1510/2013, 17.02.2014)**

An appeal has been filed by the appellant, under Section 10F of the Companies Act, 1956, seeking setting aside of the order dated 07.06.2013 passed by the Company Law Board. By the impugned order the Company Law Board has vacated the interim order passed on 01.08.2012, whereby the company was restrained from alienating the assets of the company.

A question was raised that whether the Company Law Board has erred in vacating the interim orders without any application being filed by the respondent and whether the Company Law Board could take notice of the fact that the protest petition filed by the petitioner against the closure report had been dismissed by the Chief Judicial Magistrate.

It was held that the Company Law Board exercises summary jurisdiction and its decisions are based on preponderance of probabilities. While it is correct that a pendency of a criminal complaint does not divest the jurisdiction of civil courts, it would be erroneous to contend that the outcome of a criminal proceeding regarding the same subject facts ought to be ignored by a civil court. The decision of the police authorities and the Chief Judicial Magistrate does not fetter the Company Law Board and the Board is empowered to evaluate all material and evidence to determine whether the alleged transfer of shares by the appellant and the change in the constitution of the Board of Directors are valid or not. Accordingly the appeal was dismissed.

3. **S. M. C. Global Securities Limited, New Delhi vs Securities and Exchange Board of India (SAT-Mumbai, Appeal No. 152 of 2013, 31.01.2014)** The core issues in the present appeal were the form and the mode of collection of margin money by a Clearing Member (CM) as required from time to time from its Trading Members (TMs) and the manner of its reporting to the stock exchange. The appellant failed to collect the requisite margin money from the two TMs before allowing them to trade.

The appellant, namely, SMC Global Securities Limited, had preferred the present appeal against the impugned order dated August 02, 2013, passed by the respondent's Whole Time Member, under Section 19 of the SEBI Act, 1992, read with Regulations 28 (2) of the SEBI (Intermediaries) Regulations, 2008, prohibiting the appellant from taking up any new assignment or contract or launch a new scheme for a period of three months.

The appellant collected whatever security it could procure from the two TMs (Trading Members) in the form of shares, post dated and undated cheques, purchase of property or property documents etc.

Accepting any sort of security such as post and undated cheques, property, property documents or furniture and fixtures by a CM from TMs is neither conceived in the SEBI circulars or NSE circulars nor can it be termed a prudent risk management measure.

It was held that it is pertinent for all market players to maintain the sanctity of margining as a risk management tool while dealing in securities, be it in the cash or in the F&O segment and therefore, the appeal was dismissed.

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Statute Updates

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

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1) Circular regarding Clarification regarding disallowance of expenses u/s 14A of the Income Tax Act

CBDT vide this circular clarified that rule 8D r.w.s. 14A of the act provides for disallowance of expenditure even where taxpayer in a particular year has not earned any exempt income.

(For full text refer Circular No.5, dated 11th February, 2014)

2) Circular Clarifying the scope of additional income-tax on distributed income u/s 115R of the Income Tax Act.

CBDT hereby clarifies that additional income-tax under sec 115R(2) is to be levied on income distributed by way of dividend to unit-holders of mutual funds or specified companies and receipts from redemption/repurchase of units or allotment of additional units by way of bonus units would not be subjected to levy of additional income tax under that section.

(For full text refer Circular No. 6, dated 11th February,2014)

Service Tax

1) Amendment in Mega Exemption Notification no. 25/2012

The central government hereby makes further amendments in clause (s) of Para 2 "Definitions", which is as under:-

'(s) "governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;'.

(Notification No. 02/2014 ,dated 30th January, 2014)

2) Clarification regarding levy of service tax on services provided by recognised association or a registered association

The Central Government hereby directs that the service tax payable on the services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract, shall not be required to be paid in respect of such taxable service on which the service tax was not being levied during the aforesaid period in accordance with the said practice.

(Notification No. 03/2014, dated 3rd February, 2014)

3) Notification regarding further amendment in Mega Notification no.25/2012.

The Central Government hereby makes following further amendments in the mega notification no..25/ 2012 namely:-

(i) after entry 2, the following entry shall be inserted, namely:---

"2A.Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation;";

(ii) after entry 39, the following entry shall **be inserted, namely:-**

"40. Services by way of loading, unloading, packing, storage or warehousing of rice.".

(Notification No. 04/2014, dated 17th February,2014)

4) The Central Govt vide **circular no. 177/2014, dated 17th February,2014** extends the benefit of exemption from service tax on rice by way of appropriate entries such as transportation of rice by a rail or a vessel or by a good transport agency; Loading, unloading, packing, storage and warehousing of rice and Milling of paddy into rice.

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From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

AS – 28 Impairment of Assets

Reliance Industries Ltd.–Annual Report 2012-13

Notes to Financial Statements for the year ended 31st March, 2013

Significant Accounting Policies

G. Impairment of Assets

An asset is treated as impaired when the carrying cost of asset exceeds its recoverable value. An impairment loss is charged to the Profit and Loss Account in the year in which an asset is identified as impaired. The impairment loss recognised in prior accounting period is reversed if there has been a change in the estimate of recoverable amount.

Allsec Technologies Ltd–Annual Report 2012-13

Notes to Financial Statements for the year ended 31st March, 2013

2.1 Summary of Significant Accounting Policies

(f) Impairment of tangible and intangible assets

The Company assesses at each reporting date whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the Company estimates the asset's recoverable amount. An asset's recoverable amount is the higher of an asset's or cash-generating unit's (CGU) net selling price and its value in use. The recoverable amount is determined for an individual asset, unless the asset does not generate cash inflows that are largely independent of those from other assets or groups of assets. Where the carrying amount of an asset or CGU exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of the time value of money and the risks specific to the asset. In determining net selling price, recent market transactions are taken into account, if available. If no such transactions can be identified, an appropriate valuation model is used.

The Company bases its impairment calculation on detailed budgets and forecast calculations which are prepared separately for each of the Company's cash-generating units to which the individual assets are allocated. These budgets and forecast calculations are generally covering a period of five years.

After impairment, depreciation is provided on the revised carrying amount of the asset over its remaining useful life.

An assessment is made at each reporting date as to whether there is any indication that previously recognized impairment losses may no longer exist or may have decreased. If such indication exists, the Company estimates the asset's or cash-generating unit's recoverable amount. A previously recognized impairment loss is reversed. Only if there has been a change in the assumptions used to determine the asset's recoverable amount since the last impairment loss was recognized. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no impairment loss been recognized for the asset in prior years. Such reversal is recognized in the statement of profit and loss unless the asset is carried at a revalued amount, in which case the reversal is treated as a revaluation increase.

Motilal Oswal Financial Services Limited – Annual Report 2012-13

Significant Accounting Policies for the year ended 31st March, 2013

Note 19 : Significant Accounting Policies

19.14 Impairment of Assets:

The company assesses at each balance sheet date whether there is any indication that an asset may be impaired. If any such indication exists, the company estimates the recoverable amount of the asset. If such recoverable amount of the asset or the recoverable amount of the cash generating unit which the asset belongs to, is less than its carrying amount, the carrying amount is reduced to its recoverable amount. The reduction is treated as an impairment loss and is recognized in the Statement of Profit and Loss. If at the balance sheet date there is an indication that a previously assessed impairment loss no longer exists, the recoverable amount is reassessed and the asset is reflected at the recoverable amount subject to a maximum of depreciated historical cost.

Pearl Global Industries Ltd–Annual Report 2012-13

Notes to Financial Statements for the year ended 31st March, 2013

2.3 Summary of Significant Accounting Policies

n) Impairment of Assets

An asset is treated as impaired when the carrying cost of assets exceeds its recoverable value. An impairment loss is charged to the Statement of Profit & Loss in the year in which an asset is identified as impaired. The impairment loss recognized in prior accounting period is reversed if there has been a change in the estimate of recoverable amount.

Vascon Engineers Ltd –Annual Report 2012-13

Notes to Financial Statements as at 31st March, 2013

2 Summary of Significant Accounting Policies

2. 4 Impairment

As at each Balance sheet date, the carrying amount of assets is tested for impairment so as to determine

a) the provision for impairment loss, if any and

b) the reversal of impairment loss recognized in previous period, if any Impairment loss is recognized when carrying amount of an asset exceeds its recoverable amount.

Recoverable amount is determined:

a) in the case of individual asset, at higher of the net selling price or value in use

b) in the case of cash generating unit (a group of assets that generates identified, independent cash flows), at the higher of the cash generating unit's net selling price and the value in use (value in use is determined as the present value of estimated future cash flows from the continuing use of an asset and from its disposal at the end of its useful life)

Godawari Power & Ispat Ltd – Annual Report 2012-13

Notes to Financial Statements for the year ended 31st March, 2013

2.1 Summary of Significant Accounting Policies

p) Impairment of Tangible and Intangible Assets

The Company assesses at each balance sheet date whether there is any indication that any asset may be impaired. If any such indication exists, the carrying value of such assets is reduced to its estimated recoverable amount and the amount of such impairment loss is charged to statement of profit & loss. If at the balance sheet date there is an indication that previously assessed impairment loss no longer exists, then such loss is reversed and the asset is restated to that effect.

VA Tech Wabag Ltd–Annual Report 2012-13

Summary of Significant Accounting Policies And Other Explanatory Information

2. Summary of Accounting Policies :

2.5 Impairment of assets

The company assesses at each balance sheet date whether there is any indication that an asset may be impaired. If any such indication exits, the company estimates the recoverable amount of the assets. An asset's recoverable amount is the higher of an asset's or cash generating unit's net selling price and its valuation in use. Recoverable amount is determined for an individual asset, unless the asset does not generate cash inflows from continuing use that are largely independent of those from other assets or group of assets. If such recoverable amount of the asset or the recoverable amount of the cash generating unit to which the asset belongs is less than its carrying amount, the carrying amount is reduced to its recoverable amount and the reduction is treated as an impairment loss and is recognised in the statement of profit and loss. If at the balance sheet date there is an indication that a previously assessed impairment loss no longer exists, the recoverable amount is reassessed and the asset is reflected at the recoverable amount subject to a maximum of depreciated historical cost and is accordingly reversed in the statement of profit and loss.

ICICI Bank Limited –Annual Report 2012-13

Schedules forming parts of the Accounts

Schedule 17 : Significant Accounting Policies

11. Impairment of Assets

Fixed assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset with future net discounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment is recognised by debiting the profit and loss account and is measured as the amount by which the carrying amount of the assets exceeds the fair value of the assets.

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News Lounge

Compiled by :
Mr. Manthan Khokhani

General Insurance Corporation stares at 75 crore claim for missing Malaysian flight

General Insurance Corporation, the country's sole reinsurance company, expects Rs 75-crore claim from Malaysian Airlines, one of whose aircraft vanished between Malaysia and China last week with 239 passengers on board.

GIC has a 3% share of the total claim, which may be around $400 million, including for passengers. GIC's policy covers the plane's hull and machinery and passenger liability. "For us, the claim will come to around Rs 75 crore," said AK Roy, chairman and managing director, GIC. Hull and machinery insurance is a protection for airline from any damage. However, the company has bought reinsurance to protect itself from a large aviation claim.

The airline was insured for $300-$400 million for passenger liability and $100 million for its parts.

The incident may push up the premium for insurance as well as reinsurance of aviation companies, say insurers. Premium is directly proportional to claims. The premium rates have been steady in the past few years as there were not many claims. "This might harden the aviation rate for Asian market," said an executive from GIC. "The rates were soft since 2010 as there were not many large claims, thanks to safety records." Indian airline companies will renew their policies in later part of the year. There were no major claims since 2009 when an Air France flight crashed in the Atlantic, and Libyan airline Afriquiah Airways at Tripoli International Airport and Air India crashed in Mangalore. Air France led total claim of $650 million on global insurance industry in which GIC bore 3.5% of the claim.

(The Economic Times)

CBI carries out searches at NSEL office, 15 locations

CBI on Thursday carried out searches at 15 locations across the country, including offices of National Sport Exchange Limited in Mumbai, in a case of alleged irregularities in investments by state-run trading company PEC causing a loss of Rs. 120 crore.

The searches were carried out after the agency registered a case of alleged criminal conspiracy to cheat a public sector unit (PEC) in the matter of floating fraudulent paired contracts for trading of agro-commodity on the platform of NSEL, without actually undertaking any genuine trade.

CBI alleged this caused a loss to the government to the tune of Rs. 120 crore (approx).

The agency has registered a case of criminal conspiracy, cheating forgery and relevant sections of Prevention of Corruption Act.

The searched locations included residential premises of five PEC officials, two of NSEL officials and one of private persons.

Seven offices of NSEL and six offices of counterpart in PEC transactions are being searched as part of the operation, they said.

NSEL promoted by Jignesh Shah-headed Financial Technologies India Ltd (FTIL), was hit by crisis after it suspended trade on July 31 last year following a government directive, raising concerns about possible default of Rs. 5,600 crore due to about 13,000 investors, including 7,000 small ones.

(The Hindu)

Gold falls on profit-selling; silver remains higher

Gold prices fell by Rs220 to Rs30,800 per ten grams in Delhi on Thursday on emergence of profit-selling at prevailing higher levels.

However, silver gained for the third-day by adding Rs200 to Rs46,900 per kg on sustained buying by industrial units and coin manufacturers.

Traders said profit-selling by stockists at prevailing higher levels against sluggish demand mainly pulled down gold prices. Rising equities lured investors to park their funds for quick gains and that reduced the gold demand, they said.

On the other hand, silver ready advanced by Rs200 to Rs46,900 per kg and weekly-based delivery by Rs240 to Rs46,690 per kg. It had gained Rs770 in last two days. Silver coins also spurted by Rs1,000 to Rs87,000 for buying and Rs88,000 for selling of 100 pieces.

(The Live Mint)

Government frees up onion export

The government on Wednesday allowed open export of all varieties of onions against the earlier practice of canalising them through State Trading Enterprises (STEs) to enable faster shipment of the commodity.

"Export of onion has been made free. Earlier, export of onion was permitted through STEs," the commerce department said in a notification issued.

Among the canalising agencies for export of onion are Nafed, Spices Trading Corporation, Maharashtra State AgricultureMarketing Board, and AP State Trading Corporation, among others.

Earlier this month, the government had abolished the export floor price of onions as domestic prices dropped to Rs 6-7 a kg in the wholesale markets. The government had imposed minimum export prices (MEP) on onion in September 2013 and then it was raised several times to curb exports and boost domestic supplies as retail prices had shot up as high as Rs 100 a kg in major parts of the country. India had to even import onion to control price rise.

(The Business Standard)

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contd. from page 681

The caution which was addressed by the Division Bench in *Coca Cola India (P.) Ltd.* (*supra*) has again not been followed. In *N. Rajan Nair* v. *ITO* [1987] 165 ITR 650/ 33 Taxman 451 , the Kerala High Court observed thus:

"In exercising his power, the Income-tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the power of mitigating hardships to the assessee."

These are, we may say so with respect, sage observations which must be borne in mind by the assessing authorities. Consistent with the parameters which were laid down by the Division Bench in *KEC International Ltd.* (*supra*) and the observations in the judgment in *Coca Cola (P.) Ltd.* (*supra*), we direct that the following guidelines should be borne in mind for effecting recovery:

1. No recovery of tax should be made pending
   (*a*) Expiry of the time limit for filing an appeal;
   (*b*) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.
2. The stay application, if any, moved by the assessee should be disposed of after hearing the assessee and bearing in mind the guidelines in *KEC International Ltd.* (*supra*);
3. If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay;
4. When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law;
5. In exercising the powers of stay, the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interest of the Revenue while at the same time balancing the need to mitigate hardship to the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order : the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue.

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Discrimination at its Peak

Ref. : Section 234E

A recent circular is issued by CBDT wherein an immunity has been given from payment of late fees to the Government Deductors. This circular seems to be issued after the fact of late filing of TDS statements by Government deductors getting public.

It is a matter of gross discrimination as similar benefit is not given to public at large. Even in the said circular it is clarified that no refund of late fees will be given, if paid. It is very difficult to believe that the Government deductors have made payment of late fees. This clause in the circular is inserted considering the possibility that if similar immunity is given to public at large, in that case no refund will be required to be given.

Circular No. 07/2014

F. No. 275/27/2013-IT(B)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
New Delhi, the 4th March, 2014
All Chief Commissioners of Income-tax
All Directors General of Income-tax

Sub: Ex-post facto extension of due date for filing TDS/TCS statements for FYs 2012-13 and 2013-14 – regarding

The Central Board of Direct Taxes ('the Board') has received several petitions from deductors/collectors, being an office of the Government ('Government deductors'), regarding delay in filing of TDS/TCS statements due to late furnishing of the Book Identification Number (BIN) by the Principal Accounts Officers (PAO) / District Treasury Office (DTO) / Cheque Drawing and Disbursing Office (CDDO). This has resulted in consequential levy of fees under section 234E of the Income-Tax Act, 1961('the Act').

2. The matter has been examined. In case of Government deductors, if TDS/TCS is paid without production of challan, TDS/TCS quarterly statement is to be filed after obtaining the BIN from the PAOs / DTOs / CDDOs who are required to file Form 24G (TDS/TCS Book Adjustment Statement) and intimate the BIN generated to each of the Government deductors in respect of whom the sum deducted has been credited. The mandatory quoting of BIN in the TDS/TCS statements, in the case of Government deductors was applicable from 01-04-2010.

   However, the allotment of Accounts Officers Identification Numbers (AIN) to the PAOs/ DTOs/CDDOs (a pre-requisite for filing Form 24G and generation of BIN) was completed in F.Y. 2012-13. This has resulted in delay in filing of TDS/TCS statements by a large number of Government deductors.

3. In exercise of the powers conferred under section 119 of the Act, the Board has decided to, ex-post facto, extend the due date of filing of the TDS/TCS statement prescribed under subsection (3) of section 200 /proviso to sub-section (3) of section 206C of the Act read with rule 31A/31AA of the Income-tax Rules, 1962. The due date is hereby extended to 31.03.2014 for a Government deductor and mapped to a valid AIN for -

(i) FY 2012-13 - 2nd to 4th Quarter

(ii) FY 2013-14 - 1st to 3rd Quarter

4. However, any fee under section 234E of the Act already paid by a Government deductor shall not be refunded.

5. Timely filing of TDS/TCS statements is essential to ensure timely reconciliation of Government accounts and for providing tax credit to the assessees while processing their Income-tax Returns. Therefore, it is clarified that the above extension is a one time exception in view of the special circumstances referred to above. Since the Government deductor and the associated PAO/ DTO/ CDDO belong to the same administrative setup that regulates the clearance of expenditure, the deductors/collectors may be advised to co-ordinate with the respective PAO/DTO/CDDO to ensure timely receipt of BIN/filing of TDS/TCS statements.

6. This circular may be brought to the notice of all officers for compliance.

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Concept of Accountability Mechanism

In a very recent judgement rendered by Delhi Bench of ITAT, the tribunal has suggested to set up Accountability Mechanism to put a check on Assessing Officers. Absence of Accountability is frequency observed and now it is a ray of hope that such Mechanism will take place in time to come.

The extract of this BOLD dedicision is given here under :

Bharti Airtel Limited : ITA No. 5816 / Del / 2012

ITAT hauls up AO & DRP for "*blatantly frivolous & unsustainable*" additions. Suggests that accountability mechanism be set up to put a check on AO. Rationale for existence of ineffective DRP questioned

Pursuant to a scheme of arrangement the assessee transferred its telecom infrastructure assets to Bharti Infratel Ltd for Nil consideration with the result that the WDV of the said assets amounting to Rs. 5,739 crore was written off by debiting the P&L A/c. A corresponding amount was credited to the P&L A/c from the 'business restructuring reserve' with the result that there was no net debit to the P&L A/c. The AO & DRP noted that there was no effect on the P&L A/c but still held that an addition of Rs 5,739 crore had to be made to the assessee's income. On appeal by the assessee to the Tribunal, HELD by the Tribunal allowing the appeal:

… if an action of the AO is so blatantly unreasonable that such seasoned senior officers well versed with functioning of judicial forums, as the learned DRs are, cannot even go through the convincing motions of defending the same before us, such unreasonable conduct of the AO deserves to be scrutinized seriously. At a time when evolving societal pressures demand greater degree of accountability in the governance also, it does no good to the judicial institutions to watch such situations as helpless spectators. If it is indeed a case of frivolous addition, someone should be accountable for the resultant undue hardship to the taxpayer -rather than being allowed to walk away with a subtle, though easily discernable, admission to the effect that yes it was a frivolous addition, and, if it is not a frivolous addition, there has to be reasonable defence, before us, for such an addition.

… Whichever way one looks at these entries, the inescapable conclusion is that the addition made by the AO is wholly erroneous and devoid of any legally sustainable merits.

…. The fact that even such purely factual issues are not adequately dealt with by the DRPs raises a big question mark on the efficacy of the very institution of Dispute Resolution Panel. One can perhaps understand, even if not condone, such frivolous additions being made by the AOs, who are relatively younger officers with limited exposure and experience, but the Dispute Resolution Panels, manned by very distinguished and senior Commissioners of eminence, will lose all their relevance, if, irrespective of their heavy work load and demanding schedules, these forums do not rise to the occasion and do not deal with the objections raised before them in a comprehensive and effective manner.

… While we delete the impugned addition of Rs 5739,60,05,089, we also place on record our dissatisfaction with the way and manner in which this issue has been handled at the assessment stage. Let us not forget that the majesty of law is as much damaged by not rendering justice to the conduct which cannot be faulted as much it is damaged by a wrongdoer going unpunished; not giving relief in deserving cases is as much of a disservice to the cause of justice and the cause of nation as much a disservice it is , to these causes, by granting undue reliefs. The time has come that a strong institutional check is put in place for dealing with such eventualities and de-incentivizing this kind of a conduct.

Source : itatonline.org

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Be faithful in small things because it is in them that your strength lies.

Mother Teresa

Progress is often equal to the difference between mind and mindset.

N.R.Narayanmurthy

The Man who works for others, without any selfish motive, really does good to himself

Sri Rama Krishna Paramhansa

Association News

CA. Chintan M. Doshi
Hon. Secretary

CA. Abhishek J. Jain
Hon. Secretary

Knowledge Clinic

Knowledge Clinic is to be held on Friday, 28th March 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 Friday, 21st March 2014.

Glimpses of events gone by:

Workshop on IPOD - Inner Peace Outer Dynamism & IVBI-I Vote for a better India - on 19.02.2014

(L to R CA. Shailesh Shah, CA. P.H. Khandelwal, Faculty Mr. Kartik Shah, CA. Prakash Sheth, CA. Vikash Jain)

10th Study Circle Meeting on the topic of "Issues on Capital Gain" on 04.03.2014

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

Mock Income Tax Tribunal on 01-03-2014

4th Brain Trust Cum Workshop Meeting on the topic of " Recent Important Judgements in Income Tax – Practical Aspects" on 08.03.2014

(L to R CA. Shailesh C. Shah, CA. Chintan M. Doshi, CA. Prakash Sheth, Faculty Mr. Manish J. Shah, CA. Ashok C. Kataria, CA. Surya O. Chhabria)

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