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CONTENTS

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

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

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Human Values

We are just about to celebrate Diwali Festival. In recent time celebration has become a phenomenon. We may get joy out of celebration but not happiness. Today, one does not have time to look into his own self (Spiritually). The distance between two places in the world is shortening but the distance between two human beings is ever increasing. The obvious reason is, life has become too much materialistic. Life can be lived, driven by desires or knowledge. If life is lived based on desires, it is easy and which provides instant gratification. When one tests the living life based on luxury and comforts, he does not dare to venture in to a living life based on knowledge (*Gyana*). A lifestyle based on desire gives quick and visible result but in the process human values are eroded whereas the life style based on *Gyana* may appear to be difficult however, at the end of the journey it ensures abundant happiness which is a part of eternal satisfaction as against more tangible joy derived with materialistic approach.

Life is a Festival bestowed by Almighty to *Jiva*. One should live life with human values. **Human values are the virtues that guide us to take into account the human element when one interacts with other human beings**. The legacy of how to inculcate human values is found in our *Shastra*. In today's fast moving life, we as parents struggling hard to have time to interact even with our children on daily or weekly basis. We are overlooking our parents. We hardly interact with our neighbours. Mostly human touch is lost in all our day today human activities. We are so much concentrated on our goal of becoming financially wealthier by ignoring the wealth of human relationship.

We are missing one point that we are human beings and we need human beings to live on this earth. There is hardly anything that is not found out in our rich legacy of *Shastra* to discover new ways and means for human value appreciation. **The common ground of all Religions is human value.** The human values are embedded in customs , festivals or traditions. It is important to follow such traditions and rituals and celebrate the festivals with the spirit and intent for which it has been introduced in our society. There is no advocacy to follow Religion blindly but desirable to have a look at the customs and tradition with a scientific approach.

India has preserved human values by introducing festivals, traditions and customs. As we know, *Smriti* (memory) has limited life with reference to place and time, while process of practicing values through other modes known as S*hruti*, is timeless. India has rich legacy of Shruti . The Ramayana, Mahabharat , Gita and many more other books are filled up with full of experience and wisdom for human beings. All those are torch bearer for the society.

Practicing Human Values are social, ethical and spiritual process in the mankind. The most of the parts of n world need to have more experience in practicing human values. They are appreciating human values based on their social requirements. Unless the society respects each human being, human value chain cannot be tied up. For example a marriage ceremony is an acceptance of natural need of human being, prevalent with utmost dignity, for many years in India. The relationship between two families is at paramount with dignified human values. Other examples of human value appreciation are respecting elders, teachers, parents and helping needy person in society.

The reality is, Western world has been practicing Dharma (to act), Arth (Creation of money) and Kaam (desire). All activities are self-centered. They are far ahead in following this path with full of enthusiasm but they know less about MOKSH (Spiritual eternity or happiness within soul). We follow them till they travel and stop there. We need to recall our rich legacy of practicing human values. We need to see whose are we rather than who are we. Money has limited purchasing power. Let us respect relationship and follow the call of conscience. Some retrospection is suggested by posing question to ourselves whether birth has taken as per our choice, whether death is as per our expected time, whether the result of our efforts is as per our expectation and …….Have a Faith in Supreme Power .

Let us progress by respecting human values.

Editorial

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Going out of the Way

After much hue and cry, the professionals across the country took a sigh of relief when the CBDT extended the due date of filing of returns in case of tax audit assessees to 30-11-2014. The important observation that could be drawn is that the CBDT continuously ignored the representations made by various professional bodies seeking extension of the due date; despite the untimely change in the reporting requirement formats was a genuine cause of hardship for all the practicing chartered accountants. The CBDT did not seem to take a pragmatic view of the situation but had to give away its adamant and rigid approach when various High Courts of the country directed to extend the date in line with the date of furnishing of tax audit reports.

The question arises, what has led all professional to a situation where every one of us is complaining against the system and the changing time that is casting more and more responsibility on a practicing chartered accountant. Be it the provisions of new Companies Act, TDS compliances or fighting for a truly deserved extension of due date of filing of returns. The answer is simple. We appear together up to the point of raising a concern but then wither away when the fight needs to be initiated against the system. We hardly show any valor to battle out the problem on hand and try to adjust with a situation despite same being grossly unjust and unfair. Are we are not too reluctant to come out of our comfort zone to protest and call spade, a spade?

The time when nobody is willing to come forward to take any cause for the profession, may be including the Institute of Chartered Accountants of India, the brave hearts who took up the issue of extension of the due date and decided to challenge the order of CBDT in various High Courts deserve to be congratulated and complimented. As far as the case in the Gujarat High Court is concerned, it is a matter of great pride that a member of the Association and more importantly a member of this Journal Committee, CA. Rajni M. Shah first decided to take up the issue by going out of the all known ways. Various petitions were filed on similar lines in various other High Courts of the country where almost all High Courts unanimously concluded that the move of CBDT to extend date of furnishing tax audit reports without extending the date of filing of return was not fair.

Again referring back the moot question, why are we all just uniting to complain but not to take a cause? Why are we afraid to come forward, to challenge what is wrong. This piece of editorial and including all earlier have suggested that abrupt and random changes are coming as far as the legal compliances are concerned and unfortunately that too from the regulatory authorities, ignoring the provisions of law. We cannot and must not accept these procedural changes at the whims and wishes of handful of people, not backed by law.

The fight for extension of due date of filing of returns is an example showing how to go about against the system that is non sympathetic to the people it is supposed to cater. We need to unite and fight against all that is unjust and unfair. May more and more people join such movements! Kudos to CA. Rajni M. Shah and all others brave hearts like him who went out of the way and helped the profession by taking a cause much beyond themselves.

Namaste,
CA. Ashok Kataria

From the President

CA. Shailesh C. Shah
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Dear Esteemed Readers

The last week of the month September was a week of celebration and joy for professionals, tax payers and also a proud moment for all people of India.

Firstly on 24th September Indian Space Research Organisation successfully launched an orbiter to Mars. India's space program demonstrated what's possible when a determined group of people put their minds to solve a complex problem. There is always a certain amount of nationalism attached to space missions, and people of this country are justifiably proud of the achievement. Speaking after successful launching of the orbiter our Prime Minister Narendra Modi made an emotional appeal to the youth of the nation, urging them to innovate and not be afraid of risks.

Secondly on 26th September Central Board of Direct Taxes has extended the due date of filing return of income to make it par with the date of filing the Tax Audit Report. The extension of due date came as a great relief to lakhs of taxpayer and professionals. There was no justification or reason to extend the date of Tax Audit Report alone and not to extend the date of filing income tax return. There was an easy solution to the uncomplicated problem. But CBDT made it more complicated and confusing by not extending the date of filing return. The solution to the problem though looks easy but that came only after intervention of the courts from Gujarat, Andhra Pradesh, Madras and Mumbai. High courts had to direct the lawmakers to extend the due date of filing return of income. Extension of due date of filing return of income and tax audit report was the only possible solution of the problem which was created by the Central Board of Direct taxes by introducing the new forms of Tax audit report in middle of the year.

The question that arose in everyone's mind that why CBDT has not taken into consideration the representation made by the various Associations from the whole country.

In today's time CBDT needs to change its view and approach to taxpayers and professionals. CBDT has to work on creating Friendly and Positive environment to achieve taxpayers voluntary response to law / rules.

The journey of extension of due date for furnishing return of income has been a bumpy ride. Every single day of month of September, which is generally considered as the most hectic month for professionals, had been full of uncertainties and speculation. The extension of due date by the CBDT has highly relieved everyone. The month which otherwise is very hectic would have been bit relaxed, this time around, apart from being a memorable one. The step of petitioners who challenged it in the courts and role of judiciary in understanding gravity and urgency of the issue is commendable.

Thirdly after extension of due date of filing return of income all professionals and their family members could have enjoyed the Navratri without any tension. By the time this issue is in your hands the festival of Navratri would be over. The festival Dusshera signifies victory of good over evil. I wish that all the evils (ten evils viz. Lust, Anger, Attachments, Greed, Over pride, Jealousy, Selfishness, Injustice, Cruelty and Ego) in and around you vanish by the virtue of the goodness in and around you.

Wishing you a very happy Diwali and a Prosperous new year.

With regards
CA. Shailesh C. Shah
President

Accounting & Tax Implication - Oil & Gas Industry

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The Institute of Chartered Accountants of India – ICAI has issued the "Revised Guidance Note on Oil and Gas Industry" (hereinafter referred to as "RGN") which is effective from 1st April, 2013. We would like to state over here that Guidance Notes are primarily designed to provide guidance to members of ICAI on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations provided in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. ICAI, in its above referred RGN, has explained various issues which include accounting for Carried Interest, accounting for Side-Tracking Expenditure, etc.

This article has been prepared specifically to explain the accounting as well as tax implications of "Carried Interest" as introduced in the above referred RGN. With this as a background, first of all, let us have look at type of oil and gas operations. Traditionally, oil and gas operations have been classified as:

- **Upstream:** It includes Exploration & Production of Crude Oil & Natural Gas. Thus, it generally include all activities involved in finding and producing oil and gas up to the initial point when oil or gas is capable of being sold or used.

  These are often referred to as exploration and production activities (E&P) which are normally carried out along with joint venture partners.

- **Downstream:** It generally comprise Refining, Marketing & Distribution of Crude Oil & Natural Gas

Variations to these two conventional classifications could be:

- Integrated Oil and Gas Company: One involved in E&P activities and at least one downstream activity.

- Independent Oil and Gas Company: A company involved primarily in only E&P activities.

Now, let us understand the meaning /concept of the "Carried Interest" which is as under:

"The concept of Carried Interest is seen in Joint Interest Operations where one or more of the working interest owners elect not to participate in the drilling of a well. Such party electing not to participate is referred as Carried Party and the party who agrees to pay the carried party's share of costs is referred as Carrying Party. This carried interest is not permanently relinquished in the property but it is only temporarily transferred to the carrying party and will revert back when the carrying party reaches payout."

This can also be explained with the help of following example:

A, B and C has signed a Production Sharing Contract on December 14, 2007 with the Government of India to form an Unincorporated Joint Venture for conducting petroleum exploration operations in the block named "XYZ" in the state of Gujarat. The participation interest of the JV partners is as under:

No.	JV Partners	Participating Interest
1	A (Operator)	80%
2	B	10%
3	C	10%

In August 2009, A entered into an Agreement with C, under which A granted 10% carried interest to C in the "XYZ" block.

The agreement provides that A is responsible for C's share of costs incurred during the exploration

phase prior to the date of initial commercial production, and A shall recover such costs from C's share of profit from oil and gas upon the commencement of production. A has shown Rs. 200 crores as due from C under the head 'Loans and Advances' in its Annual Report for the year 2011-12.

Now, it can be understood that the above referred agreement between A and C will be called "Carried Interest Agreement" wherein A will be called "Carrying Party" and C will be called "Carried Party".

Having understood the meaning of carried interest, we will move to relevant extract of RGN in respect of Accounting of Carried Interest which has been reproduced as under for ready reference:

"There are several types of "Carried Interest" arrangements that arise in practice. Each arrangement may be unique and would require careful analysis in order to determine the substance of arrangement. For example, a part of participating interest in an unproved property may be assigned to effect a "Carried Interest" arrangement whereby the assignee (the carrying party) agrees to defray all costs of drilling, developing and operating the property and is entitled to all of the revenue from production from the property, excluding the third party interest if any, until all of the assignee's costs have been recovered, after which the assignee (the carried party) will share in both costs and production, based on the agreed arrangement. In such an arrangement the carried party shall make no accounting for any costs and revenue until payout of the carried costs of carrying party. Subsequent to payout, the carried party shall account for its share of revenue, operating expenses and subsequent development costs, if the arrangement provides for subsequent sharing costs rather than a carried interest. During the payout period, carrying party shall record all costs, including those carried as per its normal accounting policy and shall record all revenue from the property including that applicable to the recovery of costs carried."

The above accounting treatment will have to be analyzed in respect of both carrying party and carried party in the following three stages:

Before Commencement of Production

After Commencement of Production but till payout period

After Commencement of Production and payout period

Now, let us understand the accounting as well as tax treatment in the above situations with the help of example stated at page no. 1…

A, being operator, has incurred total expenditure on the block amounting to Rs. 600.00crores till 31-03-2013. The "XYZ" block gets success on 1st April, 2013 and finds gross proved reserves of 80,00,000 barrels. During each of the first 5 years, 12,50,000 gross barrels of oil are produced and solfnotd for $25 per barrel from the block and lifting costs for the same is totaled at $5 per barrel. Exchange rate may be taken as 60 Rs./$. Computation of Payout will be as under:

Particulars	2013-14	2014-15	2015-16	2016-17	2017-18
Sales Volume	1250000	1250000	1250000	1250000	1250000
Price / barrel	1500	1500	1500	1500	1500
Gross Sales	1875000000	1875000000	1875000000	1875000000	1875000000
Less : Operating Expenses	375000000	375000000	375000000	375000000	375000000
Net Profit	1500000000	1500000000	1500000000	1500000000	1500000000
Payout	1500000000	3000000000	4500000000	6000000000	7500000000

From the above example, it is clear that carried interest of Rs. 60.00 crores (10% of Rs. 600.00 crores) which will be recouped (i.e. payout) by the end of year 4. Hence as per the RGN, carried party i.e. C will make no accounting till year 4.

From year 5 onwards, C will record for its share of revenue and operating expenses. Now, the question under consideration is about accounting by A. It has been mentioned that A should record all costs, including those carried as per its normal accounting

policy and shall record all revenue from the property including that applicable to the recovery of costs carried.

However, it has not been clarified that which normal accounting policy will be applicable and hence the following question arises:

> Whether A can continue with its existing accounting policy i.e. disclosing cost of carried interest under the head "Loans and Advances":

Under this situation, A is not considered as the owner of 10% carried interest and hence cost incurred by A will be considered as cost incurred on behalf of C. The same will continue be disclosed as "Loans and Advances" which will get proportionately reduced as and when the revenue will be generated from the block. It may be contended that the above treatment may not be called in line with the RGN as it is not affecting profit and loss account of A at any stage.

OR

> Whether A will be considered as the owner of the carried interest of 10% and A should capitalize (or CWIP) all the cost incurred towards carried interest of C?

Under this situation, A will capitalize all the cost incurred (both, incurred of its own share and incurred on behalf of C) and then the same will get depreciated year by year. On the other hand, all revenue (both incurred of its own share and incurred on behalf of C) will be credited to profit and loss account.

It should be noted over here that A will recoup all the cost incurred on behalf of C by the end of year 4 but it will not be the same case with the cost. This can be further explained with the help of following example:

Facts & Assumptions:

1) On 31-03-2013, CWIP in the books of A will be Rs. 540.00 crores (90% of 600.00 crores).
2) On 1st April, 2013, A will capitalize Rs. 540.00 crores.
3) Depreciation Rate has been assumed @ 15%

Profit and Loss Account				Balance Sheet			
Particulars	Rs. In Crores	Particulars	Rs. In Crores	Liabilities	Rs. In Crores	Assets	Rs. In Crores
F.Y. 2014 - 15				F.Y. 2014 - 15			
To Depreciation	81.00	By Income	135.00			Asset Cost (-) Depre : (81.00)	 540.00 459.00
F.Y. 2015 - 16				F.Y. 2015 - 16			
To Depreciation	68.85	By Income	135.00			Asset WDV 459.00 (-) Depre : (68.85)	 390.15
F.Y. 2016 - 17				F.Y. 2016 - 17			
To Depreciation	58.52	By Income	135.00			Asset WDV 390.15 (-) Depre : (58.52)	 331.63
F.Y. 2017 - 18				F.Y. 2017 - 18			
To Depreciation	49.74	By Income	135.00			Asset WDV 331.63 (-) Depre : (49.74)	 281.89

From the above, it is to be noted that total cost of carried interest i.e. 60 crores has been recovered from the income of 4 years, however amount claimed as depreciation on the carried interest comes to Rs. 28.68 crores only during these 4 years. Hence it means that depreciation is recovered short to the extent of Rs. 31.32 crores by the end of year 4.

Now, the question arises, what should be done with the unclaimed depreciation of Rs. 31.32 crores (i.e. Rs. 60.00 crores Less 28.68 crores) in the books of A towards carried interest. It is to be noted that A has credited all the revenue and hence remaining WDV of Rs 31.32 crores may be reduced from the block of asset and be charged to Statement of P&L. Alternatively, A should opt for separate capitalization and should depreciate the same in the proportion of income so that, after payout period, WDV itself will be Nil.

Income Tax Treatment

Now, so far as income tax treatment of carried interest is concerned, firstly following questions needs to be clarified:

(i) Whether expense incurred by A on behalf of C i.e. towards carried interest be considered as allowable for deduction u/s 42 of Income Tax Act, 1961 (herein after referred to as Act)?

Deduction u/s 42 is available only to the extent of participating interest mentioned in PSC hence A is not eligible to claim deduction u/s 42 for expenditure incurred on behalf of C.

(ii) Whether expense incurred by A on behalf of C i.e. towards carried interest be considered as allowable for deduction u/s 37 of the Act?

It is to be noted that all these expenditure are of capital in nature and capital expenditures are not allowable u/s 37 hence the above expenditure are not allowable u/s 37.

(iii) Whether expense incurred by A on behalf of C i.e. towards carried interest be considered as allowable for depreciation u/s 32 of the Act?

Even though the above expenditure are of capital in nature, the same cannot be capitalized as all these expenditures are to be recovered by A from the share of C in total revenue. Hence, in fact, A has not incurred these expense for any asset to be capitalized but to recover from C.

In view of the above, it can be concluded that expenditure incurred by A on behalf of C cannot be claimed as deduction in Act and hence the corresponding income i.e. share of C in total revenue should also not be offered for income tax.

The above situation can be explained in tabular format as under for better understanding:

Name of Company	Before commencement of production		After commencement of production – till Payout		After Payout Books of Accounts	Tax Purpose
	Books of Accounts	Tax Purpose	Books of Accounts	Tax Purpose		
A (Carrying Party)	A's own share as well as carried interest will be accounted as CWIP.	No Tax implication	A's own share as well as carried interest will be accounted as per normal accounting policy. A should also record all revenue that is applicable to the recovery of costs carried.	Refer Note - 1 to 4	A will record only its share of revenue and cost.	Refer Note - 1
C (Carried Party)	No Accounting Treatment	No Tax implication	No Accounting Treatment	No Tax implicat ion	Accounting treatment should be given as per normal accounting policy for its own share of revenue, operating expenses, and subsequent development costs, if the agreement provides for subsequent sharing of costs rather than a carried interest.	As per Note – 1 & 3

Note No.	Particulars	Tax Implications
1	Expenditure incurred in respect of drilling or exploration activities or services or in respect of physical assets used (To the extents of its own share i.e. 80%)	Deduction u/s 42 of the Act
2	Expenditure incurred in respect of drilling or exploration activities or services or in respect of physical assets used (To the extents of carried interest i.e. 10%)	No deduction of expenditure under the income tax act and income should also not to be offered to that extent.
3	Other Expenditure (80% share)	Deduction u/s 32 of the Act for capital expenditure. Remaining Expenditure as per normal provisions of the Act.
4	Other Expenditure (10% share)	No deduction of expenditure under the Act and income should also not to be offered to that extent.

Conclusion:

In today's era, oil and gas sector is very important sector and also backbone of economy of the country hence considering the new developments in the sector, ICAI has come out with the Revised Guidance Note on oil and gas sector. In view of the above analysis of Carried Interest, Carrying Party should properly account the cost as well as revenue at each stage of business cycle. However looking to the complexities in accounting as well as income tax on Carried Interest, ICAI should further come out with specific guideline for accounting in the case of carried interest.

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Forensic Audit-Moving towards "True & Correct " Scenario

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Introduction

"Thrill seeking and auditing are not mutually exclusive.Forensic audit can be a high profile and fascinating blend of legal and numerical problem solving where you are key to beating the bad guys. There's nothing better than that thrill of getting the final bit ofevidence that pieces the jigsaw together"

- Mark Alden

Root cause of Forensic Auditing is fraud. Fraud is a widespread problem that affects practically every organization, regardless of size, location or industry. Fraud is an expensive drain on an enterprise's financial resources which if not protectively managed could put you out of business. Major accounting frauds such as Enron, Worldcom& Parmalat have deeply affected the economy of the world. Some of the major fraudsters are

- Madoff - Jerone Kerviel - Charles Ponzi
- Kenneth Lay - Bernard Ebbers - Harshad Mehta

fraudulent act of them have led to loss of millions of dollars.

As per one survey, less than 10% of the frauds that takes place are detected, out of this less than 2% are detected by auditors and out of that 2%, 98% are detected by accident rather than by design!!

The above line itself suggests how deep the scope of the subject is.

The genesis of the Forensic Audit can be traced to 1817 in court decision involving bankrupt case. First time, the phrase "Forensic Accounting" was published in an article in 1946 by Maurice E Peloubet. Sherlok Homes was the most famous practitioner in the field of Forensic Audit.

According to one research, forensic accounting is one of the oldest professions and dates back to the Egyptians. The "eyes and ears" of the king was a person who basically served as a forensic accountant, watchful over inventories of grain, gold and other assets.

In India, Kautilya recognized the need of forensic accountants and also mentioned 40 ways of embezzlement centuries ago. Though not having the same name, the concept of forensic audit prevailed in several stories of Akbar & Birbal.

After the Enron debacle, auditing all over the world has come under the scanner. The age-old saying that **'an auditor is a watchdog and not a blood hound**' is being re-examined, if not questioned. Legislation which seeks to lay a greater emphasis on detection and reporting of fraud by auditors has been introduced all over the globe. In India also, legislation has shown serious doubts on functioning of audit function by imposing stringent provisions on persons associated with the accounts and audit under the Companies Act, 2013. In this context, this article seeks to introduce concepts of Forensic Accounting and how our profession can contribute for the same.

Definition & Meaning

According to Webster's Dictionary, the word "Forensic" means "Belonging to, used in or suitable to courts of judicature or to public discussion and debate" & the word "Audit" means a "methodical examination & review". Thus forensic Auditing aimed at in depth examination of records for finding conclusions which may be used judicially or for public discussion.

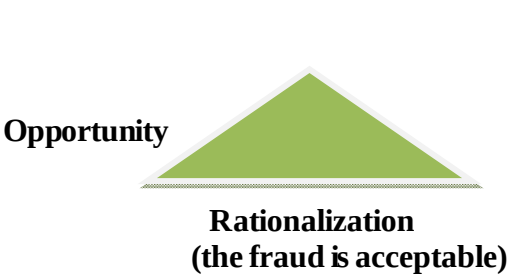
Forensic audit involves examination of legalities by blending techniques of propriety, regularity, investigative and financial audits. The objective is to find out whether or not true business value has been reflected in the financial statements and in the course of examination to find whether any fraud has taken place.Broad activities involved in Forensic Audit are summarized below.

Activities involved in Forensic Audit

- The expert Witness
- Litigation Consultancy
- Fraud Detection
- Computer Forensics

Conceptual Base of Forensic Audit

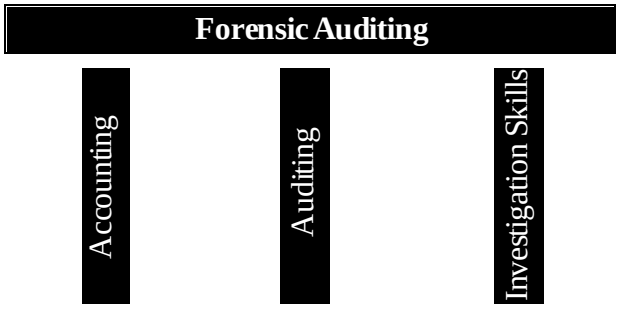
In this ever growing world, needs are always remained unsatisfied. People have never understood that simple formula of success is "There is no alternative to the hard work". Greed and wish to become prosperous in short span of a time leads to frauds.There are basically three elements which perpetrate fraud which commonly builds a Fraud Triangle mentioned as below:



Until recently, detecting a fraud or white collar crime was thought to be part of the accounting and was the responsibilities of the internal/external auditors. However, we know that auditors can only check compliance to the Generally Accepted Accounting Principles. Thus a new category of accounting was needed to substantiate the suspected fraudulent transactions. This area is known as "Forensic Accounting/Audit".

Forensic Audit is the integration of accounting, auditing and investigation skills and involves looking beyond the numbers to grasp the substance of the situations. It is more than accounting and is detective work. It is the application of a specialized knowledge to economic transaction analysis and reporting.

Three pillars of Forensic Auditing are:



Before discussing about forensic audit in detail, it would be worthwhile to differentiate the **Statutory Audit & Forensic Audit**:

Sr.No	Particulars	Statutory Audit	Forensic Audit
1.	Objective	Express opinion as to 'true & fair'presentation.	Determine correctness of the accounts or whether any fraud has actually taken place.
2.	Techniques	'Substantive' and 'compliance' procedures.	Analysis of past trend and substantive or 'in depth' checking of selected transactions.
3.	Period	Normally all transactions for the particular accounting period.	No such limitations. Accounts may be examined in detail from the beginning.
4.	Verification of Balance Sheet Items	Relies on the management certificate/ representation of management.	Independent verification of suspected/ selected items carried out.
5.	Off balance-sheet items	Used to vouch the arithmetic accuracy & compliance with procedures.	Regularity and propriety of these transactions/contracts are examined.
6.	Adverse findings	Negative opinion or qualified opinion expressed, with/without quantification.	Legal determination of fraud and naming persons behind such frauds.

Auditor's Role in Fraud Detection

So far, our legislation has imposed the following responsibilities on the auditors in the event of fraud is observed by them.

1. **Section 142(12) of the Companies Act, 2013**

   Section 142(12) requires that if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government.

2. **SA-240 "The Auditor's responsibilities relating to Fraud in an Audit of Financial Statements"**

   The above standard requires an auditor to consider the following points.
   i. An attitude of Professional Skeptism
   ii. Importance of teamwork
   iii. Perform additional/extended procedures when fraud is suspected
   iv. Reporting obligations
   v. Materiality is not an consideration when fraud is observed

3. **Clauses of CAR0-2003**

   Clause 4(iv) - The said clause requires the audit to comment whether the company has adequate Internal Control System commensurate with the size of the company and nature of its business.

   Clause 4(xxi) - The said clause requires the auditor to report whether in his opinion any fraud committed on or by the company.

4. **Sales Tax Practitioners' Association v/s The State of Maharashtra**

   The above judgment specifically has specifically provided the following:

   "An auditor's role includes fraud & error detection and detection of fraud is of primary importance and that the auditor is exposed to severe penal consequences for non-performance of his duty".

5. **Provisions of Reserve Bank of India**

   RBI requires Statutory Bank Branch Auditors and Statutory Central Auditors to report directly to it if they observe any fraudulent activities.

Types of Frauds & Financial Crimes

The following are some of the typical frauds which we need to understand:

Sr. No	Name of the fraud	Brief Explanation
1.	Trojan Horse Frauds	This fraud is committed in two parts:- i) Resilience & strength of a control is tested by the potential fraudster. If his act is noticed or questioned, he offers a plausible explanation of feigned ignorance or simple lapse on his part & fraud doesn't enter in second phase. ii) If his act is not noticed/ questioned then fraudster musters up the strength to commit the fraud. The second phase is then activated during which the actual act of damage is undertaken. The name is derived from the Greek mythology, where they created an innocent looking wooden horse and let them entered the city of enemies. When enemy didn't noticed such thing, one night soldiers hidden in those horses attacked the city and destroyed it.

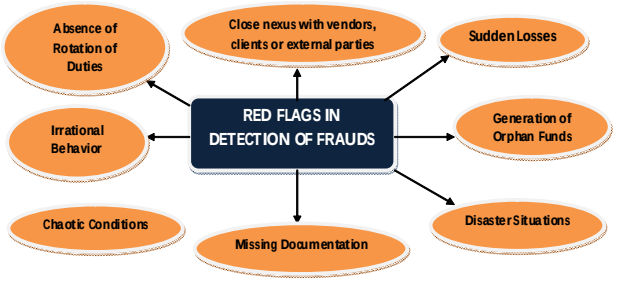
2. Disaster Frauds — There are frauds which thrive on situations of disaster, chaos, anarchy and disorder. The fraudster operates under the shield of the confusion created in such situations. He commits the fraud in the situation when it becomes impractical/ impossible to comply with the system and procedures & information and evidence can be easily suppressed.

3. Achilles Heel Frauds — The fraudster applies the principle that no chain can ever be stronger than its weakest link. These frauds are perpetrated by those with very sharp mind. The fraudsters have an eye for detail and they can discern the smallest weakness in the system and exploit it. This is named after the legendary Achilles who was invincible but for his heel. It was his heel which was the only vulnerable part of his body which was attacked and which eventually brought his downfall.

4. Corporate Espionage — Such fraud relates to unauthorized disclosure of the company's confidential information to the competitors by insiders. Today, the information carries the highest value and fraud relating to selling the same to the competitors is almost impossible to prevent & deter. Since information is intangible asset and hence it cannot be as securely stored and monitored like tangible assets like cash, bullion, and other valuables. In addition, it can be easily theft via e-mail or pen drive as it is difficult to monitor the same.

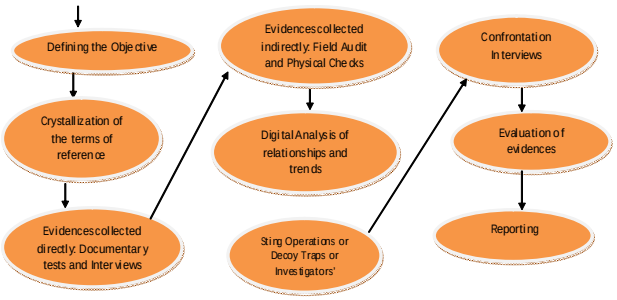
5. Technical Frauds — These are the frauds which can happen right in front of the eyes of the management and it may not even know that it has been defrauded. This is because technical aspects are the beyond the comprehension and frauds using technology are difficult to control. Such frauds can happen in any kind of organization where controlling authorities have little or no technical knowledge or where there aren't sufficient tools to check such frauds. Here too such frauds are difficult for anyone to detect.

Buddhism refers to three kinds of poisons 'anger, greed & ignorance'. If not controlled, they all eventually lead to wrongdoing. A symptom or 'Red Flag' will surface in some form or other where any of these three evils are present.Some of them are as follows.



Steps involved in Fraud Detection

Following are the common steps, which the forensic auditor would normally follow in his investigation.



Types of Evidences

While one aspect of any fraud detection is a customized programme, the real value lies in the relevance and reliability of the evidences and information gathered. Data, information or evidence of any kind by itself has no value but when logic, sense and reasoning are applied, it gains value.

As regards "Audit Evidences", it is worthwhile to discuss provisions of SAP 5 and theories of Vedic scripture called Nyaya Shastra which offer considerable insights to the Forensic Auditor.

i) Provisions of SAP 5 on "Audit Evidence"

SAP 5 provides some insights into the procedure of weighing and judging evidence. The relevant provisions are:

- External evidence is more reliable than internal evidence.
- Internal evidence is more reliable when internal controls are satisfactory.
- Written or documented evidence is more reliable than oral representations.
- Evidence obtained by the auditor is more reliable than that obtained through the auditee.
- The documentary evidence originating from third parties is the most reliable and evidence originating from the auditee is the least reliable.

ii) Tenets of Nyaya Shastra

Nyaya Shastra, also part of the Vedic Scriptures, authored by Sage Gautama offer considerable help. The relevance of this in fraud detection is that this teaches one as to possible means and aids for collection of information and evidence. While Mimamsa doctrine, which believes that for reaching conclusions, there should be unshakable and firmly embedded truth, Nyaya Shastra facilitates application of methods or aids to obtain information and evidence which will be used in reaching the eventual conclusion. According to it, there are several aids called pramanas or types of proofs which facilitates reaching the truth, which are as follows.

- Pratyaksha: Anything physically verifiable
- Anumana: Inference of guess
- Upamana: Description
- Shabda: Axioms or undisputed theories
- Arthapat: Conclusion through the principle of Reductio Ad Absurdum (the method of proving falsity by showing that its logical consequence is absurd or contradictory)
- Anupalabdhi: Conclusion through absence of truth

Concepts applied in Fraud Detection

From the forgoing, it is evident that forensic auditing is a different field all together as compared to tax, normal audit, consultancy etc. In order to understand the subject, a few theories have been explained below so as to bring readers closer to the subject. These are various concepts and principles which have been successfully applied in fraud detection and perhaps could be used effectively in similar or close resembling situations.

i) Theory of Inverse Logic

Often it is not possible to ascertain whether the assertion is reliable for the want of information. In such situation, if you cannot find out what the truth of the matter is, find out what it cannot be and eliminate all such possibilities. This process of elimination is application of inverse logic which sometimes is the only method left to ascertain the truth. When the truth is bundled with the all the other irrelevant information due to which it is apparently not clearly visible, try to eliminate all those irrelevant information, so that you can reach at the truth.

ii) The concept of "Distrust the Obvious"

In fraud detection, it is prudent to distrust what is obvious unless and until it is proved, preferably by hardcore evidence. All the submissions and facts of the case must be understood correctly so as to carry out a focused investigation. Sometimes, an imperfect understanding of the question is so deeply reached that consequently the simple answer is missed. Many times, the subconscious mind adds its own deep routed beliefs and presumptions to a message received by it and its intellect judges data or information in the light of such presumptions.

iii) The Birbal Tips & Tricks in detecting guilty mind

The wisdom applied by the legendary Birbal can be effective in fraud detection even today. We all know the anecdote where to find out the real thief, Birbal provided servants with a straw stating that it was a "Magic Straw" and the straw in the possession of the guilty servant would grow an inch higher next day. The guilt in the servant who theft made him cut the straw by an inch to avoid getting caught. But that was precisely what gave him away, since his was the only strawwhich was an inch shorter.

iv) The Principle of mirror imaging

The law of physics tells us that every image of an object in a mirror is identical to the object. This simple phenomenon can have an effective and meaningful application in fraud detection. This principle states that procedures and controls applied at one place should be possible to apply at another if the set of circumstances are the same. Results should be same or similar and deviation could mean that something is irregular. This theory is particularly helpful in control testing, where an examiner while testing the control, perform similar procedure as mentioned in such control and try to analyze the result obtained by him through the procedure and results already exists.

v) The three dimensional vision

Scientifically, the two eyes of a human being see the same object from slightly different angels. Therefore, although the object is the same, the brain receives slightly different images, which are infused and hence the viewer perceives solidity and depth of the object studied. In a similar manner, an examiner may have access to a multitude of reports, information, documents and evidences. Different kind of information from the different sources would look apparently irrelevant but when looked from the different directions simultaneously would provide valuable information.

Case Studies based on above

1. There was classic case of loss making hotel in the remote area. The hotel was loss making for the years, but suddenly, after joining new manager, there was a sudden turnaround and the hotel stated making astronomical profits though business conditions were gloomy. In addition, profits were realized in full cash receipts and hence there were no doubts for the management. However, what was really happening was the manager was selling of expensive assets of the hotel such as teak wood furniture, paintings, glass show pieces etc. He pocketed the realization and part of it was routed back as sales realization. When the hotel was fully stripped of all resources, the manager set the fire to escape from his accountability and to hide his fraud.

   Theories of "Distrust the obvious", "Disaster Frauds" and "Theory of inverse logic" can be applied here. In the above case, there were enormous cash receipts on the days of strikes which is apparently impossible.

2. Fire occurred in the godown of electronic items and goods remained inside it were destroyed. After such incidence, the company put the claim on insurance company. Insurance company appointed professional firm to verify the validness of the claim. Professional investigator noted that the stock shown in the claim was incredibly higher than the normal stock, but there was no apparent evidence to prove such thing, as he got required purchase and sales invoices as well as stock register. Based on that, he was going to certify the claim put by the company as correct, but before that he planned to recheck the claim. First thing he did was to visit the godown site again. At that time, what he observed that apparently such place could not store the stock which was claimed by the company. Then he measured the area of godown viz-a-viz area of the boxes of stock which could occupy. And soon, the position was pretty cleared that the claim was inflated by 60%. Finally the company had accepted its mistake and put the revised claim. Here the theory of "Three Dimension Vision" would apply, where you see the situation from all the possible angles, the picture would be pretty clear.

3. There was a charitable trust who has gained considerable goodwill in doing activities of welfare towards society. It had put donation boxes in front of many public places. The managing trustee got disturbing news of pilferage of such donation. Auditors had also pointed out that the procedures of collecting such donation were weak. Hence, he has appointed fraud detector who found that someone from the trustee was pilfering the funds. Hence, on one day he had called a meeting of trustees in which he has announced that he was going to put Rs.500 note with red dot on it in every donation box and on next day if he didn't find such note from any of the box then collector of such box would declared thief. And in amazingly, the real thief was caught in this trap and he himself had put Rs.500 note with red dot on it in the box collected it.

   Theory of "Birbals' tips and tricks"had applied here which is very effective in the current scenario as well.

Conclusion

The field of forensic Auditing will continue to develop and expand, with the number of corporate collapses, there will be plenty of work for those in the forensic industry in the future. The future of forensic Auditors is very bright. This specialized area is the fastest growing area, interesting and dynamic which provide unlimited opportunities for the next generation. As a result of negative consequences, increasing emphasis is being placed today on protective prevention and early detection.

There is a human tendency to get maximum in short span of time. It is not everyone on the earth, who is so fortunate enough to get maximum in a right way. In addition, in the developing country like India number of large conglomerates got increased. Chances of fraud in large organizations are more than as compared to smaller ones. In addition, advance technology has also made the businesses more complex and uncontrollable by common man.

Owners of the large business houses are unableto control their vast spread businesses. With complex accounting structure and gloomy picture presented by the borrowers, the banks apparently are unable to check his financial viability. Due to complex accounting structure and many transactions, taxation authorities are unable to find detailed tax evasion. Due to control being occupied by majority shareholders who is also the promoter group, it is difficult for the authority to protect small shareholders interests. Due to all these factors, India will soon need dedicated professionals in the line of forensics who can prevent and detect financial frauds. In the Government Department also, due to complex documentation and other processes, it is difficult to assess whether any particular decision made or a particular tender awarded to any person is in the benefit of public as a whole or not.

We being Chartered Accountants will be first expected to fulfill such needs taking into account vast knowledge base in the field of finance and accounts coupled with rich experience. With the expansion of industry in India after liberalization, incidents of frauds and money laundering are also proportionately increasing. Recognizing the need to have specialized course in this field, The Institute of Chartered Accountants of India has already initiated the Certificate course in Forensic Accounting & Fraud Detection. The same imparts detailed information in this field and would grant special skills of its members in this direction. In future, there may be the case that various legislative authorities may come up with the panel empanelling professionals having prescribed qualification in the field of forensics. Based on our investigation, it will be smooth for them to put evidences in the Court of law.

To conclude I would like to quote the famous quote of Swami Vivekananda which says "Society does not go down because of the activities of criminals, but because of the inactivity of the good people". Greed of mankind is never going to satisfy under any circumstances and hence crime would never stop, and hence there would always be the need of persons who can think like the thieves but act like the police.

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Glimpses of Supreme Court Rulings

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23 Contempt of Court – Criminal Contempt:

Being a member of the Bar, it was the appellant's duty not to demean and disgrace the majesty of justice dispensed by a court of law. It is a case where insinuation of bias and predetermined mind has been leveled by a practicing lawyer against three Judges of High Court. Such casting of bald, oblique, unsubstantiated aspersions against the Judges of the High Court not only causes agony and anguish to the judges concerned but also shakes the confidence of the public in the judiciary in its function of dispensation of justice. The judicial process is based on probity, fairness and impartiality which is unimpeachable. Such an act especially by the members of the Bar who are another cog in the wheel of justice is highly reprehensible and deeply regretted. Absence of motivation is no excuse.

The apology means a regretful acknowledgment or an excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment.

Sub-section (1) of Section 12 of the Act and the Explanation attached thereto enables the court to remit the punishment awarded to committing the contempt of court on an apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused makes it *bona fide*. A conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstruct or interfere with the administration of justice. There can be cases where the wisdom of rendering an apology dawns upon only at a later stage. Undoubtedly, an apology cannot be defence, a justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be 'ignored without compromising the dignity of the court', or it is intended to be the evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow; there is no remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as 'paper apology'.

[Bal Kishan Giri vs. State of Uttar Pradesh (2014) (7 SCC 280)]

24 Capital Gains – Transfer – Exemption:

In normal circumstances, the entire property cannot be said to have been sold at the time when an agreement to sell is entered into. However, looking at the provisions of Sec.2(47) of the Act, which defines the word 'transfer' in relation to a capital asset, if a right in the property is extinguished by execution of an agreement to sell, and that right is transferred to someone, it would amount to transfer of a capital asset. An agreement to sell in respect of a capital asset had been executed on December 27, 2002, for transferring the residential house and a sum of Rs.15 lakhs had been received by way of earnest money. The sale deed could not be executed because of pendency of the litigation between the testator's son on the one hand and the appellants on the other as to the validity of the WILL under which the property devolved upon the appellants. By virtue of an order passed in the suit, the appellants were restrained from dealing with the

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From the Courts

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43 Tribunal : Power of rectification of Order - South India Corporation Ltd. v/s. ACIT (2014) 360 ITR 39 (Ker)

Issue :

What are the powers of I.T.A.T. in rectification of order passed by it?

Held :

In appeal by the assessee, Tribunal held in favour of the assessee.

Subsequently a miscellaneous application was filed by the Revenue u/s 254(2) stating that a decision of the jurisdictional High Court was not brought to the notice of the Tribunal. The Tribunal allowed the rectification application recalling the order and dismissed the appeal filed by the assessee.

High Court held that :-

Though the decision of the Division Bench of the Court was very much in force as on the date of the appeal before the Tribunal, it was not brought to the notice of the Tribunal but later on an application was filed. Thus, this could be taken to be within the ambit of mistake apparent on the face of record which required rectification.

44 Rule 8D : Recording of satisfaction : CIT v/s. Hero Management Services Ltd. (2014) 360 ITR 68 (Delhi)

Issue :

What is the pre requisition for invoking provisions of Rule 8D?

Held :

In order to invoke Rule 8D of the Income Tax Rules, 1962, the A.O. has to first record a finding that he was not satisfied with the correctness of the claim of expenditure made by the assessee in relation to income, which did not form part of the total income under I.T. Act, 1961.

High court dismissed the appeal by the revenue in limine holding that no satisfaction as required by rule 8D had been recorded by the A.O. No disallowance could be made under section 14A.

45 Sec. 263 : Twin Condition : Erroneous and Prejudicial to the interests of the Revenue - CIT v/s. New Delhi Television Ltd. (2014) 360 ITR 44 (Delhi)

Issue :

When the twin conditions, viz (1) Erroneous and (2) Prejudicial to the interest of the revenue can be said to have been fulfilled to invoke provisions of Sec. 263?

Held :

Section 263 of the I.T. Act 1961, enables the CIT to exercise the power of revision for correcting orders passed by the assessing officers when the two cumulative conditions are satisfied. Firstly, the Order should be erroneous and secondly the order should also be prejudicial to the interests of the Revenue. An order is erroneous, when it is unsustainable, wrong or an incorrect decision deviating from law and the expression prejudicial to the interest of Revenue is of vide import and is not confined to mear loss of tax. The power under section 263 is vide but it can be exercised only when twin conditions, mentioned in section 263 are satisfied. There is difference between incomplete or inadequate verification and no verification whatsoever by the Assessing Officer. Where the assessing officer had adopted one of the two courses permissible and available to him and this has resulted in loss of revenue or two views were possible and the assessing officer has taken one view with which the Commissioner may not agree, the order cannot be treated as an erroneous order or prejudicial to the interests of revenue unless the view taken by the Assessing Officer is unsustainable

in law and therefore renders the order erroneous. The Commissioner must also show that prejudice is caused to the interests of the revenue. The order must be clear and must set out logical ground and reason as to why the assessment is erroneous and prejudicial to the interests of the revenue.

46 Sec. 50C Applies to seller only : CIT v/s. Sarjan Realties Ltd. (2014) 220 Taxman 112 (Guj) (Mag)

Issue :

Whether Provisions of Sec. 50C apply to purchaser?

Held :

A.O. made an addition on basis of difference in valuation of land by treating the same as unexplained investment in the case of the purchaser. Tribunal held that provisions of Sec. 50C would apply to a seller only and not to a purchaser and deleted the addition. Deeming fiction created by See. 50C which substitute's consideration received on sale of a capital asset by stamp duty valuation is applicable only in case of a seller and not buyer of property. Hence Tribunal was justified in deleting impugned addition in the case of purchaser.

47 Prior period expenses : Allowed in the year of crystallization : SMCC Construction India Ltd. v/s. Asstt. CIT (2014) 220 Taxman 354 (Delhi)

Issue :

Whether prior period expenses – crystallized during the current year is to be allowed ?

Held :

For the purpose of reopening assessment the A.O. recorded reason to believe that assessee had debited a sum in profit and loss account on account of prior period expenses which had not been crystallized during relevant year, and hence, such prior period expenses should have been disallowed. A.O. placed reliance on notes to accounts filed along with Return. However, said notes stated that prior period expenses crystallized /settled in relevant year. No new material came to knowledge A.O. Since, A.O. had acted on mere surmise and without any rational basis, action of reopening of assessment was contrary to law, and hence unsustainable.

48 Incorrect claim of Carried Forward loss is not concealment /inaccurate particulars - CIT v/s. Makino Asia (P) Ltd. (2014) 264 CTR 172 (Kar) : (2013) 95 DTR (Kar) 9.

Issue :

Whether claim of C/F loss which is not allowable is concealment of income or furnishing of inaccurate particulars ?

Held :

Merely because the assessee claimed set off of the loss carried forward would not mean that there was concealment of income as alleged or such claim would amount to furnishing of inaccurate particulars.

There cannot be any dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars furnished are found to be inaccurate the liability would arise. In the present case it cannot be said that the assessee furnished any inaccurate particulars of his income in the return and hence the liability would not arise.

49 Interpretation of Statutes : Harmonious Construction : Endemol India (P) Ltd. In RE. - Authority of Advance Rulings (2014) 264 CTR (AAR) 135 : (2014) 361 ITR 361 (ARR)

Issue :

What is the rule of interpretation of statutes where there are specific and general provisions?

Held :

High Court has stated as under :-

The essence of the Rule of harmonious construction is inter alia as follows :

(i) It is the duty of the Courts to avoid a head on clash between two sections of a statute and

construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

(ii) The provisions of one section of statute cannot be used to defeat the other provisions unless the court in spite of its efforts, finds it impossible to effect reconciliation between them.

(iii) All the provisions would be read together harmoniously so as to give effect to all provisions as a consistent whole, rendering no part of the provision as surplusage.

When there is in the same statute a specific provision and a general provision that in its most comprehensive sense, would include matters embraced in the former, the particular provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision. Where a general provision is expressed and the statute expresses also a particular expression incompatible with the general intention, the particular intention is to be considered in the nature of an exception.

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residential house. In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed was registered only on September 24,2004, after the suit challenging the validity of the WILL, had been dismissed. On the facts and in view of the definition of the term 'transfer', some right in respect of the capital asset had been transferred in favour of the vendee and, therefore, some right which the appellants had, in respect of capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in personam had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid Rs.15 lakhs by way earnest money. The intension of the Legislature in enacting Section 54 is to give the assessee relief in the matter of payment of tax on long-term capital gains. The appellants were entitled to relief u/s 54 of the Act in respect of the Long term capital gains which they had earned in pursuance of transfer of their residential property and used for purchase of a new asset/residential house.

[Sanjeev Lal vs. CIT (2014)(365 ITR 389)]

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I hate cowardice; I will have nothing to do with cowards or political nonsense. I do not believe in any politics. God and truth are the only politics in the world, everything else is trash.

Swami Vivekananda

Tribunal News

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37 Hydrabad Pharma Infrastructure & Technologies Ltd. v. ADIT (Int Tax) 64 SOT 179 (Hyd) - Assessment year: 2007-08 & 2008-09 Order Dated: 18th October, 2013

Basic Facts

The assessee-company was a Special Purpose Vehicle (SPV) created for the purpose of implementing the projects funded under the Industrial Infrastructure Up gradation Scheme (IIUS) by the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce, Government of India. During the year, it received grant from the Central Government and kept the amount in short-term deposits in bank, as the same was not immediately utilized. It earned interest income on such deposits and treated the same as business income. While completing the assessment the AO treated the interest income as income from other sources. On appeal to CIT(A), the assessee contended that the interest income had overriding charge and referred to letter of the DIPP, dated 5-12-2011 wherein as per the instructions of the Government the interest income on deposits had to be returned back to the Government or adjusted against future grant. Hence, it could not be treated as its income. The CIT(A) did not accept the contention of the assesse since according to him the letter merely placed restriction on how the interest income was to be utilized. According to him the title of the original grant as well as the interest income remained with the assessee and it was bound to use that amount for the purpose of achieving the objects of the company. He, therefore, upheld the order of the AO.

Issue

Whether interest earned from investment of grant is taxable if it is repaid to grantor or reduces future grants?

Held

The Tribunal observed that the assessee itself was treating such interest income as its business income and claimed deduction under section 80-IA on such income. A plain reading of the instructions issued would make it clear that the Government has given a clear instruction that interest on short-term deposits either has to be refunded back to the Government or to be adjusted against the future grants to be released for implementing the project. In other words, the amount to the extent of interest earned on fixed deposits will be reduced from the grants. Therefore, in real sense, the interests on short-term deposits arepartake thecharacter of grants, unless it is refunded back to the Govemment. In either case, interest earned on short-term deposits cannot be said to have accrued as income to the assessee. The instruction issued by the Government also makes it mandatory that the SPV shall not utilize the interest earned on the grant for any purpose. Accordingly it was held that interest earned on short-term deposits cannot be treated as income of the assessee, when the assessee in strict sense of the term has no dominion over such income. But the matter was set aside to the file of the AO to verify whether interest was refunded back to the Government or has been adjusted against any future grant released to the assesse.

38 DDIT V. Reliance Infocom Ltd. 64 SOT 137(Mum) (URO), 39 Taxmann.Com 140 (Mum) Order dated: 6th September, 2013

Basic Facts

The assessee Lucent Technologies, GRL LLC is an American company. Its Indian group company Lucent Technologies Hindustan Pvt. Ltd. (LTHPL) had entered into contract with Reliance Infocom Ltd. for supply of hardware, software and also

installation. Thereafter, supply of software was assigned to the assessee by way of tripartite agreement between Reliance, LTHPL and the assessee. The AO held that assessee had agency PE in India as substantive functions of negotiations, entering into contracts, stocking of goods or merchandising is being done by Indian Enterprise LTHPL. Further according to him not only original agreement has been entered into by the Indian Company but services relating to making software operation or warranties or maintenance were also being done by LTHPL only. The AO also relied on documents found in the course of survey in the premises of Alcatel Lucent International Ltd. (got merged entity of LTHPL) more particularly with respect to letter of agreement dated 06.09.2008 between group concerns with Reliance Communications regarding restructure of payment mile stone. He accordingly worked out business profit at 32% of the total receipts. The DRP approved the AO's order hence the assessee was in appeal before Tribunal.

Issue

Whether, on facts, was there a PE of assessee-company in India and will the question of attribution of profits arise?

Held

The Tribunal held that LTHPL entered into an agreement for supply of hardware, software and also installation and that company is an Indian company. After entering into an agreement supply of software was assigned to the assessee Lucent by way of the tripartite agreement between Reliance and LTHPL and assessee Lucent. Eventhough, installation was on Indian company there is no evidence of either deputing personnel of assessee Lucent to India nor there is any evidence in the record for invoking Service PE. Moreover for invoking Agency PE , facts do not support AO's contentions. The agreement entered is an independent agreement, entered on principle to principle basis and nowhere the Indian company has authorized or has undertaken any responsibility of the assessee Lucent. On the facts of the case the tribunal was of the opinion that there do not exist any PE, more so of agency PE. It was also not the case of the Revenue that the assessee deputed its personnel to India so as to invoke Service PE as per Indo-US DTAA. In view of the above, the tribunal held that there is no PE of the assessee company in India and as there is neither any office in India nor it has any business connection in India nor carried out any business activities in India. Assessee's company is a standalone legal independent entity. Therefore, as there is no PE in India, so the question of attribution of profits does not arise.

39 Sahara India Financial Corporation Ltd. vs. DCIT 163 TTJ 257 (Del) - Assessment Year: 2009-10Order Dated: 10th January, 2014

Basic Facts

The assessee firm is a RBI registered Residuary NBFC engaged in the activity of collecting deposits mainly from rural parts of India from small depositors, which are collected through a battery of agents spread over the rural areas. Deposits are collected under various schemes like daily deposits, term deposits, recurring deposits, small deposits etc. The assessee had disallowance Rs. 26,646/- of expenses in terms of sec. 14A(2) r/w rule 8D. But the AO disallowed of Rs. 2,16,51,917/- which was more than the exempt income earned of Rs.68,37,583/-. On appeal CIT(A) confirmed addition and revised figure to Rs. 2,19,74,418/-

Issue

Whether disallowance under section 14A can exceed the income earned?

Held

It has not been disputed that the administration, expenses and books of account of investment division are separately carried out and maintained by the assessee. No infirmity has been found by the department in this behalf. One of the main issue ison whomlies onus to establish nexus of available funds with free and taxable income. Similarly courts have held that a finding in objective terms about

assessee's working being unsatisfactory is to be recorded by AO in the order. If mechanical method of r. 8D is applied, it leads to manifestly absurd result in as much as for tax-free income of Rs.68,37,583 disallowance of Rs.2,16,51,917(enhanced by CIT(A) at Rs.2,19,47,772) is made under s 14A which isway too much than exempt income. The interpretation of provisions of s.14A r.w.r 8D is leading to unanticipated absurdities which cannot be the intention of legislature. Under these circumstances help of external aids of construction for interpretation of statue is called for. Looking at varying interpretations offered by various courts and benches of tribunal in relation to s.14A it is quite arduous to precisely decide the issue. In the given facts and circumstances without going into all the issues, it is appropriate to hold that the disallowance of expenditure in any case cannot exceed the income earned. In the interest of justice, it will be reasonable to estimate and disallow 50 per cent of exempt income (Rs.68,37,583) as relatable to exempt income under section 14 r.w.r 8D

40 R. Kasi Vishwananthan & Bros. V. ACIT 64 SOT 154 - Assessment Year: 2006-07 Order date: 11th October, 2013

Basic Facts

The assessee is engaged in the retail business in textiles. It filed its return of income for the year under consideration on 31-10-2006. The Department carried out search and seizure operations u/s. 133A of the Act in the business premises of the assessee on 24-12-2006. Consequent to the survey operations, the assessee filed a revised return of income on 31-03-2007. In the revised return, the assessee disallowed advertisement charges of Rs.1,09,67,754/-u/s 40(a)(ia) of the Act for non-deduction of tax at source and also made a fresh claim for deduction of "loss on clearance sale" to the tune of Rs.1,04,98,946/-. The AO did not consider the revised return of income since according to him, the assessee came to know of his failure to deduct tax at source on the advertisement charges &resultant disallowance u/s 40(a)(ia) of the Act due to survey operations carried by the department. Further according to the AO in order to reduce the tax liability arising out of the said disallowance, the assessee has claimed deduction of "loss on clearance sale". Holding that the filing of revised return itself is an afterthoughtthe AO did not consider it but he disallowed the advertisement expenses u/s 40(a)(ia) by treating the revised return as explanation given by the assessee for the disallowance. The CIT(A)also held that the assessee has filed the revised return only to reduce the tax liability and hence it is clearly an afterthought.

Issue

Whether where assessee filed a revised return in accordance with provisions of section 139(5), revenue authorities were not justified in rejecting said return without following procedure prescribed under section 139(9) by merely taking a view that revised return was an afterthought?

Held

The assessee has filed original return of income for Asst. Year 2006-07 on 31.10.2006, i.e. within the due date prescribed u/s 139(1) of the Act for that year. Thereafter, the assessee has filed revised return u/s 139(5) of the Act on 31.3.2007.The assessment in the hands of the assessee is completed on 29.12.2008 and one year period from the end of the assessment year under consideration expires on 31.3.2008. Since the assessee has filed revised return of income on 31.3.2007, it is well within the time limit prescribed u/s 139(5) of the Act.It is seen that the provisions of sec. 139(5) gives a right to an assessee to file a revised return of income if he discovers any omission or any wrong statement therein. In the instant case, the assessee has filed the revised return on finding that the disallowance required to be made u/s 40(a)(ia) of the Act was not made in the original return of income and further the claim of "loss on clearance sale" was not made therein.It is not the case of the AO that two adjustments made by the assessee in the revised return do not fall in the category of 'omission or any wrong statement' as stated in section 139(5).The

power to treat a return of income as 'invalid' is given to the AO u/s 139(9). The AO has not followed the procedures laid down in section 139(9) for the purpose of rejecting the revised return of income.Thus, it is seen that the AO has not drawn support from any of the statutory provisions for the decision taken by him to reject the revised return of income.The only reason given by the AO is that it is an afterthought on the part of the assessee.It is also noticed that the AO had not followed procedures prescribed under section 139(9) for treating a return as 'invalid', nor did he show that adjustments made by assessee in return of income do not fall in category of 'omission or wrong statement'.Hence, the AO and CIT(A) were not right in law in rejecting the revised return of income filed by the assessee.

41 Mando India Steering System (P.) Ltd. vs. ACIT 45 taxmann.com 160 (Che); 149 ITD 284 - Assessment Year: 2008-09 Order dated: 7th April, 2014

Basic Facts

The assessee is a wholly owned subsidiary of Mando Corporation, Korea and is engaged in the assembly of steering columns to Original Equipment Manufacturers (OEM) like Hyundai Motor India Ltd. The assessee in the course of its business has international transactions on account of import of machinery, raw-materials, consumable components and finished goods besides payment of royalty, management fee, reimbursement of expenses etc. The assessee had adopted CUP method for the purchase of machinery and reimbursement of expenses and TNM method for purchase of finished goods, raw-material components and consumables, payment of royalty, management fee development fee etc. The TPO after detailed analysis of the international transactions, made downward adjustment of Rs.7,59,39,334/-.Aggrieved against the order of the TPO, the assessee filed objections before the Dispute Resolution Panel [DRP]. The DRP rejected all the objections raised by the assessee and confirmed the findings of TPO. On the basis of the directions of the DRP, the AO completed the assessment and made addition of Rs.7,59,39,334/- on account of difference in ALP.

Issue

Whether assessee being in the initial year of its production, can under-utilization of production be ignored while determining ALP?

Held

The Revenue has not denied that the assessee is in initial year of its production. It is also a well-known fact that in the initial years of production, the overhead fixed costs are more due to under-utilization of resources. The TPO has brushed aside the contention of the assessee with regard to the under-utilization of capacity on the ground that the assessee had not claimed the idle capacity adjustment in initial TP analysis. The TPO had also raised objection that the installed capacity has been given in matric tones whereas the production is given in numbers. Due to difference in units of expression, it is difficult to analyze the percentage of capacity utilization. It is considered view that under-utilization of production capacity in the initial years is a vital factor which has been ignored by the authorities below while determining the ALP cost. The TPO should have made allowance for the higher overhead expenditure during the initial period of production. In view of the above, Tribunal deemed it appropriate to remit this issue back to the Assessing Officer with a direction to consider the claim of the assessee with respect to idle capacity adjustment during the relevant period while determining the ALP cost. The assessee was also directed to produce relevant documents in comparable units for the necessary analysis.

42 Meridian Impex vs. ACIT 164 TTJ 289 (Rajkot)(TM) - Assessment Year: 2006-07 Order Date: 25th July, 2013

Basic Facts

The assessee-firm was engaged in the business of manufacturing and export of brass items. It was an hundred per cent export oriented unit and its income was exempt under section 10B. The assessee claimed deduction under section 80-IB for the first

time in its return of income for assessment year in question. The assessee during the course of assessment proceedings filed a written letter withdrawing its claim of deduction under section 80-IB.The Assessing Officer, however, levied penalty under section 271(1)(c) on account of making a wrong claim of deduction holding the same as furnishing of inaccurate particulars of income within the meaning of section 271(1)(c).In appellate proceedings, the Accountant Member confirmed the penalty order whereas Judicial Member deleted penalty holding that there was no concealment of particulars of income on part of assessee.In view of difference of opinion between the members of the Tribunal, the matter was referred to the Third Member.

Issue

Whether since all material and relevant facts to computation of total income were duly furnished by assessee and no deficiencies in furnishing of such facts were pointed out by department, deeming fiction of Explanation 1 to section 271(1)(c) was not applicable to assessee's case?

Held

The assessee has disclosed all material facts relevant to its claim of deduction under section 80-IB in its 'statement of income' filed along with its return of income.It is a clear case of honest difference of opinion between the assessee and the revenue regarding the admissibility of a claim of deduction as per the provisions of the Act.There is no material on record brought on behalf of the revenue to suggest that the claim of the assessee in this regard was not bona fide. In fact the disallowance of deduction under section 80-IB was made by the AO on the basis of the claim made in this regard by the assessee in its statement of income filed along with the return of income.It is not the law that wherever the assessee's claim of deduction was found not acceptable by the department, the assessee should be visited with penalty for furnishing of inaccurate particulars of income under section 271(1)(c).In this case, the assessee has during the course of assessment proceedings filed a written letter before the AO withdrawing claim of deduction under section 80-IB. Even if the assessee has not withdrawn its claim of deduction and had insisted for allowance of deduction, even then in the absence of any material brought on record to implicate the assessee, by showing that his claim of deduction was not bona fide, it cannot be said that the assessee is guilty of filing inaccurate particulars of its income. Merely because the auditor of the assessee has not made the claim of the deduction, the assessee is not barred from making a legal claim of deduction while filing its return of income. The requirement of filing of auditors' certificate along with claim of deduction made by the assessee, is a procedural requirement and could be complied with during the course of assessment proceedings.All the material and relevant facts to the computation of total income were duly furnished by the assessee, and no deficiencies in furnishing of such facts were pointed out by the department, the deeming fiction of the Explanation 1 to section 271(1)(c) was not applicable to the facts and circumstances of the case, as the explanation of the assessee is bona fide and the assessee has disclosed all material facts relevant to the computation of income before the AO.In view of the law laid down by the various Courts and the facts of the case of the assessee, it is held that the claim made by the assessee for deduction under section 80-IB was a bona fide claim and does not amount to filing of inaccurate particulars of income, and therefore the assessee is not liable to penalty under section 271(1)(c).

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Controversies

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Valuation of Closing Stock when MODVAT adjustments are involved ?

Issue :

Whether the MODVAT credit on the raw materials not consumed shall form part of the cost of raw material at the end of the accounting year ?

Proposition:

It is proposed that modvat credit for duty paid on raw material is available to manufacturer on purchase but it would not amount to income for the purpose of I.T. Act. It is further submitted that if any adjustment is made to the valuation of the Closing Stock on account of utilized modvat credit. Then the AO has to revise both the opening and closing stock and hence no addition can be made to the total income.

View Against the Propostion:

It is submitted that under the Income Tax Act each year is self contained unit and the profits cannot be postponed to the next year. It is the duty of the AO to correctly determine profit liable to tax every year.

The reference can be made to the decision of the Supreme Court in the case of CIT vs. British Paints India Ltd. 188 ITR 44 which has laid down that if the system adopted by the assessee does not disclose the true and proper income the AO is entitled to appropriate computation to determine the true income. Any system of accounting where profit of one year is likely to be shifted to another year, such method would be an incorrect method of computing profit.

The Institute Chartered Accountants of India has prescribed the net method of accounting for modvat but the same should not be followed as it results in understatement of profit. The ICAI of India has given alternatives in the Guidance note. The basic difference between the net and the cross method is that in the net method the rate per unit of raw material does not include the element of modvat credit whereas in the gross method the rate per unit includes modvat credit. Under the above circumstances if assessee adopt net method then it results into understatement of profits and therefore, the AO can apply the gross method of accounting and can make addition. If assessee adopts gross method of accounting then the closing stock of raw material must include unutilized modvat credit.

When assessees follows net method of accounting i.e. the opening stock and closing stock of raw material is shown net of modvat credit. The purchases are also shown net of modvat credit and this net method of accounting results into understatement of profits. Sec. 145A makes a special provision as to the requirement of valuation of stock to include any tax, duty, cess or fee to bring the goods to the place of its location or condition on the date of valuation.

Thus, after the amendment excise duty becomes payable on transfer of goods from the factory site and would have to be included in the valuation of closing stock. As per sec. 43B also the deduction for excise duty is available only when the actual payment is made and hence, when unutilized modvat credit is included in the valuation of closing stock, the deduction is available only when the actual payment is made. The reference can be made to the decision in the case of Hindustan Unilever Ltd. v. Addl. CIT [2013] 22 ITR (Trib) 737 (Mum).

It is further submitted that when the assessee added unutilized modvat credit to the closing stock which was merely carried forward by the assessee in his books. It was contended by the assessee that the assessee's treatment was justified in the light of the High Court decision in CIT v. Indo Nippon Chemical Co. Ltd.'s case (supra) subsequently affirmed by the Supreme Court, which had pointed

out that the assessment in this case related to a year for which the provisions of section 145A introduced with effect from the assessment year 1999-2000 so that it was not applicable. It was, therefore, concluded in Jindal Iron and Steel Co. Ltd, v. Deputy CIT [2013] 21 ITR (Trib) 414 (Mumbai) that the matter requires enquiry.

View in favour of the Propostion:

I would like to invite kind attention to the decision of the **Supreme Court in CIT vs. Indo Nippon Chemicals Co. Ltd. [2003] 261 ITR 275 (SC)** wherein it is pointed out that the value of the unconsumed raw material and work-in-progress at the end of the year at net method would be consistent with the principles of accountancy. Adopting the gross method for purchases and net method for unsold stock at the end of the year is not so consistent and is not permissible. Adoption of a uniform net method cannot be faulted, where it is consistently adopted. It is for this reason that the unavailed Modvat credit cannot be added back in the computation of the income on the ground that Modvat credit available to manufacturers upon purchase of duty-paid raw materials cannot be treated as income, as no income has been derived before availing the same. In coming to the conclusion, the Supreme Court followed its own decision in a central excise case in Collector of Central Excise v. Dai Ichi Karkaria Ltd., AIR 1999 SC 3234, wherein it had found that the excise duty under section 4(1)(b) of the Act read with Rule 6 of the Valuation Rules should be understood as by men of commerce in understanding the concept of cost. However, this decision, it may be pointed out, would have no application, where the purchases themselves are accounted on net method. It follows that the treatment that is given by the assessee may be capable of adjustment only if the same treatment is not given for purchases and valuation of stock.

Summation :

The valuation of inventory is not affected by MODVAT credit. If the inventory is valued at gross rate then the purchases will also have to be recorded at the gross rate. For this proposition, reliance is placed on the judgement of the Supreme Court in the case of CIT vs. British Paints India Ltd. (1991) 188 ITR 44 (SC). Whatever component forms part of purchase should also form part of the closing stock and if duty paid is excluded from purchase, it cannot be included in the closing stock.

Reliance is also placed on the judgement of the Supreme Court in the case of Collector of Central Excise vs. Dai Ichi Karkaria Ltd. (1999) 156 CTR (SC) 172 in which, inter alia, it has been laid down that excise duty paid on raw material, if modvated, shall not be included in the cost of production of the excisable product.

The Madras High Court, in CIT v. English Electric Co. of India Ltd. [2000] 243 ITR 512 (Mad) held that, relief upon the nature of excise duty for a decision as to whether excise duty should be added to the value of closing stock, the High Court pointed out that it does not become cost till excise duty is leviable on such production. Since it is leviable only on removal, the mere prospect of liability cannot be converted into an asset in the manner expected by the Assessing Officer. If such liability had been incurred, it could have been added to the stock, while claiming the liability itself as a charge on the profits. When there has been no such charge, the inference that the amount should be added to the closing stock would not be correct. It is in this context that in Jallo Subsidiary Industries Co. (India) Pvt. Ltd. v. CIT [2002] 256 ITR 452 (Delhi), it was held in respect of excise liability, that it arises on the date of removal and not on the date on which the excise demand is raised by the order of the Collector of Central Excise. In coming to the decision, it followed the decision in Kedarnath Jute Mfg. Co. Ltd. v. CIT [1971] 82 ITR 363 (SC). The reasoning will possibly not be applicable in cases of disputed duty, where it has been adjudicated as payable in a later year. The reasoning in unexceptionable. It is the misunderstanding of this position of accounting and law, that has resulted in the enactment of section 145A, requiring any tax actually paid or incurred by the assessee to bring goods to the place of its location as on the date of valuation to be added to

contd. on page no. 427

Judicial Analysis

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Holding period for Capital Asset to be counted from the date of allotment of property, pending Possession and Conveyance Deed.

CIT vs. Anilaben Upendra Shah 262 ITR 657 (Guj)

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4. Mr.Kureshi has vehemently submitted that all that the assessee acquired on 15-11-1979 was the shares in the Co-operative Housing Society, but she acquired possession of the flat only in October, 1981 presumably because the construction of the flat was not completed till then. It is, therefore, the contention of Mr.Kureshi that the assessee did not acquire, and could not have acquired, the flat which was not in existence on 15-11-1979. Since the flat was constructed and acquired within three years prior to the date of transfer in December, 1982, the capital asset in question was a short-term capital asset meaning thereby it was held for less than 36 months.

5. For the relevant assessment year 1983-84, clause (iii) of section 27 of the Act read as under:—

   "(iii)a member of a co-operative society to whom a building or part thereof is allotted or leased under a house building scheme of the society shall be deemed to be the owner of that building or part thereof;"

   With effect from 1-4-1988, the following clause (iiia) was added :—

   "(iiia)a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4of 1882), shall be deemed to be the owner of that building or part thereof;"

6. A perusal of clause (iii) of section 27 makes it clear that the Legislature has not made any reference to handing over possession because the possession is never considered to be a sine qua non of ownership which consists of a bundle of rights. Moreover, the amendment by the Legislature by insertion of clause (iiia) with effect from 1-4-1988 also indicates that the Legislature was conscious of the fact that prior to 1-4-1988 taking or retaining possession of any building in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act was not considered as ownership for the purpose of the Income-tax Act. Hence, the assessee not getting possession of the flat in question at the time of allotment on 15-11-1979 did not detract from the assessee's ownership of the property in question even if it was constructed after 15 11-1979.

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8. It is thus clear that the member of a co-operative housing society only owns the shares in that society. The right to enjoy, or derive from, any land or building belonging to the co-operative housing society is merely an incidental right flowing from the ownership of the shares. A member of a co-operative housing society cannot sell all his shares in a co-operative housing society and still retain any interest in any property, whether land or building, belonging to a co-operative housing society and allotted/let out to the member. Similarly, a member of a co-operative housing society to whom a flat or land is allotted cannot transfer such land or building without selling the shares held by him. Hence, when the question comes up for consideration as to which is the relevant date, while computing the capital gain tax in case of transfer of his shares by a person who

is a member in a co-operative housing society, the relevant date would be the date on which the member acquires the shares in the co-operative housing society and the date on which the member had sold his shares in the said co-operative housing society.

In the facts of the instant case, it is clear that the assessee acquired shares in the co-operative housing society and allotted the flat on 15-11-1979 and she transferred those shares on 4-12-1982. Thus, the assessee had held the shares and allotment of the flat in the said co-operative housing society for a period of more than 36 months. Accordingly, the capital gain in question was rightly held by the Tribunal to be a long-term capital gain. Therefore, the assessee was rightly entitled to the benefit of section 80T of the Income-tax Act, 1961.

CIT vs. K. Ramakrishnan 225 Taxman 123 (Del)

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2. In this case, the relevant facts relating to the acquisition of the capital asset, i.e., the HUDA plot and its ultimate disposal of the assessee was considered by the Tribunal and discussed as follows :

"5. The learned counsel for the assessee, on the other hand, has placed strong reliance on the impugned order. Besides addressing the oral arguments, he has also placed before us a brief written synopsis. It has been contended that the Assessing Officer had wrongly treated the capital gain as short-term capital gain and while doing so, had erroneously taken the date of execution of the conveyance deed in favour of the assessee as the relevant date, rather than the date of allotment of the plot to the assessee by the HUDA ; that undisputedly, the assessee had booked the plot in question with the HUDA on June 18, 1986, and had deposited the earnest money ; that the plot was allotted to the assessee on August 3, 1999 ; that on receipt of the allotment letter, the assessee had deposited further amounts on various dates, as given in the chart contained in the written synopsis ; that by the expiry of the period of sixty days from the date of allotment, i.e., by October 3, 1999, the assessee had deposited 96 per cent. of the tentative cost of the plot ; that as per the terms and conditions contained in the allotment letter, since the assesseepaid the instalment as demanded by the HUDA, the assessee was to become the beneficial owner of the residential plot in question ; that as per clause 5 of the allotment letter, a letter of acceptance was to be filed by the assessee along with an amount of Rs. 10,155, within thirty days, thereby having paid 25 per cent. of the total cost of the plot ; that this amount had to be deposited by the assessee in his capacity as the owner of the plot, on allotment, which was done, as evidenced by the receipt of payment ; that as per clause 11 of the allotment letter, the right of the assessee in the allotted plot was an absolute right as owner thereof ; that this clause prohibited the assessee from transferring the plot except with the permission of the HUDA ; that this clause stated that it was till the execution of the conveyance deed, that the assessee was not to be treated as owner of the plot ; that as per clause 12, execution of the conveyance deed was not made subject to the handing over of the possession of the plot ; that thus, right from 1999, when the plot was allotted to the assessee, the assessee was having absolute rights thereon ; that in Jitendra Mohan v. ITO [2007] 11 SOT 594 (Delhi), it has been held that it is the date of allotment which is relevant for the purpose of computing a holding period and not the date of registration of conveyance deed ; that section 47 of the Registration Act lays down that registration of a document operates retrospectively ; that in Gurbax Singh v. Kartar Singh [2002] 254 ITR 112 (SC), it has been held that registration of a document would relate back to the date of its execution ; that in HamdaAmmal v. AvadiappaPathar

[1991] 1 SCC 715 and M. SyamalaRao v. CIT [1998] 234 ITR 140 (AP), it has been held likewise; that, therefore, the learned Commissioner of Income-tax (Appeals) has correctly decided the issue in favour of the assessee ; and that as such, there being no merit therein, the appeal of the Department be ordered to be dismissed."

3. In this case, the assessee acquired possession of the plot on December 12, 2005, and sold through a registered sale deed dated January 9, 2008. This court is of the opinion that having regard to the findings recorded by the Tribunal, the assessee had acquired the beneficial interest to the property at least 96 per cent. of the amount was paid, i.e., by October 3, 1999. This court is supported in its findings by a Division Bench ruling of the Punjab and Haryana High Court in Mrs.MadhuKaul v. CIT [2014] 363 ITR 54/43 taxmann.com 417.

4. In view of the reasons the courts is satisfied that the Tribunal's impugned order does not disclose any error calling for interference. The appeal is accordingly dismissed.

Ms. MadhuKaul vs. CIT 363 ITR (P&H)

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5. We have heard counsel for the parties and perused the impugned order.

6. The Income Tax Appellate Tribunal has held that as a specific flat was allotted to the assessee, on 30.11.1988, the allotment letter or payment of first installment does not entitle the appellant to claim a long term capital gain. A similar controversy came up for adjudication in Vinod Kumar Jain (supra). The point for consideration in the aforesaid case was whether capital gain arising from allotment of flat on 27.02.1982, under a scheme framed by DDA, though, the actual flat was allotted and possession was delivered on 15.05.1986 was a long term capital gain as the flat was sold on 06.01.1989. After considering Sections 2(29-A),(42A) read with Section 54 of the Income Tax Act, 1961 as well as Circular No.471, dated 15.10.1986, it was held as follows:—

'11. Section 2(14) defines capital asset. Under Section 2(29A) long term capital asset is one which is not a short term capital asset. According to Section 2(42A) short term capital asset at the relevant time meant, a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. A conjoint reading of aforesaid provisions leads to one conclusion that a capital asset which is held by the assessee for 36 months would be termed as a long term capital asset and any gain arising on account of sale thereof would constitute long term capital gain.

12. It would also be advantageous to refer to Circular No. 471, dated 15.10.1996 [162 ITR (st.) 41] issued by CBDT on which heavy reliance has been placed by the assessee whereby instructions have been issued regarding treatment of capital gains tax in case of a flat purchased under Self-Financing Scheme. It reads thus:—

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13. On careful reading of the Circular issued by the Board, para 2 thereof describes the nature of right that an allottee acquires on allotment of flat under Self-Financing Scheme. According to it, the allottee gets title to the property on the issuance of an allotment letter and the payment of instalments is only a consequential action upon which the delivery of possession flows.'

7. We find no distinction between the opinion recorded in the aforesaid judgment and the controversy in the present case. Admittedly, the flat was allotted to the appellant on 07.06.1986, vide letter conveyed to the assessee on 30.06.1986. The assessee paid the first installment on 04.07.1986, thereby conferring a right upon the appellant to hold a flat, which

was later identified and possession delivered on a later date. The mere fact that possession was delivered later, does not detract from the fact that the allottee was conferred a right to hold property on issuance of an allotment letter. The payment of balance installments, identification of a particular flat and delivery of possession are consequential acts, that relate back to and arise from the rights conferred by the allotment letter.

8. In view of what has been recorded hereinabove, we have no hesitation in holding that the Income Tax Appellate Tribunal has erred in holding that the transaction does not envisage a long term capital gain. Consequently, we allow the appeal, set aside order dated 15.02.1999 and answer the substantial questions of law in favour of the assessee.

Circular No. 471, dated 15.10.1996 [162 ITR (st.) 41]

Capital gains tax- Whether investment in a flat under the Self-Financing Scheme of the Delhi Development Authority would be construction for the purpose of ss.54 and 54F of the IT Act, 1961.

15/10/1986

CAPITAL GAINS SECTIONS 54, 54F.

Secs. 54 and 54F of the IT Act, 1961, provide that capital gains arising on transfer of a long-term capital asset shall not be charged to tax to the extent specified therein, where the amount of capital gain is invested in a residential house. In the case of purchase of a house, the benefit is available if the investment is made within a period of one year before or after the date on which the transfer took place and in case of construction of a house, the benefit is available if the investment is made within three years from the date of transfer.

2. The Board had occasion to examine as to whether the acquisition of a flat by an allottee under the Self-Financing Scheme of the Delhi Development Authority amounts to purchase or its construction by the Delhi Development Authority on behalf of the allottee. Under the Self-Financing Scheme of the Delhi Development Authority the allotment letter is issued on payment of the first instalment of the cost of construction. The allotment is final unless it is cancelled or the allottee withdraws from the Scheme. The allotment is cancelled only under exceptional circumstances. The allottee gets title to the property on the issuance of the allotment letter and the payment of instalments is only a follow-up action and taking the delivery of possession is only a formality. If there is a failure on the part of the Delhi Development Authority to deliver the possession of the flat after completing the construction, the remedy for the allottee is to file a suit for recovery of possession.

3. The Board have been advised that under the above circumstances, the inference that can be drawn is that the Delhi Development Authority takes up the construction work on behalf of the allottee and that the transaction involved is not a sale. Under the Scheme, the tentative cost of construction is already determined and the Delhi Development Authority facilitates the payment of the cost of construction in instalments subject to the conditions that the allottee has to bear the increase, if any, in the cost of the construction. Therefore, for the purpose of capital gains tax, the cost of the new asset is tentative cost of construction and the fact that the amount was allowed to be paid in instalments does not affect the legal position stated above. In view of these facts, it has been decided that cases of allotment of flats under the Self-Financing Scheme of the Delhi Development Authority shall be treated as cases of construction for the purpose of capital gains.

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FEMA Updates

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34 Refinancing of ECB at lower all-in-cost – Simplification of procedure

Refinancing of existing ECB by raising fresh ECB at lower all-in-cost is permitted subject to the condition that the outstanding maturity of the original loan is maintained. The cases, where the Average Maturity Period (AMP) of the fresh ECB is more than the residual maturity of existing ECB were examined by the Reserve Bank under the approval route.

It has been decided to simplify the procedure by delegating powers to the AD Category – I banks to approve even those cases where the AMP of the fresh ECB is exceeding the residual maturity of the existing ECB under the automatic route subject to conditions.

This facility will be available even in those cases where existing ECBs were raised under the approval route subject to the amount of new ECBs being eligible to be raised under the automatic route.

For Full Text refer to A.P. (DIR Series) Circular No. 21

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9193&Mode=0

35 Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India

In terms of Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (RFPIs) and long term investors registered with SEBI, may purchase eligible government securities directly from the issuer of such securities or through registered stock broker on a recognised Stock Exchange in India, subject to such terms and conditions as mentioned therein and limits as prescribed for the same by RBI and SEBI from time to time.

In order to provide flexibility in regard to the manner in which government securities can be acquired by eligible investors, any stipulation as to the manner of acquisition from the said Regulations has been removed. Consequently, the eligible investors can acquire such securities in any manner as per the prevalent/approved market practice.

For full text refer to: A.P. (DIR Series) Circular No. 22

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9195&Mode=0

36 External Commercial Borrowings (ECB) in Indian Rupees

In terms of AP (DIR Series) Circular No. 27 dated September 23, 2011 read with Notification No. FEMA.3/2000-RB dated May 03, 2000, all eligible borrowers are eligible to raise ECB in Indian Rupees from foreign equity holders as per the extant ECB guidelines.

With a view to providing greater flexibility for structuring of ECB arrangements, recognised non-resident ECB lenders may extend loans in Indian Rupees subject to the following conditions:

a) The lender should mobilise Indian Rupees through swaps undertaken with an Authorised Dealer Category-I bank in India.

b) The ECB contract should comply with all other conditions applicable to the automatic and approval routes as the case may be.

c) The all-in-cost of such ECBs should be commensurate with prevailing market conditions.

For the purpose of executing swaps for ECBs denominated in Indian Rupees, the recognised ECB lender, if it desires, may set up a representative office in India following the prescribed laid down process.

It may be noted that the hedging arrangement for ECBs denominated in Indian Rupees extended by non-resident equity-holders shall continue to be governed by the provisions of AP (DIR Series) Circular No. 63 dated December 29, 2011.

For full text refer to: A.P. (DIR Series) Circular No. 25

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9210&Mode=0

37 Risk Management and Inter Bank Dealings: Hedging Facilities for Foreign Portfolio Investors (FPIs)

In order to enhance the hedging facilities for the FPIs holding securities under the Portfolio Investment Scheme (PIS) in terms of schedules 2, 2A, 5, and 8 of the Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000 (Notification No. FEMA 20 /2000-RB dated 3rd May 2000) as amended from time to time, as announced in the Monetary Policy Statement of April 1, 2014, it has been decided to permit FPIs to hedge the coupon receipts arising out of their investments in debt securities in India falling due during the following twelve months subject to the condition that the hedge contracts shall not be eligible for rebooking on cancellation. The contracts can however be rolled over on maturity provided the relative coupon amount is yet to be received.

For full text refer to: A.P. (DIR Series) Circular No. 28

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9219&Mode=0

38 Foreign Direct Investment (FDI) in India - Issue of equity shares under the FDI Scheme against legitimate dues

An Indian company under the automatic route may issue shares/convertible debentures to a person resident outside India against lump-sum technical know-how fee, royalty External Commercial Borrowings (ECBs) (other than import dues deemed as ECB or Trade Credit as per RBI guidelines) and import payables of capital goods by units in Special Economic Zones subject to certain conditions like entry route, sectoral cap, pricing guidelines and compliance with the applicable tax laws.

The extant guidelines for issue of shares/convertible debentures under the automatic route have been reviewed and, accordingly, it has been decided to permit issue of equity shares against any other funds payable by the investee company, remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 or any rules/ regulations framed or directions issued thereunder, provided that:

(i) The equity shares shall be issued in accordance with the extant FDI guidelines on sectoral caps, pricing guidelines etc. as amended by Reserve bank of India, from time to time;

Explanation: Issue of shares/convertible debentures that require Government approval in terms of paragraph 3 of Schedule 1 of FEMA 20 or import dues deemed as ECB or trade credit or payable against import of second hand machinery shall continue to be dealt in accordance with extant guidelines;

(ii) The issue of equity shares under this provision shall be subject to tax laws as applicable to the funds payable and the conversion to equity should be net of applicable taxes.

For Full Text refer to A.P. (DIR Series) Circular No. 31

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9242&Mode=0

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Service Tax Decoded

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CENVAT Credit – Basic Concepts and Fundamentals

Service Tax being a Value Added Tax (VAT), a service provider needs to discharge tax on the value addition made by the service provider. Although he can collect the full service tax from the service recipient, he need to discharge service tax liability net of the service tax he has already paid to person from whom he has received the services. In simple words he can take credit of service tax he has paid to his suppliers. Thus, through this simple mechanism, a service provider pays service tax only on the value addition made by him.

However, in India, tax provisions can't be so simple. In India, it is not the pure VAT. Credit for input services, input materials and capital goods is restricted in number of ways. Department treats credit as a "facility" and not a "right" of the service provider. Poor and ambiguous drafting of related provisions and rules are also adding fuel to the fire. All such circumstances contribute to make a CENVAT credit one of the top subject of litigation in India. Some of the basic concepts and fundamentals are discussed in this article.

1. Manufacturing of goods attract Central Excise Duty and provision of service attracts service tax. Credit of Excise Duty can be taken and utilised for payment of service tax and credit for service tax can be utilised for payment of excise duty. Thus cross tax credit for taxes levied under two different statues is being allowed and for that one common law, The CENVAT Credit Rules, 2004 has been notified under both tax statues i.e. The Central Excise Act, 1944 and The Finance Act, 1994 simultaneously.

2. Notifications for amendment and circulars for clarification in the Central Excise are being notified or issued through the notifications and circulars having CE/CE(NT) series. Notifications for amendment and circulars for clarification in the Service Tax are being notified or issued through the notifications and circulars having ST series. Amendments and clarification in CENVAT are being issued or notified through the CE series and hence if one wants to refer to such notification/circular, he has to refer to Central Excise related notifications/circulars.

3. CENVAT Credit Rules, 2004 (Rules) defines certain terms. We need to refer to such definitions. Many terms are given a meaning which is different than the meaning or understanding in general parlance. For example, for these Rules, services which are not subject to service tax at all and services in the Negative List are also to be considered as Exempted Services as defined in the Rule 2(e) of the Rules. Similarly, what we understand as capital goods in general meaning, may not be capital goods as defined in the Rule 2(a) of the Rules for example a Motor Car.

4. CENVAT Credit may be taken for Inputs (i.e. raw material etc.), Input Services and Capital Goods. All three terms are defined in the Rules and one need to classify its inputs in one of the three stated above. In respect of Inputs, credit may be taken immediately on receipt of Inputs in the factory of manufacturer or premise of service provider. In respect of Input Services, credit may be taken on receipt of Invoice or challan. Thus, even if services are received and payment is also made to service provider but invoice is not raised or not reached to the service recipient, service recipient can't take the CENVAT Credit.

5. W.e.f. 01-09-2014, it is provided that the manufacturer or provider of output service shall

not take CENVAT credit after six months from the date of issue of invoice. This provision is applicable only for Inputs and Input Service and not to the Capital Goods.

6. It is worth noting that the limitation is on the taking the credit and not on utilising the credit. Once the credit is taken within the time limit prescribed, it can be utilised or carried forwarded for utilisation without any time limit.

7. CENVAT credit for Capital Goods is to be taken at 50% in the first year and rest of the credit may be availed in any subsequent year. Manufacturer eligible to avail the SSI exemption can take 100% credit in the first year itself. However, no such provision, for service provider availing threshold exemption is available. Further, restriction of 50% is not applicable in the case of credit of SAD. Further, credit in respect of capital goods shall not be allowed in respect of that part of the value on which depreciation is claimed under Section 32 of the Income Tax Act, 1961.

8. Credit for various taxes paid may be taken. For examples, Excise Duty paid under the First Schedule and the Second Schedule of the Central Excise Tariff Act, 1985, Education Cess and Secondary and Higher Education Cess on Excise Duty and Service Tax, Additional Duty leviable under Section 3 of the Customs Tariff Act, Special Additional Duty (SAD) leviable under 3(5) of the Customs Tariff Act (not available to Service Provider), Service Tax leviable under Section 66, 66A and 66B of the Finance Act, 1994 etc. Detailed list is provided under Rule 3(1) of the Rules.

9. Credit so taken may be utilised for payment of various taxes or amount due. For example, such credit may be utilised for payment of excise duty on final products and service tax on output services. However, such utilisation is subject to certain restrictions stated in provisos to Rule 3(4) of the Rules. For example, credit of SAD can't be utilised for payment of service tax.

10. Subject to the provisions of the Rules, once the CENVAT credit is availed for various taxes, it loses its individual identity. Once the CENVAT credit is properly taken, it becomes part and partial of the common pool and such credit may be utilised for payment of any tax liability as stated in Rule 3(4) of the Rules. Further, such a pool of credit may be utilised for payment of service tax payable on any output service. For example, Input Service X is used for Output Service A and credit of service tax on Input Service X is availed properly. Service tax is payable on another Output Service B also for which Input Service X is not used. Still, credit for Input Service X can be utilised to pay service tax on Output Service B. Rule 3(4)(e) clearly states that CENVAT Credit may be utilised for payment of service tax on **any** output service. Thus, one to one correlation is not required between Input Service and Output Services.

11. When a service recipient is liable to pay service tax, he is discharging service tax on behalf of the service provider. As he is not providing the Output Service, he can't have Input Service and there is no question of payment of service tax by utilisation of CENVAT credit. Rules also clearly provides for that. However, if service received by the service recipient, who has paid the service tax as a recipient, qualifies as input service, service recipient can take CENVAT credit for the service tax he has paid as recipient of service. Thus, such a person has to first pay service tax out of his pocket, and then he may take CENVAT credit for the same.

12. Many times service provider exports the services and avail input services which are used for providing export services. As services exported are not subject to service tax, there is no question of payment of service tax on such output service and in absence of output services, there can't be input services. When services are exported, Indian economy gets benefit and Government also gets highly useful foreign currency. Further, taxes, even in input services should not be exported along with services. Hence, Government, either repay the service

tax on input service or pay other incentives. One option to give benefit is to allow the CENVAT credit of service tax paid on input services which are used for providing exported services. Rules allows such credit and such credit may be utilised for payment of service tax on domestic output service on which service tax is payable. If, for any reason, service provider is not in position to utilise such credit, he is also given an option to get refund of such CENVAT credit as provided in Rule 5.

13. Definition of Input Service as provided in the Rule 2(l) is having three limbs. First limb provides that any service used by a provider of output service for providing an output service is an Input Service. This part of the definition is very wide. If any service has nexus with output service it is an Input Services. If service provider is able to establish that he has used the service for providing output service, he can take credit. Second limb is inclusive part. It starts with "*and includes*" which indicates that it enhance the meaning of the term Input Services. It list out around twenty services like security, financing, legal services, repair or renovation of premise etc. Third part is restrictive part and it strike out certain services from input services even if it can be input service as per first and second part of the definitions. Examples of such services are construction and works contract services used for building or civil structure, renting of motor vehicle etc.

14. It is well settled principal that the classification of the service can't be changed or challenged at the recipients end. Department can't change the classification for Input Service and only based on revised classification challenge the eligibility of the credit.

15. Many times it happens that service provider provides taxable (i.e which is subject to tax without any exemption) as well as exempted services. Further, it may happen that some services are used exclusively for taxable services, some are used exclusively for exempted service and some are used for both taxable as well as exempted services. CENVAT credit for input services used exclusively for exempted services shall not be taken in any case. Credit for input services used exclusively for taxable services may be taken fully. However, complication starts when services are used for both taxable as well as exempt output services. For such common Input Services, three options are provided to the service provider. First, he may to maintain separate accounts for the receipt and use of input service for providing exempted service and taxable services. Secondly, he can take common credit and pay amount equal to 6% of value of exempted services. Third option is to determine and reverse/pay amount of credit in proportionate to value of taxable and exempted output services. Detailed provisions are provided in Rule 6 of the Rules.

16. Trading of Goods is also an exempt service for the purpose of the Rule and hence if common services are used for providing taxable services as well as Trading of Goods, such common input services are subject to provision of Rule 6 discussed above. For example, a car repairer provides repairing services and also sales parts to his customers, he will be hit by the provisions of Rule 6 of the Rules. For second and third option discussed in the forgoing paragraph, value of the trading shall be the difference between the sale price and the cost of goods sold or 10% of the cost of goods sold whichever is more.

17. In the case of Partial Reverse Charge Mechanism (PRCM) and sub-contracting, it may happen that a main contractor can't pass on full credit to ultimate service recipient as services between main contractor and ultimate service recipient is subject to PRCM. In such a situation, credit may get accumulated at end of the main contractor and hence ultimately it becomes cost to him and thus VAT passing chain gets affected. In such situation, a main contractor is eligible to have refund of such

unutilised credit as provided in Rule 5B of the Rules.

18. Many times organisation runs through branches or units or similar arrangements. Head Office or some branches or units don't provide the output services but helps other branches in providing output services. These branches receive Input Services and facilitate operations of other branches. Documents eligible for taking CENVAT Credit are in the name and at address of such branches. To avoid practical difficulties and to distribute such credit to other branches or units, provision for Input Service Distributor (ISD) has been incorporated in the Rules. Such credit distributing branches may be registered as ISD and distribute credit of Input Services received by them to the branches providing output services.

19. CENVAT credit shall be taken only based on the eligible documents. Invoice issued by a manufacturer or an importer or first/second stage dealer or by a service provider is document based on which credit may be availed. Besides that credit may be availed based on Bill of Entry (for credit of Additional Duty or SAD), Challan (for payment of Service Tax under RCM) or supplementary invoice (for service tax recoverable for non/short payment/ levy of service tax). CENVAT credit will not be available unless the original documents are available with the service provider. Further all the details as required to be there under the Service Tax Rules, 1944 are contained in the said documents. In number of cases credit has been denied due to the fact that the credit was taken on the photocopies of the documents.

20. Once the credit is taken and utilised, net liability of the service tax payable gets reduced. Hence, if credit is taken wrongly, the same may be recovered from the service provider and section 73 (Show Cause Notice etc.) and 75 (interest) of the Finance Act, 1994 apply *mutatis mutandis*. Even penalties can be levied for wrongly availed credit. W.e.f. 17-3-2012, interest is payable only if credit is utilised. However, for the period prior to 17-3-2012, as held by the Supreme Court in the case of Ind-Swift Laboratories Ltd.[2012 (25) S.T.R. 184] interest is payable from the date of availing credit even if the same is not utilised.

21. It is well settled principle that once the CENVAT credit is reversed before utilisation of the same, the same is to be considered as never taken. Hence, if service provider founds that he has taken the CENVAT credit wrongly and the same is left unutilised, the same may be reversed and it should be treated as never been taken. Certain exemptions are available on the condition that CENVAT Credit is not available. However, if credit is reversed *suo moto* after substantial time limit (11 months to 15 months), it was held that benefit of exemption is not available. [Honb'ble Supreme Court in Amrit Papers 2008 (12) STR 536].

22. It may happen that numbers of services are used for providing number of taxable output services. For example, telephone services, accounting services, office cleaning services are used for providing management consultancy services. Such Input Services may not directly used for providing output services but are used for activities which are finally used for providing output services. There may not be one to one correlation between input service and output services and Rules don't require that there should be one to one correlation between Input Services and Output Services. There should be nexus but not necessarily one to one.

23. W.e.f 01-04-2011 definition of Input Service has been amended and now services in relation to setting up of a factory or premise of the service provider is not allowed. For example, Architect's Services for setting up of new office is not an Input Service. However, service used in relation to modernisation, renovation or repairs of a factory or premise of service provider is still Input Service and credit may be taken.

24. Many times some services are not having direct relationship with the output service or manufacturing activities. However, it may be

statutory requirement to obtain such service for example maintenance of garden in the factory or paying insurance premium for employees may be statutory obligation of a manufacturer or service provider under Environmental Laws or Employment Laws. Without obtaining such services, a manufacturer can't manufacture or provider of service can't provide the output services. In such a situation it is constantly held by the various courts that such services are Input Services as the existence of Output Service is not possible without such services.

25. A job worker works on the material supplied by the buyer/principle manufacturer. If process undertaken by him doesn't amount to manufacture such process is subject to service tax but exemption is provided if principle manufacturer is discharging excise duty on the final product. If his process amounts to manufacture, he is required to pay excise duty on the goods produced by him and that too not only on the value of job work charges but on value of goods also. In such situation, a job worker can avail the CENVAT credit for Inputs used by him even if he is not the owner of the goods, provided he is the consignee of the goods. Thus, each job-worker need to ascertain that whether his process amounts to manufacture or not.

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contd. from page 416

the closing stock. But even this provision, if properly understood would refer to excise duty "actually paid or incurred". It is the unjustified apprehension of the Revenue that such excise amount, if unpaid, requiring to be disallowed under section 43B of the Income Tax Act gets deducted, that has given rise to this provision. This provision, originally retrospective at the draft stage from the date on which Modvat was introduced, was finally made prospective, so that the Revenue stood to lose because the opening Modvat credit had to be added to the opening stock so as to neutralize the addition with the Revenue losing such addition to opening stock not only for the year but in future years as well. Adjustment for opening stock is inevitable even as pointed out in the memorandum on the Finance (No.2) Bill, 1998, explaining section 145A as requiring adjustment for both opening and closing stock. Principle of inventory valuation spelt out in the Accounting Standard issued by the Institute of Chartered Accountants of India would also require such adjustment.

Finally let me refer to the decision in the case of CIT vs. Indo Nippon Chemical Co. Ltd. (2000) 245 ITR 384 (Bom.) their lordship of Bombay High Court held that :

"It is a well settled principle of law that valuation of closing stock has to be on the basis of purchase cost. If the purchases include an element of MODVAT benefit then the closing stock should also correspondingly include the MODVAT benefit."

The High Court also accepted that the calculations made by the AO were erroneous on the facts of the case and that made by the assessee was correct. The AO's calculations resulted in violation of the balancing principle, whereas the same is followed correctly in the calculation of the assessee. Reading the two methods given by the ICAI the court held that it is clear that in both cases the MODVAT credit is related only to the raw material consumed. Following the decision of the Supreme Court in the case of Collector of Central Excise vs. Dai Ichi Karkaria Ltd., the High Court held that whether one applies the net method or the gross method as calculated by the assessee the gross profit remains same and hence there is no understatement of profit as envisaged by the assessing officer.

The decision of Bombay High Court has been confirmed by their lordships of Supreme Court in CIT Vs. Indo Nippon Chemical Co. Ltd. (2003) 261 ITR 275 (SC).

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Service Tax - Recent Judgements

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27 [2014] 48 taxmann.com 164 (Madras) High Court of Madras Goodearth Maritime (P) Ltd v. Commissioner of Service Tax, Chennai

Payments made to agents located abroad for services rendered outside India cannot, prima facie, be taxed under section 66A, as services are not 'received' in India.

Facts:-

Assessee, engaged in transport of cargo through owned/chartered ships, made payments to their agents located abroad. Department alleged that payments were made in respect of various services and were taxable in India. Assessee argued that services, if any, were rendered outside India and could not, therefore, be regarded as 'received' in India for purposes of section 66A. Adjudication recorded fact that 'services were rendered outside India' but upheld demand. Tribunal ordered pre-deposit of Rs. 130 lakh opining that assessee had liquid assets of worth Rs. 39 crore. Assessee further claimed that it was suffering from losses.

Held:-

In view of admitted fact that services were rendered outside India, issue is purely legal and, therefore, prima facie, it will not fall within mischief of service tax, as service tax is applicable only if service is received by a person in India. Prima facie finding of Tribunal, that there was a service received in India, does not appear to be supported by material. It may true be that there are some liquid assets in course of business, but overall financial position of company is reflected in profit and loss account, which shows a loss. Therefore, assessee has established plea both on prima facie case and undue hardship. Pre-deposit was reduced to Rs. 50 lakh accordingly.

28 [2014] 47 taxmann.com 198 (New Delhi - CESTAT) CESTAT, New Delhi Bench Taj View Hotel v. Commissioner of Central Excise, Kanpur

Renting of Banquet Hall for meetings/conferences/ assembly to pharmaceutical companies, insurance companies, marketing companies etc. do not amount to 'convention services' where it is not shown that said renting was for holding formal meetings or assembly which is not open to general public

Facts:-

Assessee was registered under Mandap Keeper Services and was paying service tax thereunder claiming abatement. Department alleged that assessee had rented out a Banquet Hall for meetings/ conferences/assembly to pharmaceutical companies, insurance companies, marketing companies etc. and said services were more appropriately classifiable under Convention Services and raised demand accordingly.

Held :-

There is a distinction between official, social or business function which fall within scope of mandap keeper and a formal meeting which falls within scope of convention service. For classification as convention service, service must be provided by one person to another in relation to holding of a convention not open to general meeting/assembly public but there is no requirement that service should be provided only in/upon immovable property including any furniture, fixtures, light fittings and floor coverings therein. Since it was not alleged/concluded that renting of Banquet Hall to pharmaceutical, insurance and other companies was for holding formal meetings or assembly which is not open to general public, demand was invalid.

Further it was held that where a person (service provider) is registered as a mandap keeper, demand of service tax under convention service, particularly by invoking extended period of limitation is not justified . Having regard to ambiguity between scope of two taxable services, it would be illegitimate to allege suppression of facts or an intention to evade taxes .

29 [2014] 47 taxmann.com 398 (New Delhi - CESTAT) CESTAT, New Delhi Bench Shree Cement Ltd. *v.* Commissioner of Central Excise & Service Tax, Jaipur-II

Event management services availed to facilitate organisation of a dealer/retailer meet for promotion, marketing, advertisement and promotion of products are eligible for credit, even though event is held in temple premises

Facts:-

Assessee, a cement manufacturer, took credit of 'event management' services received for an event organised at temple located within factory premises for purpose of dealer's meet on ground that same was for advertisement/sales promotion. Department denied credit on ground that since event was organized at 'temple', same could have been for religious purposes only and even though dealers might have attended same, credit could not be allowed.

Held :-

Event management services were availed to facilitate organisation of a dealer/retailer meet for promotion, marketing, advertisement and promotion of products, though in a temple premises - If this fact is to be rebutted, Authorities below should have cogent and clear evidence to come to a contrary conclusion. Speculation and vacuous hypothesis cannot be a substitute for evidence, to support a finding. Department's view that temple premises is used only for religious functions and for no other social activity is misconceived, as temple premises are employed for a variety of social functions including marriages. Hence, credit was allowed.

30 [2014] 48 taxmann.com 232 (Gujarat) High Court of Gujarat Cema Electric Lighting Products India (P.) Ltd. *v.* Commissioner of Central Excise

Where it was found that assessee was recovering amount from beneficiaries/its own employees while running canteen, assessee was not entitled to Cenvat Credit claimed by it in respect of catering services

Facts:-

Assessee took credit of payment made to canteen contractor even though they recovered same from employees/beneficiaries. Department denied said credit . The Commissioner (Appeals) and Tribunal confirmed the demand. The assessee argued that credit was allowable on merits, even otherwise, extended period of limitation was not invocable and interest/penalty were not leviable.

Held:-

It has been found that the assessee was recovering the amount from the beneficiaries/its own employees while running the canteen. Therefore, as such, the assessee was not entitled to Cenvat Credit which was claimed by them. It was found that, in fact, amount was recovered by the contractor and the same was recovered by the assessee from its employees/beneficiaries, therefore, the assessee was not entitled to the Cenvat Credit of the same and no error had been committed in confirming the show-cause notice and making the demand. So far as interest and penalty are concerned, it is required to be noted that the aforesaid would be a consequential under the relevant provisions of the Act and Cenvat Rules. There was no reason to interfere with the impugned judgment and order passed by the learned Tribunal. The appeals were dismissed.

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Manufacture under VAT Law

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1. Introduction

From Excise perspective it is very important to know whether any activity is treated as manufacte or not as levy of excise depends on manufacture, while from VAT perspective it is equaly important to understand whether an activity is manufacture or not**, as claim of Input tax credit on raw material, processing material, consumable as well as on capital goods depends on it.**

2. Definition under GVAT

Sec 2(14) ***"manufacture"*** *with its grammatical variations and cognate expressions means producing, making, extracting, collecting, altering, ornamenting, fishing, assembling or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed;*

There are many criteria to determine, whether any activity is manufacture or not like, coming in to existence of a new commercial commodity test, common parlance test, commercial parlance test, marketability test etc. let us understand this aspect with judicial pronouncements.

3.1. Coming into existence of a new commercial commodity not to be treated as manufacture

3.1.1. For determining, whether any activity is manufacture or not there is no necessity of coming into existence of a new commercial commodity to treat it as 'manufactured goods'.

Under U.P Trade Tax Act, in the case of Commissioner of Sales Tax v. Kaderul Sehat Dawakhana Division Bench, Hon'ble Allahabad High Court has held that, looking to the definition of manufacture under the U.P.S.T. Act, it is not necessary that completely new item should come into existence. Where a 'goods' known to the trade has been prepared or produced, but then certain changes are effected in it to adopt it for a particular purpose, it may continue to have the same commercial commodity, but when it is so adapted for a particular purpose. It has been subjected to a manufacturing process, and the goods so adapted would again be a 'goods' which, for the purpose of the Act, has been manufactured afresh.

3.1.2. To the same effect is the judgment of 3 judges Bench of Hon'ble Supreme Court in the case of B.P. Oil Mills Limited Vs. Sales Tax Tribunal and others 1998 NTN (vol. 13) – 613: 1998 U.P.T.C. 1020, decided on 03/09/1998, where in Hon'ble Supreme Court has held that to be 'manufacture' under the Uttar Pradesh Trade Tax Act, it is not necessary that completely new item must come into existence. After processing crude oil into refined oil, the commodity may remain the same, but it amounts to 'manufacture' for the purpose of section 2(e-1) of the Uttar Pradesh Trade Tax Act, as per the definition of manufacture given under

the Uttar Pradesh Trade Tax Act, because its properties have changed.

3.2. Conversion of cotton into surgical cotton is manufacturing

Under the Rajasthan Sales Tax Act, 1994, question before court was whether conversion of cotton in to surgical cotton can be treated as manufacturing?

Rajasthan Sales Tax Act defines 'manufacture' as follows –

Sec. 2(27) 'manufacture includes every processing of goods which brings into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government".

Held by the Rajasthan High Court – Surgical cotton (also known as Absorption cotton or cotton wool) is different from cotton. Conversion of raw cotton into surgical cotton involves the process of manufacture.

It is an admitted fact that a definite chemical process is involved in deriving out surgical cotton. During this process when cotton is treated with acids and alkaloid, waste is consumed. When cotton is cleaned some part of the cotton is further consumed. If total weight is calculated, as introduced in the process, they may not be the same. With the production of the end product, a sizable amount of raw cotton is consumed weight – wise. That being the position, the end product is amenable to that test where it is said that whether original product is consumed in the production of end product.

Surgical cotton in basically used for medical purposes. For medical purposes, use of ordinary cotton is not permissible in medical ethics. Allopathic method of medicines fixes standards for the quality of surgical cotton. These standards are so definite and definable that none of them would be available in ordinary cotton. If those parameters cannot be met in the ordinary cotton and surgical cotton is only used in allopathic form of medicine, then it cannot be said that use of commodity is interchangeable and in that view of the matter, surgicalcotton is a different commodity.

3.3 Conversion of Jumbo Rolls of Photographic Films into Small flats and rolls in the desired size is manufacturing activity

The activity of Conversion of Jumbo rolls of photographic films and small flats and rolls in the desired size amounts to manufacture.

(India Cine Agencies Vs. Commissioner of Income Tax, Madras, (2009) 53 S.T.A. 311, decided on 12/11/2008 by the supreme Court).

3.4 Grinding of Turmeric Roots into Turmeric Powder is manufacturing

In the case of Uma Murthy vs. Commissioner of Commercial Taxes, Banglore, (2010) 33 VST 316, question before hon'ble court was, Whether the activity of the petitioner, namely, conversion of turmeric roots into turmeric powder is a manufacturing activity so as to be eligible for the benefit of sales tax exemption.

In view of the undisputed facts and the certificate issued by the competent officer (General Manager of District Industries Centre, Mysore) certifying that the assessee has been manufacturing the goods of turmeric powder by following certain manufacturing processes such as the roots of turmeric are boiled, dried, powdered and coloured. The above manufacturing processes involved in manufacture of turmeric powder, which is one of the spices different and distinct from the roots of turmeric. Therefore, Court hold that there is a manufacturing process involved in making of turmeric powder from roots of turmeric.

3.5 Preservation and tinning of fruits and vegetables is not Manufacturing

Held by the Allahabad High Court – the process of preservation and tinning down does not amount to manufacture. If by the process fresh fruits and green vegetables are preserved as green vegetable and fresh fruits, they remain as fresh fruits and green vegetables. Thus merely because they are tinned, they do not cease to be fresh fruits and green vegetables. (S.R. Cannery Vs. Commissioner of Trade Tax, (2006) 3 VLJ 8: 2006 NTN (vol. 29) 85: STI 2006 Allahabad High Court 80: 2006 U.P.T.C. 710 (2007) 10 VST 23 (All), decided on 16/12/2005).

Supreme Court in the case of Deputy Commissioner of Sales Tax Ernakulum v/s Pio Food Packers 46 STC 63 has held that 'although a degree of processing is involved in preparing pineapple slices from the original fruits, the commodity continues to possess its original identity. It is further held that there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and consumer regard both as pineapple and such activity is not treated as manufacturing activity.

3.6 Processing of Cashew nut into cashew nut Kernel: is manufacturing

Held by the Supreme Court in the case of Vijay Laxmi Cashew Company and others Vs. Deputy Commercial Tax Officer and Another – 1996 NTN (Supreme Court) – 1 : 1996 U.P.T.C. 602 that:

Raw cashew nuts and cashew nut kernels are different commodities. They are not supposed to be the same commodities in the common of the commercial parlance. Their uses are quite different and the process of obtaining kernel from the raw cashes nuts is so elaborate that cashew nut kernel cannot be held to be the same as raw cashew nuts.

3.7 Mounting body on the chassis of vehicle is manufacturing

In the case of Kumar Motors Vs. Commissioner of Sales Tax, U.P. Lucknow, 5 VST 646 (SC), it is held that the meaning of manufacture in section 2(e-1) of the U.P. Sales Tax Act, 1948, is of wide amplitude. It takes within its sweep not only a new product but also **alterations** made in an existing product. In the case, the assessee purchased chassis of an auto rickshaw and mounts the body on the chassis with the help of nuts and bolts and sells the auto rickshaw.

It was held that he would be selling product which is different in condition from the chassis or the body, and such activity is treated as manufacturing.

3.8 Conversion of Coal dust in to Coal Briquettes is manufacturing

In the case of Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P. 147 STC 594 (SC), it was held that the expression "manufacture" covers within its sweep not only such activities which bring into existence a new commercial commodity different from the article on which those activities were carried on, **but also such activities which do not necessarily result in bringing into existence an article different from the articles on which such activities were carried on.**

In this case, coal briquettes are not the same commercial commodity as coal and coal is a raw material for making coal briquettes. The process of mixing crushed coal with binders and pressing in the briquetting press to regular shape is processing, treating or adapting coal within the meaning of definition of manufacture in sec. 2(e-1) of the U.P. Trade Tax Act, 1948. By processing of coal to make coal briquettes coal dust loses its identity. **Coal briquettes and coal-dust are two different commodities in substance as well as characteristics.**

3.9 Whether loss of identity or character is necessary to treat it as manufacturing?

In the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Tax), Emakulam Vs. Coco Fibres, 80 STC 249 (SC), it is held that it is not necessary that the stuff or the material of the original article must lose its character or identity or it should become transformed in its basic and essential properties. In the case, the green husk is soaked into saltish sea water for days together and after decomposition, on being subjected to process, which is a distinct commodity known in the commercial parlance. No one in the market would sell or supply husk when fiber is asked for.

3.10 Purchase of bulk gas and repacking in smaller cylinders after giving different grades is manufacturing activity.

In the case of M/s. AIR Liquide North India Pvt. Ltd. Vs. Commissioner, Central Excise, Jaipur, Civil Appeal No. 43 of 2005 Dt. 30/08/2011, the Hon'ble Apex Court has held that the appellant had purchased Helium gas from the market in bulk and repacked the same into smaller cylinders after giving different grades to it and then sold the same in the open market. Various tests and some treatment given, the gas was segregated into different grades having distinct properties and sold at different rates to different customers. In light of those facts, the Hon'ble Apex Court held that Helium gas was having different marketability, which it did not possess earlier and hence the gas sold by the appellant was a distinct commercial commodity in the trade. If the product / commodity, after some process is undertaken or treatment is given, assumes a distinct marketability, different than its original marketability, then it can be said that such process undertaken or treatment given to confer such distinct marketability would amount to "manufacture". Thus the treatment given by the appellant to the gas sold by it would make different commercial product and therefore, it can surely be said that the appellant was engaged in a manufacturing activity.

3.11 Dehusking paddy to produce rice is manufacturing activity.

In the case of Ganesh Trading Co. Vs. State of Haryana 32 STC 623 (SC), it is held that although rice is produced out of paddy, it is not true to say that paddy continued to be paddy even after dehusking. "Rice and paddy are two different things in ordinary parlance. Therefore, when paddy is dehusked and rice produced, there has been a change in the identity of the goods.

3.12 Removing husk from natural till is manufacturing activity

Recently Hon'ble Gujarat VAT Tribunal in the case of Keshav Till Factory v/s The State of Gujarat S.A. No: 65 of 2013 order dtd: 4-7-2014 it was held that doing business of buying natural till and after processing the same, the appellant is selling as mechanically hauled and dried till. The husk is removed from till by the process of washing with caustic soda. Then the said de-husked till is to be dried.

It was held that, activity undertaken by the appellant clearly amounts to manufacture and hence the appellants are held to be entitled to input tax credit of raw materials, processing materials, fuel and capital goods used in the activity of manufacturing.

4. Conclusion

As definition of manufacture is inclusive definition, it covers many activities as manufacture, but will depend on facts and circumstances of each case.

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VAT - Recent Judgements and Updates

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Important Judgments:

[1] The Important Judgment delivered by the Hon. GVAT Tribunal in case of Saurashtra Chemicals Ltd. Vs. The State of Gujarat

Issue:

Appeal proceedings are a continuous part of Asst. proceedings and therefore interest on refund due to assessee as per the Appellate order passed by the Appellate Commissioner is allowable at applicable rate.

Facts:

In Saurashtra Chemicals Ltd. the Hon. GVAT Tribunal has delivered that the refund is allowable to the assessee even in appeal proceedings of appeal.

The appellant of Rajkot has filed an appeal before the Ld. Joint Commissioner on the issue that the appellant was entitled to a refund of Rs. 98,57,507/-, however, the Ld. Joint Commissioner has held that the appellant was not entitled for interest on the refund.

Against the appellate order, the appellant has gone before the Hon. Tribunal and the Hon. Tribunal has allowed the interest on refund at applicable rate on the order passed by the Appellate Authority.

Readers are aware of the fact that till the date of this judgment, the department not allowed the refund arising on account of appellate order and therefore so many dealers have lost their opportunity to claim the interest on the refund. As this is an important judgment and therefore important paragraphs of the decision are reproduced hereunder for the knowledge of the readers.

The appellant had established its industrial unit pursuant to the Sales Tax incentive awarded by the State Government and therefore the appellant was entitled to sales tax exemption benefit. The requisite certificates were issued by the Competent Authorities enabling the appellant to claim such incentives. The appellant had also undertaken modernization of its then existing plant, for which it was expecting further additional sales tax incentives.

Though the requisite certificates for additional incentives as a result of modernization of plant were not received by the appellant, in anticipation of such benefits, while filing returns under the Act and the Central Sales Tax Act, the appellant had claimed sales tax incentives in respect of the total turnover of sales and purchases effected by the appellant.

The Ld. Asst. Commissioner of Sales Tax initiated assessment proceedings under section 9(2) of the CST Act r.w.s. 41(3) of the GST Act. However, since the requisite certificates relating to incentives for modernization of plant were not received, the appellant requested to defer the assessment proceedings. However, the Ld. Assessing Officer passed assessment order, wherein the incentives were partly given to the extents, they were admissible as per the original installation of plant for which the incentive certificates were issued, but did not grant incentives for remaining transactions. As a result thereof, in assessment the Ld. Assessing Officer raise aggregate dues to the tune of Rs. 12,67,98,729/- inclusive of tax, penalty and interest against the appellant. Being aggrieved by the said assessment order, the appellant preferred First Appeal before the Ld. Deputy Commissioner of Sales Tax, who was later on designated as the Learned Joint Commissioner of Sales Tax. For admission of the first appeal, the appellant deposited an amount of Rs. 99,98,464/-. Correspondingly, the appellant

pursued before the competent authorities for getting the certificates enabling the appellant to claim incentives as a result of modernization of plant undertaken by the appellant. While the first appeals were pending, the appellant was able to get the requisite certificates granting sales tax incentives to the appellant. These certificates were produced before the Ld. First Appellate Authority, who accepted the submissions of the appellant and ultimately decided to grant refund of Rs. 98,57,507/-

Arguments:

The Ld. Advocate of the appellant further submitted that the interpretation of the Ld. First Appellate Authority may lead to a situation wherein even if refund may be legally due to a dealer in assessment, it may not be given in assessment but may be allowed in appeal so as to deny interest on refund to the dealer. An interpretation of the provision which leads to such a travesty of law is absolutely bad and illegal, He has further submitted that the strict interpretation of the section as done by the Ld. First Appellate Authority leads to manifest unjust result which could never have been intended by the legislature and therefore, it is necessary to put a construction which modifies the meaning of the words used in section 54(1)(aa) of the GST Act, so as to grant interest even if refund becomes due to a dealer as result of order passed in Appeal. In support of his submissions, the Ld. Advocate of the Appellant has relied upon the following decisions of the Hon'ble Apex Court.

[a] Tirath Sigh vs. Bachittar Singh AIR 1955 SC 830

[b] Commissioner of Income Tax Bangalore vs. J.H.Gotla AIR 1985 SC 1968.

So far as the appellant's main contention that the order passed in appeal is also an order of assessment u/s. 41 of the Act is concerned.

Decision:

In view of what has been observed herein above and looking to the facts and circumstances of the case and in light of the statutory provisions and decided case law on the subject, the Tribunal passes the following order.

This appeal is allowed. The appellant is entitled to interest on refund due to him as per first appellate order passed by the Ld. Joint Commissioner of Commercial Tax at the applicable rate.

[2] The Important judgment delivered by the Gujarat High Court in case of Shri Mohammed Abbas v. State of Gujarat – Registration Certificate cannot be cancelled without hearing of a dealer.

Issue:

The registration certificate cannot be cancelled without hearing of the dealer, even though the dealer assessee is involved in criminal case.

Facts:

The Hon. Tribunal in case of Mohammed Abbas vs. State of Gujaratg has decided that provisional registration certificate cannot be cancelled without giving any opportunity to the assessee.

The department has cancelled the registration of the dealer ab initio on the ground that the assessee was involved in criminal case. Being aggrieved, the assessee has filed the writ petition before the Gujarat High Court. The gist is as under.

Arguments by the assessee:

The learned counsel for the assessee submitted before the Gujarat High Court that the provisional registration certificate issued to him had become final under the provisions of rule 5(16) of the Vat Rules.

Such registration can be cancelled only on the grounds contained in section 27 of the Act. Sub-section 5(g) provides for cancellation of a dealer who is convicted in any offence. However in such case also, the Commissioner has to record reasons and the assessee is to be heard before passing such order. It was submitted that since

the registering authority has not given any opportunity of hearing to the assessee and not recorded reasons, the order cancelling the registration certificate of the assessee must be set aside.

Arguments by the Revenue:

The Learned Counsel for the revenue submitted before the Gujarat High Court that in terms of rule 5(15) the registering authority has power to cancel the registration certificate where he is not satisfied with the details of the assessee.

Decision:

The Hon'ble Gujarat High Court prima facie observed that in the present case, the provisional registration certificate was converted into final registration certificate in terms of rule 5(15) of the Vat Rules. In such case, the registration certificate can only be cancelled on the ground mentioned in section 27 of the Act. Even in such a case, the commissioner has to grant a hearing and pass an order recording his reasons for the same.

The Hon'ble High Court held that in the present case, the registering authority has not given hearing to the assessee. The grounds on which the registration was to be cancelled were never brought to the notice of the assessee. Therefore the order of the registering authority cannot be held.

[3] The Important judgment delivered by the Gujarat Vat Tribunal in case of M/s. Modern Tube Industries Ltd. – Registration Certificates cancelled for not submitting returns for three consecutive tax periods are restored upon furnishing of cash security of Rs. 5,00,000/- with a direction that the amount of security after one year period can be adjusted against the tax liability:

Issue:

The registration certificate cannot be cancelled without hearing of the dealer. The registration certificate was cancelled for not filing of three returns consecutively, the appellant has furnished the pending returns and made the payment of tax.

The Appellate Authority has given the direction to the Commercial Tax Officer to restore the registration by furnishing of Rs. 50.00 Lacs. The appellant contended before the Hon. Tribunal and the Hon. Tribunal has given the direction for the restoration of the registration by furnishing a cash security of Rs. 5.00 Lacs. The gist is as under.

Facts:

The registration certificates were cancelled u/s. 27(5)(a) of the Vat Act. Subsequent to cancellation of registration certificates the pending returns were furnished by the appellant. However, because of irregularity of the appellant in filing of return and making the payment of tax, the Ld. Appellate Authority for restoration of registration certificates directed the appellant for furnishing of security of Rs. 50.00 Lacs as provided in section 28 of the Vat Act. As the appellant did not furnish the security of Rs. 50.00 Lacs the order of cancellation of registration certificates was upheld by the Ld. Appellate Authority. The appellant contended before the Hon. Tribunal that he has submitted all pending returns. As regard demanding of security of Rs. 50.00 Lacs by the Ld. Appellate Authority, it was contended that the Ld. Appellate Authority has no jurisdiction to demand security. The Hon'ble Tribunal held that the appeal proceeding is a continuation of the original proceeding and hence it cannot be said that the first appellate authority had no power to ask for security. The Hon'ble Tribunal restored registration certificates upon furnishing of cash security of Rs. 5.00 Lacs as against the amount of security of Rs. 50.00 Lacs demanded by the Ld. Appellate Authority. The Hon'ble Tribunal further held that the amount of cash security can be adjusted after one year against any liability raise against the appellant.

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Business Valuation

Approaches to Valuation

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The Income Approach

The concept is to value a business or asset based on its earning capacity. Earnings is a final crux of the business activity. Earnings are linked with all other fundamentals of the business like growth, capital requirements, risk involvement or uncertainty, etc. and so, valuation of business based on its earning capacity can be a better proxy.

The Income Approach derives an estimation of value based on the sum of the present value of expected economic benefits associated with the asset or business (Economic benefits have two components: cash flow (or dividends) and capital appreciation). Under the Income Approach, the appraiser may select a single period capitalization method or a multi-period discounted future income method or a multi-period weighted income method.

The capitalization method estimates the fair market value of a company by converting the income stream into value by applying a capitalization rate incorporating a required rate of return for risk assumed by the user along with a factor for future growth in the earnings stream being capitalized. This results in a value based on the present value of the future economic benefits that the owner will receive through earnings, dividends, or cash flow. The capitalization method is based on the Gordon constant growth model that uses a single period proxy of future earnings to determine the present value of the asset. This method is usually employed when a company is expected to experience steady financial performance for the foreseeable future and when growth is expected to remain fairly constant.

Multi-period discounted future income methods involve discounting a projected future income stream on a year-by-year basis back to a present value using an appropriate discount rate that reflects the required rate of return on the investment (compensating for risk). For the final year of the projection period, the income stream that represents the expected income stream in perpetuity is capitalized to arrive at a terminal value, which is then discounted back to a present value (at the same discount rate) and added to the present value of the prior years' income streams to arrive at the indication of fair intrinsic value.

This method is most commonly used when the company is expected to experience a period of abnormal growth or when the growth rate for the near term is anticipated to be significantly different from the long-term rate of growth. This is predicated upon the ability to create a reasonable forecast of the company's income stream for the forecast period. If these conditions are satisfied, the multi-period discounted future income method may more reliably capture the value impacts of cyclicality or abnormal short-term factors impacting the company's results than a capitalization method.

Single period capitalization method:

The basic of this approach is find the normalized earning capacity of the business and to capitalize it on the basis of appropriate rate considering the business fundamentals of safety, return and time. Alternately, an appropriate multiple can be used with the normalized earnings to arrive at fair estimation of business value.

This method of Valuation is relevant for valuing the business enterprises as a going concern and where the business has a proven track record and the business pertains to well established industrial segments where information as to average price to earnings multiple (P/E Multiple) is readily available.

Most businesses will have a lead-time of a few years before they start generating profits. During this period this method of Valuation may not be applicable and one would have to adopt a non–traditional method such as the Discounted Cash Flow Method (Multiple period capitalization method) which takes into account the future profitability of a business enterprise as also time value of money.

Methodology

The important task is to determine two factors (1) normalized earnings and (2) rate of capitalization or multiple for capitalization (capitalization rate is the inverse of multiple – 20% rate of returns equals a multiple of 5).

Normalized eamings

Determination of normalized earnings or future maintainable profits is a complicated task as it involves not only objective consideration of the available financial information but, subjective evaluation of many other factors such as general economic conditions, Government policies, for example, the valuer may have to take a view on exchange rate, change in custom duty or income tax rates or changes expected in subsidy given by the Government. The valuer has to give due consideration to these factors according to his reading of the situation in each individual case. In a business with a steady growth, past earnings will give indication of the future profitability and, therefore, average of the past three to five years' earnings is taken as a future maintainable profit. Before selecting the number of years for averaging, valuer has to look at the business cycle, changes in business in those years or change in the scale of business. If the business is a cyclical business, care should be taken to consider at least all the years representing a single cycle. The important considerations at this stage are how far the past profits are reflective of the future maintainable profits. Past profits need to be adjusted for all non–recurring items and non–operating expenses/ incomes. The normalized earnings can be a Profit after tax (PAT) OR a profit before Depreciation, Interest, and taxes (PBDIT) OR Net operation profit before amortization OR it may be simply a cash flow from the business operations. This earnings may be considered from recent year earnings, OR simple average of few years' earnings, OR weight age average or geometric average of few years' earnings. Again it can be a forward looking or trailing (based on past). For forward looking (also known as leading) earnings the forecasted figures must be checked. CCI guidelines prescribe usage of simple average of last three financial years' profit as future maintainable earnings of the company.

CCI guidelines, 1990 (para 7.3) state that *"The crux of estimating the Profit Earning Capacity Value lies in the assessment of the future maintainable earnings of the business. While the past trends in profits and profitability would serve as a guide, it should not be overlooked that valuation is for the future and that it is the future maintainable stream of earnings that is of great significance in the process of valuation. All relevant factors that have a bearing on the future maintainable earnings of the business must, therefore, be given due consideration"*

Rate of capitalization or multiple for capitalization

The next important factor is the rate at which adjusted maintainable profit after tax is to be capitalised. The capitalization rate or the P/E Multiple shall be reflective of the value that the business commands as on the date of valuation. The determination of this rate is influenced by many factors, some are mentioned below:

- Prevailing rate of return on safe investment, say Government Securities or RBI bonds
- Financial position of the company and Past Track record
- Prevailing Price Earning ratio of comparable companies

- Risk factors associated with the company and the industry
- Size of the business
- Stability of profits in the industry and of the company
- Industrial facts

As per the guidelines, "The Profit Earning Capacity Value" (PECV) will be calculated by capitalizing the average of the after tax profits at the following rates:

(i) 15% in the case of manufacturing companies,

(ii) 20% in the case of trading companies, and

(iii) 17.5% in the case of 'intermediate' companies that is to say, companies whose turnover from trading activities is more than 40%, but less than 60% of their total turnover." (para 7.1)

The CCI's method of determining the capitalization rate is peculiar. Finance theory suggests that the capitalization rate is a function principally of the degree of risk of the profit stream, i.e. the more risky business should be capitalized at a higher rate. On the other hand, the factor to which the CCI attaches greatest importance is whether the company is in trading or manufacturing. The implicit suggestion that trading companies arc more risky than manufacturing companies is devoid of theoretical or empirical support. Very often, an established trading company carries far less risk than a relatively new manufacturing company. Again, the CCI's demarcation of intermediate companies in terms of percentage of sales from trading activity is also unsound: percentage of profits is obviously the more relevant criterion. Finance theory asserts that companies with substantial leverage (high debt/ equity ratio) should be capitalized at higher rates reflecting higher degree of risk. The CCI's formula docs not explicitly consider leverage at all in determining the capitalization rate.

The formula

Gorden growth model estimates the value of ownership based on next year's dividend payment capacity and capitalizing it considering the expected rate of return (cost of capital) and estimated growth rate.

Following formula is used to estimate a value using this approach:

Value = Normalized earnings / (Ke – g)

Where,

Ke = required rate of return on investments

g = growth rate in earnings forever

Or

Value = Normalized earnings * Appropriate multiple

Appropriate multiple should be arrived at by considering the specific business risk, size risk, market risk, growth rate, expected return and such other factors having impact on the business operations. This multiple should also co-relate with the nature of earnings used. For example, if it is PBDIT then multiple should be based on capital invested and not only the owners' fund. This will give value of business. But if the earnings used is PAT then the multiple should reflect the factors applicable to ownership only. It will provide the value of owners' fund in the business.

To conclude, we can say that it is on the best judgment of the appraiser to decide normalized earnings and appropriate rate of capitalization.

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Corporate Law Update

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(A) MCA Updates:

1. **Clarifications on Capitalization of Costs in cases of Competitive Bid Power Projects** (AS-10 and AS-16):

   The Ministry has clarified that Accounting Standards AS-10 and AS-16 prescribe the principles of capitalization of various costs based on the underlying concept that only such expenditure should be capitalized as form a part of the cost of fixed assets which increase the worth of the assets. Cost incurred during the extended delay in commencement of commercial production after the plant is otherwise ready does not increase the worth of fixed assets. Such costs cannot, therefore, be capitalized.

   It has further clarified that AS 10 and AS 16 are applicable irrespective of whether the power projects are cost plus projects or competitive bid projects.

   [**General Circular dated 27th August, 2014**]

2. **Amendment in Schedule II of the Companies Act, 2013:**

   With effect from 29th August, 2014, Part A in paragraph 3 for sub-paragraph of Schedule II relating to the useful life shall be as under:

   "The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five per cent of the original cost of the asset:

   Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice"

   After Part C paragraph 4 shall be substituted as under:

   "(a) Useful life specified in part c of the schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

   (b) The requirement under sub-paragraph (a) shall be voluntary in respect of the financial year commencing on or after the 1st April, 2014 and mandatory for financial statements in respect of financial years commencing on or after the 1st April, 2015."

   Paragraph 7 sub-paragraph (b) shall be read as under:

   "After retaining the residual value, ***may be recognised*** in the opening balance of retained earnings, where the remaining useful life of an asset is nil."

   [**F. No. A-17/60/2012-CL-V dated 29th August, 2014]**

3. **Companies (Removal of Difficulties) 7th Order, 2014:**

   The MCA has substituted some portion of the section 143(5) as mentioned hereunder, to widen the scope of the section so as to include **any company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central**

Government and partly by one or more State Governments:

In the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall appoint the auditor under sub-section (5) or sub-section (7) of Section 139 and direct such auditor the manner in which the account s of the company are required to be audited and".

[F. No. 1/33/2013-CL.-V dated 04th September, 2014]

4. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014:

Sub rule 6 in the Rule 4 has been amended so as to include the ***expenditure on administrative overheads*** within the 5% limit of total CSR expenditure, which a company may spend for building its own CSR capacity.

[F. No. 1/18/2013-CL.-Part dated 12th September, 2014]

5. Clarification with regard to provisions of CSR under section 135 of the Companies Act, 2013: (General Circular 36)

As the Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, have been amended w. e. f. 12.09.2014, clarification (iv) in General Circular 21 dated 18.06.2014 stands omitted.

[F. No. 05/01/2014-CSR dated 17th September, 2014]

6. Companies (Appointment and Qualification of Directors) Amendment Rules, 2014:

In the Rule 9, following sub-rule 4 has been inserted:

(4) In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. **DIR-3A**.

After Rule 10, Rule 10A has been inserted:

'10A.(1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form **DIR-3B**.

(2) The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form **DIR-3C** within fifteen days of receipt of intimation under section 156.

- "Provisional DIN" has been substituted by "Application Number" and existing DIR-1 is omitted.

[F. No. 01/09/2013-Part-II, CL-V dated 18th September, 2014]

(B) SEBI UPDATES:

7. Amendments to SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 -Increasing the investment bucket for anchor investor and regulations concerning the preferential issue norms.

SEBI has clarified that:

- The revised sub-regulation (3) of regulation 43 on anchor investor allocation, shall be applicable to issuers filing offer documents with the Registrar of Companies on or after the date of notification of SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2014.
- The new and revised regulations under Chapter VII viz. regulations 71A, 76, 76A and 76B on preferential issue, shall be

applicable for the preferential issuances where notice for the general meeting for passing of special resolution by the shareholders is issued on or after the date of notification of SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2014.

[CIR/CFD/POLICYCELL/6/2014 dated 11th September, 2014]

8. Corporate Governance in listed entities - Amendments to Clause 49 of the Equity Listing Agreement:

SEBI has amended the Clause 49 of the Listing Agreement to address certain practical difficulties in ensuring compliance and matters requiring clarifications on interpretation of certain provisions, to ease the process of implementation of the same.

Major changes are as under:

- The provisions regarding appointment of woman director as provided in Clause 49 (II)(A)(1) shall be applicable with effect from April 01, 2015.
- Amendment in Clause 49(II)(B)(1)(c) relating to pecuniary relationship.
- Amendment in Clause 49(II)(B)(3)(a) w.r.t. the maximum tenure of Independent Directors.
- Amendment in Clause 49(II)(B)(4)(b) w.r.t. disclosure of terms and conditions of appointment on the website of the Company.
- Amendment in Clause 49(II)(B)(7) w.r.t. familiarisation programme for Independent Directors.
- Amendment in Clause 49(IV)(A) w.r.t. the constitution of nomination and remuneration committee.
- Amendment in Clause 49(V)(D) w.r.t. formulation of a policy for determining 'material' subsidiaries.
- Amendment in Clause 49(V)(F) w.r.t. disposal of shares in material subsidiary of the Company to less than 50% or cease to exercise of control over it.
- Amendment in Clause 49(V)(G) w.r.t. Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary.
- Amendment in clause 49(VI)(C) w.r.t. constitution of Risk Management Committee.
- Amendment in clause 49(VII)(A) w.r.t. transaction with a related party.
- Amendment in clause 49(VII)(B) w.r.t. conditions to consider the entity as the related party.
- Amendment in clause 49(VII)(C) w.r.t. formulation of a policy on materiality of the related party transactions.
- Amendment in clause 49(VII)(D) w.r.t. the prior approval of the Audit Committee for the related party transactions.
- Amendment in clause 49(VII)(E) for providing exceptions from the applicability of sub-clause 49(VII)(D) and (E) in case of transactions between two Govt. Companies and holding & wholly owned subsidiary company.
- Clause 49 (VIII)(F), (G) and (H) stands deleted.
- Clause 49(IX) for substitution of following words in place of the existing wordings:

"The CEO or the Managing Director or manager or in their absence, a Whole Time Director appointed in terms of Companies Act, 2013 and the CFO shall certify to the Board that"

[CIR/CFD/POLICY CELL/7/2014 dated 15th September, 2014]

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From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

AS – 9 Revenue Recognition
Annual Report 2013-14

Lumax Auto Technologies Limited

2.8 Revenue Recognition

Revenue is recognized to the extent that it is probable that the economic benefits will be flow to the company and the revenue can be reliably measured.

Sale of goods

Revenue from operation is recognized when all the significant risks and rewards of ownership of the goods have been passed to the buyer, usually on delivery of the goods. The company collects sales tax and value added taxes (VAT) on the behalf of the government and , therefore, these are not economic benefits following to the company. Hence, they are excluded from revenue. Excise duty deducted from revenue (Gross) is the amount that is included in the revenue (Gross) and not the entire amount of liability arising during the year.

Interest

Interest income is recognized on a time proportion basis taking into account the amount outstanding and the applicable interest rate. Interest income is included under the head "Other Income" in the statement of profit and loss.

Dividends

Dividend income is recognized when the company's right to receive dividend established by the reporting date.

Adani Power Limited

i. Revenue Recognition

i) Revenue from Power Supply is accounted for on the basis of sales to State Distribution Companies in terms of the Power Purchase Agreements (PPA) or on the basis of sales under merchant trading based on the contracted rate, as the case may be.

ii) Interest income is accounted for on an accrual basis. Dividend income is accounted for when the right to receive income established.

iii) Delayed payment charges and interest on delayed payment for power supply are recognized, on grounds of prudence, as and when recovered.

CMC Limited

g. Revenue Recognition

Sale of products

Revenue relating to equipment supplied is recognised, net of returns and trade discounts, on transfer of significant risks and rewards of ownership to the buyer, which generally coincides with the delivery of the goods to customers. Sales exclude sale tax and value added tax.

Income from services

Revenue from the contracts priced on a time and material basis are recognised when services are rendered and related costs are incurred. Revenues from time bound fixed price contracts , are recognised over the life of the contract using the proportionate of completion method, with contract costs determining the degree of completion. Foreseeable losses on such contracts are recognised when probable.

Revenues from maintenance contracts are recognised pro-rata over of the contract.

Revenue from "Education and Training" is recognised on accrual basis over the course term.

Chemfab Alkalis Limited

j. Revenue Recognition

Domestic sale of product is recognised when product are dispatched to the customer whish is when risks and rewards of ownership are transferred as per the terms of sale/ understanding with the customers. Sale are

inclusive of excise duty but excluding others taxes and are net of rebates and discounts.

Export sale of products is recognised when good are delivered to the carrier, which is when risks and rewards of ownership are transferred as per the terms of sale/understanding with the customers.

Revenues are recognised when collectability of resulting receivables is reasonably assured.

Income from service activities is accounted for on rendering the service in accordance with the contractual terms and when there is no uncertainty in receiving the same.

Insurance claims are accounted for on the basis of claims admitted /expected to be admitted and to the extent that there is no uncertainty in receiving the claims.

Interest income is recognized using time proportion method.

Dividend Income is accounted when the right to receive is established.

Cords Cable Industries Limited

IV) Revenue Recognition

Revenue is recognised to the extent that is probable that the economic benefits will flow to the company and the revenue can be reliably measured. The following specific recognition criteria must also be met before revenue is recognised.

a) Revenue from sale of goods is recognized when all the significant risks and rewards of ownership of the goods have been passed to the buyer, usually on delivery of goods. The company collects all relevant applicable taxes like sale taxes, value added taxes(VAT) etc. on behalf of the government and, therefore these are not economic benefits following to the company. Hence, they are excluded from the revenue. Gross turnover is net of sales tax and inclusive of excise duty & cess.

b) All other income are accounted for on accrual basis.

c) Profit on sale of investments is recognized on the date of the transaction of sale and is computed as excess of sale proceeds over its carrying amount as at the date of sale.

Suryachakra Power Corporation Limited

3. Revenue Recognition

a) The company's revenue from sale of electricity is based on the Power Purchase Agreement (PPA) entered in to with Andaman and Nicobar (A&N) administration. The PPA is for period of 15 years initially and shall have an extension of the terms and the effective term for 3 further periods of 5 years and contains a set of pre-defined formulae for calculation of revenue to be billed on a monthly basis. Such billings as per the terms of the PPA include a fixed charge payment, a variable charge payment, incentive payment, foreign exchange adjustment and charge in law adjustment. The revenue from sale of power is recognized on the basis of billing to A&N administration as per the terms and condition contained in the PPA.

b) Revenue from trading of goods, where the company acts as an agent are recognised when the related services are performed.

c) Income from interest on deposits is recognised on the time proportionate method using the underlying interest rates.

Ravi Kumar Distilleries Limited

2.8. Revenue Recognition

The company is in the business of manufacturing and sale of IMFL products. Sale of goods are recognised when the goods are dispatched /on passing title of the goods to the customers. The sales are accounted by including the scheme/ discounted /Excise Duty and Sales Tax. The scheme discounts /Sales Tax are charged off separately to the Profits and loss Account. Profit on sale of investments is recoded on transfer of title from the company and is determined as the difference between the sale price and the carrying value of the investment. Interest is recognised based on time-proportion method based on rate implicit in the transaction.

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From the Government

CA. Kunal A. Shah
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Income Tax

1) CBDT hereby extends the last date of deposit of TDS/TCS during the month of September,2014 from 7th October,2014 to 10th October,2014 without entailing any consequential interest.

(Press Release , dated 1st October,2014)

2) Order regarding extension of due date for furnishing of return of income for AY 14-15

CBDT hereby extends the due date for furnishing of return of income for AY 14-15 from 30th September, 2014 to 30th November,2014 , case of an assessee who is required to file his return of income by 30th September,2014 as per clause (a) of Explanation 2 to sec 139(1) of the IT Act and is also required to get his accounts audited under sec 44AB of the Act or is a working partner of a firm whose accounts are required to be audited under section 44AB of the Act.

(For full text refer Order dated 26th September,2014)

Service Tax

1) Circular regarding levy on service tax on taxable services provided By JV (Joint Venture) and vice versa

Certain doubts have been raised regarding the levy of service tax on taxable services provided (i) by the members of the Joint Venture (JV) to the JV and vice versa; and (ii) inter se between the members of the JV. In addition, doubts have also been raised regarding taxation of cash calls or capital contribution made by the members to the JV and also administrative services provided by a member to the JV.

The issue has been examined and w.e.f. 1st July, 2012, under the negative list approach, all services are taxable subject to the definition of the service [available in section 65B (44) of the Finance Act, 1994], other than the services specified in the negative list [section 66D] and exemption notification [Notification No. 25/2012-ST]. According to Explanation 3(a) of the definition of service, "an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons". In accordance with the above explanation, JV and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable.

(For full text refer Circular no. 179, dated 24th September,2014)

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Association News

CA. Abhishek J. Jain
Hon. Secretary

CA. Nirav R. Choksi
Hon. Secretary

Forthcoming Programmes

Date/Day	Time	Programmes	Venue
02.11.2014 Sunday	7.30 p.m. to 9.30. p.m.	Diwali Get - Together	Angan Party Plot, Opp. Nandavan IV, B/h. Jodhpur Gam, Satelite, Ahmedabad
20.12.2014 Saturday	8.00 a.m. to 1.00 p.m.	Cricket Match - President XI Vs. Secretary XI	Sardar Patel Stadium, Ahmedabad

Glimpses of events gone by:

1. On 8th September 2014, 4th Study Circle Meeting was held on the topic of " Tax Audit – Reporting Requirement Compliance" at H.K. College of Commerce Conference Hall, Ashram Road, Ahmedabad.

(L to R CA. Mehul Shah, Speaker CA. Chirag M. Shah, CA. Shailesh C. Shah, CA. Naishal Shah)

Participants at Study Circle Meeting

2. On 12th September 2014, a workshop was organized with Income Tax Department on "TDS Provisions" jointly with Gujarat Chamber of Commerce & Industries, Ahmedabad Branch of WIRC of ICAI, All Gujarat Federation of Tax Consultant, Income Tax Bar Association and Tax Advocate Association at GCCI Premises, Ashram Road, Ahmedabad.

President of the Association CA. Shailesh C. Shah offering a Memento to Shri Y.K. Batra, Commissioner of Income Tax (TDS).

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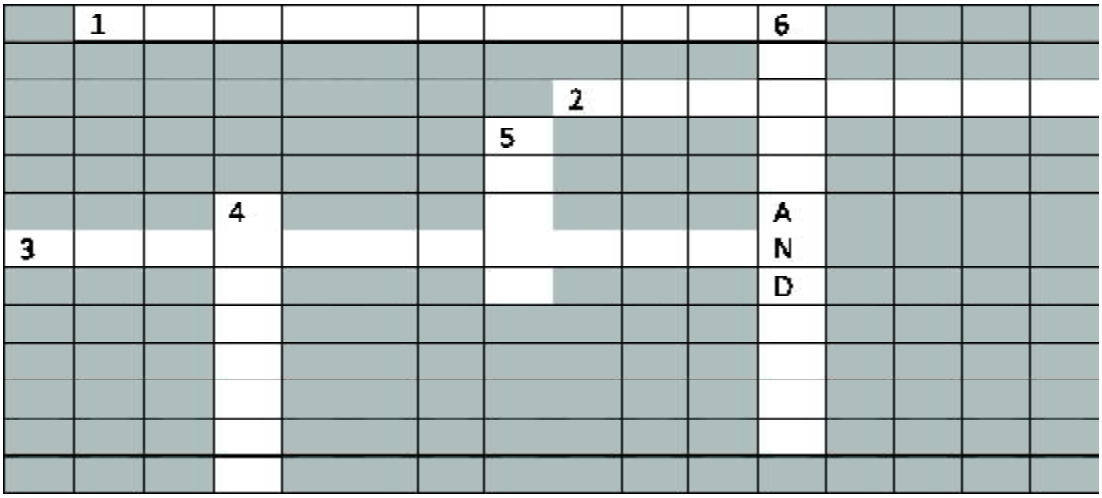
ACAJ Crossword Contest # 6

Across

1. _____ is the attribute of Strong.
2. The end product of education should be a free _____ man.
3. _____ will not be allowed in computing the income of the Trust in respect of an asset where cost of acquisition has already been allowed as application.

Down

4. As per Article 366(12), goods includes all material, commodities and _____ .
5. _____ Capital is the primary source of competitive intangibles for organization today.
6. _____ and _____ of the signatory is now mandatorily required in the revised tax audit report.



Notes:

1. The Crossword puzzle is based on previous issue of ACA Journal.
2. Three lucky winners on the basis of a draw will be awarded prizes.
3. The contest is open only for the members of Chartered Accountants Association and no member is allowed to submit more than one entry.
4. Members may submit their reply either physically at the office of the Association or by email at caaahmedabad@gmail.com on or before 31/10/2014.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 5	
1.	CA. Ajit C. Shah
2.	CA. Niraj Agarwal
3.	CA. Mohan Akalkotkar

ACAJ Crossword Contest # 5 - Solution

Across

1. Missionaries
2. Expense
3. Charity

Down

4. Investor
5. Senior
6. TDS

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