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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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The Dual Path

The true happiness is like poison in the beginning but nectar in the end.

False happiness is like nectar in the beginning but poison in the end.

- verse 37 and 38, Chapter XVIII, Bhagwad Geeta.

Human being is considered to be the crown of all creations of God. The statement is not a self proclamation but a fact because it's only a human being who has the ability to rise and reach the highest state of evolution. The ultimate goal of every individual is to be happy. Whatever may be the pursuits of life, each and every one of us is looking for that everlasting happiness. Though all our actions are for attaining that eternal and unlimited happiness, the actual state of affairs seems very far from this goal of life. As an individual, we need to take a pause and pose to ourselves; are we going in a right direction? Whether running a race to acquire and hoard the objects of desire, itself finite and limited, can give us that permanent joy. Material prosperity by itself cannot provide happiness to an individual if one has not developed a healthy inner personality.

Human being is the finest creation. Only human beings have the ability to choose their action. No other creature has this ability to make such a choice. As a dog, its nature is to bark, it does not have a choice to keep quite when it feels like barking. It is only a human being who has been blessed with a fully developed intellect to discriminate and make choices based on rationality and prudency. An individual who has developed his inner personality makes decisions with his intellect that are beneficial for his own good and also for the society at large. On the other hand, one who is driven by the material happiness chooses the obvious and convenient.

The basic knowledge of what is noble and ignoble is known to one and all. In spite of such knowledge one chooses the vicious path, which is detrimental to one's well being. The spiritual masters analysed the reason for such conduct and discovered that there are two distinct paths available in life, ***Shreya,*** the path of good and ***Preya*** the path of pleasant. As the name suggests the path of pleasant is fascinating and attractive and entices individual to take it. On the other hand, the path of good is based on sound religious tenets, is resisted by an individual. *Preya* caters to one's own sense gratification and provides immediate pleasure but subsequently results in disappointment and sorrow. *Shreya* is detestable in the beginning but later on leads to happiness and a sense of fulfillment. *Shreya* is beauty hidden providing permanent happiness recommended by all religions but unfortunately majority of people opt for *Preya* because it is alluring, providing immediate sense gratification.

May we all select the path which is noble that takes us closer to the goal of our life. It is this choice that shall determine the quality of life we live. The two paths have been beautifully portrayed in the poem "The Road not Taken" by Robert Frost. The poem concludes indicating the positive difference it makes in life when the path of good is chosen over the path of pleasant.

I shall be telling this with a sigh
Somewhere ages and ages hence:
Two roads diverged in a wood, and I—
I took the one less traveled by,
And that has made all the difference.

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Editorial

Operation *Rahat* - A National Glory

The Indian Government left no stone unturned in evacuating Indians from Yemen as fighting raged between the Houthi rebels and the Yemen government supported by aerial bombardment from the Saudi-led coalition. The operation of the government was so effective that over 26 countries including the U.S. and U.K. sought India's help in rescuing their citizens. With bombings, shelling, firing leading destruction all around, India successfully accomplished 'Operation *Rahat*' rescuing more than 5600 people.

The Indian Government led by Ms. Sushma Swaraj, Minister of External Affairs and Gen. V.K.Singh, Minister of state, External Affairs, took all possible pro-active measures to ensure success of the operation. The steps taken by the Indian Government has made a mark globally apart from restoring faith of the common man in the political establishment of the nation. The effectiveness of the operation was remarkable and the leadership of an Army General-turned-diplomat General V K Singh has a lot to do as he supervised the whole operation and lead from the ground.

There are numerous heart touching stories of people who were rescued. Among the rescued, there was a baby as old as 6 days. There were women, children and people as old as in their 90s. Though these people are back to their homes, what happens to the million others who are still in that state of terror and cannot leave because it is their home, is not known.

As India was carrying out this massive operation under hostile conditions, it is unfortunate that hardly any news media gave it the importance it warranted. This is a well deserved reason to take it in this Editorial, a mark of salutations to the soldiers and the leadership of the country. In today's era no positive news is considered as worthy of coverage and editors and journalists are busy canvassing negativities to make this beautifully planet a living hell of cynics. It is for this and a matter of shame, that no leading newspaper or media channel found this historic mission worthy enough to be covered on front pages or on a prime time. The awareness increased when it got the much needed momentum on the social networks.

Kudos for the leadership and the armed forces of the nation who have brought this glory with their mammoth efforts! The magnanimous of the operation and emotions of the rescued can be gathered from their messages doing rounds in the social media.

"I am so scared for my 8 months son & myself," - Sabah Shawesh

"We went to Sana'a airport and came back. What chance do we have now?" - Mustafa Loka

"Awaiting clearance to fly in Yemen airspace. If no clearance received, we will evacuate you by ship reaching Hodeidah port on 4th midnight," – Sushma Swaraj

"If no clearance received, we will evacuate you by ship reaching Hodeidah port on 4th midnight" – Sushma Swaraj.

"Today we reached safely from Djibouti to Mumbai. You have done tremendous effort to send us India," - Ajaj A Majid.

"I am one among them and now in transit at Doha. Will reach by tomorrow morning. Thank you very much for your all efforts."

Jai Hind!

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From the President

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Dear Reader,

It is invariably difficult to write the first and the last message. In the first message it is the nervousness of how to start and at the conclusion it is the sheer joy and sense of fulfillment of best possible put in, overpowering the expressive words.

It is said that **"life is a gift of God to us and how we live is a return gift from us to God".** Similarly, the role of the President of CAA was an opportunity and a blessing to me and at the end of my tenure there is this sense of fulfillment where I tried to put in my best efforts to serve this esteemed Institution and the professional brethrens through various educational, cultural programmes and activities round the year. All good things come to an end, and for me, the Presidentship of CAA is about to come to an end.

When this issue reaches you, I would be about to complete my term as the President of this august Association that has been carrying its legacy and glory since last more than 60 years providing a foundation of knowledge, skill and professional values to its members and public at large.

It is said that :

If you want to walk quick, walk alone
If you want to walk far, walk together.

As a president this year, I can affirm this quote to be absolutely true as I have lived and experienced it. The year passed by had left some lasting imprints in my life. I enjoyed every moment of my tenure. Blessings from elders/seniors, good wishes from friends, unstinted support from the tea club members have filled my life with positive emotions of love and gratitude. Throughout the year, I have received overwhelming response from many of you in terms of feedback to my messages, words of appreciation for some of the initiatives that we were able to take and also lots of suggestions for improvement. Encouraging feedback from members about various events, President's messages and new initiatives; memories of working as a team with Executive committee members and tea club members; togetherness and brotherhood amongst office-bearers are permanent treasures which I shall cherish throughout my life.

My fellow office bearer and current Vice-President Yamal Vyas will be the next President of the Association. I wish him all the very best for a very successful and fulfilling year. The philosophy and the principles at the Chartered Accountants Association are such that at all times, the President stands fully supported by a large number of people around who are all working selflessly and sincerely for a common goal — to serve the CAA and its members. I am sure that in the years to come, the Chartered Accountants Association will be steered into new areas with great skill by its future leaders. CAA is known for its innovation and for its forward thinking. I pray that the Association reaches to new heights in the days to come.

This is my last communication to you through Chartered Accountants Journal. It has been my privilege and honour to have been able to communicate my ideas, thoughts and views with all of you. The responsibility of writing for this journal was a very heavy one. At the same time I would like to put on record my sincere appreciation and gratitude to all office bearers, executive committee members, all past presidents, all chairmen, all conveners, members of respective committees, all authors of articles and columnists, all faculties, all members of association and office staff for their support, guidance and encouragement provided to me.

With regards
CA. Shailesh C. Shah
President

Big Bang entry of IFRS in India - Issues & Challanges on Ind AS Notification

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'*I strongly believe that the introduction of Ind AS is a momentous step for India*'- Hans Hoogervorst, Chairman of International Accounting Standard Board (IASB) said at recent conference held in India. With the notification of Companies (Indian Accounting Standards) Rules, 2015 on 16th February 2015 by the Ministry of Corporate Affairs (MCA), the IFRS has become reality in India as Indian Accounting Standards (Ind AS).

At this time, it is imperative to go back to understand the commitment by Indian Government and the efforts by MCA and ICAI for IFRS convergence in India. Prime Minister Dr. Manmohan Singh had made a commitment towards the alignment of Indian Accounting Standards with IFRS at the G20 Summit in 2009. Thereafter, the Ministry of Corporate Affairs came up with a road map for the convergence, wherein companies part of BSE Sensex and NSE Nifty, those listed on overseas stock exchanges, apart from companies with a networth of above Rs 1,000 crore were to converge with IFRS from April 1, 2011. However, MCA has deferred implementation of IFRS in February 2011. Finally, MCA notified Companies (Indian Accounting Standards) Rules, 2015 on 16th February 2015 and issued Ind AS roadmap.

Ind AS Roadmap

Phase	Types of Companies	Networth	Applicable to Financial Year beginning on or after	Comparative for the period ending on or after
I	All Companies (whether listed or not)	Rs. 500 crore or more	1st April 2016	31st March , 2016
II	Other companies listed or in the process of listing on stock exchange in India or outside India	-	1st April 2017	31st March , 2017
II	Unlisted company	Rs. 250 crore or more	1st April 2017	31st March , 2017

Notes :

1. Also applicable to Holding, Subsidiary, Joint venture or Associate companies of companies covered above.
2. A company may voluntarily apply Ind AS for accounting period beginning on or after 1st April 2015 with comparative for the period ending on 31st March 2015 or thereafter.

Issues on Applicability of Ind AS:

1. What is Net Worth for the purpose of applicability of Ind AS and related issues?

   Section 2 (57) of Companies Act 2013 defines Net Worth as '*the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the*

accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation'.

Net worth shall be calculated in accordance with the stand-alone financial statements of the company as on 31st March, 2014 or the first audited financial statements for accounting period which ends after that date;

2. X Pvt. Ltd. is a wholly owned subsidiary of A Inc. USA. The networth of A Inc is Rs. 1200 crore while of X Pvt. Ltd. is Rs. 200 crore. Is Ind AS applicable to X Pvt. Ltd or A Inc and from which date?

   For the purpose of applicability of Ind AS, networth of Indian Company is to be considered. Hence, even if networth of USA based Holding Company is more than Rs. 1000 crore, Ind AS is not applicable to either A Inc. USA or X Pvt. Ltd as net worth of Indian Subsidiary is less than the prescribed limit. However, X Pvt. Ltd. can voluntarily adopt Ind AS.

3. If X Pvt. Ltd. is incorporated on 10th May 2014. Networth of X Pvt. Ltd. for the year ended 31st March 2015 was Rs. 50 Crore and then for the year ended 31st March 2016 and 2017 it becomes Rs. 150 crore and Rs. 270 Crore. Whether Ind AS will be applicable to X Pvt Ltd. and from which year?

   As X Pvt. Ltd. cross Rs. 250 Crore in the year ended 31st March 2017, Ind AS will be applicable from the year beginning from 1st April 2017.

4. What will be the first period published under Ind AS?

   Phase – I companies having networth of Rs. 1,000 crore or more will be required to publish Ind AS from the period beginning on or after 1st April 2016. Hence, the first annual period published will be financial year 2016-17 and first interim period published will be for listed company for the Quarter ended 30th June 2016.

5. X Pvt. Ltd. having networth of Rs. 230 crore on 31st March 2014 has voluntarily opted to apply Ind AS from the financial year beginning on or after 1st April 2015. However, due to adverse business situations, the company has incurred huge loss in subsequent years and networth has been reduced to Rs. 150 Crore and Rs. 50 crore on 31st March 2016 and 31st March 2017 respectively. Can X Pvt. Ltd. opt not to apply Ind AS from the financial year 2017-18?

   As per the Rules specified, Once a company starts following the Indian Accounting Standards (Ind AS) either voluntarily or mandatorily on the basis of criteria specified in sub-rule (1), it shall be required to follow the Indian Accounting Standards (Ind AS) for all the subsequent financial statements even if any of the criteria specified in this rule does not subsequently apply to it. Therefore, X Pvt. Ltd. will be required to follow Ind AS irrespective of its networth and choice whether voluntary or compulsory.

6. A Ltd., a listed banking company is subsidiary of X Pvt. Ltd. The Networth of A Ltd. is 1,200 crore and of X Pvt. Ltd is Rs. 700 crore. What will be the applicability of Ind AS for A Ltd and X Pvt. Ltd.

   The insurance companies, banking companies and non-banking finance companies shall not be required to apply Indian Accounting Standards (Ind AS) for preparation of their financial statements either voluntarily or

mandatorily. Hence, A Ltd is exempted from Ind AS while X Pvt. Ltd. is required to prepare its Standalone and Consolidated financials under Ind AS from the period beginning on or after 1st April 2016. For preparation of Consolidated financials of X Pvt. Ltd., even A Ltd's Indian GAAP financials need to be converged to Ind AS.

Ind AS Snapshot

- Not adoption of IFRS but Convergence
- **Voluntarily** : From the period beginning on or after 1st April 2015
- **Phase – I** Companies : From the period beginning on or after 1st April 2016
- **Phase – II** Companies : From the period beginning on or after 1st April 2017
- Holding, Subsidiary, Joint Venture or Associate companies of companies covered in Phase – I or Phase – II to apply Ind AS as per respective Phase
- Applicability based on **Net Worth as on 31st March 2014**
- Once applied Ind AS, it is to **be applied for all subsequent years** irrespective of applicability of criteria.

Challanges for Corporates:

The various factors which might affect smooth transition to Ind AS include:

1) Regulation :

The impact of Ind AS adoption on Direct Tax, Indirect Tax and other regulations need to be assessed. As Income Computation and Disclosure Standards (ICDS) are recently notified, applicable from 1st April 2015, this will govern the accounting for Income Tax and provide comfort to the companies covered under Ind AS.

Due to IND AS -115 Revenue from contract with customers, the principles for revenue recognition are shifted from risk and reward to control. The impact of this standard on the revenue recognition of the companies and consequential indirect tax impact need to be assessed. The corporate sector is waiting for further clarification from regulations on these challenges.

2) Culture:

As Ind AS is based on substance over form and it is a major shift from Indian GAAP to Ind AS, the impact on stakeholders of the company – most importantly on investors and financers need to be assessed. For the companies which are listed, there is need to organise the investors' meeting in advance to abreast with the development on Ind AS implementation and likely impact on financials of the company.

3) Scale – implementation barriers:

It is estimated that in the first phase of Ind AS adoption more than 500 companies will be covered for Ind AS adoption. The transition from existing GAAP to Ind AS is not only accounting change but it also requires extensive training to the employees of the company, system changes and smooth transition. This poses challenge not only for the corporate but also for Ind AS implementation consultant, with scarce expert resource.

4) Ease of their translation:

It is utmost important for corporate to effectively converge from IGAAP to Ind AS. The tone from the top is the underlying factor. The discussion of overall implementation plan at audit committee, board meeting and a separate committee to monitor the progress of implementation are few of the important factors for smooth transition.

5) Education :

The course curriculum of the commerce graduates and professional courses like ICAI, ICSI need to be changed to include Ind AS. The education and training of students and professional accountants in the international standards is a challenge.

Numerous questions arise for the Corporate India :

1) How do we move towards international convergence?

The starting point for Ind AS convergence is critical which requires thorough understanding of the possible challenges of Ind AS convergence. The decision whether to appoint a Consultant or to carry out convergence in-house by a qualified staff needs to be taken.

2) What obstacles need to be overcome?

Understanding of clear path of Ind AS convergence is most important. Unless the corporate are able to think through the complete convergence plan, the chances of facing hurdle at last stage are high.

3) Whether Staff needs to be trained for IFRS?

Ind AS (IFRS) is not only accounting change and the same cannot be handled only through system or software or excel files. The staff in Accounts and Finance function need to be trained to understand and implement IFRS in day to day accounting.

4) What systems and processes can help to facilitate international convergence?

A clear roadmap with clarity on responsibility and timelines is the key to smooth convergence. The ERP / other system consultant may need to be involved at various stage of transition for ensuring the complete and correct information flows from system for Ind AS reporting.

5) How much cost the company need to incur to ensure smooth IFRS transition?

The notification was issued in February 2015, with requirement to prepare opening balance sheet as on 1st April 2015 for the companies covered in phase – 1. The corporate may not have budgeted the cost of convergence which includes Staff training, system improvement, Ind AS Implementation consulting fees etc. Earlier MCA has issued a roadmap for convergence to IFRS which subsequently was withdrawn at last stage. However, this time, it is unlikely that Ind AS convergence will be delayed as ICDS are notified and clarity on other regulatory issues is expected to be provided soon.

Conclusion:

With issue of Ind AS notification, there is an immense opportunity for professionals and students in the new era of accounting. It is expected than approx. 10,000 companies will be required to apply IFRS (Ind AS) in coming years. With requirement of comparatives, in fact, Ind AS is to be applied from 1st April 2015. Therefore this is a crucial time for the corporate and advisors to assess the requirement, carry out impact analysis, organise IFRS training programs for staff and successfully converge to Ind AS.

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Infinite patience, infinite purity, and infinite perseverance are the secret of success in a good cause.

Swami Vivekananda

Depreciation as per Companies Act, 2013

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Accounting Standard-6 defines depreciation as a measure of the wearing out, consumption or other loss of value of a depreciable asset arising from use, effluxion of time or obsolescence through technology and market changes.

Depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortization of assets whose useful life is predetermined.

With introduction of Companies Act, 2013, Schedule XIV of Companies Act 1956 is not in operation anymore. Schedule XIV of Companies Act, 1956 which specified minimum rates of depreciation to be provided by a company is now replaced by Schedule II of Companies Act, 2013. A plain reading of the Schedule II suggests that endeavours are being made to synchronize the methods of depreciation with the International Financial Reporting Standards widely known as IFRS. It is still awaited that how the future changes in IFRS will be recognized in converged Indian Accounting Standards widely known as Ind AS to update them.

As per the provisions of Section 123(2),depreciation is to be provided in accordance with Schedule II of the Companies Act2013. Depreciation as per Companies Act 2013 requires a systematic allocation of the depreciable amount of an asset over its useful life unlike Schedule XIV of the Act which specified minimum rates of depreciation to be provided by a company. The depreciable amount is defined as the cost of an asset, or other amount substituted for cost, less its residual value. The residual value is generally said to be not more than 5 percent of the original cost of the asset.

Pursuant to a recent amendment to Schedule II,distinction between class I and class III has been removed.The provision now reads as under:"The useful life of an asset shall not be longer than the useful life as 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 limits specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice."

With usage of the word "Different", it seems that both, a higher and a lower useful life may be allowed. The same goes right for residual value also.

As per Schedule II, and for its purpose, the term depreciation includes amortization. Also it has been stated that amortization of Intangible assets is to be done as per Accounting Standard-26, Intangible assets.For the intangible assets created under Build, Operate and Transfer, Build, Own, Operate and Transfer or any other form of public private partnership route in case of road projects, amortization may be done as mentioned in Schedule II of the Companies Act 2013.

Now as far as Useful life is concerned, it may be considered as a period over which an asset is available for use or as the number of production or similar units expected to be obtained from the asset by the entity. The useful lives specified in Schedule II of the 2013 Act for various assets will result in their depreciation over a period different from Schedule XIV of the Companies Act, 1956.

AS-10 gives an option to entities to follow component approach for accounting of Fixed Assets whereas the same has been mandated in Schedule II of the Companies Act 2013.

Schedule II of the 2013 Act also states that the specified useful lives are for the whole of the asset. When the part or any component 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 balancing asset, useful life of that component or part should be determined separately. This indicates that now companies will be required to adopt the 'component approach' and calculate depreciation on such components after determining its estimated useful life likewise.

Currently, the replacement costs are expensed out by the companies. Under component accounting, companies will capitalize these costs as a separate component of the asset, provided it meets the criteria as mentioned in Schedule II.

The requirement to adopt a 'component approach' is similar to that envisaged in Ind-AS.A significant effort will be involved in estimating useful lives for components by the entities. However adoption of the component approach is voluntary in respect of the financial year commencing on or after 01-04-2014 and mandatory for the financial statements in respect of financial years commencing on or after the 01-04-2015.

The major impact of the change in estimation of useful life will be on assets already held by the companies before 01/04/2014. In this regards the 'Transitional Provision' states that the carrying amount of the asset should be depreciated over the remaining useful life of the asset as estimated as per Schedule II of the Companies Act 2013. For the assets whose remaining useful life is nil as on 01-04-2014, the carrying value of such assets should be recognized in the opening balance of the retained earnings after retaining the residual value.

Unlike depreciation provisions of Companies Act 1956, Schedule II of Companies Act 2013 omits the provision of providing 100% depreciation on assets costing Rs. 5000 or less.

With the change in the aforesaid provisions, the entity is not required to change its method of depreciation. This is merely a change in estimation of useful life of the assets.

In reference to the Transitional Provisions as laid down in Schedule II of Companies act 2013, ICAI's announcement* titled, "Tax effect of expenses/income adjusted directly against the reserves and/ or Securities Premium Account" should be considered which reads as;

"*Any expense charged directly to reserves and/or Securities Premium Account should be net of tax benefits expected to arise from the admissibility of such expenses for tax purposes. Similarly, any income credited directly to a reserve account or a similar account should be net of its tax effect.*"

Rates of depreciation as per SLM and WDV can be calculated with the help of the below formula.

Straight Line Method:

$$\text{Depreciation Rate} = \frac{\text{Original Cost-Residual Value}}{\text{Estimated useful life}}$$

Written Down Value Method:

Depreciation Rate= 1-(Residual Value/Carrying cost/Original cost)^(1/remaining useful life)

The provision of calculating pro-rata depreciation on additions or sale, discard or demolition of assets remains the same.

The concept of Extra shift depreciation is introduced in Schedule II, Companies Act 2013 which states that:

a)For Double shift, provide for 50% increase in depreciation for that period for which asset is used.

b)For Triple shift, provide for 100% increase in depreciation for that period for which asset is used.

Schedule II also states that Extra Shift Depreciation is not applicable to items marked NESD (No Extra Shift Depreciation) in the Schedule, but it will apply to plant and machinery items subject to general rate- i.e., useful life of 15 years.

All the aforesaid provisions are lucid, but the one thing that could be tiresome is the reconciliation of depreciation rates as per the useful life under both the Schedules as prescribed in the Acts i.e. one that has rescinded and the one that is prevalent.

Companies following WDV method will have to work out the depreciation rates as per the suggested formula using their remaining useful lives. Entities will have to do the working of the Original cost and accumulated depreciation individual asset wise from the date of its purchase.

An illustration has been given here for getting practical understanding.

Let's say ABC ltd. company had purchased a Building on 01-04-2011 with original costRs. 10,00,000/-. The company depreciated the building @ 5% as per WDV method.

The depreciation working of the asset was as follows:

(Amt.in Rs.)

Particulars	Original Cost	Depre @5%	WDV
01/04/2011 WDV as on	1,000,000	50,000	950,000
01/04/2012 WDV as on	950,000	47,500	902,500
01/04/2013 WDV as on	902,500	45,125	857,375
01/04/2014	857,375		

As per Schedule II of the Companies Act 2013, the useful life of a Building is 60 years.

Hence the depreciation rate as per WDV method will be calculated using the remaining useful life of the asset as on 01-04-2014

Residual value of the said asset is 5% of original cost i.e. 10,00,000*5%=50,000/-

The formula to work out the depreciation rate is:

[1-(Residual Value/Carrying Amt.)^(1/remaining useful life)]*100

So in the current example the depreciation rate will be worked out as follows:

4.86%*[1-(50,000/8,57,375)^(1/57)]*100*

Hence from 01-04-2014, the building in the said example will be depreciated for the remaining useful life of**57 years @ 4.86%**

Let's now take another example of general furniture which has a useful life of 10 years as per Schedule II.

The said asset was purchased on 01-04-2004 and the same has a nil remaining useful life as on 01-04-2014. The depreciation working of the said furniture is as follows;

(Amt.in Rs.)

Particulars	Original Cost	Depre@18.10%	WDV	Year	Count
01/04/2004	60,000	10,860	49,140	2004-05	1
WDV as on 01/04/2005	49,140	8,894	40,246	2005-06	2
WDV as on 01/04/2006	40,246	7,284	32,961	2006-07	3
WDV as on 01/04/2007	32,961	5,966	26,995	2007-08	4
WDV as on 01/04/2008	26,995	4,886	22,109	2008-09	5
WDV as on 01/04/2009	22,109	4,002	18,107	2009-10	6
WDV as on 01/04/2010	18,107	3,277	14,830	2010-11	7
WDV as on01/04/2011	14,830	2,684	12,146	2012-13	8
WDV as on 01/04/2012	12,146	2,198	9,947	2013-14	9
WDV as on 01/04/2013	9,947	1,800	8,147		10
WDV as on 01/04/2014	8,147				

The remaining useful life of the asset as on 01-04-2014 is nil. Hence the asset will be recognized in the books at its residual value, i.e. @ 5% of its original cost.

(Amt.in Rs.)

Residual Value	**3,000**
Carrying value as on 1-04-2014	**8,147**
Effect in Opening balance of Reserves	**5,147**

The balance of the carrying value after retaining its residual value will be adjusted in Opening balance of the reserves. (Considering the announcement by ICAI)*****

The aforesaid asset will be recognized in the financial statements at a value of Rs.3,000/- i.e. at its residual value on and after 01-04-2014.

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Glimpses of Supreme Court Rulings

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1 Legal reference to be drawn from facts is question of law:

That a reading of a question initially framed and subsequently and subsequently reframed showed that what was done by the High Court was to retain three out of twelve questions, as initially framed, while discarding the rest. Some of the questions discarded by the High Court were actually more proximate to the question of perversity of the findings of fact recorded by the Tribunal, than the question retained. The High Court examined the entitlement of the assessee to deduction accepting the agreements executed by the assessee with the commission agents, the affidavits filed by the husbands of the two lady partners of RJ and the payments made by the assessee to RJ as well as to F. The question that was posed by the High Court was whether acceptance of the agreements, affidavits and proof of payments would debar the assessing authority to go into the question whether the expenses claimed would still be allowable u/s 371 of the Act. This was a question which the High Court held was required to be answered in the facts of each case. There were certain Government circulars which regulated, if not prohibited, liaisoning with Government Corporations by manufacturers for the purpose of obtaining supply orders. The true effect of the Government circulars along with the agreements between the assessee and the commission agents and the details of payments made by the assessee to the commission agents as well as the affidavits filed by the husbands of the partners of RJ were considered by the High Court. In performing the exercise the High Court did not disturb or reverse the primary facts as found by the Tribunal. Rather, the exercise performed was one of the correct legal inferences that should be drawn on the facts already recorded by the Tribunal. The questions reframed were to this effect. No question of perversity was required to be framed or gone into to answer the issue arising. In fact, the questions relatable to perversity were consciously discarded by the High Court. There was, therefore, no fault with the questions reframed by the High Court or the answers provided.

[Premier Breweries Ltd. vs. CIT (372 ITR 180)]

2 Sale of shares - Capital Gain vs. Business Income :

Where investment in shares was made with an objective of capital appreciation, there were infrequent-handful of transactions and dividend was also earned, profit from sale/purchase of shares was to be treated as capital gain.

[CIT vs. Devasan Investment (P.) Ltd. (229 Taxman 496)]

3 Term 'Turnover' as occurring in Section 80HHC:

The term 'turnover' had neither been defined in the Act nor has been explained by any of the CBDT circulars. In this circumstances, one has to look at the meaning of the term 'turnover' in ordinary accounting or commercial parlance. Normally, the term 'turnover' would show the sale effected by a business unit. It may happen that in the course of the business, in addition to the normal sales, the business unit may also sell some other things. In ordinary accounting parlance, as approved by all accountants and auditors, the term 'sales', when reflected in the profit and loss account, would indicate sale proceeds from sale of the articles or things in which the business unit is dealing. When some other things like old furniture or a capital asset, in which the business unit is not dealing are sold, the sale proceeds therefrom would not be included in 'sales' but it would be shown separately. In simple words, the word 'turnover' would mean only the amount of sale proceeds received in respect of the goods in which an assessee is dealing in.

[CIT vs. Punjab Stainless Steel Industries (229 Taxman 423)]

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From the Courts

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1 Charitable Trust and Depreciation

CIT V/s. Siliguri Regulation Market Committee (2014) 366 ITR 51 (Cal)

Issue :

Whether depreciation is available to a Charitable Trust?

Held:

The object of Section 11 of the Income Tax Act, 1961 is to feed Public Charity. By permitting computation of income in a commercial manner the object of feeding public charity is achieved. The amount deducted by way of depreciation is in the that case ploughed back for user on account of charity. It cannot be disputed that a building used for the purpose of charity diminishes in value over time like any other building. Therefore, providing for such demunition of value could keep the corpus of the trust intact, otherwise the corpus of the trust itself in course of time may got dissipated. Depreciation is deductible while computing the income of a charitable trust.

2 Essentials of Association of Persons

CTCI Overseas Corporation Ltd. V/s. D.I.T. (2014) 366 ITR 33 (Delhi)

Issue:

What are the essentials of an Association of Persons?

Held:

Delhi High Court, in the instant case has laid down the essentials of an Association of Persons in the following words:

(i) It must be constituted by two or more persons;

(ii) The constituent members must have come together for a common purpose;

(iii) The association must move by common action and there must be some scheme of common management ;

(iv) The co-operation and association amongst the constituent members must not be perfunctory or merely in form; and

(v) The association amongst members must be real and substantial.

3 Sec. 269SS / 269 T : No violation if transaction is by book- entries

(1) CIT V/s. World-Wide Township Projects (2014) 269 CTR 444 (Del)

(2) CIT V/s. Saurabh Enterprises (2014) 269 CTR 451 (All)

Issue:

Whether when transaction is by book entry without any cash involvement provision of Sec. 269-SS/ 269T would be applicable?

Held:

Both the High Courts viz. Delhi High Court and Allahbad High Court have held against the department on the subject.

It is held that :-

Delhi High Court :

Ambit of Sec. 269-SS is clearly restricted to transaction involving acceptance of money and not intended to affect cases when a debt or a liability arises on account of book entries. Liability recorded in the books of accounts by way of journal entries, i.e. crediting of the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provisions of Sec. 269-SS.

Allahabad High Court :

There is no violation of Sec. 269-SS/269T where only adjustment entries are passed and no cash is involved and, therefore penalty u/s.271D/271E is not leviable in such a case.

4 Capital Gain : Date of acquisition of flat

Ms. Madhu Kaul Vs. CIT. (2014) 225 Taxman 86 (P&H)

Issue :

Whether date of allotment of a flat can be the date of acquisition for the purpose of capital gain?

Held :

The flat was allotted to the assessee on 7-6-1986 vide letter conveyed on 30-06-1986. The assessee paid the first installment on 04-7-1986. Thereby conferring a right upon the assessee 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 and relate back to and arise from the rights conferred by the allotment letter.

Hence the gain is a long term capital gain as the flat was held for more than 36 months.

5 Search & Seizure :Quantum of jewellery exempt : CBDT circular

C.I.T. V/s. Satya Narayan Patni (2014) 366 ITR 325 (Raj)

Issue :

What is the quantum of Jewellery exempt from seizure at the time of search?

Held :

On a perusal of instruction No.1916, dated May 11, 1994 issued by CBDT, it is clear that in the case of a Wealth-tax assessee, whatever gold jewellery and ornaments have been found and declared in the Wealth-tax return, need not be seized. However, sub clause (ii) prescribes that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent of 500 gm. per married lady, 250 gms. per unmarried lady and 100 gm. per male members of the family need not be seized. Sub clause (iii) also prescribes that the authorized officer may, having regard to the status of the family and the customs and practice of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure.

Looking to the status of the family, in the instant case, and the jewellery found in possession of the four ladies, it was held to be reasonable and therefore, the authorized officer, in the first instance did not seize the jewellery as being within the limit or limits prescribed by the Board and the subsequent addition was not justifiable on the part of the Assessing Officer and rightly deleted by both appellate authorities.

6 New claim before CIT(A) or Tribunal

CIT V/s. Mitesh Impex (2014) 367 IR 85 (Guj.)

Issue :

Whether a new claim can be made before CIT(A) or Tribunal when facts are on record ?

Held :

In the instant case the assessee had raised new claim for deduction before the CIT(Appeals) and the Tribunal which were allowed. On appeal it was contended that new issues could not be raised for the first time before CIT (Appeals) or the Tribunal. On the issue, High Court has held as under :

Income tax proceedings are not strictly speaking adversarial in nature and the intention of the revenue should be to tax the real income. Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate or the Tribunal when facts necessary to examine such ground, contention or claim are already on record.

7 Audit objection and reopening

Vodafone West Ltd. V/s. Asstt. C.I.T. (2014) 226 Taxman 39 (Guj.) (Mag)

Issue :

Whether assessment can be reopened on the opinion of Audit party only?

contd. on page no. 37

Tribunal News

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Apollo International Ltd. v. ACIT 152 ITD 229(DEL)
Assessment Year: 2006-07
Order dated: 31st October, 2014

Basic Facts

The assessee was engaged in international trading of tyres, tubes and flaps through 'tyretech global division'.In transfer pricing proceedings, the TPO noticed that the assessee had reimbursed its AE, sales promotion expenses without any mark up.The TPO was of the view that the assessee was not under any contractual obligation to perform marketing function and, as such, no such reimbursement would have been made in arm's length situation.While TPO did not dispute that the assessee may have benefited from said exercise, he was of the view that such a benefit was only incidental and such incidental benefits cannot be regarded as giving rise to an arm's length transaction. He thus proceeded to hold that this payment was not for intra group services, was purely for an incidental benefit and its arm's length price to the assessee was zero. Accordingly, an ALP adjustment of Rs 44.28 lakhs was proposed by the TPO.

The DRP rejected objection raised by the assessee.

Issue

Whether where expenses are incurred by AE under instruction from and on behalf of assessee which have been reimbursed without any mark up, can arm's length price of such transaction be taken as zero?

Held

The TPO has accepted profitability of the transaction on the basis of TNMM and yet picked up this reimbursement, which constitutes a charge on such profitability, for rejection. This is essentially a reimbursement of expenditure, without any mark up to the AE. When an AE is acting only as an intermediary in the provision of services and incur costs on behalf of the assessee, which the assessee would have incurred directly, it may well be appropriate for the AE to pass on these costs without a mark-up.It is not in dispute that the costs were actually incurred by the AE under instructions from the assessee and it is also not in dispute that the assessee has reimbursed these costs, without any mark-up, to the AE. It is not even the case of the TPO that this reimbursement was reimbursement of normal business expenditure of the AE, and, therefore, it cannot amount to any advantage to the AE that these expenses are reimbursed by the assessee.As long as expenses are incurred under instructions from, and on behalf of, the assessee, as is the uncontroverted position, the arm's length price of the same cannot be taken at zero. Whether the assessee was under an obligation to make this reimbursement or not could be relevant only when the expenses were normal business expenses of the AE and yet the assessee decides to bear the same. There is nothing to indicate that the reimbursement is for expenses already incurred by the AE in its normal course of business. It is specifically stated that these expenses were incurred on behalf of the assessee, and this position remains uncontroverted. Whether the assessee was under an obligation to incur these expenses or not is, therefore, not really relevant.The question of incidental benefit to the assessee, for expenses incurred by the AE, would arise only when the expenses are incurred by the AE in its own right though for the common benefit of group as a whole. The impugned ALP adjustment is, therefore, devoid of legally sustainable basis on the facts of this case. Accordingly, the Assessing Officer was directed to delete the same.

2 Smita Conducters Ltd. v. DCIT 152 ITD 417 (Mum)
Assessment Year: 2006-07
Order dated: 17th September, 2014

Basic Facts-I

The assessee during the relevant year had sold a flat which was its business asset and formed part of block of asset. The assessee computed the capital gain under section 50 after deducting the WDV of block of assets from the sale price. The AO rejected submission of the assessee that the provisions of section 50C was not applicable. He, adopted the stamp duty value as the sale consideration and computed the short term capital gain under section 50.The Commissioner (Appeals) confirmed the order of the Assessing Officer treating the stamp duty value as the sale value under section 50C.

Issue-I

Whether provisions of section 50C would apply in case of computation of capital gain from depreciable assets?

Held-I

In the appellate proceedings the assessee raised an additional ground that for the purpose of application of tax rate, the capital gain in case of the assessee had to be assessed as long-term capital gain as the flat had been held by the assessee for more than three years.

ITAT held that the Provisions of section 50C would also apply in case of computation of capital gain from depreciable assets. It therefore upheld the order of the CIT(A).

In respect of the additional ground the ITAT held that the prescriptions of section 50 are to be extended only to the stage of computation of capital gain and, therefore, capital gain resulting from transfer of depreciable asset which was held for more than three years would retain the character of long-term capital gain for the purpose of all other provisions of the Act. Therefore, for the purpose of computation of capital gain, the flat has to be treated as short-term capital asset under section 50C, but for the purpose of applicability of tax rate it has to be treated as long term capital asset if held for more than three years.Accordingly, the AO was directed to compute the capital gain from the sale of flat and apply the appropriate tax rate after necessary verification.

Basic Facts-II

Out of the assessee claim for bad debt of Rs.11,08,930/-, AO disallowed the claim to the tune of Rs.594454/- on the ground that the assessee has not proved that the same has become bad and it was not shown that it was taken into account in computation of earlier years. On appeal, CIT(A) following the judgment of Hon'ble Supreme Court in case of T.R.F Ltd. v. CIT [2010] allowed the claim of the assessee except to the tune of Rs. 59373/-.

Issue-II

Whether deposits/advances given in connection with business could not be allowed as bad debt but as business loss?

Held-II

The addition confirmed to the extent of Rs. 59,373/- which consisted of several items of deposits/advances given in connection with business. These amounts though could not be allowed as bad debt have to be considered as business loss. It has been submitted that the deposits/advances given in connection with business are very old and have not been recovered till now. The assessee had, therefore, written off the amounts in the books of accounts. It is not cost effective to enforce recovery by filing suits. The tribunal held that considering the smallness of amounts and the facts and circumstances of the case, claim has to be allowed as business loss. They therefore, set aside the order of CIT(A) and allowed the claim of the assessee.

3 Geojit Investment Services Ltd. vs. ACIT 50 Taxmann.com 150 (Cochin) 60 SOT 37.
Assessment Year: 2008-09
Order dated: 28th August, 2014

Basic Facts

During the year under consideration, the assessee made cumulative investment in the mutual funds

and earned a dividend income of Rs.5,46,453/-. The assessee claimed expenses incurred for earning the dividend income at Rs.5000/-. However, the AO was of the opinion that it is not correct and invoked the provisions of sec. 14A read with Rule 8D of the I.T. Rules and thereafter disallowed Rs.5,60,565/- On appeal, the CIT(A) confirmed the same.

Issue

Whether in terms of rule 8D(2)(ii), interest expenses directly attributable to tax exempt income as also directly attributable to taxable income, are required to be excluded from computation of common interest expenses? Whether while applying rule 8D, it is amount of net current assets which is to be considered instead of gross current assets?

Held

The dispute in the present case is only with regards to the computation under Rule 8D(2)(ii) where the AO and the assessee have followed different approaches. As per the plain wordings of rule 8D(2)(ii) what is sought to be allocated is "expenditure by way of interest…….which is not directly attributable to any particular income or receipt". Clearly, therefore, this sub clause seeks to allocate 'common interest expenses' to taxable income and tax exempt income. However, there exists incongruity in the definition of variable 'A' embedded in formula under rule 8D(2)(ii) inasmuch as while it admittedly seeks to allocate "expenditure by way of interest, which is not directly attributable to any particular income or receipt" it ends up allocating "expenditure by way of interest, which is not directly attributable to any particular income or receipt, plus interest which is directly attributable to taxable income". According to the Tribunal the question then arises whether one can tinker with the formula prescribed under rule 8D(2)(ii) 1962 Rules, or construe it in any other manner other than what is supported by plain words of the rule 8D(2)(ii) of 1962 Rules.It was held by the Hon'ble ITAT that it is only the interest on borrowed funds that would be apportioned and the amount of expenditure by way of interest that will be taken (as 'A' in the formula) will exclude any expenditure by way of interest which is directly attributable to any particular income or receipt. Therefore it is not only the interest directly attributable to tax exempt income, i.e. under rule 8D(2)(i) but also interest directly relatable to taxable income, which is to be excluded from the definition of variable 'A' in formula as per rule 8D(2)(ii) only then the common interest expenses which are to be allocated as indirectly relatable to taxable income and tax exempt income can be computed. It was also held that net current assets is to be considered while applying the formula under Rule 8D of the I.T. Rules instead of gross current assets. Accordingly, the AO was directed to re-compute the disallowance and decide the issue afresh in the light of the above observation.

4 Jaipur Development Authority vs. CIT 67 SOT 1 (Jaipur)

Order dated: 30th September, 2014

Basic Facts

The assessee was a Government authority wholly owned and controlled by Government of Rajasthan. It was granted registration under Section 12AA of the Income-tax Act, 1961. The main purpose of forming the JDA Act, 1982 for setting up an authority for planning, coordinating and supervising for proper, orderly and rapid development of the areas in Jaipur region and of executing plans, projects and schemes for such development and to provide for the matters connected therewith, so that housing, community facilities, civil amenities and other infrastructural facilities were created. During the year under consideration CIT held that the objects of the assessee are covered under the last limb of Section 2(15) of the Act i.e. advancement of any other objects of general public utility and withdrew the registration.

Issue

Whether where assessee, a Government authority, was set up for providing housing, community facilities, civil amenities and other infrastructural facilities, since said activities were charitable in nature not carried out with object to earn profits, same would not be hit by proviso to section 2(15)?

Held

The assessee was established in October, 1982 by Jaipur Development Authority Act. Purpose of assessee is for planning, coordinating and supervising for proper, orderly and rapid development of the areas in Jaipur region, in which several government departments, local authorities and other organization are at present engaged within their own jurisdictions to provide also that such authority be enabled either itself or through other authority to formulate and execute plans, projects and schemes for the development of Jaipur region. In practical, the main work of assessee is construction of roads, sewerage, parks, play grounds, provide plots for educational, health and cultural institution for overall development of the community. By making planned development it provides smooth transportation so that air pollution can be minimized and save time of the public. If it is left in the hands of private operator, these facilities would not be provided on similar price as provided by the assessee. Whatever, the revenue is generated through these activities are finally utilized for the benefit of the public. The intention of the institution is not to earn profit but recover the cost of the establishment as well as other expenditure to implement the object of JDA.

It was further held that the CIT also erred in applying the provisions of Section 293C of the Act, since as specific provision, section 12AA was present in the Act for withdrawal of the registration.

In view of the above facts, it was held that CIT has no right to withdraw the registration of the assessee. Accordingly, the order of CIT was set aside.

5

ACIT V M Baskaran 152 ITD 844 (Chennai)
Assessment Year 2009-10,
Order dated 31st July 2014

Basic Facts :

The Assessing officer while completing the assessment made a disallowance under section 14A read with Rule 8B as expenditure incurred for earning exempt income as the assessee was holding investments and had incurred interest expenses. On appeal the CIT(A) deleted the disallowance holding that the assessee had not derived any income out of the investments and investment were made from his own funds which did not suffer from interest.

Issue:

Whether Disallowance under section 14A can be made where assessee had not earned/ received exempt income during the relevant year?

Held

In the appellate proceedings the assessee submitted that during the relevant year it has not received any exempt income and hence there was no justification in deriving expenses attributable for earning income which was not received by the assesseee. The Tribunal observed that Special Bench in the case Cheminvest Ltd 121 ITD 318 (Del) which had held that disallowance under section 14A can be made even in the year in which no exempt income has been earned or received by the assessee has been overruled by decisions of High Courts. The Tribunal accordingly held that when there is no claim for exemption of income in such situation section 14A has no application. Accordingly the disallowance made under section 14A was deleted as the assesse has not earned/received any exempt income during the year. While so holding the Tribunal relied on the Gujarat High Court decision in case of CIT V Corrtech Energy (P) Ltd. 223 Taxman 130/272 CTR 262.

6

DCIT V Kothari Food & Fragrances 152 ITD 880(Lucknow)
Assessment Year 2008-09
Order dated 5th September 2014

Basic Facts :

The assessee seller gave some discount to foreign buyer on sales. The AO opined the payment to non resident was not under any contractual obligation as no stipulation regarding payment of discount to non resident was made in the contract-note entered into by the assessee with the non resident company and payment of discount was in the nature of interest

contd. on page no. 40

Unreported Judgements

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In this issue we are giving gist of a decision rendered by the Hon'ble Income Tax Appellate Tribunal, Ahmedabad Bench in respect of allowability of provisions for depreciation in value of government securities in the hands of co-operative bank.

We hope readers would find it useful.

In the Income Tax Appellate Tribunal

Ahmedabad "D" Bench Ahmedabad

Before Shri Shailendra Kumar Yadav, Judicial Member

and Shri N.S. Saini, Accountant Member

ITA No.1026/Ahd/2011

(Assessment Year : 2007-08)

Income Tax Officer Patan, Ward-4, Mehsana		Appellant
Vs.		
Gozaria Nagarik Sahakari Bank Ltd. Bazar, At. & Post : Gozaria Dist. : Mehsana		Respondent
Date of Hearing	:	02/03/2015
Date of Pronouncement	:	13/03/2015

Gist only

(1) Facts of the Case:

The assessee bank is holding investment in government securities for valuation of which it is following guidelines issued by RBI for classification and valuation of investment. As per this guideline, individual scrip in 'available for sale' category will be marked to market at the year-end or at more frequent intervals. The assesse bank is regularly following these guidelines and also generally accepted accounting standards for valuation of its securities. During the year under consideration it made a provision for depreciation in value of government securities by Rs.91,03,750/- by following the above guidelines. The said amount came to be disallowed by the learned AO on the ground that debit of provision of any kind in Profit & Loss Account is to be disallowed. The AO also held that the assesse has shown government securities in the Balance Sheet as investment and hence provisions for depreciation of Rs.91,03,750/- being in respect of investment is not allowable under the Act. Before CIT(A), the assessee contended that though in the accounts the government securities are shown under the head investment because of the specific format given under the Act,these are the securities held as 'available for sale' and hence they have to be treated as stock in trade. The assessee also pointed out that in the past also in the similar cases in its own case the provision for depreciation in government securities was claimed as allowable expense and was allowed to it even under the scrutiny assessment. The CIT(A) decided this issue in favour of the assessee against which department had filed an appeal.

(2) **Contentions by the Department:**

The primary contention on behalf of the revenue was that since the amount of provision has been claimed, the same is not allowable as deduction,more so when the same are shown as investment in the Balance Sheet.

(3) **Contentions of the Assessee:**

The assessee relied on following contentions –

i) CBDT has issued instruction for assessment of banks vide its instruction No.17/2008 dated 26/11/2008 (F. No.228/3/3008 – ITA-III). Point No. VII of the said instruction states as under:

"As per RBI guidelines dated 16th October 2000, the investment portfolio of the bank is required to be classified under three categories viz. Held to Maturity (HTM), Held for Trading (HFT) and Available for Sale (AFS). Investments classified under HTM category need not be marked to market and are carried at acquisition cost unless these are more than the face value, in which case the premium should be amortized over the period remaining to maturity. In the case of HFT and AFS securities forming stock in trade of the bank, the depreciation/appreciation is to be aggregated scrip wise and only net depreciation, if any, is required to be provided for in the accounts. The latest guidelines of the RBI may be referred to for allowing any such claims."

Bank has correctly followed guidelines issued by RBI for the classification and valuation of investment. As per this guideline, individual scrip in 'available for sale' category are marked to market at the year-end and necessary provision for depreciation in value of the investment is made even though the same are reflected for reporting purpose as investment because of the specific format.

ii) The method and computation has been verified and certified by RBI in its Inspection Report dated 5th December, 2007. Following are the year-wise provision amount for the depreciation in values of government securities.

Sr. No.	Financial Year	Amount of provision for Depn. In Government Securities debited to P&L A/c (Amount in Rs.)
1.	2002-03	13,55,000.00
2.	2003-04	12,44,750.00
3.	2004-05	Nil
4.	2005-06	3,30,000.00

Income Tax assessment for the above said years were completed allowing the claim of Provision for depreciation in government securities. Similarly for A.Y. 2007-08 also assessee debited provision for the depreciation in value of Government security to the profit & loss account. Same was disallowed by Assessing Officer and same assessing Officer has allowed claim on provision for the depreciation in value of government security for F.Y. 2005-06 relevant to A.Y. 2006-07. Circular No.665, guideline issued by the RBI, Instruction No.17/2008 issued by CBDT, decision of the Bank of Baroda 262 ITR 334 (BOM) and CIT vs. Nedungadi Bank Ltd. (2003) 130 Taxman 93 (Ker) were requested to be considered and based on the regularly followed accounting method, the claim of provision for depreciation in the value of securities was requested to be allowed.

Held :

The Hon'ble Tribunal held as under :

"5. After going through rival submissions and material on record, we find that as per section 6 read with section 5(b) and (c) Banking Regulation Act and as per guideline issued by the Reserve Bank of India, investment activities is normal banking activity and should be treated as

banking stock in trade. The format of balance sheet has been prescribed by legislature and bank hs to report their financial result in that format only. As per this format, investment in government security though treated as banking assets (stock in trade) has to be shown in the balance sheet as investment. Further, banks are showing gain or loss arises from sale of security as business income/loss rather than capital gain. The above position has also been clarified by Circular No. 665 dated 5/10/1993.

"The question whether a particular item of investment in securities constitutes stock-in-trade or a capital asset is a question of fact. In fact, the banks are generally governed by the instructions of the Reserve Bank of India from time to time with regard to the classification of assets and also the accounting standards for investments. The Board has, therefore, decided that the Assessing Officers should determine on the facts and circumstances of each case as to whether any particular security constitutes stock-in-trade or investment taking into account the guidelines issued by the Reserve Bank of India in this regard from time to time."

CBDT has further issued instruction for assessment of banks vide its instruction No. 17/2008 dated 26/11/2008 (F. No. 228/3/3008 – ITA-III). Point No. VII of the said instruction, which has been discussed above. The accounts had been maintained and shown as per RBI guidelines. The depreciation of assets has been claimed on securities which had been classified as 'Available for Sale' (AFS). As per the board's circular, the depreciation is to be aggregated scrip wise and net depreciation, if any, is required to be provided for in the accounts. Same is the claim of assessee. Assessing Officer has not rebutted any of the above contentions legal as well as factual aspects of the issue. The contention of Assessing Officer that only provision has been debited to the P&L account and not expenses does not carry any weight in view of Reserve Bank of India directions and CBDT instructions discussed above. The circular and the instruction of the board as quoted above are squarely applicable in this case, where the provision for depreciation on the "available for sale" category of securities has correctly been claimed. So, claim of assessee is allowable as per circular and instruction. Similar claim of depreciation and value of Government securities was made and allowed in earlier assessment year. In such circumstances, same method of accounting has been followed and disallowed from (sic. Allowed) year to year. Such claim has been allowed by various judicial pronouncements. Hon'ble Mumbai High Court in case of CIT v/s Bank of Baroda (2003) 262 ITR 334 has held that "Depredation in value of investment held by bank was allowable as deduction more so when the loss was debited to P&L A/c which was reflected as provision for liability in the balance sheet and the share and securities were valued at cost on the asset side". Similar view has been taken by Hon'ble Kerala High Court in case of CIT v/s Nedungadi Bank Ltd 92003) 130 Taxman 93 (Ker). Therefore, depreciation in value was allowable even if specific instructions of the board were not there. Circular and instruction of the CBDT being squarely applicable on facts of assessee's case, so CIT(A) was justified in allowing the same which needs no interference from our side. We uphold the same."

Accordingly, the appeal preferred by the department on the above ground was dismissed.

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Controversies

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The Amendment in Section 40(a)(ia) is retrospective?

Issue:

X Ltd. has outstanding TDS on account of TDS on transportation, contractors and interest of Rs.10,00,000 as on 31.3.2005. This outstanding TDS was paid on 31.3.2005 i.e. before filing the return of income for A.Y. 2005-06. The learned AO is of the view that there is default of TDS payments and hence related expenses of Rs.1,90,00,000 has to be disallowed u/s. 40(a)(ia) of the I.T. Act, 1961.

Proposition:

As per the provisions as amended by the Finance Act, 2010, if the TDS deducted is paid on or before the due date of filing of return of income as specified in section 139(1), the expenses relating to such TDS are eligible for deduction and no disallowance could be made by invoking the provisions of section 40(a)(ia).

View against the proposition:

1] The Reliance is placed on the Special Bench (SB) decision in the case of Bharati Shipyard Ltd vs Deputy Commissioner of Income Tax (DCIT) (141 TTJ 129). Some of the important principles and deciding factors in the ruling of the SB decision are reproduced below:

- The SB dealt with a similar issue with respect to the first proviso to section 40(a)(ia) which was introduced by the Finance Act, 2010 and which extended the period of TDS payment upto the due date of filing the return of income not only in respect of tax deducted for the month of March but even in respect of the earlier 11 months for not disallowing the expenses under section 40(a)(ia).
- The SB summed up the settled legal position to the effect that "any amendment of the substantive provision which is aimed at removing unintended consequences to make the provisions workable has to be treated as retrospective notwithstanding the fact that the amendment has been given effect prospectively".
- It however held that if the consequences sought to be remedied by the subsequent amendments were to be treated as "intended consequences", the amendment could not be treated as retrospective in effect.
- The SB was of the considered view that "the objective sought to be achieved by bringing out section 40(a)(ia) is the augmentation of TDS provisions". It was further observed that "this is the cost which parliament has awarded to those assessees who fail to comply with the relevant provisions by considering overall objective of boosting TDS compliance"
- Thus, the amendment made in the first proviso was held to be prospective because, in the wisdom of the SB, section 40(a)(ia) as it stood prior to amendment in the first proviso was an "intended consequence" of the provision of section 40(a)(ia).

2] Overall scheme of section 40a(ia) :

- The underlying objective of section 40(a)(ia) was to disallow deduction in respect of expenditure in a situation in which the income embedded in related payments remains untaxed due to non-deduction of tax at source by the taxpayers.

- A deduction for expenditure is not allowed to the taxpayers, in cases where taxpayers had tax withholding obligations from the related payments, without corresponding income inclusion by the recipient.
- On a conceptual note, primary justification for such a disallowance is that such a denial of deduction is to compensate for the loss of revenue by corresponding income not being taken into account in computation of taxable income in the hands of the recipients of the payments.
- Section 40(a)(ia) cannot be seen as intended to be a penal provision to punish the lapses of non-deduction of tax at source from payments for expenditure. It is a sort of compensatory deduction restriction for income going untaxed due to tax withholding lapse.
- The penalty for tax withholding lapse per se is separately provided for in section 271C of the ITA, and, section 40(a)(ia) does not add to the same.

View in favour of the Proposition:

The Finance Act, 2010 relaxed the rigours of Section 40(a)(ia) of the Act to provide that the all TDS made during the previous year can be deposited with the Government by the due date of filing the return of income. The idea was to allow additional time to the deductors to deposit the TDS so made. This amendment was to be applicable from Assessment Year (AY) 2010-11. The Memorandum explaining the provisions of the Finance Bill, 2010 expressly mentioned as follows :

"This amendment is proposed to take effect retrospectively from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years."

The controversy surrounding the above amendment was whether the amendment was curative in nature and therefore to be applied retrospectively. In this context, few decisions are being referred herein below:

Kanubhai Ramjibhai Makwana vs. ITO [2011] 44 SOT 264 (Ahd.) (Tribunal)

Facts of the case:

During the previous year relevant to AY 2005-06, the assessee did not deduct tax at source from payments made to sub-contractors for the period April 2004 – February 2005. The Assessing Officer (AO) and the Commissioner (Appeals) disallowed the claim of expenditure for this period on account of non-compliance with TDS provisions.

The Tribunal observed that the amendment was remedial in nature and intention of the Legislature was to remove the hardship of the taxpayers. It held that a declaratory amendment may be defined as an amendment to remove doubts existing as to the meaning or effect of any statute and such amendments are usually held to be retrospective. Thus, the amendment was held to have a retrospective effect from A.Y. 2005-06.

CIT v. Virgin Creations, ITAT No. 302 of 2011/ GA 3200 / 2011 dated 2311.2011 Calcutta High Court:

The aforesaid issue came up for consideration before the Calcutta HC, Wherein, the HC relying on the decisions of the Supreme Court) (SC) in the context of Section 43B of the Act, it was held that the amendment to Section 40(a)(ia) had retrospective application.

A similar view was taken by the Mumbai Tribunal in the case of Bansal Parivahan (India) (P) Limited and by the Delhi Tribunal in the case of Taru Leading Edge (P) Limited.

Thus, we can clearly see that there is a conflict in judicial opinion as regards the retrospective applicability of the amendment to section 40(a)(ia) vide Finance Act, 2010 While the Special Bench of the Tribunal at Mumbai has ruled that the amendment would not have retrospective application, the Calcutta HC has opined otherwise. While the position for the assesses in the State of West Bengal is clear due to the decision of the jurisdictional HC (in the case of Virgin Creations), the issue becomes complicated for other assessees due to a contrary decision of a Special Bench. This

issue was also resolved by the Vizag Tribunal in the case of Rajamahendri Shipping & Oil Field Services Limited wherein it was held that a decision of a non-jurisdictional High Court prevails over an order of the Special Bench.

Summation:

Section 40(a)(ia) of the Act was introduced with effect from 1st April, 2005 by Finance (No. 2), 2004 Bill. Explaining the rationale behind insertion of the said Section, the Memorandum elucidated:-

"With a view to augment compliance of TDS provisions, it is proposed to extend the provisions of section 40(a)(i) to payments of interest, commission or brokerage, fees for professional services or fees for technical services to residents, and payments to a resident contractor or sub-contractor for carrying out any work (including supply of labour for carrying out any work), on which tax has not been deducted or after deduction, has not been paid before the expiry of the time prescribed under sub-section (1) of section 200 and in accordance with the other provisions of Chapter XVII-B. It is also proposed to provide that where in respect of payment of any sum, tax has been deducted under Chapter XVII-B or paid in any subsequent year, the sum of payment shall be allowed in computing the income of the previous year in which such tax has been paid.

The proposed amendment will take effect from the 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-06 and subsequent years. (clause 11)."

Thereafter, by Finance Act, 2008 an amendment was made to Section 40(a)(ia) with retrospective effect from 1st April, 2005. Section 40(a)(ia) as amended by Finance Act, 2008 was as under:

"40. Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "profit and gains of business or profession" ...

(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resi-dent, or amounts payable to a contactor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been paid,-

(A) in a case where the tax was deductible and was so deducted during the last month of the previous year, on or before the due date specified in sub-section (1) of section 139 or

(B) in any other case, on or before the last day of the previous year;

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted-

(A) during the last month of the previous year but paid after the said due date; or

(B) during any other month of the previous year but paid after the end of the said previous year,

such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid."

Section 40(a)(ia) was further amended by Finance Act, 2010 with effect from 1 st April, 20 10 and the amended provision now reads as under: "(ia) any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resi-dent, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for canying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or; after deduction, has not been paid on or before the due date specified in sub-section (1) of Section 139:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (I) of section 139, such sum shall be allowed as a deducted in computing the income of the previous year in which such tax has been paid."

The note on clauses and the memorandum explaining the amendments to Section 40(a)(ia) reproduced in (2010) 321 ITR Statutes 79 reads: "Notes on Clauses:

Clause 12 of the Bill seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Under the existing provisions contained in sub-clause (ia) of clause (a) of the aforesaid section, non-deduction of tax or non-payment of tax after deduction on payment of any sum by way of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub- contractor, being resident, results in the disallowance of the said sum, in the computation of income of the payer, on which tax is required to be deducted under Chapter XVII-B.

It is proposed to amend sub-clause (ia) of clause (a) of the aforesaid section to provide that disallowance under the said sub-clause will be attracted, if, after deduction of tax during the previous year, the same has not been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

The proviso to the said sub-clause provides that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the last month of the previous year but paid after the due date of filing of return or deducted during any other month of the previous year but paid after the end of the said previous year, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

This amendment will take effect retrospectively from 1st April, 201 0, and will, accordingly, apply in relation to the assessment year 2010-1 1 and subsequent years."

Let me now refer to the decision of in the case of ACIT vs. Ashok J. Patel 2013 tax pub (DT) 2589 (Ahd-Trib). The Hon. tribunal in this appeal decided that if TDS payment are made before the date of the filing of the income tax return then no disallowance can be made u/s. 40(a)(ia). The amendment made in First Proviso to sec. 40(a)(ia) with effect from A.Y. 2010-11 is applicable with retrospective effect. In the appeal before the Hon. ITAT. The Assessment year involved was for A.Y.2005-06 and 2006-07.

Thereafter, their lordships of Gujarat High Court in the case of same assessee in CIT vs. Ashok J. Patel (2014) 225 Taxman 79 (Mag.) / 43 Taxman.com 227 (guj.) (HC) held that when the assessee deducted tax at source as required before 31.03.06 but deposited on 10th May, 2006, The provision to sec.40(a)(ia) will apply and no disallowance can be made. Useful reference can be made in the case decided by their lordships of Gujarat High Court in the case of CIT vs. Royal Builders (2014) 220 Taxman 108 (Mag.) (Guj.) where similar issue was decided in favour of the assessee by holding that first proviso to section 40(a)(ia) introduced with effect from A.Y. 2010-11 is retrospectively applicable and is applicable for A.Y.2005-06 and 2006-07.

Their lordships of Calcutta High Court in the case of CIT vs. Vargin Creation also decided that the amended first proviso to sec. 40(a)(ia) has retrospective application.

Now let me refer to the decision of their lordships of Delhi High Court in CIT vs. Rajindra Kumar (362 ITR 241) decided on 1st July, 2013. Their lordships of Delhi High Court held as under:

Now, we refer to the amendments which have been made by the Finance Act, 2010 and the effect thereof. We have already quoted the decision of the Calcutta High Court in Virgin Creations (supra). The said decision refers to the earlier decision of the Supreme Court in the case of Allied Motors (P) Limited (supra) and Commissioner of Income Tax versus Alom Extrusions Limited, (2009) 319 ITR 306 (SC). In the case of Allied Motors (P) Limited (supra), the Supreme Court was examining the first proviso to Section 43B and whether it was retrospective. Section 43B was inserted in the Act with effect from 1st April 1984 for curbing claims of taxpayers who did not discharge or pay statutory

liabilities but claimed deductions on the ground that the statutory liability had accrued. Section 43B states that the statutory liability would be allowed as a deduction or as an expense in the year in which the payment was made and would not be allowed, even in cases of mercantile system of accountancy, in the year of accrual. It was noticed that in some cases hardship would be caused to assessees, who paid the statutory dues within the prescribed period though the payments so made would not fall within the relevant previous year. Accordingly, a proviso was added by Finance Act, 1987 applicable with effect from 1st April, 1988. The proviso stipulated that when statutory dues covered by Section 43B were paid on or before the due date for furnishing of the return under Section 139(1), the deduction/ expense, equal to the amount paid would be allowed. The Supreme Court noticed the purpose behind the proviso and the remedial nature of the insertion made. Of course, the Supreme Court also referred to Explanation 2 which was inserted by Finance Act, 1989 which was made retrospective and was to take effect from 1st April, 1984. Highlighting the object behind Section 43B, it was observed that the proviso makes the provision workable, gives it a reasonable interpretation. It was elucidated:

"12. In the case of Goodyear India Ltd. V. State of Haryana this Court said that the rule of reasonable construction must be applied while construing a statute. Literal construction should be avoided if it defeats the manifest object and purpose of the Act.

13. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of R.B. Judha Mal Kuthiala v. CIT, this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.

14. This view has been accepted by a number of High Courts. In the case of CIT v. Chandulal Venichand, the Gujarat High Court has held that the first proviso to Section 43-B is retrospective and sales tax for the last quarter paid before the filing of the return for the assessment year is deductible. This decision deals with Assessment Year 1985-85. The Calcutta High Court in the case of CIT v. Sri Jagannath Steel Corpn. has taken a similar view holding that the statutory liability for sales tax actually discharged after the expiry of the accounting year in compliance with the relevant statute is entitled to deduction under Section 43-B. The High Court has held the amendment to be clarificatory and, therefore, retrospective. The Gujarat High court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores v. Union of India. The special leave petition from this decision of the Patna High Court was dismissed. The view of the Delhi High Court, therefore, that the first proviso to Section 43-B will be available only prospectively does not appear to be correct. As observed by G.P. Singh in his Principles of Statutory Interpretation, 4th Edn. At p. 291: "It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended." In fact the amendment would not serve its object in such a situation unless it is construed as retrospective. The view, therefore, taken by the Delhi High Court cannot be sustained."

23. Section 43B deals with statutory dues and stipulates that the year in which the payment is made the same would be allowed as a deduction even if the assessee is following the mercantile system of accountancy. The proviso, however, stipulates that deduction would be allowed where the statutory dues covered by Section 43B stand paid on or before the due date of filing of return of income.

Section 40(a)(ia) is applicable to cases where an assessee is required to deduct tax at source and fails to deduct or does not make payment of the TDS before the due date, in such cases, notwithstanding Sections 30 to 38 of the Act, deduction is to be allowed as an expenditure in the year of payment unless a case is covered under the exceptions carved out. The amended proviso as inserted by Finance Act, 2010 states where an assessee has made payment of the TDS on or before the due date of filing of the return under Section 139(1), the sum shall be allowed as an expense in computing the income of the previous year. The two provisions are akin and the proviso to Sections 40(a)(ia) and 43B are to the same effect and for the same purpose.

24. In Podar Cement Private Limited (supra), the Supreme Court considered whether term 'owner' would include unregistered owners who had paid sale consideration and were covered by Section 53A of the Transfer of Property Act. The contention of the assessees was that the amendments made to the definition of term 'owner' by Finance Bill, 1987 should be given retrospective effect. It was held that the amendments were retrospective in nature as they rationalise and clear the existing ambiguities and doubts. Reference was made to Crawford: 'Statutory Construction' and 'the principle of Declaratory Statutes', Francis Bennion: 'Statutory Interpretation', Justice G.P. Singh's 'Principles of Statutory Interpretation', it was observed that sometimes amendments are made to supply an obvious omission or to clear up doubts as to the meaning of the previous provision. The issue was accordingly decided holding that in such cases the amendments were retrospective though it was noticed that as per Transfer of Property Act, Registration Act, etc. a legal owner must have a registered document.

In view of the aforesaid discussion in paras 18,19 and 20, it is apparent that the respondent assesse did not violate the unamended section 40(a)(ia) of the act. We have noted the ambiguity and referred their contention of Revenue and rejected the interpretation placed by them. The amended provisions are clear and free from any ambiguity and doubt. They will help curtail litigation. The amended provision clearly support view taken in paragraphs 17 - 20 that the expression "said due date" used in clause A of proviso to unamended section refers to time specified in Section 139(1) of the Act. The amended section 40(a)(ia) expands and further liberalises the statue when it stipulates that deductions made in the first eleven months of the previous year but paid before the due date of filing of the return, will constitute sufficient compliance.

Amendment of 2012 whether retrospective.

Section 40(a)(ia) of the Income Tax Act, 1961 (ITA) provides for disallowance of expenses on failure to deduct tax at source (TDS) or delay in depositing the tax so deducted beyond the due date for filing the return of income. The Finance Act, 2012 inserted a second proviso to section 40(a)(ia) with effect from 1 April 2013, providing that despite failure to deduct tax by the payer, disallowance of the expenditure shall not be made if the resident payee has:

- furnished his return of income under section 139;
- taken into account such sum while computing his income in such return;
- paid the tax due on the income declared by him in such return of income and
- furnishes a certificate to this effect from an accountant in the prescribed form.

The issue for consideration before the Agra Bench of the Income Tax Appellate Tribunal (hereafter referred to as ITAT) in the case of Rajeev Kumar Agarwal vs ACIT (I.T.A. No.337/Agra/2013) was whether the abovementioned proviso, which has been made effective from 1 April 2013, is retrospective in nature and accordingly, whether it would apply even with respect to earlier assessment years. The ITAT ruled in favour of the taxpayers following the judgement of the Delhi High Court (HC) in the case of CIT vs Rajinder Kumar (362 ITR 241).

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Judicial Analysis

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Entire Income of business of an Undertaking is eligible for claim of deduction u/s 10B of the Act.

CT vs Hritnik Exports Pvt. Ltd. (ITA Nos.219 of 2014 & 239 of 2014) (Delhi HC)

By way of these appeals, the Revenue has challenged the orderspassed by Income Tax Appellate Tribunal (Tribunal, for short) dated 11thSeptember, 2013 and 24th October, 2013 relating to assessment years 2008-09 and 2009-10, respectively.Tribunal has followed the decision of their Special Bench in the case of MaralOverseas Ltd. versus Additional Commissioner of Income Tax decided on 20thMarch, 2012, in which it hasbeenheld:-

78. Section 10B sub-section (1) allows deduction in respect of profitsand gains as are derived by a 100% EOU. Section 10B(4) lays down specialformula for computing the profits derived by the undertaking from export. The formula is as under :-

$$\text{Profit of the business of the Undertaking} \times \frac{\text{Export Turnover}}{\text{Total turnover of business carried Out by the undertaking}}$$

79. Thus, sub-section (4) of section 10B stipulated that deduction under that section shall be computed by apportioning the profits of the business of the undertaking in the ratio of turnover to the total turnover. Thus, not-with-standing the fact that sub-section (1) of section 10B refers the profits and gains as are derived by a 100% EOU, yet the manner of determining such eligible profits has been statutorily defined in sub-section (4) of section 10B of the Act. As per the formula stated above, the entire profits of the business are to be taken which are multiplied by the ratio of the export turnover to the total turnover of the business. Sub-section (4) does not require an assessee to establish a direct nexus with the business of the undertaking and once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking. Thus, once an income forms part of the business of the eligible undertaking, there is no further mandate in the provisions of section 10B to exclude the same from the eligible profits. The mode of determining the eligible deduction u/s 10B is similar to the provisions of section 80HHC inasmuch as both the sections mandates determination of eligible profits as per the formula contained therein. The only difference is that section 80HHC contains a further mandate in terms of Explanation (baa) for exclusion of certain income from the "profits of the business'' which is, however, conspicuous by its absence in section 10B. On the basis of the aforesaid distinction, sub-section (4) of section 10A/10B of the Act is a complete code providing the mechanism for computing the ''profits of the business'' eligible for deduction u/s 10B of the Act. Once an income forms part of the business of the income of the eligible undertaking of the assessee, the same cannot be excluded from the eligible profits for the purpose of computing deduction u/s 10B of the Act. As per the computation made by the Assessing Officer himself, there is no dispute that both these incomes have been treated by the Assessing Officer as business income.

The CBDT Circular No. 564 dated 5th July, 1990 reported in 184 ITR (St.) 137 explained the scope and ambit of section 80HHC and the mode of determination of profits derived by an assessee from the export of goods.

I.T.A.T., Special Bench in the case of International Research Park Laboratories v. ACIT, 212 ITR (AT) 1, after following the aforesaidCircular, held that straight jacket formula given in sub-section (3) has to be followed to determine the eligible deduction. The Hon'ble SupremeCourt in the case of P.R. Prabhakar; 284 ITR 584 had approved theprinciplelaiddownintheSpecialBench decision in InternationalReserarch Park Laboratories v. ACIT (supra). In the assessee's own case the I.T.A.T. in the preceding years, after considering the decision in the case of Liberty India held that provisions of section 10B are different from the provisions of section 80IA wherein no formula has been laid down for computing the eligible business profit.

80. In view of the above discussion, question no. 2 is answered in affirmative and in favour of the assessee. Accordingly, the assessee is eligible for claim of deduction on export incentive received by it in terms of provisions of section 10B(1) read with section 10B(4) of the Act.?

The aforesaid view is in consonance with the decision of this Court dated 1st September, 2014 passed in ITA 438/2014, Commissioner of Income Tax-VII versus XLNC Fashions in which this court has held as under :- :-

Deduction under Section 10B of the Income Tax Act, 1961 (Act, in short) is to be made as per the formula prescribed by Sub-Section (4), which reads as under:

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Sub-section (4), therefore, is the special provision which enables the assessee to compute the profits derived from the export of articles or things or computer software. We do not see any conflict between Sub-section (1) and Sub-section (4) to Section 10B, as Sub-section (1) states that deduction of such profits and gains as are derived by a hundred percent export-oriented undertaking from the export of articles or things or software would be eligible under the said Section. Sub-section (1) is a general provision and identifies the income which is exempt and has to be read in harmony with Sub-section (4) which is the formula for finding out or computing what is eligible for deduction under Sub-section (1). Neither of the two provisions should be made irrelevant and both have to be applied without negating the other. In other words, the manner of computing profits derived from exports under Sub-section (1), has to be determined as per the formula stipulated in Sub-Section (4), otherwise Sub-section (4) would become otise and irrelevant.

The issue in question in this appeal which pertains to the Assessment Year 2009-10, relates to duty draw back in the form of DEPB benefits. As per Section 28, clause (iii-c), any duty of customs or excise repaid or repayable as drawback to a person against exports under Customs and Central Excise Duties Draw Back Rules, 1971 is deemed to be profits and gains of business or profession. The said provision has to be given full effect to and this means and implies that the duty draw back or duty benefits would be deemed to be a part of the business income. Thus, will be treated as profit derived from business of the undertaking. These cannot be excluded.

Even otherwise, when we apply Sub-section (4) to Section 10B, the entire amount received by way of duty draw back would not become eligible for deduction/exemption. The amount quantified as per the formula would be eligible and qualify for deduction/exemption. The position is somewhat akin or close to Section 80HHC of the Act, which also prescribes a formula for computation of deduction in respect of exports.

In view of the aforesaid, we do not find any merit in the present appeal and the same is dismissed.?

Karnataka High Court in Commissioner of Income Tax, Central Circle versus Motorola India Electronics (P) Ltd., ITA No. 428/2007, decided on 11.12.2013, reported as [2014] 46

taxmann.com 167 (Karnataka) has also taken a similar view, wherein it has been held:-

By Finance, Act, 2001, with effect from 01.04.2001, the present Sub-section (4) is substituted in the place of old Sub-section (4). No doubt Sub-section 10(B) speaks about deduction of such profits and gains as derived from 100% EOU from the export of articles or things or computer software. Therefore, it excludes profit and gains from export ofarticles.ButSub-section(4)explainswhat is (4) says that profits derived from export of articles or things or computer software shall be the account which bares to the profits of the business of the undertaking and not the profits and gains from export of articles. Therefore, profits and gains derived from export of articles is different from the income derived from the profits of the business of the undertaking. The profits of the business of the undertaking includes the profits and gains from export of the articles as well as all other incidental incomes derived from the business of the undertaking. It is interesting to note that similar provisions are not there while dealing with computation of income under Section 80HHC. On the contrary there is specific provisions like Section 80HHB which expressly excludes this type of incomes.

Therefore, in view of the aforesaid provisions, it is clear that, what is exempted is not merely the profits and gains from the export of articles but also the income from the business of the undertaking.?

In view of the aforesaid position, the appeals have to be dismissed.

We order accordingly.

Watson Pharma (P.) Ltd. *v. DCIT* [2015] 54 taxmann.com 88 (Mumbai - Trib.)

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79. Grounds no. 4 & 5 pertain to disallowing interest income of Rs. 2,10,65,566/- for the purposes of computing deduction u/s 10B.

80. The AO found that the assessee had taken into consideration the income generated as interest and sale of scrap, for the purposes of computation of deduction u/s 10B. He treated the same as income from other sources, being not derived from the operations of business. He relied on various decisions, which were countered by the assessee, but the AO excluded the income from interest and sale of scrap from the computation.

81. Against this, the assessee along with TP issues approached the DRP, who sustained the disallowance made by the AO.

82. Against these disallowances, the assessee is now before the ITAT.

83. Before us, the AR submitted that the instant issue is covered by the decision in the case of *Maral Overseas Ltd.* v. *Addl. CIT* [2012], 16 ITR (Trib.) 565 (Indore) (SB) and also by the Bangalore Bench of the ITAT in the case of *GE India Technology Center (P) Ltd.* (*supra*) and is now covered by the Hon'ble Karnataka High court in the case of *CIT* v. *Motorola India Electronics (P) Ltd.* [2014] 46 taxmann.com 167/225 Taxman 11 (Mag.) wherein it has been observed,

"For the purposes of sub-section (1), the profits derived from export of articles or things or computer software shall he the amount which bears to the profits of the business of the undertaking, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking.

By Finance Act, 2001, with effect from 01.04.2001, the present Subsection (4) is substituted in the place of old Subsection (4). No doubt Subsection 10(B) speaks about deduction of such profits and gains as derived from 100% EOU from the export of articles or things or computer software. Therefore, it excludes profit and gains from export of articles. But Subsection (4) explains what is the profit derived from export of articles as mentioned in Subsection (1). The substituted Sub-section (4)

says that profits derived from export of articles or things or computer software shall be the account which hares to the profits of the business of the undertaking and not the profits and gains from export of articles. Therefore, profits and gains derived from export of articles is different from the income derived from the profits of the business of the undertaking. The profits of the business of the undertaking includes the profits and gains from export of the articles as well as all other incidental incomes derived from the business of the undertaking. It is interesting to note that similar provisions are not there while dealing with computation of income under Section 80HHC. On the contrary there is specific provisions like Section 80HHB which expressly excludes this type of incomes. Therefore, in view of the aforesaid provisions, it is clear that, what is exempted is not merely the profits and gains from the export of articles hut also the income from the business of the undertaking. 8. In the instant case, the assessee is a 100% EOU, which has exported software and earned the income. A portion of that income is included in EEFC account. Yet another portion of the amount is invested within the country by way of fixed deposits, another portion of the amount is invested by way of loan to the sister concern which is deriving interest or the consideration received from sale of the import entitlement, which is permissible in law. Now the question is whether the interest received and the consideration received by sale of import entitlement is to be construed as income of the business of the undertaking. There is a direct nexus between this income and the income of the business of the undertaking. Though it does not par take the character of a profit and gains from the sale of an article, it is the income which is derived from the consideration realized by export of articles. In view of the definition of 'Income from Profits and Gains' incorporated in Subsection (4), the assessee is entitled to the benefit of exemption of the said amount as contemplated under Section 10B of the Act. Therefore, the Tribunal was justified in extending le benefit to the aforesaid amounts also. We do not find any merit in these appeals".

84. Similar view was taken in the decision rendered earlier by Hon'ble Bombay High Court in the case of *CIT* v. *Lok Holdings* [2009] 308 ITR 356 [2010] 189 Taxman 452, wherein it was held,

"interest earned by the assessee, a property developers, by making temporary deposits of surplus money out of advances received by it from intending purchaser is business income and cannot be assessed as "income from other sources",

85. In such a situation where the incomes sought to be taxed are intrinsically connected to the business of the assessee and also that provisions falling under section 10A & 10B form a code within the code, we are of the opinion that no disallowance is called for.

86. We therefore, set aside the order of the DRP and direct the AO to compute the deduction, taking into account the interest income as well as sale scrap as business income.

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Lubrizol Advanced Materials India (P.) Ltd. *v. DCIT* [2014] 42 taxmann.com 263 (Ahmedabad - Trib.)

xxx…

Ground nos. 5 & 6 are interconnected and is with respect to computation of deduction u/s 10B:

17. During the course of assessment proceedings AO noticed that Assessee has received brokerage on sea freight of Rs 1,00,318/- and insurance claim of Rs 64,125/- and had considered both of them as part of profit of the business for computing deduction u/s 10B. AO was of the view that the aforesaid amounts did not have the attributes of profits derived from the business of the undertaking of export of articles or things and therefore cannot be considered to be part of profit for deduction u/s 10B. He accordingly reworked the profit of the business by excluding the same. Aggrieved

by the order of AO, Assessee carried the matter before DRP. DRP upheld the order of AO and therefore the Assessee is now before us.

18. Before us, the Ld. A.R. submitted that brokerage on sea freight charges were nothing but merely discount availed by the Assessee and refund of insurance charges were in the nature of refund of excess amount paid to insurance company and claimed as deduction. He further submitted that the aforesaid transactions were reduction in actual expenses incurred in connection with the business of export of manufactured goods and therefore should not be reduced from the amount of profit for working out deduction u/s 10B. He further placed reliance on the Special Bench decision in the case of *Maral Overseas Ltd.* v. *Addl. CIT* [2012] 136 ITD 177/20 taxmann.com 346 (Indore). The ld. D.R. on the other hand relied on the order of AO and DRP.

19. We have heard the rival submissions and perused the material on record. Before us the nature of income as submitted by the Assessee has not been controverted by Revenue. The contention of the Revenue is that the income cannot be said to be derived from the eligible undertaking and hence is not allowable. We find that before Special Bench in the case of *Maral Overseas Ltd.* (*supra*) one of the question was as to whether the undertaking is eligible for deduction on export incentive received by it. The Special Bench has decided the issue by holding as under:—

"It is clear from the plain reading of section 10B(1) of the Act that the said section allows deduction in respect of profits and gains as are derived by a 100% EOU. Further, section 10B(4) of the Act stipulates specific formula for computing the profit derived by the undertaking from export. Thus, the provisions of sub-section(4) of section 10B of the Act mandate that deduction under that section shall be computed by apportioning the profits of the business of the undertaking in the ratio of export turnover by the total turnover. Thus, even though sub-section(1) of section 10B refers to profits and gains as are derived by a 100% EOU, the manner of determining such eligible profits has been statutorily defined in sub-section(4) of that section. Both sub-sections(1) and (4) are to be read together while computing the eligible deduction u/s10Bof the Act. We cannot ignore sub-section (4) of section 10B which provides specific formula for computing the profits derived by the undertaking from export. As per the formula so laid down, the entire profits of the business are to be determined which are further multiplied by the ratio of export turnover to the total turnover of the business. In case of Liberty India, the Hon. Supreme Court has dealt with the provisions of section 80IA of the Act wherein no formula was laid down for computing the profits derived by the undertaking which has specifically been provided under sub-section (4) of section 10B while computing the profits derived by the undertaking from the export. Thus the decision of the Hon. Supreme Court is of no help to the revenue in determining the claim of deduction u/s 10B in respect of export incentives."

20. Thus it is seen that the respected Special Bench of the Tribunal has held that once an income forms part of the business of the undertaking, the same would be included in the profits of the business of the undertaking and will be eligible for deduction. Respectfully following the aforesaid Special Bench decision, we are of the view that the Assessee is eligible for deduction on the brokerage on sea freight and insurance claim which it has credited to its profit and loss account. Thus this ground of the Assessee is allowed.

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Overview of Action Plan 1 of BEPS Project – Addressing the tax challenges of Digital Economy

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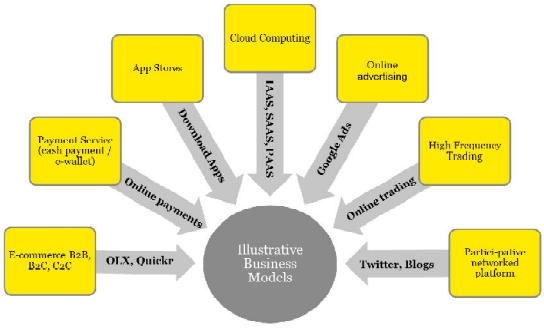
In continuation to our previous article onoverview of Base Erosion and Profit Shifting ('BEPS') and detailed analysis of Action Plan 13 and Action Plan 2,in this article, we now have capsulized an overview of Action Plan 1of BEPS Project ie Addressing the tax challenges of Digital Economy.

1. *Background of Digital Economy*

Digital Economy is a result of progressive developments and innovations in Information and Communication Technology ('ICT') which has led to more powerful, improved and cheaper business processes.Innovations in ICT and digital economy have accelerated the spread of global value chains whereby Multinational Enterprises ('MNEs') integrate their world-wide operations on virtual ICT products which traditionally required physical presence.

Given below are some Illustrative Business Models followed by some ICT's:



The tax challenges and BEPS concerns raised by the Digital Economy could be better identified and addressed by analysing existing structures adoptedby MNEs together with new business modelsand by focusing on its key features and determiningwhich of those features raise or exacerbate tax challenges or BEPS concerns.

2. *Overview of the BEPS Report*

The report recognises that while digital economy does not generate unique BEPS issue, its following key features increase BEPS risks:

- Ability to have substantial virtual presence without having physical presence
- Ability to avoid source / residence based taxation
- Heavy reliance on intangibles
- Ability to lead to shifting of profits to low-tax jurisdictions
- Volatility due to low barriers to entry and rapidly evolving technology
- Unique challenges of determining nexus in respect of 'big data'
- Inability of present system of taxation to check artificial reduction of taxable income

The report also recognizes that it becomes important to closely examine how enterprises of the digital economy add value and make profits in order to determine whether and to what extentadapt the current rules of international taxation to prevent BEPS.

The spread of the digital economy across the globe poses challenges for international taxation. The report on tax challenges of Digital Economy released by OECD on 16 September 2014, sets out an analysis of these tax challenges.

The Report sets out that because the digital economy is increasingly becoming the economyitself, it would be difficult, if not impossible, to ring-fence the digital economy from the rest of the economy for tax purposes and attempting toisolate the digital economy

as a separate sector would inevitably requirearbitrary lines to be drawn between what is digital and what is not.

At present, the report does not recommend any specific measures to address the concerns of the digital economy.

3. *Objectives of the DE Report*

The objectives of the report include the following:

- Identify difficulties posed by the digital economy while applying existing international tax rules;
- Develop options to address such difficulties by taking a holistic approach considering both, direct and indirect taxation.

The guidance sets out in the report is primarily to deal with the following key issues:

- The ability of a company to havea significant digital presence in the economy of another countrywithout being liable to taxation due to the lack of nexus under currentinternational rules;
- The attribution of value created from the generationof marketable location relevant data through the use of digital productsand services;
- The characterisation of income derived from new businessmodels;
- How to ensurethe effective collection of VAT/GST with respect to the cross-border supply of digital goods and services.

4. *Identifying opportunities and tackling BEPS in the digital economy*

The Report expresses the view that the spread of global value chains advanced by the evolution of ICT and new business models is a key issue in addressing the opportunities for BEPS in the digital economy.

In this regard, the Report notes that many of the policies being developed under other focus areas of the BEPS project will address the elements associated with the digital economy.

The report identifies core elements of BEPS strategies with respect to both direct and indirect taxation and highlights certain characteristics of the digital economy that must be taken into account to ensure measures developed under other BEPS Actions will effectively address BEPS concerns with respect to the digital economy.

The report identifies the following four core elements associated with BEPS in the context of direct taxation:

1. Minimization of taxation in the market (source) State through the followings:
   - Minimization of functions, assets and risks;
   - Avoidance of taxable presence by contractually allocating risk/ legal ownership of Intangibles;
   - Maximizing deduction in the market jurisdiction
2. Low or no withholding tax at source in payer jurisdiction
3. Reduction/ Elimination of tax at the level of recipient through
   - Value producing intangible housed in low tax jurisdiction
   - Use of preferential tax regimes/Hybrid Mismatch Arrangement
   - Maximize deductions to a related entity
4. Low or no taxation at recipient level by
   - Undercompensating value creation functions;
   - Deferral of tax in absence of CFC

In the context of indirect tax, the Report identifies the following BEPS concerns that arise with respect to VAT:

1. Remote supply of digital goods and services to VAT exempt businesses

2. Remote supply of digital goods and services to a centralized location for resupply within a multinational group not subject to VAT

While the Report concludes that these elements may not create unique BEPS issues, it indicates that they do create unique challenges which willneed to be taken into account in the context of the work on other BEPS Actions – specifically, CFC rules (Action 3)~ artificial avoidance of PE (Action7)~ and transfer pricing (Actions 8 through 10).

While acknowledging that CFC rules are a matter of domestic law, the Report highlights the possibility of adapting CFC rules to target the types ofincome that may typically be earned in a digital economy business model.

With respect to preventing the artificial avoidance of PE status, the Report notes that many of the policies being developed under Action 7 should helpto restore taxation in the market jurisdiction. In the context of the digital economy, the Report provides that the work under Action 7 should specificallyreconsider the preparatory or auxiliary exemption in the PE article with an eye to assessing if the exempt activities have in some cases become thecore activities of businesses in the digital economy.

In addition, with respect to artificial avoidance of PE status, the Report suggests that the reliance on the conclusion of a contract in one territory toavoid taxation in another should be reviewed in relation to the effective negotiation of contracts by local sales force where the contracts are concludedonline or directly abroad.

Additionally, the report goes on to conclude that transferpricing allocation methodologies need to be reviewed and should consider whether profit split methodologies are the best way to address these issues and also suggests that relying upon a model that allocates only a routine return to a low risk subsidiary and the balance to a low taxentrepreneur company who is contractually allocated all the risk may not be wholly appropriate.

5. ***Identification of the broader tax challenges raised by the digital economy and potential options to address the broader tax challenges***

In addition to identifying and tackling BEPS issues raised by the digital economy, the Report also discusses broader, more systemic direct tax andindirect tax challenges and some potential options to address those challenges. In general terms, the Report identifies four main tax policy concernsraised by the digital economy:

1. **Nexus** – The continual increase in the potential of digital technologies and the reduced need for extensive physical presence in order to carry on business.
2. **Data** – The growth in sophistication of information technologies has permitted companies to gather and use information to an unprecedented degree. This raises the issues of how to attribute value created from the generation of data through digital products and services, and how to characterise it for tax purposes.
3. **Characterization** – The development of new digital products or means of delivering services creates uncertainties in relation to the characterisation of payments made in the context of new business models.
4. **VAT Collection** – Cross border trade in both goods and services creates challenges for VAT systems, particularly where such goods and services are acquired by private consumers from suppliers abroad.

While the Report does not recommend any specific measures to address the digital economy, it does provide an overview of various potential optionsproposed and considered by the OECD task force on the

digital economy. These include the following:

(i) modifying PE rules (i.e., preparatory and auxiliary exemptions, PE nexus based on significant digital presence, and virtual PE concept),

(ii) introducing a withholding tax regime for digital transactions,and

(iii) modifying existing VAT regimes.

6. *Relevance of Digital Economy in Indian Perspective*

The Indian Revenue Authority (IRA), in its response to questionnaire issued by the OECD, acknowledgedthe fact that in spite of the huge market for the digital economy in emerging economies like India, digital enterprises face zero or notaxation because of the principle of residence-based taxation asagainst source-based taxation.

Since the dominant players in the digital world like Amazon or Google are not tax residents in India,profits sourced from India are not offered for taxation. Thus,significant base erosion is caused by the inadequacy of existing international tax rules to allocate profits to countries from where these profits are sourced, and in particular, the irrelevance ofphysical presence as a criteria for allocating taxing rights tosource countries in case of digital enterprises.

Further, the IRA, to ensure that the benefits of the growth of the digital footprint across the country are reaped through higher tax collections fromsuch activities, India has consistently made demands for sourcebasedtaxation and has also suggested withholding of taxes onpayments made for digital transactions.

Considering the facts and scenario, India has considered Action Plan 1 on Addressing tax challenges of the Digital Economy as crucial for India.

7. *Way forward*

While there still remain certain areas of disagreement among stakeholders, the Report acknowledges that there is consensus that more work should be done in a variety of areas, including addressing PE issues in the digital economy and consumption taxeson business-to-consumertransactions.

In light of the interaction among all the focus areas in the BEPS Action Plan, the OECD's work on the taxation issues within the digital economy willcontinue into 2015 and perhaps beyond. However, many countries have started taking action with respect to the tax treatment of activity in the digital economy.

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Held :

Section 147 permits initiation of reassessment proceedings only when the A.O. has a reason to believe that income has escaped the assessment. Whenever the audit party raises objections, it may provide information, however, eventually it is the A.O. who should be satisfied himself and form a belief of his own that taxable income escaped the assessment. He cannot abdicate his decision making power by choosing to solely rely on the audit objection or follow such direction without his subjective satisfaction. On the instant case, therefore, the petitioner has succeeded on this ground alone and notice of reopening does need to be quashed.

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FEMA Updates

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1 Foreign Direct Investment in Pharmaceuticals sector – Clarification

The extant FDI policy for pharmaceutical sector has since been reviewed and it has now been decided with immediate effect that there would be a special carve out for medical devices which was earlier given the same treatment as pharmaceutical sector.

A copy of Press Note No.2 (2015 Series) dated January 6, 2015 issued in this regard by Department of Industrial Policy and Promotion, Ministry of Commerce & Industry, Government of India is appended to this circular.

For Full Text refer to A.P. (DIR Series) Circular No. 70

http://www.rbi.org.in/Scripts/Notification User.aspx?Id=9531&Mode=0

2 Foreign investment in India by Foreign Portfolio Investors

In accordance with Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000- RB dated May 3, 2000, as amended from time to time and to A.P. (DIR Series) Circular No. 13 dated July 23, 2014 in terms of which all future investment in government securities by registered Foreign Portfolio Investors (FPIs) shall be required to be made in government bonds with a minimum residual maturity of three years.

In terms of the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015 all future investment by FPIs in the debt market in India will be required to be made with a minimum residual maturity of three years.

- Accordingly, all future investments by an FPI within the limit for investment in corporate bonds shall be required to be made in corporate bonds with a minimum residual maturity of three years. Further, all future investments against the limits vacated when the current investment runs off either through sale or redemption, shall be required to be made in corporate bonds with a minimum residual maturity of three years.
- FPIs shall not be allowed to make any further investment in liquid and money market mutual fund schemes.
- There will, however, be no lock-in period and FPIs shall be free to sell the securities (including those that are presently held with less than three years residual maturity) to domestic investors.

For Full Text refer to A.P. (DIR Series) Circular No. 71

http://www.rbi.org.in/Scripts/Notification User.aspx?Id=9543&Mode=0

3 Foreign investment in India by Foreign Portfolio Investors

In accordance with Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000- RB dated May 3, 2000, as amended from time to time in terms of which registered Foreign Portfolio Investors (FPIs) may purchase, on repatriation basis Government securities and non-convertible debentures (NCDs) / bonds issued by an Indian company subject to such terms and conditions as mentioned therein and limits as prescribed for the same by the Reserve Bank of India and Securities and Exchange Board of India from time to time.

In terms of the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015 reinvestment of coupons in Government securities will be enabled even when the existing limits are fully utilised.

Accordingly, FPIs shall be permitted to invest in government securities, the coupons received on their existing investments in government securities. These investments shall be kept outside the applicable limit (currently USD 30 billion) for investments by FPIs in government securities. AD Category – I banks shall ensure reporting of such investments as may be prescribed from time to time.

For Full Text refer to A.P. (DIR Series) Circular No. 72

http://www.rbi.org.in/Scripts/Notification User.aspx?Id=9547&Mode=0

5 Foreign investment in India by Foreign Portfolio Investors

In terms of the announcement in the Sixth Bi-Monthly Monetary Policy Statement, 2014-15, issued on February 03, 2015 all future investment by FPIs in the debt market in India will be required to be made with a minimum residual maturity of three years. Further clarifications on queries:

- In terms of the aforesaid directions, any fresh investments shall be permitted in any type of debt instrument in India with a minimum residual maturity of three years. Accordingly, FPIs shall not be allowed to make any further investment in CPs.
- FPIs shall not be allowed to make any further investments in debt instruments having minimum initial / residual maturity of three years with optionality clause exercisable within three years.
- FPIs shall be permitted to invest in amortised debt instruments provided the duration of the instrument is three years and above.

For Full Text refer to A.P. (DIR Series) Circular No. 73

http://www.rbi.org.in/Scripts/Notification User.aspx?Id=9554&Mode=0

6 Foreign Exchange Management Act, 1999 – Import of Goods into India

In terms of A.P.(DIR Series) Circular No. 82 dated February 21, 2012 applications by persons, firms and companies for making payments, exceeding USD 5,000 or its equivalent towards imports into India must be made in Form A-1.

- To further liberalise and simplify the procedure, it has been decided to dispense with the requirement of submitting request in Form A-1 to the AD Category –I Banks for making payments towards imports into India. AD Category –I may however, need to obtain all the requisite details from the importers and satisfy itself about the bonafides of the transactions before effecting the remittance.

For Full Text refer to A.P. (DIR Series) Circular No. 76

http://www.rbi.org.in/Scripts/Notification User.aspx?Id=9567&Mode=0

7 Foreign Direct Investment –Reporting under FDI Scheme on the e-Biz platform

With a view to promoting the ease of reporting of transactions under foreign direct investment, the Reserve Bank of India, under the aegis of the e-Biz project of the Government of India has enabled the filing of the following returns with the Reserve Bank of India viz.

- Advance Remittance Form (ARF) - used by the companies to report the foreign direct investment (FDI) inflow to RBI; and
- FCGPR Form - which a company submits to RBI for reporting the issue of eligible instruments to the overseas investor against the above mentioned FDI inflow.
- The design of the reporting platform enables the customer to login into the e-Biz portal, download the reporting forms (ARF and FCGPR), complete and then upload the same onto the portal using their digitally signed certificates.

- The ARF and FCGPR services of RBI will be operational on the e-Biz platform from February 19, 2015.

For Full Text refer to A.P. (DIR Series) Circular No. 77

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9566&Mode=0

8 External Commercial Borrowing (ECB) Policy — Review of all-in-cost ceiling

It has been decided that the all-in-cost ceiling as specified under paragraph 2 of A.P. (DIR Series) Circular No. 99 dated March 30, 2012 will continue to be applicable till March 31, 2015 and is subject to review thereafter. All other aspects of ECB policy remain unchanged.

For Full Text refer to A.P. (DIR Series) Circular No. 80

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9583&Mode=0

9 Acquisition/transfer of immovable property – Prohibition on citizens of certain countries

In terms of Regulation 7 of Foreign Exchange Management (Acquisition and Transfer of immovable property in India) Regulations, 2000 notified vide Notification No. FEMA 21/2000-RB dated 3rd May 2000, no person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

It has been observed that Macau and Hong Kong are the two Special Administrative Regions of China. As they are notified separately, it has been decided, in consultation with the Government of India, that citizens of Macau and Hong Kong will also be included in the list of countries which are prohibited to acquire/transfer immovable property in India.

For Full Text refer to A.P. (DIR Series) Circular No. 83

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=9595&Mode=0

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and therefore TDS was deductible under section 195(1). The CIT(A) deleted the addition made by the AO holding that discount allowed did not form any payment to the non resident.

Issue

Whether benefit allowed by assessee to its buyer under the name of prepayment discount was infact in nature of interest?

Held

The Tribunal found that there was no mention in purchase contract that any prepayment discount will be allowed by assessee. The payment was to be made by the buyer to the tune of provisional price as per the agreement after furnishing of bank guarantee by the assessee seller but as per the invoice it was seen that in all these invoices prepayment discount were allowed by the assessee. The benefit allowed by the assessee to its buyers under the name of discount was in fact in the nature of interest because the same was in consideration of receiving advance payment. On receiving advance payment, one may compensate the maker of advance payment by way of allowing interest or the same benefit can be given the name of discount but merely because a different nomenclature has been given, it does not change its character. Under these facts, TDS was deductible under section 195. The AO's order was upheld by the Tribunal.

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Service Tax Decoded

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Exemption to Small Service Providers – PART II

In the February, 2015 issue of this Journal we have discussed issues related to threshold exemption. Further issues are discussed in this article.

15. Mr. Kadikar is providing services of commercial coaching and training. During the year 2014-15 he has provided services and received Rs. 10,15,500/- from students as value of services. However, out of this amount, he has refunded Rs. 16,000/- back to students who have not attended the classes. Is threshold exemption as provided under Notification No. 33/2012-ST available to Mr. Kadikar for the year 2015-16?

    - In terms of Notification No. 33/2012-ST, taxable services of aggregate value upto Rs. 10 Lakh is exempt provided aggregate value of taxable services rendered in the preceding financial year does not exceed Rs. 10 Lakh. As Mr. Kadikar has refunded the money back to the students because of the fact that he has not provided services to the student, value of taxable services rendered by him is still below Rs. 10 Lakh in the financial year 2014-15 and hence, threshold exemption is available to him for the financial year 2015-16.

    - Above proposition is also tested by the Hon'ble Delhi Tribunal in the case of Academicians Classes Versus CCE, Jaipur [2010 (17) S.T.R. 116 (Tri. - Del.)] and tribunal has held that if amount, after deducting the amount refunded is below the threshold limit, exemption is available to assessee.

16. M/s. Basic Design & Solutions is engaged in the execution of works contract related to original works for new buildings. During the year 2014-15 they have provided services of Rs. 24 Lakh for composite contract where value of material and service are not separated. Is threshold exemption available to M/s. Basic Design & Solutions for the year 2015-16?

    - In terms of clause (h) of the Section 66E of the Finance Act, 1994 (the Act) only "service portion" in the execution of works contract is declared service and not entire contract. Further, in terms of Section 65B(44), deemed sales under clause (29A) of the Article 366 of the Constitution is not a "service" at all.

    - Thus, material portion in such contract is not taxable service at all and question of inclusion of that value for determination of threshold exemption doesn't arise.

    - Rule 2A of the Service Tax (Determination of Value) Rules, 2006 prescribes the method for determination of "service portion" in works contract. In terms of this rule, if separate values for material and service are not determined, value of service portion shall be 40% of the total amount charged for the works contract. As total amount charged by M/s. Basic Design & Solution is Rs. 24 Laks, 40% of the same comes to Rs. 9.60 Lakhs in the financial year 2014-15. As value of taxable services rendered by them is below Rs. 10 Lakhs in the previous year, threshold exemption of Rs. 10 Lakhs is available in the year 2015-16.

17. M/s. Pax Ex is providing services of Renting of Motor Vehicle Designed to carry passengers. During the year 2014-15 they have provided vehicles for rent of Rs. 22.50 Lakhs. Is threshold exemption is available to M/s. Pax EX for the year 2015-16.

- In terms of Notification No. 26/2012-ST, abatement of 60% is provided for the services of renting of motor vehicle designed to carry passengers and service tax is payable only on 40% of the total rent for motor vehicle designed to carry passengers.
- In terms of the said notification, value, over and above 40% is exempt from the tax. In terms of Notification No. 33/2012-ST, value charged for the services, which are wholly exempt from the service tax don't not form part of aggregate value of Rs. 10 Lakh. If the value of abatement can be considered as "wholly exempt", such value needs not to be included in "aggregate value".
- One view is that such *service* is not "wholly exempt" from the service tax but partially exempt from the service tax and hence value of abatement should not be excluded for determining threshold exemption. However, another view is that *portion of service* pertaining to abatement is wholly exempt from service tax and should be excluded for determining threshold exemption limit.
- In the case of Ashok Kumar Mishra V. CCE, Allahabad [2013 (32) S.T.R. 300 (Tri. - Del.)], Hon'ble tribunal taken *prima faice* view that value of abatement should not be taken into account while computing the total value of the services for the purpose of falling under the SSI (threshold exemption) notification.

18. Mr. Sandip is Air Travel Agent and booking of tickets for domestic travel by air. During the year 2014-15 he has booked tickets having basic fare of Rs. 160 Lakhs. As provided under Rule 6(7) of the Service Tax Rules, 1994, he has opted to pay service tax @ 0.6% on the basic fare. Is Threshold exemption granted under Notification No. 33/2012-ST is available to Mr. Sandip for the year 2015-16?

- In terms of Rule 6(7) of the Service Tax Rules, 1994, person liable to pay service tax in relation to the service of booking of tickets for travel by air provided by an air travel agent, shall have the option, to pay an amount calculated at the rate of 0.6% of the basic fare in the case of domestic bookings. This is an option given to such service provider.
- Basic fare charged by the airlines from passengers is not amount charged by the air travel agent from passenger for services provided and the same should not be included in the "aggregate value" for the threshold exemption. Merely because, travel agents are given an option to pay service tax in simplified manner, it doesn't make basic fare taxable in the hands of travel agents.
- In my opinion, even if service provider has opted to pay service tax at special rates provided under Rule 6 of the Service Tax Rules, 1994, he should consider his actual commission (or value of taxable service provided by him) to check if threshold exemption is available to him or not.
- In this case, if during the year 2014-15, Mr. Sandip has earned actual commission not exceeding Rs. 10 Lakhs, threshold exemption of Rs. 10 Lakh is available to him for the year 2015-16.

19. Mr. Dinesh and Mr. Chandra have purchased a commercial property in the joint name and are equal co-owners of the property. Property has been rented out for total rent of Rs. 18 Lakhs per annum. Rent is received by each partner equally directly in their bank accounts and offered by them as their individual income for Income Tax. During the year 2014-15 they have received total rent of Rs. 18 Lakhs. Is threshold exemption is available for them for the year 2015-16?

- Here, although total rent is above Rs. 10 Lakh in previous year, rent received by the individual co-owner is below Rs. 10 Lakh

(Rs. 9 Lakh for each partner). If threshold limit is available to each co-owner, value of taxable service is below threshold limit and no service tax is required to be paid.

- If services are being provided by the Association of Person of Mr. Dinesh and Mr. Chandra, it may be argued that there is only one service provider and that is Association of Person. Merely joint ownership doesn't create Association of Person. Each co-owner is charging his value of service separately from the service recipient (tenant) and receiving the consideration for service directly from the tenant in his bank account and also offering it as his income for income tax. Such circumstances show that they are merely joint owners and each co-owner is a service provider.
- As each co-owner is service provider, threshold exemption as provided under Notification No. 33/2012-ST is applicable to each one. As for each one of them aggregate value is below Rs. 10 Lakh in the financial year 2014-15, each of them are eligible to avail threshold exemption in the year 2015-16 even if total rent for the property is above Rs. 10 Lakh.
- In the case of Dineshchandra V Patel V. Commissioner of Service Tax, Ahmedabad [2013 (31) S.T.R. 296 (Tri. - Ahmd.)] Hon'ble CESTAT – Ahmedabad has taken a *prima facie* view that the threshold exemption notification talks about the aggregate value of the taxable services rendered, should be considered for the purpose of exemption and in this case if individually all the appellants be considered as provider of such service, their aggregate value does not exceed the threshold limit.

20. M/s. Shree Enterprise is operating an air conditioned restaurant. They operate restaurant in the name of 'DISH HONEST' which is a famous brand owned by M/s. Dish Honest Pvt. Ltd. During the year 2014-15, M/s. Shree Enterprise has served food worth Rs. 9 Lakhs. Is threshold exemption available for the year 2015-16?

    - Proviso to paragraph 1 of the Notification No. 33/2012-ST stipulates that threshold exemption is not available if services are provided under brand name, whether registered or not, of another person. As M/s. Shree Enterprise is providing restaurant services under brand name "DISH HONEST' which is owned by another person M/s. Dish Honest P. Ltd., threshold exemption is not available to M/s. Shree Enterprise.

21. M/s. Jay Enterprise has showroom and they are exclusively selling branded goods bearing brand name "Fashionade" which is owned by M/s. Fashionade Ltd. For sale of each garments, M/s. Jay Enterprise receives commission from M/s. Fashionade Ltd. During the year 2014-15 M/s. Jay Enterprise has received commission of Rs. 7 Lakhs from M/s. Fashionade Ltd. Is threshold exemption is available to M/s. Jay Enterprise for the year 2015-16?

    - Threshold exemption is not available where services are provided under brand name and such limitation is not extended where goods are sold under brand name on behalf of brand owner. Service of commission agency is being provided by M/s. Jay Enterprise to M/s. Faishonade Ltd.. M/s. Jay Enterprise sells the branded goods but does not provide commission agency services under brand name "Fashionade". Hence, threshold exemption is available to M/s. Jay Enterprise for the year 2015-16.

22. Mr. Kothari is working as Direct Selling Agent of the Haxis Bank. He is getting fees and commission from the bank for each borrower referred by him to the bank. During the year 2014-15, Mr. Kothari has provided such services having assessable value of Rs. 8 Lakh.

Central Excise Officer is having a opinion that as Mr. Kothari is providing services under the brand name of the another person, i.e. Haxis Bank, threshold exemption is not available to Mr. Kothari. Is contention of the Central Excise Officer is correct?

- In terms of Proviso to paragraph 1 of the Notification No. 33/2012-ST, threshold exemption is not available to service provider if services are provided under brand name of the another person.
- Here Mr. Kothari is receiving the commission from Haxis Bank and Mr. Kothari is service provider and Haxis Bank is service recipient. Mr. Kothari is providing services to Haxis Bank and not to borrower on behalf of Haxis Bank. If the contention of the Central Excise Officer is accepted, it will mean that services are being provided to Haxis Bank under the brand name of Haxis Bank itself. Such proposition seems illogical.
- Mr. Kothari is not getting commission from the borrowers and he is not providing any services to the borrowers. If Mr. Kothari would have provided services to the borrower, in that case it may be argued that he is providing services under the brand name "Haxis Bank" which is owned by another person. But it is not the case here.
- In the case of Peoples Automobiles Limited versus CCE, Kanpur, [2011 (24) S.T.R. 635 (Tri. - Del.)] Hon'ble CESTAT Delhi, held that the said Proviso hits the taxable services, when not being provided by a person under his own name, but are being provided by him under the brand name or trade name of another person. CESTAT didn't find any merit in the revenue's reasoning that such services being provided by the appellant to the banks are by using their brand name. CESTAT further held that appellants providing services to the bank under their own name and banks are recipient of the service and it can't be said that the services are being provided to the banks as recipient of the services by using the recipient's brand name.
- Based on above proposition, Mr. Kothari is eligible for threshold exemption in the year 2015-16.

23. For the first time Mr. Fresh CA is crossing limit of Rs. 10 Lakh as provided under Notification No. 33/2012-ST on 11-01-2015 and now he has to pay service tax on the value above Rs. 10 Lakh. On 25-01-2015 he has received invoice from an input service provider whose services were obtained and used for providing output services for which threshold exemption was availed and no service tax was paid by Mr. Fresh CA. However, as today Mr. Fresh CA is liable to pay service tax on services provided after 11-01-2015 and hence wants to avail credit of such input service. Can he do so?

    - In terms of Rule 6(1) read with Explanation II to Rule 6(3) of the CENVAT Credit Rules, 2004 CENVAT credit shall not be allowed for input services used for providing exempted services. As services received by Mr. Fresh CA is used for providing exempted services (of Rs. 10 Lakh – Threshold Exemption), he is not eligible to avail the CENVAT Credit.

24. In above example, Mr. Fresh CA has received another input service and invoice thereof before 11-01-2015 and service tax is also charged by service provider. However, such input services are used for providing output service by Mr. Fresh CA which is billed after 11-01-2015 and service tax has been charged thereon by Mr. Fresh CA. Can Mr. Fresh CA avail CENVAT credit for service tax he has paid to his input service provider?

    - Yes. Service Provider is eligible to avail CENVAT credit of Input Service if he has used that service for provision of Output

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Service Tax - Recent Judgements

CA. Ashwin H. Shah
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1 2015 (37) STR 618 Murli Realtors Pvt Ltd vs. CCE, Pune.

Notional interest on interest free security deposit cannot be added to rent agreed upon between parties for purpose of levy of service tax on renting of immovable property.

Facts:

In determining value of 'renting of immovable property services' provided by assessee landlords, department added notional interest at 18 per cent per annum on interest free security deposits received by them.

Held:

Section 67 clearly provides that only consideration received in money for service rendered is leviable to service tax and consideration for renting of immovable property is 'rent' Security deposit is taken to provide for a security in case of default in rent by lessee or default in payment of utility charges or for damages, if any, caused to leased property Thus, security deposit serves a different purpose altogether and it is not a consideration for leasing of property~ hence, notional interest cannot be charged to tax.

2 [2014] 51 taxmann.com 392 Commissioner of Customs & Central Excise *v.* Sachin Malhotra (HC of Uttarakhand)

Rent- a Cab Scheme Operator Service

Facts:

Assessee was providing its vehicles with drivers on per kilometer basis to various public sector organizations. Department argued that it was 'rentacab services' and liable to service tax. Assessee argued that its activities were 'mere hiring' and there was no renting, as possession and control remained with assessee always.

Held:

It was held that unless control of vehicle is made over to hirer and he is given possession for howsoever short a period, to deal with the vehicle, there would be no renting service. A person chooses to hire a car where owner of vehicle, who while retaining control and possession of vehicle with himself is liable to pay service tax under Rent –a-Cab Scheme. It was further held that expression 'in relation to' used in section 65(105)(o) though expands scope of taxation, any service which does not relate to renting of cabs, would be irrelevant for imposing service tax.

3 [2015] 55 taxmann.com 363 (Mumbai CESTAT) CESTAT, MUMBAI BENCH Shravan Banarasilal Jejani *v.* Commissioner of Central Excise, Nagpur

Service recipient may claim refund of wrongly paid service tax without any time bar.

Facts:

Assessee, a service recipient, bought residential flats from builder on payment of service tax. As per Circular, dated 29-1-2009, there was no liability of service tax thereon. Assessee applied for refund, which was rejected on ground of timebar. Assessee argued that since service tax itself was not payable, section 11B would not apply to refund thereof.

Held:

Assessee was not required to pay service tax but had paid service tax erroneously. As per Circular dated 29-1-2009, department could not levy service tax. Mere payment made by assessee erroneously cannot authorize department to retain same. Therefore, provisions of section 11B are not applicable Hence, refund was allowed.

4 [2015] 53 taxmann.com 533 Board of Control for Cricket In India *v.* Commissioner of Service Tax, Mumbai-I (SC)

Services received by BCCI from foreign media companies for coverage of Indian Premier League Matches by way of production of audiovisual coverage of the cricket matches are covered under 'Programme production services' and liable to service tax on reverse charge basis.

Facts:

Assessee, BCCI, received services from foreign media companies for coverage of Indian Premier League Matches and as per agreements, such non-resident service providers were required to produce audio-visual coverage of the cricket matches conducted by BCCI and digitalized images of coverage were uploaded for broadcasting for viewers of cricket match all over world. Department demanded service tax from BCCI under reverse charge.

Held:

It was held by Tribunal that (a) non-resident service providers had installed cameras in stadium to capture images of cricket match; (b) a combination of audio and visual recording would be a programme and expression 'audio or visual matter' in section 65(86a) can be read as 'audio and visual matter' also; (c) both production of programme 'for' BCCI or 'on behalf of' BCCI is covered; (d) hence, activities undertaken by non-resident service providers fall within definition of 'programme' and service providers are 'programme producers', as defined; (e) even services by way of supply of equipment and personnel for recording live programme and actually participating in such programme production would also fall within definition of 'programme producer's services'; (f) but, booking of hotel accommodation and transport of personnel in connection with recording of cricket matches would not be covered.

On assessee's appeal to Supreme Court , it was held that there is no infirmity in order passed by Tribunal and there is no reason to interfere in these matters . Hence, assessee's appeals were dismissed.

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Services. There is no provision in the CENVAT Credit Rules, 2004 which restrict such credit.

25. During the year 2013-14 aggregate value of services provided was above Rs. 10 Lakh and hence Mr. Pravin was not eligible for threshold exemption for the year 2014-15 and has collected and paid service tax for the year 2014-15. For the year 2014-15, such value is below Rs. 10 Lakh and hence he has decided to avail the threshold exemption for the year 2015-16. As on 31-03-2015, he has unutilised credit of Rs. 50,000/- and wants to carry forward that balance in the year 2015-16 so that it can be used if he crosses limit of Rs. 10 Lakh in the year 2015-16. Can he do so?

- Exemption under Notification No. 33/2012-ST is optional. Rule 11 of the CENVAT Credit Rules, 2004 provides that if service provider opts for exemption from payment of whole of the service tax, he is required to pay an amount equivalent to CENVAT credit contained in the taxable services pending to be provided. It further provides that if after above payment, the balance of credit, if any, still remaining shall lapse and shall not be allowed to be utilised for payment of service tax on any output services. Hence, Rs. 50,000/-, being balance of the CENVAT Credit can't be carried forwarded so that it can be utilized for payment of service in future.

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VAT - Recent Judgements and Updates

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Statute Updates
Value Added Tax (VAT)

[I] **Important Notifications/Circulars:**

[A] **GST is knocking the doors:**

The Central Government has introduced the 122nd Constitution Amendment Bill for Special Provision of Goods and Service Tax in the Parliament. In the Bill it was noticed that some new articles viz. 269A, 279A pertaining to levy and collection of Goods and Service Tax in course of Inter-State Trade and Commerce and the Appointment of Goods and Service Tax Council and Arrangement of assignment of additional tax on the supply of goods to the states for two years and compensation to be paid to the states for the loss of revenue are introduced. The gist of the same is narrated hereunder for the benefit of the readers.

Insertion of New Article 269A:

After article 269 of the Constitution, the following article shall be inserted, namely –

Levy and collection of goods and service tax in course of inter-State trade or commerce.

"269A:

[1] Goods and Service Tax on supplies in the course of inter-State trader or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Service Tax Council.

Explanation: For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

[2] Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce."

Insertion of New Article 279A in respect of Appointment of Goods and Service Tax Council:

After article 279 of the Constitution, the following article shall be inserted, namely –

Goods and Service Tax Council:

"279A".

[1] The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty Second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Service Tax Council.

[2] The Goods and Service Tax Council shall consist of the following members, namely –

(a) the Union Finance Minister - Chair Person

(b) the Union Minister of State In Charge of Revenue or Finance - Member

(c) the Minister in Charge of Finance or Taxation or any other Minister nominated by each State Government - Members

[3] The Members of Goods and Service Tax Council referred to in sub clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to the Vice Chair Person of the Council for such period as they may decide.

[4] The Goods and Service Tax Council shall make recommendations to the union and the states on –

[a] the taxes, cresses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and serviced tax;

[b] the goods and services that may be subjected to, or exempted from the goods and service tax;

[c] model Goods and Service Tax Laws, principles of levy, apportionment of integrated Goods and Service Tax and the principles that govern the place of supply;

[d] the threshold limit of turnover below which goods and services may be exempted from Goods and Service Tax;

[e] the rates including floor rates with bands of goods and service tax;

[f] any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

[g] special provision with respect to the States of Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

[h] any other matter relating to the goods and service tax, as the Council may decide;

[5] The Goods and Service Tax Council shall recommend the date on which the goods and service tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as Petrol), natural gas and aviation turbine fuel.

[6] While discharging the functions conferred by this article, the Goods and Service Tax Council shall be guided by the need for a harmonized structure of goods and service tax and for the development of a harmonized national market for goods and services.

[7] One half of the total number of Members of the Goods and Service Tax Council shall constitute the quorum at its meetings.

[8] The Goods and Service Tax Council shall determine the procedure in the performance of its functions.

[9] Every decision of the Goods and Service Tax Council shall be taken at a meeting, by a majority of not less than three-fourth of the weighted votes of the members present and voting, in accordance with the following principles, namely –

[a] the vote of the Central Government shall have a weightage of one – third of the total votes cast, and

[b] the votes of all the State Governments taken together shall have a weightage of two-third of the local votes cast, in that meeting.

[10]No act or proceeding of the Goods and Service Tax Council shall be invalid merely by reason of –

[a] any vacancy in, or any defect in, the constitution of the Council; or

[b] any defect in the appointment of a person as a meber of the Council; or

[c] any procedural irregularity of the Council not affecting the merits of the case.

[11]The Goods and Service Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.

Arrangement of assignment of additional tax on supply of goods to States for two years or such other period recommended by the Council.

[1] An additional tax on supply of goods, not exceeding one per cent, in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Service Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

[2] The net proceeds of additional tax on supply of goods in any financial year except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund

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Business Valuation

Academic Refresher

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Approaches to Valuation
Market Approach
(Relative Valuation Approach)

Market value is also known as extrinsic value. The basis of market value is the assumption that if comparable Asset or property (or business) has fetched a certain price, then the subject asset or property (or business) will realize a price something near to it. The market, says Mr. Johnson in Adam smith's The Money Game, is like a beautiful woman- endlessly fascinating endlessly complex, always changing always mystifying.

There is a significant philosophical difference between discounted cash flow and relative valuation. In discounted cash flow valuation, we are attempting to estimate the intrinsic value of an asset based upon its capacity to generate cash flows in the future. In relative valuation, we are making a judgment on how much an asset is worth by looking at what the market is paying for similar assets. If the market is correct, on average, in the way it prices assets, discounted cash flow and relative valuations may converge. If, however, the market is systematically over pricing or under pricing a group of assets or an entire sector, discounted cash flow valuations can deviate from relative valuations.

In relative valuation, we have given up on estimating intrinsic value and essentially put our trust in markets getting it right, at least on average. It can be argued that most valuations are relative valuations. Damodaran (2002) notes that almost 90% of equity research valuations and 50% of acquisition valuations use some combination of multiples and comparable companies and are thus relative valuations.

Correctness of and dependency on Market prices

Efficient market theory submits that in an efficient market all investors receive information instantly and that it is understood and analyzed by all the market players and is immediately reflected in the market prices. The market price, therefore, at every point in time represents the latest position at all times. The efficient market theory submits it is not possible to make profits looking at old data or by studying the patterns of previous price changes. It assumes that all foreseeable events have already been built into the current market price.

The market values are very sensitive and changes with each new information. This information also contains the rumors and wrong beliefs of investors and market players. Therefore, it influences by irrelevant facts and information as well as by personal thoughts and interpretation of information by market players.

On the other hand, many financial economists and statisticians believe that stock prices are at least partially predictable. They emphasized psychological and behavioral elements of stock-price determination, and they came to believe that future stock prices are somewhat predictable on the basis of past stock price patterns as well as certain "fundamental" valuation metrics.

Under FAS 157, the Board concluded that quoted market prices provide the most reliable measure of fair value. Quoted market prices are easy to obtain and are reliable and verifiable. Those are used and relied upon regularly and are well understood by investors, creditors, and other users of financial information.

Valuation Techniques

There are two primary sources or methods that can be applied to determine a value based on market transactions or market behavior.

1) **Merger and Acquisition Method (Comparable Sales or Completed transaction) –**

2) **Guideline Public Company Method**

1) **Merger and Acquisition Method (Comparable Sales or Completed transaction) –**

This method involves reviewing transactions for companies that are in the same or similar line of business as the company being valued and then applying the relevant pricing multiples to the subject company to determine its value. The method might involve private company transactions, public company transactions, as well as public company valuation measures using current share market data. The theory behind this approach is that valuation measures of similar companies that have been sold in arms-length transactions should represent a good proxy for the specific company being valued. Depending on the source of data available and the underlying company being valued, a variety of valuation measures might be used including Enterprise Value (EV) to Sales, EV to EBITDA, EV to EBIT, Price to Earnings, etc. Adjustments are commonly made to these valuation measures before applying to the subject company to ensure an "apples-to-apples" comparison. One or many comparable sales might be considered under this method depending on the data available and the degree of similarity to the company being valued.

2) **Guideline Public Company Method –**

The premise of the guideline company method is based on the economic principle of substitution stating that one will not pay more for an asset than the amount at which they can acquire an equally desirable substitute. This method involves using market multiples derived from market prices of stocks for companies that are engaged in the same or similar industries as the subject company. This can be a helpful tool in valuing private companies, but these public company multiples usually need to be discounted significantly to reflect the higher risks (e.g., customer concentration, management depth, access to financing, etc.) inherent in smaller private companies as well as the "lack of marketability" of private company stock.

The guideline publicly traded company method is appropriate when similar and relevant proxy companies may be identified and employed in estimating the value of a closely held company.

The question comes here is :

What is then a comparable firm?

A comparable firm is one with cash flows, growth potential, and risk similar to the firm being valued. It would be ideal if we could value a firm by looking at how an exactly identical firm - in terms of risk, growth and cash flows - is priced. Nowhere in this definition is there a component that relates to the industry or sector to which a firm belongs. Thus, a telecommunications firm can be compared to a software firm, if the two are identical in terms of cash flows, growth and risk.

Traditional analysis is built on the premise that firms in the same sector are comparable firms. In most analyses, analysts define comparable firms to be other firms in the firm's business or businesses. The implicit assumption being made here is that firms in the same sector have similar risk, growth, and cash flow profiles and therefore can be compared with much more legitimacy. However in reality, it is also difficult to define firms in the same sector as comparable firms if differences in risk, growth and cash flow profiles across firms within a sector are large.

In discounted cash flow valuation, the value of a firm is a function of three variables – its capacity to generate cash flows, the expected growth in these cash flows and the uncertainty associated with these cash flows. Every multiple, whether it is of earnings, revenues or book value, is a function of the same three variables – risk, growth and cash flow generating potential. Intuitively, then, firms with higher growth rates, less risk and greater cash flow generating potential should trade at higher multiples

than firms with lower growth, higher risk and less cash flow potential.

It is impossible to find exactly identical firms to the one you are valuing and figuring out how to control for the differences is a significant part of relative valuation. If, in your judgment, the difference on the multiple cannot be explained by the fundamentals, the firm will be viewed as over-valued (if its multiple is higher than the average) or under-valued (if its multiple is lower than the average).

No matter how carefully we construct our list of comparable firms, we will end up with firms that are different from the firm we are valuing. The differences may be small on some variables and large on others and we will have to control for these differences in a relative valuation. These differences are generally controlled by using subjective adjustments or using modified multiple or applying statistical technique like sector regression or Marker regression.

We will discuss the techniques of using various multiples in next article.

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of India and be deemed to have been assigned to the States from where the supply by the originates.

[3] The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

[4] Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

Compensation to States for loss of revenue on account of introduction of goods and service tax.

Parliament may, by law, on the recommendation of the Goods and Service Tax Council, provide for compensation to the States for loss or revenue arising on account of to States for implementation of the goods and service tax for such period which may extend to five years.

Transitional Provisions:

Notwithstanding anything in this Act, any provision of any law relating to tax on goods and services or on both in force in any state immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement whichever is earlier.

If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or Law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty.

Provided that no such order shall be made after the expiry of three years from the date of such assent.

Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

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Corporate Law Update

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MCA Updates:

1. **Clarification relating to filing of e-form DIR-11 & DIR-12 under the Companies Act, 2013:**

   In case of de-activation of Digital Signature Certificate (DSC) following en masse resignation of all the directors of a company before appointment of new directors in their places, the MCA has clarified that to enable the filing of e-form DIR-12 (Particulars of appointment of director and the key managerial personnel and the changes among them), the Registrar of Companies within their respective jurisdictions are authorized, on request from the stakeholders, and after due examination, to allow any one of the resigned director who was an authorized signatory Director for the purpose of filing DIR-12 only along with additional fees, as applicable and subject to compliance of other provisions of Companies Act 2013.

   [General Circular No. 3/2015, dated March 03, 2015]

2. **Clarification with regard to section 185 and 186 of the Companies Act 2013 - loans and advances to employees:**

   The MCA has clarified that loans and/or advances made by the companies to their employees, other than the managing or whole time directors (which is governed by section 185) are not governed by the requirements of section 186 of the Companies Act, 2013.

   This clarification will, however, be applicable if such loans/advances to employees are in accordance with the conditions of service applicable to employees and are also in accordance with the remuneration policy, in cases where such policy is required to be formulated.

   [General Circular No. 4/2015, dated March 10, 2015]

3. **Companies (Share Capital and Debentures) Amendment Rules, 2015:**

   Following changes have been made effective w. e. f. the date of notification of these amendment Rules:

   - **(Rule 3)** The provisions of these rules shall apply to:
     (a) all unlisted public companies:
     (b) all private companies: and
     (c) listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by the Securities and Exchange Board of India;
   - Rule 5, 6, 12, 13, 18 and 19 also have been amended.

   [F. No. 1/4/2013–CL-V(Pt I) Notification dated March 18, 2015]

4. **Companies (Meetings of Board and its Powers) Amendment Rules, 2015:**

   Following changes have been made through this amendment:

   (a) in the rule 8:
   (i) item numbers (3), (5), (6), (7), (8) and (9) and the entries relating thereto shall be omitted;
   (b) in the rule 10:

   in the proviso, for the word 'principle" the word 'principal' shall be substituted.

   [(F. No. 1/32/2013-CL-V-Part) dated March 18, 2015]

5. **Companies (Management and Administration) Amendment Rules, 2015:**

   - Rule 20 (**Voting though electronic means**) of the Companies (Management

and Administration) Rules, 2014, has been substituted:

- This rule shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this rule.
- Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognized stock exchange or a company having not less than one thousand members, shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at general meetings by electronic means'

  The words "Agency", "Cut-off Date", "Cyber Security", "Electronic Voting System", "Remote Voting System", "Secured System", Voting by Electronic Means" also have been explained for the purpose of this rule.
- The Company shall follow the prescribed procedure for sending the notices containing the specified contents indicating the process and manner of voting to the members, directors & auditors of the company.
- The Company shall issue at least 21 days before the general meeting, a public notice through an advertisement in Vernacular & English language specifying various details including business to be transacted, time, cut-off date, process and manner of remote e-voting.
- The Board shall appoint CA, CS, Cost Accountant or Advocate in practice or any other independent person of repute, as the scrutinizer(s) to scrutinize the voting and remote e-voting process in a fair and transparent manner.
- A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

[(F. No. 0l/34/2013-CL-V- Part-I) dated March 19, 2015]

6. Companies (Adjudication of Penalty) Rules, 2014.

The Central Government has appointed the concerned Registrars of Companies as the adjudicating officers for the purposes of Companies Act, 2013.

The Appeals, if any, filed before the concerned Regional Director having jurisdiction over the adjudicating offices shall be disposed of in accordance with the notification of the Government of India in the Ministry of Corporate Affairs published in the Gazette of India, Extraordinary, Part II, Section 3 Subsection (i), vide number G.S.R. 887 (E), dated the 14th December, 2011 and G.S.R.763 (E), dated the l5th October, 20 I 2.

[(F. No. A - 42011/112/2014-Ad II) dated March 24, 2015]

7. Companies Acceptance of Deposit Rules, 2014

- The MCA has clarified that the amounts received by private companies from their members, directors or their relatives, prior to 01st April, 2014, shall not be treated as 'DEPOSITS' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 01st April, 2014, the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement.
- Any renewal or acceptance of fresh deposits on or after 01st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made there under.

[(F. No. 0l/18/2013-CL-V) dated March 30, 2015]

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From the Government

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Income Tax

1) Income Computation and Disclosure Standards u/s 145(2) under the IT Act,1961.

The Central Government has notified the income computation and disclosure standards as specified in the Annexure to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or " Income from other sources". This notification shall come into force with effect from 1st day of April, 2015, and shall accordingly apply to the assessment year 2016-17 and subsequent assessment years. **(For full text refer notification no. 33, dated 31/03/2015)**

Service Tax

1) Abatement for the following services are effective from 01/04/2015

Sr.No.	Name of Service	**From 01/04/2015**	Upto 31/03/2015
1	Transport of passengers by air		
a)	Economy class	**60%**	60%
b)	Other than Economy Class	**40%**	
2	Services of GTA in relation to transportation of goods	**70%**	75%
3	Transport of goods in a vessel	**70%**	60%
4	In case of service of Transport of goods/ passengers by Rail the following words have been inserted**" Cenvat credit on inputs, capital goods and input services, used for providing the taxable service, has not been taken under the provisions of the Cenvat Credit Rules,2004".**		
5	The abatement of 60% in case of renting of motor cab has been **omitted**.		

(For full text refer notification no. 08, dated 01/03/2015)

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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
02.05.2015 Saturday	05.00 pm to 05.30 pm	27th Annual General Meeting of Mutual Benefit Scheme	Shantinath Hall, ICAI Bhawan, Ahmedabad
02.05.2015 Saturday	05.30 pm onwards	64th Annual General Meeting of Chartered Accountants Association, Ahmedabad	Shantinath Hall, ICAI Bhawan, Ahmedabad

Events gone by

1. On 10th March 2015, "An Open House Interactive Session with Income Tax Department" jointly with Gujarat Chamber of Commerce & Industry and other associations was organised at Gujarat Chamber of Commerce & Industry Ashram Road, Ahmedabad.

2. On 16th March 2015, 9th Study Circle Meeting on " Understanding Importants Provisions proposed under Finance Bill, 2015" Jointly with Ashram Road CPE Study Circle of WIRC of ICAI and Navjivan CPE Study Circle of WIRC of ICAI was held at H. T. Parekh Convention Hall, AMA, Ambawadi, Ahmedabad.

3. On 21st March 2015, 4th Brain Trust Committee programme on the topic of "Deeming Fiction under the Income Tax Act" was held at ATMA Hall, Opp. Citi Gold, Ashram Road, Ahmedabad.

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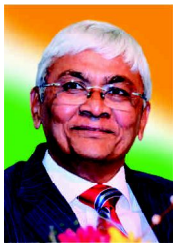
CONGRATULATIONS



CA. SUNIL TALATI, member of Association and Past President of ICAI, has been elected as a member of Service Export Promotion Council, set up by the Ministry of Commerce & Industry, Government of India for the years 2015 - 2017.

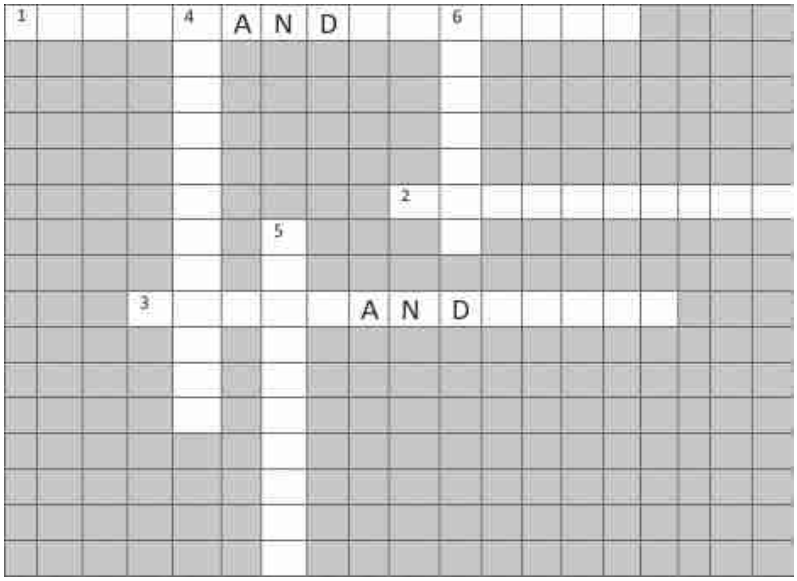
ACAJ Crossword Contest # 12

Across

1. _____ and _____ Tax is the logical conclusion of the successful introduction and imposition of value added tax in India.
2. As per AS – 16, it is provided that interest can be capitalized only in respect of _____ asset.
3. If we can have a sense of love and brotherhood for all living beings, it amounts to our _____ and _____ in God.

Down

4. A cess called _____ cess is proposed in Union Budget 2015.
5. The meaning given by the Institute clearly denotes that in normal accounting parlace the word "turnover" would mean _____.
6. Web and portal charge are held to be _____ in nature by Delhi ITAT.



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 01/05/2015.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 11
1. CA. Manan Vyas
2. CA. Rakesh Gupta
3. CA. Raj Shah

ACAJ Crossword Contest # 11 - Solution	
Across	
1. Cabs	2. Capital
3. Freedom	
Down	
4. PPF	5. Shareholder
6. Estopped	

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