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

Published By

CA. Ashok Kataria,

on behalf of Chartered Accountants Association, Ahmedabad, 1st Floor, C. U. Shah Chambers, Near Gujarat Vidhyapith, Ashram Road, Ahmedabad - 380 014.

Phone : 91 79 27544232

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M-2 Hasubhai Chambers, Near Town Hall, Ellisbridge, Ahmedabad - 380 006.

Mobile : 98252 62512 E-mail : pratikshaprinter@yahoo.co.in

CA. Punit R. Prajapati
punitca@gmail.com

Excellence Embedded in the Duty - Way to Prosperity

One day a General Manager of a renowned company found a cleaner not cleaning the floor properly and some portion was left unclean. He stopped the cleaner, cleaned the floor on his own and demonstrated to the cleaner that how a floor can be cleaned properly. Then he asked the cleaner a question: Do you know, why are you merely cleaning the floors since last so many years? Cleaner couldn't reply and then General Manager explained. He said, you are cleaning since many years and not promoted ahead of it because of the fact that you are not doing even cleaning properly. The moment you will be able to clean floor properly, you will be promoted to supervisor level automatically. Even if, this company will not promote you, any of the visitors of the factory will notice your work done properly and will offer a better job and salary and you will be elevated. If you will do your duty of supervision properly, you will be automatically elevated by the world, may be by this company or anyone else. And this will continue if you keep doing your duty properly.

Wordings of the General Manager may be somewhat different, but this is a real story and that too from the state of Gujarat. It shows the observations of an experienced person.

Ecosystem of the human society has been beautifully evolved. It provides tremendous opportunities to the person who does his duty properly and that who doesn't perform his duty suffers misery. If a person doesn't perform his karma, he is not the only one, who suffers, but his dependents, like parents, spouse, children, employees etc. also suffer. Hence, doing our duty properly is the key for a peaceful and prosperous life.

Whatever work is given, it should be done with a great level of involvement. Try your best to justify your work and try to do it as perfectly as possible. If one is able to detach his senses out of worldly objects, he will be able to focus on his duty. Unless one is focused on his duty, he will not be able to justify the work he is entrusted by the world.

Keep doing it until it becomes habit and once it is a habit, path to excellence is open. A work done perfectly gives immense amount of pleasure to the doer, the *karta*. It may not give fruit to the *karta* immediately, but in long run *karta* is the owner of it and will enjoy the fruit sooner or later and that too in this world itself. Same is with the fruit of a work not done properly. *Karta* of such *karma* is the owner and has to suffer for it, sooner or later, directly or indirectly, in this world itself.

Work entrusted by the world doesn't give only monetary consideration but it also gives respect and fame. If done properly, it provides the opportunity to prove excellence of *karta* and he will secure a place in the minds of the people and will be remembered by the people with respect. People will immediately recall his name for entrusting similar work. Similarly, if the work entrusted is not done properly, people do not look up to such persons, deny approaching again and ultimately resulting in their downfall. This is a beauty of the human society. One, who does his duty properly and perfectly, gets elevated and one, who doesn't, suffers.

There is no need to go through thousands of pages of scriptures to understand this simple rule. "Way to prosperity passes through excellence embedded in the one's duty, *the karma*."

Editorial

ackatariaco@yahoo.co.in

Again - It's Election Time

India is a vast democratic country. We always find elections happening in one part of the nation or other. Recently the state of Bihar went for polls where the *Mahagathabandhan* got a thumping majority over NDA. Soon after Diwali, there are Municipal Corporation Elections in Ahmedabad. Amidst these different elections, the important one affecting and concerning the profession are the Regional Council and Central Council Elections in the month of December followed by Branch Elections early next year.

These elections are important as far as we the members are concerned. These are significant because it decides how do we like to take the profession forward. It is our responsibility to ensure that right candidates are elected who ultimately are our representatives at the Councils, Regional or Central. Most of the members would have started receiving messages, phone calls, personal visits along with the brochures and flyers from the candidates.

Though we professionals are considered as one of the elite intellectuals of the society but when it comes to electing our candidates, to some extent, we cast our votes on the basis of references, recommendations and suggestions. How much time do we spend to know the candidate for whom we are casting our preference? As a member it is our duty to ensure that only right and deserving candidates get elected. People who can lead from the front and be the face of the profession during these challenging times. Marking our preferences on the ballot paper without even knowing the candidate may be dangerous for the profession in the times to come. Moreover electing candidates based on their caste, creed, sex or reference makes us none better than those unfortunate illiterates in the country who sell votes for a small handful of money.

The phase is crucial for the profession. If we wish to have good times ahead, we need to ensure that proper candidates are elected. How often we meet candidates soliciting votes? Can we not ask them reason for voting in their favour? It is important to know what the candidate has on offer for the profession, for each member and a very large section of students. The candidates who are re-contesting, we can at least check their record and performance during their tenure.

Once again, it is our responsibility to ensure that right candidates represent us. Let's check and ensure at least the following before exercising our franchise.

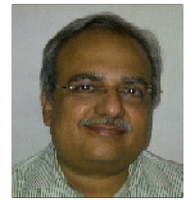
* Whether the candidate has academic interest in the subjects relevant to the profession?
* Whether the candidate can represent us and communicate at various forums?
* What is the performance of the re-contesting candidates?
* Are we electing the candidate on the basis of his cast and community?
* Are we electing the candidate based on references and suggestions?

It's time to make a choice. Let merit take precedence over references this council elections. Let's try to shape it for the better.

Wishing all a very happy Diwali!

Namaste,
CA. Ashok Kataria

From the President



CA. Yamal A. Vyas
yamalavyas@yahoo.com

The Diwali Season is upon us and I sincerely wish all of you a Very Happy Diwali and Prosperous and Healthy New Year. May God bless you and your family though out the coming Samvat year and beyond. Your Association is actively working on a number of projects including coming out with various books of professional interest.

In November we plan to release at least two books written by young members of our Association. Let me assure you that the efforts put in by these youngsters and the end results will be eye openers for all of us. I am now confident that the future of CAAA and the profession is bright, very bright.

I wish to bring to the notice of members a very serious issue. Last month I received letters from 5 young members of the Association. The words were different but the message was the same. Each one of them expressed concern over the fact that no new members were joining the Association's Mutual Benefit Scheme (MBS), and in view of that they would like to discontinue their membership of the scheme.

I was surprised and disturbed by this. The mutual benefit scheme, launched in 1988, has about 800 members and on the death of a member, the surviving members contribute varying amounts as per their age and the amount so collected is given to the nominees of the deceased member. On an average, the nominee receives an amount of Rs. 3-4 lacs on the death of the member.

This scheme was launched as -and in my view is- a kind of social service whereby a CAA member contributes a very small sum on the death of a fellow member to support the deceased's family in a small way. No amount of money can fill the void created by the death of a family member- usually the principal bread earner- but as colleague, we collectively try to alleviate the suffering of the family.

Yet, this idea does not seem to convince the young members. Now it is sad state of affairs but a reality that most of the new members who join CAAA do not become members of the MBS. For a few years, the CAAA had made it compulsory for new members to join the MBS. This resulted in a fall in new membership, and so this condition was withdrawn.

Now, through the medium of this message, I request all the members of CAAA who are eligible to become members of MBS to join the scheme at the earliest. By becoming a member, one would have to contribute about Rs.2000-5000 per year. This is about the cost of one family dinner or a short weekend trip, not more.

And in the process one would derive the satisfaction of having been part of a small social service effort, and that too, having contributed to the family of a person who was a fellow professional, possibly a colleague, friend or acquaintance.

Friends, I would like to stress , especially to the young members that this is not a commercial proposition. You are not investing to get returns. For that you are definitely allocating a much higher amount. This is purely a service to fellow professionals. You are definitely not going to see any return on this amount spent in your life time. But the satisfaction of having done a good deed - be it small- should definitely be worth much more than the amount spent.

To facilitate the entry of non MBS CAAA members to the scheme, we have reduced the additional amount that was being charged for the entry by 90 per cent. So now, any Association member who wants to join the MBS can do so by paying a nominal sum. I sincerely request all eligible CAAA members to take my appeal seriously and join the MBS as a part of spreading cheer this Diwali.

CA. Yamal Vyas
President

Concept of International Transfer Pricing in India

Adv. Darshan R. Patel
darshan07patel@yahoo.co.in

Brief Introduction to Transfer Pricing

As per the definition laid down by OECD, 'transfer prices' means the prices at which an enterprise transfers physical goods and intangibles or provides services to associated enterprises.[1]

Whenever a transaction takes place between two enterprises, whether they are related or not, it is necessary to fix a proper price. "Transfer pricing" therefore refers to the setting of prices at which transactions occur involving the transfer of property or services between associated enterprises, forming part of an MNE group. The normal course of action for fixing the price between two independent parties would consist of negotiation of the price. The agreed price takes several factors into consideration such as availability of alternatives, need of the two parties, etc. Such price is driven by the market. Whereas transfer prices are essentially set within a single enterprise, and this price is not necessarily driven by the market forces alone, it may be possible that "group's interest" may take priority over market forces. In other words, it is right to say that it is very much probable that the transfer price may differ from the price that may be determined in a similar transaction between two independent enterprises under similar circumstances.

Due to such a nature, transfer pricing has been an enigma for all the concerned parties. One probable approach is to consider transfer pricing as a simple management tool to determine the profitability of the different enterprises of the group, when such is the case, it may be possible to argue that transfer pricing enables the managers of the MNE group to make the best possible decision regarding purchase or sale of goods and services within or outside the group. If the management wants its branches and subsidiaries in different countries to operate as independent profit centres, it may set these prices as close as possible to the transactions between unrelated enterprises. Consequently, if there has been no other consideration, then the transfer price would be the same as fixed in the transaction between unrelated parties. However, evidence shows that due to several reasons the transfer prices differ from those obtained between independent enterprises.

The effort of every tax administration is to determine the correct value of taxable income of a taxpayer, but this determination becomes very difficult when the tax payer has intra-group transactions. In order that this determination is equitable, the impact of close relationships on the values of transactions has to be removed.[2]

History and Development of Transfer Pricing Regulations(TPR) in India.

The history of transfer pricing is as old as that of International transactions or cross-border transactions. International transactions were earlier limited to production in one location and sale to independent parties in another or there were straightforward cases of import and export of raw-materials and of finished goods traded between independent parties. However things started changing with the advent of industrial revolution, and later during the advent of 20th Century which saw revolutions in transportation and communication. Transferring funds, labour and ideas across geographical and political boundaries became easier, effective and efficient. Companies expanded rapidly by opening up subsidiaries in developed countries and also in the developing countries. These revolutions resulted in the emergence of Multinational Enterprises(MNE's), wherein the parent company was in one country while subsidiaries in other countries.

An accompanying development has been the increasing volume of transactions within a multinational enterprise group. These transactions which are also known as intra-group transactions, have importance for both the managers as well as the policy makers due to several reasons. These intra-group transactions can be either between the parent firm and its foreign associates or only between the associates or amongst a combination of the two.

Studies show that intra-group transactions are growing steadily and also account for more than 60% of the international transactions. The clear consequence is that a large and growing number of international transactions are no longer governed completely by market forces, but are now governed by forces that are driven by common interests of the group. As MNE's try to fulfill several interests, some of which may be mutually conflicting, the system to determine prices of intra-group transactions becomes quite difficult and complex. OECD's Forum on Tax Administration in its Seoul declaration identified Transfer Pricing as one of the significant concerns for tax jurisdictions.[3]

In the year 1991, the Indian economy started to open up. Foreign investment started pouring in as a result of economic reform measures taken by the Government. The Industrial licensing policy was considerably liberalized, tax structure was made simple and was also made internationally compatible. India became a favorite destination for investment, it entered into agreements with almost all the capital and technological exporting countries, in order to avoid double taxation of income arising in India by virtue of business connection.

Double taxation agreements(DTA's) became the established way for the States to have an agreement at international level for resolving the problems which arouse from cross-border trading and investment. The tax treaty facilitated investment and trade flow by preventing discrimination between taxpayers, adding fiscal certainty to cross-border operation, preventing avoidance and evasion of tax at international level, thus facilitating collection of taxes, and contributing towards attainment of national development goal.

The key feature being that a treaty guarantees the stability of tax burden, so that the provisions are not abused by multinational enterprises by fixing prices, terms and conditions of transactions between their controlled enterprises located in different jurisdictions, the treaty also requires that such transactions be dealt with as if they are between the unrelated parties, accounts are also to be rewritten if required, and real profits are to be taxed(which are sought to be manipulated). Article 9 of the treaty so provides, but it does not provide the methodology of doing it. The law of transfer pricing as enacted in sections 92,92A,92B,92C,92D,92E,92F of the Income-tax Act,1961 read with rules 10A,10B,10C,10D,10E of the Income Tax Rules,1962 provides the methodology, which is patterned on the OECD guidelines of 1995. The law had been enacted to prevent erosion of Indian tax base by the multinationals through the mechanism of "transfer pricing".

In a modern democratic set up, the Local, State as well as the Central Governments are modified versions of "service corporations" of which all the people in the community are the members and the principle aim of the Government is serving the people. In India, it is to achieve the goal of democratic society as envisaged in the Constitution of India. When the law is enacted to impose certain tax, in ultimate analysis it is the people's decision to tax the community for the benefit and welfare of the society. The Government collects most of the money it needs from the citizens and companies, by taxing their income according to their capacity to pay, to spend on behalf of the citizens in order to maintain law and order, providing education, healthcare and social security. Taxation is a means of appropriating the costs of Government amongst those who benefit from it. Non-payment of taxes by any individual when it is due, increases the burden of those who pay. In *Jennison v. Baker*[4], the court pointed out that "The law should not be seen to sit by lifelessly, while those who would defy it go free and those who seek its protection lose hope."

Hence, the Government frowns upon evasion and takes measures which includes penalty and prosecution, for its prevention. No Government can afford multinational companies to dictate transactions amongst their affiliates and avoid payment of tax in the state where it is due, causing substantial loss of much needed public revenue in a welfare State.[5]

The need for transfer pricing issues was revealed by the authorities in India by the results of a study which had been conducted by Zdanowicz et al. in the year 1996. The Standing Committee on Finance, in India, had observed in March 1999 that the legal provisions of the Income-tax Act,1961 may not be effective enough to curb issues relating to transfer pricing in respect of MNC's and such MNCs may in turn exploit this inadequacy.

In view of this issue, the Central Board of Direct Taxes(CBDT) set up an Expert Group on Transfer Pricing in the year 1999 to determine whether any amendments were needed in the 1961 Act, and if so to suggest a regulatory frame work for the same. The Group submitted its report in January 2001 to the CBDT. The Ministry of Finance after considering the report, introduced comprehensive legislative framework to deal with Transfer Pricing issue vide the Finance Act, 2001. Section 92 of the 1961 Act had been substituted by a new Section 92. Along with this, new Sections 92A to 92F were also introduced in the Act. Rules 10A to 10E were also introduced in the Income Tax Rules, 1962 for giving effect to substantive provisions. The regulations were made applicable to relevant international transactions from 01.04.2001.

Before the introduction of the above legislation, the concept of transfer pricing was applied under the act, but in a limited manner. The previous Section 92 provided that if the tax authorities believed that an international transaction with a non-resident resulted in less than ordinary profits for the resident owing to a "close connection" between the two, they could recompute the taxable income of the resident. In this regard, it is pertinent to note the decision of the Supreme Court in the case of *Mazagaon Dock Ltd v CIT & EPT*[6] under the erstwhile provisions. In this case, two non-resident companies carrying on the business of shipping entered into an agreement with their Indian subsidiary engaged in the business of repairing ships. Under the agreement, the resident Indian Company had to recover from the non-resident associates only the cost of repairs of their ships without charging any sort of profits. The Supreme Court held that the transactions formed organized activities of a business character and the non-resident companies carried on business with the resident company. The Apex court upheld the applicability of provisions of S.42(2) of the Income Tax Act,1922(which is S.92 of the Income Tax Act,1961). However this provision was vague as it had terms like "close connection" which was not defined. Moreover, no detailed method was prescribed to compute what comprised "ordinary profits". On account of the lack of clarity of the provisions, the same were rarely invoked by the tax authorities. It also did not specifically cover transfer of tangibles or services. Further, it did not cover transactions between two non-residents, for example, between the permanent establishment of an MNE and its parent entity.

The reasons for introducing Transfer Pricing Regulations in India are aptly explained in the explanatory notes on the provisions in the Finance Act,2001 issued by the CBDT. It mentioned that the earlier provisions were of a general nature and limited in scope. These provisions did not allow adjustments of income in the case of non- residents. The methods prescribed for estimating profits were not scientific. It did not apply to individual transactions such as the payment of royalty, etc which are not a part of a regular business carried on between a resident and a non-resident. Moreover, said provisions had no detailed rules prescribing the documents required to be maintained.

Explaining the provisions of the Finance Act,2001, Circular No. 14/2001 states that the Transfer Pricing Regulations was introduced in order to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of multinational enterprises, and also introduced new sections 92 A to 92F in the Act, relating to computation of income from an international transaction having regard to arm's length price, meaning of associated enterprise, meaning of international transaction, computing arm's length price, maintenance of information and documents by persons entering into international transactions, furnishing of a report from an accountant by persons entering into international transactions and definitions of certain expressions occurring in the said sections. In short, the TPR was introduced by the Finance Act, 2001 to address the shortcomings of the existing legislative framework in dealing with shifting of profits from India by manipulation of the prices in the intra-group transactions.

The memorandum of the concerned Finance Bill stated that: "the increasing participation of multinational groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multinational group. The profits derived by such enterprises carrying on business can be controlled by multinational group, by manipulating the prices charged and paid in such intra-group transactions, thereby leading to erosion of tax revenues. With a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, new provisions are proposed to be introduced in the Income-Tax Act."

The TPR attempts to create a simple and equitable law. It aims to provide a statutory framework that will create a reasonable, fair and just tax base and also prevent abuse of transfer pricing with regard to cross-border transactions between associated enterprises.[7]

KPMG's Observation on Transfer Pricing Regulations(TPR)[8]

The Indian TPR were introduced in 2001 which are mostly in correspondence with the OECD Guidelines. Since their introduction, the Indian Transfer Pricing Regulations have come of age in terms of quality of audits as well as the revenue generated for the Indian government. Further, over the past few years, there has been significant guidance provided by Income Tax Tribunals as well as the higher Appellate Authorities on various fundamental transfer pricing issues across industries.

The Indian government proposed noteworthy amendments involving transfer pricing in the Draft Direct Taxes Code Bill, 2010 (DTC). It was projected that the DTC, if enacted into a law, would be enforceable from 1 April 2013 and will replace the current Indian Income Tax Laws. The 2009 Union Budget also saw the introduction of safe harbor provisions, which also set up an Alternate Dispute Resolution Panel. In addition, the draft DTC proposed the introduction of General Anti Avoidance Rules(GAAR), rationalization of penalty provisions and changes in various other administrative procedures. Taking these changes ahead, the Finance Act 2012 has introduced additional provisions which also include applicability of transfer pricing to certain Specified Domestic Transactions, enlargement of the definition of International Transaction to include guarantees, any debt arising during the course of business, business reorganizations or restructuring irrespective of whether the same has an impact on current year's profits, income, losses or assets, intangible properties including marketing intangibles, technology related intangibles, etc. In addition, the much awaited Advance Pricing Agreements(APA) program has also been introduced in India.

Brief provisions relating to Transfer Pricing in the Income Tax Act, 1961

The provisions of transfer pricing were first introduced by substituting Sections 92 to 92F by the Finance Act,2001, with effect from April 1, 2002. The new provisions supported by Rules 10A to 10E of The Income Tax Rules, 1962 now provide a detailed statutory machinery for computation of reasonable and equitable profits and tax in India in the case of multinational enterprises.

Before the transfer pricing mechanism came into force, international transactions were attacked only on the ground if they were lacking economic substance, by looking to the substance rather than the form. That mechanism was insufficient and was capable of being manipulated with ease; multinational corporations providing economic substance sufficient to overcome the ground of attack. In *EI Du Pont de Nemours & Co v. United States*[9], the court found that a wholly owned Swiss subsidiary of a US parent company, which sold only its parent products to yield 75 percent of the total profits relished upon their sale, performed substantial commercial functions and could not be considered a sham operation i.e. lacking economic substance, through the subsidiary internal memoranda were replete with references to transfer pricing benefits. Under the transfer pricing regime, an international transaction is not only modified and income relocated on the ground of improper accounting, fraudulent or colourful activities, but also incorrect reporting of arm's length standard. But, the new provisions and rules outline the 'methods of determination of arm's length price, defining the key words used for the purpose, like "enterprise", "Arm's Length Price(ALP)", "Associated Enterprise(AE)", "transaction", "international transaction" etc.

Sale of goods, transfer of licensing of technology and patent rights, and provision of services are the means for transfer pricing abuses. Section 92 of the Income-Tax Act,1961 which provided for preventing such abuses was found to be insufficient for the purpose. It empowered the Assessing Officer(AO) to determine and then include in the taxable income of the resident assessee, the amount of profits which might reasonably be deemed to be derived from such business transaction as has been arranged because of the close connection between the resident and the non-resident, so as to no profit or no less than ordinary profit, that section has now been substituted by section 92- 92F. Section 92 relates to computation of income from international transactions having regard to arm's length price, it also provides that the costs or expenses between two or more enterprises shall be at ALP.

Section 92A defines what is meant by "associated enterprises" in an international transaction.

Section 92B, defines "international transaction" as meaning a transaction between two or more associated enterprises, either or both of whom are non-residents.

Section 92C prescribes the methods for determination of the ALP in relation to an international transaction. It has to be done by (a) Comparable uncontrolled price method; or (b) resale price method; or (c) cost-plus method; or (d) profit split method; or (e) transactional net margin method; or (f) any other method which is prescribed by the Board. Out of these, the Most Appropriate Method(MAP) has to be applied for computing ALP.

In a case where more than one price can be determined as Most Appropriate Method, the arm's length price shall be the arithmetical mean of such prices. During the course of any proceeding for the assessment of income, the Assessing Officer may be of the opinion formed on the basis of material or information or document in his possession, that the price charged or paid in an international transaction has not been determined in accordance with sub-sections (1) and (2) ; or any information and document relating to an international transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or the information or data used in computation of the arm's length price is not reliable or correct ; or the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D, in that case the Assessing Officer may proceed to determine the arm's length price in relation to the said international transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him, after giving an opportunity to be heard. The Assessing Officer may serve a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

Section 92D deals with maintenance, keeping of information and documents by persons entering into international transactions.

Section 92E requires obtaining a report from the accountant. It makes it mandatory for every person entering into an international transaction in the previous year to obtain a report from an accountant and also furnish it on or before the specified date, in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed. The legislation contains a set of methodology for evaluating transfer prices and comparability factors that shall be taken into account while assessing their Arms Length nature.

Section 92F defines several expressions. Penalties have also been provided for failure to comply with the requirements of the new provision by inserting Sections 271AA, 271BA, 271G which shall be discussed later on in detail.

Salient features of Transfer Pricing Provisions.

The new legislation follows OECD Guidelines. The main points of OECD guidelines are: adoption of the ALP, setting up levels of comparability that emphasize functions performed, risks assumed and assets employed, introducing a strong presence for the use of traditional- transaction based methods, introducing a profit based method, called as 'transactional net margin method', and acknowledging the need for tax-payer documentation of the arm's length character of its transfer pricing and role played by penalties in encouraging compliance.

Incorporating all above, the Indian law has the following important features:

1. It codifies the Arm's Length Principle.
2. The basic principle of the legislation in the arm's length, as defined by the OECD guidelines using five permitted methods. Determination of ALP is not restricted to the above methods. Its scope has been widened. Any other method which is not specified, and prescribed by the Board may be resorted to, if it gives fair determination of arm's length price.
3. The arm's length price applies only so as to increase Indian tax base
4. The expression "enterprise" covers permanent establishment also, meaning that transaction between a non-resident entity and its permanent establishment or between a permanent establishment of a non-resident with other permanent establishments outside India
5. A widening scope of the transfer pricing provisions through a broader concept of "control" between associated enterprises, i.e direct or indirect, participating in the capital, management or supervision of another enterprise capable of influencing the price in respect of the transaction between them. It is the capacity to exercise control and not its extent or level which is relevant
6. the concept of specific relations between entities is broadly defined ,including situations ranging from statutory to economics dependency, and also certain family relations;
7. extensive documentation requirement that requires the taxpayer to demonstrate the arm's length nature of the inter-company prices and how these prices have arrived at , justifying transfer pricing arrangements
8. burden of proof as to the arm's length nature of consideration rests with the taxpayer;
9. penalties for encouraging compliance.[10]

Penalties for Non-Compliance

Penalty Provisions in the Income Tax Act, 1961.

With a view to ensuring compliance that multinational enterprises comply with the requirements of the new sections, section 271 has been amended and sections 271AA, 271BA, 271G have been newly inserted. These provide for penalty to be levied in cases of non-compliance with the procedural requirements, and in cases of understatement of profits through fraud or willful negligence.

Section 271AA provides for levy of penalty for failure to keep and maintain information and documents in respect of international transactions for the prescribed period, as required under section 92D(1) and (2). The Assessing Officer or the Commissioner (Appeals) shall direct the defaulting person to pay, by way of penalty, a sum equal to 2% of the value of each International Transaction, he will not be so directed, if the assessee proves that there was reasonable cause for such failure (amended section 273B).

Section 271BA provides that if a person fails to furnish a report from an account as required by section 92E, the Assessing Officer may direct that such person shall pay by way of penalty , a sum of one lakh rupees. This may not be done, if there is satisfactory reasonable cause for the failure(amended section 273B).

Section 271G provides that the Assessing Officer or the Commissioner (Appeals) shall direct payment, by way of penalty, a sum equal to 2% of the value of the international transaction failed to furnish any such information or documents as required under section 92D(3). He may not so direct, if the assessee proves that there was a reasonable cause of failure (amended section 273B).

Section 271 provides, inter alia, that if the Assessing Officer or the Commissioner (Appeals) in the course of any proceedings under the act is satisfied that any person has concealed the particulars of income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in addition to tax payable by him, a sum which shall not be less than, but which shall not exceed three times the amount of tax sought to be evaded. There are six explanations, explaining when a person could be deemed to have concealed particulars of income and furnished inaccurate particulars thereof. Another deeming Explanation 7 has been inserted which says that the amount added or disallowed in computing the total income under section 92C(4) is deemed to represent income in respect of which the person could be said to have concealed or furnished inaccurate particulars. That person could not be deemed to have concealed or furnished inaccurate particulars, if he proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) that the price charged or paid in such transaction was computed in accordance with the provisions contained in section 92C and in the manner prescribed under that section, in good faith and with due diligence.

<u>Comparison of Burden of Proof, Quantum of Penalty and other provisions in India with other Prominent counties.</u>

The following analysis captures some of the important provisions of the transfer pricing regulations along with comparison of the position in other countries whenever possible.

(a) **Burden of Proof.**

A lot of countries with transfer pricing regulations have made it compulsory for associated enterprises to arrange and submit documentation on the determination of ALP in respect of the various transactions they enter into among themselves.

Parting such documentation, countries differ with respect to whether they impose the burden of proof on the taxpayer or on the tax officials so as to arrive at an ALP which is different from the one reflected in the documentation submitted by the taxpayer.

(i) Position in India with regards to Burden of Proof:

The concerned tax official merely has to form an opinion that the ALP determined by the taxpayer is not in agreement with the statutory provisions, or that the information used for computation thereof is unreliable or incorrect. It is the taxpayer who has to show why the ALP suggested by the tax official is not correct.

While it has been judicially interpreted that once a taxpayer presents a reasonable argument and evidence to suggest that transfer pricing was at arm's length, the burden of proof shifts to the tax officials to establish why the taxpayer's transfer pricing was not at arm's length. The tax officials, especially lower level officials, reject the taxpayer's determination of ALP as a matter of routine without conveying reasons and shift the burden of proof to the taxpayer by asking the taxpayer to show cause as to why the determination made by the tax officials should not be adopted.

(ii) Position in other countries:

In UK, if the taxpayer's transfer pricing position is rational and well documented, the tax authorities will have to show that it is wrong before an adjustment can be imposed.

In, Australia, if the tax authorities are of the view that pertinent ALP is materially different to that adopted by the taxpayer, a position paper is issued by the Australian Taxation Office (ATO) setting out the basis for the ATO's determination. The taxpayer has an opportunity to react to the position paper before the ATO makes a final decision.

In Japan, the tax authorities bear the burden of proof for the allegation that the transfer pricing method applied by the tax authorities is in accordance with one of the methods provided for under Japanese tax law.

In U.S.A., the taxpayer has to bear the burden of proof in showing both that the tax authorities' determination of ALP is arbitrary, capricious, and unreasonable, and that the ALP determined by the tax payer is accurate. The tax authorities are required to provide the taxpayer with an explanation as to how their adjustment was determined.

(b) Quantum of Penalty

It is a widely established principle that determination of ALP is not an exact science, and it is undertaken by way of a subjective analysis, and is largely dependent on data integrity, which is difficult to determine. It is merely the determination of an estimate.

Penalty imposed by transfer pricing regulations, although treated as a civil penalty, is nothing but punishment for wrongdoing and thereby has an element of criminal penalty. Therefore, the extent to which wrongdoing can be ascribed with respect to a calculation, for an undertaking for which there is no objective/scientific method, is something that needs to be handled very carefully.

(i) Position in India:

If ALP determined by the taxpayer differs from the one determined by the tax officials by a margin of more than 3 percent, interest is levied at 12 percent per annum and penalty can be imposed up to 300 percent of the additional income tax liability. There are no binding guidelines to determine the different factors that worsen or reduce the quantum of penalty within the 300 percent limit.

Besides, in practice penalties are levied, particularly by lower level tax authorities, as a matter of routine whenever an additional tax liability is ascertained by the tax authorities and the burden of proof is on the taxpayer to show good and sufficient reasons for default and to prove non-concealment of income and particulars thereof.

(ii) Position in other Countries:

In U.S, for transfer pricing, the maximum penalty that could be imposed is 40 percent. There are clear rules prescribed regarding the quantum of penalty that could be imposed.

In U.K., maximum penalty imposed is 60 percent of the additional tax liability, except in cases involving deliberate and/or unconcealed action.

In Australia, the tax officials may impose interest as well as penalties. Penalty could range from 10 to 50 percent of the additional tax liability.

In Japan**,** the penalty for understatement range from 10 to15 percent of the corporation tax additionally imposed. The delinquency tax (equivalent to interest) is currently 4.3 percent per annum, which is exactly four percentage points above the Central Bank's interest rate of 0.3 percent per annum.

In Canada, maximum penalty up to 10 percent of the additional tax liability is levied.

In South Africa, differing quantum of penalty has been prescribed depending on the levels of culpability involved and on whether there is voluntary disclosure post-audit. The maximum understatement penalty is 75 percent of the additional tax imposed.

In Brazil**, i**n the absence of fraud and/or non-adherence with notifications issued during investigation by the tax officials, penalty up to 75 percent of the additional tax liability could be levied.

(c) Method of choosing ALP

There are various methods prescribed in various countries for determination of ALP such as the comparable uncontrolled price method, resale price method, cost plus method, profit-split method, transaction net margin method, and so forth.

(i) Position in India:

With respect to a transaction, India requires the most appropriate method to be followed, which is to be determined having regard to the nature of transaction, class of associated persons, class of transaction, functions performed, and so forth.

(ii) Situation in Brazil:

The transfer pricing law allows the taxpayer to rely on any method which results in the smallest adjustment, rather than applying the most appropriate method.

(d) Alternative Dispute Resolution:

Whether India accepts Alternative Dispute Resolution Mechanism in order to solve issues relating to transfer pricing or not? Which countries prefer using Alternative Dispute Resolution? Whether Alternative Dispute Resolutions are useful in reducing the burden in respect of matters involving determination of ALP for transfer pricing. All these questions shall be answered by comparing India's position with South Africa.

(i) Position in India:

For transfer pricing matters, leaving apart the existence of a Settlement Commission, which is more relevant with respect to making disclosures and avoiding penalty for undisclosed income, there is no alternative dispute resolution mechanism.

(ii) Position in South Africa: The Tax officials can enter into settlements using alternative dispute resolution procedure. Till today, no transfer pricing case has been taken to court, and all disputes in South Africa have been settled by negotiation.[11]

If we compare India's position with South Africa in the application of Alternative Dispute Resolution Mechanisms, we can clearly observe that India is yet to follow any Alternative Dispute Resolution

Mechanisms in respect of transfer pricing matters. Whereas in South Africa, till now no matter of transfer pricing has been moved to the courts and has been settled by negotiation itself, which is a very commendable job.

Solving transfer pricing matters by applying Alternative Dispute Resolution Methods becomes very helpful and effective in order to solve the matters and also to reduce the burden of courts in deciding the matters. Hence, it is the correct time that India should start thinking about applying Alternative Dispute Resolution Mechanisms in transfer pricing as well as other international taxation matters, in order to solve the issues quickly.

OECD Transfer Pricing Guidelines, 2010

On 22 July the OECD released key revisions to its transfer pricing guidelines. Several chapters of the OECD Guidelines were re-worked to imitate practical tax administration experience gained over the past 15 years since the guidelines were last issued.

Reflecting the business circumstances that are operative today, the revised Transfer Pricing Guidelines adopted a "most appropriate method" rule which is similar to what exists in India. While the revisions to its chapters will not cause the Indian transfer pricing rules to be out of step with the OECD's overall approach, they will offer guidance on the subject. Also, a new Chapter IX has been added which addresses the transfer pricing issues arising from business restructuring. Business restructuring is defined as the cross border redistribution by a multinational enterprise of functions, assets and/or risks. Prominently, this chapter provides precious insights to matters that are required to be considered when embarking on a business restructuring project or when considering the transfer pricing outcomes from existing structures.[12]

Currently the OECD focuses on the following four areas:

1. Application of General Principles to complex situations- The first area of focus is regarding providing guidance on how to apply the general principles of the Guidelines to complex situations such as permanent establishments, financial services, and global trading

2. Monitoring the practical implementation- The second area is monitoring the practical implementation of the Guidelines and amending and updating the existing guidance given in the light of the monitoring. The business community, via the Business and Industry Advisory Committee of the OECD (BIAC), is associated with this activity. One outcome of the monitoring process is the development of further practical examples to show the application of arm's length principle. The extent to which the existing guidance on transfer pricing can be applied to electronic commerce is also being examined,

3. Improvement of the administrative procedures- The various methods of dispute resolution like arbitration and negotiation are currently being examined.

4. Association of non-member Countries with the Guidelines- Countries outside the OECD are to be encouraged to associate themselves with the Guidelines. This is done by the means of multinational seminars, often with appropriate regional partners, which discusses transfer pricing issues and explain the guidelines to tax officials from non-member countries.[13]

Conclusion

Taxation of international transactions is a controversial issue and policymakers attempt to balance law and economics while enforcing transfer pricing provisions. Subjective administration and micromanagement of international transactions by tax authorities under the TP provisions have led to greater litigation and uncertainty.

As per reports, it has been noted that the amount spent in litigation in direct tax cases in India as on September 30, 2012, was INR 1.002 trillion (about $15.4 billion)[14]. The Transfer Pricing adjustments made in 2012-13 alone were INR 700 billion which is around $10.8 billion[15].

Recently, a large majority of direct tax case disputes have initially been in favour of the tax authorities, but later in the favour of taxpayer at appellate levels in Tribunals and Courts.[16] The taxpayer is required to deposit the entire or significant portion of the disputed amount before going for an appeal, and any refund of deposits on reversal of the judgment appealed against must be made with 6% interest per annum. By doing so, the Tax Authorities are leading the Indian Government into a huge debt trap. It would not be wrong to say that majority of the analysis of transfer pricing litigation in India has been done on determining the correct method of ALP.

The Transfer Pricing Regulations(TPR) are provisions for determining income arising from transactions carried out between associated enterprises, such that the income would be equivalent to the income that would have arisen had the enterprises not been associated. The aim is to stop artificial profit shifting to enterprises situated in jurisdictions with comparatively lower tax rates or that are taxed at lower rates by virtue of exemptions, special deductions, set off of losses carried forward from previous years, etc.

Several changes are still needed in order to reduce cases of tax avoidance by taxpayers as taxpayers tend to manipulate the provisions relating to transfer pricing and avoid payment of taxes by transferring funds to their associated enterprises which are situated in countries where tax rates are comparatively lower.

There needs to be an end to such practices and a proper legislation should be drafted, which should be at an international level and most countries, if not all, should become part of the legislation. The drafting should be such which should try to cover issues relating to transfer pricing like determination of ALP, maintenance of proper documents etc. Proper standards should be set, penalties should be imposed for non-compliance.

There are several characteristics of an Internationally acceptable Transfer Pricing Legislation, which are:

a) Equity: the tax payable should be in accordance with the ability to pay.
b) Certainty: the taxpayer should know exactly what is being taxed, how much tax he has to pay, and how and when should make the payment. The law should be clear and unambiguous and the interpretation of it should be easily available.
c) Convenience: the tax should be payable in the manner and time which is convenient to the taxpayer as well as the authority. It should be mutually decided.
d) Economy: the enforcement and collection costs should be reasonable and proportionate to the receipt.

Apart from these principles, it needs to be kept in mind that cross-border transfer pricing involves a minimum of three players, namely an MNE with two enterprises and two tax jurisdictions. Every player desires to maximise its own interest. These interests may be conflicting with one another, and no fixed policy may satisfy all of them. The MNE's intend to minimize its overall tax burden, while each tax authorities endeavours to collect maximum taxes. However in order to maximise their revenue, the policymakers of the two jurisdictions should appreciate that there is a limit to which taxpayer's burden can be increased, especially when the competition in business forces minimisation of profits. But, this shall not apply in cases of tax evasion.

The policymakers should ensure that the transfer pricing regulations are correct, not only at the policy framing level, but also at the practical level. At the policy level, the countries need to ensure that they keep a balance between revenue-raising efforts and undue double taxation. The regulations should be internationally acceptable and not in conflict with major trade partners. It should be noted that though the ALP is theoretically correct, its application is a bit difficult, the most important difficulty can be considered regarding choosing of the correct method.

The irony of tax litigation in India is that the companies that litigate are those that are making bona fide attempts to obey the IT Act. Unquestionably, loss of revenue to the nation is a serious issue that must be addressed but a better understanding of the loss is required before legislation is passed to address the issue.

Without economic and empirical data, no policy can be effectively addressed. A better approach would be to adopt the approach under the Customs Act which casts a clear obligation to positively identify price distortion. A holistic and non adversarial approach would help bring down litigation and ensure greater compliance which are beneficial for the taxpayer as well as for the entire country.

(Footnotes)

1 Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration, OECD, 1995

2 Delloite, *Transfer Pricing Law and Practice in India*, Wolters Kluwer(India) Pvt Ltd, 2009, at pg.2-4

3 Delloite, *Transfer Pricing Law and Practice in India*, Wolters Kluwer(India) Pvt Ltd, 2009, at pg.1-2

4 [1972] 1 All ER 997

5 D.P.Mittal, *Law of Transfer Pricing in India*, Taxmann, 2012, at pg.1-3

6 [1958] 34 ITR 368

7 Delloite, *Transfer Pricing Law and Practice in India*, Wolters Kluwer(India) Pvt Ltd, 2009, at pg.16-18

8 http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/global-transfer-pricing-review/Documents/india.pdf

9 608 S 2d 44 (1979)

10 D.P.Mittal, *Law of Transfer Pricing in India*, Taxmann, 2012, at pg88-97.

11 Mihir Nnaniwadekar and T.P. Janani, "*Tripping over Transfer Pricing Regulations in India*", Reprinted from *Tax Notes Int'l* (2013), at pg 1127.

12 http://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/International%20Tax%20%20Transfer%20Pricing%202010%20Developments.pdf

13 D.P.Mittal, *Law of Transfer Pricing in India*, Taxmann, 2012, at pg 64

14 ''Enough: Govt May Choose to Draw the Line on Tax Litigation With Firms,'' *The Indian Express* (Apr. 25, 2013), *available at* http://www.indianexpress.com/news/enough-govt-maychoose-to-draw-the-line-on-tax-litigation-with-firms/1107372/0.

15 Ministry of Finance, ''Tax Evasion by Foreign Companies,'' Press Information Bureau, Government of India (Aug. 30, 2013), *available at* http://pib.nic.in/newsite/erelease.aspx?relid=99349.

16 In 2011-2012, in appeal cases filed by the taxpayer at the Tribunal, High Court and Supreme Court level, 36 percent, 38 percent, and 33 percent, respectively, have been decided completely in favour of the taxpayer, compared to 35 percent, 36 percent, and 14 percent, respectively, decided wholly in favour of the tax authorities. For the same period, in case of appeals filed by the tax authorities, only 19 percent, 20 percent, and 10 percent, respectively, were decided wholly in favour of the tax authorities, compared to 52 percent, 62 percent, and 39 percent, respectively, decided wholly in favour of the taxpayer [Report of the Standing Committee on Finance on Demand for Grants (2013-2014) of the Ministry of Finance (Department of Revenue), dated Apr. 16, 2013].

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Glimpses of Supreme Court Rulings

Advocate Samir N. Divatia
sndivatia@yahoo.com.

20 Constitution and Law:

The conventional view is that the legislature alone makes the law. But the truth is the courts are inescapably possessed of some degree of legislative power. Enacted legislation lays down rules in advance. The commands of Parliament are deliberate prospective commands. The very concept of enacted legislation postulates an authoritative interpreter who operates ex post facto. No such interpreter can avoid legislating in the course of exercising that function.

The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step into fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly dedicated to them to further the object of the legislation and to promote the goals of the society or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as the attempt to furnished the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.

When the Constitution is eloquent, the laws made their under cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declared it accordingly.

[Vipulbhai M. Chaudhary Vs. Gujarat Co-op Milk Marketing Federation Lt.d (2015) (8 SCC 1)]

21 Appeal – maintainability - small tax effect:

CBDT instruction No.3 of 2011, dtd.9th Feb., 2011 expressly state that they shall not govern the appeal which have been filed before the year 2011 and therefore impugned orders passed by the High Court dismissing revenues' appeals preferred prior to year 2011 and set aside and the matters are remitted back to the High Court for the re-adjudication of the appeals on merits.

[CIT vs. Suman Dhamija (2015) (279 CTR 329)]

22 Clubbing of income under section 64(1):

In view of the specific terms in the trust deeds that the income of the trust shall not be received by the minors during their minority and would be spent for their benefits only when they attain majority, the two minors did not received the benefit immediately in the assessment year in question viz., as 'minor' children and, therefore, the income cannot be included in the income of the assessee by invoking provisions of section 64 (1)(iii); there is no provision to the effect that Explanation 2A to section 64(1) shall be attracted even when the income earned by the trust cannot be utilized for benefit of the minor during his/her minority.

[Kappor Chand (Dead) vs. Asst. CIT (2015) (279 CTR 434)]

23 Clearing and forwarding operations:

Expression 'clearing and forwarding operations', covers those activities which pertain to clearing of goods and thereafter forwarding those goods to a particular destination at the instance and on the directions of the principal; assessee who is appointed by companies merely for the purpose of supervising and liaisoning with the coal company as well as the Railways to see that the coal required by the said companies is loaded on wagons as per the schedule did not qualify as C&F agent within the meaning of section 65(25) of the Finance Act, 1994.

[Coal Handlers (P) Ltd vs. Comm. of Central Excise (2015) (279 CTR 233)]

24 Power of High Court to review order passed u/s 260A:

After hearing the appeal for admission, High Court reserved its order for pronouncement on the substantial question of law, if any, involved in the appeal. However without framing any substantial question of law, High Court rendered a decision on merits. On realising the mistake committed on its part, on the review of the assessee, High Court recalled its order by a lengthy judgement. No interference is called for with the order of High Court passed on review petition recalling its order where the appeal was decided on merits without formulating substantial question of law. High Court being Court of record power of review inheres in it; Sub- section (7) of section 260A neither excludes the application of the provisions of CPC other than those of appeals nor does it affect the inherent jurisdiction High Court.

[CIT vs. Meghalaya Steels Ltd. (2015) (279 CTR 189)]

25 Chargeability of interest u/s 234B :

It will be seen that under the provisions of Section 234B, the moment an assessee who is liable to pay advance tax has failed to pay such tax or where the advance tax paid by such an assessee is less than 90 per cent of the assessed tax, the assessee becomes liable to pay simple interest at the rate of one per cent for every month or part of the month. The levy of such interest is automatic when the conditions of Section 234B are met. The facts of the present case are squarely covered by the decision contained in Kalyankumar Ray's case inasmuch as it is undisputed that contained a calculation of interest payable on the tax assessed. This being the case, it is clear that as per the said judgment, this Form must be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of Section 143, which is referred to in Explanation 1 to Section 234B

[CIT vs. Bhagat construction Co (P) Ltd. (2015) (279 CTR 185)]

26 Depreciation u/s 32 – 'Plant' :

In Commissioner of Income Tax vs. Anand Theatres 224 ITR 192 it was held that except in exceptional cases, the building in which the plant is situated must be distinguished from the plant and that, therefore, the assessee's generating station building was not to be treated as a plant for the purposes of investment allowance. It is difficult to read the judgment in the case of Anand Theatres so broadly. The question before the court was whether a building that was used as a hotel or a cinema theatre could be given depreciation on the basis that it was a "plant" and it was in relation to that question that the court considered a host of authorities of this country and England and came to the conclusion that a building which was used as a hotel or cinema theatre could not be given depreciation on the basis that it was a plant.

[ACIT vs. Victory Aqua Farm Ltd. (Civil Appeal Nos. 4429 and 4430 of 2006 & 5099-5100 of 2009) (Dated 04.09.2015)]

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Have faith in yourselves, and stand up on that faith and be strong; that is what we need.

Swami Vivekananda

From the Courts

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

CA. Jayesh C. Sharedalal
jcs@crsharedalalco.com

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Section 201 : Limitation for Issue of Notice : Where Payee is Non Resident : Director of Income Tax (International Taxation) v/s. M/s. Mahindra & Mahindra Ltd (2014) 364 ITR 0560 (Bom)

Issue :

Whether in absence of any limitation period in respect of default when payee is non resident, the A.O. has to exercise powers in reasonable time?

Held :

Though section 201 does not prescribe any limitation period in respect of default when payee is non - resident, for the Assessee being declared as an Assessee in default, yet the Revenue will have to exercise the powers in that regard within a reasonable time. In such circumstances Court held that it was of the view that the Tribunal's order in this case does not suffer from any error of law apparent on the face of record or perversity warranting interference in appellate jurisdiction.

44

Adjustment of Refund Against Demand: Notice to assessee is necessary

Oriental Insurance Co. Ltd. v/s. Dy. C.I.T. (2015) 229 Taxman 521 (Delhi)

Issue:

Whether A.O. can adjust refund against outstanding demand without giving notice to the assessee?

Held:

In the instant case, it is evident from the record of the case that on the same date on which the intimation was issued, the adjustment was made simultaneously. This is contrary to the spirit of the provisions of Section 245 as interpreted by this court in the decision viz. Court in its own motion v/s. C.I.T. (2013) 352 ITR 273 and another, as no opportunity of hearing was given to the assessee before the adjustment was made.

Court held that, it was earlier held by the Court that:

"The correct position in law i.e. Section 245 mandates and envisages prior intimation to the assessee so that he/she can respond before any adjustment of refund is made towards the demand relating to any other assessment year. Thus an opportunity of response/reply should be given and after considering the stand and plea of the assessee, justified and valid order or direction for adjustment of refund can be made. The section postulates two stage action, prior intimation and then subsequent action when warranted and necessary for adjustments of the refund towards arrears."

Hence the adjustment order was quashed on the above ground alone.

45

Partnership Firm : Keyman Insuance Premium of Partners: Allowable.

C.I.T. v/s. Agrawal Enterprise (2015) 229 Taxman 525 (Bom).

Issue :

Keyman Insurance Premium on partners life paid by partnership firm is an allowable expense?

Held:

Assessing Officer disallowed 20 percent of insurance premium of keyman insurance premium on the life of partners paid by the firm. On appeal to Court it is held that :

The finding of the Tribunal are that the adhoc deduction could not have been effected. More so, when the department itself has clarified that premium paid on the Keyman Insurance Policy is allowable as business expenditure. The Keyman Insurance Premium is a life insurance taken by a person on the life of another person who is or was the employee of the first mentioned person or is or was connected in any manner whatsoever with the business of the first mentioned person. The Commissioner referred to the legal provisions. The Commissioner rested his finding on the factual position that emerged from the record. The record indicated that the partnership firm comprised of two partners. It was dealing in securities and shares. The policy was obtained for the benefit of the firm in as much as the firm's business would be adversely affected, in the event, one of the partners met with an untimely death. It is, therefore, concluded by the Tribunal that such being the nature of the expenses and the business of the firm being of dealing in securities for protecting it this policy was obtained. The premium expenditure was incurred in the above factual backdrop. There was no basis, therefore, for making deduction or disallowance. The disallowance was purely a matter of conjecture and surmise on the part of the Assessing Officer.

46

Cost of Construction: Burden on Department: Reference to Valuation Officer.

Family of Sp. SS. Sp. Subramanian Chattiar- v/s. I.T.O. (2015) 372 ITR 203 (Mad) : 232 Taxman 723 (Madras)

Issue:

In case when A.O. does not accept the cost of construction, what is the burden on Department?

Held:

Books of account furnished by the assessee were never rejected. No explanation was called for from the assessee stating that there was concealment or understatement of amount in the books of account. The initial burden cast on the Department to prove that there was understatement or concealment of income had not been discharged and, therefore, the Assessing Officer was not empowered to refer the matter to the Department Valuation Officer or rely on such report.

47

Composite Sale of a House (Short Team) with Land (Long Term) and benefit u/s. 54(1)

C.N. Anantharam v/s. ACIT (2015) 230 Taxman 34 (Kar) : 275 CTR 329 (Kar)

Issue:

Benefit of Sec. 54(1) reinvestment in residential house is available on capital gain of Sale and Land (Long Term) on which building (Short Term) is there?

Held:

When a property, residential house is sold, the sale consideration includes the value of land and the value of the construction. Though there is no two sale transactions involved for the purpose of the Act, in order to calculate the capital gains as rightly done by the Assessing Officer he has treated the sale of land on which the residential house is constructed as a long term capital gain and he has treated the building as a short term capital gain. If, for levying tax under the Act, such a distinction could be made, we fail to understand why that distinction should not be kept in mind in extending the benefit under section 54(1) of the Act, if the land on which the building is constructed is a long term capital gain and the amount received towards the sale of such land when it is assessed as a long term capital gain and taxed. In view of section 54(1) if that consideration from the sale of the land is utilized in acquiring a residential house, the benefit from exemption is to be extended. Otherwise, the section looks absurd. The land which is adjoining the residential house is entitled to benefit under section 54(1) of the Act, but the land on which the residential house would not be entitled to such benefit, we cannot impute any such intention to the legislature.

On the contrary the legislative intent is manifest. The assessee is entitled to benefit of Section 54(1) in respect of land and building. That land may be the land on which the residential house is constructed or the land appurtenant to the residential house.

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Tribunal News

CA. Yogesh G. Shah
yshah@deloitte.com

CA. Aparna Parelkar
aparelkar@deloitte.com

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Dharmodayam Co. v. ITO 154 ITD 574 (Cochin)
Assessment Year: 2004-05 Order dated: 14th May, 2015

Basic Facts

The assessee is a public charitable institution and its main objective is to provide medical aid, education and carry on other public charitable activities. It was registered u/s. 12A of the Act. It filed its return of income for the year under consideration declaring a loss and the same was processed u/s. 143(1) of the Act. Subsequently, the AO re-opened the assessment by issuing notice u/s. 148 of the Act. In response thereto, the assessee filed its return of income declaring Nil income.The AO noticed that the assessee had claimed certain amount as deduction under section 11(2) on the ground that it was accumulated for future application.The AO took a view that deposits should have been made out of the current year's income. Accordingly, he held that a part of deposits made by assessee could not be considered to be deposits made in terms of section 11(2)(b), since they had not been made out of current year's income. The CIT(A) confirmed the said disallowance.

Issue

Whether in order to claim deduction under section 11(2) is it necessary that deposits have to be made out of current year's income, or earmarking of existing bank fixed deposits, which is free from any lien, towards income accumulated under section 11(2) during year under consideration would be sufficient compliance?

Held

The Hon'ble ITAT opined that the view taken by the revenue is too technical. The provisions of sec. 11(2) of the Act should be interpreted in a holistic way duly considering the objective behind each of the provision. Considering the objective of the provision of sec. 11(2)(b), what is required to be seen is whether the income accumulated has been deposited or invested in the forms prescribed u/s 11(5) of the Act, i.e., there should be corresponding investment, which could be identified with the income accumulated. The provisions of sec. 11(2)(a) talks about "income", whereas the provisions of sec. 11(2)(b) talks about the "money" so accumulated. The "money" available with the assessee may be pertaining to the current year's income or earlier year's income. Further, if the view taken by the tax authorities that the deposit should have been made out of current year's income is accepted as correct for a moment, then the assessee trust shall be forced to foreclose the existing deposit and thereafter make a new deposit, thus losing considerable amount towards loss of interest/ penalty. The same would be very much technical in nature. Hence, it was Tribunal's view, that the earmarking of existing bank fixed deposits, which is free from any lien, towards the income accumulated u/s 11(2) of the Act during the year under consideration would be sufficient compliance with the provisions of sec. 11(2)(b) of the Act, since the accumulated income is represented by the corresponding deposit/investment. In view of the foregoing the Ld CIT(A)'s order was set aside and the AO was directed to delete the disallowance of income accumulated u/s 11(2) of the Act.

38

OUTOTEC GMBH vs. DCIT [2015] 172 TTJ337 (KOL)
Assessment Year: 2010-11 & 2011-12 Order dated: 16th June, 2015

Basic Facts

The assessee provided drawings, designs & engineeringdocuments relating to steel industry in India to the customers for the operation and maintenance ofthe plant. The designs and drawings are largely the products of the various technologies that are sold to its Indian customers after being modified, tomeet their requirements. The modification activities have been performed by the assessee in its owncountry i.e. the entire work has been undertaken / performed outside India. The designs anddrawings sold by the assessee were used by the Indian customers for internal business purpose ofsetting up of their plants and not for any commercial exploitation. Sale of designs and drawings hasalso effected outside India. Consideration/payments for the basic engineering work were received by the assessee outside theterritory of India in foreign currency. Accordingly, the income from supply of designs and drawings is not taxable either under the provisions of the Act or the DTAA. The AO held that the consideration received by the assessee is not a sale but royalty under article 12(3) of the DTAA as well as Explanation 2 to Section 9(1)(vi) of the IT Act. Accordingly, it was held that the income earned from supply of drawings and designs are taxable in India. The DRP did not accept the contentions of the assessee and upheld the decision of the AO that the income earned from supply of drawings anddesigns is taxable in India.

Issue

Whether the income received by the assessee from supply of designs and drawings is taxable under the provisions of the Act or the DTAA?

Held

The Hon'ble ITAT held that the basic engineering packages sold by theassessee to the Indian customers have been largely designed on the basis of standard technologiesavailable with it. The consideration was, therefore, for the sale of the product, which is embedded inthe plant set up by the Indian customers and does not constitute royalty and is in the nature ofbusiness income. Since the work was done outside India and sale was taken place outside India,such income is not taxable under the provisions of the Act and DTAA. Retaining intellectualproperty in designs and drawings is similar in the nature to the retaining of patented rights in anygoods/machinery. Restriction on the intellectual property in designs and drawings sold by theassessee for the purpose of setting up a plant in India does not change the character of thetransaction from the sale of the product to the use of licence/know-how. Normally, designs anddrawings sold by foreign customers were used by Indian customers for internal business purposesfor setting up of their plants and not for any commercial exploitation. Accordingly, the designs anddrawings sold by the assessee tantamounts to the use of copyrighted article rather than use of acopyright and is, therefore, in the nature of business income. Thus, the assessee's appeal was allowed.

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Bhaidas Cursondas & Company Vs. ACIT [2015] 154 ITD 521 (Mumbai) Assessment Year: 2009-10 Order dated: 11th March, 2015

Basic Facts

The assessee had sold a part of the assets forming part of the block of assets 'Building'. The AO during the course of assessment proceedings held that the same attracts section 50C. The AO, accordingly, recomputed the opening WDV of the relevant block of assets by reducing the stamp value as 'moneys payable', and allowed the depreciation for the current year accordingly which was less than that claimed by the assessee. The assessee contended that section 50C applies only for computing 'capital gains' on transfer of capital assets specified therein& it will have no implication towards computing the WDV of the relevant block of assets. The CIT(A) allowed the claim of the assessee.

Issue

Whether deeming provisions of section 50C, where stamp duty value was adopted as sale consideration, were applicable for limited purpose of computing capital gains and it had no application in determination of written down value of relevant block of assets?

Held

The deeming of section 50C is for the limited purpose for computing the capital gains u/s. 45 r/w s. 48 on the assets specified under the said section. The only purport of section 50C is the extent of the matter specified therein, providing (to that extent) an alternate basis to that specified u/s. 48, for computing the capital gains chargeable u/s. 45. The WDV would have to be necessarily computed in terms of section 43(6), and for which section 50C has no application. The Tribunal upheld the decision of the CIT(A). In fact Tribunal was unable to understand how the opening WDV could be altered without first changing the depreciation for the immediately preceding year and, concomitantly, the WDV at the close of that year. The revenue's appeal was accordingly dismissed.

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IBM India (P.) Ltd. Vs. ITO154 ITD 497 (Bang.)
Assessment Year: 2006-07 to 2009-10
Order dated: 14th May, 2015

Basic Facts

The Assessee is a wholly owned subsidiary of IBM World Trade Corporation, US ("IBM WTC"). The Assessee follows the mercantile system of Accounting. The Assessee makes provision for certain expenses in its books of accounts. In the subsequent year the provision entries were reversed. On receipt of invoices in respect of the respective expenses, the same were recorded as liabilities due to the respective parties, at which point in time taxes were withheld at source & paid to Government. During the year under consideration also assessee had made provision for expenses by debiting the expenses to Profit & Loss account and crediting the provision account. While filing return of income, the assessee disallowed the amounts in the computation of income in terms of section 40(a)(i) & 40(a)(ia) of the Act. The AO held that the above procedure followed by the assessee was contrary to the accounting policy and that the assessee had to deduct tax at source on the provision so created in the books of account. The AO accordingly held the assessee to be assessee in default under section 201(1) & also levied interest under section 201(1A) of the Act. The order of the AO was upheld in principle by the CIT(A).

Issue

Whether the assessee would be liable to deduct tax on provision for expenses created in books of account as per Statutory provisions of withholding tax that clearly envisage deduction of tax at source de hors charge under section 4(1)?

Held

The contention of the revenue that the assessee having admitted its default under section 40(a)(i) and 40(a)(ia), cannot in proceedings under section 201(1), be heard to say that there was no default under chapter XVII-B is correct. The disability under section 40(a)(i) and 40(a)(ia), and the liability under section 201(1) cannot be different and they arise out of the same default. Once there is a disallowance under section 40(a)(i) and 40(a)(ia), it is not possible to argue that there was no liability under chapter XVII-B and therefore the provisions of section 201(1) will not be attracted. It is clear from the statutory provisions of TDS that the liability to tax at source exists when the amount in question is credited to a 'suspense account' or any other account by whatever name called, which will also include a 'provision' created in the books of account. Therefore it is not possible for the assessee to argue that there was no accrual of expenditure in accordance with the mercantile system of account and therefore the TDS obligations do not get triggered. The Tribunal found that the assessee deducted tax on the provision made for various expenses in the subsequent financial years when the provision entries were reversed. It therefore held that the assessee therefore cannot take a plea that the payments in question are not chargeable to tax and therefore there was no obligation on its part to deduct tax at source.

The assessee pending the outcome of the appeal had filed with the AO the details of tax deducted on the provision so made in the subsequent years. Based on the verification of the AO of this fact, the tribunal allowed the assessee's appeal in respect of treating it as assessee in default under section 201(1) but dismissed the appeal in respect of interest charged under section 201(1A) of the Act.

41 Mitsubishi Corporation India Private Limited Vs. DCIT171 TTJ 417 (Del) Assessment Year: 2010-11Order dated: 26thMay, 2015

Basic Facts

The assessee had made payments to its Supplier Associate Enterprises without deducting tax at source under section 195 of the Act on the ground that tribunal had held in AY 2006-07 that certain AE's did not have PE in India and in case of other AE's the provisions of Article 24 of DTAA between India & Japan were applicable. The AO rejected the assessee's contentions and applying GP ratio to the purchases made determined the income of the AE's on which according to him tax ought to have been deducted at source. He disallowed the said amount under section 40(a)(i) of the Act for non deduction of tax at source.

Issue

Whether assessee is allowed the benefit of non-discrimination under Article 24 of the DTAA between India and Japan and cannot be visited with disallowance u/s 40(a)(i) ?

Held

The Tribunal deleted the disallowance in respect of three parties in whose case in the earlier year, the tribunal had held that there were no PE since in the year under consideration the department had not brought on records to distinguish the case.

In respect of the other parties the assessee claimed benefit of Article 24 of the DTAA. While examining the assessee's contention that it is entitled to the benefit of Article 24 in terms of para3, the tribunal on perusal of said para found that the said para transpires that except where the provisions of Article 9 etc. apply, interest, royalties and other disbursements paid by an Indian enterprise to a Japanese enterprise, shall, be deductible in determining the taxable profits of the Indian enterprise under the same conditions as if they had been paid to an Indian resident. Simply stated, para 3 of Article 24 provides that any payment made by an Indian enterprise to a Japanese enterprise shall, for the purposes of determining the taxable profit of an Indian enterprise, be taken up under the same conditions as if the payment had been made to an Indian resident and not to a non- resident.When the TDS provisions are examined, it is noticed that no provision under the Chapter XVII of the Act stipulates for deduction of tax at source from payment made for the purchases made from an Indian resident. This position when contrasted with purchases made from a non-resident, imposes liability on the purchaser for deducting tax at source under section 195, subject to the fulfilment of other conditions. When we compare an Indian enterprise purchasing goods from an Indian party vis-a-vis from a Japanese party, there is possibility of an obvious discrimination in terms of disallowance of purchase consideration under section 40(a)(i) in so far as the purchases from a Japanese enterprise are concerned. It is this discrimination which is sought to be remedied by para 3 of Article 24. The effect of this Article is that in determining the taxable profits of an Indian enterprise, the provisions of the Act, including disallowance u/s 40(a)(i), shall apply as if the purchases made from a Japanese enterprise are made from an Indian enterprise. Once purchases are construed to have been made by an Indian enterprise from another Indian enterprise, not requiring any deduction of tax at source from the purchase consideration and consequently ousting the application of section 40(a)(i), the non-discrimination clause shall operate to stop the making of disallowance in case of purchases actually made from a Japanese enterprise, which would have otherwise attracted the disallowance. Thus, it is evident that para 3 of Article 24, without considering the effect of Article 9 and other Articles referred to in the beginning of this para, rules out the making of disallowance u/s 40(a)(i) of the Act. Hence, the Hon'ble ITAT held the decision in the favour of the assessee and the assessee was allowed the benefit of non-discrimination as effected by Article 24 of the DTAA.

contd. on page no. 436

Unreported Judgements

CA. Sanjay R. Shah
sarshah@deloitte.com

In this issue we are giving gist of two decisions rendered by the Hon'ble ITAT, Ahmedabad in the matter of validity of proceedings u/s 147 and also u/s 263 of the Act. The first one in the case of Sonal Arpit Doshi relates to the validity of proceedings u/s 147 when the A.O. issued such notice in order to verify whether the appellant is involved in obtaining bogus beneficial entries, whereas the second one in the case of Serendipity Apparels Pvt. Ltd. relates to the validity of proceedings u/s 263 when on merits of the case the issue is covered in favour of the assessee.

We hope readers would find them useful.

In the Income Tax Appellate Tribunal
"D" Bench Ahmedabad
Before Shri G.D. Agrawal, Vice President and Shri Kul Bharat, Judicial Member.
ITA. Nos. 366/Ahd/2015
(Assessment Year : 2006-07)

Sonal Arpit Doshi	**Vs.**	**The Income Tax Officer**
5/A, Vaishali Apartment		**Ward – 10(4)**
43, Pritamnagar,		**Ahmedabad**
Ellisbridge		
Ahmedabad		
PAN : AIHPD 3959 L		
Appellant		**(Respondent)**

Assessee by : Shri Sakar Sharma, AR
Revenue by : Shri S.L. Chandel, Sr. DR.
Date of Hearing : 19/10/2015
Date of Pronouncement : 21/10/2015

<u>Gist only</u>

<u>Facts :</u>

1. The ground before Hon'ble Tribunal was as under :

   "The Ld. CIT(A) erred on facts and in law in confirming action of Assessing Officer in issuing notice u/s 148 and in making assessment u/s 147 of the Act."

2. The reasons recorded by the learned AO for reopening the case u/s 148 were as under "

   "The Search & Seizure action, carried out by the Department on 25/11/2009 in the group case of M/s Mahasagar Securities Ltd., and also covered its all group companies which were controlled by Shri Mukesh M. Choksi, at Mumbai. Shri Mukesh M. Choksi himself admitted that my all group companies are providing entry for taking profit or loss by showing purchase or sale of the shares and securities to various parties across India on which I was charged certain commission from the beneficiary parties. The same information received by ; this office supplied by The Director of Income –Tax (I &C.I.), New Delhi, vide letter dated 07.03.2013 alongwith copy of statement of Shri Mukesh M. Choksi recorded by the Department on oath u/s 131 of the I.T. Act. Accordingly, all the Purcahse and Sale transactions regarding shares and securities made by you through group companies belonging to Shri Mukesh M. Chokshi which was known as Mahasagar Securities Ltd. which is totally unverifiable transaction as the controlling person namely Shri Mukesh M. Chokshi himself admitted in his statement recorded on oath u/s 131 on 16.01.2013 by Shri P.S. Naik, CIT, Central-46, Mumbai recorded. On deep scrutinized of the data/details received in this office it is ascertain that you have also involved for taking unverifiable / bogus beneficial entries from the group companies belongs to Shri Mukesh Choksi during the F.Y. 2005-06. Accordingly, all the transactions made by you were unverifiable. Hence, same transactions also should be required for detailed verification from various aspects for genuineness of the said transaction as per the information supplied by the Director of Income-

tax (I & C.I.), New Delhi in your case by re-assessment".

"The above reasons are provided on express request made by you vide above referred application. As such, your application stand disposed off, which may please be noted."

3. Decision

The Hon'ble Tribunal held as under :

"4.0 From the above, it is evident that the Assessing Officer has simply reopened the assessment for the purpose of verification of certain transactions. In our opinion, when the Revenue wanted to verify the correctness of certain transactions, the proper course is to issue the notice u/s 143(2), it cannot resort to section 148 for the purpose of verification of certain transactions. Notice u/s 148 can be issued only when the Assessing Officer records his satisfaction with regard to escapement of income. In the reasons recorded, there is no mention of the escapement of income; therefore, in our opinion, reopening of assessment is not valid and the same is quashed and consequentially, the assessment order passed in pursuance to such notice is also quashed.

5.0 since we have quashed the assessment order, the additions made by the Assessing Officer in the said assessment order which are challenged on merit in the assessee's appeal do not survive for adjudication, because the assessment itself has been quashed.

6.0 In the result, the assessee's appeal is allowed."

Thus the proceedings u/s 148 were held invalid and consequential order passed u/s 147 was quashed.

In the Income Tax Appellate Tribunal
Ahmedabad "D" Bench Ahmedabad
Before Shri Pramod Kumar, Accountant Member,
and Shri S. S. Godara, Judicial Member.
ITA. Nos. 1244/Ahd/2014
(Assessment Year : 2009-10)

The Serendipity Apparels Pvt. Ltd.
Arvind Mills Premises
Naroda Road, Ahmedabad **Appellant**

Vs.

CIT – IV
'C' Block, 3rd Floor, PratyakshaKar
Bhavan, Ambawadi, Ahmedabad
Respondent

By Assessee	:	**Shri S.N. Soparkar with Urvashi Shodhan, A.R.**
By Revenue	:	**Shri Sanjay Agrawal, CIT D.R.**
Date of Hearing	:	**28.08.2015**
Date of Pronouncement	:	**21.10.2015**

Gist only

Facts :

1.0 The assessee company derives lease rental income from renting out machinery, plants and buildings. It had filed its return admitting Nil income after claiming set off of unabsorbed depreciation and losses relating to A.Y. 2006-07. The A.O. framed a regular assessment by disallowing a sum of Rs.73,80,572/- qua depreciation claim of plant and machinery set off against assessee's lease rental income declared under the head "other sources". This issue was carried by assessee before CIT(A), who decided the issue on merits in favour of the assessee.

2.0 Thereafter, the Administrative CIT issued notice u/s 263 to set aside the assessment on following grounds :

i) A.O. wrongly allowed set off of unabsorbed depreciation for A.Y. 2006-07 against the lease income offered under head income from other sources.

ii) The assessee has stopped business activity of manufacturing of fabrics from grey yarn on job work basis and from 1/10/2006 the assets are given to M/s Arvind Mills under lease agreement and from that day there is no income chargeable under the head income from business. Since the assessee company has not carried out any business during the year under consideration, the unabsorbed depreciation claim as part of current depreciation as per section 32 (2) is not allowable as deduction u/s 57 (ii) against income from other sources.

3.0 The assessee filed its reply on 18/3/2014 invoking merger principle, which was rejected by the Administrative CIT.

Contentions before Hon'ble Tribunal :

4.0 The assessee raised three arguments :

i) On the basis of section 263(1)(c) where CIT(A) has already accepted assessee's claim of set off of depreciation, the Administrative CIT(A) ought not to have invoked revision proceedings u/s 263.

ii) The income from other sources in question comes u/s 56 (2)(iii) of the Act, which in turn is entitled for deduction of unabsorbed depreciation u/s 32 (1) & 32 (2) as per section 57 (ii) of the Act.

iii) The Administrative CIT wrongly held that assessee is not entitled for set off of unabsorbed depreciation on the ground that there was no business carried on in the year under consideration as was the case when the unabsorbed depreciation arose in the earlier A.Y. For this, reliance was placed on Hon'ble Gujarat High Court decision in the case of CIT v/s Fabriquip Pvt. Ltd. 260 ITR 207.

Decision by the Hon'ble Tribunal :

5.0 The Hon'ble Tribunal decided on merits of the case and held as under :

"*8.0 We have heard both the parties and perused the case file. Relevant facts stand narrated in preceding paragraphs. The same are not repeated for the sake of brevity. We come to merits of the case first. The assessee has derived its lease rental income under the head from "other" sources. There is no dispute that the same is covered u/s 56(2)(iii) of the Act. This is followed by Section 57 stipulating allowability of corresponding depreciation relief u/s 32(1) & (2) of the Act. The CIT holds that the assessee's business as it existed earlier of manufacturing is no longer in existence or the same is not being carried out in the impugned assessment year so as to claim depreciation relief u/s 32(1) & (2) of the Act. We notice from case law of Fabriquip (supra) that their lordships considered earlier decisions of (1987) 168 ITR 773 CIT vs. Deepak Textile Industries Ltd. (Gujarat) and (1995) 216 ITR 607 (Gujarat) CIT vs. Virmani Industries Pvt. Ltd. holding that in order to avail Section 32(2) depreciation claim, it is not necessary that the business carried on in the following previous year should be the same as it was carried on the preceding previous year. And also that there are no words to that effect in the relevant statutory provision as well. The jurisdictional high court is of the view that an assessee need not carry on any business or profession for availing this benefit in the following year. The Revenue fails to point out any exception thereto. We accordingly accept assessee's latter two arguments on merits and hold it entitled for the impugned depreciation benefit. Its legal plea of merger principle (supra) is rendered infructuous. The CIT's order under challenge passed u/s 263 of the Act stands reversed accordingly.*

This assessee's appeal is allowed."

Thus, it was held that when the issue on merits is covered by the decision of jurisdictional High Court on the basis of which the order passed by A.O. on merits cannot be considered to be erroneous or prejudicial to the interest of revenue, CIT's order passed u/s 263 for reversing the decision of A.O. cannot be sustained.

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Controversies

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

Whether interest paid u/s 234B is allowable as business expenditure?

Issue:

XYZ Ltd. did not pay advance tax and hence it was required to pay interest u/s 234B of the Income Tax Act 1961. XYZ Ltd. claims that such interest is compensatory in nature and hence it is required to be allowed as business expenditure.

Proposition:

It is proposed that interest paid u/s 234B can not be called penal interest and hence it can not be disallowed either u/s 40(a)(ii) or u/s 37, The levy of interest can not be regarded as a penalty in as much as the same is by way of compensation and not by way of penalty.

View Against the Proposition:

It is submitted that interest paid u/s 234B is certainly penal interest and the same has to be disallowed while computing the business income, the interest is nothing but part and parcel of liability to pay Income Tax. Since Income Tax paid by the assessee is not a permissible deduction in view of section 40(a)(ii) the interest paid for delay in payment of tax would also not be permissible deduction as the interest would take the color of the original amount liable to be paid as Income Tax.

Let me now refer to section 40(a)(ii)……..

"Section 40- Amounts not deductible "

Not with standing Section 30 to 38, the following amounts are not allowed as deduction in computing the income under the head "Profit and gain of business or profession"…………..

(ii) "Any sum paid on account of any rate or tax levied on the profit or assessed in relation to such profit."

It is submitted that Interest u/s. 234A, 234B and 234C being regarded as accretion to Income Tax, are not deductible. Reference may be made to decision of Gauhati High Court in case of Assam Forest Products (P)Ltd. vs. CIT (180 ITR 478). Even Foreign Income Tax would not be allowed as deduction. Reference may be made to the decision of Madras High court in case of CIT vs. Indian Overseas Bank Ltd. (50 ITR 725). However interest tax would be allowed as deduction.

Let me further submit as under:

a) The payment of interest under section 139,215 and 217 are payments out of profits and not expenditure for earning profit;
b) Such interest is not trading loss which could be taken into account under section 28 under ordinary commercial principles; and
c) Such interest is—
   (i) Not incurred for reducing liability to tax but, in fact, increased it,
   (ii) Not incurred for preserving the business.
   (iii) Not incurred as interest on capital borrowed for the business.
   (iv) Not incidental to business as they related to a liability to which all assesses were exposed whether they did business or not, and
   (v) Is penal in nature.

It is submitted that:

Payment of income-tax is not deductible as business expenditure under the provisions of section 40(a)(ii) of the Income tax Act, 1961. It is clear from the language of section 139(8) of the Act that the interest charged under this provision is an accretion to the amount of tax found payable on the total income as determined on regular assessment. Due to failure to file return in time, the Revenue lose the amount of tax due as per the return and so by charging interest, it enlarges its receipt, i.e., augments the amount of tax. In so far as interest levied by sections 215 and 217 of the Income-tax Act,1961, is concerned, that has a direct connection with the amount payable as advance tax by charging interest on which the corpus of the tax amount is enlarged. So, in all these three cases, interest paid has to be regarded as part and parcel of the liability to pay tax. Since any sum paid on account of tax is not deductible under section 40(a)(ii), interest paid under sections 139,215 and 217 are also not deductible as business expenditure.

It is important to refer to the decision of their lordships of Gauhati high court in the case of ASSAM FOREST PRODUCTS (P.) LTD. V/s COMMISSIONER OF INCOME TAX.Reported in 180 ITR 479. It is held by their lordships as under:

"We may add that though from what has been stated in Mahalakshmi's case [1980] 123 ITR 429 (SC) it is not explicit whether payment of cess itself was a deductible expenditure but the same being an expenditure laid out by the mill wholly and exclusively for the purpose of business was definitely covered by section 37 of the Act. Now, if cess is a deductible expenditure, as we think to be, interest paid on arrear of cess under section 3(3) of the relevant act has also to be regarded as a deductible expenditure in the context of the view taken about the interest payable on arrear of cess under section 3(3) of the relevant Act. But as the amount of income-tax paid is not deductible under the Act in view of what has been stated in section 40(a)(ii), interest on it would also not be deductible.

ShriBhattacharjee has also referred in this connection to Rajasthan central Stores (P.) ltd. v. CIT[1985] 156 ITR 90 (raj) in which payment of interest on the failure of the assessee to remit the sales tax to the government account within time was held to be permissible deduction. This view was taken following, inter alia, the decision in mahalakshmi Sugar Mills Co.'s case [1980] 123 ITR 429 (SC). The bench deciding the case regarded the interest payable under the relevant Sales tax Act as not much different from the interest payable under section 3(3) of the U.P. Sugarcane Cess Act which had come for consideration in Mahalakshmi Sugar Mills co's case [1980] 123 ITR 429 (SC),which was followed in balrampur Sugar Co. Ltd v. CIT [1982] 135 ITR 227 (Cal) and Triveni Engineering Works Ltd. v. CIT [1983] 144 ITR 732 (All) [FB]. As the payment of sales tax which was under consideration in rajasthan's case [1985] 156 ITR 90 (Raj) and for that matter, other taxes coming up for consideration in the Calcutta and Allahabad cases were held as deductible expenditure, the interest paid on the same was also regarded as revenue expenditure deductible under section 37(1) of the Act. But these decision cannot assist the assessee as payment of income tax is not deductible as per section 40(a)(ii) of the Act and so interest under sections 139,215 and 217 which have to be regarded, for reasons given, as accretion to tax, cannot also be allowed to be deducted."

View in favour of the Proposition:

It is submitted under the advance tax scheme, an assessee who earns income in a particular year is required to pay tax in that financial year. Section 234B applies to situations where there is a default in payment of advance tax. But it would only apply where there is a liability upon the assessee to pay the advance tax in that year and if he has failed to do so. Section 208 of the said Act clearly stipulates that advance tax is payable during the financial year. Section 209 also indicates that it must be paid in that year.

Let me refer to the decision of Supreme Court in the case of CIT v. Pranoy Roy and Another "The assessees, being furher aggrieved, filed a writ petition in the High Court of Delhi which has been disposed of by the impugned order. The High Court, while accepting the writ petition and setting aside the interest charged under section 234A of the Act, has come to the conclusion that interest is not a penalty and that the interest is levied by way of compensation to compensate the revenue in order to avoid it from being deprived of the payment of tax on the due date."

The Honorable Karnataka High Court in the matter of CIT vs. Oriental Insurance Co. Ltd. 183 Taxman 186 has held that section 201 [1A] is a provision to levy interest for delayed paymentfor TDS and hence it is compensatory in the nature. Similarly, for refunds, the revenue pays interest to the assessee. Therefore, the levy of interest under section 201(1A) cannot, at any rate, be construed as penalty. Hence, it will be of immense use to rely on this case regarding the allowance of the interest on the late payment of TDS. Hence interest on late payment of TDS is allowed. No provision in act says interest under 201(1A) is disallowed.

Summation:

It is interesting to refer to the direct Judgment on the issue of Deduction of interest U/s 234B as Business Expenditure. The reference is CIT vs. AnandPrakash reported in 316 ITR 141 (dehli). The Lordships of Delhi High Court held as under.

"We Have examined the decisions cited by the counsel on both sides and after considering the submissions made by them, we agree with the learned counsel for the revenue that the levy under section 234B of the said Act is compensatory in nature and is not in the nature of penalty. We may also note the decision of the Bombay High Court in case of CIT v. Kotak Mahendra Finance Ltd: 265 ITR 119(Bom), wherein the Bombay High Court observed that it was well settled that interest under section 234B was compensatory in Character and that it was not penal in nature. Another Decision which would be relevant is of a Division Bench of this court in the case of Dr. Prannov Roy vs. Commissioner of Income-tax and another : 254 ITR 755 (Del.). In that case, the provisions of Section 234A were in issue. The Question before the court was whether interest could be charged under Section 234A when, though the return had not been filed in time, the tax had been paid. The argument raised on behalf of the Revenue that such payment of tax did not strictly comply with the meaning of advance tax and would therefore, have to be disregarded for the purposes of charging interest under section 234A, was rejected. The * Court also held that interest under section 234A was compensatory in nature and unless any loss was caused to the Revenue, the same could not be charged from the assesse. It may be relevant to point out that the matter was taken up in appeal before the Supreme Court and By Its decision dated 17.09.2008 in CIT vs. Prannov Roy /Civil 'Appeal No.448/2003L the Supreme Court noted that; " the High Court, while accepting the writ petition and Setting aside the interest charged under section 234A of the Act, has come to conclusion that interest is not a penalty and that the interest is levied by way of compensation to compensate the revenue in order to avoid it from being deprived of the payment of tax on the due date.

"Having heard counsel on both the sides we entirely agree with the finding recorded by the High Court as also the interpretation of Section 234'A of the Act as it stood at the relevant time."

12.Coming back to the present appeals, we are of the view that Section 234A, Section 234B and Section 234C are of the same class. On going through these provisions, it is clear that interest' is sought to be charged on account of the fact that the Government is deprived of its revenue. Under Section 234A, interest is charged if tax whichever to be paid at the time of filling of the return is not paid at that point of time, Section 234B provides for levy of interest for default in payment of advance tax on the appointed dates of payment. It is Clear that under the said Act tax is payable at different dates and through different models. Where Specific dated of payment of tax are not adhered to, it can be said that the Government is deprived of tax on those dates. Interest is chargeable under the provisions the Act such a Sections 234A, 234B And 234C in order to compensate the Government for such deprivation. It is clear from the scheme of the Act and the nature of these provisions that they are compensatory and not penal. We, Therefore, conclude that the levy of interest under section 234B of the Income Tax Act is Compensatory in nature. The Tribunal, having taken a contrary view has clearly erred."

It is submitted that levy of interest under section 234B is compensatory in nature and is not in the nature of penalty. "Section 234B and section 234C are of the same class. On going through these provisions, it is clear that interest is sought to be charged on account of the fact that the Government is deprived of its revenue. Under Section 234A, interest is charged if tax, whichever to be paid at the time of filing of the return, is not paid at that point of time; section 234B provides for levy of interest for default in payment of advance tax; and section 234C stipulates the charging of interest for default in the payments of advance tax on the appointed dates of payment. It is clear that under the Act, tax is payable on different dates and through different modes. Where specific dates of payment of tax are not adhered to. It can be said that the Government is deprived of tax on those dates. Interest is chargeable under the provisions of the Act, such as sections 234A, 234B, and 234C in order to compensate the Government for such Deprivation. It is clear from the scheme of the Act and the nature of these provisions that they are compensatory and not penal, and hence interest paid under section 234B is to be allowed as deduction while computing business income.

❊❊❊

Judicial Analysis

Advocate Tushar Hemani
tusharhemani@gmail.com

Recent decisions of Gujarat High Court on presumptive availability of interest free funds in the context of S. 14A/36(1)(iii) of the Act.

CIT Vs. Suzlon Energy Ltd. – 354 ITR 630 (GUJ)

XXX…

3. Question [2] pertains to disallowances made by the Assessing Officer under section 14A of the Act in respect of interest expenses incurred for investments made in subsidiaries and administrative expenses. CIT [A] deleted such disallowances, upon which, Revenue approached the Tribunal. The Tribunal rejected Revenue's appeal, making following observations:-

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3.1 From the above portion, we noticed that the Tribunal has bifurcated the expenditure in two parts - first related to investment of Rs. 5907.18 lakh in foreign subsidiaries, it was held that the dividend income from such subsidiaries is taxable in India and that therefore, section 14A would have no applicability. The remaining amount pertains to investment of Rs. 38 crore [rounded off] made in Indian subsidiaries. In this respect, the Tribunal noted that the assessee had to its disposal, own interest free funds many times over the investment in question. As per the balance sheet as on 31st March, 2005, the assessee had interest free fund of Rs. 929.57 crore.

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CIT Vs. Torrent Power Ltd. – 363 ITR 474 (GUJ)

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7. We could notice from the record that the assessee was having share holding funds to the extent of 2607.18 crores and the investment made by it was to the extent of Rs.195.10 crores. In other words, the assessee had sufficient funds for making the investments and it has not used the borrowed funds for such purpose. This aspect of huge surplus funds is not disputed by the Revenue which earned it the interest on bonds of dividend income.

CIT Vs. Hitachi Home & Life Solutions (I) Ltd. – (2014) 41 taxmann.com 540 (GUJ)

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6. As can be noted from the elaborate notings of the Assessing Officer itself, the interest free funds with the assessee was to the tune of Rs. 1.56 Crores, even if the outstanding loan of Rs. 2077.06 lacs as on 31st March, 1999, is taken into account. Since we are only concerned with a sum of Rs. 18.38 lacs - disallowances of which has been made under section 14A of the Act; even if the Tribunal has held that this was a question of mixed funds, the further reasonings given by the Tribunal cannot be ignored nor can earlier version be viewed in isolation. These findings cannot be said to be in consonance with the findings of the Assessing Officer. We also hold that the CIT [A] and the Tribunal both have specifically held the said amount has not been rightly disallowed since the same had been expended from interest free funds, though spent for earning exempt dividend income. It is not the question of the total sum of Rs. 471 lacs, but, a limited sum that has been spent for earning the exempt income, therefore, as rightly held, when there was interest free funds available with the assessee, there does not arise a question of disallowing expenditure under Section 14A of the Act.

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CIT v. Gujarat Apollo Industries Ltd. [2015] 55 taxmann.com 158 (Gujarat)

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7. Insofar as the second question which relates to addition of Rs.28,36,668/- under section 14A of the Act on account of interest and administrative expenses is concerned, the Tribunal has taken note of the fact that the matter had initially been restored to the file of the Commissioner (Appeals) with a specific direction to bring out clearly as to whether the borrowed fund had indeed been utilized in investment in shares/mutual funds for earning exempt income. The Commissioner (Appeals), with a view to carry out this direction analyzed the financial chart showing the financial summary of the assessee of the last seven years and found that the assessee was having sufficient surplus funds at its disposal for making any investment in share and for business purposes and therefore, no nexus could be established with the expenditure incurred by the assessee for earning the exempt income. There was no increase in borrowing rather there was reduction in total debts. Having regard to the above findings recorded by the Commissioner (Appeals), the Tribunal observed that it is now well settled that no disallowance under section 14A of the Act can be made of interest expenses until there is finding of Assessing Officer that borrowed funds were utilized by assessee to earn exempt income. It is in these circumstances, that the Tribunal did not find any infirmity in the order passed by the Commissioner (Appeals) in deleting the addition made by the Assessing Officer out of interest payment under section 14A of the Act.

8. From the facts noted hereinabove, it is apparent that the Commissioner (Appeals) has, after analyzing the material on record, found as a matter of fact that the assessee had sufficient surplus funds at its disposal for making any investment in share and for business purpose and therefore, there was no nexus that could be established with the expenditure incurred by the assessee for earning the exempt income. Thus, the conclusion arrived at by the Tribunal is based upon concurrent findings of fact recorded by it after appreciating the evidence on record. On behalf of the appellant, nothing contrary has been pointed out so as to dislodge the findings of fact recorded by the Tribunal, nor is it the case of the assessee that the Tribunal has taken into consideration any irrelevant material or that any relevant material has been ignored. In the absence of any perversity in the findings of fact recorded by the Tribunal, the impugned order does not give rise to any question of law, much less, a substantial question of law, so as to warrant interference.

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CIT v. Gujarat Narmada Valley Fertilizers Co. Ltd. [2014] 42 taxmann.com 270 (Gujarat)

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9. We could notice from the material on the record that both the authorities have correctly approached the issue in as much as the record clearly had reflected from the balance sheet of the assessee-company that the interest free funds available was much larger to the extent of Rs. 84,45,567/= lakhs as compared to the investment which was only Rs. 22.707 lakhs. Both the authorities have also noted faultnessly that the dividend income which was earned out of the investments made in the earlier years and there was no investment made in the year under consideration. With the availability of the huge interest free funds in the form of share capital, reserves, etc., the Assessing Officer had not correctly applied the provisions of law to the issue. Such findings are also supported by the decision rendered by this Court in case of CIT v. Gujarat State Fertilizers & Chemicals Ltd.[2013] 358 ITR 323/217 Taxman 229/36 taxmann.com 230 where identical question of law had come up before this Court, wherein the issue has been answered in the following manner:—

"3.8 The moot question here is as to whether the CIT (Appeals) and the Tribunal were right in setting aside the order of Assessing Officer, whereby it disallowed the sum of Rs.1,14,43,040/-, applying the provisions of Section 14A of the Act on the ground that the assessee had used interest bearing borrowed funds for earning dividend during the assessment year under question. The dividend income earned was of Rs.1,14,43,040/- and the estimate of expenditure was assessed at the rate of 10% of the total income. Had the Revenue been successful in establishing that the assessee had incurred the expenses to earn the dividend income from the borrowed funds, the entire discussion of application of Section 14A of the Act could be understood. However, when both the CIT (Appeals) and the Tribunal have noted that the assessee had sufficient funds available with it, which was more than the amount it invested for earning the dividend income, both these authorities have correctly approached the issue by setting aside the order of disallowance under Section 14A of the Act in respect of interest expenditure. When the very basis for employing Section 14A of the Act on factual matrix is lacking, the disallowance to the extent of 10% of dividend income was not permissible. When it transpires from record that the assessee's own funds were at higher than the investment made by it and with nothing to indicate that the borrowed funds were utilized for the purpose of investment in shares and for earning dividends, the Tribunal committed no error in disallowing the sum of Rs.1,14,43,040/-."

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CIT v. Amod Stamping (P.) Ltd. [2014] 45 taxmann.com 427 (Gujarat)

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3.1 At the outset it is required to be noted that in each assessment year the AO directed to make disallowance under section 36(1)(iii) of the IT Act which has been deleted by the learned ITAT by impugned judgment and order. At the outset it is required to be noted that while deleting the disallowance made by the AO under section 36(1)(iii) of the IT Act, the learned ITAT has relied upon the decision of the Bombay High Court in the case of Reliance Utilities & Power Ltd. (supra) and has specifically observed that the interest free funds as on the date of balance-sheet were far in excess of investments as on 31.03.2004. In para 23 [AY 2004-05] and while deleting the disallowance made by the AO under section 36(1)(iii) of the IT Act, the learned ITAT has observed as under:

'23. From the audited Balance Sheet as on 31.03.2004 placed on record it is seen that as on 31.03.2004 the investments of the Assessee are to the tune of Rs. 5.82 crore as compared to Rs. 46,000/- in the immediately preceding financial year meaning thereby that the investments to the extent of Rs. 5,82,28,953/- have been made during the year. It is also seen from the Balance Sheet that the interest free funds in the form of share capital, reserves and surplus and unsecured loans as on 31.03.2004 was to the extent of Rs. 22.92 crore as against Rs.2.79 crore as on 31.03.2004 meaning thereby that there was an increase of Rs. 20.13 crore in interest free funds. Thus it is seen that the interest free funds as on the date of Balance Sheet were far in excess of investments as on 31st March, 2004. In the case of Reliance Utilities (supra) the Hon. Bombay H.C. has held as under:—

"Held that if there were funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest-free funds were sufficient to meet the investments".

Considering the facts of the case and seen in the light of the decision of Hon. Bombay H.C. (supra) and respectfully following it, we are of the view that in the present case a presumption can be made that investment are out of interest free funds and, therefore, the Assessing Officer was not justified in making addition. We, therefore, direct the deletion of addition, made by A.O. Thus this ground of assessee is allowed.'

3.2 Similar observations are made by the learned ITAT with respect to the assessment years 2005-06 and 2006-07. In the case of Reliance Utilities & Power Ltd. (supra), the Bombay High Court has held that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest-free funds were sufficient to meet the investments and therefore, interest was deductible. Similar view has been taken by the Division Bench of this Court in the case of CIT v. Gujarat State Fertilizers & Chemicals Ltd. [2013] 358 ITR 323/36 taxmann.com 230/217 Taxman 229 (Guj.). Applying the ratio/law laid down by the Bombay High Court in the case of Reliance Utilities & Power Ltd. (supra) as well as Division Bench of this Court in the case of Gujarat State Fertilizers & Chemicals Ltd. (supra) to the facts of the case on hand and when it has been found that the assessee was having interest-free funds far in excess of investments and therefore, it can be said that the investments are made out of interest-free funds and therefore, the AO was not justified in making additions and/or making disallowance under section 36(1)(iii) of the IT Act. Under the circumstances, no error and/or illegality has been committed by the learned ITAT in deleting the disallowance made by the AO under section 36(1)(iii) of the IT Act. No question of law much less substantial question of law arise with respect to deletion of the disallowance made by the AO under section 36(1)(iii) of the IT Act.

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CIT v. R L KalthiaEnggineering& Automobiles (P.) Ltd. [2013] 33 taxmann.com 14 (Gujarat)

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3. Such disallowances were made by the Assessing Officer on the ground that the assessee, on one hand, had borrowed the capital for the purpose of business and such borrowed fund is expected to be used in the business. The interest paid on such borrowings being an expenditure, the same is required to be deducted in computation of income from the business. Noting that the interest payable on the capital borrowed since is a liability till it is repaid, such interest is allowable under proviso to Section 36[1](iii) of the Act. On noticing that there was substantial diversion by the assessee of such interest bearing funds towards interest free loans and advances, and towards non-business investment, the total amount held to be diverted for the purpose of investment in the shares and loans to the sister-concern to the tune of Rs. 1,59,37,432/= calculating interest @ 18% per annum, the amount of Rs. 28,68,776/= was disallowed.

4. Aggrieved by such disallowance of interest amount under Section 36[1](iii) of the Act, challenge was made before the CIT[A] by the assessee-respondent. On noticing that in case of a sister-concern of the respondent-company where similar disallowances were made, that the same had been deleted by the CIT[A] vide order dated 30th November 2007, in the instant case also, the CIT[A] set-aside such disallowances by holding that the assessee-respondent had not diverted interest bearing fund as no nexus was established between the borrowed funds and the funds lent and investment.

5. When challenged before the Tribunal by the revenue, it concurred with the findings of the CIT [A]. It also noticed that the total interest-free funds available with the respondent was to the tune of Rs. 1.74 Crores and the advances and investments made were at Rs. 1.59 Crores. The Tribunal also followed the treatment given to such issue of disallowance of interest in case of sister-concern and not having found any nexus in the instant case between the borrowed funds and the funds lent, as also registering the availability of the huge amount of interest-free funds to the tune of Rs. 1.74 Crores, upheld the decision of the CIT[A] of reversing the decision of the Assessing Officer on this count.

6. It is well established proposition that when the Revenue fails to establish any nexus between the borrowed funds and the funds diverted/lent, any denial of allowances of interest under Section 36[1](iii) is not permissible. In the instant case, as both the authorities have held concurrently on the basis of material available that sufficient amount of interest-free funds were available with the assessee-respondent and therefore also, there is no justification in interfering with the decision of both these authorities. Resultantly, the question of law proposed is answered accordingly.

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FEMA Updates

CA. Savan Godiawala
sgodiawala@deloitte.com

33 Exchange Earners' Foreign Currency (EEFC) Account- Discontinuation of Statement pertaining to trade related loans and advances

As per A.P. (DIR Series) Circular No.78 dated February 14, 2003, transactions relating to loans/ advances from EEFC account were required be reported by the AD banks on a quarterly basis to the Regional Office of Reserve Bank.

With a view to liberalizing the procedure, it has now been decided to dispense with the above-mentioned statement with immediate effect.

For Full Text refer to A.P. (DIR Series) Circular No. 11 dated 10September 2015 https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10021

34 Guidelines for Grant of Authorisation for Additional Branches of FFMC/AD Cat. II

As part of further simplification of the guidelines, it has now been decided to incorporate the changes in the guidelines in respect of submission of documents by the applicant FFMC/AD Cat. II while applying for authorization for an additional branch. The existing guidelines in respect of required documents and revised position are provided in the table below:—

Sr. No.	Documents required to be submitted as per existing guidelines	Revised Position
1	Copy of latest audited accounts with a certificate from Statutory Auditors regarding position of NOF as on date of application.	Only a certificate from Proprietor/Partner/Director /CFO of the entity as regards the position of NOF is required to be submitted.
2	Confidential Report from applicant's banker.	This requirement shall be dispensed with.
3	Declaration to the effect that no proceedings have been initiated or are pending with DoE/DRI	The declaration has to be submitted every time an application for authorisation of a new branch is made, as per existing instructions.
4	A copy of KYC/AML/CFT policy framework existing in the company	Only a declaration to be submitted that there is no change in the KYC/AML/CFT policy framework since its last submission to RBI. However, in case there is a change, a copy of the revised/latest version of the policy shall be required to be submitted.
5	Brief write-up on the internal control systems, including internal and external audit.	Only a declaration to be submitted to the effect that there is no change in the internal control systems including internal and external audit since submission of the last write-up to RBI. However, in case there is a change, the revised/latest write-up shall be required to be submitted.

The revised guidelines will come into force with immediate effect.

For Full Text refer to A.P. (DIR Series) Circular No. 12 dated 10 September 2015

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10022

35 Trade Credit Policy - Rupee (INR) Denominated trade credit

With a view to providing greater flexibility for structuring of trade credit arrangements, it has been decided that the resident importer can raise trade credit in Rupees (INR) within the following framework after entering into a loan agreement with the overseas lender:

i. Trade credit can be raised for import of all items (except gold) permissible under the extant Foreign Trade Policy
ii. Trade credit period for import of non-capital goods can be upto one year from the date of shipment or upto the operating cycle whichever is lower
iii. Trade credit period for import of capital goods can be upto five years from the date of shipment
iv. No roll-over / extension can be permitted by the AD Category - I bank beyond the permissible period
v. AD Category - I banks can permit trade credit upto USD 20 mn equivalent per import transaction
vi. AD Category - I banks are permitted to give guarantee, Letter of Undertaking or Letter of Comfort in respect of trade credit for a maximum period of three years from the date of shipment
vii. The all-in-cost of such Rupee (INR) denominated trade credit should be commensurate with prevailing market conditions
viii. All other guidelines for trade credit will be applicable for such Rupee (INR) denominated trade credits

Overseas lenders of Rupee (INR) denominated trade credits will be eligible to hedge their exposure in Rupees through permitted derivative products in the on-shore market with an AD Category - I bank in India. Necessary guidelines for hedging will be issued separately.

For Full Text refer to A.P. (DIR Series) Circular No. 13 dated 10 September 2015

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10023

36 Opening of foreign currency accounts in India by ship-manning / crew-management agencies

General permission is available to ship-manning / crew managing agencies that are rendering services to shipping/airline companies incorporated outside India, to open, hold and maintain non-interest bearing foreign currency account with an AD Category – I bank in India for meeting the local expenses in India of such shipping or airline company.

With a view to ensuring strict compliance, our guidelines on the operations in such foreign currency accounts opened with AD Category-I banks by foreign shipping or airline companies or their agents in India are reproduced below:

a. Credits to such foreign currency accounts would be only by way of freight or passage fare collections in India or inward remittances through normal banking channels from the overseas principal. Debits will be towards various local expenses in connection with the management of the ships / crew in the ordinary course of business.
b. No credit facility (fund based or non-fund based) should be granted against security of funds held in such accounts.
c. The bank should meet the prescribed ‘reserve requirements’ in respect of balances in such accounts.
d. No EEFC facility should be allowed in respect of the remittances received in these accounts.
e. These foreign currency accounts will be maintained only during the validity period of the agreement.

For Full Text refer to A.P. (DIR Series) Circular No. 15 dated 24 September 2015

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10036

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Service Tax Decoded

CA. Punit R. Prajapati
punitca@gmail.com

Cenvat Credit in Construction Industry

1. Some abatements are available with condition that CENVAT Credit is not to be taken by the service provider. However, there is no restriction in Abatement Notification No. 26/2012-ST which applicable to builder/developer in taking credit for input services and capital goods. Similar is the situation if valuation is for works contract as provided under Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

2. There are three types of CENVAT Credit which can be availed in terms of provisions of the CENVAT Credit Rules, 2004.

   i. Excise Duty paid on Inputs (goods)

   ii. Service Tax paid on Input Services

   iii. Excise Duty paid on Capital Goods

3. Under Entry No. 12 of Notification No. 26/2012-ST and under provision of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, credit of Inputs (goods) is not available. However, credit for Input Services and Capital Goods can be availed even if benefit of abatement is availed or value is reduced under above stated rules.

4. CENVAT credit may be availed on receipt of invoice and invoice should contain the details as required under Rule 4A of the Service Tax Rules, 1994.

5. In construction industry, it is common that payment to the supplier of services is delayed and it may happen that credit is taken on services received from the contractor and payment to the contractor for his services is delayed. In such situation, second proviso to Rule 4(7) of the CENVAT Credit Rules, 2004 provides that if payment to service provider, for his services and service tax both, is not made within three months from the date of invoice, credit already availed shall be reversed. Thus, track of payments made to contractors shall be maintained and it should be made it sure that payment to such contractor is either paid within three months or credit taken on his invoice is reversed.

   Naturally, if payment is made after three months to the contractor for which credit was already reversed as stated above, the same credit may be taken back on payment to contractors.

6. CENVAT credit is to be taken within one year from the date of invoice. If credit is not taken within a year from the date of invoice, right of the builder/developer to take credit lapses and service tax paid on such services becomes cost to the builder.

7. However, above time limit is only for input or input services and not for the capital goods.

8. Following are the possible services on which CENVAT credit may be availed in construction industry.

   a. Services of Architects

   b. Legal Advisor for plan passing, environment clearance etc.

   c. Bank Charges paid for Project Loan.

   d. RCC Contractor's Services

   e. Masonry Contractor's Services

   f. Plaster Contractors Services

   g. Contracts for Tiling, Colour etc.

   h. Security Services

   i. Goods Transporter Agency Services

   j. Credit Rating Agency Fees

   k. Installation of Lift

   l. Installation of Electrical Installations

m. Hiring of Crane and other machinery etc.

n. Finishing Services Contracts like water proofing etc.

o. Interior Designing Service

p. Auditor's Fee

q. Fees for drafting of Sale Deed etc.

9. After 1st July, 2012, CENVAT credit of service tax paid to the contractors and sub-contractors are available and thus it is not a cost to the builder and developers. By paying service tax to them, over and above the agreed price, builders and developers do not incur additional cost. Thus, cost wise it is not making any difference for the builders and contractors should avoid any planning that is prone to litigation.

10. Generally, credit of service portion in the execution of a works contract and construction services is not available to service provider in so far as they are used for construction or execution of works contract of a building or a civil structure or a part thereof. However, this provision is not applicable to the builders and developer who are providing construction services and they can take such credit.

11. It is worth noting that term "Capital Goods" is defined in the CENVAT Credit Rules, 2004 and credit is available accordingly. It may be possible that certain goods are to be treated as Fixed Assets in the business but may not be capital goods for the purpose of CENVAT Credit. Definition of Capital Goods as provided at Rule 2(a) of the CENVAT Credit Rules, 2004 may be referred for further clarification.

12. In construction industry, it may possible that contractors, builder and developers own capital goods and are using their goods for their various construction sites and some of that projects are exempt from service tax. In such situation, it is to be noted that credit for the Capital Goods is available even if slightest use of the Capital Goods is for taxable projects.

13. If any imported capital goods is being used for provision of taxable projects, credit of CVD (equivalent to excise duty) paid on such imported capital goods is also available. However, credit of SAD (Special Additional Duty) is not available to service providers.

14. Basic exemption of Rs. 10 Lac is available under notification No. 33/2012-ST and it is also available to builders and developers. However, this exemption is available subject to condition that no CEVNAT Credit has been taken. However, in the case of construction projects, initially expenses are high and so the quantum of credit is also high. If one opts to avail such exemptions, he will not be able to take credit till the time such basic exemption continues. It may result in loss rather than benefit.

15. In construction industry, it is very common to revise the invoices due to finalization of measurements, rates, discounts etc. It may happen that invoice based on which credit is taken is revised downwards thereafter. In terms of third proviso to the CENVAT Credit Rules, 2004, in such case, proportionate credit is required to be reversed.

16. In construction of residential or commercial construction, generally, administrative or head office is located at different place than the actual construction site. Contractors and other service providers issues invoices either at administrative/head office or at site offices. Further, various services are also received at administrative/head office like auditors fee, legal consulting services, architect services. To avail the credit it is precondition that address of the service receiver is available on the invoice. Registration by builder may have been obtained at either at head office or at site and department may dispute the credit pertaining to the premise which is not registered with the service tax department.

    In such situation, builder/developer should make it sure that all invoices received by them shall contain the address of place for which registration with the service tax department is obtained by the builder/developer.

Another option is to obtain a centralized registration and include all sites and offices within a centralized registration. Builders who are working on number of projects and handling the projects from head office may opt for such registration.

Another option is to obtain a registration of Input Service Distributors at sites and offices (like marketing office from where no invoices are being issued and no liability to pay service tax) and avail the credit of services received at such offices and distribute such credit on head office or other offices.

17. CENVAT Credit can be availed soon after the invoice is received by service recipient. CENVAT Credit of service tax paid by service recipient himself, i. e. builder/developer under Reverse Charge Mechanism can also be availed. In such case credit for such tax paid under Reverse Charge Mechanism is available to builders/developers based on the challan through which they have paid the service tax and not on the basis of the invoices issued by the service providers (like contractors). Similarly, limitation of one year for taking credit, will start from the date of challan and not from the date of invoice of the service providers.

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Educational Institution : Exemption and Profit Motive

Queens Educational Society v/s. C.I.T. (2015) 275 CTR 449 (SC)

Issue:

What are the requirements for exemption u/s. 10(23C) (iii ad) and 10(23C) (vi) and if profit emerges, whether exemption is available?

Held:

Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it has ceased to exist solely for educational purposes and has become an institution for the purpose of making profit. In such case, the predominant object test must be applied. A distinction must be drawn between making of a surplus and the object of carrying on the institution "for profit". Merely because imparting of education results in making a profit, no inference arises that it has become an activity for profit. Ultimate test is whether on an overall view of the matter in the relevant assessment year the object is to make profit as opposed to educating persons- When a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit.

49

Recognition u/s. 80G : Requirement

CIT v/s. Vipassana Trust (2015) 229 Taxman 630 (Guj.)

Issue:

What are the requirements to be fulfilled at the time of seeking recognition u/s.80G of the I.T. Act?

Held:

It is well settled position of law that at the time of granting approval under section 80G, what is to be examined is the object of the trust and so far as the aspect of income is concerned, same can be very well examined by the Assessing Officer at the time of framing assessment. However, in the case on hand, the assessee-Trust was refused recognition only on the ground that it had not spent 85 per cent of the amount towards the objects of the Trust. The Tribunal, while passing the impugned order, relied on a decision of the Punjab & Haryana High Court in *CIT* v. *Surya Educational & Charitable Trust* [2011]203 Taxman 53/15 taxmann.com123, wherein, the High Court held that at the stage of registration under section 12AA, the extent and nature of activities are not required to be examined and the same is required to be examined in assessment proceedings. Similar view is taken by this Court in Tax Appeal No.306 of 2014 and the allied matters. In view of the above discussion, the Tribunal committed no jurisdictional error in issuing direction to grant recognition to the trust under section 80G (5).

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Service Tax - Recent Judgements

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

32 **Cricket Club of India Ltd. v. Commissioner of Service Tax [2015] 62 taxmann.com (Mumbai - CESTAT) CESTAT, MUMBAI BENCH**

Facts:-

Assessee was a members' club and was run by members themselves through appropriate management bodies and, in event of liquidation, amount was to be received by members. Department demanded service tax on entrance fee collected by assessee from members. Assessee argued that it was governed by principle of mutuality and not liable to service tax.

Held:- It was held that principle of mutuality applies squarely to assessee as a members' club and ruling in Sports Club of Gujarat (supra) would settle case in favour of assessee . It was further held that mere capacity of clubs to provide services does not amount to "club or association" services; there must be some "service" provided or agreed to be provided. Every fee or charge payable by members to a "club or association" does not, ipso facto, become taxable; each category of fee or charge needs to be examined severally to determine whether it is for some "service". In this case, entrance fee did not confer members access or services, facilities or advantages and was merely for inclusion in restricted group of members. It was merely towards contribution of expenses, which are necessary for sustenance and survival of club and maintenance of its assets. Hence, not being a consideration, same cannot be charged to service tax.

33 **Reliance Infratel Ltd vs. CST, Mumbai-II 2015 (39) STR 829 (Tri-Mumbai)**

Facts:- The appellant is a subsidiary of Reliance Communications Limited (hereinafter referred to as RCM) and was providing taxable service falling under 'Business Support Services' as defined in Section 65(124C) read with Section 65(105) of the Finance Act, 1994. Upon investigation by the officers of DGCEI, it was noticed that the appellant had entered into Master Service agreement with RCM and that RCM financed the appellant as per the Master Service Agreement the financial support given to appellant was to be set off against the bills that would be raised by the appellant on RCM. The adjudicating authority confirmed the demand of service tax with interest and penalties overruling the objection of the assessee that the demands raised by the Revenue was incorrect and amounts were repaid by them to RCM during the same financial year and they were not, therefore, consideration for the services rendered but interest-free loans received from holding-company.

Held:- It was held that the master service agreement is not leading to conclusion that amount received is in nature of advances for services to be rendered, hence not liable to service tax.

34 **Jitendra Singh Bagga Vs. Chhattisgarh State Civil Supplies Corpn. Ltd. (2015) 40 STR 69 CHH**

Facts:- Liability to pay service tax on GTA service by recipient of service be shifted to the supplier of GTA service.

Held:- It was held that assessee (Chhattisgarh State Civil Supplies Corporation Ltd) being a company incorporated under Companies Act, 1956, Service Tax leviable on said service is payable by the recipient of service. No illegality in passing incidence of liability to pay service tax by the recipient, Chhattisgarh State Civil Supplies Corporation Ltd., shifted to supplier of GTA service in terms of agreement. It being permissible in terms of Apex Court judgment in the case of Rashtriya Ispat Nigam Ltd. Vs. Diwan Chand Ram Saran [2012-26-STR-289-SC] Decided in favour of the assessee.

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VAT - Judgements and Updates

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

Statute Updates
Value Added Tax (VAT)

[I] **Important judgments/decisions delivered of Hon. Gujarat Vat Tribunal.**

[1] In case of Shiva Pharmachem Ltd. in respect of the demand of Appellate Authority:

Issue:

The dealer has not furnished declaration form 'C' at assessment stage and he has furnished the same in the first appeal. The appellant authority has demanded transport receipt while considering the claim of interstate sales. The Hon. Tribunal has decided that the Appellate Authority is not justified.

Held:

The claim of Interstate Sale made against Form C was disallowed while passing assessment order for the period 2008-2009. The appellant furnished certain declaration Form C before the Appellate Authority, but the claim was rejected because the appellant did not furnish proof of transportation of goods to the other state. In the second appeal, the appellant contended that once the claim of interstate sale was considered by the assessing officer, then the only requirement for getting benefit of concessional rate of tax was to furnish declaration form C. The appellate authority is not justified in demanding the proof of transportation of goods to the other state. Considering the submission made by the appellant, it is held that when the said transactions were once accepted as an interstate sale, there was no reason for the first appellate authority to ask for the LR. The matter is remanded to the assessing officer for allowing the benefit of reduced rate of tax of interstate sale made against form C which the appellant has furnished before the first appellate authority. There was issue of reduction of tax credit in respect to the use of LDO in the job work process. The matter is remanded to the assessing officer for producing necessary particulars for reducing tax credit in respect to LDO used in the job work

[2] **In case of Saurashtra Chemicals Ltd. in respect of Interest u/s. 54(i)(aa) of GST Act is held admissible in respect of Refund arising in the Appeal Order.**

Issue:

The appellant is a new industry and enjoying the benefit under GCST Act. The entitlement certificate was not received for modernization of plant during the assessment proceedings and therefore the benefit was not allowed.

Held:

The Hon. Tribunal held that in view of the few judgments appellant was entitled to get interest u/s. 54(i)(aa) on the refund of appeal. The important gist is reproduced hereunder for the benefit of the readers.

The appellant was enjoying benefit of new industries of the notification issued u/s. 49(2) of the GST Act. The entitlement certificate was not received for modernization of plant during the assessment proceeding for the period 1998-1999 were taken up by the department. The benefit of new industries was not allowed and heavy dues were raised against the appellant. The first appeal was admitted on payment of Rs. 99,98,464/- which ultimately granted as a refund in deciding of the appeal because meanwhile the appellant could obtain entitlement certificate for benefit of new industries scheme. The appellant requested for granting of interest u/s. 54(i)(aa) on the amount of refund arised in deciding the appeal. The claim of interest was not rejected. The appellant contended in the second appeal that the appellant was entitled to get interest on the amount of refund. The appellant in support to the contention that the appeal proceeding is constitute continuation of the assessment proceedings relied on the judgments in the case of Tel Utpadak Kendra 48 STC 248 (SC), Smt. Vimlaben Vadilal Mehta AIR 1984 SC 302 and M/s. A. S. Venkataram & Co. P. Ltd. AIR 1986 SC 1089. The appellant on the issue of interpretation of statute relied on judgment in the case of Tirath Singh AIR 1955 SC 830 and J G Gotla AIR 1985 SC 1968. The appellant also relied on the following judgments.

[i] Nagahills T. Company Ltd. 89 ITR 236 (SC)

[ii] Radheshyam Cotton Industries SCA No. 9864/2011 decided on 18.11.2011.

The appellant also relied on report of Sales Tax Study Team, Gujarat in respect to granting of interest on delayed payment of refund. It was also submitted that the earlier judgment in the case of Gayatri Tiles 2000 GSTB 204 and of Mahavir Expo Chem Ltd. 22.04.2004 requires re-consideration. While deciding the issue whether the interest is admissible on the amount of refund arise in deciding the appeal. The Hon. Tribunal has referred the following important judgments.

- National Insurance Co. Ltd. (2007) 48 (3) GLR 2564
- Roshalki vs, Tico Bank JT 2007 (2) SC 611
- K. P. Varghese 131 ITR 591 (SC)
- Onkar S Kanvar (2002_ 125 Taxman 121 SC
- Mayur Foundation 274 ITR 562 (Guj)
- Shankar Iron Store 75 STC 4 (Del)
- Mohta Brothers (1975) 36 STC 582
- Garikapati Veeraya AIR 1957 SC 540
- Arulmurugan & Co. 51 STC 381 (Mad)
- D. J. Works 195 ITR 227 (GH)

Accordingly, in view of the judgments relied on as above and referring sub clause (b) to the explanation to section 54(i)(aa), it is held that the appellant was entitled to get interest on the amount of interest arise in deciding of the appeal.

[3] **M/s. Atlas Pharmachem Industries Pvt. Ltd.**

Issue:

Whether the excess Tax Credit is firstly required to be adjusted against the tax liability of the current year?

Held:

The assessment order was passed for the period 2008-2009 in which the excess tax credit of Rs. 13,96,276/- was not adjusted against the tax liability of the current year and the dues were determined payable to the tune of Rs. 24,65,393/- which includes the amount of tax of Rs. 7,97,210/-, interest of Rs. 4,72,368/- and penalty of Rs. 11,95,815/-. The first appeal was summarily dismissed on account of not making payment of pre-deposit amount. In the second appeal, it was contended that the excess tax credit of Rs. 13,96,276/- was required to be adjusted against the tax liability of the current year. Considering section 13 and in view of rule 18, the second appeal is allowed and it is held that the tax liability shall be deducted from the available excess tax credit and therefore the resultant interest and penalty shall be deleted.

[4] **The Hon. GVAT Tribunal has decided in case of Good Luck Traders that refund should be granted with Interest and the Department should pay Rs. 500/- as a cost for default.**

Issue:

In the Misc. Application before the Hon. Tribunal the appellant has raised the issue that as per the direction, the department has not calculated interest on the late payment of refund and therefore the Hon. Tribunal has given the direction to the officer to pay the interest on the payment of refund.

Held:

The Hon. Tribunal has considered the rival submissions and facts of the case, the Ld. Advocate for the appellant has submitted that the applicant will finish once gain ECS form and cancelled cheque within 24 hours. The Ld. Government Representative has submitted that as soon as cancelled cheque and ECS from are produced the applicant will be given the interest amount within one week from the date of receipt of such details. The fact, however, still remains that this Tribunal has directed the department to grant interest amount within one month from the date of the said order dt. 9.1.2015, meaning thereby the department was supposed to make payment on or before 9.2.2015, Till this date, the payment is not made to the applicant for whatever reasons. In view of this matter, the department is hereby directed to pay a cost of Rs. 500/- to the applicant forthwith. Mr. Ld. Advocate for the appellant has, however, submitted that this is not correct calculation and he will give correct calculation with cancelled cheque as well as ECS Form. The department is therefore directed to verify this calculation and grant an interest amount accordingly.

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Kaybee (P) Ltd. Vs. ITO 171 TTJ 536 (Mum)
Assessment Year: 2008-09 Order Dated: 29th May, 2015

Basic Facts

The assessee was engaged in running business centre by providing amenities. It had also received service charges/commission charges for making purchase of textiles, yarns etc. on behalf of ‘K’ Limited, Singapore. Mr. Gis one of the Directors of the assessee company and also holding 99.9% of the share holding of the assessee company. Mr. G was also director of K Limited & its chief operating officer. The AO held the two companies are AE’s in terms of section 92(1) as well as section 92A(2) of the Act. The CIT(A) upheld the order of the AO.

Issue

Whether one enterprise was participating directly or indirectly or through one or more intermediaries in management or control or capital of other company and, hence, assessee and ‘K’ Limited, Singapore are AEs as per Section 92A?

Held

In the instant case, there is no denial of the fact that ‘G’ was Director and 99.9 per cent shareholder of the assessee company and also was a Director and Chief Operating Officer of ‘K’ Limited, Singapore. Therefore, ‘G’ not only participated in management of both the companies but he was also holding the key position in the management of ‘K’ Limited, Singapore and was part of decision making process of the said company since 1996. ‘G’ is a common director in both the company and participating in the management of both the companies not for the name sake but he is holding the key position in taking decision being a Chief Operating Officer of ‘K’ Limited, Singapore and almost the entire shareholding of the assessee company; therefore, the condition of one enterprise participates directly or indirectly or through one or more intermediaries in its management or control or capital as prescribed under clauses (a) & (b) of sub-section (1) of section 92A was satisfied and hence, the assessee and ‘K’ Limited, Singapore are AEs as per the provisions of section 92A.

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Business Valuation

Academic Refresher

CA. Hozefa Natalwala
researchbv@gmail.com

International Glossary of Business Valuation Terms*

To enhance and sustain the quality of business valuations for the benefit of the profession and its clientele, the identified societies and organizations have adopted the definitions for the terms included in this glossary.

The performance of business valuation services requires a high degree of skill and imposes upon the valuation professional a duty to communicate the valuation process and conclusion in a manner that is clear and not misleading. This duty is advanced through the use of terms whose meanings are clearly established and consistently applied throughout the profession.

If, in the opinion of the business valuation professional, one or more of these terms needs to be used in a manner that materially departs from the enclosed definitions, it is recommended that the term be defined as used within that valuation engagement.

This glossary has been developed to provide guidance to business valuation practitioners by further memorializing the body of knowledge that constitutes the competent and careful determination of value and, more particularly, the communication of how that value was determined.

Departure from this glossary is not intended to provide a basis for civil liability and should not be presumed to create evidence that any duty has been breached.

- American Institute of Certified Public Accountants
- American Society of Appraisers
- Canadian Institute of Chartered Business Valuators
- National Association of Certified Valuation Analysts
- The Institute of Business Appraisers

Adjusted Book Value Method—a method within the asset approach whereby all assets and liabilities (including off-balance sheet, intangible, and contingent) are adjusted to their fair market values (NOTE: In Canada on a going concern basis).

Adjusted Net Asset Method—see **Adjusted Book Value Method**.

Appraisal—see **Valuation**.

Appraisal Approach—see **Valuation Approach**.

Appraisal Date—see **Valuation Date**.

Appraisal Method—see **Valuation Method**.

Appraisal Procedure—see **Valuation Procedure.**

Arbitrage Pricing Theory—a multivariate model for estimating the cost of equity capital, which incorporates several systematic risk factors.

Asset (Asset-Based) Approach—a general way of determining a value indication of a business, business ownership interest, or security using one or more methods based on the value of the assets net of liabilities.

Beta—a measure of systematic risk of a stock; the tendency of a stock's price to correlate with changes in a specific index.

Blockage Discount—an amount or percentage deducted from the current market price of a publicly traded stock to reflect the decrease in the per share value of a block of stock that is of a size that could not be sold in a reasonable period of time given normal trading volume.

Book Value—see **Net Book Value**.

Business—see **Business Enterprise**.

Business Enterprise—a commercial, industrial, service, or investment entity (or a combination thereof) pursuing an economic activity.

Business Risk—the degree of uncertainty of realizing expected future returns of the business resulting from factors other than financial leverage. See Financial Risk.

Business Valuation—the act or process of determining the value of a business enterprise or ownership interest therein.

Capital Asset Pricing Model (CAPM)—a model in which the cost of capital for any stock or portfolio of stocks equals a risk-free rate plus a risk premium that is proportionate to the systematic risk of the stock or portfolio.

Capitalization—a conversion of a single period of economic benefits into value.

Capitalization Factor—any multiple or divisor used to convert anticipated economic benefits of a single period into value.

Capitalization of Earnings Method—a method within the income approach whereby economic benefits for a representative single period are converted to value through division by a capitalization rate.

Capitalization Rate—any divisor (usually expressed as a percentage) used to convert anticipated economic benefits of a single period into value.

Capital Structure—the composition of the invested capital of a business enterprise, the mix of debt and equity financing.

Cash Flow—cash that is generated over a period of time by an asset, group of assets, or business enterprise. It may be used in a general sense to encompass various levels of specifically defined cash flows. When the term is used, it should be supplemented by a qualifier (for example, “discretionary” or “operating”) and a specific definition in the given valuation context.

Common Size Statements—financial statements in which each line is expressed as a percentage of the total. On the balance sheet, each line item is shown as a percentage of total assets, and on the income statement, each item is expressed as a percentage of sales.

Control—the power to direct the management and policies of a business enterprise.

Control Premium—an amount or a percentage by which the pro rata value of a controlling interest exceeds the pro rata value of a non-controlling interest in a business enterprise, to reflect the power of control.

Cost Approach—a general way of determining a value indication of an individual asset by quantifying the amount of money required to replace the future service capability of that asset.

Cost of Capital—the expected rate of return that the market requires in order to attract funds to a particular investment.

Debt-Free—we discourage the use of this term. See **Invested Capital**.

Discount for Lack of Control—an amount or percentage deducted from the pro rata share of value of 100 percent of an equity interest in a business to reflect the absence of some or all of the powers of control.

Discount for Lack of Marketability—an amount or percentage deducted from the value of an ownership interest to reflect the relative absence of marketability.

Discount for Lack of Voting Rights—an amount or percentage deducted from the per share value of a minority interest voting share to reflect the absence of voting rights.

Discount Rate—a rate of return used to convert a future monetary sum into present value.

Discounted Cash Flow Method—a method within the income approach whereby the present value of future expected net cash flows is calculated using a discount rate.

Discounted Future Earnings Method—a method within the income approach whereby the present value of future expected economic benefits is calculated using a discount rate.

Economic Benefits—inflows such as revenues, net income, net cash flows, etc.

Economic Life—the period of time over which property may generate economic benefits.

Effective Date—see Valuation Date.

Enterprise—see Business Enterprise.

Equity—the owner's interest in property after deduction of all liabilities.

Equity Net Cash Flows—those cash flows available to pay out to equity holders (in the form of dividends) after funding operations of the business enterprise, making necessary capital investments, and increasing or decreasing debt financing.

Equity Risk Premium—a rate of return added to a risk- free rate to reflect the additional risk of equity instruments over risk free instruments (a component of the cost of equity capital or equity discount rate).

Excess Earnings—that amount of anticipated economic benefits that exceeds an appropriate rate of return on the value of a selected asset base (often net tangible assets) used to generate those anticipated economic benefits.

Excess Earnings Method—a specific way of determining a value indication of a business, business ownership interest, or security determined as the sum of a) the value of the assets derived by capitalizing excess earnings and b) the value of the selected asset base. Also frequently used to value intangible assets. See **Excess Earnings**.

Fair Market Value—the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts. (NOTE: In Canada, the term "price" should be replaced with the term "highest price.")

Fairness Opinion—an opinion as to whether or not the consideration in a transaction is fair from a financial point of view.

Financial Risk—the degree of uncertainty of realizing expected future returns of the business resulting from financial leverage. See **Business Risk**.

Forced Liquidation Value—liquidation value, at which the asset or assets are sold as quickly as possible, such as at an auction.

Free Cash Flows—we discourage the use of this term. See **Net Cash Flows**.

Going Concern—an ongoing operating business enterprise.

Going Concern Value—the value of a business enterprise that is expected to continue to operate into the future. The intangible elements of Going Concern Value result from factors such as having a trained work force, an operational plant, and the necessary licenses, systems, and procedures in place.

Goodwill—that intangible asset arising as a result of name, reputation, customer loyalty, location, products, and similar factors not separately identified.

Goodwill Value—the value attributable to goodwill.

Guideline Public Company Method—a method within the market approach whereby market multiples are derived from market prices of stocks of companies that are engaged in the same or similar lines of business, and that are actively traded on a free and open market.

Income (Income -Based) Approach—a general way of determining a value indication of a business,

business ownership interest, security, or intangible asset using one or more methods that convert anticipated economic benefits into a present single amount.

Intangible Assets—non-physical assets such as franchises, trademarks, patents, copyrights, goodwill, equities, mineral rights, securities and contracts (as distinguished from physical assets) that grant rights and privileges, and have value for the owner.

Internal Rate of Return—a discount rate at which the present value of the future cash flows of the investment equals the cost of the investment.

Intrinsic Value—the value that an investor considers, on the basis of an evaluation or available facts, to be the "true" or "real" value that will become the market value when other investors reach the same conclusion. When the term applies to options, it is the difference between the exercise price or strike price of an option and the market value of the underlying security.

Invested Capital—the sum of equity and debt in a business enterprise. Debt is typically a) all interest-bearing debt or b) long-term interest-bearing debt. When the term is used, it should be supplemented by a specific definition in the given valuation context.

Invested Capital Net Cash Flows—those cash flows available to pay out to equity holders (in the form of dividends) and debt investors (in the form of principal and interest) after funding operations of the business enterprise and making necessary capital investments.

Investment Risk—the degree of uncertainty as to the realization of expected returns.

Investment Value—the value to a particular investor based on individual investment requirements and expectations. (NOTE: in Canada, the term used is "Value to the Owner.")

Key Person Discount—an amount or percentage deducted from the value of an ownership interest to reflect the reduction in value resulting from the actual or potential loss of a key person in a business enterprise.

Levered Beta—the beta reflecting a capital structure that includes debt.

Limited Appraisal—the act or process of determining the value of a business, business ownership interest, security, or intangible asset with limitations in analyses, procedures, or scope.

Liquidity—the ability to quickly convert property to cash or pay a liability.

Liquidation Value—the net amount that would be realized if the business is terminated and the assets are sold piecemeal. Liquidation can be either "orderly" or "forced."

Majority Control—the degree of control provided by a majority position.

Majority Interest—an ownership interest greater than 50 percent of the voting interest in a business enterprise.

Market (Market-Based) Approach—a general way of determining a value indication of a business, business ownership interest, security, or intangible asset by using one or more methods that compare the subject to similar businesses, business ownership interests, securities, or intangible assets that have been sold.

Market Capitalization of Equity—the share price of a publicly traded stock multiplied by the number of shares outstanding.

Market Capitalization of Invested Capital—the market capitalization of equity plus the market value of the debt component of invested capital.

Market Multiple—the market value of a company's stock or invested capital divided by a company measure (such as economic benefits, number of customers).

Marketability—the ability to quickly convert property to cash at minimal cost.

Marketability Discount—see **Discount for Lack of Marketability**.

Merger and Acquisition Method—a method within the market approach whereby pricing multiples are derived from transactions of significant interests in companies engaged in the same or similar lines of business.

Mid-Year Discounting—a convention used in the Discounted Future Earnings Method that reflects economic benefits being generated at midyear, approximating the effect of economic benefits being generated evenly throughout the year.

Minority Discount—a discount for lack of control applicable to a minority interest.

Minority Interest—an ownership interest less than 50 percent of the voting interest in a business enterprise.

Multiple—the inverse of the capitalization rate.

Net Book Value—with respect to a business enterprise, the difference between total assets (net of accumulated depreciation, depletion, and amortization) and total liabilities as they appear on the balance sheet (synonymous with Shareholder's Equity). With respect to a specific asset, the capitalized cost less accumulated amortization or depreciation as it appears on the books of account of the business enterprise.

Net Cash Flows—when the term is used, it should be supplemented by a qualifier. See **Equity Net Cash Flows** and **Invested Capital Net Cash Flows**.

Net Present Value—the value, as of a specified date, of future cash inflows less all cash outflows (including the cost of investment) calculated using an appropriate discount rate.

Net Tangible Asset Value—the value of the business enterprise's tangible assets (excluding excess assets and non-operating assets) minus the value of its liabilities.

Non-Operating Assets—assets not necessary to ongoing operations of the business enterprise. (NOTE: in Canada, the term used is "Redundant Assets.")

Normalized Earnings—economic benefits adjusted for nonrecurring, non economic, or other unusual items to eliminate anomalies and/or facilitate comparisons.

Normalized Financial Statements—financial statements adjusted for non operating assets and liabilities and/or for nonrecurring, non economic, or other unusual items to eliminate anomalies and/or facilitate comparisons.

Orderly Liquidation Value—liquidation value at which the asset or assets are sold over a reasonable period of time to maximize proceeds received.

Premise of Value—an assumption regarding the most likely set of transactional circumstances that may be applicable to the subject valuation; e.g. going concern, liquidation.

Present Value—the value, as of a specified date, of future economic benefits and/or proceeds from sale, calculated using an appropriate discount rate.

Portfolio Discount—an amount or percentage deducted from the value of a business enterprise to reflect the fact that it owns dissimilar operations or assets that do not fit well together.

Price/Earnings Multiple—the price of a share of stock divided by its earnings per share.

Rate of Return—an amount of income (loss) and/or change in value realized or anticipated on an investment, expressed as a percentage of that investment.

Redundant Assets—see **Non-Operating Assets**.

Report Date—the date conclusions are transmitted to the client.

Replacement Cost New—the current cost of a similar new property having the nearest equivalent utility to the property being valued.

Reproduction Cost New—the current cost of an identical new property.

Required Rate of Return—the minimum rate of return acceptable by investors before they will commit money to an investment at a given level of risk.

Residual Value—the value as of the end of the discrete projection period in a discounted future earnings model.

Return on Equity—the amount, expressed as a percentage, earned on a company's common equity for a given period.

Return on Investment—see **Return on Invested Capital** and **Return on Equity**.

Return on Invested Capital—the amount, expressed as a percentage, earned on a company's total capital for a given period.

Risk-Free Rate—the rate of return available in the market on an investment free of default risk.

Risk Premium—a rate of return added to a risk-free rate to reflect risk.

Rule of Thumb—a mathematical formula developed from the relationship between price and certain variables based on experience, observation, hearsay, or a combination of these; usually industry specific.

Special Interest Purchasers—acquirers who believe they can enjoy post-acquisition economies of scale, synergies, or strategic advantages by combining the acquired business interest with their own.

Standard of Value—the identification of the type of value being used in a specific engagement; e.g. fair market value, fair value, investment value.

Sustaining Capital Reinvestment—the periodic capital outlay required to maintain operations at existing levels, net of the tax shield available from such outlays.

Systematic Risk—the risk that is common to all risky securities and cannot be eliminated through diversification. The measure of systematic risk in stocks is the beta coefficient.

Tangible Assets—physical assets (such as cash, accounts receivable, inventory, property, plant and equipment, etc.).

Terminal Value—see **Residual Value**.

Transaction Method—see **Merger and Acquisition Method**.

Unlevered Beta—the beta reflecting a capital structure without debt.

Unsystematic Risk—the risk specific to an individual security that can be avoided through diversification.

Valuation—the act or process of determining the value of a business, business ownership interest, security, or intangible asset.

Valuation Approach—a general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more valuation methods.

Valuation Date—the specific point in time as of which the valuator's opinion of value applies (also referred to as "Effective Date" or "Appraisal Date").

Valuation Method—within approaches, a specific way to determine value.

Valuation Procedure—the act, manner, and technique of performing the steps of an appraisal method.

Valuation Ratio—a fraction in which a value or price serves as the numerator and financial, operating, or physical data serves as the denominator.

Value to the Owner—see **Investment Value.**

Voting Control—de jure control of a business enterprise.

Weighted Average Cost of Capital (WACC)—the cost of capital (discount rate) determined by the weighted average, at market value, of the cost of all financing sources in the business enterprise's capital structure.

*(source: www.aicpa.org)

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Corporate Law Update

CA. Naveen Mandovara
naveenmandovara@gmail.com

MCA Updates:

1. **Alterations to Schedule III, Companies Act, 2013.**

(1) In the said Schedule, in Part I- Balance Sheet-

(i) Under the heading "Equity and Liabilities", in para (4), for "(b) Trade payables", the following shall be substituted, namely:-

"(b) Trade Payables:-

(A) total outstanding dues of micro enterprises and small enterprises; and

(B) total outstanding dues of creditors other than micro enterprises and small enterprises.".

(2) Under the heading "Notes: General Instructions for preparation of Balance Sheet", in para 6, after sub-para F the following shall be inserted, namely:-

"FA. Trade Payables

The following details relating to Micro, Small and Medium Enterprises shall be disclosed in the notes:-

(a) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier at the end of each accounting year:

(b) the amount of interest paid by the buyer in terms of section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;

(c) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under the Micro, Small and Medium Enterprises Development Act, 2006;

(d) the amount of interest accrued and remaining unpaid at the end of each accounting year; and

(e) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues above are actually paid to the small enterprise, for the purpose of disallowance of a deductible expenditure under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Explanation: The terms 'appointed day', 'buyer', 'enterprise', 'micro enterprise', 'small enterprise' and 'supplier', shall have the same meaning assigned to those under clauses (b), (d), (e), (h), (m) and (n) respectively of section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.

[F. No. 01/19/2013 CL-V, Dated September 4th, 2015]

2. Paras 5 (ii) (a) (1), 5 (ii) (a) (2), 5 (ii) (e), 5 (iii), 5 (viii) (a), 5 (viii) (b), 5 (viii) (c) and 5 (viii) (e) relating to Additional information of the General instructions for preparation of Statement of Profit and Loss in Schedule III of the Companies Act, 2013, shall not apply to government companies producing Defense Equipment including the Space Research subject to fulfillment of following conditions, namely:-

Conditions:

A. The Board of Directors of the Company has given consent with regard to non-disclosure of information relating to paras 5(ii)(a)(1), 5(ii)(a)(2), 5(ii)(e), 5(iii), 5(viii)(a), 5(viii)(b), 5(viii)(c) and 5(viii)(e), as may be applicable;

B. The Company shall disclose in the Notes forming part of the balance sheet and profit and loss account, the fact of grant of exemption under this notification;

C. The company shall comply with the prescribed Accounting Standards;

D. The company shall ensure that its financial statements represent a true and fair state of affairs of its finances; and

E. The company shall maintain and file such information as may be prescribed or called for or required by the Government or the Reserve Bank of India or any other regulator.

Note: This notification shall be applicable in respect of financial statement prepared in respect of the financial years ending on or after the 31st March, 2016.

[F. No. 01/19/2013 CL-V part, Dated September 4th, 2015]

3. Companies (Accounts) Second Amendment Rules, 2015

In the Companies (Accounts) Rules, 2014,

(i) in rule 2, in sub rule (1), after clause (d), following shall be inserted, namely:-

"(da) "Indian Accounting Standards" means the Indian Accounting Standards referred to in rule 3 and Annexure to the Companies (Indian Accounting Standards) Rules, 2015."

(ii) after rule 4 the following rule shall be inserted, namely:-

"4A. Forms and items contained in financial statements- The financial statements shall be in the form specified in Schedule III to the Act and comply with Accounting Standards or Indian Accounting Standards as applicable:

Provided that the items contained in the financial statements shall be prepared in accordance with the definitions and other requirements specified in the Accounting Standards or the Indian Accounting Standards, as the case may be."

(iii) in rule 8, in sub rule (3), the following proviso shall be inserted at the end, namely:-

Provided that the requirement of furnishing information and details as under this sub-rule shall not apply to a Government Company engaged in producing defence equipment."

(iv) in rule 12, for sub-rule 910 the following sub-rule shall be substituted, namely:-

"(1) Every Company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statement, if any, with Form AOC-4 CFS."

(v) Form AOC-4 has been substituted by AOC-4 and AOC-4 CFS.

[F. No. 01/19/2013 CL-V part, Dated September 4th, 2015]

4. Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015.

(a) The following class of companies shall file their financial statement and other documents under section 137 of the Act the Registrar in the e-form AOC-4 XBRL for the financial years commencing on or after 1st April, 2014 using the XBRL taxonomy given in Annexure II, namely:-

(i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or

(ii) all companies having paid up capital of rupees five crore or above;

(iii) all companies having turnover of rupees hundred crore or above; or

(iv) all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:

Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

(b) Filing of cost audit report - A company required to furnish cost audit report and other documents to the Central Government under sub-section (6) of section 148 of the Act and rules made thereunder, shall file such report and other documents using the XBRL taxonomy given in Annexure-III.for the financial years commencing on or after 1st April, 2014 in e-form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014.

[F. No. 01/19/2013 CL-V, Dated September 9th, 2015]

5. Companies (Acceptance of Deposits) Second Amendment Rules, 2015.

(a) In the Companies (Acceptance of Deposits) Rules, 2014, in rule 2, in sub-rule (1), in clause (c), for sub-clause (viii), the following shall be substituted, namely:-

"(viii) any amount received from a Person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company:

Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;"

(b) In the said rules, in rule 3,

(a) for the words "paid-up share capital and free reserves", wherever they occur, the words "Paid-up share capital, free reserves and securities premium account" shall be substituted;

(b) in sub-rule (8), in the Table, for item (e) and entries relating thereto the following shall be substituted, namely:-

"(e) Brickwork Ratings India Pvt Ltd (Brickwork) – BWR FBBB"

[F. No. 01/08/2013 CL-V, Dated September 15th, 2015]

SEBI Updates:

1. Format for compliance report on Corporate Governance to be submitted to Stock Exchange (s) by Listed Entities.

- Regulation 27(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), specifies that the listed entity shall submit quarterly compliance report on corporate governance in the format specified by the Board from time to time to recognised Stock Exchange(s) within fifteen days from close of the quarter.

- Compliance Report on Corporate Governance are to be submitted as under:-

  Annexure - I - on quarterly basis;

  Annexure - II - at the end of the financial year (for the whole of financial year);

  Annexure - III - within six months from end of financial year. This may be submitted along with second quarter report.

- Additionally, the following reports shall also be placed before the board of directors of the listed entity in terms of requirement under Regulation 17(3) of Listing Regulations:-

  3.1. Compliance Reports mentioned at para 2 above;

  3.2. Secretarial Audit Report prepared in accordance with Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 under Section 204 of the Companies Act, 2013 in so far as it pertains to Securities Laws.

The above report shall be placed before the board of directors of the listed entity in its next meeting.

- This circular shall come into force with effect from 90 days of notifications of Listing Regulations i.e. September 02, 2015.

[CIR/CFD/CMD/ 5 /2015, Circular dated, September 24th, 2015]

2. Format of Uniform Listing Agreement.

- The requirement of executing a listing agreement with the Stock Exchange is specified under different regulations related with initial issuance of capital, the details of which are as under:

Type of Securities	Regulation	Regulation No.
Specified Securities (Equity & Convertible Securities on Main Board or SME or ITP) or Indian Depository Receipts	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR")	Regulation 109
Non-Convertible Debt Securities	Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 ("ILDS")	Regulation 19A
Non-Convertible Redeemable Preference Shares	Securities and Exchange Board of India (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 ("NCRPS")	Regulation 16A
Securitised Debt Instruments	Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 ("SDI")	Regulation 35A
Mutual Funds	Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 ("MF")	Regulation 31B

- In order to give effect to the requirements of Regulations mentioned above, a simplified listing agreement which is uniform across all types of securities/listed entities is being specified under Annexure I of this circular on SEBI website at www.sebi.gov.in under the categories "Legal Framework" and "Issues and listing", "Mutual Funds", "Corporate Debt Market" "Continuous Disclosure Requirements.
- A listed entity which has previously entered into agreement(s) with a recognized Stock Exchange(s) to list its securities shall execute a fresh listing agreement with such Stock Exchange within six months of the date of notification of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) i.e. September 2, 2015.

Notwithstanding such novation, any action taken or purported to have been done or taken by the Stock Exchanges or SEBI, any enquiry or investigation commenced or show cause notice issued in respect of the existing listing agreement shall be deemed to have been done or taken under the corresponding provisions of the Listing Regulations in force.

[CIR/CFD/CMD/6/2015, Circular dated 13th October, 2015]

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Allied Laws Corner

Adv. Ankit Talsania
ankittalsania@gmail.com

Whether employees have *locus* to file Winding – up Petition u/s 433 of the Companies Act, 1956 / 271 of the Companies Act, 2013 in respect of his unpaid wages / salary and emoluments?

1. Recently an employee of a Company filed a Winding-up Petition u/s 433 of the Companies Act, 1956 in respect of his unpaid wages / salary and emoluments before the Hon'ble Madhya Pradesh High Court. The question which arose and formulated for consideration before the Hon'ble Madhya Pradesh High Court was as to ***'Whether unpaid wages/salary of workman/employee can be covered within the meaning of debts under section 433(e) and the view taken by Single Judge in the matter of Pawan Kumar Khullar v. Kaushal Leather Board Ltd. AIR 1996 MP 85 in this regard was correct.'***

2. The Hon'ble Madhya Pradesh High Court after considering the law in detailed held that,

   (a) outstanding or unpaid wages/salary of workman/employee is a 'debt' to be paid by company;

   (b) no provision of Companies Act excludes dues to be received by employee be it, in service or former employee, from character of a debt to be paid by company;

   (c) workman is a creditor of company to extent of his unpaid wages and salary ;

   (d) the fact that no specific reference is made to dues of employees in section 529A unlike workmen's dues, to be paid as overriding preferential payments, does not mean that amount receivable by employees, who may not be workmen as such, is not a debt or that they are excluded from term 'creditors' in any manner;

   (e) remedy provided under sections 433 and 434 is to all creditors, known by whatever description be it, in respect of goods purchased from them or services rendered by them, as the case may be;

   and therefore, employee of company has locus to file company petition under section 433 in respect of his unpaid wages/salary and emoluments, as having been filed by a creditor of company.

3. In order to appreciate the controversy the Facts of the Case is given as under :

   "2. Briefly stated, the Company Petition for winding up of Respondent-Company is filed on the assertion that the respondent-Company had engaged the petitioner to manage the Asset Management Business in Singapore vide letter dated 05.03.2008 and subsequent employment letter dated 18.04.2008. The petitioner was accordingly appointed as the Chief Executive Officer of the respondent-Company and was assured payment of a gross annual salary of S$ 650,000 being S$ 54,166 per month. The petitioner was also offered two years employment, a fixed and guaranteed annual bonus of S$ 450,000. Further, the respondent-Company was fully satisfied by the services rendered by the petitioner after his appointment and was receiving regular monthly salary till 31.03.2009. However, after 31.03.2009 as the respondent-Company failed and neglected to pay monthly salary to the petitioner in spite of several requests made by the petitioner to the respondent-Company in that behalf until 14.09.2009, which resulted in penury condition for the petitioner. The petitioner, therefore, resigned from service on 14.09.2009 by sending a resignation letter to the respondent- Company and also demanded his rightful dues including the outstanding salary of S$ 297,961.67 for the period between 1.4.2009 to 14.9.2009, the fixed and guaranteed bonus of S$ 131,250 for the period starting from 18.04.2009 till 14.09.2009, aggregating to S$ 879,211.67 which is equivalent to Indian Rs. 3,00,69,039 (Rupees Three Crores Sixty Nine Thousand and Thirty Nine Only) at the conversion rate of Indian Rs. 34.2 (Rupees Thirty Four and Two Paise) for each Singapore Dollar as on 14.09.2009.

3. According to the petitioner, in spite of repeated oral as well as written reminders, the respondent-Company paid no heed to discharge its debts payable to the petitioner towards outstanding salary and emoluments for the services rendered by him. The petitioner, however, was informed by the respondent- Company that the fund flow situation of the Company was yet to improve. Thus, being unconvinced with the excuse given by the respondent-Company, which was avoiding to discharge its obligation to pay its debt amount to the petitioner and was unable to pay the same, the petitioner sent a legal notice dated 26.09.2009 to the respondent-Company demanding a sum of S$ 879,211,67, giving the breakup of the amount.

4. According to the petitioner, the respondent-Company vide letter dated 14.12.2009 admitted its liability, by stating, *inter alia*, that the respondent-Company was facing financial crisis and unable to make the payment due to prevailing market situation. By the said communication, the respondent-Company also volunteered to amicably settle the matter with the petitioner. The petitioner vide letter dated 26.12.2009 responded by stating that he had shown enough patience for more than 6 months with a hope of settlement of his dues and for that had even given up his II year guaranteed bonus of S$ 131,250. Nevertheless, the petitioner informed that he was willing to discuss about amicable settlement, without prejudice to his rights and contentions. The respondent-Company, however, by letter dated 31.12.2009 even though admitted its liability to pay salary to the petitioner, raised issue of no business brought by the petitioner, for which, was not entitled to receive any bonus. In the said communication, the respondent-Company, however, expressed willingness to pay only salary of the petitioner, amounting to S$ 297,961.67, in three to four installments because of the financial crisis faced by the respondent-Company. The petitioner by his letter dated 08.01.2010 reiterated that he was entitled to receive the sum of S$ 747,961.67 after foregoing II year guaranteed bonus of S$ 131,250. Finally, as the petitioner did not receive any favourable response from the respondent-Company nor his outstanding dues were settled, was forced to file Company Petition under Sections 433 and 434 of the Companies Act, 1956 (for brevity "Act"), on 27.01.2010."

4. The Hon'ble Madhya Pradesh High Court held as under :

"12. In the backdrop of the abovesaid facts, it must follow that the outstanding or unpaid wages/salary of the workman/employee is a "debt" to be paid by the Company. The expression "debt" has not been defined in the Act. Going by the meaning of term "debts" as understood in common parlance, it is a sum of money due from one person to another. It would not only mean the obligation of the debtor to pay, but also the right of the Creditor to receive and enforce payment. Further, no distinction can be made between remuneration due to be recovered and the sum which is to be recovered as price of goods purchased on credit. The Supreme Court in the case of *Kesoram Industries and Cotton Mills Ltd*. (*supra*) after considering several decisions on the point from paragraph 23 onwards, summarized the position in paragraph 33, which is as follows:

"33. To summarize : A debt is a present obligation to pay an ascertainable sum of money, whether the amount is payable in *praesenti* or *in futuro; debitum in praesenti, solvendum in futuro*. But a sum payable upon a contingency does not become a debt until the said contingency has happened. . . . ."

13. The application for winding up of the Company, as predicated by Section 439 of the Act, can be presented by the specified enumerated persons. Clause (b) of Sub-section (1) thereof, mentions of any Creditor or Creditors, including any contingent or prospective creditor or creditors. The ground on which relief of winding up of Company can be pursued by the Creditor is ascribable to Section 433(e) of the Act. It envisages - where the company is unable to pay its debts. Where the company is unable to pay its debts, by a deeming provision inserted in the form of Section 434, it is envisaged that if the company fails to respond to the demand made by way of legal notice exceeding the specified amount, there is legal presumption that the company is unable to pay its debts. Indeed, that legal position is rebuttable. Going by the legislative Scheme, it is, therefore, amply clear that any creditor can invoke the jurisdiction of Company Court praying for winding up of Company.

14. Therefore, the moot question is : whether the petitioner qualifies the definition of creditor in the context of his claim regarding unpaid wages, salary and emoluments receivable from the respondent-Company where he was employed during the relevant period.

15. The expression "Creditor" is intrinsically linked to the expression "debt"/"debts". Wherever it is a case of "debts", the person, who is entitled to receive the amount, as belonging to him, is necessarily a creditor. No provision of any statute much less of the Companies Act has been brought to our notice, which expressly or impliedly excludes the dues to be received by the employee - be it, in service or former employee - from the character of a debt to be paid by the Company; and for which reason the person so employed is not a creditor of the Company, within the meaning of Section 439 or any other provision of the Companies Act.

16. We may now deal with the decision of the learned Company Judge of Our High Court in the case of *Pawan Kumar Khullar* (*supra*). In that case also, the petitioner had filed Company Petition for winding up of the Company on the assertion of non-payment of his salary. The Company Judge observed that there is difference between debt and salary. Further, the salary is the remuneration paid to a person or employee in lieu of services rendered by him/her whereas debt is not remuneration. Debt is something which is borrowed by a person on settled terms and conditions and settled rate of interest and can be re-settled between the parties.

17. With utmost respect, we disagree with this opinion. It is not possible to countenance that unpaid salary is not a debt, in view of the exposition of Supreme Court in *Kesoram Industries & Cotton Mills Ltd.* (*supra*) and also the meaning of expression "debt" as understood in common parlance mentioned in P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, Vol.2 at page 1238 till 1243. It is noted that debt means any pecuniary liability, whether payable presently or in future, or whether ascertained or to be ascertained. It means any liability which is claimed as due from any person. Indeed, it must be a legally payable amount or dues. In the Earl Jowitt's Dictionary of English Law, it is noted that debt is a sum of money due from one person to another. A debt exists when a certain sum of money is owing from one person to another. Debt denotes not only the obligation of the debtor to pay, but also the right of the creditor to receive and enforce payment. Referring to the case of DPP v. Turner, (1973)3 ALL ER 124, it is noted that debt normally has one or other of two meanings. It can mean an obligation to pay money or it can mean a sum of money owed. It is unnecessary to multiply the other illustrations, referred to in the said dictionary, except to mention that expression "debt" has to be given widest amplitude to mean any liability which is claimed as due from any person.

18. The Andhra Pradesh High Court has had occasion to consider similar issue in the case of *Capt. B.S. Demogray* (*supra*). Even in that case the petitioner, who had invoked remedy of Company Petition for winding up of the respondent- Company, was an employee of that Company and had resigned from the post of Trainee/ Captain before institution of the petition. In that case, resignation was not accepted by the Company till the filing of the petition. In that sense, it was a case similar to the facts of Pawan Kumar Khullar, as the petitioner was in employment of the Company or worker of the Company. In the present case, however, it is admitted that the petitioner has already tendered resignation and there is nothing to indicate that resignation was still treated as pending. Be that as it may, the Company Judge of the Andhra Pradesh High Court disagreed with the view taken by the Company Judge of Our High Court in *Pawan Kumar Khullar* (*supra*). It will be useful to reproduce the relevant part of the said decision, which reads thus:

'In the case of Kesoram Industries and *Cotton Mills Ltd.* v. *CWT* [1966] 59 ITR 767, the apex court, after discussing various decisions, has observed that (pages 780 and 787) :

"a debt means a sum of money which is now payable or will become payable in future by reason of present obligation *debitum in praesenti, solvendum in futuro.*

A debt involves an obligation incurred by the debtor and the liability to pay a sum of money in present or future. The liability must, however, be to pay a sum of money, i.e., to pay an amount which is determined or determinable in the light of factors existing on the date when the nature of the liability is to be ascertained."

The claim of short delivery of materials has been held to be debt in the case of *Kudremukh Iron Ore Co. Ltd.* v. *Kooky Roadways P. Ltd.* [1990] 69 Comp Cas 178 (Kar). The unpaid salary of an employee is liable to be recovered from the employer, because the employer is obliged to a pay it to the employee for the services rendered by it. As noted above, a debt is a sum which is to be recovered from a person who is obliged to pay the same and, therefore, no line of demarcation can be drawn between a remuneration due to be recovered and a sum which is to be recovered because a person has to pay for the price goods which has been purchased by him on credit. With respect I am unable to agree with the view taken by the learned single judge of the Madhya Pradesh High Court in the case of *Pawan Kumar Khullar* v. *Kaushal Leather Board Limited* [1996] 87 Comp Cas 130 : AIR 1996 MP 85. I, therefore, hold that an unpaid salary is also a debt.'

19. This decision has been approved by the Division Bench of the Andhra High Court in the case of *M. Suryanarayana* (*supra*). Even in the case before the Division Bench, the petitioner was an employee of the respondent- Company and had resorted to Company Petition for winding up of the Company in respect of unpaid salary as debt within the meaning of Section 433(e) of the Act. The Division Bench referred to the meaning of word "debt" as given in Black's Law Dictionary, fifth edition, which, *inter alia*, mentions that there must be an existing obligation to pay sum of money now or in future. The Division Bench proceeded to observe thus:

xxx…

20. After adverting to the decision of Our High Court in the case of *Pawan Kumar Khullar* (*supra*), the Division Bench of Andhra Pradesh High Court went on to observe as follows:-

xxx….

We are in respectful agreement with the view taken by the learned single judge of this court in the above judgment. In deciding the question whether arrears of salary could be a "debt", in our considered opinion, section 530(1)(b) of the Act also in a way suggests that arrears of salary payable to an employee of the company can be treated as a debt. Section 530 deals with preferential payments in the matter of clearing the outstanding debts of the company. Section 530(1)(b) reads:

"Section 630. Preferential payment:- (1) In a winding up, subject to the provisions of Section 529A, there shall be paid in priority to all other debts-(a) . . . .

(*b*) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in Sub-section (2):"

Section 530(1)(b) speaks of wages in respect of services rendered to the company as a preferential charge. If wages and salary payable to an employee of the company in respect of services rendered to it is made a preferential charge under the Act, there is no good or sound reason to take out the arrears of salary or salary already due to an employee of the company from the definition or meaning to the concept "debt" in the context of Section 433(e) of the Act. Therefore, we hold that in a given case, even arrears of salary due to an employee of the company which is sought to be wound up can be a "debt" within the meaning of that term under Section 433(e) of the Act and it cannot be said as a general rule, that under no circumstance, arrears of salary or salary due to an employee of the Company can be a "debt".'

21. Besides the decision of the Division Bench of the Andhra Pradesh High Court, even the Company Judge of Delhi High Court has answered the issue against the Company. The argument canvassed before us that after the decision of the Supreme Court in *National Textile Workers' Union* (*supra*), in particular observations found in para 7 of the said judgment, the right to apply for winding up of Company being a creature of statute, and no such right having been conferred on the workers, they cannot prefer a winding up petition against a Company, has been examined. The background in which these observations have been made by the Supreme Court has been pithily analyzed by the Company Judge of the Delhi High Court, from pages 59 to 62; and concluded that the said observations are in the context of the argument raised on behalf of the Company in the said proceeding about the *locus* of the workers to intervene. In other words, the Court was dealing with the said argument of the Company that the workers have no right to be heard in the said proceedings and that extreme argument has been negatived.

22. Suffice it to observe that the Delhi High Court has justly analyzed the observations of the Supreme Court in *National Textile Workers' Union* (*supra*); and relying on Section 439 of the Act, has noted that when the worker becomes a Creditor, he will have a right to institute petition as a creditor of the Company. In substance, the Court has noted that it is one thing to refuse to entertain the prayer for winding up at the instance of the employee concerned, which is within the discretion of Company Court and can be done in larger interests of the public. But, to say that the worker has no locus to maintain petition for winding up of a company in respect of his claim for unpaid salary/wages is untenable. The latter cannot be countenanced, in the light of the express provision in Section 439 read with Sections 433 and 434 of the Act. Taking any other view, would be re-writing the said provisions to mean that unpaid salary is not a debt within the meaning of Section 433(e) and the employee, who owes unpaid salary from the Company even after ceases to be employee of that Company is not a Creditor of the Company, in relation to the claim of unpaid salary and wages.

23. Notably, the Delhi High Court was also considering the petitions of two ex-employees and held that Company Petition for winding up filed by them against the Company in relation to unpaid salary/ wages for the period when they were working with the respondent-Company, could be maintained by them as Creditors.

24. The decision of the Supreme Court in *IBA Health (I.) (P.) Ltd* (*supra*) pressed into service by the respondent, in our view, deals with completely different proposition. Further, we fail to understand as to how observations made in paragraph 34 of the said decision can support the argument of respondent-Company - that Company Petition by a former employee of the Company for recovery of his dues, is not maintainable.

25. That leaves us with the decision of the Company Judge of the Bombay High Court in the case of *Mumbai Labour Union* (*supra*). Even this decision has been correctly analyzed by the Company Judge of the Delhi High Court in the case of *Argha Sen* (*supra*). The apprehension of the respondent-Company that on the interpretation given by the Division Bench of the Andhra Pradesh High Court and Company Judge of the Delhi High Court, if accepted, may result in encouraging avoidable litigation to be filed by the disgruntled employees and Trade Unions, does not commend to us. The provision, such as, Section 439 read with Sections 433 and 434, providing for remedy to class of persons, cannot be interpreted on such apprehensions.

26. As aforesaid, none of the provisions in the Companies Act persuade us to take the view that the claim of worker or employee regarding his unpaid salary, wages or emoluments cannot be treated as debt or dues payable by the Company. Once that contention fails, it would necessarily follow that the workman is a Creditor of the Company to the extent of his unpaid wages and salary. This view is reinforced from Chapter-V of the Companies Act. For, Section 529, defines the purport of expression "workmen's dues". Further, Section 529A provides for Overriding Preferential Payments in respect of workmen's dues. There is preferential right to receive those dues guaranteed under Section 530 of the Act over other dues. The fact that special preference in payment of workmen's dues has been specified in the Act, does not mean that the workmen are excluded from the term "creditors" or that the amount of unpaid salary, wages or emoluments of the workmen is not a debt payable by the Company, as such.

27. Counsel for the respondent-Company invited our attention to Sub-section (5) of Section 530 of the Act including the distinction made between workman and the employee of the Company. The fact that no specific reference is made to the dues of employees in Section 529A unlike workmen's dues, to be paid as overriding preferential payments, does not mean that the amount receivable by the employees, who may not be workmen as such, is not a debt or that they are excluded from the term "creditors" in any manner. The remedy provided under Section 433 and 434 of the Act is to all the creditors, known by whatever description - be it, in respect of goods purchased from them or services rendered by them, as the case may be. It is not possible to exclude one amongst those, considering the sweep of Sections 433 and 434 and in Section 439 of the Act.

28. Reverting to the question referred for being considered by us, we may improvise the same as to whether the unpaid wages/ salary of a former workman/employee, as in the present case, can be the foundation for resorting to remedy of winding up of Company under Sections 433(e) and 434 of the Act. We agree with the opinion of the Division Bench of the Andhra Pradesh High Court in *M. Suryanarayana* (*supra*) and of the Company Judge of the Delhi High Court in *Argha Sen* (*supra*).

29. We accordingly, hold that the employee of the Company has locus to file Company Petition in respect of his unpaid wages/salary and emoluments, as having been filed by a creditor of the Company. As a concomitant, the opinion of the learned Company Judge of our High Court in the case of *Pawan Kumar Khullar* (*supra*), is overturned.

30. While parting, we may clarify that we may not be understood to have expressed any opinion on the merits of the claim of the parties or for that matter on the question relevant for exercise of discretion of the Company Judge to entertain the Company Petition, in any manner. Those issues will have to be decided at the appropriate stage.

31. We further clarify that we may not be understood to have expressed any opinion on whether the Trade Unions have locus to espouse the cause of workmen/ employees regarding unpaid salary/wages against the Company by way of a Company Petition. That question can be decided in appropriate proceedings, as it is not relevant in the present case.

32. We answer the issue referred to us on the above terms and direct the Registry to forthwith place the matter before the Company Judge (Indore Bench) for further consideration in accordance with law."

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From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

AS – 9 Revenue Recognition – Annual Report 2014-15

Chemfab Alkalis Limited

Domestic sale of product is recognised when the products are dispatched to the customer and it is at this point that the risks and rewards of ownership are transferred as per the terms of sale/understanding with the customers. Sales are inclusive of excise duty but excluding others taxes and are net of rebates and discounts.

Export sale of products is recognised when good are delivered to the carrier, and it is at this point that the risks and rewards of ownership are transferred as per the terms of sale/understanding with the customers

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

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

Interest income is recognized using time proportion method.

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

Revenue are recognised when collectability of resulting receivables is reasonably assured and is net of estimated allowance for uncertainty

Indian Oil Corporation Limited

11.1 Revenue from sale of goods is recognised when sufficient risks and rewards are transfer to customers which is generally on dispatch of goods

11.2 Dividend income is recognized when the company's right to receive dividend is established.

11.3 Claims (including interest on outstanding) are accounted: a) When there is certainty that the claims are realizable b) Generally at cost

11.4 Income and expenditure up to Rupees five lakhs in each case pertaining to previous year are accounted for in the current year.

11.5 Pre-paid expenses up to Rupees five lakhs in each case are charged to Statement of Profit & Loss in the year in which it is incurred.

Hindustan Media Ventures Limited

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

Advertisements

Revenue is recognized as and when advertisement is published / displayed and is disclosed net of discounts.

Sale of News & Publications, Waste Paper and Scrap

Revenue is recognized when the significant risks and rewards of ownership have passed on to the buyer and is disclosed net of sales return and discounts.

Printing Job Work

Revenue from printing job work is recognized on the completion of job work as per terms of the Agreement

Interest/ Income from investment

Revenue is recognized on a time proportion basis taking into account the amount outstanding and the rate applicable. Income on investments made in the units of mutual funds is recognized based on the yield earned and to the extent of its reasonable certainty.

Commission Income

Commission income from sourcing of advertisement orders on behalf of other entities' publications is recognized on printing of the advertisement in those publications.

Dividend Income

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

RPP Infra Projects Limited

A. Accounting of construction contracts

The Company follows the (Accounting Standard 7) percentage completion method, based on the stage of completion as at the balance sheet date, taking into account the contractual price and revision there to by estimating total revenue and total cost till completion of the contract and the profit so determined has been accounted for proportionate to the percentage of the actual work done as on the date of the Balance Sheet.

B. Other Operational Income

Other Operational Income Includes Revenue for Technical services provided and accounted on accrual basis.

C. Other Income

a. Claims were accounted as income in the year of receipt of arbitration award or acceptance by client or evidence of acceptance.

b. Income of Power Generation from Windmill was accounted in the period in which the right to receive of the same is established.

c. Interest income is recognised on the time proportion basis.

d. Other items of income are accounted as and when the right to receive arises.

Oberoi Realty Limited

i) Revenue from real estate projects

The Group follows the percentage of project completion method for its projects. The revenue recognition policy is as under:

(a) Project for which revenue is recognised for the first time on or after April 1, 2012 In case of real estate project which commences on or after April 1, 2012 and also for real estate projects which have already commenced but where revenue is being recognised for the first time on or after April 1, 2012, the Group recognizes revenue in proportion to the actual project cost incurred (including land cost) as against the total estimated project cost (including land cost), subject to achieving the threshold level of project cost (excluding land cost) as well as area sold, in line with the Guidance Note issued by ICAI and depending on the type of project.

(b) Project for which revenue recognition has commenced prior to April 1, 2012 In this scenario, the Group recognizes revenue in proportion to the actual project cost incurred (excluding land cost) as against the total estimated project cost (excluding land cost) subject to completion of construction work to a certain level depending on the type of the project.

Revenue is recognised net of indirect taxes and on execution of either an agreement or a letter of allotment. The estimates relating to percentage of completion, costs to completion, area available for sale etc. being of a technical nature are reviewed and revised periodically by the management and are considered as change in estimates and accordingly, the effect of such changes in estimates is recognised prospectively in the period in which such changes are determined. Land cost includes the cost of land, land related development rights and premium

ii) Revenue from hospitality

Room revenue is recognised based on occupancy. Revenue from sale of food and beverages and other allied services is recognised as and when the services are rendered. Revenue is recognised net of trade discounts and indirect taxes, if any

iii) Revenue from lease rentals and related income

Lease income is recognised in the statement of profit and loss on straight line basis over the lease term, unless there is another systematic basis which is more representative of the time pattern of the lease. Revenue from lease rentals is disclosed net of indirect taxes, if any. Revenue from property management service is recognised at value of service and is disclosed net of indirect taxes, if any.

iv) Other income

Dividend income is recognised when the right to receive dividend is established. Other incomes are accounted on accrual basis, except interest on delayed payment by debtors and liquidated damages which are accounted on acceptance of the Group’s claim.

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From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Service Tax

1) Notification regarding Cenvat Credit of EDU. Cess and SHE Cess can be used for payment of service tax after 01/06/2015

CBEC vide this notification clarified that Cenvat Credit of Edu. Cess and SHE Cess related to input and capital goods which is received on or after 1/6/2015 in the premises of output service provider can be used for payment of service tax on or after 01/06/2015. Also the balance 50% cess related to capital goods for financial year 2014-15 can be utilized for payment of service tax on any output service.

Further it is also provided that the credit of Edu Cess and SHE Cess paid on input service in respect of which the invoice, bill, challan or service tax certificate for transportation of goods by rail as the case may be, is received by the provider of output service on or after the 01/06/2015, can be utilized for payment of service tax on any output service.

(For full text refer Notification No. 22, dated 29/10/2015)

2) Circular relating to revised monetary limits for arrest in service tax

The limit for arrest of a person in relation to evasion of service tax or misuse of cenvat credit has been increased from rupees fifty lacs to rupees one crore.

(Circular no. 1010, dated 23/10/2015)

3) Notification relating to further amendment in notification no. 25/2012,dated 20/06/2012

The Central Government hereby amends notification no. 25/2012 so as to exempt specified services provided by Business Facilitator/Business Correspondent with respect to a Basic Saving Bank Deposit account covered by Pradhan Mantri Jan Dhan Yojana (PMJDY) in the banking company's rural area branches. Further it also includes activities relating to advancement of yoga, in the definition of charitable activities, for the purposes of exemption from service tax.

(For full text refer Notification no. 20, dated 21/10/2015)

4) Notification regarding taxability of services provide in relation to remittances of money to India from overseas.

Central Govt vide this notification clarified that no service tax will be levied on the service provided by an Indian Bank or other entity acting as an agent to the Money Transfer Service Operators (MTSO) in relation to remittance of foreign currency from outside India to India from 01/07/2012 to 13/10/2014.

(For full text refer notification no. 19 , dated 14/10/2015)

5) Regarding service tax levy on services provided by a Goods Transport Agency

Goods Transport Agency (GTA) has been defined to mean any person who provides service to a person in relation to transport of goods by road and issues consignment note, by whatever name called. The service provided is a composite service which may include various ancillary services such as loading/ unloading, packing/unpacking, transshipment, temporary storage etc., which are provided in the course of transportation of goods by road. These ancillary services may be provided by GTA himself or may be sub-contracted by the GTA. In either case, for the service provided, GTA issues a consignment note and the invoice issued by the GTA for providing the said service includes the value of ancillary services provided in the course of transportation of goods by road.

Thus, a composite service, even if it consists of more than one service, should be treated as a single service based on the main or principal service. Thus, if ancillary services are provided in the course of transportation of goods by road and the charges for such services are included in the invoice issued by the GTA, and not by any other person, such services would form part of GTA service and, therefore, the abatement of 70%, presently applicable to GTA service, would be available on it.

(Circular No. 186, dated 05/10/2015)

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Association News

CA. Nirav R. Choksi
Hon. Secretary

CA. Dilip U. Jodhani
Hon. Secretary

Forthcoming Programmes

Date	Time	Programmes	Speaker	Venue
19.11.2015	07.00 p.m to 09.00 p.m.		Diwali Get Together	Rajwadu, Nr. Jivraj Tolnaka, Behind Ambaji Mandir, Malav Talav, Jivrajpark, Ahmedabad
15.12.2015 To 22.12.2015		International Study Tour	VariesSpeaker	Bali, Indonesia
02.01.2016	09.00 a. m.	Cricket MatchPresident IX v / s Secretary IX		Sardar Patel Stadium, Navrangpura,Ahmedabad

Glimpses of Event gone by:

Study Circle Meeting was held on 21st October 2015 on the topic of "Technical aspect on Service Tax Returns & Related Procedures" at Atma Hall, Ashram Road,

(L to R CA. Rakesh Gupta, CA. Yamal Vyas, Speaker CA. Rahul Patel, CA. Ganesh Nadar)

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Dear Member,,

Hitherto Single Window Grievance Clearance Cell of was operative only at Ahmedabad, mainly for complaints relating to non receipt of refunds.

Today, at 3.05 pm. Pr. CCIT, Gujarat, Shri Sushil Chandra, inaugurated Single Window Clearance Cell through video conference at Ahmedabad, Baroda, Rajkot and Surat by Unveiling application form for filing grievance relating to no receipt of Refunds, Rectifications and Appeal Effects.

Application form along with relevant guidelines for filing applications are attached for benefit of the members.

For, Legal & Representation Committee

CA. S. K. Sadhwani — *Chairman*

CA. Ajit C. Shah — *Convener*

Date: 05.11.2015

APPLICATION TO SINGLE WINDOW CLEARANCE CELL (SWCC) (FOR REFUND, RECTIFICATION & APPEAL EFFECT)

(Ahmedabad Region)

1. Name of the assessee	:	
2. Address of the assessee	:	
3. P.A.N	:	
4. A.Y. (s)	:	
5. Concerned A.O.	:	
6. Contact details of assessee	:	Tele: No. / Mobile No / Email id
7. Application pertains to (tick appropriate Box)	:	1. For Refund { } 2. For Rectification { } 3. For Appeal effect Order { }
8. Gist of request (Not exceeding 100 words)	:	
9. Application filed before Pr. CIT* [(*) If Applicable]	:	Date of Application :-

Date: ____________________

Signature of the Assessee.

— Please see overleaf for Guidelines & Supporting enclosures required to be attached with this application.

— Ahmedabad region includes Ahmedabad, Bhavnagar, Gandhinagar, Mehsana, Palanpur, Modasa, Himmatnagar, Surendranagar, Kadi, Unjha & Patan.

(*) Please see overleaf.

GUIDELINES FOR APPLICATION TO SINGLE WINDOW CLEARANCE CELL (SWCC)

1. Application for refund:-

— **Only** in cases of **Manual Returns or E-filled returns where CPC (Centralized Processing Centre, B'lore) has pushed the Returns to the jurisdictional AO.**

— **Only**, if the assessee has not received refunds **even after ONE YEAR** from the date of filling of Return of Income.

— Enclosures

1. Acknowledgement of Filling of Return of Income.
2. Copy of Form 26AS, where Tax credit as claimed duly appears in Form 26AS.
3. Where tax is paid or deducted but not reflected in Form 26AS, relevant challan for payment of Tax (Advance –tax, /self Assessment tax) and or Form 16A evidencing TDS, in respect of the missing Tax Credit.
4. Any other relevant documents, if any.

2. Application for Rectification u/s 154:-

— **Only**, if the Assessee's Application for rectification u/s 154 has **NOT** been disposed off by the concerned A.O. within **FOUR MONTHS** of the date of such application.

— **Only**, if application pertains to an issue that previously has **never been disposed off** by the A.O.

— In cases, where A.O. has not disposed off the rectification within two months, assessees are advised to file an application before concerned Pr. CIT (*).

— Enclosures

1. Copy of relevant Rectification Application u/s 154 with date of filling.
2. Copy of application filed before Pr. CIT, if applicable (*).
3. Disclaimer letter signed by assessee / A.R certifying that the issue has never been disposed by A.O.
4. Any other relevant documents, if any.

3. Application for Appeal Effect Order:-

— **Only**, if the concerned A.O has **NOT** passed Appeal Effect Order within **FOUR MONTHS** from the date of receipt of the relevant Appeal Order. In cases, where A.O. has not given appeal effect within two months, assessees are advised to file an application before concerned

Pr. CIT (*).

— Enclosures

1. Copy of relevant Appeal Order.
2. Copy of the application filed before Pr. CIT if applicable (*).
3. Any other relevant documents, if any.

(Note: - All the above guidelines and enclosures are mandatory, without which the application would deem to be rejected.)

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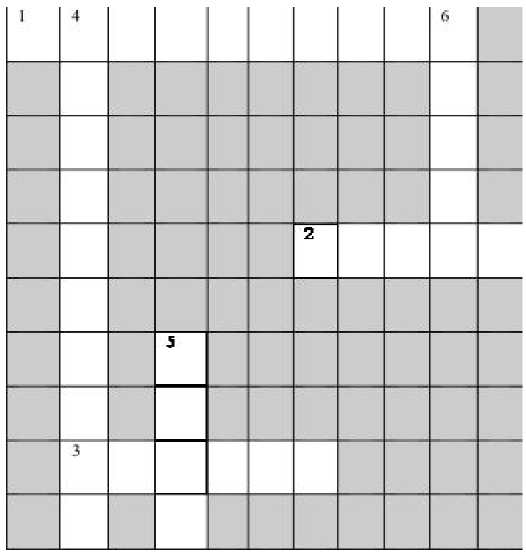
ACAJ Crossword Contest # 18

Across

1. Once the source of cash deposit in Bank account is explained, subsequent __________ is not required to be explained.
2. As per notification no. 76. dated 29-09-2015, the deductor will be required to retain form 15G/H for _____ years.
3. Today valuables have taken precedence over ______.

Down

4. The National IPR Policy of India is based on the theme of "________ India, Creative India".
5. In case of Tara Agencies, Hon'ble Supreme Court held that ____ is an articial or thing which can be produced by the assessee.
6. As per the decision of Kolkata Tribunal, the provisions of section 194I are not applicable to _____ premium.



Notes:

1. The Crossword puzzle is based on previous issue of ACA Journal.
2. Two 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 20/11/2015.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 17

1. CA. Ajit C. Shah
2. CA. Naresh J. Patel

ACAJ Crossword Contest # 17 - Solution

Across

1. Storage & Warehousing
2. Transaction
3. Prayer

Down

4. Repayment
5. India
6. Speculative

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