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

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MananaM

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Do not tell me

The usual response of adult human being is, he knows everything and does not require any further guidance or advice, *"I know everything, please do not tell me", I have been living life according to the situations given by God and I shall live with the situation according to my experience and knowledge"*. The question is whether this is a right approach to life?

The obvious answer is yes. The reason is one cannot live life of others. Each human being is genetically (Tamas, Rajas and Satva) different than other. Therefore in Gita there are 18 chapters (YoGa) and each one is applicable according to the level of intellect and physical strength of Individual. In fact our Varna Vyavastha is based on this principle but converted into caste and creed by influential governors of society of then relevant time. Human being cannot be judged by birth taken in a family, but he should be judged by his natural characteristics. Arjuna was preached by Lord Krishna to look into his inner characteristics to fight the battle. Someone may have more curiosity for getting more knowledge to direct the life according to the level of intellect, while others may have eagerness to improve the physical strength and lead the life. In both the situations the fundamental universal principles remain the same that human being cannot live without action. The person cannot run away from doing and taking actions. Even not doing action is also an action. Therefore which action is more appropriate, one needs to decide based on his intellect and mind. To illustrate this situation, let me give one example. In a motor car, we need engine, which generates power, while steering coupled with accelerator along with gear assist driver to reach at his destination. In a real life, Mind is an engine (powerhouse), generates energy and steam, and intellect is a steering cum accelerator along with gear. If car gets started but gear with accelerator and steering is not used, driver will remain at the same place. Similarly mind is working hard but without intellect, the progress is ruled out. In fact intellect should dominate and guide the mind. However while applying intellect, fear comes as front runner and discourages the actions. Fear comes from ignorance. To overcome this situation, one needs to have knowledge, which drives away ignorance and inturn instills confidence for taking an action. The knowledge even works on mind because the function of mind is to believe and function of intellect is to understand. **Hence knowledge is a panacea**. Knowledge comprises of information and experience. However at the same time the function of mind is vitally important. The mind is influenced by knowledge and intuition .The desires come from the mind and satisfaction of desire also registers in mind. Therefore predominately mind is a first place for any action. The desire comes from necessity or a feeling of incompleteness. Here one needs to draw a line for things described as basic necessity and things required to fill this imaginary in-completeness. The desires derived from feeling of incompleteness need more attention, because it is related to beyond necessity. For example, someone fixes goal for attaining a super rich status. The fixation of goal is not bad but it comes from incomplete feeling of a person which requires more attention. The knowledge may provide directions to fulfill it. If a person is conscious of doing things with ethical principles (all religions spell about ethical practices), the doer himself and society at large will derive good fruits .

Therefore one needs to improve his knowledge continuously by following right path. "I"stands for ignorance, which needs to be removed by kindling the light of knowledge. Hence continuous satsang is required for good experience and conditioning the mind which is having influence of intellect too. **Everyone has to take appropriate decision at the earliest on any situation rather than running away or giving up action.** Do the actions as duty, exercise intellect and mind while executing the task and offer it to GOD saying that we have done our best and leave the rest unto HIM and accept the result as Prasadi of GOD, which will reduce your stress. Every execution of action has a reaction; even taking no action is also action. The result of action is based on how it is executed. This is not a science, which one can prove that what action you take, you will get certain result. If it is a science, no need of believing in theory of GOD's presence. It is a matter of faith. Developing theory and believing

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Why so much dependence on Bank Branch Audits?

Yet another fiscal year ends, preparations for the coming year start and life of a practising chartered accountant somehow gets lost in due dates of statutory compliances. As the month of March begin, so does the allotment of Bank Branch audit assignments. All of the professional brethrens hope to have an opportunity to work as the bank branch auditors and many are fortunate to find themselves on the panel and are allotted the assignment.

The point I wish to talk about is how we chartered accountants look up to for this work. Quite often, it is found that when an audit is allotted, the first and foremost question raised is how much are the advances. If the question is to assess the quantum of work, fair enough! Unfortunately, the person who at least wanted a bank audit work, shifts his attention to the remuneration it will generate. We need to understand and appreciate, be it a bank branch audit or any other assignment, when it is driven by the monetary reward the execution is somehow affected but if it is out of love for the work, it gives immense joy in carrying out the work and complete satisfaction when it's done. Money as such will follow the work, nobody can stop it and it is bound to come. I have seen instances when professionals plan their vacations based on professional fee to be received from the bank branch audit. Truly speaking there is no harm in doing it, the problem arises when our life gets dependent on only one type of assignment, specially the bank branch audits. The hope is that we are a respectable profession; we can very well rise from this attitude and serve the society with our expertise. Needless to say, material prosperity is automatic!

Pranams,
CA. Ashok Kataria

Yandamuri Veerendranath is a Chartered Accountant and had worked with State Finance Corporation for 5 years and with Andhra Bank for 10 years in a senior executive position. He was the youngest officer to hold highest position in the history of the bank. Though he resigned himself to Novel writing (Telugu) after that and wrote about 50 novels to his credit. Many of his work are translated into Tamil, Kannada and Malayalam, Hindi, Gujarati and Marathi. He also won several awards for his notable works in literature. He also worked for more than 30 Films. Many of his novels have been made into motion pictures in Telugu.

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MananaM

certain things beyond comprehension of human mind is faith. This does not mean that science and spirituality are different. It is going hand in hand but science stops somewhere and spirituality travels further. Faith cannot be proved but confidence can be proved. This is the difference between faith and confidence. Generally we are always questioning the things which we dislike.The things which we like or which gives us pleasure are never listed in our diary as question. Let me give one more example to clarify the belief. As a chartered accountant,you open your office daily in anticipation that someone may need your services and will pay visit to you. This is your faith in yourself as well as visitor has faith in you that you will be helpful to him. Are you able to prove that who will visit you and what result you will be able to deliver? You may say it a matter of faith in your capability and facts of case, Right? Another example is when we take food , we try our level best to select good quality of food but leave it to stomach to get it digested with faith that it will functions and food will get digested. We cannot do anything as far as digestion process is concerned. It is a Divine's presence, which we accept unknowingly as faith in this case. Similarly, one should visit temple or place of worship of God and offer himself. If you have done an action as accepting your duty with full ability, the result would be good. However running away from taking action and expecting no action will yield good result is a stupidity. Believe it that one needs to lift, sustain and progress himself by his own knowledge and experience and no miracle will make this possible unless you take own actions.

“ we cannot teach people anything, we can only help them discover it within themselves”

-Galileo Galilei

From the President

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This month I intend to take up an issue very close to my heart. The number of youngsters qualifying as Chartered Accountants is increasing by the day, and that is a highly encouraging sign. A large number of newly qualified members enter into Practice. One belief-should I say myth?, is that mostly those young members who do not get good jobs enter into Practice arena.

I disagree. Actually CA Practice requires a different mindset than that required for a corporate job. And these days, most of the young boys and girls are clear in their minds even before qualifying as to what they intend to do . It is possible that a few may be undecided and some may be entering Practice because of circumstances, but for a large majority of young CAs it is not the case.

Having said that, let me point out that the professional career of many of these youngsters is not going in the proper direction. For example, some believe that there are various short cuts available to succeed in the profession, and they think nothing of cutting corners in their professional work. Now as we have learnt from experience of others and our own, there are no short cuts for success in our profession. This is not a business which can have a windfall season and you can make millions in a short time.

A CA's work is low risk- no one goes bankrupt- low return activity, and progress is naturally slow. So, to expect your Practice income to grow and match that of the best paid employed CA of your batch in 5 years would not be proper. But, Practice gives you lot of scope for personal development in the specialised area you like. This is hardly possible in a job. Secondly, the growth may be slow, but it is also steady, and in a few years, one can really make name -and money -based on one's talent and hard work. And nothing can be more satisfying than that.

One disturbing recent development in the profession has been the news that some nationalised banks are floating tenders for concurrent audits. As I write this, the Institute, always vigilant and working for the members, has come out with the diktat that we cannot bid for any tender for any work which only CAs can do. I am not clear whether Concurrent Audit of Banks falls under this category or not.

In my view, the Institute has to be vigilant to ensure that the areas of practice that we can do increase, and other competing professions or vested interests do not manage to reduce the size of our pie. And this is a real threat.

The young members I meet usually have little interest in reading and gaining solid knowledge. This is unfortunate because reading is the main source through which we update ourselves professionally. The media may change, but acquiring knowledge through reading will continue in future also. The coaching classes have been spoon-feeding the students with readymade, examination friendly knowledge.

This has helped students pass the exams, but without extensive reading habit, becoming a thoroughbred professional is impossible. This may sound old fashioned but it is true. So, my request to the young members reading this: keep yourself updated with reading as much as you can.

We are fortunate that technological development has made our life much simpler. Getting details of relevant judgements is today fairly easy, courtesy Google. But this can be turned to our advantage only if we use this saved time to get hold of a few more judgements and commentaries to deepen our knowledge base. Sadly this is not happening.

I am sure that with more experience the young brigade will turn into better professionals. My confidence comes from observing that the raw material is excellent. It only needs to be processed properly. And with the rigorous professional grind before them, the processing will definitely good. All the best!

CA. Yamal Vyas
President

Bogus Purchases

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During the course of assessment proceedings, at times, purchases are questioned by the Assessing Officer and notice is given as to why certain purchases be not considered as bogus and the appropriate amount be disallowed in respect of such purchases and added to income coupled with penalty proceedings.

The question arises mostly when the seller of goods is not verifiable as the notices issued to such sellers are not being served as they are not available, or the Assessing Officer doubts that purchases are not made at all.

It is usually a fact that when purchases are made, bills are received and payments are made by account payee cheques so as not to contravene the provisions of Section 40A(3) which provides payment exceeding Rs.20,000/- by Account Payee Cheques only. Hence for purchases usually the assessee makes payment by Account Payee Cheques.

It would be necessary to submit necessary evidences of purchases made when Assessing Officer refuses to believe that purchases are made and goods are received.

To substantiate the claim of deduction in respect of purchase price of goods, following proofs are required to be submitted so as to satisfy the Assessing Officer regarding genuineness of the purchases.

(1) Copy of Purchase Bill received from the sellers, which mentions the name of assessee as purchaser, date, description of goods-purchased with quantity, price and total amount. In the printed copy of the Bill, seller party's Vat number may have been mentioned which supports that the seller was a registered dealer with the Vat Department Genuineness of the seller party can be verified on inquiry with the Vat Department.

(2) Amount paid in respect of the purchase made by Account Payee Cheque. The same will reflect in (a) Bank Book (b) Ledger in Party's Account and (c) Bank Pass Book as the cheque is cleared. If it is possible the details of the Bank by which the cheque is cleared and in which account the same is cleared can be obtained and produced. It is likely that the seller party, after clearance of cheque has withdrawn the amount or transferred somewhere else. It that case the assessee can make up the case by stating that Assessing Officer has not proved that the said amount is received back by the assessee. It is for the Assessing Officer to establish that assessee has received the said amount back which is not possible to allege or prove. (d) If possible, seller's Bank Statement can be obtained in which cheque issued is credited.

(3) Entry in respect of purchase in assessee's books of account viz. cash book/purchase register.

(4) (a) Entry in Stock Register when the purchased goods are credited in quantity.

(b) It would be advisable to submit extract of further entries for sale of the purchased goods in case of reseller and 'issue' entry passed in case of manufacturing concern. This will substantiate that the goods were received and were resold or issued for process/manufacture.

Above evidences submitted will be in full support that the goods are purchased and physically the same are received, as also the same are resold for which the sale amount is received or the goods are issued in manufacturing process in the case of manufacturer:

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Glimpses of Supreme Court Rulings

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45 Negotiable instrument Act – Dishonour of cheque - section 138:

It is not in dispute that execution of the promissory note and the endorsement made by the respondent has been satisfactory proved at the trial. Concurrent findings recorded by the trial court and the first appellate court to that effect conclude the factual part of the controversy. The only question that survives in the above background is whether the cheques issued by the respondent were meant to discharge, in whole or part, "any debt or other liability" within the meaning of section 138 of the Negotiable instruments Act, 1881. The difficulty arises only because the promissory note uses the words 'security' qua the cheques. This would ordinarily and in the context in which the cheques were given imply that once the amount of Rs. 10 lakhs was paid, the cheques shall have to be returned. There would be no reason for their retention by the complainant all for their presentation. In case, however, the amount was not paid within the period stipulated, the cheques were liable to be presented for otherwise there was no logic or reason for their having been issued and handed over in the first instance. If nonpayment of the agreed debt / liability within the time specified also did not entitle the holder to present the cheques for payment, the issuance and delivery of any such cheques would be meaningless and futile, if not absurd. 'Any liability or debt' need not be only of person who has a directly/primarily enjoyed benefits thereof like the principle debtor. Person who is secondarily liable, such as surety or guarantor may also be convicted under section 138 of Negotiable instrument Act if the ingredients thereof are satisfied.

[Don Ayengia Vs. State of Assam & another (2016) (3 SCC 1)]

46 Second appeal - Scope of interference:

Both the questions of law framed by the High Court are not substantial questions of law. Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should steam out of a complete misreading of evidence or it should be based only on conjectures and surmises. The safest approach on the perversity is the classic approach on the reasonable man's interference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity.

[Damodar Lal Vs. Sohan Devi and Others (2016) (3 SCC 78)

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Every successful man must have behind him somewhere tremendous integrity, tremendous sincerity, and that is the cause of his signal success in life.

- Swami Vivekanand

From the Courts

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78 Slow moving spares and stores written off: Allowed CIT v/s. Indian Rare Earths Ltd. (2015) 231 Taxman 853 (Bom)

Issue :-

When assessee had written-off slow moving stores and spares, whether the same is allowable?

Held –

Assessee , a government company, claimed loss on account of certain slow moving items and had written off certain amounts in profit and loss account. Assessing officer was of view that amount claimed towards loss of non moving stores could not be so claimed as assessee was believed to have changed its method of accounting in respect of stores and spares, in as much as it wrote off 95 percent of value of such stores and spares which had not moved over last three years and retained only 5 percent of residual value . It was found that assessee's plants were located in remote places and near sea. Non-moving stores and spares were corroded over a period of time due to wear and tear. Since write off claimed was essentially on basis of deterioration of various materials including raw-materials and in particular, slow moving items of spares of machinery, assessee would be entitled for said deduction.

79 Stay of demand - DishaConstruction v/s. Ms.DevireddySwapna (2015) 232 Taxman 98 (Bom)

Issue:

Whether the demand of tax is to be stayed when on similar issue the assessee is successful in previous assessment years?

Held:

Assessee pointed out that for the earlier assessment year on an identical issue the Commissioner (Appeals) had decided in their favour and, therefore, on the basis of Board circular No.530 , dated 6-3-1989 read with circular No. 589, dated 16-01-1991 as the disputes on identical issues for the earlier year had been decided in favour of the assessee, the demand was to be stayed till the decision of the Appellate Authority.

In view of the fact that an officer of the department has taken a view that the grounds are similar in the present assessment year to that in the order passed for earlier assessment year 2008-09 and 2009-10,the assessee has made out a more than prima facie case for grant of stay. In these peculiar facts of this case, it is directed that revenue will not initiate any recovery proceedings till the disposal of the appeal filed by the petitioner with the Commissioner(Appeals).

80 Reference to DVO without rejecting books invalid. - CIT v/s. Freedom Board and Paper Mills (2015) 231 Taxman 719 (P & H)

Issue :

Is a reference to DVO for valuation of property, without rejecting books of account valid?

Held :

The proceedings in this case have been sought to be re-opened by way of reassessment - without following the prescribed procedure of rejecting the books of account which has been maintained by the assessee.

High Court took support of the case viz. CIT v/s. Chohan Resorts (2013) 359 ITR 394/220 Taxman 152, in similar circumstances had held that where books of account in respect of cost of construction are maintained, reference to the DVO can only be made on the basis of rejection of said books of account on some legal or justified basis.

In view of the above, the Tribunal was correct in deleting the additions made by the A.O. who never rejected the books of account before referring the matter to the DVO, and on the basis of her report the reassessment proceedings could not have been initiated. Accordingly, the Department's appeal was dismissed.

81 No deduction of tax at source on advise of C.A : No default : CIT v/s. Filtrex Technologies Pvt. Ltd. (2015) 231 Taxman 811 (Kar)

Issue :

When assessee has acted on the advice of C.A, whether penalty or other action can be taken ?

Held :

Assessee company was engaged in manufacture of carbon blocks used in water purifying filters. Assessee made payment for technical services to a foreign company 'F' without deduction of tax. Assessing Officer treated non-deduction of tax regarding said company as concealment of income and initiated penalty proceedings. It was found that Chartered Accountant had given a certificate to effect that assessee was not required to deduct tax at source while making payment to a company 'F'. Thus, assessee remitted payments to said company based on certificate issued by CA and no violations were reported in Form No. 3CD.Failure to deduct tax by assessee was a bona fide mistake and hence this was not a case to levy penalty.Therefore no business disallowance could be made under section 40a(ia).

82 Bogus Purchases : G.P. Rate favourable : CIT v/s. Premkumar B. Rathi (2015) 232 Taxman 638 (Guj) : (2015) 126 DTR 0270(Guj), (2015) 281 CTR 0075(Guj).

Issue :

Entire addition can be made as bogus purchases when G.P. rate is favourable ?

Held :

Assessee was trader in edible oils on semi-whole sale basis. Survey proceedings under section 133 carried out in assessee's proprietary concern. It was a found that assessee purchased edible oils of Rs. 2 crore from 5 different parties. Assessing Officer opined that assessee failed to discharge onus of proving genuineness of aforesaid purchase; he thus, made addition of 25 per cent of total purchases taking it an 'unexplained purchase'. Commissioner (appeals) reduced addition to 20 per cent an amount of unexplained purchase. Tribunal further reduced said disallowance to 10 per cent of purchases relying on decision of coordinate bench of Tribunal. Even though order passed by Tribunal was non-speaking, yet same was based on Supreme Court decision. Moreover, G.P. rate shown by assessee in relevant year was better than rate disclosed in subsequent years. The impugned order of Tribunal did not require any interference.

83 Addition on Surmise : CIT v/s. Zohra Emporium (2015) 232 Taxman 629 (Delhi) : (2015) 372 ITR 0381 (Delhi)

Issue :

Whether addition made on surmises can be sustained?

Held :

Assessing Officer verified closing stock of assessee on test check basis and applied test check ratio to entire purchase and sales of year. Thereafter, Assessing Officer rejected assessee's books of account by invoking section 145(2) and brought to tax sum in respect of unaccounted purchase, unaccounted sales and embroidery charges. Commissioner (appeals) held that Assessing Officer made addition based on assumptions and presumptions. He granted substantial relief to assessee. Tribunal deleted addition by holding that rejection of books of account of assessee was only on basis of surmises and assumed discrepancies in closing stock which has been reasonably explained by assessee. Commissioner (Appeals) as well as Tribunal were guided by peculiar nature of transactions involved where assessee purchased raw and semi finished products and, thereafter, sent them for embroidery and other work before finished products were made available for sale. Since no fresh ground had been made out by revenue to show why Tribunal's reasoning was unsustainable in law, deletion of addition was justified.

84 Personal return and RTI Act : Shailesh Gandhi v/s. Central Information Commissioner (2015) 232 Taxman 783 (Bom)

Issue :

Is information in Income Tax Return liable to be exposed under RTI Act ?

Held :

An application was made u/s 6 of RTI Act requesting certain information more particularly the income tax return and Balance Sheets on the ground that it is in the larger public interest. The application was rejected by the authorities on approach to the High Court it is held that : -

On second appeal, the Central Information Commission (CIC) upheld the orders passed by the Public Information Officer and the first appellate Authority. It also referred the judgment of the Apex Court in Girish Ramchandra Deshpande v/s. Central Information Commission [2013] 351 ITR 472 / [2012] 211 Taxman 46/25 taxmann.com 525 holding that the details disclosed by a person in his income tax returns is personal information which has been exempted from disclosure under clause (j) of section 8(1) unless involved a larger public interest and the CPIO and or the State Public information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. The Central Information Commissioner observed that the petitioner had not been able to prove any larger public interest with corroborative evidence.

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Non Availability of Seller.

In case when the notice issued by the Assessing Officer is not served or returned back, the same can be replied that:-

(i) Assessee has not to keep a track of seller and it is likely that the seller might have closed business or shifted the place of business. In any case it is not the liability of the assessee to produce the seller and in doing so no adverse inference can be drawn for addition when all other evidences are produced.

It is likely that in extreme circumstances the seller refuses and states that he has not delivered the goods but has only issued the bills. In these circumstances cross examination of the seller can be demanded or the version of the seller can be refuted by stating that it is his some compulsion for which he states accordingly. It is not for the assessee to meet with his compulsions; and by all the evidences as stated earlier the delivery and existence of the goods is established as the same are sold and received by the purchasers of the assessee in case assessee is a trader or the same is included in the product in case of assessee being a manufacturer.

Above issues are well discussed in the decision of Calcutta High Court in the case viz. C.I.T. v/s. Manish Enterprises (2015) 276 CTR 89 (Cal).

(5) G. P. Rate :

If G. P. Rate is favourable say equal to or more than previous year the same would be a good ground to argue that no addition can be made in respect of so called bogus purchases.

Support can be claimed from the recent decision in the case viz. CIT v/s Premkumar B. Rathi (2015) 232 Taxman 638 (Guj.) in which it is held that when G. P. Rate is favorable, entire purchases are not to be added.

Above are some guidelines for procuring and producing the evidences to contravene the allegation of the Assessing Officer that the assessee has not received the goods but only the same are debited in books as purchases and thereby making addition and initiating penalty proceedings.

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Tribunal News

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66 Bharti Airtel Ltd. Vs. ITO -[2016] 67 taxmann.com 223 (Delhi Trib)

Facts

The assese is a leading telecom service provider in India. It is also a Global Telecommunication Company having operations in several countries. It is engaged internationally in the business of providing Cellular Telephone Facilities to subscribers.In course of carrying out business as an International Long Distance Service Provider, Inter-connect Usage Charges ("IUC") are paid by the assese to the Foreign Telecom Operator ("FTO"). The AO raised the demand u/s. 201 as well as 201(IA) for the assessment years 2008-09 to 2011-12 for non-deduction of tax at source u/s. 195 of the Income Tax Act, 1961 (hereinafter referred as "The Act") on 'IUC' payment made to "FTO's". He levied tax on higher rate of 20% (plus Surcharge & Cess) on the gross amount of payment made to the FTO for all the years under consideration by applying the provisions of section 206AA of the Act. Aggrieved the assessee carried the matter in the Appeal before the CIT(A). The CIT(A) upheld the order of the AO to the extent of the finding that the payment of IUC are in the nature of Fees for Technical Services under the Act.

Issue

Whether the payment of IUC by assese to FTO's are taxable as fee for technical services u/s. 9(1)(vii) of the act?

Held:

As regards the issue whether IUC requires human intervention or not, the phraseology of Fees for Technical Services requires a direct co-relation between the Services which are of technical nature and the consideration received in lieu of rendering the services. Also it means special skills and knowledge relating to technical field which is required for the provisions of such services. The services provided by machines and robot do not fall within the ambit of technical services as provided u/s. 9(1)(vii) of the Act.

Human intervention is required only for installation of the network, installation of other necessary equipment's/infrastructure, maintaining, repairing and monitoring each operator or individual network, however it's not required for interconnection of call whether international or domestic calls and thus payment in question cannot be considered as "Fee for Technical Services" in terms of section 9(1)(vii) read with Expln. 2 of the Act.

Moreover, the payment made to FTO for inter - connect Usage Charges does not fall within the ambit of the definition of 'Royalty' under section 9(1)(vi) or under the definition of 'Royalty' under the Treaties as there is no 'use of' or 'right to use' of any process.

67 Ashok Leyland Ltd. Vs DCIT- [2016] 67 taxmann.com 48

Facts

The assessee was in the business of manufacturing of commercial vehicles, industrial and marine engines. The assessee made transactions with the Associated Enterprise during the financial year 2005-06 and provisions of section 92CA were attracted. The transactions the assessee had entered with associated enterprise were supply of chests, fully built vehicles and spare parts. These three transactions with AE have resulted in a profit. The assessee filed revised Form 3 CEB in transfer pricing proceedings before TPO on 1-6-2009 with proper comparables and was very much before passing of TP order under section 92CA(3) on 24-7-2009.The TPO treated the revised Form 3 CEB as belated and held that the time-limit for filing Form 3 CEB along with return was 31-10-2006 and revised Form 3 CEB for the relevant assessment year could be filed within one year from the end of the assessment year or before completion of assessment whichever was earlier under section 139(5) and rejected the contention and passed the order.

Issue:

Whether revised Form 3CEB submitted during TP proceedings needs to be accepted?

Held

Under provisions of section 92CA(3) there is no specific time-limit specified for filing revised form. The statutory Form 3CEB is a report of Chartered Accountant furnished under section 92E relating to international transactions and specific domestic transactions based on the documents prescribed and maintained by the assessee in respect of international transactions. The Chartered accountant report is based on the audited books of account maintained by the assessee were the international transaction have been incorporated and are authenticated. The report of the Chartered Accountant cannot be ruled out and also factual position has to be considered to correct any mistake in calculating of Arms Length Price (ALP) for valuation, and it is evident that the revised Form 3 CEB includes the proper comparables in respect of vehicles, parts which are integral product of commercial vehicles. The action of TPO in rejecting the revised Form 3 CEB is not proper as factual comparables certified by the Chartered accountant is revised Form 3 CEB cannot be ignored. Therefore, in the interest of justice, the disputed issue is to be remanded to the file of the AO and to consider revised Form 3CEB filed by the assessee for assessment and calculation of arms length price.

68 **Datamine International Ltd. Vs. ADIT ITA No. 5651/Del/2010 (Del) Assessment Year 2007-08 Order Dated: 14 March 2016**

Basic Facts

The assesse is subsidiary of a UK based company and is engaged in the activity of providing specialized mining software solutions, developed by its Group, to mining industry in India. The assesse declared 'Software sales' in its Profit &Loss Account as business receipts which was rejected by the AO. In reaching this conclusion, he noticed that the software licensed for use by the assessee to the end-consumers were specialized software having special purpose usage in mining activity covering full scope of mining from the exploration, drill hole extending up to shipping. In addition, he also held that the software sold by the assessee were making available a 'process' to the customer who 'use' the process while carrying out their business. In the backdrop of this factual matrix, the AO held that the consideration for software license falls within the definition of `Royalty' undersection 9(1)(vi), clauses (i), (iii) and (v) of Explanation 2 of the Act and also Article 13(3)(a) ofIndo-UK Double Taxation Avoidance Agreement (hereinafter called `the DTAA'). The assesse also failed to convince DRP and AO treated software sales as royalty.

Issue

Whether the 'software sale' is to be treated as Royalty? Whether retrospective amendment in the definition of Royalty can be read in the articles of DTAA?

Held

Under the amended provisions of the Act, the tribunal held that the payment would be covered considered as Royalty as per Explanation 4 to section 9(1)(vi) of the Act. The tribunal after reviewing the "Distributor agreement" and "end-user agreement" noted that end users merely have the right to use the product under license. The customers were not assigned any rights as mentioned under section 14A of the Copyright Act. It was further noted by tribunal that India has entered into DTAAs' wherein computer software has specifically been included in the Article dealing with Royalty income. Since the India- UK DTAA doesnot include consideration for use of software as royalty, it was held that the payment for software would not constitute Royalty under the DTAA.

With respect to revenue's stand that the retrospective insertion of Explanation 4 to Sec 9 (1)(vi) should be read into the DTAA, the tribunal held that Any amendment carried out to the provisions of the Act with retrospective effect shall no doubt have the effect of altering the provisions of the Act but can not per se have the effect of automatically altering the analogous provision of the Treaty. There are certain provisions in some Treaties which directly recognize the provisions of the domestic law. For example, Article 7 in certain Conventions provides that the deductibility of expenses of the permanent establishment shall be subject to the provisions of the domestic law. In such a case, if any retrospective amendment is made to the provisions of the Act governing the deductibility of the expenses, the same shall apply under the Treaty as well. Article 3(3) of the DTAA provides that any term not defined in the Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning tax to which the Convention applies. The nitty-gritty of Article 3(3) in the present context is that if a particular term has not been defined in the Treaty but the same has been defined in the Act and further there is a retrospective amendment to that term under the Act, then it is this amended definition of the term as per the Act, which shall apply in the Treaty as well. If however a particular term has been specifically defined in the Treaty, the amendment to the definition of such term under the Act would have no bearing on the definition of such term in the context of the Convention, unless the DTAA is also correspondingly amended. A country which is party to a Treaty cannot unilaterally alter its provisions. An amendment to a Treaty can be made bilaterally after entertaining deliberations from both the countries who signed it. If there is no amendment to the provision of the Treaty but there is some amendment adverse to the assessee in the Act, which provision has been specifically defined in the Treaty or there is no reference in the Treaty to the adoption of such provision from the Act, then such amendment will have no effect on the DTAA.

69

Krishak Bharati Cooperative Ltd. V. Assistant Commissioner of Income-Tax, Circle-30(1)
Appeal nos. 6785 & 6786 (Delhi) of 2015
Assessment years 2010-11 & 2011-12
order dated March 9,2016

Basic Facts

Assessee received dividend income from an Omani Company. The assessee was liable to pay tax in India on said dividend income as per Indian Income-tax Act. However, it was not liable to pay any tax on such dividend income in Oman by virtue of exemption granted as per Article 8 (bis) of the Oman Company Income-tax Law.Assessee included the dividend income in its total income and, thereafter, claimed credit of tax which would have been payable in Oman in respect of such income.The contention of the assessee was that Article 25 of DTAA between India and Oman allows tax credit in India for the taxes payable in Oman. Even though no taxes were actually paid in Oman by virtue of exemption or so. Assessing Officer (AO) accepted the contention of assessee and allowed credit of deemed dividend tax which would have been payable in Oman. However, subsequently, Commissioner of Income-tax (CIT) revised the order of AO and disallowed the tax credit so claimed by assessee.Aggrieved by the order of CIT, assessee filed the instant appeal before the Tribunal.

Issue

Whether the assesse is entitle to tax credit in respect of deemed dividend tax which would have been payable in Oman?

Held

Clause (4) of Article 25 of DTAA between India and Oman lays down that the tax payable shall be deemed to include the tax which would have been payable but not paid because of certain tax incentive granted under the laws of the contracting State designed to promote economic developments.Thus, the crucial issue to be examined was whether the dividend income was granted exemption in Oman with the purpose of promoting economic development?The exemption had been granted under Article 8(bis) of the Omani Tax Laws. In this respect, it was clarified by the Finance Ministry of Oman that said provision was introduced to promote economic developments in Oman and to attract investment.From the clarification of the Finance Ministry of Oman, there remains no doubt regarding the purpose of granting exemption to dividend income. The interpretation of Omani Tax Laws can be clarified only by the highest tax authorities of Oman and, therefore, such interpretation given by them must be adopted in India.

Hence, in view of the facts of the case, assessee was entitled to tax credit in respect of deemed dividend tax which would have been payable in Oman.

70 Forbes Container Line Ptd. Ltd. Vs ADIT-(Intl. Taxation)-3(2) Assessment year: 2009-10 Order Dated: 31/10/2013

Basic Facts

Assessee-company is engaged in business of operating ships in international traffic across Asia and Middle East. It is incorporated in Singapore. It is a wholly owned subsidiary of Forbes and Co. Ltd. (FCL) and FCL is incorporated in India. The assessee company filed its return of income declaring total income at Rs. Nil. The Assessing Officer (AO) completed the assessment and held that the business of the assessee was covered by the provisions of section 44B of the Act. During the assessment proceeding the AO found that FCL had entered into an agency agreement with M/s. Volkart Flemming Co. and Services Ltd.(VFSSL) w.e.f. 1.1.2007, that it was appointed as an agent in India by FCL. That VFSSL was 100% subsidiary of FCL, that VFSSL had demerged its shipping agency division into FCL w.e.f. 01.04. 2008.AO held that assessee's income was arising out of operation of ships in International traffic and that same was taxable in India as per Sec 5(2) and Sec 44B. During AY 2009-10, AO held that holding company secured the business from India for assessee and that one of the directors of the company was also director of the India parent.AO further observed that assessee had no other agent in India except the parent company and that parent company was concluding the contracts on behalf of the assessee. AO pointed out that said director was permanently residing in India and was looking after the policy matters of assessee. AO thus concluded that assessee had business connection as well as a PE in India. CIT(A) upheld AO's order.

Issue

Whether the assessee had a PE in India and hence was to be liable to be taxed on its business income? Whether the provisions of section 44B were correctly invoked by the AO?

Held

Factors like staying of one of the directors in India or holding of only one meeting during the year under consideration or the Location of parent company in India in themselves would not decide the residential status of the assesse. The assesse had received substantial portion of its income from the operation carried out in Middle East and other countries which was factually correct from the paper book. The assessee had not claimed exemption of Article 8 of the DTAA as it was not in the shipping business.Therefore, the income of the assessee had to assessed as per the provisions of tax treaty which deals with business income. Moreover, the CIT(A) was not justified in confirming the order of the AO holding that provisions of sec.44B of the Act would be applicable with regard to the disputed amount. Section 44 B deals with the shipping business and the AO had himself admitted that the assesse was not in shipping business .The assesse did not own or charter or took on lease any vessel or ship for the year under consideration, it was only providing container services to its various clients. Therefore, provisions of section 44B were not applicable to the factsof the case under consideration. Thus the assesse was liable to be taxed as business income and that in absence of PE no income was taxable in India, that the provisions of section 44B were wrongly invoked by the AO.

71 TRIO Elevators Company (India) Ltd Vs. ACIT - ITA No. 2477/Ahd/2011 Assessment Year: 2007-08 Order Dated: 08 March 2016

Basic Facts

The assessee, Trio Elevators Company (India) Ltd. purchased the business of selling, installation commissioning and repairs and maintenance of elevators from Alps Technologies Pvt. Ltd. vide a slump sale agreement. Among other things assessee acquired a trademark which was valued at Rs.2 crores in the agreement. For AY 2007-08 assessee claimed depreciation of Rs. 50 lakhs on trademark so acquired which was disallowed by the AO during scrutiny assessment on the ground that trademark wasn't registered in assessee's name. AO took note of Sec 28 (1) of Trade Marks Act, 1999 and observed that as assessee was not a registered owner of trademark, it was not entitled to the use of the trademark, nor can it bar any other person from using the same. On appeal, CIT(A) confirmed AO's order.

Issue

Whether admissibility of depreciation claim on trademark is contingent upon its registration as intangible asset?

Held

ITAT observed that the underlying assumption of the lower authorities that an unregistered trademark could not be considered to be an asset worth any value was fallacious as SC in Cadila Health Care Limited Vs. Cadila Pharmaceuticals Limited [(2001) 5 SCC 73] had clarified that even in the case of un-registered trademarks, a passing off action was maintainable.ITAT thus held that "unless a trademark is registered in the name of a person, he does not get exclusive rights to use the trademark in respect of the goods for which the trade mark is registered but that is really immaterial because the person in whose name the trademark was registered had already assigned the rights to the assessee". ITA thus concluded that assessee had the rights to use the trademark as same were assigned to it by person in whose name it was registered.ITAT further noted that business was transferred to the assessee as a going concern and thus held "Once the assessee was carrying on the business as such under the same trademark and as a going concern, the effective use of the trademark cannot be disputed". ITAT opined that said intangible asset was an integral part of assessee's business and by no stretch of logic, it could be seen in isolation with the business as a whole.ITAT thus noted that even in the case of the unregistered trade mark "assessee does have valuable rights which make it an intangible asset eligible for depreciation. In any event, the admissibility of depreciation on trademark is not contingent upon its registration inasmuch as the description of intangible asset in Part B of the deprecation schedule describes the same merely as "know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature".

ITAT thus ruled in favour of assessee and held that "assessee was indeed eligible for depreciation in respect of the intangible asset by way of trademark".

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Sincerity of conviction and purity of motive will surely gain the day; and even a small minority, armed with these, is surely destined to prevail against all odds.

- Swami Vivekanand

Unreported Judgements

CA. Sanjay R. Shah
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In the Income Tax Appellate Tribunal
Ahmedabad "C" Bench
(Before Shri Rajpal Yadav, Judicial Member & Shri N.K. Billaiya, Accountant Member)
ITA. No: 143/AHD/2013
(Assessment Year: 2006-07)

M/s. IDMC Limited	**V/S**	**Assistant**
Plot No. 124, 128,		**Commissioner of**
GIDC Estate		**Income Tax**
Vithal Udhyognagar-		**Anand Circle,**
388121		**Anand**
Tal & Dist: Anand		
(Appellant)		**(Respondent)**
PAN: AAACI4631E		

Order

Date of hearing : 30 -03-2016
Date of Pronouncement : 05 -04-2016

Per N.K. Billaiya, Accountant Member:

1. This appeal by the assessee is preferred against the order of Ld. CIT (A)-IV, Baroda dated 23.11.2012 pertaining to A.Y. 2006-07.

2. The grievance of the assessee is two fold; firstly, the assessee has challenged the validity of the re-assessment proceedings on the ground that the A.O has initiated proceedings u/s. 147 of the Act without jurisdiction. Secondly, on merits of the case, the assessee is aggrieved by the order of the ld. CIT (A) by which disallowance of the claim of additional depreciation on plant and machinery has been upheld.

3. At the very outset, the ld. counsel for the assessee stated that he is not pressing the ground relating to the challenge of the re-opening of the assessment. Hence, the same is dismissed as not pressed.

4. Coming to the merits of the case, during the course of the assessment proceedings and on verification of the case records, the A.O found that the assessee had claimed depreciation of Rs. 2,18,50,976/- which was @ 20% u/s. 32(1)(iia) of the Act. On further probe, the A.O found that the machinery was purchased before 31.03.2005 but was installed on 15.04.2005 i.e. after 31.03.2005. The A.O was of the firm belief that for the purpose of claiming the additional depreciation on new plant and machinery @ 20% u/s. 32(1)(iia) of the Act, the plant and machinery should have been acquired and installed after 31.03.2005. However, in the present case, the machinery was acquired before 31.03.2005 but was installed after that date, therefore the assessee has failed to fulfill the twin condition and accordingly not entitled for additional depreciation.

5. Assessee was asked to justify its claim of additional depreciation. In its reply, the assessee stated that the machineries received were damaged and, therefore, had to be returned/ replaced by the vendor which took some time and, therefore, the installation took place after 31.03.2005. It was strongly contended that the claim of additional depreciation cannot be denied.

6. However, the claim of the assessee did not find favour with the A.O who was of the opinion that since the assessee has failed to fulfill the twin condition of Section 32(1)(iia) of the Act. The assessee is not entitled for additional depreciation. The A.O disallowed the additional depreciation and made an addition of Rs. 2,18,50,976/-.

7. Assessee carried the matter before the ld. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. Counsel that since additional depreciation is a benefit conferred upon the assessee by the statute, it deserves liberal construction and the benefits cannot be denied on technical reasons.

9. Per contra, the ld. D.R. strongly supported the findings of the revenue authorities. It is the say of the ld. D.R. that the A.O has rightly denied the claim since the assessee has not fulfilled the mandatory conditions for the claim of additional depreciation.

10. We have heard the rival submissions and carefully perused the orders of the authorities below. In so far as the factual matrix is concerned, there is no dispute. Admittedly, the assessee accepts that the machinery was acquired before 31.03.2005 but the same was installed after 31.03.2005. All that has to be considered by us is whether acquisition and installation have to be read together for entertaining the claim of additional depreciation. It would not be out of place to consider at this stage, the objects for inserting Section 32(1)(iia) of the Act and which reads as under:-

Incentives for Investment and Industrial Growth

Additional depreciation on new machinery and plant

Under the existing provisions contained in sub-section (1) of section 32 of the Income-tax Act, deduction is allowed in respect of depreciation on assets owned wholly or partly by the assessee and used for the purposes of the business or profession at the rates prescribed under the Income-tax Rules, 1962.

With a view to give a boost to the manufacturing sector, it is proposed to allow a deduction of a further sum equal to fifteen per cent of the actual cost of such machinery or plant acquired and installed after 31st day of March, 2002—

(i) in the case of a new industrial undertaking in the previous year in which it begins to manufacture or produce any article or thing; or

(ii) in the case of an existing industrial undertaking in the previous year in which it achieves substantial expansion by way of increase in the installed capacity by not less than twenty five per cent.

Such further sum shall be deductible from the written down value of the asset. "Installed capacity" has been defined to mean the capacity of production as existing on the last day of any previous year commencing on or after the 31st March, 2002. The proposed amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003- 2004 and subsequent years.

11. A perusal of the aforementioned object clearly shows that the legislature wanted to give a boost to the manufacturing sector.

12. This provision was subsequently amended by the Finance Bill, 2005 and the object for amending the provisions read as under:-

"Clause 8 seeks to amend section 32 of the Income-tax Act relating to depreciation. Under the existing provisions contained in clause (iia) of sub-section(1) of the said section, a further sum equal to fifteen per cent. Of the actual cost of any new machinery or plant (other than ships and aircraft) acquired and installed after the 31stDay of March, 2002 by an assessee engaged in the business of manufacture or production of any article or thing, is allowed as deduction as further depreciation. It is proposed to increase the said sum of further depreciation mentioned in the said clause (iia) from fifteen per cent to twenty percent. It is further proposed to omit the conditions relating to industrial undertaking being new or substantial expansion mentioned in the first proviso to the aforesaid clause (iia) and also to omit the requirements of furnishing details of machinery or plant and report of an accountant mentioned in the third proviso of that clause (iia). This amendment will take effect from 1stApril,2006andwill,accordingly,applyin relation to assessment year 2006-07 and subsequent years."

13. Thus, it can be seen that not only the rate of additional depreciation was increased from 15% to 20% but also the rigidity of conditions pertaining to the increase in the installed capacity and for furnishing details of machinery and plant and report of an Accountant were done away with. Meaning thereby, that these conditions were not necessary for the claim of additional depreciation.

14. Once again, it can be seen that the amendments brought to this section is to encourage new investment in plant and machinery.

15. Coming back to the facts of the present case, as mentioned elsewhere, the assessee has acquired the plant and machineries before 31.03.2005 but the machineries were installed after 31.03.2005. If the revenue authorities' view is accepted then the assessee cannot claim additional depreciation as per earlier provision since the machineries were neither acquired nor installed after 31.03.2002. At the same time, the assessee cannot claim the additional depreciation under the new provisions as machineries were acquired before 31.03.2005 but installed after 31.03.2005. Such interpretation would lead to a precarious situation and put the assessee in a vulnerable situation wherein even after making investments in new plant and machineries, the assessee is deprived of additional depreciation.

16. Let us look at the facts from another angle. The revenue has allowed the claim of depreciation admitting that the plant and machineries have been used by the assessee for its business only the claim of additional depreciation has been denied. In our considered opinion and the understanding of the law, the eligibility for the claim of depreciation should be considered from the date of the installation of the plant and machineries, and the word "acquired" has to be considered in the light of "ownership" of the asset.

17. The observations of the Hon'ble High Court of Calcutta in the case of Surama Tubes Pvt. Ltd. 201 ITR 124 needs Special mention and which read as under:-

    4. It will be evident that what is relevant and material is the year of acquisition in the case of ships or aircraft and the year of installation in the case of machinery or plant. If the installation of a plant is spread over more than a year, the relevant year for the grant of allowance would be the year in which the installation is completed. As in the case of investment allowance, so also in the case of additional depreciation, the material date is the date of installation and not the year of acquisition. The Tribunal categorically found on a perusal of the assessment order for the asst. yrs. 1980-81 and 1981-82 and the relevant balance sheets of the assessee-company that the machines in question were shown as machines under installation in the previous years in the fixed assets schedule annexed to the balance sheet. These machines have been only transferred to the machines account during the year under reference. No depreciation was claimed by the assessee on these machines and

depreciation was only claimed on the machines which were shown as machines of the assessee in the fixed assets schedule. Two things would, therefore, be clear; firstly, these machines were new and they were under installation and the installation was completed during the year under reference ; and secondly, no depreciation was ever claimed by the assessee prior to this assessment year on these machines. This finding of the Tribunal has not been challenged. The Tribunal also found that the machines, although acquired earlier, could not be installed in view of the change of management twice. The machines were lying idle and were kept for installation and the installation was completed in the year under reference.

18. If the facts of the case in hand are considered in the light of the observations of the Hon'ble High Court of Calcutta, there remains no doubt that the assessee is very much entitled for the claim of additional depreciation. Let us consider one more example. In the case of Large Petro Chemicals Industries which requires huge plant and machineries for the manufacturing process, there may be a situation when hundreds of machineries are acquired in financial year and the installation process crosses another financial year because of the humongous task of installing such machineries. In such a situation, can the assessee be denied the claim of additional depreciation merely because the acquisition and installation have taken place in two different financial years? In our considered opinion, the sine qua non for the claim of depreciation should be the date of installation when it can be said that the plant and machineries are ready for use. Acquisition can at best be related to the ownership.

19. Our understanding draws support from the decision of the Hon'ble High Court of Calcutta (supra).

20. The observations of the Hon'ble Supreme Court in the case of Bajaj Tempo Ltd. 196 ITR 188 deserves Special mention here and which read as under:-

    6. The section, read as a whole, was a provision directed towards encouraging industrialization by permitting an assessee setting up a new undertaking to claim the benefit of not paying tax to the extent of such per cent in a year on the capital employed. But the legislature took care to restrict such benefit only to those undertakings which were new in form and substance by providing that the undertaking should not be "formed" in any manner provided in cl. (i) of sub-s. 15C. Each of these requirements namely, formation of the undertaking by splitting up or reconstruction of an existing business or transfer to the undertaking of building, raw material or plant used in any previous business results in denial of the benefit contemplated under sub-s. (1). Since a provision intended for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it.

21. Considering the facts of the case in the light of the observations of the Hon'ble High Court of Calcutta (supra) and in the light of the ratio laid down by the Hon'ble Supreme Court (supra), in our considered opinion, the assessee should not be denied the claim of additional depreciation. We accordingly set aside the findings of the ld. CIT(A) and direct the A.O to allow the claim of additional depreciation and delete the addition of Rs. 2,18,50,976/-.

22. In the result, the appeal filed by the assessee is allowed.

Order pronounced in Open Court on 05 - 04 - 2016.

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Controversies

CA. Kaushik D. Shah
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Whether compensation for loss of energy generation received entitled for deduction u/s 80IA of Income Tax Act, 1961?

Issue:

Whether compensation received for short fall of electricity generation, an income eligible for deduction u/s 80 IA?

Proposition

1. X Ltd. has commissioned a project of wind mills with the intention of captive consumption of power for its manufacturing activities.
2. Wind farm developer and operator have guaranteed 85 lacs units of power generation from the wind mills. For the short fall of power generation if any they have given bank guarantee for the payment of compensation. X ltd. received Rs. 1.24 crores as compensation on account of loss of power generation and credited it to income from wind mills operation.
3. It is proposed that such compensation received for loss of power generation is income in nexus to the wind mill project commissioned and will be eligible for deduction u/s 80 IA.

Extracts from Section 80IA

Section 80IA (1)

Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) of this section, there shall, in accordance with and subject to provisions of this section, be allowed in computing the total income of the assessee, a deduction of an amount equal to hundred percent of profits and gains derived from such business.

Section 80IA (5)

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

Therefore, certain income falling within the parameters of being incidental to business, can fall within the scope of the business of the assessee, yet it cannot be said to have been derived from the eligible industrial undertaking of the assessee, so as to be eligible for deduction under section 80-IAoftheAct.

View in against of the preposition

The phrase "Derived from" subsumed in Section 80IA (1) has been a very contentious issue while applying the provisions of Section 80IA/80IB of the Act. The issue revolves around the contention whether deduction is applicable for all receipts/income of the, assessee or is it restricted to profits and gains "derived from".

The issue has been discussed in detail in various judgments, which clearly brings about the concept of "income derived from" in contrast to other related concept like "income attributable to". The decision of the Apex Court in the case of **Cambay**

Electrical Supply Co. Ltd. 113 ITR 84 highlights the distinction between the two expressions. According to the Hon'ble Apex Court, the expression 'attributable to' has a much wider import than the expression 'derived from' thereby intending to cover receipts from sources other than the actual conduct of the business of the industrial undertaking.

Another notable judgment on the issue is in the case of **Sterling Foods 237 ITR 53 (SC)**. Herein also, the Apex Court opined that where the nexus between the income and the industrial undertaking was not direct but was only incidental, it would not fall within the expression 'profits derived from industrial undertaking'.

In case of **Maheshwari Devi Jute Mills Ltd. vs. CIT (U.P.)** it was held that receipts of the company for sale of loom hours were not income from the business within the meaning of law. It was contended that loom hours were a part of profit making structure and could not be used by the assessee as the preparatory section which prepared the yarn was inadequate and could not supply the necessary material for use on the looms which the assessee under the agreement was entitled to urn. In the circumstances all the loom hours available under the agreement could not be used by the assessee and it, therefore, parted with the surplus loom hours for consideration. The money received could not be said to have been received in course of the assessee's business. The business of the assessee was to run a jute mill, to manufacture and sell jute products. Sale of loom hours could not in any way be called a part of the assessees business. Therefore, it was contended that the money did not partake of the character of a trading receipt. Nor could it be said to have been received in the course of the assessees business.

View in favor of Proposition

The compensation received is exclusively on account of loss of power generation and directly related to the Wind Mills Income. If company had not purchased wind mills then the question of compensation income would not arise and also if there was no power generation loss then income from power produced from wind mills could have been higher. Ultimately income/ profit from wind mills could have been higher by that amount. Therefore the compensation for loss of power generation is in nexus to the wind mills project.

Looking from another angle, what the assessee achieved by invoking the bank guarantee was reduction of the loss arising out of the industrial undertaking. Such recouping or reduction of the loss cannot be kept out of consideration while computing the assessee's income eligible for reduction under section 80IA of the Act.

The co-ordinate Bench of this Tribunal in the case of C.N.V Textiles Pvt. Ltd. V. DCIT., in ITA NO. 746/ Mds/ 2014 dated 21.11,2014 held

As generation loss compensation receipt is concerned, Tribunal was of the view that generation loss compensation receipt is entitled for deduction u/s 80IA of the act. Similar view has been expressed by the Delhi **Bench of this Tribunal in the case of Magnum Power Generation Ltd. v. DCIT**.

We would like to refer to the decision of their lordships of Gujarat High Court in the case of **Commissioner of Income Tax- IV v. Shree Rama Multi Tech. Ltd. 215 Taxman 90 (Gujarat)** in this case it was held by their lordships of Gujarat High Court that since the insurance compensation is derived from an industrial undertaking the assessee is entitled to deduction u/s 80IA.

Further relying on the decision of Ahmedabad ITAT Bench in case of **Income Tax Officer v. Electro Ferro Alloys Ltd. reported in (2012) 25 Taxman 458**, if the compensation is received by the assessee company from the insurance company for shortage of material it has to be taken into account in determing the profits and gains of industrial undertaking and is eligible for deduction u/s 80IB.

Summation

In my opinion, compensation on loss of power generation is in nexus to wind mill project and falls within the ambit of the word "Derived from" as per section 80IA (1) and thus eligible for deduction.

The nexus can be proved, as if the wind mills were not purchased such compensation would not have been received by the assessee. The recoupment/ reduction in the loss of the assessee should be considered while claiming deduction derived u/s 80IA.

The Hon'ble Supreme Court while deciding upon the case of **Liberty India Ltd. Vs CIT [2009] 183 Taxman 349 (SC)** brought out fine distinction between "profit linked incentives" and "investment linked incentives" and the concept of "first degree source", "derived from" as against "attributable to". The relevant portion of the order is as under:

Before analyzing Section 80-IB, as a prefatory note, it needs to be mentioned that the 1961 Act broadly provides for two types of tax incentives, namely, **investment linked incentives** and **profit linked incentives.** Chapter VI-A which provides for incentives in the form of tax deductions essentially belong to the category of "profit linked incentives".

Therefore, when Section 80-IA/80-IB refers to profits derived from eligible business, it is not the ownership of that business which attracts the incentives. What attracts the incentives under Section 80-IA/80-IB is the generation of profits (operational profits). For example, an assessee company located in Mumbai may have a business of building housing projects or a ship in Nava Sheva. Ownership of a ship per se will not attract Section 80-IB (6). It is the profits arising from the business of a ship which attracts sub-section (6). In other words, deduction under sub-section (6) at the specified rate has linkage to the profits derived from the shipping operations. This is what we mean in drawing the distinction between profit linked tax incentives and investment linked tax incentives. It is for this reason that Parliament has confined deduction to profits derived from eligible businesses mentioned in sub-sections (3) to (1 1A) [as they stood at the relevant time].

In the case of **Vellore Electric Corpn. Ltd. v. CIT [1997] 93 Taxman 401/227 ITR 557 (SC)** where assessee-electricity distributing company had to deposit contingency reserve as stipulated in the Electricity (Supply) Act in securities authorised under the Indian Trusts Act, the Hon'ble Supreme Court held that the assessee was entitled to deduction in respect of interest earned from investment in securities there being direct and proximate connection between carrying on business as licensee under the Electricity (Supply) Act and income derived by way of interest from investment in securities.

When the compensation is received for loss of stock relating to an industrial undertaking by fire, such compensation would relate to the industrial undertaking, so as to be treated as part of eligible profits as decided in **CIT v. Sportking India Ltd. [2010] 324 ITR 283 (Delhi)**. In coming to conclusion, the High Court followed the decision in **Raghuvanshi Mills Ltd. v. CIT [1952] 22 ITR 484 (SC)** distinguishing in the process the decision in **Pandian Chemicals Ltd. v. CIT [2004] 270 ITR 448 (Mad)** and **Vania Silk Mills P. Ltd. v. CIT [1991] 191 ITR 647 (SC)**. It goes without saying that loss of stock would go to reduce the eligible profits in the year of loss.

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Update on BEPS project and expectation from Government of India

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Union Budget 2016 – Key International Tax Proposals

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The Union Budget for 2016-17 was presented bythe Finance Minister on 29 February 2016. The Finance Bill, 2016 (FB 2016), that was introduced in the Parliament as part of the Budget proposals, contains a number of international tax proposals. A number of proposals are influenced from the recommendations emanating from the Final Reports of the OECD under its Action Plan on Base Erosion and Profit Shifting (BEPS). These include implementation of Master File and Country-by-Country (CbC) Reporting (Action 13), introduction of equalisation levy which requires withholding on gross basis for all payments in relation to certain specified digital services (Action 1) and a "Patent Box" tax regime for royalty income (in compliance with Action 5).

Other significant proposals include deferment of Place of Effective Management (POEM) as a test for determining corporate residency, by one year i.e., tax year 2016-17, exemption from dividend distribution tax (DDT) for companies with units in International Financial Service Centre (IFSC), clarification on non-application of Minimum Alternate Tax (MAT)to foreign companies etc.

In this article, we have analysed the key international tax proposals of the FB 2016 in detail:

A. Implementation of Master File and CbC Reporting

On 5 October 2015, the OECD released Final Reports on all 15 focus areas in its Action Plan on BEPS. India, as part of its commitment to implement the BEPS Action Plan (specifically Action 13, being a minimum standard), has proposed to implement the three-tiered standardized approach (CbC Reporting, Master File and Local File), which is explained below:

- The CbC Report captures information pertaining to the global operations of multinational enterprises (MNEs). This Report mandates the provisioning of information such as revenue, tax paid, employee strength, capital, accumulated earnings and tangible assets for each jurisdiction in which the group does business, and would be required to be furnished prior to or along with the return of income.
- Master File captures standardized information relevant for all MNE group members. In general, this File is intended to provide a high level overview in order to place the MNE group's transfer pricing practices in its global economic, legal, financial and tax contexts.
- Local File refers specifically to material transactions of the local taxpayer.The Budget proposes to implement the Master File and CbC Reporting for international groups. While enabling provisions have been incorporated in the FB 2016, more detailed provisions, by way of rules, can be expected in due course.

CbC reporting will be applicable to the Indian parent of the international group or Indian designate entity of the foreign parent, if consolidated revenue of the group in the prior year i.e. FY 2015-16 exceeds INR equivalent to 750 million Euros i.e. approximately INR 5,3950 Crores. The new regime will be applicable for FY 2016-17 and the first filing will be due by 30 November 2017.

Penalty provisions for non-compliance with new documentation requirement have been introduced and are summarized below.

Nature of penalty	Penalty
Failure to furnish the master file by prescribed date	Rs 500,000
Furnishing inaccurate particulars in the CbCR (subject to certain conditions)	Rs 500,000
Failure to submit CbCR by the reporting entitya) Where period of failure d" 1 monthb) Where the period of failure > 1 monthc)	Rs 5,000 per day Rs 15,000 per day Rs. 50,000 per day
Continuing default after service of penalty order Failure to respond within 30 days to CbCR related queries [extendable by max 30 days]	Rs 5,000 per day upto service of penalty order Rs. 50,000 per day for default beyond date of service of penalty order

Further, penalty for transfer pricing adjustment has been revised as under:

Existing penalty	Amended Penalty
100-300% of tax ontransfer pricing adjustment, inabsence of goodfaith and due diligence	No penalty, where transfer pricing documentation ismaintained, transaction declared and material facts disclosed.Penalty at 50% of tax on transfer pricing adjustment, where transfer pricing documentation is not maintained.Penalty at 200% of tax on transfer pricing adjustment, where transaction is not declared or material facts are not disclosed

It is to be noted that other penalties for non-maintenance of documentation, failure to report a transaction, furnishing incorrect information or documents, failure to furnish accountant's report or requested documentation will continue to apply.

B. Equalisation Levy (EL)

With regard to taxation of the digital economy, while the Report on Action Plan 1 indicates that the OECD/G20 countries have agreed to monitor developments and analyze data that will become available over time to address digital economy taxation, the Report also suggests that countries could introduce provisions in their domestic tax laws as additional safeguards against BEPS, provided they respect existing tax treaty obligations. EL was one of the potential options provided under Action 1 to address direct tax challenges in the digital economy.

In light of the above and in order to address BEPSrisks exacerbated by the rapidly evolving digitaleconomy, the Government of India (GOI) has proposed to introduce EL as part of the FB 2016 proposals.

- This levy is @ 6% on consideration for specified services received or receivable by Non-residents (NRs) from the following:
- Indian resident which carries on business or profession; or
- An NR having a permanent establishment (PE) in India
- However, no levy is charged in the following circumstances:
- An NR providing the specified service has aPE in India and the service is effectively connected with such PE; or

- Aggregate amount of consideration received or receivable from the specified payers in a taxable year does not exceed INR1 lakh; or
- Payment is not for the purpose of carrying out business or profession.
- Specified services include online advertisements, provision for digital advertising space, provision for any facility or service for online advertisements and other services to be notified by the GOI.
- This levy is to be collected by specified payers viz., (1) a resident in India carrying on business or profession in India. (2) An NR having a PE in India.
- This levy takes effect only from the date appointed in the notification to be issued by the GOI.
- A corresponding provision is also included in the Indian Tax Laws (ITL) that provides forexemption from income tax on income arising to an NR from such specified services which has been subjected to the EL.

C. "Patent Box" tax regime for royalty income

The GOI proposes to introduce a concessional tax regime for worldwide royalty income arising from exploitation of patents. By virtue of these provisions, specified royalty would be taxed @ 10% on gross basis (plus applicable surcharge and cess). Incomes eligible for the regime includes royalty from transfer of all or any rights in respect of a patent, imparting of any information concerning the working, or the use, of a patent, or use of any patent or rendering ofany services in connection with the above activities.

The amendments apply from tax year 2016-17. However, the benefits are restricted to royalty in respect of a patent developed and registered in India by Indian residents.

D. POEM test to determine corporate residency deferred to apply from tax year 2016-17 onwards

In 2015, the ITL was amended to provide that from tax year 2015-16 onwards, a foreign company would be treated as a resident of India if its POEM is in India. The applicability of the POEM test to determine corporate residency has been deferred by a year and is now proposed to apply from tax year 2016-17 onwards. Thus, for tax year 2015-16, the test of residency for foreign companies continues to be "control and Management" of the affairs of the foreign company "wholly" in India.

Additionally, residency in India on account of the POEM test, triggers many provisions which have tax consequences, such as advance tax Payments, withholding tax provisions etc. Therefore, a transition mechanism to address these issues was required. For this purpose, the ITL is proposed to be amended to empower the Central Board of Direct Taxes (CBDT) to notify exceptions, modifications and adaptations etc., as the case may be, subject to which, the provisions of the ITL would apply in such cases.

E. Tax incentive for a unit set up in IFSC

Presently, the ITL provides for certain income linked incentive in respect of a unit in an IFSC. With a view to facilitate and incentivize the growth of IFSC into a world class hub, the following tax benefits are proposed:

- DDT @ 15% plus surcharge and cess is generally required to be paid by a company distributing dividends. However, where the total income of a company comprises income from a unit located in an IFSC inconvertible foreign exchange, no DDT is required to be paid on such distributions made on or after 1 April 2016 out of its current income. This exemption is available both to the payer and recipient of dividends.

- The company would be subject to MAT @9% for units located in an IFSC. This proposal should take effect from tax year2016-17.
- The long-term gains arising in foreign currency on sale of equity shares or units of equity-oriented funds or units of a business trust taking place on a recognized stock exchange established in an IFSC would be exempt from tax. Furthermore, no Securities Transaction Tax (STT) is payable on such a transaction. This proposal is proposed to take effect from 1 June 2016.
- Also, Commodity Transaction Tax (CTT) will not be payable on transactions undertaken in foreign currency for sale of commodity derivatives taking place on a recognized association established in an IFSC jurisdiction. This proposal should take effect from 1 June 2016.

F. Beneficial tax rate/exemption in certain cases of capital gains income

Long-term capital gains on unlisted securities are subject to a concessional tax rate of 10%.

However, there is no clarity on whether such beneficial rate is available even on transfer of shares of a private company. The ITL is now proposed to be amended to clarify that the beneficial rate of 10% applies even in case of capital gains on transfer of private company shares. This applies prospectively from tax year 2016-17 onwards.

In case of rupee denominated bonds, it is proposed that capital gains to the extent of and relating to the appreciation of the rupee against foreign currency between the date of issue and the date of redemption is exempt from capital gains tax. This amendment is proposed to apply from tax year 2016-17 onwards.

G. Exemption from requirement of furnishing Permanent Account Number (PAN)

Presently, NRs without PAN (Indian tax identification number) are subjected to a higher rate of withholding tax. This tax is higher of 20% or the applicable tax rate.

It is proposed to amend the relevant provision to provide that, on furnishing of alternative documents, the higher rate will not apply. Accordingly, the FB 2016 proposes to exclude the application of this provision, subject to fulfilment of certain prescribed conditions.

H. Clarification on non-application of MAT to certain foreign companies

As per the MAT provisions under the ITL, if the tax payable by a company on the total income as computed under the ITL is less than 18.5% of its book profit, such book profit is deemed to be the total income of the company and the company is liable to taxes on such book profits. Issues arose regarding the applicability of this provision to Foreign Institutional Investors (FIIs) which do not have a PE in India.

The FA 2015 provided some relief to foreign companies in terms of allowing certain incomes of a foreign company to be reduced while computing book profits for the purposes of MAT. However, the said amendment was effective from 1 April 2015 i.e., tax year 2015-16. The controversy on applicability of MAT to such foreign companies for the periods prior to 1 April 2015 still remained alive.

The FB 2016 now proposes to amend the ITL relating to provide for non-applicability of MAT toforeign companies (including Foreign Portfolio Investors (FPIs)/FIIs), in the following situations:

- The foreign company is resident of acountry with which India has a tax treaty and it does not have a PE in India as per the provisions of the relevant tax treaty; or
- The foreign company is resident of a country with which India has not entered into a tax treaty and such foreign company is not required to seek registration under any law for the time being in force relating to companies.

This amendment is to be made effective retrospectively from financial year 2001-02.

I. Rationalization of withholdingtax provisions on paymentsby Alternative InvestmentFunds (AIFs) to its investors

The Finance Act, 2015 (FA 2015) provided for a partial pass-through regime in respect of income earned by Category I and II AIFs. Under this regime, the income of the AIF (not being in the nature of business income) is accorded a pass through status and is taxable in the hands of the investor in the same manner and in the same proportion as it would have been had the investor received such income directly. The AIF is required to withhold taxes in respect of any such income (other than business income) credited or paid to the investor @ 10%.

The withholding tax provisions with regard to distribution by AIFs have created certain difficulties. NR investors were not able to claim benefit of lower or nil withholding, which is otherwise available to it under a tax treaty, due to the manner in which the withholding tax provisions are worded.

The withholding tax provisions are proposed to be amended to provide that income (other than business income) distributed to NR investors would be liable to withholding at the “rates inforce”. This would enable tax withholding to be carried out at the beneficial tax treaty rate. Furthermore, the ITL is also amended to provide that an NR investor can now make an application to the Assessing Officer for a lower or nil withholding certificate in respect of such income.These provisions are to be effective from 1 June 2016.

Concluding remarks

The Union Budget for 2016-17 shows India’s commitment to implement a number of BEPS recommendations which may get implemented over a period of time through legislative amendments, as well as through changes to rules and administrative procedures. The international tax proposals implemented in the Budget could be far reaching. International investors would need to carefully monitor developments and assess the impact on their operations. International groups would need to assess readiness and begin preparing for complying with the Master File and CbC Reporting requirements.

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Every work has got to pass through hundreds of difficulties before succeeding. Those that persevere will see the light, sooner or later.

- Swami Vivekanand

FEMA Updates

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61 Compilation of R-Returns: Reporting under FETERS

In order to enhance the security-level in data submission and further improve data quality, the modifications are required to be effected in the guidelines for compilation of R-Returns for reporting under the Foreign Exchange Transactions Electronic Reporting System (FETERS) on Export of Goods and Services: Export Data Processing and Monitoring System (EDPMS) for facilitating banks to submit export-related information through EDPMS platform and discontinued separate reporting of information in ENC (Export Bills Negotiated / sent for collection) for acknowledgement of receipt of export documents and Sch.3 to 6 (realization of export proceeds) under FETERSfrom 1st fortnight of April 2016 (i.e., reporting of those transactions which take place from April 1, 2016).

The modification, inter alia, include replacement of email based submission by web-portal based data submission, revision in Form AS2, and online submission of Form AS2 by the remitter.

For Full Text refer to A.P. (DIR Series) Circular No. 50 dated 11February 2016

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10276

62 Regulatory relaxations for start-ups- Clarifications relating to acceptance of payments

RBI, vide press release dated February 2, 2016, had announced that in case of start-ups, to facilitate ease of doing business, certain permissible transactions under the existing regime shall be clarified. One of the issues relate to the start-ups accepting payment on behalf of overseas subsidiaries.

In this connection, it is clarified as under:

a. A start-up in India with an overseas subsidiary is permitted to open foreign currency account abroad to pool the foreign exchange earnings out of the exports/sales made by the concerned start-up;

b. The overseas subsidiary of the start-up is also permitted to pool its receivables arising from the transactions with the residents in India as well as the transactions with the non-residents abroad into the said foreign currency account opened abroad in the name of the start-up;

c. The balances in the said foreign currency account as due to the Indian start-up should be repatriated to India within a period as applicable to realisation of export proceeds (currently nine months);

d. A start-up is also permitted to avail of the facility for realising the receivables of its overseas subsidiary or making the above repatriation through Online Payment Gateway Service Providers (OPGSPs) for value not exceeding USD 10,000 (US Dollar ten thousand) or up to such limit as may be permitted by the Reserve Bank of India from time to time under this facility; and

e. To facilitate the above arrangement, an appropriate contractual arrangement between the start-up, its overseas subsidiary and the customers concerned should be in place.

For Full Text refer to A.P. (DIR Series) Circular No. 51 dated 11 February 2016

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10277

63 Regulatory Relaxations for Startups- Clarifications relating to Issue of Shares

RBI, vide Press Release dated February 2, 2016, had announced that in case of startups, certain permissible transactions under the existing regulatory framework shall be clarified. One of the issues related to issue of shares without cash payment by the investor through sweat equity or against any legitimate payment owed by the company remittance of which does not require any permission under FEMA, 1999. Accordingly, the following is clarified:

a. Issue of shares without cash payment through sweat equity: Reserve Bank of India has permitted Indian companies to issue sweat equity, subject to conditions, inter-alia, that the scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 in respect of listed companies or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013 in respect of other companies.

b. Issue of shares against legitimate payment owed: Reserve Bank of India has permitted Indian companies to issue equity shares against any other funds payable by the investee company (e.g. payments for use or acquisition of intellectual property rights, for import of goods, payment of dividends, interest payments, consultancy fees, etc.), remittance of which does not require prior permission of the Government of India or Reserve Bank of India under FEMA, 1999 subject to conditions relating to adherence to FDI policy including sectoral caps, pricing guidelines, etc. and applicable tax laws (cf. paragraph 3 of Schedule 1 to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2015).

For Full Text refer to A.P. (DIR Series) Circular No. 52 dated 11 February 2016

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10278

64 Grant of EDF Waiver for Export of Goods Free of Cost

In terms of A.P. (DIR Series) Circuar no. 94 dated April 6, 2003, GR waiver to exporters for export of goods free of cost had been enabled. The facility had been extended to the Status Holders vide para 2.52.1 of Handbook of Procedures- Vol-I of Foreign Trade Policy 2004-2009, in terms of which Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years, whichever is higher.

Government of India vide amendment Notification No. 9/2015-2020 dated June 4, 2015, has notified that the Status Holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of Rs 10 lakh or 2% of average annual export realization during preceding three licensing years whichever is lower. AD Category – I banks may, therefore, consider requests from Status Holder exporters for grant of Export Declaration Form (EDF) waiver, for export of goods free of cost based on the revised norm.

For Full Text refer to A.P. (DIR Series) Circular No. 53 dated 03March 2016

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10297

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Service Tax - Recent Judgements

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58 Arpanna Automotive (P.) Ltd. v. Commissioner of Customs & Central Excise [2016] 67 taxmann.com 174 (Mumbai CESTAT) CESTAT, Mumbai Bench

Facts :-

Assessee, a motor dealer, earned commission from financial institutions for giving table space in assessee's premises. Department demanded service tax thereon.

Further the assessee, a motor dealer, earned 'differential amount' kept back on fees charged for RTO registration from their customers. Department argued that amount collected over and above actual charges paid to RTO authorities is liable to service tax.

Held :-

It was held that since assessee was not disputing tax amount, tax liability was confirmed with interest relying upon judgment in Pagariya Auto Centre v. CCE

Further it was held that assessee was : (a) neither promoting/marketing any service provided by any client, (b) nor providing any customer care service on behalf of client. Assessee was merely helping vehicle buyers with registration with RTO under Motor Vehicle Act and same cannot be considered as Business Auxiliary Service or 'Business Support Services' Hence, demand was dropped.

Hence helping vehicle buyers to avail registration with RTO under Motor Vehicle Act does not amount to Business Auxiliary or Business Support Services; hence, differential amount earned over and above actual RTO registration fees cannot be charged to service tax

59 Bordubi Engineering Works v. Union of India* [2016] 66 taxmann.com 256 (Gauhati) High Court of Gauhati

Facts :-

Department invoked extended period alleging suppression to raise demand on works contract services provided by assessee. Assessee argued that : (a) it had been submitting returns regularly showing all details and there was no suppression; (b) entire tax burden was to be borne by service recipient, hence, assessee would not gain anything by evasion; therefore, charge of evasion was invalid.

Held :-

It was held that burden of proof is on revenue to show that there was willful suppression of facts by assessee; but, once revenue brings out certain material, then, burden shifts back to assessee. Mere omission to inform would not lead to invocation of extended period, unless it is a deliberate attempt to escape from Service Tax. Where facts are known to department, then, omission by department to do what it might have done, does not constitute suppression by assessee. In this case, since department did not record any findings regarding assessee's contentions (a) and (b), matter was remanded back for consideration afresh.

Thus burden of proof is on revenue to show that there was willful suppression of facts by assessee with a view to evade service tax; but, once revenue brings out certain material, then, burden shifts back to assessee.

60 Commissioner of Central Excise, Customs & Service Tax, Vapi v. S.V. Jiwani [2016] 66 taxmann.com 329 (Bombay) High Court of Bombay

Facts :-

Assessee paid service tax on entire contract/ construction price and took credit of inputs and input service. Department argued that assessee had to apply rule 2A ibid and accordingly, service tax was payable as per said rule and credit had to be disallowed. Tribunal found that there was no revenue loss and hence, held in favour of assessee.

Held:-

It was held that when tax liability has been discharged on full contract price and credit has been taken, revenue was not put to loss. Hence, leaving question of law open, present appeals were disposed of, as there was no revenue loss.

Thus where assessee has paid service tax on full contract price of a works contract and availed credit of inputs and services and there is no revenue loss to department, department cannot seek to deny credit relying upon valuation rule 2A.

61 Nice Construction v. Union of India [2016] 66 taxmann.com 292 (Gujarat) High Court of Gujarat

Facts :-

Assessee builder neither took registration nor paid service tax. Department issued notices raising demand but assessee did not file any reply nor made any appearance. Assessee challenged adjudication order but Commissioner (Appeals) dismissed appeal as time barred beyond his permissible condonation power. Assessee filed writ against adjudication order arguing that demand was confirmed without allowing abatement for construction services.

Held:-

It was held that though writ jurisdiction is available against adjudication order even after expiry of time limit to file appeal, however, such benefit cannot be extended to indolent, tardy or lethargic litigant. In this case, assessee never filed reply to notices and not even participated in adjudication, despite several hearings granted to it. In view of assessee's lethargic conduct, writ was dismissed.

Quite apart from the petitioner presenting the appeal beyond the period what the Commissioner could condone, had simply not responded to the show cause notice issued by the adjudicating authority. We have noticed that after receipt of show cause notice, for months together, petitioner filed no reply. The order of adjudication came to be passed more than a year later. At no point of time, the petitioner either filed a reply or even participated in the adjudication proceedings. The adjudicating authority has recorded that, several notices for personal hearing were issued under registered A.D., despite which, neither the petitioner nor its authorized representative ever appeared before him.

Thus where assessee never filed any reply to notices and not even participated in adjudication hearings, then, no writ would be maintainable against ex parte adjudication order after expiry of time limit for filing appeal to Commissioner (Appeals).

62 Union of India v. Hamdard (Waqf) Laboratories [2016] 67 taxmann.com 125 (SC) Supreme Court of India

Facts:-

Assessee applied for refund on 25 8 1999 and was granted same on 15 11 2000. Assessee claimed interest on belated refund from 26 11 1999 to 15 11 2000 . Department denied interest on ground that : (a) there were certain defects in application, which were informed on 27 9 1999 and rectified on 30 9 1999; and (b) there was some mistake apparent from record in judgment giving rise to refund, which was informed to assessee on 1 12 1999 and got rectified later; thus, time limit of 3 months would commence only after rectification of all defects and accordingly, refund was not granted belatedly.

Held:-

Time limit to process refund claim is 3 months from date of receipt of application viz. 25 8 1999. Revenue must intimate deficiencies in application within two days and, if there are still deficiencies, it can proceed with adjudication and reject such application. In any event, adjudicatory process must be concluded within 3 months and cannot be carried on beyond 3 months. Hence, assessee was entitled to interest from 26 11 1999 to 15 11 2000.

Even in case of defect in any application for refund, adjudication thereof must be concluded within 3 months from receipt of original application; any delay in grant of refund beyond said 3 months would entitle assessee to claim interest on belated refund under section 11BB.

Sincesection11Bisalsoapplicabletoservicetax, the provisions would also cover refund of interest on service tax.

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VAT - Judgements and Updates

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Statute Updates
Value Added Tax (VAT)

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

The time limit of filing the e-return under Rule 19 has been changed as under vide Public Circular dated 29.02.2016

[1] **Monthly Returns**

	Time Limit
Dec. 2015 and thereafter all monthly Returns	45 days

[2] **Quarterly Returns**

From Oct. '15 to Dec. '15 and thereafter all quarterly returns	45 days

[II] **Important Judgments:**

[1] **The Hon. GVAT Tribunal in case of Durga Ceramics Pvt. Ltd. decided that on account of A.G. Audit there should not be a re-assessment in case of mistake of facts, mistake of law, change of opinion etc.**

Issue:

The Sales Tax Authority had made a re-assessment subsequent to the audit assessment and levied a demand of tax and penalty due to difference in closing stock shown in Balance Sheet and in the return filed by the dealer and addition is made.

Facts:

It is the case of the appellant that the appellant is carrying on the business of manufacturing ceramics, crockery etc. and is registered as a dealer under the GVAT Act as well as under CST Act. The appellant has worked out input tax credit on purchases made from registered dealers under the VAT Act, on which the vendors have collected Vat in their invoices. The appellant has also worked out output tax on sales made within the State of Gujarat as well as sales made outside the State of Gujarat under section 3(a) of the CST Act. The appellant has adjusted output tax liability against the input tax credit available to the appellant. The appellant has also filed returns accordingly by working out the above procedure for the year 2007-08.

Subsequently, audit assessment order was passed whereby the appellant was found to have paid excess amount. Thereafter, on the audit objection, the reassessment proceedings were initiated by issuing notice in Form-303 dated 19.11.2012 in which the appellant was directed to remain present with all accounting materials. In response to such notice for reassessment, the appellant through its Tax Consultant remained present and clarified the issues raised by the order. As per the view taken by the assessing officer, an amount of Rs. 7,39,362/- was considered as stock difference, whereas as per the stand of the appellant, it is nothing but dead stock, which has no value at all as they are not saleable due to breakage, not marketable, etc. The assessing officer did not accept the appellant's submissions and passed the reassessment order on 11.01.2013 raising the total demand of Rs. 96,422/-. Being aggrieved by the said reassessment order, the appellant filed first appeal before the learned Deputy Commissioner of Commercial Tax, Appeal-3, Gandhinagar. At the time of preliminary hearing of the first appeal, the appellant reiterated appeal grounds and request was made to admit the first appeal without any payment or some token amount, but, the First Appellate Authority directed the appellant to make payment of 20% of total demand of Rs. 96,422/-. Since the appellant did not agree, the learned Deputy Commissioner dismissed the first appeal only on the ground of non-payment of pre-deposit.

The Hon. Tribunal has considered the rival submissions and the facts of the case and have also gone through the orders passed by the authorities below and the documents produced before this Tribunal. The only point involved in the present appeal is whether loss shown in the profit and loss account can be considered due to any stock difference. The stock difference may arise for variety of reasons. In the present case, it was a specific case of the appellant that the stock difference in the present case arose only because of certain defects in the finished goods and because of the breakages, the goods could not be sold and since the said goods were liable to be destroyed, the same were not taken into consideration, the figures shown in the balance sheet by way of dead stock, cannot be considered as stock difference.

Apart from the fact that the appellant’s contention was accepted in the audit assessment, it is only at the behest of the audit party, the issue was raised and the appellant’s claim was disallowed. However, the action taken by the assessing officer on the basis of the audit party, cannot be said to be a valid action.

It is nothing but the change of opinion which is not permissible while re-framing the assessment order. Thus, the present appeal deserves to be allowed on both the counts and the order passed by the assessing officer and confirmed by the learned Deputy Commissioner deserves to be set aside. The audit party cannot point out the mistake of facts. If there is no mistake of law, the re-assessment order passed by the assessing officer on the basis of audit objection cannot be upheld.

The Hon. Tribunal is therefore of the view that the appellant succeeds in this appeal on both the counts, namely, on legal issue as well as on merits. The reassessment order passed by the assessing officer is held to be not justified. Even on merits, the amount of loss shown in the balance sheet cannot be considered as stock difference. In the result, the following order is passed.

This appeal is allowed. The orders passed by the authorities below on this issue are set aside. There shall be no order as to cost.

[2] **In case of Sanjar Auto Centre the Hon. GVAT Tribunal has reduced the enhancement in sales turnover and in Penalty.**

Issue:

During the visit of place of business the provisional assessment orders were passed for the period 2010-11 & 2011-12 and considering the stock difference 100% enhancement was made in sales turnover and the penalty was also levied @ 150%.

Facts

Pursuant to visit to the place of business the assessment order passed for the period 2010-11 and 2011-12 was concerned, the sales turnover was estimated on the basis of delivery challan for which the appellant did not furnish sale bill. The provisional assessment order was passed for the period 01.04.2012 to 15.05.2012 in respect to the stock difference of Rs. 7,98,778/-. The 100% enhancement was made in the sales turnover estimated as above. The interest was levied and penalty was imposed in passing of provisional assessment order. The appeal preferred against the provisional assessment order was dismissed. The appellant filed the second appeal before the Tribunal in which it was contended that the stock difference determined during the visit to the place of business is not just and fair, because the appellant is dealing in automobile parts and it is difficult to identify the stock of all and each parts. The enhancement in sales turnover was contended along with the levy of interest and penalty. The second appeal is partly allowed by reducing the enhancement in the sales turnover from 100% and the levy of penalty from 100% to 25%.

[3] **In case of Top Agro Industries the Hon. GVAT Tribunal has not accepted the plea of the appellant that there is receipt book seized during the visit of the place of sister concern.**

Issue:

From the place of business one receipt book was seized showing the sales of muster seeds, the enhancement made in the sales turnover was reduced to 50% by the first Appellate Authority, however, the Hon. Tribunal has not accepted the wrong statement of the appellant that the receipt book which was seized of sister concern and appeal was dismissed.

Facts:

The place of business of the appellant was visited and receipt book was seized. The statement of the appellant was recorded in which it was confessed that the said receipt book was in relation to business of sale and purchase of mustard seeds i.e. raida. The provisional assessment order was passed. The appeal preferred against the provisional assessment order was partly allowed by reducing enhancement made in the sales turnover. The second appeal was preferred in which the estimation of sales turnover on the basis of receipt book was contended. The second appeal was decided and the matter was remanded to the assessing officer for passing fresh assessment order. The assessment order was passed in which the sales turnover estimated on the basis of receipt book was upheld. The appeal preferred against assessment order was rejected. The appellant filed second appeal in which it was contended that the receipt book was not of his business, but it was one of his sister concerns. The Tribunal observed that the appellant has made statement during the visit to the place of business that the receipt book was relating to his business of mustard seed, whereas now he says that the receipt book was of the sister concern. In view of the contradictory statement, the sales turnover estimated in the assessment order is upheld. However, the enhancement in sales turnover reduced in the first appeal preferred against the provisional assessment order is held just and fair.

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Case Laws on Matters related to Business Valuation

- **Break-up value for going concern is nor correct.**
- **Court laid down principles of valuation**

Mahadev Jalan , Wealth Tax, 1972 (SC)

Supreme Court of India

Commissioner Of Wealth Tax vs Mahadeo Jalan & Mahabir Prasad ... on 13 September, 1972

Equivalent citations: 1973 AIR 1023, 1973 SCR (2) 215

Bench: Reddy, P Jaganmohan

Petitioner : Commissioner of Wealth Tax Vs.

Respondent : Mahadeo Jalan & Mahabir Prasad Jalan

Date of Judgment : 13/09/1972

Citation : 1973 AIR 1023 1973 SCR (2) 215

1973 SCC (3) 157

ITATOR INFO : F 1980 SC 769 (1,7)

RF 1988 SC 522 (4)

ACT: Wealth Tax Act, 1957-Section 7-Basis of valuation of shares in Private Limited Companies.

Head Note:

On the question as to what is the basis of valuation of shares in private limited companies for the purpose of section 7 of the Wealth-tax Act, 1957,

Held:

The general principle of valuation in a going concern is the yield on the basis of average maintainable profits, subject to adjustment etc, which the circumstances of any particular case may call for. An examination of the various aspects of valuation of shares in a limited company would lead to the following conclusions-

(a) Where the shares in a public limited company are quoted on the stock exchange and there are dealings in term, the price prevailing on the valuation date is the value of the shares.

(b) Where the shares are of a public limited company which are not quoted on stock exchange or of a private limited company the valuation is determined by reference to the dividends if any reflecting the profit earning capacity on a reasonable commercial basis. But where they do not, then, the amount of yield on that basis will determine the value of the shares. In other words, the profits which the company has been making and should be making would ordinarily determine the value. The dividend and earning method or yield method are not mutually exclusive; both should help in ascertaining the profit earning capacity. If the results of the two methods differ, an intermediate figure may have to be computed by adjustment of unreasonable expenses and adopting a reasonable proportion of profits.

(c) In the case of a private limited company also where the expenses ,are incurred out of all proportion to the commercial venture, they will be added back to the profits of the company in computing the yield., In such companies the restriction on share transfer, will also be taken into consideration in arriving at a valuation.

(d) Where the dividend yield and earning method break down by reason of the company's inability to earn profits and declare dividends, if the set back is temporary then it is perhaps possible to take the estimate of the value of the shares before set back and discount it by a percentage corresponding to the proportionate

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Corporate Law Update

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MCA Updates:

1. **Exemption from the provisions of section 5 of the Competition Act for a period of 5 years:**
   The Central Government, in public interest, hereby exempts the 'Group' exercising less than fifty per cent. of voting rights in other enterprise from the provisions of section 5 of the said Act for a period of five years with effect from the date of publication of this notification in the official gazette.
   The Central Government, in public interest, hereby exempts an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India from the provisions of section 5 of the said Act for a period of five years from the date of publication of the notification in the official gazette.
   [F. No. 5/33/2007-CS (Part) dated 04th March, 2016]

2. **Enhancement in the value of assets and value of turnover for the purpose of section 5 of the Competition Act:**
   The Central Government in consultation with the Competition Commission of India, hereby enhances, on the basis of the wholesale price index, the value of assets and the value of turnover, by hundred per cent for the purposes of section 5 of the said Act, from the date of publication of this notification in the Official Gazette.
   [F. No. 5/7/2013-CS dated 04th March, 2016]

3. **Shifting of the office of the Registrar of Companies, UP, Kanpur:**
   The office of the Registrar of Companies, UP, Kanpur will be shifted from 10/499-B, Allenganj, Khalasi line, Kanpur to 37/17 West Cott Building, The Mall, Kanpur-208001, Phone No. 0512-2310443/2310323, E-Mail ID: roc.kanpur@mca.gov.in in with effect from 25.02.2016.

4. **Companies (Share Capital and Debentures) Amendments Rules, 2016:**
   In the Companies (Share Capital and Debentures) Rules, 2014, in rule 17, in sub-rule (I), in clause (n), after sub-clause (iii), the following proviso shall be inserted, namely:-
   "Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company."
   [F. No. 01/04/2013 CL-V (part-II) dated 10th March, 2016]

5. **Order in respect of Govt. Companies:**
   The Central Govt. has notified that the debt to capital and free reserves ratio shall be 6:1 for government companies within the meaning of clause (45) of section 2 of the Companies Act, 2013 which carry on Non-Banking Finance Institution activities and Housing Finance activities.
   [F. No. 01/04/2013 CL-V (Pt-II) dated 10th March, 2013]

6. **Companies (Incorporation) Second Amendment Rules, 2016:**
   The format of Certificate of Incorporation, i.e. Form INC-11 has been revised and substituted with the new format with effect from the publication of this notification in the Gazette of India.
   [F. No. 01/13/2013 CL-V (Pt-I) dated 23rd March, 2016]

7. **CRC to process the forms pertaining to registration of companies:**
   With effect from 28th March, 2016, the Central Registration Centre (CRC) shall also exercise

functional jurisdiction of processing and disposal of e-forms and all related matters pertaining to registration of companies under section 7, 8 and 366 of the Companies Act, 2013 having territorial jurisdiction all over India.

The CRC shall process forms pertaining to registration of companies i.e. e-forms (INC-2, INC-7 and INC-29 along with linked forms INC-22, DIR-12 and URC-1 and any other forms as may be notified by the Central Government) filed along with the prescribed fee as provided in the Companies (Registration of Offices and Fees) Rules, 2014.

The jurisdiction, processing and approval of name or names proposed in e-Form number INC-29 hitherto exercised by the respective Registrar of companies having jurisdiction over incorporation of companies under the Companies Act, 2013 and the rules made thereunder shall forthwith be exercised by Registrar, CRC.

The jurisdictional Registrar of companies, other than Registrar CRC, within whose jurisdiction the registered office of the company is situated shall continue to have jurisdiction over the companies incorporated by the Registrar, CRC under the Companies Act, 2013 for all other provisions of the Act and the rules made thereunder, which may be relevant after incorporation.

[F. No. A-42011/03/2016.-Ad.11 dated 23rd March, 2016]

SEBI updates:

1. **Introduction of Exchange Traded Cross Currency Derivatives and option Contracts:**

   The Reserve Bank of India (RBI) has permitted recognized stock exchanges to offer cross currency futures and option contracts in the EUR-USD, GBP-USD and USD-JPY currency pairs. RBI has also permitted recognized stock exchanges to offer currency option contracts in EUR-INR, GBP-INR and JPY-INR currency pairs, in addition to the existing USD-INR pair.

   The SEBI also has permitted the recognized stock exchanges to introduce cross currency futures and options contracts on EUR-USD, GBP-USD and USD-JPY. The details in terms of product design, margins and position limits for the specified currency pairs are as given under **Annexure I.**

   Further, it has also been decided to permit recognized stock exchanges to introduce currency options on EUR-INR, GBP-INR and JPY-INR currency pairs. The details in terms of product design, margins and position limits for the three additional currency pairs are as given under **Annexure II.**

   Eligible market participants, i.e., stock brokers, domestic institutional investors, FPIs and clients, are allowed to take positions in the exchange traded cross-currency futures and option contracts in the EUR-USD, GBP-USD and USD-JPY currency pairs and exchange traded currency option contracts in EUR-INR, GBP-INR and JPY-INR currency pairs, subject to terms and conditions mentioned in this circular and the aforesaid circular of RBI.

   [SEBI/HO/MRD/DP/CIR/P/2016/0000000038 dated 09th March, 2016]

   For details please refer the following link: **http://www.sebi.gov.in/cms/sebi_data/attachdocs/1457523461184.pdf**

2. **Investments by FPIs in REITs, InvIts, AIFs and Corporate Bonds under default:**

   A. REITs, INVITs and AIFs

   As the RBI has permitted investments by FPIs in the units of REITs, InvIts and AIFs, the SEBI has decided to permit FPIs to invest in units of REITs, InvIts and Category III AIFs in terms of Regulation 21 (1) (n) of SEBI (FPI) regulations, 2014, subject to such other terms and conditions as may be prescribed by SEBI from time to time.

   A FPI shall not hold more than twenty five percent stake in a category III AIF.

   B. Corporate Bonds under default

   The RBI has permitted FPIs to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal installment in the case of amortizing bond. Accordingly, in partial modification of Para 2 of the SEBI circular CIR/IMD/FIIC/1/2015 dated February 03, 2015, FPIs shall be permitted to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal installment in the case of an amortizing bond. FPIs shall be guided by RBI's definition of an amortizing bond in this regard.

Such NCDs/bonds restructured based on negotiations with the issuing Indian company, shall have a minimum revised maturity period of three years.

[CIR/IMD/FPIC/39/2016 Dated 15th March, 2016]

3. Securities and Exchange Board of India (International Financial Services Centers) Guidelines, 2015 (IFSC Guidelines) - Inclusion of Commodity Derivatives:

Since, the Section 133 of the Finance Act, 2015 had amended Securities Contracts (Regulation) Act, 1956 to include "Commodity Derivatives" as securities. Further, the sub-clause (vi) of Clause 7 of IFSC Guidelines, 2015 provides that "Such other securities as may be specified by the Board".

Accordingly, it is hereby specified that the "Commodity Derivatives" shall be eligible as securities for trading and the stock exchanges operating in IFSC may permit dealing in Commodity Derivatives.

[CIR/MRD/DSA/41/2016 Dated 17th March, 2016]

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fall in the price of quoted shares of companies which have suffered similar reverses.

(e) Where the company is ripe for winding up the break-up value method determined what would be realized by that process.

(f) As in Attorney v General of Ceylon v. Mackie a valuation by reference to the assets would be justified where as in that case the fluctuations of profits and uncertainty of the conditions at the date of the valuation prevented any reasonable estimation of prospective profits and dividends. The above principles are not intended to lay down any hard and fast rule, because, ultimately the facts and circumstance of each case, the nature of the business, the prospects of profitability and such other considerations will have to be taken into account as will be applicable to the facts of each case. But one thing is clear, the market value, unless in exceptional circumstances, cannot be determined on the hypothesis that because in a private limited company one holder can bring it into liquidation, it should be valued as on liquidation by the break-up method. The yield method is the generally applicable method while the break-up method is the one resorted to in exceptional circumstances or where the company is ripe for liquidation, but, nonetheless, is one of the methods.

Attorney General of Ceylon v. Mackie [1952] 2 All. E.R. 775 P.C., Smith v. Revenue Commissioners, 1931 Irish Reports 643, Mc. Cathie v. The Federal Commissioner of Taxation, 69 Commonwealth Law Reports page I and Federal Commissioner of Taxation v. Sagar, 71 C.L.R. 422 referred to. (3)This Court has power to reframe the question as framed by the High Court so long as a new and different question is not raised but confine it only to resettling or reframing a question formulated by the Tribunal or by the High Court so as to bring out the real issue between the parties. [221E]Narain Swadeshi Weaving Mills v. Commissioner of E.P.T., 26 I.T.R. 765 at 774 and Kusum Ben De Mahadavia v. Commissioner of Income-tax, 39 I.T.R. 540 at 544 referred to.

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Allied Laws Corner

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Scheme of Demerger – Devise to avoid tax, capital gain and stamp duty is not to be sanctioned

Recently the Rajasthan High Court in the case of **Uma Enterprises (P.) Ltd.** reported in **67 taxmann.com 227** found the scheme of demerger to be mere devise to avoid tax, capital gains and stamp duty which would be otherwise leviable in the event of land of the company otherwise being transferred to a third party, and accordingly, the High Court did not sanction the scheme of demerger.

A. Facts of the case :

1. The Petitions came to be filed before the Hon'ble High Court under sections 391-394 of the Companies Act, 1956 read with Rule 57 of the Companies Court Rules, 1959 seeking sanction of the scheme of de-merger of Uma Enterprises (P.) Ltd. into nine resultant companies aside of demerged company as approved and adopted by the shareholders and creditors of the company so as to be binding on all concerned.

2. The company applied to the Hon'ble court at the first motion for holding of meetings of its shareholders and unsecured creditors for considering and if thought for approving with or without modifications the demerger of the company as proposed. Vide order dated 31-5-2012 it was directed by the court that meeting of shareholders and unsecured creditors of applicant company be convened and held at its registered office on 30-6-2012 under the chairmanship of Ms. Pallavi Mehta and Mr. Rachit Sharma respectively. In the consequent meetings as directed by this court, the scheme of demerger was approved and adopted at the meetings of 30-6-2012 and reports of Chairpersons of the meetings as appointed by the court submitted to the court.

3. The company Uma Enterprises Private Limited was incorporated under the Companies Act on 23-10-1973. It engaged in the business of production, processing and sale of edible oils and other related activities. The Company owns 40,400 sq. meters of land. Under the scheme of de-merger under consideration the shareholders and creditors of the company have approved transfer of 26023 sq. meters of its land purportedly the nine real estate divisions of the company to nine resultant companies, each of which will then work independently for enhancement of shareholders' value. Counsel for the petitioner has submitted that the scheme of de-merger was necessitated for reason of compulsion of implementing family arrangement between the shareholders of the company who are all related. The de-merger as approved at the meeting of the shareholders and creditors will facilitate continuing cordial relations within the extended family and promotors of the company. Each branch of the family will have an independent right to operate the respective resultant companies coming to its control and conduct business operations relating thereto with their own vision and determination. The arrangement envisaged eschews potential defences and dispute in the future between the extended members of the family, all shareholders in different measure in the applicant company. It has been submitted that the scheme of demerger will also facilitate proper management, focus on core businesses to advance the interest of the shareholders by each of the resultant demerged and resultant companies. It has been submitted that total value of land in the ownership and possession of the company as per its books is Rs. 2,43,051 of which a sum of Rs. 75,000/- is constituted of capital expenditure towards development

work on the company land by levelling it and redying it for real estate business. Subsequent to the de-merger/ hiving out of 26023 sq. meters under the real estate division into the nine resultant companies, land value of de-merged company will be Rs. 73,727/-. It has been contended that the scheme of de-merger is in compliance of all laws and this Court on a second motion moved under Sections 391-394 of the Act of 1956 having only supervisory jurisdiction confined to ensuring that the scheme is fair, reasonable, just and not contrary to public interest, should sanction the scheme.

B. Arguments of Add. Solicitor General appearing for the Regional Director:

1. Mr. R.D. Rastogi, Additional Solicitor General appearing for the Regional Director has submitted that the de-merger scheme of which sanction is sought is evidently a sham and a mere ruse to convey the company's land to third parties circumventing liability towards capital gains under the Income-tax Act, 1961 (hereinafter 'the Act of 1961') and stamp duty under the Rajasthan Stamp Act, 1998 (hereinafter 'the Act of 1998'). It is in a clear attempt to evade taxation and is against public interest, submitted counsel, and if it is sanctioned would cause huge loss to the public exchequer amounting to crores of rupees on account of stamp duty and capital gains tax.

2. It was pointed out that 26023 sq. meters of valuable land with market price of over Rs.1 lac per meter is worth Rs. 260 crores odd but is being transferred on face value of Rs. 1.61 lacs under the colour of the demerger scheme. It was submitted that the purpose and intent of the de-merger scheme is not so much efficacy of existing businesses or enhancement of shareholder value by transferring an ongoing concern/undertaking/division of the company for better results but to circumvent the laws of the land and use of this court as a medium to solely advance private interest of the promoters and shareholders of the company to public detriment of lost revenues.

3. It was submitted that under the purported scheme of demerger 26023 sq. meter of land in a posh area of Jaipur Metropolitan is sought to be transferred to independent entities for a face value of Rs. 1.69 lac whereas its market value at a conservative estimate of Rs. 1 lac per sq. meter i.e. Rs. 260 crores.

4. The device adopted by the applicant company through abuse of the benefits of the statutory provisions of Sections 391-394 of the Act of 1956 will bring about loss of about 50 crores to the revenue on account of capital gains and about Rs. 15 crores on account of stamp duty—all to the detriment of public interest. Collection of due tax is the highest public interest. The Addl. Solicitor General has also submitted that the scheme of de-merger is also mala fide founded as it is upon incorrect statement of facts as to the existence of real estate division in the company as an ongoing concern/undertaking/ division. It has been submitted that no real estate business at any point of time has been carried by the company as evident from the fact that no turnover, income or expenditure from the said business from the very inception of the company in 1973 is reflected in its annual financial statements as apparent from the balance-sheet as of 31-3-2012. It has been submitted that the Tax Audit Report dated 11-9-2013 and 19-9-2014 also shows the applicant company only engaged in the manufacturing activity and sale of vanaspati and edible oils. The Addl. Solicitor General then pointed out that no land has been shown in the inventory of the company in its books under the head of current assets as required if the purported real estate business of company was operational as a going concern. Even in the return of 2014-15 the applicant company's land has been shown as "Fixed Assets".

5. It has been submitted that the purported capital expenditure of Rs.75,000/- towards levelling of applicant company's land post-2010 is fraudulent as when asked for vouchers in respect thereof only a plain paper of purported expenses unsigned and unpaid was presented

where oddly the contractor engaged asked not to be paid but instead for a credit in respect thereof to be reflected in the books of the company. It was submitted that this nebulous suspect entry as a capital expenditure on the company's land on account of its alleged levelling cannot be taken as a commencement of the company's real estate business or creation of real estate division/s.

6. It was submitted that the process of this court is sought to be misutilised as are the salutary provisions of section 392(2), read with 394 of the Act of 1956 by camouflaging the conveyance of the company's land as a demerger solely to avoid the taxation events which would otherwise followed in the ordinary course of law in respect of a conveyance. It was further submitted that the scheme of de-merger of which sanction is sought being a sham is also buttressed by the fact that the proposed de-merger does not fall within the ambit of Section 2(19AA) of the Income Tax Act, 1961 and Explanation I thereto. According to the Additional Solicitor General the explanation aforesaid provides that a de-merger can be brought about only by way of transfer of an undertaking or any part thereof or a unit of an undertaking or a business as a whole, and when the holder of equity shares in the demerged company have similar interest in the resultant company/s. It has been submitted that from the facts on record, specifically the company's own balance-sheet as also its profit and loss account, and turnover, no real estate "undertaking" obtained in the company's business since its inception which could be de-merged under the Income-tax Act, 1961. It has been submitted that public policy would not allow the court's discretion being exercised to allow a demerger under Section 392(2), read with 394 of the Act of 1956 in the cross hair of an existing law. It has been submitted that what is proposed/approved by the shareholders in the de-merger scheme before this court is that bare land be transferred to resultant companies. It has also been emphatically submitted that while in a genuine scheme of demerger, the shareholders of the demerged company are allotted shares in the resultant company, oddly in the instant case contrary to general practice, the shareholders of the demerged company are to be allotted under the scheme only non-cumulative compulsorily redeemable preference shares and not equity shares, thus clearly separating them from ownership/interest in the resultant companies. This clearly establishes that the demerger is not a bona fide restructuring but a sale of assets under a device to circumvent tax liability.

C. Arguments of the Advocate of the Petitioner:

1. Mr. Gunjan Pathak, counsel for the petitioner company has submitted that the scheme of de-merger is in compliance with all operative laws and fully within the legal framework of Companies Act, 1956. If any taxation event under the Act of 1961 or the Act of 1998 attracts to the demerger sanctioned by this court, law will take its own course. It was then submitted that if the de-merger scheme entails saving of capital gains, tax or stamp duty, it is of no consequence. Counsel submitted that the Apex Court has constantly held that where a scheme of arrangement under the Act of 1956 does not violate any provision of law, the mere suspicion of alleged avoidance of tax cannot be a ground for not sanctioning the scheme, otherwise lawful and valid. Referring to the judgment in case of CIT v. Calcutta Discount Co. Ltd., [1974] 3 SCC 260] it has been submitted that an assessee is free in law to arrange his/its affairs with intent to minimise the tax burden.

2. It has been submitted that the applicant company has a real estate business as would be evident from the fact that it expanded Rs. 75,000/- as recorded in its books of account as capital expenditure towards levelling the company's land. Counsel submitted that where expenditure is revenue or capital is a matter of identification by the statutory auditor of the

company who is fully competent and authorised to comment and qualify the expenditure. It has been submitted that Rs. 75,000/- having been described by the statutory auditor of the company as capital expenditure, and so accepted by the Income Tax Department, it does not lie in the mouth of the Regional Director to argue to the contrary that the company is not engaged in any real estate activity of which it is seeking demerger.

3. It has been further submitted that for the commencement of a business mere intention to do so suffices and no rule, regulation or law applicable to a private limited company has been cited by the Regional Director to show it is as the company's obligation to disclose the factum of commencement of a business in its financial statements. It has been submitted that in the year 2010 a resolution was passed at the extraordinary meeting of shareholders of the company duly convened to approve as the company's "other objects" commencement of real estate business on the land available with it. The resolution was approved and on 4-6-2010 whereby the company adopted clauses 9, 10, and 11 of part C of III in the Memorandum of Association of the company in this regard. The aforesaid clauses relate to business activities which the company was authorised to carry out in the interest of its shareholders. On the issue of compulsorily redeemable preference shares related to the demerged company by the resultant companies as proposed in the scheme of de-merger to which objection was taken by the Regional Director as indicative of the scheme being that of transfer of land and not of a de-merger of a unit/division of the company, it was submitted that the issue of preference shares in lieu of equity shares in a case of de-merger of a company is a matter of practice and does not in any way render the proposed scheme of de-merger illegal or fraudulent.

D. Decision of the Hon'ble Rajasthan High Court :

1. **It is well settled that the scheme of arrangement under Sections 391-394 of the Act of 1956 is fundamentally a commercial document based on the commercial wisdom of the shareholders and creditors of the company. The company court cannot sit in judgment thereof on merits as if in appeal and seek to evaluate the scheme meticulously prior to grant of sanction. That however is not the end of the matter or the complete statement of law. For it is equally well settled that the sanction of the court under sections 391(2)-394 of the Act of 1956 is not to be mechanically granted on the mere askance as if the court were a mere rubber stamp. The company court has to wisely exercise its discretionary jurisdiction vested in it to sanction the scheme, having regard to various aspects such as considering the background and material facts of the case, determining the good faith and foundation of scheme under consideration, ascertaining the purpose of scheme, ensuring that it is not prejudicial to the public interest, that it does not violate any provision of law, rendering it contrary to public policy and is not a mere device to evade tax.** The scheme should be bona fide to advance business efficacies and shareholders interest without compromising public interest. It should not be a ruse to indirectly achieve what is prohibited in law. It is within these parameters that the objections to the sanction of scheme by the Regional Director have to be considered.

2. It is quite apparent from the facts on record that ever since its inception in 1973, the company has been only engaged in the business of manufacturing and sale of vanaspati and edible oil. It is indeed true that in the year 20l0 the object clause of the company as disclosed in its Memorandum of Association was amended to include among the company's "other objects" real estate business. However, as submitted by the Additional Solicitor General it is manifest that the company did not carry out any real estate activity as neither was

such activity reflected in its books of account by way of turnover, income and profit therefrom nor for that matter was the land of the company included in inventory under the head of Current Assets warranted under applicable Generally Acceptable Accounts Principles (hereinafter 'GAAP') for real estate businesses. As per the tax audit report even upto 19-9-2014 the company has at all times only engaged in the business of manufacturing and sale of vanaspati, edible oil and not in the business of real estate. No separate assets or liability of the purported real estate business has been shown. And these facts were not disclosed in the application for sanction of the scheme. Instead, what was given out is that the company seeks to de-merged its real estate "divisions" as if the real estate business was operative and a going concern.

3. I am unable to accept the contention of counsel for the petitioner that the mere intent to commence the business of real estate and the purported expenditure of Rs. 75,000/- debited to the capital account towards levelling of land constituted commencement of business to bring it within the scope of Section 2(19AA) of the Income Tax Act, 1961 and allow for a demerger. I am of the considered view that in the facts obtaining it cannot be held that the company had an operative real estate business or undertaking, which is a prerequisite for a de-merger under the law of the land. It cannot be disputed that while sanctioning a scheme the court in the exercise of its jurisdiction under Section 391(2), read with 394 of the Act of 1956 cannot negate other laws as it would be plainly contrary to public policy to do so. **In the circumstances the sanction of the scheme of demerger as sought as rightly argued by the Addl. Solicitor General appears to be a mere device to avoid tax capital gains and stamp duty which would be otherwise leviable in the event of the land of company otherwise being transferred to a third party. The compulsorily redeemable preference shares in lieu of equity shares being allotted by the resultant companies to the demerged company is further indicative of the arrangement/demerger under consideration being a plain transfer of land not a restructuring of the applicant company. An important criterion for restructuring of a company as by way of demerger is that the same persons carry on the business of structuring.** This is not the case as holders of non-compulsorily redeemable preference shares have no rights in the business or its management but only right to dividends. **Even though it is correct to contend that mere suspicion of alleged avoidance of tax and stamp duty cannot entail holding the scheme under Sections 391(2)-394 as unlawful/invalid, yet the fact remains that where a scheme under sections 391-394 appears to have been formulated, approved and adopted by the shareholders solely with the intent to avoid tax and is without any evident fundamental purpose for the benefit of the shareholders and efficacies of a restructured business, it would tantamount to a sanction being sought contrary to public interest owing to which it cannot and ought not to be sanctioned. The Apex Court in the case of Macdowell and Co. Ltd. v. Commercial Tax Officer [1985] 3 SCC 230 has held that though tax planning may be legitimate within the framework of law, yet colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by dubious methods.** It was further held that it is the obligation of every citizen to pay taxes honestly without resorting to subterfuges as there is behind taxation laws as much moral sanction as is behind any other welfare legislation. It was then held that where a transaction is a device to avoid tax, more so by resort to judicial process to accord approval thereto, it cannot be countenanced and it is upto the court to take stock to determine the nature of the device, to expose the device for what it really is and to refuse to give it judicial benediction.

4. The Gujarat High Court in the case of **Wood Polymer Ltd., In re [1977] 109 ITR 177** has held that **if the object of a scheme of amalgamation (and by extension demerger) is just to defeat tax provisions it would be against public interest to approve it and hence should not be approved by the court.** The Court in the aforesaid case delineated the concept of public interest in company law holding that rampant laissez faire was not countenanced under the Act of 1956. Instead the Act of 1956 also very consciously provided for regulation of companies in public interest, inasmuch as in several fields even the joint will of the management and the stake-holders has to reckon with public policy. **It was held that all taxes are levied by the State in public interest and where a citizen/corporate seeks to circumvent its obligation to pay taxes by subterfuges and even misuse and abuse of salutary provisions dehors their context and purpose, the enterprise should not be promoted by the court. In the context of amalgamation and public interest considerations for sanction thereof it was held by the Gujarat High Court in its opinion that the scheme of amalgamation must accordingly fulfill some felt needs, some objects and it must have some correlation to public interest. If the only purpose behind the scheme is defeating tax obligations and prior to the arrangement a phoney situation is created wholly unreal for milking the enabling provisions of law it would distinctly establish appear that the provisions of such a scheme were sought to be utilised for the avowed object of defeating tax liability.**

5. On consideration of the second motion, submissions of counsel for the petitioner company and the counsel for the Regional Director, with reference to facts of the case, I am of the considered view that the sanction to the scheme of de-merger as sought by the petitioner company cannot be granted. **The company does not appear to have had any real pre-existing real estat/division since its inception.** It is evident that the petitioner company was all along engaged in the business of manufacturing, processing and sale of vegetable oil alone. As evident from the facts on record no income or profit and loss on account of real estate business has been reflected in books of account of the company. **The land of the company also has not been shown in the inventory under of head of current assets of the petitioner company as it would have been and warranted by the General Accounting Principles, if the company indeed had a real estate business. A bare look at the explanation to Section 2(19AA) of the Income Tax Act, 1961 makes it manifest that for a demerger a pre-existing undertaking is a prerequisite. That pre-requisite is found absent in the facts of the instant case. To sanction the scheme of demerger of purported (not real) and non-functional real estate business of the company as sought would also be in the cross hair of a statutory provision** i.e. explanation to Section 2(19AA) of the Act of 1961. The Apex Court in **Hindustan Lever v. State of Maharashtra [2004] 9 SCC 438** has reiterated the view in the judgment in case of Miheer H. Mafatlal v. Mafatlal Industries Ltd. [1997] 1 SCC 579 and inter alia held that **the company court before sanctioning a scheme should ensure that the arrangement is not violative of any provision of law, aside of not being contrary to public policy interest.**

6. In summation, I would hold that the scheme of demerger of which sanction is sought appears to be only a device for avoidance of obligation towards capital gains tax and stamp duty and also falls foul of Explanation to Section 2(19AA) of the Income Tax Act of 1961.

7. In the circumstances, the discretion of this court therefore cannot be exercised in favour of the petitioner company. The scheme of de-merger cannot therefore be sanctioned.

❊ ❊ ❊

From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

AS - 28 Impairment of Assets

Reliance Industries Limited

An asset is treated as impaired when the carrying cost of asset exceeds its recoverable value. An impairment loss is charge to the profit & loss statement in the year in which an assets is defined as impaired .the impairment loss recognized in the prior accounting period is reversed if there has been a change in the estimated recoverable amount

Chowgule Steamship Limited

Consideration Is Give To Each Balance Sheet Date To Determine Whether There Is Any Indication Of Impairment Of The Carrying Amount Of The Company Fixed Assets. Is Any Indication Exists, An Assets Recoverable Amount Is Estimated. An Impairment Loss Is Recognized Whenever The Carry Amount Of The Assets Is Exceed Its, Recoverable Amounts. The Recoverable Amounts Is Greater Of The Net Selling Price And Value In Use. In The Assessing Value In Use The Estimated Future Cash Flow Are Discounted To Their Present Value Based On An Appropriate Discount Factor. Reversal Of Impairment Loss Is Recognized Immediately As Income In The Statement Of Profit & Loss.

HOV Services Limited

According to AS 28 on' impairment of assets 'prescribed by the company act 2013 where there is an indication of impairment of the group assets related to cash generating unit the carrying amounts of such assets are reviewed at each at each balance sheet date to determine whether there is any impairment .The recoverable amounts of such assets is estimated as higher of its net selling price and its value in use. An impairment loss is recognised whenever carrying amounts of such assets exceeds its recoverable amount. Impairment loss is recognised in the statement profit and loss. if at the balance sheet date there is an indication that a previously assessed impairment loss no longer exists, then such loss is revered and the assets is restated to extent of the carrying value of the assets that would have been determine (net of amortization / depreciation) had no impairment loss recognized.

KPR Mill Limited

The carrying values of assets / cash generating units at each balance sheet date are reviewed for impairment. If any indication of impairment exists, the recoverable amount of such assets is estimated and impairment is recognised, if the carrying amount of these assets exceeds their recoverable amount. The recoverable amount is the greater of the net selling price and their value in use. Value in use is arrived at by discounting the future cash flows to their present value based on an appropriate discount factor. When there is indication that an impairment loss recognised for an asset in earlier accounting periods no longer exists or may have decreased, such reversal of impairment loss is recognised in the Statement of Profit and Loss, except in case of revalued assets

National Buildings Construction Corporation Limited

Carrying amount of cash generating units is reviewed at each reporting date where there is any indication of impairment based on internal/ external indicators. An impairment loss is recognised in the statement of profit and loss where carrying amount exceeds recoverable amount of cash generating units. Impairment loss is reversed, if, there is change in recoverable amount and such loss either no longer exists or has decreased or indication on which impairment was recognised no longer exists.

Take Solutions Limited

At each Balance Sheet date, the Management reviews the carrying amounts of its assets included in each of the cash generating units to determine whether there is any indication that those assets may be impaired. If such an indication exists, the company estimates the recoverable amount of the asset. For an asset that does not generate independent cash flows, the recoverable amount is determined for the cash–generating unit to which the asset belongs. If such recoverable amount of the asset or the recoverable amount of the cash-generating unit to which the asset belongs is less than its carrying amount, the carrying amount is reduced to its recoverable amount.

The reduction is treated as an impairment loss and is recognized in the Statement of Profit and Loss. If at the Balance Sheet date there is an indication that if a previously assessed impairment loss no longer exists, the recoverable amount is reassessed and the asset is reflected at the recoverable amount. An impairment loss is reversed only to the extent that the carrying amount of the asset does not exceed the net book value that would have been determined if no impairment had been recognized.

Shemaroo Entertainment Limited

The Company assesses at each Balance Sheet date whether there is any indication that an asset may be impaired. If any such indication exists, the Company estimates the recoverable amount of the asset. If such recoverable amount of the asset or the recoverable amount of the cash generating unit to which the asset belongs is less than its carrying amount, the carrying amount is reduced to its recoverable amount. The reduction is treated as an impairment loss and is recognised in the Statement of Profit and Loss Account. If at the Balance Sheet date there is an indication that if a previously assessed impairment loss no longer exists, the recoverable amount is reassessed and the asset is reflected at the recoverable amount.

Unity Infraprojects Limited

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

NHPC Limited

The company assesses at each balance sheet date whether there is any indication that cash generating unit (CGU) is impaired based on internal/external indicators. If any such indication exists, company estimates the recoverable amount of the CGU. An impairment loss is recognized in the Statement of Profit and Loss where the carrying amount exceeds the recoverable amount of the cash generating units. An impairment loss is reversed if there is a change in the recoverable amount and such loss either no longer exists or has decreased. Rate Regulated Assets are also tested for impairment at each Balance Sheet Date.

***

From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1) Clarification regarding taxability of consortium members

Regarding EPC contracts / Turnkey projects there are several contrary ruling of various courts on what constitutes an AOP. With a view to avoid tax-disputes and to have consistency in approach while handling these cases, the Board has decided that a consortium arrangement for executing EPC/Turnkey contracts which has the following attributes may not be treated as an AOP:

a. each member is independently responsible for executing its part of work through its own resources and also bears the risk of its scope of work. i.e. there is a clear demarcation in the work and costs between the consortium members and each member incurs expenditure only in its specified area of work;

b. each member earns profit or incurs losses, based on performance of the contract falling strictly within its scope of work. However, consortium members may share contract price at gross level only to facilitate convenience in billing;

c. the men and materials used for any area of work are under the risk and control of respective consortium members;

d. the control and management of the consortium is not unified and common management is only for the inter-se coordination between the consortium members for administrative convenience;

It is further clarified that this Circular shall not be applicable in cases where all or some of the members of the consortium are Associated Enterprises within the meaning of section 92A of the Act. In such cases, the Assessing Officer will decide whether an AOP is formed or not keeping in view the relevant provisions of the Act and judicial jurisprudence on this issue.

(For full text refer Circular No. 07/2016 Dated 7th of March,2016)

2) Method of determination of period of holding of capital assets in certain cases

The CBDT hereby amend the Income Tax Rules, 1962 by inserting rule 8AA after rule 8A.

Rule 8AA reads as under:- Method of determination of period of holding of capital assets in certain cases:-

1) The period for which any capital asset, other than the capital assets mentioned in clause (i) of the Explanation 1 to clause (42A) of section 2 of the Act, is held by an assessee, shall be determined in accordance with the provisions of this rule.

2) In the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in clause (x) of section 47 of the Act, there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.

(Notification No. 18, dated 17/03/2016)

3) Notification regarding amendment in Income Tax Rules

The Central Board of Direct Taxes hereby amend the Income Tax Rules, 1962;

1. This rule may be called the Income–tax (**7th Amendment**) Rule, 2016 and shall be deemed to have come into force from the 1st day of April, 2015.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the Rules), in rule 114E,—

   (i) In the marginal heading, after the words "Information Return", the words "or Statement of Financial Transactions" shall be inserted;

   (ii) In sub-rule (1), for the words "annual information return", the words "annual information return or statement of financial transactions, as the case may be," shall be substituted;

   (iii) In sub-rule (4),—

      (I) in clause (a),—

         (A) For the word "return", wherever it occurs, the words "return or statement" shall be substituted;

         (B) In both the provisos, for the words and figure "Annual Information Return Administrator", wherever they occur, the words and figure "Annual Information Return or Statement of Financial Transaction-Administrator" shall be substituted;

      (II) In clause (b),—

         (A) In the long line, for the word "return" , the words "return or the statement" shall be substituted;

         (B) In clause (ii), for the word "return", the words "return or the statement" shall be substituted;

   (iv) In sub-rule (7), for the words "Annual Information Return", the words "Annual Information Return or Statement of Financial Transaction" shall be substituted;

   (v) In this rule, except sub-rules (1), (4) and (7), for the word "return", wherever it occurs, the words "return or statement" shall be substituted.

3. In the Appendix II to the Rules, in Form No.61A,—

   (a) for the words "Annual Information Return", wherever they occur, the words "Annual Information Return or Statement of Financial Transactions" shall be substituted;

   (b) for the word "return", wherever it occurs, the words "return or statement" shall be substituted.

4. Rule 114E of the Rules, as amended by this rule shall be applicable for the specified financial transactions carried out during the period from 1st April, 2015 to 31st March, 2016.

Service Tax

1) Notification No. 21, dated 30/03/2016 regarding amendment in Point of Taxation Rules,2016

The Central Government hereby makes the following rules further to amend the Point of Taxation Rules, 2011, namely :—

1. These rules may be called the Point of Taxation (Second Amendment) Rules, 2016.

2. In the Point of Taxation Rules, 2011, in rule 7, after second proviso, the following proviso shall be inserted, namely,– "Provided also that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice.".

***

Representation for timely release of ITR Forms

By speed Post/Email

Dated: 25th March, 2016

Hon. Chairman
Central Board of Direct Taxes,
North Block, Secretariat,
New Delhi – 110001

Respected Sir,

Sub: **Request for timely release of ITR Forms & schema on e-filing portal of I.T. Dept. for A.Y.2016-17**

1. As per the mandate of the Law, the process of notification of ITR Forms and release of schema for e-filing of ITR Forms shall be made available to assessee from the 1st day of commencement of Assessment Year i.e. 1st April, 2016 for A.Y.2016-17, in order to enable him to comply with his legal obligation of filing of return of income.
2. Historically, CBDT has displayed laxity in notification of the Forms & releasing of E-filing utilities, causing lot of hardship to the tax payers. While redressing the grievances of tax payers, Hon. High Courts have directed CBDT shall endeavor to ensure that forms & utilities for e-filing of income tax returns are ordinarily made available from the 1st day of April of relevant A.Y.
3. Hon. Prime Minister, Shri Narendra Modi has also initiated series of steps for making life easier for businesses. Recently, during the meeting of Pragati (Pro-Active Governance and Timely Implementation), Hon. PM emphasized the need to push the country into the Top 50 league, from current ranking of 130, *in the ease of doing business ranking.*
4. We hope from this A. Y., CBDT will ensure timely notification of the ITR forms on or before 1st April 2016, not only in the interest of stakeholders & revenue, but surely to appreciate & support the *patriarchal initiative of the ease of doing business launched in India.*

Thanks & Regards,

Yours Truly,

For, Chartered Accountants Association, Ahmedabad

CA. Yamal A. Vyas	CA. S.K. Sadhwani	CA. Ajit C. Shah
President	***Chairman, L & R Committee***	***Convener, L & R Committee***

Copies to: (For kind perusal and necessary action at their end)

1) **Hon. Revenue Secretary**,
Ministry of Finance
128-A, North Block, Secretaiat,
New Delhi – 110001

2) **The Joint Secretary**,
TPL-1,
CBDT, North Block,
New Delhi

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

Room No. 114, Income Tax Office, 1st Floor, Narayan Chambers, Nr. Nehru Bridge, Ashram Road, Ahmedabad-380009.
website : www.agftc.co.in

CHARTERED ACCOUNTANTS ASSOCIATION, AHMEDABAD
Turn Transform Transcend
1ST Floor, C. U. Shah Chambers, Near Gujarat Vidhyapith, Ashram Road, Ahmedabad – 380 014.
Ph.: +91 79 2754 4232, 2754 5442
Mail : caahmedabad@gmail.com Web : www.caa-ahm.org

Hon. Chairman
Central Board of Direct Taxes,
North Block, Secretariat,
New Delhi - 110001

Date: 01.04.2016

Respected Sir,

Sub: Request for display of timings & services of Aayakar Seva Kendra (ASK) in public domain on the website of I.T dept. as well as at front desk of various ASK centers.

1. At the outset, we appreciate the initiative of I. T. dept., to set up Aayakar Seva Kendras (ASK) a multi-faceted mechanism for achieving excellence in public service delivery reflecting a new quality policy, providing a single window to all taxpayers for submitting Dak/ Grievances & Returns.
2. Instances have come to notice of associations that Dak/ Grievances/ Applications are not accepted at *ASK* after 5:00 pm. even though, office timings are from 9:30 am to 6:00 pm.
3. We hereby request to place in public domain, the office timings for submitting & acceptance dak/ applications etc. conspicuously along with the nature of services rendered by ASK (a) At the front desk of various *ASK* & I. Tax offices (b) On the website of I. Tax dept. (c) To advertise in news papers & mass media etc for the benefit of public at large.

Thanks & Regards,

Yours Truly,

CA. Durgesh Buch	**CA. K. D. Shah**	**CA. Yamal Vyas**	**CA. S. K. Sadhwani**
President	*Chairman, Repre. Comm.*	*President*	*Chairman, L & R Comm.*
All Gujarat Federation of Tax Consultants		Chartered Accountants Association, Ahmedabad	
M: +91- 98250 12959	M:+91- 98250 70807	M : +91- 9825311777	M: +91-94270 27284

Copy to:

1) **DGIT (Systems),**
ARA Centre,
E-2, Jhandewalan Extention,
New Delhi – 110055.

2) **Directorate of Income Tax**,
6th Floor, Mayur Bhavan,
Connaught Circus,
New Delhi – 110001.

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ALL GUJARAT FEDERATION OF TAX CONSULTANTS

Room No. 114, Income Tax Office, 1st Floor,
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website : www.agftc.co.in

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CHARTERED ACCOUNTANTS ASSOCIATION, AHMEDABAD

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1ST Floor, C. U. Shah Chambers, Near
Gujarat Vidhyapith,
Ashram Road, Ahmedabad – 380 014.
Ph.: +91 79 2754 4232, 2754 5442
Mail : caahmedabad@gmail.com Web : www.caa-ahm.org

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To,
Date: 01.04.2016

Prin. CCIT Gujarat (CCA),
Aayakar Bhavan,
Ashram Road, Ahmedabad - 380009

Respected Sir,

Sub: Request for display of timings & services of Aayakar Seva Kendra (ASK) in public domain on the website of I.T dept. as well as at front desk of various ASK centers.

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Thanks & Regards,

Yours Truly,

CA. Durgesh Buch	**CA. K. D. Shah**	**CA. Yamal Vyas**	**CA. S. K. Sadhwani**
President	*Chairman, Repre. Comm.*	*President*	*Chairman, L & R Comm.*
All Gujarat Federation of Tax Consultants		Chartered Accountants Association, Ahmedabad	
M: +91- 98250 12959	M:+91- 98250 70807	M : +91- 9825311777	M: +91-94270 27284

Copy to: **Commissioner of Income Tax (Admin & Co)**,
2nd Floor, Aaykar Bhavan,
Ashram Road,
Ahmedabad – 380009.

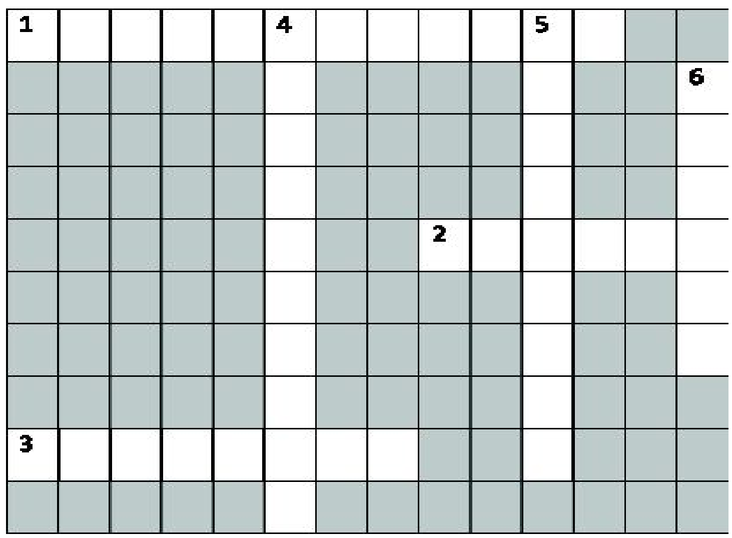
ACAJ Crossword Contest # 23

Across

1. In service tax, _________ Cess is levied @ 0.5% w.e.f. 1-6-2016.
2. Knowledge with _________, converts adversity into prosperity.
3. Debit cards, ATM cards, or any other instrument which can be used to create a financial liability may be defined as ________.

Down

4. As per the order of Kolkata Bench of ITAT, share application money cannot be considered as ___________ which is likely to earn tax free dividend income for disallowance u/s 14A.
5. Interest on application money deposited in bank account is taxable in the year of ____ of shares.
6. In case of vehicles purchased by institutions, the proposed rate of VAT is ________ percent.



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 25/04/2016.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 22

1. CA. Jainee Shah
2. CA. Naveen Mandovara

ACAJ Crossword Contest # 22 - Solution

Across

1. Erroneous
2. Convertible
3. Charity

Down

4. Reasons
5. Partner
6. Twelve

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