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

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

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Joy of Giving

We all feel happy when we receive gifts on our birthday, marriage anniversary or even when there is no occasion. This feeling of joy is also reflected in the person actually giving these gifts away. Imagine the delight on the face of person who is in need of something and he receives it as a gift. **When we give something to someone without any expectation, out of sheer love, it is enjoyed by both the giver as well as by the receiver.**

We all must have experienced the sight of untidy bodies in torn clothes, often coming near at the traffic signals. They try to peep in to catch a glimpse of our world inside, but truly looking for some alms. Many of us would not be felling good and wait for the traffic to move as these unknown and unwanted people keep tapping on the glass constantly. Sometimes we become generous to shed few coins. This is general attitude towards giving but is this how most of us would like to do something by way of charity?

Only those who feel the grief of others come out to help. True giving comes from the heart, with no expectation of reciprocation. If you want to experience more joy, give joy to others, if you want more love, learn to give love, if you want attention and appreciation, learn to give appreciation to others. These are some of life's most precious gifts and they don't cost anything. Giving is one of the best investments one can make for a happy life.

Very often it is not always the money or belongings that people need, it is love, support, advice, care, a kind gesture or even a smile that matters. We all have become money-oriented today. We want more and better of everything. Bigger houses, high salaries, advanced gadgets and what not. We work hard for a good life for ourselves and are entitled to every comfort our money can buy but to live with compassion and contribute to the society is the means of happiness in our lives.

Every religion preaches charity. It is an evolution towards a spiritual life. Such a life encourages sharing a portion of earnings with the needy in the society and that ultimately accrues as unlimited benefits to the giver.

There are many people in this world waiting to give. However it is general tendency that at the time of giving donations, most of us are gripped with middlemen phobia. We think that whether the money that we give will be used in appropriate manner or not. When giving directly is not feasible one may go through organizations working towards the cause.

Apart from donations we can do charity by giving time for social causes, contribute resources, sharing love, sharing knowledge, donating organs, help animals, save the environment.

We all should celebrate the joy of giving. It is a secret barter where one gives something that he has and in turn receives happiness without asking for it. However, one thing should be kept in mind that when we give something, we should not expect anything in return. Giving out of love and from the heart is what matters. The most important thing is that a giver enjoys this joy of giving when there are no expectations or any selfish motives.

Let me share a small story with you.

"A woman found a precious stone while travelling in the mountains. Next day she met another traveler who was hungry and she opened the bag and shared her food.

The traveler saw the stone and asked her to give, which she did without hesitation. The traveler knew it was precious and worth enough to give him security for a lifetime.

Few days later he came back to return the stone to the woman by saying "I give it back in the hope that you can give me something even more precious. Give me what you have within you that enabled you to give me the stone."

The woman replied with a smile, "The Joy of Giving"

I would conclude by saying that Joy of Giving is possible only because there is a receiver at the other end, and I thank God who grants this opportunity to enjoy this Joy of Giving.

Editorial

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Leadership Matters

Of late, the leadership of the country has become the most talking and happening point not just in the Indian sub-continent but the world at large. Gone are the days when the news channels used to come up with expose of scams in the country. Now is the time when media discusses and debates the level of success the Prime Minister's foreign tour has had. It was indeed surprising to find when one of the news channels was found discussing and ranking the most performing minsters in the Narendra Modi Government.

Leadership plays a very important role, be it a nation or any other organisation. The vision of a leader gives the shape to the future of the people. If we take the example of our own Prime Minister, he is truly leading from the front. His recent tour to five nations is being termed as yet another successful tour where India is all set to join a 34 nation Missile Technology Control Regime (MTCR) and has come a step closer to the NSG. There would be many who do not like the style of politics of the Prime Minister but there would be no doubt that this success has been possible only because of the efforts of one man and his foreign policy.

This editorial is not written to highlight the achievements of the Prime Minister or in favour of a particular political party but as an observer of the leadership qualities of a great leader. It is not just the foreign policy but the vision and action behind. Everybody understands the importance of cleanliness but how many thought about it or did anything to spread its importance. One slogan "Swachh Bharat" has made a big impact on the nation. Why just Swachh Bharat, there are so many initiatives like "Skilled India", "Make in India" and many others which are intended to make this nation a better nation.

It is possible to argue that the ground reality may not exactly be the same and there could be some hurdles or drawbacks, agreed but the intent is clear. There could be a segment that would criticize the policies but that won't help. The leadership of the Prime Minister has had such a positive impact that I know of a group of chartered accountants that is contemplating on how the growth rate set by the Prime Minster be achieved and how we as citizens can contribute to make the Prime Minister a reality. Salutation to the leadership of the country! Salutations to the concerned citizens of this great nation!

There has been a change in the leadership at the Chartered Accountants Association as well. As the new year starts, every new committee gears up with the task allotted to it. So it happens with the Journal Committee. The new leadership becomes the guiding force to decide the future course of action. I am pleased to inform that the Association will be once again sending the physical copy of the Journal to all its members.

We would like to continue in our endeavour to bring in the best possible content in the Journal. One column is changed for now. Almost every aspect of Business Valuations had been covered in last two years and therefore the same is discontinued. Against this a new column is introduced on Mergers and Acquisitions.

Members may also find the cover page of the journal a bit different. The idea is not to make the Journal a religious magazine but to offer our tribute to the great masters, those subjective scientists who re-established values in the society and showed the way of living to world by leading as an example. To begin this journey we have Adi Sankaracharya.

Pranams,

CA. Ashok Kataria

From the President

CA. Raju Shah
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Respected Seniors and Dear Professional Colleagues,

The occasion to rise to the post of President of Chartered Accountants Association, Ahmedabad has brought mixed emotions; of joy, of pride, of honor, and of responsibility, to me. These feelings are overwhelming when I am writing this piece, being my first communication to the members of this august Association.

At the outset I would like to thank each member for electing me as the President of our esteemed Association. I assure you to fulfill all your expectations to the best of my ability. I am confident and this will be possible with the help of my team which is a nice combination of very senior members ever ready to guide and young and energetic members always eager to work for the Association.

As per my knowledge our Association is amongst top three Chartered Accountant Associations of India. Yes we would like to see that our association perform at its best for the members AND the society at large.

This is the vacation time, it's a time for the members to rejuvenate to spend quality time with the family and to be ready with the coming professional season. As per the meteorological report the summer of 2016 could possibly be the hottest summer, with several parts of the country recording above normal temperatures. Ahmedabad is having 48+ temperatures, hottest in the last five years as per the media reports.

This year's slogan is "A Passion to Perform".

As a professional we need to update ourselves with regular reading, attending seminars, study circle meetings etc. Keeping this in mind this year we have planned to have Study Circle meetings on different subject at regular intervals – I have please in informing that we have arranged "Discussions series on Income Computation Disclosure Standards (ICDS)" – Five lecture series- I am really happy to inform that even in this hot summer members are attending it in large number. This will definitely give us the boost to organize more such programmes.

Brain trust meetings- I am fan of BRAIN TRUST meetings...let me share with you that I became member of CAA only because of BRAIN TRUST meetings...which I like so much... this year we have planned to have FOUR meetings on different topics- First brain trust meeting is scheduled on 18/06/16 on "Corporate case studies with focus on amended Companies Act and recent judicial precedents" by CA. Nipun Singhvi, Mumbai. Request all to register if not yet registered.

The Residential Refresher Course (RRC) of the Association is always eagerly awaited by all the members. Over the years, RRC, with a fine blend of studies and recreation has been one the best ways to get rejuvenated and revitalized before gearing up for the tax audit assignments. We are pleased to announce the 43rd Residential Refresher Course of 3 nights and 4 days at The Welcome Hotel, Jodhpur from 1st July 2016 to 5th July, 2016.

Entertainment programme – Entertainment committee has arranged a Unique Gujarati Programme "**DOST, HU GUJRAT CHHU**" on Saturday, 18th June 2016 at Tagore Hall, Paldi at 8.30 pm onwards. This programme is based on well-known Gujarati Songs, Audio-Video visuals, Folk dances etc. The programme has received a Special Award as a best programme from "**GUJARATI SCREEN AND STAGE AWARDS 2014**" by Tranmedia, Mumbai. Come and enjoy this great with your family.

Swami Vivekananda very well said ***"Stand up, be bold, be strong. Take the whole responsibility on your own shoulders, and know that you are the creator of your own destiny, all the strength and succor you want is within yourself. Therefore make your own future".*** I am sure his thoughts and learning remain a continuous source of inspiration and motivation to us and would help us take our activities in the right direction.

I request you to give your constructive guidance and suggestions on any of the activities of the Association to be carried out during the year 2016-17.

With best regards,
CA. Raju Shah
President

Financial Restructuring through Buyback of Shares

CA. Dr. Jagdish Joshipura
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Introduction

Corporate can enhance its valuation by undergoing the process of either corporate restructuring or financial restructuring or both.

When the corporate restructuring is attempted, it would mainly focus on the asset side of the balance sheet by fixing the balance sheet by fixing the business processes right. It would concentrate on operating cash flow of the enterprise. On the other hand when financial restructuring is carried out, it would mainly focus on Liability side of the balance sheet. It would include changing the mix of Equity and Debt.

Financial Restructuring and Buyback of shares

Buyback is repurchase of the outstanding equity shares. From the point of view of financial restructuring, the buyback is done in order to reorganize its capital structure, return cash to shareholders and enhance overall shareholders value. Buyback leads to reduction in outstanding number of equity shares, which would lead to improvement in earnings per share and also enhance return on networth and would help in creating long term value for continuing shareholders.

A good corporate governance calls for maximising shareholders value when a company has surplus funds. The company's financial structure requires balancing. Buyback of shares is one of the financial restructuring technique. While going through several buybacks in India, following motives are noticed.

i. To improve earnings per share.

ii. To improve return on capital, Networth and to enhance long term shareholders value.

iii. To provide an additional exit route to shareholders when shares are undervalued.

iv. To enhance consolidation of stake in the company.

v. To prevent unwelcome takeover bid.

vi. To return surplus cash to shareholders.

vii. To achieve optimum capital structure.

viii. To service the equity more efficiently.

A stock buyback is a company's buying back its shares from the market place. It is in other words company is investing in itself. It is using cash to buy its own shares. Since the company cannot act as its own shareholders, repurchased shares are aborted by the company and the number of outstanding shares on the market is reduced. When this has happened the relative ownership stake of each investor increases because there are fewer number of shares or claims, on the earnings of the company.

Such offers are typically undertaken by companies when share prices are perceived to be attractive and is showing below intrinsic worth. This would help to improve the valuation of the stock and hence considered as reward to the shareholders. Thus when the bear market exists it is considered as preferred scenario for buyback. Thus whenever there is a correction in secondary market and share prices come down significantly, companies would opt for the buyback.

Criteria for Buyback of Shares

In order to make buyback beneficial the company may undertake buyback after meeting the following criteria.

i. The company has exhausted all avenues of fresh investment in near future.

ii. Buyback can be undertaken without jeopardizing the lenders risk.

iii. The company enjoys return on capital employed when is significantly higher than the normal cost of borrowing.

iv. The market price of the company's share is lower than its intrinsic value.

There are generally two ways a company can return cash to its shareholders – declaration of dividends or through a buyback of shares. A buyback represent a more flexible way of returning surplus cash to its shareholders as it is governed by a process laid down by law, it is carried out through the stock exchange mechanism and is more tax efficient as it does not involve the company to make payment of dividend distribution tax and it has the benefits of long term capital gains.

Indian Legal Framework for Buyback

For Unlisted Public and Private Companies	Section 68, 69 and 70 of Companies Act, 2013 Rule 17 of Companies (Share Capital and Debentures) Rules, 2014
For Listed Companies	Section 68, 69 and 70 of Companies Act, 2013 Rule 17 of Companies (Share Capital and Debentures) Rules, 2014 Securities and Exchange Board of India (Buy-back of Securities) Regulations, 1998 and Securities and Exchange Board of India (Buy-back of Securities) (Amendment) Regulations, 2013.

Prohibition and Pre-conditions of Buyback

Shares can be purchased by the Company out of :

- Free Reserves;
- Securities' Premium Account;
- Proceeds generated out of Issue of any shares or other specific securities.

No buy-back of any kind of shares or other specific securities could be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Companies are prohibited to buyback its own shares directly through any investment company or group of investment companies or through any subsidiary company including its own subsidiaries. The company should not have defaulted in repayment of deposit, interest, redemption of debentures / preference share, dividend and term loans. Buyback shall not be prohibited if default is remedied and a period of 3 years has lapsed after such details ceased to subsists. Further companies are not allowed to raise further capital for a period of one year except in discharge of its subsisting obligations.

Pre-Conditions

In order to carry out a buyback of shares, the following matters need to be considered to by the company:

- The buyback should be authorized by its Articles of Association;
- It should be approved by the Board or shareholders, as the case may be. Shareholders resolution is not required when the buy-back is 10% or less of the total paid up equity capital and free reserves of the company; and such buy-back has been authorized by the Board by means of a resolution passed at its meeting;
- Buyback should not exceed 25% of its paid up equity share capital in one Financial Year;
- Post Buy-back, the Debt Equity Ratio of the company should not exceed 2:1;
- Equity Shares to be bought back must be fully paid up;
- Buy-back should be completed within one year of passing of the resolution;
- Company should ensure that at least 50% of the amount earmarked for buy-back, as specified in resolutions is utilized for buying-back shares;

Process of Buyback

A buyback process starts with passing a resolution in the board of meeting or a shareholders resolution through postal ballot which contains the specifics of the buy-back offer and ends with a public announcement in a national daily on the successful completion of the buy-back. A broad process of buyback is as under :

Buyback by Listed Companies-Tender Method

In addition to the above, following steps / compliances are required to be complied for buyback under Tender Method :

- Approval by Board Resolution / Special Resolution through postal ballot;
- Opening of Escrow Account and depositing cash on or before opening of the buyback;
- File the Draft Letter of Offer (DLOF) along with fees and Declaration of Solvency with SEBI and ROC;
- SEBI to give comments on Draft Letter of Offer;
- Dispatch of Letter of Offer to Shareholders;
- 15% of the shares proposed for buyback are to be reserved for the small shareholders on proportionate basis;
- No offer of buyback for 15% or more of paid up capital and free reserves shall be made from the open market.

Tax Treatment for Buyback of Shares

SEBI vide circular dated April 13, 2015 provided the facility for acquisition of shares through the stock exchange mechanism pursuant to a buyback. Stock Exchanges having nationwide trading terminals will provide a separate window – "Acquisition Window" which is similar to secondary market transactions. Investors can sell their shares through the respective stock brokers during normal trading hours. Such transactions, where investors pay STT, are eligible for capital gains tax exemptions under the Income Tax Act, 1961 as under:

- In case shares are held for a period of 12 months or above, it shall be treated as Long Term Capital Gains arising from such transaction would be exempt under section 10 (38) of the Income Tax Act 1961; and
- Dividend Distribution Tax (DDT) under Section 115-O of the Income Tax Act, 1961 will not be applicable in case of buyback.

Applicability of Stamp Duty

No Stamp Duty is payable in case of buy back of shares as company is buying back its own shares and hence, the same does not result in any transfer.

Buyback vis-à-vis Compliance under SEBI (SAST) Regulations, 2011 (Regulations)

In case the acquirer's initial shareholding was more than 25% and the increase in shareholding due to buyback is beyond the permissible creeping acquisition limit of 5% per financial year, the acquirer can get an exemption from making an open offer, subject to the following:

- Such acquirer does not vote in favour of the resolution authorizing the buy-back of securities under section 68 of the Companies Act, 2013;
- In the case of a shareholders resolution, voting is by way of a postal ballot;
- The increase in voting rights does not result in an acquisition of control by such an acquirer over the target company. In case the above conditions are not fulfilled, the acquirer may, within 90 days from the date of increase, dilute his stake so that his voting rights fall below the threshold which requires an open offer.

Conclusion

The purpose of financial restructuring is to manage the liquidity effectively, to lower cost of capital, reducing risk avoiding loss of control and ultimately improving shareholders value.

The whole exercise would be successful after considering factors like level of leverage pattern of ownership, choice of instrument right timing,

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Glimpses of Supreme Court Rulings

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2 Hindu succession Act, 1956 - succession to joint family property prior to 2005 amendment:

The law in so far as it applies to succession to joint family property governed by the Mitakshara School, prior to the amendment of 2005, can be summarised as follows ;

(i) when a male Hindu dies after the commencement of the Hindu succession Act, 1956, having at the time of his death an interest in Mitakshara coparcenary property, his interest in the property will devolve by survivorship upon the surviving members of the coparcenary (vide Section 6 HSA).

(ii) To proposition (i), an exception is contained in section 30 Explanation HSA, making it clear that notwithstanding anything contained in the Act, the interest of a male Hindu in Mitakshara coparcenary property is property that can be disposed of by him by will or other testamentary deposition.

(iii) A second exception engrafted on proposition (i) is contained in proviso to section 6, which states that if such a male Hindu had died leaving behind a female relative specified in class I of the schedule or a male relative specified in that class who claims through such female relative surviving him, then interest of the deceased in the coparcenary property would devolve by testamentary or intestate succession, and not by survivorship.

(iv) In order to determine the share of the Hindu male coparcener who is governed by section 6 proviso HSA, a partition is effected by operation of law immediately before his death. In this partition, all the coparceners and the male Hindus widow get a share in the joint family property.

(v) On the application of section 8 HSA, either by reason of the death of a male Hindu leaving self-acquired property or by the application of section 6 proviso HSA, such property would devolve only by intestacy and not survivorship.

(vi) On a on joint reading of section 4,8 and 19 HSA, after joint family property has been distributed in accordance with section 8 HSA on principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as they hold the property as tenants in common and not as joint tenants.

[Uttam Vs. Saubhag Singh and others (2016)(4SCC 68)]

3 Interpretation of judgments - proper mode:

It is a well settled position of law that a word or sentence cannot be picked up from a judgment to construe that it is the ratio decided on the relevant aspects of the case. It is also a well settled position of law that a judgement cannot be read as a statute and interpreted and applied it to fact situations. An 11 judge bench of this court in *Madhav Rao Jivaji Rao Scindia Vs Union of India* held as under : (SCC p.165, para 141)

'it is difficult to regard a word, a clause or a sentence occurring in a judgement of this court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgement'

It is not everything is saved by a judge while giving judgement that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decided. According to the

well settled theory of precedents, every decision contains three basic postulates –

(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the judge draws from the direct, or perceptible facts ;

(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(iii) judgement based on the combined effect of the above.

A decision is only an authority for what it actually decides. What is of the offence in a decision is its ratio not very observation found therein not what logically follows from the various observations made in the judgement. *Every judgement must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgement and to build upon it because the essence of the decision is its ratio and not every observation found therein.*

[Vishal N. Kalsaria vs. Bank of India and others (2016) (3 SCC 762)]

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Financial Restructuring through Buyback of Shares

decision on correct valuation and pricing, nature of contract with provider of funds and lastly ability to pay the dividend.

Buyback aren't without value. It is crucial, however, for directors to understand their real effects when deciding to return cash to shareholders or to pursue other investment options. A buyback's impact on share price comes from changes in a company's capital structure and, more critically, from the signals a buyback sends. Investors are generally relieved to learn that companies don't intend to do something wasteful such as make an unwise acquisition or a poor capital expenditure with the excess cash. In general, markets have applauded such moves, making buybacks an alluring substitute if improvements in operational performance are elusive.

Stock buyback is a function of cash utilization and economic conditions. Thus if a stock is trading at lower than its intrinsic value and stock market conditions are also depressed, buyback is a good way of improving return on equity for investors. So, number of shares are getting reduced after buyback, adding support to the earnings per share, thereby making more attractive its price, earning ratio and return on equity. However by any chance, markets stage a strong comeback companies might not opt for a buyback. From investors' perspective, buyback offer good exit opportunities when the investment – conviction is not very high. However for investors with a long term horizon, buyback is an indicator of higher perceived intrinsic value, compared to its stock price. Thus, if investors see value in a company, they should remain invested in the stock and not to exit by using the buyback.

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From the Courts

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8 Sec. 147 : Notice must state that income has escaped assessment.
Navi Trading Ltd. v/s. Union of India (2015) 375 ITR 308 (Bom)

Issue :

What is the requisite which is a must for issue of notice u/s 147?

Held :

The revenue proceeded on the footing that shares were gifted without consideration. It was this fact which it wanted to verify and particularly whether the value of these shares had been computed on the market value. The tax authorities did not state that any income chargeable to tax had escaped assessment. All that the Revenue desired was verification of certain details pertaining to the gift. That was not founded on the belief that any income had escaped assessment and hence, such verification was necessary. That belief was not recorded. The notice of reassessment was not valid.

9 Penalty u/s 271(1)(c) : Not automatic:
Rave Entertainment P. Ltd. v/s. CIT (2015) 376 ITR 544 (All)

Issue:

Penalty cannot be levied automaticallybecause it is lawful to levy penalty.

Held :

Penalty can be imposed u/s 271(1)(c) of the Income Tax Act 1961, only when there was some element of deliberate default and not a mere mistake. An order imposing penalty for failure to carry out a statutory obligation is the result of Quasi Criminal proceedings and penalty will not ordinarily be imposed unless the party either acted deliberately in defiance of law or was guilty of conduct contramacious or dishonest or acted in conscious disregard of its obligation penalty will also not be imposed merely because it is lawful to do so. Assessment proceedings and penalty proceedings are quite different. The findings are not binding on each other.

10 Interest on self assessment tax paid :
CIT v/s. Punjab Chemical& Crop Protection Ltd. (2015) 279 CTR 171 (P & H) : (2015) 370 ITR 481 (P & H)

Issue :

Whether interest u/s 244A(1)(b) is payable on excess self assessment tax refund?

Held :

The primary question that arises for adjudication in the present appeal is whether the assessee is entitled to interest u/s 244A(1)(b) on the amount of refund which was deposited by it by way of self assessment tax u/s 140A. It may be observed that in so far as nature of payment of the tax is concerned the tax deducted at source, advance tax and also tax paid by way of self assessment after its adjustment in the tax liability of the assessee on regular assessment losses its original character and becomes tax paid in pursuance to the liability. Once that is so, it cannot be held that the assessee is only entitled to interest u/s 244A (1)(b) on tax deducted at source or advance tax paid and not on self assessment tax paid u/s 140A which was found to be paid in excess. The assessee shall be entitled to interest u/s 244A(1)(b) on the refund of self assessment tax paid.

11 Sec. 54F : Investment in construction of house not completed.
CIT v/s. B.S. Santhakumari (2015) 233 Taxman 347 (Karnataka)

Issue :

Whether relief u/s 54F is allowable when investment is made in a property within three years but when the construction is not completed.

Held :

Assessee sold a property on 06/10/2008. She purchased another residential plot on 13/10/2008. On 02/06/2010 she obtained approval of building plan from local authority and commenced construction; which was not completed within three years i.e. on or before 05/10/2011. She claimed exemption u/s 54F in respect of long term capital gain arising from sale of property. A.O. disallowed claim on ground that assessee had not completed construction of house within three years as per Sec. 54F. It was held that once it was established by assessee that she had invested entire net consideration in construction of residential house within stipulated period, it would meet requirement of Sec. 54F and she would be entitled to get benefit of Sec. 54F.

12 Re-opening Essentials : Godrej Industries Ltd. v/s. B.S. Singh, Dy. CIT (2015) 377 ITR 1 (Bom)

Issue :

What are the requisites of a valid reopening of a case.

Held :

An assessment can be reopened under section 147 of the Income Tax Act, 1961, only on the jurisdictional requirement for reopening of an assessment being strictly satisfied. This is for the reason that a reopening of an assessment would disturb a settled position by reopening a completed proceeding. Normally, the jurisdictional requirements to be satisfied for issuing of a reopening notice are:

(a) the Assessing Officer must record his reasons for issuing a reopening notice before issuing the notice;

(b) the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment and this must be recorded in his reasons;

(c) the Assessing Officer should not have considered the issue on which the reopening is sought during the regular assessment proceedings. In case the issue has been considered even if evidenced by asking questions then such an attempt to reconsider would not be permitted on ground of being a mere change of opinion;

(d) the reopening of an assessment must be on tangible material and the grounds for reopening must be recorded before issuing of notice for reopening of an assessment;

(e) these grounds recorded for reopening of an assessment must disclose a live link between the tangible material and the reason to believe that income chargeable to tax has escaped assessment;

(f) in the case of assessments sought to be reopened beyond a period of four years from the end of the relevant assessment year then there should have been a failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment; and

(g) sanction of a superior officer to the reasons recorded, where required, in terms of section 151 should have been obtained before issuing of the notice.

All the above jurisdictional requirements have to be satisfied cumulatively, wherever applicable. Therefore, even if one of the numerous jurisdictional requirements necessary for the issue of reopening notice is not satisfied, the reopening of an assessment fails. The sustainability of the reopening notice would be tested only on the basis of the reasons recorded at the time of issuing the notice. These reasons cannot be added to, deleted from or supplemented. Besides when a notice for reassessment is challenged, the burden is on the Revenue to establish that the jurisdictional requirement stands satisfied. So far as reason to believe on the part of the Assessing Officer is concerned, at the stage of issuing the notice only a prima facie and not a conclusive case of income escaping assessment should be established to turn down a challenge to the reopening notice.

contd. on page no. 86

Tribunal News

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7 Smt. Aishwarya Rai Bacchan Vs. Add. CIT : 68 taxmann.com 324(Mumbai) Assessment Year: 2007-08 Order Dated: 30TH March, 2016

Facts

Payment in US Dollars was made to a non-resident for development of website and other allied works by the assessee. It was submitted by the assessee, that not only the payment was made outside India but services also were rendered outside India. Hence, the provision of section 195 was not applicable. The AO observed that website maintenance fell within the meaning of 'fees for technical services' as provided under section 9(1)(vii) read with Explanation 2 and treated the assessee as an assessee in default under section 201(1). Though, the assessee challenged the order passed under section 201 in appeal, ultimately she accepted her liability before Tribunal. On the basis of order passed under section 201/201(A), the AO initiated proceedings for imposition of penalty under section 271C alleging failure to deduct tax at source under section 195. The assessee submitted that there was reasonable cause for not deducting tax at source due to the certificate issued by the Chartered Accountant stating that remittance was exempt from withholding tax at source. The AO observed that assessee had failed to establish existence of reasonable cause for not deducting tax at source and imposed penalty. The CIT(A)also confirmed imposition of penalty by holding that assessee having failed to deduct tax at source without any reasonable cause, was liable for penalty.

Issue

Whether confirmation of demand raised under section 201, cannot be sole criteria for imposing penalty under section 271C as proceedings under section 271C and 201 are two separate proceedings?

Held:

The Tribunal held that as was evident, assessee's C.A., had issued a certificate opining that tax was not required to be deducted at source on said remittances, as the payment was made to a non–resident having no P.E. in India that too, for services rendered outside India. It is a well accepted fact that every citizen of the country is neither fully aware of nor is expected to know the technicalities of the Income-tax Act. Therefore, for discharging their statutory duties and obligations, they take assistance and advice of professionals who are well acquainted with the statutory provisions. In the present case also, assessee has engaged a chartered accountant to guide her in complying to statutory requirements. Therefore, when the C.A. issued a certificate opining that there is no requirement for deduction of tax at source, assessee under a *bona fide* belief that withholding of tax is not required did not deduct tax at source on the remittances made. Though, this fact was brought to the notice of the Departmental Authorities in course of the penalty proceedings but due weightage has not been given to such contention of the assessee. The explanation submitted by the assessee is a valid explanation and cannot be brushed aside with some general observations. Only because the assessee before the Tribunal had accepted her liability for deduction of tax at source, it cannot be the sole basis for imposition of penalty completely ignoring the primary and fundamental reason shown by the assessee for failure to deduct such tax. Proceedings under sections 201 and 271C, are two independent and separate proceedings. While imposing penalty, the authority concerned is duty bound to examine assessee's explanation to find out whether there was reasonable cause for failure to deduct tax at source. As is evident, the assessee being advised by a professional well acquainted with provisions of the Act had not deducted tax at source. No *mala fide*

intention can be imputed to the assessee for failure to deduct tax. More so, when the issue whether tax was required to be deducted at source, on payments to a non-resident for services rendered is a complex and debatable issue requiring interpretation of statutory provisions *vis-a-vis* relevant DTAA between the countries. Therefore, failure on the part of the assessee to deduct tax at source was due to a reasonable cause. Accordingly, the penalty imposed under section 271C was deleted.

8 Mrs. Richa Dubey *v.* ITO [2016] 68 taxmann.com 268 (Mumbai) Assessment Year: 2011-12 Date of Order: April 20, 2016

Basic Facts:

The assessee is an individual. Assessee hired the services of a professional online return filing portal Taxspanner.com for filing her return of income.During the course of assessment proceedings, the AO observed that the assessee received salary income amounting to Rs. 21,48,558/- and offered gross total income to the extent of Rs.2,34,882/- in the return of income filed. The difference amount was added back to the total income of the assessee as under declaration of salary income in the assessment orderand penalty proceedings u/s.271(l)(c) of the Act was also initiated. During the course of penalty proceedings the assessee submitted that at that time she was having pregnancy of 5 months and due to immense work pressure in the office she could not devote time to see the contents of return of income filed by the online tax return filing portal as she did not understand the form also, hence she just signed the ITR-V and sent it to the Bangalore CPC of Income Tax Department.The A.O. rejected the contentions of the assessee and held that the return of income has been signed by the assessee herself. Moreover, in its return of income e-mailed to the assessee, the online tax return filing portal "Taxspanner" sent summary of return filed wherein total income was shown as Rs.2,34,882 and refund of Rs. 4,24,500, which the assessee has confirmed by signing it. Therefore, the A.O. held that it is a gross negligence on the part of the assessee.Thus, the A.O. levied maximum penalty u/s 271(1)(c) of the Act @ 300% of the tax so evaded on the assessee.The assessee preferred an appeal before the CIT(A).The assessee submitted that she also promptly deposited back the refund amount as soon as it came to her notice. The assessee contended that A.O. is not justified in levying maximum penalty for a mistake committed by the professional service provider. The CIT(A) upheld the contentions by AO and further stated that the no action was taken by the assesseeto intimate the AO or the department about the wrong refund, till her case was taken-up for scrutiny proceedings. But nothing has been brought on record by the AO to justify the levy of penalty at 300% of the tax sought to be evaded. Accordingly CIT(A) directed the A.O. to restrict the levy of penalty at 100% of the tax sought to be evaded. Aggrieved by the orders passed by the CIT(A), the assessee preferred an appeal before the Tribunal.

Issue

Where in given circumstance the penalty for concealment of income was justified.

Held

The Hon'ble ITAT held that the assessee had claimed refund of taxes only in the assessment year 2011-12 under appeal and in the last seven years spanning from assessment year 2009-10 to 2015-16 except assessment year 2011-12, no attempt has been made by the assessee to claim refund of taxes from the Revenue. Alsoas soon as the assessee came to know about the error/mistake, she immediately took steps to deposit back the refund of taxes. The Hon'ble ITAT held that the conduct of the assessee is bona-fide and there is no mala fide intention on the part of the assessee. Further, the assessee salary income was subjected to deduction of tax at source by her employers and the employers also intimate the Revenue about the gross salary paidand thus, the revenue is fully aware of the salary income of the tax-payer in its data-base.Considering all the facts and circumstances of the case, the Hon'ble ITAT deleted the penalty levied.

9 Mridu Hari Dalmia Parivar Trust Vs. Assessing Officer [2016] 68 taxmann.com 376 (Delhi)
Assessment Year: 2010-11 Order Dated: 01 April 2016

Basic Facts

The assessee suffered a long-term capital loss on share transactions, which amount was carried forward for future set off. The Assessing Officer observed that the assessee transferred those shares through off-market sale on loss without payment of Securities Transaction Tax (STT); and that if these transactions had been made through recognized Stock Exchange with STT payment, then the loss would not have been carried forward within the meaning of section 10(38). He held that the assessee used a colorable device to avoid tax in connivance with the trustees/beneficiaries by simply placing the shares in the hands of the trustees and showing such placement as off-market sale. He, therefore, disallowed such loss by holding it as bogus. On appeal, the Commissioner (Appeals) approved the view taken by the Assessing Officer.

Issue

Whether loss suffered on off market sale of share is not allowable to be carried forward.?

Held

An off-market transaction of transfer of shares is not *per se* illegal or void. According to the facts of the present case, these were off-market transactions to beneficiaries/trustees of the assessee trust, but, the sale consideration is equivalent to the closing sale rate of these shares on the respective dates. This demonstrates that the shares were sold by the assessee at the prevailing market rates. Further actual transfer of shares took place on respective dates from the demat account of the assessee trust to the demat accounts of the transferees. The payment of sale price was made by transferees which was credited to the bank account of the assessee trust. All these facts amply indicate the genuineness of the off-market sale transactions entered into by the assessee with its beneficiaries. The AO has harped on the fact that if the transactions had been made through recognized Stock Exchange, then the STT would have been payable and resultantly the loss would have become ineligible for set off or carry forward in terms of section 10(38) of the Act. section 10(38) is an exemption provision. In other words, if the conditions stipulated under this provision are fulfilled, then the resultant gain will not be chargeable to tax and the resultant loss, if any, will equally not qualify for set off and carry forward. In order to fall within the purview of section 10(38), it is *sine qua non* that STT must have been paid on the transaction of sale of such equity share held as long-term capital asset. . It is undisputed that STT is payable in respect of transactions carried through a Stock Exchange, which are called on-market transactions. If there is some off-market transaction, namely, which is undertaken without involvement of a Stock Exchange and is directly between the buyer and seller, then no STT is payable thereon. This implies that if the transaction is off-market, then, no STT would be payable and, *ex consequenti*, the provisions of section 10(38) would not be magnetized. Once this section is not applicable, there can neither be any exemption of income nor there can be any question of denial of benefit of set off and carry forward of loss. The AO has held these off-market sale transactions as a colorable device and tax avoidance scheme adopted by the assessee to evade payment of legitimate tax due to the exchequer. In Tribunal's opinion, this is a glaring example of tax planning rather than the tax avoidance as has been held by the AO. Accordingly tribunal held that the loss suffered on such transactions is a genuine loss which cannot be disallowed as it does not fall within the ambit of section 10(38) because of non-payment of STT

10 Sony Mobile Communications International AB vs. DDIT, Circle-2(2), New Delhi. ITANo.6794/DEL/2015
Assessment Year: 2009-10 Order Dated: 29.04.2016

Basic Facts

The assessee is an Indian branch office of Sony Mobile Communications International AB (hereinafter referred to as 'SMCI') (formerly called

Sony Ericsson Mobile Communications International AB), a company incorporated under the laws of Sweden.The assessee's Head office is a wholly owned subsidiary of Sony Ericson Mobile Communications AB.SMCI set up a branch office (R&D Centre) in a Special Economic Zone (SEZ) in Chennai with the objectiveof entering into research and development activity in the informationtechnology industry. One of the issue raised by the ld. AR is about not granting of working capital adjustment. The TPO refused to allow on the ground that such adjustment would be relevant only when some inventory remains tied up or receivables are held up which cannot be a criteria in a service industry as the assessee is engaged in. The Dispute Resolution Panel (DRP) upheld the decision of TPO by adding one more reason, being the necessity and non-availability of daily average of working capital deployed as against the use by the assessee of the average of such figures of working capital on the first and the last daysof the accounting period.

Issue

Whether the working capital adjustment cannot be allowed as the assessee is in service industry? Whether the view taken by DRP for computing the adjustment on the basis of daily average of working capital deployed is tenable?

Held

ITAT refused to accept the reason given by the lower authorities that assessee being in the service industry, such an adjustment is restricted to inventory, trade receivables and trade payables. ITAT explained that in case of a company carrying high trade receivables, it would be allowing its customers relatively longer period to pay their dues, which would result into higher interest cost and resultant low net profit. Therefore ITAT held that, "In order to neutralize the differences on account of carrying high or low inventory, trade payables and trade receivables, as the case may be, it becomes eminent to allow working capital adjustment so as to bring the case of the assessee at par with the other functionally comparable entities". ITAT relied on the Delhi ITAT decision in the case of Navisite India Pvt. Ltd wherein it was held that components of the working capital deployed should be considered on annual basis with the average of opening and closing figures. ITAT thus rejected DRP's stand that working capital adjustment should be allowed based on daily averages of working capital employed and allowed grant of working capital adjustment in principle.

11 Capgemini Business Services (India) Ltd. Vs. ACIT [2016] 68 Taxmann.com36 (Mumbai) Assessment Year: 2007-08 Order Dated: 29February 2016

Basic Facts

During the year the assessee company purchased "off the shelf" software from 'QAD Singapore Pvt. Ltd.'. The payment was made in foreign currency. The AO disallowed the expenditure incurred on the purchase of software u/s 40(a)(i) on the grounds that the assessee had purchased the right to use the software in India and therefore the said payment was liable for deduction of tax at source u/s 195 of the Act in light of the provisions of Section 9. Aggrieved, the assessee preferred an appeal with the DRP and adduced evidence in the form of invoice and other documents/material in respect of the software purchased to prove that the said software has been standard software and that the payment made by the assessee for the said software was a onetime payment and not a recurring payment for use of software. It was also explained by the assessee that what it had purchased was a 'copyrighted article' and not the 'copyright,' itself, so as to classify it as royalty or fees for technical services. The DRP upheld the decision of the AO and reasoned further that the software was not sold but a license was given to the assessee to use it in a particular manner in consideration of the license fee. The DRP, in conclusion held that the license to use the software would fall under the purview of royalty.

Issue

Whether the payment made for purchase of 'off the shelf software' can be considered as payment of royalty liable to TDS and thus the expenditure needs to be disallowed u/s 40(a)(i) for non deduction of tax.

Held

The Tribunal noted that *vide* amendment Act of 2012, *Explanation 4* has been added to section 9(1)(*vi*) with retrospective effect including software in the definition of 'royalty'.But on a comparison of the definition of 'royalty' as provided under the DTAA with the definition of 'royalty' as provided under Income Tax Act found that the same are not at par materia with each other. It is to be further noted that the consideration paid for 'computer software' has not been specifically included under the definition of royalty under the DTAA. A specific provision is made under section 90 that if the DTAA provision will prevail over the general provisions contained in the Income-tax Act, if the same is more beneficial to the assessee as provided under section 90.The definition of 'royalty' as per DTAA is restrictive whereas 'royalty' as defined in the Income Tax Act is broad in scope.

Different benches of the Delhi High Court have been unanimous to hold that the license granted to the licensee permitting him to download the computer programme and storing it in computer for its own use is only incidental to the facility extended to the licensee to make use of the copyrighted product. Apart from such incidental facility, the licensee has no right to deal with the product just as the owner would be in a position to do.

The contention of the Revenue that in case of software licenses, the copyright owner gives a license to use the copyright in the software and that the owner of software exercises power over not only the software itself but also over people who may wish to use the software is not true. The sale of such a CD ROM/diskette is not a license but it is a sale of a product which of course is a copyrighted product and the owner of the copyright puts the conditions and restrictions on the use of the product so that his copyrights in the copyrighted article or the work, which has been written on such CD ROM/diskette, may not be infringed. Such conditions are not the license to use the product. These license agreements in case of shrink wrapped software are thus the conditions of the sale of the product and cannot be termed as a grant of license to use the product. The assessee is entitled to the fair use of the work/product including making copies for temporary purpose for protection against damage or loss even without a license provided by the owner in this respect and the same would not constitute infringement of any copyright of the owner of the work even as per the provisions of section 52 of the Copyright Act, 1957. The computer software is considered as a 'good', the Sale of Goods Act, 1930 will have relevance in the formation and execution of the sale contract.

Hence, without expressing any view in relation to the definition of 'royalty' *vis-à-vis* 'computer software' as provided under the Income-tax Act, findings were given only in respect of the scope of 'royalty' under the DTAA. The assessee cannot be said to have paid the consideration for use of or the right to use copyright but has simply purchased the copyrighted work embedded in the CD-ROM which can be said to be sale of 'good' by the owner. The consideration paid by the assessee thus as per clauses of DTAA cannot be said to be royalty and the same will be outside the scope of the definition of 'royalty' as provided in DTAA and would be taxable as business income of the recipient. In view of the above the issue was decided in favour of the assessee.

12 Shree Bhanushali Mitra Mandal Trust vs. ITO [2016] 68 taxmann.com 250 (Ahmedabad - Trib.) Assessment Year 2011-12 Order Dated 22 February 2016

Basic Facts

The Appellantisa trust registered u/s.12AA of the Act w.e.f. 17.12.2013.However it claimed exemption u/s 11 for the AY 2011-12 which under consideration. The AO rejected the claim stating that assessee trust was not registered u/s.12AA of the Act during the relevant assessment year. Aggrieved, the appellant approached first appellant authority and who upheld the view taken by AO.

Issue

Whether exemption under sec. 11 could be denied to a trust if it was granted registration during pendency of appeal?

Held

In the instant case, it was not in dispute that registration was granted with effect from 17-12-2013 by the order of the Commissioner (Appeals) dated 8-5-2014. It was also not in dispute that objects and activities of the assessee trust are charitable in nature during the relevant financial year. When section 12A was amended by introducing new provisos to sub-section (2) of section 12A by the Finance Act, 2014 with effect from 1-10-2014, the assessment orders passed by the Assessing Officer in respect of the present assessee were pending in appeal before the first appellate authority. During such pendency, the assessee was granted registration under section 12AA on 17-12-2013 with effect from the assessment year 2013-14. The appeal is the continuation of the original proceedings and that the power of the Commissioner was co-terminus with that of the Assessing Officer are two well established principles of law. In view of the above and going by the principle of purposive interpretation of statutes, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the Assessing Officer' within the meaning of that term as envisaged under the proviso. It follows therefrom that the assessee which obtained registration under section 12AA during the pendency of appeal was entitled for exemption claimed under section 11. The Hon'ble ITAT observed that the explanatory Memorandum to Finance (No.2) Bill, 2014 explains the objects and reasons for making such amendments that makes it clear that it was in order to provide relief to such trusts in respect of which, due to absence of registration u/s 12AA tax liability got attached though otherwise they were eligible for exemption by fulfilling other substantive conditions that the amendment was brought in. That being so, denying such benefit to a trust like the appellant who had obtained registration u/s 12AA during the pendency of the appeals filed against the orders of the assessing authority, by narrowly interpreting the term, 'pending before the assessing officer' so as to exclude its pendency before the appellate authority, will be doing violence to the provisions of the Statute and, as such, liable to be interfered with.. Thus, Hon'ble ITAT held that sections 12A and 12AA are only procedural in nature. Hence, it is not the registration u/s 12AA by itself that offers immunity from taxation. A receipt whether it is revenue or capital in nature is to be decided at the assessment stage. Being procedural in nature, liberal interpretation will give effect to the intention of the amendment, thereby removing the hardship in genuine cases and the ground of appellant is allowed.

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contd. from page 80

13 Cost inflation index in case of inherited property - CIT v/s. Smt. Mina Deogun (2015) 233 Taxman 367 (Calcutta) : (2015) 375 ITR 0586 (Cal)

Issue :

How to apply cost inflation index on sale of inherited property?

Held :

Assessee had sold inherited property in A.Y. 2003-04.

Assessee's father had purchased property. After father's death mother inherited the property in the year 1968. After death of mother assessee acquired the property in 1999. In terms of provisions in Sec. 55(2)(1) fair market value, at the option of the assessee is to be adopted as on 01/04/1981.

14 Fair market value. Valuation report and estimate by Assessing Officer. N. Govindraju v/s. ITO (2015) 233 Taxman 376 (Karnataka) : (2015) 377 ITR 0243(Kar)

Issue :

When Assessee proves fair market value by producing valuer's report, can A.O. estimate the fair market value on other evidences?

Held :

Assessee sold a plot of land and treated the gain as long term capital gain. Assessee submitted valuation report of a registered valuer determining fair market value as Rs. 225 per sq.ft. as on 01/04/1981. A.O. on basis of some nearby property sales, arrived at the value @ Rs. 84 as on 01/04/1981, and computed the capital gain. When assessee had proved value as on 01/04/1981 by producing relevant material including valuer's report the A.O. cannot arrive at a different value ignoring material supplied by Assessee including valuer's report.

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Unreported Judgements

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In this issue we are giving gist of an important decision rendered by Hon'ble Mumbai Tribunal in the case of Fiduciary Shares & Stock P. Ltd. in respect of disallowance of loss on trading of shares as per Explanation to Section 73 after considering the amendment made by the Finance No.2 Act 2014 in Explanation to said Section 73 of the Act.

We hope the readers would find the same useful.

In the Income Tax Appellate Tribunal
"F" Bench, Mumbai
Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member
ITA No.321/Mum/2013
(Assessment Year: 2009-10)

Fiduciary Shares & Stock P. Ltd. Unit No. T7B, 5th Floor, Phoenix House, Block No.2, Phoenix Mills Compound, 462, Senapati Bapat Marg, Mumbai-400013	Vs.	ACIT, Circle 4(2) Aayakar Bhavan, M.K. Road Mumbai 400 020
Appellant [PAN – AAACF9759N]		Respondent

Appellant by : Shri B.V. Jhaveri
Respondent by : Shri Sumit Kumar

Date of Hearing : 12/04/2016
Date of Pronouncement : 13/05/2016

Gist

Facts :

1. The assessee, a company engaged in consultancy and dealing in shares and debt instruments, filed its return of income for A.Y. 2009-10 on 29/09/2009 declaring income of Rs.1,58,26,201/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act) and the case was subsequently taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 22/12/2011 wherein the income of the assessee was determined at Rs.4,16,55,840/- in view of the following disallowances:

   i) Disallowance u/s 14A r.w. Rule 8D : Rs. 12,58,232/-
   ii) Disallowance of loss on trading of shares as per : Rs.2,43,32,584/- Explanation to Section 73
   iii) Disallowances of transaction charges : Rs. 2,38,821/-

   The appellant got partial relief from CIT(A). It, therefore, filed an appeal before Tribunal challenging above three additions made by the learned A.O. as confirmed by CIT(A). The Tribunal dealt with all the three issues as under.

Decision:

1. In respect of the first issue of disallowance u/s 14A r.w. Rule 8D for a sum of Rs.12,58,232/-, the Tribunal found that assessee company is carrying on business of a share broker and dealing / trading in shares. The assessee company has borrowed funds for acquiring its stock-in-trade, which consist of government securities, shares and other securities. The assessee contended that income earned from trading in stock-in-trade is taxable and it is only the incidental dividend income that is exempt from tax. The assessee, therefore, contended that the amount of stock-in-trade should not be considered as investment for the purpose of calculation of its disallowance in the formula laid down in Rule 8D. It also relied on Hon'ble Bombay High Court decision in

the case of CIT v/s India Advantage Securities Ltd. in ITA No. 1131 of 2013 to support the above contention. The Tribunal after considering rival contentions held as under :

"4.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. The issue for adjudication before us is as to whether the shares held by the assessee-company under the head 'stock-in-trade' are to be considered for making disallowance under section n 14A r.w. Rule 8D. As submitted by the learned A.R. for the assessee we find that the Hon'ble Jurisdictional Court in the case of India Advantage Securities Ltd. in ITA No. 1131 of 2013 dated 17/3/ 2015 has held that disallowance, if any to be made under section 14A r.w. Rule 8D should only be made with regard to investments and not with regard to shares held as stock-in-trade. This decision of the Hon'ble Bombay High Court (supra) has been followed by the Coordinate Bench of this Tribunal in the case of Devkant Synthetics (India) Pvt. Ltd. in ITA No. 2663 to 2665/ Mum/2015 dated 28/10/ 2015……..

4.4.2 Respectfully following the decisions of the Hon'ble Bombay High Court in the case of India Advantage Securities Ltd. (supra), the Hon'ble Karnataka High Court in the case of CCI Ltd (supra) and the Coordinate Bench of this Tribunal in the case of Devkant Synthetics (India) Pvt. Ltd. (supra), we hold that the disallowance under section 14A r.w. Rule 8D cannot be made in respect of shares held as stock-in-trade and therefore direct the AO to delete the disallowance made under section 14A r.w. Rule 8D. consequently, ground No. 1 of the assessee's appeal is allowed. "

2. As regards disallowance of business loss by invoking Explanation to Section 73 the composition of business income was as under:

Brokerage and Commission :	Rs.5.50,41,964.56
Profit/(Loss) on sale of shares – speculation :	(-) Rs. 11,30,493.74
Profit/(Loss) on sale of shares – Derivatives :	(-)Rs. 59,48,289.62
Profit/(Loss) on Trading of shares :	(-) Rs.2,13,23,589.99
	Rs.2,66,39,591.02

The assessee contended that due to amendment by the Finance No.2 Act 2014 if the assessee is engaged in the principal business of trading in shares, then such Explanation to Section 73 would not apply to such companies. The assessee on the basis of the decision of Hon'ble Supreme Court in the case of CIT v/s J.H. Gotla 156 ITR 323, CIT v/s Gold Coin Health Food Pvt. Ltd. 304 ITR 308 and CIT v/s Podar Cement P. Ltd. 226 ITR 626 contended that such amendment in Explanation to Section 73 is clarificatory and curative in nature and hence the same should be considered retrospective and should also apply to the present assessment year 2009-10. The department on the other hand contended that such amendment is not retrospective and following the Bombay High Court decision in the case of Prasad Agents Pvt. Ltd. 333 ITR 275 contended that the loss from share trading even if it is delivery based has to be considered as speculation loss and cannot be allowed to be set off against normal business income. The Tribunal after considering amendment made in Explanation to Section 73 and relying on the Hon'ble Supreme Court decision in the case of Allied Motors Pvt. Ltd. 224 ITR 677, J.H. Gotla 156 ITR 323, Gold Coin Health Food Pvt. Ltd. 304 ITR 308 and

Rajeev Kumar Agarwal's case decided by the Agra Tribunal 45 taxmann.com 555 held as under :

"*5.6.10 We have carefully perused the decision of the Hon'ble Bombay High Court in the case of Prasad Agents P. Ltd. in 333 ITR 275 (Bom) and are of the humble opinion that the decision / finding rendered therein would not apply to the issue in the case on hand since the issue raised before the Hon'ble High Court was whether the loss due to valuation of stock is covered by Explanation to Section 73 of the Act as it stood in 2009 and not in respect to the effect of the amendment by way of the insertion of exception in Explanation to section 73 of the Act by Finance Act (No.2) Act, 2014 which is before us. The Hon'ble High Court in the cited case (supra) held that there cannot be difference in the treatment between losses suffered in the course of trading in shares and losses in terms of book value of stock-in-trade, even if there was no trading in the course of financial year as the Explanation to section 73 of the Act would cover both shares which are stock-in-trade and shares which are traded for the purpose of considering the profit and loss for the year.*

5.6.11 In our humble view, drawing support from the judicial pronouncements cited at paras 5.6.3 to 5.6.9 of this order (supra) we are of the considered opinion and held that the amendment inserted in Explanation to section 73 of the Act by Finance (No.2) Act, 2014 w.e.f. 1/4/2015 is clarificatory in nature and would therefore operate retrospectively from 1/4/1977 from which date the Explanation to section 73 was placed on the statute since this amendment to section 73 of the Act '…… Or a company the principal business of which is the business of trading in shares ……..' brings in the assessee whose principal business is trading shares. Therefore, the loss incurred in share trading business by such companies, i.e. like the assessee will not be treated as speculation business loss but normal business loss, and hence the same loss can be adjusted against other business income or income from any other sources of the year under consideration. In this view of the matter, we direct the AO to allow the assessee's claim for setting off the loss from 'share trading business' against 'other business income' and income from any other sources during the year under consideration. Since we have allowed the assessee's primary contention/ground, we do not consider it necessary to adjudicate the alternative contention raised by the assessee."

3. As regards disallowance of transaction charges paid to the stock exchange disallowed u/s 40(a)(ia) on the ground that the same are fees for technical services and liable to TDS, the Tribunal following the decision of Hon'ble Supreme Court in Kotak Securities Ltd. in Civil Appeal No. 3141 of 2016 dated 29/3/2016 held that no TDS is deductible on payments of transaction charges paid by members to stock exchange u/s 194J of the Act as they are not for technical services rendered, but are in the nature of payments for facilities provided by the stock exchange and accordingly directed A.O. to delete disallowance of Rs.2,38,821/- made u/s 40(a)(ia) of the Act.

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Controversies

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When there is mismatch between income as per 26AS statement and income as per books of account whether addition can be made as undisclosed income ?

Issue:

For the A.Y. 2013/14 –As per 26AS statement income of assessee stated is Rs 1,00,000 and TDS is Rs 10,000. As per books of accounts this income is not disclosed but TDS is claimed at Rs 10,000. The A.O. is of the view that this income of Rs 1,00,000 has to be taxed as undisclosed income as assessee claimed TDS of Rs 10,000. As per assessee such income is disclosed in A.Y. 2014/15. According to assessee as the bills for services rendered in month of March 2013 are raised in the accounts of succeeding assessment year i.e. A.Y. 2014/15 the income is taxable in that year.

Proposition:

It is proposed that information as per database of the revenue authorities cannot be by itself legally sustainable as a basis for addition to the income of an assessee.

View against the proposition:

it is clear that the assessee has claimed credit for tax deducted at source in assessment year 2013/14, whereas he has offered the income relating thereto for taxation in assessment year 2014/15. The limited issue therefore, is whether the assessee can claim the credit for tax deducted at source in assessment year 2013/14 and offer the income relating thereto for taxation in assessment year 2014/15. In my humble opinion, the provision of sections 198 and 199 of the income-tax Act are quite clear. According to section 198, all sums deducted under Chapter XVII are required, for the purpose of computing the income of assessee, to be deemed to be the income received. Therefore, income in respect of tax deducted at source has to be treated as income received in assessment year 2013/2014, i.e., the year in which the assessee has claimed the credit. According to section 199, the credit for tax deducted at source is required to be given for the amount so deducted on the production of certificate furnished under section 203 in the assessment made under this act for the assessment year for which such income assessable. It is, therefore, evident on the bare perusal of the provision of the section 199 of the income-tax Act that credit for tax deducted at source is required to be given in the assessment year in which the income relating thereto is assessable. It is undisputed position in the case under consideration that the assessee has claimed and Assessing Officer has allowed the credit for tax deducted at source in assessment year 2013/14 and hence, it is equally undisputable that income relating thereto has to be brought to tax in the said assessment year. This view is quite apparent and clear, as stated above, on bare perusal of the provisions of section 199.

The undisputed position that emerges is that credit for tax deducted at source and the assessment of income relating thereto have to go together in the same assessment year and that they cannot be divorced from each other. Section 199 prohibits the credit for TDS to be given in an assessment year different from the one in which the income relating thereto is assessable. It was the case of the assessee before the departmental authorities that credit for tax deducted at source should be given to him in assessment year under consideration and hence the departmental authorities were justified in treating the income relating thereto also as his assessable income for the assessment year 2013/14, it was incumbent upon the assessee to the offer the income relating thereto to tax in assessment year 2013/14.

The submission of the assessee that he has followed mercantile system of accounting for the assessment year under appeal also supports the aforesaid view. The assessee claimed credit for the tax deducted at source in the assessment year 2013/14 and hence admitted and recognized the assessability of income relating thereto in assessment year 2013/2014. Be

whatever it may, the system of accounting cannot defeat the express provisions of law contained in section 199, which mandates that credit for TDS shall be given in the assessment year in which the income relating thereto is assessable. As held by the hon'ble supreme court in Tuticorin Alkali Chemicals & Fertilizers Ltd. v. CIT[1997] 227 ITR 172, the income tax law does not march step to step in the divergent foot prints of the accountancy profession.

View in favour of proposition:

It is submitted that assessee is raising the bills against his claim for the services rendered in a month only in succeeding month and on that basis the bills in respect of the services rendered in March 2013 are raised in the accounts of the succeeding assessment year.

Both the sections, viz., 198 and 199, fall within chapter XVII of the income-tax Act, 1961 which are titled as "Collection and Recovery-Deduction at source". In other words, these are machinery provisions for effectuating collection and recovery of the taxes that are determined under the other provisions of the Act. In other words, these are only machinery provisions dealing with the matter of procedure and do not deal with either the computation of income or chargeability of income. The basis of charge of income to tax in the case of business income is provided in sec 28 of the Act. The computation provisions of section 28 to 43A deal with the assessment of profit and gains of business. In computing the income from business or profession, the method of accounting followed by the assessee becomes relevant. After all, the profits and gains of business or profession carried on by the assessee should be computed in accordance with the method of accounting regularly followed by the assessee asprovided in the section 145(1) of the income-tax Act, 1961. In fact, the words "Profit and Gains" referred to in section 28 and 29 of the Act deal with only commercial profits as understood in the commercial parlance as held by lord Halsbury in Gresham Life Assce. Soc. v. Styles 3 TC 185 (HL) "in its natural and proper sense – in a sense which no commercial man would misunderstand". This principle has been approved by the Privy Council in Pondicherry Railway Co. Ltd. v. CIT 5 ITC 363, and by the Supreme Court in Badridas Daga v. CIT [1958] 34 ITR 10, Calcutta Co. Ltd. v. CIT [1959] 37 ITR 1 (SC) and CIT v. Bai Shirinbai (K) Kooka [1962] 46 ITR 86. The profits mentioned herein are the real profits and they must be ascertained on ordinary principles of commercials practice and commercial accounting. Therefore, the assessee's method of accountings becomes relevant for determining the income from the conduct of any business or exercise of any profession.

Sections 198 and 199 of the Act nowhere provide for an exception either to the determination of the income under the aforesaid provisions of sections 28, 29 or as to the method of accounting employed under section 145 of the Act, which alone could be the basis for computation of income under the provisions of sections 28 to 43A of the Act. Section 198 has a limited intention. It only declares the amount deducted at source under sections 192 to 194, section 194A, section 194B, Section 194BB, section 194C, section 194D, Section 194E, section 194EE, Section 194F, section 194G, section 194H, section 194-I, section 194J, section 194K, section 195, section 196A, section 196B, section 196C, and section 196D to be treated as an income received. The purpose of the section 198 is not to carve out an exception to section 145 of the Act. Section 199 of the Act has two objectives – one to declare the tax deducted at source as payment of tax on behalf of the person on whose behalf the deduction was made and to give credit for the amount so deducted on the production of certificate in the assessment year for which such income is assessable. The second objective mentioned in section 199 is only to answer the question as to the year in which the credit for tax deducted at source shall be given. It links up the credit with assessment year in which such income is assessable. In other words, the Assessing officer is bound to give credit in the year in which the income is offered to tax. Thus section 199 does not empower the Assessing Officer to determine the year of assessability of the income itself but it only mandates the year in which the credit is to be given on the basis of the certificate furnished. In the other words, when the assessee produces the certificates of of TDS, the Assessing Officer is required to verify whether the assessee has offered the income pertained to the certificate before giving credit. If he

finds that the income of the certificate is not shown, the Assessing Officer has only not to give credit for TDS in that assessment year and has to defer the credit being given to the year in which the income is to be assessee. At the cost of repetition, it may be mentioned that sections 198 and 199 do not in any way change the year of assessability of income, which depends upon the method of accounting regularly employed by the assessee. They only deal with the year in which the credit has to be given by the Assessing Officer. It cannot be disputed that according to the method of accounting employed by the assessee the income of in respect of TDS Certificate, which are mentioned in paragraph above, does not pertain to the assessment year in the question, but it pertains to the next assessment year and, in fact, in that year the assessee has offered same to the tax. Therefore, the credit in respect of TDS Certificates shall not be given in the assessment year under consideration, but the credit for the same shall be given in the next assessment year in which the income is shown to have been assessed.

Summation

I am in complete agreement with the views in favour of the assessee, Let me at the outset refer to the decision of Delhi "A" Bench, New Delhi, I.T. A. No. 4679/Del/2012, Assessment Year 2009-10. In the case of Income Tax Officer Vs. Sh. Basant Kumar S/o Sh. Sheo Narayan, it was held by the Hon. Tribunal that it is only elementary that information as per database of the revenue authorities cannot be, by itself, a legally sustainable basis for addition being made to the income of an assessee and that such inputs are at best starting points for appropriate inquiries.

We professionals who follow cash system of accounting have been facing lots of problems regarding the situation where the client is following mercantile system of accounting and makes provision for Audit Fees and TDS is also made while the professionals who follow cash system of accounting credits the income in the next year when Audit Fees are received. Thus, the statement of 26AS discloses TDS in one year while the income is offered in the next year. I think the issue arises only on account of misconception and misunderstanding of the Income Tax Department.

Let me refer to decision of third member Smt. Varsha G. Salunke v. DCIT, Circle 31(1) reported in 98 ITD 147. The Hon. Tribunal in brief held:-

"Whether since according to the method of accounting employed by assessee, income in respect of three TDS certificates did not pertain to relevant assessment year but it pertained to next assessment year and in fact, in year-Held, whether credit in respect of said three TDS certificates also would not be given in relevant assessment year but in next assessment year in which income would have been assessed-Held, Yes"

Thus, the third member decision cited above is very clear and there should not be any doubt that just because TDS is claimed the income referable to such TDS is taxable in year in which TDS has been claimed.

I would also like to refer to the decision of Jurisdictional ITAT Ahmedabad Bench, in the case of Shri Pannalal Hiralal vs. DCIT, ITA No. 327/Ahd/2010 A. Y. 2004-05 where the Hon. Tribunal has held as under:

"Further, a decision in respect of third member in the case of Smt. Varsha G. Salunke Vs. Dy. CIT(ITAT Mumbai Bench "F" Third Member) reported at (2006) 98 ITD 147 (Mumbai). Order dates 27/09/2005 has also been cited before us, wherein it was held that the credit of the TDS is to be given in the relevant assessment year in which income has been shown by the assessee. Respectfully following these decisions we, hereby direct that since the assessee has shown the income in the next assessment year, i.e. A.Y. 2005-06, therefore there is no occasion to assess the same income for the year consideration, i.e, 2004-05 and we further direct that the corresponding TDS credit should not be given in the Assessment year 2004-05.

Thus, in my opinion the issue raised in this controversy should be treated as settled in favour of the assessee. The income as per the method of accounting employed by the assessee is taxable in year in which such income is credited and TDS will be also be allowed in that year. The TDS and the relevant income cannot be divorced from each other.

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FEMA Updates

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6 Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director

In terms of Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, no person resident in India shall accept any deposit from, or make any deposit with, a person resident outside India.

Under section 160 of the Companies Act, 2013, it is provided that a person who intends to nominate himself or any other person as a director in an Indian company is required to place a deposit with the said company. In this context, it has come to the notice of the Reserve Bank that there is ambiguity whether such deposits will require any specific approval from the Reserve Bank under Notification No. FEMA 5(R), in cases where the deposit is received from a person resident outside India.

It is clarified that keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank. All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.

A.P. (DIR Series) Circular No.59, dated April 13, 2016

For full text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10348

7 Issuance of Rupee denominated bonds overseas

According to the Monetary Policy Statement, the current limit of USD 51 billion for foreign investment in corporate debt, as was given in A.P. (DIR Series) circular No. 94 dated April 01, 2013, has been fixed in Rupee terms at Rs. 2443.23 billion. Issuance of Rupee denominated bonds overseas will be within this aggregate limit of foreign investment in corporate debt.

As the overall limit is now prescribed in Rupee terms, the maximum amount which can be borrowed by an entity in a financial year under the automatic route by issuance of these bonds will be Rs. 50 billion and not USD 750 million as given in the circular. Proposals to borrow beyond Rs. 50 billion in a financial year will require prior approval of the Reserve Bank.

Detailed changes / revised instructions in respect of issuance of Rupee denominated bonds is mentioned in the circular.

A.P. (DIR Series) Circular No.60, dated April 13, 2016

For full text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10350

8 Overseas Direct Investment - Submission of Annual Performance Report

At present, an Indian Party (IP) / Resident Individual (RI) which has made an Overseas Direct Investment (ODI) has to comply with certain obligations including obligation for submission of an Annual Performance Report (APR) in Form ODI Part III to the Reserve Bank by 30th of June every year.

It has been observed that IP / RI are either not regular in submitting the APR

In order to track submission of APRs and improve compliance level by the IPs / RIs, several instructions are given including, modification of online OID application to view the outstanding position of all the APRs, certification of APRs by the Statutory Auditor or Chartered Accountant need

not be insisted upon in the case of Resident Individuals. Self-certification may be accepted etc.

A.P. (DIR Series) Circular No.61, dated April 13, 2016

For full text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10349

9 Overseas Direct Investment (ODI) – Rationalization and reporting of ODI Forms

At present, application for ODI is required to be made in Form ODI – Part I for direct investment in JV / WOS under automatic route / approval route. Further, remittances in Part II, Annual Performance Report (APR) in Part III and disinvestment in Part IV. It has been decided to subsume Form ODI Part II within Form ODI Part I. Thus the Form ODI will have five sections instead of six.

The rationalised and revised Form ODI is given in Annex I to the circular.

A.P. (DIR Series) Circular No.62, dated April 13, 2016

For full text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10351

10 Foreign Investment in units issued by Real Estate Investment Trusts, Infrastructure Investment Trusts and Alternative Investment Funds governed by SEBI regulations

With a view to rationalising foreign investment regime for Alternative Investment vehicles and to facilitating foreign investment in collective investment vehicles for real estate and infrastructure sectors, it has been decided, in consultation with the Government of India, to allow foreign investment in the units of Investment Vehicles registered and regulated by SEBI or any other competent authority. At present, Investment Vehicle will include

- Real Estate Investment Trusts (REITs); Infrastructure Investment Trusts (InvITs);
- Alternative Investment Funds (AIFs)

The salient features of the new investment regime include person resident outside India may invest in units of Investment Vehicles

A.P. (DIR Series) Circular No. 63, dated April 21, 2016

For full text refer tohttps://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10358

11 Foreign Exchange Management (Remittance of Assets) Regulations, 2016

Attention of Authorised Dealers (ADs) is invited to (a) A.D. (M.A. Series) Circular No. 11 dated May 16, 2000 and (b) Para 2.3 and 3.2 of Master Direction No. 13 on Remittance of Assets. On a review it is felt necessary to revise the regulations issued under the Foreign Exchange Management (Remittance of Assets) Regulations, 2000, as amended from time to time. Accordingly, in consultation with the Government of India, the said regulations have been repealed and superseded by the Foreign Exchange Management (Remittance of Assets) Regulations, 2016 (Notification No. FEMA 13(R)/2016-RB dated April 1, 2016).

A.P. (DIR Series) Circular No. 64/2015-16 [(1)/13(R)], dated April 28, 2016

For full text refer tohttps://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10371

12 Foreign Exchange Management (Deposit) Regulations, 2016

Attention of Authorised Dealers (ADs) is invited to Foreign Exchange Management Act, 1999 and (b) para 3.2 of Part I and paras 1.1, 2.4, 2.5, 2.7, 2.8, 4, 4.8, 6.6, 6.7, 6.8, 7, 8.1, 9, 10, 12 and the Appendix of Part II of Master Direction No. 14 on Deposits and Accounts. On a review it is felt necessary to revise the regulations issued under the Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time. Accordingly, in consultation with the Government of India, the said regulations have been repealed and superseded by the Foreign Exchange Management (Deposit) Regulations, 2016 (Notification No. FEMA 5(R)/2016-RB dated

contd. on page no. 99

Service Tax Decoded

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Transportation Services by Individual Truck Owner and Operator – Raise of Controversy

1. Controversies are coupled with levy of service tax on services in relation to transportation of goods by road since its inception. Initially in the year 1997, service tax was introduced on services provided by Goods Transport Operators (yes, not Agency) where in *transport operator was defined to be any commercial concern engaged in the transportation of goods but does not include a courier agency* [Erstwhile Section 65(17) of the Finance Act, 1994]. In terms of erstwhile section 65(41)(m), taxable service means any *service provided to a customer, by a goods transport operator in relation to carriage of goods by road in a goods carriage*. Further, liability to pay service tax was shifted to the service recipient.

2. Although, Government succeeded in the front of constitutional validity in the case of Nava Bharat Ferro Alloys Ltd. [2006 (3) S.T.R. 565 (A.P.) as maintained by Supreme Court in the case of Sree Rayalaseema Alkalies & A. Chemicals 2007 (8) S.T.R. J196 (S.C.)], the Government had to withdraw the levy due to one or another reasons. However, through Budget 2004-05, Government once again tried to levy tax on transportation and services of "Goods Transport Agency" was made taxable. In terms of erstwhile section 65 (50b), goods transport agency was defined *to be any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called.* Further, in terms of erstwhile Section 65(105) (zzp) *services provided to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage was made taxable.*

3. Considering the difference between levy introduced through the Budget 1997 and Budget 2004, it can be understand that earlier services provided by the "Goods Transport Operators" (GTO) were tried to be made taxable and later services provided by the "Goods Transport Agency" (GTA) were made taxable. If intention of the Government was to introduce the same levy, it would have simply reintroduced levy on services provided by "Goods Transport Operator". However, in 2004, the Government himself has differentiated between GTO and GTA and services of GTA only were made taxable.

4. This can be further supported from the Paragraph No. 149 of the Budget Speech of the Finance Minister given during the introduction of the Finance (No. 2) Bill, 2004.

   "149. 58 services have been brought under the net so far. I propose to add some more this year. These are business exhibition services; airport services; services provided by ***transport booking agents;*** *transport of goods by air****; ..... I may clarify that there is no intention to levy service tax on truck owners or truck operators.*** *.....".*

5. Based on the difference between levy of Budget 1997 and Budget 2004 and the above stated Budget Speech, one can fairly believe that services provided by Transport Booking Agents only are made taxable under the category of Goods Transport Agency Services and services provided by the person who provides the transportation on their own carriage are not covered under the category of the "GTA". Services provided by the individual truck owners by transporting the goods on their own may not be taxed.

6. Various benches of tribunals had held that services provided by the truck owners and operators are not subject to tax and recipient of such services are not required to pay service tax. For example, Kanaka Durga Agro Oil Products Pvt. Ltd. [2009 (15) S.T.R. 399 (Tri. - Bang.)], Bellary Iron & Ores Pvt. Ltd. [2010 (18) S.T.R. 406 (Tri. - Bang.)], Lakshminarayana Mining Co. [2009 (16) S.T.R. 691 (Tri. - Bang.)].

7. Similarly, in the case of K.M.B. Granites Pvt. Ltd. [2010 (19) S.T.R. 437 (Tri. - Chennai)] it was held that transportation undertaken by individuals owning and operating lorry and trucks is not liable to service tax. However, department went to the Madras High Court against such order and Madras High Court held that the individual operator would also be covered within the meaning of expression 'commercial concern' and upheld the liability of the service recipient even if services are provided by the individual truck owner or operator. [2014 (35) S.T.R. 63 (Mad.)].

8. In the above judgment, following facts should be noted.

   a. Through the Finance Act, 2006, "any person" was replaced with "commercial concern" in the definition of the "Goods Transport Agency" however earlier decisions were rendered for the earlier period. Based on such facts, Hon'ble Madras High Court, in this case, has held that individual truck owners will be covered under the word "commercial concerns" and hence now such services are subject to tax.

   b. No one represented the assessee before the High Court and it is ex-party decision wherein court was never guided.

   c. Department had approached Karnataka High Court in the case of Bellary Iron Ore Pvt.Ltd. [2011 (24) S.T.R. 274 (Kar.)] but the Hon'ble Karnataka High Court has dismissed the department's appeal as "non-maintainable" as in terms of Section 35G and 35L of the Central Excise Act, 1944, as made applicable to service tax, appeal against decision of CESTAT on such question lies to Supreme Court, and not to High Court. Department has now moved to the Supreme Court and their appeal is pending before the Supreme Court. This fact was not brought to the Hon'ble Madras High Court in the case of K.M.B. Granites Pvt. Ltd.

   d. Earlier, services of Goods Transport Operator was made taxable while at present services of "Goods Transport Agency" only are made taxable. Without principal, there can't be agent. In terms of the section 182 of the Indian Contract Act, 1872, an '*agent' is a person "person employed to do any act for another or to represent another in dealings with the third persons*. In the case of transportation of goods, generally, as prevailing practice in India, agents accept the booking from the clients on behalf of the actual transporters. Hence, services of booking agents only are made taxable and not the transportation of goods itself. However, it seems that this fact was not brought to the notice of the court.

   e. Further, the entry in the Act defines "Goods Transport Agency" as one which issues consignment notes and thereafter Rule 4B says that "Goods Transport Agency" has to issue consignment note. So which criteria has to be satisfied first is not clear. That is to say if a goods transport operator does not issue consignment note he does not come within the meaning of "Goods Transport Service" and then the requirement under Rule 4B also is not enforceable. Thus, the definition of "Goods Transport Agency" under Section 65(50b) of Finance Act, 1994 and provision of Rule 4A of Service Tax Rules are logically inconsistent. This fact is also recorded in

the case of Bazpur Co-Operative Sugar Factory Ltd. [2012 (27) S.T.R. 517 (Tri. - Del.)]. Thus, there is ambiguity and it is well settled principle that if doubts arise in interpretation of the fiscal or a taxing statute, speeches made by the mover of the bill on the Floor of the Parliament are admissible as an aid to construe a statute. [K.P. Varghese v. ITO - 1981 (131) ITR 597 (S.C.)]. Thus, paragraph 149 of the Finance Minister's Budget Speech for the Budget 2004 can be relied upon and it may be held that services of provided by individual truck owner/operators are not subject to service tax.

9. Anyway, today this judgment holds the field and binding to the lower authority including to the CESTAT, unless jurisdictional High Court or Supreme Court decides contrary. CESTAT has to follow the above ratio and now, CESTAT is confirming the demand of service tax on recipient where services are received from the individual truck owners and operators. For example Shree Balaji Transport [2015 (38) S.T.R. 651 (Tri. - Bang.)].

10. Now, effect of such judgments will be that department will demand service tax even if service is provided directly by the truck owners and operators. For example, department will ask for the service tax on Tempo Bhada, local freight etc. wherein generally consignment note is not being issued. Even service tax will be demanded from individual truck owner/ operator on transportation of the goods where service recipient is not liable to pay service tax, for example consigner and consignee both are individuals not in business.

11. Matter in the case of Bellary Iron Ore Pvt. Ltd. is still pending before the Hon'ble Supreme Court and hence it may happen that decision of the Madras High Court may be overruled by the Hon'ble Supreme Court. However, it may take decades to have decision from the Hon'ble Supreme Court and till that time assessee may have to suffer.

12. It is worth noting that with introduction of Negative List based regime, provisions based on which above judgments are delivered, are changed. w.e.f. 01-07-2012, "transportation of goods by road" except the services of goods transport agency and courier agency, is a service in negative list in terms of Section 66D(p), as standing today. Hence, discussions in forgoing paragraphs may not be directly applied today. Earlier, for the period for which above judgements were delivered, such provision was not there in the statute. Transportation per se was never exempted or specifically excluded from the levy of service tax. Outcome of the above provision is that mere transportation of goods per se, is not subject to service tax at all and services provided by the goods transport agency alone is subject to service tax.

13. Now, if it is held, even today that services of individual truck owners/operator or any other person, by way of transportation of goods is taxable, it will result in absurd result, wherein, there will be no need to have entry (p) in the Section 66D Negative List and provision of Section 66D(p) will be redundant. Such interpretation can't be accepted by the courts.

14. When Finance Minister introduced the levy in the year 2004, Government was facing rigorous agitation and opposition from transporters across the country. To avoid any possible crisis, Finance Minster may have clarified in the budget speech, which is not in consistent with the actual provisions of the law. Government could have incorporated the wordings, which are used in the budget speech, in the provisions itself. However, it seems that such proposition, created intentionally or un-intentionally, has earned lot of revenue, for the Government, whether genuine or not.

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Service Tax - Recent Judgements

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7 [2016] 68 taxmann.com 380 (AAR - New Delhi) Authority for Advance Rulings (Central Excise, Customs and Service Tax), New Delhi vs. Berco Under-carriages (India) (P.) Ltd.,

Facts:-

Assessee-importer appointed foreign C&F (Clearing and Forwarding) agent for import handling, arranging shipping liners, ocean freight, material clearance, local transport etc. Foreign C&F agent would incur expenses on behalf of assessee on freight, insurance, loading, unloading and handling of goods, etc. and said expenses would form part 'customs value'. Assessee sought advance ruling 'whether said charges billed by C&F agent would be liable to service tax under reverse charge', despite fact that same are already included in customs value, as that would be 'double taxation'.

Held:-

There is no law that 'if customs duty is chargeable, Service Tax is not leviable on same component'; hence, assessee's argument against double taxation was rejected. Further, import freight upto customs station of clearance in India is covered in negative list under section 66D(p)(ii). However, expenditure or costs incurred by C&F Agent i.e., freight, insurance, loading, unloading, handling charges etc. would be excluded from value, only if conditions enumerated in rule 5(2) ibid are satisfied.

8 [2016] 69 Taxmann.com 131 (SC) Supreme Court of India Deputy Commissioner, Central Excise v. Sushil & Company

Facts:-

Under contract with Birla Cement, assessee was supplying manpower to work at cement packing plant. Packing/unpacking or loading/unloading of cement bags was carried out through automatic machines. Department demanded service tax under cargo handling services.

Held:-

For a service to be 'Cargo Handling Service', two conditions must be fulfilled : (1) there must be a cargo i.e. a packed or unpacked commodity accepted by a transporter or carrier for carrying same from one destination to another; and (b) service provider must independently be involved in loading-unloading or packing-unpacking of cargo. Since said conditions were not fulfilled, service in question was not cargo handling services.

High Court went by contract entered into by assessee and taking into consideration all averments made in show-cause notice, on basis of admitted facts, came to conclusion that even if allegations in notice are accepted, activity is not liable to service tax. Since no disputed questions of fact were involved and legal issue was to be decided on basis of facts, as admitted by parties, which were so specifically recorded by High Court itself, hence, there was no error committed by High Court.

9 [2016] 69 taxmann.com 127 (Madras) High Court of Madras V.R. Mohanraj v. Commissioner of Service Tax

Facts:-

Assessee, a real estate agent, was not paying service tax on said services on 3-9-2013, assessee received summons for department. Thereupon, assessee filed declaration under Service Tax Voluntary Compliance Encouragement Scheme (VCES). Department rejected said declaration under section 111 ibid on ground that same was false. Assessee filed writ against said rejection. Department argued that in view of alternate remedy by way of statutory appeal, writ was not maintainable.

Held:-

In passing impugned order, assessee's reply to show-cause notice was considered and assessee was granted hearing in which assessee's counsel had appeared; hence, there was no violation of principles of natural justice. Since impugned order is appealable order, hence, writ petition cannot be entertained in view of alternate appeal remedy. Accordingly, writ was dismissed with liberty to file appeal.

10 Commissioner of Service Tax–II vs. Kalpesh Transport, – CESTAT, Mumbai decision dated 6-4-2016 in Appeal No. ST/87/12-Mum.(Unreported Judgement)

Facts:-

The respondent is a proprietorship concern of Shri Chothani, who had entered into a contract with M/s. Ultratech for providing of clearing and forwarding and, transportation services.

The respondent had discharged service tax liability on charges received for clearing and forwarding, but did not discharge service tax on the charges received on account of transportation. The plea of the respondent was that on transportation charges service recipient is liable to pay service tax under reverse charge mechanism. The adjudicating authority dropped the proceedings on merits, however revenue filed an appeal before the CESTAT.

The respondents contended that the proprietor had died on 24-7-2010, and therefore, being a sole proprietor, no appeal would lie against the respondents.

Held:-

The Hon'ble CESTAT, placing reliance on Rule 22 of the CESTAT Procedure Rules, 1982 and the case of Shabina Abraham vs. Collector of Central Excise and Customs 2015 (322) ELT 372 (SC) set aside the demand completely holding that No appeal would lie against a dead person.

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contd. from page 94

April 1, 2016), hereinafter referred to as Deposit Regulations.

A.P. (DIR Series) Circular No. 67/2015-16 [(1)/5(R)], dated May 05, 2016

For full text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10382

13 Foreign Exchange Management (Exports of Goods and Services) Regulations, 2015

On a review it is felt necessary to revise the regulations issued under the Foreign Exchange Management (Exports of Goods and Services) Regulations, 2000 as amended from time to time. Accordingly, in consultation with the Government of India, the said regulations have been repealed and superseded by the Foreign Exchange Management (Exports of Goods and Services) Regulations, 2015.

A.P. (DIR Series) Circular No.68 [(1)/23(R)], dated May 12, 2016

For full text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10393

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Add

VAT - From the Courts

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1 Whether Statutory forms submitted late (after 3 months from end of quarter) need to be rejected or claim of concessional tax should be allowed?

Universal Surgical Associates V. Assisstant Commissioner (CT), Chennai reported in **85 VST 410 (Mad)**

Background of the case:-

The petitioner- dealer was issued notice for the assessment year 2011-12 proposing to levy tax at a higher rate on inter-State sales not covered by C forms. Pursuant to this, the dealer filed C forms covering the entire inter-State sales but the Assistant Commissioner again issued notice to reject the above C forms on the ground that the declaration forms were not filed within three months after the end of the period to which the declaration related as required under rule 12(7) of the Central Sales Tax (Registration and turnover) rules, 1957. The dealer replied explaining that its proprietor was not well and his wife was suffering from depression for the last five years and in these circumstances, there was a delay in submitting the C forms which was neither willful nor deliberate. The Assistant Commissioner passed an order levying tax at the higher rate on inter-State sales. On a writ petition:

Held, allowing the petition, the rule 12(7) of the Rules clearly says that it is for the dealer to give reasonable cause for the delay. In this case due to personal inconvenience, the dealer had produced the C form belatedly. Normally, illness of the family members should have been taken into consideration. Taking into consideration the personal inconvenience, which had been brought to the notice of the Assistant Commissioner by relevant documents, the Assistant Commissioner, could have shown some leniency considering the facts and circumstances of the case. The order of the Assistant Commissioner was to be set aside and the matter remanded to him for consideration afresh.

2 When a particular item is treated as exempted goods for many years, whether department can change its stand even though there is no change in entry to schedule?

Nestle India Limited V. Deputy Commissioner of Commercial Tax and another reported in **89 VST 56 (Guj)**

Background of the case:-

The petitioner-dealer carried on manufacture and sale of various food products including “noodles” under various internationally acclaimed brands. In the year 1984, the dealer applied for determination under section 62 of the Gujarat Sales Tax Act, 1969 for rate of tax of Maggi Noodles and the deputy Commissioner held that “Maggie two minute noodles” fell under entry 6 of Schedule III to the 1969 Act. The dealer appealed before the Tribunal where upon it set aside the determination order passed by the Deputy commissioner and held that “Maggie two minutes noodles” were covered by sub-entry [d] of entry 1 of schedule I to the Act, and were tax-free. That order attained finality. Up to the year March 31, 2006 the assessing officers in respect of noodles sold by the dealer accepted that the noodles would fall under the category “sev” made by wheat flour or Maida and was not liable to tax. After April 1, 1992, what was under entry 1(d) of schedule I prior to April 1, 1992, was renumbered as entry 10(3) with effect from April 1, 1992, but there was no change in the wording of the entry. The Gujarat Value Added Tax Act, 2003 came into force from April 1, 2006 and the exemption for “sev” being entry 9(3) of schedule I to the 2003 Act remained the same., i.e., “sev made out of wheat flour or Maida” and under entry 22 “farsan and eatables (other than sweetmeats) as

the State Government may by notification in the Official Gazette specify for the purpose of the entry except when sold in sealed container under a brand.", are exempted from payment of sales tax. Up to the year March 31, 2006, in all the assessments in respect of the "noodles" sold by the petitioner, the department had accepted that "Maggi noodles" would fall under category of "sev made out of wheat flour or Maida" and were not liable to tax. For the year 2006-07, the Assistant Commissioner issued notice upon the petitioner proposing to impose tax on sales of "Maggi Noodles " at the rate of 12.5 per cent. By treating it as covered by residuary entry 87 of schedule II to the 2003 Act, to which the dealer gave a reply and submitted that the "noodles" would be covered by entry 9(3) of Schedule I to the 2003 Act and would be exempted from tax and the assessing officer accepted this. The assessment for the subsequent year 2007-08 came to be duly completed accordingly and as such, "Maggi Noodles" as "sev" under entry 9(3) of the Schedule I to the 2003 Act. For the year 2008-09, the dealer was served with notice by the deputy Commissioner (Assessment) calling upon it to show cause why "Maggie Noodles" should not be treated as "farsan" sold as branded product and pursuant thereto passed an order holding that the dealer was liable to pay tax on sale of "Maggi noodles" under entry 87 (residuary entry) at the rate of 12.5 per cent. Plus additional tax. On a writ petition:

Held that,

The principle that res judicata is not applicable to tax laws, as every year is a separate unit, would not be applicable in a case where the issue with respect to classification is interpreted by a higher forum and the decision of the higher forum has attained finality and has been allowed consistently for number of years, unless there are changed circumstances in the subsequent assessment years. The subordinate authority on the ground of judicial discipline is bound to follow the decision of the higher forum. If the State or authority is of the opinion that the earlier decision, which is against the Revenue, the appropriate remedy available to the authority would be to pass an order following the earlier binding decision of the higher forum and thereafter, the revisional authority either may take the order in suo motu revision and thereafter, the matter may be carried to the Tribunal and in that case, the Tribunal may either follow the earlier decision of the Tribunal or may refer the matter to the Special bench and if the Tribunal concurs with the earlier decision, the Revenue may still approach the High Court. However, the assessing officer being lower in rank cannot be permitted to ignore or be permitted to take a view contrary to that taken by the higher forum, more particularly, when in the subsequent years, there are no changed circumstances and the decision of the higher forum has been acted upon and implemented for many years.

allowing the petition, (i) that when after considering the Department's objection with respect to maintainability of the petition in view of the statutory remedy available, the court had earlier thought it fit to admit the petition and to consider the petition on the merits, it would not be proper to dismiss the petition on the grounds of availability of alternative remedy.

(ii) that in view of the decision of the tribunal, " Maggi Noodles" had been treated as "sev" falling within exemption entry 1 (d) of Schedule I to the 1969 Act and therefore, exempted from payment of tax. The subsequent entries were similar or the same and pari materia and there was no change at all. Throughout after 1986, the Department had granted exemption on sale of product "Maggi Noodles" treating it as "sev" in light of the decision of the Sales Tax Tribunal dated September 9, 1986 which operated and the exemption was granted for two decades. The State having not challenged the order passed by the Tribunal and having granted the benefit of exemption to the dealer on the manufacture and sale of "Maggi Noodles" till 2006-07, the assessing officer could not be permitted to ignore or to pass an order contrary to the order passed by the higher forum, unless there were changed circumstances in the subsequent assessment years.

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VAT - Judgements and Updates

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Statute Updates
Value Added Tax (VAT)

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

[i] Vide Notification No. GHN/28 dated 12th May 2016, the Gujarat Government has made change in the rate of tax for motor vehicles covered by Entry 80A of Schedule II in respect of motor vehicles sold to the dealers shall be taxed from 1.4.2016 @ 15% including additional tax. The exact entry is given as under.

Entry No.	Class of sales or Purchases	Exemption whether whole or part of tax	Restriction and conditions if any
112	Motor Vehicles covered by Entry 80A of Schedule II of the Act sold to the dealers engaged in business of sale of such vehicles	To the extent to which the amount of tax exceeds fifteen paise including additional tax at the rate of two and half paise in the rupee	This entry shall be deemed to have come into force on and from 1st April 2016
113	[i] Tankers, loading rickshaws, goods carriage vehicles except goods carrier trucks [ii] Chassis of school buses, passenger buses, goods carrier trucks, goods carriage vehicles, tankers, loading rickshaws	To the extent to which the amount of tax exceeds fifteen paise including additional tax at the rate of two and half paise in the rupee.	This entry shall be deemed to have come into force on and from 1st April 2016.

[ii] **Change in Rate in Entry Tax:**

Vide Notification No. GHN/29 dated 12th May 2016 the Gujarat Government has amended the Notification and in respect of Tractors and Motor Vehicles the Entry Tax has been taxed at the rate of 5% and 15% respectively. The Notification is given as under.

Sr. No.	Class of Importers	Extent of Exemption	Conditions
3	Tractors	To the extent to which the amount of tax exceeds five paise in the rupee	
4	Motor Vehicles including chassis of such motor vehicles and the body which is built on chassis on such motor vehicles covered under entry at serial No. 10 of Schedule appended to the Govt. Notification, Finance Dept. No. (GHN-18) GEA-2016-(S.3)(6)-TH dated 1st April 2016 imported by a registered dealer who is engaged in the business of sales of such vehicles	To the extent to which the amount of tax exceeds fifteen paise in the rupee.	This entry shall be deemed to have come into force on and from 1st April 2016.

[II] **Important Judgments:**

[i] **The Hon. GVAT Tribunal in case of Shakti Distilleries Pvt. Ltd. has decided that the amount of freight charged separately in the sale invoice is held as not part of sale price by considering the facts of the case.**

Facts:

The appellant is a private limited company engaged in the business of manufacturing of special denatured spirit. The assessment for the impugned period was completed and no demand was raised against the applicant. However, on the basis of the A. G. audit objection, the applicant was served with the notice in Form 503 proposing to revise the assessment order. It was observed that while passing the assessment order, it was observed that while passing the assessment order, freight shown separately in the invoices and claimed to be not forming part of sale price was accepted by the assessing officer. The Revisional Authority passed ex-party revision order and raised demand of Rs.14,14,074/- including the amount of interest by considering the amount of freight as a part of sale price.

Accordingly, the applicant preferred revision application before the Hon. Tribunal. The applicant has produced the written purchase order of the customer in which one of the specific terms was that the transportation would be arranged by it. It was pointed out from the said term that the applicant was not liable to pay tax on transportation charges as the same was not forming part of sale price. Secondly, the applicant has also produced the marine cargo transit insurance policy obtained by the buyer from New India Insurance Company Ltd. which clarifies that the risk of purchaser starts as soon as goods are delivered to the transporter. In support to his contention the applicant has relied on the following judgments.

[a] Hindustan Sugar Mills Ltd. v/s. State of Rajasthan 43 STC 13 (SC)

[b] Greaves Chitram Ltd v/s. State of Tamilnadu 100 STC 411 (SC)

[c] CST v/s. Gill & Co. 33 STC 536 (MP)

[d] Black Diamond Beverages v/s. CTO 1 SCC 458 (SC)

[e] Oriental Paper Mills Ltd v/s. State of Orissa 35 STC 84

[f] CTO v/s. Indian Rayon & Industries Ltd. 26 VST 299 (Rajasthan)

The applicant has also contended that as per the definition of sale price provided in clause (h) of section 2 of the Act, it is divided in two parts. The first part speaks about the sale price, whereas the second part of the said definition provides certain deduction from the sale price. Accordingly, the applicant submitted that the freight charges shown separately in the invoice are covered by the exclusion part of the said definition and hence he is not liable to pay tax on the amount of freight as they do not form part of sale price. The Hon. Tribunal considering the documentary evidences submitted by the applicant and the judgment relied on by both the parties, has held that as the transportation charges were to be borne by the purchaser, the same do

not become part of sale price and hence the revision order was set aside.

[ii] **The Hon. GVAT Tribunal in case of Ambuja Cement Ltd. has decided that the Value of tax is not to be included in the purchase price for the purpose of reduction of ITC u/s. 11(3)(b) of the Act. The claim of credit notes issued in 2008-09 on account of discount given at the end of the year 2007-2008 is held admissible.**

The appellant has filed two second appeals against the order of Ld. Joint Commissioner of Commercial Tax, Rajkot and has also filed two revision applications against the revision orders passed by the Ld. Joint Commissioner of Commercial Tax, Rajkot. As far as the second appeals for the period 2008-09 is concerned, the main issues involved is that whether tax and value of purchase on which no tax credit was claimed can be included in aggregate taxable turnover of purchase within the state for the purpose of reduction of tax credit u/s. 11(3)(b) of the Act. In the revision applications filed by the applicant for the year 2008-09, the issue involved was in respect to the claim of credit note disallowed on the ground that it is not claimed in the year to which the sale pertains. In the second appeals, the applicant has submitted that for the purposed of reduction of tax credit u/s. 11(3)(b), the taxable turnover of purchase can be determined by excluding the amount of tax and the purchase transactions on which the amount of tax credit was claimed.

As regard to issue of credit note in the relevant applications, the applicant has submitted that as per trade practice in the cement industry various types of discounts are offered to the customer which are subject to fulfillment of terms and conditions of discount offer. Accordingly the applicant ascertained discount accrued to the customer for the last quarter of 200708 and yearly discount for the year 2007-08 and hence the credit notes were prepared, issued and accounted in the first quarter of 2008-09. The applicant has submitted that as provided in section 8(1) and 8(2) of the Act, he has rightly adjusted aggregate amount of tax involved in the credit notes issued in the year 2008-09 for the sales made during the year 2007-08. The Hon. Tribunal considering the submission made by both parties has held that as far as the reduction of tax credit u/s. 11(3)(b) is concerned, the amount of tax and the value of purchase on which no tax credit was claimed and not granted in the assessment, cannot be included in aggregate of taxable turnover of purchase within the state for the purpose of reduction of tax credit u/s. 11(3)(b). The claim of credit note issued in the year subsequent to which the sale pertains is also allowed by the Hon. Tribunal in view of sub-section (1) and (2) of section of the Act.

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Mergers and Acquisition Corner

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Dear Professional Friends,

Namaskara!!

With starting of the new financial year, I have been given the greatest opportunity to find a space in your hearts and to meet you every month through this column ***'M&A Corner'***. Motivation for taking up my pen enthusiastically for the column was one attractive 'News Headline' on NDTV which ***stated 'After $20-Billion M&As in 2015, India Inc. Eyes $30 Billion in New Year'[1].***

India has always been an attractive country for investment due to its vast natural resources, reasonably good varied geography coupled with economical labor force. With the good governance currently leading, the country has won investor confidence worldwide and ignited the fire-flow of foreign direct investment ('FDI') in India.

Mergers and Acquisitions (M&A) (or deal advisory) has also been a niche area of practice for the finance professionals. Tax and regulatory aspect of M&A is one of the important subset of deal advisory. M&A tax practice has become more challenging post 2016 Budget announcements where rules for determining cost in case of buyback post business reorganization i.e. merger/demerger are proposed to be introduced and additional asset based condition for tax neutrality in case of LLP conversion is also imposed.

In this column, I intend to compile details about the important deals which are happening/announced from the publically available information. It will contain details of brief description of a deal, salient features of a scheme, consideration payable, mode of consideration, tax efficiency, if any etc. In addition, it may also cover Initial Public Offering (IPO), investment into entities related news and important start up updates.

Having said that, let's enter into the M&A World!!

1. <u>Piramal hints at demerging healthcare, financial services units</u>[2]

Billionaire Ajay Piramal, chairman of Piramal Enterprises Ltd, has hinted at a move to split the company's healthcare and financial services businesses.

This restructuring will likely happen in the medium term, Piramal said, according to media reports. Timelines for the restructuring are not mentioned.

"Piramal Enterprises is a conglomerate today and, hence, may seem to be complex and difficult to understand. It is our intent to simplify the structure going forward and create focused businesses, in the process also unlocking value for our shareholders," Piramal said after the company announced its quarterly results.

The Piramal Group, which was founded in 1984 and has operations in 30 countries, has diversified into areas such as finance, private equity and real estate funding from its core pharmaceuticals business over the past few years.

While Piramal reduced exposure to its core pharmaceuticals business after selling its key domestic formulations business to Abbott in a multi-billion dollar deal in 2010, the healthcare division remains a significant part of its business.

In the fourth quarter ended March 31, 2016, revenue of the healthcare business, comprising pharmaceutical solutions, critical care and consumer products, grew 14.3% from a year earlier to Rs 955 crore, contributing 53.8% to total sales.

Piramal Enterprises has made three acquisitions in the consumer healthcare segment in the past six months, including the recent purchase of four brands from drug maker Pfizer Ltd for Rs 110 crore ($16.5 million), to expand its presence in the over-the-counter business.

While its focus on healthcare remains, its push to expand into the financial services businesses has been noteworthy. Its income from financial services grew 112% from a year earlier to Rs 559 crore in the quarter ended March 31, 2016, contributing 28.2% to total sales.

Piramal also has a Real Estate Fund Management business with investments of about Rs 9,000 crore. The firm had invested in 57 projects across six cities with 23 leading developers last year.

The company's revenue from its third vertical, the information management business, grew 6.5% year on year to Rs 207 crore during the January-March quarter, accounting for 6.5% of total sales.

2. Flipkart investor Tiger Global reduces its stake in Amazon by 67%[3]

Tiger Global Management, which is the largest investor in e-commerce major Flipkart , has reduced its stake in US rival Amazon by nearly 67% in the March ended-quarter.

The hedge fund has cut its exposure to 1.04 million shares worth $619 million as of March 31, down from 3.19 million shares worth $2.16 billion as of December 31, as per regulatory filings. The fund also reduced its stake in Chinese e-tailer JD.com by nearly 25% and entirely dissolved its minority stake in Alibaba.

Amazon was Tiger Global's second-largest public holding, after it had picked up 2.44 million shares for about $1 billion in September last year. The hedge fund however lost 22% in the first three months of this year, as Amazon shares dipped by 12% during the period.

Since then, Amazon shares has risen significantly on the back of a strong financial results and record profit in March ended quarter, resulting in the stock touching its all-time high price of $720.6 on May 12.

Tiger Global which manages $20 billion in assets, deploys capital through two business - private equity and public equity funds. Amazon's investment was through the latter fund while the Flipkart investment was through the former.

Over the past few months, Flipkart has also faced a series of markdowns from its mutual fund investors. Earlier this month, two of Flipkart's mutual fund investors Fidelity and Valic had further marked down the value of their holdings in the company by nearly 20%

Amazon India, Flipkart and Snapdeal are currently locked in a battle for market leadership in the burgeoning e-commerce sector and all three have aggressively spent billions of dollars on marketing, strengthening their supply chains and acquiring customers with predatory discounts.

3. Ratan Tata invests in medical emergency response start-up MUrgency Inc3. Ratan Tata invests in medical emergency response start-up MUrgency Inc.[4]

Ratan Tata, chairman emeritus of Tata Sons, has invested in the San Francisco-based medical emergency response start-up app company, MUrgency Inc., which is developing 'One Global Emergency Response Network'. The international award winning mobile app makes emergency response available with just one tap on a mobile phone in under nine minutes in urban areas.

MUrgency Inc. will use the proceeds of the funding to augment technology and scale up operations besides leveraging Tata's experience and network as a global business leader to develop the emergency response network globally through appropriate partnerships.

Ratan Tata has made more than 25 investments in start-ups in the last two years. Healthcare start-ups that have benefitted from his investment include Lybrate, an online doctor consulting start-up, Swasth India, a start-up which focusses on cancer treatment and health data analytics and Invictus Oncology, a cancer therapeutic start-up.

Founded in 2014 by Indian social entrepreneur Shaffi Mather in Silicon Valley and incubated out of Stanford ChangeLabs, MUrgency Inc. recently received investment from Axilor Ventures, which is led by Infosys veterans Kris Gopalakrishnan and S. D. Shibulal.

MUrgency launched its services in the TriCity area of Punjab on February 16 with a responder network of 36 hospital emergency rooms, more than 40 ambulances and about 350 medical professionals. MUrgency would launch its services in Amritsar and Jalandhar in the last week of May and cover entire state of Punjab by end of June. The company plans to make its services available across India by 2018 and around the world by 2020.

Apart from MUrgency, Tata's investment in overseas companies include among others, Boston-based wind energy start-up Altaeros Energies, China's largest smartphone maker Xiaomi and Singapore-based start-up Crayon Data, a big data analytics firm.

The app is live on iOS and Android app stores and several features are accessible across the world already.

4. Haldiram's in talks with PEs to sell stake, may raise $200m[5]

In what stands to be one of the most anticipated investment deals in the Indian consumer market, snack food brand Haldiram's has held initial talks with top-tier private equity funds for a possible $200-million, or Rs 1,300-crore, financing round, people close to the development said. Capital International, Everstone Capital, General Atlantic Partners, WestBridge Capital and TA Associates are among those who have made overtures to pick up a minority stake in the business, combining Nagpur and Delhi branches of the company. The deal, if and when it goes through, is likely to value the snack manufacturer at around $1 billion, or Rs 6,700 crore, sources said. Haldiram's operates out of three major hubs — Delhi, Nagpur and Kolkata — after the Agarwal family split the business geographically among themselves in the 1990s. They are all descendants of Gangabhisan Bhujiawala (Agarwal) who started what is now Haldiram's with a sole shop in Bikaner, Rajasthan, in 1937. Despite clocking robust growth over past two decades, the promoters have desisted from getting external financing so far. The transaction is likely to have a large secondary component wherein existing and new investors will exchange shares for capital, but money won't come into the company. Haldiram's may fetch a three-four times multiple on revenue. This is slightly suppressed due to the lack of an obvious exit and the region-based market demarcation which has impacted full-throttle growth.

This fund-raise is expected to see the Delhi and Nagpur outfits — which account for three-fourths of the operations — get investors on board either together or as separate entities.These two branches also control the Haldiram's trademark while the Kolkata business runs operations mostly within West Bengal.

The structuring of a potential deal was still to be worked out with investors preferring to plough funds into a combined entity. The capital infusion could be a mix of fresh equity allotment and a secondary share purchase. The Delhi unit is the largest in the Haldiram's network and also has a sizeable (roughly 20%) business coming through retail outlets and restaurants. The Nagpur branch, which is the second biggest, had tested the private equity market in the past but didn't strike any deal. Haldiram's works on a 17-18% operating margin driving through tight working capital management, where most of the business runs on cash and little credit, said an investor who had explored investment opportunities in the past.

PE investors have chased domestic food brands buoyed by India's consumption story. CapitalInternational, one of the largest asset managers globally, came close to investing in Rajkot-based Balaji Wafers but family disputes scuppered the deal. Not too many big-ticket investments have fructified as most of these businesses are family-owned with many generations partaking in the running of the operations.

1. http://profit.ndtv.com/news/corporates/article-after-20-billion-m-as-in-2015-india-inc-eyes-30-billion-in-new-year-1258972
2. http://www.vccircle.com/news/pharmaceuticals/2016/05/17/piramal-hints-demerging-healthcare-financial-services-units
3. http://economictimes.indiatimes.com/industry/services/retail/flipkart-investor-tiger-global-reduces-its-stake-in-amazon-by-67/articleshow/52306573.cms
4. http://timesofindia.indiatimes.com/business/india-business/-Ratan-Tata-invests-in-medical-emergency-response-start-up-MUrgency-Inc-/articleshow/52309326.cms
5. http://timesofindia.indiatimes.com/business/india-business/Haldirams-in-talks-with-PEs-to-sell-stake-may-raise-200m/articleshow/52301511.cms

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Corporate Law Update

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MCA Updates:

1. Clarification with regard to Companies (Accounting Standards) Amendment Rules, 2016.

The Ministry has clarified that the amended Accounting Standards should be used for preparation of accounts for accounting periods commencing on or after the date of notification.

[F. No.01/01/2009-CL-V dated 27th April, 2016]

2. Delegation of the powers to Regional Director

The Central Government has delegated the powers to appoint inspectors for inspection of books and papers of a company under sub-section (5) of section 206 as ordered by Central Government to the Regional Directors.

[F. No 3/516/2015-CL. II dated 29th April, 2016]

3. Clarification with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

The Ministry has clarified that the companies, while undertaking Corporate Social Responsibility activities under provision of the Companies Act, 2013, shall not contravene any other prevailing laws of the land including Cigarettes and Other Tobacco Products Act (COTPA), 2003.

[No. 05/01/2014- CSR dated 16th May, 2016]

4. Relaxation of additional fees and extension of lost date of filing of various e-Forms under the Companies Act.

The Ministry has decided to extend the period for which the one time waiver of additional fees is applicable to all e-forms which are due for filing by companies between the 25th March, 2016 up to 31st May, 2016 as well as extend the last date for filing such documents and availing the benefit of waiver to 10.06.2016.

[F. No.01/34/2013 CL-V dated 16th May, 2016]

5. Designation as Special Courts.

The Central Government have designated the following Courts mentioned in the Table below as Special Courts for the purposes of trial of offences Punishable under the Companies Act, 2013 with imprisonment of two years or more in terms of section 435 of the Companies Act, 2013, namely:-

Sl. No. (1)	Existing Court (2)	Jurisdiction as special Court (3)
1	Courts of Additional Special Judge, Anti Corruption at Jammu and Srinagar	State of Jammu and Kashmir
2	Presiding Officers of Court No's. 37 and 58 of the City Civil and Sessions Court, Greater Mumbai.	State of Maharashtra
3	Court of Principal District and Sessions Judge, Union Territories of Dadra and Nagar Haveli at Silvassa.	Union territories of Dadra and Nagar Haveli and Daman and Diu.
4	Court of District Judge-l and Additional sessions Judge, Panaji.	State of Goa
5	Court of Principal District and Sessions Judge, Ahmedabad (Rural), situated at Mirzapur, Ahmedabad.	State of Gujarat
6	9th additional sessions Judge, Gwalior Madhya Pradesh	State of Madhya Pradesh
7	Court of Additional District and session Judge, Port Blair, Andaman and Nicobar Islands.	Union territory of Andaman and Nicobar Islands.
8	2nd Special Court, Calcutta.	State of West Bengal

[F. No. 01/12/2009-CL-I (Vol.-IV) dated 18th May, 2016]

6. Commencement of section 2(29), sections 435 to 438 and 440 of Companies Act, 2013.

The Central government has appointed the **18th day of May, 2016** as the date on which the provisions of clause (iv) of sub-section (29) of section 2, sections 435 to 438 (both sections inclusive) and section 440 of the said Act shall come into force.

[F. No. 01/12/2009-CL-I (Vol. IV) dated 18th May, 2016]

7. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016:

In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, for sub-rule (2), the following sub-rule shall be substituted, namely:—

"(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism".

[F. No. 05/12/2016-CSR-Cell dated 23rd May, 2016]

SEBI Updates:

1. Electronic book mechanism for issuance of debt securities on private placement basis.

In order to streamline the procedures for issuance of debt securities on private placement basis and enhance transparency to discover prices, the SEBI has decided to lay down a framework for issuance of debt securities on private placement basis through an electronic book mechanism.

This electronic book mechanism would be mandatory for all private placements of debt securities in primary market with an issue size of *Rs.500 Crores* and above, inclusive of green shoe option, if any.

Issues with a single investor and where coupon rate are fixed issues wherein the issue size is less than Rs. 500 crores, inclusive of green shoe option will have an option to follow either electronic book mechanism or the existing mechanism.

Explanation has been provided regarding participants in Electronic book mechanism, their roles and responsibilities and Pre and Post bid procedure for electronic book mechanism in the circular.

[CIR/IMD/DF1/48/2016 dated 21st April, 2016]

For details, please refer the following link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461236399007.pdf

2. Disclosure of Proprietary Trading by Commodity Derivatives Broker to Client and "Pro - account" Trading terminal.

In order to increase the transparency in the dealings between the stock broker and the clients in commodity derivatives market, it has been decided to align the provisions relating to the proprietary trading carried out by the stock brokers of commodity derivatives exchanges in line with the securities market.

Disclosure of proprietary trading by broker to client: The provisions of the directions issued by SEBI vide its circular no. *SEBI/MRD/SE/Cir-42/2003* dated November 19, 2003, regarding the disclosure of proprietary trading by stock broker to client, are made applicable to all the commodity derivatives exchanges.

"Pro – account" trading terminals: All the commodity derivatives exchanges shall ensure compliance with the provisions of the directions issued by SEBI vide its circular no. *SEBI/MRD/SE/Cir-32/2003/27/08 dated August 27, 2003* regarding "Pro – account" trading terminals.

Provisions of this circular will come in to effect with effect from three months from the date of this circular.

[SEBI/HO/CDMRD/DMP/CIR/P/2016/49 dated 25th April, 2016]

For details, please refer the following link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1461583368115.pdf

3. Revised Formats under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

SEBI vide circular No. SEBI/CFD/DCR/SAST/1/2011/09/23 dated September 23, 2011 has, inter alia, prescribed the format for report to be furnished to stock exchanges under regulation 10(5) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

While filing the reports, the acquirers are required to report compliance under Chapter V of the regulations. However, there is no specific time period mentioned in the formats for reporting of such compliance. In order to bring it in line with the requirement under regulation 10(1)(a), it is necessary that the compliance should be reported for a period of 3 years. Accordingly, the aforesaid formats have been modified to this extent and are given in the Annexure to the circular.

[SEBI/HO/CFD/DCR1/CIR/P/2016/52 dated 02nd May, 2016]

For details, please refer the following link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462179239778.pdf

4 Procedure to deal with cases prior to April 01, 2014 involving offer / allotment of securities to more than 49 and up to 200 investors in a financial year.

It has been decided that the certification as provided in Para 7 of the Circular dated December 31, 2015 CIR/CFD/DIL3/18/2015 may also be provided by *an independent peer reviewed practicing Company Secretary* in addition to an independent peer reviewed practicing Chartered Accountant certifying compliance to deal with cases involving offer / allotment of securities to more than 49 and up to 200 persons.

[CFD/DIL3/CIR/P/2016/53 dated 03rd May, 2016]

For details, please refer the following link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1462275156209.pdf

5 Disclosure of the Impact of Audit Qualifications by the Listed Entities:

To streamline the existing process of audit qualifications contained in the Audit Reports of Listed Entities, the SEBI has decided the followings:

a) to make the listed entities disseminate the cumulative impact of all the audit qualifications in a separate format, simultaneously, while submitting the annual audited financial results to the stock exchanges

b) to dispense with the existing requirement of filing Form A or Form B for audit report with unmodified or modified opinion respectively;

c) to dispense with the existing requirement of making adjustment in the books of accounts of the subsequent year.

The operational details for implementing the aforesaid amendments shall be as under:

- For audit reports with unmodified opinion, the listed entity shall furnish a Declaration to that effect to the stock exchange(s) while submitting the annual Audited financial results.
- For audit reports with modified opinion, a statement showing impact of audit qualifications shall be filed with the stock exchanges in a format as specified in **Annexure I**.
- The management of the listed entity shall have the option to explain its views on the audit qualifications;
- Where the impact of the audit qualification is not quantified by the auditor, the management shall make an estimate. In case the management is unable to make an estimate, it shall provide reasons for the same. In both the scenarios, the auditor shall review and give the comments.
- The aforesaid statements on impact of audit qualifications filed by the listed entities shall be a part of regular monitoring by the stock exchanges as specified in Regulation 97 of the Listing Regulations. In case of noncompliance, the stock exchanges shall take action against such entities as deemed fit and report to SEBI on a regular basis.

This circular shall be applicable for all the annual audited standalone / consolidated financial results, as applicable, submitted by the listed entities for the period ending on or after March 31, 2016.

[CIR/CFD/CMD/56/2016 Dated 27th May, 2016]

For Details please refer the following link:

http://www.sebi.gov.in/cms/sebi_data/attachdocs/1464333727033.pdf

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Allied Laws Corner

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"Set-off" of Stamp-duty payable is not permissible in case of Inter-State amalgamation of the Companies.

Recently the Bombay High Court in the case of *Chief Controlling Revenue Authority vs. Reliance Industries Ltd.* reported in *68 taxmann.com 140* held that where Registered Offices of Transferee company and Transferor company were situated in two different States, requiring such orders sanctioning Scheme to be passed under section 394 by two different High Courts, then order of High Court which sanctioned Scheme passed under section 394 would be instrument chargeable to stamp duty and it would be obligatory upon Transferor and Transferee to pay stamp duty on such instrument.

A. Facts of the Case :

1 The Reliance Industries Limited (respondent no. 1) and Reliance Petroleum Limited, Jamnagar Gujarat (respondent no. 2) entered into a scheme of amalgamation under Sections 391 & 394 of the Companies Act 1956. Accordingly, on 10th April 2002, the respondent no. 1-transferee company filed a Company Petition No. 391 of 2002 and Company Application No. 133 of 2002 in the Bombay High Court for sanctioning the arrangement in the Scheme of Amalgamation. Similarly, respondent no. 2, the transferor Company on 16th April 2002, filed the Company Petition No. 75 of 2002 and Company Application No. 76 of 2002 in Gujarat High Court for sanctioning the arrangement in the Scheme of Amalgamation.

2 The Bombay High Court passed an order under Section 394 of the Companies Act 1956 on 7.6.2002 sanctioning the scheme and the Gujarat High Court passed an order on 13.9.2002 sanctioning the scheme.

3 On 16.10.2002, Respondent no. 1 submitted the order dated 7.6.2002 passed by the Bombay High Court along with the order dated 13.9.2002 passed by the Gujarat High Court for adjudication of stamp duty in the office of Superintendent of Stamp, Mumbai (the applicant no. 2) now known as Superintendent of Stamp (Head quarters) Mumbai. Respondent no. 1 requested the applicant no. 2 to adjudicate the stamp duty, if any, payable on the order dated 7.6.2002 passed by the Bombay High Court. The respondent no. 1 had paid stamp duty of Rs. 10 crores in the State of Gujarat on the order dated 13.9.2002 passed by the Gujarat High Court.

4 During the hearing of the adjudication proceedings, the respondent no. 1 had urged that the maximum stamp duty payable under Article 25(da) of schedule-1 of Bombay Stamp Act, 1958 for order sanctioning the Scheme of Amalgamation in the State of Maharashtra was Rs. 25 crores and since respondent no. 1 had already paid stamp duty of Rs. 10 crores in the State of Gujarat on the order of sanction of scheme passed by the Gujarat High Court, the respondent no. 1 was entitled to remission/deduction/ set off in the payment of stamp duty thereon to the extent of Rs. 10 crores and therefore, the respondent no. 1 was liable to pay only Rs. 15 crores as stamp duty. The applicant no. 2 rejected the submissions of respondent no. 1 and direct respondent no. 1 to pay the entire amount of Rs. 25 crores as stamp duty.

5 The respondent no. 1 appealed against this order of adjudication under Section 53(1A)

of the Bombay Stamp Act, 1958 before the Chief Controlling Revenue Authority, Maharashtra State who while dismissing the appeal upheld the order of applicant no. 2. Against this order the respondent no. 1 filed an application to the applicant no. 1 to refer the case to Bombay High Court for opinion under Section 54 of the Bombay Stamp Act, 1958 as it involved a serious and a substantial question of law. This application was rejected. Against this order, the respondent no. 1 filed a Writ petition being Writ Petition No. 591 of 2006 before the Bombay High Court. By an order dated 22.2.2006 the Bombay High Court remitted the matter back to the applicant no. 1 to decide the reference application afresh after hearing the parties. The applicant no. 1 once again rejected the reference application against which the respondent no. 1 filed a fresh writ petition bearing No. 1293 of 2007.

6 By an order dated 1.3.2007, the Bombay High Court directed the respondent no. 1 to deposit the balance amount of deficit stamp duty of Rs. 10 crores in the office of the applicant no. 2 within two weeks thereof and directed the applicant no. 1 to make reference to this court under Section 54(2) of the Bombay Stamp Act, 1958 within 4 weeks from the date of deposit of the balance amount of deficit stamp duty by respondent no. 1.

B. Arguments made by the Counsel of Reliance Industries Ltd. :

1. The Respondents submitted as under :

(*i*) Under section 2(l), only a document which creates right or obligations constitutes an "instrument".

(*ii*) Moreover an "instrument" could be chargeable to duty as a "Conveyance" under sec. 2(g), only if it is a document by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person.

(*iii*) In respect of a Scheme of Amalgamation such as the present, the Scheme becomes effective/operative and the undertaking/assets/property are transferred to the transferee company, only when both the Application/ Petition filed by the Transferor company AND the Transferee Company have resulted in the Scheme being sanctioned by the Courts.

(*iv*) In the case of *Hindustan Lever* v. *State of Maharashtra* [2003] 48 SCL 630, the Hon'ble Supreme Court has held in the context of sec. 2(g)(iv) that "Thus the amalgamation scheme sanctioned by the court would be an instrument within the meaning of section 2(i). By the said "instrument" the properties are transferred from the transferor co. to the transferee company...." The Court in that judgment also referred to the English judgment in *Sun Alliance Insurance Ltd.* v. *Inland Revenue Commissioners* (1971) 1 All ER 135 and observed "It was further held that the order of the court was liable to stamp duty as it resulted in transferring the property and that the order of the court which results in transfer of the property would be an instrument as it includes every document." In *Li Taka Pharmaceuticals Ltd.* v. *State of Maharashtra* [1996] 8 SCL 102 (Bom.) this Hon'ble Court had also earlier held that "the amalgamation Scheme sanctioned by the Court would be an instrument within the meaning of sec 2(l)".

(*v*) Having regard to the legal requirement of both the transferor and the transferee company having to secure sanction separately, as also the provision of the Scheme itself, the Scheme as also the first order of this Hon'ble Court sanctioning the Scheme on the

Transferee Company's Application, would not constitute an instrument or a conveyance, unless and until the Gujarat High Court had sanctioned the Scheme on the Transferor Company's Application. This is because the Scheme would become effective & operative and the property would stand transferred and vested from the transferor to the transferee, only on the Gujarat High Court making the second order sanctioning the Scheme. In fact if the second High Court had not sanctioned the Scheme, the same would not have become operative and there would be no transfer or vesting of property in the transferee company. Accordingly on such sanction being granted by the Gujarat High Court, the parties were liable to pay stamp duty on the sanctioned scheme (read with the two orders) in Gujarat and then to pay stamp duty in Maharashtra subject to a rebate under sec.19 for duty already paid in Gujarat. Therefore, it is the scheme that is the instrument and not the orders.

(*vi*) Alternatively if pursuant to sanction by the Gujarat High Court, both court orders are treated as multiple instruments for giving effect to the same transfer/transaction, the last order/the order passed in the case of the transferor company would be the principal instrument in relation to which stamp duty had to be computed. In any event in such a circumstance sec. 4(2) entitles the parties to determine for themselves which of the instruments shall be deemed to be the principal instrument. The parties were accordingly entitled in law to treat the Gujarat High Court order as the Principal instrument and offer to pay the highest duty thereon subject to rebate under sec.19 for duty already paid thereon in Gujarat.

(*vii*) In this context with question No. 2 referred to above following issue also may be answered :

"Whether in the case of amalgamation of two companies where registered offices of transferor and transferee company are situated in two different states, the transaction of amalgamation is a single transaction contained in several instruments and transferee company is entitled to determine as to which of those instruments be deemed to be the principle instrument?

(*viii*) In fact the Revenue had in previous Inter-state amalgamation levied stamp duty only on the order of the transferor company.

(*ix*) Moreover in Intra-State amalgamations the revenue had always levied stamp duty on only one of the orders as the principal instrument.

1. All instruments as per the scheme of Bombay Stamp Act 1958, covered under schedule-1 thereof are chargeable with stamp duty. In the present case, instrument in question is the order dated 7.6.2002 passed by this court and accordingly as provided under Section 2g(iv), the order dated 7.6.2002 was liable to duty under Article 25(da) of schedule-1 of the Bombay Stamp Act, 1958. The applicants also submitted that as per section 17 of the Bombay Stamp Act every document chargeable with duty under the Act is required to be charged with duty at the time of execution and therefore, the order dated 7.6.2002 is required to be stamped with duty as per the situation and circumstances on the day of its execution as per the Stamp Act. It was also submitted that the stamp duty payable was on the instrument and not on the underlying transaction.

2. On the stand of the respondent no. 1 that they are entitled to a rebate on the stamp duty paid in Gujarat as mentioned in section 19, it is the case of the applicants that section 19 applies only

when an instrument chargeable under stamp duty in schedule-I and relating to any property situate or to any in matter or thing done or to be done in this State is executed out of the State and subsequently such instrument or a copy of the instrument is received in this State. As the instrument submitted for adjudication in this State is the order dated 7.6.2002 and which has been executed in the State prior to payment of stamp duty of Rs. 10 crores in Gujarat, the question of taking benefit of section 19 does not arise. It was also submitted that section 19 provides for contingency in which instrument is executed outside the State and then brought into the State. In this case as the instrument is the order dated 7.6.2002 passed by this court within the State of Maharashtra, the question of being brought into the State did not arise. Hence, section 19 is not applicable at all.

A. Findings of Hon'ble the Bombay High Court :

Whether the scheme of arrangement between the parties which has been sanctioned by the court is the instrument or the order of the court sanctioning the scheme is the instrument as parties are ad-idem that stamp duty is payable on an instrument.

1. The Hon'ble Supreme Court, in *Hindustan Lever* (*supra*) in the context of Section 2(g)(iv) has held that *the transfer is effected by an order of the Court and the order of the Court sanctioning the scheme of amalgamation is an instrument which transfers the properties and would fall within the definition of Section 2(l) of the Bombay Stamp Act, which includes every document by which any right or liability is transferred*. By the said instrument the properties are transferred from the transferor to the transferee company. Paragraph 38 of the Judgment reads as under :—

"*As discussed above, the order passed under Section 394 is founded on consent and this order is an instrument as defined under Section 2(1) of the Bombay Stamp Act*. The State Legislature would have the jurisdiction to levy stamp duty under Entry 44 List III of the Seventh Schedule of the Constitution and prescribes rate of stamp duty under Entry 63 List II. It does not in any way impinge upon any entry in List I. Entry 44 of List III empowers the State Legislature to provide for stamp duties other than duties or fees collected by means of judicial stamps. Along with this, Entry 63 of List II empowers the State Legislature to prescribe rates of stamp duty in respect of documents other than those specified in the provisions of List I, that is to say, rates of stamp duty in respect of Bill of Exchange, cheques, promissory notes, Bill of landing, letter of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. By sanctioning of amalgamation scheme, the property including the liabilities are transferred as provided in Section 394 of the Companies Act and on that transfer instrument, stamp duty is levied. It, therefore, cannot be said that the State Legislature has no jurisdiction to levy such duty". (Emphasis supplied)

2. In *Hindustan Lever* (*supra*) the apex court also referred to the English Court Judgment in *Sun Alliance Insurance Ltd*. (*supra*) and observed "It was further held that the order of the court was liable to stamp duty as it resulted in transferring the property and that the order of the court which results in transfer of the property would be an instrument as it includes every document. Paragraphs-23, 24 & 25 of the *Hindustan Lever* (*supra*) reads as under :—

"23. Point as to whether the stamp duty was leviable on the Court order sanctioning the scheme of amalgamation was considered at length in Sun Alliance Insurance Ltd. v. Inland Revenue Commissioners 1971 (1) All England Law Reports 135. The point which arose for determination as to whether the stamp duty was payable on the order of the Judge sanctioning the scheme of arrangement under Section 206 of the Companies Act, it was held:—

"It follows that it is the court order that effects the transfer; and this is nonetheless so because the scheme is not operative until an office copy has been delivered to the Registrar of Companies for registration, for the court order itself ordered that to be done and the Act so provides; nor because London has still to cause the name of Sun Alliance to be entered on to the register as the holder of the shares. The registration of the transferee occurs in every case where a transfer is executed, and merely perfects the title of the transferee. The same thing occurs in the case of registered land, where one finds a transfer and subsequent registration. I have therefore come to the conclusion that by the court order the shares were transferred to Sun Alliance, or, to use the words of s. 54, by that order property was transferred to a purchaser."

24. Expression "conveyance on sale" as provided in Section 54 of the Stamp Act, 1891 is similar to Section 2(g) of the Bombay Stamp Act. The expression "conveyance on sale" as defined in the said Section includes every instrument, and every decree or order of any Court or any Commissioner, whereby any property, or a estate or interest in any property, upon the sale thereof was transferred or vested in the purchaser, or any other persons on his behalf and on his direction.

25. The Court further considered as to whether the order of the judge is an 'instrument' executed in any part of the United Kingdom for the purposes of Section 14(4) of the Stamp Act, 1891; it was held that it was an instrument executed in the United Kingdom within the meaning of Section 14(4) of the Stamp Act 1891. It was further held that order of the Court was liable to stamp duty as it resulted in transferring the property and that the order passed by any Court which results in transfer of property would be an instrument as it includes every document.' (Emphasis supplied)

3. In *Li Taka Pharmaceuticals Ltd*. (*supra*) a division bench of this court had held that an order under Section 394 is found or based upon compromise or arrangement between the two companies of transferring assets and liabilities of one company to another company. The order is an "instrument" as defined under Section 2(l) of the Bombay Stamp Act which includes every document by which any right or liability is transferred.

4. Therefore, as the scheme of arrangement or amalgamation has no effect or force unless or until it was sanctioned by the court, it is the order sanctioning the scheme that would be an instrument under Section 2(l). Hence, the order dated 7th June 2012 passed by this court will be the instrument as defined.

5. Section 3(a) of the Bombay Stamp Act, 1958 provides for chargeability of the instruments covered under Schedule-I appended to the said Act, when first executed in the State. As per section 2(i) the words "executed" and "execution" means signed and signature. In this context the Order of the Hon'ble High Court, Bombay was executed on 07/06/2002. As per section 2(d) an instrument becomes chargeable on execution or first execution after the commencement of the Bombay Stamp Act, 1958. Section 17 of the Bombay Stamp Act, 1958 provides for stamping of the instruments executed in the State. This section makes it clear that any instrument chargeable with duty executed in the State is required to be stamped before or at the time of execution or immediately thereafter or on the next working day following the day of execution. Considering all the provisions above, the transferee- respondent no. 1 in any event was bound to pay the necessary duty as it stood on the date of execution, i.e., 07/06/2002, the date of passing of Order by this Court. Here it is pertinent to note that the words "executed" and "execution" represent signed and signature under the stamp Law. These words,

however, do not represent completion of an act, task, things or compliance of any nature, to be done as per contents of the document. Therefore it was obligatory on the part of the Respondent no. 1-transferee to approach stamp Authority and pay the stamp duty on execution of Order by this Court. The Respondent no. 1-transferee instead of fulfilling the legal obligation cast on it, paid part of the stamp duty in the State of Gujarat on the Order passed by Hon'ble High Court of Gujarat which was passed couple of months after the order passed by this Court. Had the respondent no. 1-transferee fulfilled its obligations in Law, the settling of any question of Law would have never arisen.

6. Section 3 of the said Act is a charging section and provides for charging stamp duties. As quoted above, section 2 of the said Act defines the terms "Conveyance" [2(g)], "Executed and Execution" [2(i)], "Instrument" [2(l)] and "Settlement" [2(t)].

   It is the settled position in law that in terms of the scheme of the said Act, stamp duty is charged on 'the instrument' and not on 'the transaction' effected by 'the instrument'.

7. The Order dated 7.6.2002 as stated earlier would be the instrument and that was executed in Mumbai, i.e., in Maharashtra. As per section 3 every instrument executed in State of Maharashtra is chargeable to duty. The Order dated 7.6.2002 whereby assets of respondent no. 2 transferor company are transferred to the respondent no. 1-Transferee company, is the instrument upon conjoint reading of section 2(g), (l) and 3 of the Bombay Stamp Act. As per the Scheme of the said Act, instrument is chargeable to duty and not the transaction and therefore even if the Scheme may be the same, i.e., transaction being the same, if the scheme is given effect by a document signed in State of Maharashtra it is chargeable to duty as per rates provided in Schedule I. As per the Scheme of the Act, the taxable event is the execution of the instrument and not the transactions. If a transaction is not supported by execution of an instrument, there can not be a liability to pay duty. Therefore, essentially the duty is leviable on the instrument and not the transactions. Although the Scheme may be same, the Order dated 7.6.2002 being conveyance and it being an instrument signed in State of Maharashtra, the same is chargeable to duty so far as State of Maharashtra is concerned.

8. *Although the two orders of two different high courts are pertaining to same scheme they are independently different instruments and can not be said to be same document especially when the two orders of different high courts are upon two different petitions by two different companies. When the scheme of the said Act is based on chargeability on instrument and not on transactions, it is immaterial whether it is pertaining to one and the same transaction. The duty is attracted on the instrument and not on transaction.*

9. As regards the amalgamation of Companies is concerned, Section 391 r/w. Section 394 of the Companies Act, 1956, contemplates following steps :—

   (*i*) Formation of a Scheme mutually agreed by the Transferor and the Transferee company;

   (*ii*) Holding of meeting for approval of the Scheme ;

   (*iii*) The Order of the Court sanctioning the Scheme ;

   (*iv*) Filing of a Certified copy of the Order sanctioning the Scheme with the Registrar of Companies for registration ;

10. The transfer of any property or any interest in any property on account of such amalgamation, takes place pursuant to the Order passed by the Court sanctioning the Scheme of amalgamation. This aspect is clear in view of sub-section 2 of section 394 of the Companies Act, which specifically states that, by virtue of an Order issued under Section 394(1), the property of the Transferor Company gets transferred to and vests in the Transferee company. Thus, the instrument, which effects transfer, is the Order of the Court

issued under Section 394(1) that sanctions the Scheme and not the Scheme of amalgamation itself. The incident of transfer is the second stage referred to in the aforesaid paragraph and not the first stage, as such.

11. Therefore, the contentions of the respondents that the Scheme of Amalgamation would be an instrument within the meaning of Section 2(l) of the said Act, is not legally sustainable. *The Scheme of Amalgamation by itself cannot and does not result in transferring the property. It is the Order of the Court that sanctions such a Scheme of Amalgamation results in transferring the property and it is therefore, this Order alone would be an 'instrument', as defined by the said Act, on which stamp duty is chargeable.* Therefore, the contentions of the respondents that the parties were liable to pay stamp duty on the sanctioned Scheme (read with the two Orders) is not correct and cannot be accepted.

12. The provisions of Section 391 r/w. Section 394 of the Companies Act require obtaining of an Order sanctioning the Amalgamation Scheme by both the Transferor, as also, the Transferee Company. The purpose and the object as to why both, the Transferor and the Transferee company, have to obtain the Order from the Court sanctioning the Scheme of Amalgamation, is that, such a Scheme of Amalgamation must bind the dissenting members, as also, all the creditors of both the Companies and not just for the purpose of effecting transfer of property, assets etc. Apart from the aforesaid legal aspect of the matter, as a matter of fact, inasmuch as the present case is concerned, the chronology of events separately submitted by the applicants when considered demonstrates that the first Order sanctioning the Scheme, was issued by this Court on 7th June 2002 and the order states as under :—

"AND THIS COURT DOTH ORDER that with effect from the Appointed Date, the Assets/ Undertakings of the Transferor Company (as defined in the Scheme of Amalgamation being Exhibit "E" to the petition and in the Schedule hereto) shall without any further act, instrument or deed stand transferred to and vested in or deemed to have been transferred to and vested in the petitioner company pursuant to the provisions of Section 391 to 394 of the Companies Act, 1956 so as to become the properties and assets of the petitioner company." (Emphasis supplied)

13. Therefore, the order of this court sanctioning the Scheme was not a conditional order, which was to operate after the scheme was also sanctioned by the Hon'ble Gujarat High Court. By this Order dated 7.6.2002 of this Court itself, it could be considered that the transfer was effected and therefore the said Order of this Court is the 'order made by the High Court under Section 394 of the Companies Act 1956..... " as contemplated by Section 2(g)(iv) of the said Act. For the same reason the order dated 7.6.2002 of this Court is the 'instrument', as contemplated by the provisions of the said Act.

14. However, it may also be mentioned that this court in its order dated 7th June, 2002 has further ordered as under :—

"AND THIS COURT DOTH FURTHER ORDER that the petitioner company do within 30 days of the sealing of this order, cause a certified copy of this order to be delivered to the Registrar of Companies, Maharashtra, Mumbai for registration And upon such certified copy of order being so delivered to the Registrar of Companies, Maharashtra, Mumbai And upon receipt of the oder sanctioning the Scheme of Amalgamation by the High Court of Gujarat at Ahmedabad and upon receipt of the files and documents in respect of Transferor Company from the Registrar of Companies, Gujarat, the Registrar of Companies, Maharashtra, Mumbai shall place and register with him on the files and documents kept by him in relation to the petitioner company and shall consolidate the files of the Transferor Company and the petitioner company accordingly."

15. That part of the order of this court clearly directs the Transferee Company to deliver to the

Registrar of Companies, Maharashtra, Mumbai for registration, the certified copy of the order of this court within 30 days of the sealing of the order, without waiting for the Hon'ble Gujarat High Court to pass appropriate order in regard to sanctioning the Scheme. Thus, the implementation of the order of this court was not made dependent upon passing of an appropriate order sanctioning the Scheme by the Hon'ble Gujarat High Court. This is the step contemplated by the provisions of sub section 3 of section 394 of the Companies Act.

16. The aforesaid part of the order of this court will have to be considered from the point of view of 'effective date' read with clauses 23, 24 and 27, as contemplated by the Scheme of Amalgamation. Thus, the transfer in issue though has taken place in terms of the provisions of the Companies Act only and only on account of the order of this court, such a transfer will take effect from the date the Hon'ble Gujarat High Court passes an order sanctioning the Scheme. In other words, after the Hon'ble Gujarat High Court passes an order sanctioning the Scheme on account of the order of this Hon'ble Court, the transfer in issue will take place.

17. It is further pertinent to note that the respondent no. 2 – Transferor Company, vide its application dated 18th September, 2002, produced before the appropriate Authority contemplated by the Bombay Stamp Act, 1958 (as applicable in the State of Gujarat), only the order dated 13th September, 2002 of the Hon'ble Gujarat High Court, as is clear from Exhibit '4' to the affidavit filed on behalf of the 1st respondent. The Collector and Additional Superintendent of Stamps, Gujarat State, Gandhinagar, only on the order passed by the Hon'ble Gujarat High Court has imposed a stamp duty of Rs. 10 crores. Admittedly, the respondents have not paid any stamp duty on the order of this Hon'ble Court, which is the subject matter of this reference. The order of this court dated 7th June, 2002 was presented for payment of stamp duty for the first time only on 16th October, 2002 by the respondent no. 1 – Transferee Company along with application produced at Exhibit '6' to the affidavit filed on behalf of the Transferee-1st respondent and not by the 2nd respondent-Transferor company.

18. Respondent no. 2 - Transferor Company has not paid any stamp duty on the order passed by this court either in the State of Gujarat or in the State of Maharashtra at the time when the aforesaid application dated 16th October, 2002 was submitted with the Superintendent of Stamps, Mumbai. Therefore, the respondent no. 1 - Transferee Company was liable to pay full stamp duty on the order dated 7th June, 2002 passed by this Court in the State of Maharashtra inasmuch as on this order, no stamp duty was ever paid by anybody either in the State of Gujarat or in the State of Maharashtra.

19. The contention of the respondents that the provisions of Section 4 of the said Act enables the respondents to treat the order of the Hon'ble Gujarat High Court as "principal instrument" and act accordingly is wholly unsustainable in law and in view of the facts of the case.

20. Section 4 of the said Act has no application whatsoever inasmuch as the present controversy is concerned. Section 4 of the said Act applies only to the transactions set out therein viz. Development Agreement, Sale, Mortgage or Settlement. It is obvious that the instrument in issue does not fall in the first three categories viz. Development Agreement, Sale or Mortgage. This also answers that issue raised by the respondents as mentioned in paragraph-10(vii) above.

21. As regards the fourth category viz. 'settlement' is concerned, the instrument in issue does not even fall in this category. The term 'settlement' is defined by Section 2(t) of the said Act as under:—

    Section 2(t) : "settlement" means any non-testamentary disposition in writing of movable or immovable property made, —

(*i*) in consideration of marriage,

(*ii*) for the purpose of distributing property of the settler among his family or those for whom he desires to provide, or for the purpose of providing for some person dependent on him, or

(*iii*) for any religious or charitable purpose and

Includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing any instrument recording whether by way of declaration of trust or otherwise, the terms of any such disposition.

22. This definition demonstrates that 'settlement' contemplated by the provisions of the said Act is not and cannot cover "the Scheme of Amalgamation" whereby two Companies are amalgamated in terms of Section 391 r/w. Section 394 of the Companies Act. Section 4 of the said Act has no application at all to the facts of this case.

23. Apart from the aforesaid aspect, as set out in detail in the aforesaid paragraphs, we have to go only by the instrument on which stamp duty is payable and that instrument is the order passed by this Court dated 7th June, 2002. Thus, in absence of 'several instruments' used in 'single transaction', as such, the provisions of Section 4 of the said Act is not applicable.

24. Further Section 19 is not applicable in the present case. Section 19 is applicable in respect of —

(*i*) instrument executed out side State;

(*ii*) of property in the State or thing done or to be done in State; and

(*iii*) subsequently received in the State of Maharashtra.

25. The instrument in question is the order dated 7.6.2002 executed by High Court of Bombay. The order is already in Mumbai and executed in Mumbai. It is not executed out side Maharashtra. The order dated 7.6.2002 is not received in Maharashtra since it originated in Maharashtra. Therefore, the ingredients of Section 19 are not complied. Respondent no. 2-transferee while paying duty on the order dated 7.6.2002 of the Bombay High Court cannot claim rebate for duty paid on order dated 13.9.2002 in State of Gujarat by invoking Section 19 of the Act.

26. The provisions of Section 17 of the said Act also need to be considered in its proper perspective. This Section specifically contemplates that all instruments chargeable with duty, are required to be stamped either before or at the time of execution or at least immediately thereafter on the next working day following the day of execution. In the present case, this Court passed the order, which is the instrument in issue on 7th June, 2002. The respondents were required to pay the stamp duty in that regard at least immediately on the next working day following 7th June, 2002. The Hon'ble Gujarat High Court passed the order only on 13th September, 2002. The respondents were therefore, required to pay the requisite stamp duty much before passing of the Order by the Hon'ble Gujarat High Court on 13th September, 2002. Had the respondents acted strictly in accordance with the said Act, the respondents would have paid the entire stamp duty of Rs. 25 crores much before passing of the order by the Hon'ble Gujarat High Court. The respondents therefore, are liable to suffer other consequences in this regard in addition to the payment of full stamp duty on the order dated 7th June 2002 of this Court.

27. The contention of the respondents that under Section 2(l) of the said Act, only a document, which 'creates right or obligation' alone constitutes an 'instrument', is not correct, as is apparent from the definition clause itself. It is pertinent to note that, in first place, the definition of the term 'instrument' is an inclusive definition and is not an exhaustive definition, as such. Moreover, the term 'instrument', as defined, will also include, in addition to a document which 'creates right or obligation',

a document, which 'purports to create, transfer, limit, extend, extinguish or record' any right or liability. It is emphasized that the term 'instrument' so defined, will also include a document, which merely records any right or liability.

28. In view of the above, we answer the questions raised by the present reference as under :—

(*i*) Whether a scheme sanctioned between the two companies under Section 391 and 394 of the Companies Act is one and the same document chargeable to stamp duty regardless of the fact that order sanctioning the scheme may have been passed by two different High Courts by virtue of the fact that the Registered Office of the two companies are situated in different States?

Ans. A scheme settled by two companies is not a document chargeable to stamp duty. An order passed by the Court sanctioning such a Scheme under Section 394 of the said Act, which effects transfer is a document chargeable to stamp duty. In case if the Registered Offices of the two Companies are situated in two different States, requiring such Orders, sanctioning the Scheme to be passed under Section 394 of the Companies Act by two different High Courts, then in that event, the order of this High Court which sanctions the Scheme passed under Section 394 of the Companies Act will be the instrument chargeable to stamp duty.

(*ii*) Whether the instrument in respect of amalgamation or compromise or scheme between the two Companies is such a scheme, compromise or arrangement and the orders sanctioning the same are incidental as the computation of stamp duty and valuation is solely based on the scheme and scheme alone?

Ans. The orders of the court, sanctioning a Scheme of amalgamation are not just incidental orders even in accordance with the Scheme of the Companies Act laid down by Section 391 r/w Section 394. Only after the orders are passed by the Court, sanctioning the Scheme of Amalgamation, such a scheme becomes operational and effective. Computation of stamp duty and valuation does not make Scheme of Amalgamation alone chargeable to stamp duty. The order is the instrument.

(*iii*) Whether in a scheme, compromise or arrangement sanctioned under Sections 391 and 394 of the Companies Act where Registered Offices of the two Companies are situated in two different States, the Company in State of Maharashtra is entitled for rebate under Section 19 in respect of the stamp duty paid on the said scheme in another State?

Ans. The answer to this question will be in the negative for the reasons set out in detail herein above.

(*iv*) Whether for the purposes of Section 19 of the Act, the scheme/compromise/ arrangement between the two Companies must be construed as document executed outside the state on which the stamp duty is legally levied, demanded and paid in another State?

Ans. Basically, a scheme/compromise/ arrangement between the two companies is never a document chargeable to stamp duty, whether such a document is executed in the State or outside the State of Maharashtra. Moreover, in view of our conclusions above, Section 19 of the Act in any event, has no application whatsoever.

36. Civil Reference dispoed accordingly.

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From Published Accounts

CA. Pamil H. Shah
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AS 22 Accounting for Taxes on Income

Significant Accounting Policies – Annual Report 2014-15

KPR Mill Limited

T) Taxation

Current tax is determined on the basis of taxable income and tax credits computed for each of the entities in the Group in accordance with the applicable tax rates and the provisions of applicable tax laws.

Minimum Alternate Tax (MAT) paid in accordance with the tax laws, which gives future economic benefits in the form of adjustment to future income tax liability, is considered as an asset if there is convincing evidence that the Company will pay normal income tax. Accordingly, MAT is recognised as an asset in the Balance Sheet when it is highly probable that future economic benefit associated with it will flow to the Company.

Deferred tax is recognised on timing differences, being the differences between the taxable income and the accounting income that originate in one period and are capable of reversal in one or more subsequent periods. Deferred tax is measured using the tax rates and the tax laws enacted or substantively enacted as at the reporting date. Deferred tax liabilities are recognised for all timing differences. Deferred tax assets are recognised for timing differences of items other than unabsorbed depreciation and carry forward losses only to the extent that reasonable certainty exists that sufficient future taxable income will be available against which these can be realised. However, if there is unabsorbed depreciation and carry forward of losses and items relating to capital losses, deferred tax assets are recognised only if there is virtual certainty supported by convincing evidence that there will be sufficient future taxable income available to realise the assets. Deferred tax assets and liabilities are offset if such items relate to taxes on income levied by the same governing tax laws and the Company has a legally enforceable right for such set off. Deferred tax assets are reviewed at each balance sheet date for their realisability.

The Group offsets deferred tax assets and deferred tax liabilities, and advance income tax and provision for tax, if it has a legally enforceable right and these relate to taxes in income levies by the same governing taxation laws.

Current and deferred taxes relating to items directly recognised in reserves are recognised in reserves and not in the Statement of Profit and Loss.

Take Solutions Limited

1.11 Taxation

Tax expenses comprising of both current tax and deferred tax are included in determining the net results for the period.

Current tax is determined based on the provisions of the Income Tax Act of the respective countries.

Deferred tax reflects the effect of timing differences between the assets and liabilities recognized for financial reporting purposes and the amounts that are recognized for current tax purposes. As a matter of prudence deferred tax assets are recognised and carried forward only

to the extent, there is reasonable certainty that sufficient future taxable income will be available against which such deferred tax assets can be realised.

Ashok Leyland Limited

14. Income taxes

14.1 Income tax expenses comprise current and deferred taxes. Current tax is determined on income for the year chargeable to tax in accordance with the applicable tax rates and the provisions of the Income Tax Act, 1961 and other applicable tax laws and after considering credit for Minimum Alternate Tax (MAT) available under the said Act. MAT paid in accordance with the tax laws which gives future economic benefits in the form of adjustments to future tax liability, is considered as an asset if there is convincing evidence that the future economic benefit associated with it will flow to the Company resulting in payment of normal income tax.

14.2 Deferred tax is recognised on timing differences, being the difference between taxable income and accounting income that originate in one period and are capable of reversing in one or more subsequent periods. Deferred tax is measured using the tax rates and the tax laws enacted or substantively enacted as at the reporting date. Deferred tax assets are recognised for timing differences other than unabsorbed depreciation and carry forward losses only to the extent that there is a reasonable certainty that there will be sufficient future taxable income to realise the assets. Deferred tax asset pertaining to unabsorbed depreciation and carry forward of losses are recognised only to the extent there is a virtual certainty of its realisation.

VRL Logistics Limited

m) Taxation

i. Tax expenses comprise current tax (amount of tax for the period determined in accordance with the Income Tax Regulations in India) and deferred tax charge or credit (reflecting the tax effects of timing differences between accounting income and taxable income for the period).

ii. The deferred tax charge or credit and the corresponding deferred tax liabilities or assets are recognised using the tax rates that have been enacted or substantively enacted by the Balance Sheet date. Deferred tax assets are recognised only to the extent there is reasonable certainty that the assets can be realised in future; however, where there is unabsorbed depreciation or carry forward losses under taxation laws, deferred tax assets are recognised only if there is a virtual certainty of realisation of such assets. Deferred tax assets are reviewed at each Balance Sheet date and written down or written up to reflect the amount that is reasonably / virtually certain, as the case may be, to be realised.

iii. Tax credit is recognised in respect of Minimum Alternate Tax (MAT) as per the provisions of Section 115JAA of the Income Tax Act, 1961 based on convincing evidence that the Company will pay normal income tax within the statutory time frame and is reviewed at each Balance Sheet date.

South Indian Bank

10. Taxes on income

The income tax expense comprises current tax and deferred tax. Current tax is measured at the amount expected to be paid in respect of taxable income for the year in accordance with the Income Tax Act. Deferred tax assets and liabilities are recognized for the future tax

consequences of timing differences being the difference between the taxable income and the accounting income that originate in one period and are capable of reversal in one or more subsequent periods. The Bank restricts recognition of deferred tax assets to the extent that it has become reasonably certain or virtually certain as the case may be. Changes in deferred tax assets/ liabilities on account of changes in enacted tax rates are given effect to in the profit and loss account in the period of the change.

Deferred income taxes reflect the impact of timing differences between taxable income and accounting income originating during the current year and reversal of timing differences for the earlier years. Deferred tax is measured using the tax rates and the tax laws enacted or substantively enacted at the reporting date. Deferred income tax relating to items recognized directly in equity is recognized in equity and not in the statement of profit and loss account.

Patel Engineering Limited

m) Taxation

The tax expense comprises of current tax and deferred tax. Current tax is calculated in accordance with the tax laws applicable to the current financial year. Deferred tax resulting from "timing difference" between book and taxable profit is accounted for using the tax rates and tax laws that have been enacted by the balance sheet date. Deferred tax assets are recognized only to the extent there is virtual certainty of realization in future.

Unity Infraprojects Limited

7 Taxes on Income

(a) Provision for current tax and fringe benefit tax is made considering various allowances and benefits available to the Company under the provisions of Income Tax Act, 1961.

(b) In accordance with Accounting Standard AS-22 "Accounting for Taxes on Income", deferred tax resulting from timing differences between book and tax profits are accounted for at tax rate substantially enacted by the Balance Sheet date to the extent the timing differences are expected to be crystalised. Deferred Tax Assets arising on account of carried forward losses and unabsorbed depreciation as per Income Tax Act, 1961 are recognised to the extent there is a virtual certainty supported by convincing evidence that such assets will be realised.

ICICI Bank Limited

10. Income Taxes

Income tax expense is the aggregate amount of current tax and deferred tax expense incurred by the Bank. The current tax expense and deferred tax expense is determined in accordance with the provisions of the Income Tax Act, 1961 and as per Accounting Standard 22 - Accounting for Taxes on Income respectively. Deferred tax adjustments comprise changes in the deferred tax assets or liabilities during the year. Deferred tax assets and liabilities are recognised by considering the impact of timing differences between taxable income and accounting income for the current year, and carry forward losses. Deferred tax assets and liabilities are measured using tax rates and tax laws that have been enacted or substantively enacted at the balance sheet date. The impact of changes in deferred tax assets and liabilities is recognised in the profit and loss account. Deferred tax assets are recognised and re-assessed at each reporting date, based upon management's judgment as to whether their realisation is considered as reasonably/ virtually certain.

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From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1) CBDT Clarifications regarding form 15G and 15H

The CBDT has clarified about the due date for quarterly uploading of 15G/H declarations by the payers on e-filing portal and the manner for dealing with form 15G/H received by payer during the period from 01/10/2015 to 31/03/2016 as under:-

Sr. No.	Period for which the declarations to be filed	Due Date of filing the declaration in form 15G/H
1	Qtr ending 30th, June	15th July of the financial year
2	Qtr ending 30th, September	15th October of the financial year
3	Qtr ending 31st, December	15th January of the financial year
4	Qtr ending 31st, March	30th April of the financial year immediately following the financial year in which declaration is made.

It is further clarified that the declarations received during the period from **01/10/2015 to 31/03/2016 to be furnished on e-filing portal in the given format on or before 30th June, 2016.**

(Notification No. 9, dated 07/06/2016)

2) **The Cost Inflation Index for the financial year 2016-17 is 1125** *(Notification No. 42, dated 02/06/2016)*

3) Notification regarding procedure for online submission of TDS and TCS statement

The deductor / collectors will have the option of online filing of e-TDS/TCS returns through e-filing portal or submission at TIN Facilitation Centers. The procedure for online filing of TDS/TCS statement is as under:-

- Deductor / Collector is required to be registered in the e-filing website
- The statement so prepared is required to be uploaded as a zip file and submitted using DSC. The signature file for the zipped file can be generated using the DSC Management Utility.
- After login the deductor /collector is required to upload the zipped file along with the signature file. The uploaded file shall be processed and validated at the e-filing portal and upon validation the status shall be either 'accepted or rejected' which will reflect within 24 hours from the time of upload.

(For full text refer Notification No. 6, dated 4th May, 2016)

4) Notification regarding procedure for submission of form 15G/15H

The Principal Director General of Income-tax (Systems) hereby lays down the following procedures for online submission of form 15G/15H:-

- Deductor / Collector is required to be registered on the website of income tax department.
- The form 15G/15H utility can be used to prepare the xml zip file. The declaration is required to be submitted using a DSC. The signature file for the zipped file can be generated using the DSC Management Utility.
- The designated person is required to upload the Zip file along with the signature file. The uploaded file shall be processed and validated at the e-filing portal and upon validation the status shall be either 'accepted or rejected' which will reflect within 24 hours from the time of upload.

(For full text refer Notification No.7, dated 4th May, 2016)

5) Notification regarding Income Declaration Scheme 2016

The Central Government hereby makes the rules for carrying out the provisions of Chapter IX of the said Act relating to the Income Declaration Scheme,2016. They shall come into force on the 1st day of June, 2016

(For full text refer Notification No. 33 , dated 19th May, 2016)

6) Notification regarding Equalisation Levy Rules 2016

Central Government hereby makes the rules for carrying out the provisions of chapter VIII of the said Act relating to Equalisation levy. They shall come into force on the 1st day of June, 2016

(For full text refer Notification No.38, dated 27th May, 2016)

7) Notification regarding The Direct Tax Dispute Resolution Scheme Rules 2016

The Central Government hereby makes the rules regarding The Direct Tax Dispute Resolution Scheme Rules, 2016. They shall come into force on the 1st day of June, 2016

(For full text and forms refer Notification No.35, dated 26th May, 2016)

8) The Central Government hereby appoints the 31" day of December, 2016 as the date on or before which a person may make a declaration to the designated authority in respect of tax arrear or specified tax under the Direct Tax Dispute Resolution Scheme, 2016.

(Notification No. 34, dated 26th May, 2016)

Service Tax

1) Circular regarding Accounting code for Krishi Kalyan Cess (KKC)

Tax Collection	Interest	Refunds	Penalties
00441509	00441510	00441511	00441512

(Circular No. 194, dated 26th May, 2016)

2) Amendment in Rule 6 of Service Tax Rules 1994

The Central Government hereby makes the following rules further to amend the Service Tax Rules, 1994, namely:- These rules shall come into force from the 1 st day of June, 2016.

(ii) after sub-rule (7D), the following sub-rule shall be inserted, namely:- "(7E) The person liable for paying the service tax under sub-rule (7), (7A), (7B) or (7C) of rule 6, shall have the option to pay such amount as determined by multiplying total service tax liability calculated under sub-rule (7), (7A), (7B) or (7C) of rule 6 by effective rate of Krishi Kalyan Cess and dividing the product by rate of service tax specified in section 66B of the Finance Act, 1994, during any calendar month or quarter, as the case may be, towards the discharge of his liability for Krishi Kalyan Cess instead of paying Krishi Kalyan Cess at the rate specified in sub-section (2) of section 161 of the Finance Act, 2016 (28 of 2016) and the option under this sub-rule once exercised, shall apply uniformly in respect of such services and shall not be changed during a financial year under any circumstances."

These rules shall come into force from the 1 st day of June, 2016.

(Notification No.31, dated 26th May, 2016)

3) Clarification regarding exemption of Krishi Kalyan Cess in certain cases

Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts such taxable services from whole of Krishi Kalyan Cess leviable thereon which are either exempt from the whole of service tax by a notification or special order issued under sub-section (1) or as the case may be under sub-section (2) of section 93 of the Finance Act, 1994 or otherwise not leviable to service tax under section 66B of the Finance Act, 1994.

It is hereby clarified that value of taxable services for the purposes of the Krishi Kalyan Cess shall be the value as determined in accordance with the Service Tax (Determination of Value) Rules, 2006. This notification shall come into force from the 1 st day of June, 2016.

(Full for text refer Notification No. 28, dated 26th May, 2016)

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Association News

CA. Dilip U. Jodhani
Hon. Secretary

CA. Riken J. Patel
Hon. Secretary

65th Annual General Meeting

1 At the 65th Annual General Meeting of the members of the Association held on Saturday, 7th May, 2016 at ICAI Bhavan, 123, Sardar Patel Colony, Naranpura, Ahmedabad. Following Office Bearers and Executive Committee Members have been declared elected for the year 2016-2017.

Office Bearers

1	CA. Raju C. Shah	President
2	CA. Kunal A. Shah	Vice - President
3	CA. Dilip U. Jodhani	Hon. Secretary
4	CA. Riken J. Patel	Hon. Secretary

Executive Committee Members

1 CA. Jayesh M.Shah	2. CA. Jignesh J. Shah	3. CA. Malav K. Mehta
4. CA. Mihir H. Pujara	5. CA. Nalin K. Thakkar	6. CA. Naveen R. Mandovara
7. CA. Pradeep G. Tulsian	8. CA. Rakesh B. Lahoti	9. CA. Umang B. Saraf

Imm. Past President	CA. Yamal A. Vyas

List of Sub Committees

Sr. No.	Name of Sub Committee	Chairman	Convener	Members
1	Journal	CA. Ashok C. Kataria	CA. Pitamber S. Jagyasi	CA. Gaurang Choksi CA. Jayesh Sharedalal CA. Nalin K. Thakkar CA. Rajni Shah CA. Shailesh C. Shah
2	Residential Refresher Course	CA. Amar Gandhi	CA. Bindesh Jain	CA. Mukesh O Parikh CA. Abhishek Agarwal CA. Ketan Mistry CA. Aniket Talati CA. Atul R. Shah CA. Jayesh M Shah CA. Mihir Pujara CA. C H Pamnani
3	Brain Trust	CA. Parag Raval	CA. Kiran B. Parikh	CA. Govind Patel CA. Jayesh K. Shah CA. Fenil B Shah CA. Amish Khandhar CA. Bijal J. Gandhi CA. Malav Mehta CA. Gaurang Choksi

Sr. No.	Name of Sub Committee	Chairman	Convener	Members
4	Legal And Representation	CA. Rajni Shah	CA. Manthan Khokani	CA. Uday Shah CA. S.K.Sadhvani CA. Ashok Kataria CA. Jignesh J Shah CA. Sunil Talati
5	Information Technology	CA. Ketan Mistry	CA. Anuj Sharedalal	CA. Meghal Shah CA. Kandarp Trivedi CA. Ashok Kataria CA. Sanjay Dave CA. Jayesh P Patel CA. Mukesh Khandwala
6	Publication	CA. Shailesh Shah	CA. Abhishek Jain	CA. Ashok Kataria CA. Rajni Shah CA. Atul Shah CA. Chintan Doshi CA. Nirav Choksi CA. Mukesh Khandwala CA. Jayesh Sharedalal
7	Entertainment	CA. C. H. Pamnani	CA. Shivang Choksi	CA. Vandit M. Desai CA. Amolaksingh B. Dang CA. Surya Chhabria CA. Yamal Vyas CA. Nirav R. Choksi
8	Membership Development	CA. Monish Shah	CA. Rushabh Shah	CA. Nirav R. Choksi CA. Ganesh Nadar CA. Fenil R. Shah CA. Pradeep Tulsian CA. Chandubhai F. Patel
9	Sports	CA. Chintan Doshi	CA. Abhishek Jain	CA. Maulik Desai CA. Saurabh Patel CA. Prakash Sheth CA. Priyam Shah CA. Umang Saraf CA. Ajit Shah
10	Crown of CAA-Think Tank	CA. Ajit C. Shah	CA. C. H. Pamnani	CA. Shailesh C. Shah CA. Prakash B. Sheth CA. Gaurang M. Choksi CA. Ashwin H Shah CA. Jayesh C. Sharedalal CA. Mukesh M. Khandwala CA. Deepak R. Shah CA. Durgesh V. Buch CA. Sunil H. Talati
11	Special Events	CA. Devang Doctor	CA. S. K. Sadhwani	CA. Rakesh Lahoti CA. Durgesh Buch

Sr. No.	Name of Sub Committee	Chairman	Convener	Members
12	International RRC	CA Anand Sharma	CA Harshad Shah	CA Mukesh O. Parikh CA Darshan A. Shah CA Aniket Talati CA Yamal Vyas CA Durgesh Buch
13	Memorial Lecture	CA Nirav Choksi	CA Harit Dhariwal	CA Hitesh Mandani CA Shivang Choksi CA Kunal Shah CA Sanjay R Shah
14	Mutual Benefit Scheme Development	CA Atul R. Shah	CA Mukesh O Parikh	CA Shailesh Shah CA C. H. Pamnani CA Vikash Jain CA Ashutosh P. Nanavaty
15	Study Circle	CA Hersh S. Jani	CA Ronak M. Khandwala	CA Riken J. Patel CA Ashwin H Shah CA Samir D. Shah CA Deven D. Shah CA Sanjay M. Dave CA Shamik H. Chokshi CA Shivang R. Chokshi

The following prizes and Medals were distributed:

Best Article in Ahmedabad Chartered Accountants Journal

Sr. No.	Name of the Trophy	Name of the Recipient	Name of the Article published in the Journal
1	Shri Gatorbhai Patel Shiva Pharma Foudation Trophy for Best Article on Direct Taxes 2015-16	CA. Chandrakant K. Thakkar	Research and Development Expenses Taxation and Other Related Issues
2	Shri U. R. Shah Memorial Funds Trophy for Best Article on Allied Law 2015-16	CA. Bihari B. Shah	Introduction of GST and Journey Ahead
3	Champaben Chandulal Shah Memorial Trophy for Best Article on Corporate Law 2015-16	CA. Chintna P. Shah & CA. Kinjal Pandit	Depreciation as per Companies Act, 2013

Best Study Circle Meeting Leader

Sr. No.	Name of the Trophy	Name of the Recipient	Name of the Study Circle Meeting
1	Shri Dwarkadas B. Shah Memorial Trophy for the Best Lead Study Circle Meeting 2015-16	CA. Rahul P. Patel	Technical aspect on Service Tax Returns & Related Procedures

List of Students who have been Awarded MedalS/Prizes for the Year 2015

Sr.	Medal	Highest Marks in	PCC / Final C.A. Examination	Name of the Recipent Student
1	Avinash J. Budhdev Memorial CA Student Award (Cash Prize of Rs.11000/- each)	**Final Year Topper (Gujarat)**	**Final/May 2015**	Parth Vijaykumar Bang
			Final/Nov 2015	Ravikumar Bhikhalal Soni
2	Kantilal V. Patel Memorial Medal	**Best Student of the year 2014 (A'bad)**	**Final/May-Nov. 2015**	Himani Devendra Jain
3	H. V. Vasa Memorial Medal	**Best Student (Ahmedabad)**	**Final/May 2015**	Himani Devendra Jain
			Final/Nov 2015	Ravikumar Bhikhalal Soni
4	A. M. Thaker Memorial Medal	**Best Lady Student (Ahmedabad)**	**Final/May 2015**	Himani Devendra Jain
			Final/Nov 2015	Amita Suryakant Shah
5	Chandulal M. Shah Memorial Medal	**Paper 1** Financial Reporting	**Final/May 2015**	Sonal Prakash Jain
			Final/Nov 2015	Ravikumar Bhikhalal Soni
6	VNS & BNS Social Welfare Medal	**Paper 2** Strategic Financial Management	**Final/May 2015**	Akshi Hitendra Jain
			Final/Nov 2015	Vishal G. Mulchandani
7	Dhirubhai B. Shah Memorial Medal	**Paper 3** Advanced Auditing and Professional Ethics	**Final/May 2015**	Parth Bharatkumar Mehta
			Final/Nov 2015	Manojkumar G. Tekchandani
8	Mansukhbhai J. Shah Medal	**Paper 4** Corporate and Allied Laws	**Final/May 2015**	Priyank Pareshbhai Banker
			Final/Nov 2015	Malav Prakash Shah
9	Madhuben Prafulbhai Trivedi Memorial Medal	**Paper 5** Advance Management Accounting	**Final/May 2015**	Jainam Pareshkumar Shah
			Final/Nov 2015	Vishal B. Chitlangya
10	VNS & BNS Social Welfare Medal	**Paper 6** Information Systems Control & Audit	**Final/May 2015**	Utsav Nishitbhai Sanghvi
			Final/Nov 2015	Amita Suryakant Shah
11	A. M. Garg Memorial Medal	**Paper 7** Direct Taxes laws	**Final/May 2015**	Jimit Birendra Shethwala
			Final/Nov 2015	Mohdirfan Abdulaziz Shaikh
12	C. F. Patel Memorial Medal	**Paper 7** Direct Taxes laws	**Final/May 2015**	Jimit Birendra Shethwala
			Final/Nov 2015	Mohdirfan Abdulaziz Shaikh
13	Jagrutiben K. Shah Memorial Medal	**Paper 8** Indirect Taxes Laws	**Final / May 2015**	Vatsal Hasmukhbhai Shah
			Final /Nov 2015	Ravikumar Bhikhalal Soni
14	Shri K. T. Thakore Memorial Medal	**Best Student of the year 2015 (Gujarat)**	**IPCE / May-Nov 2015**	Devansh Sanjaybhai Shah
15	B. S. Soni Memorial Medal	**Best Student (Ahmedabad)**	**IPCE / May 2015**	Sapan Bharatbhai Shah
			IPCE / Nov 2015	Ankit Kantilal Jain

Sr.	Medal	Highest Marks in	PCC / Final C.A. Examination	Name of the Recipent Student
16	Hasmukhbhai J. Patel Memorial Medal	**Paper -1** Accounting	**IPCE / May 2015**	Aagam Sandipbhai Dalal
			IPCE / Nov 2015	Nimisha Mahendra Jain
17	Shri V. R. Shah Memorial Medal	**Paper -2** Best Student for the year 15 in A'bad for Business Law Ethics and Communication	**IPCE / May-Nov 2015**	Sarthak Gutpa
18	Lalita Khanchand Tekwani Memorial Medal	**Paper 3** Cost Accounting & Financial Management	**IPCE / May 2015**	Mitwa Upendrakumar Patel
			IPCE / Nov 2015	Shiv Pitamber Chhatwani
19	VNS & BNS Social Welfare Medal	**Paper - 4** Taxation	**IPCE / May 2015**	Sapan Bharatbhai Shah
			IPCE / Nov 2015	Drashti Manish Shah
20	Rameshchandra S. Shah Memorial Medal	**Paper -5** Advance Accounting	**IPCE / May 2015**	Sapan Bharatbhai Shah
			IPCE / Nov 2015	Ankit Jitendra Dobariya
21	Akshay Trivedi Memorial Medal	**Paper 6** Auditing & Assurance	**IPCE / May 2015**	Neel Mayankkumar Mehta
			IPCE / Nov 2015	Drashti Manish Shah
22	Mansukhbhai S. Shah Memorial Medal	**Paper 7** Information Tech-nology & Strategic Management	**IPCE / May 2015**	Sapan Bharatbhai Shah
			IPCE / Nov 2015	Ankit Kantilal Jain

3 **M/s P. M. Patel & Co., Chartered Accountants**, are appointed as Auditors of the Association for the financial year 2016-17.

4 At the 28th Annual General Meeting of the members of the Mutual Benefit Scheme held on Saturday, 7th May 2016 at ICAI Bhavan, 123 Sardar Patel Colony, Naranpura, Ahmedabad. **M/s P. M. Patel & Co., Chartered Accountants,** are appointed as Auditors of the Association for the financial year 2016-17.

1st Executive Committee Meeting

1 At the 1st Executive Committee Meeting held on 7th May, 2016, three senior members of the Association namely (a) CA. Jayesh P. Patel, (b) CA. Mukesh M. Khandwala, (c) CA. Vikash G. Jain have been Co-opted as the members of the Executive Committee for the year 2016-17.

2 **Forthcoming Programmes**

Date/Day	Time	Programmes	Speaker	Venue
18.06.2016 Saturday	9.00 am to 1.00 pm	1st Brain Trust Meeting - “Corporate Case Studies"	CA. Nipun Singhvi	ATMA Hall, Ashram Road, A'bad
18.06.2016 Saturday	8.30 pm onwards	"Dost Hu Gujarat Chhu"		Tagore Hall, Paldi, Ahmedabad
23.06.2016 Thursday	5.30 pm to 7.30 pm	Study Circle Meeting - "Amendments Applicable for filing Income Tax Return for A.Y. 2016-17"	CA. Mehul Thakkar	H. T. Parekh Auditorium, AMA, Ahmedabad
01.07.2016 to 05.07.2016		43rd Residential Refresher Course	Various Speakers	ITC Welcome Hotel, Jodhpur, Rajasthan
16.08.2016 Tuesday	8.00 pm onwards	Talent Evening		Tagore Hall, Paldi, Ahmedabad

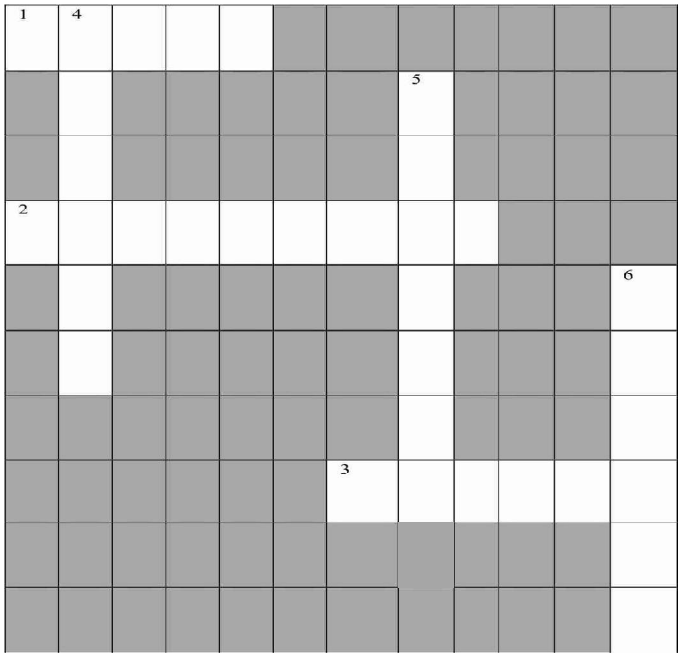
ACAJ Crossword Contest # 25

Across

1. E payment of VAT has been mandatory when payment exceeds _____ thousand.
2. Where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a _____ relationship.
3. Once HUF had settled a sum in favour of minor daughter of Karta could not be treated as part of _____ of HUF.

Down

4. Equalization Levy will not be chargeable on services that are available freely on the internet, or free apps that are available to the _____ consumers.
5. Taxes, cesses or duties levied are not consideration for any particular service as such and hence not leviable to _____ tax.
6. The _____ is same in each and every being.



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 21/06/2016.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 24

1. CA. Bhupendra Prajapati
2. CA. Mahendra Ratilal Pandhi

ACAJ Crossword Contest # 24 - Solution

Across

1. Addition
2. Engine
3. Revenue

Down

4. Demerger
5. Six
6. Penalty

❊ ❊ ❊