AHMEDABAD CHARTERED ACCOUNTANT JOURNAL

Volume : 40 | Part 3 | June, 2016

Sri Ramana Maharshi

Chartered Accountants Association, Ahmedabad

A Passion to Perform

Ahmedabad Chartered Accountants Journal
E-mail : caaahmedabad@gmail.com Website : www.caa-ahm.org - caaahmedabad
Volume : 40 Part : 3 June, 2016

CONTENTS

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Professional Awards

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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Printed : Pratiksha Printer

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

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Is Life a Race ?

"Life is a race, if you don't run fast you will be a broken *Anda"*. Such apt lines summarize the present day lives and the attitude of the present generation. But are we required to be a part of that race? Absolutely NO. The readers would agree that our fathers and forefathers had more time on hand than the present generation and led a more peaceful life. Agreed or not? But then the day continues to be of the same 24 hours and the daily chores and business has also been the same. Then what has changed? A deeper analysis would suggest two reasons – Lack of patience and lack of satisfaction.

We fail to find peace and contentment in our life owing to the dynamic and ever changing world. The herd yearns for instant success and instant money. (No wonder instant noodles are a big hit with this generation). Leave apart success, even the cricketing fraternity had to change the five day long format to a 3 hour game to catch viewership. Today's generation can be summed up in one simple phrase 'GOTTA HAVE IT RIGHT NOW'. We live in a world where there are 'guided' missiles and 'misguided' human beings.

Everyone today runs and runs without even a slightest of the idea that even if they win the rat race, they would still be the rat!! We have started to be less patient and more restless. We must understand that significant breakthroughs don't happen in moments. Unless we are patient, we won't be able to taste the fruits of success. Patience is one characteristic or aspect of success.

It is needless to say, without patience no one can achieve eminence and success. Flip the pages of history and one can see thousands of precedents where patience was the indispensable mantra of success be it the Father of Our Nation, Mahatma Gandhi or superstar of the millennium, Amitabh Bachchan or a great scientist like Vikram Sarabhai.

Can one imagine the amount of patience that would have been required for building and constructing the historical monuments, temples and architectural works?. All these marvelous structures would have required immense patience and perseverance and such quality of work would not have been possible otherwise.

In earlier times, our parents and forefathers used to go for pilgrimage. That particular time span was completely devoted to refresh the mind and keep the body and soul at peace. They did not have notifications ringing on their smartphones. The happiness and relaxation they received was directly related to the patience quotient.Today people complete the tour in a day or two.

Today, the 'Me First' attitude has captured our lives. The lack of patience and Me First affects the people surrounding us. Everyone wants to be the first person crossing the road when the traffic light signals green. No apparent reason. But we should try and change the "my" centric approach and be a little more patient with this world so that world can be a better place to live in.

These days people strive only for materialistic pleasures and worldly desires. However, most of them forget that these are temporary tools for instant satisfaction. We are living in a world where people continuously remain discontented and disgruntled with their life. As per a survey, one third of the marriages end up at being separated. The reason? Discontentment, envy and restlessness. The masses today, purchase stuff which they don't need, with money they don't possess and in a strenuous effort to overawe people they don't even know. Who says we live in an independent world? We all have been slaves of envy and discontentment. A man is happy with his Maruti 800 until his neighbor buys a Honda City.

Today we may possess all the luxuries in life, but we may not be 'HAPPY'. The Noisy fan of the bedrooms may have transformed to Split Air Conditioners, but where is the sound sleep?, The 'Hamara Bajaj' may have been replaced by an Audi Q5, but is there any place where you can go, sit and relax? The age-old Nokia Phones may have been replaced by Iphone 6S, but do we have someone to talk to? The disposable 2 Rs. Ball point

contd. on page no. 136

Editorial

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IDS - Yet another measure to fulfil a political promise?

The Income Disclosure Scheme - 2016 has been introduced in the Finance Act, 2016 with an object to unearth black money whereby a one time opportunity is provided to come clean by disclosing undisclosed income. With the announcement of the scheme, different issues are being debated and discussed at different forums apart from various statements coming from the Government to make it a success.

One of the important aspect that is considered as a hindrance to the success of the scheme is the effective rate of tax of 45%, including surcharge and penalty. Many argue that there won't be many subscribers to the scheme considering the high rate of tax. It is obvious that the rate cannot be 30% as it has been in the past. If the scheme is floated in the similar manner as done in past, it is nothing but a deception for an honest tax payer who has been complying tax laws thoroughly. The scheme should not be seen as to include people who are left out, but only a mechanism to tax those who have wilfully defaulted to disclose their true income. It is not a platter in the serving but may be the last opportunity to clean one's own house.

Interestingly, the statements coming from the government or the department are also confusing and far from being consistent. The Prime Minister of the country asks income tax officials to trust income tax assessees and not to look upon them with an eye of suspicion. Then we have the scheme where entire government machinery is working hard to ensure that maximum people declare their hidden assets under the IDS. The move from the government is unprecedented where the finance minster along with the revenue secretary is holding programs to ask people to be part of the scheme. Even the message from the Prime Minister in his monthly *Man* Ki *Baat* was loud and clear, come disclose your black money, take it as an opportunity otherwise no one will be spared thereafter. One can only question what sort of trust in the assessees is being demonstrated!

I also agree that the scheme may not be a success at the given rate of 45% of tax at the market value of assets. Even the government would be aware of it and that's the reason it is being so aggressive in its approach. Is IDS just a scheme or a message to exhibit an action to a political promise? Lot was said, announced and promised during the run-up to the 2014 general elections. The year 2015 had The Black Money and Imposition of Tax Act and 2016 has IDS. Is this just a garb to show to the people of the country that enough was done to trace Black Money in the days to come? Wonder will this have an answer!

Pranams,

CA. Ashok Kataria

contd. from page 135

pen may have been replaced by Mont Blanc limited edition pen, but do you have the urge to write something beautiful? We may have become millionaires and billionaires but do we have the family to enjoy the wealth?

It is high time we stop being depressed and melancholic with ourselves. It is time we realize that we are perfect. It is time we break off trying to look like someone else. It is time we get satisfied with whatever we have. It is time the present day 'my' centric approach be indoctrinated into an 'Our' Centric approach to make this world a better place to live in. It is time we visualize and act beyond 'I', 'Me' and 'Myself'.

The idea to pen down this piece is not to teach or preach but, in a generation where we all are exploring for an extra hour in the day, a moment spared to read these thoughts could be consoling, warming and soothing. Let me end this piece and summarise the same with a Swahili phrase – **"HakunaMatata"**which roughly translates to "Don't Worry Be Happy……".

From the President

CA. Raju Shah
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Respected Seniors and Dear Professional Colleagues,

In this issue, I would like to share my views as under:

CA DAY

July 1st is the day of pride for the entire CA fraternity. It is the day when the relentless efforts of our visionary founding fathers fructified and an independent accounting body was established in India. On this momentous occasion of CA foundation day, I salute all those visionaries who have laid the strong foundation of our esteemed institute and have bestowed upon us the legacy of this noble profession. We at CA Association celebrated this day in a different way by spending some time with under privileged children looked after by **VSSM (Vicharta Samuday Samarthan Manch)** and tried to bring happiness in their lives in whatever small way we could. I thank all the members who contributed and participated in the program.

BREXIT

Lot of debates are taking place for the Britain's referendum to exit the European union. There are as many pros and cons in Britain exiting the Europe. India has a positive trade surplus of $3.64 billion in terms of bilateral trade with Britain. The total trade stood at $14.02 billion in FY 16, out of which $8.83 billion was in exports and $5.19 was in imports. So on the event of Brexit, the pound rate might fall against the dollar and thus, the rupee. And the companies which have income from UK and Europe are going to be hit, at least for shorter term. Indian pharma industry which has more exposure towards Europe will also be affected. On the other hand the imports from UK will be getting cheaper on the event of Brexit mainly rough uncut diamonds, spirits etc.

RESIDENTIAL REFRESHER COURSE

The Residential Refresher Course (RRC) was arranged from 1st July to 6th July at Welcome Hotel, Jodhpur. I congratulate the chairman of the committee CA Amar Gandhi and his young team comprising of CA Bindesh Jain, CA Jay Parekh and CA Anshul Agarwal for a grand success. I must compliment CA Chandrakant Pamnani for his guidance in all aspects and CA Atul Shah for his meticulous work. RRC committee CA Jayesh M.Shah, CA Mukesh Parikh, CA Mihir Pujara, CA Jayesh Patel, CA Ketan Mistry and all for their delegated work. I thank spouses, Alpa Raju Shah, Nanki Jayesh Patel, Bhavi Mihir Pujara, Amisha Amar Gandhi and Member CA Mihir Pujara for Games and gifts to winners, CA Mukesh Khandwala for chairing valedictory session, our own participant speakers CA Kaushik C. Patel, CA Deepak R.Shah Shah, CA Jignesh J. Shah for their excellent papers, group leaders of the brain trust, CA Riken Patel, CA Darshan Shah, CA Navin Mandovara and CA Kunal Shah. And my special thanks to all participants.

OTHER EVENTS

1st BRAIN TRUST meetings on "Corporate case studies with focus on amended Companies Act and recent judicial precedents" by CA. Nipun Singhvi was very well attended by members. It also generated a very healthy discussion in the groups lead by CA D.P.Shah, CA Rakesh Gupta, CA A.P.Nanavaty and CA Chintan Doshi.

A well appreciated entertainment programme "DOST, HU GUJRAT CHHU" was enjoyed by 600+ members with their family and friends.

Study Circle meeting on Amendments applicable for filing Income Tax Return for A. Y. 2016-17 by CA. Mehul Thakkar and chaired by Past President of Chartered Accountant Association CA Deepak R.Shah, was attended by more than 200 members and their Article Assistants.

Entertainment committee is arranging **"Talent Evening" on 16/08/2016.** Members are requested to participate and send their nomination at Association's office. For details refer the circular sent by e-mail.

I would like to conclude with a very well said statement by David Schwimmer : ***"Being generous or doing things for others actually make me feel good so I don't do it because I hope karma will come around and get me and I will benefit from it."***

Looking forward to your support and participation in future activities of the Association.

With best regards,

CA. Raju Shah
President

General Accumulation u/s 11(1)(a) and Carry Forward of Negative Income to Subsequent Year(s) - Taxation of Religious / Charitable Trust

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The Income Tax Act, 1961 lays down special provisions relating to taxation of Charitable and Religious Trust. While filing return of income of the Religious / Charitable trusts some typical issues crop up. This article deals with two important issues relating to taxation of Religious / Charitable Trusts.

General Accumulation u/s 11(1)(a)

One of the basic issue relates to the general accumulation u/s 11(1)(a) of the I. T. Act, 1961. It may be noted that following two independent items are covered in the scope of Section 11(1)(a) –

(a) Actual amount applied for the objects of the trust; and

(b) General accumulation of not more than 15% of the income

From the plain language of the provisions of section 11(1)(a) it would be clear that the income that is required to be excluded (i.e. not to be included) for the purpose of computing the total income would be the amount applied for charitable / religious purpose and 15 per cent of the total receipts (net of corpus donation). Accordingly, the income of the trust would be calculated as follows –

Table – 1 – Computation of income by Assessee-Trust

Gross Income including donation to corpus	72,02,072
Less: Exempted u/s 11(1)(d) - Donation to Corpus	(-)11,00,000
Gross Income after deducting the donation to corpus	61,02,072
Less: U/s 11(1)(a): @ 15% of Gross Income of Rs.61,02,072	9,15,311
	51,86,761
Less: Amount applied for the objects of the trust	(-) 99,18,102
Negative Income to be c/f for set off in subsequent years	(-) 47,31,341

However, recently, the income tax department has been taking a view that accumulation u/s 11(1)(a) would be calculated on the positive amount remaining after excluding the corpus donation and the income applied to charitable purposes. Taking the figures stated in Table – 1, the income tax department is typically calculating the income as follows –

Table – 2 – Typical Computation of income by the Department

Gross Income including donation to corpus	72,02,072
Less: Exempted u/s 11(1)(d) – Donation to Corpus	-11,00,000
Gross Income after deducting the donation to corpus	61,02,072
Less: Amount applied for the objects of the trust	-99,18,102
	-38,16,030
Less: U/s 11(1)(a): @ 15% of Gross Income of Rs.61,02,072 = Rs. 9,15,311 but restricted to……	**Nil**
Negative Income to **NOT** be c/f for set off in subsequent years	-38,16,030

Readers would have noted that some of the softwares available in the market also adopt the erroneous methodology adopted by the income tax department. However, the provision of Section 11(1)(a) are unambiguous. Recently, Hon. ITAT, Ahmedabad has decided the issue relating to general accumulation u/s 11(1)(a) in favour of the assessee-trust. Full Text of the Hon. Tribunal's judgment is appended at the bottom.

Carry Forward of Negative Income to Subsequent Year(s)

The next important issue is whether the assessee-trust is entitled to carry forward the computed negative income to the subsequent year(s) for set

off or not. As mentioned before, in Table – 2, the department does not allow the carry forward of the computed negative income for set off in the subsequent years(s).

It may be noted that, it is the well-settled position that income derived from the trust property has to be determined on commercial principles and if commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year having regard to the benevolent provisions contained in section 11 of the Act and will have to be excluded from the income of the trust under section 11(1)(*a*) of the Act in that subsequent year. Accordingly, the deficit / negative income determined in year – 1 will be carried forward for set off against the income of the year – 2 and so on.

The matter is squarely covered by the judgment of the Hon. Madras High Court in the case of CIT v/s Maitriseva Trust [242 ITR 20 (Mad)] as well as the judgment of the Hon. Gujarat High Court (jurisdictional High Court) in the case of **CIT** v. **Shri Plot Swetamber Murti Pujak Jain Mandal [1995] 211 ITR 293 (GUJ.).** The Hon. Gujarat Court was considering the following question –

"Whether, on the facts and in the circumstances of the case, the assessee is entitled to the carry forward of the expenses for set off in the subsequent year?"

The Hon. Court ruled as under –

"...

In view of the above discussion, we are of the opinion that, on the facts and in the circumstances of the case, the assessee is entitled to carry forward expenses for set off in the subsequent year. The question referred to us is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the Revenue."

We trust that the readers would find this information useful while dealing with the issues of hand.

Text of the Hon. ITAT, Ahmedabad's Judgment (*Supra)*

In the Income Tax Appellate Tribunal "B" Bench, Ahmedabad

Before Shri Rajpal Yadav, Judicial Member
and
Shri Anil Chaturvedi, Accountant Member

ITA No.2208/Ahd/2013
Asstt. Year: 2010-2011

Dy.Director of Income Tax (Exemption)
Ahmedabad
Vs
Utthan Seva Samsthan
26, Surdhara Bungalows Nr.T.V. Tower,
Thaltej, Ahmedabad.

Revenue by: Shri Somogyan Pal, Sr.DR
Assessee by: Shri P.B. Kedia

Date of Hearing: 28/09/2015
Date of Pronouncement: 29/09/2015

O r d e r

Per Rajpal Yadav, Judicial Member:

The Revenue is in appeal before us against the order of the Ld. CIT(A) dated 13.6.2013. The Revenue has taken four grounds of appeal. But its grievance revolves around a single issue i.e. whether the assessee can accumulate 15% of the income derives from property held under the Trust under section 11(1)(a) of the Income Tax Act or its accumulation can only be restricted to 15% of the balance amount remained with the assessee after applying for charitable purpose.

2. The Revenue is of the opinion that out of the gross receipt, the first amounts are to be carved out which are stated to be applied for charitable purpose. From the remaining amount, the assessee should accumulate 15%. This conclusion of the AO has not been approved by the Ld. First Appellate Authority. The Ld. First Appellate Authority put reliance upon the order of the ITAT in the case of Sayaji Ubakhin Memorial Trust and the decision of the Hon'ble Supreme Court in the case of ACIT Vs. A.I.N. Rao Charitable Trust, 129 CTR 205. The Ld. CIT(A) held that exemption available under section 11(1)(a) i.e. 15% of the income is unfettered and not subject to any conditions.

3. With the assistance of the Ld. Representative, we have gone through the record carefully. The Ld. Counsel for the assessee has placed on record a copy of the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Programme for Community Organisation, 248 ITR 1 = 166 CR 401 (SC). We find that this decision has silenced the controversy. It reads as under:

1. The questions that were referred to the High Court for consideration, at the instance of the revenue, read thus:

"1. Whether, on the facts and in the circumstances of the case and on an interpretation of the relevant provisions of the Income-tax Act, 1961, the assessee is entitled to exemption at 25 per cent on Rs. 2,57,376 or only on Rs. 87,010?

2. Whether, on the facts and in the circumstances of the case, should not the Tribunal have accepted the view of the revenue expressed in the circular, the same being consistent with the relevant provisions of the Income-tax Act, 1961?

3. Whether, on the facts and in the circumstances of the case, and also considering the scope of the earlier order of the Commissioner (Appeals) dated 18-11- 1983 the Tribunal is right in law in holding that the Commissioner (Appeals) has rightly interfered with the order of the Income-tax Officer ?"

2. The answers being in favour of the assessee, the revenue is in appeal by special leave.

3. The question that really requires consideration is whether, for the purposes of section 11(1)(a) of the Income-tax Act, 1961 ('the Act'), the amount for the grant of exemption of twenty-five per cent should be the income of the trust or it should be its total income determined for the purposes of assessment to income-tax. This question has to be answered in the light of these facts: the assessee-trust received donations in the aggregate sum of Rs. 2,57,376. It applied there out for its charitable purposes the aggregate sum of Rs. 1,70,369 leaving a balance of Rs. 87,010. The question is whether the assessee is entitled to accumulate twenty-five per cent of Rs. 2,57,376, as it contends, or twenty five per cent of Rs. 87,010, as the revenue appeared to contend.

Section 11(1) (a) reads thus :

"11 Income from property held for charitable or religious purposes.-(1)(a) Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;"

4. Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulated twenty-five percent of income derived from property held under trust. For the present purposes the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty five per cent thereout. It is unclear on what basis the revenue contended that it was entitled to accumulate only twenty-five per cent of Rs. 87,010.

5. For the aforesaid reasons, the civil appeal is dismissed.

6. No order as to costs."

4. In view of the above decision, we do not find any error in the order of the CIT(A). The appeal of the Revenue is dismissed.

Order pronounced in the Court on 29th September, 2015 at Ahmedabad.

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A Deeming Fiction - Section 50C Controversies and Probable Solutions

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In our country a parallel economy of black money is in the operation and the same is not hidden from any one. Through the various committee reports the finance ministry came to know the real estate transactions are one of the major source of black money generation in the economy and accordingly to control the generation of black money, the finance ministry has inserted Section 50 C in the Income Tax Act, 1961 vide Finance Act 2002 effective from 1st April 2003.

Section 50 C creates a deeming fiction and thereby the value assessed or assessable by the Stamp Duty Authority of the respective state government for the purpose of payment of stamp duty i.e Jantri Valuation or Value as per Circle Rates replaces the full value of consideration accruing or received by the assessee on account of transfer of a capital asset being land or building or both in case the former is higher. However if the assessee claims before the assessing officer that the Jantri Valuation or Circle Rate are higher than the fair market value as on the date of transfer of the capital asset and the value is not subject to any appeal, revision, reference or order of court, then the assessing officer may refer the matter to the Department Valuation Officer (DVO) to value the asset in accordance with Section 55 A of The Income Tax Act, 1961 and lower of the valuation so done by DVO and Jantri Valuation will be deemed to be the Full value of consideration accruing or received by the assessee on account of transfer of a capital asset for the purpose of Computation of Capital Gain.

In this article an attempt is made to settle various controversies u/s 50C

1. **Does provisions of Section 50C apply in case of Transfer of Rights in the property i.e Tenancy Rights, Lease hold rights etc?**

Section 50C is a deeming provision and it is only applicable in respect of capital assets which are land or building or both. It is thus clear that this deeming provision of section 50C will come into play only if the capital asset transferred by the assessee is a land or building or both. If capital asset transferred is neither land nor building nor both, this deeming provision shall not be applicable to such transfer.

The rights in land cannot be equated with the land or building. Therefore, it is concluded that section 50C is applicable to transfer of capital asset only in respect of land or building or both and is not applicable to right in land. In the present case, the assessee had only transferred the right in land for a valuable consideration thus, the long term capital gain could not be calculated by invoking the deeming provisions provided under section 50C.

Supporting Judgments

A. Tara Chand Jain [2015] 63 taxmann.com 286 (Jaipur - Trib.)

B. Kancast (P) Ltd. v. ITO (2015) The Chamber's Journal- April -2015 P 125 (Pune.)(Trib.)

C. Fleurette Marine NovelleHatam 2015] 61 taxmann.com 362 (Mumbai - Trib.)

D. ITO .v. Pradeep Steel Re-Rolling Mills (Pvt.) Ltd. (2013) 155 TTJ 294/ 39 taxmann.com 123./ Ltd (2014) 61 SOT 104 (URO) (Mum.) (Trib.)

E. Dy. CIT v. Tejinder Singh [2012] 50 SOT 391/19 taxmann.com 4 (Kol.)

F. ITO v. Shri PethabhaiBabubhai Patel 2012 (10) TMI 428 (Mum.)

G. ACITv. ShrikishanDass (2013) 6 TMI 428 - ITAT DELHI ITA No. 915/Del/ 2012,

H. ITO v.Pashupati Electrodes (P.) Ltd. (2013) 8 TMI 413 - ITAT DELHI I.T.A.No.3892/Del/2010

2. Can the fiction Created u/s 50C be extended to Section 69 B?

It is well settled that legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond that legitimate field.

Section 50C is a deeming provision, which is applicable only for the purpose of section 48. The latter section spells out the mode of computation of capital gain. To put it simply, the substitution of 'full value of consideration received' with 'the stamp value' in terms of section 50C, is applicable in the hands of the seller of the property who has to compute capital gains under section 48 pursuant to the transfer of a capital asset in the nature of land or building or both. On the contrary, section 69B, which is again a deeming provision, governs the cases in which investment made by the assessee is not fully disclosed. In other words, section 69B applies to the purchaser of an asset, in contradistinction to section 50C, which applies to the seller of an asset. The position about the substitution of 'stamp value' with the 'consideration received' in case the latter is lower than the former, in the hands of the seller only, leaving the differential investment made by the buyer untaxed, appears to have been realized by the Parliament. That is why, the legislature in its wisdom has inserted clause (vii) to section 56(2) by the Finance (No. 2) Act, 2009 with effect from 1-10-2009. The conjoint reading of sections 50C and 56(2)(vii) makes it vivid that whereas 'stamp value' has been substituted with the 'full value of consideration' in case the latter is less than the former in the hands of the seller by virtue of section 50C, the substitution of the 'stamp value' with the 'actual purchase price, in excess of Rs. 50,000' has been made effective in the hands of the buyer only where any immovable property is purchased after 1-10-2009.

Supporting Judgments

A. Global Mercantiles (P.) Ltd.* [2016] 67 taxmann.com 166 (Kolkata - Trib.)

B. CIT .v. Sarjan Realities Ltd. (2014) 220 Taxman 112 (Mag.) (Guj.)(HC)

C. Nitco logistics Pvt. Ltd. v. JCIT (Amritsar) (Trib.); www.itatonline.org

D. Subash Chand vs Asstt CIT (2012) 48 SOT 732

E. ITO v. Inderjit Kaur (Mrs.) (2012) 50 SOT 377 / 79 DTR 297 / (2013) 152 TTJ 252 (Chd.)(Trib.

F. Dy. CIT v. Vallabhbhai Purshottambhai Surani (2012) 54 SOT 556 (Ahd.)(Trib.)

G. Dy. CIT v. VirjibhaiKalyanbhaiKukadia (2012) 138 ITD 255 / 80 DTR 457 / (2013) 151 TTJ 219 (Ahd.)(Trib.)

3. Does the provisions of Section 50C apply in case of Exemption u/s 54F?

Provisions granting exemption from capital gains arising from eligible assets are contained in sections 54 to 54GB. All these exemptionary provisions, except the provisions of sections 54F & 54GB are similar and require the quantification of capital gains and provide for 100% exemption out of such gains if the entire capital gain is invested in specified assets provided in the respective sections.

However, in the case of sections 54F & 54GB (section 54GB applicable w.e.f. 1-4-2013) the quantification of the amount of exemption is a bit different. Section 54F, subject to the satisfaction of certain conditions contained therein, enables exemption wholly under

section 54F(1)(a) if the investment in the new residential house is equal to or more than the net consideration (and not the capital gain) received on transfer of the original asset. Section 54F(1)(b) grants part exemption where such investment in new eligible asset is less than the net consideration on a proportionate basis. Same is the case of section 54GB, which grants exemption from capital gains on sale of residential property subject to investment in equity shares of an eligible company.

The term 'net consideration' has been defined by Explanation to sub-section (1) of section 54F as follows :

"**Explanation: For the purposes of this section**:

'net consideration', in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer."

In view of the specific definition under section 54F as above and in absence of specific provision/explanation making section 50C applicable to section 54F, in determination of proportionate deduction available under section 54F, actual net consideration received/accrued has to be considered.

Supporting Judgments

1. Prakash Karnawat v. ITO [2011] 16 taxmann.com 357/[2012] 49 SOT 160 (Jaipur - Trib.)
2. Gyan Chand Batra v. ITO [2010] 8 taxmann.com 22 (Jaipur)
3. Raj Babbar v. ITO [2013] 56 SOT 1/29 taxmann.com 11 (Mum.)

However same analogy cannot be extended to the provisions of Section 54 ,54 B etc where the condition is to invest the Capital Gain. Capital Gain means the gain computed as per the provisions of Section 48. Section 50C replaces the full value of consideration accruing or arising to the assessee on account of transfer of a capital asset being land or building or both with the Jantri value if latter is higher and hence the Capital gain as per Section 48 is after considering the deeming fiction created by Section 50 C. And this capital gain i.e one computed u/s 48 read with 50C is required to be invested as per Section 54 , 54 B etc to get the exemption under respective sections and hence Section 50C is applicable in case of Section 54 . 54 B etc where Capital Gain is required to be invested.

4. Applicability of Section 50 C to Auction Sale or Compulsory Acquisition

In the cases where property has been sold in open auction after due publicity, it would not be appropriate to adopt a notional value in terms of section 50 C of the Act for the reason that there can be no allegation for understatement of consideration. In such circumstances, provisions of section 50C cannot be applied. Similarly, in the cases of compulsory acquisition of a property, the consideration received by the owner of the property from Governmental authorities can only be considered as consideration of the property and not a deeming value as per section 50C of the Act

5. Applicability of Section 50 C to Section 45(2),(3),(4),(5)

Section	Nature of Transfer	Value to be adopted
45(2)	Conversion of capital asset to stock-in-trade.	Fair market value of the asset on the date of conversion.
45(3)	Transfer of a capital asset by a person to a firm or an AOP in which he is a partner/member.	Amount recorded in the books of account of the firm or an AOP.

45(4)	Transfer of a capital asset by a firm or an AOP to its partner/ member.	Fair market value of the asset on the date of transfer.
45(5)	Compulsory acquisition of a capital asset under any law.	Consideration as is determined or approved by the Central Government or the RBI or as may be enhanced by any Court, Tribunal or other authority.

Provisions of section 45(2)/(3)/(4)/(5), section 50 and section 50B of the Act specifically provide the basis to be adopted for taking value in case of transfers referred to in the above sections. Transfers and the basis provided in respect thereof in above sections are as under

Its is a well settled law of interpretation of statute that the Specific Provisions will prevail over General Provision but the confusion is still there that which one is general provision and which one is special Provision. For example Section 45(3) is general with respect to Category of Assets covered and Specific with respect to the Nature of Transfer whereas Section 50 C is specific with respect to Assets Covered and General with respect to the Nature of Transfer. Thus with respect to transfer of land or building or both if we consider Section 50 C as general and 45 (3) as specific then Section 45 (3) being Specific will prevail over General and accordingly Section 50C will not apply. Further Section 45(3) and Section 50C both are deeming Fiction and one Fiction can not be imposed on other fiction. However, due to lack of any High Court or Supreme Court decisions on this subject post the amendment in Section 50C in 2009, this controversy remains unresolved.

6. Is it mandatory for the AO to refer the matter to the DVO ?

When the assessee applies to the Assesing Officer, the word "May" becomes "Shall" and it becomes mandatory for the AO to refer the matter to DVO.

S. 50-C is a rule of evidence in assessing the valuation of property for calculating capital gains and is rebuttable. It is well known that an immovable property may have various attributes, charges, encumbrances, limitations and conditions. The Stamp Valuation Authority does not take into consideration the attributes of the property for determining the fair market value and determines the value in accordance with the circle rates fixed by the Collector. The object of valuation by the Stamp Valuation Authority is to secure revenue on such sale and not to determine the true, correct and fair market value for which it may be purchased by a willing purchaser subject to and taking into consideration its situation, condition and other attributes such as it occupation by tenant, any charge or legal encumbrances; (ii) If the assessee raises an objection that the value assessed by the stamp valuation authority u/s 50C (1) exceeds the fair market value of the property on the date of transfer, the AO has to apply his mind on the validity of the objection and may either accept the valuation of the property on the basis of the report of the approved valuer filed by the assessee or invite refer the valuation of the capital asset to the DVO in accordance with s. 55-A. In all these events, the AO has to record valid reasons, which are justifiable in law. He is not supposed to adopt an evasive approach of applying the deeming provision without deciding the objection or referring the matter to the DVO u/s. 55-A as a matter of course without considering the report of the approved valuer submitted by the assessee.

Supporting Judgments

A. T. V. Nagasena (Smt) v. ITO (2012) 53 SOT 166 (Bang.)(Trib.)

B. N. Meenakshi v. ACIT [2010] 326 ITR 229 (Chennai HC)

C. S. Muthuraja v. CIT [2013] 218 Taxman 73 (Mag.)/ 37 taxmann.com 352

D. CIT v.ChandraNarainChaudhri [2013] 219 Taxman 60/38 taxmann.com 275 (Allahabad HC)

E. SarwanKumar .v. ITO (2014) 150 ITD 289 (Delhi)(Trib.)

F. AppaduraiVijayaraghavan .v. Jt. CIT (OSD) (2014) 369 ITR 486 (Mad.) (HC)

G. A.T.E. Enterprises (P.) Ltd. v. Dy. CIT (2013) 55 SOT 175 (Mum.)(Trib.)

H. Raj Kumari Agarwal [2014] 47 taxmann.com 88 (Agra - Trib.)

I. Further the Calcutta HC has Taken the view in the case of Sunil Kumar Agarwal .v. CIT (2015) 372 IT 83 / (2014)225 Taxman 211/272 CTR 332 (Cal.)(HC) that no inference can be made that the assessee has accepted the price fixed by the District Sub Registrar for stamp duty purposes as the fair market value of the property because the assessee has nothing to do in the matter. Stamp duty is payable by the purchaser & it is for the purchaser to either accept it or dispute it. The assessee could not, on the basis of the price fixed by the Sub-Registrar, have claimed anything more than the agreed consideration of a sum of Rs.10 lakhs which, according to the assessee, was the highest prevailing market price. It would follow automatically that his case was that the fair market value of the property could not be Rs.35 lakhs as assessed by the District Sub Registrar. In a case of this nature the AO should, in fairness, have given an option to the assessee to have the valuation made by the Departmental Valuation Officer (DVO) contemplated u/s 50C. As a matter of course, in all such cases the AO should give an option to the assessee to have the valuation made by the DVO. The valuation by the DVO is required to avoid miscarriage of justice. The legislature did not intend that the capital gain should be fixed merely on the basis of the valuation to be made by the District Sub Registrar for the purpose of stamp duty. The legislature has taken care to provide adequate machinery to give a fair treatment to the citizen/taxpayer. There is no reason why the machinery provided by the legislature should not be used and the benefit thereof should be refused. Even in a case where no such prayer was made the AO, discharging a quasi judicial function, has the bounden duty to act fairly and to give a fair treatment by giving him an option to follow the course provided by law.

7. Can the Value decided by the DVO be challenged ?

Valuation is nothing but a opinion and differs from valuer to valuer based on facts on circumstances of the case. The Valuation report is after all statistical hypothesis and leaves room for error and hence the same can be challenged on merits.

Supporting Judgments

A. ITO v. Santosh Kumar Dalmia [1994] 208 ITR 337/77 Taxman 575 (Cal.)

B. Bhola Nath Majumdar v. ITO [1996] 221 ITR 608 (Gau.)

C. Kamalam Rajendran v. Dy. CIT [2003] 129 Taxman 840 (Mad.

D. Abdul Mazid v. ITO [1989] 178 ITR 616/ 44 Taxman 167 (MP)]

E. WaqfAlalAulad v. Addl. CIT [2010] 37 SOT 58 (Delhi),

However in the below mentioned judgments the authorities have taken the view that the

report of the government valuercan not be challenged they being the technical expert.

Supporting Judgments

A. ITO v. United Marine Academy [2011] 130 ITD 113/10 taxmann.com 320 (Mum.) (SB)

B. Mrs. Sosamma Paulose v. Jt. CIT [2003] 133 Taxman 46 (Cochin)(Mag.)

C. CIT v. Raman Kumar Suri [2013] 212 Taxman 411/29 taxmann.com 231 (Bom.)

D. Arya Texturisers & Twister v. ITO [2013 (8) TMI 625 - ITAT Mumbai ITA No. 6906/Mum/2011

8. What will prevail – Circle Rate as on Date of Agreement to Sale or Date of Sale Deed?

Consideration for sale of the immovable property is required to be worked out based on the basis of the stamp duty prevailing on the date of registration of the agreement to sale and not by applying such valuation as on the date of execution of sale deed.

Supporting Judgments

A. Lahiri Promoters vs ACIT (ITA No 12/ Vizag/2009 dated 22-06-2010

B. ITO vs Modipon Limited (2015) 57 Taxmann.com 360 (Delhi – Tribunal)

The amendment made by the Finance Act 2016 though w.e.f 1st April 2017 but confirms that the law laid down by the above authorities is the correct one. The Amendment provides that the consideration is required to be worked out based on the Circle Rate prevailing on the date of execution of Agreement to Sale / MOU provided the amount of Consideration is fixed is vide that agreement and some portion of the consideration (full or part) is paid by the buyer to the seller through account payee cheque or draft or by use of electronic clearing system.

9. Amendment made by the Finance Act 2016 is retrospective or prospective ?

The Provisos have been inserted with effect from 01-04-2017, that is, assessment year 2017-18. So far as the years prior to assessment year 2017-18 are concerned, there could be three views:

a) the provisos do not have any retrospective effect and benefit of taking stamp duty value as on date of agreement was not available to the assessee and that the decisions of the Tribunal to the contrary do not lay down the correct Law;

b) the Tribunal in Lahir Promoters (supra) and Modipon (supra) laid down the correct law and the provisos do not have retrospective effect, that is, it would not be necessary for the consideration or part thereof to have been received at all or received in the stated manner;

c) the Delhi tribunal has laid down the correct law and it would apply subject to the satisfaction of additional condition that the consideration should have been received by account payee cheque,etc., on or before the date of agreement for the transfer.

While the matter is not free from doubt, the second view appears to be more appropriate view.

10. Can the Penalty u/s 271 (1) (c) be levied in case of addition u/s 50 C ?

No penalty can be levied u/s 271(1) (c) simply because the addition has been made u/s 50C as there is neither concealment of income or furnishing of inaccurate particulars of income by the assessee.

Supporting Judgments

A. CIT v. Mrs. N. Meenakshi [2009] 125 TTJ 856 (Chennai)

B. Prakash Chand Nahar v. ITO [2010] 110 TTJ 886 (Jodh.)

C. Bhagya Anant Udeshi ITA No 565/Hyd/ 2015 Date of Decision 0-09-2015

D. CIT v. Fortune Hotels and Estates (P.) Ltd. (2015) 232 Taxman 481 (Bom.)(HC)

E. ACIT .v. Sunland Metal Recycling (Mum.) (Trib.) www.itatonline.org

F. Harish Vooyaya Shetty .v. ITO (Mum.) (Trib.) www.itatonline.org.

G. CIT v. Madan Theatres Ltd (2013) 88 DTR 217 / 260 CTR 75 (Cal.)(HC)

H. ChimanlalManilal Patel v. ACIT (Ahd.) (Trib.) www.itatonline.org

11. Does the Provisions of Section 50 C apply to Depreciable Asset ?

As per section 32(1), in case of any block of assets depreciation is allowable at prescribed percentage on the Written Down Value [WDV] thereof.

WDV in case of any block of asset has been defined in section 43(6)(c) of the Act, according to which "written down value" means aggregate of the opening WDV of all assets falling within that block of assets and adjusted-

(a) by the increase by actual cost of any asset falling within that block acquired during the previous year;

(b) by the reduction of the moneys receivable in respect of asset falling within that block, which is sold/discarded/demolished or destroyed during the previous year; subject to maximum of WDV so increased at (a) above. (So that WDV should not become negative)

By virtue of section 50, computation of Short-term Capital Gain/Loss can be made in the case of transfer of a depreciable asset in the following two cases-

(a) Section 50(1): On 31st March of the previous year, the WDV of block of asset is zero;

(b) Section 50(2): On 31st March of the previous year, the block of asset is empty (block ceases to exist because all assets in that block are sold during the previous year);

Now, in case of block of asset consisting of immovable assets eligible for depreciation, on transfer/sale of any of the long-term/short-term assets contained therein, consideration received as a result of such transfer, if lower than the full value of consideration by virtue of section 50C, may give rise to various tax issues.

Scenario-1: There is sale of depreciable immovable asset during the year & the actual consideration received as a result of such transfer is less than the valuation of asset under section 50C. (Provisions of sub-sections (1) & (2) of section 50 are not applicable, i.e., at year end there are other assets remaining in the block with positive closing WDV)

The deeming fiction of section 50C is for the limited purpose of computing the capital gains under section 45, read with section 48 on the assets specified under the said section. The only purport of section 50C is the extent of the matter specified therein, providing (to that extent) an alternate basis to that specified under section 48, for computing the capital gains chargeable under section 45.

Therefore, the WDV would have to be necessarily computed in terms of section 43(6), for which section 50C has no application, which only applies for computing 'capital gains' arising to the assessee on the transfer of capital assets specified therein.

Supporting Judgment

A. Bhaidas Cursondas & Co. v. ACIT [IT Appeal No. 5019 (Mum.) of 2012, dated 11-3-2015

Scenario-2: There is sale of depreciable immovable asset of business during the year & actual consideration received is less than the valuation under section 50C. Further, provisions of sub-section (1) or (2) of section 50 are applicable, i.e., at year end, either block ceases to exists or the closing WDV has become NIL as a result of such transfer

The term "cost of acquisition" used in section 48 has been modified by section 50, whereas section 50C has modified the term "full valuation of consideration".

The expression 'full value of the consideration received or accruing to the assessee as a result of transfer' used in section 48, remains the same even for the purpose of section 50 and here the provisions of section 50C come into play which lay down that stamp duty valuation is to be adopted or substituted as 'full value of the consideration received or accruing to the assessee as a result of transfer', if it is more than the consideration shown by the assessee.

Thus, even after the creation of legal fiction in section 50, the term 'full value of the consideration received or accruing to the assessee as a result of transfer' used in section 48 and section 50 has remained the same. This term has subsequently been extended by the legal fiction created in section 50C. Further, there is nothing in the provisions of section 50 to debar the application of the provisions of section 50C.

Therefore, even if the capital gain arising from transfer of depreciable asset is computed as per special provisions contained in section 50, provisions of section 50C shall apply so as to adopt stamp duty value as full value of consideration received as a result of such transfer.

There are two deeming fictions created in section 50 and section 50C. The first deeming fiction modifies the term 'cost of acquisition' used in section 48 for the purpose of computing the capital gains arising from transfer of depreciable assets, where as the deeming fiction created in section 50C modifies the term 'full value of the consideration received or accruing as a result of transfer of the capital asset' used in section 48 for the purpose of computing the capital gains arising from the transfer of capital asset, being land or building or both. The deeming fiction created in section 50C thus operates in a specific field which is different from the field in which section 50 is applicable. It was thus not a case where any supposition had been sought to be imposed on other supposition of law. There are two different fictions created into two different provisions and going by the legislative intentions to create the said fictions, the same operate in different fields. **The harmonious interpretation of the relevant provisions makes it clear that there is no exclusion of applicability of one fiction in a case where other fiction is applicable.** As a matter of fact, there is no conflict between these two legal fictions which operate in different fields and their application in a given case simultaneously does not result in imposition of supposition on other supposition of law. Thus, there is no wrong in applying the provision of section 50C to the transfer of depreciable capital assets covered by section 50 and in computing the capital gain arising from the said transfer by adopting the stamp duty valuation.

Supporting Judgments

A. ITO v. United Marine Academy [2011] 130 ITD 113/10 taxmann.com 320 (Mum.)(SB) followed in Rallis India Ltd. v. Addl. CIT [2013] 29 taxmann.com 23/ 55 SOT 288 (Mum.)]

12. Applicability of Section 50C in case of sell of a property by Selling Share of a Company.

Section 2(47) provides the definition of transfer for the purposes of charging capital gains.

Explanation 2 thereof inserted by the Finance Act, 2012 w.r.e.f. 1-4-1962 widens the definition of transfer, thereby "parting with an asset or any interests therein" in any manner, "directly-indirectly, absolutely-conditionally, voluntarily-involuntarily", will also be held as transfer. However, this widened definition of transfer would be applicable when shares of a company registered or incorporated outside India are transferred. Under this situation Explanation 2 will enable to deem the situs of shares so transferred outside India as situated in India. The department may argue that expression "notwithstanding that such transfer of rights has been characterised as being affected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India" is a non obstante clause to the earlier expression, whereas the Explanation 2 in general enables to deem the place of transfer of shares of a company registered anywhere either in India or abroad and the nonobstante expression further widens the applicability of the Explanation 2 to companies registered outside India nullifying/overriding the argument that transfer of an asset or an interest is only dependent or flowing from the transfer of shares of such company. The result is that this Explanation 2 to section 2(47) can be invoked by the revenue to hold that there was a transfer of immovable property as the same was disposed of or parted away indirectly through the transfer of shares of the company. Further, revenue may give a finding that possession was handed over to the new group and, therefore, clause (v) of section 2(47) will also come into operation, i.e., it would be deemed to be a transfer under section 53A of the Transfer of Property Act.

However, merely holding that there was an indirect transfer of immovable property by transferring the shares of the company, holding such immovable property, will not be sufficient to levy the capital gains by holding that it was a transfer of immovable property. There has to be a consideration commensurate with or directly related to the transfer of immovable property. If the consideration is stated to be for transfer of shares then without there being material on record it cannot be inferred that it was a consideration for transfer of immovable property. For invoking section 2(47)(v), read with Explanation 2 all the three ingredients must be simultaneously and cumulatively satisfied. They are: (i) an objective finding based on material on record that in reality it was a transfer of immovable property indirectly through the transfer of shares of the company; (ii) The possession of the property was handed over in part performance of the agreement; (iii) There was a consideration paid for transfer of property. Invoking of the Explanation 2 to section 2(47), in fact, is directly related to a finding that transfer of shares of the company was a colourable device and only a guise to transfer the immovable property. Therefore, prima facie, invoking of Explanation 2 will not be possible unless AO holds the apparent transaction as ruse, disguise or a colourable device.

For arriving at a finding whether a particular series of the transactions is a colourable device or not the onus is on the AO to find out: (i) whether the parties to the transactions have concealed or hidden any fact and/or whether what is shown to be done could have actually happened in different time or at different place; (ii) whether it could be a normal business practice; (iii) even where individual transactions of the device are legal or legitimate, whether combination of these steps creates an effect which is abnormal in the business world and could not have been otherwise undertaken in normal circumstances; (iv) these individual transactions create an effect which is contrary to human probabilities; (v) whether actions of the parties finally are at

variance with the terms of the agreement; (vi) what was the true intent of the parties after looking into all the surrounding circumstances; (vii) that final effect created was different from the effect it was purported to create. The Ld. AO has to look at the substance and look through the series of the transactions by ignoring the form to find out the true effect of the series of the transactions which individually may be perfectly legal.

Thus, if the prime object of transfer of shares is found to be transfer of immovable property and not the transfer of the company and underlying business as a whole, then AO can legally draw a valid inference that it was an indirect transfer of immovable property and the case would be covered within the meaning of the Explanation 2 to section 2(47). The AO can show it by pointing out that at the time of transfer of shares only asset in the company was the immovable property by further showing that the company was not engaged in any business at the relevant time. On the other hand, where the company was engaged in the business, it had several assets including immovable property and company as a whole changed hands by transfer of its shares from one group to another, it could not be said that transfer of shares was a colourable device for affecting an indirect transfer of immovable property through the transfer of shares.

Section 50C is applicable to transfer of capital asset, being land or building or both. On the face of it this section is not applicable to the transfer of shares. However, where AO gives a finding that transfer of shares is a colourable device and underlying motive is to transfer the immovable property held by the company then he can consider to invoke Explanation 2 to section 2(47) and then hold that it is a transfer of immovable property under the guise of transfer of shares. In that case he can also consider to invoke section 50C, read with Explanation 2 to section 2(47) and also clause (v) thereof. However, for invoking section 50C it is necessary that the value of land or building or both is assessed or assessable by stamp valuation authorities (SVA in short). Unless agreement for transfer refers to the land or building or to both as subject matter of transfer, the value thereof cannot either be assessed or assessable. The meaning of the expression "Assessable" has been given in the Explanation 2 to section 50C and it would mean the value adopted or assessed if it were referred to SVA for the purposes of payment of stamp duty, i.e., it means the value which could be assessed in future. If subject matter of transfer are shares, the value of immovable property can never be assessable either in the present or in the future as it is not going to be presented for transfer before SVAs. The insertion of expression "Assessable" by the Finance Act, 2009 w.e.f. 1-10-2010 is to extend the operation of this section in those cases where immovable property is transferred through agreement GPAs and Wills without formally executing conveyance deed. Earlier it was held by the Courts that section 50C can be invoked only where immovable property is transferred through registered conveyance deed. Navneet Kumar Thakkar v. ITO [2008] 110 ITD 525 (Jd.) : Carlton Hotel (P.) Ltd. v. Asstt. CIT [2010] 35 SOT 26 (Luck.)(URO). In other words the expression "Assessed" or "Assessable" refers, in section 50C, to value of immovable property (being land or building or both) and not to the value of other asset in which the immovable property is underlying. The initial expression in the section "when the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than……" also supports the view that the operation of this section is confined only to situations where consideration is received/ accrued for transfer of land or building only and not to any other capital asset. Thus, where the subject matter of transfer are shares,

operation of section 50C is ruled out at the outset. This proposition is further supported by the language used in the Explanation 2 to section 2(47).ThisExplanation deems that transfer of shares will also include transfer of underlying assets. But the operation of this Explanation will stop at this only. It cannot further deem that section 50C will also be applicable for such deemed transfer of underlying assets. There are a plethora of decisions which hold that there cannot be a deeming fiction within a deeming fiction and that deeming fiction is confined to that fiction only and cannot be extended beyond the parameters for which it is enacted. In other words, by virtue of the Explanation 2 to section 2(47) it cannot be further deemed that what was transferred for the purposes of section 50C was land or building or both and not the shares. The legal fiction created by the Explanation 2 to section 2(47) of the Act cannot be extended further to mean that the assessee has actually received the consideration or that the consideration deemed to be so received was for transfer of immovable property and not for transfer of shares so as to invoke section 50C of the Act. The Hon'ble Apex Court in Apollo Tyres Ltd. v. CIT [2002] 122 Taxman 562 observed that "In our opinion, a deeming provision of this nature as found in section 32(3) should be applied for the purpose for which the said deeming provision is specifically enacted, which in the present case is confined only to deeming the UTI a company." In Bengal Immunity Co. Ltd. v. State of Bihar AIR 1955 SC 661 the Hon'ble Supreme Court observed that "legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field". Similar view has been taken in CIT v. Shrishakti Trading Co. [1994] 74 Taxman 590 (Bom.). Even the departmental Circular No. 8 of 2002, dated August 27, 2002 ([2002] 258 ITR (St.) 13), (page 39 of 258 ITR (St.)) prescribes the operation of section 50C to real estate transactions only. ITAT Mumbai in Irfan Abdul Kader Fazlani v. Asstt. CIT [2013] 29 taxmann.com 424/56 SOT 12 also held that section 50C cannot be invoked in cases where subject matter of transfer are shares of a company and not immovable properties held by that company

13. Applicability of Section 147 in case of Sales Consideration is less than Jantri Value but no addition was made by the AO

It has been held in the case of *ITO* v. *Haresh Chand Agarwal HUF* ITA No. 282/Agra/2013 that when the assessee had submitted supporting documents for the sale and calculated capital gain on the basis of actual sale consideration, failure of the AO to invoke section 50C was not escapement of income, as even after considering the provisions of section 50C conclusion could be that in the facts of the case sale consideration represented the correct value.

14. Is revision u/s 263 justified in case of addition u/s 50C ?

If AO has not examined the case with reference to the application of Section 50 C, certainly it becomes erroneous and to that extent prejudicial to the interest of the revenue and hence is liable for revision u/s 263 of The Income Tax Act, 1961

Supporting Judgments

A. Smt. Madhu Bhandari v. CIT, 2012 (9) TMI 356 ITAT (Bang.), dated 29-6-2012

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Glimpses of Supreme Court Rulings

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4 Principle of lifting the corporate veil:

The principle of lifting the corporate veil is an exception to the distinct corporate personality of a company or its members is well recognized not only to unravel tax evasion but also where protection of public interest is of paramount importance and the corporate entity is an attempt to evade legal obligations and lifting of veil is necessary to prevent a device to avoid welfare legislation. It is neither necessary nor desirable to enumerate at the classes where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.

The doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions- the first of the transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transition is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented.

[State of Rajasthan and others vs. Gotan lime stone khanijudyog Pvt. Ltd. And another (4 SCC 469)]

5 Section 2(47) – Transfer Land Development Agreement:

Assessee was in business of real estate and owned area of 35 acres 6 guntas – out of total land area, an area of 34 acres was subjected to joint development agreement and the remaining area of land was kept by assessee for his personal use, i.e. , for construction of his residential house. During the course of search, documents were seized which depicted that the assessee received income in respect of remaining area of 1 acre 6 guntas land by surrendering FAR. High Court by impugned order held that since assessee had surrendered FAR in respect of said remaining portion of land area exclusively held by him and received advance, same would amount to transfer under section 2(47). SLP dismissed against high court's ruling that where assessee surrendered FAR to developer in respect of remaining land kept for his personal use and received consideration, same would amount to transfer within the definition of section 2(47).

[Dinesh D. RankhaVs. CIT (239 Taxman 262)]

6 Income from house property – Chargeable from retrospective effect:

Assessee let out its premises of government of India. Rent for said premises was enhanced in year 1994 retrospectively from previous year in question. Assessing officer issued notice for reassessment to impose tax on said retrospective receipt of rent. A reading of the decision of this court in *E.D.Sasson & Co. Ltd. Vs. CIT (26 ITR 27)* would go to show that the income to be chargeable to tax must accrue or arise at any point of time during the previous year. It was held in said case in categorical terms that income can be said to have accrued or arisen only when a right to receive the amount in question is vested in the assessee. Viewed from the aforesaid perspective, it is clear that no such right to receive rent accrued to the assessee at any point of time during the assessment year in question, in as much as enhancement though with retrospective effect, was made only in the year 1994. The contention of the revenue that the enhancement was with retrospective effect does not alter the situation as retrospectivity is with regard to the right to receive rent with effect from an anterior date. The right, however, came to be vested only in the year 1994.

Therefore, it has to be held that the notice seeking to reopen the assessment for assessment year in question is without jurisdiction and authority of law. The said notice, therefore, is liable to be interfered with and the order of the High Court set aside.

[P.G. & W. Sawoo (P) Ltd. Vs. Asst. CIT (239 Taxman 257)]

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From the Courts

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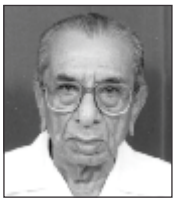

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15 Sec. 41(1) : Applicability : CIT v/s. V.S. Dempo &. Co. Ltd. (2015) 233 Taxman 415 (Bombay)

Issue :

Are the provisions of Sec. 41(1) applicable on writing off loan and for purchase of machinery?

Held :

Assessee had taken loan and used for the purpose of purchase of machinery. There was cessation of liability. It was held that when the loan was utilized for purchase of machinery and such loan was written off, provisions of Sec. 41(1) would not be applicable.

16 Meaning of interest under Income Tax Act : Beacon Projects Pvt. Ltd. v/s. CIT (2015) 377 ITR 237 (Ker)

Issue :

What is the meaning of interest under the Income Tax Act?

Held :

A statutory enactment ordinarily be construed according to plain natural meaning of its language and no words should be added, altered or modified unless it is plainly necessary to do so in order to present a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. If this is the principle to be borne in mind, the term "interest" as defined in section 2(28A) of the Income Tax Act, 1961 has to be construed strictly. On such literal construction, it can be seen that before any amount paid is construed as interest, what is required to be established is that the sum paid is in respect of any money borrowed or debt incurred and that there is a debtor – creditor relationship between the parties. These are necessary ingredients of Sec 2 (28A).

17 Tax Avoidance : Sec. 40A(2) : Principal CIT v/s. Gujarat Gas Financial Co. Ltd. (2015) 233 Taxman 532 (Guj)

Issue :

Whether provisions of Sec. 40A(2) can be invoked when both the parties are taxed at maximum marginal rate ?

Held :

Assessee – company was a 100 per cent subsidiary company of 'G Ltd', a Government company. 'G Ltd.' was engaged in distributing gas through pipelines to its customers. Assessee entered into an agreement with 'G Ltd.' for providing services etc. to 'G Ltd.' It was agreed that assessee company would pay certain sum for each connection. Said charges were claimed for deduction under section 37(1) which was allowed. Subsequently, Assessing Officer found that assessee was using some space of 'G Ltd.'. Assessing Officer initiated proceedings by exercising powers under section 40A(2) and deducted estimated rent of space from service charges. It was observed that assessee company as well as parent company, both were assessed to tax at maximum marginal rate and, therefore, it could not be said that service charge was paid to G at unreasonable rate to evade tax. Since revenue could not point out that assessee evaded payment of tax, invocation of section 40A(2) was not valid.

18 Value of opinion expressed by Institute of Chartered Accountants of India : CIT v/s. Pact Securities and Financial Services Ltd. (2015) 234 Taxman 17 (AP and Telangana),374 ITR 681 (AP)

Issue :

Whether opinion of Institute of Chartered Accountants of India in accounting matter is relevant for computing income as per Income Tax Act?

Held :

Assessee had given certain assets on lease and shown gross lease rentals as income in profit and loss account. It claimed deduction of lease equalisation charges from lease rental income. It submitted that treatment in accounts had been given as per guidance note on accounting for leases issued by ICAI. Assessing Officer disallowed deduction of lease equalisation charges from lease rental income. For some assessment years, Tribunal allowed deduction of lease equalisation charges from lease rental income. For remaining assessment years, Tribunal disallowed deduction of lease equalisation charges from lease rental income holding that assessee was wrong in employing guidance note issued by ICAI for computing income from lease rent. Notwithstanding fact that opinion of ICAI was expressed in guidance note, which had not attained a mandatory status, would not be a ground to discard books of account of assessee or method of accounting for lease followed by assessee and disallowing deduction of lease equalisation charges from lease rental income. Addition made was held to be not justified and it was deleted.

19 Payment towards royalty for knowhow spread over 10 years is revenue expenditure : CIT v/s. SMCC Construction India Ltd. (2015) 234 Taxman 14 (Delhi)

Issue :

When a payment for technical know-how is made spread over 10 years as royalty whether such expenditure is revenue expenditure?

Held :

Assessee entered into a technical collaboration agreement with 'S' Ltd, Japan, in respect of construction management services. In terms of agreement, 'S' Ltd, had to transmit technical information to assessee. In return, assessee had to make payment of royalty to 'S' Ltd, spread over a period of 10 years. Assessing Officer opined that payment made to 'S' Ltd. was a capital expenditure. Commissioner (Appeals) as well as Tribunal held payment in question to be revenue expenditure. It was noted that even though payment was spread over a period of 10 years, yet it did not make assessee owner of technical know–how. It was also found that agreement in question was not of permanent nature. In view of above, impugned order passed by Tribunal was upheld.

20 Co-operative Society : Interest earned : Meaning of "Attributable to" v/s. "Derived From" Guttigedarara Credit Co. Op. Society v/s. ITO (2015) 377 ITR 464 (Karn)

Issue :

What is meaning of "attributable to" v/s. "derived from" in respect of interest earned by a cooperative credit society.

Held :

Under the provisions of section 80P of the Income Tax Act, 1961, in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains attributable to the business is entitled to special deduction. The word "attributable to" is certainly wider in import than the expression "derived from". Whenever the Legislature wanted to give a restricted meaning, it used the expression "derived from". The expression "attributable to" being of wider import, it is used by the Legislature whenever it intended to gather receipts from sources other than the actual conduct of the business. A co-operative society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The society cannot keep idle the interest so derived or the capital, if not immediately required to be lent to the members. If it deposits this amount in a bank so as to earn interest, the interest is attributable to the profits and gains of the business of providing credit facilities to its members. The society is not carrying on any separate business for earning such interest. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing

contd. on page no. 162

Tribunal News

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13 DDIT Vs. SAVVIS Communication Corporation [2016] 69 taxmann.com 106 (Mumbai)

Assessment Year: 2009-10 Order Dated: 31th March, 2016

Basic Facts

The assesse is a US-based company engaged in the business of providing information technology solutions, including, amongst other things, web hosting services. During the year under consideration the assessee earned income from the provision of web-hosting services to two Indian entities. In the income tax return filed by the assessee, the income so earned was disclosed but claimed to be not taxable in India in view of the provisions of the India-USA DTAA. It was contended that the income so earned cannot be taxed in India as 'fees for included services' in view of the provisions of Article 12 of the treaty. Further, in light of Article 7, no taxability arises as the assessee does not have a Permanent Establishment in India fulfilling the requirements of Article 5. The AO took note of the fact that the services provided by the assessee was essentially in the nature of limited period contracts for hosting data and applications on the data centres maintained by the assessee, outside India, which were in the nature of specialized facilities consisting of, *inter alia,* server on which data and applications were hosted, network and hardware which facilitated the connectivity of the server with the outside world. He held that in essence the receipt was for granting the right to use the scientific equipment which was taxable in India under item (*va*) of Explanation 2 to section 9(1)(*vi*) as also article 12(3)(*b*) of Indo-US Tax Treaty. Aggrieved, the assessee preferred an appeal with the CIT(A). The CIT(A) upon verification of facts, upheld the contention of the assessee and held that web-hosting services provided by the assessee does not amount to royalty as per provisions of the Act or the tax treaty.

Issue

Whether the payment received for providing web hosting services, with all back up, maintenance, security and uninterrupted services, is taxable as 'royalty' under clause (*iva*) to Explanation 2 to Section 9 (1)(*vi*) of the Act.

Held

The very basis of the impugned addition is AO's finding that the receipts in question were on account of use of scientific equipment, and, for that reason, giving rise to an income taxable under section 9(1)(*vi*) of the Act as also article 12(1)(*b*) of the Indo US tax treaty. This finding, however, proceeds on the fallacy that when a scientific equipment is used by the assessee for rendering a service, the receipt will be construed as a receipt for use of scientific equipment. The use of a scientific equipment by the assessee, in the course of giving a service to the customer, is something very distinct from allowing the customer to use a scientific equipment. The true test is in finding out the answer to the fundamental question- is it the consideration for rendition of services, even though involving the use of scientific equipment, or is it the consideration for use of equipment *simplictor* by the assessee? In the case of former, the consideration is not taxable, in the case of the latter, the consideration is taxable. In the present case also, what the assessee is providing is essentially web hosting service, though with the help of sophisticated scientific equipment, in the virtual world. The scientific equipment used by the assessee enable rendition of such a service, and such a use, which is not even by the Indian entity, is not an end in itself. In this view of the matter, even though the services rendered by the assessee to the Indian entities may involve use of certain scientific equipment, the receipts by the assessee cannot be treated as "consideration for the use of, or right to use of, scientific equipment" which is a *sine qua non* for taxability under section 9(1)(*vi*) read with Explanation 2 (*iva*) thereto.

14 Ideal Sheet Metal Stamping & Pressing (P.) Ltd. Vs. ACIT [2016] 69 Taxmann.com 337 (Ahmedabad)
Assessment Year: 2006-07 Order Dated: 17th February, 2016

Basic Facts

During the course of scrutiny assessment proceedings the AO noted that certain family members of Director and Ex-Directors have travelled to US and the expenses on these travelling have been claimed as deduction on account of travelling expenses. It was explained by the assessee that the foreign visits of the Directors were to negotiate business deal and in support of this contention the assessee, inter alia, produced invoice issued by dealers. The AO was of the view that these expenses are in the nature of personal expenses as the assessee Company is not benefited in any way by these expenses. Accordingly, the AO proceeded to disallow the travelling expenses. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) opined that since the expenses were for a business trip the expenses cannot be entirely disallowed. However, since the directors are relatives the possibility of them incurring personal expenses cannot be ignored, the CIT(A) confirmed 50% of the disallowance and deleted the addition for the remaining amount. Aggrieved, both assessee and the Revenue preferred an appeal with the Hon'ble Bench of the Tribunal.

Issue

In the given circumstance whether disallowance of foreign travel expenses under section 40A(2) was justified?

Held

As for the emphasis on the fact that the persons travelling together were family members, the tribunal noted that all the four persons were directors of the assessee. The purpose behind all the four directors visiting together was to introduce two other directors to the business associates before one of the directors retires in May 2006. Nothing really turns against the assessee so far as relationship of the directors is concerned.The decision that the assessee's senior directors, who are on their way out, personally meet the vendors and introduce the newer directors is essentially a business decision and it cannot be open to the AO to question same. The element of business needs in such circumstances is clearly present. The assessee company may or may not have direct tangible benefit as a result of the expense but then just because the assessee does not get immediate tangible benefit, the expense does not cease to be deductible in nature. Further, the disallowance under Section 40A(2) comes into play only when the payment is made to the specified persons.That is not the case here. The payment is made in respect of foreign travel of the specified persons but that does not bring the expense within the scope ofdisallowance under section 40A(2). The very foundation of impugned disallowance is thus wholly unsustainable in law.

15 Shri Narayan Tatu Rane *v.* ITO [2016] ITA No. 2690 and 2691/Mum/2016 (Mumbai)
Assessment Year: 2007-08 and 2008-09 Date of Order: May 05, 2016

Basic Facts

The assessee originally filed returns of income for both the years under consideration u/s 139(1) of theAct. During the course of search and seizure operations in the case of M/s R.N.S Infrastructure Ltd, certain documents indicating payments made to persons holding public office were seized. One of the said documents contained certain payment details under the heading "Rane C M".The AO reopened the assessment of both the years based on this information and completed the assessment without making any addition. On examination of the assessment records, the Ld. Pr. CIT took the view that the AO did not examine and verify the issues by correlating the evidences found during the course of search conducted in the hands of R.N.S. Infrastructure. Accordingly he set aside the assessment orders of both the years under consideration and directed the AO to redo the assessment de novo. The assessee contended that the Ld. CIT is not entitled to initiate revision proceedings on the ground that the enquiry was not conducted in the manner thought by him.

Issue

Whether the assessment order can be considered prejudicial to the interests of the revenue? Whether revisionary order passed by the Ld. CIT is valid?

Held

The Hon'ble ITAT held that the Ld. Pr. CIT can only revise the order if it is shown that the assessment order is erroneous in so far as prejudicial to the interests of the revenue. The ITAT held that the Ld. Pr. CIT has failed to show that the view taken by the AO is unsustainable in law and has simply expressed the view that the AO should have conducted enquiry in a particular manner as desired by him. The Ld Pr. CIT has taken support of the newly insertedExplanation 2(a) to sec. 263 of the Act. The said Explanation cannot be said to have override the law interpreted by Courts that CIT cannot remit the matter for a fresh decision to the AO to conduct further enquiries without a finding that the order is erroneous. If that be the case,then the Ld Pr. CIT can find fault with each and every assessment order, without conducting any enquiry or verification in order to establish that the assessment order is not sustainable in law and order for revision. He can also force the AO to conduct the enquiries in the manner preferred by Ld Pr. CIT, thus prejudicing the independent application of mind of the AO. Definitely, that could not be the intention of the legislature in inserting Explanation 2 to sec. 263 of the Act, since it would lead to unending litigations and there would not be any point of finality in the legal proceedings. Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. This provision as per Tribunal shall apply, if the order has been passed without making enquiries or verificationwhich a reasonable and prudent officer shall have carried out in such cases,which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinizing the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence,in view of the Tribunal, what is relevant for clause (a) of Explanation 2 to sec.263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorize or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In Tribunal's view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquires or verification that would have been carried out by a prudent officer. Hence, in tribunal's view, the question as to whether the amendment brought in by way of Explanation 2(a)shall have retrospective or prospective application shall not be relevant.

Also no other corroborative material was available with the department to show that the explanations given by the assessee were wrong or incorrect. Accordingly, based on the failure of the two conditions required to be satisfied before invoking revisionary powers, the ITAT set aside the revision orders passed by the Ld. CIT for the two years under consideration.

16 Mitsue Prime Advanced Composites India (P.) Ltd. *v.* DCIT [2016] 70 taxmann.com 123(Delhi)

Assessment Year: 2010-11 Date of Order: April 28, 2016

Basic Facts

The assessee is a subsidiary of Mitsui Chemicals Inc., a company incorporated in Japan carrying on the business of manufacture and sale of all types of poly propylene and poly propylene compounds. It filed its return declaring loss. Six international transactions were reported in Form no. 3CEB. The assessee applied Transactional Net Margin Method (TNMM) with Profitlevel indicator (PLI) of Operating profit/Operating revenue (OP/OR) to demonstrate that its international transactions were at arm's length price(ALP). The TPO accepted all the international transactions except availing of specified business and consultancy services,

engineering support services and management support services. The TPO separated these three international transactions of intra-group services from the other international transactions and determined their ALP under the Comparable Uncontrolled Price (CUP)method at Nil. The AO passed the assessment order making such addition, thereby reducing the declared loss. The assessee did not challenge the addition in appeal as the returned loss was marginally reduced. Thereafter, penalty proceedings were initiated by the AO. Not convinced by the assessee in the penalty proceedings, the AO imposed penalty, which came to be upheld in the first appeal.

Issue

Whether the TPO can impose penalty under section 271(1)(c) on the mere fact that the TPO determined Nil ALP of the international transactions?

Held

The Hon'ble ITAT held that the assessee's application of TNMM in respect of three international transactions under consideration is in accordance with the provisions contained in section 92C. The ITAT held that the benefit derived by the assessee from payments under these three international transactions cannot be considered as nil as the assessee has not only acquired a new business from GSC but also availed services for setting up its plant. Also the action of TPO in changing the most appropriate method from TNMM to CUP without bringing on record any incomparable instance is itself faulty. Further, an honest difference of opinion between the assessee and the revenue can never be a cause for imposition of penalty. The ITAT held that the assessee has satisfied all the requisite conditions as stipulated in the exception crafted in Explanation 7 granting immunity since the assessee has proved that the price paid by it under such transactions was computed in accordance with the provisions of section 92C and in manner prescribed under the TNMM in good faith and with due diligence, and hence it cannot be visited with penalty under section 271(1)(c).

17 Reliance Communications vs. ACIT (TDS) -[2016] 69 taxmann.com 307 (Mumbai)

Assessment Year: 2010-11 and 2011-12

Order Dated: 11.04.2016

Basic Facts

The assessee company is CDMA service provider offering full telecommunication services to its telecom subscribers across Pan India. Post December 2008 and January 2009, the assessee company entered into a roaming agreement with Reliance Telecom Ltd. The assessee submitted that the visiting network operator does not provide any technical service to the home network operator so as to deduct TDS for rendering of technical services. The AO concluded that human intervention is required in the process and therefore, it is rendering of technical services. The AO held that the assessee cannot be treated as assessee-in-default under section 201(1), but would be liable to pay interest under section 201(1A) for the assessment year 2010-11 and 2011-12. The Ld. CIT confirmed the order of the AO on the issue of roaming charges in the nature of fees for technical service but held that the assessee remained in default for levy of tax under section 201(1) as the assessee had not furnished any declaration from the deductees or about their status of their return of income having already filed, wherein the said payments had already incorporated in their return of income. Regarding interest under section 201(1A), the Ld. CIT (A), though accepted the assessee's plea in principle, but, finally dismissed the ground of the assessee on the basis that the appellant has not furnished any declaration from the deductee in support of the fact.

Issue

Whether assessee-deductor could be held to be assessee-in-default for non-deduction of tax at source where there is a pending dispute regarding taxability of payment of roaming charge by one telecom operator to other?

Held

The Hon'ble ITAT held that nothing conclusive finding or view can be drawn that there is constant

human endeavor or involvement of human interface throughout the process. It is obvious that if any technology or machine developed by human is put to operation automatically, then there is some human involvement but it is not a constant endeavor of the human in the process. Relying on the decision of the Hon'ble Supreme Court in the case of Kotak Securities Ltd. vide judgment and order dated 29th March, 2016, the ITAT held that the whole test of constant human intervention and human interface fails in the case of roaming charges. The ITAT did not enter into the semantics of this issue and left the issue open-ended and held that the observations made above are not final conclusion on this matter.

The ITAT further held that the AO himself has held that assessee is not in default in terms of section 201(1) in wake of evidences filed before him, then without any defect or any material to rebut, there cannot be any deviation from the order of the AO and accordingly, observation and finding of the CIT(A) with regard to section 201(1) were set aside.

So far as the liability of interest under section 201(1A), the ITAT held that if deductees have themselves incurred huge losses and have shown these losses in their return of income on which no income-tax is payable then, there is no occasion to pay tax by the deductees and hence, in such a situation, neither the assessee can be held to be assessee-in default for nor non-deduction of the tax for amount paid by the deductees would entail levy of interest under section 201(1A). Thus, if contention of the assessee as raised before the CIT(A) is found to be correct then no interest under section 201(1A) should be charged and accordingly relief should be given.

18 Topsgrup Electronic System Ltd. Vs. ITO [2016] 67 taxmann.com 310 (Mumbai)
Assessment Year: 2009-10 Order Dated: 19.02.2016

Basic Facts

The assessee company, a wholly owned subsidiary of the Tops Securities Ltd. (TSL) . Tops BV is a 100% subsidiary of the assessee. The assessee was engaged in the business of providing security services. However, it started carrying on the activity of an investment/holding company and in order to expand its business, it proposed to invest in Shield Guarding Co. Ltd., A UK based company. Towards this, assessee's holding company entered into the agreement with it's investors and subscribed to the shares of the assessee. The money received by the assessee from its parent company were invested in Tops BV(wholly owned subsidiary of the assesse) which was to be the Intermediate holding company to acquire Shield at a premium. The transaction was shown as part of Form no.3CEB but the same was not benchmarked since it did not have bearing on profitability & therefore TP regulations were not applicable. The TPO contended that AE (viz. Tops BV) got the huge premium due to its special relation with the assessee and the assesse failed to establish that the AE was capable to raise loan on standalone basis. In the absence of this share premium, the AE would have had to take loans from the assessee or on open market which would entail it to pay huge interest costs. The AE thus got the funds by way of the above transfer by the assessee without being charged any interest thereon and the premium is nothing but a loan given by Assesse to its AE in the garb of share premium. The CIT(A) upheld the order of the AO.

Issue

Whether the investment in shares issued at premium by wholly owned subsidiary outside India can be recharacterised as interest free loan given to the AE

Held

The ITAT held that there is no income/potential income arising to the assessee out of the impugned international transaction of investment in acquiring shares the same would not fall in the purview of Indian TP provisions, the Tribunal relied on the decision of Mumbai High Court in case of Vodafone India which ratio applied equally to inbound and outbound capital transactions. In the absence of provision/Rules for recharacterization of investment in share capital into loan and vice-versa the tribunal held that the recharacterisation of the capital transaction into loan as sought for by the TPO/ CIT(A) was not tenable.

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Unreported Judgements

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In this issue we are giving gist of Hon'ble Gujarat High Court decision in the case of B.A. Research India Ltd. , wherein the issue was whether Assessing Officer can deny the deduction u/s 80IB(8A)(ii) of the Act, particularly when the prescribed authority has granted approval as required under the Act.

We hope the readers would find the same useful.

In the High Court of Gujarat at Ahmedabad

Tax Appeal No. 233 of 2016

With

Tax Appeal No. 234 of 2016

For Approval and Signature:

Honourable Mr. Justice Akil Kureshi

and

Honourable Mr. Justice A.J. Shastri

The Principal Commissioner of Income Tax-1 ……. [Appellant(s)]

v/s

B.A. Research India Ltd. …… [Opponent(s)]

Appearance :

Mr. Manish Bhatt, Sr. Counsel with Ms Mauna M. Bhatt,

Advocate for the Appellant(s) No.1

Mr. Mukesh M. Patel with Mr. RK Patel with Mr. BD Karia with Mr. Jigar M Patel with Mr Darshan R Patel for the Opponent(s) No. 1.

Gist only

Following substantial question of law was taken up by the Hon'ble Court for consideration in this appeal.

"Whether the Income Tax Appellate Tribunal has substantially erred on facts and in law in holding that once the prescribed authority grants approval under sub-rule (2) of rule 18D of the Income Tax Rules, 1962, the revenue cannot deny deduction under section 80IB read with rules 18D and 18DA and thereby considering such grant of approval to be the sole requirement for granting deduction under section 80IB(8A)(ii) of the Act?"

Facts :

i) The assessee was engaged in scientific research activities. In the original assessment proceedings A.O. had granted deduction u/s 80IB(8A) barring some amount on which he did not grant the deduction.

ii) Thereafter, Administrative CIT revised the order u/s 263, which was challenged by the assessee before Hon'ble Tribunal which set aside the order of the CIT and directed him to pass a fresh order u/s 263. Thereafter, Commissioner passed fresh order u/s 263 dated 29/3/2014 and held that assessee was not eligible to claim deduction u/s 80IB(8A) of the Act as it did not satisfy all the provisions listed in the said sub-section and rule 18DA of the I.T. Rules. The Commissioner referred to following four conditions, which had to be complied:

"That the company

(i) is registered in India ;

(ii) has its main object the scientific and industrial research and development ;

(iii) is for the time being approved by the prescribed authority at any time after the 31st day of April 2007 ;

(iv) fulfills such other conditions as may be prescribed;

He agreed that the assessee had fulfilled conditions no.(i) and (iii) but failed to satisfy conditions no. (ii) and (iv). Inter alia on such grounds, the Commissioner passed the said order."

Against the order of CIT, the assessee approached Hon'ble Tribunal again and Tribunal allowed assessee's appeal. The Tribunal referred to and relied upon the decision of coordinate Benches of Bombay and Delhi Tribunal to come to the conclusion that the Revenue authorities cannot sit in appeal over the order of the prescribed authority. The Tribunal was of the opinion that the prescribed authority was an expert body exercising powers to grant approval for the purpose of deduction under section 80IB(8A) of the Act and the Revenue cannot decline the deduction ignoring such approval. It is this judgement of the Tribunal which the Revenue has challenged in this appeal.

Decision :

The Hon'ble High Court discussed several decisions and held that when there is a prescribed authority, which is entitled to consider the request for approval by the assessee and such authority has granted the approval it does not remain in the domain of the A.O. or the department to question such approval granted by the prescribed authority and the same shall be final and conclusive. The Hon'ble Gujarat High Court disposed off the departmental appeal by dismissing the same in the following words:

"18. Under the circumstances, once such authority grants approval and such approval holds the field, it would not be open for the Assessing Officer or any other revenue authority to go behind such approval certificate and reexamine for himself, the fulfillment of the conditions contained in sub-rule(1) of rule 18DA. These conditions are prescribed in terms of clause no. (iv) of sub-section (8A) of section 80-IB of the Act. The Commissioner was therefore, completely in error in observing that even though the assessee company had valid approval issued by the prescribed authority, the Assessing Officer still had to examine whether such company had fulfilled the conditions referred to in clause (iv), as such other conditions as may be prescribed, reference to which we find in rule 18DA. Any other view would create conflict of decision making process. Even counsel for the Revenue could not dispute that many of these requirements prescribed under rule 18DA are to be examined by the prescribed authority. If once the prescribed authority examines such conditions and upon being satisfied that the conditions are fulfilled, grants approval, can the Assessing Officer take a different view? The answer obviously has to be in the negative. First and foremost, the prescribed authority is a specialized body having expertise in the field of scientific research and development. The requirements are extremely complex scientific requirements and have therefore, been rightly placed in the hands of an expert body to judge. Secondly, there is no reason why once an authority which is prescribed under the Rules for a specific purpose has been invested with statutory functions, the Assessing Officer should be allowed to overrule the decision of the said body. Thirdly, there are multiple indications within the Rules themselves. We may recall, under sub-rule(2) of rule 18D, extension of approval once granted is subject to satisfactory performance of the company, to be judged on periodic review. Further, sub-rule(3) of Rule 18DA gives wide powers to the prescribed authority to withdraw the approval if it is found that the same was to avoid payment of taxes by its group companies or companies related to its directors or majority of its shareholders or that any provisions of the Act or the Rules have been violated. Thus once again the task of judging whether the provisions of the Act or the Rules have been violated or not, has entrusted to the prescribed authority with matching powers for withdrawal of the approval, if the authority is satisfied about such breach.

20. Judged from such angle, in our opinion, once the approval is granted by the prescribed authority and such approval is valid, it would no longer be open for the Assessing Officer to verify the satisfaction of the conditions prescribed under rule 18DA in order to refuse deduction under sub-section (8A) of section 80-IB of the Act. This however, does not mean that other issues relevant to the claim of deduction by the assessee would be taken away from the jurisdiction of the Assessing Officer. We do not share the anxiety of the Counsel for the Revenue that interpretation that we have adopted would divest the Assessing Officer from examining any claim of deduction under the said provisions and grant deduction mechanically without verifying the claim. For example, in this very case, the Assessing Officer had doubt about the sample storage income being part of the income from eligible business. After hearing the assessee, he disallowed the deduction holding that the same does not form part of the income of the assessee's business of scientific research and development.

*21. Before closing, we may refer to the decision cited by Shri Bhatt for the Revenue. In case of **Southern Technologies Ltd.** (supra), the issue was regarding the taxability of income ignoring the provisions contained in the Companies Act concerning non banking financial company which permitted adjustment of a provision for possible diminution of value assets of the company allowing the company to show only the net figure in the balance-sheet.*

22. In the result, while answering the question in favour of the assessee, we clarify that the power of the Assessing Officer to verify the claim of deduction is not taken away. He can certainly verify the accounts and refuse deduction which does not form part of section 80-IB(8A) and the income which does not arise out of the eligible business. He however, cannot ignore the approval granted by the prescribed authority and hold that the prescribed conditions are not fulfilled by the assessee."

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contd. from page 154

credit facilities to its members by a co-operative society and is entitled to be deducted from the gross total income under section 80P.

21 Conditions for applicability of Sec. 41(1): CIT v/s. Velocient Technologies Ltd. (2015) 280 CTR 142 (Delhi), 376 ITR 131 (Del)

Issue :

What are the conditions for applicability of provisions of Sec. 41(1) of I.T. Act.

Held :

Sec. 41(1) which empowers the Revenue to treat the amounts claimed one way or the other in the previous years as the assessee's income, and bring it to tax, relates to deductions made for any year in respect of loss expenditure or trading loss. The second important aspect is that the mere change of character of the amounts in the books of the assessee is undeterminative as to whether it can be brought to tax under s. 41(1). By no stretch of imagination could the initial amount of Rs. 10.65 crores have been treated as loss, expenditure or trade liability incurred during the previous year. No doubt, the circumstances whereby the assessee forfeited the amounts raised certain suspicions. Those suspicions led to the reopening of the previous year's assessment and completion of reassessment by adding those amounts under s. 68. The amounts were never treated as trading receipts but as unsecured loans, no doubt for the purpose of establishing or furthering a business, yet they were loans and not trading receipts or loss from expenditure – the other instances attracting s. 41(1). Independent of the findings with respect to treatment for earlier year as unaccounted receipt under S. 68 given the phraseology and wording of s. 41(1), the Revenue's argument for the latter's applicability are without substance and merit.

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Controversies

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Whether Share application/Share Capital money received by the company is covered by provisions of Sec. 68?

Issue:

X Pvt. Ltd. has received an amount of Rs. 1 Crore as Share application money in A.Y. 2012-13 and X Ltd. Pvt. Ltd. Company has received Rs. 1 Crore as Share Capital money in A.Y. 2012-13. The AO is of the view that the share application money and Share Capital money is hit by Sec. 68 as the source of the money remains unexplained.

Assessee contains that Share application money and Share Capital Money is not covered by the provisions of Sec. 68 and cannot be taxed as income from undisclosed sources in the hands of the company.

Proposition:

It is proposed that even if the Share Application money is not satisfactory explained by the companies as well as if Share Capital money is not explained, no addition can be made u/s. 68 in the hands of the company.

View against the Proposition:

It is submitted that onus is on the assessee to prove that the cash credit is genuine and cash creditor is a man of means on the issue of burden of proof a very specific and illustrious decision was from the Hon. Culcutta High Court in CIT vs. Precision Finance Pvt. Ltd. (1994) 208 ITR 465 (Ca I) where in it was laid down that the assessee is expected to establish:-

1. Identity of his creditors.
2. Capacity of creditors to advance money; and
3. Genuineness of transaction.

Where any sum is found credited in the books of the assessee for any previous year it may be charged to Income Tax as the income of the assessee for that previous year if the explanation offered by assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. SumatiDayal Vs. CIT (SC) 214 ITR 801.

Assessee has to establish identity of subscribers to share capital and prove their creditworthiness and genuineness of transaction; Furnishing of Income Tax file numbers may not be sufficient to discharge the burden – CIT V. NivedanVaniyaNiyojan Ltd. (2003) 130 Taxmann 153/263 ITR 623 (Cal.)

Let me refer to now provisions of section 68 of the Act (upto A.Y. 2012-13)

Section 68 of the act provides that if any sum is found credited in the books of any assessee and he either :

- Does not offer any explanation about nature and source of money; or
- Explanation offered by him is not to the satisfaction of Assessing Officer ,
- Then, such amount can be taxed as his income.

The primary onus of satisfactory explanation of such credits is on assessee.

It is important to note the recent decision of Hon'ble high court of Delhi in case of CIT vs. Nova Promoters & Finlease (P)Ltd. [(2012)18 taxmann 217] wherein Hon'ble Justice Mr. R.V. Easwar held that "there is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the income tax officer is entitled to draw the inference that the receipt are of an assessable nature. Section 68 recognizes the aforesaid legal position. The view taken by the Tribunal on the duty cast on the assessing officer by section 68 is contrary to the law laid down by the Supreme Court in the judgment cited above.

ITAT Delhi Bench in the case of JankiJwellers vs. ITO Ward-4 held as under:

"The Assessing Officer should also allow an opportunity to the assessee to establish the identity and creditworthiness of the share applicants and also

to establish the genuineness of the transactions in question and after considering all these aspects and after providing adequate opportunity of being heard to the assessee, the Assessing Officer should pass necessary order as per law.

Further ITAT Delhi Bench in the case of ITO Ward-5 vs. M/s Kushara Real Estate (P)Ltd, it was held that whether the transaction in question is genuine transaction or not should be decided and for the purpose the matter was remanded to CIT(A) for passing a specking order regarding receipt of share capital with high premium.

View in favour of the proposition:

Let me refer to the landmark judgments in favour of the proposition:

CIT v. Lovely Exports (P)Ltd (2008)216 CTR 195 (SC):

The onus cast upon the assessee company was discharged upon disclosure of the names and particulars of the alleged bogus shareholders. It was for the department to conduct its own enquiry thereafter and addition if any may be in the hands of the shareholders.

CIT v. Steller Investment Ltd.(2001) 115 Taxman 99 (SC):

Even if subscribers to the capital are not genuine, the amount received by the company as share capital could not be assessed in the hands of the company itself. Such amounts should be considered for assessment in the hands of persons who are alleged to have really advanced the money.

CIT v. Divine Leasing & Finance Ltd. (2007) 158 Taxman 440(Delhi)- Delhi High Court

The judgment held that the amount of share application money received by a company from alleged bogus share holders could not be regarded as undisclosed income u/s 68 when the assessee furnished details regarding shareholders. If the names of the alleged bogus shareholders are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law. The Supreme Court upheld this view.

CIT v. STL Extrusion (P) Ltd. (2011) 333 ITR 269/11 taxman.com 125(MP):

Where assessee had duly discharged its onus by furnishing names, age, address, date of filing application of share, number of shares of each subscriber, the AO was not justified in making addition u/s 68.

CIT v. Arunananda textiles (P)Ltd. (2011) 203 taxman 32 (Mag.)/15 taxman.com 226(kar.):

It was not for the assessee to pace material before the Assessing officer about creditworthiness of the shareholders. Once the company had given the addresses of the shareholders and their identity was not in dispute, it was for the assessing officer to make further inquiry with the investors about their capacity to invest the amount in shares.

CIT v. Dwarkadhish Investment (P)Ltd. (2010) 194 Taxman 43/ (2011) 330ITR 298 (Delhi):

Once the assessee proves the identity of creditors/ share applicants, by either furnishing their PAN or income tax assessment numbers, and shows genuineness of transaction by showing money in his books either by account payee cheque or draft or by any other mode, onus of proof would shift to revenue.

CIT v. Creative World Telefilms Ltd. (2011) 203 taxman 36/333 ITR 100/15 taxman.com 183 (Bom.)

Once documents like PAN card, bank account details or details from the bankers were given by the assessee, onus shifts upon the Assessing Officer and it is on him to reach the shareholders. The Assessing Officer could not burden the assessee merely on the ground that summons issued to the investors were returned back with the endorsement not traceable

The decisions were based on a settled legal position, application to any cash credit like loans, deposits, advances, share capital or others, that;

- Primary onus is on assessee;
- An assessee does not have to establish source of source;
- If primary onus is discharged, burden shifts to Tax department;
- AO needs to discharge his burden and reach an objective satisfaction;
- AO has a discretion to assess cash credits;

- In a given case the amount can be assessed in the hands of investor/lender under other applicable provisions of law, like section 69.

Summation:

The Law on section 68 regarding share applications and share capital money received by the company upto A.Y. 2012-13, is as good as settled in view of the decision of Supreme Court in lovely exports Pvt. Ltd. 216 CTR 195. Their lordships of Supreme court held as under:

"Whether share application money can be treated as undisclosed income of the assessee? If the share application money is received from alleged bogus shareholders, whose names are given to AO, then department is free to proceed to reopen their individual asst. in accordance with law, but it cannot be regarded as undisclosed income of the assessee."

The special leave petition against the judgment of lovely exports was dismissed by their lordships of Supreme Court reported in 319 ITR 5. The question is whether special Leave petition dismissal by speaking order in lovely exports attracts binding force of article 141. The answer appears to be yes. The reference is invited in the judgment of Supreme Court in the case of Kunhayammed and Others vs. State Of Kerala And Another, Reported in 245 ITR 360.

Another issue which is not yet tested is whether the decision of Lovely Exports can be applied in the context of unsecured loan taken by a corporate assessee. Answer appears to be yes,i.e. when unsecured loan is taken by a corporate assessee and identity of the borrower is established the department is free to proceed to tax the individual borrower in accordance with law but it cannot be regarded as undisclosed income of the assessee.

This settled law has been unsettled by the amendment in Finance Act 2012 which has inserted to provisos to section 68 with effect from 01.04.2013 i.e. A.Y. 13-14.

The first proviso of this enlarges the onus of a closely held company and provides that if a closely held company receives any share application money or share capital or share premium or the like.it should also establish the source of source (that is, the resident from whom such money is received).

Second Proviso provides that the first proviso will not apply if the receipt of sum (representing share application money or share capital or share premium etc.) is from a VCC or VCF [referred in section 10(23FB).

The objective of the amendment is to nullify the judgment of Supreme Court in the case of lovely exports 216 CTR.

It can be seen that First proviso is limited to the fiction providing for the circumstances in which the explanation given by the company in respect of the credits to share capital account, etc. would be deemed to be not satisfactory. In other words, it extends to the explanation required in the normal circumstances for any cash credit and in that, as discussed above, shifts the burden or imposes an additional requirement in cases of credit to share capital etc. to explain also the source of source (required for credit to share capital etc.)

In respect of the cash credit, the main provisions of section 68 would continue to apply, along with the additional requirement of the proviso.

The deeming consequences is mandatory and once the closely held company does not offer an explanation, the Assessing Officer has no discretion but to deem the sum as income as per the main provision. However, where a closely held company furnishes the explanation, which may be construed as unsatisfactory, it can be said that the Assessing Officer has a discretion and it is not mandatory for the Assessing Officer to make an addition [refer CIT v. Smt. P.K. Noorjahan [1999]103 taxman 382/ 237 ITR 570(SC)].

Thus the law is clear and settled upto A.Y. 2012-13 to the effect that share application and share capital money cannot be taxed in the hands of the company and addition if any can be made only in the hands of shareholders. However from A.Y. 2013-14, the decision of lovely exports stands overruled and in case of closely held company the amended provision will apply and explanation is required about the nature and source of the cash credit in the hands of the residential holder. Thus the company is required to explain "Source of the Source". This shifts the burden under section 68 and overrides the earlier position.

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Judicial Analysis

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Various rights in Land and Building vis-à-vis S. 50C of the Income Tax Act, 1961

Smt. Devindraben I. Barotv. ITO [2016] 70 taxmann.com 235 (Ahd)

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3. Briefly stated the facts of the case are that the assessee entered into Banakhat for land at Village Vadaj having area of 489 square meters at the rate of 605 per square meter on 24.09.1993. This Banakhat was registered without possession of the land on 27.10.1993. On 22.11.1993, assessee entered into another Banakhat of the aforementioned land with Shri Vimal R. Ambani and Indravadan Barot @ 1000 per square meter. This Banakhat was registered on 19.03.1994 without giving any possession of the land. On 19.04.2005, Shri Prafulchandra P. Patel (HUF) from whom the assessee entered into Banakhat on 24.09.1993 (*supra*) entered into a sale transaction with Shri Vimal R. Ambani and Indravadan Barot to whom the assessee had entered into Banakhat on 22.11.1993 (*supra*). This sale deed was registered.

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6. We have gone through the orders of the authorities below. We have also given a thoughtful consideration to the factual matrix as mentioned elsewhere. There is no denying that the purchase and sale transaction took place between Shri Prafulchandra P. Patel and Shri Vimal R. Ambani/Indravadan Barot. It is also an undisputed fact that for the impugned land, assessee had entered into a Banakhat on 24.09.1993 with Shri Prafulchandra Patel sold the land, assessee had only relinquished his right in property.

7. From the reading of Section 50C, it is evident that Section 50C is a deeming provision and it extends only to land or building or both. Section 50C can come into play only in a situation where the consideration received or accruing as a result of the transfer by an appellant of a capital asset, being land or building or both is less than the value adopted or assessed or assessable for the purpose of payment of stamp duty in respect of such transfer. It is settled legal proposition that deeming provision can be applied only in respect of the situation specifically given and, hence, cannot go beyond the explicit mandate of the section. Clearly, therefore, it is essential for application of Section 50C that the transfer must be of a capital asset, being land or building or both. If the capital asset under transfer cannot be described as 'land or building or both', then Section 50C will cease to apply.

8. From the facts of the case as mentioned elsewhere, it is seen that the assessee has transferred only rights in the impugned land which cannot be equated to land or building or both. Therefore, in our understanding of the fact qua the provisions of Section 50C, the action of the revenue authorities is erroneous. We, therefore, set aside the findings of the ld. CIT(A) and direct the A.O to delete the addition of Rs. 7,66,666/- ad deemed income u/s. 50C of the Act. In the result, the appeal filed by the assessee is allowed.

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ITO v. Tara Chand Jain [2015] 63 taxmann.com 286 (Jaipur - Trib.)

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6.9 Section 50C is a deeming provision and it is only applicable in respect of capital assets

which are land or building or both. It is thus clear that this deeming provision of section 50C will come into play only if the capital asset transferred by the assessee is a land or building or both. If, in the absence of capital asset transferred is neither the land nor building nor both, this deeming provision shall not be applicable to such transfer.

6.10 It is seen from the above mentioned statement of fact i.e. the ownership of the land is with the State Government. The land is acquired and the assessee is merely a Kastkar, this clearly shows that the assessee is only having the limited rights in the land sold. The limited rights of Kastkar on the land cannot be equated with the ownership of land or with building or with both. The Income Tax Act clearly recognized the distinction between the land or building or any right in the land or building under section 50C of the Act. Thus the Act has given the separate treatment to land, building and rights in the land.

6.11 In the opinion of the Bench, the rights in land cannot be equated with the land or building. Therefore, it is concluded that section 50C is applicable to transfer of capital asset only in respect of land or building or both and is not applicable to right in land. In the present case, the assessee has only transferred the right in land for a valuable consideration, therefore, in the opinion of the Bench, the long term capital gain cannot be calculated by invoking the deeming provisions provided under section 50C. Therefore we hold that section 50 C is not applicable to present case. This is also of view of Mumbai Tribunal in the case of *Atul G. Puranik* v. *ITO* [2011] 132 ITD 499/11 taxmann.com 92.

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Kancast (P.) Ltd. *v. ITO* [2015] 55 taxmann.com 171 (Pune - Trib.)

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9. We have carefully considered the rival submissions. Section 50C of the Act provides that if the consideration received or accruing is less than the value adopted or assessed or assessable by the stamp valuation authority of the State Government for such transfer then the value so adopted or assessed or assessable shall be deemed to be the full value of consideration and the capital gains will be computed accordingly. The phraseology of section 50C of the Act clearly provides that it would apply only to "a capital asset, being land or building or both". The moot question before us is as to whether such expression would cover the transfer of a capital asset being leasehold rights in land or building. There cannot be a dispute to the proposition that the expression land by itself cannot include within its fold leasehold right in land also. Of-course, leasehold right in land is also a capital asset and we find no fault with this stand of the Revenue. So however, every kind of a 'capital asset' is not covered within the scope of section 50C of the Act for the purposes of ascertaining the full value of consideration. In-fact, the heading of section itself provides that it is "Special provision for full value of consideration in certain cases". Therefore, there is a significance to the expression "a capital asset, being land or building or both" contained in section 50C of the Act. The significance is that only capital asset being land or building or both are covered within the scope of section 50C of the Act, and not all kinds of capital assets.

10. In-fact, the Mumbai Bench of the Tribunal in the case of *Atul G. Puranik* (*supra*) which was pressed into service by the assessee before the lower income-tax authorities, clearly brings out the aforesaid proposition. In our view, the said decision of the Tribunal has been wrongly disregarded by the CIT(A). The plea of the CIT(A) is based on the meaning of expression 'immovable property' contained in Explanation below section 269UA(d)(i) of the Act. According to the CIT(A), the Explanation below section 269UA(d)(i) of the Act makes it clear that the land, building, etc. included in the phrase 'immovable property' also includes

any rights therein. The CIT(A) has co-related this to section 2(47) of the Act which defines the expression 'transfer' in relation to capital asset. As per the CIT(A), section 2(47) of the Act contains a reference to the meaning of the 'immovable property' contained in section 269UA(d) of the Act and therefore transfer in relation to a capital asset defined in section 2(47) of the Act would include within its purview transfer of a capital asset, being leasehold rights in land also. Upto this stage, there can be no quarrel with the stand of the CIT(A). The incongruity starts when the CIT(A) further goes to say that because of the aforesaid provisions, it was "not necessary to mention 'rights in land or building' specifically u/s 50C of the Act also".

11. In our considered opinion, the point made by the CIT(A) is quite fallacious. Firstly, it has to be understood that the meaning of the expression "immovable property" contained in section 269UA(d) of the Act has been referred to in section 2(47) of the Act only in relation to sub-clause (v) and (vi) thereof. Secondly, from the meaning of expression "immovable property" contained in section 269UA(d) of the Act, the only thing that can be inferred is that even leasehold rights in land is a capital asset. However, the said inference does not justify the inclusion of a transaction involving transfer of leasehold rights in land within the purview of section 50C of the Act. Quite clearly, section 50C of the Act applies only to capital asset being land or building or both. It does not apply to leasehold rights in the land or building. The stand of the CIT(A) that it was not necessary to mention 'rights in land or building' specifically in section 50C of the Act, in our view, is quite misconceived.

12. Apart from the aforesaid discussion, we find that the Mumbai Bench of the Tribunal in the case of *Pradeep Steel Re-Rolling Mills (P.) Ltd.*, case (*supra*) has considered an identical controversy wherein it has been held that section 50C of the Act would apply only to capital asset, being land or building or both and it would not apply in relation to leasehold rights in land or building. To the similar effect is the decision of the Jaipur Bench of the Tribunal in the case of *Jaipur Times Industries* (*supra*). The Jaipur Bench of the Tribunal followed an earlier decision of the Mumbai Bench of the Tribunal in the case of *Shavo Norgren (P) Ltd.* v. *Dy. CIT* [2013] 58 SOT 23/33 taxmann.com 491 (Mum. - Trib) to hold that section 50C of the Act does not apply to transfer of leasehold rights in land. The decision of the Ahmedabad Bench of the Tribunal in the case of *Shri Yasin Moosa Godil* (*supra*) is also on similar lines.

13. In view of the aforesaid legal position and in the absence of any decision to the contrary brought out by the Revenue, we conclude by holding that section 50C of the Act does not come into operation in the present facts where what is transferred by the assessee is only the leasehold rights in land which were acquired by it from Maharashtra Industrial Development Corporation (i.e. MIDC) on a 99 years lease basis. As a consequence, we set-aside the order of the CIT(A) and direct the Assessing Officer to compute the long term capital gain on transfer of leasehold land by adopting the full value of consideration of Rs.2,35,04,000/- declared by the assessee in the computation of income and allow the appropriate relief to the assessee. Thus, on this Ground assessee succeeds.

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ITO *v.* Pradeep Steel Re-Rolling Mills (P.) Ltd. [2013] 39 taxmann.com 123 (Mumbai - Trib.)

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4. The Revenue is in appeal. We are unable to find fault with the decision of the CIT(A) that s. 50C cannot be invoked to a transfer of leasehold rights. The section (applies only to capital assets being land or building or both. It does not in terms include leasehold rights in the land or building within its scope. The AO's conclusion to the contrary is based on s. 27(iiib)

of the Act, which says that a person who acquires any rights, excluding any rights by way of a lease from month to month or for a period not exceeding one year, in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in cl. (f) of s. 269UA, shall be deemed to be the owner of that building or part thereof. Firstly, this provision has been expressly limited in its application to ss. 22 to 26 of the Act, which deal with the computation of the income under the head "income from house property". It has not been made applicable to the computation of capital gains. Secondly, the rights mentioned in the ' provision are rights over the building and any rights over the land have not been included in the section. In any case, since the s. 27(iiib) has not been extended to the computation of capital gains under s. 45 and is limited to the computation of the income under the head "Income from house property", the conclusion of the CIT(A) that s. 50C cannot be invoked where leasehold rights in land or building are transferred, seems to us, to be correct. We accordingly affirm the decision of the CIT(A) and dismiss the appeal filed by the Revenue with no order as to costs.

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DCIT *v.* TejinderSingh [2012] 19 taxmann.com 4 (Kol.)

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8. A plain look at the undisputed facts of this case clearly shows that the assessee was a lessee in the property which was sold by the KSCT; there is no dispute on this aspect of the matter. Yet, the Assessing Officer has treated the assessee a seller of property apparently because the assessee was a party to the sale deed, and because, according to the Assessing Officer, "consideration is paid on sale of the property for giving up right of the owner of the property" and that "in the case of leasehold property, the right of owner is divided between lessor and lessee". We are unable to share this line of reasoning. It is not necessary that consideration paid by the buyer of a property, at the time of buying the property, must only relate to ownership rights. In the case of tenanted property, as is the case before us, while the buyer of property pays the owner of property for ownership rights, he may also have to pay, when he wants to have possession of the property and to remove the fetters of tenancy rights on the property so purchased, the tenants towards their surrendering the tenancy rights. Merely because he pays the tenants, for their surrendering the tenancy rights, at the time of purchase of property, will not alter the character of receipt in the hands of the tenant receiving such payment. What is paid for the tenancy rights cannot, merely because of the timing of the payment, cannot be treated as receipt for ownership rights in the hands of the assessee. This distinction between the receipt for ownership rights in respect of a property and receipt for tenancy rights in respect of a property, even though both these receipts are capital receipts leading to taxable capital gains, is very important for two reasons - first, that the cost of acquisition for tenancy rights, under section 55(2)(a), is, unless purchased from a previous owner - which is admittedly not the case here, treated as 'nil'; and, - second, since the provisions of Section 50 C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both", the provisions of Section 50 C will apply on receipt of consideration on transfer of a property, being land or building or both, these provisions will not come into play in a case where only tenancy rights are transferred or surrendered. It is, therefore, important to examine as to in what capacity the assessee received the payment. No doubt the assessee was a party to the registered tripartite deed dated 20th July 2007 whereby the property was sold by the KSCT, but, as a perusal of the sale deed unambiguously shows, the assessee has given up all the rights and interests in the said property,

which he had acquired by the virtue of lease agreements with owner and which were, therefore, in the nature of lessee's rights; these rights could not have been, by any stretch of logic, could be treated as ownership rights. It has been specifically stated in the sale deed that the lessee, which included this assessee before us, had proceeded to, *inter alia,* "grant, convey, transfer and assign their leasehold rights, title and interest in the said premises". There is nothing on the record to even remotely suggest that the assessee was owner of the property in question. The monies received by the assessee, under the said agreement, were thus clearly in the nature of receipts for transfer of tenancy rights, and, accordingly, as the learned CIT(A) rightly holds, Section 50C could not have been invoked on the facts of this case. Revenue's contention that the provisions of Section 50C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statute. Section 50C can come into play only in a situation "where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, *(emphasis supplied by us by underlining)* is less than the value adopted or assessed or assessable by any authority of a State Government …… for the purpose of payment of stamp duty in respect of such transfer". Clearly, therefore, it is *sine qua non* for application of Section 50C that the transfer must be of a "capital asset, being land or building or both", but then a leasehold right in such a capital asset cannot be equated with the capital asset *per se*. We are, therefore, unable to see any merits in revenue's contention that even when a leasehold right in "land or building or both" is transferred, the provisions of Section 50C can be invoked. We, therefore, approve the conclusion arrived at by the CIT(A) on this aspect of the matter.

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Atul G. Puranik*v.* ITO [2011] 11 taxmann.com 92 (Mum.)

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11. The AO adopted the value of asset sold on 25-08-2005 at Rs.2.88 crores by applying the provisions of sec.50C for the purposes of computing capital gain. His view was based on the assessee's submission that the market rate prevailing for land at Village Kamothe-II published by Panvel Nagar Palika during 1.4.2004 to 31.12.2004 was Rs.3950 per sq. meter. The ld. CIT(A) upheld the action of the AO on this score. The ld. counsel for the assessee contended that the authorities below were unjustified in applying section 50C. Per contra, the ld. DR supported the impugned order on this issue.

11.1 In order to appreciate the rival contentions on this issue, it would be apt to consider the prescription of sec. 50C(1), which is as under :

"50C. (1) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government (hereinafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be full value of the consideration received or accruing as a result of such transfer

11.2 On going through the above provision, it transpires that where the full value of consideration shown to have been received or accruing on the transfer of an asset, being land or building or both, is less than the value adopted or assessed or assessable by stamp valuation authority, the value so adopted etc. shall, for the purposes of sec. 48, be deemed to be full value of consideration received or accruing as a result of such transfer. This section has been inserted by the Finance Act 2002

w.e.f. 01-04-2003 with a view to substitute the declared full value of consideration in respect of land or building or both transferred by the assessee with the value adopted or assessed or assessable by stamp valuation authority. But for this provision, there is nothing in the Act, by which the full value of a consideration received or accruing as a result of transfer of land or building or both is deemed to be any amount other than that actually received. From the language of sub-sec. (1), it is clear that the value of land or building or both adopted or assessed or assessable by the stamp valuation authority shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such a transfer. Two things are noticeable from this provision. Firstly, it is a deeming provision and secondly, it extends only to land or building or both. It is manifest that a deeming provision has been incorporated to substitute the value adopted or assessed or assessable by stamp valuation authority in place of consideration received or accruing as a result of transfer, in case the latter is lower than the former. It is further relevant to note that the mandate of sec. 50C extends only to a capital asset which is "land or building or both". It, therefore, follows that only if a capital asset being land or building or both is transferred and the consideration received or accruing as a result of such transfer is less than the value adopted or assessed or assessable by the stamp valuation authority, the deeming fiction under sub-sec. (1) shall be activated to substitute such adopted or assessed or assessable value as full value of consideration received or accruing as a result of such transfer in the given situation.

11.3 It is a settled legal proposition that a deeming provision cannot be extended beyond the purpose for which it is enacted. The Hon'ble Apex Court in *CIT* v. *Amarchand N. Shroff* [1963] 48 ITR 59 has considered the scope of a deeming provision and came to hold that it cannot be extended beyond the object for which it is enacted. Similar view has been reiterated by the Hon'ble Supreme Court in *CIT* v. *Mother India Refrigeration Industries (P.) Ltd.* [1985] 155 ITR 711/23 Taxman 8 by laying down that "legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond their legitimate field". In *CIT* v. *ACE Builders (P.) Ltd.* [2006] 281 ITR 210 /[2005] 144 Taxman 855 (Bom), the Hon'ble jurisdictional High Court considered the facts of a case in which the assessee was a partner in a firm which was dissolved in the year 1984 and the assessee was allotted a flat towards the credit in the capital asset with the firm. The assessee showed the flat as capital asset in its books of account and depreciation was claimed and allowed from year to year. In the previous year relevant to asst. year 1992-93, the assessee sold the flat and invested the net sale proceeds in a scheme eligible u/s.54E of the Act and accordingly declared *Nil* income under the head 'Capital gains'. The AO formed the view that since the block of building ceased to exist on account of sale of flat during the year, the written down value of the flat was liable to be taken as cost of acquisition u/s.54E of the Act. He further held that since the assessee had availed depreciation on such asset, which was otherwise a long-term capital asset, the deeming provision u/s.50 would apply and it would be treated as capital gain on the sale of short-term capital asset and hence no benefit u/s.54E could be allowed. When the matter came up before the Hon'ble Bombay High Court, it was noticed that sub-sections (1) and (2) of sec. 50 contained a deeming provision and such fiction was restricted only to the mode of computation of capital gain contained in sections 48 and 49 and hence it did not apply to other provisions. The assessee was held to be eligible for exemption u/s.54E in respect of capital gain arising out of the capital asset on which depreciation was allowed.

11.4 In view of the aforenoted judgments rendered by the Hon'ble Apex Court and that of the Hon'ble jurisdictional High Court, it is clear

that a deeming provision can be applied only in respect of the situation specifically given and hence cannot go beyond the explicit mandate of the section. Turning to sec. 50C, it is seen that the deeming fiction of substituting adopted or assessed or assessable value by the stamp valuation authority as full value of consideration is applicable only in respect of "land or building or both. If the capital asset under transfer cannot be described as 'land or building or both', then sec. 50C will cease to apply. From the facts of this case narrated above, it is seen that the assessee was allotted lease right in the Plot for a period of sixty years, which right was further assigned to M/s. Pathik Construction in the year in question. It is axiomatic that the lease right in a plot of land are neither 'land or building or both' as such nor can be included within the scope of 'land or building or both'. The distinction between a capital asset being 'land or building or both' and any 'right in land or building or both' is well recognized under the I.T. Act. Sec. 54D deals with certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub-sec.(1) of sec. 54D opens with : "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking…..". It is palpable from sec. 54D that 'land or building' is distinct from 'any right in land or building'. Similar position prevails under the W.T. Act, 1957 also. Section 5(1) at the material time provided for exemption in respect of certain assets. Clause (*xxxii*) of sec. 5(1) provided that "the value, as determined in the prescribed manner, of the interest of the assessee in the assets (not being any land or building or any rights in land or building or any asset referred to in any other clauses of this sub-section) forming part of an industrial undertaking" shall be exempt from tax. Here also it is worth noting that a distinction has been drawn between 'land or building' on one hand and 'or any rights in land or building' on the other. Considering the fact that we are dealing with special provision for full value of consideration in certain cases u/s.50C, which is a deeming provision, the fiction created in this section cannot be extended to any asset other than those specifically provided therein. As sec. 50C applies only to a capital asst, being land or building or both, it cannot be made applicable to lease rights in a land. As the assessee transferred lease right for sixty years in the Plot and not land itself, the provisions of sec.50C cannot be invoked. We, therefore, hold that the full value of consideration in the instant case be taken as Rs.2.50 crores.

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ArifAkhatarHussain*v.* ITO [2011] 45 SOT 257 (Mumbai)

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8. After considering the rival contentions and relevant record, we find that the assessee themselves have offered the capital gain against the transfer of the property *vide* development agreement which was available before the AO. The documents itself shows the sale consideration admitted by the assessee and the stamp valuation made by the Stamp Valuation Authority. The AO adopted the full value of sale consideration at Rs. 4,73,48,000 as valued by the Stamp Valuation Authority against the sale consideration admitted by the assessee at Rs. 63,00,000. The assessee's share in the said property are 2/7 and 1/7, respectively, therefore, the AO proportionately took the share of sale consideration and computed the capital gain.

9. The main contention of the learned AR is that the development rights does not amount to transfer of land or building and therefore, the provisions of section 50C are not applicable. It is to be noted that the definition of transfer in the Income-tax Act, is not similar to that of definition under the Transfer of Property Act. Apart from various mode of transfers provided under the Transfer of Property Act, the Income-

tax Act, also provides a definition of transfer as deemed transfer under section 2(47)(*v*). The deemed transfer is applied when the condition prescribed under section 53A of Transfer of Property Act are fulfilled section 53A of the Transfer of Property Act does not provide the condition for transfer but it provides protection to the transferor of any immovable property by a written contract, the terms of which constitute the transfer and can be ascertained with reasonable certainty and the transferee as part perfor- mance of the contract taken the possessions of the property and has performed or willing to perform his part of contract, then even the said contract though required to be registered has not been registered and the transfer has not been completed in the manner prescribed therefore by law, the transferor is barred from enforcing against the transferee any right in respect of the property other than the right expressly provided by the terms of the contract. Under the Income-tax Act, 1961 by inserting clause (*v*) to section 2(47), the definition of the term 'transfer' includes the transaction which fulfils the conditions provided under section 53A of Transfer of Property Act. Thus, the provisions of section 53A of Transfer of Property Act does not provide any transfer but it talks about the situation when the right created in favour of the transferee cannot be defeated otherwise than the terms and conditions expressly provided in the contract itself. When the assessee has received the sale consideration and handed over the possession of the property in question *vide* development agreement then the condition prescribed under section 53A of the Transfer of Property Act are satisfied and accordingly, as per the provisions of section 2(47)(*v*) of the IT Act the transaction of transfer is completed. Accordingly, we do not find any merit or substance in the contention of the assessee. Merely because the name of the assessee still stand in the record of the municipal record does not change the nature of transaction. Even otherwise the mutation of the property in the Property tax record of Municipal Authority does not give any title of ownership. Once, undisputedly, the assessee has handed over the possession of the property to the developer against the payment of share of sale consideration then the property is deemed to have been transferred as per the deeming provisions of section 2(47) of the IT Act. When the conditions of section 53A of Transfer of Property Act is fulfilled irrespective of the fact that it is not absolute transfer by way of execution of sale deed, the transaction is to be completed. The transfer of capital asset is completed if the certain conditions of section 53A of the Transfer of Property Act is satisfied. Accordingly, we do not find any reason to interfere in the order of the lower authorities on this issue. As far as, demerits attached to the property are concerned, the DVO has already taken into account all aspects while making the valuation of the property. The assessee has participated in the proceedings before the DVO and accordingly, we do not find any error or illegality in the valuation made by the DVO which is much less to the valuation made by the Stamp Valuation Authority. The substantial relief has already been given by the DVO as well as by the AO while passing the consequential order as per the DVO's report. Accordingly, the appeals of the assessee are devoid of merits on this issue.

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If you want to do a great or a good work, do not trouble to think what the result will be.

- Swami Vivekananda

Place of Effective Management ('POEM') - Analysis of Draft Circular

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1. Background

Under the Indian Tax Laws ('ITL'), test of residency for foreign companies was amended in 2015. Per the erstwhile provisions of section 6(3) of the Income-tax Act, 1961, a company would be 'resident in India' in a previous year if:

- It is an Indian company, or;
- During that year, the control and management of its affairs is situated **wholly in India**

The Finance Act amended the test of residency for foreign companies, applicable from tax year commencing on 1 April 2015, as per which a company would become resident in India if:

- If it is an Indian company, or'
- Its **Place Of Effective Management ('POEM'),** in that year, is in India

POEM is defined as a place where key management and commercial *decisions* that are necessary for the conduct of the business of an *entity as a whole*, are in substance made.

As one would observer that the earlier test of residency for foreign companies required that the whole of its control and management should be in India. As explained by the Explanatory Memorandum and in the Circular issued by the CBDT, such liberal threshold resulted in shift of profits to low tax jurisdictions by incorporating shell companies outside India, which were largely controlled from India.

Pursuant to the above, the Central Board of Direct Taxes (CBDT) has, vide Press Release dated23 December 2015, issued a draft of the guidelines (Guidelines) for determination of POEM of foreign companies in India, same has been discussed in detail below.

2. General principles: a substance over form approach

The Guidelines provide for certain general principles of relevance for determination of POEM as under:

i. Determination of POEM depends on the facts and circumstances of a given case.

ii. The concept is one of substance over form.

iii. An entity may have more than one place of management, but it can have only one POEM at any given point of time.

iv. POEM needs to be determined on a year to- year basis for determining residence.

v. The principles recited in the Guidelines for determining POEM are by way of guidance and no single principle is decisive.

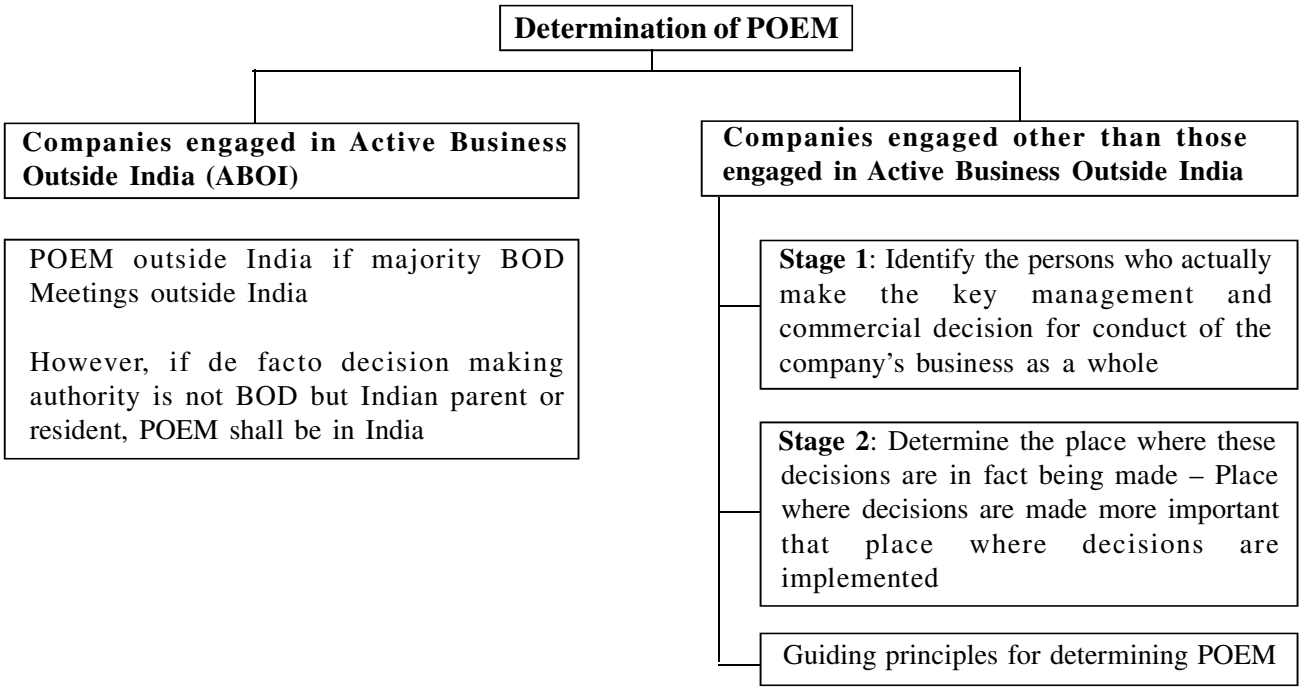
vi. All facts related to the management and control of the company are relevant and POEM determination cannot be based on isolated facts.

vii. If, during the previous year, POEM is in India as also outside India, POEM shall be presumed to be in India if it was mainly/predominantly in India.

viii. The principles are not to be applied by taking a "snapshot view", but activities Performed over a period of time, during the previous year, need to be considered.

3. Determination of POEM as per draft guidelines

Determination of POEM has primarily been divided on the basis of two categories of foreign companies, as reflected in the flow chart below, elements of which are explained later:



4. POEM for companies fulfilling ABOI test

A company is said to be engaged in ABOI if it fulfils the cumulative conditions of:

a. Its passive income (wherever earned) is 50% or less of its total income, and

b. In respect of each of the following, the threshold is less than 50%:
   - Its total assets situated in India.
   - Total number of employees situated in India or residents in India
   - Payroll expenses incurred on such employees compared to total payroll expenditure

For the above purpose, **passive income** is the aggregate of:

i) Income from the transactions where both, the purchase and sale of goods, is from or to its associated enterprises (AEs).

ii) Income, by way of royalty, dividend, capital gains, interest or rental income, whether or not involving AEs.

If the foreign company qualifies the ABOI test, its POEM is presumed to be outside India if majority BOD meetings of the company are held outside India.

However, if the facts and circumstances establish that the BOD is not the de facto decision-making authority but such powers are, in fact, being exercised either by the Indian parent or any other person resident in India, then POEM shall be considered to be in India.

5. POEM determination for companies other than those fulfilling the ABOI test

For companies other than those engaged in ABOI, determination of POEM is a two stage process:

a. Identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company's business as a whole.

b. Determination of place where these decisions are, in fact, being made.

For this purpose, the following guiding principles may be taken into account:

i) **Location of BOD**
   - Place where the BOD regularly meets and makes decisions is the POEM
   - BOD retains and exercises the authority to govern the company and makes key management and commercial decisions necessary for the conduct of the company's business as a whole

- If key decisions are made at a place other than the place of formal meetings, such place is POEM

ii) **Delegation of Authority by BOD**
- If BOD has delegated its authority to make decisions to senior management/other person, and BOD merely ratifies the decisions, then POEM will trigger in the country where such senior management/ person is located
- If BOD has formally or de facto delegated authority to a committee consisting of members of senior management, then the place where such a committee develops and formulates key decisions for mere formal approval by the BOD will often be considered to be POEM

iii) **Location of Head Office**
- Location of Head Office is a key factor for POEM determination
  - o Not necessarily the place where BOD typically meets
  - o Not necessarily the place where most employees work
- In case of meetings by way of telephone or video conferencing, the HO would normally be the location where the highest level of management and their direct support staff is located
- Use of modern technology means that physical presence is no longer necessary for BOD or committee meetings. In such cases, the place where majority of the directors or decision-making persons usually reside may be relevant

iv) **Place of implementation or execution of decisions is not relevant**
- The place where management decisions are taken would be more important than the place where such decisions are implemented.
- Day-to-day routine decisions taken by junior and middle management are not relevant for determining POEM.

v) **Place of residence of directors/ decision-makers relevant where modern technology is used**
- Use of modern technology means that physical presence is no longer necessary for BOD or committee meetings. In such cases, the place where majority of the directors or decision-making persons usually reside may be relevant.

vi) **Secondary factors (if the above do not lead to clear identification of POEM)**
- Place where the main or substantial activity of the company is carried out or
- Place where the accounting records of the company are kept.

6. No POEM scenarios illustrated

Illustratively, POEM cannot be established to be in India merely because:
- The company is owned by an Indian company or,
- One or some of the directors of a foreign company reside in India or,
- Local management in India is in respect of activities carried out by a foreign company in India or,
- There exists in India, support functions that are preparatory and auxiliary in character.

7. Conclusion

As detailed out above, the Guidelines emphasize that the test of POEM is one of "substance over form" and is to be determined having regard to the facts and circumstances of each case on a yearly basis. Given the same, companies, headquarters in India and have outbound operation, should assess if they would qualify as an Indian tax resident.

Further, adequate training should be provided to all stakeholders, i.e., employees, board members and promoters of the finer nuances of POEM. Formulation of detailed guidelines of the do's/don'ts for various stakeholders of foreign companies may be undertaken, keeping in mind legal provisions and judicial interpretation of these requirements.

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FEMA Updates

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14 Establishment of Branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) in India by foreign entities - procedural guidelines

In terms of Notification No. FEMA 22(R) /2016-RB dated March 31, 2016, salient provisions of the procedure for a person resident outside India to open a branch office or a liaison office or a project office are outlined.

If the application to open a BO/LO/PO is received from an entity resident outside India whose principal business falls under sectors where 100 percent Foreign Direct Investment (FDI) is allowed in terms of FEMA Notification No. 20/2000-RB dated May 3, 2000, Special approval is required by the RBI in specific cases such as for residents of countries such as Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau, if the proposed opening of BO/LO/PO is in Jammu and Kashmir, North East region and Andaman and Nicobar, if the entity is an NGO or a body/department of a foreign government or if the principal business of the applicant falls in the four sectors namely Defence, Telecom, Private Security and Information and Broadcasting.

The application for establishing BO / LO/ PO in India may be submitted by the non-resident entity in Form FNC [as provided in Regulation 4.c. of the Notification], to a designated AD Category. The AD Category-I bank shall before issuing the approval letter to the applicant forward a copy of the Form FNC along with the details of the approval proposed to be granted by it to the General Manager, Reserve Bank of India, for allotment of Unique Identification Number (UIN) to each BO/LO.

The validity of an LO is generally for three years [as provided in Regulation 4.d. of the Notification], except in the case of Non-Banking Finance Companies (NBFCs) and those entities engaged in construction and development sectors, for whom the validity is two years only. The validity of the PO is for the tenure of the project.

Detailed information on setting up a bank account by BO/LO/PO, Foreign currency accounts by PO, Extension of validity of the approval of LO and PO etc. can be found in the circular.

A.P. (DIR Series) Circular No.69, dated May 12, 2016

For Full Text refer to https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10398

15 Memorandum of Procedure for channelling transactions through Asian Clearing Union (ACU)

The Memorandum ACM) issued on February 17, 2010 lists that the minimum amounts and the multiples in which Reserve Bank receives and pays U.S. Dollar/ Euro is $ 25,000/ € 25,000 and $ 1,000/ € 1,000, respectively. It has been decided to revise the minimum amount and the multiples in which Reserve Bank will receive and pay for the purpose of funding or for repatriating the excess liquidity in the ACU Dollar and ACU Euro accounts to $ 500 / € 500.

A.P. (DIR Series) Circular No.72, dated May 26, 2016

For Full Text refer to https://rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10419

16 Foreign Exchange Management Act, 1999 (FEMA) Foreign Exchange (Compounding Proceedings) Rules, 2000 (the Rules) - Compounding of Contraventions under FEMA, 1999

This circular pertains to paragraph number 7 and 8 of the Master Direction on Compounding of Contraventions under FEMA, 1999 issued vide FED Master Direction No.4/2015-16 dated January 1, 2016.

In terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000, effective from June 1, 2000, Reserve Bank is empowered to compound contraventions relating to rule 7, 8 and 9 of and the third schedule to the Foreign Exchange Management (Current Account Transactions) (FEMCAT) Rules, 2000. The Reserve Bank was, vide GSR 609 (E) dated September 13, 2004 empowered to compound all the contraventions of Foreign Exchange Management Act, 1999 (FEMA) except section 3(a) of FEMA.

For disseminating the information pertaining to compounding orders, it has been decided to host the compounding orders passed on or after June 1, 2016 on the Bank's website (www.rbi.org.in). As per provisions of section 13 of FEMA the amount imposed can be up to three times the amount involved in the contravention. However, the amount imposed is calculated based on guidance note given in the Annex of the circular.

.A.P. (DIR Series) Circular No.73, dated May 26, 2016

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10424

17 Export Data Processing and Monitoring System (EDPMS) – Additional modules for caution listing of exporters, reporting of advance remittance for exports and migration of old XOS data

The circular pertains to paragraph number C.2, C.15, C.20, C.24 and C.28 of Master Direction No.16 dated January 1, 2016 on Export of Goods and Services.

To streamline cautioning / de-cautioning of exporters, the procedure has been automated. The updated list of caution listed exporters will be readily available to AD category – I banks through their registered e-mail and also through EDPMS Criteria laid down for cautioning / de-cautioning of exporters in EDPMS is mentioned in the circular.

With respect to the reporting of Advance Remittance for Exports; presently the export data in EDPMS is being captured only from the shipping bills generated. It has now been decided to capture the details of advance remittances received for exports in EDPMS. Henceforth, AD Category – I banks will have to report all the inward remittances including advance as well as old outstanding inward remittances received for export of goods / software to EDPMS as well as the electronic FIRC to EDPMS wherever such FIRCs are issued against inward remittances. Furthermore, it has been decided that AD category – I banks will upload the particulars of all the overdue export advances into the system and discontinue submission of quarterly return henceforth.

With regard to export outstanding statement (XOS), the circular mentions that with effect from March 01, 2014, details of all export outstanding bills can be obtained from the EDPMS. Instead of reporting the old outstanding bills prior to March 01, 2014 in XOS on half yearly basis every year, it is decided to migrate the XOS data reported by the AD banks for half year ended December 2015 onwards to EDPMS and discontinue separate reporting of XOS for the subsequent periods. AD category – I banks are required to mark off / close the XOS data pertaining to pre March 01, 2014 as and when amount has been realised.

A.P. (DIR Series) Circular No.74, dated May 26, 201

For Full Text refer tohttps://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10423

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Purity, patience and perseverance are the three essentials to success and, above all, love.

- Swami Vivekananda

Service Tax - Recent Judgements

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11 Harinder Goyal vs. CCE, Chandigarh 2016 42 STR 61 (Tri-Delhi)

Facts:-

Assessee was running petrol pump owned by HPCL Assessee's role was : (a) delivery of petroleum products to customers~ (b) handling receipts, stock, storages, etc.~ (c) maintaining security, proper accounts, air/water and other facilities, etc. Assessee received consideration from HPCL along with reimbursements towards various expenses. Department demanded service tax under Business Auxiliary Services. Assessee claimed that its activity amounted to manpower supply and only labour amount was taxable.

Held:-

It was held that service by way of sale of goods produced/provided by or belonging to client HPCL is covered under section 65(19)(i) viz. Business Auxiliary Service. Services could not be regarded as manpower supply, as labour continued to remain employee of assessee and supervision/control also remained with assessee and not with HPCL. In absence of any evidence of actual amount of reimbursements, benefit of exclusion cannot be granted.

12 Tarachand Chaudary vs. CCE, Jaipur 2016 (42) STR 83 (Tri-Delhi)

Facts:-

Assessee, a contractor, entered into contracts with Jaipur Development Authority (JDA) and Jaipur Nagar Nigam (JNN) for management and maintenance of parks and road side plantation and maintenance. Adjudicating authority held that demand for period up to 30.4.2006 was not sustainable but demand for period with effect from 1.5.2006 onwards was upheld on ground that service rendered fell under scope of management, maintenance or repair service under Section 65(64)/ 65(105)(zzg) of FA, 1994 . Assessee did not take ST registration and did not file ST -3 returns pertaining to impugned service. Thus, assessee is clearly guilty of suppression of facts.

Held:-

It is noted that w.e.f. 1.5.2006, change in definition of "management, maintenance or repair" brought "maintenance or repair of properties whether immovable or not" within scope of 'management, maintenance or repair service'. Perusal of typical work orders which apart from requiring maintenance or repair, involve supply of goods too, like supply of different trees, for which specific rates have been mentioned. Case remanded with direction that impugned ST liability may be recomputed after extending benefit of Notification 12/2003. Since, the appellant has not obtained ST registration and not filed returns the period of limitation is invocable.

13 Radhe Residency vs. CCE & ST, Surat 2016 (42) STR 65 (Tri- Ahmd)

Facts:-

Assessee was engaged in providing taxable services falling under category of Construction of Residential Complex services, under Section 65 of FA, 1994. Assessee paid differential service tax amount before date of visit of audit officers. Only interest amount was not paid, which also was paid by assessee before issue of SCN. Whether penalty under section 78 of Finance Act, 1994 imposable?

Held:-

The Tribunal held that, there is no intention to evade payment of service tax and hence penalty under section 78 is not imposable.

contd. on page no. 182

VAT - From the Courts

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3 Whether capital assets used for research activity can be termed as used in manufacturing and whether such business is covered in definition of Business?

In the case of Hindustan Unilever Ltd. v/s State of Karnataka reported in **90 VST 236 (Karn)**

Background of the case:-

The definition of "Business" in section-2(6) of the Karnataka Value Added Tax Act, 2003, includes any transaction in connection with or incidental and ancillary to such trade or commerce or manufacture or adventure or concern. The definition is inclusive definition and is not exhaustive. Therefore, any activity or any function which has direct nexus to the manufacturing activity of the dealer would fall within the definition of the word "business "apart from the principal activity of manufacturing. The word "business" even otherwise is defined in an inclusive manner. If a manufacturer-dealer sets up a research centre for undertaking the research of a product or may be a new product in which he is dealing, it can be said to have a direct nexus to the principal activity of manufacture. It is out of various researches undertaken one may possibly decide to manufacture a particular product or of a particular quality having better prospects in the business.

Once the goods are purchased in furtherance to or for aiding the manufacturing process, the same will have a direct nexus to the manufacturing activity and there is no reason why they could be treated as independent capital goods disentitling the benefit. They cannot be segregated just on a mere ground that they are capital goods.

Held that the dealer was not running an independent research institute, but was also dealing in the manufacturing or sale of the products. The principal activity of the dealer was manufacturing of the product and research was limited to the variety of products which may be manufactured by the dealer. If one is a dealer and manufacturing a particular product and is also undertaking research activity pertaining thereto for itself, such can be said to be an incidental activity to the manufacturing activity and hence would fall within the definition of the word "business". The dealer was entitled to input-tax credit on the purchases made for research unit as claimed.

That considering section 11(a)(2) of the Act and entry 3 of the Fifth Schedule to the Act, all electrical and electronic goods including air-conditioners, air coolers, telephones, fax machines, etc. used would fall in the category of the goods for which the input-tax credit would be inadmissible unless the goods are for resale or for manufacturing of any other goods for sale. The electrical or electronic goods should have nexus to the manufacturing process if they are purchased and put to use for the purpose of or in furtherance to the manufacturing process. The various items mentioned at entry 3 include air conditioner, air-cooler, fax machines which can be broadly considered as capital goods. The language for all electrical or electronic goods is inclusive and not exhaustive. The speeder system was used to back up the electricity in the manufacturing process and the input-tax credit could not be denied to the dealer.

4 Whether department can take recovery action on property of Karta's wife for dues of dealer namely Hindu Undivided Family?

In the case of State of Gujarat V. Jwelly Tea Co. (Guj) reported in **90 VST 501 (GUJ)**

Background of the case:-

On a revision petition by the Department challenging the order of the Tribunal allowing the

appeal against the order by the first appellate authority upholding the order passed by the Commercial Tax Officer under section 45 of the Gujarat Value Added Tax Act, 2003, provisionally attaching the properties of the wife of the karta of the Hindu undivided family, a dealer duly registered under the provisions of the Gujarat Sales Tax Act, 1969 in respect of outstanding dues of the Hindu undivided family.

Held, dismissing the petition, that the Tribunal had recorded a finding of fact that the property which was sought to be attached under section 45 of the Gujarat Value Added Tax Act was in the nature of streedhan. Thus it was clear that the flat stood in the name of the wife of the karta of the Hindu undivided family and did not belong to the dealer and therefore, the provisions of section 45 could not have been resorted to in the facts of the present case the provisions of section 57(2) and 58 of the Act were not invocable as the properties of the Hindu undivided family had been partitioned amongst its members and the business had not been discontinued. Besides, both sections-57 and 58 of the Gujarat Value Added Tax Act envisaged crystallised liabilities and could not be invoked during the pendency of the assessment proceedings. The Act recognised a Hindu undivided family as a dealer and as a person. The Legislature having treated a Hindu undivided family as a taxable entity, distinct from the individual members constituting it, it was not open for the Department to attach the properties of an individual member of the Hindu undivided family for the dues of the Hindu undivided family. Therefore the order passed by the Tribunal did not suffer from any legal infirmity.

5 Whether advertisements display hoardings fixed on structure let out can be termed as transfer of right to use any goods ?

In the case of **Delta Communications** V. **State of Kerala reported in 90 VST 438(Ker)**

Background of the case:-

The petitioner-firm was engaged in the business of outdoor marketing media for which advertisements were displayed in hoardings. For this purpose structures were erected on land acquired by the petitioner on lease, and the hoardings fixed on structures were let out to various companies for advertising their products for rental charges. The assessing officer took the view that the petitioner was liable to pay tax under the Kerala Value Added Tax Act, 2003 on rental charges received during the year 2007-08 and assessed the turnover under section-6(1)(c) as transfer of right to use goods. Appeals preferred by the petitioner before the appellate authority as well as the Tribunal were dismissed. On a revision petition:-

Held, dismissing the petition that the hoardings were constructed using tempered steel / thick steel poles by attaching the same to a concrete structure embedded on earth and erected using nuts and bolts. Taking into account the explanation, of the petitioner it could be said that it was fastened to earth and was detachable easily and therefore, was not an immovable property. Further the structure so erected was never a complicated installation unlike heavy machinery fitted in a factory premises by assembling various components and then attached to earth which became a complicated procedure. A hoarding on the other hand was fastened to a concrete structure on earth using nuts and bolts, the removal of which was a simple procedure which made it a movable article under the Act. The assessing authority had evaluated the factual circumstances and came to the finding that the structure erected was "goods" as defined under the Act and this finding was correctly confirmed by the first appellate authority as well as the Tribunal

(ii) That, the petitioner was unable to interfere with the nature of the advertisement carried out by the lessee in the hoardings since as per work order, it was his absolute right to finalize the nature of advertisement that was put up on the hoardings. The Tribunal had found that the entire art work exhibited on the hoardings was a creation of the lessee and that after the period of lease, the petitioner was liable to return the vinyl fixture displayed on the hoarding in re-useful condition. It was further found that once the printed vinyl was fixed on the hoarding,

the petitioner did not have any control over the hoardings and the effective control vested with the lessee till the expiry of the period for which the hoardings were to be taken on rent. Therefore, the absolute control of the hoardings was transferred to the lessee by virtue of the work order. With regard to the maintenance of the advertisement materials on the hoardings, the petitioner had no role during the period of contract and the same were also absolutely under the control of the lessee. Therefore, there was a transfer of right to use goods by transferring the hoardings to the lessee by the petitioner liable to tax under section 6(1) (c) of the Act.

(iii) That after the introduction of sub-article (29A) and clause (d) of article 366, there was a clear power conferred on the Legislature to impose tax on the transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. Service tax and value added tax were not mutually exclusive and if there was liability, both were to be paid by the petitioner.

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contd. from page 179

14 Ajay Enterprises Pvt Ltd Vs CST, Delhi 2016 (42) STR 471 (Tri.- Del.)

Facts:-

Assessee was a real estate agent and registered under 'Real Estate Agent' service. It was providing service in relation to sale purchase, leasing or renting of real estate and paying service tax for rendering real estate agent service. Administrative/ transfer charges (viz. changing names of owner) were recovered for rendering service in relation to real estate.

Held:-

It was held that the charges recovered for rendering services in relation to real estate viz, changing names of owner in records prior to execution of sale deed in favour of buyer clearly falls within Real Estate Agent Service. Since there was Commissioner (Adjudication) Service Tax, New Delhi Order in another case holding such transaction not dutiable, supports appellants claim regarding bona fide belief and therefore extended period of limitation cannot be invoked.

15 Dinesh M Kotian vs CCE & ST – I, Mumbai 2016 (42) STR 772 (Tri. – Mumbai)

Facts:-

Appellant was rendering intermediary service to the Postal department. Service tax paid by the assessee, the same shall be available as Cenvat credit to the postal department and to that extent net liability of service tax shall stand reduced while paying the service tax by the postal department.

Held:-

The Tribunal held that, service tax if paid by appellant, Postal Department is entitled for Cenvat Credit of such tax resulting into revenue neutral situation, therefore demand is not sustainable.

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VAT - Judgements and Updates

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Statute Updates
Value Added Tax (VAT)

[I] **Concept of reason to believe – Change of opinion and then re-assessment:**

Preliminary :

Under the Sales Tax Law as well as under VAT Act and under Income Tax Act, many assessments are being reopened on account of words and phrases "Reason to Believe, Change of Opinion. With a view to understand the concept of above words and its analysis, a fruitful judgment was delivered by Hon. Supreme Court **in case of State of Uttar Pradesh vs. Aryaverth Chawl Udyog & Ors**. The important paragraphs from the above referred judgment are reproduced hereunder for the benefit of the readers because in day to-day practice such type of reopening of cases are faced by the Practitioners.

Important Paragraphs for the understanding of Reason to believe:

[1] Under section 21(1) of the U. P. Trade Tax Act, 1948, reassessment proceeding can be initiated only if the assessing authority has "reason to believe" that there is a case of escaped assessment and not otherwise. It is now trite law that whenever a statute provides for "reason to believe", either the reasons should appear on the face of the notice or they must be available on the materials which have been placed.

[Aslam Mohd. Merchant V. Competent Authority (2008) 14 SCC 186 followed]

[2] The expression "reason to believe" does not mean a purely subjective satisfaction on the part of the assessing authority. The satisfaction ought to be a satisfaction reached by the assessing authority on the basis of facts or materials available before it.

The material on which the assessing authority bases its opinion must not be arbitrary, irrational, vague, distant or irrelevant. It must bring home the appropriate rationale of action taken by the assessing authority in pursuance of such belief. In the absence of such material, the action taken by the assessing authority on such "reason to believe" is arbitrary and bad in law. If the same material is present before the assessing authority during both, the assessment proceedings and the issuance of notice for reassessment proceedings, the assessing authority cannot say that "reason to believe" for initiating reassessment is an error discovered in the earlier law taken by it during original assessment proceedings.

[DCM V. State of Rajashthan (1980) 4 SCC 71 followed]

[3] The standard of reason exercised by the assessing authority is that of an honest and prudent person who would act on reasonable grounds and come to a cogent conclusion. The necessary sequitur is that a mere change of opinion while perusing the same material cannot be a "reason to believe" that a case of escaped assessment exist requiring assessment proceedings to be re-opened.

[A. L. A. Firm V. Commissioner of Income (1991) 189 ITR 285 (SC) and Binani Industries Ltd. v. Asst. Commissioner of Commercial Taxes (2007) 6 VST 783 (SC)

If a conscious application of mind is made to the relevant facts and material available or existing at the relevant point of time while making the assessment and again a different or divergent view is reached, it is tantamount to a "change of opinion". If an assessing authority forms an opinion during the original assessment proceedings on the basis of material facts and subsequently finds it to be erroneous, it is not a valid

reason under the law for re-assessment. Thus, reason to believe cannot be said to be the subjective satisfaction of the assessing authority but means an objective view on the disclosed information in the particular case and must be based on firm and concrete facts that some turnover has escaped assessment.

If there is a change of opinion, there must necessarily be & nexus that requires to be established between the "change of opinion" and the material present before the assessing authority would not be a justified ground to initiate proceedings under section 21(1) of the Act on the basis of a change in subjective opinion.

[Commission of Income Tax v. Dineshchandra H Shah [1971] 82 ITR 367 (SC) and Income Tax Officer v. Nawab Mir Barkat Ali Khan Bahadur [1974] 97 ITR 239 (S.C.)]

[4] In Commissioner of Income Tax v. Kelvinator of India Ltd. (2010) 2 SCC 7232, a three judge bench of this court has considered the meaning of expression "reason to believe" in the context of change of language in section 147 of the Income Tax Act, 1961 (for short "the I.T. Act"). The said pro-vision provides for income that has escaped assessment and lays down the test for ascertainment of the case where reassessment should be performed by the assessing authority. The test being "if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year…". This court in Kelvinator case [2010] 2 SCC 7232 has referred to the legislative intent behind reintroduction of condition of "reason to believe" in the said section and observed that:

On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the assessing officer to make a back assessment, but in section 147 of the Act (with effect from April 1, 1989), they are given a go by and only one condition has remained viz. that where the assessing officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post April 1, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" falling which, the court if afraid , section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of 'mere change of opinion' which cannot be per se reason to reopen.

The Hon. Court must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of 'change of opinion' is removed, as contended on behalf of the department, then, in the garb of reopening the assessment, review would take place.

One must treat the concept of change of opinion as an in-built test to check abuse of power by the assessing officer. Hence, after April 1, 1989 the assessing officer has power to reopen, provided there is 'tangible material' to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. The view gets support from the changes made to section 147 of the Act, as quoted hereinabove.

Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the companies against omission of the words 'reason to believe', Parliament reintroduced the said expression and deleted the word 'opinion' on the ground that it would vest arbitrary powers in the assessing officer…."

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Mergers and Acquisition Corner

CA. Kush Desai
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1. Tata Power to buy Welspun's renewable energy business for $ 1.4 bn[1]

Tata Power Co Ltd has signed an agreement to buy the renewable energy business of Welspun Group for Rs 9,249 crore ($1.4 billion) including debt, making it the top player in the green energy sector in the country. The deal is the largest in India's renewable energy sector thus far, the Tata group company said in a statement late on Sunday. It is also one of the biggest in the power sector and comes as Tata Power sells some of its overseas businesses and focuses more on its India operations. The Tata group company said in a statement late on Sunday that it has inked an agreement to buy Welspun Renewables Energy Pvt Ltd. from Welspun Energy Pvt Ltd. It disclosed the enterprise value of the deal in a stock-exchange filing on Monday.

Welspun Energy is privately owned by the Welspun Group with public listed Welspun Enterprises Ltd holding around 15.5% stake. Welspun Renewables has one of the largest operating solar power portfolios in India spread across 10 states. It has about 1,140 MW of renewable projects comprising about 990 MW solar and about 150 MW of wind power projects. Of this, nearly 1,000 MW capacity is operational and the remaining is under advanced stages of implementation. Tata Power Renewable Energy Ltd currently operates 294 MW of renewable power capacity, and 500 MW of renewable assets are being carved out of Tata Power into this wholly owned arm. In addition, almost 400 MW of solar and wind power projects are under MW with all these assets, making it the largest renewable power company in India.

"This acquisition will enable the company to deliver significant value for all stakeholders as most of the assets are revenue generating and operating assets. Tata Power can further enhance value of these assets with its operational experience and financial optimisation," Tata Power CEO and managing director Anil Sardana said. He added that the acquisition is also a significant step toward attaining the company's objective of having 30-40% of its total generating capacity based on non-fossil fuels. Tata Power, together with its subsidiaries and jointly controlled entities, has an installed gross generation capacity of 9,184 MW and a presence in all the segments of the power sector, fuel security and logistics, generation (thermal, hydro, solar and wind), transmission, distribution and trading. After this acquisition, its installed gross generation capacity will be 10,324 MW. Tata Power hived off its renewable energy assets into the new unit late last year. In March, Tata Power Renewables signed a pact to acquire a 30 MW wind farm from a unit of Indo Rama Renewables Ltd. In April, Tata Power agreed to sell its 50% stake in a joint venture that is developing a geothermal power project in Indonesia for $30 million (about Rs 200 crore).

The latest deal could also open up a liquidity pipeline for GE Energy Financial Services, an arm of American multinational conglomerate General Electric. Two years ago it had agreed to invest $24 million in a 151 mega watt solar photovoltaic power project built by Welspun Renewables at Neemuch in Madhya Pradesh. The deal would also open up an exit opportunity for multilateral development finance agency Asian Development Bank, which had signed an agreement to make an

equity investment of $50 million in Welspun Renewables. It could not be immediately ascertained if the two are staying put as an investor in the project and the company.

JM Financial Institutional Securities Ltd acted as exclusive transaction adviser to Tata Power Renewable. KPMG India was the accounting and tax adviser while AZB & Partners acted as the legal adviser for this transaction. Barclays acted as exclusive financial adviser to Welspun and Cyril AmarchandMangaldas was legal adviser for this transaction. The deal is likely to be closed by September.

2. Dr. Reddy's to buy eight generic drugs in US for $350 mn[2]

Dr Reddy's Laboratories Ltd said it has agreed to buy eight generic drugs in the US from Teva Pharmaceutical and Allergan Plc for $350 million (around Rs 2,350 crore) in cash. The combined sales of the branded versions of the products in the US is around $3.5 billion, the Hyderabad based drugmaker said in a stock exchange filing. "This transaction will add strength to our product portfolio, help us be more relevant in the US market and also create new opportunities for growth," GV Prasad, co-chairman and CEO of Dr Reddy's Laboratories said. The portfolio being acquired is a mix of filed abbreviated new drug applications (ANDAs) pending approval and an approved ANDA and comprises complex generic products across diverse dosage forms, Dr Reddy's said. The acquisition of these AND As is contingent on the closing of the Teva Allergan generics transaction and approval by the US Federal Trade Commission of Dr Reddy's as a buyer. Dr Reddy's is acquiring the portfolio on a cashfree, debtfree basis and expects to finance the transaction using a combination of cash on hand and available borrowings under existing credit facilities, the company said.

3. Cleartax raises $12 mn from SAIF Partners[3]

Income tax return e-filing platform ClearTax, run by Defmacro Software Pvt. Ltd, has raised $12 million (over Rs 80 crore) in a Series A round of funding led by Ravi Adusumalli of SAIF Partners. The firm will use the funds to launch new products and hire talent, it said in a statement. The company will triple it team size to 300 employees by the end of the year. Top talent from India and the Silicon Valley expected to be hired soon. This is part of the firm's move to strengthen its leadership team. "Instead of spending the capital raised on advertising, we will be investing in building technology products and in engineering talent from within India and Silicon Valley," said founder and CEO, Archit Gupta. For it new products, Clear Tax will tap into areas such as consumer and business taxes, tax savings on investments. The company expects to extend its services to 25 lakh users by the year-end. It claim that over 10 lakh users e-filed their tax returns through its platform during FY 2015-16. As part of its new product launch, Clear Tax will roll out a robotic tax saving platform, which will advise users on the best way to save taxes based on income profile, age and other parameters. "For now, we are starting with tax savings and in the future will diversify into investments," Ankit Chaudhary, who oversees marketing for Clear Tax, told Tech circle in. Besides providing advisory services, users can also avail of investment instruments such as PPF, mutual funds, fixed deposits, etc. In April, Clear Tax hired former In Mobi executive Arvind Shastry to head its business unit. The firm also hired a number of engineers from Flipkart—Prasanth Nair, former director at the e-commerce major, joined the tax e-filing firm as vice president of engineering; Anand Mathur, who was with Flipkart from 2010 to 2016, was appointed as director of engineering; Jai Santhosh and Aakash Bapna too joined the

startup from Flipkart as senior engineers. The latest round of funding comes after the firm raised $2 million in a pre-Series A round from PayPal co-founder Peter Thiel's Founders Fund Angel (FF Angel) and Sequoia Capital. In April 2016, Clear Tax secured angel funding worth $1.3 million (around Rs 8.6 crore) from Silicon Valley investors, including PayPal co-founder Max Levchin. Clear Tax provides e-tax filing services to individual consumers, small and medium size enterprises (SMEs) and chartered accountants (CA). It has also launched a mobile app through which users can file tax returns. It was among the 47 startups selected for Combinator's 2014 summer batch and was the fourth Indian startup to be funded by the accelerator.

4. Microsoft to buy LinkedIn for $ 26.2 Billion[4]

Microsoft Corp. is acquiring the professional social network LinkedIn Corp. for $ 26.2 billion, one of the largest technology industry deals on record, as the maker of Windows software attempts to put itself at the center of people's business lives. The deal is a way for Microsoft, which largely missed out on the consumer Web boom dominated by the likes of Google and Facebook Inc., to sprint ahead in social tools – in this case, for professionals. While Chief Executive Officer Satya Nadella has drawn kudos for efforts to reshape the company and reignite sales growth, the board is urging an even faster shift toward software and services delivered over the Internet.

Microsoft will pay $196 per share in an all cash transaction, including LinkedIn's net cash, a 49.5 percent premium to LinkedIn's closing price Friday. LinkedIn will retain its brand, culture and independence and Jeff Weiner will remain CEO of the social network, Microsoft said in a statement Monday. The price relative to LinkedIn's earnings makes the transaction the most expensive of any major deal this year, according to data compiled by Bloomberg.

"This is about the coming together of the leading professional cloud and the leading professional network," Nadella said in an interview. "This is the logical next step to take. We believe we can accelerate that by making LinkedIn the social fabric for all of Office."The deal is the biggest ever for Microsoft as Nadella, 48, focuses on appealing to business customers with cloud-based services and productivity tools rather than regular customers. In a presentation announcing the deal, Redmond, Washington-based Microsoft outlined a vision inwhich a person's LinkedIn profile resides at the middle of other pieces of their work life, connecting with Windows, Outlook, Skype, Office productivity tools like Excel and PowerPoint, and other Microsoft products. Microsoft's Cortana digital assistant could provide users with information pulled from LinkedIn about participants in an upcoming meeting, for example, while a LinkedIn news feed will serve up articles based on projects that users are working on. Other products could include a kind ofconsulting service that will suggest an "expert" who might be able to help with a given project. Microsoft could build LinkedIn, the largest global professional network, into a major customer relationship management software system for sales people, pushing into an area dominated by Salesforce.com Inc., said Anurag Rana, a senior analyst for Bloomberg Intelligence. "LinkedIn could really become a big competitor for Sales force going forward," he said. LinkedIn's analytics will help power data tools for Microsoft's Dynamics, which competes with Salesforce in helping companies manage relationships with their customers. While Nadella and Weiner had spoken many times about partnerships, they first met to discuss a potential acquisition deal in February. LinkedIn had just given a lower than expected revenue forecast that caused its stock to fall more than 40 percent in a day. "In that very first meeting,

we both got excited as we were brain storming and riffing a bit about the things we could do in combination, combining the world's professional network and the world's professional cloud," Weiner said in an interview Monday. What piqued Weiner's interest most was Nadella's idea for the structure of the organization that LinkedIn could continue to operate independently like Facebook's WhatsApp or Google's YouTube but still rely on Microsoft for a boost in potential customers.

LinkedIn shares surged 47 percent to $192.21 in New York, their biggest advance since 2011. They had declined 42 percent this year through Friday as investors began to question the company's long term prospects. Microsoft fell 2.6 percent to $50.14. Twitter Inc. jumped as much as 9.1 percent amid speculation that it could be in play as well before paring some gains to close up 3.8 percent at $14.55.

The $26.2 billion offer values LinkedIn at about 91 times earnings before interest, taxes, depreciation and amortization, according to data compiled by Bloomberg. Excluding net cash, the multiple is about 84 times Ebitda. That's the highest of any takeover valued at more than $5 billion this year, the data show. On a conference call, Microsoft said it's confident in the cash position it has and that the company will keep investing for growth. However, the debt-financed LinkedIn deal gave Moody's Investors Service pause. The agency placed Microsoft's debt rating under review for downgrade, saying the purchase will increase Microsoft's gross debt to two times Ebitda, exceeding the 1.5 times leverage Moody's has said could pressure the rating. Microsoft and Johnson & Johnson are currently the only two U.S. companies with a AAA creditrating.

Microsoft made several big acquisitions over recent years under previous CEO Steve Ballmer, though many of them have not panned out as hoped. Microsoft has largely written off it's $9.5 billion purchase of Nokia Corp.'s mobile phone business, Skype hasn't matched the promise of integrating into other products after the $8.5 billion deal in 2011, and Yammer has been a mixed bag after the corporate social network operator was bought in 2012. Nadella's 2014 purchase of Mojang AB, the maker of the Minecraft video game, has been a bright spot.

When assessing acquisitions, Nadella thinks about whether the target would expand market opportunity, ride the technology waves of the future and be at the core of Microsoft. LinkedIn has long been valued for having the potential viral growth of a social network with the recurring revenues of a softwareasaservice business. But recently, growth has started to slow and it's been more difficult to get people to return to the site and pay for services. The company has been rethinking its strategy, redesigning its suite of mobile applications to make the product easier to use. Combining with Microsoft would give LinkedIn a boost in members with reasons to visit, making it more useful if people are sharing updates more frequently.

1. http://www.vccircle.com/news/power/2016/06/13/tata-power-buy-welspuns-renewable-energy-business
2. http://www.vccircle.com/news/pharmaceuticals/2016/06/11/dr-reddys-buy-eight-generic-drugs-us-350-mn
3. http://www.vccircle.com/news/technology/2016/06/17/cleartax-raises-12-mn-saif-partners
4. http://www.bloomberg.com/news/articles/2016-06-13/microsoft-to-buy-linkedin-in-deal-valued-at-26-2-billion-ipe079k9

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Corporate Law Update

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MCA Updates:

1. Relaxation of additional fees and extension of time for filing of e-Forms by the Companies under Companies Act, 2013 and for filing of Annual Return (Form 11) by the LLPs under the Limited Liability Partnership Act, 2008.

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 25.03.2016 to 30.06.2016 as well as extend the last date for filing such documents and availing the benefit of waiver to 10.07.2016.

Further, it has also been decided to extend the time limit presided under the provisions of section 35 of LLP Act, for filing of Form 11 of LLP in respect of Financial Year ending on 31.3.2016 up to 30.06.2016, without additional fees.

[F. No. MCA/21/33/2016- e-Gov cell dated 30th May, 2016]

2. Transfer of power from Company Law Board to National Company Law Tribunal.

The Central Government has fixed the **01st day of June, 2016,** on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.

[F No. 1/30/CLB/2013/CL-V dated 01st June, 2016]

3. Constitution of NCLT and commencement of relevant Provisions of Companies Act, 2013.

The Central Government has appointed the 01st day of June, 2016 as the date on which the following provisions of the Companies Act, 2013, shall come into force, namely :—

Sr. No.	Section
1	Sub-section (7) of section 7 [except clause (c) and (d)]
2	Second proviso to sub-section (1) of section 14
3	Sub-section (2) of section 14
4	Sub-section (3) of section 55
5	Proviso to Clause (b) of sub-section (1) of section 61
6	Sub-sections (4) to (6) of section 62
7	Sub-sections (9) to (11) of section 71
8	Section 75
9	Section 97
10	Section 98
11	Section 99
12	Sub-section (4) of section 119
13	Section 130
14	Section 131
15	Second proviso to sub-section (4) and sub-section (5) of section 140
16	Sub-section (4) of section 169
17	Section 213
18	Sub-section (2) of Section 216
19	Section 218
20	Section 221
21	Section 222
22	Sub-sections (5) of section 224
23	Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245
24	Reference of word 'Tribunal' in sub-section (2) of section 399
25	Sections 415 to 433 (both inclusive)
26	Sub-section (1)(a) and (b) of section 434
27	Sub-section (2) of section 434
28	Section 441
29	Section 466

The Central Government has constituted the following Benches of the National Company Law Tribunal:

Sr. No.	Title of the Bench	Location	Territorial Jurisdiction of the Bench
1 (a) (b)	National Company Law Tribunal, Principal Bench. National Company Law Tribunal, New Delhi Bench.	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi.
2	National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of Dadra and Nagar Haveli. (4) Union territory of Daman and Diu.
3	National Company Law Tribunal, Allahabad Bench.	Allahabad	(1) State of Uttar Pradesh. (2) State of Uttarakhand.
4	National Company Law Tribunal, Bengaluru Bench.	Bengaluru	(1) State of Karnataka.
5	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh.
6	National Company Law Tribunal, Chennai Bench.	Chennai	(1) State of Kerala. (2) State of Tamil Nadu. (3) Union territory of Lakshadweep. (4) Union territory of Puducherry.
7	National Company Law Tribunal, Guwahati Bench.	Guwahati	(1) State of Arunachal Pradesh. (2) State of Assam.(3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim.(8) State of Tripura.
8	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	(1) State of Andhra Pradesh. (2) State of Telangana.
9	National Company Law Tribunal, Kolkata Bench.	Kolkata	(1) State of Bihar. (2) State of Jharkhand. (3) State of Odisha. (4) State of West Bengal. (5) Union territory of Andaman and Nicobar Islands.
10	National Company Law Tribunal, Mumbai Bench.	Mumbai	(1) State of Chhattisgarh. (2) State of Goa. (3) State of Maharashtra.

[F. No. A-45011/14/2016-Ad.IV dated 01st June, 2016]

4. Constitution of National Company Law Tribunal.

The Central Government has constituted the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the **01st day of June, 2016**.

The Central Government also has constituted the National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the **01st day of June, 2016**.

[F. No. A-45011/14/2016-Ad. IV dated 01st June, 2016]

5. **Limited Liability Partnership (Second Amendment) Rules, 2016.**

By virtue of the Limited Liability Partnership Rules, 2009, following changes:

(a) In Form 2,-

(l) in Part A, in serial number 12, in item (i), for sub-item (ii), the following shall be substituted, namely:-

"(ii) Name of **nominee** :

(II) in Part B, under the heading 'Addendum to Form 2', in serial number 6, in item (i), for sub-item (ii),the following shall be substituted, namely:-

"(ii) Name of **nominee** :

(b) In Form 3,-

(I) in part A, in serial number Z, in item (ii) for the Table, the following shall be substituted namely:-

1	2	3	4	5	6	7	8
"SI No.	DPIN/ Incometax PAN/ Passport number	Name of Partner	**Name of Nominee in case of body corporate**	Designation on (Partner/ Designated Partner)	Form of contribution	Monetary Value of Contribution	% of profit sharing

(II) in part B, for serial number 21-

(A), in item (a) for the Table, the following Table shall be substituted, namely:-

1	2	3	4	5	6	7	8
Type of change	DPIN/ Incometax PAN/ Passport number	Name of Partner	**Name of Nominee in case of body corporate**	Designation on (Partner/ Designated Partner)	Form of contribution	Monetary Value of Contribution	% of profit sharing
o Deletion o Change o No change			o DP o P				

(B) in item (b), for the Table, the following Table shall be substituted, namely:-

1	2	3	4	5	6	7
Type of change	DPIN/ Incometax PAN/ Passport number	Name of Partner	**Name of Nominee in case of body corporate**	Form of contribution	Monetary Value of Contribution	% of profit sharing
o DP o P						

(c) (a) in Form 4,-

(a) in serial number 7, in item (i), for sub-item (ii), the following shall be substituted, namely:-

"(ii) Name of **nominee**

(b) Under the heading 'Addendum to Form 4', in serial number 6, in Item (i), for sub-item (ii) the following shall be substituted, namely:-

"(ii) Name of **nominee**

(d) In Form 11, in serial number 13, in item (ii), for the table, the following shall be substituted, namely:-

1	2	3	4	5	6
Type of change	DPIN/ Incometax PAN/ Passport number	Name of Partner/ Designated Partner	**Name of Nominee in case of body corporate**	Section number Offence	Penalty imposed

[F. No. 17/31/2015-CL-VI dated 10th June, 2016]

SEBI Updates:

1. Restriction on redemption in Mutual Funds:

In order to bring more clarity and to protect the interest of the investors, the following requirement shall be observed before imposing restriction on redemptions:

a. Restriction may be imposed when there are circumstances leading to a systemic crisis or event that severely constricts market liquidity or the efficient functioning of markets such as:

   I. Liquidity issues - when market at large becomes illiquid affecting almost all securities rather than any issuer specific security.

   II. Market failures, exchange closures - when markets are affected by unexpected events which impact the functioning of exchanges or the regular course of transactions Such unexpected events could also be related to political, economic, military, monetary or other emergencies

   III. Operational issues - such as force majeure, unpredictable operational problems and technical failures (e.g. a black out).

b. Restriction on redemption may be imposed for a specified period of time not exceeding 10 working days in any 90 days period.

c. Any imposition of restriction would require specific approval of Board of AMCs and Trustees and the same should be informed to SEBI immediately.

d. When restriction on redemption is imposed, the following procedure shall be applied.

   i. No redemption requests up to INR 2 lakh shall be subject to such restriction.

   ii. Where redemption requests are above INR 2 lakh, AMCs shall redeem the first INR 2 lakh without such restriction and remaining part over and above INR 2 lakh shall be subject to such restriction.

e. The above information to investors shall be disclosed prominently and extensively in the scheme related documents regarding the possibility that their right to redeem may be restricted in such exceptional circumstances and the time limit for which it can be restricted.

This circular shall be applicable immediately for (i) all schemes to be launched on or after the date of this circular and (ii) all the existing schemes with effect from July 01, 2016.

[SEBI/HO/IMD/DF2/CIR/P/2016/57 dated 31ST May, 2016]

2. Investor Protection Fund (IPF) of Depositories.

Based on recommendations of DSRC and Expert Committee on Clearing Corporations, the following guidelines are being issued with regard to IPF of the Depositories.

Utilization of the IPF

The IPF may be utilized for the following purposes with a focus on depository related services:

i. Promotion of investor education and investor awareness programmes through seminars, lectures, workshops, publications (print and electronic media), training programmes etc. aimed at enhancing securities market literacy and promoting retail participation in securities market.

ii. To aid, assist, subsidise, support, promote and foster research activities for promotion/ development of the securities market.

iii. To utilize the fund for supporting initiatives of Depository Participants for promotion of investor education and investor awareness programmes.

iv. To utilize the fund in any other manner as may be prescribed/ permitted by SEBI in the interest of investors.

- Depositories shall frame their internal guidelines on utilization of the funds in accordance with the aforementioned objectives and post approval of their board, submit the same to SEBI within 30 days from the date of this circular. Depositories shall also keep SEBI informed of any subsequent changes in internal guidelines with regard to utilization of IPF.

Constitution and Management of the IPF

The IPF shall be administered by way of a Trust created for the purpose.

i. The IPF Trust shall consist of at least one Public Interest Director (PID) of the depository, one person of eminence from an academic institution from the field of finance / an expert in the field of investor education / a representative from the registered investor associations recognized by SEBI and Managing Director of the Depository.

ii. The Depository shall provide the secretariat for the IPF Trust.

iii. The Depository shall ensure that the funds in the IPF are kept in a separate account designated for this purpose and that the IPF is immune from any liabilities of the Depository.

Contribution to the IPF

The following contributions shall be made by the Depository to the IPF:

i. 5% of their profits from Depository operations every year. The depositories shall transfer the amount with effect from the Financial Year 2012-13 as specified in the SEBI (Depositories and Participants) (Amendment) Regulations, 2016.

ii. All fines and penalties recovered from Depository Participants and other users including Clearing Member pool account penalty as specified in SEBI circular no. SMDRP/Policy/Cir-05/2001 dated 01st February, 2001.

iii. Interest or Income received out of any investments made from the IPF.

iv. Funds lying to the credit of IPR (Investor Protection Reserve) / BOPF (Beneficial Owners Protection Fund) of the Depository or any other such fund / reserve of the Depository shall be transferred to IPF.

v. Any other sums as may be prescribed by SEBI from time to time.

Investments of Fund

- Funds of the Trust shall be invested in instruments such as Central Government securities, fixed deposits of scheduled banks and any such instruments which are allowed as per the investment policy approved by the Board of the Depository. The investment policy shall be devised with an objective of capital protection along with highest degree of safety and least market risk.

- The balance available in the IPF as at the end of the month and the amount utilized during the month including the manner of

utilization shall be reported in the Monthly Development Report of the Depository.

- The Depositories shall implement the provisions of this circular within three months from the date of issuance of this circular.

[SEBI/HO/MRD/DP/CIR/P/2016/58 dated 07th June, 2016]

3. Know Your Client (KYC) norms for ODI subscribers, transferability of ODIs, reporting of suspicious transactions, periodic review of systems and modified ODI reporting format.

The SEBI has decided that ODI Issuers shall be guided by the following provisions w. e. f. 01st July, 2016, with regard to the norms relating to the issuance and transfer of ODIs:

Applicability of Indian KYC/AML norms for Client Due Diligence.

With regards to KYC of ODI subscribers, ODI Issuers shall now be required to identify and verify the beneficial owners (BO) in the subscriber entities, who hold in excess of the threshold as defined under Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 i.e. 25 % in case of a company and 15 % in case of partnership firms/ trusts/ unincorporated bodies. ODI issuers shall also be required to identify and verify the person(s) who control the operations, when no beneficial owner is identified based on the aforesaid materiality threshold.

KYC Review

The KYC review shall be done on the basis of the risk criteria as determined by the ODI issuers, as follows:

a. At the time of on-boarding and once every three years for low risk clients.

b. At the time of on-boarding and every year for all other clients.

It is clarified that in case of existing ODI Subscriber, the KYC review should be done within three years for low risk clients and one year for all other clients from the effective date of this circular and accordingly reported in revised ODI reporting format.

Suspicious Transactions Report

ODI Issuers shall be required to file suspicious transaction reports, if any, with the Indian Financial Intelligence Unit, in relation to the ODIs issued by it.

Reporting of complete transfer trail of ODIs

Presently, the details of the holder of ODIs have to be mandatorily reported to SEBI on a monthly basis. The ODI issuers are also required to capture the details of all the transfers of the ODIs issued by them and these can be made available to SEBI on demand. The Board decided that in the monthly reports on ODIs all the intermediate transfers during the month would also be required to be reported.

Reconfirmation of ODI positions

ODI Issuers shall be required to carry out reconfirmation of the ODI positions on a semi-annual basis. In case of any divergence from reported monthly data, the same should be informed to SEBI in format provided.

Periodic Operational Evaluation

ODI Issuers shall be required to put in place necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A certificate in this regard should be submitted on an annual basis to SEBI by the Chief Executive Officer or equivalent of the ODI Issuer. The said certificate should be filed within one month from the close of every calendar year.

Accordingly, KYC Documentation for ODI subscribers is specified in Annexure I and the revised ODI reporting format is specified in Annexure (II) of the circular.

[CIR/IMD/FPI & C/59/2016 dated 10th June, 2016]

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Allied Laws Corner

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A Chartered Accountant, a master-mind, in providing accommodation entries faced life time banned from practice.

Recently the High Court of Punjab and Haryana in the case of **Institute of Chartered Accountants of India vs. Vivek Kapoor** as reported in **70 taxmann.com 170** observed that the said Chartered Accountant admitted his guilt of providing accommodation entries before the Income Tax Authority, which has resulted in defrauding the revenue and he has left the Country; even he did not avail the opportunity afforded to him at various levels. It is further observed that a Professional, who behaves in this manner, deserves to be dealt with sternly and the conduct of the concerned Chartered Accountant is wholly unworthy of Chartered Accountant, who is expected to maintain high standard of professional conduct. Therefore, the Hon'ble Court directed the Institute of Chartered Accountant of India to remove the name of concerned Chartered Accountant from the register of members for the life time as against 10 years recommended by the Council of ICAI.

A. *Modus Operandi* of the guilty Chartered Accountant in providing accommodation entries in the present case :

1. The case of Vivek Kapoor, the Chartered Accountant was established on the basis of admission made by him before the Income Tax Authorities and the allegations made against him were never denied by him at any stage of proceedings. The admission made by him before the Income Tax Authorities is extracted as under :

   "Statement of Sh. Vivek Kapoor recorded on 15.1.2002

   Q.1 Pl. identify yourself.

   Ans. I am Vivek Kapoor and am working as Chartered Accountant since 1982. I am educated upto B.A. and as stated earlier have done C.A. I am practicing as income tax consultant for the last 20 years. I am practicing only at Amritsar and not anywhere else. But I am having outstation clients in Delhi only, nowhere else.

   Q.2 It has been noted that you have introduced two accounts in the name of M/s J K Enterprises, Prop. Deepak Kumar in OBC, Putlighar and of Mr. Shiv Kumar in OBC, Civil Lines. Do you accept this?

   Ans. It is submitted that I being a good citizen and since my conscious is also picking me I want to tell your good self the whole story. Actually I was being led into the bank entry business by Sh. Ashwani Mittal and Sh. Raj Kumar Gupta. I met Mr. Raj Kumar Gupta first and he introduced me to Sh. Ashwani Mittal. Raj Kumar Gupta is resident of Yamuna Nagar and is practicing C.A. there. Ashwani Mittal is otherwise not in practice and is resident of Jagadhari-Khera Bazar. I am having his telephone numbers which are 9812078860 (mobile), 47504 (residence) and 42713 (office). They came to me at Amritsar in the year 1997 when Sh. Raj Kumar Gupta had come for some bank audit. During the meeting they asked me to offer accounts in various names at Amritsar so that the accommodation entries may be given at Yamuna Nagar and Jagadhari. They were after getting the entries of export concerns. This was because the export project is tax free.

Since I was having some export concerns with me. I was lured by them into sending the export entries to their clients at Yamuna Nagar and Jagadhari.

At Amritsar I was only being sent the cash by this person, i.e., Ashwani Mittal. When the cash being received it was then deposited in various bank accounts at Amritsar which I shall state later on. The cash was sent on the instruction of Sh. Ashwani Mittal with the direction reg only the name blank and the amount of the draft to be prepared. In fact Ashwani Gupta is in the league with the local CAs at Yamuna Nagar who approach him and he then sends the money to Amritsar. The money received at Amritsar was deposited by me with the help of my employees in the office. They used to prepare the drafts from the bank and send the drafts to Yamuna Nagar at the address of Ashwani Mittal, Kheri Bazar, Jagadhari by courier service i.e. First Flight, Court Road, Opp. Swami Motors, Amritsar. The detail of the bank accounts used at Amritsar is as follows:

(a) OBC Putlighar in the name of J K Enterprises Prop. Deepak Kumar, 52626

(b) OBC Civil Lines in the name of Shiv Kumar A/c No. 13105

(c) OBC Hall Bazar in the name of J K Enterprises Prop. Deepak Kumar 10350

(d) OBC Jallianwala Bagh in the name of J K Enterprises

(e) CBI Civil Lines in the name of J K Enterprises A/c No. 943

SBOP East Mohan Nagar in the name of A. G. Exports and M/s R. K. Overseas

(f) State Bank of Bikaner and Jaipur, AG Exports, Rajan Arora HUF, Bee Gee International, Bani Exports

(g) P. S. B. Sindhvidayalaya in the name of Bani Export

(h) P. S. B. Tanda Talab in the name of Jac Bros.

In addition to the above it is also informed that as per my intimation Ashwani Mittal and his association have opened an account in the name of Jac Bros in Central Bank of India Yamuna Nagar or Jagadhri. In this account along with the actual partners of Jac Brother whose photographs were prepared by me (without the knowledge of the actual partners of Jac Bros) Mr. SC Garg, Shallu Gupta, Atul Garg etc. were partners. I am supplying you the detail of the same.

Also it is intimated that the parties have not only taken bank entries but also cash entries straightway and I am furnishing the copy of the account of these persons. These persons have cash entries from R. K. Overseas (without the knowledge of actual partners or in the books of actual partners).

In the banks the entry(s) are also to serve other stations. It is further submitted that all the photos except of Shiv Kumar are also false. I have told everything because I felt that this was not right thing being done by me. I want to clear my consciousness and come out clean before the department. It is submitted that other than the export entries to the partners, some share application money was also sent in favour of T. G. Leisure & Resorts P. Ltd. and also some money was given to Daisy Investments i.e. Awayzet Road, Delhi. Entries worth 60 lacs (approx) were given to them. All of these are done on the instruction given by Ashwani Mittal. Whatever is stated above is true to best of my knowledge and belief and has been stated voluntarily without any coercion.

Q.3 Please now tell whether the entries which were being given through your banks were for some consideration?

Ans. Yes, this was consideration involved which ranged between one to three percent while there were entries also on which I did not get any consideration. I am ready to pay taxes on it. My case maybe viewed sympathetically. I have discussed everything. I am ready to pay taxes subject to no penalty and prosecution.

Statement of Sh. Vivek Kapoor recorded on 18.1.2002

Q.4 Pl. tell who is Deepak Kumar, the prop. of J K Enterprises in the account 52626 in OBC Putlighar.

Ans. Actually nobody in the name of Deepak Kumar exits. Any available photograph was attached. This photograph is not known to me. However the account was operated by me and I used to sign as Deepak on the cheques.

Q.5 Pl tell who is Deepak Kumar on the account opening form of A/c number 10350 in OBC Hall Bazar.

Ans. This account was also operated by me and I used to sign as Deepak Kumar. However the photograph which was picked randomly in this case happen to be that of Manu r/o Gopal Di Haqtti, Swawer Mandi, Amritsar. He happened to be one of my articles.

Similar in the OBC Jalianwala Bagh account in the name of Deepak Kumar prop. J K Enterprises the photograph is of somebody else. But the account was operated by me by signing again as Deepak. The photograph was arranged randomly and I do not know who is the person. Also in the account of J K Enterprises Prop Deepak Kumar in CBI (Central Bank of India) Civil Lines, Amritsar the photograph is of somebody else, and was arranged randomly. However again the account was operated by me by signing as Deepak.

In the Jee Bee International also the signature of Deepak Kumar are done by me but the photograph of Ajay Kumar who is working as an accountant with Sanjay Weaving Co. Verka.

Q.6 Pl tell who is Sameer Arora signing the cheques of AG Exports in SBOP East Mohan Nagar, Amritsar and who is signing as Vicky in the RK Overseas.

Ans. In RK Overseas account with SBOP the account was opened as a proprietary concern and I used to sign as Vicky on the cheques and operate the same. The photocopy of the cheque No. 0292563 dated 12.11.98 from account No. 1344 of RK Overseas shown to me has been assigned by me and on the reverse of the cheque the application for the issue of demand draft favouring Sushil Gupta has also been written by me. It is submitted that now I recollect that this concern was opened as partnership concern with Kuljit Singh as partner and Vicky. Kuljit Singh was a sham name and I signed as Kuljit Singh.

The AG Exports was also opened as a partnership with SBOP East Mohan Nagar with Sameer Arora and Avtar Singh as partners. The signatures are of Sameer Arora and Avtar Singh but these are not any real persons.

Q.7 What about the account of AG Exports with State Bank of Bikaner & Jaipur.

Ans. This was an account opened as proprietorship in the name of Rajiv Kanth who was a typist with me. He is presently working with Hardayal Singh & Sons, Tarn Taran Road, Amritsar. Though he has signed all the cheques but the same have been done on my

instructions. Similarly the account of Bee International was also opened by me as stated earlier. I used to sign as Deepak and I used to sign as Benu. The photograph of the lady is not of somebody known to me but has been just arranged and provided to the bank.

Also the account of Rajan Arora and Bani Exprots was also operated by me. The photograph on the Bani Export account is that of Sandeep Singh resident of Chall Mandi and the photograph on Rajan Arora HUF account is of someone not known to me and has been randomly picked.

In the end I would like to state that all the entries using the names of various export namely RK Overseas, AG Exports, bani Exports, Jac Bros. Bee Bee International either cash, cheque or draft are not having any basis. This is only a method of converting the unaccounted i.e. black money of the beneficiaries as legitimate accounted money without the payment of income tax."

1. Not only the said Chartered Accountant admitted his guilt before the IT Authorities, but also he filed a Settlement Application before the Settlement Commission again admitting his ***modus operandi*** as under :

"Statement of Facts

1.1 The applicant is a whole time practicing Chartered Accountant practicing Company in Amritsar and having a few clients with Branch Offices in Delhi and Karnal as well. The applicant was also auditing the books of account of the following exporter firms u/s 44AB of the Act.

1. M/s AG Exports, Tarn Taran Road, Amritsar.

2. M/s Bant Exports, Tarn Taran Road, Amritsar

3. M/s R. K. Overseas, Tarn Taran Road, Amritsar

4. M/s Jac Bros., Tarn Taran Road, Amritsar

5. M/s Bee Bee International, 62-Bhandari Bridge, Amritsar

6. M/s Gaurav Arora, 62- Bhandari Bridge, Amritsar

7. M/s Kiran International, Tarn Taran Road, Amritsar 9. M/s Parveen Suneja, Bagh Ramanand, Amritsar

1.2 As already stated the financial position of the applicant was quite weak and the added illness of his old parents was proving burdensome.

1.3 During the financial year 1997-98, the applicant met Shri Ashwani Mittal and a chartered Accountant Shri Raj Kumar Gupta both of Yamuna Nagar, who coerced and prevailed upon him to enter into the business of giving accommodating entries. The modus operandi suggested by them was that applicant would provide them with true copies of the Trading, Profit & Loss A/c and Balance Sheets of the genuine exporters for which the applicant was the Audition on the basis of the actual balance sheets of such genuine exporters, one of them would prepare duplicate profit & loss account, balance sheets and partnership deeds with deferent set of partners and locate persons interested in buying accommodation entries of tax free export profits. The applicant would then open bank accounts in various banks especially in the bank/ branches where the bank accounts of genuine exporters existed. The accommodating entries were to be routed through the said bank accounts. In pursuance of the said scheme, the following bank accounts were opened.

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1.4 None of the aforesaid accounts were in the name of the applicant and as such none of the deposits or remittances in the said accounts belonged to the applicant.

1.5 After preparation of duplicate sets of Trading and Profit & Loss A/c, Capital are having names of various interested parties and balance sheets, as well as duplicate partnership deeds having names of interested parties as partners and opening of bank accounts, the next step used to be to issue bank drafts interested parties. The bank drafts/ cheques were issued under the directions of Shri Ashwani Mittal of Yamuna Nagar. The drafts were issued mainly for outstation parties based in cities like Yamuna Nagar, Panipat, Ponta Sahib, Faridabad and Delhi etc. the applicant knew none of the said parties.

1.6 The total funds deposited in various bank account were arranged and given by Shri Ashwani Mittal of Yamuna Nagar. The drafts were made in the names supplied by him.

1.7 There were also transfers from the other banks and sometimes cash was withdrawn which was refunded to the parties as directed by Shri Ashwani Mittal.

1.8 The applicant also gave certain accommodating entries to the parties in Amritsar, which were known to him only. The applicant also earned commission by using his contracts without various clients for arranging sales turnover. The cash received by way of sale proceeds was remitted to the sellers through cheques issued from the aforesaid bank accounts. A few parties were also given accommodating entries by way of Share application money.

1.9 The applicant had employed staff for handling cash and for getting drafts prepared. The applicant also incurred various expenses of the nature of conveyance, stationary, photocopying, bank account opening expenses etc.

1.10 The applicant invested the savings cut of commission earned in fixed deposits and also gave private cash loans. The interest earned on the said movements is also being offered for tax.

Manner in which Income has been derived

The applicant has been providing accommodating entries in the form of export profits, loans, creating turn over and share application money. Most of the time, the two persons of Jamuna Nagar mentioned above would refer the parties but, sometimes, the parties desirous of converting their unaccounted money into accounted one would contact the applicant directly. The rates of commission varied. It was 1% of the amount of the entries in respect of the cases referred by Shri Ashwani Mittal of Yamuna Nagar and 3% for the parties contacting directly. A few parties mostly relatives were not charged any commission.

The amount of commission earned was partly spent but was mostly invested in deposits of small amounts or lent in cash on interest to third parties. While computing interest on investment it has been presumed that all the available funds/ savings were deployed for earning interest @ 12% for the whole year.

The applicant after carefully perusing his profit and loss account filed before the income tax department for the AY. 1998-99 to AY 2001-02, had identified certain expenses that may not have been incurred for the purpose profession and has therefore offered the same to tax before the Hon'ble Settlement Commission. The applicant had also offered to tax for each of the assessment years certain amounts which may have been earned by way of commissions etc. for which no records are available in order to ensure that there is no

escapement of income. Neither the commission nor the interest income earned through investments was recorded in the regular books of accounts. There is also no other record of such transactions except the bank accounts. Based on the entries in the bank accounts and on the basis of memory and the unaccounted net wealth, the applicant has prepared the revised computation of income for each of the five years. The revised income and expenditure accounts and the balance sheets that are annexed in Appendix to this application also support them. Revised income and expenditure accounts, capital account and balance sheets for each of the five years are as per appendix. The consolidated utilization statement is as per appendix.

True and Full Disclosure

The applicant has disclosed additional income of Rs. 42,64,000/- for all the five years on which the additional tax comes to Rs. 13,32,721/- as per the yearly computations given in the appendices. These disclosures are in addition to regular incomes for these years already disclosed in the regular of income furnished from time to time."

2. Thereafter, the Commissioner of Income Tax filed a complaint against the said Chartered Accountant and the matter was referred by the Council to the Disciplinary Committee. However, the said Chartered Accountant neither filed any reply nor appeared before the Disciplinary Committee and left the Country. The findings and the conclusions recorded by the Disciplinary Committee are extracted below:

"Findings

10. The Committee considered the submissions made by the complainant and the witnesses who had appeared before the Committee. The Committee also perused the documents placed on record by the complainant.

11. The complaint was received duly filled in Form 8 by the Commissioner of Income-tax-II, Amritsar and it was noted that the respondent has been in full time practice as a Chartered Accountant at Amritsar. The respondent has failed to submit his written statement inspite of regular reminders. The letters were returned undelivered with the postal remarks "Prapt karta desh chor kar chala gaya hai".

12. The Committee is of the view that the respondent has opened various bank accounts using fake names and photographs. He was also operating all these bogus accounts to route the accommodation entries. The cash was obtained from the beneficiaries and the bank draft or the cheques were issued to the beneficiaries. In most of the cases, beneficiaries were shown as partners in various export concerns by making forged partnership deeds. The cheques received by the beneficiaries were given to them as the tax free bonds derived from the exports. In few of the cases, the beneficiaries were also given by way of sales turnover, share application and loans. All these have been very well admitted by the respondent in the statement given by him before the income-tax authorities and also in the application made before the Settlement Commission. The Committee also examined the witnesses, namely, Shri Ravinder Pal Mehra and Shri Shashi Pal Mehra who had given the statement on oath before the Commissioner of Income-tax as well. The witnesses also deposed before the Committee that the respondent has misguided them by explaining that the income when would be shown would not be taxable as it is in the form of export profit. Thus, the respondent has performed the acts, which are not expected of a Chartered Accountant.

13. Considering the overall facts stated as above, the Committee is of the view that the respondent had indulged in opening and operating Bank Accounting using fake names and photographs, giving bogus entries, preparing fraudulent partnership deeds. Profit & Loss Account and Balance Sheet and has thereby done cheating with clients and has help clients to defraud the revenue by helping in evading Taxes and, therefore, has committed acts which are unbecoming of a Chartered Accountant. The Committee is thus of the view that the respondent is guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

Conclusion:

15. Thus, in conclusion, in the considered opinion of the Committee, the respondent is guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949."

3. The Council on the basis of the report of the Disciplinary Committee recommended removing the name of the said Chartered Accountant from the Register of Members for a period of ten years.

A. Provisions of the Chartered Accountants Act, 1949 for removal of name of the member from the register :

As per S.21 of the Chartered Accountants Act, 1949, after following due procedure as laid down in the Act, the Council can take action against its members if the removal of name of a member from the register is upto the period of five years. In case the penalty proposed to be imposed is of a period more than five years, then the matter is to be referred to High Court. After receipt of the recommendations from the Council, the High Court is competent to pass any order in terms of powers conferred under Section 21(6) of the Act.

B. Finding of the High Court :

On filing of reference by the Council in pursuant to S.21(5) of the Act before the Punjab & Haryana High Court, the High Court directed the Council to remove the name of the said Chartered Accountant from the register for life time as against 10 years as proposed by the Council, after making following observations :

***15.** From the facts, noticed above, it is clear that respondent No. 1 grossly violated the code of ethics for Chartered Accountants. He admitted his guilt before the Income-tax authorities, which resulted in defrauding the revenue. Thereafter, he left the country. He did not avail of the opportunity afforded to him at different stages to defend the case against him. A professional, who behaves in this manner, deserves to be dealt with sternly. In our opinion, the conduct of respondent No. 1 is wholly unworthy of a Chartered Accountant, who is expected to maintain high standard of professional conduct. The punishment proposed by the Institute in these circumstances is quite lighter. Such a professional deserves to be debarred from practice for life time. Hence, in exercise of powers conferred under Section 21(6) of the Act, we deem it appropriate to direct that name of respondent No. 1 be removed from the register of members of the Institute for life. Ordered accordingly.*

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From Published Accounts

CA. Pamil H. Shah
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AS 9 Revenue Recognition

Significant Accounting Policies - Annual Report 2014-15

Ashok Leyland Limited

a) Sale of goods

Revenue from sale of products, net of returns, is recognised on dispatch or appropriation of goods in accordance with the terms of sales and is inclusive of excise duty. Price escalation claims are recognised to the extent there is reasonable certainty of its realisation.

b) Sales of services

Revenue from services is recognised in accordance with the specific terms of contract on performance.

c) Income from Financial Services

Interest / finance income from assets on finance / loan included in revenue from operations represents interest income arrived at based on internal rate of return method. Interest income is recognised as it accrues on a time proportion basis taking into account the amount outstanding and the rate applicable, except in the case of non-performing assets (NPA) where it is recognised upon realisation.

d) Income on Securitisation/assignment

i) In respect of transfer of financial assets by way of securitisation or bilateral assignments, the said assets are derecognized upon contractual transfer thereof, and transfer of substantial risks and rewards to the purchaser. The gain arising on transfer of financial assets by way of securitisation or bilateral assignments, if received in cash, is amortised over the tenure of the related financial assets, and if received by way of excess interest spread, is recognised based on the contractual accrual of the same. Loss on sale, if any is charged to consolidated statement or profit and loss immediately at the time the sale is effected.

ii) Upfront income pertaining to loan origination is accounted for upfront as and when it becomes due.

e) Income from energy generated

Revenue from energy generated through windmills is recognised based on the contracted rates with the customers and the credit generated by the regulatory authorities to the said customers for units generated.

f) Other operation revenues

Other operating revenues comprise of income from ancillary activities incidental to the operations for the group and are recognised when the right to receive the income is established as per the terms of the contract.

g) Other Income

Interest income is accounted on accrual basis. Dividend income is accounted as and when the right to receive the dividend is established.

South Indian Bank

a) Interest/Discount Income from loans, advances and investments (including deposits placed with banks and other institutions) are Recognized over the period of the loans, advances and investments on accrual basis, except in respect of income relating to advances/ investments classified as non-performing advances/investments where in accordance with RBI guidelines the income is recognized only on realization.

b) Dividend on investments in shares and units of mutual funds are accounted on accrual basis when the bank's right to receive the dividend is established.

c) Commission income on issuance of bank guarantee/letter of credit is recognized over the period of the guarantee/letter of credit.

d) Processing fee/upfront fee, handling charges or income of similar nature collected at the time of sanctioning or renewal of loan/facility is recognized when it is due.

e) All other amounts collected from customers as non-interest income, locker rent or recovery of expenses towards provision of various services/ facilities are accounted/recognized as and when these are due to the extent that their ultimate collection.

f) Amounts recovered against debts written off in earlier years and provisions no longer considered necessary in the context of the current status of the borrower are recognized in the profit and loss account.

g) The bank imports gold coins on a consignment basis for selling to its customers. Other income includes the profit/loss on sale of gold coin is arrived at after reducing all direct and indirect costs.

KPR Mill Limited

Sales are recognised, net of return and trade discounts, on transfer of significant risks and rewards of ownership to the buyer, which generally coincides with the delivery of goods to customers. Sales include excise duty but exclude sales tax and value added tax. Sales of Service and revenue from sales of windmill power are recognised when services are rendered and related costs are incurred.

Unity Infraprojects Limited

(a) Income from construction is recognised as determined by the project manager by taking into consideration actual cost incurred and profit evaluated and duly certified by the client. All other income are recognised and accounted for on accrual basis. Losses on contracts are fully accounted for as and when incurred. Foreseeable losses are accounted for when they are determined. Insurance claims are accounted for on cash basis.

(b) Turnover represents work certified as determined by the project managers by taking into consideration the actual cost incurred and profit evaluated and duly certified by the client and is inclusive of service tax.

(c) Dividends are accounted for when the right to receive dividend is established.

(d) Income from interest on deposits, loans and interest bearing securities is recognised on time proportionate method.

(e) Share of profit / loss from firms, in which the company is a partner is accounted for in the financial year ending on (or immediately before) the date of the balance sheet.

Take Solutions Limited

1.5.1 Software Services & Products

The Contracts between the company and its customers are either time and material contracts or fixed price contracts.

a) Revenue from fixed-price contracts is recognised according to the milestones achieved as specified in the contract on the proportionate completion method based on the work completed. Any anticipated losses expected upon the contract completion are recognized immediately. Charges in job performance, conditions and estimated profitability may result in revisions and corresponding revenues and costs are recognized in the year in which changes are identified.

b) In respect of time and material contract, revenue is recognized in the year in which the services are provided. Unbilled revenue represents cost and earnings in excess of billings while deferred revenue represents the billing in excess of cost and earnings.

c) Revenue from product sale and licensing arrangements are recognized on delivery and installation.

1.5.2 Sales of IT Infrastructure & Support Services

Income from sale of IT infrastructure is recognized upon completion of sale. Income from support services is recognized upon rendering of the services. Income from maintenance contract relating to year is recognized when the contracts are entered into on a time proportionate basis.

1.5.3 Revenue from E-Business Solutions

Revenue is recognized when invoices are raised and are accounted net of trade discounts, rebates, taxes and duties.

1.5.4 Other Income

a) Interest income is recognized using time proportion method based on rates implicit in the transaction.

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

c) Miscellaneous income is recognized on accrual basis.

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From the Government

CA. Kunal A. Shah
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Income Tax

1) **Relaxation u/s 206AA to Non-residents – Insertion of Rule 37BC and amendments in form no. 27Q**

CBDT vide this notification gives relaxation to Non-residents from furnishing PAN in India. TDS @ 20% will not be deducted in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset if the deductee furnishes the following details and documents to the deductor :-

a) name, email id, contact number;

b) address in the country or specified territory outside India of which the deductee is a resident;

c) tax residency certificate (TRC) from the government of that country if the law of that country provides for issuance of such certificate;

d) tax identification number (TIN) or any other unique identification number of the non-resident of his residence country.

(For full text refer notification no. 53, dated 24th June,2016)

2) **Amendment in section 206C of the Income Tax Act**

The Board hereby clarify the issue as applicability of the provisions relating to levy of TCS where the sale consideration received in partly in cash and partly in cheque in the form of question and answer.

(For Full text refer Circular No. 23, dated 24th June,2016)

3) **Clarifications on the Income Declaration Scheme,2016**

The Board has vide this circular considered and issued further clarifications regarding various provisions of the Income Declaration Scheme 2016. ***(For full text refer Circular No. 24, dated 27th June, 2016)***

4) The Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified in clause (23DA) of section 10 of the said Act received by any securitization trust as defined in clause (d) of the Explanation to section 115TC of the said Act. This notification shall come into force from the date of its publication in the Official Gazette.

(Notification No. 46, dated 17/06/2016)

5) The Central Government hereby notifies that no deduction of tax under Chapter XVII of the said Act shall be made on the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), excluding a foreign bank, or to any payment systems company authorised by the Reserve Bank of India under Sub-section (2) of Section 4 of the Payment and Settlement Systems Act, 2007 (51 of 2007), namely :-

(i) bank guarantee commission;

(ii) cash management service charges;

(iii) depository charges on maintenance of DEMAT accounts;

(iv) charges for warehousing services for commodities;

(v) underwriting service charges;

(vi) clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called

charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;

(vii) credit card or debit card commission for transaction between merchant establishment and acquirer bank.

This notification shall come into force from the date of its publication in the Official Gazette.

(Notification No. 47, dated 17/06/2016)

6) <u>Clarification regarding Amendment in Section 206C vide Finance Act 2016</u>

Section 206C of the Income-tax Act, 1961 (hereafter referred to as 'Act'), prior to amendment by Finance Act,2016, provided that the seller shall collect tax at source at specified rate from the buyer at the time of sale of specified items such as alcoholic liquor [or human consumption, tender leaves, mineral being coal or lignite or iron ore etc. It also provided for collection of tax at source at the rate of one per cent on sale in cash of bullion exceeding 2 1akh rupees and jewellery exceeding 5 lakh rupees.

In order to reduce the cash transactions in sale of goods and services, Finance Act 2016 has expanded the scope of section 206C (I D) to provide that the seller shall collect tax at the rate of one per cent from the purchaser on sale in cash of any goods (other than bullion and jewellery) or providing of any services (other than payment on which tax is deducted at source under Chapter XV II-B) exceeding two lakh rupees. So far as sale of Jewellery and bullion is concerned, the provisions of sub-section (1 D) of section 206C prior to its amendment by the Finance Act, 2016 shall continue to apply. Further, with a view to bring high value transactions within the tax net, it has been provided in sub- section (1 F) of section 206C of the Act that the seller who receives consideration for sale of a motor vehicle exceeding ten lakh rupees, shall collect one per cent of the sale consideration as tax from the buyer. Any person who obtains in any sale, the goods of the nature specified in sub-section (I D) or (1 F) of section 206C is a buyer. The seller for the purposes of collection of lax under section 206C shall be –

(i) A Central Government or a state Government,

(ii) Any local authority, or corporation or authority established under any Central, State or Provincial Act,

(iii) Any company, firm or cooperative society,

(iv) An individual or Hindu undivided family who is liable to audit as per provisions of section 44AB during the financial year immediately preceding the financial year in which the goods are sold or the services are provided.

The amendments brought in section 206C by Finance Act, 2016 are applicable form lst June 2016. In this regard a number of queries have been received about the scope of the provisions and the procedure to be followed. The board has considered the same and decided to clarify the points raised vide issue of this circular in the form of questions and answers.

(For full text refer Circular No.22, dated 08/06/2016)

Service Tax

1) <u>Notification regarding clarification on applicability of Krishi Kalyan Cess (KKC)</u>

The Central Government hereby exempts taxable services with respect to which the invoice for the service has been issued on or before the 31st May,2016 from the whole of Krishi Kalyan Cess leviable thereon, subject to condition that the provision of service has been completed on or before the 31st May,2016.

(Notification No. 35, dated 23/06/2016)

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Association News

CA. Dilip U. Jodhani
Hon. Secretary

CA. Riken J. Patel
Hon. Secretary

1 Forthcoming Programmes

Date/Day	Time	Topic	Speaker	Venue
04.08.2016	4.00 to 6.00 pm	Clause by Clause study - Tax Audit with Practical Issues	CA. Palak Pavagadhi	Association Office
06.08.2016	5.00 pm to 8.00 pm	2nd Brain Trust cum workshop Meeting on Income Tax	CA. N.C. Hegde	ATMA HALL Ashram Road, Ahmedabad
16.08.2016 Tuesday	8.00 pm to 12.30 am	Talent Evening By Members and their Family members - Singing, Dancing, Solo or Group Performance		Tagore Hall, Paldi, Ahmedabad

Glimpses of Past Events

Series on ICDS

Entertainment Programme - Dost Hu Gujarat Chhu

1st Brain Trust Cum Workshop

Meeting

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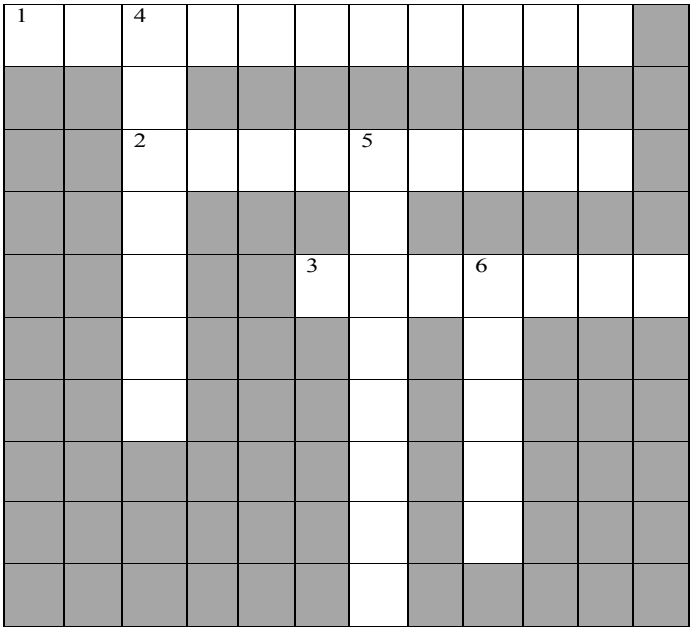
ACAJ Crossword Contest # 26

Across

1. Giving is one of the best _____ one can make for a happy life.
2. Buyback leads to _____ in outstanding number of equity shares, which would lead to improvement in earnings per share.
3. _____ cannot be levied automatically just because it is lawful.

Down

4. Deferred tax assets are recognized only to the extent there is ____ certainty of realization in future.
5. The income as per the method of accounting employed by the assessee is taxable in year in which such income is _____ and TDS will be also be allowed in that year.
6. As per the Indian Contract Act, 1872 an _____ is a person employed to do any act for another or to represent another in dealings with the third persons.



Notes:

1. The Crossword puzzle is based on previous issue of ACA Journal.
2. Two lucky winners on the basis of a draw will be awarded prizes.
3. The contest is open only for the members of Chartered Accountants Association and no member is allowed to submit more than one entry.
4. Members may submit their reply either physically at the office of the Association or by email at caaahmedabad@gmail.com on or before 25/07/2016.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 25
1. CA. Niraj Agrawal
2. CA. Falguni Anada

ACAJ Crossword Contest # 25 - Solution

Across

1. Fifty
2. Fiduciary
3. Wealth

Down

4. Indian
5. Service
6. Brahmn

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