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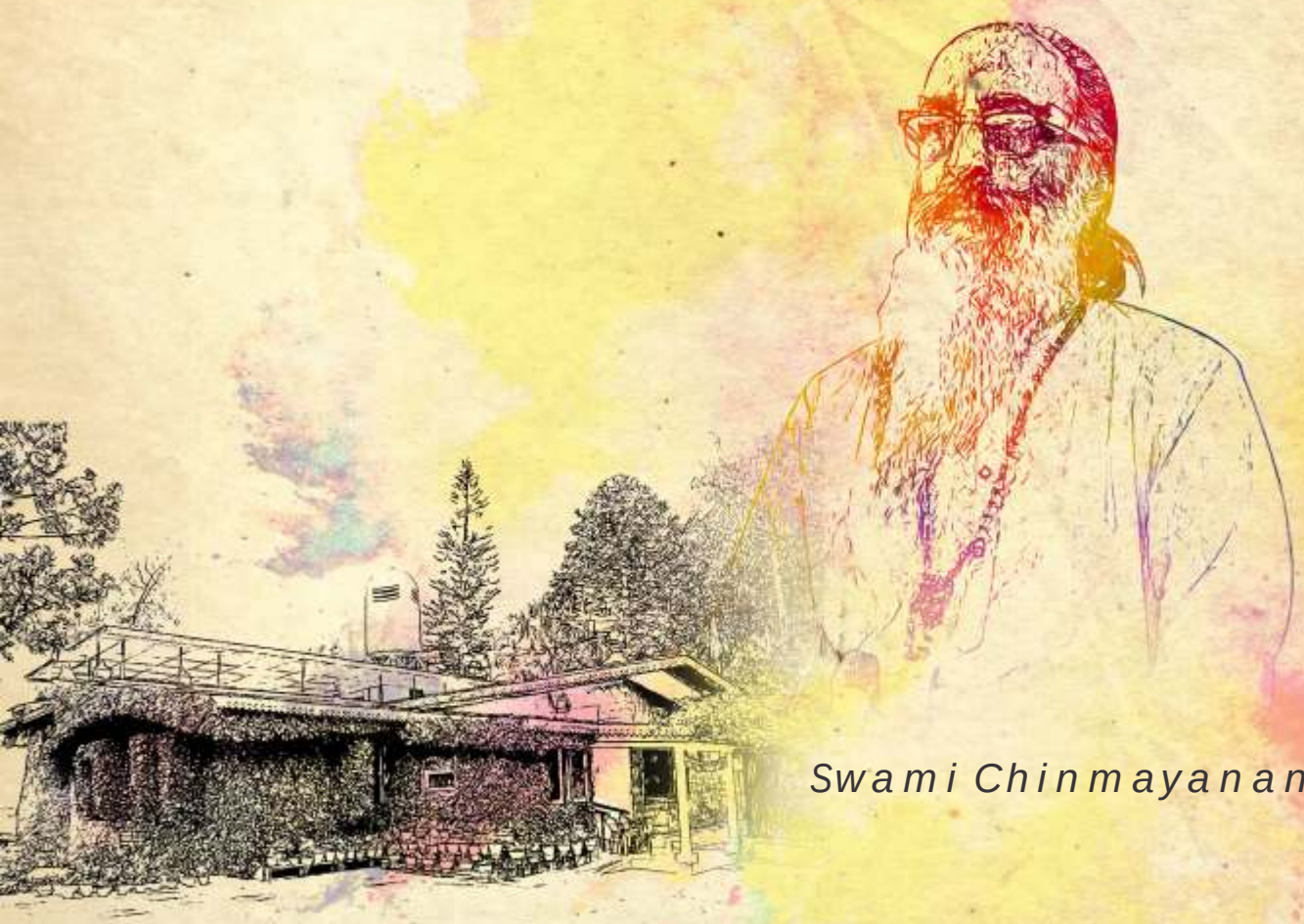

Swami Chinmayananda

Chartered Accountants Association, Ahmedabad

A Passion to Perform

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

Published By

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Friendship for Principles

Friends,

I am thankful for being invited to contribute to 'Mananam'

As soon as I address you friends, I am reminded the words of a great thinker, "kinds of friendship are three, (1) Friendship for Profit (like business transactions where friendship is developed), (2) Friendship for Pleasure (different people enjoy from various activities like music, dance, drama and sport etc. and in that journey friendship is developed) and (3) Friendship for Principles". Some thoughts are shared with you on Friendship for Principles.

What is the meaning of Principle? Principle means a "moral rule or standard of good Behavior". In our day to day work, when we see any up-right and a straightforward man, a clean and a law abiding person, a blameless gentleman, a spotless personality, a non-corrupt officer, then immediately we say wow; he is a man of principle and integrity and rightly we long friendship with him and that is the 'Friendship for Principle'.

When we find that morals are compromised, the troubles in life start. Being amidst Navratri and Dushera, there cannot be a better example than Ravana. He was a mighty king but when he fell from the values of life, he and his entire kingdom was destroyed by Rama. Similarly friends, when this 'Friendship for Principle" is broken it brings along the downfall of a human being and destroys all relationships which then become irreparable. Being a civilized citizen of this great nation, we should try and make sincere efforts where our standards and moral values are not compromised.

Let us take a simple example and classify people symbolically into following three categories.

(1) Beggars around us who don't get work and don't get their piece of chapatti.

(2) The second category of people who are fortunate to have the opportunity, capable of working somehow not working, but still need their piece of share in the chapatti.

(3) The third category of people are the ones who have their chapatti in their plates but still want to snatch a laddu from someone else's plate.

The first category deserves sympathy and mercy and society should provide enough work to them so that they don't have to beg for their share in chapattis. But the second and third categories of people neither deserve any sympathy nor mercy. These people need to rise from their petty and selfish motives and get into this Friendship for Principles where life is lived with values and not just giving importance to valuables.

In a life of Chartered accountants, as a profession there are accounting standards, auditing standards, ethics and code of conduct. Till the time these codes and ethics are in the books and not part of our life, it has no meaning. These values are to be lived rather than restricting it to just a study. It is time to learn that once we deviate from these values, ***Dharma***, life, though may appear pleasurable, it indeed becomes very sorrowful. So friends, never compromise with principles. Whenever you see people of the second and third category around you, get united with this Friendship for Principles so that WOW moment remains as a part of our life and also the profession.

Let us have a Friendship for Principle and celebrate Diwali and new year with right spirit.

Editorial

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India First

The political scenario and the public sentiments in the country have completely changed after the Uri attack where nineteen soldiers were killed in a militant attack last month. The entire country has stood up and shown solidarity with the Indian Armed Forces who have been guarding us against terrorism being exported by the neighbouring nation, Pakistan.

It has been the first time since last so many years that we have seen a political will to counter terrorism. The aggression with which Prime Minster spoke in Kerala after the Uri attack gave a clue of what would follow next. He slammed Pakistan saying that the country wants Kashmir when they cannot handle PoK, Gilgit and Balochistan, which are already under its control. The important aspect of mentioning this point in this piece of editorial is hardly we have had any leader who has been so strong in criticizing Pakistan and more so talking on the internal matters of the country that has caused great harm on the Indian soil.

Soon after these statements, we found that India carried most comprehensive surgical strikes in Pakistan occupied Kashmir, crossing the Line of Control (LOC). It is believed that Indian army successfully eliminated more than 50 to 60 militants across the LOC who were waiting at their launch-pad to infiltrate into India during this winter season. These surgical strikes are reported to be one of its kind, carried out precisely and was great achievement of the armed forces.

Of-late, we find discussions and debates on various news channels as to whom the credit should go for the success of these surgical strikes. Can there be two opinions? It is armed forces and the leadership of the country. But more amusement came when these media houses wanted Pakistani celebrities to have a say and take a call on the terror attacks and unfortunately nothing came from them, not just against their nation but not even a word against terrorism. It is regrettable that some people from the film fraternity support these artists forgetting the idea of "India First" just because some of their economic ventures are at stake. More shameful is, we as a citizen are happy to watch these movies without even sympathising with the armed forces and not realising the fact why only they should be in a state of confrontation with the enemy country and we continue enjoying with our entertainment shows be it Aman ki Asha, movies and literary festivals.

We as an Indian citizen need to take a call and stand with the country and atleast boycott these leisure events to give a message that we support Indian armed forces and they are not alone as they fight with the enemy nation. As a chartered accountant, we in cross-border economic transactions, be it with any country, should bring this idea of "India First" where we provide the consultation which is not just legal (permissible within the four corners of law) but also moral and ethical where my country does not lose its share of revenue.

If you become aware of how many living beings are giving their lives to sustain yours, you will eat with enormous gratitude. Sadguru.

Jai Hind!

CA. Ashok Kataria

From the President

CA. Raju Shah
shahmars@gmail.com

Respected seniors and dear professional colleagues,

"No worldly success can compensate for failure in the home"- David O. McKay. Many of us were working at a frenzied pace last month in order to meet the deadline of tax audits and filing returns. Though our heart longed to be with our dear ones at home our mind and attention was at work and office. Now with the due dates behind us we are all set to enjoy Diwali with both our hearts and minds at home.

You would be receiving this Journal nearing of DIWALI celebrations. On behalf of Chartered Accountants Association Ahmedabad, I take the opportunity to wish all of you and your family a very Happy Diwali and an exciting and challenging year ahead.

"None of us can buy goodwill; we must earn it"- William Feather. It's possible to earn goodwill with the dedicated hard work. At the Association we have continued to organize quality programme for the members. Brain Trust cum workshop meeting on "GST-New vistas for professionals….grab it" was organized which was led by CA Sandesh Mundra.

It's really a matter of great pride that we could arrange a second Residential Refresher Course (RRC) at Mumbai Jointly with BOMBAY CHARTERED ACCOUNTANTS SOCIETY, (BCAS) on 21st & 22nd October, 2016 at Kohinoor Hotel. The members will have benefit of quality learning with experienced and expert faculties from Mumbai. Our special thanks to CA Uday Sathey, Mumbai and CA Chetan Shah-President BCAS for arranging everything including all the faculties.

Consider how hard it is to change yourself and you will understand what little chance you have to change others. As GST is now reality we are organizing a class room study- 8 study lecture on GST starting from 15th November, 2016. We will send the details very soon.

The team finalized the International Study tour from 5th January, 2017 to 13th January, 2017 at "Magical Thailand-Krabi (2N), Phuket (3N) and Bangkok (2N), total 7 nights for total cost of Rs.70,700/-. Detailed circular mailed.

Mutual Benefit Scheme (MBS) :

Main objective of MBS is to provide a lump sum ex-gratia payment to the family of a member of a scheme, upon his death. It is observed that out of 1450+ members of the association approximately 700+ members are not the members of MBS. It is my earnest request to members who are not the members of Scheme to become the member and strengthen the membership base which will help us to increase the ex-gratia amount to the family of the deceased members.

At the last executive meeting we have reconsidered the onetime adhoc contribution for new members joining as under :-

Age group	Adhoc Contibution(Rs.)
Below 30 years	500/-
Between 30 and 50 years	1000/-
Above 50 years	1500/-

Further the committee has revised the contribution to be made by the Mutual benefit scheme members as under:-

Age group	Contibution(Rs.)
Below 30 years	250/
Between 30 and 50 years	500/-
Above 50 years	750/-

With increase in the contribution amount now it is possible to give ex-gratia payment of approximately Rs.5.00 lac to the family member of the deceased. This can be further increased with the increase in mutual benefit scheme members.

We are in the process of preparing the Post-Budget Memorandum and expect our members to actively contribute to it by sending their inputs.

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

With best regards,

CA. Raju Shah
President

Changing Face of Insolvency Laws in India

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Introduction

Much needed and welcomed refurbishing of framework for dealing with issues related to insolvency and bankruptcy has been done by enactment of *THE INSOLVENCY AND BANKRUPTCY CODE, 2016*. Prior to the enactment of the CODE, the legislative framework on the subject was scattered in multiple overlapping laws like:

- Chapter XIX & Chapter XX of Companies Act, 2013
- Recovery of Debts due to Banks and Financial Institutions Act (RDDBFI), 1993
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002
- Sick Industrial Companies (Special Provisions) Act (SICA), 1985
- The Presidency Towns Insolvency Act, 1909
- The Provincial Insolvency Act, 1920
- Chapter XIII of the LLP Act, 2008

Besides, the erstwhile legislature had multiple adjudicating forums and mechanisms essentially comprising aspects of recovery, revival, reconstruction and winding up. With no separate unified insolvency code covering all the above aspects in one place, the process was complicated, time consuming and ineffective.The Code enacted on May 28, 2016 will not only provide a uniform, comprehensive insolvency legislation encompassing all companies, partnerships and individuals but will also shift focus to***creditor*** driven insolvency resolution.

Institutional Structure under New Code:

To facilitate a formal and time bound insolvency resolution and liquidation process, it proposes to create a revamped institutional structure, comprising of the following:

- ***Insolvency and Bankruptcy Board of India (IBB***): It will be the chief regulator established under section 188(1) of the Code as apex body for promoting transparency & governance in the administration of the Code will be involved in setting up the infrastructure and accrediting Insolvency professional agencies & Information Utilities.
- ***Insolvency Professional Agencies*** (registered with the Board under section 201): It will enroll Insolvency Professionals and monitor their functioning.
- ***Insolvency Professionals*** (person enrolled with an insolvency professional agency and registered with the Board under section 207): They will be enrolled with Insolvency professional agencies and regulated by Board. They will be appointed by creditors and can override the powers of board of directors and will take over the management of company from the time they are appointed. They may act as Liquidator/ bankruptcy trustee in case the liquidation proceeding is initiated.
- ***Information Utilities*** (registered with the Board under section 210): It will be centralized repository of financial and credit information of borrowers. It will accept, store, authenticate and provide access to financial data provided by creditors.
- ***Adjudicating Authorities***: *National Corporate Law Tribunal (NCLT)* and *Debt Recovery Tribunal* will act as adjudicatory authority for corporate insolvency and non corporate insolvency respectively. They will entertain or dispose any insolvency application, approve or reject resolution plans, decide in

respect of claims or matters of law or facts.Appeals from NCLT orders lie to the National Company Law Appellate Tribunal and thereafter to the Supreme Court of India where as appeals from DRT orders lie to the Debt Recovery Appellate Tribunal and thereafter to the Supreme Court.

A. Corporate Insolvency Resolution Process

The Code prescribes two independent stages in the process ***Insolvency Resolution Process (IRP) and Liquidation.*** During IPR, financial creditors assess whether the debtor's business is viable to continue and the options for its rescue and revival; and if the insolvency resolution process fails or financial creditors decide to wind down and distribute the assets of the debtor it moves to the Liquidation stage.

Let's see the important stages involved briefly:

a) **Application for insolvency proceedings:**

The Code categorizes creditors into those for financial debts and those for operational debts. Financial Debts are debts extended against consideration for time value of money like term loan, financial guarantee contracts, etc whereas operational debt means debt incurred against the provision of good, services, employment or government dues. Any financial or operational creditor can apply for insolvency on default of debt or interest payment exceeding INR 1,00,000. This is a significant departure from erstwhile practice where net worth assessment was the basis for insolvency proceedings. Such cash flow based assessment will lead to early detection of impending financial crises. The entity itself can also apply for insolvency proceedings suo motto.

IRP may be triggered by a financial creditor (s) by application to NCLT on occurrence of default whereas operational creditors can initiate IRP only if it has not been replayed or existence of some dispute has been demonstrated by the debtor within 10 days of receiving a notice of default from the operational creditor. Once initiated the whole IPR process must be completed within 180 days which may be extended to maximum 270 days by the NCLT on an application made by at least 75% of creditors.

b) Moratorium

The NCLT orders a moratorium on the debtor's operations for the period of the IRP during which no action can be taken against the company or the assets of the company. This operates as a 'calm period' during which no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can take place against the debtor.

c) Appointment of Insolvency Professional (IP):

Next step is appointment of IP by the Board and approved by the creditor committee. IP will take over the day to day management of the Company. From date of appointment of IP, power of Board of directors will be suspended and vested in the IP. IP will have immunity from criminal prosecution and any other liability for anything done in good faith.

d**) Constitution of Creditors Committee and Revival Plan**

The IP will then identify the financial creditors and constitute a creditors committee. Related party should be excluded from committee. Operational creditors above a certain threshold would be allowed to attend meetings of the committee but will not have voting

power. Each decision of the creditors committee will require a 75% majority vote and will be binding on the corporate debtor and all its creditors.

The creditors committee will consider proposals for the revival of the debtor and must decide whether to proceed with a revival plan or liquidation within a period of 180 days (subject to a one-time extension by 90 days). Anyone can submit a revival proposal, but it must necessarily provide for payment of operational debts to the extent of the liquidation waterfall. If the plan for revival is approved by minimum 75% of creditors, it would be implemented otherwise liquidation proceedings would be initiated.

e) **Liquidation:**

Liquidation process can be initiated on occurrence of following:

- The creditor's committee resolves with 75% majority voting to liquidate the corporate debtor at any time during the IRP;
- The creditor's committee does not approve a resolution plan within 180 days or such extended period as approved by the NCLT;
- The NCLT rejects the resolution plan submitted to it by the creditor's committee on technical grounds; or
- The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the corporate debtor.
- Debtor can also opt for voluntary liquidation by a special resolution in a General Meeting.

When NCLT passes an order of liquidation, IP may act as the liquidator. A moratorium is imposed on the pending legal proceedings against the entity. The liquidator shall form an estate of the assets and consolidate, verify, admit and determine value of creditors' claims.and all the entities assets including the proceeds of liquidation will then vest in the liquidation estate.

Order of priority for distribution of assets

The Code has made a clearly defined order of priority of claims on assets under liquidation (also known as waterfall mechanism). A major change in this respect is in case of dues to the government which now will come below most other debts including outstanding dues to unsecured creditors. The order is as follows:

- Insolvency related costs
- Secured creditors and workmen dues upto 24 months
- Other employee's salaries/dues up to 12 months
- Financial debts (unsecured creditors)
- Government dues (up to 2 years)
- Any remaining debts and dues
- Equity

Rights of Secured Creditor during Liquidation Process

It should be noted that upon liquidation, a secured creditor may choose to realise his security and receive proceeds from the sale of the secured assets in first priority. If the secured creditor enforces his claims outside the liquidation, he must contribute any excess proceeds to the liquidation trust and in case of any shortfall, the secured creditors will be below unsecured creditors to the extent of the shortfall.

Avoidance Transaction

Liquidator has right to cancel or modify terms of certain transactions entered into by defaulting entity within one year of the initiation of IRP with third parties or within two years of initiation with related parties, which in his opinion are of preferential nature primarily entered into to benefit a particular class of people.

Fast Track Corporate Insolvency

The Insolvency Code further prescribes a fast track corporate insolvency process for the entities with less complex structuring or businesses where the whole insolvency process will be required to be completed within a period of 90 days or an extended period of further 90 days at most. The Central Government will prescribe the classes of entities based on the assets and liabilities, amount of debt and other criteria, which will be subject to the fast track process.

B. **Insolvency Resolution Process for Non-Corporate**

Part III of the Code deals with the provisions relating to insolvency resolution and bankruptcy for individuals and partnership firms. Before heading to a bankruptcy process, the Insolvency Code prescribes two distinct processes which are the Fresh Start and Insolvency Resolution.

Fresh Start

This option is for defaults where amount involved are petty. This process can be initiated by the individuals with income and assets lesser than 'specified thresholds' which are an annual gross income not exceeding Rs. 60,000 and aggregate value of assets not exceeding Rs. 20,000. Such individuals can apply to DRT for a discharge from their 'qualifying debts' of up to Rs. 35,000 and make fresh start. The resolution (insolvency) professional will investigate and prepare a final list of all qualifying debts within 180 days from the date of application. On the expiry of this period, the DRT may pass an order discharging debtor from the qualifying debts and accord an opportunity to the debtor to start afresh, financially.

Insolvency Resolution Process

In case of individuals and partnership firms an insolvency resolution process may be initiated by the creditor or the debtor personally or through a resolution professional. However in case of partnership firms, the application can be made by all or majority of the partners. Further in case of application by creditors of partnership firm application can be made for insolvency proceedings against a single partner or the firm. An interim moratorium commences on the date of application till the date of admission of application during which no legal action can proceed or initiated in respect to any debts. Within seven days of receipt of application, DRT will either nominate a resolution professional or in case application is filled through a resolution professional, confirm that there are no disciplinary proceedings pending against such resolution professional to the Board. Board will in next seven days either confirm or reject the appointment. The resolution professional so appointed will examine and submit a report to the Adjudicating Authority recommending for approval or rejection of the application within 10 days of appointment. The Adjudicating Authority will then within fourteen days from the date of submission of the report, either admit or reject the application.

If the application is accepted, a moratorium of 180 days will begin where no legal action on debts and assets would be permissible. In the Insolvency Resolution Process, the creditors and the debtor will engage in negotiations to arrive at an agreeable repayment plan for composition of the debts and affairs of the debtor, supervised by a resolution professional. The repayment plan will require approval of a three-fourth majority of creditors in value.

The repayment plan may authorize or require the resolution professional to:

(a) carry on the debtor's business or trade on his behalf or in his name; or
(b) realize the assets of the debtor; or
(c) administer or dispose of any funds of the debtor.

The repayment plan will be implemented in supervision of the insolvency professional.

contd. to page 379

Service Tax Impact on Services provided by Government / Local Authority

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Generally, any person / assessee makes the following type of payments to government / local authority for various services.

- Taxes like Excise, Custom, Service Tax, Value Added Tax / Central State Tax, Income Tax, Works Contract Tax, Stamp Duty, Luxury Tax, Appeal filling fees.
- Late filing fees, fines, penalties
- Additional fees paid to ROC
- Fees for Driving license, passport, visa, birth / death certificate, overtime charges
- Damages or fine paid
- N.A. Charges
- Shop Act and other legal regulatory

In this article, we will discuss various amendment made in relation to service by Government / Local authority through Finance Act, 2016. The same has been explained as under with the help of question and answer format.

1. Whether service provided by local authority / government is taxable under service tax regime?

Reply: Generally, services provided by Government / Local Authority are covered under Negative list (i.e. 66D of Finance Act), 1994. Please note that, only following services provided by local authority / government were taxable under service tax regime till March 2016.

a) Service by the department of post by way of speed post, express parcel post, and life insurance and agency services provided to other than government.

b) Services in relation to an aircraft or vessel, inside or outside the precincts of a part or an airport

c) Transport of goods or passengers

d) Support services other than service covered under clause (i) to (iii) above provided to business entities.

Firstly, we will discuss meaning of some of the phrases / words.

(i) Support services means infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.

However, through Finance Act 2016, Finance minister has replaced the word "support services" by "any services". Hence, after 1st April 2016, any service provided by government / local authorities to business entities will fall under ambit of service tax regime.

2. Who will be liable for the payment of service tax in case of service provided by government / local authorities?

Reply:

As per Rule 2(1)(d) of service tax rules, 1994, service provided by government / local authority **except**

(i) Renting of immovable property

(ii) Services specified in sub clause (i), (ii), (iii) of the section 66D of finance act, 1994

To Any Business Entity located in taxable territory then person liable to pay will be **Recipient of Services**.

In nutshell and with effect from 1st April 2016 "Any service provided by government / local authority other than specified above services to the Business Entity will be covered under ambit of full Reverse Charge Mechanism (RCM).

Here, Business Entity means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession. Hence, any person whether individual or company or trust / AOP / BOI or any other person engaging in activity relating to commerce or business or profession, industry will be covered under definition of Business Entity.

Here Government means

- Departments of the Central Government,
- A State Government and its Departments and
- A Union territory and its Departments,
- But shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with article 150 of the Constitution or the rules made thereunder.

Here local authority means

a. Panchayatas referred to in clause (d) of article 243 of the Constitution

b. Municipality as referred to in clause (e) of article 243P of the Constitution ;

c. Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund

d. A Cantonment Boards defined in section 3 of the Cantonments Act, 2006 (41 of 2006);

e. A regional council or a district council constituted under the Sixth Schedule to the Constitution ;

f. A development board constituted under article 371 of the Constitution; or

g. A regional council constituted under article 371A of the Constitution

3. Whether any Exemption has been granted / given to service provided by local authority / government?

Reply: CBEC vide various notifications has provided exemption to services provided by local authority / government.

Sr. No.	Service provided by Government or local Authority by way of -	Applicability of Service Tax
1	Activity in relation to any function entrusted to a municipality under article 243 W of the Constitution	No Service tax is payable as same has been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 39 of Notification).
2	Services provided by Government or a local authority to another Government or local authority	Such services have been exempted vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 54 Refers]. However, the said exemption does not cover services specified in subclauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994.

3	by way of issuance of passport, visa, driving license, birth certificate or death certificate	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 55 of Notification). **However this exemption is restricted to only for Passport, Visa, Driving license, Birth / death Certificate and not any other charges.**
4	Where the gross amount charged for such services does not exceed Rs. **5000**/- per financial year to the individual who may be carrying out a profession or business.	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 56 of Notification).
5	by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 57 of Notification).
6	by way of- (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force;	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 –ST dated 13.4.2016 (Serial no. 58 of Notification).
7	assignment of right to use natural resources to an individual farmer for the purposes of **agriculture**	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 59 of Notification).
8	by way of any activity in relation to any function entrusted to **a Panchayat** under article 243G of the Constitution	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 60 of Notification).
9	by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges(MOT).".	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 63 of Notification).
10	Service Tax on taxes, cesses or duties.	Taxes, cesses or duties levied are not consideration for any particular service as such and hence not

		leviable to Service Tax. These taxes, cesses or duties include excise duty, customs duty, Service Tax, State VAT, CST, income tax, wealth tax, stamp duty, taxes on professions, trades, callings or employment, octroi, entertainment tax, luxury tax and property tax.
11	Service Tax on fines and penalties	It is clarified that fines and penalty ***chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations*** are not leviable to Service Tax.
12	Services in the nature of change of land use, commercial building approval, utility services provided by Government or a local authority.	Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are already exempt under Notification No. 25/2012 – ST dated 20.6.2012. The said services when provided by Government or a local authority have also been exempted from Service Tax vide Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 [Entry 39 refers].
13	Whether Service Tax is payable on yearly installments due after 1.4.2016 in respect of spectrum assigned before 1.4.2016.	No Service tax is payable as same has been exempted vide in Notification No. 25/2012 – ST dated 20.6.2012 as amended by Notification No. 22/2016 – ST dated 13.4.2016 (Serial no. 61 of Notification). However this exemption is only for the rights issued before 1st April 2016 irrespective of mode of payment.

4. After the analysis of various exemption provided to government, another question will be raised that what would be value of service tax provided by government?

Reply:

As per section 67 of Finance act, 1994 read with service tax (Determination of value) Rules, 2006, Value of Services means ***"Amounts paid or payable for services provided or to be provided"***. Hence whatever amount paid to government will be considered as Value of Services.

Further if any amount is paid in installments along with interest to government / local authority against any services provided / to be provided then whether interest portion will also include in value of services or not?

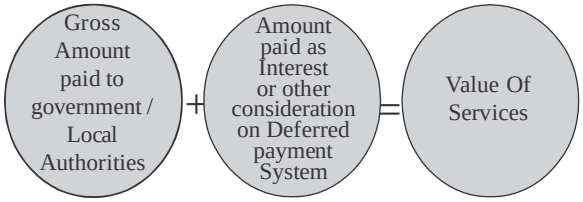
In this respect, as per the Rule 6(2)(iv) of the Service Tax (Determination of Value) Rules, "The value of ***any taxable service shall NOT include Interest on delayed payment of any consideration for the provision of services or sale of property, whether movable or immovable***".

However, above clause will not be applicable in case of service provided by government.

CBEC vide Notification no. 23/2016 dated 13th April 2016, inserted following proviso.

"Provided that this clause shall not apply to any service provided by Government or a local authority to a business entity where payment for such service is allowed to be deferred on payment of interest or any other consideration."

Hence form the above it is clear that, value of service in case of service provided by government / local authority would be as follow.



5. What will be the Point of Taxation Rules, 2011?

Reply: As the service tax liability is on service receiver, hence Rule 7 of Point of Taxation Rules is applicable in the case of service provided by government / local authorities. Further CBEC vide notification no. 24/2016 – ST dated 13-04-2016, has amend Rule 7 of POTR, 2011 in relation to service provided by government / local authority.

Point of Taxation will (POTR) will be **EARLIER** of the following.

- Any payment whether part or full becomes due as specified in the invoice, bill, and challan or as case may be (i.e. Date of demand order / demand notice for payment). OR
- Date of payment.

6. When and how will the allotee of the right to use natural resource be entitled to take CENVAT Credit of Service Tax paid for such assignment of right?

Reply: As per rule 4(7) of Cenvat credit rules, 2004, Cenvat Credit of **service tax paid on One time charges (whether paid upfront or installments) for the service of assignment of the right to use any natural resources by the government, local authority or any other person shall be allowed evenly over period of 3 years**.

However, the Service Tax paid on spectrum user charges, license fee, transfer fee charged by the Government on trading of spectrum would be available in the year Page 8 of 13 in which the same is paid. Likewise, Service Tax paid on royalty in respect of natural resources and any periodic payments shall be available as credit in the year in which the same is paid.

Further, when the right assigned to person by government or any other person in any financial year is assigned to another person against consideration balance amount of cenvat credit available in respect of such assignment shall be allowed in the year in which such right is transferred.

7. On the basis of which documents can CENVAT Credit be availed in respect of services provided by Government or a local authority?

Reply: CENVAT Credit may be availed on the basis of challan evidencing payment of Service Tax by the Service recipient. (As per clause (e) of sub-rule (1) of Rule 9 of CCR, 2004).

8. Whether limitation period of One year is applicable in this case?

Reply: Limitation period of one year is not applicable in this case.

We hope that above will be helpful to all.

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Glimpses of Supreme Court Rulings

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11 Capital Gain – Depreciable Asset :

The assessee had sold its loading platform on which it had claimed depreciation. The asset was almost 17 years old. The assessee had also claimed that it was entitled for exemption under section 54 E of the Income Tax Act. The assessing officer rejected the claim for exemption under section 54 E of the Act on the ground that the assessee had claimed depreciation on this asset and, therefore, the provisions of section 50 were applicable. Section 50 of the Act which is the special provision for computing the capital gains in the case of depreciable assets is not only restricted for the purpose of section 48 or section 49 of the Act as specifically stated therein and the said fiction created in sub-section (1) & (2) of section 50 has limited application only in the context of mode of computation of capital gains contained in section 48 and 49 and would have nothing to do with the exemption that is provided in a totally different provision i.e. Section 54E of the Act. The High Court of Gujarat has also approved this ratio in case of *CIT vs. Polestar Industries [(2013) (SCC Online Gu 5517)].*

[CIT vs. V. S. Dempo Company Ltd. (Civil Appeal No.(S). 4797/2008) (dtd.05.09.2016)]

12 Section 153A - Seized material :

SLP granted against High Court's ruling that where seized material was destroyed in fire that took place at revenue's office and was not available with Assessing Officer while framing assessment under section 153A, assessment so framed on basis of said information which was not unearthed during search, was to be set aside

[CIT vs. MGF Automobiles Ltd. (241 taxman 440)(2016)]

13 Permanent Establishment :

SLP dismissed against High Court's ruling that unless rig owned by assessee was actually used for a period of 120 days in India, same could not be considered as PE under article 5(2)(j) of India – USA DTAA

[DIT (International Taxation-II) Vs. R & B Falcon Offshore Co. (241 Taxman 358 (2016)]

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Article : Changing Face of Involvency Laws in India

Bankruptcy Process

The bankruptcy of an individual can be initiated only after the failure of the resolution process or non-implementation of repayment plan. The bankruptcy trustee is responsible for administration of the estate of the bankrupt and for distribution of the proceeds on the basis of the priority.

Conclusion

The Code if implemented as desired would bring a positive effect on corporate environment. It will improve India's ranking in ease of doing business. It will bring down the average time to resolve insolvency in India from 4.5 years to maximum 1 year. But without the infrastructure machinery required for implementation of the Code, it is like a bare plan waiting to be executed. One of the main bottlenecks in this respect would be the lack of information utilities and insolvency professional which might take some time to resolve. Hopefully the Code will become operational by financial year 2017-18.

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From the Courts

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42 Penalty u/s 271(1)(c) and Expln. B to Sec. 271(1)(c) : CIT v/s. Pilani Investment and Industries Corp. Ltd. (2016) 284 CTR 272 (Cal), 383 ITR 0635 (Cal)

Issue :

What is the effect of Expln. B to Sec. 271(1)(c) in penalty proceedings?

Held :

In order to bring the case within Expln. (B) to s. 271(1)(c) following conditions have to be fulfilled : (a) the assessee offers an explanation which he is not able to substantiate, (b) the assessee fails to prove that such explanation is bone fide, and (c) the assessee fails to prove that all the facts relating to and material to the computation of his total income have been disclosed by him. It may be true that the AO did not accept the explanation offered by the assessee and made additions which the later did not challenge in appeal but it is also true that the Tribunal opined that "since the matter is sub judice it is not a realized or realizable income in the hands of the assessee". In that view of the matter even the first condition was not satisfied. As regards the second condition there is concurrent finding of the CIT(A) and the Tribunal that the explanation was bonafide. This finding is not under challenge. It is not even alleged that the assessee failed to prove that all the facts relating to and material to the computation of his total income were not disclosed by him. Thus, the requirements appearing from the Explanation remain unfulfilled. As a result S. 271(1)(c) cannot operate against the assessee. The assessee cannot be held to have furnished inaccurate particulars or concealed particulars of his income. Hence, the imposition of penalty under s. 271(1)(c) was rightly set aside both by CIT(A) and the Tribunal.

43 Deduction u/s 54F : Co-ownership in second SO property is not relevant to claim relief by purchase of new SO property. CIT v/s. Kapil Nagpal (2015) 235 Taxman 539 (Delhi), 385 ITR 0381 (Del)

Issue :

Is relief u/s 54 F available when assessee is already owner of one residential house and also a co-owner of second residential house ?

Held :

Assessee filed his return claiming deduction under section 54F. AO denied exemption on ground that assessee already owned two residential properties. It was found that at time of sale of asset, assessee was only a co-owner holding 15 per cent share in one residential property apart from owning another residential house. Further, said house was in fact purchased within time allowed under section 54 F which was supported by documents placed on record by assessee. On facts assesee duly satisfied conditions prescribed under section 54F and, thus, his claim for deduction was to be allowed.

44 RTI Act : Information in I.T. Return is personal

Vinubhai Haribhai Patel v/s. ACIT (2015) 235 Taxman 467 (Guj)

Issue :

Whether information in personal Income Tax Return is liable to be disclosed under RTI Act?

Held :

Petitioner filed an application under RTI Act before Public Information Officer of office of Commissioner of Income tax seeking certain information which included copies of Income Tax returns of five private parties. He demanded

information on plea that above parties had acquired status of agriculturists for themselves on basis of a Will of one 'L' which was not genuine and disclosure of information demanded would help to ascertain whether those parties had shown any agriculture income in their Income tax returns and thereby avoided paying income tax. Information Authorities denied information. Information demanded by petitioner was personal information and was clearly exempted information under section 8(1)(j). In disclosing said information, there was no element of public interest to be sub-served.

45 Sec. 14-A Exemption v/s. Deduction : CIT v/s. Banaskantha District Co.Op. Milk Producers' Union Ltd. (2015) 280 CTR 609 (Guj)

Issue :

What is the difference between exempted income and deductions for the purpose of sec. 14A?

Held :

(1) Provision of s. 14A when examined, it operates in respect of the income not forming part of the total income. It could be noted that provisions of Chapter VI-A (ss. 80A to 80U) refer to deductions to be made in computing the total income. Such deductions, in no manner, can be compared with the exempted income, which does not form part of the total income as provided in ss. 10 to 13A under Chapter III. There is a clear absence of any reference of deduction to be made in computing the total income as per provision of Chapter IV-A in s. 14A. Undoubtedly, as provided under Chapter VI-A while computing the total income of the assessee from his gross total income in accordance with and subject to the provision of this chapter, the deductions specified are permissible. As a resultant effect, the taxable income of the assessee would surely get reduced and yet there is marked difference between the exempted income and the deduction provided under Chapter VI-A. The investment in shares made by the assessee which earned him dividend was from his own income. Moreover, from the very provision of s. 14A, the same would have no application in respect of the income not being taxable on account of deduction under s. 80P(2)(d). Both the authorities have rightly held that there is no application of s. 14A as far as the deductions under s. 80A to 80U under Chapter VI-A are concerned.

(2) Deductions under Chapter VI-A in no manner, can be compared with the exempted income which does not form part of the total income as provided in ss. 10 to 13A under Chapter-III and therefore, s. 14A has no application as far as deduction under ss. 80A to 80U falling under Chapter VI-A are concerned.

46 Retrospective effect of CBDT circular in respect of low tax effect and appeals : CIT v/s. Sunny Sounds Pvt. Ltd. (2016) 381 ITR 443 (Bom)

Issue :

Whether CBDT circular in respect of non filing of appeals is applicable to pending appeals (references) also ?

Held :

The Circular would apply to pending references under section 256 of the Income Tax Act, 1961 because the entire objective of the circular having been made retrospective was that the court should concern itself with grievances of the Department having substantial financial stake in terms of the tax involved and the decision of the Tribunal up to the value of Rs. 20 lakhs even if it was adverse to the Department should be accepted. A pending appeal under section 260A of the Act was not different from a pending reference, since in the case of a reference, the Tribunal was of the view that a substantial question of law arose either on its own or as directed by court which required the opinion of the court, while in a pending appeal under section 260A of the Act, the court was of the view that a substantial question of law arose which required due consideration by the court. Therefore, the circular dated December 10, 2015 was applicable even to pending references in the same manner they

apply to pending appeals. Since the tax effect of the reference was less than Rs. 20 laks, it was to be returned unanswered.

Note : Also see :

CIT v/s. Computer Point (I) Ltd. (2016) 381 ITR 441 (Bom)

47 Reopening : Failure of Assessee : Importance of Reasons Recorded : Nirmal Bang Securities (P) Ltd. v/s. Asst. CIT (2016) 284 CTR 244 (Bom)

Issue :

Whether assessment can be reopened when there is no failure on the part of the assessee to disclose required facts AND what is the importance of recording of reasons?

Held :

A bare reading of the reasons would ex facie show that there was not even an allegation in the said reasons that there was any failure on the part of the assessee to disclose any material fact, let alone the details thereof, which led to any income escaping assessment. Moreover, even on a holistic reading of the reasons it cannot be said that it suggests any failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. It is now well-settled that the reasons which are recorded by the AO for reopening an assessment are the only reasons which could be considered. No substitution or deletion is permissible. No addition can be made to those reasons and no inference can be allowed to be drawn based on reasons not recorded. The reasons which are recorded by the A.O. for reopening the assessment are the only reasons which could be considered when the formation of the belief is impugned. The requirement of recording reasons is a check against arbitrary exercise of power, for it is on the basis of the reasons recorded and those reasons alone that the validity of the notice for reopening an assessment can be sustained. The reasons cannot be allowed to grow with age and ingenuity by devising and/or supplementing additional reasons in replies and affidavits not envisaged in the reasons recorded for reopening the assessment. To put it simply, the validity of a notice under s. 148 has to be tested on the basis of the reasons recorded for initiating the reassessment proceedings. The reasons recorded cannot be supplemented by affidavits and other material.

48 (1) Belated Return and Unabsorbed Depreciation (2) Department's duty to guide Assessee for their relief. Rajeshwari Cotton Gng. and Press Industries Ltd. v/s. Asstt. CIT (2016) 284 CTR 300 (Kar), 382 ITR 0093 (Bom)

Issue :

Whether assessee is entitled to claim unabsorbed depreciation of a belated return and what is the duty of the Department to guide the assessee for his relief?

Held :

It is an undisputed fact that the return of income for the asst. yr. 1986-87 was filed by the assessee belatedly. However, filing of belated returns itself would not restrain the assessee from claiming set off of unabsorbed depreciation, investment allowance and Sec. 80J exemption. Unabsorbed depreciation and investment allowance stand differently than that of the business loss. Belated filing of the return of income would not curtail the right of the assessee to claim unabsorbed depreciation, investment allowance and s. 80J exemption. Tribunal has proceeded hyper-technically in rejecting the claim of the assessee on the ground that rectification application was filed by the assessee before the AO after giving effect to the order of the CIT(A). It is significant to note that in the circular issued by the CBDT No. 14(XL-35) of 1955, dt. 11th April, 1955, it has dealt with "Administrative instructions" in regard to the attitude of the Department in matters affecting the assessee's interest. It has categorically held that the officers of the Department must not take advantage of the ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer (assessee) in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the

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Tribunal News

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30 ITO Vs. Excel Chemicals India Ltd. 72 taxmann.com 284 (Ahmedabad) Assessment Year: 2012-13 Order Dated: 29 July 2016

Basic Facts

The assessee is a resident company engaged in the business of trading in chemicals. The assessee has claimed deduction in respect of the commission paid, to non-resident entities. The assessee had not withheld any tax on this payment. The assessee contended that the said payment must not be disallowed u/s 40(a)(i) as the sale commission was paid in respect of services rendered abroad, and, as such, no tax was deductible at source. The AO however, disallowed the said payments as according to him under section 5(2)(b) of the Act, a non-resident assessee is taxable in India in respect of all his incomes accruing or arising in India or deemed to accrue or arise in India. Further by the virtue of deeming fiction under section 9(1)(i), this income is accruing or arising in India, directly or indirectly through any business connection in India or through any source of income in India. Aggrieved, the assessee preferred an appeal with the CIT(A) who deleted the disallowance.

Issue

Whether non-resident commission agents were not taxable in India in respect of their commission earnings from orders procured abroad?

Whether for application of section 195, it is sine qua non that payment to non-resident must have an element of income liable to be taxed under Indian Income-tax Act?

Held

The AO, in the present case, did not take into account the scope of Explanation 1 to Section 9(1)(i) which states that in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. In the given facts that no part of operations of the non-resident commission agent were carried out in India. Therefore, the conclusion drawn by the AO is fallacious. It is also now well settled in law that when the payment made to a non-resident does not have an element of income, withholding requirements under section 195(2) do not come into play at all. Therefore, as per the facts in the present case, the assessee was not under any obligation to deduct any tax at source from the commission payments to the non-residents. Since there was no obligation to deduct tax at source, the very foundation of impugned disallowance under section 40(a)(i) ceases to hold good in law.

31 Sparkle Diam Pvt. Ltd. Vs. Dept. of Income Tax ITA No. 3971/Ahd/2008(Ahmedabad) Assessment Year: 2004-05 Order Dated: 26July 2016

Basic Facts

The Assessee company is engaged in the business of manufacturing and export of Diamond studded jewellery. During year, assessee has entered into two international transactions with its associated enterprises. To compute the Arm's Length Price for both the transactions the assessee used Transaction Net Margin Method (TNMM). The TPO made an upward adjustment to the total income of the assessee. This was because he used the Cost Plus Method (CPM) instead of agreeing with TNMM used by the assessee. He reasoned that the assessee had incurred loss due to non-recovery of fixed assets and therefore, it would be appropriate to take

gross profit for benchmarking. Aggrieved, the assessee preferred an appeal with the CIT(A). The CIT(A) allowed the appeal of the assessee.

Issue

Whether AO/TPO can decide the method of computing the Arm's Length Price without following the procedure laid down in Section 92C r.w.r. 10B and 10C?

Whether TPO was justified in computing Arm's Length Price as per CPM merely on the ground that the assessee has suffered a loss in the year?

Held

The Tribunal held that the only reason given for adopting CPM and for rejecting TNMM of assessee was that assessee has incurred loss during the year. The TPO stated that assessee has incurred loss due to non-recovery of fixed assets and therefore, it would be appropriate to take gross profit as bench marking. The TPO has not discussed in his order as to how he has arrived at CPM as the most appropriate method and TNMM is not the most appropriate method. As per the provisions of Section 92C, AO has to follow certain steps, as prescribed in the section, before making adjustments to the income shown by assessee in respect of transfer pricing. Further, Rule 10B prescribes various methods and gives various conditions whereby the TPO/A.O. is required to adhere to for determining the most appropriate method. This rule gives various conditions as per which either CPM or RPM or TNMM would be the most appropriate method. Rule 10C laid down various factors which the A.O. should take into account for selecting the most appropriate method. In the present case, neither the AO nor the TPO was justified in their observations. In fact, they had not followed the procedures laid down in Section 92C of the Act and in Rules 10B & 10C. The TPO has not made any attempt in showing why the results of Deep Diamond India Ltd., Moon Diamonds Ltd., Shanti Vijay Jewels Ltd. and Sovereign Diamonds Ltd. are comparable for calculating the gross profit margin. The assessee has, on the other hand, provided detailed submissions as to why the TPO was not justified in using CPM based on the Gross Profits of the 4 companies stated above. Therefore, the order of the CIT(A) is upheld and the matter is decided in favour of the assessee.

32 Damodar Valley Corporation Vs. ACIT [2016] 180 TTJ 82 (Kolkata) Assessment Year: 2008-09 & 2009-10 Order Dated: 13th January, 2016

Basic Facts

The assessee was a statutory corporation established under the Act of Parliament namely Damodar Valley Corporation (DVC) Act, 1948. It was engaged in the business of generation of electricity.The assessee filed its return computing its income under normal provisions of the Act as well as under section 115JB. However, during assessment proceedings, by way of a letter the assessee sought to withdraw the applicability of section 115JB. The Assessing Officer held that the provisions of section 115JB were applicable to the assessee-corporation. The CIT(A)upheld the order of AO.

Issue

Whether provisions of section 115JB are applicable to the assessee being Corporation established under a separate Act.

Held

When section 43 of DVC Act, 1948 was enacted, the provisions of section 115J/115JA/115JB were not there in the Act. Section 43 of DVC Act, 1948, only states that the Corporation shall pay taxes on any income. The book profit contemplated under section 115JB is only deemed income. The book profit is an alien to the basic concept of 'income'. The form of Balance Sheet of the Corporation is prescribed in Annexure II of the Damodar Valley corporation Rules. It is found from the provisions of DVC Act, 1948, the assessee corporation does not conduct any annual general meeting. In section 115JB section, the term 'company' referred to should be construed as company as defined under Companies Act, 1956 only. Section 115JB clearly states that the accounts are to be prepared in accordance with Part II of Schedule VI of Companies Act, 1956. There is lot of force in the

argument of the assessee that the computation provision states that 'Net profit as per Profit and Loss Account prepared as per Part II of Schedule VI of Companies Act, 1956.' The assessee corporation is not a company under the Companies Act, 1956. Only for income tax assessment purposes, the assessee Corporation is given the status of a company. When the computation provision could not be applied in a particular case, it is indicative of the fact that the charging section also would not apply. Explanation 3 to section 115JB has been inserted by the Finance Act, 2012 to clarify that only assessees being companies and to whom provisions of the Companies Act, 1956, are applicable, come within the ambit of section 115JB. In other words, unless an assessee comes within the ambit of section 211 of the Companies Act, 1956, it was not covered by the Explanation 3 to section 115JB and as a necessary corollary section 115JB was not applicable to it. The amendment is brought only from 1-4-2013 and hence is not retrospective. The expression 'for the removal of doubts, it is hereby clarified' used in Explanation 3 to section 115JB should not be construed as clarificatory in nature and thereby giving retrospective effect. In view of the above, it was held that in view of the legislative change brought about by the introduction of Explanation 3 in section 115JB by the Finance Act, 2012, the assessee's contention in fact stands more fortified. Since the assessee is not a company within the meaning of Companies Act, 1956, section 211(2) and proviso thereon is not applicable and, therefore, provisions of section 115JB are also not applicable.The intention of MAT is that the companies were declaring huge profits as per the Companies Act and declaring dividends to its shareholders but paying nil tax or lesser tax under the Act due to various exemptions/deductions.The assessee corporation does not declare any dividends to shareholders and also paying huge tax under Act. Applying this to the background of introducing the provisions of section 115JB it can safely be concluded that it was never the intention of the legislature to impose MAT on corporations enacted by an Act of Parliament like assessee herein.

Accordingly the ground raised by the assessee is allowed.

Basic Facts

The assessee earned certain exempt income in form of interest on tax free bonds of RBI. The assessee disallowed 20 per cent of said income under section 14A.The Assessing Officer having invoked provisions of Rule 8D(2)(ii) and Rule 8D(2)(iii) of 1962 Rules, made disallowance under section 14A of higher amount.The CIT(A) confirmed order of AO.

Issue

Whether AO can directly invoke rule 8D(2) without recording satisfaction in terms of rule 8D(1)?

Held

It was found from records that the assessee has got sufficient own funds to make investments and the AO has not brought any nexus between the borrowed funds vis a vis the investments made by the assessee. Without doing the same, he cannot directly presume that the investments were made out of borrowed funds. If the action of the AO and CIT(A) was to be upheld, then no assessee could make any investments when there is a interest bearing loan to be repaid. The fact of making the investments has to be viewed from the point of commercial expediency and from the point of view of businessman and not from the viewpoint of the revenue. It is well settled that businessman knows his interest best. If the own funds are available with the assessee and if the same are more than the investments made by the assessee, then it has to be presumed that the investments were made out of own funds and not out of borrowed funds. Hence the provisions of Rule 8D(2)(ii) cannot be invoked in these circumstances. The action of the AO in directly embarking on rule 8D(2) of the 1962 Rules without recording any satisfaction as mandated in rule 8D(1) of the 1962 Rules was not appreciated and hence no disallowance under section 14A by applying rule 8D(2) of the 1962 Rules could be made in the facts of the instant case. The assessee Corporation had disallowed certain sum and no

adverse inference has been brought on record and no satisfaction has been recorded with cogent reasons by the AO as to why the said figure computed by the assessee is incorrect. Without satisfying the requirement contemplated in rule 8D(1), the AO had directly proceeded to apply rule 8D(2) in the instant case. Hence, the disallowance made under section 14A was not sustained.

33 Gujarat Pipavav Port Limited Vs. ITO [2016] 180 TTJ 354 (Mumbai) Assessment Year: 2008-09 Order Dated: 23rd March, 2016

Basic Facts

The assessee had entered into a Main Purchase Agreement (MPA) with ZPMC, a Chinese Company, for supply of cranes to its affiliates. Consequent to MPA, it also entered into a separate Service Contracts with ZPMC for rendering the installation and commissioning services in relation to such cranes. It engaged Liftech, a USA based entity, for rendering of engineering services to review of pre-determined design and construction audit, which got its part of contract executed through a sub-contractor, namely, Leader which was a resident of China. The assessee paid a certain sum to Liftech for the services availed. ZPMC had provided installation and commissioning services of the cranes and it also provided after sales services and spare parts and the assessee had paid ZPMC for installation and commissioning of crane. The AO held that the services performed by Liftech were technical/consultancy and managerial services, that same were utilized in assessee's business being carried on in India, and that payment was chargeable as Fees for technical Services (FTS) as per Explanation to section 9(2) and as explained in CBDT Circular, dated 12-3-2008. He opined that such services might also fall under 'Royalty' under the India-USA DTAA as those involved imparting of information concerning their industrial commercial or scientific experience in the field of quality checking of cranes. He also held that ZPMC had PE in India under Article 5(2)(j); as per Article 5(2) of the Tax Treaty installation and assembly project which continued for a period of more than 183 days would constitute a PE in India. He treated the assessee as an 'Assessee-In Default' for not deducting tax from such payments. As a result, a demand was raised upon the assessee. The CIT(A) upheld the order passed by the A.O.

Issue

Whether amount paid in relation to installation and commissioning as well as engineering services for audit could be treated as fees for included services or fees for technical services?

Held

All the services related with audit and construction of cranes were availed out of India. Liftech had appointed Leader as its sub-contractor, and the assessee was not party to that contract. Therefore, there was not any transfer of technical plan/design by Liftech to assessee and that nothing was 'made available' to the assessee in India. Once it is held that provisions of article 12 of the DTAA are not applicable, the next step is to determine as to whether the disputed amount can be taxed as business income of Liftech. The AO or the CIT(A) has not proved that Liftech had any PE including functional PE in India. So, in absence of PE, there would not be business income to Liftech and the assessee would not be required to deduct tax from the payments made to Liftech. Accordingly it was held that the payment made to Liftech was not royalty or FIS or FTS and the assessee was not supposed to deduct tax at source for making the payment to Lifetech and therefore cannot be treated as assessee in default. The Tribunal held that there was no justification in holding that the services provided under the basic agreement were akin to services rendered by specific services agreement-rather they were part and parcel of the service contracts dated 26-5-2006 and 9-12-2006. The project started on 30-10-2007 and was commissioned on 15-1-2008. Thus,the installation job took 78 days and the employees of ZMPC stayed in India for 21 days commissioning took place. In these circumstances, the effective stay of the employees in India was 99 days only. If the actual period of after sales service is excluded from

the total period then the stay of the employees of ZMPC would be less than 183 days, there would not be any PE of ZPMC in India as per article-5(2)(j) of the DTAA. One of the issues before the Tribunal was to determine the method of calculating the period of stay for PE purposes. It was held that threshold limit of 183 days under article 5(3) would be calculated from date of actual activity for installation purpose and not from the date of signing of contract. The letter of ZMPC has confirmed that none of its employees were present in India after 24-3-2008. Details of employees visiting for after sales services are also available. These documents clearly prove that actual number of days of the employees of ZMPC were less than183 days.

Thebasic principle, in this regard, lays down the rule that when there is a specific PE clause in relation to a particular type of service (construction/ installation/assembly) and where such services are also covered within the scope of article 12, the provisions of that article will not be applicable. It was found that UBCB was sub-contractor of ZPMC, but it had no authority to conclude any contract on behalf of ZPMC, that it had rendered services relating to the installation and commissioning of crane not only to assessee but to other parties also. Therefore was no agency PE in India under article-5(4) of the India China DTAA of the non-resident entity-i.e. ZPMC considering the above, the said issues were decided in favour of assessee.

34 ACIT Vs. Majmudar & Co. 73 Taxmann.com 77 (Mumbai)
Assessment Year: 2004-05 to 2009-10
Order Dated: 19 August 2016

Basic Facts

The appellant is a firm of Advocates and Solicitors engaged in providing legal services to its foreign clients by using legal database compiled by it via electronic media via emails and internet facilities. It claimed deduction under section 10B.The AO disallowed the claim on the ground that rendering of legal services by the assessee to the foreign clients could not be termed as export of legal database from India. The CIT(A) upheld the assessee's contention.

Issue

Whether in light of Explanation 2(i)(b) of section 10B and Notification No. S.O. 890(E), dated 26-9-2000, assessee was eligible for deduction under section 10B?

Held

ITAT observed that *Explanation* 2(*i*)(*b*) defines computer software to mean any customized electronic data or any product or service of similar nature as may be specified by the CBDT which is transmitted or exported from India to any place outside India by any means. Over and above, CBDT in Notification No. S.O. 890(E), dated 26-9-2000 notified 'the product or services of legal database' as an eligible information technology enabled product or service. Hence, the notification applies to both legal database products and services rendered through the use of legal database and thus allowed in favour of the appellant.

35 Pragyaraj Power Generation Company Limited Vs. ITO 69 Taxmann.com 380 (Lucknow)
Assessment Year: 2010-11 and 2011-12
Order Dated: 26 February 2016

Basic Facts

The assesse company wanted to enter in to the new business of generation of power for which the plant and machinery was in process of installation. The funds available with the company were deployed temporarily in Fixed Deposit. The revenue authorities contended that since land was acquired and advances were given for plant & machinery, *etc.*; and source of interest income was generated, the business has commenced in relevant Previous Year.

Issue

Whether for a new business or for a new source of income which has come into existence, previous year would start from date of setting up of new business or from date when new source of income has come into existence?

Whether interest income was to be reduced from capital cost of project instead of taxing same as income from other sources

Held

It was seen that only land was acquired and advances are given for plant & machinery *etc.* and under these facts, it cannot be said that the business was set up .The source of income of the assessee in the instant case is the industrial undertaking for generation of power. Till the year under Consideration, the assessee has arranged total funds of certain amount and the same was used for purchasing land, machinery etc.. and only excess fund were utilized to earn income. Thus in the present case only a head of income has arisen and not source of income. Moerover interest income from the FD is not an independent source of income *de horse* the business undertaking because the earning of interest income is not the object of the assessee-company and the funds were not arranged by the assessee-company for earning interest income. Therefore it was held that the head of income should not be mixed with source of income and therefore it should be allowed to reduce from the cost of project and not taxed since the business has not commenced.

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contd. from page 382

officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate whether some refund or relief is due to the assessee, which would benefit the Department and it would inspire confidence in the assessee. In such view of the matter the Tribunal ought to have taken a wider look in allowing the claim of the assessee even if the return for the asst. yr. 1986-87 is belatedly filed, which would not restrict the rights of the assessee to claim the benefit of unabsorbed depreciation, investment allowance and s. 80J exemption.

49 Sec. 54F : Whether sale consideration itself is to be invested in New Asset? CIT v/s. Kapilkumar Agarwal 382 ITR 56 (P & H)

Issue :

Is it mandatory to utilise the sale consideration received on sale of original asset in new asset?

Held :

In order to avail of the benefit under section 54F of the Income-Tax Act, 1961, the assessee is required to either purchase a residential house within a period of one year before or two years after the date on which transfer takes place or construct a residential house within a period of three years after that date. Section 54F of the Act nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilised for the purchase or construction of a house property. No provision has been made by the statute that in order to avail of the benefit of section 54F of the Act, the assessee has to utilise the amount received by him on sale of original capital asset for the purposes of meeting the cost of the new asset.

For the assessment year 2009-10, the assessee claimed benefit under section 54F of the Income Tax Act, 1961. The Assessing Officer disallowed it on the ground that the assessee had not entirely sourced the amount invested in his new asset from the capital gains receipts. The Commissioner (Appeals) confirmed this. The Tribunal allowed the claim of the assessee. On appeals by the Department:

Held, dismissing the appeal, that the investment made by the assessee was within the stipulated time. Therefore, the assessee was entitled to the benefit under section 54F of the Act.

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Controversies

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When no expenditure is incurred for earning dividend income, whether disallowance can be made u/s. 14A read with Rule 8D?

Issue:

Mr. X has earned dividend income of Rs. 3 Lakhs on investments in shares. Mr. X claims that no expenditure is incurred for earning the dividend income except D-mat charges of Rs. 1,500/- Investments in shares is made out of internal accruals and not out of any borrowings. No administrative expenditure has been incurred by Mr. X. According to Mr. X no disallowance can be made u/s. 14A in his case except D-mat charges of Rs. 1,500/-.

According to AO, the general explanation of the assessee is not acceptable. Assessee has taken loan but assessee's claim that the loan has been utilized for the purpose of business only is not acceptable. Assessee has not submitted any proof or specific explanation other than the said general explanation. No day to day fund flow has been submitted. In absence of such fund flow the assessee's claim that no interest bearing funds were diverted for the investment in said shares/securities remains unsubstantiated.

Proposition:

It is submitted that when assessee has not incurred any expenditure other than the D-mat charges no disallowance is called for u/s. 14A of the Act read with Rule 8D. It is a duty of assessing officer to pin point any expenditure which the assessee has incurred for earning the exempt income. For earning exempt dividend income no expenditure is required to be incurred.

It is proposed that when no expenditure is incurred for earning exempt income no disallowance can be made u/s. 14A read with Rule 8D.

View against the Proposition:

It is well settled law that initial onus is on the person who claimed the deduction. It is for the assessee to prove that borrowed funds have been utilized for the purpose of business. The assessee cannot make a general claim that non-interest bearing funds have been utilized for the purpose of making investments in shares. It is for the assessee to prove precisely, by referring to the Bank and cash balance available on the date when interest free loan is given, and at best the benefit of doubt would be given to the assessee when in the common pool account there is sufficient balance which would cover the interest free loan.

Further, the Hon'ble Culcutta HC in the case of Dhandhuka & Sons vs. CIT reported in 339 ITR 319 has held as under:

"The object of section 14A of the Act is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income.

In the case before us, there is no dispute that part of the income of the assessee from its business is from dividend which is exempt from tax whereas the assessee was unable to produce any material before the authorities below showing the source from which such shares were acquired. Mr. Khaitan strenuously contended before us that for the last few years before the relevant previous year, no new share has been acquired and thus, the loan that was taken and for which the interest is payable by the assessee was not for acquisition of those old shares and therefore, the authorities below erred in law in giving benefit of proportionate deduction.

In our opinion, the mere fact that those shares were old ones and not acquired recently is immaterial. It

is for the assessee to show the source of acquisition of those shares by production of materials that those were acquired from the funds available in the hands of the assessee at the relevant point of time without taking benefit of any loan. If those shares were purchased from the amount taken in loan, even for instance, five or ten years ago, it is for the assessee to show by the production of documentary evidence that such loaned amount had already been paid back and for the relevant assessment year, no interest is payable by the assessee for acquiring those old shares. In the absence of any such material placed by the assessee, in our opinion, the authorities below rightly held that proportionate amount should be disallowed having regard to the total income and the income from the exempt source. In the absence of any material disclosing the source of acquisition of shares which is within the special knowledge of the assessee, the assessing authority took a most reasonable approach in assessment.

View in favour of Proposition:

Law appears to be well settled that if no expenditure is incurred disallowance cannot be made u/s. 14A of the I.T. Act 1961. It is useful to refer to decision of P & H High Court in CIT Vs. Hero Cycles Ltd. 323 ITR 518. Where it has been held that unless there is evidence to show that interest bearing funds have been invested in the investments which have generated Tax Exempt Dividend Income, No disallowance can be made, revenue has to establish nexus in this regard. On the basis of mere presumption provisions of section 14A cannot be applied. Revenue is not permitted to presume that some administrative expenditure must have been incurred for the purpose of earning the exempt income.

The Assessing Officer cannot apply provisions of Section 14A of the Act read with Rule 8D of the Rules automatically or mechanically without rendering any opinion on the correctness of the claim of the assessee regarding incurring of any expenditure or non-incurring of any expenditure to earn exempt income. The Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. reported in 347 ITR 272 has held as under:

"The condition precedent for the Assessing Officer to himself determine the amount of expenditure is that he must record his dissatisfaction with the correctness of the claim of expenditure made by the assessee that no expenditure has been incurred. It is only when this condition precedent is satisfied, that the AO is required to determine the amount of expenditure in relation to income not includable in total income in the manner indicated in sub-rule (2) of Rule 8D."

The Pune Tribunal in the case of ACIT Vs. Magarpatta Township Development & Construction Co. Ltd. in 46 taxmann.com 284, following the decisions of the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT 328 ITR 81 and the decision of Delhi High Court in the case of Maxopp Investment Ltd. 203 Taxmann 364, has held that where the AO has not recorded satisfaction as required by Section 14A(2) of the Act, disallowance u/s. 14A invoking Rule 8D is unjustified.

Summation:

It is submitted that the onus is on the revenue to establish that assessee has incurred some expenditure for the purpose of earning the exempt income. However, AO as well as CIT(A) insist on negative onus so to say according to them assessee has to establish that no expenditure is incurred for the purpose of earning exempt income.

In view of the decision of ITAT Delhi Bench in DCM Ltd. Vs. DCIT the AO must give reasons before rejecting assessee's claim. He must establish nexus between the expenditure and the exempt income.

It is respectfully submitted that the case of Mr. X is squarely covered by the decision of the jurisdictional high court of Gujarat in the case of CIT Vs. Torrent Power Ltd. (Guj.) reported in 363 ITR 478. Their lordships of Gujarat High Court held as under:

"The Assessing Officer has not pin pointed any expenditure which the assessee had incurred for earning the exempt income. We also find support to our reasoning by the ratio laid down by the Hon. Delhi High court in case of Maxopp Investments Ltd. Vs. CIT (2012) 347 ITR 272 (Delhi)."

I further invite kind attention to another decision of Jurisdictional High Court of Gujarat in the case of CIT Vs. Gujarat State Fertilizer And Chemicals Ltd. (Guj.) 358 ITR 331. Their lordships of Gujarat High Court held as under:

"Had the revenue been successful in establishing that the assessee had incurred the expenses to earn the dividend income from the borrowed funds, the entire discussion of application of section 14A of the Act could be understood."

I respectfully rely on the following judicial authorities to submit that when no expenditure is incurred for earning exempt income no disallowance can be made u/s. 14A of the I.T. Act 1961.

1. CIT Vs. Deepak Mittal (2014) 361 ITR 131 (P&H)

   In this case their lordships of P & H High Court held that in a case where no expenditure has been incurred by the assessee in earning the exempt income. There cannot be any disallowance of expenditure u/s. 14A r.w.r. 8D of the I.T. Rules 1962.

2. Canara Bank Vs. ACIT (2014) 99 DTR 36 (Karn)

   In this case, income was derived by way of dividends exempt u/s. 10(33), interest on tax-free bonds exempt u/s. 10(15)(h) and interest on long term finance to infrastructure companies exempt u/s. 10(23G) of the Act. The persons with whom the aforesaid investment was made by the assessee were crediting the aforesaid income to the assessee's account by way of a bank transfer.

   It was held by the Hon. High Court that there was no human agency involved in collecting these dividends and interest for which the assessee had to incur any expenditure. This is the consequence of computerization, online transaction through NEFT, RTGS and also D-mat account. The AO should take note of these developments in deciding, whether any expenditure is incurred in earning the said income.

3. CIT Vs. Hero Cycles Ltd. 323 ITR 518 (P & H)

   Unless there is evidence to show that such interest bearing funds have been invested in the investments which have generated the "tax exempt dividend income". There is no nexus established by the Revenue in this regard and therefore, on a mere presumption, the provisions of Section 14A cannot be applied.

4. CCI Ltd. Vs. JCIT (2012) 206 taxmann 563 (Karn.) (HC)

   When no expenditure is incurred by the assessee in earning the dividend income, no notional expenditure could be deducted from the said income.

In view of the above it is submitted that when no expenditure is incurred for earning exempt income disallowance u/s. 14A read with Rule 8D cannot be made.

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Service Tax - Recent Judgements

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26 [2016] 43 STR 110 (Tri Mumbai) Sumeet C. Tholle and Prathima S. Tholle vs. C.C.E.&C., Aurangabad.

Facts:-

Assessee jointly purchased a house wherein service tax and VAT collected from them. Even though the transaction between the assessee and its vendor was of transfer of immovable property, the vendor charged service tax. On understanding the facts, the assessee filed a refund claim with the department since tax was levied and collected without authority of law. The refund claim got rejected on the ground the assessee had not provided any proof of deposit of service tax by the service provider with the Government.

Held:-

Since the transaction of transfer of immovable property is covered in exclusion part of definition, the activity of transfer of immovable property is not a taxable activity. Service recipient cannot be made liable to prove that the service tax paid by him to the service provider has been credited to the service provider has been credited to the Government or not. Refund can be granted to the recipient on the basis of invoices held by them wherein service tax has been charged. Whether service tax has been deposited to the Government or not is to be looked by the department and not the service recipient. Service recipient having borne the incidence of tax can challenge taxability by claiming authority.

Service tax collected and deposited without authority of law by the service provider can be refunded to service receiver.

27 [2016] 43 STR 301 (Tri.- Bang.) Kirthi Constructions vs. CCE. & ST., Mangalore

Facts:-

Refund of service tax paid on construction services was claimed as it was not leviable to service tax. Assessee contested that since service tax was paid by mistake of law and it was not collected from buyers, refund claim cannot be held as time barred. Revenue demanded service tax as it was not a case of self service, service tax was collected from buyers and in any case, the refund was time barred.

Held:-

Since the typical arrangement was that the assessee was first selling plot of land and then the buyer was appointing the assessee for construction services. Accordingly, no service tax was payable. Relying on Hon'ble Supreme Court's decision in case of Mafatlal Industries Ltd. Vs. UOI (1997 (89) ELT 247 (SC)), it was held that all refund claims except unconditional levies have to pass the test of limitation of one year (time bar) and non-passing of service tax burden to buyers (unjust enrichment)

Even if refund of service tax is on account of mistake of law, provision of "time bar" and 'unjust enrichment' would apply.

28 [2016] 73 taxmann.com 31 (Delhi) High Court of Delhi Makemytrip (India) (P.) Ltd. vs. Union of India

Facts:

In this case, without even an SCN being issued and without there being any determination of the amount of service tax arrears, the resort to the extreme coercive measure of arrest followed by the detention of Vice-President of assessee - company was impermissible in law. Hence, search, arrests

and collections were set aside and department was directed to refund amounts.

Held:

It was held that before making arrest under service tax, department must prima facie adjudicate demad and also grant hearing to assessee as to materials collected; It was further held that in case of habitual tax-evaders, arrests may be made straightaway, but subject to review of past conduct and only after recording prima facie view as to how assessee is habitual tax-evader.

29 [2016] 43 STR 545 (Tri.- Mumbai) Emrald System Engg. Ltd. vs. CST, Mumbai

Facts:

In this case the assessee was engaged in the activity of arranging of entire transportation, dispatching of the goods, supervising the loading and unloading of goods. Whether such activities are covered under Business Support Service or Business Auxiliary Service?

Held:

The Tribunal in this case held that, the activity of arranging of entire transportation, dispatching of the goods, supervising the loading and unloading of goods is covered under Business Support Service not under Business Auxiliary Service. It is further held that activity of organizing orders from various stockiest, distribution of goods and collecting them from stockiest is liable under Business Auxiliary Service.

30 [2016] 43 STR 482 (High Court - Cal.) Sourav Ganguly vs. UOI

Facts:

In this case the assessee is providing services of writing of articles for newspapers, sports magazines or for any other form of media, anchoring of TV shows, brand promotion & playing IPL matches? Whether the theses activities are liable to service tax under Business Auxiliary Service?

Held:

The Calcutta High Court has quashed Show-cause cum demand notice demanding Service Tax from former Indian Cricket Team captain, Ganguly.

Further it was held that that mere failure to disclose a transaction or activity and pay tax thereon or a mere misstatement is not sufficient for invocation of the extended period of limitation, which has been done in this case. The Court also held that the remuneration received by the former Skipper for writing articles and anchoring TV shows would not attract service tax. The court also observed that "brand endorsement" was not a taxable service during the period of time for which the tax demand was raised, and hence such demand cannot be sustained.

The Court also said that Ganguly while he played for Indian Premier League (IPL) was not rendering any service which could be classified as business support service.

31 [2016] 43 STR 507 (Mumbai) D. P. Jain & Co. Infrastructure Pvt. Ltd. vs. UOI

Facts:

In this case the assessee is doing activity of repairs of roads and airports. Whether the assessee is providing taxable service?

Held:

The High Court held that repair of road and airports excluded from construction services does not mean that it cannot form part of other taxable service. The Legislature thought it fit to bring it within management, maintenance or repair service.

It is further held that, retrospective exemption to activity of management, maintenance or repair of road w.e.f. 16/06/2005 does not include runways in airport which are specifically prepared along which aircraft take off and lands. It is not how it is made and surfaced but what it is utilised for which is relevant. Hence, road cannot be said to be genus of which runway is specie.

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VAT - From the Courts

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12 Burden of Proof tax collected by selling dealers remitted to Government is on purchaser of goods.

Nav Bharat Steel v. State of Karnataka reported in 93 VST page 240 (Kar)

Background of the case:

The prescribed authority exercising the powers under the Karnataka Value Added Tax Act, 2003, concluded reassessment proceedings on the petitioner by disallowing the input-tax credit in respect of the purchases of iron and steel claimed to have been made from selling dealer, since the selling dealers were absconding and were involved in bill trading. Penalty was also levied. The petitioner filed appeal before the Joint Commissioner and filed xerox copies of the tax invoices but it was dismissed. The second appeal filed before the Tribunal was also dismissed. On revision petitions:

Held, dismissing the petitions, that the burden lay on the petitioner to establish that the dealers from whom the petitioner had purchased the goods had remitted the tax collected to the Government. Mere obtaining the registration number of the selling dealers would not suffice to claim input-tax credit unless the petitioner discharged the burden of proof in support of the input tax claimed. No input-tax credit could be allowed on the basis of the photostat copies of tax invoices. It was noticed that the prescribed authority had visited the business premises of the petitioner and no books of accounts and tax invoices were produced before the assessing authority despite sufficient opportunity provided. It was also noticed that in an inspection report of the Joint Commissioner it was categorically stated that the petitioner had purchased the goods from H and that the dealers were involved in bill trading and were absconding. When the investigations provided that the selling dealers were non-existing, availing of input-tax credit on photostat tax invoices/ bogus invoices in the absence of selling dealer remitting the taxes to the Government amounted to violation of the provisions of the Act attracting levy of penalty under section 72(2) of the Act. Therefore, the order passed by the Tribunal was justifiable and did not call for any interference.

Comment from Columnist:

With reference to similar facts of bogus purchases, as per Judgement of Gujarat VAT Tribunal, if tax and interest is paid then penalty is removed completely as held in case of :

1) Mahendra iron traders v/s State of Gujarat S.A no: 204 to 206 of 2013 order dtd: 9-1-2014.

2) Hari Dye Chem S.A No: 1002 of 2014 Order dtd: 19-02-2015

13 Construction of taxing statutes—Common parlance meaning—When not applied. Change of opinion

Ravi Prakash Refineries P. Ltd v. State of Karnataka reported in 93 VST page 441 (SC)

Background of the case:

The dealer, engaged in manufacture of refined edible oil by solvent extraction process, sold sunflower de-oiled cake in the course of inter-State trade. The assessing authority passed the assessment order under section 9(2) of the Central Sales Tax

Act, 1956 granting the dealer concessional rate of two per cent. tax in terms of Notification No. FD 119 CSL 2002(2), dated May 31, 2002 issued under section 8(5) of the 1956 Act on production of C form. After the order of assessment was passed, the succeeding assessing officer, forming an opinion that turnover had escaped assessment to tax because inter-State sale of sunflower de-oiled cake was liable to tax at four per cent. and not at two per cent., levied tax at four per cent. on the inter-State sales of sunflower de-oiled cake. The Joint Commissioner of Commercial Taxes (Appeals), set aside the order of reassessment on the ground that the change of opinion could not have been a ground for reopening of assessment in exercise of power under section 12A of the Karnataka Sales Tax Act, 1957. The dealer, though having succeeded in first appeal, filed an appeal before the Tribunal on the ground that the first appellate authority did not express any opinion with regard to rate of tax on oil-cake and de-oiled cake. The Tribunal set aside the reassessment order holding that the expression "oil-cake" in entry 6 of Notification No. FD 119 CSL 2002(2), dated May 31, 2002 would include also de-oiled cake. It also held that the reopening of assessment by change of opinion was not permissible. The High Court on a revision petition held that there was a distinction between oil-cake and de-oiled cake and they were two different commodities and not one and the same. On appeal by the dealer:

Held, (i) that the assessing authority had expressed the opinion with regard to the rate of tax on the de-oiled cake while scrutinising C forms which is an expression of opinion on the available materials brought on record and, therefore, the first appellate authority and the Tribunal were justified in concurring with that order. The Revenue had not challenged the order passed by the Joint Commissioner. The High Court had not expressed any opinion on this score. Considering the cumulative effect of the facts and law, it must be held that there should not have been reopening of assessment.

(ii) That it was evident from the notification dated May 31, 2002, that the competent authority while exercising power under sub-section (5) of section 8 of the 1956 Act, had kept out the reduction of tax qua de-oiled cake from the purview of notification and had only provided oil-cake to be taxed at the reduced rate of tax. In view of the decision of the Supreme Court in Agricultural Produce Market Committee v. Biotor Industries Ltd. [2014] 73 VST 1 (SC) **whereby the court concluded that there was a distinction between oil-cake and de-oiled cake and they were two different commercial products, the dealer could not be allowed to advance a plea that that test should not be applied, but the commercial parlance test should be adopted to determine the goods for the purposes of the Central Sales Tax Act.**

14 Benefit of credit notes for turnover discount, in which year to grant. i.e. year for discount or year of accounting.

State of Gujarat v Ambuja Cement Ltd. Reported in 93 VST 436 (Guj)

Background of the case:

For the assessment year 2007-08, the respondent-dealer engaged in manufacture and sale of cement, sold cement to various customers, finalized in the last quarter the discount to be given to such customers on the sales during that year and gave credit notes to customers discounting the value added tax already collected from them on the basis of the original price. Since this event took place during the financial year 2008-09, the dealer claimed credit of such discounted sale price and the consequential reduced tax collected from the consumers in such year. The assessing officer accepted the formula and framed the assessment

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VAT - Judgements and Updates

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GST, VAT Judgments and Updates

Dear Readers,

Now it is a right time for the introduction of GST to Chartered Accountant faternity. With this article, I am starting the basic concept of GST as Part – I of my article and the Vat Updates will be in Part – II, hence forth.

[I] Key Points from Model GST Law:

[1] **Threshold limit for registration & Control Jurisdiction:**

[i] Threshold Limit for Exemption:

[a] North Eastern States : Rs. 10 Lakhs

[b] Other States : Rs. 20 Lakhs

[ii] Control Jurisdiction:

[a] Services : Central Authorities

[b] Goods : Based on Turnover

[i] Turnover below Rs. 1.5 Crores : States

[ii] Turnover above Rs. 1.5 Crores : Both Centre and States

[2] **Place of Registration:**

The dealer has to get registered in the State from where taxable goods or services are supplied.

[3] **Migration of existing taxpayers to GST:**

Every person already registered under extant law will be issued a certificate of registration on a provisional basis. This certificate shall be valid for period of 6 months. Such person will have to furnish the requisite information within 6 months and on furnishing of such information, final registration certificate shall be granted by the Central/State Government.

[4] **GST compliance rating score:**

Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act. The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and will also be placed in the public domain.

[5] **Levy of Tax:**

The person registered under this law is liable to pay tax if his aggregate turnover in a financial year exceeds Rs. 20 lakhs. However, a dealer conducting business in any of the North Eastern States is required to pay tax if his aggregate turnover exceeds Rs. 10 lakhs. A negative list has also been prescribed for transactions and activities of Government and local authorities which shall be exempt from GST levy, like activities of issuance of passport, visa, driving license, birth certificate or death certificate etc.

[6] **Taxable Event:**

The taxable event under GST regime will be supply of goods or services. Supply includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration. It also includes importation of service, whether or not for a consideration.

[7] **Point of Taxation:**

CGST/SGST shall be payable at the earliest of the following dates, namely:

[i] Date on which the goods are removed for supply to the recipient (in case of moveable goods);

[ii] Date on which the goods are made available to the recipient (in case of immovable goods);

[iii] Date of issuing invoice by supplier; or

[iv] Date of receipt of payment by supplier; or

[v] Date on which recipient shows the receipt of the goods in his books of account.

[8] **TCS on online sales of goods or services**

Every E-Commerce operator engaged in facilitating the supply of any goods and/or services (like Amazon, Flipkart etc) shall collect tax at source at the time of credit or at the time of payment whichever is earlier.

[9] **Valuation Rules**

Such Rules shall apply to the supply of goods and/or services under the IGST/CGST/SGST Bill. Some of the methods prescribed for valuation are given hereunder.

[a] Transaction Value: As per this method the value of goods and/or services shall be the transaction value.

[b] Transaction value of goods or services of like kind: Where value of supply cannot be determined under previous method [i.e. point a], the value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.

[c] Computed Value Method: Where value cannot be determined under previous method [i.e. point b], it shall be based on computed value which shall include cost of production, manufacture or processing of the goods or the cost of provision of services, the charges, if any, for design and brand and amount towards profit and general expenses.

[d] Residual Method: Where the value cannot be determined under the computed value method, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

[10] Utilization of IGST: The amount of input tax credit on account of IGST available in the electronic credit ledger of dealer shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

Utilization of SGST: The amount of input tax credit on account of SGST available in the electronic credit ledger of dealer shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

Utilization of CGST: The amount of input tax credit on account of CGST available in the electronic credit ledger of dealer shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

Note: The input tax credit on account of CGST shall not be available for payment of SGST.

[II] **Important Judgment:**

Hon. Gujarat High Court in case of Bhailal Amin General Hospital vs. State of Gujarat deciding that in case of Charitable Trust running a Hospital and Medical Store is not a dealer.

Facts of the case:

The assessee is a Charitable Trust running hospital and medical store. The assessee applied to the Commissioner under section 80 of the Act for determination of a question whether the assessee who is a charitable trust running hospital/medical store for achieving its objects is a dealer as defined under section 2(10) of the Act. It was contended by the assessee before the Commissioner that in view of the exceptions contained in the impugned definition, it was not a dealer as defined under the Act. The Commissioner rejected the contention of the assessee by holding that the activity of selling medicines, though without profit, was business activity of trust and the assessee was a dealer under the Act. The impugned determination

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Mergers and Acquisition Corner

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1. With RCom, Aircel merger; Ambani brothers all set to rule telecom market[1]

The Ambani brothers are all set to rule the telecom market. Less than a fortnight after elder brother Mukesh Ambani's Reliance Jio Infocomm Ltd (RJIL) sent the older players reeling from the impact of aggressive pricing for his fourth generation (4G) long term evolution (LTE) data and voice services, younger brother Anil Ambani created a formidable entity by merging his Reliance Communications (Rcom) with Malaysia-based Maxis Communications Berhad's (MCB) Aircel Ltd. The merged entity will have a subscriber base of 186.7 million (9.87 million of RCom and 8.80 million of Aircel), catapulting it to the third position after Bharti Airtel (251 million) and Vodafone (198 million) and before Idea Cellular (175 million). The two companies will hold 50% share each with equal representation on board and committees. The merger transaction, which will be completed in 2017, will prune RCom's debt by Rs 20,000 crore or 40% of the total debt whileAircel will cut its debt by Rs 4,000 crore. The wireless businesses of both the telecom service provider will be combined through a process of demerger approved by the court.Sources in RCom, who did not want to be named, said RCom's wireless business will be demerged for a merger with Aircel and the new entity will be renamed and rebranded. He said the actual formal merger would take around six months and approvals from Securities and Exchange Board of India (Sebi), stock exchanges, Competition Commission of India (CCI), Department of Telecom (DoT), and courts would be sought during that period. A statement issued by two operators claimed the merger deal made the new entity the second-largest spectrum holder in the country at 451 mega Hertz (MHz) across 850 MHz, 900 MHz, 1800 MHz and 2100 MHz frequency bands and would be among the top four players in terms of customer base and revenues.

"We expect with this combination to create substantial long-term value for shareholders of both RComand MCB, given the benefits of the wide-ranging spectrum portfolio and significant revenue and cost synergies," said Ambani, chairman of Reliance Group in a statement issued by the company. RCom had earlier bought out the wireless business of Sistema Shyam Telecom Ltd (SSTL). MCB, which has invested over Rs 35,000 crore since it acquired Aircel in 2006, said the deal and further equity commitment "underpinned" its belief in the long-term growth potential of "India and India's telecom sector". A statement issued by both the companies said; "On consummation of the merger, RCom and MCB are committed to additional equity infusion into the MergerCo (merged entity) to further strengthen the balance sheet, fund future growth plans and enhance financial flexibility. Both parties are already in talks with leading international investors in this regard". Post-merger, the entity will have an asset base of Rs 65,000 crore and net worth of Rs 35,000 crore. A telecom analyst with a leading financial consultancy firm, who did not want to be named as his company policy does not permit him to speak on any specific company, said if the Ambani brothers have access to each other's network then the merger is likely to give Reliance Jio further advantage in terms of a voice platform. "RCom has pooled spectrum with Reliance Jio. I don't know what the condition for the access to that will be for the new (merged) company but if that is the case then theoretically the two companies have

a lot of advantages because they will have their 2G and 3G networks and we know that Jio is suffering on account of having no voice platform. If it has access RCom's network then theoretically they (Reliance Jio, RCom and Aircel) will be the only player with 2G, 3G and a nationwide 4G LTE network. Plus, it has a good market share (10%), so it should be able to do a very good market play," he said. G Krishna Kumar, Bangalore based telecom executives, expects only 4-5 operators to survive in the Indian market while the rest would either merge with larger players or sell out.

2. Naspers owned PayU buys rival Citrus for $130 m in all-cash deal[2]

The Netherlands-based global online payments service provider PayU has acquired Citrus Pay in an all-cash deal, valuing the Indian startup at $130 million (around Rs 830 crore). PayU is part of South African internet and media conglomerate Naspers, which is one of the largest technology investors in the world. TOI first reported about Naspers buying Citrus Pay on August 8 .The freshly merged entity will operate under the PayU brand in India and will have a customer base of more than 30 million with over 200,000 merchants. The deal will strengthen Naspers' payments division and is expected to support its strategy to grow its financial services footprint across emerging markets, said PayUglobal's CEO Laurent le Moal. Citrus and PayU focus on providing payments solutions to a growing tribe of merchants who operate online and will together take on the likes of Paytm, backed by Alibaba, as well as players like Snapdeal-owned Freecharge.

Venture capital fund Sequoia Capital, an early investor in Citrus, holds around 25-30% in the Mumbai based company, and is expected to make healthy returns on its investment. The five-year-old Citrus has in all raised around $32 million in risk capital, from the likes of Japanese investors Beenos and EContext. Investors collectively own around 50% in the company. Less than a year ago, the payments startup had picked up $25 million from Sequoia and Ascent Capital and had been in talks with potential investors to raise more capital before the acquisition was finalised. Citrus will drive PayU's fin tech foray into lending through its platformLazypay , while PayU cofounder Shailaz Nag will focus on new areas of growth through bank alliances. Amrish Rau, currently Citrus Pay managing director, will become CEO of PayU in India after the takeover. Founded in 2011 by Jitendra Gupta and Satyen Kothari, Citrus acts as a bridge between bank accounts of merchants and banks and credit card companies. While Rau, who came on board in 2014, and Gupta are both managing directors at Citrus, Kothari carved out the consumer-facing app business into a separate company -Cube, which he controls currently - earlier this year.

PayU-Citrus collectively processed 150 million transactions in 2016 worth a combined $4.2 billion, and will grow at 50% plus year on year, Moal said. He added that the group would like to tie up with banks in the near future to give services in the digital banking and wealth management to retail customers. The Indian government backed Unified Payments Interface, where money can be transferred from one bank account to another through smart phones using an app, would not affect the payment service providers' businesses as they will act as collecting agents for merchants.Nitin Gupta, PayU cofounder, will help complete the transition to the new leadership team before departing the company to pursue his entrepreneurial ambitions. The Indian online payments industry is rapidly growing, attributed to the rise in smartphone use and an active policy push to drive financial inclusion. A recent Boston Consulting Group report estimated digital transactions will hit $500 billion by 2020, ten times its current level.

3. Zee sales Ten Sports to Sony for $385 mn[3]

Marking the second largest deal in media and entertainment in recent times, Sony Pictures Networks India (SPN) has bought media firm Zee Entertainment Enterprises (ZEEL)-owned Ten Sports bouquet of channels for $385 million (approximately Rs 2,600 crore) in an all-cash deal. With this, SPN has cemented itself as a strong competitor to Star India, increasing its bouquet strength to nine channels in the country. Star India operates eight sports channels under the Star Sports brand. "The board of directors of the company approved the sale and transfer of the 'sports broadcasting business' of the company to SPN and its affiliates at an aggregate all-cash consideration of $385 million," ZEEL said. Sports broadcasting business accounted for Rs 631 crore revenue in the company's consolidated revenue and net loss of Rs 37.20 crore for FY16. ZEEL had bought Ten Sports from Dubai-based Abdul Rahman Bukhatir'sTaj Group in 2006. "We have maintained that sports is one of the three pillars of our business and we have been investing significantly in acquiring properties that support this strategy. The sports properties that Ten has – whether it's the five cricket boards, World Wrestling Entertainment (WWE) or the various tennis events — complement our strategy and so, the acquisition made perfect sense to us," says N P Singh, chief executive officer, SPN India. In India, SPN now has access to Ten 1, Ten 1 HD, Ten 2, Ten 3, and Ten Golf HD from the acquired bouquet, in addition to four channels from its own bouquet – Sony Six, Sony Six HD, Sony ESPN, and Sony ESPN HD. Andy Kaplan, president, Worldwide Networks, Sony Pictures Television, added, "India has been a strong driver of Sony Pictures' growing networks business for two decades, and sports continue to play a significant role in that growth. The acquisition of Ten Sports, following the launch of Sony ESPN channels, will mean that our Indian networks would reach over 800 million viewers and broadcast many of the most popular and prestigious sporting events in the world."

With all eyes on the media rights for the Indian Premier League (IPL), which may be up for grabs next year, SPN would want to beef up the sports portfolio. The five sports channels can be easily rebranded and repackaged in time for the 2017 edition of the Twenty20 league. Withthese, the SPN sports cluster will have at least nine channels across standard and high definition feeds, giving competition to and, in fact, surpassing Star India's bouquet of eight channels. More channels will not only mean more advertising inventory on a big-ticket property like the IPL, it will also give SPN the bandwidth to experiment with multi-language feeds, a strategy the network started with the FIFA World Cup in 2014. Also, the acquisition means that SPN India will be able to enter international markets like Maldives, Singapore, Hong Kong, West Asia and the Caribbean in sports broadcasting. These are markets where Ten enjoys a strong presence. ZEEL had been present in the sports broadcast business for almost a decade before it decided to pull the plug on the business. It had bought 50 per cent stake in Ten Sports at an enterprise value of $114 million (Rs 800 crore) in 2006 and completely acquired it in 2010. The company has lost around Rs 660 crore in sports business from FY10-16, according to analyst reports.

Among its marquee sports properties are WWE and cricket rights of West Indies, South Africa, Pakistan, Sri Lanka and Zimbabwe. "The non-compete clause is for four years. So, for now, we have exited the sports business. The focus will be to develop verticals across broadcast, live events, digital, films and international business. Part of the process will be deployed towards growing the digital business as of now. We will continue to make investments and when the time comes," says Punit Goenka, managing director & CEO, ZEEL. He adds, "Exiting the sports business will not have much impact on our presence in the international

markets where Ten had a strong presence. The channels are not bundled there and we have other channels in those markets." VinitKarnik, head, business, ESP Properties, says, "The Sony Pictures Networks India and Ten Sports deal will surely boost Sony's domestic and international sports portfolio. This is great news from a sporting industry standpoint in India. The acquisition will strengthen SPN's offering for viewers of cricket, football, WWE etc, complementing their existing portfolio. Additionally, the deal will also bring exciting sporting action such as English Football League Cup, Moto GP, Tour de France, Golfing Tournaments and rights to major sporting events such as the Commonwealth Games and Asian Games to Sony. This will help them build a robust distribution network base as well!"

1. http://www.dnaindia.com/money/report-rcom-aircel-merge-to-become-third-largest-telco-2255242
2. http://timesofindia.indiatimes.com/deals/-ma/Naspers-owned-PayU-buys-rival-Citrus-for-130m-in-all-cash-deal/articleshow/54321658.cms
3. http://www.business-standard.com/article/companies/zee-sells-ten-sports-to-sony-for-385-mn-116083100446_1.html

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order came to be confirmed by the Tribunal. Being aggrieved, the assessee filed present Tax Appeal before the Hon. Gujarat High Court.

Held:

Submissions of the assessee before the Gujarat High Court:

The learned counsel for the assessee submitted before the Hon. Gujarat High Court that the explanation to definition of 'dealer' provides exclusions for a charitable, religious or educational institution, carrying on the activity of manufacturing, buying, selling or supplying goods, in performance of its functions, for achieving its avowed objects, which are not in the nature of business. It was, therefore, contended that the assessee being a charitable trust is not engaged in businesses and not a dealer as defined in section 2(10) of the Act. In support of this contention, the counsel relied on the decision of the Apex Court in case of Commissioner of Sales Tax v. Sai Publication Fund reported in (2002) 4 SCC 57.

Submissions of Revenue before the Gujarat High Court:

The learned counsel for the revenue submitted before the Gujarat High Court that the trust, doing the activity of buying, selling and supplying of medicines to the patients will fall within the definition of 'dealer'.

Therefore, the Tribunal has rightly held that the assessee is a dealer within the definition of section 2(10) of the Act and no interference is called for with the same.

Decision of the Hon. Gujarat High Court:

The Hon. Gujarat High Court held that since the assessee being a charitable trust, is doing the activity of purchasing, selling and supplying medicines to patients in order to achieve its avowed objects, it is not engaged in business activity and therefore, the assessee is not a dealer within the meaning of Exception (iii) to section 2(10) of the Act. The Tax Appeal filed by the assessee came to be allowed and the Tribunal order came to be set aside accordingly.

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Corporate Law Update

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MCA Updates:

1. Special courts under section 435 of the Companies Act, 2013:

The Central Government has designated the following Courts as Special Courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013, namely:-

Sl. No.	Existing Court	Jurisdiction as Special Court
1	Sessions Judge, Bilaspur	State of Chhattisgarh
2	Court of Special Judge, (Sati Niwaran), Jaipur	State of Rajasthan
3	Court of Sessions Judge and 2nd Additional Sessions Judge, S.A.S. Nagar	State of Punjab
4	Court of Sessions Judge and 2nd Additional Sessions Judge, Gurgaon	State of Haryana
5	Court of Sessions Judge and 2nd Additional Sessions Judge, Chandigarh	Union Territory of Chandigarh
6	I Additional District and Sessions Court, Coimbatore	Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur.
7	II Additional District and Sessions Court, Puducherry	Union Territory of Puducherry
8	Sessions Judge, Imphal East	State of Manipur

[F. No. 01/12/2009-CL-I (Vol-IV) dated 01.09.2016]

2. Date of Notification of Section 124 and 125:

The Central Government has appointed the 7th September, 2016 as the date on which the provisions of section 124, sub-sections (1) to (4), (6) [with respect to the manner of administration of the Investor Education and Protection Fund] and (8) to (11) of section 125 of the said Act shall come into force.

[F. No. 5/27/2013-IEPF (Part) dated 05.09.2016]

3. The Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and Provision for offices and officers) Amendment Rules, 2016

After Rule 3, the following rule shall be inserted, namely:

3A "The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall name, sue or be sued."

[F. No. 05/27/2013-IEPF dated 05.09.2016]

4. **The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016:**

The Central Government has made the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 which shall be effective from 07.09.2016.

For details of such rules, please refer the link at http://www.iepf.gov.in/IEPF/pdf/Rules_06092016.pdf

[F. No. 05/27/2013-IEPF dated 06.09.2016]

5. Relaxation of additional fees for filing Form IEPF-1:

The Ministry has clarified that the Companies that have not filed the requisite information in Form 1INV can now file the information in Form IEPF-1. Further, as a onetime measure, for Companies with due date for filing of the Form 1-INV falling between the period 25th March, 2016 to 06th September, 2016, the Companies may file Form IEPF-1 without additional Fees on or before 06.10.2016.

[General Circular No. 10/2016 dated 07.09.2016]

6. **Commencement of applicability of certain sections of Companies Act, 2013:**

The Central Government has appointed 9th September, 2016, as the date on which the provisions of section 227, clause (b) of sub-section (1) of section 242, clauses (c) and (g) of sub-section (2) of section 242, section 246 and sections 337 to 341 (to the extent of their applicability for section 246), of the said Act shall come into force.

[F. No. A-45011/14/2016-Ad-IV dated 09.09.2016]

7. **Companies (Mediation and Conciliation) Rules, 2016:**

The Central Government has made Companies (Mediation and Conciliation) Rules, 2016.

For details please refer the link at http://www.mca.gov.in/Ministry/pdf/CompaniesMediationandConciliationRules_10092016.pdf

[F. No.1/36/2013-CL. V dated 09th September, 2016]

8. Notice for inviting applications for empanelling experts as Mediators or Conciliators:

The Ministry of Corporate Affairs (MCA) has empowered the Regional Director(s) to prepare and maintain/update the Mediation and Conciliation Panel of eligible experts in pursuance of Rule 3(1) of Section 442 of the Companies Act, 2013, who are willing to be appointed as mediator or conciliator in the specified Regions.

Application can be sent in the Form MDC-1 (annexed to the Companies (Mediation and Conciliation) Rules, 2016 to the respective Regional Directors on or before 08th November, 2016.

9. Constitution of Expert Group to look into issues related to Audit Firms:

The Ministry has constituted an Expert Group, which shall examine the about the adverse impacts on the Indian Audit Firms due to the structuring of certain audit firms leading to circumvention of various regulations, manner in which auditor's rotation requirements is being implemented by Companies, and imposition of restrictive conditions by foreign investors with regard to the auditor's appointment by Companies.

The Group shall submit its report within two months of this order.

[F. No. 17/112/2016-CL-V dated 30.09.2016]

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Allied Laws Corner

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Director is not guilty of violating Section 8 of the FEMA on failure of company to realize export proceeds within stipulated period as the said Director was not in-charge of day to day affairs of the company.

Recently, the Appellate Tribunal for Foreign Exchange, New Delhi in the case of **Samir Gupta vs. Special Director, Enforcement Directorate, Mumbai** reported in **73 taxmann.com 9** held the finding of ED as erroneous in levying penalty on director for violation of S.8 of the FEMA on failure of the company to realize the export proceeds within the stipulated period as admittedly the alleged Director was not in-charge of the day to day affairs of the company. The Appellate Tribunal further held that no SCN was served upon him and no personal hearing was granted to him and therefore adjudicating order passed without giving appellant opportunity of being heard was in gross violation of principles of natural justice.

A. Facts of the Case :

1. M/s. Aviquipo of India Limited (the company) had exported goods abroad but had failed to take necessary steps to realize the export proceeds to the extent of US$ 44,91,685.68 (approx. Rs. 20,21,25,870) within the stipulated period in contravention of the provisions of Section 8 of Foreign Exchange Management Act, 1999 read with Regulation 9 and 13 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000. It was alleged that the Appellant was a Director of the company along with other directors Rajat Gupta, Executive Director, R.K.T. Dass, Executive Director, Sanjay Gupta, Director, V. K. Rathee, Director and R.K. Pramanik, Director. All the directors were charged for said contraventions in terms of Section 42 of the FEMA, 1999.

2. Investigation was initiated on the basis of information received from RBI regarding non-realization of export bills of M/s. Aviquipo of India Ltd. and its sister companies, which were negotiated through different banks. It is said that since the Managing Director of the company failed to respond to various summons, the details of outstanding export bills were demanded from the authorized dealer, Oriental Bank of Commerce on behalf of erstwhile Global Trust Bank Ltd. The authorized dealer submitted 10 copies of pending GRs in respect of M/s. Aviquipo of India Ltd. vide their letter dated 24.02.2005. Documents furnished by the bank showed that the company had failed to realize an amount of US $ 44,91,685.68 against 10 GR forms. It is contended that Rais Ahmed, authorized representative of the company was examined and his statement was recorded under Section 37 of FEMA on 15.04.2014 and 03.08.2015 in which he is stated to have admitted the total outstanding amount in respect of noticee company. The company also vide its letter dated 21.04.2004 confirmed the outstanding amount of export bills for the value alleged, on this basis it appeared that the company had failed to realize the full export value of the goods within the specified time limit and had failed to take reasonable steps for its realization and

repatriation without the general or special permission of the RBI.

3. Show-cause notice was issued, however, no replies were filed by the company and its directors, therefore, it was decided to proceed with the adjudication and notices were issued for personal hearing on 01.02.2006, 03.02.2006, 13.03.2007, 07.11.2007 and 16.12.2008, but no noticee turned up. Show-cause notice was issued to six noticees apart from M/s. Aviquipo of India Ltd. It is contended that the company vide its letter dated 12.03.2007 had filed reply to the show-cause notice. Noticee, R.K.T. Das also filed his reply against the show-cause notice dated 12.03.2007, however no response from the Appellant and other Directors was received, therefore, the proceedings were held exparte.

4. The Adjudicating Authority recorded that the company has failed to furnish any details of efforts made by it to realize the export proceeds, though it has been stated that one of the buyers in U.K. had gone into liquidation. In view of the above, the Adjudicating Authority held that the company M/s. Aviquipo of India Ltd. has failed to take necessary steps to realize the export proceeds and thus has contravened the provisions of Section 8 of FEMA, 1999 read with regulation 9 and 13 of Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 and has held the company guilty for the aforesaid contraventions.

5. In respect of directors the Adjudicating Authority has held that they were directors at the relevant time as per the documents furnished by the company as well as by the bank concerned. He has further held that out of all the directors only R.K.T. Das has filed his reply to SCN in which he has stated that he was only Non-Executive Director and was not involved in the day today working of the company and had also not attended any board meeting of the company. In view of the above the Adjudicating Authority dropped the proceedings against R.K.T. Das and further held that rest of the Directors cannot escape their responsibilities, therefore he held them guilty for contravention of Section 8 of FEMA read with regulation 9 and 13 of Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 also read with section 42(1) and (2) of FEMA, 1999 and imposed a penalty or Rs. 2 crores against the company and a penalty of Rs. 20 lakhs against the five directors including the Appellant.

6. In Appeal NO. 21/2011 it is alleged that M/s. Tirumala Impex Pvt. Ltd. had exported goods abroad but had failed to take necessary steps to realize the export proceeds within the stipulated period in contravention of the provisions of Section 8 of FEMA, 1999 read with regulation No. 9 and 13 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000. Apart from the company, nine directors of the company including the Appellant were charged for the said contraventions in terms of Section 42 of FEMA, 1999. Facts of the matter bereft of details are that investigations were initiated on the basis of information received from RBI regarding non-realization of export bills by M/s. Tirumala Impex Pvt. Ltd and its sister companies, which were negotiated through different banks. Since the Managing Director failed to respond to the summons, the required information was gathered from the

authorized dealer, Oriental Bank of Commerce, formerly known as Global Trust Bank, which informed that the exports were made through 25 GR forms for a value totaling US$ 20399661.43 equivalent to Rs. 91,79,84,745 approx.

7. Rais Ahmed was examined and his statement under Section 37 of FEMA was recorded on 15.4.2004 and 3.8.2005 in which he admitted that the sale proceeds could not be realized and were outstanding as per the details furnished by the authorized dealer. The company also confirmed the information supplied by the bank. In view of the above, it appeared that the company had failed to realize the full export value of the goods exported and had failed to realize the export proceeds without any general or special permission of RBI. Show-cause notice was acknowledged by the company, however, no reply was filed by it and only Rais Ahmed and Bhupender Patel filed their replies. The matter was posted for personal hearing. It was found that Noticee Mukesh Patel had died during the continuance of the proceedings, therefore, the Adjudicating Authority in view of the fact that nobody had turned up in response to the summons and call notices, decided to proceed exparte against the noticees and on the basis of evidence available held the company liable for contravention under Section 8 of FEMA and regulation 9 & 13 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000. With regard to the directors the Adjudicating Authority was of the view that only Bhupesh Patel has filed his reply denying his involvement in the day to day affairs of the company and also stating that he had hardly attended any board meeting of the company, therefore, he decided to drop the proceedings against Bhupesh Patel, but held the other directors excluding Mukesh Patel, who died during the pendency of the proceedings, guilty for the alleged contraventions and imposed a penalty of Rs. 7 crores against the company and a penalty of Rs. 70 lakhs each against remaining directors including the Appellant individually.

B. Arguments of the Counsel for the Appellant:

1. Ld. Counsel for the Appellant contended that the Appellant after completing engineering degree in Mechanical Engineering in 1994 joined M/s. Aviquipo of India Limited as an employee on the post of Manger (Technical Services) for looking after the production of plastic injection factory of M/s. Aviquipo of India Limited situated in Kolkata. It has also been submitted that M/s. Aviquipo of India Limited was a research, design and standard organization - approved company (approved vendor for Indian Railways for supply of plastic Nilon Liners). It is contended that due to technical knowledge, commitment and dedication, the Appellant was appointed as Executive Director of the company in the year 1996 for looking after Kolkata operations of the company, however, the Appellant resigned from the post of Executive Director on 12.08.2002. **He was during his association with the company on pay rolls of the company and never held shares. Further submission is that the Appellant had no involvement in the export activities of the company and had never remained in-charge of day to day affairs of the company or had any involvement in the business of the company in any way. The Appellant was not in the knowledge of the questioned transactions.**

2. It is contended that a show-cause notice was allegedly issued to the company and to all directors at Mumbai address and not at the registered office of the company in Kolkata, based on a complaint. **The Appellant had no knowledge of the show-cause notice and regarding the proceedings held by the Adjudicating Authority, neither the company, nor the ED served copy of show-cause notice to him**. It was only when the Appellant visited the office of the Directorate of Enforcement in connection with another show-cause notice in M/s. Geekey Exim matters that he learnt about the impugned order and thereafter immediately applied on 7th October, 2010 for obtaining copies through his lawyers. Ld. Counsel for the Appellant has further submitted that the Appellant along with his counsel appeared in M/s. Geekey Exim matter on 22.10.2010 before the Enforcement Directorate and filed detailed reply bringing the factual position before the Adjudicating Authority which vide its order dated 28.10.2010 exonerated the Appellant of all the charges. Copy of the order has been annexed as Annexure-III to the memo of appeal. It is contended that the case of the Appellant is similar in the instant matter to that which he pleaded in the M/s. Geekey Exim mater and was exonerated.

3. Ld. Counsel for the Appellant has submitted in Appeal No. 21/2011 that the Appellant had joined as an Engineer in M/s. Tirumala Impex Pvt. Ltd., Mumbai and due to his technical acumen, commitment and dedication was **appointed as Non-Executive Independent Director of the company but was not responsible for the day to day working of the company and was not involved in the exports by the company and had never remained in-charge or responsible to the company for the conduct of the business.** He also had no knowledge of any of the transactions of the company in question. He was neither a shareholder of the company nor a shareholder of the group of companies and had also not attended any Board Meetings. The Appellant had been residing in Kolkata and was never posted in Mumbai. Submission is that on 10th October, 2005 a show-cause notice is alleged to have been issued to the company and its directors for alleged contraventions under Section 8 of FEMA read with regulations 9 and 13 of the Foreign Exchange Management (Export of Goods and Services) Regulation, 2000 read with Section 42(1) and (2) of FEMA, 1999, based on a complaint, however no show-cause notice or call notice was served upon the Appellant and he had no knowledge about the proceedings. It was only when he visited the Office of Enforcement Directorate in connection with another show-cause notice relating to M/s. Geekay Exim matter, which was also on the similar lines as the instant matter for filing the reply, he learnt about the proceedings of this matter. The Appellant has been exonerated and proceedings have been dropped against him in the Geekay Exim matter.

4. Submission is that in both the appeals the impugned orders are erroneous, violative of principles of natural justice and are arbitrary in nature. The Adjudicating Authority before proceeding exparte did not ensure that the show-cause notices were dispatched at the correct address of the Appellant and was duly served upon the Appellant. Similarly, the alleged personal hearing notices were not received at the Appellant, but still the proceedings were

held exparte. Submission is that the Adjudicating Authority failed to take into account that the Appellant was a Non-Executive Director and had no role in the day to day management of the company and was not associated with the export of the two companies. There was no specific allegation against the Appellant in the complaint and the impugned order is silent regarding the role of the Appellant. Had the Appellant got an opportunity to defend himself in the two adjudication proceedings held exparte against him and placed correct facts about his non-involvement in the exports or day to day affairs of the companies, the Appellant would have been exonerated, as he already been exonerated in the M/s. Geekey Exim matter. Similarly situated co-noticee Bhupesh Patel has also been exonerated. The appellant cannot be held vicariously liable under provisions of Section 42 of the FEMA. The amount of penalties imposed are exorbitant, irrational and arbitrary. The Appellant has been deprived of his fundamental right to get fair justice, as due opportunity to defend himself was not afforded to him. It has also been submitted that an extension was provided by the RBI initially for a period of one year ending on 31.12.2001 and the Appellant had resigned on 03.11.2001. It has also been argued that in the statement of Rais Ahmed recorded on 03.08.2005, copy of which has been filed, it has come that the Appellant had resigned on 03.11.2001, thus it is established that he was not under the employment of the company at the relevant time and the extension for realization granted by the RBI was continuing when he left the company.

5. Ms. Natasha Sarkar, Ld. Legal Consultant for the ED defended the impugned orders and has submitted that the proceedings in both the appeals were held exparte, because despite knowledge of the Adjudication proceedings and issuance of show-cause notices and notices for personal hearing, the Appellant did not turn up in Appeal NO. 20/2011. Noticee Rais Ahmed who was the authorized representative of M/s. Aviquipo of India Ltd, was the Managing Director of the Company and was examined by the Enforcement Authorities. His statements were recorded on 15.04.2004 and 03.08.2005 wherein he confirmed that a total amount of US$4491685.68 was outstanding for realization in respect of the company. This fact was also confirmed by the company vide its letter dated 21.04.2004. No efforts by the company or its Managing Director and other Directors including the Appellant who was also a director and was thus associated with the management of the company and had knowledge of the exports were made for non-realisation of the amount of sale proceeds. The Appellant failed to make any efforts for realization and repatriation of the amount of sale proceeds. The impugned order is a reasoned and speaking order and the liability of the company and the Managing Director and Directors has been rightly fixed and the amount of penalties imposed are reasonable, therefore, the impugned order is liable to be affirmed. The contention of the respondent that he had no concern with the day to day affairs of the company or had no knowledge and could learn about the proceedings when he went to the office of ED and came to know about the proceedings is an afterthought.

6. Similarly in Appeal NO. 21/2011, the Appellant was the Director of M/s. Tirumala Impex Pvt. Ltd. in which also

being a Director his involvement in day to day affairs including in the exports in question cannot be ruled out. The order is perfectly legal, reasoned and speaking and cannot be set aside. The Adjudicating Authority has specifically dealt the roles of each director in both the appeals and has held that they were the Directors of the company at the relevant period as per documents furnished by the noticee company as well as the bank concerned. Submission is that the Adjudication Order in the matter of M/s. Geekay Exim (I) Ltd and Others, which was decided on 28.10.2010 cannot be cited as an exemplar by the Appellant in the instant cases copy of which has been filed by the appellant. The appellant in Geekay Exim matter had put in his appearance and contended that he was looking after the work at Kolkata and was not looking after the affairs of the company i.e. M/s. Geekay Exim (I) Ltd. in Bombay. Relying on his version, the proceedings against the Appellant, were dropped. Submission is that the contentions of the Appellant in the Appeal No. 20/2011 that he had resigned during the period of extension granted by the RBI and was posted at Kolkata and was on the pay rolls of the company and had never held shares, has not been substantiated by any documentary evidence. Likewise in the matter of M/s. Tirumala Impex Pvt. Ltd., the argument that the Appellant had been residing in Kolkata and was never posted in Mumbai and therefore had no knowledge of the affairs of the company or the Appellant was a Non-Executive Director has also not been substantiated by any documentary proof. It has been submitted that the responsibility to prove that he was not in-charge or was not associated lies squarely on the person who wants to take advantage on the basis of this plea.

8. The Counsel for the ED further relied upon the decision in *Maganbhai Hansarajbhai Patel* v. *Asstt. CIT* [2013] 353 ITR 567/ [2012] 211 Taxman 386/26 taxmann.com 226 (Guj.) Hon'ble Gujarat High Court in paragraph 20 of judgment has observed that it is of course true that the responsibility of establishing such facts is cast upon the directors. Therefore, once it is shown that there is a private company whose tax dues have remained outstanding and same cannot be recovered, any person who was a director of such a company at the relevant time would be liable to pay such dues. Further submission is that in the matter of *Briji Gopala Dada* (*supra*), the Hon'ble Kerala High Court in paragraph 16 of the judgment has held that merely because the Appellants were non-executive directors or independent directors, is not a ground to come to a conclusion that they have no role in the day to day administration of the company. Though there is a Managing Director, who is normally responsible for the conduct of the company, the company may also include other directors who in the day to day administration of the company may be associated along with the managing director and this fact be known only to the directors and need not be known to others, therefore, the Appellant cannot be absolved of the liability by claiming that he was a Non-Executive Director. Further in the matter of *ANZ Grindlays Bank* v. *Directorate of Enforcement* MANU/MH/ 0036/1999, the Hon'ble Bombay High Court has held in para 40 of the judgment that once it is found that there has been a contravention of any of the provisions of the Foreign Exchange Regulation Act read with CSE Customs Act by a firm, the

partners of which who are in-charge of its business are responsible for the conduct of the same and cannot escape liability, unless it is proved by them that the contravention took place without their knowledge or they exercised all due diligence to prevent such contravention.

C. Findings of the Appellate Tribunal :

1. We have considered the submissions of Ld. Counsel for the Appellant as well as Ld. Legal Consultant and have also perused the case laws relied upon by the parties. In our view, **the case laws relied upon by the Ld. Legal Consultant do not help the Respondents in the instant appeals as it has neither been contended by the Enforcement that the Appellant was in-charge of the export business or responsible for day to day affairs of the company or had played any specific role in the export of the goods or in the matter of realization of the export proceeds. Had there been such an allegation then the onus would have shifted upon the Appellant to prove that he was not associated with the disputed transactions and was not responsible for them.** Only on his failure to establish his innocence in such eventuality his liability could have been fastened. The Appellant has specifically pleaded that he was a qualified engineer and was associated only with the production of the goods and had no concern with the business activities of the company. The Appellant has claimed that he was posted in Kolkata and was not posted in Bombay and his role was limited to the production of the goods which were to be exported. It has also not come in the evidence that the Appellant was in any manner associated with the administration of the company along with the managing director of the company. **There is no such allegation either in the complaint or in the show-cause notice that the Appellant was in-charge of day to day affairs of the company.** The appellant has not been stated to be a partner of the firm/company and there is no evidence on record to prove that he was in-charge of the business, therefore, the case laws relied upon by Ld. Legal Consultant are not applicable.

2. **In *Puja Ravinder Devidasani* (*supra*), the Hon'ble Supreme Court in para-17 of the judgment has held that non-executive director is no doubt a custodian of the governance of the company, but is not involved in day to day affairs of the running of its business and only monitors the executive activity. It has been further held that to fasten vicarious liability under Section 141 of the Act (Negotiable Instruments Act) on a person at the material time that person shall have been at the helm of the affairs of the company, one who actively looks after the day to day activities of the company and is particularly responsible for the conduct of its business.** In *Bhupendra V. Shah* (*supra*) relied upon by Ld. Counsel for the Appellant in para-22 of the judgment, the Hon'ble Delhi High Court has held that Section 42(1) of FEMA extends the liability by a deeming fiction only to such directors who were at the relevant point in time in-charge, were responsible to the company for the conduct of its business. The Hon'ble Court in this paragraph has also observed that moreover, there is nothing in the complaint to explain how they could said to be in-charge of the affairs of and responsible for conduct of its business at the time of contravention. In the matter of ***Ajay Bagaria* (*supra*)** relied upon by the Ld. Counsel for the

Appellant in para-14 of the Judgment, the Hon'ble Delhi High Court has analyzed Section 68 of FERA which is *parimateria* to Section 42 of FEMA, **the Hon'ble High Court has held that averments imposed must contain the two mandatory elements i.e. it would state the person sought to be arraigned as an accused apart from the company was a person in-charge of the affairs of the company and responsible for the conduct of its business and further that such person was in that capacity at the time of commission of offence**. Since there is no allegation at all that the appellant was responsible in any way with the management or business activities or the exports relating to disputed transactions in any way, the finding of Adjudicating Authority wherein he has fastened the liability upon all the directors, presuming their involvement merely on the basis that they were directors of the company at the relevant period, as per documents furnished by the company as well as the banks concerned, is erroneous. Further the same Adjudicating Authority has absolved co-noticee R. K.T. Das in the Order challenged through Appeal NO. 20/2011 on his plea that he was only a non-executive director and was not involved in the day to day working of the company and had not attended any board meeting of the company also. Similar is the plea of the Appellant, but since the proceedings were held exparte there was no occasion for him to take such plea. Likewise in appeal NO. 21/2011, the Adjudicating Authority has dropped the proceedings against the co-noticee Bhupender Patel on the same grounds and has also dropped the proceedings against the Appellant in the Adjudicating Order of M/s. *Geekay Exim (India) Ltd.* dated 28.10.2010.

3. It may be pointed that **by merely issuing notices to a party does not mean that notice was duly served upon that party. Sufficient service of notice as per rules is necessary before the Adjudicating Authority can decide to proceed exparte against such persons**. In the instant appeals the case of the Appellant is that he had left his service during the period when the extension granted by the RBI to the company for realization was continuing, no service upon him of the SCN or call notice for personal hearing was effected, has substance because had the appellant knowledge of the proceedings he could have appeared before the Adjudicating Authority and taken the same case/plea upon which proceedings were dropped against the Appellant in the matter of M/s. Geekay Exim (India) Ltd. **The impugned Adjudication Orders, in our view are not in consonance of law and smacks of arbitrariness on the part of the Adjudicating Authority, resulting in gross violation of principles of natural justice.** Therefore, in view of the above, we find merit of the appeals, which deserve to be allowed.

4. Consequently, both the appeals are allowed and both the Adjudication Orders challenged are set aside. No order as to costs. Pre-deposit amount if any by the Appellant shall be refunded by the Respondents after the expiry of the period of limitation for appeal.

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From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

AS 13 Investments
Significant Accounting Policies

Teamlease Services Ltd.

a. Current Investments:

Investments that are readily realisable and are intended to be held for not more than one year from the date, are classified as current investments. Current investments are carried at cost or fair value, whichever is lower.

b. Long Term Investments:

All other investments are classified as long term investments. Long term investments are carried at cost. However, provision for diminution is made to recognize a decline, other than temporary, in the value of investments, such reduction being determined and made for each investment individually. In case of investments in units of a mutual fund, the asset value of units is considered at the market / fair value.

IFB Industries Ltd.

Non-current investments are stated at cost less diminution in value, if any other than temporary , determined on specific identification basis.

Current investments are stated at lower of cost and fair value . The comparison of cost and fair value is carried out separately for each investment.

Profit or loss on sale of investment is determined as the difference between the sale price and carrying value of investment, determined individually for each investment.

HOV Sevices Limited

Investments are classified into long – term investments and current investments. Long-term investments are carried at cost and provision is made to recognize any decline, other than temporary, in the value of such investments. Current investments are carried at the lower of the cost and fair value and provision is made to recognize any decline in the value of investment. Profit or loss on sale of investment is determined as the difference between the sale price and carrying value of investment, determined individually for each investment.

Cairn India Limited

Investment that are readily realisable and intended to be held for not more than a year from the date on which such investments are made, are classified as current investments. All other investments are classified as long –term investments. Current investments are measured at cost or market value, whichever is lower, determined on an individual investment basis. Long term investments are measured at cost. However , provision for diminution in value as made to recognise a decline other than temporary in the long term investments.

BGR Energy Systems Limited

Investments are classified into long-term and current investments based on the intention of the management at the time of acquisition.

Long –term investment are stated at cost less provision for diminution in value other than temporary, if any current investments are carried at cost or fair value whichever is lower.

NBCC (India) Limited

a) Current Investments are valued at Lower of Cost or Net Realizable Value.

b) Long Term Investment are stated at cost. Provision for diminution in the value of long term investments is made only if, such decline is other than temporary in the opinion of the management.

Motilal Oswal Financial Services

Investments are classified into long term investments and current investments. Investments that are intended to be held for one year or more are classified as long-term investments and investments that are intended to be held for less than one year are classified as current investments.

Long term investments are valued at cost. Provision for diminution in value of long term is made if in the opinion of management such a decline is other than temporary.

Current investments are valued at cost or market/ fair value, whichever is lower.

On disposal of investments, the different between its carrying amount and net disposal proceeds is charged or credited to the statement of profit and loss.

Investment property

An investment is building which is not intended to occupy substantially for use by, or in the operation of the company, is classified as investment property. Investment property are started at cost, net of accumulated depreciation and accumulated impairment losses, if any.

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contd. from page 395

accordingly, but the Commissioner in exercise of suo moto revision power disallowed the adjustments and raised the revised tax demand on the ground that for the sale transactions which took place in the year 2007-08 for which the credit notes were issued, the benefit of reduced tax could be granted only during such period and not during the subsequent year. On a revision petition the Tribunal held that the procedure adopted by the dealer was legal and proper. The Tribunal observed that since the discount of each customer was crystallized only on March 31, 2008, the final price payable for the goods sold to the customers could be ascertained only after April 1, 2008. The credit notes were, therefore, prepared and accounted for in the books of the dealer in the first quarter of financial year 2008-09. On an application:

Held, dismissing the petition, that in terms of sections 60 and 61 of the Gujarat Value Added Tax Act, 2003, the dealer was entitled to issue credit notes once the amount of tax shown as charged in the tax invoice exceeded the actual tax charged in respect of the sale concerned. This was precisely what the dealer had done and claimed benefit of reduced tax collected from the purchasers. Even section 8 permitted adjustment of tax which was found to be in excess of what was payable during the period when it had become apparent that the tax paid was incorrect. In essence what the dealer did, was to reduce the total turnover of the assessment year 2008-09 to the extent its value after discount during the previous year had come down which would have a direct relation to the tax payable by the dealer. Therefore, the order of the Tribunal upholding the device adopted by dealer was valid.

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From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1) Notification on Income Computation and Disclosure Standards

The Central Government hereby notifies the income computation and disclosure standards as specified in the Annexure to this notification to be followed by all assessees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

This notification shall apply to the assessment year 2017-18 and subsequent assessment years.

(For Annexure in detail refer Notification No. 87, dated 29/09/2016)

2) Amendment in Income tax rules and form 3CD

The Central Board of Direct Taxes hereby amends the Income-tax Rules, 1962 and form 3CD by substituting the clause 13 for sub-clause (d) in Part B of Form 3CD w.e.f. 01/04/2017 to incorporate compliance of ICDS.

(For full text refer Notification No. 88, dated 29/09/2016)

3) Notification regarding insertion of rule 129 and form no. 68 – Immunity from penalty for underreporting and misreporting of income

The Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:—

1. (1) These rules may be called the Income-tax (25th Amendment) Rules, 2016.

(2) They shall come into force on the 1st day of April, 2017.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), after rule 128, following rule shall be inserted, namely:—

"129. *Form of application under section 270AA.*— An application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and from initiation of proceedings under section 276C or section 276CC shall be made in Form No.68.".

(For full text and form 68 for application under section 270AA(2) of the Income-tax Act, 1961 refer Notification No. 90, dated 05/10/2016)

Service Tax

1) Amendment in Service tax return Form ST3

The Central Government hereby makes the rules further to amend the Service Tax Rules, 1994, by amending the form ST3 form

(For Full text refer Notification No. 43, dated 28/09/2016)

2) Guidelines for arrest in relation to the offences punishable under the Finance Act, 1994 and Central Excise Act , 1944.

(For full text refer Circular No. 201, dated 30/09/2016)

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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
12.11.2016 Saturday	7.00 p.m. to 9.00 p.m.	Diwali Get Together		Navdeep Hall, Near Navrang Hall, Naranpura, Ahmedabad
10.12.2016 Saturday	8.30 a.m.	Cricket Match President XI v/s Secretary XI		Sardar Patel Stadium, Navrangpura, Ahmedabad
31.12.2016 Saturday	8.30 a.m.	Cricket Match		Sardar Patel Stadium, Navrangpura, Ahmedabad

Glimpses of Past Events

3rd Brain Trust Meeting on GST

CA. Sandesh Mundra - delivering Lecture on GST

OBITUARY

CA. Balmukund T. Nagori, very senior member of the Association left for Heavenly Abode on 07/09/2016. May the departed soul rest in eternal peace.

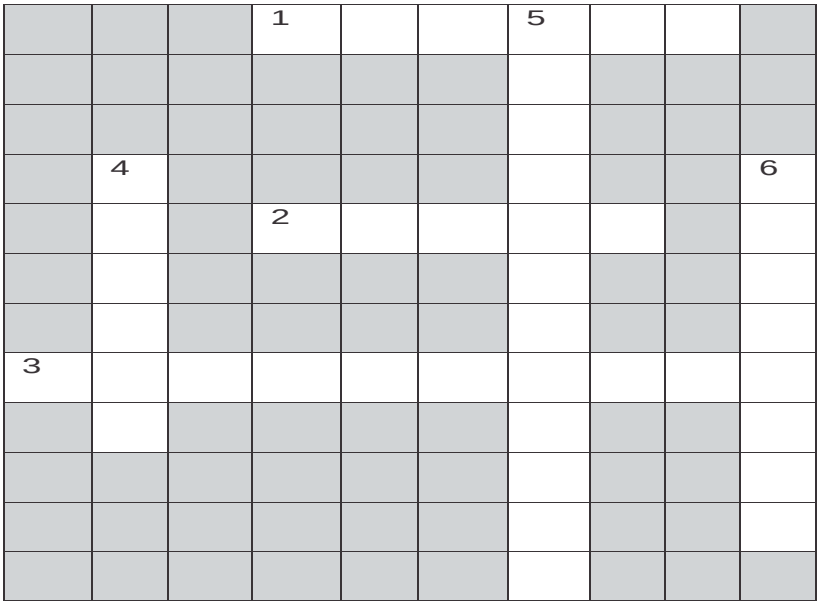
ACAJ Crossword Contest # 29

Across

1. The second joint program of CAA with BCAS is going to be held at _____.
2. Mind is everything, as you _____ so you become.
3. Newly inserted section 44ADA applies to an assessee being a resident, engaged in _____.

Down

4. P & H High Court in case of CIT v/s Health Life Sciences Pvt. Ltd. has held that income of doctors is not _____ but professional charges.
5. There can be no disallowance u/s 43B where the amount is taken to the _____ without any charge to Profit and Loss account.
6. Where the business of the company is to lease its property and earn rent, the income so earned is to be taxed as _____ Income.



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 25/10/2016.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 28

1. CA. Raj Shah
2. CA. Manan Vyas

ACAJ Crossword Contest # 28 - Solution

Across

1. Marriage
2. Pholosophy
3. Company

Down

4. Application
5. Four
6. GST

❊ ❊ ❊

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