# AHMEDABAD CHARTERED ACCOUNTANT JOURNAL

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*Swami Dayananda Saraswati*

Chartered Accountants Association, Ahmedabad

*A Passion to Perform*

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## Attention

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

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

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# Mananam

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## Kuchh to Log Kahenge
## कुछ तो लोग कहेंगे

God has gifted all of us a beautiful life without any conditions and restrictions to express our self in our own way, do something uniquely, create something we think useful for others. Working for the larger good is the most enchanting part of the human life. In today's age any action of ours does not go without notice of the world. When you put yourself out there to accomplish any task and achieve your goal there are people to judge you. They may appreciate you or criticize your work. Whether you carry on a business/profession; get married, have a family; travel the world or stay at home; go to the gym or sit back and relax on your sofa to watch a television program - whatever, whenever, wherever or howsoever you act, someone will judge you. One cannot escape this.

For every action there always is a reaction, be it positive or negative. Any comment/criticism in its pure form is nothing but a thought of that individual as a reaction which is neither bad nor good. It is the person who is criticized or appreciated then labels it as good or bad using one's own yardstick, largely influenced by the inclination towards or against his action. This has been happening since ancient time and is a way of life. We just can't change it.

**कुछ तो लोग कहेंगे, लोगो का काम है कहना.**

So irrespective of your like or dislike, people will have a say on all your actions. In fact they are doing their business as human being gifted with this inherent quality, take that.

However, there is always an inclination in the mind of some of the people to condemn our deeds even if it is done for the larger good. This should not be a hindrance or create any road block for a person in the field of action. Any thought of fear or criticism prevents us from attaining our goals. Negative emotions affect very strongly in our work. It serves nothing if you think what other people will say about you. At the end of the day, you are the one who has to live with yourself. What other people think about you is none of your business. You can please some of the people some of the time, but you can't please all the people all the time.

It takes a lifetime to learn that just because people criticize you it doesn't mean that they really care about you and your choice to do something different. We should learn to safely ignore any negative appearing comments and continue our work harnessing positivity with constructive ideas. However, there is also other side of the coin. Any criticism that allows me to improve upon should be welcomed. Kabirdas ji puts it beautifully

**निंदक नियरे रखिए, आंगन कुटी छवाय,**
**बिन पानी, साबुन बिना, निर्मल करे सुभाय**

How to get over criticism? I found following to be useful.

1. Do not criticize or condemn others. We should always try to support and encourage the people who display courage in coming up with new ideas.
2. Do not surrender to the criticism. Instead take it as tool to improve your work. It is said that "don't let the wall keep you from seeing the road. Focus on the path ahead".
3. Do not respond to the criticism. If at all needed, be polite.
4. Make a choice that is right for you and keep on performing your duty to reach your goal. People will criticize any way.

**He who controlling the organs of sense and action by the power of his will, and remaining unattached, undertakes the Yoga of selfless action, he excels.**

Bhagawad Gita, Ch. 3. V. 7

# Editorial

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## *Digital India*

Since about last 10 years, the practise in the office of a chartered accountant has gone through a complete change as far as the procedural compliances are concerned. There were times during the due date of any return or compliance the team of office assistants was busy to fill up the forms manually and then a second line of team would carry it to the government departments, spend difficult hours in long queues to ensure the documents are submitted and acknowledged within the prescribed time.

It was in the year 2006 when the electronic return filing in case of corporate assessees was made mandatory and from there by each passing year almost all assessees are now under the ambit of compulsory e-filing of return. Electronic filing, when first introduced, every chartered accountant or a tax practitioner wondered how a system can help manage law. Ten years down the line, where an option is available to file a manual return we are unwilling to do it. This is one the greatest positive change technology has brought in the functioning. The system driven procedural compliances for Income Tax, VAT, ROC, Service Tax have brought in a great level of comfort and ease of practise though there were initial problems.

The idea of demonetization was to curb black money but somehow because of the innovative minds of the people of this country the objective got derailed. How successful will be the government to catch hold of tax evaders who have deposited large sum of money in their bank accounts or in dummy accounts, only the time will tell. However, the cash crunch post demonetization has created a great opportunity for the government to create an environment of cashless economy. If the idea of cashless transactions is accepted in the Indian system, it will be another path breaking change to control the generation of black money in the economy.

Looking at the scenario around when every person is getting acquainted to mobile phone, soon all financial transactions will be carried over these phones. Government sees great potential in the proposal where a track can be kept on each and every spending of a person. Even though it may appear to be somewhat difficult for a non-urban citizen; the day is not far when everyone in the county would be equipped to do such type of transactions. With this great idea in mind, the government of the day is also coming up with various announcements to ensure India moves on the "Digital Path". Bharat Interface for Money (BHIM), a mobile application launched by Government of India is a special application to transfer money. Some interesting features of this application are:

- BHIM is Aadhaar-based payments app developed by the National Payment Corporation of India (NPCI).
- The app allows easily transferring money or making a payment from your bank account using only phone number. It can work even on basic phones as it supports USSD payments.
- It has mobile wallet facility in which money can be loaded. Using it anyone can directly connect their phone to bank account like a debit card.
- The app also allows user to scan a QR code. The merchant can also generate his QR code through the app. Payment can be done through scanning QR code.
- Merchants can also use the BHIM app to receive money from a smartphone or Aadhaar Pay if customer has linked a bank account and Aadhaar ID.
- Payments through this app are happening directly from and to bank accounts, so merchants don't have to worry about transferring wallet earnings to the bank account.

The day when every person in the country will be able to transfer his money over the mobile phone, we would proudly say we are a DIGITAL INDIA.

CA. Ashok Kataria

# From the President

**CA. Raju Shah**
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Respected seniors and dear professional colleagues,

**Wishing you and your Family a Happy New Year 2017**

"Life is full of challenges, seen and unseen, so to look and feel great, you must hold your head up each day and project your inner confidence." ¯**Cindy Ann Peterson**

The Indian Institute of Insolvency Professionals of ICAI (IIPI) has been designated as first Insolvency Agency in India. IIIPI being a section 8 Company formed by ICAI will enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy code, 2016 read with regulations. Please visit http://iiipicai.in/ to know the details in this regard. In a significant move in the direction of economic reforms, the Insolvency and Bankruptcy Code, 2016 has been passed by both the houses of the Parliament in May 2016 and has been notified too. This amendment has brought in new avenues of professional opportunities, since insolvency professionals will have to carry out a wide range of functions including those in finance and accountancy. Chartered Accountants are best suited who can carry out insolvency and bankruptcy processes as liquidator's, trustees, etc. at various stages of the insolvency proceedings.

We celebrated the Chartered Accountants Association Foundation day on 15th December, 2016 in a unique way. We started with Talk on Mind and Sound based Wellness – Holistic approaches to wellness using body, mind and emotions by Ms. Ririi Trivedi & Mr. Gunjan Trivedi followed by health check-ups, homeopath by Dr Naitik Shah, eye check up by Dr. Tejal Dalal, dental check up by Dr. Sachin Dalal and blood tests by Green Cross Pathology and Molecular Lab, Dr. Dilip D. Shah. To commemorate the glorious 66 years, we released a Table-calendar covering host of past presidents of the Association.

As part of sports activity, we arranged a cricket match on 31st December, 2016 with Rajkot Branch of WIRC of ICAI. This was the first match ever between the two teams. It was a very good competitive match and I am happy to inform you that CA Association won the match. I compliment both teams for excellent sportsmanship on the field. The next match is to be played on 28/01/2017 with IT Bar Association. All are invited to join to cheer up the Association's team.

We are in process of finalizing the Late C F Patel Memorial Seminar on 10th February, 2017 covering various subjects. We are also in process of finalizing a full day Banking Seminar on 17th February, 2017 on subjects relevant to current scenario. The detailed circulars will follow soon.

The present government is always ready to take bold and innovative steps. This year the Budget is being presented on 1st of February 2017 instead of end of February. We also have to gear up for the budget amendments as we are expecting many changes in the coming budget. As per our regular practice we have arranged budget meeting on 4-2-2017 – detailed circular will be mailed to you shortly. Likewise we have also planned to publish the budget booklet in English and in Gujarati. Place your order in advance.

"Leadership is never an avenue to be self-serving but, a platform to render great service to people."

For us feedback is the most important guide to improve our performance. Please send your feedback regularly.

With best regards,

**CA. Raju Shah**
President

# Crowd Funding - A Mode of Risk Financing

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## Introduction

Crowd funding is a process of funding through large groups of people. It is the method of soliciting funds from the general public to support an idea or create projects or fund businesses. Crowd funding is a novel method for funding a variety of new ventures, allowing individual founders for profit, cultural, or social projects to request funding from many individuals, often in return for future products or equity. It directly connects people with money to the people who need it. It is nothing else but the crowd's collective pocketbook. It allows large groups of people to replace banks and other institutions as a source of funds.

## History of Crowd Funding

The concept of collective funding of a project by a group of people is as old as time. The modern day crowd funding is the modified, internet model of the same old concept. The Web has made the entire process of floating an idea and raising funds for the same much easier and faster. Apart from getting access to funds, another major advantage is to getting validation of the idea or concept. One of the first instances of using internet to raise funds occurred in 1997 when the British rock group Marillion raised $60,000 from its fans to fund its North American tour. *Artist Share* was the first US-based company to establish the crowd funding website in 2001.Over the past few years, crowd funding has emerged as novel way for entrepreneurial ventures to secure funds without having to look for venture capital or other traditional sources of venture investment. Schwienbacher and Larralde (2010) define crowd funding as an open call, essentially through the Internet, for the provision of financial resources either in form of donation or in exchange for some form of reward and/or voting rights in order to support initiatives for specific purposes. Thus, the crowd generates financial support for already proposed initiatives.

## Crowdsourcing and Crowdfunding

Crowd funding draws inspiration from concepts like micro-finance (Morduch, 1999) and crowdsourcing (Poetz and Schreier, 2012), but represents its own unique category of fundraising, facilitated by a growing number of internet sites devoted to the topic. Crowd funding is based on the principle of crowdsourcing. It is an application of crowd sourcing. Jeff Howe, defines crowdsourcing as the power of the many that can be leveraged to accomplish feats that were once the responsibility of a specialized few, in his book Crowdsourcing: How the Power of the Crowd Is Driving the Future of Business. Wikipedia is one of the best known examples of a crowdsourcing model. It is an online encyclopaedia that is completely written by users, containing over 3 million articles in English. A large number of people, each one of whom putting a little effort in reaching a big goal together.

## Features of Crowd funding

1. Crowd funding is a collective effort by people who network and pool their money together, usually via the internet, in order to invest in and support efforts initiated by other people or organizations (Ordanini, 2009).
2. It is more of an informal form of financing projects – either commercial or non-commercial. Here, a large number of people (the crowd) fund small amounts of money to accumulate into an investment large enough to finance a project (or a startup company).
3. Crowd funding projects can range greatly in both goal and magnitude, from small artistic projects to entrepreneurs seeking hundreds of thousands of dollars in seed capital as an alternative to traditional venture capital investment (Schwienbacher and Larralde, 2010).

**Crowdfuning – How does it Work?**

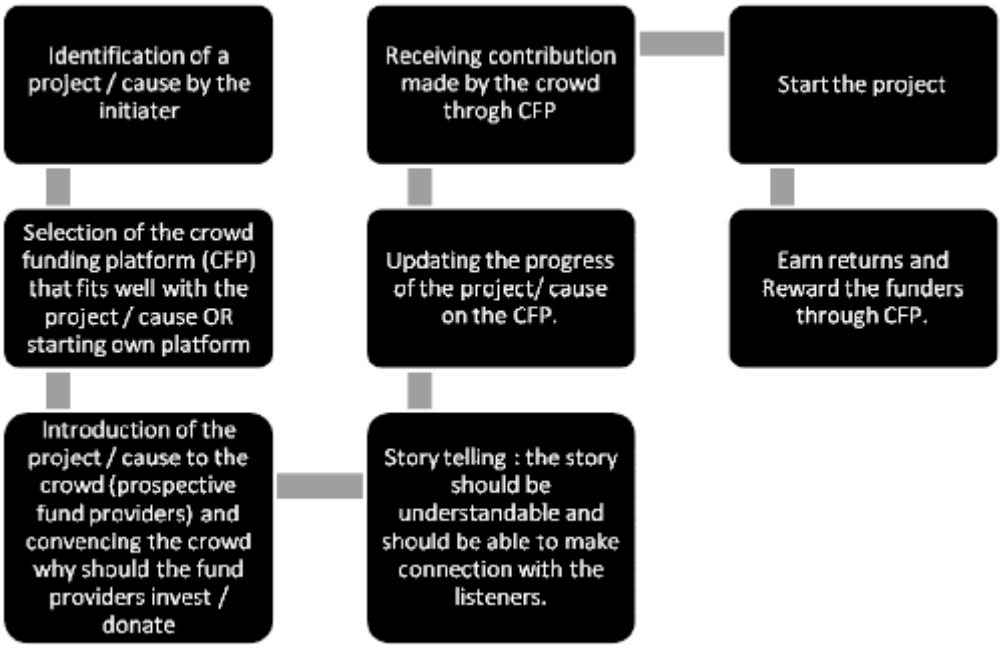



*Figure 1-The working of Crowd funding*

**Models of Crowdfunding**

There are 2 basic models of crowdfunding -

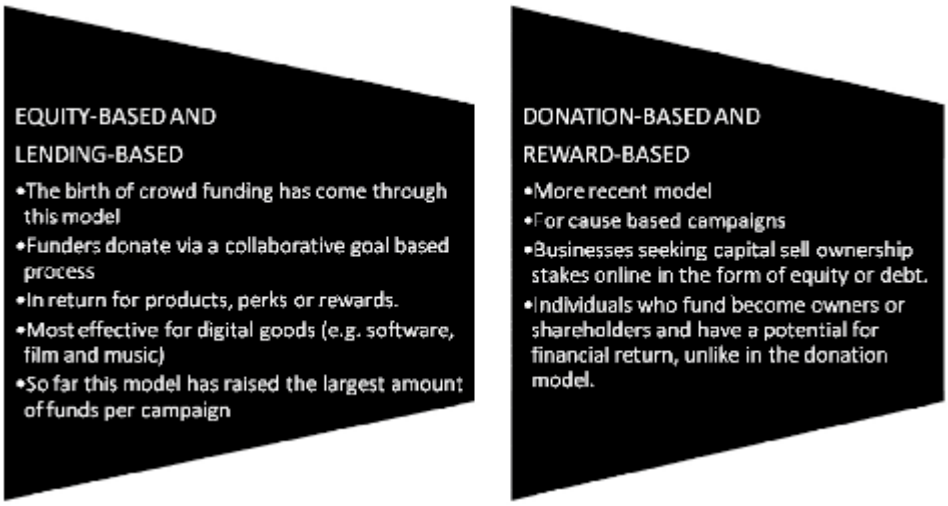



*Fig. 2 – Models of Crowdfunding*

With the increased penetration of technology, it has become easier to approach wider set of people through the internet. Thus, raising fund from large number of funders is possible using the internet. The online platforms that facilitate bringing funders and fundraisers closer, are known as crowd funding platforms (CFPs). A CFP is an operator that facilitates monetary exchange between funders (investors) and fundraisers (project / start-up owner).Massolution (*http://www.massolution.com*), a leading firm in crowdsourcing solutions, defines 4 categories of CFPs –

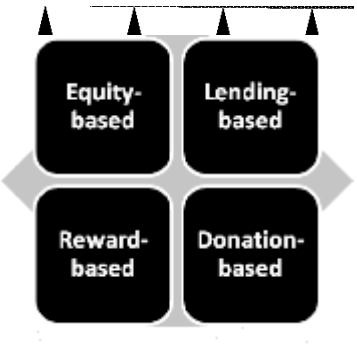



*Fig. 3 – Categories of Crowdfunding*[1]

According to the 2012 global crowd funding report about crowd funding models , equity based and lending based crowdfunding (i.e., for financial return) is the most effective for digital goods like software,film and music). These categories, on average, raised the largest sum of money per campaign. Donation-based and reward-based crowd funding for causebased campaigns that appeal to funders' personal beliefs and passions perform best (e.g., environment).The growth rates in 2014 also continued to be primarily driven by lending-based crowd funding, but significant annual growth in equity-based crowd funding and increased adoption of newer hybrid and royalty-based models indicates that the allocation of funding volume across different models will be more highly distributed over the comingyears.

Crowd funding's popularity as a way to fund creative, philanthropic, and social endeavours still prevails but crowd funding's application for entrepreneurial ventures began to gain significant traction over the last few years. Business and Entrepreneurship had become the lead category by 2012 at 27.4% of total crowd funding volume globally and in 2014 had increased in importance, accounting for over 40% of worldwide funding volume. In 2014, the share of lead categories' funding volume globally was:

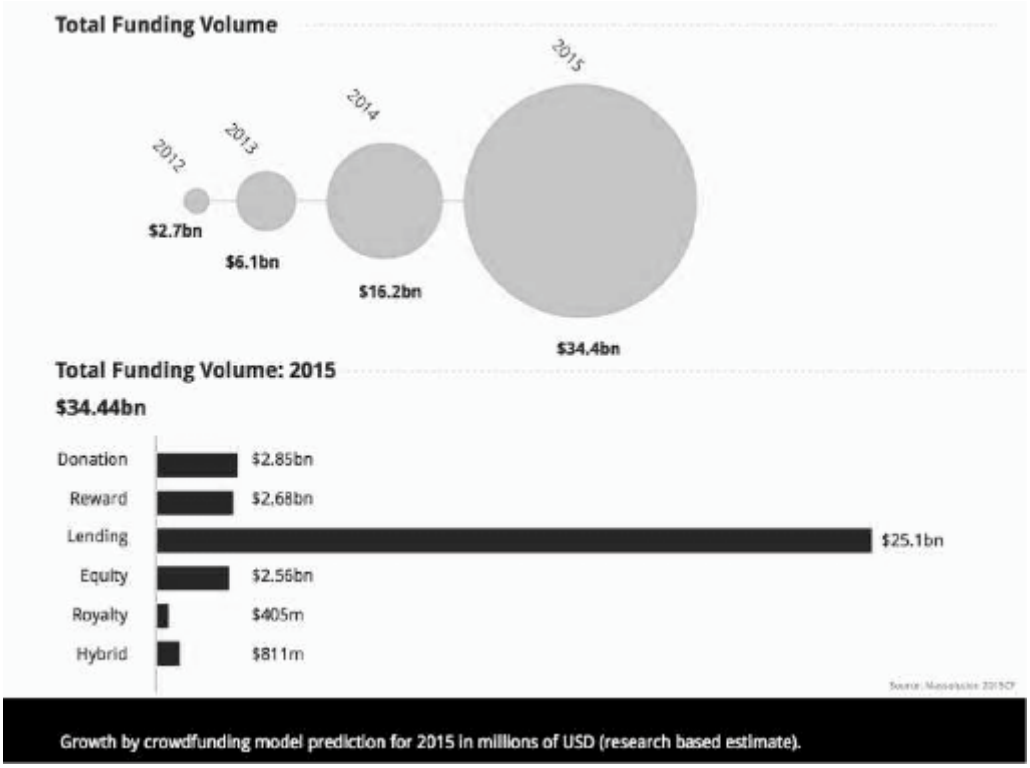
- Business and Entrepreneurship - 41.3% / $6.7bn
- Social Causes - 18.9% / $3.06bn
- Films & Performing Arts - 12.13% / $1.97bn
- Real Estate - 6.25% / $1.01bn
- Music and Recording Arts - 4.54%/ $736m

**Global Scenario**

They collectively helped raise $2.7 billion in 2012 across more than 1 million individual campaigns globally. The 2015 crowd funding report revealed that CFPs raised $16.2 billion in 2014, a 167% increase over the $6.1 billion raised in 2013. North America still accounts for the largest market but 2014 saw Asia overtake Europe, by a small margin.

There are 1,250+ active CFPs worldwide. Following are the leading global players[2]

- www.gofundme.com
- www.kickstarter.com
- www.indiegogo.com




Growth by crowdfunding model prediction for 2015 in millions of USD (research based estimate).

Realising the importance and the span of crowdfunding, as a source of entrepreneurial finance, the Federal Government of the US has designed special regulations, Jobs Act, 2012. The Act governs the fundraising by various CFPs.

**Indian Scenario**

Crowdfunding is relatively a new concept in India and the usage of Internet for raising funds is even less. There are 15+ crowdfunding platforms operating in India.

Following are few of the well-known CFPs in India-

- Catapooolt - *http://www.crowdfundinsider.com/*
- Ignite Intent – *http://www.igniteintent.com/*
- Ketto - *http://ketto.org/*
- Pick A Venture - *http://signup.pikaventure.com/*
- Start 51 - *http://www.start51.com/*
- Wishberry - *https://www.wishberry.in/*
- Fundlined-www.fundlined.com

Apart from the local players, many global CFPs have also launched their local platforms for India e.g. Grow VC - *http://india.growvc.com/* and Indiegogo- http://www.indiegogo.com.This means, the initiator has various options for launching his/her idea and same way the investor has various options to select the right idea and the CFP based on his/her preferences.

**CFPs - A Fund raising route for start-ups**

With increasing exposure and ideas, several innovations led by Gen-Y are being talked about these days. But very few of these innovative concepts / prototypes actually turn into real product / service. The present young generation is not only dexterous in understanding problems faced in day-to-day lives but is also consciously trying to find solutions for these problems using their techno-managerial abilities. Many of these innovations do not turn into reality due to lack of idea validation or low market reach. A large number of them do not materialise due to the insufficient availability of funds. In response to this, many universities and higher education institutions, abroad as well as in India, have started looking at crowd funding as possible solution.

***What would a Crowd Funding Campaign Include?***

The idea initiator (young entrepreneur) has to let people know about his/her idea / concept through a campaign. Most crowdfunding campaigns have

similar components: a detailed description of the product/service idea or business, funding goals, a video, and a social media campaign designed to engage supporters and attract funders. Each of these components is a microcosm for an essential entrepreneurial skill: planning, pitching, financing, marketing, sales, and more.

***What is the Benefits Offered by a Crowd Funding Campaign?***

First of all, younger entrepreneurs are at a disadvantage—in addition to lacking sufficient resources to seed-fund their own ideas, they lack experience in specific markets or domains and have not yet developed a network of advocates and supporters. Beyond offering a viable path to funding for early stage ideas, it allows entrepreneurs an environment where they can sharpen their pitches, refine their ideas, and learn how to engage advocates and supporters.

For educators, CFPs can be a powerful new training tool. By requiring students / young entrepreneurs to transform their ideas into a live crowdfunding campaign, Gen-Y get the opportunity to sharpen their vital entrepreneurial skill sets such as business planning, product planning, pitching, marketing and sales on and above seed funding —all while getting valuable feedback from the market. Crowdfunding is as essential a new teaching tool as it is an essential new skill set for entrepreneurs.

***What should a Crowd Funding Enthusiast be Careful about?***

The issue of concern with crowdfunding in India is so far there are no regulations. Almost every other month a new CFP is launched. A budding entrepreneur needs to be very careful while selecting the CFP at the same time a funder (an investor) also needs to check the genuineness of a project.

Crowdfunding is not a fundraising method that replaces all the traditional funding techniques but it is best to think it as simply a new method of obtaining funds and should be evaluated in light of other alternatives that are available to the budding entrepreneur. While looking forward, crowdfunding has a bright future as internet penetration and e-commerce success will pave the way for crowdfunding. To make this a safer platform of fund raising, what we require is regulations.

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- http://crowdfunding.org/
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- http://www.forbes.com/sites/katetaylor/2013/08/06/6-top-crowdfunding-websites-which-one-is-right-for-your-project/
- http://www.marketwired.com/press-release/crowdfunding-market-grows-167-2014-crowdfunding-platforms-raise-162-billion-finds-research-2005299.htm


**(Footnotes)**

1 http://www.crowdfunding.nl/wp-content/uploads/2012/05/92834651-Massolution-abridged-Crowd-Funding-Industry-Report1.pdf

2 http://www.crowdfunding.com/

❊❊❊

# Glimpses of Supreme Court Rulings

**Advocate Samir N. Divatia**
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## 17 Family and Personal Laws:

There is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises. If, however, it is reduced to the form of writing with the purpose that the terms should be evidenced by it, it requires registration and without registration it is inadmissible in view of section 17 and 49 of the Registration Act. But the said family arrangement can be used as corroborative piece of evidence for showing or explaining the conduct of the parties.

*[Subraya M. N. Vs. Vittala M. N. And Others (2016) (8 SCC 705) ]*

## 18 Tribunals – Constitution and functioning:

Considering the nature of disputes adjudicated upon by tribunals, their Constitution, tenure of members, venue / location of tribunals, bypassing of High Courts and the pendency of litigation before the Supreme Court; Law commission directed to examine: (i) necessity to bring changes in the statutory framework constituting various tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc (ii) providing of appeals routinely to Supreme Court on a question of law or substantial question of law which is not of national or public importance (iii) bypassing of the High Courts from the orders of Tribunal (iv) exclusion of jurisdiction of all the courts in the absence of equally effective alternative mechanism for access to justice at grass root level.

*[Gujarat UrjaVikas Nigam Ltd. Vs. Essar Power Ltd. (2061) (9 SCC 103) ]*

## 19 Penalty u/s 271(1)(c):

Section 274, read with section 271(1)(c) of the Income tax Act 1961. Procedure for imposition of (conditions precedent) – Tribunal, relying on the decision of division bench of Karnataka High Court rendered in case of CIT vs. Manjunatha Cotton & Ginning factory (2013)(359 ITR 565), allowed appeal of the assessee holding that notice issued by assessing officer under section 274 r.w.s. 271(1)(c) was bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. High Court held that matter was covered by aforesaid decision of Division bench and, therefore, there was no question of law arising for determination. Whether since there was no merit in SLP filed by revenue, same was liable to be dismissed.

*[CIT vs. SSA's Emerald Meadows (2016) (242 Taxman 180) ]*

❊❊❊

The easiest way to make ourselves happy is to see that others are happy.

- Swami Vivekananda

# From the Courts

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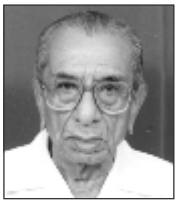

**CA. Jayesh C. Sharedalal**
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## 72 Bogus Job Work
## CIT v/s. Jawahar International
## (Decided by Hon. Gujarat High Court in Tax Appeal No. 1342 of 2010 and No. 1344 of 2010 decided on 22/06/2016).

**Issue :**

Why the assessing authority cannot disallow the job work expenses by holding the same as bogus?

**Held :**

Hon. Gujarat High Court has approved the decision of the Tribunal in the following words.

"We find that the assessee's case is covered by decision of Hon'ble Gujarat High Court in the case of CIT v/s. M.K. Brothers 163 ITR 249 (Guj). In the assessment order, the A.O. has presumed that the payments made by the appellant for job work expenses might have been back interest form of cross cheques, etc. This is just a presumption without any finding. The A.O. could have very well checked the payments made by job parties. There is no finding at all that any portions of these payments have come back to the assessee. Merely by arbitrary presumptions it cannot be said that the amounts might have come back to the assessee. There is no such finding at all. There is no basis at all for this presumption. The A.O. must have checked the payments made by this job party and if at all there was any finding against assessee then he could have clearly brought out the same on record. But there is no such finding at all. This renders the arbitrary presumption of the AO to be completely baseless and unsustainable. In the absence of any such finding, the genuine expenditure incurred by the assessee for value addition job work paid by A/c. Payee cheque cannot be disallowed. This issue is clearly covered by the judgment of Hon'ble High Court of Gujarat in above case law".

## 73 Reopening of Assessment : Change of opinion
## Priya Desh Gupta v/s. Dy. CIT (Delhi)
## (2016) 385 ITR 452 (Delhi)

**Issue :**

In case of change of opinion, notice u/s 147 is valid?

**Held :**

Assessing Officer did not refer to any material, other than what was examined in the initial round of assessment proceedings, for forming his belief that the assessee's income had escaped assessment. The Assessing Officer's belief was based solely on the basis of material already examined by him during the first round of assessment proceedings. A perusal of the reasons recorded by the Assessing Officer also indicated that he had initiated the proceedings for reassessment pursuant to a letter sent by the Commissioner (Appeals) who had opined that the revised agreement was void and the consideration of Rs. 38 per share should be attributed to the non compete clauses. This was a matter of opinion regarding agreement and the revised agreement, which were duly considered by the Assessing Officer at the time of initial assessment.

Thus, it was apparent that the issuance of the notices was occasioned by a change of opinion, which was impermissible under section 147 read with section 148 of the Act and therefore, the notices were to be quashed.

## 74 C.B.D.T. Circulars : How far binding to Department and Assessee.
## Vodafone Essar Mobile Services Ltd. V/s. Union of India and Ors.
## (2016) 385 ITR 436 (Delhi)

**Issue:**

Binding nature of CBDT circulars to (1) Department and (2) Assessees.

**Held :**

Section 201 of the Income Tax Act, 1961, as it stood prior to the amendment which introduced sub section (3) with effect from April 1, 2010 did not contain a provision stipulating a time limit for initiation of the proceedings there under. Circular No. 5 of 2010 of the Central Board of Direct Taxes was issued clarifying that the proviso to section 201(3) of the Act was meant to expand the time limit for completing the proceedings and passing orders in relation to "pending cases". The proviso cannot be interpreted to enable the Department to initiate proceedings for declaring an assessee to be an assessee in default under section 201 of the Act for a period earlier than four years prior to March 31, 2011.

It is well settled that if a circular issued by the Department favours an assessee then it should be so done even where such interpretation goes contrary to the legislative intent.

## 75 Cash System v/s. Mercantile System of Accounting
## CIT v/s. Bijoy Kumar Jain
## (2016) 385 ITR 339 (Cal)

**Issue :**

How the accounting treatment to certain entries is to be interpreted vis-a-vis Cash/Mercantile System of accounting?

**Held :**

Section 145 of the Income Tax Act, 1961 provides that an assessee has the choice to compute his income arising out of profits and gains of business or profession or income from other sources either in accordance with the cash system or in accordance with the mercantile system. The section is a mere mandate that the assessee has to follow either of the two systems of accounting. Therefore, section 145 neither militates against a deposit being treated as a capital receipt nor does it favour the proposition that a deposit should be treated as a revenue receipt where the assessee follows the cash system. Whether the receipt is a revenue receipt or a capital receipt would depend essentially on the nature of the receipt.

The deposits were treated by the assessee as a capital receipt and the deposits were adjusted in the subsequent years against the expenditure incurred for or on behalf of the client from whom the deposit was received. Such expenditure also included the fees of the assessee himself. It was at that stage that the money was earned by him. Before that, he was holding the money as an agent or as a fiduciary of his client. The Appellate Tribunal was right in taking the view that it did.

## 76 Special Audit u/s 142(2A) and reasonable opportunity of being heard
## Isolux Corsan India Engineering and Construction (P) Ltd. V/s. Dy.CIT
## (2016) 287 CTR 92 (P & H)

**Issue:**

Whether giving opportunity of being heard is a condition precedent before passing order u/s 142 (2A) for special audit?

**Held :**

Sec. 142(2A) confers power upon the AO, where the nature and complexity of accounts etc. and the interest of the Revenue so requires to record an opinion that it is necessary to call upon the assessee to get his accounts audited by an accountant nominated by the AO. The first proviso to S. 142(2A), however prohibits an AO from directing such an audit unless the assessee has been afforded a "reasonable opportunity of being heard". The expression "reasonable opportunity of being heard" inhers an obligation to afford a reasonable opportunity of being heard. The mere calling upon the assessee to file a reply would not fulfill the pre-emptory condition set out in the first proviso to S. 142(2A). The grant of a reasonable opportunity of being heard, is a statutory pre-condition to the exercise of power under s. 142(2A), and if an AO fails to afford a reasonable opportunity of being heard, before passing an order under s. 142(2A), such an order would be null and void.

## 77 Reopening : On instructions of superior authority : Instruction of CBDT. Pharmaceutical Industries Ltd. v/s. Dy. C.I.T. (2016) 287 CTR 621 (Del)

**Issue :**

(1) Any superior or administrative authority has authority to instruct Assessing Officer to reopen the assessment.

(2) What is the binding force of CBDT instructions on this subject?

**Held:**

That a quasi judicial authority, which is expected to exercise statutory functions on an objective criteria, cannot act on the dictates of any superior authority, or on any instruction that may be issued by an authority that may have administrative control over such quasi judicial authority, is fairly well settled. Reasons 3 to 7 of the order dt. 30th March, 2011, based as they are on audit objections, in terms of which the AO felt constrained as a result of the CBDT Instruction No. 9 of 2006, to reopen the assessment for the asst. yr. 2004-05, are unsustainable in law. Instruction No. 9 of the CBDT dt. 7th Nov, 2006 cannot possibly override the statutory powers to be exercised by an AO in terms of S. 147. In other words the said instruction has to be read consistent with proviso(a) to S. 119(1) and cannot, as was erroneously understood by the respondent, compel the AO to issue the notice dt. 30th March, 2011. If the CBDT instruction No. 9 of 2006 is read to the contrary it would fall foul of S. 119.

## 78 Application for approval of Group Gratuity Scheme pending for 25 years : Deduction allowed: Pr. CIT v/s. Rajasthan State Seed Corporation Ltd. (2016) 386 ITR 267 (Raj)

**Issue:**

Is contribution allowable to group gratuity scheme when application for approval is pending for 25 years?

**Held:**

In so far as disallowance of claim of Rs. 1,92,82,605/- is concerned, admittedly, the assessee respondent has claimed to have applied for according approval of the Group Gratuity Scheme to the concerned Commissioner on March 31, 1981. Once the assessee files an application for approval of the scheme, it was for the Commissioner to have taken recourse of disposing of the said application either to approve or to reject the same. The same having not been done for the last more than almost 25 years, the assesssee could not have been blamed for the same. There is no denial by the Assessing Officer that application for approval has not been filed by the assessee on March 31, 1981. Even the Assessing Officer admits that the application for approval was submitted on March 31, 1981 and both the appellate authorities have come to a definite finding of fact that once an application has been moved for approval and having not been rejected then the claim could not have been disallowed or the claim could not have been rejected merely because the Commissioner did not accord approval of the same. The assessee cannot be made to suffer for inaction of the Revenue.

## 79 Sec. 245: Adjustment of Refund : Right of Assessee. CIT(TDS) v/s. State Bank of India (2016) 384 ITR 227 (Uttarakhand)

**Issue:**

Has Assessing Officer unfettered right to adjust refund against demand?

**Held:**

Section 245 states that the adjustment should be made "after giving prior intimation in writing of the proposal to adjust the refund". A quasi judicial authority is obliged to comply with the principles of natural justice. Rights cannot be adjudicated without opportunity of either making a representation or, if the situation so warrants, an opportunity of personal hearing. Even if the order is an administrative order, as long as the administrative order has the effect of affecting legal

rights of parties, the authority is not immune from the operation of the principles of natural justice. When the competent authority, mentioned in section 245, decides not to pay the amount due by way of refund and seeks to invoke section 245 and set off the amount against any amount remaining payable, it cannot be said it does not affect the right of the party.

## 80 Sec. 115JB and Powers of Assessing Officer, CIT v/s. Jajodia Engineering P. Ltd. (2016) 384 ITR 364 (Gauhati)

**Issue:**

Whether Assessing Officer has any power to embark upon a fresh inquiry in respect of Accounts prepared as per the provisions of Companies Act?

**Held:**

When the accounts produced by an assessee are found to be maintained in accordance with the requirements of the Companies Act, it is not open to the Assessing Officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The Assessing Officer has limited power of making appropriate correction in accordance with the Explanation to section 115JB. To put it differently the Assessing Officer does not have the jurisdiction to go behind the net profit reflected in the profit and loss account except to the limited extent permitted by the Explanation to section 115JB.

## 81 Sec. 54F : House not complete within three years. Pr. CIT. v/s. C. Gopalswamy (2016) 384 ITR 307 (Karn)

**Issue:**

Is relief u/s 54F available, when the new house is not complete with three years?

**Held:**

The assessee effected sale of equity shares on July 7, 2007, which gave rise to long term capital gains. The assessee invested part of the gains in construction of a residential house and claimed exemption thereof under section 54F of the Income Tax Act, 1961. The assessing authority disallowed the claim on the ground that the construction was not completed within the three year period stipulated in the section. The Commissioner (Appeals) dismissed the assessee's appeal. The Tribunal found that though the agreement for construction entered into by the assessee with the builder gave an outer date which went beyond the three year period from the date of sale of the shares the assessee had done all that he could do for acquiring the villa by paying the whole of the price on July 28, 2007 itself. Following CIT v/s. Sambandam Udaykumar (2012) 345 ITR 389 (Karn) the Tribunal held that the fact that the builder had not handed over possession would not disentitle the assessee from claiming the benefit under section 54F and that the assessee was entitled to the exemption under section 54F because he had re-invested the entire capital gains by making payment in full to the builder.

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It is the greatest privilege in our life that we are allowed to serve the Lord in all these shapes.

- Swami Vivekananda

# Tribunal News

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## 48 ACIT Vs. Liva Healthcare [2016] 73 Taxmann.com 171 (Mumbai) Assessment Year: 2009-10 Order Dated: 12th September 2016

### Basic Facts

The assessee was engaged in the manufacturing of drugs and pharmaceuticals. During the year under consideration, it incurred expenditure for sponsoring Doctors overseas Tour and stated that such expenses are allowable u/s 37 of the Act, being wholly and exclusively for the purpose of business. The assessee claimed to have organized seminars, group visits for the doctors. However, nothing was placed on record with the AO as an evidence as to the fact that seminars were conducted on these visits. The AO thus concluded that these trips were organized to lure the doctors to buy/prescribe the medicines and to allure the Doctor the assessee company is trying to sponsor their travel program. Thus, it is observed by the AO that neither the doctor, nor the tour operator nor the expenses are related to the business of the assessee. The AO disallowed the said expenses. Aggrieved, the assessee preferred an appeal with the CIT (A). The CIT(A) observed that the assesseee's contention that the trips increased the sales of the assessee is general in nature and thus the expenditure cannot be said to have been incurred for the purpose of business. The CIT (A) thus dismissed the assessee's appeal.

### Issue

**Whether expenses incurred by assessee could not be allowed as business expenditure under section 37(1) as they were clearly hit by Explanation to section 37 being against public policy as unethical, prohibited by law and by regulation 6.4.1 of IMC regulations, 2002.**

### Held

The expenditure has been admittedly incurred by the assessee with an objective to keep doctors in good humour to seek favours from them by way of recommending the pharmaceutical products dealt with by the assessee to the patients so that sales and profitability of the assessee company increases which clearly reflects that these are illegal gratification against public policy being unethical prohibited by law. As per Explanation to Section 37 inserted vide Finance Act, 1998 with effect from 1st April 1962, if the expenses are incurred for any purpose which is an offence or which is prohibited by law then the same shall not be deemed to have been incurred for the purposes of business or profession and no deduction on account of business expenditure shall be allowed with respect to such expenditure. The Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 prohibits *vide* regulation 6.4.1 the physician to receive any gifts, gratuity, commission or bonus in consideration or return for referring the patients for medical, surgical or other treatment. Further, CBDT vide circular no. 5 of 2012 dated 1st August 2012 clarified that any expenses incurred in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37(1) being an expense prohibited by the law. Further, No details of the seminars conducted abroad are brought on record as also spouses of the Doctors had also travelled overseas along with Doctors and the expenses of the spouse on air ticket as well stay abroad are charged as an business expenditure under section 37 which cannot be called as being incurred wholly and exclusively for the purposes of business of the assessee. Thus, the order of the CIT (A) was upheld and the appeal of the assessee was dismissed.

## 49 International Management Group (UK) Ltd vs. ACIT 182 TTJ 1/75 taxmann.com 250(Delhi)
**Assessment Year: 2010-11 Order Dated: 4th October, 2016**

**Basic Facts**

The assessee a UK based company was engaged in the business of event management and talent representation activities in sports events such as golf, tennis, football *etc.* The assessee was to provide services in relation to IPL 2009 to BCCI which was scheduled to be held in India in April - May 2009, however, later the event was organized in South Africa. As the length of the stay of such staff *etc.* exceeded 90 days in a 12 months period, according to the assessee, it created a service permanent establishment of appellant in India in terms of article 5(2)(k) of the Indo-UK DTAA. Therefore, income of the assessee was chargeable to tax in India as attributable to that permanent establishment. The assesse offered only income attributable to PE for taxation. But did not offer to tax balance income which was not attributable to PE, considering the same to be Fees for Technical services covered under Article 13(4) of the DTAA on the ground that technology was not made available. During assessment proceedings the AO accepted the business income shown in return of income as attributable to the PE but made an addition of balance receipt as FTS. The DRP held that the balance receipts were chargeable to tax under section 9(1)(vii)(b) and also FTS under DTAA. The DRP further directed that such receipt should be attributed to the PE and be taxed on net basis. It gave direction for taxing the sum as FTS on protective basis and considering the above sum as business income on substantive basis.

**Issue**

**Payment to Event Management Company for IPL hosted in South Africa was FTS under India-UK treaty?**

**Held**

Before the Tribunal the assessee took the plea that the agreement entered into with BCCI was effectively connected with the PE. Accordingly whole of the income received under the agreement was effectively connected with the PE in India, but since the balance income was for services rendered outside India the same was not taxable in India. The Tribunal held that the in order to consider any income to be income of PE , it should arise through the PE and the right of property or contract in respect of which the Technical fees are received should be effectively connected with the PE. The assessee in this case could not establish that the activities in respect of balance income were carried out by the PE since the same were carried out by the Head office outside India. Therefore, according to the Tribunal balance income was not attributable to the PE and hence was not taxable as PE income since the activity test for PE failed. Accordingly the balance income was to be considered as Fees for Technical services. The Tribunal found that the assessee was required to provide the Constitution of the IPL, the authority of the governing Council, the structure of IPL, tournament rules and regulation, the franchisee tender document, the franchisee agreement, necessary franchisee regulation and the IPL implementation budget. Further according to the agreement the intellectual property rights remains with the board of control for Cricket in India. Accordingly as per tribunal when all documentation and material is provided to the BCCI it is able to use such know-how and documentation generated from provision of the services of the assessee independent of the services of the assessee. The Technology can be said to be made available to BCCI. Accordingly the Tribunal rejected assessee's claim that no technology was made available to BCCI & the income was not taxable as per Article 13. The tribunal also rejected the assessee claim that the amount was covered by exception to section 9(1)(vii) of the Act since BCCI has used services rendered by the assessee for carrying out events outside India. As per the Tribunal it was an established fact that BCCI is carrying on business in India and not outside India. Further the source of income of the BCCI is in India and not outside India. Merely because the event is performed outside India it cannot be said that source

of income of the BCCI is not in India. Therefore, the income of the appellant of was held chargeable to tax even under section 9(1) (vii) as Fees for technical services.

## 50 Fibres and Fabrics International Pvt. Ltd. Vs. DCIT [2016] 182 TTJ 374 (Bangalore)

**Assessment Year: 2008-09 and 2009-10**
**Order Dated: 13th July, 2016**

### Basic Facts

The assessee-company is a company engaged in the business of manufacture and export of readymade garments. The company acquired 'Fibres and Fabrics International', a sole proprietorship concern on slump sale basis and as a going concern in the F.Y: 2002-03. As a part of the business acquisition, a number of intangible assets including customer/supplier contracts, export quotas and assembled workforce (employee base) were acquired and the consideration for the same was settled by way of issuance of shares. The said intangible assets were classified as 'goodwill' and assessee claimed depreciation u/s 32(1) (ii) of the Act on the said intangible asset classified as goodwill. While completing the assessment, the AO denied the depreciation claimed on goodwill of Rs.2,76,85,547 holding that goodwill does not quality for depreciation. Aggrieved by this order of assessment, appeal was preferred before the CIT(A). The CIT (A) upheld the denial of depreciation on goodwill.

### Issue

**Whether disallowance of depreciation of goodwill can be made on the ground that since no commercial rights have been acquired, no depreciation was admissible on the goodwill?**

### Held

The Hon'ble ITAT relied on the recent decision of Hon'ble Delhi High Court in the case of Triune Energy Services (P.) Ltd. (65taxman.com 288) held that the excess of the amount paid over net value of assets constitutes 'goodwill'. The ITAT relying on the decision of Hon'ble Apex Court in the case of CIT v. Mugneeram Bangur & Co. (57 ITR 299) held that when the company was taken over as a going concern with all the assets & liabilities for a slump consideration, it is neither permissible nor possible to apportion the consideration paid against different assets. Further, the ITAT held that goodwill is an asset within the meaning of section 32 of the Income-tax Act, 1961 and depreciation on goodwill is allowable as held by the Hon'ble Apex Court in the case of CIT v. Smifs Securities Ltd. Accordingly the ITAT directed the AO to allow the same. Assessee's appeal was allowed.

## 51 ADDIT Vs. Taj TV Ltd. [2016] 72 Taxmann.com 143 (Mumbai)

**Assessment Year: 2003-04 to 2005-06**
**Order Dated: 5th July, 2016**

### Basic Facts

The assessee-company, was registered under the laws of Mauritius and was a tax resident of Mauritius. It was engaged in the business of broadcasting of sports channel namely, 'Ten Sports' all across the globe including India. Since assessee did not have any branch or business premises in India, it formed a subsidiary, as its advertising sales agent to sell commercial advertisement slot to prospective advertisers and other parties in India, in connection with the business of programming and telecasting sports events and programs on Ten Sports Channel. The assessee entered into agreement with its subsidiary for collection of advertising revenue in India for which a commission @ 10% was paid to the subsidiary. A Distribution agreement was also entered into with the subsidiary under which distribution revenue was shared in the ratio of 60:40. For the assessment year 2003-04, the assessee had filed its return of income at *'Nil'* on the basis that advertising and distribution revenue earned by it was not taxable in India because it did not have any Permanent Establishment (PE) in India. The AO took a view that in relation to the advertising income, subsidiary was a 'dependent agent' of the assessee and, therefore, assessee had PE in India in the form of its subsidiary within the scope and meaning of article 5(4) of India-Mauritius DTAA. Secondly, in relation to distribution income, AO held that the

assessee-company allowed the cable operators to use or access the encrypted signal for commercial exploitation by allowing them to distribute it to the viewers. The encrypted signal was the property of the assessee-company and by allowing it to be commercially exploited; it was partially transferring the rights to the cable operators. Therefore, distribution income was taxable as 'Royalty' under section 9(1) (vi). In appeal before the CIT (A), the CIT (A) held that there was agency PE as far as the advertisement agreement is concerned but in respect of Distribution agreement it was held that there was no agency PE.

**Issue**

**Whether in view of fact that entire relationship qua distribution revenue was that of principal to principal basis and subsidiary was acting independently, it did not constitute an agency PE in terms of article 5(4) of DTAA? Whether, therefore, distribution income of assessee could not be taxed in India?**

**Held**

The character of an agent, who can be said to be a dependent only if, firstly, the commercial activity for the enterprise is subject to instructions or comprehensive control and secondly, it does not bear the entrepreneur risk. It is sufficient for the establishment of an agency PE that the agent has sufficient authority to bind the enterprise's participation in the business activity. Here in this case, none of the conditions as stipulated in article 5(4) is applicable because subsidiary was acting independently *qua* its distribution rights and the entire agreement ostensibly is on principal to principal basis. When the entire relationship *qua* the distribution revenue was that of principal to principal basis and the subsidiary was acting independently, then it moves out from the conditions laid down in article 5(4). Thus, the distribution income of the assessee could not be taxed in India, because the subsidiary does not constitute an agency PE under the terms of article 5(4).

## 52 Smt. Madhu Mehta Vs. DCIT [2016] 181 TTJ 768 (Mumbai) Assessment Year: 2008-09 Order Dated: 11th April, 2016

**Basic Facts**

The assessee's sources of income during the year are from house property income, business and other sources. The A.O. observed from the details furnished by the assessee that she has made payment to the C & F agent but the assessee has not deducted tax at source on the payment made to C & F agent which is covered under section 194C. In view of non-deduction of tax at source in view of provisions of section 194C of the Act, the expenditure on the payment made to C & F agent was disallowed by the A.O. u/s.40(a)(ia) of the Act and added to the total income of the assessee. The assessee contended that out of the total amount there was a reimbursement of expenses towards air freight, insurance charges and postage charges and balance was paid towards agency charges of the clearing and forwarding agent M/s. S. Natesa Iyer & Co. The CIT (A) confirmed the AO's action.

**Issue**

**Whether disallowance under section 40(a) (ia) can be done?**

**Held**

The ITAT held that reimbursement of expenses paid by the assessee to S. Natesa Iyer & company for reimbursement of air freight, insurance charges and postal charges in connection with export consignment shipped from India to Lusaka (Zambia) cannot be disallowed by invoking provisions of Section 40(a)(ia) of the Act as there is no liability on the assessee to deduct tax at source u/s 194C of the Act on these reimbursement of expenses. However, payment which was paid to M/s S. Natesa Iyer & Co. for work performed by them for handling custom clearance etc. was subject to deduction of tax at source u/s 194C of the Act but the same was below the threshold exemption limit provided u/s 194C of the Act as per the facts emerging from the records, hence, the same stood

out of the applicability of provisions of Section 194C of the Act. Assessee's appeal was allowed.

Note: Similar issue has been decided in favour of assessee by Hon'ble Gujarat High court in case of CIT V Gujarat Narmada Valley Fertilizer Co. Ltd. 361 ITR 192.

## 53 Syngenta India Ltd. Vs. DCIT [TS-988-ITAT-2016(Mum)-TP]
**Assessment Year: 2009-10, 2010-11 and 2011-12**
**Order Dated: 30 November, 2016**

### Basic Facts

The assessee is a public limited company engaged in the business of manufacturing and trading of agro-chemical products/crop protection chemicals and multiplication and trading of seeds. The Transfer Pricing Officer ('TPO') has made transfer pricing adjustment on account of 'location savings'. The TPO has proceeded on the premise that due to high cost of production in the developed countries, the multinational companies are setting up new plants in the developing countries having low cost of production and accordingly generate location saving. In the given case, the TPO observed that the Associated Enterprise ('AE') has received the advantage of cost saving since the manufacturing facility are in low cost jurisdiction viz. India however, the AE has not attributed such location cost saving to the assessee. The TPO's specific focus on location saving was in respect of lower labour cost in India. The assessee had raised its objections against the action of the TPO/AO before the Dispute Resolution Panel ('DRP'). The DRP upheld the contention of the TPO, however, gave part relief by restricting the adjustment of locational saving only to the Goa Plant of the assessee and thus marginally reducing the adjustment.

### Issue

**Whether location saving was to be regarded as separate international transaction which requires separate benchmarking especially when the overall profit margin of the entire international transaction meets arm's length requirement?**

### Held

The Hon'ble ITAT held that there are no specific provisions or guidelines in existing TP provisions prescribing adjustment for location saving. The Hon'ble ITAT further held that the TPO made adjustments on the ground that assessee had not received any compensation from AE on account of location saving advantage because of lower cost of labour of its Indian manufacturing facility. Noting that assessee's international transactions have been analyzed under Transactional Net Margin Method ('TNMM') and its margin found to be higher than average profit margin of comparables, the Hon'ble ITAT observes that any kind of return or advantage towards location savings would be embedded in the margin of comparables and thus separate adjustment is not warranted. Further, the Hon'ble ITAT, relying on BEPS Action-8 guidelines and India Chapter in Draft UN Transfer Pricing Manual, observes that no location savings adjustment is required to be made separately if reliable local market comparables are available, however, Hon'ble ITAT observes that nothing was brought on record to demonstrate that Action 8 has been captured in our current TP laws /provisions. Further, the Hon'ble ITAT observed that it is not clear if TPO treated the adjustments as separate international transactions or as adjustment on determination of assessee's profits. In this regard, the Hon'ble ITAT states that in respect of separate international transactions, benchmarking needs to be done carrying out comparability analysis with uncontrolled transaction under prescribed methods while in case of adjustment on profits, TPO needs to justify that due to such factors, comparability with local comparables failed to yield arm's length result, none of which had been done by TPO. The Hon'ble ITAT concluded that such an arbitrary adhocism for making such huge adjustment in the profit sans any Transfer Pricing analysis under the prescribed provisions cannot be sustained. The Hon'ble ITAT relying on Delhi High Court decision in case of Li & Fung held that the Transfer Pricing adjustment cannot be on vague generalities.

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# Controversies

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**Whether provisions of Section .50C of the Act are applicable on transfer of tenancy rights/lease hold rights?**

**Issue**:

When assessee assigns lease hold rights/tenancy rights for a consideration whether provisions of section 50C is applicable?

**Proposition:**

A perusal of Section 50C suggests that it is only for the limited purpose of computing capital gain in respect of sale of land and building, only when such sale takes place stamp duty value has to be substituted for the sale consideration, if the sale consideration is less than the stamp duty value. It is proposed that in case of the surrender of tenancy right/assignment of lease hold rights, provisions of sec. 50C would not apply.

**View in against of proposition:**

Let me refer to provision of Section 50C, where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a state government (hereafter in this section referred to as the "stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

The distinction between a capital asset being "land or building or both" and any right in "land or building or both" is well recognized under the I.T. Act. Section 54D deals with certain cases in which capital gain on compulsory acquisition of land and building is charged. Sub-section (1) of sec. 54D opens with: "Subject to the provisions of sub-section (2), where the capital gain arises from the transfer by way of compulsory acquisition under any law of a capital asset, being land or building or any right in land or building, forming part of an industrial undertaking.." it is palpable from section 54D that "land or building" is distinct from "any right in land or building". Similar position prevails under the W.T. Act, 1957 also. Section 5(1) at the material time provided for exemption in respect of certain assets. Clause (xxxii) of section 5(1) provided that "the value, as determined in the prescribed manner, of the interest of the assessee in the assets (not being any land or building or any rights in land or building or any asset referred to in any other clauses of this sub-section) forming part of an industrial undertaking" shall be exempt from tax. Here also it is worth noting that a distinction has been drawn between land or building on one hand and or any rights in land or building on the other.

It is very well settled that lease hold rights and tenancy rights are capital assets and liable to capital gains. When capital gain is to be computed section 50C applied and if the stamp valuation is more than the sale consideration than capital gain liability arises. Section 50C of the Act is a special provision for computing capital gains in certain cases and would include not only land as such but also lease hold rights in land. The assessee cannot claim exemption on the bases of the ground that section 50C specifically does not cover rights in land or building. Section 50C is applicable for the purpose of computing capital gain and capital gain as per this section has to be computed on the basis of stamp duty value. Thus, stamp duty value has to be substituted for the sale consideration if the sale consideration is less than the stamp duty value. Thus, since the lease hold rights as well as tenancy rights are also capital assets capital gains have to be worked out.

**View in favour of the proposition**:

A question arises whether the words "land or building or both" shall also cover any right in land or building or bith. Section 54D of the Act refers to "capital asset, being land or building or any right in land or building.." section 269UA(d) defines immovable property. Explanation to sub-clause (i) of clause (d) of section 269UA provides that "For the purposes of this sub-clause, "land, building, part of a building, machinery, plant, furniture, fittings and other things" include any rights therein". Thus, from the wordings used in section 54D and 269UA(d), it is clear that:

(i) Wherever Parliament intended to cover "any right in land or building within the ambit of any provision, it has done so by using clear and express words.

(ii) The need to specifically cover rights in land or building in section 54D and 269UA(d) arose because the expression land and building will not cover any rights therein.

In Atul G. Puranik V. ITO (2011) 132 ITD 499 (Mum.), the Tribunal held that lease rights for 60 years in a plot of land is not capital asset being land or building or both and section 50C is not attracted in a transaction for assignment of lease rights in a plot of land to a builder.

In Dy. CIT V. Tejinder Singh (2012) 19 taxmann.com 4(Kol.), the Tribunal held that:

Section 50C does not apply to transfer or surrender of tenancy rights as it will not apply to transfers of capital assets other than land or building or both.

Section 50C can only be applied in respect of "transfer by an assessee of a capital asset, being land or building or both". These provisions will not come into play in a case where only tenancy rights are transferred or surrendered.

A lease hold right in capital asset being land or building or both cannot be equated with the capital asset per se.

The Tribunal observed as under:

"revenue's contentions that the provisions of section 50C also apply to the transfer of leasehold rights is devoid of legally sustainable merits and is not supported by the plain words of the statue. It is sine qua non for application of section 50C that the transfer must be of a "capital asset, being land or building or both", but when a leasehold right in such a capital asset cannot be equated with the capital asset per se. We are, therefore, unable to see any merits in revenue's contention that even when a leasehold right in land or building or both is transferred, the provisions of section 50C can be invoked.

[Fleurette Marine Novelle Hatam Vs. ITO (International Taxation)-61 taxmann.com 362 (Mum. Tri.)]

The Tribunal held that undisputedly tenancy right is a capital asset but whether transfer of such capital asset has to be looked upon in the light of the provisions of Sec. 50C of the Act. A perusal of sec. 50C suggests that it is only for the limited purpose of computing capital gain in respect of sale of land and building, only when such sale take place stamp duty value has to be substituted for the sale consideration, if the sale consideration is less than stamp duty value. The Tribunal further held that in case of the surrender of tenancy right, provisions of sec. 50C would not apply. Dismissing Revenue's appeal, the Tribunal held that provisions of sec. 50C are not applicable on the transfer of tenancy right inasmuch as there was no reason for referring the matter to the DVO and adopting DVO's valuation for the computation of long term capital gains.

**Summation:**

It is submitted that the rights in land cannot be equated with the land or building. Therefore, it is concluded that section 50C is applicable to transfer of capital asset only in respect of land or building or both and is not applicable to right in land.

Let me now refer to the decision of ITAT bench Mumbai in the case of Shri Farid Gulmohamed C/o. M/s. B.C. Dastur and Co. Vs. ITO (International Tax) 3(1). ITA No. 5136/Mum/2014, Asst. 2010-11, decided on 16 March, 2016. The Hon. Tribunal held as under:

**contd. to page 587**

# Judicial Analysis

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## Recent decisions of Hon'ble Gujarat High Court on validity of reopening based on "borrowed satisfaction".

**Harikishan Sunderlal Virmanivs DCIT [Special Civil Application No. 16204 of 2016] (Gujarat High Court)**

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5.00. Heard the learned advocates appearing on behalf of the respective parties at length.

5.01. At the outset, it is required to be noted that the impugned notice under section 148 of the Act to reopen the assessment in exercise of the power under section 147 of the Act, has been issued beyond the period of four years. Therefore, considering the proviso to section 147 of the act, unless and until it is found that there was a failure on the part of the assessee in not disclosing truly and fully relevant material for assessment, reopening beyond four years is not permissible. It also cannot be disputed that even to reopen the proceedings, there must be satisfaction of the A.O. and the A.O. himself, on the basis of the material before him is required to form an opinion that the income has escaped assessment due to failure on the part of the assessee in not disclosing truly and fully material necessary for the assessment.

5.02. The reasons recorded to reopen the assessment are as under :-

"2. Reasons for reopening of the assessment – A.Y. 2009 reg.

Assessee had e-filed his return of income for the Asstt. Year 2009-2010 on 30.09.2010 declaring therein total income of Rs.2,09,39,600/-. Subsequently, the case was selected in CASS within the meaning of section 143(3) of the act. Assessment proceedings was completed u/s. 143(3) of the Act on 30/11/2010 determining the assessed income at Rs.2,09,60,910/-.

2. Thereafter, information has been received from the Principal Director of Income Tax (Investigation), Ahmedabad vide confidential letter No. PDIT (Inv)/ AHD/CCM/Dissemination/15-16 dated 08.03.2016.

On perusal of the data supplied by the office of the Pr. Director of Income Tax (Investigation), Ahmedabad it is noticed that assessee carried out share trading through the broker, Guiness securities Limited. And as per the guidelines of the SEBI the client code of the assessee with the aforesaid broker was WW/2647. In order to verify the genuineness of the modification of client code in the case of the assessee, by applying Lavenshtein Distance Analysis or digit edit analysis utility, in those cases where the assessee is original client and transactions were carried out from assessee's client code then subsequently client code was modified to other client the details of such case are as under:-

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In order to verify the genuineness of the error, the Lavenshtein Distance analysis or digit edit analysis utility is also provided by the investigation Wing. This utility gives a clear indication as to whether the code is wrongly typed or is completely replaced. If the number of digits changed from original code to modified code is 1, then it can be reasonably argued that the OCC (Original Client Code) may have been typed wrongly by mistake. Similarly, if

the number of digits changed is more say 4 or 5,it cannot be genuine mistake but a deliberate change. To this extent, Levenshtein Distance Analysis or digit edit analysis act as a clear indicator for genuineness in client code modification. In short, the longer the distance (i.e. number of digits changed), the lesser the chance of genuineness.

3. Hence, the editing of client code above it is termed as deliberate change and establishes the non-genuineness and contrived nature of the code change.
4. In view of the above facts, I have reason to believe that the income to the extent of Rs.1,19,848/- has escaped assessment, which required to brought under tax. Therefore, this case is a fit case for initiating the proceeding u/s. 147 of the Act."

5.03. Thus from the reasons recorded, the reopening of the assessment is on the information / data supplied by the office of the Principal Director of Income Tax (Investigation), Ahmedabad and the information received from the Principal Director of Income Tax (Investigation), Ahmedabad vide his confidential letter dated 8/3/2016. From the information received, it appears that though the client code of the assessee with the broker - Guinness Securities Limited was WW/2647, modified client code was found to be WW/2108 and therefore, to verify the genuineness of the modification of the client code, by applying Lavenshtein Distance Analysis or digit edit analysis utility, distance was found to be 3 and therefore, it is believed that the code is not wrongly typed and it is termed as deliberate change and establishing no genuineness and contrived nature of the code change. From the reasons recorded, it does not appear that verification of the material on record there is independent formation of opinion by the A.O. and that any income has escaped assessment due to any failure on the part of the assessee in not disclosing truly and correct facts / material necessary for assessment. From the reasons recorded, it appears that the impugned reopening proceedings are on the borrowed satisfaction. No independent opinion is formed. On the plain reading of the reasons recorded what emerges is that the A.O. on considering the information received from the Principal Director of Income Tax (Investigation), Ahmedabad, reassessment proceedings have been initiated on the ground that the income escaped assessment. However, there is no assertion regarding the basis on which material on record, he has come to such conclusion. Therefore, the material on the basis of which the A.O. seeks to assume the jurisdiction under section 147 if the Act is the information received from the external source viz. the Principal Director of Income Tax (Investigation), Ahmedabad. It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information / material received from other source, A.O. is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification.

5.04. At this stage it is required to be noted that even in the reasons recorded, there is no allegation that there was any failure on the part of the assessee in not disclosing truly and fully material facts necessary for assessment. Under the circumstances, the assumption of the jurisdiction to reopen the assessment beyond the period of four years in exercise of powers under section 147 of the Act is bad in law and contrary to the provisions of section 147 of the Act. Under the circumstances, on the aforesaid ground alone, the impugned reassessment proceedings deserve to be quashed and set aside.

5.05. In view of the above and for the reasons stated above, present petition succeeds. The impugned notice issued under section 148 of the Income Tax Act, 1961 and reopening of the proceedings for A.Y. 2009-2010 cannot sustain and the same deserves to be quashed and set aside and are hereby quashed and set aside. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

**Shree Chalthan Vibhag Khand v. DCIT [2015] 376 ITR 419 (Gujarat)**

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8. Heard learned Advocates appearing for respective parties at length.

In all these petitions under Article 226 of the Constitution of India, the respective petitioners - cooperative societies have challenged the impugned notices under Section 148 of the Act reopening the assessment for respective assessment years and the assumption of jurisdiction under Section 147 of the Act.

8.1 As observed hereinabove as such this group of petitions can be bifurcated into two groups. One group in which the reopening of the assessment for respective AYs is beyond the period of 4 years and second group in which the reopening of the assessment is within the period of 4 years.

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9. Now, so far as the initiation of impugned reassessment proceedings and the impugned notices under Section 148 of the Act within 4 years is concerned, it appears that the reopening has taken place only on one ground that the assessee has paid price of sugarcane more than the SMP. It is required to be noted that in all these cases the assessments were completed under Section 143(3) of the Act after holding necessary inquiry by the Assessing Officer. It also appears that the inquiry was made and the issue was gone into detail. It is also required to be noted that in some of the cases the practice of paying more prices to the cane growers than the SMP declared by the Government has been consistently followed since many years and the same has been accepted and no objection has been raised at any point of time earlier. It appears that the reason to believe and/or formation of the opinion by the Assessing Officer that the income chargeable to tax has escaped assessment is on the ground that the assessee has paid more price than the price determined/ declared by the Government and therefore, the same is nothing but distribution of profits and/ or passing of profits on the basis of the decision of the Hon'ble Supreme Court in the case of Shri Satpuda Tapi Parisar SSK Ltd. (supra). However, it is required to be noted that once at the time of original assessment under Section 143(3) of the Act the Assessing Officer after applying the mind accepted the return, thereafter reopening of the assessment can be said to be on mere change of opinion of the Assessing Officer and as per the catena of decisions of the Hon'ble Supreme Court as well as this Court mere on change of opinion of the Assessing Officer, reassessment proceedings are not permissible.

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9.2 Even otherwise it is required to be noted that the reasons to believe must necessarily show, indicate and communicate why and on what grounds/cause any income has escaped assessment. Reasons recorded must be germane, prudent and disclose prima facie belief that income has escaped assessment. Even for formation of the opinion and/or reason to believe that any income has escaped assessment, there must be some tangible new material available with the Assessing Officer on the basis of which the reassessment proceedings are permissible. In the present case as such except the allegation that cane price/ price has been paid to the cane growers more than the purchase price determined/declared by the Government under the Control Order and therefore, the difference between the same is distributing the profits and therefore, the

income liable to tax has escaped assessment. However, mere payment of cane price paid in excess to the SMP cannot by ipso facto and/or per se can be said to be distributing the profits. There must be tangible material available with the Assessing Officer, such as the amount or cane price paid to the cane growers in excess to the SMP either is exorbitant or too excessive and is not justifiable at all and on the basis of the material available with the Assessing Officer with respect to the cane price paid by other societies it is found that amount of cane price paid by a particular assessee/cooperative society is not justifiable at all, as either it is exorbitant and/or unreasonable, then and then only it can be said that such excess payment of cane price is nothing but distributing the profits and/or passing of the profits. However, for that and for reopening of the assessment on the aforesaid ground, there must be some tangible material available with the Assessing Officer to have a reasonable belief and/or form such an opinion and in that case only the reassessment is permissible.

At this stage it is required to be noted that as such the SMP declared by the Government, declared under the Control Order is as such in the larger interest of the cane growers and so as to see that the cane growers are not exploited and therefore, it is mandated that the sugar cooperative societies to pay the purchase price of the cane not less than the SMP declared by the Government. Under the Control Order as such there is no restriction and/or ban not to pay more amount than the SMP declared. Even in the case of Shri Satpuda Tapi Parisar SSK Ltd. (supra), the Hon'ble Supreme Court has observed that in deciding the questions whether the differential payment made by the assessee to the cane growers after the close of the financial year or after the balance-sheet date would constitute an expenditure under Section 37 of the Act and whether such differential payment would, applying the real income theory, constitute an expenditure or distribution of profits, the Assessing Officer is required to take into account the manner in which the business works, resolutions of the State Government, the modalities and the manner in which SAP and SMP are decided, the timing difference which will arise on account of the difference in the accounting years etc. Therefore, while considering the aforesaid question, numbers of questions are required to be examined by the Assessing Officer, before even forming an opinion and/or a reason to believe that the income chargeable to tax has escaped assessment. Mere payment of any amount of cane price/purchase price in excess to SAP/SMP per se cannot be said to be distribution of profits. For which a detailed inquiry is required to be conducted by the Assessing Officer. In the present case no such inquiry has been done and/or conducted by the Assessing Officer before having a reasonable belief and/or forming an opinion that the income chargeable to tax has escaped assessment on the aforesaid ground.

9.3 At this stage it is required to be noted that in some of the cases the Assessing Officer has formed an opinion on the basis of the order passed by the learned CIT (Appeals) which were pursuant to the order of Hon'ble Supreme Court in the case of Shri Satpuda Tapi Parisar SSK Ltd. (supra). However, it is required to be noted that on the basis of the order passed by the learned CIT (Appeals) in the case of some other assessee the satisfaction of the Assessing Officer and formation of opinion in the case of present assessee cannot be sustained and the same can be said to be a borrowed satisfaction from another officer. Such borrowed satisfaction in absence of any application of mind and any real finding in the case of the assessee do not constitute valid reason to believe that the income has escaped assessment. Under the circumstances on the aforesaid ground also the impugned reassessment proceedings within 4 years and beyond 4 years deserves to be quashed and set aside.

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**Shree Sayan Vibhag Sahkari v. DCIT [2016] 69 taxmann.com 245 (Gujarat)**

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2. This petition under Article 226 of the Constitution of India is directed against the notice dated 25.03.2015 issued by the respondent under section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") whereby, he seeks to reopen the assessment of the petitioner for assessment year 2008-09.

3. The facts stated briefly are that the petitioner is a Co-operative Society manufacturing sugar from sugarcane supplied by its members and has been assessed to tax under the provisions of the Act for the last several years. For assessment year 2008-09, the Assessing Officer issued the impugned notice dated 25.03.2015 under section 148 of the Act in response to which, the petitioner addressed a letter dated 05.01.2016 stating that the return under section 139 of the Act as originally filed be considered as a return in response to reassessment notice and also prayed for the copy of the reasons recorded. By a letter dated 06.01.2016, such reasons came to be furnished to the petitioner. The petitioner filed its objections to the respondent by a letter dated 12.01.2016, which came to be rejected by an order dated 18.01.2016. Being aggrieved, the petitioner has filed the present petition.

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6. On a perusal of the reasons recorded for reopening the assessment as referred to in the case of Shree Chalthan Vibhag Khand (supra) and the reasons recorded in the present case, it is evident that the grounds for reopening the assessment in the present case are identical to the grounds for reopening the assessment in the said case. This court, in the above case, after giving detailed reasons in support of its conclusion, has set aside the impugned notice under section 148 of the Act on the ground that the formation of opinion in the case of the assessee could not be sustained as the same can be said to be a borrowed satisfaction from another officer and such borrowed satisfaction, in the absence of any application of mind and any real finding in the case of the assessee, does not constitute valid reason to believe that the income has escaped assessment. The court took note of the fact that despite the fact that in certain cases, reopening was beyond a period of four years, in the reasons recorded, there was not even a whisper as regards any failure on the part of the petitioner to disclose fully and truly all material facts.

7. In the facts of the present case, the impugned notice under section 148 of the Act has been issued on 25.03.2015 for reopening the assessment for assessment year 2008-09, which is clearly beyond a period of four years from the end of the relevant assessment year. Under the circumstances, in view of the first proviso to section 147 of the Act, the Assessing Officer is required to record twin satisfaction, viz., that income chargeable to tax has escaped assessment and that such escapement is by reason of failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the year under consideration. On a perusal of the reasons recorded it is amply clear that there is nothing stated therein to the effect that there was any failure on the part of the petitioner to disclose fully and truly all material facts. Thus, the second condition precedent for exercise of powers under section 147 of the Act is clearly not satisfied. Moreover, even as regards the first condition, namely, that the Assessing Officer should record satisfaction that income chargeable to tax should have escaped assessment, in the light of the reasons recorded by this court in the case of Shree Chalthan Vibhag Khand (supra), it cannot be said that on the reasons recorded for reopening the assessment, the Assessing Officer could have formed the belief that income chargeable to tax has escaped assessment. Therefore, even the first condition precedent for exercise of powers under section 147 of the Act, is not satisfied. Under the circumstances, the impugned notice issued under section 148 of the Act cannot be sustained.

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# OECD releases Multilateral Instrument to modify bilateral tax treaties under BEPS Action 15

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## *1. Executive Summary*

On 24 November 2016, the Organisation for Economic Co-operation and Development (OECD) released the text of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) under BEPS Action 15 (the multilateral instrument). The text and the related explanatory statement were formally adopted by approximately100 countries at a ceremony hosted by the OECD following the conclusion of the negotiations during the week of 21 November 2016.

The multilateral instrument under BEPS Action 15 is a key part of the OECD's effort toward implementation of the tax treaty related BEPS measures into existing bilateral or regional tax treaties as quickly and consistently as possible.

In general, the multilateral instrument will only enter into force after 5 countries have ratified it and will apply for a specific tax treaty, after all parties to that treaty have ratified the instrument and a certain period has passed to ensure clarity and legal certainty. It is expected that the multilateral instrument will be open for signature as of 31 December 2016 and a first high-level signing ceremony will take place in the week beginning 5 June 2017.

## *2. Detailed discussion*

The multilateral instrument will operate to modify tax treaties between two or more parties. It will not however, function in the same way as an amending protocol to a single existing treaty, which would directly amend the text of the tax treaty. Instead, it will be applied alongside existing tax treaties, modifying their application in order to implement the BEPS measures. As a result, while for internal purposes, some Parties may develop consolidated versions of their Covered Tax Agreements as modified by the multilateral instrument, doing so is not a prerequisite for the application of the multilateral instrument.

The tax treaty related BEPS measures covered by the multilateral instrument include (elements of): (i) Action 2 on hybrid mismatch arrangements, (ii) Action 6 on treaty abuse,(iii) Action 7 on the artificial avoidance of the PE status; and (iv) Action 14 on dispute resolution. The substance of the tax treaty provisions relating to these actions was agreed under the final BEPS package released in October 2015.

The multilateral instrument does not modify or add to the substance of these provisions. The instrument is solely focused on how to modify the provisions in bilateral or regional tax treaties in order to align these treaties with the

BEPS measures. The only action for which the negotiations both related to developing the substance of the provision and the modalities of its implementation in bilateral and regional tax treaties, concerns the mandatory and binding arbitration provision which was announced in the final report on Action 14. A group of countries (20 countries) expressed their willingness to voluntarily include mandatory and binding arbitration in their existing tax treaties at the time of conclusion of the Action

14 final report. Eventually, 27 countries participated in the subgroup which developed this provision.

The intention of the multilateral instrument is to enable all countries to meet the treaty-related minimum standards that were agreed as part of the final BEPS package. These include the minimum standard for the prevention of treaty abuse under Action 6 and the minimum standard for the improvement of dispute resolution under Action 14. Given, however, that each of those minimum standards can be satisfied in multiple different ways, and given the broad range of countries and jurisdictions involved in the negotiations, the multilateral instrument was designed to be flexible enough to accommodate the positions of different countries and jurisdictions. The multilateral instrument is also drafted to provide flexibility in relation to provisions that do not reflect minimum standards.

The multilateral instrument provides that flexibility by:

- Allowing countries to specify the tax treaties to which the multilateral instrument applies
- Creating flexibility with regard to the provisions that relate to a minimum standard, in order to allow countries to choose for the option that fits those best
- Including the possibility to opt out of provisions when the provisions do not relate to a minimum standard
- Including the possibility to opt out of provisions for treaties with existing provisions with specific, objectively defined characteristics
- Allowing a choice to apply optional or alternative provisions, such as for example the optional provision on mandatory and binding arbitration

### *3. Implications and Next Steps*

The multilateral instrument of BEPS Action 15 is a key part of the OECD's effort toward implementation of the recommended measures. The instrument will implement the tax treaty related BEPS measures into existing bilateral or regional tax treaties.

Currently more than 3000 of such treaties are in force. Bilateral renegotiations of these treaties in the conventional ways would potentially take decades and would therefore hamper the swift implementation of the treaty related BEPS measures. The multilateral instrument could potentially lead to the amendment of at least 2000 of these treaties in the coming years.

Governments are currently preparing their lists of treaties to be covered by the multilateral instrument and are considering which options to select and reservations to make. They will have to notify this to the OECD, who will be the depositary of the multilateral instrument and will support governments in the process of its signature, ratification and implementation.

The multilateral instrument will be open for signature as of 31 December 2016 and a first high-level signing ceremony will take place in the week beginning 5 June 2017, with the expected participation of a significant group of countries.

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# FEMA Updates

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## 38 Foreign Exchange Management (Insurance) Regulations, 2015

On a review, it is felt necessary to revise the regulations issued under the Foreign Exchange Management (Insurance) Regulations, 2000 notified vide Notification No. FEMA. 12/2000 - RB dated May 03, 2000 c.f. G.S.R. No. 395(E) dated May 03, 2000. Accordingly, the said Regulations have been repealed in consultation with the Government of India and superseded by the Foreign Exchange Management (Insurance) Regulations, 2015 notified vide Notification No. FEMA. 12(R)/2015-RB dated December 29, 2015 c.f. G.S.R. No. 1007(E) dated December 29, 2015. The revised notification has come into force with effect from December 29, 2015.

The Memorandum of Foreign Exchange Management Regulations relating to General/ Health Insurance (GIM) and Life Insurance (LIM) in India have also been suitably modified and are annexed at Annex I and Annex II of the circular.

**A.P. (DIR New Series) Circular No.18 [(1)/12 (R)], dated November 17, 2016**

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10717

## 39 Investment by Foreign Portfolio Investors (FPI) in corporate debt securities

In terms of extant provisions, foreign portfolio investors (FPI) are permitted to invest only in listed or to-be-listed debt securities. Investment in unlisted debt securities is permitted only in case of companies in the infrastructure sector.

As announced in the Union Budget 2016-17, it has now been decided to expand the investment basket of eligible instruments for investment by FPIs under the corporate bond route to include the following:

(i) Unlisted corporate debt securities in the form of non-convertible debentures/bonds issued by public or private companies subject to minimum residual maturity of three years and end use-restriction on investment in real estate business, capital market and purchase of land. The custodian banks of FPIs shall ensure compliance with this condition.

(ii) Securitised debt instruments as under:

   a. any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset/s where banks, FIs or NBFCs are originators; and/or

   b. any certificate or instrument issued and listed in terms of the SEBI Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008.

Investment by FPIs in the unlisted corporate debt securities and securitised debt instruments shall not exceed ` 35,000 crore within the extant investment limits prescribed for corporate bond from time to time which currently is ` 2,44,323 crore. Further, investment by FPIs in securitised debt instruments shall not be subject to the minimum 3-year residual maturity requirement.

All other existing conditions for investment by FPIs in the debt market remain unchanged.

**A.P. (DIR Series) Circular No.19, dated November 17, 2016**

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10718

## 40 Exchange facility to foreign citizens

In supersession of instructions issued inA.P. (DIR Series) Circular No. 16 dated November 9, 2016 giving certain exemptions to foreign tourists visiting

India, it has been decided that foreign citizens (i.e. foreign passport holders) can exchange foreign exchange for Indian currency notes up to a limit of ` 5000/- per week till December 15, 2016 subject to the tenderer submitting a self-declaration that this facility has not been availed of during the week. The Authorized Person shall keep the passport details and the above declaration on record. Authorized Person may also ensure that the total value of such exchange to Indian currency notes does not exceed ` 5000/- during the week.

**A.P. (DIR Series) Circular No.20, dated November 25, 2016**

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10742

## 41 Exchange facility to foreign citizens

Attention of Authorized Persons is invited to the A.P. (DIR Series) Circular No. 20 dated November 25, 2016 permitting foreign citizens to exchange foreign exchange for Indian currency notes up to a limit of ` 5000/- per week till December 15, 2016.

2. On a review it has been decided that the instructions contained in the A.P. (DIR Series) Circular No. 20 dated November 25, 2016 shall continue to be in force till December 31, 2016.

**A.P. (DIR Series) Circular No. 22, dated December 16, 2016**

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=10781

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contd. from page 578



"We do not find any justification in the orders of the authorities below in invoking the provisions of section 50C of the Act and adopting the value of property as determined by the stamp valuation authority, for the purpose of computing the capital gain on transfer of the assessee's leasehold rights".

In the end, let me refer to the latest decision of their lordships of Bombay High Court in ITA No. 735 of 2014 decided on 24th Oct, 2016. Their lordships held as under:

"Mr. Kotangale, learned counsel for the revenue, states that the Revenue has not preferred any appeal against the decision of the Tribunal in the case of Atul Puranik (Supra.). Thus, it could be inferred that it has been accepted. Our court in DIT Vs. Credit Agricole Indosuez 377 ITR 102 (dealing with Tibunal Order) and the Apex Court in UIO Vs. Satish P. Shah 249 ITR 2211 (dealing with High Court Order) has laid down of the Court/Tribunal on an issue of law and not challenged it in appeal, then a subsequent decision following the earlier decision cannot be challenged. Further, it is not the Revenue's case before us that there are any distinguishing features either in facts or in law in the present appeal from that arising in the case of Atul Puranik (Supra.).

It is also interesting to note that this decision also is applicable not only to assignment of leasehold rights in land but also transfer of tenancy rights or leasehold rights in land as well as building about which the question was raised in some of the decisions of the ITAT.

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# Service Tax - Recent Judgements

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## 44 106) Commissioner of Service Tax Vs. Lionbridge Technologies (P.) Ltd, CESTAT, Mumbai 2016

**Facts:-**

Assessee exported information technology services. Assessee took credit of services received at Chennai Branch and sought refund thereof under rule 5. Department denied refund on ground that assessee's Chennai Branch was not registered and credit cannot be allowed without registration.

**Held:-**

Assessee had exported Information Technology Services and input services were used for rendering such services. It was further held that assessee's Chennai branch was subsequently registered. Substantial benefit of Cenvat Credit cannot be denied merely because of non-registration. Hence, credit and consequent refund was allowed.

## 45 SME Consulting Private Limited Vs. Comm. of Excise-ST, Jaipur (2016)

**Facts:-**

**A** show cause notice was issued to the appellant to demand service tax under the category of Management Consultancy Services for the activity of Data Processing. The matter was adjudicated and it was held that appellant is liable to pay service tax under Management Consultancy Service. Accordingly demand of service tax along with interest confirmed penalty was also imposed. The said order was challenged by the appellant before the Commissioner (Appeals) who hold that appellant is liable to pay service tax under the category of Management Consultancy service the same fall under Business Auxiliary Service and held that appellant is liable to pay service tax under the category of BAS. Aggrieved from the said order appellant is before us.

**Held**:-

On consideration of the facts that we find that the show cause notice was issued to demand the service tax under the category of Management Consultancy service, therefore, the scope of the show cause notice on this point. In the impugned order, the learned Commissioner (Appeals) opined beyond the scope of show cause notice. The activity of the appellant falls under the category of BAS as it is not alleged in the show cause notice to demand the service tax under the category of BAS, the demand of service tax cannot be confirmed against the appellant under the said category. In these circumstances, we set aside the impugned order qua demanding the service tax under the category of BAS. With these observations, impugned order is set aside demanding service tax under the category of BAS. In result appeal is allowed with consequential relief.

## 46 Chief Engineer Maharashtra State Electricity Distribution Co. Ltd. v. Commissioner, Central Excise, Customs & Service Tax, Aurangabad [2016]

**Facts:-**

In Transmission or Distribution of Electricity, Assessee, an electricity company, was collecting supervision charges from consumers under outright contribution scheme in relation to power supply and also for erection, commission and installation of meters. Department demanded service tax thereon under Consulting Engineer's services. Assessee claimed exemption under Notification 45/2010-ST.

**Held:-**

All services in relation to supply and distribution of electricity are exempt under Notification 45/2010-ST. Since so called consulting engineer

service was provided in relation to supply and distribution of electricity to consumer. And hence, same was also exempt.

## 47 Raval Trading Company Vs. Comm. of Service Tax, ,2016 , Gujarat HC

**Facts:-**

Assessee claimed that no penalty could be levied under section 76 if penalty had been levied under section 78 of the Finance Act,1994.

**Held:-**

Section 78 deals with penalty in evasion cases and provides for higher penalty, while section 76 deals with penalty generally for failure to pay tax. Hence, it was a plausible view that both sections are mutually exclusive. Amendment by way of insertion of proviso in section 78 from 16-5-2008 makes legislative intention clear that sections 76 and 78 are mutually exclusive and hence, said amendment is clarificatory and retrospective. Further, substitution of sections 76 and 78 by Finance Act, 2015 further fortifies view that both sections are and have been mutually exclusive. Hence, no penalty can be levied under section 76, if penalty has been levied under section 78 even for period prior to 16-5-2008.

## 48 Commissioner of Customs & Service Tax, Bangalore Vs. Nisha Designs Bangalore, 2016

**Facts**: -

The facts of the present case are that the appellant is a 100% EOU and is engaged in the manufacture of export and readymade garments. The respondent filed refund claim with Assistant Commissioner of Customs Bangalore in terms of Rule 5 of CENVAT Credit Rules 2004 claiming refund of CENVAT Credit of service tax paid on input services used in the manufacture of their final product. The Assistant Commissioner vide order -in-original disallowed input service credit on services which is not directly related with the manufacturing.

**Held :-**

Learned A.R. for the Revenue has submitted that all these services on which the learned Commissioner (Appeals) has allowed CENVAT credit does not fall in the definition of input service as contained in Rule 3 of CENVAT Credit Rules 2004 as the said service is not used by the manufacturer in relation to manufacture of final product. Further, he submitted that these input services have no nexus with the manufacturing activity and therefore service tax credit should not be allowed. On the other hand learned counsel for the respondent submitted that all these services on which the credit has been allowed by the learned Commissioner has been held to be input services and are directly related to the business. He further submitted that the Tribunal and the High Court in various judgments have held that these services fall in the category of input services on which credit is admissible.

After hearing the counsel for the parties and following the ratio of various judgments cited by the counsel for the respondent, Bench viewed that there is no merit in the appeal of the appellant and the impugned order is valid and does not require any interference by this Tribunal. Consequently the appeal of the revenue is dismissed.

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It is only by doing good to others that one attains to one's own good, and it is by leading others to Bhakti and Mukti that one attains them oneself.

- Swami Vivekananda

# VAT - Judgements and Updates

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## GST and VAT Judgments and Updates

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

[i] **Time is extended for filing the Vat Audit Report as well as Annual Return in Form No. 203:**

The Hon. Commissioner of Commercial Tax, Gujarat State has issued a Public Circular dated 20th Dec. 2016 and extended the time up to 28th Feb. 2017 for filing the Vat Audit Report under Rule 44(2) and Annual Return under Rule 20 of the GVAT Rules.

[ii] **Tax Credit is withdrawn of the Purchase of Natural Gas:**

The Under Secretary to the Govt. of Gujarat has issued a Notification dated 20.11.2016 and as per the Notification, the Entry No. 6 has been amended dated 29.06.2010 in respect of Natural Gas, the Input Tax Credit shall not be available when sold/resold in the course of Interstate Trade and Commerce or consign or dispatch for Branch Transfer or to the Agent outside the State. This notification is effective from 20.11.2016.

**Various Notifications:**

[iii] The Joint Secretary to the Government of Gujarat has issued a Notification dated 19.12.2016 under which the whole tax is exempted in the sale or purchase of Point of Sale (POS), Terminal Machine (Swipe Machine) for cashless transaction.

[iv] The Hon. Commissioner of Commercial Tax, State of Gujarat vide Public Circular dated 25th Nov. 2016 has extended the time limit for filing the Form No.203 under the Incentive of Textile Policy up to 45 days. Now both the returns in Form No. 201 as well as in Form No. 203 are to be filed within 45 days instead of 30 days.

[II] **Important Judgments:**

[i] **Hon. Gujarat High Court in case of Mosaic India Pvt. Ltd. v. State of Gujarat: (Writ Petition)**

**Issue:**

**No Provisional attachment is permissible for dues of Entry Tax in absence of enabling provisions in Entry Tax Act. (Gujarat Entry Tax Act):**

**Facts of the case:**

The assessee is a dealer registered under the VAT Act. The assessing officer, for the purpose of recovery of future dues, attached bank account of the assessee outside the State by invoking powers under section 45(1) of the Vat Act. Being aggrieved, the assessee filed present writ petition before the Gujarat High Court.

**Arguments of the Assessee:**

The assessee has argued before the Gujarat High Court that the assessing officer has committed a serious error in placing the assessee's bank account under provisional attachment since the Entry Tax Act does not invest the authority with any power of such nature. Even if as apprehended by the Assessing Officer, the registration of the assessee as a dealer were to be cancelled with retrospective effect, the same can have little effect on the assessee's tax liability by disallowance of input tax credit since, as an importer of the goods from outside India, there is no element of input tax in relation to such purchases.

**Department's Arguments:**

The learned counsel for the revenue submitted before the Gujarat High Court that the assessee has no permanent establishment within the State. If the registration were to be cancelled with retrospective effect, the tax, interest and penalty liability may touch Rs. 40 Lakhs. The competent authority has therefore, to protect the interest of the Revenue, put the assessee's bank account under attachment. Learned counsel was however unable to point out any provision in the Entry Tax Act which would enable the authority to exercise power of provisional attachment for unpaid dues of entry tax even before the assessment is completed.

**Held:**

The Gujarat High Court held that the fact that the disputed tax liability represents in substantial measure, entry tax, is not in dispute. The Entry Tax Act does not contain any provision for provisional attachment. Section 45(1) of the Vat Act, of course, authorize the competent authority to exercise the power of provisional attachment pending the proceedings for assessment or reassessment of turnover escaping assessment to protect the interest of Revenue. Such power obviously cannot be imported for the purpose of the Entry Tax Act.

In facts of the present case therefore, when we notice that the assessee has already deposited a sum of Rs. 11 lakhs towards the initial estimated tax, penalty and interest liability of Rs. 20 lakhs, which in any case, includes substantial portion of disputed entry tax, we would not permit the authorities to provisionally attach the assessee's bank account. The writ came to be allowed accordingly and the order of bank attachment came to be set aside.

[ii] **Hon. Gujarat High Court in case of Royal Enterprise v. State of Gujarat: (Writ Petition)**

**The Time Limit of assessment is also applied to issue base assessment (Section 34(8A)):**

**Facts of the case:**

The assessee is a dealer registered under the Vat Act. The assessee filed self – assessment return for the year 2006-07. The assessee did not receive any notice for regular assessment under section 34 of the Act. The time limit of passing assessment order u/s. 34 was also over and the self-assessment return filed by the assessee became final. Thereafter, the time limit for revision also came to be passed.

Thereafter, the assessee received a notice for issue base assessment under section 34(8A) of the Act proposing to reduce input tax credit claimed by the assessee. The said notice was issued on objection raised by AG Audit. The assessee contended that since the time limit for assessment/revision was expired, the powers under section 34(8A) cannot be revoked. The said submissions came to be rejected and the assessment order came to be passed raising demand against the assessee. Being aggrieved, the assessee filed present writ petition before the Gujarat High Court.

**Arguments by the Assessee:**

The learned counsel for the assessee submitted before the Gujarat High Court that in the facts and circumstances of the case, the assessing officer wrongly invoked sub-section (8A) of section 34 of the Vat Act. It was submitted that admittedly, no assessment was pending till the proceedings become time barred. It was submitted that for the first time, the notice came to be issued on 10th August, 2016

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# Mergers and Acquisition Corner

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**1. Sun Pharma to acquire cancer drug from Novartis for $175 mn[1]**

Sun Pharmaceutical Industries Ltd, India's biggest drugmaker, plans to acquire skin cancer drug Odomzo from Swiss firm Novartis AG for an upfront payment of $175 million (Rs 1,190 crore). The company will also make additional milestone payments as part of the proposed deal, it said in a stock exchange filing. It didn't specify the quantum of these payments. The deal is subject to anti-trust clearance and other closing conditions, the company said. Odomzo was approved by the USFood and Drug Administration in July 2015. It is a so-called hedgehog pathway inhibitor indicated for the treatment of adult patients with locally advanced basal cell carcinoma that has recurred following surgery or radiation therapy, or those who are not candidates for surgery or radiation therapy, Sun Pharma said. "Odomzo gives us an opportunity to meaningfully expand our already established branded dermatology business and support our expansion into branded oncology with a launched brand," said Kirti Ganorkar, global head of business development at Sun Pharma. Sun Pharma, which counts Singapore sovereign wealth fund GIC and state investment firm Temasek as investors, has made several acquisitions and entered new segments over the past months. In October, Sun Pharma said it would acquire Swiss firm Ocular Technologies from private equity firm Auven Therapeutics to boost its ophthalmic pipeline. Sun Pharma agreed to pay Auven $40 million upfront, plus contingent development milestones and sales milestones as well as tiered royalty on sales of Ocular's eye disease treatment drug Seciera. In March, Sun Pharma said it will acquire 14 prescription brands from Swiss firm Novartis in Japan for $293 million in a deal that would help the company to establish a strong footprint in the world's second-largest pharmaceutical market.The drug maker announced its entry into the dermatology segment in June with the launch of its sunscreen product Suncros, as it sought to expand its over-the-counter business.

**2. Reliance communication to sell tower biz tobrookfield Infra for G11k cr in all cash deal[2]**

Reliance Communications (RCom) signed binding agreements with Canada-based Brookfield Infrastructure and its institutional partners to sell 51 per cent stake in its pan India telecom towers for cash Rs11,000 crore ($1.6 billion) on completion of the sale. The all-cash deal will be used solely to reduce the firm's debt, which stood at over Rs 42,000 crore as on September 2016.As per the terms of the deal, RCom's telecom tower business will be demerged into a separate company that will be 100 per cent owned and independently managed by Brookfield Infrastructure, thereby creating the second largest independent and operator-neutral Towers company in India. According to the statement, RCom will "also receive B Class non-voting shares in its tower company, providing 49 per cent future economic upside in the towers business based on certain conditions. The firm also expects significant future value creation from the B Class shares, based on growth in tenancies arising from fast accelerating data consumption, the statement added. RCom will enjoy certain information and other rights, but will not be involved directly or indirectly in the management and operations of the new Company. The transaction, which is subject to regulatory and other requisite approvals, will represent the largest-ever investment by an

overseas financial investor in the infrastructure sector in India.RComand Reliance Jio will continue as major long term tenants of the new Tower company, along with other existing third party telecom operators. Anil Ambani led firm expects that the already announced combination of RCom's wireless business with Aircel, and the monetization of the Tower business, will together reduce RCom's overall debt by Rs 31,000 crore, or nearly 70 per cent of existing debt. RComwill continue to hold 50 per cent stake in the wireless business combination with Aircel and the 49 per cent upside in the towers business, and will monetise these valuable assets at an appropriate time in the future to further reduce its overall debt significantly, the statement added.It may be recalled that in mid-October, RCom had announced the signing of a non-binding term sheet with Brookfield Infrastructure Group for sale of thenationwide tower assets and related infrastructure. The deal with Brookfield is the second attempt made by RCom to sell its tower business. However, Fitch Ratings downgraded credit rating of Reliance Communications saying that it feels that ongoing joint venture plan of the company with Aircel and proposal to sell stake in its mobile tower arm will be negative for creditors.

1. http://www.vccircle.com/news/pharmaceuticals/2016/12/22/sun-pharma-acquire-cancer-drug-novartis-175-mn?logintype=premium

2. http://www.newindianexpress.com/business/2016/dec/22/reliance-communication-to-sell-tower-biz-to-brookfield-infra-for-g11k-cr-in-all-cash-deal-1551804.html

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and that too, based on the audit objection. It was submitted that therefore the assessment order passed by the Assessing Officer is wholly without jurisdiction. In support of the above statement, the learned counsel heavily relied upon the decision of Division Bench of this court in case of Dhanani Imp. Exp. Pvt. Ltd. v. State of Gujarat (Special Civil Application No. 9519 of 2016.

**Department's Arguments:**

The learned counsel for the revenue conceded before the Gujarat High Court that when the proceedings under section 3498A) of the Vat Act were initiated, admittedly, no assessment was pending and in fact, the period of limitation provided for the audit assessment, reassessment and/or even the revision powers had expired.

**Held:**

Applying the decision in case of Dhanani, the Gujarat High Court held that the impugned order passed by the assessing officer can be said to be without jurisdiction.

In as much as the assessment has been made for the period between 1.4.2006 to 31.3.2007 beyond the period of limitation, which is 4 years as prescribed under section 34(9) of the Act. The assessment order cannot to be quashed accordingly.

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# Corporate Law Update

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## MCA Updates:

**1. Notification regarding Sections under Insolvency and Bankruptcy code, 2016:**

The Ministry of Corporate Affairs has notified the following sections of the Insolvency and Bankruptcy Code, 2016 with effect from 1st December, 2016.

(1) clause (a) to clause (d) of section 2 (except with regard to voluntary liquidation or Bankruptcy);

(2) section 4 to section 32 [both inclusive];

(3) section 60 to section 77 [both inclusive];

(4) section 198;

(5) section 231;

(6) section 236 to section 238 [both inclusive]; and

(7) clause (a) to clause (f) of sub-section (2) of section 239.

**[F. No. 30/7/2016-Insolvency Section dated 30th November, 2016]**

**2. Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016:**

The Central Government has made the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 w. e. f. 01st December, 2016.

These rules prescribe about the procedural aspects of Application by financial creditor, Demand notice by operational creditor, Application by operational creditor, Application by corporate applicant, Withdrawal of application, Interim resolution professional, Filing of application and application fee etc.

Various forms have been prescribed, details of which are as under:

| Particulars | Form No. |
|---|---|
| Application by financial creditor(s) to initiate corporate insolvency resolution process under the code. | 1 |
| Written communication by proposed interim resolution professional | 2 |
| Form of demand notice / invoice demanding payment under the insolvency and bankruptcy code, 2016 | 3 |
| Form of notice with which invoice demanding payment is to be attached | 4 |
| Application by operational creditor to initiate corporate insolvency resolution process under the code. | 5 |
| Application by corporate applicant to initiate corporate insolvency resolution process under the code. | 6 |

**Schedule of Fees:**

| S. No. | Applicant | Fee payable (in Rs.) |
|---|---|---|
| 1 | Application by financial creditor (whether solely or jointly) | 25000 |
| 2 | Application by operational creditor | 2000 |
| 3 | Application by corporate debtor | 25000 |

**[F. No. 30/10/2016-Insolvency dated 30th November, 2016]**

**3. Benches of the National Company Law Tribunal designated:**

The Central Government has designated the Benches of the National Company Law Tribunal from 01st December, 2016, constituted vide notification number S.O. 1935 (E) dated the 1st day of June, 2016 to exercise the Jurisdiction, powers and authority of the Adjudicating Authority conferred by or under Part II of the Code.

**[F. No. A-45011/14/2016-Ad-IV dated 30th November, 2016]**

**4. Companies (Removal of Difficulties) Fourth Order, 2016:**

In the Companies Act, 2013, in Section 434, in sub-section (1), in clause (c), after the proviso, the following provisos shall be inserted with effect from 15.12.2016, namely:-

"Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that –

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959".

**[F. No. 16/61/2016-Legal dated 07th December, 2016]**

**5. Notification regarding enactment of certain provisions of the Companies Act, 2013:**

The Central Government hereby appoints the 15th day of December, 2016 as the date on which the following provisions of the said Act shall come into force, namely :-

1. Clause (23) of section 2
2. Clause (c) and (d) of sub-section (7) of section 7
3. Sub-section (9) of section 8
4. Section 48
5. Section 66
6. Sub-section (2) of section 224
7. Section 226
8. Section 230 [except sub-section (11) and (12)], and Sections 231 to 233
9. Sections 235 to 240
10. Sections 270 to 288
11. Sections 290 to 303
12. Section 324
13. Sections 326 to 365
14. Proviso to section 370
15. Sections 372 to 373
16. Sections 375 to 378
17. Sub-section (2) of section 391
18. Clause (c) of sub-section (1) of section 434

**[F. No. 2/31/CAA/2013-CL-V-pt dated 07th December, 2016]**

**6. The Companies (Transfer of Pending Proceedings) Rules, 2016:**

*(Effective from 01st April, 2017)*

**Pending proceeding relating to Voluntary Winding up:**

All applications and petitions relating to voluntary winding up of companies pending before a High Court on the date of commencement of this rule, shall continue with and dealt with by the High Court in accordance with provisions of the Act.

*(Effective from 15th December, 2016)*

**Transfer of pending proceedings relating to cases other than Winding up:**

all proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up on the date of coming into force of these rules shall stand transferred to the Benches of the Tribunal exercising respective territorial jurisdiction:

Provided that all those proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred.

**Transfer of pending proceedings of Winding up on the ground of inability to pay debts:**

(1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

(2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a High Court and where no appeal is pending, the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall continue to be dealt with by such High Court in accordance with the provisions of the Act.

**Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts:**

All petitions filed under clauses (a) and (f) of section 433 of the Companies Act, 1956 pending before a High Court and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Companies Act, 2013 (18 of 2013).

**Transfer of Records:**

Pursuant to the transfer of cases as per these rules the relevant records shall also be transferred by the respective High Courts to the National Company Law Tribunal Benches having jurisdiction forthwith over the cases so transferred.

**Fees not to be paid:**

Notwithstanding anything contained in the National Company Law Tribunal Rules, 2016, no fee shall be payable in respect of any proceedings transferred to the Tribunal in accordance with these rules.

**[F. No. 1/5/2016– CL-V dated 07th December, 2016]**

**7. Clarification of the due date of transfer of shares to IEPF Authority:**

The MCA has clarified that simplification of transfer process of shares to IEPF Authority and extension of due date for such transfer, are under review. The rules are likely to be revised and shall be notified in due course.

**[F. No. 5/23/2016– IEPF dated 07th December, 2016]**

**8. Companies (Compromises, Arrangements and Amalgamations) Rules, 2016:**

These rules shall be effective from 15.12.2016. Under these rules various forms have been prescribed for submission of notices/statements/ reports/petitions. A gist of the same is as under:

| Particulars | Section | Rule | Form No. |
|---|---|---|---|
| Creditors Responsibility Statement | 230(2)(c)(i) | 4 | CAA. 1 |
| Notice and Advertisement of notice of meeting of creditors or members | 230 (3) | 6 and 7 | CAA. 2 |
| Notice to Central Government, Regulatory Authorities. | 230(5) | 8 | CAA. 3 |
| Report of result of meeting by chair person. | | 13 (2) and 14 | CAA. 4 |
| Petition to sanction compromise or arrangement. | 230 | 15(1) | CAA. 5 |
| Order on petition | 230 (7) | Sub-rule (3) of rule 17 | CAA. 6 |
| Order under section 232 | 232 | 20 | CAA. 7 |
| Statement to be filed with Registrar of Companies | 232 (7) | 21 | CAA. 8 |
| Notice of the scheme inviting objections or suggestions | 233(1)(a) | 25(1) | CAA. 9 |
| Declaration of Solvency | 233(1)(c) | 25(2) | CAA. 10 |
| Notice of approval of the scheme of merger | 233(2) | 25(4) | CAA. 11 |
| Confirmation order of scheme of merger or amalgamation | 233 | 25(5) | CAA. 12 |
| Application by the Central Government to the Tribunal | 233(5) | 25(6) | CAA. 13 |
| Notice to dissenting shareholders | 235(1) | 26 | CAA. 14 |
| Information to be furnished along with circular in relation to any scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company | 238(1)(a) | 28 | CAA. 15 |

**Schedule of Fees**

| Sr. No. | Sections of the Companies Act, 2013 | Rule Number | Nature of application or petition | Fees |
|---|---|---|---|---|
| 1. | Sub-section (1) of section 230 | 3 (1) | Application for compromises arrangement and amalgamation | Rs. 5000 |
| 2. | Sub-section (2) of section 235 | | Application by dissenting shareholders | Rs. 1000 |
| 3. | Sub-section (2) of section 238 | 29 | Appeal against order of Registrar refusing to register any circular | Rs. 2000 |

**[F. No. 2/31/CAA/2013– CL-V dated 14th December, 2016]**

**9. National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.**

Under these rules various forms have been prescribed for submission of Application/notice/affidavit/ order etc. A gist of the same is as under:

| Particulars | Rule | Form No. |
|---|---|---|
| Application under section 66 for confirming the reduction of share capital | 2(1) | RSC-1 |
| Notice to Central Government, Registrar etc in respect of application for reduction of share capital. | 3(1)(i) and (ii) | RSC-2 |
| Notice to Creditors | 3(1)(iii) | RSC-3 |
| Publication of Notice | 3(3) | RSC-4 |
| Affidavit on dispatch and publication of notice | 3(5) | RSC-5 |
| Order confirming the reduction of share capital and approving minute | 6(2) | RSC-6 |
| Certificate of registration of order and minute | 6(3) | RSC-7 |

**Schedule of Fees**

| Sr. No. | Section of the Companies Act, 2013. | Nature of Application/ petition | Fees in Rs. |
|---|---|---|---|
| 1. | Sub-section (1) of section 66 | Application for reduction of share capital | 5000/- |

**[F. No. 1/30/2013/CL.V dated 15th December, 2016]**

**10. Delegations of Powers to Regional Directors:**

The Central Government has delegated the following powers to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong:

| Sr. No. | Section | Description of Powers |
|---|---|---|
| 1 | Section 8 (i)(4)<br>(for alteration of memorandum in case of conversion into another kind of company) | Power to give approval for altering the provisions of memorandum and articles of Company registered under Section 8 of the Companies Act, 2013 |
| 2 | Section 8 (6) | Power to revoke the license granted to a Company registered under Section 8 of the Companies Act, 2013 |
| 3 | Section 13 (4) and (5) | Power to give approval for alteration of Memorandum for place of registered office from one state of another state |
| 4 | Section 16 | Power to Rectify the name of company |
| 5 | Section 87 | Power for Condonation of Delay of Creation, Modification and Satisfaction of Charge. |
| 6 | Section 111 (3) | Power to give order, declares that the right conferred by this section is being abused to secure needless publicity for defamatory matter. |
| 7 | Section 140(1) | Power to removal of Auditor by Passing of Special Resolution |
| 8 | Section 230 (5) | To receive the notice of the meeting called by the tribunal for Compromise and Arrangement |
| 9 | Section 233 (2), (3), (4), (5) and (6) | Merger or amalgamation of certain companies |
| 10 | First and second proviso of section 272 (3) | Power to give sanction for Petition for winding up by the Registrar |
| 11 | Section 348 (1) | Information as to pending liquidations |
| 12 | Sections 361 | Power to order for winding up of company by Summary procedure for liquidation |
| 13 | Section 362 | Power to make orders on the Sale of assets and recovery of debts due to company |
| 14 | Section 364 | Power to dismiss the Appeal made by Creditor or modify the decision of Official Liquidator |
| 15 | Section 365 | Power to Order of dissolution of company |
| 16 | Clause (i) of the proviso to section 399 (1) | Power to give permission for inspection of documents with a prospectus. |
| 17 | Section 442 | Power to maintain Mediation and Conciliation Panel |

**[F. No. 2/31/CAA/2013-CL-V dated 19th December, 2016]**

## 11. NCLT (Amendment) Rules, 2016:

Under NCLT (Amendment) Rules, 2016, following changes have been made:

| Clause | National Company Law Tribunal Rules, 2016 (Principal Rules) | NCLT (Amendment) Rules, 2016 | Change Effected |
|---|---|---|---|
| In Part-I, for the heading | "Definitions, forms and etc." | "Definitions and forms etc." | Substituted |
| Rule 2 (5) | Words "Interlocutory Application" | Words "Interlocutory Application" are omitted. | Omitted |
| Rule 2 (9)(d) | "or a chartered accountant or a cost accountant or a company secretary" | "or a chartered accountant in practice or a cost accountant in practice or a company secretary in practice" | Substituted |
| Rule 23A | — | **"23A. Presentation of joint Petition:**<br>1. The Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have common interest.<br>2. Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act" | Inserted |
| Rule 25 | Words "in the prescribed" | Words "in the Form No. NCLT 3C" | Substituted |
| Rule 27(1) | Words "or by any other advocate or authorized representative whether engaged in the case or not or if the advocate or authorized representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order" | Words "or if the authorized representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order" | Substituted |
| Rule 38(1) | — | After the words "by post", the words "or by courier" shall be inserted. | Inserted |
| Rule 38(2) | — | After the words "acknowledgement due", the words "or by courier" shall be inserted. | Inserted |
| Explanation:- For the purpose of Rule 38(1) and (2), the term "courier" means a person or agency which delivers the document and provides proof of its delivery. | | | |
| Rule 38A | — | **"38A. Multiple remedies:**<br>A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another". | Inserted |
| Rule 68A | — | **"68A. Application to cancel variation of rights under sub-section (2) of section 48:**<br>Where an application to cancel a variation of the rights attached to the shares of any class is made | Inserted |

| | | | |
|---|---|---|---|
| | | on behalf of the shareholders of that class entitled to apply cancellation under sub-section (2) of section 48 by the letter of authority signed by the shareholders so entitled, authorizing the applicant or applicants to present the application on their behalf. **For full text, please refer the complete circular.** | |
| Rule 76A | — | **"76A. Application under section 130:** The Central Government, the Income tax authorities, the SEBI, any other statutory regulatory body or authority or any person may file an application for reopening of books of accounts and for re-casting of financial statement of a company under section 130 of the Act and such application shall be accompanied by such documents as mentioned in Annexure-B". | Inserted |
| Rule 83A | — | **"83A. Application under sub-section (1) of section 244:**<br>An application may be filed before the Tribunal for waiver of requirement of clause (a) or (b) of section 244 of the Act which shall be accompanied by such documents as mentioned in Annexure-B". | Inserted |
| Rule 112(3) | — | After the words "shall be paid by means of", the words "an Indian Postal Order or by" shall be inserted. | Inserted |
| Schedule of Fees in serial no. 10 under the heading "Nature of application / petition" | — | For the word "deposition" the word "depositor" shall be substituted. | Substituted |

In the Principal Rules, in Annexure "A" the Form No. NCLT-3 (Notice of Motion) and Form No. NCLT-3C (Memorandum of Caveat) has been substituted by the new Form NCLT-3 and NCLT-3C.

Changes in the Principal Rules, in the Annexure "B"

| **Clause** | **National Company Law Tribunal Rules, 2016 (Principal Rules)** | **NCLT (Amendment) Rules, 2016** | **Change Effected** |
|---|---|---|---|
| Serial no. 7 under the heading "Nature of petition" | — | For the word "deposition" the word "depositor" shall be substituted. | Substituted |
| Serial no. 7 under the heading "Enclosures to the Petition" | — | In para 2, the word "small" shall be omitted. | Omitted |
| Serial No. 13 | — | Following serial number and entries relating thereto shall be inserted | Inserted |

| Sr. No. | Section of the Act | Nature of Petition | Enclosures to the Petition |
|---|---|---|---|
| 13. | — | Wherever no document is prescribed to be attached with the application or petition, documents as mentioned in next column may be attached, as applicable. | 1. Document and /or other evidence in support of the statement made in the application or appeal or petition, as are reasonably open to the petitioner(s).<br>2. Documentary evidence in proof of the eligibility and status of the petitioner(s)with the voting power held by each of them, whatever applicable;<br>3. Where the petition os presented on behalf of members, the letter of consent given by them, if applicable;<br>4. Statement of particulars showing names, address, number of shares held, and whether all calls and other monies due on shares have been paid in respect of members who have given consent to the petition being presented on their behalf;<br>5. Where the petition is presented by a member or members authorized by the Central Government, the order of the Central Government authorizing the officer(s) or member or members to present the petition shall be similarly annexed to the petition;<br>6. Affidavit verifying the petition;<br>7. Evidence regarding payment of fee;<br>8. Memorandum of appearance with copy of Board resolution or the vakalatnama, as the case may be;<br>9. Three copies of the petition; and<br>10. Any other documents in support of the case. |

**[F. No. 1/30/2013/CL.V dated 20th December, 2016]**

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# Allied Laws Corner

**Adv. Ankit Talsania**
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## The Benami Transactions (Prohibition) Amendment Act, 2016:

The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in Lok Sabha on May 13, 2015 by the Minister of Finance Mr. Arun Jaitley. Originally the Benami Transactions (Prohibition) Act was enacted in 1988 and had only nine Sections and any person who wishes to acquire an asset or a property must do it in his own name, with his money. If he acquires it in the name of somebody else, then, it is deemed to be a benami property. The Statement of Objects and Reasons of the Bill outlines that it has been brought to prohibit holding property in benami and to restrict the right to recover or transfer such property, and to provide a mechanism and procedure for confiscation. It mentions that during the process of formulating the rules for implementing certain provisions of the Benami Transactions (Prohibition) Act of 1988, it was found that the provisions were inadequate to deal with benami deals. The Act received the assent of the President on 10th August, 2016 and came to be in force with effect from 1st November, 2016.

**Salient features of the Benami Transactions (Prohibition) Amendment Act, 2016 are as under:**

**1. What is Benami Transaction?**

S.2(9) of the Act provides the meaning of benami transactions as under,

(a) a transaction or an arrangement—

(i) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(ii) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration;

(b) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(c) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(d) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.

**2. Which property is excluded from Benami Transaction?**

When the property is held by,

**(a) a Karta**, or a member of a Hindu undivided family, as the case may be, and the property is held **for his benefit** or benefit of other members in the family and the **consideration** for such property has been provided or paid **out of the known sources** of the Hindu undivided family;

(b) a person standing in a **fiduciary capacity** for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(c) any person being an individual in the name of **his spouse** or in the name of **any child** of such individual and the **consideration** for such property has been

provided or paid out of the **known sources of the individual**;

(d) any person in the name of **his brother** or **sister** or **lineal ascendant** or **descendant**, where the names of brother or sister or lineal ascendant or descendant and the individual appear as **joint-owners** in any document, and the **consideration** for such property has been provided or paid out of the **known sources of the individual**.

**3. Who is Benamidar?**

"Benamidar" means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.

**4. Who is Beneficial Owner?**

"Beneficial Owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar.

**5. What kind of property is included in Benami Property?**

(a) Assets of any kind, whether **movable** or **immovable**,

**(b) tangible** or **intangible**, **corporeal** or **incorporeal** and includes any right or interest; or

**(c) legal documents** or instruments evidencing title to or **interest in the property**; and

(d) where the property is capable of **conversion** into some other form, then the property in the converted form and also includes the proceeds from the property.

**6. Who shall be punishable under the Benami Property Act?**

Sub-section (3) to S.3 of the Act provides that whoever enters into any benami transaction on or after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016 (i.e 1st November, 2016) shall be punishable in accordance with the provisions contained in Chapter VII of the Act.

**7. Whether property subject matter of benami transaction can be confiscated?**

Yes. The property which is subject matter of benami transaction shall be confiscated by the Central Government.

**8. Who shall be authorities in the Benami Property Act?**

(a) The **Initiating Officer**, who shall be **Asst. / Dept. Commissioner of Income Tax**;

(b) The **Approving Authority**, who shall be **Addl. / Joint Commissioner of Income Tax**;

(c) The **Administrator**, who shall be the **Income Tax Officer**;

(d) The **Adjudicating Authority**, who shall be the Adjudicating Authority appointed u/s 7 of the Act;

(e) Officers of other agencies shall assist the authorities in enforcement of this Act.

**9. What shall be the powers of the authorities in the Act?**

(a) The Authorities shall have the same power as vested in a civil court, under a Code of Civil Procedure, namely,

(i) discovery and inspection;

(ii) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;

(iii) compelling the production of books of account and other documents;

(iv) issuing commissions;

(v) receiving evidence on affidavits; and

(vi) any other matter which may be prescribed

(b) They shall have power to require any officer of the Central Government or State Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant for the purposes of this Act.

**10. Who shall be the Adjudicating Authority and how it shall be constituted?**

(a) The **Central Government** shall **appoint** one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by this Act;

(b) An Adjudicating Authority shall consist of a **Chairperson** and **at least two other members**;

(c) A person shall not be qualified for appointment unless, he,

(i) has been a member of **Indian Revenue Service** and has held the post of **Commissioner of Income Tax** or equivalent post in that service; or

(ii) has been a member of the **Indian Legal Service** and has held the post of **Joint Secretary** or equivalent post in that service.

(d) The jurisdiction of the Adjudicating Authority may be exercised by **Benches** thereof;

(e) A benches may be **constituted** by **the Chairperson** of the Adjudicating Authority with **two members**;

(f) The **Benches** shall ordinarily **sit** in the **National Capital Territory of Delhi** and at **such other places** as the **Central Government may**, in consultation with the Chairperson, by **notification specify**;

(g) The Adjudicating Authority **shall not be bound** by the procedure laid down by **the Code of Civil Procedure**, 1908 **but shall be guided** by the **principles of natural justice** and subject to other provisions of this Act the Authority **shall have powers to regulate its own procedure**;

(h) The Chairperson and Members shall **hold office** for a **term not exceeding five years** from the date on which they enter upon their office, **or** until they attain **the age of 62 years**, **whichever is earlier** and shall **not be eligible for reappointment**.

**11. What are the provisions for provisional attachment of property involved in Benami Transaction?**

(a) Where the **Initiating Officer (i.e Asst. / Dy. CIT)** , on the basis of **material in his possession**, has **reason to believe** that any person is a benamidar in respect of a property, he may, after **recording reasons in writing**, **issue a notice** to the person to **show cause** within such time as may be specified in the notice **why the property should not be treated as benami property;**

**(b) Show Cause Notice** may also be issued to the **beneficial owner**, if his identity is known;

(c) Where the Initiating Officer is of the **opinion** that the person in possession of the property held benami **may alienate the property** during the period specified in the notice, he may, with the **previous approval** of **the Approving Authority**, by order in writing, **attach provisionally the property** in the manner as may be prescribed, for a **period not exceeding ninety days** from the date of issue of notice;

(d) The Initiating Officer, after making such inquiries and calling for reports or evidences, may pass the order for **continuation of provisional attachment**

beyond a period ninety days till the adjudication by the adjudicating authority.

**12. Who shall pass the adjudication order? What is the limitation of time?**

On reference received from the Initiating Officer, the Adjudicating Authority, after providing an opportunity of being heard, shall pass the adjudication order with respect to the property subject matter of benami transaction. The Adjudication order shall be passed within 1 years from the end of the month in which reference was received by him from the Initiating Officer.

**13. What are the provisions for confiscation of the property?**

(a) Where an adjudication order is passed holding such property to be a benami property, the Adjudicating Authority, after providing an opportunity of being heard, shall make an order confiscating the property held to be a benami property;

(b) No confiscation order shall be passed, where a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction;

(c) Once the confiscation order is passed, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation;

(d) Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void;

(e) Where an order of confiscation in respect of a property under sub-section (1) of section 27, has been made, the Administrator shall proceed to take the possession of the property.

**14. Who can appear before the Authorities in the Act?**

A person authorized in writing, being

**(i) a person related to the benamidar** or such other person in any manner, or a person regularly employed by the benamidar or such other person as the case may be; or

**(ii) any officer of a scheduled bank** with which the benamidar or such other person maintains an account or has other regular dealings; or

**(iii) any legal practitioner** who is entitled to practice in any civil court in India; or

(iv) any **person** who has **passed any accountancy examination recognised** in this behalf by the Board; or

(v) any person who has acquired **such educational qualifications** as the **Board may prescribe** for this purpose

may appear before the Authorities in the Act.

**15. What are the penalty provisions for Benami Transactions?**

(a) **Guilty of offence -** Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction;

(b) **Imprisonment and fine -** Whoever is found **guilty** of the offence of benami transaction referred to in sub-section (1) shall be **punishable** with **rigorous imprisonment** for a term which **shall not be less than one year**, but which **may extend to seven years** and shall **also be liable to fine** which may extend to 25% of the **fair market value of the property**.

(c) **Fair Market Value - FMV** for the purpose of this Act means **a price** that the **property would ordinarily fetch** on sale in open market **on the date of transaction**. In cases where the price is not ascertainable, another procedure will be prescribed;

(d) **Imprisonment and fine for providing false information -** Imprisonment from six months to five years and fine up to 10 per cent of the fair market value of the property.

**16. What are the appeal provisions?**

(a) Any person including the Initiating Officer **aggrieved** by an order of the Adjudicating Authority **may prefer an appeal** before the Tribunal **within 45 days from the date of order**;

(b) The Tribunal shall grant an appropriate opportunity of being heard to the Appellant;

(c) Tribunal, as far as possible, **may hear and finally decide** the appeal **within a period of one year** from the last day of the month in which appeal is filed;

(d) Any person including the Initiating Officer **aggrieved** by an order of the Tribunal **may prefer an appeal** before the High Court **within a period of 60 days from the communication of the order or decision of the Tribunal;**

(e) Where the HC is satisfied that a **substantial question of law** is involved in a case, it shall **formulate that question**;

(f) The appeal shall be heard **only on the question of law so formulated.**

**17. Under what circumstances transfer of property can be treated as null and void?**

S.57 provides that notwithstanding anything contained in the Transfer of the Property Act, 1882 or any other law for the time being in force, where, **after the issue of a notice** under section 24, **any property referred** to in the said notice **is transferred** by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, **be ignored** and if the **property is subsequently confiscated** by the Central Government under section 27, then, **the transfer of the property** shall be deemed to be **null and void.**

**18. Who shall be treated as guilty in the case of the offence committed by a Company?**

Where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and **it is proved** that the contravention has taken place **with the consent or connivance of**, or is **attributable to any neglect** on the part of any director, manager, secretary or other officer of the company, **the director, manager, secretary or other officer** shall also be **deemed to be guilty** of the contravention and **shall be liable** to be proceeded against and punished **accordingly**.

In this Act, **'Company'** means a **body corporate**, and **includes**— (i) **a firm**; and (ii) **an association of persons** or a **body of individuals** whether **incorporated or not.**

**"Director",** in relation to—

(i) a firm, means a partner in the firm;

(ii) any association of persons or a body of individuals, means any member controlling the affairs thereof.

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# From Published Accounts

**CA. Pamil H. Shah**
pamil_shah@yahoo.com

## AS - 13 Investments - Significant Accounting Policies - Annual Report 2015-16

**Abhishek Corporation Limited**

Investments are started at cost.

**B. L. Kashyap and Sons Limited**

Investments are classified as current and long-term Investments; current investments are stated at lower of cost and fair value. Long-term investments are stated at cost. A provision for diminution is made to recognise a decline, other than temporary, in the value of long-term investments.

**Manaksia Limited**

Long-term investments are stated at cost less provisions recorded to recognise any decline, other than temporary, in the carrying value of each investment. Investments in foreign companies are considered at the exchange rates prevailing on the date of their acquisition. Current investment are carried at lower of cost or fair value of each investment. Short them investments in liquid fund scheme of mutual funds have been stated at their NAV on year end date or purchase price whichever is less.

**VRL Logistics Limited**

Investments are classified into current investments and non-current investments. Current investments, i.e. investments that are readily realisable and intended to be held for not more than a year are valued at lower of cost and net realisable value. Any reduction in the carrying amount or any reversal of such reduction are charged or carried to the statement of profit and loss.

Non-current investments are stated at cost. Provision for diminution in the value of these investments is made only if such decline is other than temporary, in the opinion of the management.

**H.P. Cotton Textile Mills Limited**

Current investment are carried at lower of cost and fair value; if any, and Non Current investments are stated at cost.; if any, provision for dimunation in value on Non current investments is made only if such a decline is other than temporary.

**IFB Industries Limited**

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.

**Claris**

a. Long-term investments are stated at cost. Any diminution in the value, other than temporary, is provided for current investments are carried individually, at lower of cost and fair value.

b. Investments in share of foreign subsidiary companies are expressed in Indian currency at the rate of exchange prevailing at the time when the original investments were made.

**Triveni Engineering & Industries Ltd.**

Investments, which are readily realizable and intended to be held for not more than one year from the date on which such Investments are made, are classified as current Investments. All other Investments are classified as non-current / long-term investments. Current investments are carried at lower of cost and fair value determined on an individual investment basis. Long-term investments

**contd. to page 611**

# From the Government

**CA. Kunal A. Shah**
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## Income Tax

**1) Circular regarding Clarifications on the Direct Tax Dispute Resolution Scheme, 2016**

The Direct Tax Dispute Resolution Scheme, 2016 (hereinafter referred to as 'the Scheme') incorporated as Chapter X of the Finance Act, 2016 provides an opportunity to tax payers who are under litigation to come forward and settle the dispute in accordance with the provisions of the Scheme.

In furtherance of the provisions and earlier circular No.33 of 2016 dated 12.09.2016, the Central Government vide this circular has considered the further queries raised and decided to clarify the same in the form of questions and answers.

***(For full text refer Circular No. 42, dated 23/12/2016)***

**2) Press Release clarifying the reporting Cash Transactions under Rule 114E of the Income-tax Rules,1962.**

**Serial no. 11 of the rule 114E reads as under:-**

| Sl. No. | Nature and value of transaction | Class of person (reporting person) |
|---|---|---|
| 11. | Receipt of cash payment exceeding two lakh rupees for sale, by any person, of goods or services of any nature (other than those specified at Sl. No. 1 to 10 of this rule, if any. | Any person who is liable for audit under section 44AB of the Act. |

With regard to the above, CBDT hereby clarifies that the said transactions did not require aggregation and the reporting requirement under statement of financial transactions (SFT) for this purpose is on receipt of cash exceeding rupees two lakh for sale of goods or services per transaction.

***(Press Release, dated 22/12/2016)***

**3) The Central Government vide this notification notifies the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016.** The scheme shall come into force from 17th December, 2016 and shall be valid till 31st Marche, 2017. The Scheme shall be applicable to every declarant under the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

***(For full text refer Notification, dated 16/12/2016)***

**4) Notification regarding the 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana Rules,2016**

The CBDT hereby makes the rules for declaration of income in the form of cash or deposit in an account and prescribes **form 1** (form for declaration under section 199C in respect of the taxation and investment regime for pradhan mantra garib kalian yojana rules, 2016) and **form 2** (Certificate of declaration under section 199C in respect of the taxation and investment regime for pradhan mantra garib kalian yojana rules,2016)

***(For full text and form 1 and 2 refer Notification no. 116, dated 16/12/2016)***

**5) Press Release relating to Filing of Revised IT returns by the tax payers Post Demonetisation of Currency**

Under the existing provisions of section 139(5) of the Income-tax Act, 1961 ('Act'), Revised Return can only be filed if any person, who has filed a return under section 139(1) of the Act or in response to notice u/s 142(1), discovers any omission or any wrong statement therein. Post demonetization of the currency

on 8th November, 2016, some taxpayers may misuse this provision to revise the return-of income filed by them for the earlier assessment year, for manipulating the figures of income, cash-in-hand, profits etc.

It is hereby clarified that the provision to file a revised return of income u/s 139(5) of the Act has been stipulated for revising any omission or wrong statement made in the original return of income and not for resorting to make changes in the income initially declared so as to drastically alter the form, substance and quantum of the earlier disclosed income.

It is brought to the notice of tax payers that any instance coming to the notice of Income-tax Department which reflects manipulation in the amount of income, cash-in-hand, profits etc. and fudging of accounts may necessitate scrutiny of such cases so as to ascertain the correct income of the year and may also attract penalty/prosecution in appropriate cases as per provision of law.

***(Press Release, dated 14/12/2016)***

**6) Circular regarding on directions under section 119 of the Income-tax Act, 1961.**

Recent initiatives of the Government to curb the black economy in the country have encouraged people to shift towards digital mode of payment while making financial transactions. By adopting digital mode of payment, no financial transactions would remain undisclosed and consequently an enhanced turnover of business might get reflected in the books of accounts. Under the circumstances, an apprehension has been raised that increased turnover in the current year may lead to reopening of earlier years' cases involving lower turnover u/s 147 of the Income-tax Act, 1961 ('Act') by the Assessing Officer causing undue harassment to tax payers.

It is hereby clarified that reopening of cases u/s 147 of the Act is feasible only when the Assessing Officer "has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and not merely on the basis of any reason to suspect. Mere increase in turnover, because of use of digital means of payment or otherwise, in a particular year cannot be a sole reason to believe that income has escaped assessment in earlier years. Hence, Assessing Officers are advised not to reopen past assessments in cases merely on the ground that the current year's turnover has increased.

***(Circular No. 40/2016, dated 09/12/2016)***

## Service Tax

1) **Notification regarding amendment in Mega Exemption Notification no. 25, dated 20/06/2012:-**

The Central Government hereby makes the following further amendments in the notification No.25/2012-Service Tax, dated the 20thJune, 2012, by inserting a entry 64 after entry 63, which reads as under:-

"64. Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation. — For the purposes of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card."

***(Notification No. 52, dated 08/12/2016)***

2) **Notification regarding amendment in Service Tax Rules, 1994**

The Central Government hereby amends the rules by inserting the following proviso in sub-rule (1) of rule 4C:-

'Provided that a person located in non-taxable territory providing online information and database access or retrieval services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated by means of a digital signature for a period upto 31st January,2017.' (Rule 4C:- Authentication by digital Signature)

***(Notification No. 53, dated 19/12/2016)***

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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 | Venue |
|---|---|---|---|
| 28/01/2017 Saturday | 8.30 a.m. | Cricket Match - C. A. Association v/s Income Tax Bar Association | Ahmedabad University Ground, Ahmedabad |
| 18/02/2017 Saturday | 8.30 a.m. | Cricket Match - C. A. Association v/s Baroda Branch of WIRC of ICAI | Railway Cricket Ground, Sabarmati, Ahmedabad |

**Glimpses of Past Events**

CA Foundation Day Celebrations

4th Brain Trust Meeting

GST Series

Cricket Match

contd. from page 607



are carried at cost. However, provision is made to recognize a decline, other than temporary, in the value of long-term investments, such reduction being determined and made of each investment individually.

**Ankit Metal & Power Limited**

Long Term investment is valued at cost. Provision for diminution in value of these investments is made only if such a decline other than of temporary in nature.

**KLRF Limited**

Investments are meant to be long term investments and are stated as cost. Diminution in the value of investments other than temporary in nature is provided for.

**Triveni Turbine Limited**

Investments, those are readily realisable and intended to be held for not more than one 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 carried at lower of cost and fair value determined on an individual Investment basis. Long term Investments are carried at cost. However, provision for diminution is made to recognise a decline, other than temporary, in the value of long-term Investments, such reduction being determined and made for each Investment individually.

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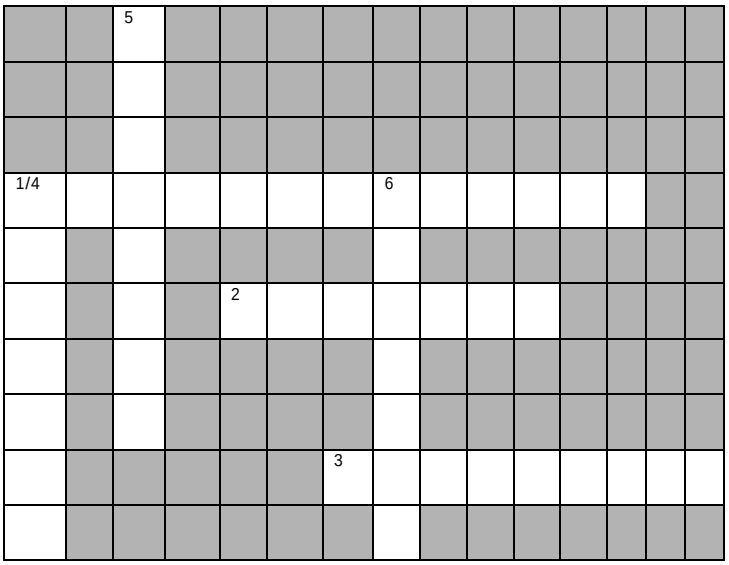
# ACAJ Crossword Contest # 32

**Across**

1. Supreme Court has held that the speech of Finance Minister is relevant in so far it gives the background, but is not _____ of the construction of provisions.
2. Punjab and Haryana High Court in case of Ramesh Steels has held that premium paid on Keyman Insurance Policy taken on the life of _____ is an allowable expense.
3. Money can buy all the materialistic pleasures in the world but not _____.

**Down**

4. On the internet what we leave behind after storage, usage, navigation and communication is called _____ Footprints.
5. On 15-12-2016, CA Association celebrated the Foundation Day and completed _____ years.
6. Gujarat Government dated 28-11-16 has notified that the input tax credit on _____ Gas shall be reduced when sold/ resold in the course of interstate trade and commerce.




**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 22/01/2017.
5. The decision of Journal Committee shall be final and binding.

**Winners of ACAJ Crossword Contest # 31**

1. CA. Mahavir Shah
2. CA. Irfan Hawa

**ACAJ Crossword Contest # 31 - Solution**

**Across**

1. Service
2. Partner
3. Quarter

**Down**

4. Supply
5. Vishala
6. Nectar

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*Pursue your hobbies!*

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