AHMEDABAD CHARTERED ACCOUNTANTS JOURNAL

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E-mail : caaahmedabad@gmail.com **Website** : www.caa-ahm.org - caaahmedabad

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CONTENTS

To Begin with

Mananam - *Keep up the Good Work*....................................*CA. Ajit C. Shah*....................63

Editorial - *GST - Whether all set to go ?*....................................*CA. Ashok Kataria* 64

From the President....................................*CA. Kunal A. Shah*....................65

Articles

Relevance of Digital and Social Media Platforms for Businesses and Professional....................................*Dr. CA. Anjali Choksi & Dr. Bijal Mehta*....................66

Direct Taxes

Glimpses of Supreme Court Rulings....................................*Adv. Samir N. Divatia*....................*70*

From the Courts....................................*CA. C.R. Sharedalal & CA. Jayesh Sharedalal*.................... 71

Tribunal News....................................*CA. Yogesh G. Shah & CA. Aparna Parelkar*....................75

Controversies....................................*CA. Kaushik D. Shah*....................*79*

Judicial Analysis....................................*Adv. Tushar P. Hemani*....................*81*

FEMA & International Taxation

OECD releases implementation guidance on hard-to-value intangible....................................*CA. Dhinal A. Shah & CA. Sagar Shah*....................87

FEMA Updates....................................*CA. Savan Godiawala*....................89

Indirect Taxes

Service Tax

Recent Judgements....................................*CA. Ashwin H. Shah*....................93

Value Added Tax

Judgements and Updates ....*CA. Bihari B. Shah*....................*95*

Corporate Law & Others

Corporate Law Update....................................*CA. Naveen Mandovara*....................99

Allied Laws Corner....................................*Adv. Ankit Talsania*....................103

From Published Accounts ....*CA. Pamil H. Shah*.................... 109

From the Government ....*CA. Kunal A. Shah*....................111

Association News....................................*CA. Riken J. Patel & CA. Maulik S. Desai* 114

ACAJ Crossword Contest....................................116

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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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on behalf of Chartered Accountants Association, Ahmedabad, 1st Floor, C. U. Shah Chambers, Near Gujarat Vidhyapith, Ashram Road, Ahmedabad - 380 014.

Phone : 91 79 27544232

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Mobile : 98252 62512 E-mail : pratikshaprinter@yahoo.co.in

Mananam

CA. Ajit C. Shah
ajitshahca@yahooo.com

Keep up the Good Work

You have to perform your duty, without expecting the result. How often have we heard about this but how much do we follow? We surely have a general understanding as to what a good or a bad karma is and what impact can it have in our life. Our scriptures state that the type of energy we put out in to the universe is bound to come back to us. We understand this but somehow forget while acting in the world. How many times have we experienced that the result of a good deed comes back to us in the most pleasant way and similarly we have also repented for the misdeeds.

Human beings are the only species that have choice of action. How do we exercise this choice creates our destiny. This is "Law of Karma". To engage ourselves in something noble, caring for the world, loving all are examples of good karma. The following are the some of the ways where Karma can change our life.

- Focus On Current Goals: One of the best ways that one can bring good karma in to life is by focusing on the goals that have already been set. Along with the goals we should also not stray from the means to achieve the goal. We must remain steadfast and committed to our goal. There may be failures but take them as stepping stones to success.
- Take Responsibility: Another extremely good way to pursue good karma is taking the responsibility for everything we feel aspired or committed to. Even if the decision taken is against all odds, we should own it up with full conviction.
- Learn To Laugh At Yourself : Humility is one of the greatest factors that strengthens your belief to keep up the good work. One who cannot laugh at himself finds it difficult to be in terms with the world and cannot accept the smallest of criticism. Do not take everything and everyone very seriously but at the same time, admit your mistake sportingly. Humility is the foundation of all virtues.
- Be Patient: One of the best methods to do a good karma is by learning to be tolerant as well as patient with the world. Everything is not going to happen on your terms and exactly the way you want it to be. Be it people, objects or circumstances. People get easily impatient when it comes to their desires, but there's an old saying that goes *"All good things come to those who wait."*
- Practice Being Kind: Practice being kind, not just to others but also to yourself. Self-love is primarily important and necessary when it comes to being kind to others. If you are just putting on a fake smile for people then that isn't really a genuine feeling. There cannot be a mid-way in emotions. The more you figure out how to be kind to yourself, being kind to others happens naturally.
- Practice Being Comfortable With Change: Change is not the best thing and yet at the same time it is. The problem with change is that we have a really hard time coping with differences that we aren't familiar with. This doesn't necessarily make 'change' something bad; it's just that we aren't used to it. Practice being open minded to new things and try to get out of your comfort zone.

Finally it's Krishna' advice to all mankind:

कर्मण्येवाधिकारस्ते मा फलेषु कदा चन ।
मा कर्मफलहेतुर्भूर्मा ते सङ्गो ऽस्त्वकर्मणि ॥

You have a right to perform your prescribed duty, but you are not entitled to the fruits of action. Never consider yourself the cause of the result of your activities, and never be attached to not doing your duty.

ackatariaco@yahoo.co.in

GST - Whether all set to go ?

"Change is hard at first, messy in the middle and gorgeous at the end" - Robin Sharma

The biggest ever tax reform in independent India is almost on the edge of implementation. The appointed date for now is declared to be the 1st day of July, 2017. The new taxation system which is based on the principle of "One Nation - One Tax" theory itself has about thirty five legislations including that of the Centre and the States. We can only term it as splendour of the Federal Structure that more than thirty legislations are enacted to impose one tax in the country.

As the declared appointed date fast approaches, we need to take the stock of the situation and independently assess whether we, including the government, professionals and business houses are adequately equipped, educated and informed about the new levy. Under the new regime almost every aspect starting from registrations, returns, processing and compliances will be system driven with minimal of human intervention. We have 15-20 days on hand before the actual execution starts but we do not have any idea as to when the necessary softwares will be available so that the office of professionals and assessees are updated to carry out the compliances. Are we really ready to go?

There are certain industries which were not subject to VAT but now will be covered under the GST. Textile industry is one such example. Almost every trader dealing in textiles and associated job workers will have to register themselves under the GST. All other assessees, registered under the existing laws would have migrated to GST platform and more or less would be ready to comply with the new procedure. For all assessees belonging to the sectors where the tax is introduced for the first time still do not have any option to register to come into the new system from the 1st day of July. Are we really ready to go?

Seven states are yet to enact the SGST law including big players like Punjab, Kerala, West Bengal, Karnataka and Tamil Nadu. When will these states come out with their required legislation? When will the rules be drafted? When will the necessary public awareness be created? How the citizens will comply with the law? Are we really ready to go?

All professionals practising in GST are required to register themselves on the GST platfrom. This facility is expected to be enabled around 15th day of June. Whether all the professionals can complete this task of registering themselves within 15 days? Are we really ready to go?

Any change is good, be it for the nation, community or an individual. GST is one of the most important tax reforms. It is equally important that the every citizen of the country becomes tax compliant whether it is direct taxes or indirect taxes. When the government is expecting to take all on board with GST from 1st July, it should also ensure that the procedures and systems are in place before jumping the guns. The necessary notifications, rules and circulars should be released much in advance so that necessary information gets timely floated. The GST is going to be reality and is welcomed but the government needs to ensure that the transition from old regime to new happens with minimum of fuss and without losing the confidence of public or trade and industry.

"The Secret of Change is to focus all your energy, not on fighting the old but on building the new."

Socrates

Pranams,
CA. Ashok Kataria

From the President

CA. Kunal A. Shah
cakashah@gmail.com

Dear Members,

The much awaited GST is progressing at a brisk pace and is very much on track to be rolled out from July 1. Designed to replace a slew of central and state taxes, GST is all set to transform Asia's third largest economy into single market for the first time. Ten years in the making, GST is set to harmonize the indirect tax system by creating one of the largest trade zones in the world. Prime Minister Shri Narendra Modi is confident that GST implementation will result in the economy notching at least two percent growth in GDP.

FIPB abolition to boost FDI flow:- Recently the government abolished the Foreign Investment Promotion Board in order to boost FDI inflows into the country.

"The momentous initiative (scrapping of FIPB), which is a follow-up of the measure announced in the Union Budget, would streamline the process of FDI approvals, and thereby boost FDI flows into the country, adding to growth and employment." The said move would take Foreign Direct Investment (FDI) inflows to greater heights, and reinforce the attractiveness of India as a viable business destination.

Foreign funds' inflows lift Indian equities to new highs. The key Indian indices surged to new highs as substantial inflow of foreign funds, domestic funds coupled with an appreciating rupee , kept investors' sentiments buoyed.

IPL:-Mumbai Indians have been on a roll this season; winning games from the word go and are now at the top of the points. This is in stark contrast to Mumbai's journey in the last few seasons: Every year, the beginning was difficult and intense, but they managed to scrape through to reach the playoffs. This year too it was a nail-biting contest leading to the glorious victory. Well done Mumbai Indians!

Events at the Association:

We have received an overwhelming response to our GST Study Series: almost all enrolled members have attended the meetings, and benefitted from discussions with the speakers.

We had said at the outset that we will be adding more programmes and we have begun to fulfill the promise: The 1st Study Circle Meeting on "Form 61A Reporting" was held and received a very gone response. I am happy to note that though the programme was held at a short notice, the CAA office was jam-packed where it was held. For 'SFT Preliminary Response', the option 'No' has been replaced by NIL Transactions'. Now generation of ITDREIN and filing of form 61A required only if there is a reportable transaction with option 'Yes'.

The 2nd Study Circle Meeting was held on the topic of "Amendments in Income Tax applicable for AY 2017-18 and Changes in new ITR" also had an excellent response. The meeting was held at the H.T. Parekh Hall, AMA, and it had very good attendance.

This year we have launched an "Accountant-Plus" Series focusing on the GST regime. It aims to train the accountants on all aspects of the regime. A four-day lecture series was held covering almost all the topics under the GST regime. The response was so good that we had to stop accepting registrations and felt compelled to launch another series on GST, especially for the Accountants. For this I thank all the members for spreading the message about the series among their clients which resulted in increasing the number of registrations.

In my address as a President I told that we will be planning seminars with Bombay Chartered Accountant Society under the banner of Professional Development Committee. And now its time to put the words into action and therefore the Professional Development Committee of CAA is in process of finalizing the full day seminar on GST which will be nurtured by the eminent speakers from BCAS.I request you all to keep a check on the announcement and enroll at the earliest to avoid disappointment.

On successful completion of one month as a President of CAA, I would like to end my communication by sharing a few of my favourite quotes that could be beacons of inspiration in riding the 'downs' in our lives.

"I suppose leadership at one time meant muscles; but today it means getting along with people." ***Mahatma Gandhi***

"No man has a good enough memory to be successful liar" ***Abraham Lincoln***

" Love all, trust a few, do wrong to none." ***William Shakespeare***

With regards,

CA. Kunal A. Shah
President

Relevance of Digital and Social Media Platforms for Businesses and Professional

Dr. Bijal Mehta
bijal.mehta@ahduni.edu.in

Dr. CA. Anjali Choksi
anjali.choksi@anaca.in

Introduction

The digital platform in general and the Social Media network in particular, with their dynamic nature and fastest growing reach are becoming the most used tools for people to stay connected for personal relationship management as well as for business development and marketing. The top four states for SSI units owned by women entrepreneurs are Kerala, Tamil Nadu, Karnataka and Maharashtra. Gujarat features on the ninth position with a 5.5 % contribution (A study by www.sidbi.in 2007). Gujarat has come a long way since then.

The 21st century has seen a shift in the way businesses market their products and services.The internet and Social Media have changed the business environment and the overall way by which businesses can gain access to resources that seemed impossible earlier. Moreover, the use of the Internet makes it possible to have partnerships and contacts with professionals and business partners across distances and time zones. This tool has, therefore, become important for business owners and marketers as a marketing and communication tool also.

The significant beginning of social media websites happened around the year 2000 and it changed the way entrepreneurs could interact and network with their buyers. By engaging in social media activities for their firm, the businesses not only enhance the brand experience for buyers but also conduct a brand building exercise.

The government, private sector, the Indian as well as the global fraternity have begun to give significant importance to (by now) a well-known fact that the digital and social media platforms can have a high influence on entrepreneurial performance.

India has over 1.2 billion people and from those 379 million are between the ages of 18 to 35 years. (Census India 2011). These young persons are aspiring and they look for jobs and/or activities that help them progress. Entrepreneurship development initiatives by the government are meant to help such aspiring persons and to create job opportunities for both men and women. Innovations are the gateway towards new entrepreneurial enterprises and these enterprises in turn help create jobs and provide livelihood. Women and men today are equally competent, deserving and desiring in their education, abilities and zeal to succeed. Innovations are the drive for the future and in the year 2010, the government of India has announced this decade as the "Decade of Innovation" (National Innovation Council 2010).

Entrepreneurship allows young businesses to develop products, services and offerings that can cater to newer markets. Added to that the digital possibilities, it increases their competitiveness, thus leading them towards excellent performance. The social media is used by start-ups, SMEs and business professionals for product promotions, idea generation, distribution, payment and enhanced pricing possibilities. There is a rising power balance that has enabled individuals to produce market and distribute products through online technology.

In the last one decade social media tools such as Twitter, LinkedIn, YouTube, Instagram and the hugely popular Facebook have prevailed as important interactive tools for businesses. Today both consumers and marketers are active content creators rather than just content receivers and viewers. Consumers are not only able to see the information, evaluate and make decisions but they are also able to communicate their opinions to the firm and to other potential buyers or consumers. Social Media permits what is known as the "long tail concept" that allows content to be shared on more than one platform and can hence reach a wider group of audience. Use of social media tools has

increased the opportunities for businesses to communicate with a larger group of persons much faster and has become an important channel for information distribution. Social Media tool fosters an environment where consumers form strong relationships in which the parties influence each other's views, attitudes, knowledge, information gathering, purchasing behaviour, and post purchase assessments.

A new business function known as e-business or e-commerce has taken birth due to the advancement of technology and the fast paced adoption of technology by the world and the Indian market. E-business is the use of the Internet and business related technological tools in the firm's operations and e-commerce is the use of the Internet and related tools to buy, sell, distribute, promote and market a firm's products, services or offerings.

Small businesses and entrepreneurs face continuous challenges and are part of a dynamic business environment. Successful enterprises need to be prepared, updated and equipped to face the emerging scenarios and competition. With fast paced advancement in technology and increased use of digital platforms, businesses are finding many avenues to grow and compete. Under such scenarios, SMEs must be able to incorporate the use of digital and social media platforms in their communication and marketing.

Our study aimed to understand how aware are entrepreneurs (either in business or in profession) about various social media tools and their use for business progress. Findings from the study can be used by entrepreneurs to know how **creatively** other people are using SM for business, the various **channels** available, type and appropriateness of **content** to put on different platforms and whether the use of SM is valuable for their business based on kind of **clients** type and **context f**or targeted **customers**.

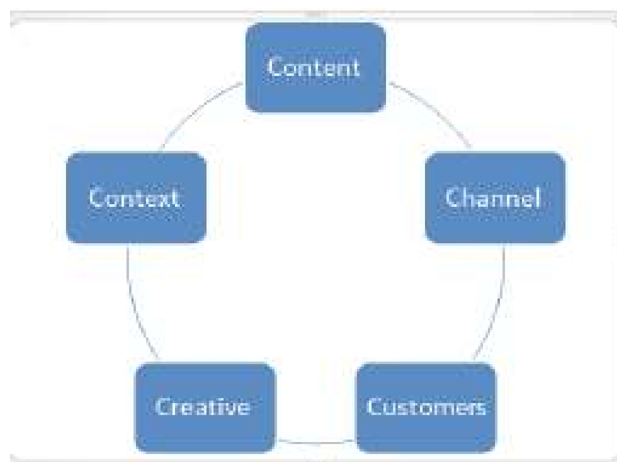
Findings & Analysis

Social Media is considered as an important tool for doing business by 93% of the participants. Visibility is a critical component for many of these businesses (93%). Knowledge sharing is also increased and many of them are able to reach a higher number of new clients for their business through different social media platforms. It is also considered a fast medium of communication.

On being asked whether it was important to use social media for business responses ranged from "It is necessary to use Social Media if you have to establish thought leadership in your business and be known amongst your business community" as said by one of the participants with a financial services business. "I am able to reduce my marketing and advertisement expenses with social media and the Internet. Now I send emails and What Sapp messages for my upcoming workshops instead of printing pamphlets" – a baking enthusiast and entrepreneur. Social Media is considered important for increasing exposure and gaining important market insights by participating business participants from education. As said by a fashion designer & in jewellery business "because my customers want to see the designs and products before they decide, they now look at my Instagram page and then contact. While this platform has increased competition also, it has given me loyal fans for my work."

5 C's for effective Online Engagement:

The overall findings are clubbed in this diagram which depicts the 5 Cs of Social Media.



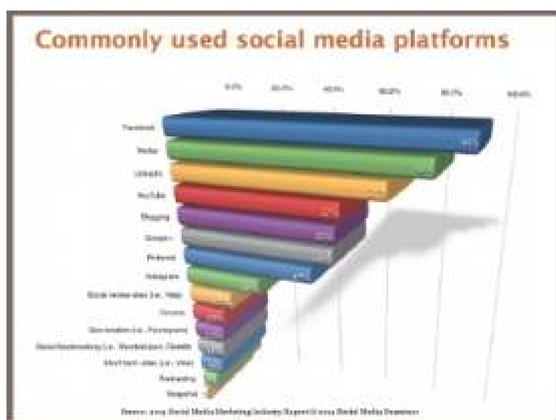
1. Content

Content is the most important factor in the usage of SM platforms. The authenticity and relevance of the content count most. Professionally communicated posts and relevant content are required as an interface between prospective customers and businesses.

Participants opined that for different SM platforms, different content should be used since purpose and audience would be different. They share information relating to the business and industry they are in through the social media platforms. Mostly they were looking for top companies in their field and other professional groups and while 4 to 5 of them said they use separate platforms for personal and professional communication, most of them found there to be an unavoidable information sharing overlap.

2. Channel

Facebook is considered to be mother of all SM platforms. LinkedIn has created a niche market by catering explicitly to a mere professional environment.This platform model facilitates an exchange between business partners, employees as well as applicants and companies to occur. They aim to offer all of the advantages that sites like Facebook have in terms of communication but in a more professional setting.



More than 50% of the respondents agree that Facebook is the commonly used and most popular social media platform followed by LinkedIn at Rank 2. Platforms such as Instagram are used by business women where visibility of the product is very important for buyers to make a decision such as cooking and fashion designing. When asked whether they knew about the online support / Help Desks available at various SM platforms under study, participants were not aware of same. Moreover, between the use of Freemium models and Paid models, majority of them still depended on the former. These entrepreneurs, however, made significant use of email.

3. Customers

The essence of SM is in the widespread network creation possibility that it provides. However, it is certainly not a sole means to deliver a superior and wholesome experience to customers. A satisfied customer can become a brand ambassador through spread of Word of Mouth online or offline.

Participants agreed that marketing their products through SM is one of the better ways to showcase products and increase the client base. They also agree that FB offers businesses exceptional reach. For many of them the real time interaction possibilities of online platforms were very attractive but at the same time a big challenge. As said by one participant (translated here in English) “My clients like or dislike my products, and this has an effect on my other clients also. It is so fast, hence, I have to also be faster with the times”.

4. Creative

Combined with its low cost and its broad reach to a wide range of potential customers, viral marketing is becoming increasingly important for many companies. However, when asked whether you post videos online, less than 15% responded in the affirmative. These participants decided to go viral with the video content as it would add more life to their product presentation and some of the loyal customers would “share” the same on their own pages, thus further increasing the exposure of the entrepreneur’s product / service offerings.

5. Context

All in all, the general feeling was that context matters very much. Worthwhile results should be expected only if a business is able to keep the business context and nature of communication in tandem across all platforms. However, majority of the women entrepreneurs who participated, were still struggling with this aspect as their client base was either vernacular in nature, did not have the requisite awareness and comfort with the use of the Internet.

Summary of Major Findings

- Facebook and LinkedIn are the two most important social networks for entrepreneurs. Business people are using FB more (50%) followed by Instagram and YouTube and Professionals are using LinkedIn for networking and industry updates. Other platforms used are Amazon, Company websites & Twitter.
- While a75% of them has linked the different platforms for communication, they still wish to understand how to do it in a context relevant manner.
- Professionals are not sure about the effectiveness of Facebook marketing but business people have recognised its benefit in terms of increase in clients.
- Commonly used types of contents are visuals and blogging. Videos and podcasting are rarely used. Most of them are not aware of the importance of videos.
- There is no fixed time for posting the posts on social Media. Participants post as per their convenient timing.
- A significant 75% of respondents plan on increasing their use of Twitter, Instagram and YouTube.
- Majority of the participants are not aware of the support systems (Help desk) available on various SM platforms.

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Glimpses of Supreme Court Rulings

Advocate Samir N. Divatia
sndivatia@yahoo.com.

3 Article 142 of the Constitution of India – Let justice be done though the heavens fall.

Article 142(1) of the Constitution of India had no counterpart inthe Government of India Act, 1935 and to the best of our knowledge, does not have any counterpart in any other Constitution in world over. The Latin maxim *fiat justitiaruatcælum*is what first comes to mind on a reading of Article 142 – Let justice be done though the heavens fall. This Article gives a very wide power to do complete justice to the parties before the Court, a power which exists in the Supreme Court because the judgment delivered by it will finally end the litigation between the parties. It is important to notice that Article 142 follows upon Article 141 of the Constitution, in which it is stated that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Thus, every judgment delivered by the Supreme Court has two components – the law declared which binds Courts in future litigation between persons, and the doing of complete justice in any cause or matter which is pending before it. It is, in fact, an Article that turns one of the maxims of equity on its head, namely, that equity follows the law. By Article 142, as has been held in the **State of Punjab judgment**, equity has been given precedence over law. But it is not the kind of equity which can disregard mandatory substantive provisions of law when the Court issues directions under Article 142. While moulding relief, the Court can go to the extent of relaxing the application of law to the parties or exempting altogether the parties from the rigours of the law in view of the peculiar facts and circumstances of the case. This being so, it is clear that this Court has the power, nay, the duty to do complete justice in a case when found necessary.

[State (through) Central Bureau of Investigation Vs. Shri Kalyan Singh (former CM of UP) & Others (Criminal Appeal No.751 of 2017)

4 Section 2(22)(e) – Deemed Dividend:

Section 2(22)(e) of the Act creates a fiction, thereby bringing any amount paid otherwise than as a dividend into the net of dividend under certain circumstances. It gives an artificial definition of ‘dividend’. It does not take into account that dividend which is actually declared or received. The dividend taken note of by this provision is a deemed dividend and not a real dividend. Loan or payment made by the company to its shareholder is actually not a dividend. In fact, such a loan to a shareholder has to be returned by the shareholder to the company. It does not become income of the shareholder. Notwithstanding the same, for certain purposes, the legislature has deemed such a loan or payment as ‘dividend’ and made it taxable at the hands of the said shareholder. It is, therefore, not in dispute that such a provision which is a deemed provision and fictionally creates certain kinds of receipts as dividends, is to be given strict interpretation. It follows that unless all the conditions contained in the said provision are fulfilled, the receipt cannot be deemed as dividends. Further, in case of doubt or where two views are possible, benefit shall accrue in favour of the assessee.

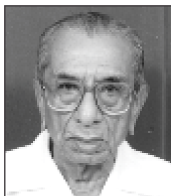
Even if we presume that it is not registered shareholder, as per the provisions of Sec. 2(22)(e) of the Act, once the payment is received by the HUF and shareholder is a member of the said HUF and he has substantial interest in the HUF, payment made to the HUF shall constitute deemed divided within the meaning of Sub-clause (e) of Sec.2(22) of the Act.

[Gopal and sons (HUF) vs. CIT(2017) (3 SCC 574)]

contd. on page no. 78

From the Courts

CA. C. R. Sharedalal
jcs@crsharedalalco.com



CA. Jayesh C. Sharedalal
jcs@crsharedalalco.com

11 Stay of Demand : 15% of demand : Interpretation of Office Memorandum dt. 29/02/2016 for adjustment of Refund. Jindal Steel and Power Ltd. v/s. Principal CIT & Anr. (2016) 290 CTR 342 (P & H)

Issue:

In the matter of stay of demand and applicability of instruction no. 1914 dt. 2nd Feb. 1993 modified by Office Memorandum dt. 29th Feb. 2016, whether refund to be adjusted to the extent of 15% or otherwise?

Held:

Guideline C(e) of the original instructions dt. 2nd Feb, 1993 stood modified by para 4(a)(iii) of the Office Memorandum. The last sentence in para 5 of the order dt. 14th June, 2016 granted the AO the right to adjust any refund which may arise in favour of the assessee in respect and to the extent of the said 15 per cent of the demand only. In any event, even if it entitles the AO to adjust any refund against the entire tax demand, it would be contrary to the instructions of the CBDT contained in the Office Memorandum of 29th Feb. 2016.

There is force in the contention that the Department must safeguard its interest and that its interest may be jeoparadized if the assessee is entitled to avail of the refund and at the same time enjoy the benefit of the stay. However, the Department is bound by the circular as modified by the Office Memorandum. Had the circulars /Office Memorandum not been in force, it may have been a different matter altogether. In the circumstances, the assessee shall be entitled to a stay of the demand subject to its depositing the installments as required by the order dt. 14th June, 2016 and the future refunds can be adjusted only to the extent of the balance amount directed to be paid as a condition for the stay.

12 Keyman Insurance Premium on the policy of a partner Allowable : CIT v/s. Agarwal Enterprises (2016) 290 CTR 294 (Bom)

Issue:

Premium paid on the Keyman Insurance policy of a partner of a firm is allowable as revenue expenditure?

Held:

The AO disallowed 20 per cent of the keyman insurance premium on the basis that this expenditure was personal in nature of the partners and it was not incurred wholly and solely for the purpose of business of the assessee firm. The CIT(A) deleted such ad hoc disallowance and the Tribunal has upheld that order of the CIT(A). The record indicated that the partnership firm comprised of two partners. It was dealing in securities and shares. The policy was obtained for the benefit of the firm inasmuch as the firm's business would be adversely affected, in the event, one of the partners met with an untimely death. It is, therefore, concluded by the Tribunal that such being the nature of the expenses and the business of the firm being of dealing in securities for protecting it this policy was obtained. The premium expenditure was incurred in the above factual backdrop. There was no basis, therefore, for making any deduction or disallowance. The disallowance was purely a matter of conjecture and surmise on the part of the AO.

Note:

Since CBDT has issued a circular for allowance of such premium to the firm. Circular No. 38 of 2016 dt. 22nd November, 2016 (2016 290 CTR @ St. P. 57)

13 Capital expenditure for expansion of existing business is revenue expense: CIT v/s. Kayal Syntex Ltd. (2016) 389 ITR 84 (Guj)

Issue:

When capital expenditure is incurred for expansion of existing business whether such expense is allowable as revenue expense?

Held:

In a case of a new unit being merely an expansion of the existing business of the assessee and not setting up of a new business the expense incurred in that regard would be allowable as revenue expenses under section 36(1)(iii) or section 37 of the Income Tax Act, 1961. The mere fact that the expenses have been capitalized in the books of account is not conclusive.

Hon Court has followed its own decision in the case viz. CIT v/s. Ghaneshyam Steel Works Ltd. (2010) 195 Taxman 180 (Guj)

14 Penalty u/s 271(1)(c) not to be levied on "bonafide claim" not allowed in assessment. Principal CIT v/s. Torque Pharmaceuticals Pvt. Ltd. (2016) 389 ITR 46 (P & H)

Issue:

When the claim of the assessee in respect of certain expenditure is bonafide but rejected by Department, whether penalty u/s 271(1)(c) can be levied?

Held:

An addition to income was made on account of disallowance of expenditure under section 40(a)(ia) of the Income Tax Act, 1961. The assessee had made a claim to deduction in the return of income. No finding had been recorded by the authorities below that the claim made by the assessee was mala fide. It had been categorically recorded by the Tribunal after examining the entire material on record that the Commissioner (Appeals) had rightly cancelled the penalty against the assessee. It was further recorded that the assessee made a bona fide claim to deduction of the expenditure and even though it was not acceptable to the Department it would not lend to the conclusion that the assessee had concealed the particulars of income or filed inaccurate particulars of income. The Tribunal was justified in cancelling the penalty under section 271(1)(c) of the Act.

15 Additional evidence under Rule 46A before CIT(A) CIT v/s. Sangu Chakra Hotels Pvt. Ltd. (2016) 389 ITR 117 (Mad)

Issue:

Power of CIT(A) for admission of additional evidence under Rule 46-A, how to be exercised.

Held:

Exercise of power by the Commissioner (Appeals) under rule 46A of the Income Tax Rules, 1962, is to enable the appellate authority to pass orders for substantial cause while entertaining additional evidence. The appellate authority is empowered to allow additional evidence to do substantial justice between the parties. The appellate authority may admit the evidence and decide the appeal. The appellate authority may keep the appeal pending and direct the Assessing Officer to ascertain the facts, essential for the purpose of deciding the appeal and then, on the basis of the remand report, decide the appeal. Where additional evidence is adduced, the other side has to be given an opportunity to explain or rebut such additional evidence. It is also well settled that if evidence has been allowed to be let in, without objection, it will not be open to the party aggrieved to raise any objection, as to its admissibility, at a subsequent stage.

16 Sec. 80IB : Meaning of Built up Area : Whether Balcony included? CIT v/s. Amaltas Associates (2016) 389 ITR 175 (Guj)

Issue:

For the purpose of Sec. 80IB, for calculating "Built up Area" whether Balcony and open terrace are to be included?

Held:

Section 80-IB (14) of the Income Tax, 1961 contains definitions for the purpose of the section. Clause (a) thereof provides that build up area means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls, but does not include the common areas shared with other residential units. The exclusion clause of the common areas shared by other units cannot be applied in the reverse. In other words, the moment a certain area is not shared but is exclusively assigned for the use of a particular residential unit holder that would not mean that such area would automatically be included in the built up area. In order to be part of the built up area, it must be part of the inner measurements of a residential unit or projection or balcony. The open terrace space on the top floor of a building would not satisfy this description. It will also not be covered in the expression balcony. In the context of residential or even commercial complexes, the term 'balcony' has gained a definite common parlance meaning. It usually consists of a projection from a building covered by a parapet or railing and may or may not be but usually is covered from the top. This term 'balcony' certainly would not include an open terrace adjoining a bed room or any other constructed area of a penthouse. The terrace is not a projection".

17 Power of CBDT u/s 119(2)(b) : How to be exercised.

CBD.T v/s. Regen Infrastructure and Services P. Ltd. (2016) 389 ITR 138 (Mad)

Issue:

How the power given to CBDT u/s 119(2)(b) is to be exercised?

Held:

Under section 119(2)(b) of the Income Tax Act, 1961, the Central Board of Direct Taxes has been empowered "to admit an application or claim for exemption, deduction, refund or any other relief under the Act, after the expiry of the period specified by or under the Act by making such an application or claim and deal with the same on the merits in accordance with law". In other words, the statute has conferred discretion in the Board to admit any claim which is made beyond the period specified for doing so and when once the discretion is conferred by a statute upon an authority, such discretion is required to be exercised on sound lines. One of the important factors to be considered while dealing with an application seeking condonation of delay is whether grave and irreparable injury or hardship will be caused to the person concerned and whether or not the interests of justice would be served better, in condoning the delay.

That once an authority had been conferred discretion to condone delay an application by the assessee seeking condonation of delay of one day could not be rejected for reasons assigned by it. The Central Board of Direct Taxes had not exercised its discretion properly in the matter and in keeping with the legal principles relevant for such consideration. One could take judicial note of the fact that uploading of return required not only an effort but was also time consuming. If the assessee had encountered certain hardship or difficulty in uploading its return, as alleged by it due to technical snags in the website of the Department due to the last hour rush of filing of returns, the delay deserved to be condoned. The Assessing Officer would process the return of the assessee for the assessment year 2010-11.

18 Sec. 147: Reopening after four years: Validity

CIT v/s. Hindustan Latex Ltd. (2016) 389 ITR 407 (Ker)

Issue:

Under which circumstances notice u/s 147 beyond four years can be issued?

Held:

Action under the first proviso to section 147 of the Act, after the expiry of four years, could be taken only if the income chargeable to tax had escaped assessment by reason of the failure on the part of the assessee to file a return under section 139 or in

response to a notice issued under section 142(1) or section 148 or to disclose fully and truly all material facts necessary for the assessment. It was discernible from the order of the Appellate Tribunal that the assessee had responded to the queries raised by the Assessing Officer in the original assessment proceedings and during the course of such proceedings had produced all the relevant material facts as were called for and necessary to complete the assessment for the year. The Appellate Tribunal was justified in concluding that the reassessment proceedings were impermissible in view of the embargo under the first proviso to section 147. The order of the Appellate Tribunal was affirmed.

19 Advance to subsidiary company at lower rate of interest : Commercial expediency : No addition can be made. Hindalco Industries Co. v/s. CIT (2016) 389 ITR 430 (All)

Issue:

Advance to a subsidiary concern at a lower rate of interest than the rate at which borrowed can be construed as for "commercial expediency"?

Held:

The assessee paid interest at the rate of 16 per cent on its borrowings from the bank. The Assessing Officer found that the assessee had advanced loans to its subsidiary companies at a lower rate of interest, 6 per cent, or 12 per cent. He determined the rate of interest at 12 per cent., as the rate at which loans were advanced to the sister concerns and disallowed the difference between the interest at market rate and the rate at which loans were advanced to sister companies under section 36(1)(iii) of the Income tax Act, 1961. The Commissioner (Appeals) affirmed the disallowance on the ground that the assessee was not a financing company and that if the assessee had not advanced loans, it would not have borrowed money from the banks to the extent of the sums lent. The Appellate Tribunal also upheld the disallowance. On a reference:

Held, that financial condition of the assessee's sister concerns was not good and to help them run smoothly, the assessee advanced them loans at a lower rate of interest. Both sister concerns were subsidiaries of the assessee and there was nothing per se adverse. For the welfare and proper functioning of the sister concerns, the assessee had decided to advance loans so that ultimately they could function properly and the assessee being the holding company would also benefit. Therefore, the loans advanced to its sister concerns were for commercial expediency and the assessee was entitled to the deduction of interest under section 36(1)(iii) of the Act.

20 Capital Gain on sale of residential property and relief u/s 54 CIT v/s. Mrs. Shakuntala Devi (2016) 389 ITR 366 (Karn) @ P. 371-372

When and how the relief in capital gain on sale of residential property is allowable?

Held:

The main purpose of section 54 of the Act is to give relief in respect of profits on the sale of a residential house. Necessary conditions to be fulfilled for the applicability of section 54 are:

(i) Assessee should be an individual or a Hindu undivided family;
(ii) Capital Gain should result from the transfer of a long term capital asset;
(iii) Capital Gain must arise from transfer of building which is chargeable as "income from house property".
(iv) Property should be a residential house;
(v) Assessee must have within a period of two years after that date purchased another property;
(vi) Property purchased must be residential;
(vii) Exemption would be available only to the extent the sale proceeds are utilized;
(viii) Where reinvestment in a residential property is not made before due date for filing return amount not so utilized till such date is required to be deposited in Capital Gain Account Scheme.

Thus, if the above conditions are satisfied, the assessee is entitled to claim benefit of the provision of section 54.

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Tribunal News

CA. Yogesh G. Shah
yshah@deloitte.com

CA. Aparna Parelkar
aparelkar@deloitte.com

7

State Bank of India Vs. ACIT 81 Taxmann.com 162 (Jaipur)
Assessment Years: 2013-14 & 2014-15
Order Dated: 28th March, 2017

Basic Facts

The assessee bank provides the benefit of leave travel concession (LTC) to its employees. During the TDS assessment proceedings, the ACIT was of the view that LTC benefit under section 10(5) is not available as foreign destination is involved i.e, the places of travel are not situated in India, it cannot be termed as the shortest route to the designation in India, and the National carrier is not involved/used for purposes of the air travel. Therefore, ACIT passed an ordertreating the entire LTC payments made to employees of corporate office during both years as taxable and treated the assessee bank as an assessee in default for purpose of section 201 of the Act. On appeal, the CIT(A) dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee preferred an appeal to the ITAT.

Issue

Whether LTC paid by assessee to employees involving foreign travel as well would qualify for exemption under section 10(5) and, accordingly, whether assessee was liable to deduct TDS on such payment of LTC?

Held

The Hon'ble ITAT held that the facts of the case are pari-materia with the decision of the Coordinate Bench in case of SBI vs DCIT, Kanpur and Om Prakash Gupta vs ITO where in it was held that as per provisions of section 10(5) of the Act, only that reimbursement of travel concession or assistance to an employee is exempted which was incurred for travel of the individual employee or his family members to any place in India. Nowhere in this clause it has been stated that even if the employee travels to foreign countries, exemption would be limited to the expenditure incurred to the last destination in India. Thus, the the payment made to its employees is chargeable to tax and in that situation, the assessee is under obligation to deduct TDS on such payment. Therefore, the ITAT confirmed with the findings of CIT(A) and appeal of the assessee was dismissed.

8

VOLKSWAGEN India Private Limited Vs. ACIT 81 Taxmann.com 8 (Pune)
Assessment Years: 2008-09 to 2011-12
Order Dated: 25th January, 2017

Basic Facts

The assessee was a subsidiary company of Volkswagen AG, Germany. It was engaged in the manufacturing of passenger vehicles of Skoda and Volkswagen brand. The assessee had a manufacturing unit at Chakan where Survey under section 133A of the Act was conducted. The Assessing Officer noted that the assessee had made certain payments and in respect of one set of payments the assessee had deducted the tax at source under section 194C of the Act. However, the AO was of the view that the provisions of section 194J are attracted. The assessee was issued show cause notice under section 271C of the Act. Before the CIT(A), the assessee pleaded that it had deducted tax at source under section 194C of the Act instead of 194J of the Act was not accepted to be the bonafide belief for applying different provisions of the Act. Also the assessee did not deduct the tax against payments made to its German company for accessing standard data server facility located outside India. The assessee contended that such services did not involve any human intervention for transmitting the data and there was no liability to deduct tax at source under section 194J of the Act.

Issue

Whether penalty under section 271C can be levied in case of payments on which assessee had deducted tax at source under section 194C instead of 194J of the Act?

Whether provisions of section 194J for payments made to German company were applicable where assessee was accessing standard data server facility of such company located outside India?

Held

The Hon'ble ITAT relying on the decision of Delhi High Court in the case of Cadbury India Ltd held that in case of payments on which the assessee had deducted the tax at source under section 194C of the Act and merely because the debate was whether the provisions of section 194J are attracted or not and even if the stand of the AO was such, does not make the assessee exigible to levy of penalty under section 271C of the Act and hence the same is deleted. Regarding the data server facility, the ITAT held that such payments made did not partake the nature of professional/technical services and the provisions of section 194J of the Act were not applicable. Also the assessee has deducted the tax at source on such consultancy fees paid and deposited the same in the account of the treasury, but the assessee cannot be held to be liable to penalty under section 271C of the Act.

9

Nandinho Rebello vs. DCIT [2017] ITA Nos. 2378/AHD/2013 (Ahmedabad) Assessment Years: 2010-11 Order Dated: 18th April, 2017

Basic Facts

The assessee is an individual, deriving income from salary, house property and other sources. During the course of reassessment proceedings, the AO observed that the assessee had worked with Reliance Communication Ltd, Sistema Shyam Teleservices Ltd. and Videocon Tele Communication Ltd. and received salary. In the return of income the assessee claimed deduction of the notice pay recovered and offered net salary to tax. Also, the assessee received interest from Reliance Infocom Ltd. Employee's PF Account which was considered as exempt by the assessee. Since the assessee was failed to disclose the salary income from other two employers, the entire salary income received from Reliance Communication Ltd and Videocon Tele Communications Ltd were added to the taxable income of the assessee. On appeal, the CIT(A) sustained the additions made by the AO. Aggrieved, the assessee appealed before the Tribunal.

Issue

Whether salary recovered by the employer for not serving notice period can be claimed as deduction from salary income? Whether addition made by the AO and sustained by the CIT(A) in respect of interest income received from PF account was correct?

Held

The Hon'ble ITAT held that the assessee has actually received the salary from his previous employers after deducting the notice period as per the job agreement with them. Therefore, the actual salary received by the assessee is only taxable. The claim of deduction of notice pay was allowed. With regard to the addition of interest income from PF account, the assessee had accepted that the interest income from bank and interest income from Reliance Infocom Ltd employee provident fund had remained undisclosed in the return of income. Thus, the assessee has not provided supporting evidence that the particular income is exempt from the income tax. Therefore, this ground of appeal of the assessee is dismissed.

10

Marck Biosciences Ltd. Vs. ITO [2017] 80 taxmann.com 275 (Ahmedabad) Assessment Years: 2009-10 Order Dated: 28th March, 2017

Facts

The assessee made payment to a US Based LLC for business Promotion, Marketing Publicity and Financial Advisory. The department raised that the assessee is assessee in default u/s 201 as it had not deducted TDS for the said payment. It also held that such transaction falls within the definition of

Royalty as per Income Tax Act as well as India – US DTAA as the assessee is using the rich experience of the consultants and the information has an element of its own commercial and industrial experience and can be termed as royalty under section 9(1)(vi) of the Act Explanation 2 sub-clause (iv). Accordingly, it can be said that the income is deemed to accrue arise in India and also the India – US DTAA has similar definition of royalty.

Issue

Whether the payment made for rendering of advisory services and not for use of any information can be treated as Royalty as per India – US DTAA?

Held

The Tribunal held that while characterizing nature of payment what is to be seen is the activity triggering in consideration of which the payment is made and the activity in present case is rendition of services. The fact that in the process of availing these services, the assessee benefits from rich experience of the service provider is wholly irrelevant. Also the taxability of such fees as fees for included services under article 12.4 can arise only when these services "make available" which is not there in the present case.

Hence, the ground raised by Department was dismissed.

11 Saira Asia Interiors Vs. ITO,TDS [2017] 79 taxmann.com 460 (Ahmedabad) Assessment Years: 2011-12 Order Dated: 28th March, 2017

Facts

The assessee company recorded a liability towards payment of fees for technical services to one of its foreign group companies. However, the payment towards the said fees was made in the succeeding financial year after deducting tax @ 10%. The AO held that tax payer was liable to deduct tax at the time when the entry was passed in the books of accounts.

The revenue also held that there is no provision in the Act to deduct tax when the tax becomes taxable to the payee.

Issue

Whether the tax payable for Royalty income is taxable on receipt basis as per India – Italy DTAA?

Held

ITAT held that with holding liability under section 195 is a vicarious liability and depends on existence of tax liability in hands of the NR recipient. Reliance was also placed on Apex court ruling G E Technology Centre Pvt. Limited wherein it was held that the tax with holding liability is not triggered unless the income embedded in the payment is taxable.

As per Article 13 of India – Italy DTAA, taxability is dependent on payment by resident of contracting state and receipt of the same by resident of other contracting state. Mere fact that an Indian resident credits the amount of royalty payable to an Italian resident does not trigger taxability under Article 13.

Having considered taxability of royalty on paid basis under Article 13, the tribunal applied beneficial withholding tax rate of 10% provided under the Act as against 20% as provided under Article 13.

Tribunal held that though the tax payable is covered by the India Italy tax treaty the provisions of the Act continue to apply to the extent more beneficial to the taxpayer.

Hence, the ground raised by Department was dismissed.

12 Soma Textiles & Industries Limited Vs. ACIT [2017] 81 taxmann.com 67 (Ahmedabad) Assessment Years: 2008-09 Order Dated: 11th March, 2017

Facts

The assessee has given interest free loan to its 100% foreign subsidiary and TPO considered additional 2% as arm's length interest as against the LIBOR+2% rate applied in previous year. The justification for this variation is given as an additional 2% is higher risk in lending to the subsidiary, and is justified as to guarantee which the subsidiary would have required from the

assessee. The TPO has observed that even if the subsidiary was to obtain this loan from the bank, in addition to LIBOR plus 2%, the assessee would have needed a guarantee from its parent company, as the subsidiary does not have credit rating, and the effective borrowing rate would thus have been LIBOR+ 2% for bank's margin+ 2% for the guarantee fees.

Issue

Whether an additional arm' s length price adjustment on account of higher risk of lending to a low rated subsidiary is required when there is no adjustment of same in previous year under same facts and circumstances?

Held

The ITAT observed that adjustment due to assumption about lower credit rating of the subsidiary is not warranted unless the said is demonstrated before the ITAT. Also the same is not sustainable in the scenario when the TPO himself has adopted LIBOR plus 2% as an arm's length interest and there is no material change in the facts and circumstances of the case in this year.

Hence, the ground raised by Department was dismissed.

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contd. from page 70

5 Sales Tax and VAT – Karnataka Value Added Tax Rules – Trade discount :

First proviso to R.3(2)(c), prescribed that a discount to be eligible for deduction had to be in accordance with the regular practice of the dealer / terms of any contract or agreement entered into in a particular case and the tax invoice or bill of sale issued in respect of the sales relating to such discount showed the amount allowed as discount. Held, the actual quantification of the trade discount, depending on the nature of the trade and the related stipulations in any contract with regard thereto, may be deferred till the happening of a contemplated even, so much so that the benefit thereof is extended at a point of time subsequent to that of the original sale / purchase.

[Southern Motors Vs. State of Karnataka and Others (2017) (3 SCC 467)]

6 Literal or strict construction :

Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than injustice, then such construction should be preferred to the literal construction.

Though words in a statute must, to start with, be extended their ordinary meanings, but if the literal construction thereof results in anomaly or absurdity, the courts must seek to find out the underlying intention of the legislature and in the said pursuit, can within permissible limits strain the language so as to avoid such unintended mischief.

Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise and even if it were, it is not possible to provide for them in terms free from all ambiguity, the caveat being that the English language is not an instrument of mathematical precision.

[Southern Motors Vs. State of Karnataka and Others (2017) (3 SCC 467)]

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Controversies

CA. Kaushik D. Shah
dshahco@gmail.com.

Can construction of a Residential House commence before the date of transfer of old property for the purpose of exemption u/s. 54/54F?

Issue:

For the purpose of claiming exemption u/s. 54/54F Long term Capital Gain is required to be invested in acquiring a new Residential House. These sections require that Long term Capital Gain can be invested in purchasing a new residential house within a period of one year before the date of transfer or within two years after the date of transfer. It is also provided that the long term capital gain can be invested in construction of a new residential house within three years after the date of transfer. Question arises whether in respect of construction of a new residential house, construction can commence before the date of transfer? Section mandates that the construction should be done within three years after the date of transfer and hence, if construction starts before the date of transfer then the exemption u/s. 54/54F may not available. Needless to say that if the entire capital gain is invested then the same will be exempt u/s. 54/54F.

Proposition:-

It is submitted that we must make note of two situations:

1. The construction of the new house commences before the date of transfer but is completed within the stipulated period after the date of transfer.
2. The construction of the new house is completed before the date of transfer.

The date of commencement of construction of the new house is immaterial. If the assessee has constructed the new house within the stipulated period from the date of transfer of old building. He is entitled to claim exemption u/s. 54/54F.

"It is proposed that section 54/54F if read carefully states that the assessee, being an individual or Hindu Undivided Family, could claim benefit under the said section provided the assessee had within a period of three years after the date of sale of the original asset, constructed a residential house. It is not stipulated or indicated in the section that the construction must begin after that date of sale of the original/old asset."

View against the Proposition:-

When the construction of new house is completed before the transfer of old house then the assessee is not entitled to deduction u/s. 54/54F of the Act it was held by the Gujarat High Court in the case of *Smt. Shantaben P. Gandhi Vs. CIT (1981) 129 ITR 218 /16 Taxmann 356. The ITAT Delhi Bench in the case of Jt. CIT Vs. Rajkumar Aggarwala & Sons (2005) 95 TTJ 315* following the decision of the Gujarat High Court in the case of Smt. Shantaben P. Gandhi (supra) and distinguishing the decision of the Karnataka High Court in the case of Subramanya Bhat (supra) held that the assessee was not entitled to get the benefit of exemption u/s. 54 of the Act if he had completed the construction of the new house before the transfer the old house.

It is further submitted that even if construction starts before the sale of old residential house and is completed after the sale of old residential house the exemption to the extent of investment before the sale of old residential house is not available for exemption. *The Hydrabad Bench of the ITAT in the case of Smt. Nimmagadda Sridevi V. Sy. CIT (2013) 33 taxmann.com 306/58 SOT 54* has held that investment in new residential property made by assessee is not entitled to deduction u/s. 54F to the extent of investment in the residential property following the decision of the Tribunal in the case of *Chandru L. Raheja Vs. Third ITO (1988) 27 ITD 551 (Bom.).*

View in favour of the Proposition:-

Let me refer to the landmark decision of Karnataka High court in the case of *CIT Vs. J.R. Subramanya*

Bhat (1987) 165 ITR 571. The assessee was the owner of a residential building which was partly let out and partly owner occupied. The assessee sold the building in February, 1977 but started construction of a new building in March 1976 itself and claimed exemption u/s. 54 of the Act. The building was completed in March 1977 after the sale of the old building in February 1977. One of the grounds on which the claim made u/s. 54 of the Act was rejected by the Assessing Officer was that the construction of the new building had commenced earlier than the sale of the old building. The Tribunal allowed the appeal of the assessee by holding that, though the commencement of the new building was completed in March, 1977, which was within the two years' period contemplated u/s. 54 of the Act. The stipulated period, as per the provisions of section 54 stood then, was two years as against three years now for construction of property. The High Court, on reference u/s. 256(2) of the Act, held that "the date of the commencement of construction of the new building was immaterial. Since the assessee had constructed the building within two years from the date of the sale of the old building, he was entitled to relief u/s. 54. On the basis of evidence on record, the conclusion of the Tribunal was not unreasonable. Therefore, the assessee was entitled to relief u/s. 54.

Let me now refer to the decision in the case of *Dy. CIT V. Radhakant M. Tripathy (IT Appeal No. 136 (AHD.) of 2011, dated 21st Feb. 2014)*. The Ahmedabad Bench of ITAT in this case, following precedents on this issue, has held that payment made towards purchase of land and construction within 1 year prior to date of sale of old capital asset was eligible for exemption u/s. 54F of the Act. In this case the assessee sold a plot on 26th March, 2007 for a sum of Rs. 60 lakhs and earned capital gain of Rs. 44,99,597/-. The assessee made a total payment of Rs. 34.50 lakhs from 27th March, 2006 to 24th June, 2007 and claimed exemption u/s. 54F of the Act to the tune of Rs. 27,02,268/- as per proportionate deduction allowable under this section. The AO, on noticing that the aforesaid investment of Rs. 34.50 lakhs included a sum of Rs. 17.50 lakhs made prior to the date of transfer of property, restricted the exemption accordingly. On appeal by the assessee the commissioner of Income Tax (Appeals) through an elaborate order, after referring to precedents, allowed the appeal of the assessee. The appeal preferred by the Revenue was dismissed by the Tribunal after fully analyzing the facts of the case by observing that "the Revenue could not bring any contrary material on record to controvert the findings of CIT (A)."

Summation:-

In my opinion, if the construction of a new house is completed before transfer of old house then assessee is not entitled to deduction u/s. 54/54F. However, if the construction of new house starts before transfer of old house but is completed after the transfer of old house then assessee is entitled to deduction of u/s. 54/54F. Let me refer to the decision of Sandeep Khosla Vs. CIT (IT Appeal No. 509 (Bang) of 2013 dated 8th August, 2014. The assessee in this case sold a plot on 26th September, 2007, but had obtained plan approval for construction of new capital asset (residential house) on 3rd August, 2005 and started construction in the first quarter of the F.Y. 2006-07, i.e. 11/2 year prior to sale of the old capital asset. The AO held that as the construction had started prior to sale of plot-old capital asset the assessee was not eligible for necessary exemption u/s. 54F of the Act. The commissioner of Income Tax (Appeals) concurred with the view of the AO in denying exemption u/s. 54F of the Act. On appeal preferred by the assessee, reliance was placed by him on the decision of the Jurisdictional High Court in the case of J.R. Subramanya Bhat (supra) for the proposition that the date of commencement of construction was not relevant, as the law has stipulated only the time limit for completion of construction. The Tribunal after noticing the fact about the commencement of construction of the house 11/2 year prior to the date of sale, concurred with the argument put forth on behalf of the assessee that the date of commencement of construction was not relevant as the law has stipulated only the time limit for completion of construction and allowed the appeal of the assessee with a direction to the AO to verify date of completion of construction within the stipulated time.

contd. on page no. 101

Judicial Analysis

Advocate Tushar Hemani
tusharhemani@gmail.com

Whether TDS is to be effected on Export Sales Commission?

DCIT v. Welspun Corporation Ltd. [2017] 77 taxmann.com 165 (Ahmedabad - Trib.)

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36. Let us sum up our discussions on this part of the scheme of Section 9, so far as tax implications on commission agency business carried out by non-residents for Indian principals is concerned. It does not need much of a cerebral exercise to find out whether the income from the business carried on by a non-resident assessee, as a commission agent and to the extent it can be said to directly or indirectly accruing through or from any business connection in India, is required to be taxed under section 9(1)(i) or under section 9(1)(vii), of the Income Tax Act, 1961. The answer is obvious. Deeming fiction under section 9(1)(i) read with proviso thereto, as we have seen in the earlier discussions, holds the key, and lays down that only to the extent that which the operations of such a business is carried out in India, the income from such a business is taxable in India. When no operations of the business are carried on India, there is no taxability of the profits of such a business in India either. The question then arises whether in a situation in which, in the course of carrying on such business, the assessee has to necessarily render certain services, which are of such a nature as covered by Explanation 2 to Section 9(1)(vii), and even though the assessee is not paid any fees for such services per se, any part of the business profits of the assessee can be treated as 'fees for technical services' and taxed as such under section 9(1)(vii). This question does not pose much difficulty either. In the light of the discussions in the foregoing paragraph, unless there is a specific and identifiable consideration for the rendition of technical services, taxability under section 9(1)(vii) does not get triggered. Therefore, irrespective of whether any technical services are rendered during the course of carrying on such agency commission business on behalf of Indian principal, the consideration for securing business cannot be taxed under section 9(1)(vii) at all. This profits of such a business can have taxability in India only to the extent such profits relate to the business operations in India, but then, as are the admitted facts of this case, no part of operations of business were carried out in India. The commission agents employed by the assessee, therefore, did not have any tax liability in India in respect of the commission agency business so carried out.

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41. We are in considered agreement with the views so expressed by the coordinate bench. In view of these discussions, as also bearing in mind entirety of the case, we uphold well reasoning findings of the learned CIT(A) that the commission payments made to the non-resident agents did not have any taxability in India, even under the provisions of the domestic law i.e. Section 9. Once we come to the conclusion that the income embedded in these payments did not have any tax implications in India, no fault can be found in not deducting tax at source from these payments or, for that purpose, even not approaching the Assessing Officer for order under section 195. In our considered view, the assessee, for the detailed reasons set our above, did not have tax withholding liability from these

payments. As held by Hon'ble Supreme Court in the case of GE India Technology Centre (P.) Ltd. v. CIT [2010] 327 ITR 456/193 Taxman 234/7 taxmann.com 18, payer is bound to withhold tax from the foreign remittance only if the sum paid is assessable to tax in India. The assessee cannot, therefore, be faulted for not approaching the Assessing Officer under section 195 either. As regards the withdrawal of the CBDT circular holding that the commission payments to non-resident agents are not taxable in India, nothing really turns on the circular, as de hors the aforesaid circular, we have adjudicated upon the taxability of the commission agent's income in India in terms of the provisions of the Income Tax Act as also the relevant tax treaty provisions.

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ITO v. Excel Chemicals India Ltd. [2016] 72 taxmann.com 284 (Ahmedabad - Trib.)

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4. We have heard the rival contentions, perused the material on record and duly considered the facts of the case as also the applicable legal position.

5. The basic contention of the Assessing Officer is that in view of the scope of deeming fiction under section 9(1)(i), which inter alia holds that any income 'arising directly or indirectly from any business connection in India' will be deemed to accrue or arise in India, read with the scope of charging Section 5(2), which enables taxability of a non-resident in respect of "income accruing or arising or deemed to accrue or arise, in India,, income arising in the hands of the non-resident commission agent is taxable in India. What he overlooks, however, is the impact of Explanation 1 to Section 9 (1)(i) which states that "for the purpose of this clause [i.e. 9(1)(i)], in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India". Only if he was to take into account the scope of Explanation 1 to Section 9(1)(i), coupled with the fact that admittedly no part of operations of the non-resident commission agent were carried out in India, he would have realized that even though deeming fiction under section 9(1)(i) is triggered on the facts of this case, on account of commission agent's business connection in India, it has no impact on taxability in the hands of commission agent because admittedly no business operations were carried out in India, and, therefore Explanation 1 to Section 9(1)(i) comes into play. The seemingly erudite analysis by the Assessing Officer is based on a half-baked legal theory, and the conclusions, therefore, clearly fallacious.

6. As for the AAR ruling in the case of SKF Boilers and Driers (P.) Ltd. (supra), on which so much reliance has been placed by the Assessing Officer, we find that this decision merely follows the earlier ruling in the case of Rajiv Malhotra (supra) which, in our considered view, does not take into account the impact of Explanation 1 to Section 9(1)(i) properly. That was a case in which the non-resident commission agent worked for procuring participation by other non-resident entities in a food and wine show in India, and the claim of the assessee was that since the agent has not carried out any business operations in India, the commission agent was not chargeable to tax in India, and, accordingly, the assessee had no obligation to deduct tax at source from such commission payments to the non-resident agent. On these facts, the Authority for Advance Ruling, inter alia, opined that "no doubt the agent renders services abroad and pursues and solicits exhibitors there in the territory allotted to him, but the right to receive the commission arises in India only when exhibitor participates in the India International

Food & Wine Show (to be held in India), and makes full and final payment to the applicant in India and that the commission income would, therefore, be taxable under section 5(2)(b) read with section 9(1)(i) of the Act". The Authority for Advance Ruling also held that the fact that the agent renders services abroad in the form of pursuing and soliciting participants and that the commission is remitted to him abroad are wholly irrelevant for the purpose of determining situs of his income We do not consider this approach to be correct. When no operations of the business of commission agent is carried on in India, the Explanation 1 to Section 9(1)(i) takes the entire commission income from outside the ambit of deeming fiction under section 9(1)(i), and, in effect, outside the ambit of income 'deemed to accrue or arise in India' for the purpose of Section 5(2)(b). The point of time when commission agent's right to receive the commission fructifies is irrelevant to decide the scope of Explanation 1 to Section 9(1)(i), which is what is material in the context of the situation that we are in seisin of. The revenue's case before us hinges on the applicability of Section 9(1)(i) and, it is, therefore, important to ascertain as to what extent would the rigour of Section 9(1)(i) be relaxed by Explanation 1 to Section 9(1)(i). When we examine things from this perspective, the inevitable conclusion is that since no part of the operations of the business of the commission agent is carried out in India, no part of the income of the commission agent can be brought to tax in India. In this view of the matter, views expressed by the Hon'ble AAR, which do not fetter our independent opinion anyway in view of its limited binding force under s. 245S of the Act, do not impress us, and we decline to be guided by the same. The stand of the revenue, however, is that these rulings, being from such a high quasi-judicial forum, even if not binding, cannot simply be brushed aside either, and that these rulings at least have persuasive value. We have no quarrel with this proposition. We have, with utmost care and deepest respect, perused the above rulings rendered by the Hon'ble Authority for Advance Ruling. With greatest respect, but without slightest hesitation, we humbly come to the conclusion that we are not persuaded by these rulings.

7. In view of the above discussions, in our considered view, learned CIT (A) was indeed justified in holding that given the undisputed and uncontroverted facts of this case, the non-resident commission agents were not taxable in India in respect of their commission earnings from orders procured abroad.

8. It is also now well settled in law that when the payment made to a non-resident does not have an element of income, tax deduction source requirements under section 195(2) do not come into play at all. Hon'ble Supreme Court, in the case of G E India Technology Centre (P.) Ltd. v. CIT [2010] 327 ITR 456/193 Taxman 234/ 7 taxmann.com 18, has inter alia observed as follows:

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9. Clearly, therefore, for application of Section 195, it is sine qua non that the payment to no-resident must have an element of income liable to be taxed under the Indian Income Tax Act, 1961. On the facts of this case, as we have already concluded, no part of the remittance to the commission agent was taxable in India. The assessee was, therefore, not under any obligation, on the facts of this case, to deduct any tax at source from the commission payments to the non-residents. Since there was no obligation to deduct tax at source, the very foundation of impugned disallowance under section 40(a)(i) ceases to hold good in law. Learned CIT (A) was, therefore, quite justified in deleting the impugned disallowance. We uphold his action, and dismiss the grievance raised by the Assessing Officer.

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ABM Steels (P.) Ltd. v. ACIT [2016] 75 taxmann.com 182 (Gujarat)

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11. The case of the petitioner from the beginning has been that the TDS was not required to be deducted in view of CBDT circular since the income did not arise or accrue in India. The said explanation with respect to export commission explained by the assessee reads as under:—

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12. The Central Board of Direct Taxes have issued circulars dated 23rd July, 1969 being Circular No. 23 and one another Circular No. 786 dated 7.2.2000, whereby, it has been clearly mentioned that such export commission is to be treated as outside the net of tax deduction at source as laid down under Section 195 of the Act and therefore, this being the effect of circular having binding effect upon the respondent-authority, the step of reopening of assessment could not have been undertaken and these circulars having been brought to the notice by the assessee, the order could not have been passed rejecting the request to drop the proceedings. These circulars are attached to the petition compilation at page Nos.40 and 41 respectively and as such, the conjoint effect of these circulars would clearly indicate that where the non resident agent operates outside the country, no part of income arises in India and since the payment is usually remitted directly abroad, it cannot be held to have been received by or on behalf of the agent in India and such payments were, therefore, held to be not taxable income. The subsequent circular dated 7.2.2000 is in clarification of earlier Circular No. 23 which is specifically clarifying that no tax is deductible under section 195 of the Act. For immediate perusal, the same is reproduced herein after.

1314. Clarification regarding taxability of export commission payable to non-resident agents rendering services abroad."

1. In their Audit Report for 1997-98 [D.P. NO. 79(I.T.)] the Comptroller & Auditor General (C & A G) raised an objection that the Assessing Officer in computing the profits and gains of business or profession, in a case in Mumbai charge, had wrongly allowed a deduction in respect of a payment to a non-resident where tax had not been deducted at source. The nature of the payment of this case was export commission and charges payable for services rendered outside India. In the view of C & A.G. the expenditure should have been disallowed in accordance with the provisions of section 40(a) (i) of the I.T. Act, 1961. It has come to the notice of the Board that a similar view, on the same set of facts has been taken by some Assessing Officers in other charges.

2. The deduction of tax at source under section 195 would arise if the payment of commission to the non-resident agent is chargeable to tax in India. In this regard attention to CBDT Circular No. 23 dated 23rd July, 1969 is drawn where the taxability of 'Foreign Agents of Indian Exporters' was considered along with certain other specific situations. It had been clarified then that where the non-resident agent operates outside the country, no part of this income arise in India. Further, since the payment is usually remitted directly aboard it cannot be held to have been received by or on behalf of the agent in India. Such payments were therefore held to be not taxable in India. The relevant sections, namely section 5(2) and section 9 of the income -tax Act, 1961 not having undergone any change in this regard, the clarification in Circular No. 23 still prevails. No tax is therefore deductible under Section 195 and consequently, the expenditure on export commission and other related charges payable to a non-resident for services rendered outside India becomes allowable expenditure.

On being apprised of this position, the Comptroller and Auditor General have agreed to drop the objection referred to above".

13. In view of the above mentioned position, the action initiated is not sustainable and as such, we are of the opinion that the impugned notice dated 8.7.2010 as well as the order dated 11.2.2011 are required to be quashed and set aside and accordingly are set aside. Petition is allowed and disposed of. Rule is made absolute.

Pankaj A Shah v. ITO [2014] 47 taxmann.com 205 (Ahmedabad - Trib.)

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7. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the Assessee has paid commission to non resident and no TDS was deducted while making the payment for the reason that the parties to whom the commission was paid do not have permanent establishment in India nor have they provided any technical services. The aforesaid submissions of the Assessee has not been controverted by Revenue by bringing any contrary material on record. Assessee had also relied on Circular No. 786 dated 07.02.2000 for non deduction of TDS. As per the aforesaid circular, the Assessee was not required to deduct TDS u/s. 195 with regard to payment of commission to foreign agents. In the present case, Assessee had filed the return of income in accordance with the circular prevailing at that time. We find that an identical issue was before the Co-ordinate Bench of Tribunal in the case of Panchmahal Steel Ltd. (supra), the Co-ordinate Bench of Tribunal decided the issue in favour of the Assessee by holding as under:—

"We have considered the rival submissions and the material available on record. The assessee specifically pleaded before the learned CIT(A) that tax was not deducted because income tax is deductible at source only from payments which are chargeable to tax under Income Tax Act. It was submitted that the amount was paid for commission in foreign currency was not chargeable to tax in India because these payments represented business income of non-resident and that none of the payees have permanent establishment or business connection in India within the meaning of section 9 of the IT Act. It was also explained that non-residents were not chargeable to tax in India due to various Double Taxation Agreements. It was also explained that payments were not for royalty or technical know-how and therefore, tax was not liable to be deducted. It was also submitted that the assessee did not deduct tax because of the existing circular issued by CBDT. Therefore, no disallowance could be made. The learned DR however, submitted that earlier Board circular relied upon by the assessee has been withdrawn with immediate effect vide subsequent circular dated 23-10-2009; therefore, earlier circulars would no longer survive. However, we do not agree with the submissions of the learned DR because later circular dated 23-10-2009 was having no retrospective effect and also could not have the effect to the assessment years where the assessee filed the return of income on time in accordance with the existing Board circular. Therefore, there was no default on the part of the assessee not to deduct TDS in such circumstances based upon its opinion on the CBDT circulars……………………"

8. In view of the aforesaid facts, we are of the view that no disallowance can be made in present case. We therefore delete the disallowance.

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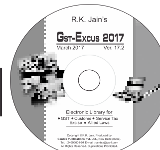

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OECD releases implementation guidance on hard-to-value intangibles

CA. Dhinal A. Shah
dhinal.shah@in.ey.com

CA. Sagar Shah
sagar1.shah@in.ey.com

A. <u>Background</u>

On 23 May 2017, the Organisation for Economic Co-operation and Development (OECD) released a discussion draft (the Discussion Draft or Draft) on the implementation guidance on hard-to-value intangibles (HTVI) in connection with Base Erosion and Profit Shifting (BEPS) Action 8. The Discussion Draft provides guidance on the implementation of the approach to HTVI.

The HTVI approach is stipulated in the final report on transfer pricing underBEPS Actions 8-10 (Actions 8-10 Report) and formally incorporated into the OECD Transfer Pricing Guidelines. The Discussion Draft contains three sections that present (i) the principles that should underlie the implementation of the HTVI approach, (ii) three examples to clarify the implementation of the HTVI approach in different scenarios, and (iii) the interaction between the HTVI approach and the access to the mutual agreement procedure (MAP) underthe applicable treaty. The guidance included in the Draft is aimed at reachinga common understanding and practice among tax administrations on how to apply adjustments resulting from the application of the HTVI approach.

The proposals included in the Discussion Draft do not represent a consensus view of the OECD's Committee on Fiscal Affairs, but were released in draft formin order to provide an opportunity for public comments, to be submitted by 30th June 2017.

B. <u>Detailed Discussion</u>

(I) <u>Principles that should underlie the implementationof the HTVI approach</u>

The treatment of HTVI for transfer pricing purposes is addressed in section D.4 of the Actions 8-10 Report. The guidance is developed to tackle the asymmetry of information available between taxpayers and tax administrations about the potential value of HTVI. In summary, the HTVI approach authorizes tax administrations to use ex post evidence on the financial outcomes of an HTVI transaction (i.e., information gathered in hind sight about how valuable an intangible as turned out to be) as presumptive evidence on the appropriateness of the ex ante pricing arrangements. The Actions 8-10 Report also describes certain circumstances or safe harbors where such presumptive evidence may not be used. The ex post outcomes provide information on thedetermination of the valuation at the time of the transaction, but a potential revised valuation should not be based on actual income or cash flow without also taking into account the probability of such income or cash flow at the time ofthe transfer of the HTVI.

The Discussion Draft discusses the impact of timing issues on the HTVI approach. In this respect, tax administrations should apply audit practices to identify and act upon HTVI transactions as early as possible. However, inherent to this approach, ex post outcomes relating to the transfer of the intangible may not be available shortly after the transaction. It is recognized that the elapsed time between the transaction and the moment the ex post outcomes become available to tax administrations may not always correspond with the audit cycles or administrative and statutory time periods, in particular for intangibles that will not be exploited commercially until years after the transaction.

The guidance set forth in the Draft should not be used todelay or bypass a country's normal audit procedures. Some countries

may encounter difficulties in implementing the HTVI approach due to for example short audit cycles or statute of limitations. Such countries may consider targeted changesto procedures or legislation to counter these implementation difficulties, such as mandatory prompt notifications in the case of a HTVI transfer or an amendment of the normal statute of limitations.

The Discussion Draft reiterates that adjustments by tax administrations may include an adjustment of the pricing structure adopted by the taxpayer. The Draft also provides the principles that should underpin the HTVI approach, consistent with the guidance on HTVI in section D.4 of the Actions 8-10 Report.

(II) Example

The examples included in the Discussion Draft illustrate the practical implementation of a transfer pricing adjustment arising from the application of the HTVI approach. Example 1, scenario A, describes the case in which a taxpayer cannot demonstrate that it properly took into account a – not unforeseeable – possibility. As a result, the tax administration may use the presumptive evidence to determine that this possibility should have been taken into account in the valuation. The original valuation is revised accordingly, and the tax administration is entitled to make a transfer pricing adjustment for the difference in value. Scenario B of example 1describes a situation in which exemption iii of paragraph 6.193 of the Actions 8-10 Report (20% divergence margin) would be applicable and the HTVI approach therefore does not apply.

In example 2, similar to example 1, the application of the HTVI approach results in the tax administration being entitled to make an adjustment. In this example, the significant revisions to the lump-sum payment give rise to the consideration of whether an alternative payment structure (e.g., acombination of an initial lump sum payment and additional contingent payments based on key milestones) might be more appropriate. The alternative payment structure may be (more) consistent with the fact that specific developments are not sufficiently predictable. Such alternative payment structure could be based on observations of pricing arrangements for transfers of intangibles in comparable circumstances in the same business sector.

Example 3 illustrates that any primary adjustment to be assessed and any corresponding adjustment to be granted in open years will be determined in accordance with the domestic law of each country and the rules on statute of limitations applicable to the transaction(s). The Draft stimulates countries to resolve any cases of double taxation under the MAP in the relevant treaty that relate to differences in countries' statute of limitation.

(III) HTVI and the mutual agreement procedure

The Actions 8-10 Report stresses the importance of permitting the resolution of cases of double taxation arising from the application of the HTVI approach through access to the MAP under the applicable treaty. The Discussion Draft should therefore be read in conjunction with the final reporton BEPS Action 14.

C. Implications

The Discussion Draft contains proposed implementation guidance on the approach to HTVI. The guidance included inthe Draft should improve tax administrations' consistency in applying the HTVI approach and reduce the risk of economic double taxation in case of intercompany transactions relating to such intangibles.

It is important for companies to continue to monitor the developments in this area in the OECD and in the countriesin which they operate, and to consider actively engaging with policy makers in this international tax debate.

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CA. Savan Godiawala
sgodiawala@deloitte.com

4 RBI announces draft guidelines of Simplified Hedging Facility for Residents and Non-Residents

RBI released draft guidelines of Simplified Hedging Facility for Residents and Non-Residents which permits dynamic hedging of currency risk and simplifies the procedure involved in booking hedge contracts. To monitor activity under this facility, banks and exchanges will report customer data to the Trade Repository on a regular basis. Comments on the draft guidelines are invited from banks, market participants and other interested parties.

Press Release : 2016-2017/2759

For full text refer to:https://rbi.org.in/scripts/FS_PressRelease.aspx?prid=40139&fn=5

Excerpts of Simplified Hedging Facility- "Draft Guidelines"

Participants: Resident entities with foreign currency exposures and non-resident entities with Rupee exposures, other than individuals, arising out of transactions permitted under Foreign Exchange Management Act, 1999, of up to USD 30 million or equivalent.

Purpose: To hedge underlying exchange rate risk.

Products: Any Over the Counter (OTC) derivatives and Exchange Traded Currency Derivatives (ETCD) permitted under FEMA, 1999, except cost reduction structures and swaps.

Designated Bank: Any AD Cat-I bank designated as such by the customer for the purpose of hedging under the facility. Upon designation, the bank shall get this information updated in the Trade Repository (TR).

Operational Guidelines, Terms and Conditions

a. Customers with total hedging requirement of up to USD 30 million at any point in time may enter into permitted forex derivative contracts with any AD bank up to his requirement. The customer is not required to furnish any documentary evidence to the AD bank for establishing exposure.

b. Customer will provide the AD bank with a one-time self-declaration signed by the CFO or CFO equivalent, to the effect that the sum total of the outstanding OTC derivative contracts and the outstanding ETCD contracts are backed by underlying currency exposure, either contracted or anticipated.

c. At the time of booking of hedge contracts, customers may provide information relating to the underlying exposure (no documentary or other evidence is needed) including type of transaction i.e. current or capital account (ECB, FPI, FDI etc.), currency, tenor etc.

d. Hedge contracts can be booked with any AD bank provided, the underlying delivery takes place with the same bank. Cancelled contracts under this facility may be freely rebooked with the same bank.

e. On cancellation, while losses may be passed on to the customer, net gains i.e. gains in excess of cumulative losses, if any, will be passed on to the customer at the time of delivery of the underlying cash flow. In case of part delivery,

net gains will be paid to the customer on a pro-rata basis.

f. A customer, who has booked contracts under this facility shall not book hedge contracts under any other facility.

For full text refer to: https://rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3337

5 RBI proposes fresh Regulations under Foreign Exchange Management Act, 1999 for Cross Border Mergers: Invites comments from stakeholders

RBI has placed on its website the draft guidelines proposed to be issued on cross border merger transactions pursuant to the Rules notified by Ministry of Corporate Affairs through Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2017 on April 13, 2017.

Section 234 of the Companies Act, 2013 provides for mergers and amalgamations between Indian companies and foreign companies. Accordingly, Ministry of Corporate Affairs has issued Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2017 on April 13, 2017 to operationalize this section.

The Reserve Bank of India has proposed these Regulations under the Foreign Exchange Management Act, 1999 (FEMA) in order to address the issues that may arise when an Indian company and a foreign company enter into Scheme of merger, demerger, amalgamation, or rearrangement. These Regulations stipulate conditions that should be adhered to by the companies involved in the Scheme. The Regulations shall be named Foreign Exchange Management (Cross Border Merger) Regulations.

Press Release : 2016-2017/2909

For full text refer: https://rbi.org.in/scripts/FS_PressRelease.aspx?prid=40288&fn=5

Excerpts of Foreign Exchange Management (Cross Border Merger) Regulations, 2017- "Draft Regulations"

4. Inbound merger: A merger or amalgamation of foreign company with an Indian company

   In case of cross border mergers where the resultant company is an Indian company,

   a. Any issue or transfer of security by the resultant company to a person resident outside India shall be in accordance with the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

   b. Any borrowing or impending borrowing of the foreign company from overseas sources which becomes the borrowing of the resultant company or any borrowing from overseas sources entering into the books of resultant company arising shall conform to the External Commercial Borrowing norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable.

   c. The resultant company may acquire and hold any asset outside India which an Indian company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under

the Act or rules or regulations framed thereunder.

d. Where the asset or security is not permitted to be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of 180 days from the date of sanction of the Scheme of cross border merger and the sale proceeds shall be repatriated to India immediately through banking channels.

5. Outbound merger: A merger or amalgamation of Indian company with a foreign company

In case of cross border mergers where the resultant company is a foreign company,

a. A person resident in India may acquire or hold securities of the resultant company in accordance with the Foreign Exchange Management (Transfer or issue of Foreign Security) Regulations, 2000 or the provisions of the Liberalized Remittance Scheme, as applicable.

b. The resultant company shall be liable to repay outstanding borrowings or impending borrowings as per the Scheme sanctioned by the National Company Law Tribunal in terms of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

c. The resultant company may acquire and hold any asset in India which a foreign company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder.

d. Where the asset or security is not permitted to be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of 180 days from the date of sanction of the Scheme of cross border merger and the sale proceeds shall be repatriated outside India immediately through banking channels.

6. Valuation of companies involved in cross border merger

The valuation of the Indian company and the foreign company for the purpose of cross border merger shall be done as per internationally accepted pricing methodology for valuation of shares on arm's length basis which should be duly certified by a Chartered Accountant/public accountant/merchant banker authorized to do so in either jurisdiction.

7. Reporting

1. Any transaction arising due to cross border merger shall be reported to the Reserve Bank in the same manner in which it is otherwise required to be reported under the Act or rules or regulations framed thereunder.

The Indian company and the foreign company involved in the cross border merger shall be required to furnish reports as may be prescribed by the Reserve Bank.

For full text refer: https://www.rbi.org.in/Scripts/bs_viewcontent.aspx?Id=3343

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હિન્દુસ્તાન પાઈપ

બોર તથા ઈરીગેશન માટેના એ.સી. પ્રેશર પાઈપ
૮,૧૦,૧૨ ઈંચ ક્લાસ ૧૦,૧૨ તથા ૧૫

અમદાવાદ સીમેન્ટ પાઈપ્સ
વડાગામ, તા.ધનસુરા, સાબરકાંઠાઃ © ૯૫-૨૭૭૪-૨૭૭૨૩૧
અમદાવાદ : © ૦૭૯-૨૬૪૪૪૭૭૭

૮૦ mm (૩ ઈંચ), ૧૦૦ mm (૪ ઈંચ) તથા ૧૫૦ mm (૬ ઈંચ)
સાઈઝમાં પાઈપ્સ પણ ઉપલબ્ધ છે.

Service Tax - Recent Judgements

CA. Ashwin H. Shah
ashwinshah.ca@gmail.com

5 Commissioner of Central Excise & Service Tax, Hyderabad - IV vs. Hyundai Motor (I) Engineering (P) Ltd. (2017)

Facts:-

The respondent exported services and filed a claim of refund of unutilized CENVAT credit of service tax paid on various input services within 1 year from the date of receipt of convertible foreign exchange vide section 11B of the Central Excise Act, 1944 read with Rule 5 of CENVAT Credit Rules, 2004. However, majority claims were rejected on the ground that, relevant date for filing the refund claim should be the date of provision of service and not the date of receipt of consideration.

Held:-

Hon'ble High Court held that relevant date for filing refund claim of unutilized CENVAT credit shall be the date of receipt of convertible foreign exchange for calculating period of limitation of 1 year. Referring to the case of Bechtel India Pvt. Ltd. vs. Comm. of C. Ex. Delhi – 2014 (34) STR (Tri. – Delhi) and accordingly it is held that the relevant date would be the date of receipt of consideration and not the date of invoice.

6 Commissioner of Central Excise & Service Tax, Allahabad vs. Luxmi Chaurasia. (2017)

Facts:-

8 individuals co-owned an immovable property which was rented out. Collective rent paid to all 8 individuals was beyond Rs.10 lacs and therefore, department issued Show Cause Notice for non-registration, non-payment and non-filing of service tax returns. Respondents argued that rent was received separately by all individuals and therefore small scale service provider's exemption was available to each such individual. Further, as per various judicial pronouncements delivered in the context of Income tax, mere execution of documents by co-owners does not constitute body of individuals. Revenue relied on the definition of 'person' as per the General Clauses Act, 1897 to argue that the respondents were body of individuals. Respondents contended that though rent agreement was signed by all co-owners through a single document, security deposit as well as monthly rent was demanded by each co-owner separately.

Held:-

It was held that each co-owner is providing individual renting services unless they have formed "association of persons" through execution of any agreement. Without execution of any agreement between the co-owners, for formation of "Association of Persons", they cannot be considered as "Association of Persons" by any definition of any law. Since the definition is inclusive, there has to be an association of individuals to become 'person'. Therefore, the demand was set aside.

7 Reliance Media World Limited vs. Commissioner of Service Tax-II, Mumbai. (2017)

Facts:-

The Appellants availed CENVAT credit on input services used for providing broadcasting services in the State of Jammu and Kashmir and other parts of India. CENVAT credit availed was sought to be recovered on the ground that separate records of taxable and exempted services were not maintained. It was argued that the restrictive provisions of the CENVAT Credit Rules, 2004 in relation to availment does not arise in relation to such services and accordingly they are not exempted services.

Held:-

The Tribunal noted that the Finance Act, 1994 does not extend to the State of Jammu and Kashmir and therefore the services are not liable for service tax. The input services availed are required to provide the taxable services also, therefore, a portion of such credit cannot be denied on the ground that the Appellants are also rendering services in the state of Jammu and Kashmir. However, it was observed that it is required to be seen whether the provision of such services require any additional use of input/ input services or whether the services could be rendered in the rest of India by isolating a portion of input/input services. Accordingly, in absence of any logic for restricting the credit, it was held that the availment and utilization of full CENVAT credit is as per law. However, the Tribunal also held that if the input/input services were distinctly divisible, the provisions of Rule 6 would come into play.

8 G. Booban vs. Commissioner of Central Excise & ST, Madurai. (2017)

Facts:-

The Appellants while filing the service tax return finished up to the 'SAVE' stage, however the returns were not filed. Subsequently on realizing non-filing of return, the return was filed belatedly. The department demanded late fees under Rule 7C of the Service Tax Rules, 1994 read with section 77(2) of the Finance Act, 1994. It was argued that since the returns were prepared up to the 'SAVE' status, there was an intention to submit the same and since the assessee was a semi-literate provider, the actual submission was not done inadvertently.

Held:-

The Tribunal noted that since the returns are filed up to the 'SAVE' stage in the system and the assessee is a semi-literate service provider, late fee for delayed filing of service tax return is set aside. Accordingly, considering that the Appellant is a semi-literate service provider and has saved the return in the system, the recovery of late fee and penalty is set aside.

9 Andhra Pradesh State Road Transport Corporation (APSRTC) vs. Commissioner of Central Excise, Customs & Service Tax, Hyderabad-II. (2017)

Facts:-

Appellant providing services of "sale of space or time for advertisement", continued to collect service tax even after 01.07.2012, i.e. date from which said services ceased to be liable to service tax on account of inclusion in negative list. The service tax so collected was duly deposited by them. On realizing that said tax was not payable, the amount collected as "service tax" from customers were adjusted by appellant with amounts due from such customers and as regards amount deposited with service tax department, appellant filed refund claim. The refund claim was rejected by revenue authorities as being hit by unjust enrichment provision, which was upheld by adjudicating as well as first appellate authority. Appellant adduced evidence to show that the amount collected as "service tax" is adjusted against amounts due from customers. (In effect, the same was already returned to them). Thus they submitted that in absence of service tax liability on their activities, the amount deposited by them with the Government cannot be retained as being held without authority under law.

Held :-

Tribunal held that the assessee is entitled to refund in respect of amounts which were mistakenly collected as "service tax" and paid to Government, but later on adjusted with amounts due from customers on realizing that the activities were covered by negative list and thus, not liable to service tax. In the case of of Geojit BNP Paribas Financial Services Ltd. vs. CCE, C & ST [2015] 59 taxmann.com 401, wherein it was held that refund claim would not be subject to limitation in cases where service tax is paid on account of mistake of fact and there is no validity or authority with revenue to collect such amount. Thus, Tribunal set aside order rejecting refund claim.

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VAT Judgments and Updates

CA. Bihari B. Shah
biharishah@yahoo.com.

Important Judgments :

Hon. Gujarat VAT Tribunal in the case of Meghmani Organics Ltd.

Issue:

During the assessment, the Assessing Officers are reducing 2% Tax Credit from the purchase of capital goods in case of goods which are sold in the course of Interstate Trade & Commerce pursuing the notification issued u/s. 11(6) of Vat Act.

Held:

The Hon Gujarat Value Added Tax Tribunal has held Tax Credit @ 2% cannot be reduced in respect of Plant and Machinery used in the manufacturing of goods which are sold in the course of Interstate Trade & Commerce.

The gist of the important paragraphs of the judgment are reproduced hereunder for the benefit of the readers.

[1] Capital Goods are neither input nor Raw Material:

The appellant is a company engaged in the manufacture and sales of pesticides and chemicals. The appellant is registered under the Gujarat Value Added Tax Act, 2003("the GVAT Act" in short) as well as under the Central Sales Tax Act, 1956 ("the CST Act" in short). It is the case of the appellant that the appellant affected local sales within the State of Gujarat as well as sales in the course of inter-state trade and commerce and duly discharged output tax liability under the GVAT Act and the CST Act, that the appellant claimed input tax credit of tax paid on purchase of raw materials as well as capital goods that the appellant also reduced the claim of tax credit at the rate of 2% of the purchase value of 'raw materials' used in manufacture of goods sold in the course of inter-state trade and commerce as required by Entry No. 2 of the Notification No. (GHN-14) VAT-2010-S.11(6)(2).TH dated 29.06.2010 ("Notification dated 29.06.2010" in short) for the assessment year 2012-13, that the Assessing Officer issued a notice for audit assessment for the year 2012-13; that the appellant produced books of account in support of tax liability discharged with returns filed under the GVAT Act and the CST Act; that the assessing officer passed the assessment order and reduced tax credit in respects of 'capital goods' also and took a view that the tax credit in respect of purchase of 'capital goods' used in manufacture of taxable goods that were sold in the course of inter-state trade and commerce was also required to be reduced; that the assessing officer did not assign any reason for reduction of input tax credit in the assessment order and there were also certain calculation errors in the assessment order; that the assessing officer did not issue show cause notice to the appellant for reduction of tax credit in respect of 'capital goods' and hence, the assessment order is passed in breach of principles of natural justice; that the assessing officer reduced tax credit in respect of 'capital goods' by considering them to be 'input' for the purpose of Notification dated 29.06.2010; that the appellant preferred first appeal before the learned first appellate authority and the learned first appellate authority accepted the error committed by the learned assessing officer in determining the liability of tax, however, the contention of non-reduction of input tax credit in respect of purchase of 'capital goods' used in manufacture of goods sold in the course of inter-state trade and commerce was not accepted. It is further contended by the appellant that the learned first appellate authority committed error in confirming reduction of tax credit relating to 'capital goods' under the

Notification dated 29.06.2010 as the said notification required reduction of tax credit only of goods used as "input including raw materials" and hence 'capital goods' are neither 'input' nor 'raw materials', therefore, reduction of tax credit relating to 'capital goods' is bad in law; that the term 'input' suggests that it is something which is put into the process and hence 'raw materials' which go into final product by the manufacturing process is 'input'; that the 'capital goods' are machinery for carrying on business and cannot be considered as 'input' or 'raw materials' therefore, the interpretation of the authorities below to include 'capital goods' as 'input' for purpose of reduction of tax credit frustrates the scheme of the GVAT Act and 'capital goods' are durable in nature and they are used in manufacturing goods which are sold locally as well as in the course of inter-state trade and commerce. Therefore, Notification dated 29.06.2010does not apply to the 'capital goods'; that the interpretation to include 'capital goods' in the terms 'input' is contrary to the intention of the Government in introducing the Notification dated 29.06.2010 in view of budget speech by Hon'ble Finance Minister of Gujarat State for the year 2010-11. Therefore, it was never the intention of the Government to include 'capital goods' under the purview of Notification dated 29.06.2010. Therefore, present Second Appeal is filed challenging the order passed by the authorities below.

[2] Principle of Natural Justice:

The learned Advocate for the appellant submitted that the assessment order is passed against the principles of natural justice as no show cause notice was issued to the appellant regarding reduction of tax credit in respect of 'capital goods'. The Advocate for the appellant has also submitted that the assessment order does not assign any reason for reduction of tax credit and the assessing officer committed error in passing order by considering the 'capital goods' to be "input" for the purpose of Notification dated 29.06.2010. The Ld. Advocate for the appellant further submitted that the Notification dated 29.06.2010 required reduction of tax credit only in respect of goods used as 'input including raw materials' and 'capital goods' are neither 'input' nor 'raw materials' and therefore, reduction of tax credit relating to 'capital goods' is illegal. He has also submitted the term 'input' suggests that it is something which is put into the process and so raw material, processing material, consumable stores which are put into the manufacturing process are 'input' but 'capital goods' (plant and machinery) are used in the manufacturing process of converting various input into final product and therefore 'capital goods' are not 'input'.

[3] What is Input?

The Ld. Advocate for the appellant has relied upon the decision of M/s. Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar and Another reported in 96 STC 2011 (SC) in support of his contention that the expression "input including raw materials" used in Notification dated 29.06.2010 cannot have the effect of including the 'capital goods'. In the said decision Hon'ble Supreme Court made following observations as to what can be considered as "input".

"Raw Material has been further explained by the word "inputs", which dictionary means, 'what is put in', 'enter', 'enter system'. The concessional rate of tax is thus applicable to that raw material that is put in the manufacture or use of the goods. In Collector of Central Excise, Calcutta vs. Jay Engineering Works Ltd. [1989] 75 STC 313(SC); [1988] Supp. 3 SCR 998 a question arose whether name-plates used by manufacturer of fans being 'input' were exempt from payment of excise duty which provided that duty of excise leviable on such goods falling under item 1-A of Serial No. 68 as used 'inputs' would be exempt. It was held that name-plate affixed on the fan was not a piece of decoration and the fan without name-

plate could not be marked, therefore, it was exempt as provided in the notification and the assessee was entitled to exemption. The tyres, tubes and batteries were purchased for being put in the vehicle, which could not be operative without it. They were thus 'input'. The use of this word was indicative that the benefit was intended for every item which was raw material in the widest sense made wider by using the expression 'input'.

[4] Packing Material is not input:

Learned Advocate for the appellant has also relied upon the decision of M/s. Hindustan Lever Ltd. vs. State of Karnataka reported in [2016] SCC online 898 (SC). In the said decision the question that arose for consideration was whether 'packing materials' which enter the local area for consumption therein, that is for packing tea that is manufactured by the appellant can be said to be raw material, components or 'input' used in the manufacture of tea. Hon'ble Supreme Court after considering relevant provisions of Entry Tax Act held that when raw materials, components and things which go into the finished products, namely, tea and cannot be extended to cover packing material of the tea.

The Court after referring to the case of M/s. Tata Engineering and Locomotive Co. Ltd. (Supra) observed that the expression 'in the manufacture of goods' would normally encompass the entire process carried on converting raw materials into finished products. The Court held that when materials, component parts and 'input' refer to raw materials, component and things which go into the finished goods, cannot be extended to cover packing material which did not go into the finished goods.

[5] What is Plant?

In the decision of Hon'ble Gujarat High Court in the case of Commissioner of Income Tax, Gujarat vs. Elecon Engineering Co. Ltd. reported in 96 ITR 672 relied upon by the Ld. Advocate for the appellant, the court held that drawings and patterns which constitute know-how and are fundamental to the assessee's manufacturing business are plant. Hon'ble Supreme Court in the decision of Scientific Engineering House (P) Ltd. vs. Commissioner of Income Tax, Andhra Pradesh reported in 157 ITR 86 (SC) also relied upon by the Ld. Advocate for the Appellant agreed and approved the view taken in Elecon Engineering Co. Ltd. (supra and held that technical know-how in the form of drawings, designs, charts, plans, processing date and other literature would fall within the term of 'plant'. The court also observed that in order to qualify as 'plant' the article must have some degree of durability and it must be a tool of trade of the assessee with which he carries on his business.

In view of above two decisions, 'capital goods' are apparatus with durability used by businessman for carrying on his business. 'Capital goods' are used in manufacture of taxable goods and they do not go into or put into or enter into final product. Therefore, 'capital goods' cannot be covered into making of final product. It is also clear that 'capital goods' are used for manufacturing of final products from 'raw materials'.

[6] Order:

In view of above discussion, in view of the Tribunal, the Ld. Deputy Commissioner of Commercial Tax, Circle-6, Ahmedabad committed error in interpretation of the Notification dated 29.06.2010 by holding that the term 'input including raw material in the manufacture of goods' includes 'capital goods' and passing the impugned order dated 5/6.10.2015 and by partly confirming the said order by the Ld. Joint Commissioner of Commercial Tax (Appeal), Vibhag-2, Ahmedabad on 22.03.2016, therefore, both these orders are required to be set aside to the extent of reduction of 2% tax credit on 'capital goods' under the Notification dated 29.06.2010

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Corporate Law Update

CA. Naveen Mandovara
naveenmandovara@gmail.com

MCA Updates:

1. **Companies (Acceptance of Deposits) Amendment Rules, 2017:**

   (a) in rule 2, in sub-rule (1), in clause (c), in sub-clause (xviii), after the words "Domestic Venture Capital Funds" the words ", Infrastructure Investment Trusts" shall be inserted.

   (b) in rule 5, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:—

   "Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2018 or till the availability of deposit insurance product, whichever is earlier."

   [F. No 1/8/2013-CL-V dated 11.05.2017]

2. **Clarification regarding applicability of section 16 (1)(a) of the Companies Act, 2013 with reference to cases under corresponding provisions of Companies Act, 1956:**

   The MCA has clarified that the applications that were rejected by the Regional Directors under section 22(1)(ii)(b) of the Companies Act, 1956, on the ground that such applications were made after the requisite period of twelve months specified therein, cannot apply afresh under section 16(1) (a) of the Companies Act, 2013, as the extinguished limitation cannot be considered to be revived even if no limitation period has been prescribed /laid down in the said section.

   [F. No. l7/89/2016-CL-V dated 16.05.2017]

3. **Notification for commencement of provisions:**

   The Central Government hereby appoints the 1st April, 2017 as the date on which the provisions of clause (a) to clause (d) of section 2 of the Code relating to voluntary liquidation or bankruptcy shall come into force.

   According to the provisions of Section 2 of the Insolvency and Bankruptcy Code, 2016, the Code shall be applicable to:

   a) any company incorporated under the Companies Act, 2013 or under any previous company law,

   b) any other company governed by any special Act,

   c) any Limited Liability Partnership ('LLP') incorporated under the LLP Act, 2008,

   d) such other body incorporated under any law as notified by the Govt., and

   e) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation / bankruptcy.

   In reference to the above, MCA by means of an explanatory memorandum has further clarified that by giving retrospective effect to this notification, it is certified that no one is being adversely affected and giving retrospective effect to this notification is purely procedural in nature.

   [F. N. 30/7/2016-Insolvency Section dated 15.05.2017]

4. **Companies (Registered Valuers and Valuation) Rules, 2017:**

   These Rules shall come into force with effect from 15th July, 2017. These Rules comprises of Five Chapters and Three Schedules, brief details of the same are as under:

Chapter / Schedule No.	Particulars
Chapter I	Preliminary
Chapter II	Eligibility, qualifications and registration of valuers
Chapter III	Recognition of valuation professional organisations
Chapter IV	Valuation standards
Chapter V	Disciplinary proceedings
Schedule I	Model code of conduct for registered valuers
Schedule II	Form A Application for registration as a valuer by an individualForm B Application for registration as a valuer by a partnership entityForm C Certificate of RegistrationForm D Application for Certificate of RecognitionForm ECertificate of Recognition
Schedule III	Governance Structure and Model Bye Laws for VPOs and Model Bye-Laws of a valuation professional organisation

For details, please refer at:

http://www.mca.gov.in/Ministry/pdf/Companies_Registered_Valuers_Rules_2017.pdf

5. **Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017:**

In the Insolvency and Bankruptcy Code, 2016, in the Eighth Schedule, relating to amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, in section 4, in clause (b), after the second proviso, the following provisos shall be inserted, namely:—

"Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code:"

"Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order."

[F. No. 30/7/2016-Insolvency-Part II dated 24.05.2017]

1. **SEBI (International Financial Services Centres) Guidelines, 2015:**

The SEBI has clarified that "An IFSC Banking Unit (IBU) set up in IFSC shall be permitted to act as a Trading Member of an exchange or a Professional Clearing Member of a clearing corporation in IFSC, without forming a separate company", subject to the conditions mentioned in the aforesaid RBI circular dated April 10, 2017.

[SEBI/HO/MRD/DSA/CIR/P/2017/ 34 dated 27.04.2017]

2. **Instant Access Facility and Use of e-wallet for investment in Mutual Funds:**

The SEBI has issued the guidelines on Instant Access Facility and Use of e-wallet for investment in Mutual Funds (MFs). Instant Access Facility (IAF) simplifies the credit of redemption proceeds in the bank account of the investor on the same day of redemption request. E- Wallet is an electronic device that allows an individual to make electronic transactions.

For details, please refer the circular at:

http://www.sebi.gov.in/legal/circulars/may-2017/instant-access-facility-and-use-of-e-wallet-forinvestment-in-mutual-funds_34830.html

[SEBI/HO/IMD/DF2/CIR/P/2017/39 dated 08.05.2017]

3. Position limits for cross-currency futures and options contracts (not involving indian rupee) on exchanges in International Financial Services Centres (IFSC):

The SEBI has fixed the positions limits for cross currency futures and options contracts on exchange in IFSC. The position limits for eligible market participants, per currency pair per stock exchange, shall be as follows:-

a. Trading Members (positions on proprietary basis as well as clients' position) – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher.

b. Institutional Investors – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher.

c. Eligible Foreign Investors – Gross open position across all contracts not to exceed 15% of the total open interest or USD 1 billion equivalent, whichever is higher.

d. Other Clients – Gross open position across all contracts not to exceed 6% of the total open interest or USD 100 million equivalent, whichever is higher.

Appropriate penalties shall be imposed by stock exchanges for violation of position limits by eligible market participants.

[SEBI/HO/MRD/DRMNP/CIR/P/2017/43 dated 17.05.2017]

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contd. from page 80

Let me now refer to important decision of the Delhi High court explaining the term "Construction". In the case *of CIT v. Ashok Kumar Ralhan (2014) 46 Taxmann.com 416/224 Taxman 137 (Mag.)/360 ITR 575 (Delhi),* the assessee had sold a property in Oct. 2006 and declared capital gains of Rs. 51,71,994/-. He had purchased a property in December, 2004 on construction of which he claimed benefit u/s. 54F of the Act.

The AO denied benefit u/s. 54F of the Act to the assessee on the ground that there was no need for the assessee either to reconstruct or to renovate the purchased property as it was already fully constructed. The Commissioner of Income Tax (Appeals), relying on certificate issued by the architect who had stated that the earlier structure was demolished and thereafter, new construction was made on the plot, held that it was a case of new construction after demolition and therefore, the assessee was entitled to exemption u/s. 54F of the Act. When the issue ultimately reached the Delhi High court it made the following observations at para.7of its judgment

"The Word "construction" in Black's Law Dictionary, 6th Edition at page 312 has been defined to mean to build; erect; put together; make ready for use. The word "construct" is distinguishable from maintenance, which means to keep up, to keep from change, to preserve. The word "construction" for the purpose of the section has to be given realistic, practical and a pragmatic meaning, keeping in mind the object and purpose of the provision. Section 54F is a beneficial provision as an earlier capital asset, which is sold, is replaced by a new capital asset in the form of a residential house, which should be purchased or constructed within the time period stipulated.

The Delhi High court ultimately held in favour of the assessee by dismissing the appeal preferred by the Revenue.

In this case the new capital asset was purchased 22 months prior to sale of old capital asset.

It is clear from the detailed discussion above that period of investment prior to sale of asset has no relevance in determining total investment made prior to date of sale of capital asset, though it has to be ensured that construction is not complete before sale of old capital asset.

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Mumbai Office :
710, Maker Chambers V, Nariman Point,
Mumbai 400 021. India.
T : 91-22-2205637 / 65219960
F : - 91-22-22025621

Allied Laws Corner

Adv. Ankit Talsania
ankittalsania@gmail.com

A Guarantor is also a 'borrower' within the meaning of the SARFAESI Act and measures can be taken against him to recover secured debt.

Recently, the Gujarat High Court in the case of **Sagar Innovative (p.) Ltd. vs. Punjab National Bank** reported in **80 taxmann.com 264** held that a person who has given any guarantee or created any mortgage or pledge as security for financial assistance granted by any bank or financial institution, is a 'borrower' within meaning of Act and it would stand covered in section 13(2) and 13(4) for taking measures to recover secured debt.

A. Facts of the case :

1. Petitioners filed a Writ Petition under Article 226 and 227 of the Constitution of India aggrieved by the action taken under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, that the guarantor cannot be termed as borrower for the purpose of taking action under Section 13 of the Act and no measures can be taken u/s 13(2) /13(4) of the Act to recover the secured debt financed by the lenders to the actual borrowers.

B. Arguments of the Petitioners :

1. It was submitted that the Act does not apply to the petitioners as they are not the borrowers who have taken the loan but they are the guarantors. They submitted that the action under Section 13 of the Act could be taken only against the borrower who makes default in repayment of the loan and whose account with secured creditor is classified as NPA. They submitted that since the guarantor is not responsible to repay the financial assistance, there is no question of making any default or classifying his account as NPA. They submitted that though the guarantors are included in the definition of 'borrower' in Section 2(f) of the Act, however in the context of taking any action under the Act, the borrowers are of two kinds; i.e. 'borrower-in fact' and 'borrower-in law'.
2. Referring to provisions of Section 13, they submitted that the actions contemplated under Section 13 are against the borrower who had taken financial assistance and not against the guarantor or the mortgagor. Referring also to definition of 'default', they submitted that non-payment of debt is referable to the borrowers who have availed of loan and not to the guarantors and therefore, the provisions of the Act, especially Section 13, would not apply to them.
3. It was further submitted that the possession of the property of the petitioner was taken in purported exercise of powers under Section 13(4) of the Act without following the mandatory procedure under Rule 8 of the Security Interest (Enforcement) Rules, 2002 ('the Rules') and therefore, the petitioner is justified to invoke extraordinary jurisdiction of this Court.
4. It was submitted that the respondent is neither a bank nor financial institution but it is a securitization company which has no jurisdiction to enforce the provisions of Section 13 against the guarantor to recover the dues of the loan independently granted to the borrower. It was argued that measures under Section 13(4) of the Act

could be taken by the reconstruction company to recover the financial assets but not for recovery of fresh loan/ financial assistance granted to the borrower. He submitted that the petitioner of this petition was given Rs.10 crore as fresh loan and for recovery of the dues in connection with such fresh loan, the Act does not apply. Referring to Section 5(2) of the Act, he submitted that securitisation or the asset reconstruction company cannot be considered as deemed lender under the Act for independent lending to the petitioner. He submitted that if the reconstruction company is not the deemed lender within Section 5(2) of the Act, it is not authorized to recover any dues from the guarantor by resorting to the provisions of Section 13 of the Act in connection with fresh lending done by it to the borrower. He further submitted that Section 9 provides for re-schedulement of debts- NPA but not restructuring of other dues. Mr. Shah submitted that since the measure of taking possession of the property of the petitioners under Section 13(4) of the Act is without jurisdiction, the Court may exercise its extraordinary powers under Article 226 of the Constitution of India.

C. Arguments of the Respondent :

1. It was submitted that since against the measures taken under Section 13(4) of the Act, the statutory remedy of appeal under Section 17 of the Act is available, the petitioners should be relegated to avail of such statutory remedy.
2. They submitted that the 'borrower' defined under the Act would also mean a person who has given any guarantee or created any mortgage or pledge as security for financial assistance granted by any bank or financial institution.
3. They submitted that when the purpose to enact the Act is to reduce NPAs by adopting measures for speedy recovery of the financial assets by enforcement of the security interest, the legislature could be said to have intended that the Act would apply even to the guarantors/mortgagors and actions envisaged under Section 13 could well be taken against such guarantors and mortgagors.
4. It was further argued that since respondent No.1 is a private company, the petition under Article 226 of the Constitution of India would not be maintainable against it. He submitted that even otherwise, financial assistance of Rs.10 crore given to the borrower was part of the restructured dues/debt and the respondent company is since a secured creditor within the meaning of definition of secured creditor, it has jurisdiction to take action under Section 13 of the Act.

D. Findings of the Hon'ble Gujarat High Court:

1. The Court having heard learned advocates for the parties finds that all the petitions are filed after the measure of taking possession of the secured assets of the petitioners is taken under Section 13(4) of the Act. **Section 17 of the Act provides for remedy of appeal to any person including the borrower aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Act taken by secured creditor or his authorized officer.** As per sub-section (2) of Section 17, Debts Recovery Tribunal (DRT) has jurisdiction to consider whether any of the measures referred to in sub-section (4) of Section 13 taken by secured creditor for enforcement of the security is in accordance with the provisions of the Act or the Rules made thereunder. As provided in sub-section (3), if the DRT finds that measures

taken under Section 13(4) of the Act are not in accordance with the provisions of the Act or the Rules and requires restoration of the management of the secured assets to the borrower or restoration of the possession of the secured assets to the borrower, it may by order declare that the recourse to any of the measures taken under Section 13(4) of the Act by secured creditor is invalid and restore possession of the secured assets to the borrower or restore the management of the secured assets to the borrower and pass such further order as it may consider appropriate and necessary in relation to the recourse taken under sub-section (4) of Section 13. **Thus, statutory remedy of appeal under Section 17 available to any person aggrieved by measures taken under sub-section (4) of Section 13 of the Act is efficacious and exhaustive.**

2. However, it was argued on behalf of the petitioners that when the Act does not apply to the petitioners or that the action taken under sub-section (4) of Section 13 against the petitioners is without jurisdiction, the petitioners are entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and they may not be relegated to the alternative remedy.

3. The contentions that the Act does not apply to the petitioners and that the action taken under Section 13(4) is without jurisdiction are mainly on the premise that the petitioners since have not taken financial assistance but has given guarantee as security for financial assistance taken by the borrowers, they cannot be said to be borrower responsible to repay the loan and committed default in repayment of such loan and also on the premise that since the accounts of the guarantors are not maintained by secured creditor, there is no question of classifying the account of the guarantor as NPA.

4. **As regards the question whether the guarantor/ mortgagor could be proceeded against under Section 13 for recovery of the secured debt, the Court finds from the statement of objects and reasons for enacting the Act and from the Scheme of the Act that if the guarantors or the mortgagors are taken to be excluded from the purview of the Act, it would run counter to the objects intended to be achieved by the legislature.**

5. **As stated in the statement of objects and reasons, to come out from the slow place of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions,** the Act is enacted to regulate securitization and reconstruction of the financial assets and enforcement of the security interest and for the matters connected therewith or incidental thereto.

6. **The definition of 'borrower' takes in its sweep even a person who has given guarantee or created any mortgage or pledge as a security for the financial assistance granted by any bank or financial institution.** The security interest means right, title or interest of any kind whatsoever upon property, created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment other than those specified in Section 31. The creation of security interest to secure the debt of the bank or financial institution does not fall within Section 31 of the Act. Security interest could be created under the security agreement as defined in section 2(zb) of the Act and on creation of such security interest, the debt of the bank or financial institution is secured. **Therefore, a person who has**

given any guarantee or created any mortgage or pledge as security for financial assistance granted by any bank or financial institution, is a borrower within the meaning of 'borrower' under the Act.

7. Sub-Section (1) of Section 13, which provides for enforcement of any security interest created in favour of any secured creditor in accordance with the provisions of the Act, notwithstanding anything contained in Section 69 and 69A of the Transfer of Property Act and without intervention of the Court or the Tribunal, clearly indicates the legislative intent that the Act applies to the guarantor or the mortgagor for recovery of the secured debt by enforcing security interest against them.

8. Sub-section (2) of Section 13 when read with sub-section (3) thereof, it becomes clear that when the borrower, who is under liability to a secured creditor under security agreement makes default in repaying the secured debt or any installment thereof and his account in respect of such debt is classified as NPA, **the secured creditor can issue notice to the actual borrower of loan/financial assistance, who is referred as 'borrower in-fact' by learned advocate Mr. Shah and also to the guarantor/ mortgagor who is referred as 'borrower in-law' by Mr. Shah for discharging liability to secured creditor under the security given by them and on failure to discharge such liability, can enforce secured assets by taking measures under Section 13(4) of the Act**.

9. Thus, though default in making repayment of the financial assistance is by the person who is actual borrower of such financial assistance and to whom definition of 'default' could be said to be applied, however **when the person who has given guarantee or created mortgage as a security for financial assistance given by the bank or the financial institution, is specifically included in the definition of 'borrower', the guarantor/ mortgagor would stand covered in Section 13(2) and 13(4) for taking measures to recover secured debt.**

10. **When the object of the Act is for speedy recovery of the secured debts which are NPAs, which could be achieved by enforcement of security interest without intervention of the Court or the Tribunal, the guarantors/mortgagors are very much intended to be proceeded against under the provisions of the Act for recovery of the secured debt.** The provisions made in sub-section (11) of Section 13 is one more indication of the legislative intent to apply the provisions of Section 13(2) and 13(4) against the guarantor/mortgagor for recovery of the secured debt. It provides that without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors to sell the pledged assets without first taking any measures specified in Clauses (a) to (d) of sub-section (4) in relation to the secured assets under the Act. Thus, sub-section (11) would go to show that the secured creditor does have right to proceed against the guarantor or the mortgagor under Section 13 for enforcement of the security. In such view of the matter, the contention that the Act does not apply to the guarantors or the mortgagors and that no action can be taken against them under Section 13 of the Act cannot be accepted. The guarantors or the mortgagors aggrieved by the measures taken under sub-section (4) of Section 13, can have their statutory remedy of appeal under Section 17 of the Act.

11. In the case of ***United Bank of India* v. *Satyawati Tondon* [2010] 8 SCC 110**, Hon'ble Supreme Court while examining the question **whether the appellant therein could have issued notices to respondent No.1 therein- guarantor under Section 13(2) and 13(4) and filed an application under Section 14 of the Act without first initiating action against the borrower, i.e. respondent No.2 therein, for recovery of the outstanding dues,** has held and observed in para 42 and 43 as under:-

"42. There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.

43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute."

12. As regards the contention that the petition is not maintainable under Article 226 of the Constitution, it is required to note that the reconstruction company is to function as statutorily required to take action under Section 13 of the Act and therefore, it cannot be said that writ petition is not maintainable. But, since the statutory remedy is available, the Court may not entertain the petition under Article 226 of the Constitution. However, learned advocate Mr. Shah for the petitioner submitted that since the impugned action taken by the respondent- reconstruction company is not to recover financial assistance, but to recover the dues of Rs.10 crores which were independently lent by the respondent company, it could neither be said to be a bank or financial institution or a secured creditor and therefore, the respondent No.1 company has got no jurisdiction to take any action under the Act to recover dues of Rs.10 crore from the

petitioners. Learned senior advocate Mr. Soparkar however submitted that the measures taken against the petitioners under Section 13(4) of the Act are to recover restructured dues of financial assistance, for non-payment of which the respondent No.1 company as a deemed lender and secured creditor is entitled to take action under the provisions of Section 13 of the Act against the petitioners. Mr. Soparkar drew the attention of the Court to the contents of the notice issued under Section 13(2) of the Act to the original borrower and also to the petitioner who is the mortgagor to point out that additional loan of Rs.10 crore was given to the petitioner for the purpose of restructuring of acquired loans. He also drew the attention of the Court to the affidavit of respondent No.1 to support the stand taken that grant of additional facility to the borrower was a part of restructuring of the dues. He also took the Court to a document at Annexure-R4, annexed with the affidavit-in-reply, which is a communication dated 13.9.2010 addressed to the Chairman of the borrower company, stating that on the terms and conditions agreed between the parties, additional facility was granted as part of restructuring of the dues. Copy of the Annexure referred in the said communication containing the terms and conditions for such additional facility are found placed at page 133.

13. The Court finds that **when the stand taken by respondent No.1 is that advancing financial assistance of Rs. 10 crore to the borrower was not independent loan given to the borrower but was part of the restructured loan which was made for restructuring of dues/ financial assistance, it is a stand taken contrary to the stand taken by the petitioner and gives rise to a dispute which could be resolved only on considering or appreciating the evidence including documentary evidence and this Court under Article 226 of the Constitution of India may not go into disputed questions of fact**. Though learned advocate Mr. Shah submitted that the action could be taken under Section 13 of the Act only in respect of the financial assistance acquired by the securitization or reconstruction company and that respondent No.1 company is neither bank nor financial institution or that it would not satisfy the definition of ' Secured Creditor' as measures taken under Section 13(4) of the Act against the petitioners is not for secured debt but to recover the dues of independent loan advanced by respondent No.1, however **once the respondent No.1 has taken stand with supporting documents placed on record that Rs.10 crore given to the petitioner was part of restructuring of the financial assets, the Court would not enter into disputed question of such fact when a remedy of statutory appeal under Section 17 of the Act is available to the petitioners against the measures taken against them under Section 13(4) of the Act.**

14. **In light of the above and since statutory remedy of appeal is available to all the petitioners under Section 17 of the Act against the actions impugned in the petitions, the petitions are not entertained and are rejected**, leaving it open to the petitioners to avail of alternative remedy before appropriate forum. Rule discharged.

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From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

AS 15 - Employee Benefits - Annual Report 2015-16

Deepak Fertilisers And Petrochemicals Corporation Limited

Employee benefits

Short –term employee benefits are recognised as an expense at the undiscounted amount in the statement of profit and loss of the year in which the related service is rendered.

Provident fund

The eligible employees of the company are entitled to receive benefits under the provident fund, a defined contribution plan in which both the employees and the company make monthly contributions at a specified percentage of the covered employees' salary [currently 12% of employees' salary]. The contributions as specified under the law are paid to the regional provident fund commissioner and the central provident funds commissioner and the central provident fund under the pension scheme the company recognises such contributions as expense of the year in which the liability is incurred.

Gratuity

The company has an obligation towards gratuity, a defined benefit retirement plan covering eligible employees. The plan provides for a lump sum payments to vested employees at retirement, death while in employment or on termination of employment of an amount equivalent to 15 to 30 days salary payable for each completed year of service. Vesting occurs upon completion of five years of service. The plan is managed by a trust and the fund is invested with recognised insurance companies under their group gratuity scheme. The company makes annual contributions to gratuity fund and recognises the liability for gratuity benefits payable in future based on an independent actuarial valuation.

Superannuation

The company has an optional superannuation plan for its executives, a defined contribution plan. The company makes annual contributions at 15 % of the covered employees' salary, subject to maximum of 1,00,000 per employee, for the executives opting for the benefit . The plan is managed by a trust and the funds are invested with recognised lnsurance companies under their group superannuation scheme. Annual contributions as specified under the trust deed are paid to the lnsurance companies and recognised as an expense of the year in which the liability is incurred.

Compensated Absences

The company provides for the encashment of leave or leave with pay subject to certain rules. The employees are entitled to accumulate leave for availment as well as encashment subject to the rules. As per the regular past practice followed by the employees, it is not expected that the entire accumulated leaves shall be encashed or availed by the employees during the next twelve months and accordingly the benefit is treated as log-term defined benefit. The liability is provided for based on the number of days of unutilized leave at the balance sheet date on the basis of an independent actuarial valuation.

Medical Benefits

The company has a medical benefit plan according to which employees are entitled to be covered under mediclaim policy for the next five years post their superannuation. The amount being insignificant, the liability towards such benefit is recognised based on the actual premium payable.

Post–retirement benefits

The company has a post retirement benefit plan, which is a defined benefit retirement plan, according to which executives superannuating from the service after ten years of services are eligible for certain benefits like medical, fuel, telephone reimbursement, club membership etc. for specified

number of years. The liability is provided foe on the basis of an independent actuarial valuation.

DLF Ltd.

Expenses and liabilities in respect of employee benefits are recorded in accordance with the notified accounting standard 15 employee benefits.

i) Provident Fund

Certain entities of the DLF group make contribution to statutory provident fund trust setup in accordance with the Employees Provident Funds and Miscellaneous Provisions Act, 1952. In terms of the guidance on implementing the revised accounting standard 15 employee benefits, the provident fund trust set up by the DLF group is treated as a defined benefit plan since the DLF group has to meet the interest shortfall, if any, is recognised as an expense in the period in which services are rendered by the employee.

Certain other entities of the DLF group make contribution to the statutory provident fund in accordance with the Employees Provident Fund and Miscellaneous Provisions Act, 1952 which is defined contribution plan and contribution paid or payable is recognised as an expense in the period in which the services are rendered.

ii) Gratuity

Gratuity is a post employment benefit and is in the nature of a defined plan. The liability recognized in the financial statement in respect of gratuity is the present value of the defined benefit/obligation at the reporting date less the fair value of plan assests, together with adjustments for unrecognized actuarial gains or losses and past service costs. The defined benefit/obligation is calculated at or near the reporting date by an independent actuary using the projected unit credit method.

Actuarial gains and losses arising from past experience and changes in actuarial assumptions are credited or charged to the statement of profit and loss in the year in which such gains or losses are determined. For certain consolidated entities, contributions made to an approved gratuity fund (funded by contributions to LIC under its group gratuity scheme) are charged to revenue on accrual basis.

iii) Compensated Absences.

Liability in respect of compensated absences becoming due or expected to be availed within one year from the reporting date is recognised on the basis of undiscounted value of estimated amount required to be paid or estimated value of benefit expected to be availed by the employees. Liability in respect of compensated absences becoming due or expected to be availed more than one year after the reporting date is estimated on the basis of an actuarial valuation performed unit the projected unit credit method.

Actuarial gains and losses arising form past experience and changes and changes in actuarial assumptions are credited or charged to the statement of profit and loss in the year in which such gains or losses are determined.

iv) Superannuation Benefit

Superannuation is in the nature of a defined benefit plan. Certain entities make contributions towards superannuation fund (funded by payments to life insurance corporation of india under its group superannuation scheme) which is charged to revenue on accrual basis.

v) Employee shadow option scheme (cash settled options)

Accounting value of cash settled options granted to employees under the employee shadow/phantom option scheme is determined on the excess of the average market price, during the month before the reporting date, over the exercise price of the shadow option. The same is charged as employee benefits price of the shadow option. The same is charged as employee benefits over the vesting period, in accordance with guidance note no.18 Accounting for employee share based payments, issued by the Institute of Chartered Accountants of India (ICAI).

vi) Other Short-term Benefits

Expense in respect of other short-term benefits is recognised on the basis of the amount paid or payable for the period during which services are rendered by the employee.

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From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1) **Notification regarding not furnishing of Aadhaar Number in Income Tax Return for specified individuals**

Section 139AA of the Income-tax Act, 1961 as inserted by the Finance Act, 2017 provides for mandatory quoting of Aadhaar / Enrolment ID of Aadhaar application form for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017.

Section 139AA (3) of the Act empowers the Central Government to notify the person(s) or State(s) to which the requirement of quoting of Aadhaar / Enrolment ID shall not apply.

Accordingly, the Central Government vide notification dated 11th May, 2017 has notified that the requirement of quoting of Aadhaar / Enrolment ID shall not apply to the following individuals if they do not possess the Aadhaar / Enrolment ID:-

(a) An individual who is residing in the state of Assam, Jammu and Kashmir and Meghalaya.

(b) An individual who is a non-resident as per the Income-tax Act, 1961.

(c) An individual of the age of eighty years or more at any time during the previous year.

(d) An individual who is not a citizen of India.

(Notification No.37/2017, dated 11/05/2017)

2) **Press Release regarding Clarification on furnishing Statement of Financial Transaction (SFT) & SFT Preliminary Response**

Section 285BA of the Income-tax Act, 1961 requires furnishing of a statement of financial transaction (SFT) for transactions prescribed under Rule 114E of the Income-tax Rules, 1962. The due date for filing such SFT in Form 61A is **31st May 2017**.

In case there are reportable transactions for the year, the reporting person/entity is required to register with the Income Tax Department and generate Income Tax Department Reporting Entity Identification Number **(ITDREIN)** The same can be generated by logging-in to the e-filing website (https://incometaxindiaefiling.gov.in/) with the log in ID used for the purpose of filing the Income Tax Return of the reporting person / entity. Entity having PAN can take only PAN based ITDREIN. Entity having TAN can generate an ITDREIN only when such TAN's Organisational PAN is not available.

The registration of reporting person **(ITDREIN registration)** is mandatory only when at least one of the Transaction Type is reportable. A functionality **"SFT Preliminary Response"** has been provided on the e-Filing portal for the reporting persons to indicate that a specified transaction type is not reportable for the year.

Detailed procedure of ITDREIN registration and upload of Form 61A is available under the "Help" section and Form 61A utility and Schema are available under the download section of http://www.incometaxindiaefiling.gov.in and https:/

/www.cleanmoney.gov.in. Online filing of form 61A requires a valid class 2 or 3 digital signature certificate of person responsible for filing the same. Please refer "DSC Management Utility" manual under help section on how to generate the signature file, attaching the XML with signature and uploading of XML with signature file in e-Filing portal.

(Press Release dated 26/05/2017)

3) **Notification regarding declaration of Cost Inflation Index.**

The Central Government hereby specifies the Cost Inflation Index as mentioned in column (3) of the Table for the Financial Years mentioned in the corresponding entry in column (2) of the said Table, namely:—

SI. No.	Financial Year	Cost Inflation Index
(1)	(2)	(3)
1	2001-02	100
2	2002-03	105
3	2003-04	109
4	2004-05	113
5	2005-06	117
6	2006-07	122
7	2007-08	129
8	2008-09	137
9	2009-10	148
10	2010-11	167
11	2011-12	184
12	2012-13	200
13	2013-14	220
14	2014-15	240
15	2015-16	254
16	2016-17	264
17	2017-18	272

This notification shall come into force with effect from 1st day of April, 2018 and shall accordingly apply to the assessment year 2018-19 and subsequent years.

(Notification No. 44 /2017, dated 05/06/2017)

4) **Notification regarding extension in time for furnishing Form 16 by employer to employee.**

The Central Board of Direct Taxes hereby amend the Income-tax Rules, 1962 by extending the time for furnishing form 16 from 31st May to 15th June.

They shall come into force from the date of their publication in the Official Gazette.

(Notification No. 42 /2017, dated 02/06/2017)

***

WITH BEST COMPLIMENTS

FROM

R B CONSTRUCTION COMPANY

(TURNKEY CONTRACTORS FOR PIPELINES / PUMPING STATIONS / TREATMENT PLANTS / ESR AND SUMPS.)

ROHIT BODIWALA M.S. (USA)

MILIND BODIWALA M.S. (USA) PRANAV BODIWALA M.S.(USA)

225, SOMESHWARA COMPLEX-2
OPP. STARBAZAR, SATELLITE, AHMEDABAD-380015
TEL NO (079) 26923830, 26921431
E-MAIL ID - rohit_bodiwala@yahoo.com

Association News

CA. Riken J. Patel
Hon. Secretary

CA. Maulik S. Desai
Hon. Secretary

1 **Forthcoming Programmes**

Date/Day	Time	Programmes	Speaker	Venue
12th, 14th, 15th, 16th June 2017	5.30 a.m. to 7.30 a.m. (All Days)	**Accountant Plus** - A Unique programme on GST for Accountants **(Comprising a series of 4 lectures)**	CA. Priyam R. Shah, CA. Punit R. Prajapati, CA. Rahul P. Patel CA. Monish S. Shah	H.K. College Conference Hall, Nr. Nehru Bridge, Ashram Road Ahmedabad
17.06.2017 Saturday	9.00 a.m. to 1.30 p.m.	1st Brain trust Meeting cum workshop on Practical Aspects and intricacies of Income Computation and Disclosure Standards (ICDS)	CA. Jayesh C. Sharedalal	ATMA Hall, Ashram Road, Ahmedabad
18.06.2017 Sunday	7.00 a.m. to 9.00 a.m.	Health Management Through Yoga	Smt. Mayurika Pankaj Shah (Yoga Trainer)	The Multipurpose Hall, Sports Club of Gujarat, Sardar Patel Stadium, Navrangpura
23.06.2017 Friday	9.00 a.m. to 5.00 p.m.	Full Day Seminar on "Goods & Service Tax (GST) "**jointly with BCAS**	CA. Chirag Mehta, CA Puloma Dalal & CA Dushyant Bhatt	Fire & Flames Banquet Hall, 4th Floor, Ahmedabad One Mall, Opp. Vastrapur Lake, Vastrapur
30.06.2017 Friday	8.00 p.m. to 12.00 p.m.	Musical Programme		Tagore Hall, Paldi, Ahmedabad.
02.08.2017 to 05.08.2017		44th Residential Refresher Course		Various Speakers Jaypee Greens Golf & Spa Resort, Greater Noida, UP

Glimpses of events gone by:

1st Study Circle (Direct Tax) - Lecture meeting on Form 61A reporting SFT (Specified Financial Transactions)

2nd Study Circle (Direct Tax) - Income Tax Amendments applicable for AY 2017-18 and Changes in Income Tax Return forms

Round Table Conference with Hon'ble Finance Minister Shri Arun Jaitley and CM Gujarat, Shri Vijaybhai Rupani at Karnavati Club

GST Study Series

1st Batch of Accountant Plus –A Unique Programme on GST for Accountants

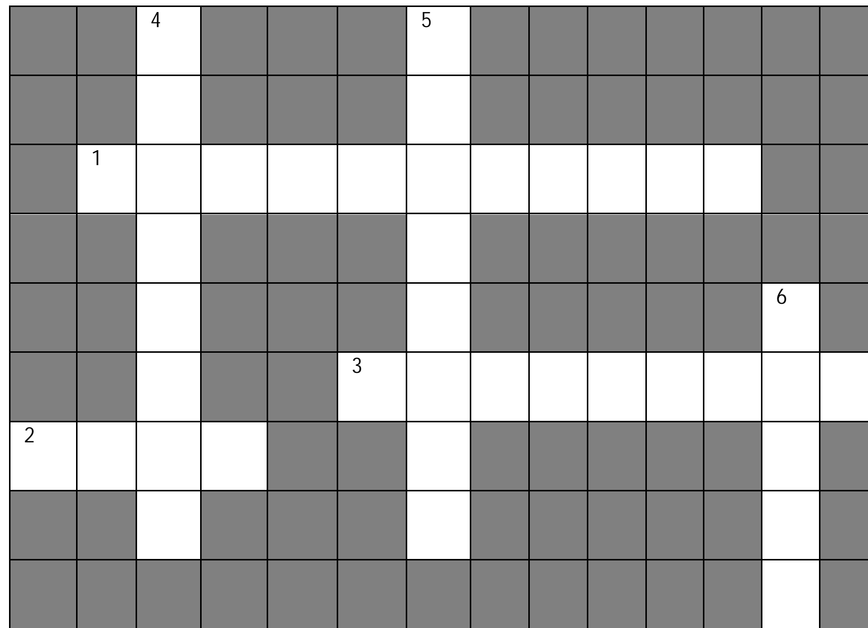
ACAJ Crossword Contest # 37

Across

1. Any person having centralized registration under Service Tax shall be granted one ________ registration in each state or union territory for the purpose of migration to GST.
2. Under GST regime, Special Economic Zones supplies are expected to be at ____ Rate.
3. Section 43B of Income Tax cannot be invoked when there is no claim of _______.

Down

4. While computing book profit for the purpose of section 40(b), the remuneration to _______ should be first allowed and thereafter brought forward business losses should be set off.
5. Lease rent from letting out building along with other amenities in an Industrial Park/ SEZ is to be charged to tax as ______ income.
6. The 44th RRC of CA Association is to be held at ________.



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 20/06/2017.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 36

1. CA. Ajit C. Shah
2. CA. Nilpa H. Shah

ACAJ Crossword Contest # 36 - Solution

Across

1. Proviso
2. Depreciation
3. Resident

Down

4. Twenty
5. Recoverable
6. Double

ધી અમદાવાદ ડિસ્ટ્રિક્ટ કો-ઓ.બેન્ક લિ.

ગાંધીબ્રીજના નાકે, ઈન્કમટેક્ષ ઓફીસ સામે, અમદાવાદ-૯. ફોન : ૨૭૫૪૨૬૦૮-૦૯-૧૦
Website : www.adcbank.coop • Email : info@adcbank.coop, adcbank@gmail.com

બેંકના કામકાજની પ્રગતિ

૩૧-૦૩ના હિસાબી વર્ષ આખરની આર્થિક સ્થિતિ

(રકમ રૂા. કરોડમાં)

ક્રમ	વિગત	૧૯૯૦	૧૯૯૫	૨૦૦૦	૨૦૧૦	૨૦૧૧	૨૦૧૨	૨૦૧૩	૨૦૧૪	૨૦૧૫	૨૦૧૬	૨૦૧૭
૧	શાખાઓની સંખ્યા	૧૦૨	૧૧૪	૧૨૧	૧૪૦+૩	૧૪૦+૧૮	૧૪૨+૨૯	૧૫૮+૧૫	૧૬૨+૨૨	૧૭૫+૧૧	૧૭૭+૧૧	૧૮૮+૨
૨	શેર ભંડોળ	૮.૫૦	૧૫.૭૫	૩૨.૬૯	૫૪.૧૦	૫૩.૯૪	૫૩.૭૭	૫૪.૮૩	૫૪.૯૦	૫૫.૯૧	૫૬.૧૮	૫૪.૬૧
૩	રીઝર્વ ફંડ તથા અન્ય ફંડો	૪૦.૨૮	૮૭.૩૬	૧૬૩.૧૪	૨૫૦.૦૪	૨૮૫.૪૬	૩૦૭.૭૩	૪૪૩.૯૧	૩૮૦.૯૭	૩૭૭.૪૬	૩૮૯.૦૨	૪૨૪.૦૦
૪	એગ્રી. ધિરાણ	*	*	૧૯૪.૪૬	૪૬૨.૯૦	૪૭૩.૯૬	૬૯૫.૫૯	૮૬૦.૬૧	૧૨૭૫.૫૬	૧૪૯૫.૭૯	૧૭૮૨.૩૮	૨૩૨૦.૭૧
૪અ	કુલ ધિરાણ	૨૪૦.૦૧	૨૯૪.૯૭	૪૬૪.૨૧	૧૧૦૫.૨૮	૧૨૬૮.૧૪	૨૬૪૭.૯૧	૧૯૮૮.૬૪	૨૨૯૩.૪૪	૨૫૩૦.૫૩	૨૮૯૩.૮૮	૩૪૧૫.૩૮
૫	લો કોસ્ટ ડીપોઝીટ	*	*	૨૮૬.૩૫	૧૧૦૭.૫૮	૧૪૦૯.૦૦	૧૪૯૮.૧૮	૧૪૯૧.૦૭	૧૫૪૨.૭૨	૧૬૯૧.૧૯	૧૯૨૯.૪૩	૨૨૨૩.૦૯
૫અ	થાપણો	૩૫૨.૨૯	૬૦૫.૭૮	૧૩૩૦.૫૪	૩૦૦૭.૧૦	૩૧૦૩.૩૦	૩૩૬૨.૭૮	૩૬૦૨.૦૮	૪૦૫૦.૬૫	૪૫૫૫.૩૧	૪૭૦૩.૧૦	૫૦૫૦.૦૪
૬	ડીપોઝીટરની સંખ્યા	૪૬૨૧૮૨	૫૩૩૫૬૮	૬૩૯૭૭૨	૮૭૯૭૭૪	૮૯૬૬૨૯	૯૦૧૪૯૧	૯૧૨૨૪૯	૧૧૯૧૬૯૫	૧૩૫૩૪૭૩	૧૫૨૫૫૬૩	૧૬૨૩૬૬૬
૭	ફંડ કોસ્ટ	*	*	૯.૫૩%	૬.૭૦%	૫.૫૯%	૫.૪૧%	૫.૯૩%	૬.૮૯	૬.૯૯	૬.૩૨	૫.૮૫
૮	નફો/ખોટ	*	(-)૨૦.૨૬	(-)૨૦.૨૮	૯.૨૬	૯.૮૫	૯.૯૩	૧૧.૫૧	૧૨.૧૫	૧૩.૦૯	૧૪.૨૮	૧૪.૩૧

૧. વ્યક્તિગત ધિરાણની મહત્તમ મર્યાદા રૂા.૬૦ લાખ છે હાઉસીંગ લોન માટે રૂા.૨૫ લાખ સુધીનું વ્યક્તિગત ધિરાણ આપવામાં આવે છે.

૨. બેંક પોતાના સરપ્લસ ભંડોળનું રોકાણ બેંક, સ્ટેટ બેંક ઓફ ઈન્ડિયા, આઈડીબીઆઈ, બેંક ઓફ બરોડા, દેના બેંક અને ધી ગુજરાત સ્ટેટ કો.ઓ.લિ. બેંક જેવી પ્રતિષ્ઠિત બેંકોમાં જ કરે છે

* વિગત પ્રાપ્ત નથી

બેંક એક... સુવિધા અનેક...

RuPay ATM કમ ડેબિટ કાર્ડની સુવિધા

આરટીજીએસ/એનઈએફટી • લોકર્સ

SMS બેંન્કીંગ-મોબાઈલ બેંન્કીંગ
ઈન્ટરનેટ બેન્કીંગ (નોન ફાયનાન્શીયલ)

CTS • વ્યાપાર ધંધા માટે સીક્યુરીટી લોન

લોક સેવા સેવિંગ્સની આકર્ષક યોજનાઓ

સ્ટેમ્પ ફ્રેન્કીંગ, CBS તથા આધુનિક ટેકનોલોજીથી સુસજ્જ કોમ્પ્યુટરાઈઝડ બ્રાંચો

તા. ૦૫-૧૨-૨૦૧૬થી થાપણો ઉપર અમલમાં આવેલ વ્યાજના દર

વિગત	રેગ્યુલર વ્યાજનો દર	સીનીયર સીટીઝન માટે વ્યાજનો દર
૭ થી ૧૪ દિવસ સુધી	૪.૦૦%	૪.૫૦%
૧૫ થી ૩૦ દિવસ સુધી	૪.૫૦%	૫.૦૦%
૩૧ થી ૪૫ દિવસ સુધી	૫.૦૦%	૫.૫૦%
૪૬ થી ૯૦ દિવસ સુધી	૫.૨૫%	૫.૭૫%
૯૧ થી ૧૭૯ દિવસ સુધી	૬.૦૦%	૬.૫૦%
૧૮૦ થી ૨૬૯ દિવસ સુધી	૬.૨૫%	૬.૭૫%
૨૭૦ થી ૩૬૪ દિવસ સુધી	૬.૭૫%	૭.૨૫%
૧ વર્ષ થી ૨ વર્ષ સુધી	૭.૨૫%	૭.૭૫%
૨ વર્ષ થી વધુ અને ૫ વર્ષ સુધી	૭.૦૦%	૭.૫૦%

(સેવિંગ્સ ખાતામાં ૪.૦૦% મહત્તમ વ્યાજ)

વધુ માહિતી માટે અમારી નજીકની શાખાનો સંપર્ક કરો

જગદીશભાઈ પટેલ
વાઈસ ચેરમેન

અજયભાઈ પટેલ
ચેરમેન

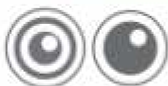
તથા બોર્ડ ઓફ ડીરેકટર્સ

oppo Camera Phone

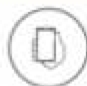
Selfie Expert

F3 | F3 Plus Dual Selfie Camera

Deepika Padukone



16MP Beautify & Double View Group Selfie Camera*



13.97cm (5.5in) FHD In-cell Display*

4GB RAM + 64GB ROM

Sleek Metal Body

THE INDIAN CRICKET TEAM SPONSOR