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ACTION

AHMEDABAD CHARTERED ACCOUNTANTS JOURNAL

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

Published By

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The Higher Purpose

Finite thoughts, infinite possibilities;
the soul is dyed in colours of 'diversity'.

Mere guards of ideas we are,
sunk in the hoarding, over the time, we 'mar'.

Intent might be legitimate,
albeit, who is to question or validate?

In sharing, do we fulfil a higher purpose,
Of educating and enlightening towards the path we propose.

Whether it be knowledge or gesture,
Nothing goes unnoticed in the books of the master.

To serve others with what we have is the supreme goal,
Otherwise, we would have been mere puppets in the world so cold.

Imbibe what is right, and break the shackles of the wrongs;
persevere like a duck, refrain from hitting the 'gong'.

Practice your faith, for it gives you energy,
Resonate in the mantras, let your mind-body work in synergy.

Work on yourself, till your work introduces you,
Be a better version of yourself, continuously beating the blues.

For there will come a time when you will rise like a phoenix,
Not from the ashes, nor from the dirt, but self-created mirage of toxic.

We evolve every day. Every single minute, even while we are asleep. The cloud of thoughts, ideas, and emotions built up inside us gives us a new definition of 'ourselves' every single morning. We wake up brand new, seeing the world in a different shade of light. We see, we absorb, we churn, we analyse, and then, we apply. We take birth every day, and that is a rare gift! This gift gives us the power to rise up, and be a better version of ourselves. It gives us the opportunity to revamp our mundane yesterday, and glorify the today. Most importantly, it gives us 'time'. Time to succeed, to fail, to succeed again, and ultimately achieve the desired.

We must ask ourselves, why are we running, half panting-half smiling in this cycle, or a race, if you may…?

As vague as it may sound, we all are consciously or unconsciously a part of this war, where we want to prove to others how superior we are from them. God knows when this happened, but some time in childhood, a chip was inserted to our innocent system in the name of 'healthy competition' that we are born to outdo others, and prove our worth in whichever field possible, and that, we should strive consistently to maintain that status. *Only in relative comparison, can we find peace, and the satisfaction that we have done something better than our fellows.* What we do fail to realise, even after some 20-30 odd years of existence is – why do we exist…?

Do we exist to eat, work, sleep, and repeat? Or do we have higher purpose to fulfil? A purpose that is unique to us, and that, no other living being can perform, a purpose that gives meaning to our life, and which ignites in us a fire so intense that we never run out of passion. From the first ray of the sun in the morning to the dim light of the moon in the night, everything around us, visible and invisible to the naked eye, has a definite purpose. With humans, it can never be definite. *No one can know what purpose he/she has to serve while crawling on the knees!!* It can (it does!) change from time to time, and with the knowledge of rational and irrational, it gives itself a shape.

Nothing is permanent, and realising that the state of nothingness exists, is the only truth. The burden you have tightly clasped to your chest is not yours to claim, human! Remember how you used to lovingly give away half your toffee to your younger sibling, just because he/she made a puppy face and you love him/her? Remember how you used to share your valuable knowledge a night before exams to help your friends not flunk the other day? Remember all those times you just selflessly helped a stranger, because why not, it gives you immense happiness?

Just like that, we cannot just have everything to ourselves without giving it back to those who have helped us, and those who deserve a return from us. We are a beautiful amalgamation of words, flesh, thoughts, blood, and energy, but it does not entirely belong to us. We have got flesh and blood from our parents, who are the reason we exist in the first place. We get words and thoughts from all the people, and matter that exists around us, and with whom we have interacted in our life. We derive energy from different sources – food, work, meeting like-minded people, or just from a cup of coffee! If we are made from so many sources, how can we not give them back what they have contributed in making us the best version of ourselves?

Editorial

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GST - Constant Changes is the name of the Game

It has been around five months now into the GST regime and still there are numerous changes being recommended and introduced time and again by the GST council. These frequent changes may be looked into with two perspectives: 1) It is an admission by the government that there have been some omissions and lapses which could have been addressed at the time of introducing the law and thus being corrected and 2) It also signifies that government is concerned with the grievances from the trade and industry and is receptive to the suggestions to make the GST law a "good and simple tax". The positive aspect in the entire exercise is that the most of the changes being introduced are procedural in nature to make things easier and without much change in the legal framework.

Out of the many changes that are being constantly introduced, change in rates of various items is frequent and prominent. The draft model law was initially put for public consultation followed by the revised law. Finally, the CGST Act was notified w.e.f. 1st July 2017 which further improved from the revised draft law. In contrast, the rate schedules for goods and services was first released only in May – 2017, about 50 days before the launch of GST. As a result the government could not receive much feedback from the trade and industry with regard to rates and this is one of the reasons that change in the rate structures has been more frequent than other changes.

The major hurdle in implementation of the GST law has been the procedural aspect. The GST portal was made effective about 24 days after the launch of the GST and this was without many important functionalities being operational. Surprisingly, five months down the line, many features including refunds, advance ruling and various return forms have not yet been embedded in the system. This has been one of the major reasons of frequent changes. Every delay in introducing a required feature for compliance forced the extension of corresponding due date. A foolproof IT system should have ideally been put into public domain prior to the launch of GST for proper testing but unfortunately it seems that GST portal started functioning on trial and error basis with the live data of the tax payers.

One of the important aspects of every change, legal or procedural, it has to come by way of recommendation from the GST council. It is an accepted principle that whatever is recommended by the GST council, the government will follow it with appropriate notification. Of late, one decision of the council has not yet been accepted by the central and other state governments. The GST council in one of recent meetings decided that the tax will be payable quarterly in case of small dealers having turnover of less than 1.5 crores. However, no appropriate notification is issued till date and on the contrary the government has come with advertisement that every assessee needs to file monthly form 3B with payment of tax till the month of March – 2018 by the 20th of the subsequent month. Whether this contrary view taken by the government against the decision of the GST council is just a beginning of many new controversies waiting to emerge? Time will tell!

By the time things get settled, it would be better to accept all changes cheerfully and move on.

CA. Ashok Kataria

From the President

CA. Kunal A. Shah
cakashah@gmail.com

Dear Members,

Firstly, I wish you and your family a very happy new year. The Diwali get-together function was successfully organized wherein members gathered in large number to exchange Diwali Greeting amidst sumptuous food and the live music. I thank all the members for gracing the Diwali get-together function with their family members.

Finally, the heavy load of work relating to tax audit and pressure of GST filings and other compliances in October came to an end and now we will be busy with completing the assessment proceedings on or before 31st December, 2017. No matter how much you plan through the year and extensions you get, one still ends up racing towards meeting the due date.

With the revised GST rates coming into force, FMCG majors such as Hindustan Unilever (HUL) and ITC said they are in the process of reducing prices of commonly used items to pass on the benefits to consumers.

The Narendra Modi-led National Democratic Alliance (NDA) government is all set to revamp its **'Make in India**' initiative and will come up with certain policy changes in important sectors to help fasten the process of creating jobs.

The Government of India launched an ambitious campaign 'Make in India' in September 2014 with an objective of reviving the growth of manufacturing sector in India. Make in India initiative has imprinted a positive image of the Indian economy on the global platform. It has helped to increase the flow of foreign funds in India. The Government of India has introduced a number of sector specific measures for attracting foreign and domestic investors and making the campaign successful.

While the Government of India is continuing its efforts in the necessary direction, the home grown shock of demonetization cannot be ignored. Demonetization has hurt the demand in recent months affecting consumer goods industry.

With the introduction of various new reforms and policies along with a tax and regulatory friendly environment, the Make in India initiative can be expected to create the necessary fertile ground to foster the growth of manufacturing sector and uplifting the Indian economy.

World Cup failure plunges Italy into a national existential crisis - Many tragedies have befallen Italy in the past 60 years. Dozens of governments have collapsed. Earthquakes and terrorism have shaken cities. But the failure of the national soccer team to qualify for the World Cup for the first time since 1958 seems to be taking a place in the pantheon of Italian disasters.

Activities at the Association:

Proper Filing of information in the returns is a mandatory process for smooth flow of credit to the last recipient. Also documentation for RCM purchases and expenses will be important to claim their credits. Another important thing in this month is filing of Trans 1 to carry forward the credits of Excise, VAT and Service Tax. Keeping this in mind, CAA organized a seminar on Trans 1 and how to use Tally for GST especially for Lady Chartered Accountant members, lady Articles and their lady staff members. Despite the busy month of October, Ladies Wing Programme by young lady speakers was well attended by the lady participants.

Before I conclude this message, I would like to make this earnest request to all of you to join me in the CAA membership drive. The association needs to increase its membership, specially the youth. After all, numbers do matter. If every member can add one member, we can target to double our membership, which will be a big step forward.

I would like to conclude with the thought, "We live in a wonderful world that is full of beauty, charm and adventure. There is no end to the adventures that we can have if only we seek them with our eyes open." – Jawaharlal Nehru

"Failure comes only when we forget our ideals and objectives and principles." – Jawaharlal Nehru

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

With best regards,

CA. Kunal A. Shah
President

IP in New India

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Even before the inception of the very concept of society, the inventions have been taking place in one way or the other. But at that time the term "invention" had not been coined and so these innovative inventions were nothing but a way to ease the lifestyle. The ability of the human brain to come up with techniques to make living easier is of such superior level that from sending birds to deliver messages which took days, now we all possess a smart phone to do that in seconds.

Lets for a moment travel back in time (FYI the invention is yet to be done so hurry up!) where there was no law, no society only the species of earth living together in harmony. Since that time the inventions have been taking place, (Hard to believe? Make your time machine and go experience it. Don't forget to get it patented!), like invention of fire, wheel, tools, weapons and other things. From the very start of the human race the creativity and inventions have gone hand in hand and due to this level of creativity, invention and most importantly need (as it is the mother of invention) it was possible to stand at a place where it is now.

What is New India? Is it a new version of India that the government will launch like India 2.0 or India 2S? Well, the answer to this question is subjective. New India can be can be defined in 125 crore ways. But the definition I am taking is, the India which for the first time is taking initiatives to put the rights of the people first, to spread awareness of these rights and to have a simple and user friendly procedure to secure these rights. The New India can indeed be defined as India 2.0 where the importance is being given to the digitization of everything.

Before any law came into force all the innovations used to go unnoticed and unrecognized and even if they were recognized the actual mental laborer behind such innovation would get no credit. The term Intellectual property was initially termed as Industrial Property under the Paris Convention as "*the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition*"[1]. Intellectual property is the mental labor of a person and is thus intangible in nature. In 1967 a specialized agency of United Nations was formed known as WIPO (World Intellectual Property Organization), with a view "*to encourage creative activity, to promote the protection of intellectual property throughout the world.*" According to WIPO Intellectual Property is "*the creations of mind, inventions, literary and artistic works, and symbols, names, images and designs used in commerce*".[2] Later in the year 1986 during the Uruguay Round of GATT was the turning point in the field of IP, in this round WTO was created and extension of intellectual property rights was achieved. With this in 1995 WTO came into existence subsequent to which all the members of WTO entered into TRIPS AGREEMENT which led to the official start of Intellectual Property Rights.

There is a huge onus on the shoulders of the courts. On one hand they have laws and on the other they have public policy. The Novartis case[3] the court gave a distinguished judgment. Even though this was criticized by the world but it proved to be a turning point and milestone where the public welfare and the statute were harmonized. The court gave importance to the public interest hence creating history in the field of IP.

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1 Article 1(2) of the Paris Convention.
2 *What is Intellectual Property,* WIPO
3 Novartis A.G vs Union Of India

With the incorporation of the new government in 2014, steps have been taken to develop the IP regime in India. The significant changes that took place were[4]:

1) Constitution of the joint India-US working group on IPR
2) A National IPR Think Tank group set-up to draft a National IPR Policy.

The need for such change was felt because of the ever increasing level in the piracy. With the world becoming analog and user friendly, the piracy is at an all time high. Piracy is the intellectual labor of the people whose rights are violated as their creations are being copied and put up in public forum without their permission. Torrent is one such example of such piracy, but you already knew that! The software piracy, film piracy, uploading e-books without the permission of the author, uploading games, songs and the list is never ending.

But with the changing times the people are gaining awareness of the existence of such rights. The government is taking steps to create awareness about Intellectual property. With this step of government, I can only think what Nathaniel Brandon said *"the first step toward change is awareness. The second step is acceptance"*, may be the new government is trying to do the same.

The positive part of such change is that not only the people are gaining awareness but the courts are also helping by quick and proficient examination of the disputes and subsequently grant interim or permanent relief in order to protect the IP rights[5].Since that time many changes has been done in the IP Law, many statues have been made and many judgments have been given. With the passage of time the term Intellectual Property has finally found its place in India. Now taking a leap and coming back to the present day and let's try and see what IP in new India can possibly mean.

In the recent DU Photocopy Case[6], again a point of criticism for the world, but again the court kept students' interest in mind and again harmonized the law and the public interest. The problem arises when the cases relate to such aspects which have not been touched upon and/or which do not have any specific legislation to get protection under like: trade secrets, personality rights, image rights, celebrity rights, cyber squatting.

The acknowledging part is that, not only the judiciary but the legislature is working towards developing a strong and people friendly IP system. With the new amended rules for patents[7] has reduced the time, from 12 months to 6 months, for filing a response to the FER, expedited patent examination on request has been introduced, refund of 90% fees on withdrawal of application are few among others.[8] Not only in Patents but new rules have been introduced for patents also, The Trade Mark Rules, 2017, where the number of forms have been reduced, "start-ups" and "small enterprises" have been introduced, provision of e-filing, there is now a whole process to determine "well known mark", are few new features among the others[9].

As Georg C. Lichtenberg stated that, *"I cannot say whether things will get better if we change; what I can say is they must change if they are to get better."* Therefore, even if the recent GIPC[10] score of India is 8.75/35 and India ranks 43 out of the 45 economies[11], that doesn't mean that this will prevail.

4 Diljeet Titus and Rai S. Mittal, *Recent developments in intellectual property laws in India- Part 1,* Economic Times, June 23, 2015, *available at* <http://economictimes.indiatimes.com/small-biz/legal/recent-developments-in-intellectual-property-laws-in-india-part-1/articleshow/47780038.cms>

5 Supra Note 4

6 The Chancellor, Masters & Scholars of the University of Oxford & Ors. v. Rameshwari Photocopy Services & Ors

7 Patent (Amendment) Rules, 2016

8 Pankhuri Agarwal, *A Look Back at India's Top IP Developments of 2016,* Spicy IP, December 31, 2016

9 Prateek Surisetti, *Trade Mark Rules, 2017 (Salient Features),* Spicy IP, March 9, 2017

10 GIPC is an institution of United States Chamber of Commerce handling all issues relating to the Intellectual Property.

contd. on page no. 351

GST Impact on Textile Industry

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INTRODUCTION TO GST

After Initial hiccups, India warms up to the new tax regime -GST. It is a business reform rather than a tax reform. The Real business will take place and only organized players will stay in the market. India has presence of significant unorganized segment in various sectors. Textile sector is one of the highest with more than 90% unorganized segment as per the report below:-

Sector	Unorganized Segment (in %)	Key companies in Organized Segment
Apparel Industry	70	Aditya Birla Fashion & Retail, Page industries
Textiles (Ex-Apparel)	>90	Welspun India, Raymond, Bombay Dyeing
Retail	>90	Shoppers Stop, Future Retail, Trent
Batteries After Market	40	Exide Industries, Amarja Raja Batteries
Dairy Industry	78	Parag Milk Foods, Prabhat Dairy, Heritage Foods
Jewellery	75	Titam, kalian, Tribhovandas Bhimji Zaveri
Diagnostic Industry	85	Dr Lal Pathlabs, Thyrocare, Metropolis, Super Religare laboratories
Air Coolers	75-80	Symphony, Bajaj & Voltas
Pumps	30	Shakti Pumps, CRI Pumps, Kirloskar
Footwear	50-55	Bata India, Relaxo Footwear, Liberty, Mirza International

Source:-Edelweiss Research

Those in the organized sector will gain the market share since in the GST era it will be difficult to do business with unregistered persons. The switch to GST will increase the size of the formal part of the economy and increase productivity but it will also extract a cost from the most vulnerable firms and workers.

This article studies the impact of GST on Textile sector according to the notifications and circulars issued till 15.11.2017.

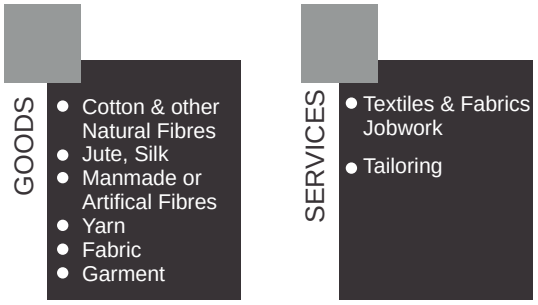
PAST STRUCTURE

In the previous regime, the levy and collection was as under:-

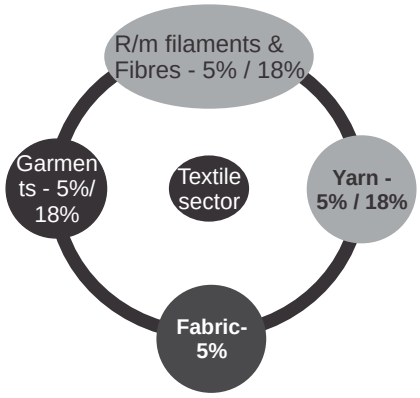
Category	Past Regime (Central Excise)	Past Regime (VAT)
Manufacture/Trading of Yarn	Excise Duty	VAT
Manufacture/Trading of Fabric	No Excise Duty	VAT
Manufacture/Trading of Ready Made Garments	Excise Duty/Service Tax	VAT

INTRODUCTION TO TEXTILE SECTOR

A. Classification in Textile Sector under GST



B. Working in Textile Sector



Impact of GST IS divided into two parts:-

A. General Impact

1. ***Effect on Small Industries***

- A big company who does all 3 stages of manufacturing – There will be no impact of accumulated credit as the restriction of refund applies only in case when output GST is paid on fabrics.
- The impact of the same would be that the goods that are manufactured by small industries performing manufacturing process of single stage shall be costlier as compared to goods manufactured by the big industries.

2. ***Imports***

- Imports will be cheaper as compared to past regime as credit of IGST will be entirely available now which will lead to Increased competition.

3. ***Working Capital & Compliances***

· Requirement of working capital will increase impacting specifically to small industries along with the increasing compliances in from of various returns and forms.

4. ***Creation of National Organised Market***

· The organized sector will survive, as GST boosts economies of scale

5. ***Cost to the Consumer***

· The cost to consumer is expected to decline as entire credit will be passed on throughout the textile chain resulting into aversion of double taxation.

B. Specific Impact

1. Impact on Manufacturer of Yarn

In case of any accumulated credit due to higher tax on inputs or job work shall be eligible to be claimed as refund.

2. Impact on Manufacturer of Fabric

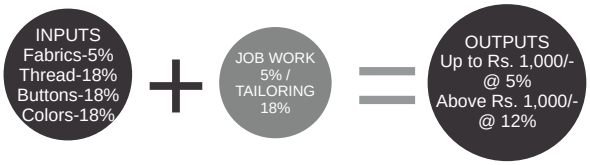
In case of any accumulated credit due to higher tax on inputs – no refund will be allowed.

The accumulated credit shall form part of cost of the manufacture.

NOTE : As per Circular No. 13/13/2017, a clarification has been issued regarding unstitched salwar suits. It has been represented that a fabric is cut from bundles or thans & are sold in unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size.

It was clarified that, *"Mere cutting & packing of fabrics into pieces of different lengths will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract 5% GST rate."*

3. Impact on Manufacturer of Garments



In case of any accumulated credit due to higher tax on inputs or job work shall be eligible to be claimed as refund.

NOTE:

According to Notification No. 20/2017-Central Tax (Rate)the rate of GST for *"Services by way of job work in relation to - Textiles and textile products falling under Chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975)" shall be 5%*." Here, the word 'job work' has been specifically used which has been defined u/s 2(68), *"job work means any treatment or process undertaken by a person on goods belonging to another registered person and the expression 'job worker' shall be construed accordingly."*

Tailoring services are generally provided to end customers who are not registered under GST and hence they do not fall under the term '*another registered person.*'

Hence in our opinion, tailoring services provided to consumers on B2C basis do not fall under job work and hence the GST rate on same shall be 18%. In case of tailoring services provided on B2B basis where the recipient of services is registered, it can be construed as job work and hence GST rate shall be 5%

4. Impact on Traders

In case of trading business, the GST paid on purchase will be entirely available as credit against the GST payable on sales.

RCM & Expenses

The normal provisions of RCM and credit of expenses shall apply to textile industry as well.

However, as per notification issued on 13th October, 2017 the provisions of reverse charge mechanism u/s 9(4) in relation to purchases made from unregistered persons has been suspended till 31st March, 2017.

❊❊❊

contd. from page 348

May be The National IPR policy is the change that will get things better. It has now been passed which has been taken up as a good initial step,has filled up several gaps in the IP framework like the need for stronger administrative capacities at India's IP offices, the need for stronger enforcement of existing IP rights and the need for a trade secrets law but there are still some aspects not touched upon.[12]

Better late than never, so even if it's after a decade of the TRIPS agreement, it can be seen that the present government is finally taking steps to grant the rights the people deserve for their intellectual labor. There has been introduction of new rules, policy, awareness programs with motive to ease the procedure so can people can avail these rights easily.

Such developments are also important to increase the business climate in India and one of the ways to do that is to build upon IPR Regime. In the end I would only like to quote Pauline R. Kezer, "*Continuity gives us roots; change gives us branches, letting us stretch and grow and reach new heights",* may be our branches are finally growing.

11 *THE ROOTS OF INNOVATION U.S. Chamber International IP Index*, GIPC, Fifth Edition, available at <http://www.theglobalipcenter.com/wp-content/uploads/2017/02/India.pdf>

12 *Ibid*

❊❊❊

Glimpses of Supreme Court Rulings

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16 Mandatory seeding of Aadhaar Numbers in PAN database:

Obligation of all assessee to provide Aadhaar number or enrolment ID of Aadhaar application form while applying for PAN or while filing income tax return.

Held, does not violate arts. 14 or 19(1)(g) of the constitution. However, validity of Sec. 139-AA r/w Aadhaar Act vis-à-vis various aspects of right to privacy/Art.21 of the constitution would still have to be tested before constitution bench before whom related issues are already pending-Moreover, penal consequences u/s. 139-AA(2) proviso i.e. deletion of PAN in case of non-linking of Aadhaar, held cannot be applied retrospectively to existing PAN card holders. Sec.139AA(2) proviso read down to mean that it would operate prospectively. PAN card of assessees who are not Aadhaar Card holder not to be treated as invalid for time being – this is to enable them to facilitate transactions which fall within ambit of R. 114-B, Income Tax Rules, 1962 – Requirements of Sec. 139-AA would be applicable to new applications for PAN card and those who had already enrolled in Aadhaar – Furthermore, pending adjudication of privacy/Art. 21 of the constitution issues by the constitution bench, penal provisions u/s. 139 AA(2) proviso partially stayed- in the interregnum, parliament given liberty to consider whether there is a need to tone down S. 139-AA(2)

Binoy Viswam Vs. UOI and others (2017) 7 SCC 59

17 Judicial Review/Judicial Activism/ Judicial Legislation:

If a public authority has a duty to do an act and fails to discharge that function, mandamus can be issued to the said authority to perform its duty: being a judicial review of an administrative action.

Where the statute vests a discretionary power in an administrative authority, the court would not interfere with the exercise of such discretion unless it is made with oblique end or extraneous purposes or upon extraneous considerations, or arbitrarily, without applying its mind to the relevant considerations, or where it is not guided by any norms which are relevant to the object to be achieved.

A clear distinction is to be made between the duty to act in an administrative capacity and the power to exercise statutory function. If public authority is foisted with any duty to do an act and fails to discharge that function, mandamus can be issued to the said authority to perform its duty. However, that is done while exercising the power of judicial review of an administrative action. It is entirely different from judicial review of a legislative action.

No court can direct a legislature to enact a particular law. Similarly when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact the law which it has been empowered to do under the delegated legislative authority.

Mangalam Organics Ltd. Vs. UOI (2017) 7 SCC 221

18 Capital Gains-Exemption u/s. 10(37)

Even if the amount of compensation is paid on agreed terms it would not change the character of the acquisition from that of compulsory acquisition to the voluntary sale and the exemption provided under the IT Act would be available and such negotiations would be confined to the quantum of compensation only.

UOI & Ors. Vs. Infopark Kerala (2017) 297 CTR SC 219

contd. on page no. 356

From the Courts

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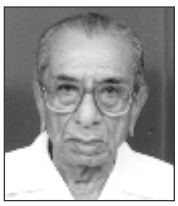

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61 Purchase and Sale of Computer Software v/s. Royalty : Interpretation of TDS provisions : Sec. 40(a)(ia) : CIT v/ s. Vinzas Solutions (India) Pvt. Ltd. (2017) 392 ITR 155 (Mad)

Issue :

Whether supply of Software attracts provision of Tax Deduction and consequently provisions of Sec. 40(a) (ia) are applicable?

Held :

The assessee was a dealer in computer software purchased from various companies. The Assessing Officer disallowed the deduction under section 40(a)(ia) of the Income Tax Act, 1961 on the ground that the consideration for the purchase by the assessee was in the nature of royalty and tax ought to have been deducted at source in accordance with the provisions of section 194J. The Commissioner (Appeals) confirmed the order of the Assessing Officer and held that the consideration paid by the assessee fell within the ambit of the definition of royalty under Explanations 4 and 5 of section 9(1)(vi). The Appellate Tribunal reversed the orders of the lower authorities.

High Court held that the provisions of section 9(1)(vi) of the Act, dealing with and defining " "royalty" could not be made applicable to a situation of outright purchase and sale of a product. It was an admitted fact that the assessee was engaged in buying and selling software in the open market. The transaction in question was thus one of purchase and sale of a product and nothing more. Courts had consistently noted the difference between a transaction of sale of a "copyrighted article" and one of "copyright" itself. The provisions of section 9(1)(vi) would stand attracted in the case of the latter and not the former. Explanations 4 and 7 to section 9(1)(vi) relied on by the authorities had to be read and understood only in that context and could not be expanded to bring within their fold, transaction beyond the realm of the provision. The Appellate Tribunal was justified in deleting the disallowance.

62 Appeal before High Court : Meaning of Perversity of order of Tribunal : CIT v/ s. India Advantage Fund –VII (2017) 392 ITR 209 (Karn)

Issue :

When can an order passed by Tribunal can be said to be perverse so as an appeal can be filed before High Court?

Held :

In an appeal to the High Court the finding of fact by the Tribunal is final unless perverse. Perversity can be tested in two ways: (a) if any finding of fact is not supported by record and is on some hypothesis or surmises, (b) that the finding arrived at which any person with reasonable prudence may not record. Then it can be said that such finding is perverse.

63 Conditions for application u/s 12A/12AA of the Income Tax Act. CIT v/s. Gopi Ram Goyal Charitable Trust (2017) 392 ITR 285 (Raj)

Issue :

Which materials are to be examined for grant of Registration u/s 12A of the Act for a Charitable Trust?

Held :

In accordance with section 12AA (1)(b) of the Income Tax Act, 1961, registration shall be granted by the Commissioner on being satisfied about the objects of the Trust or institution and genuineness of its activities. The scope of the enquiry under section 12A for the purpose of grant of registration

as envisaged under section 12AA by the Commissioner shall be confined with regard to the objects of the trust or institution and genuineness of its activities and therefore, it cannot travel to the extent of finding out whether the income of the trust from the property is wholly applied for the charitable purposes or not so as to make them entitle to claim exemption under section 11 and 12 of the Act.

64 Validity of Reopening at the instance of Audit Party
Reckit Benckiser Healthcare India P. Ltd. v/s CIT (2017) 392 ITR 336 (Guj)

Issue:

Whether notice issued u/s 147/148 for reopening at the instance of Audit party is valid?

Held:

"We have therefore no hesitation in coming to the conclusion that neither the reasons recorded by the Assessing Officer, nor the decision to issue notice for reopening were those of the Assessing Officer himself. He had acted under the compulsion of the audit party which held a belief that on account of discrepancy in the turnover figures, income chargeable to tax had escaped assessment. The Assessing Officer was inclined to believe the petitioner's explanation that such discrepancy could be reconciled. If the Department was not convinced about the opinion of the Assessing Officer, it was always open for the Commissioner of take the order of assessment in revision. The action of reopening of assessment however, stands on entirely different footing and as per settled law, can be resorted to by the Assessing Officer only if he has tangible material at his command to form a reasonable belief that income chargeable to tax had escaped assessment. Such belief of the Assessing Officer cannot be substituted by that of the opinion of the Audit party".

65 Interpretation of Statutes : Sec. 158 B-C : Difference between (1) not less than fifteen days and (2) within 15 days.
Surya Dev Kumawat v/s. CIT (2017) 392 ITR 369 (Raj)

Issue :

How the provisions of Income Tax Act are to be construed for legality of action?

Held :

Section 158BC (a)(ii) provides as under:

In respect of search initiated or books of account or other documents or any assets requisitioned on or after 1st day of January 1997, serve a notice to such person requiring him to furnish within such time not bearing less than fifteen days but not more than forty five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142 setting forth his total income including the undisclosed income for the block period.

On interpretation of above section when the notice was issued to file return "within fifteen days", it is held that:-

On the questions whether the notices issued to the assessee under section 158BC of the Income Tax Act, 1961 by the Assessing Officer to file returns "within 15days" violated the provisions of the section which required to issue a notice providing time of "not being less than 15 days" and hence whether the assessments made on the basis of such notices were bad in law.

Held, allowing the appeals, that the assessments made on the basis of illegal and invalid notice were bad in law.

66 Any Order and Section 264 : Interpretation
Dy. Jyoti Vijpayee v/s. CIT (2017) 392 ITR 518(All)

Issue :

Expression "any order" as per the power of revision u/s 264 empowers which order?

Held :

The use of the expression "any order" under section 264 of the Act, would imply that the section does not limit the power to correct the errors committed by the subordinate authorities, but could even be

exercised where the errors are committed by the assessee. It would even cover situations where the assessee, because of an error, has not put forth a legitimate claim at the time of filing the return.

67 Sec. 14A and power to apply
Principal Commissioner of Income Tax v/s. U.K. Paints (I) Pvt. Ltd. (2017) 392 ITR 552 (Delhi)

Issue :

When does Assessing Officer derive power to invoke power u/s 14A of the Act?

Held :

The principle of disallowance is stated in section 14A(1) of the Income Tax Act, 1961. Section 14A(2) prescribes the mode or methodology for the disallowance and the steps for its calculation. Unlike the other part of the statute which decree or enjoin the actual methodology and are substantive, Parliament deemed it appropriate to leave it to the rule making authority to prescribe the methodology, that is, computation. For instance, what are taxable and in what proportion and the principles applicable are embedded in the statute in certain provisions, such as sections 28 and 43 and sections 80A to 80HHC when it comes to deductions. The rules are not merely procedural but are substantive and can be said to be engrafted in the statute, as is evident from the mandate of the first part of section 14A(2). That apart, significantly, the question of applying the statutorily prescribed method would arise only and only if the Assessing Officer expresses an opinion rejecting the assessee's methodology and the figure offered at the time of assessment. This is material because the jurisdiction to go into the method prescribed in the Rules arises only if the amounts the assessee offers does not have any realistic correlation with the tax exempt income.

68 Date of Issue of notice how determined
Rajesh Sunderdas Vaswani v/s. C.P. Meena Dy. CIT (2017) 392 ITR 571 (Guj)

Issue :

How is date of issue of notice to be ascertained?

Held :

The date of issue of notice under section 149 of the Income Tax Act, 1961 would be the date on which it was handed over for service to the proper officer, i.e. the Postal Department.

In a writ petition the assessee sought quashing of the notice of reassessment on the grounds that the notice issued under section 148 of the Act was issued beyond six years from the end of the relevant assessment year and therefore, barred by limitation as provided in section 149 of the Act, that though the notice was dated March 30, 2015, it was not booked for delivery with the Postal Department before April 1, 2015 and that the Assessing Office had not recorded his reasons before issuance of the notice, clearly demonstrating a legal error. The postal endorsement showed that the notice was booked for delivery only on April 1, 2015.

There were prima facie material produced by the Department to demonstrate that the envelope in fact was handed over to the postal authorities on March 31, 2015 itself for delivery. Therefore, it would be sufficient compliance with the requirement of issuance of notice.

69 Refundable security deposit by a club is a capital receipt
Pr. CIT v/s. Gulmohar Green Golf and Country Club Ltd. (2017) 392 ITR 601 (Guj)

Issue :

Whether refundable security deposit received by a club is a capital or revenue receipt?

Held :

The assessee company carried on the activities of a club. It filed its returns. On a scrutiny of its accounts it was noticed by the Assessing Officer that the assessee had enrolled members on payment of security deposit as entrance fee. The security deposit was refundable to the members after 25 years without interest. The company had only a mere share capital of Rs. 5,10,000/- and the amount collected as security deposits from the members as entrance fee was utilized for construction and

providing other facilities at the club. The assessee had not kept apart the security deposit obtained from the members but appropriated it for construction and other amenities provided in the club. The deposits collected from the members had not been shown under the head "liabilities" in the accounts of the assessee. The Assessing Officer held that 60 percent of the security deposit received by the assessee during the year under assessment was to be considered as income for the year under assessment. The Tribunal deleted the addition. On appeal to High Court.

Held, dismissing the appeals, that considering the fact that the security deposit was refundable after a period of 25 years or on occurrence of the contingencies mentioned in the bye laws it could not be said that the assessee club had absolute dominion over the deposits. The case on behalf of the Department that deposits should be treated as revenue income could not be accepted merely because the security deposit was not kept apart or subsequently the amount of security deposit was utilized by the club for other purposes such as construction and providing other amenities at the club, it would not lose the character of "deposit". The amount was not assessable as a revenue receipt.

70 Sec. 14A/Rule 8D cannot be applied when there is no exempt income : Redington (India) Ltd. v/s. Addl. CIT (2017) 392 ITR 633 (Mad)

Issue :
Whether provisions of Sec. 14A read with rule 8D can be invoked when there is no exempt income?

Held :
The provisions of section 14A of the Income tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962 could not be made applicable in the absence of exempt income. Section 14A was relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that section 14A entailed the assessment of notional income, assumed to be exempted in the future, in the present assessment year. The computation of total income under section 5 was on real income and there was no sanction in law for the assessment of notional income, particularly in the context of effecting a disallowance in connection therewith. The computation of disallowance under rule 8D was by way of a determination invoking direct as well as indirect attribution. Accepting the submission of the Department would have resulted in the imposition of an artificial method of computation on notional and assumed income. The language of section 14A (1) had to be read in the context that it would advance the scheme of the Act rather than distort it.

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contd. from page 352

19 Civil Suit – Jurisdiction/Jurisdictional Error:

The issue of jurisdiction which goes to the root of the case, if found involved has to be tried at any stage of the proceedings once brought to the notice of the court.

SNDP Sakhayogam Vs. Kerala Atmavidya Sangham & ors. (2017) 8 SCC 830

20 Deduction u/s.80HH, 80I and 80IA – Manufacture or production

LPG obtained from the refinery undergoes a complex technical process in the assessee's plant and clearly distinguishable from the LPG bottled in cylinders and **activity** of bottling LPG into cylinders which a complex technical process amounts production and therefore claimed admissible.

(CIT vs. Hindustan Petroleum Corporation Ltd.) (297 CTR 3)

21 Income from House property vs. Business income

The assessee was undisputedly a deemed owner of properties u/s.27(iiib) and had not established that he was engaged in any systematic or organized activity of providing services to occupiers of shops/ stalls, amounts received by the assessee from sub-lessee of shops/stalls towards rent and service charges constituted income from house property. Merely because there is an entry in the object clause of the business showing a particular object, would not be determinative factor to arrive the conclusion that the income is to be treated as income from business. Such question would depend upon the circumstances of each case.

Raj Dadarkar & Associates vs. ACIT (298 CTR 117)

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Tribunal News

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37 Claris Life Science Vs. DCIT86 Taxmann.com 56 (Ahd- SPL Bench) Assessment Year: 2008-09, Order Dated: September 26, 2017

Basic Facts

Assessee, being a public company, at the time of filing original return of income declared that the self assessment tax has been paid. This claim was, however, found to be incorrect which was also subsequently accepted by the assessee and the assessee subsequently filed revised return of Income and paid the self assessment tax due on revised income. The revised income had substantial revisions on account of change is sales. The AO based on the above facts imposed penalty of Rs. 50,00,000 on account of non-payment of self-assessment tax liability under section 140A. The assessee, aggrieved contended that since the original return was revised duly u/s 139(5) and tax liability was paid on that return, the revised return substitutes original return and **the provisions of sub-section (3) of section 140A of the Act cannot be invoked for imposing penalty under section 140A of the Act for non-payment of tax or interest on the income declared in the return by relying on** *ACIT* v. *Shri Shakti Credits Limited* [(2014) 66 SOT 0175 (Lucknow)]. The assessee also argued that whether or not the assessee had a reasonable cause for non-payment of self-assessment tax under section 140A should also be considered. On the other hand the revenue argued that the penalty is for this lapse by the assessee in not making the payment of admitted tax liability and filing of revised income tax return is a subsequent event which happened much later and that cannot take away the penal consequences.

Issue

Whether Penalty under section 221(1) r.w.s. 140A(1) is actually leviable when assessee at the time of filling original return of income did not pay self-assessment tax u/s 140A and had paid tax only while revising the return of Income?

Held

The substitution of original income tax return by revised return of income is only for the purposes of assessment of income. The claims made in an income tax return is one thing and all the actions connected with the original income tax return becoming a legal nullity quite another thing. Thus by paying the admitted liability while filing the revised return of income does not wipe out the lapse of not paying the tax liability at the time of original return of income and hence penalty invoked merely on this ground cannot be deleted.

The Special Bench however acknowledged the argument of the assessee that levying of penalty u/s 221(1) r.w.s. 140A(1) also depends on whether or not the default of the assessee was for good and sufficient reasons.

38 Solarfield Energy Two Pvt. Ltd. vs. ITO TS-409-ITAT-2017(Mum) Assessment Year: 2012-13 Order Dated: 11th September, 2017

Basic Facts

The assessee is a domestic company which is a wholly owned subsidiary of an Indian Company. The assessee was incorporated to set–up a power plant. During the course of assessment proceedings, the AO observed that the assessee has reduced interest on fixed deposit with Bank from the expenditure shown under capital work–in–progress. The AO called upon the assessee to justify its claim. The assessee submitted that the interest received on fixed deposit being inextricably linked with the process of setting–up of power plant will go to reduce the cost of the asset. Therefore the receipt being capital in nature cannot be taxed as income

but has to be reduced from the capital work-in-progress. The AO did not agree with the assessee and relying on the decision *of Hon'ble Supreme Court in Tuticorin Alkali Chemicals and Fertilisers Ltd. v/s CIT, 227 ITR 172*, taxed the interest income as income from other sources. Being aggrieved by the addition made by the AO, the assessee preferred an appeal before the CIT(A). The CIT(A) held that the earning of interest on fixed deposit is not a business activity of the assessee and thus upheld the addition made by the AO. Aggrieved by the order of CIT(A), assessee preferred an appeal before the ITAT.

Issue

Whether the interest earned on fixed deposit is to be treated as capital receipt?

Held

The Hon'ble ITAT noted the assessee as a precondition was required to have net worth of Rs. 60 crore, to bid for set–up of the power plant. Since, the assessee was not having the required net worth, the parent company infused funds by investing in equity shares and compulsorily convertible preference shares of the assessee company which resulted in enhancing the net worth of the company. Thus, on the basis of such net worth, the assessee could participate in bid and being successful was awarded the contract to set–up the power plant .Thus, the infusion of fund was integrally and inextricably connected with the setting–up of the power project. Also the funds required for setting up of power project were temporarily parked in fixed deposit, thereby, indicating that the interest earned on such fixed deposit has an immediate and proximate nexus with the setting–up of power project. The ITAT also relied on the decision of Hon'ble Supreme Court in the case of Bokaro Steels Ltd. and Hon'ble Delhi High Court in Indian Oil Panipat Power Consortium Ltd. and held that the decisions are squarely applicable to the facts of the assessee. Thus, the ITAT allowed the appeal of the assessee.

39 ACIT vs. National Dairy Development Board TS-439-ITAT-2017(Ahd) Assessment Year: 2007-08 Order Dated: 21st September, 2017

Basic Facts

The assessee came into existence by an Act of Parliament called National Dairy Development Board Act, 1987. The assessment of the assessee for AY 2007-08 under consideration was completed u/s. 143(3) of the Act after making certain additions. The assessee preferred appeal before the CIT(A) against the assessment order. The CIT(A) confirmed certain additions made by the AO and granted relief in respect of some other additions. The AO while giving the appeal effect, misinterpreted the directions of the CIT(A) in respect of issue of Write back of provisions and denied relief claimed by Assessee. The assessee went in appeal before the CIT(A) once again who decided the matter in the favour of assessee. The AO while giving effect to order of CIT(A) in second round of proceedings, omitted to calculate interest under section 244A of the Act on the aforesaid excess interest charged earlier under section 234B and which led to reduction of the principal amount of tax refund to the extent of excess interest. Accordingly, the assessee carried the matter before the CIT(A) assailing wrong calculation of interest by the AO under section 244A owing to which interest has been short granted. The CIT(A) allowed the appeal of the assessee. Aggrieved by the order of CIT(A), revenue filed an appeal before the ITAT.

Issue

Whether the expression 'in any other case' occurring in section 244A(1)(b) of the Act would include interest on an amount of refund resulted from reversal of excess interest charged u/s. 234B of the Act.?

Held

The Hon'ble ITAT held that the tax liability including interest is required to be determined on the correct assessed income. The assessee, in consequence, is entitled to interest on excess tax paid beginning from date of payment of tax to the

date on which refund is granted as contemplated under section 244A of the Act. Thus, the assessee would be entitled for the claim under section 244A from the original date. Resultantly, following the order of CIT(A), the ITAT held the matter in favour of the assessee and dismissed the appeal of the revenue.

40 Sun Pharmaceuticals Ltd. Vs. ACIT [2017] 84 taxmann.com (Ahmedabad) Assessment Year: 2008-09 Order Dated: 16th June, 2017

Basic Facts I

The assessee has given share application money towards subscription of shares in its 100% subsidiary Sun Pharma Global Inc (SPG BVI). The TPO was of the opinion that the assessee should have charged interest at LIBOR plus basis and that arm's length price would be the LIBOR charged by the assessee + 200 basis points. The assessee strongly objected to this proposition for TP adjustment stating that till the amount advanced for shares is actually adjusted towards allotment of equity share, the amount is to be treated as "advance towards share application money". It was contended that the amount was paid towards equity infusion and the assessee is not a financing company to charge margin to cover short-term basis as one by banks.

Issue I

Whether share application money given by assessee company to its wholly owned subsidiary company could be regarded as loan or advance till allotment of shares notional interest needs to be charged on the same.

Held I

Share application money is not liable to be re-characterised as loans only because there was a delay in allotment of shares, more so when assessee has given plausible reason for such delay to avoid repetitive documentation and other regulatory exigencies and thus Merely because allotment of shares was delayed and in books share application money was reflected as advance till the allotment would not alter characterization to the prejudice of assessee's position anyway. The percentage of ownership is the only material factor which remains at 100 per cent prior to allotment and also post allotment. As the assessee was the only shareholder in its 100 per cent owned subsidiary company SPG BVI, it would not make any difference merely because part of the share application money was converted into equity shares and the balance were allotted in subsequent assessment years. Thus the issue was decided in favour of the assessee.

Basic Facts II

The assessee sold medicines called Pantoprazole Tablets, manufactured at its US FDA on Contract Research & Manufacturing Services basis to its AE(SPG- BVI) and earned a margin of 21.57%. The same products were sold by its AE without any value addition in the US market at 95% margin. The assessee had applied TNMM method, however the AO was of the opinion that PSM would be the most appropriate method as the assessee had performed substantial functions and the risk shared by the assesssee and SPG were almost equal and so the assessee cannot be termed as mere contract manufacturer. It was also noted that the AE was the owner of the drug as well as technology to manufacture the drug and that assessee did not undertake any other functions namely marketing, distribution, credit risk, product litigation liabilities etc.,. The AO decided the addition as per PSM method which was shared between the assessee and its AE equally. However the CIT(A) to enhance the profit share from 50 per cent each to 80 per cent attributable to assessee and 20 per cent to AE.

Issue II

Whether assessee manufactured a pharmaceutical product for its AE on contract basis, in view of fact that assessee did not undertake any other functions namely marketing, distribution, credit risk, product litigation liabilities etc., ALP of transaction in question was to be determined on basis of TNMM?

Held II

PSM may also be found as the most appropriate method in cases where both parties to a transaction make unique and valuable contributions to the transaction. Considering the functions performed by the appellant company to SPG BVI, it is clear that the assessee has performed only one simple function and that is manufacturing of Pantoprazole Tablets. Except for this, there is no significant unique contribution by the assessee. For such simple functions as per OECD guidelines, profit split method typically would not be appropriate. Moreover, The assessee has performed only one function and that is manufacturing of Pantoprazole Sodium and for this, the demonstrative evidence is exhibited which clearly establishes the ownership of the product with SPG-BVI. Therefore TNMM as most appropriate method is upheld by the tribunal.

41 ITO Vs. Ambika Sadhts -408-ITAT-2017 (Del)
Assessment Year: 2010-11 & 2011-12
Order dated: August 28, 2017

Basic Facts

The assessee was engaged in the business of manufacturing and export of garments, make-ups and accessories from its export oriented unit (EOU) located in Noida.For AY 2010-11 and AY 2011-12, assessee claimed deduction u/s. 10B for the duty drawback received which was included in the profits of the company. AO disallowed the deduction relying on SC ruling in the case of Liberty India Ltd. However, the Ld. CIT(A) allowed the same on appeal anddeleted the addition following the judgment of Delhi High Court in the case of *CIT vs. XLNC Fashions* &Hon'ble Karnataka High Court in case of *CIT vs. Motorola India Electronics Pvt. Ltd.* The Revenue being aggrieved filed an appeal before the ITAT and there was no authorized representative presented on behalf of the assessee.

Issue

Whether the amount received as duty draw back in the formof DEPB benefits is eligible for deduction u/s.10B?

Held

The Tribunal held that conjoint reading of sub section (4) and sub section (1) of the section 10B clearly indicates that, *firstly,* deduction of such profits and gains as are derived by 100% EOU from the export of articles or things are to be allowed; and *secondly,* subsection (4) is the formula for computing what is eligible for deduction under sub section (1). In other words, the manner to compute profits derived from the export is stipulated in sub section (4) and the provision laid down therein does not require that assessee should establish any direct nexus with the business of the undertaking unlike in section 80IB, *albeit* once an income forms part of the business of eligible undertaking there is no further mandate to exclude deductions u/s 10B. If the said formula is applied then it is not necessary that the entire receipt by way of duty drawback would become eligible for deduction because the amount quantified as per the formula would only be eligible and qualified for deduction.Therefore, Hon'ble ITAT rejected the Revenue's reliance on the SC ruling in the case of Opera Clothings The ITAT thus held that the formula laid down u/s.10B(4) is apt and the principles given by the SC in the context of Sec.80IB would not be applicable on deductions u/s. 10B. Ruling in favour of the assessee, ITAT upheld CIT(A)'s order allowing deduction u/s 10B in respect of duty draw-back receipts and dismissed the appeal of the Revenue.

42 Google India Pvt Ltd Vs ACIT 86 taxmann.com 237(Bangalore)
Assessment Year: 2007-08 to 2012-13
Order Dated: October 23, 2017.

Basic Facts

Assessee is awholly owned subsidiary of Google International LLC, US ("GIL") who was appointed as a non-exclusive authorized distributor of Adword programs to the advertisers in India by Google Ireland.During AY 2008-09, assessee paid distribution fees to GIL towards distribution rights granted without deducting tax at source u/s. 195 of the Income Tax Act 1961. Assessee contended that it does not have any right of any use or exploitation

contd. on page no. 363

Controversies

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Whether unpaid disputed electricity charges can be disallowed by invoking provisions of Section 43B Income Tax Act 1961.

Issue:

X Ltd. is an assessee company engaged in the business of manufacture of HT Powers. The state electricity board of the relevant state raised demand of Rs. 10 Lacs for the FY 2010-11 which was disputed by the company on various grounds and paid only Rs. 8 Lacs and carried over Rs. 2 Lacs as liability in the Books and debited the entire amount of Rs. 10 Lacs to Profit & Loss Account. The AO proposed to disallow the unpaid amount of Rs. 2 Lacs u/s. 43B of the Income Tax Act 1961.

Proposition:

The unpaid electricity charges payable to the state electricity board is not a tax duty, cess or fee and hence the provisions of section 43B of the Income Tax Act 1961 cannot be disallowed and hence not disallowable.

View against the Proposition:

Section 43B of the Income Tax Act states:

Notwithstanding anything contained in any other provisions of this Act, a deduction otherwise allowable under this Act in respect of

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees or

(c) any sum referred to in clause (*ii*) of sub-section (1) of section 36, or

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution [or a State financial corporation or a State industrial investment corporation], in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

(e) any sum payable by the assessee as interest on any [loan or advances] from a scheduled bank **[***or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank***]** in accordance with the terms and conditions of the agreement governing such loan [or advances], or

(f) any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee or

(g) any sum payable by the assessee to the Indian Railways for the use of railway assets.

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

[**Provided** that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

A fee is a payment levied by an authority in respect of services performed by it for the benefit of the

payer, while a tax is payable for the common benefits conferred by the authority on all taxpayers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue.

Hence the amount of electricity charges payable to the state electricity board is a fee and would be squarely covered by the provisions of section 43B of the Income Tax Act and the same has to be disallowed.

View in favour of the Proposition:

The ITAT Mumbai in the case of Dighi Port Ltd. Mumbai Vs. Department of Income Tax in ITA No. 609/Mum/2010 has decided as under:

"The disallowance in question in this case is relating to wharfage/port dues which were in the shape of consideration payable by the assessee to the MMB as royalty for cargo handling at Dighi Port as per the contract between the parties. The said dues were not payable by way of tax, duty, cess or fee and hence as per the law laid down by the Hon'ble Supreme Court in the case of "CIT vs. McDowell & Co. Ltd." (supra) as well as by the Hon'ble Andhra Pradesh High Court in the case of "CIT vs. Andhra Ferro Alloys (P.) Ltd." (supra), the section 43B of the Act is not attracted in this case. Hence, the disallowance made/confirmed in this case by the lower authorities under section 43B of the Act was not called for and thus the finding of the ld. CIT(A) in this respect is set aside and therefore ground No.1 of the assessee's appeal is allowed."

The ITAT Hydrabad Bench "B" in the case of Sarvaraya Textiles Ltd Vs. DCIT (ITA No. 1716 (HYD) of 1993 & 90 HYD of 1994 reported in 54 ITD 612 has observed as under:

"As to the department's argument that the HT power tariff itself is a "fee" within the meaning of section 43B(a). Broadly stated, a tax is an imposition made for public purposes without reference to any service rendered by the State or any specific benefit to be conferred upon the taxpayers. The object of the Revenue is to raise "general revenue". A fee, on the contrary, is a payment levied by the State in respect of services performed by it for the benefit of the payers of the fee. Conceptually speaking, a fee is levied on a principle opposed to that of a tax. While a tax is levied for the common benefits conferred by the Government on the public, a fee is a payment made for some special benefit enjoyed by the payer, the payment being usually commensurate with the benefit enjoyed. For the purpose of Entries 96, 66 and 47 respectively of the Union List, the State List and the Concurrent List of the Seventh Schedule to the Constitution of India, term "fee" has a special signification and that is that it connote a levy which is the price or consideration for the services rendered by the State to the payers of the fees taken as a class, the sum levied being commensurate with the nature and extent of services rendered. For the purposes of section 43B the term "fee" must be given the special signification referred to (supra). That special signification cannot be imputed to the price which the assessee herein has paid to the APSEB for the HT Powers requirements drawn by it from the said Board. True, the fixation of the price is status-based and statutorily regulated. True again there is total quid pro quo. Even so, the HT Powers charges paid by the assessee cannot be treated as a fee having the aforesaid special signification. Therefore, the contention of the department on this point had to be rejected.

Summation:

The Andhra Pradesh High Court in the case of CIT Vs. Andhra Ferro Alloys (Pvt.) Ltd reported in 349 ITR 255 has held as under:

Section 43B of the Act does not specifically mention about the electricity charges. The proviso to the section says that an assessee has to pay the actual liability on or before the due date applicable in his case for furnishing the return of income. In the instant case, the assessee challenging the balance electricity charges of Rs. 52,23,790/- filed a writ petition before this court against the APSEB and this court granted interim stay and the writ petition is pending. As such, the assessee has shown the

said amount as liability. In this view of the matter, we are of the considered opinion that the assessee has not paid the disputed electricity charges of Rs. 52,23,790/- to the APSEB as it obtained stay from this court, and as such, the provisions of section 43B of the Act would not be attract to such unpaid electricity charges. Further, non-payment of such disputed electricity charges to the APSEB cannot be termed as "fees" and that the Revenue has to give deduction to the said amount.

The Tribunal while allowing the appeal held that the electricity charges does not partake the nature of statutory liability and accordingly will have to be allowed as deduction irrespective of whether or not the same has been paid and notwithstanding that the assessee has disputed any liability to pay any part of such charges. Section 43B of the Act does not speak about the electricity charges. Nowhere it is mentioned in the section or proviso to it that unpaid electricity charges are not deductible. The Revenue cannot interpret the provisions of section 43B of the Act in its favour, since the provisions of section 43B do not incorporate the electricity charges. Therefore, we are of the considered opinion that such electricity charges are in the nature of statutory liability and the Revenue has to allow them as deduction irrespective of whether or not the same has been paid and notwithstanding that the assessee has disputed any liability to pay any part of such charges.

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contd. from page 360

of the underlying intellectual property and software and it was merely in the form of advertisement fee and thus it cannot be termed as royalty. However, the A.O. treated distribution fee in the nature of royalty under the India-Ireland DTAA and thus held that it was subject to withholding tax in India under section 195 of the Act. Aggrieved by the order of A.O, the assessee filed an appeal before the CIT(A) who upheld the order of A.O. the assessee then preferred an appeal before the ITAT.

Issue

Whether payment made by Assessee would be termed as royalty chargeable to tax in India.

Held

ITAT held that the Adwords Program Distribution Agreement allows the assessee to access all the intellectual property and confidential information, which is used for activities related to Distribution Agreement. ITAT noted that as per the Distribution agreement the assessee was permitted to use tradename, trademarks, service marks, domains or other distinctive brand features of GIL on a non-exclusive, non sub-licensable basis for the purpose of marketing and distribution of the Adwords Program. Hence, the Tribunal concluded that the said Google brand features were used by the assesse as marketing tool for promoting and advertising the advertisement space, which is the main activity of assesse and is not an incidental activity. Hence even on this count the payment falls under the definition of royalty under the Act as well as DTAA. Thus, assessee was therefore duty bound to deduct tax. Accordingly, the ITAT held the matter in the favour of the revenue and dismissed the appeal of the assessee.

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Judicial Analysis

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Decisions of Gujarat High Court in favour of the assessee on amended definition of "charitable purpose" u/s 2(15) of the Income Tax Act, 1961 – Part I

Director of Income-tax (Exemption) v. Sabarmati Ashram Gaushala Trust [2014] 44 taxmann.com 141 (Gujarat)

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5. Term "Charitable Trust" is defined in Section 2 (15) of the Act which includes the relief to the poor, education, medical relief, preservation of environment; including watersheds, forests and wildlife and preservation of monuments or places or objections of artistic or historic interest and advancement of any other object of general public utility. Proviso to Section 2 (15) and further proviso whereof inserted by Finance Act 2010 w.e.f 1st April 2009 read, thus —

"Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty five lakh rupees or less in the previous year."

6. The legal controversy in the present Tax Appeal centers around the first proviso. In the plain terms, the proviso provides for exclusion from the main object of the definition of the term "Charitable purposes" and applies only to cases of advancement of any other object of general public utility. If the conditions provided under the proviso are satisfied, any entity, even if involved in advancement of any other object of general public utility by virtue to proviso, would be excluded from the definition of "charitable trust". However, for the application of the proviso, what is necessary is that the entity should be involved in carrying on activities in the nature of trade, commerce or business, or any activity of rendering services in relation to any trade, commerce or business, for a cess or fee or any other consideration. In such a situation, the nature, use or application, or retention of income from such activities would not be relevant. Under the circumstances, the important elements of application of proviso are that the entity should be involved in carrying on the activities of any trade, commerce or business or any activities of rendering service in relation to any trade, commerce or business, for a cess or fee or any other consideration. Such statutory amendment was explained by the Finance Minister's speech in the Parliament. Relevant portion of which reads as under:—

'I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will, following the usual practice, issue explanatory circular containing guidelines for determining whether any entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility".'

7. In consonance with such assurance given by the Finance Minister on the floor of the House, CBDT issued a **Circular No. 11 of 2008 dated 19th December 2008** explaining the amendment as under :—

"3. The newly inserted proviso to section 2 (15) will apply only to entities whose purpose is ' advancement of any other object of general public utility' i.e., the fourth limb of the definition of ' charitable purpose' contained in section 2 (15). Hence, such entities will not be eligible for exemption under section 11 or under section 10 (23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on any activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1 There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under ' any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2 (15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be chargeable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).

3.2 In the final analysis, however, whether the assessee has for its object ' the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of ' general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessees, who claim that their object is ' charitable purpose' within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business."

8. What thus emerges from the statutory provisions, as explained in the speech of Finance Minister and the CBDT Circular, is that the activity of a trust would be excluded from the term ' charitable purpose' if it is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business for a cess, fee and/or any other consideration. It is not aimed at excluding the genuine charitable trusts of general public utility but is aimed at excluding activities in the nature of trade, commerce or business which are masked as ' charitable purpose'.

9. Many activities of genuine charitable purposes which are not in the nature of trade, commerce or business may still generate marketable products. After setting off of the cost, for production of such marketable products from the sale consideration, the activity may leave a

surplus. The law does not expect the Trust to dispose of its produce at any consideration less than the market value. If there is any surplus generated at the end of the year, that by itself would not be the sole consideration for judging whether any activity is trade, commerce or business - particularly if generating ' surplus' is wholly incidental to the principal activities of the trust; which is otherwise for general public utility, and therefore, of charitable nature. The Tribunal took into account the objects of the Trust, which are as under:—

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10. The Tribunal also noted that the objects were admittedly charitable in nature. The surplus generated was wholly secondary. It was, therefore, that the Tribunal held that the proviso to section 2 (15) of the Act would not apply.

11. We are wholly in agreement with the view of the Tribunal. The objects of the Trust clearly establish that the same was for general public utility and where for charitable purposes. The main objectives of the trust are - to breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country; to produce and sale the cow milk; to hold and cultivate agricultural lands; to keep grazing lands for cattle keeping and breeding; to rehabilitate and assist Rabaris and Bharwads; to make necessary arrangements for getting informatics and scientific knowledge and to do scientific research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations, etc.; to establish other allied institutions like leather work and to recognize and help them in order to make the cow keeping economically viable; to publish study materials, books, periodicals, monthlies etc., in order to publicize the objects of the trust as also to open schools and hostels for imparting education in cow keeping and agriculture having regard to the trust objects.

12. All these were the objects of the general public utility and would squarely fall under section 2 (15) of the Act. Profit making was neither the aim nor object of the Trust. It was not the principal activity. Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business. As clarified by the CBDT in its Circular No. 11/2008 dated 19th December 2008 the proviso aims to attract those activities which are truly in the nature of trade, commerce or business but are carried out under the guise of activities in the nature of ' public utility'.

13. Delhi High Court in case of Institute of Chartered Accountants of India v. DGIT [2012] 347 ITR 99/[2011] 202 Taxman 1/13 taxmann.com 175 considered these very provisions in the context of activities of the Institute of Chartered Accountants holding that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members/enrolled chartered accountants and merely because the Institute was holding coaching classes which also generate income, the Court held that proviso to Section 2 (15) of the Act would not be applicable. It thus held and observed as under:—

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Mudra Foundation for Communications Research & Education v. Chief Commissioner of Income-tax, Ahmedabad-IV [2015] 64 taxmann.com 275 (Gujarat)

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14. It is an admitted position that a certificate under Section 12A of the Act has already been issued in favour of the petitioner and the same has continued till date. Therefore, it is established that the petitioner-institution is a charitable trust as far as applicability of the Income Tax Act is concerned.

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16. If the objects mentioned in the memorandum of association as mentioned in paragraph 3(i) and more particularly (a), (b) and (c) are perused, it appears that the institution is awarding diplomas, certificates, etc. after providing training in communication, advertising and related subjects

to equip them thoroughly to practice the art and profession of Communication in which they have been trained and by giving special training they do prepare the outstanding and talented mature young persons for careers leading to Communication including advertising with teaching them their responsibilities towards the public at large. Clause (f) makes it clear that the fee collected shall not exceed the cost of training, hostel expenses etc., and the petitioner society shall not be precluded from subsidising such costs. As far as object 3(i) which has been relied upon by Mr Bhatt, learned Senior Counsel, we are of the opinion that by providing training to the individuals as well as those persons who have been sent by the companies to meet the needs of the Indian industry and Commerce and introducing them with new products and informing them about market conditions, etc. would not establish that the petitioner is carrying on such activity which would treat the same as service provided in relation to any trade, commerce and industry. Education does not mean teaching the students only, in the manner and method, the regular schools or colleges adopt to teach. In the progressive world, it is expected from certain institutions that they educate, teach and train persons so that those persons can compete similar experts worldwide. Therefore, we are not in agreement with the submissions made by Mr Bhatt, learned Senior Counsel that the sole object of the institution is not to impart education. By providing latest information and thereafter training to those persons who are already in the field of advertising communication, etc. and in such process if certain persons become super-specialists in particular field and for which the institution is charging fee, we are of the opinion that the case would not fall under proviso to Section 2(15) as submitted by Mr Bhatt, learned Senior Counsel appearing for the respondent.

17. In case of Queen's Educational Society (supra) the Honourable Supreme Court has dealt with the similar provisions and more particularly provision of Section 10(23C) (vi), etc. With regard to the case of the respondent authority that the surplus funds of the institution have ever been used for other purpose than the purpose of promoting educational activities including research, etc. by relying upon the case of Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310/90 Taxman 528 (SC) the Honourable Supreme Court in paragraph 9 has held that the overall future of the matter is to be examined while considering the object of the institution i.e. whether the same is established to make profit or not. In paragraph 10 of the aforesaid judgment the Honourable Supreme Court has, by relying upon the case of American Hotel & Lodging Assn. Educational Institute v. CBDT [2003] 301 ITR 86/170 Taxman 306 held that if the institution has surplus at the end of the year, the same would incidental form the activities carried on by the institution and if it is established before the authority that the institution is not established solely for the educational purpose. After considering several decision, certain criteria have been laid down in paragraph 11 of the judgment, which reads as under:

"11. Thus, the law common to Section 10(23C) (iiiad) and (vi) may be summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."

18. The Honourable Supreme Court while dealing with the case of Queen's Educational Society (supra) has dealt with the decision of the Division Bench of Punjab and Haryana High Court in the case of Pine Grove International Charitable Trust v. Union of India [2010] 327 ITR 73/188 Taxman 402 and has confirmed the view expressed by the Punjab and Haryana High Court with regard to applicability of Section 10(23C)(vi) of the Act. The Honourable Apex Court has also considered different judgments of various High Courts which have relied upon the decision of the Pine Grove International Charitable Trust (supra) and the observations are reflected in paragraph 23 of the judgment. It has also been held by the Honourable Apex Court that the Assessing Authority under the Act can monitor the income and expenditure of the assessee who has been granted the certificate under Section 10(23C)(vi) of the Act. The relevant paragraph viz. paragraph 25 of the aforesaid judgment in the case of Queen's Educational Society (supra) reads as under:

"25. We approve the judgments of the Punjab and Haryana, Delhi and Bombay High Courts. Since we have set aside the judgment of the Uttarakhand High Court and since the Chief CIT's orders cancelling exemption which were set aside by the Punjab and Haryana High Court were passed almost solely upon the law declared by the Uttarakhand High Court, it is clear that these orders cannot stand. Consequently, Revenue's appeals from the Punjab and Haryana High Court's judgment dated 29.1.2010 and the judgments following it are dismissed. We reiterate that the correct tests which have been culled out in the three Supreme Court judgments stated above, namely, Surat Art Silk Cloth, Aditanar, and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit. In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act."

The case relied upon by the petitioner of Director of Income-tax (Exemption) (supra) delivered by the Division Bench of this Court has dealt with a case of an educational institution in appeal for which the Division Bench has opportunity to examine the income and expenditure of the educational institution. In our opinion, in the present facts and circumstances of the case, the same would not be applicable.

19. Considering the overall facts and circumstances of the case, the object of the petitioner institution, we are of the opinion that the petitioner institution is established for the sole purpose of imparting education in a specialised field. Hence, the petition is allowed. Order dated 29th September 2014 passed by the Respondent-Chief Commissioner of Income-tax, Ahmedabad-IV vide which he refused to issue exemption certificate under Section 10(23C)(vi) of the Act in favour of the petitioner has been set aside. Rule is made absolute.

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Indian Tax Administration releases Final rules on Country by Country reporting and Master File implementation

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1. Executive Summary

As we have detailed out the draft rules published by the CBDT on 6th October 2017 on the provisions for additional transfer pricing (TP) documentation and Country-by-Country (CbC) reporting. Following the submission of public comments from various industry stakeholders, on 31 October 2017, the Indian Tax Administration issued the final rules for CbC reporting and the furnishing of the master file (Final Rules). The Final Rules contain a few administrative changes and clarifications. Key highlights of the Final Rules are:

- The contents of the master file and the CbC report are largely in line with the recommendations specified in Action 13 barring a few additional requirements for the master file
- A monetary threshold, based on cumulative conditions of consolidated revenue and the value of international transactions, is prescribed for maintenance of the master file, while the threshold for CbC reporting is in line with the OECD recommendation
- Filing of the master file and CbC report (including notification) would be made electronically in accordance with the specification to be prescribed by the designated authorities who are also responsible for evolving and implementing appropriate security, archival and retrieval policies
- The due date for the first year, i.e., financial year (FY) 2016-17 master file compliance, as well as for CbC reporting has been extended to 31st March 2018. For subsequent FYs, the master file and CbC report need to be filed on or before the due date for filing the income tax return
- For every constituent entity resident in India, if its parent entity is not resident in India, the notification regarding the details of the parent entity or the alternate reporting entity (which files CbC report) needs to be filed at least two months prior to the due date for filing income tax return. For FY 2016-17, such due date would be on or before 31st January 2018

We have provided below an overview of the Final Rules on Master File and CbC report.

2. Master File

2.1 Overview

In accordance with Action 13, the master file should provide an overview of the MNE group business, its overall TP policies, and its global allocation of income and economic activity in order to place the MNE group's TP practices in their global economic, legal, financial and tax context. The master file shall contain information which need not be restricted to the transaction undertaken by a particular constituent entity situated in particular country. In that aspect, information in the master file would be more comprehensive than typical current documentation standards.

2.2 Who are subject to MF

Under the ITL, as amended through Finance Act, 2016, entities that are constituents of an international group, shall be required to maintain such information and documents as prescribed (i.e., master file) in addition to the information related to the international transactions undertaken by such constituent entity in the contemporaneous local documentation. The Final Rules provide that the master file requirements apply to every taxpayer, being a

constituent entity of an international group, if the following two conditions are satisfied:

- The consolidated revenue of the international group, of which such taxpayer is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds INR 500 crores. Further, the Final Rules clarify that for the purpose of computation of the INR value of the consolidated group revenue (if it is reported in a foreign currency), telegraphic transfer buying rate of such foreign currency (as quoted by State Bank of India) on the last day of the accounting year would be adopted.
- Either of the below transactional threshold is achieved for the accounting year:
    - o The aggregate value of international transactions as per the books of accounts maintained by the taxpayer exceeds INR 50 crores
    - o The purchase, sale, transfer, lease or use of intangible property (IP) as per the books of accounts maintained by the taxpayer exceeds INR 10 crores

Under the ITL, the accounting year where the ultimate parent entity/alternate reporting entity resident in India would be the FY starting from 1st April and ending on 31st March of the following year. In all other cases, the reporting accounting year would be an annual accounting period, with respect to which the parent entity of the international group prepares its financial statements under any law for the time being in force or the applicable accounting standards of the country or territory of which such entity is resident.

Upon meeting the above thresholds, each taxpayer, being a constituent entity of an international group resident in India, would be required to maintain the prescribed information and documents as part of the master file for annual compliance purposes.

2.3 Monetary penalty for non-maintenance and non-filing of master file

Under the ITL, monetary penalties are applicable if the constituent entity fails to maintain and furnish the master file in Form 3CEAA within the due date unless the taxpayer is able demonstrate "reasonable cause" for such non-compliance. The prescribed sum of penalty is INR 5,00,000.

3. CbC report

3.1 Overview

The Action 13 report provides for CbC reporting to be done separately from the master file and the local file. The CbC report will be helpful for high level TP risk assessment purposes. Action 13 emphasizes that such information should not be used as a substitute for a detailed TP analysis based on a full functional and comparability analysis and so, it does not constitute conclusive evidence that transfer prices are or are not appropriate.

3.2 MNEs who are subject to CbC reporting requirement

According to the Final Rules, CbC reporting requirements would apply to an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the preceding accounting year exceeds INR 5500 crores. Similar to the Final Rules on master file maintenance, the Final Rules on CbC reporting provide that for the purpose of computation of the INR value of the consolidated group revenue (if it is reported in a foreign currency), telegraphic transfer buying rate of such foreign currency (as quoted by State Bank of India) on the last day of the accounting year would be adopted. The amount prescribed is consistent with the OECD recommendation of Rs. 750 million.

3.3 Taxpayers who are subject to CbC reporting requirements in India

Under the ITL, the CbC report filing requirements would arise in the case of the following entities:

- The parent entity of an international group (which has been defined to include two or more enterprises including a permanent establishment which are resident of different countries or territories), if it is resident in India
- An entity in India belonging to an international group, if the parent entity of the group is resident:
    - o In a country with which India does not have an arrangement for exchange of the CbC reporting; or
    - o Such country is not exchanging information with India even though there is an agreement; and this fact has been intimated to the constituent entity by the Indian Tax Administration

The ITL also provides that if an international group, with a parent entity which is not resident in India, has designated an alternate entity for filing its report with the tax jurisdiction in which the alternate entity is resident, then the entities of such group operating in India would not be required to furnish a CbC report if the same can be obtained under the agreement of exchange of CbC reports by the Indian Tax Administration.

3.4 Monetary penalty for non-maintenance and non-filing of CbC report

Under the ITL, monetary penalties are applicable if the reporting entity fails to furnish or furnishes an inaccurate CbC report within the due date unless the taxpayer is able demonstrate "reasonable cause" for such non-compliance. The prescribed sum of penalties are as follows:

Event	Penalty
Non-filing of CbC report by Indian resident parent company or alternate resident company	- INR 5,000 per day up to one month - INR 15,000 per day beyond one month - INR 50,000 per day for continuing default after service of notice
Not furnishing the information called for by the Indian tax authority within the given time limit	- INR 5,000 per day up to service of penalty order - INR 50,000 per day for default beyond date of service of penalty order
Furnishing inaccurate details or non-filing of corrected report within 15 days	- INR 500,000

4. Concluding remarks

The Indian master file and CbC reporting Final Rules released by the Indian Tax Administration are broadly in line with OECD guidance in Action 13. While the Final Rules require the Indian constituent entities to furnish a few additional details in the master file which deviates from the BEPS Action 13 recommendation, it appears that the Indian Tax Administration has considered such requirement to be relevant for risk assessment purposes from an India standpoint. The Final Rules however still do not provide clarity on transitional issues which may arise where jurisdictions where the parent entity is located have a delayed implementation of CbC reporting or are not able to sign a competent authority agreement for exchange of the CbC report before the due date for Indian filing.

International groups should focus on the new reporting requirements and should assess readiness as to whether the necessary data is available, what must be done to ensure that data can be sourced and presented in an effective, efficient and clear manner and also analyze how tax authorities are likely to assess such information. Taxpayers will need to adopt a consistent and harmonized approach to preparing their master file and local files as well as CbC reporting and be prepared for a more detailed information or document requests during an audit.

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FEMA Updates

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12 Issuance of Rupee Denominated Bonds (RDBs) Overseas

This is in context to the provisions contained in paragraphs 2 and 8 of A.P. (DIR Series) Circular No.60 dated April 13, 2016 on issuance of Rupee denominated bonds overseas and paragraphs 3.2 and 3.3.9 of Master Direction No.5 dated January 1, 2016 on "External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers", as amended from time to time.

It has been decided, in consultation with the Government of India, to exclude issuances of RDBs from the limit for investments by FPIs in corporate bonds with effect from October 3, 2017 vide A. P. (DIR Series) Circular No. 05 dated September 22, 2017.

Consequently, reporting requirement in terms of paragraph 8 (additional email reporting of RDB transactions for onward reporting to depositories) of A.P. (DIR Series) Circular No. 60 dated April 13, 2016 has been dispensed with. However, it should be noted that the reporting of RDBs will continue as per the extant ECB norms.

All other aspects of the ECB policy remain unchanged. AD Category - I banks may bring the contents of this circular to the notice of their constituents and customers.

The aforesaid Master Direction No. 5 dated January 01, 2016 will be updated to reflect the changes.

The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

A.P. (DIR Series) Circular No. 06, September 22, 2017

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11128

13 Investment by Foreign Portfolio Investors (FPI) in Government Securities Medium Term Framework

This refers to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000-RB dated May 3, 2000, as amended from time to time, and RBI/2017-18/12 A.P.(Dir Series) Circular No.1 dated July 3, 2017.

Revision of Limits for the next quarter Oct-Dec 2017

The limits for investment by FPIs for the quarter October-December 2017 is increased by INR 80 billion in Central Government Securities and INR 62 billion in State Development Loans. The revised limits are allocated as per the modified framework prescribed in the RBI/2017-18/12 A.P.(Dir Series) Circular No.1 dated July 3, 2017, and given as under.

Limits for FPI investment in Government Securities

[1] Billion

Quarter Ending	Central Government securities		State Development Loans				Aggregate
	General	Long Term	Total	General	Long Term	Total	
Existing Limits	1877	543	2420	285	46	331	2751
December 31, 2017	1897	603	2500	300	93	393	2893

The revised limits will be effective from October 3, 2017.

contd. on page no. 377

GST Updates

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Press Release (dated 10th November, 2017)

The GST Council, in its 23rd meeting held at Guwahati on 10th November 2017, has recommended the following facilitative measures for taxpayers:

Return Filing

a) The return filing process is to be further simplified in the following manner:

i. All taxpayers would file return in FORM GSTR-3B along with payment of tax by 20th of the succeeding month till March, 2018.

ii. For filing of details in FORM GSTR-1 till March 2018, taxpayers would be divided into two categories. Details of these two categories along with the last date of filing GSTR 1 are as follows:

(a) Taxpayers with annual aggregate turnover upto Rs. 1.5 crore need to file GSTR-1 on quarterly basis as per following frequency:

Period	Dates
Jul- Sep	31st Dec 2017
Oct- Dec	15th Feb 2018
Jan- Mar	30th April 2018

(b) Taxpayers with annual aggregate turnover more than Rs. 1.5 crore need to file GSTR-1 on monthly basis as per following frequency:

Period	Dates
Jul- Oct	31st Dec 2017
Nov	10th Jan 2018
Dec	10th Feb 2018
Jan	10th Mar 2018
Feb	10th Apr 2018
Mar	10th May 2018

iii. The time period for filing GSTR-2 and GSTR-3 for the months of July, 2017 to March 2018 would be worked out by a Committee of Officers. However, filing of GSTR-1 will continue for the entire period without requiring filing of GSTR-2 & GSTR-3 for the previous month / period.

b) A large number of taxpayers were unable to file their return in FORM GSTR-3B within due date for the months of July, August and September, 2017. Late fee was waived in all such cases. It has been decided that where such late fee was paid, it will be re-credited to their Electronic Cash Ledger under "Tax" head instead of "Fee" head so as to enable them to use that amount for discharge of their future tax liabilities. The software changes for this would be made and thereafter this decision will be implemented.

c) For subsequent months, i.e. October 2017 onwards, the amount of late fee payable by a taxpayer whose tax liability for that month was 'NIL' will be Rs. 20/- per day (Rs. 10/- per day each under CGST & SGST Acts) instead of Rs. 200/- per day (Rs. 100/- per day each under CGST & SGST Acts).

Manual Filing

d) A facility for manual filing of application for advance ruling is being introduced for the time being.

Further benefits for service providers

e) Exports of services to Nepal and Bhutan have already been exempted from GST. It has now been decided that such exporters will also be eligible for claiming Input Tax Credit in respect of goods or services used for effecting such exempt supply of services to Nepal and Bhutan.

f) In an earlier meeting of the GST Council, it was decided to exempt those service providers whose

annual aggregate turnover is less than Rs. 20 lakhs (Rs. 10 lakhs in special category states except J & K) from obtaining registration even if they are making inter-State taxable supplies of services. As a further measure towards taxpayer facilitation, it has been decided to exempt such suppliers providing services through an e-commerce platform from obtaining compulsory registration provided their aggregate turnover does not exceed twenty lakh rupees. As a result, all service providers, whether supplying intra-State, inter-State or through e- commerce operator, will be exempt from obtaining GST registration, provided their aggregate turnover does not exceed Rs. 20 lakhs (Rs. 10 lakhs in special category States except J & K).

Extension of dates

g) Taking cognizance of the late availability or unavailability of some forms on the common portal, it has been decided that the due dates for furnishing the following forms shall be extended as under:

S. No.	FORM and Details	Original due date	Revised due date
1	GST ITC-04 for the quarter July-September, 2017	25.10.2017	31.12.2017
2	GSTR-4 for the quarter July-September, 2017	18.10.2017	24.12.2017
3	GSTR-5 for July, 2017	20.08.2017 or 7 days from the last date of registration which ever is earlier	11.12.2017
4	GSTR-5A for July, 2017	20.08.2017	15.12.2017
5	GSTR-6 for July, 2017	13.08.2017	31.12.2017
6	TRAN-1	30.09.2017	31.12.2017 (One-time option of revision also to be given till this date)

Revised due dates for subsequent tax periods will be announced in due course.

Benefits for Diplomatic Missions/UN organizations

h) In order to lessen the compliance burden on Foreign Diplomatic Missions / UN Organizations, a centralized UIN will be issued to every Foreign Diplomatic Mission / UN Organization by the Central Government and all compliance for such agencies will be done by the Central Government in coordination with the Ministry of External Affairs.

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GST & VAT
Judgments / Updates

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Important Judgment delivered by Hon. GVAT Tribunal in the case of Meghmani Organics Ltd.

Issue:

An important judgment delivered by Gujarat Value Added Tax Tribunal in case of the assessee in respect of reduction @ 2% of Input Tax Credit in case of goods are sold in course of inter-state trade on the purchase of capital goods.

Held:

The Hon. Tribunal held that the reduction @ 2% is not legal.

The gist of the judgment is reproduced hereunder for the benefit of the readers.

The appellant is a company engaged in 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 with 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 @ 2% of the purchase value of "raw material" used in manufacture of goods sold in the course of inter-state trade and commerce as required by Entry No. 2of 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 the tax credit in respect 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 trades 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 the reduction of input 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 the 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 the first appeal before the learned First Appellate Authority and the learned first appellate authority accepted the error committed by the learned assessing officer 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-stated 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 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 the 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 29.06.2010 does not apply to the 'capital goods'; that the interpretation to include 'capital goods' in the terms of 'input' is contrary to the intention of the Government in introducing the Notification dated 29.06.2010 in view of budget speech of 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 purview of Notification dated 29.06.2010 therefore, present Second Appeal is filed challenging the order passed by the authorities below.

The Ld. 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'. He 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. He 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 also submitted that 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 for manufacturing process of converting various input into the final product, therefore, 'capital goods' are not 'input'. He also submitted that Section 11(3)(vi) of the GVAT Act provides for granting of tax credit in respect of raw materials used in manufacturing of taxable goods and section 11(3)(vii) provides for tax credit in respect of 'capital goods' meant for use in manufacture of taxable goods. He further submitted that the term 'raw materials' and 'capital goods' are defined under the GVAT Act and hence there are two different and distinct class of goods and therefore, 'capital goods' cannot be covered under the term 'input'. He also submitted that according to the definition 'capital goods' means plant and machinery is not input and hence notification dated 29.06.2010 does not cover 'capital goods'. He also submitted that budget speech also envisages reduction of tax credit in respect of 'raw materials' and not 'capital goods', therefore authorities below committed serious error in interpretation of Notification dated 29.06.2010 and therefore, they are required to be set aside. The learned Advocate for the appellant relied upon numerous decisions which have been discussed at appropriate place in this judgment.

The Hon. Tribunal considered the contentions raied by the parties and oral as well as written submissions submitted by them.

Section 2(19) defines 'raw materials' as under.

'raw material' means goods used as ingredient in the manufacture of other goods and includes processing materials, consumable stores and material used in the packing of the goods so manufactured but does not include fuels for the purpose of generation of electricity'.

In view of the above definition 'raw materials' are goods used as ingredient in the manufacturing of other goods and includes processing materials, consumable stores and materials used in packing of the goods so manufactured.

Ld. Advocate for the appellant has relied upon the decision of M/s. Tata Engineering & Locomotive Co. Ltd. v. 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. Supreme Court made the following observations as to what can be considered as 'input'.

"Raw Material has been further explained by using the word 'inputs' which dictionarily 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 v. Jay Engineering Works Ltd. [1989] 75 STC 313 (SC); [1998] Supp 3 SCR 998 a question arose whether name-plates used by manufacturer of fans being 'input' were exempt from the 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, with could 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'.

In view of the various discussions, the Hon. Tribunal has passed the order as under.

The Second Appeal No. 427 of 2016 is allowed. The order passed by the Ld. Deputy Commissioner of Commercial Tax, Circle-6, Ahmedabad on 05/06-11-2015 and partly confirmed by the Ld. Joint Commissioner of Commercial Tax (Appeal), Vibhag-2, Ahmedabad on 22.03.2016 in first appeal to the extent of reduction of 2% tax credit on 'capital goods' under Notification No. (GHN-14) VAT-2010-S. 11(6)(2)/TH dated 29.06.2010 are set aside. The assessing officer is directed to pass consequential order.

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contd. from page 372

The operational guidelines relating to allocation and monitoring of limits will be issued by the Securities and Exchange Board of India (SEBI).

A.P. (DIR Series) Circular No. 07, September 28, 2017

For Full Text refer to https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11127&Mode=0

14 Risk Management and Inter-Bank Dealings – Facilities for Hedging Trade Exposures invoiced in Indian Rupees

This circular refers to the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 dated May 3, 2000 (Notification No. FEMA. 25/RB-2000 dated May 3, 2000) and Master Directions on Risk Management and Inter-Bank Dealings dated July 5, 2016 as amended from time to time.

In terms of para 6 under Section II (Facilities for Persons Residents outside India) of the aforementioned master direction, non-residents are permitted to hedge the currency risk arising out of INR invoiced exports from and imports to India with AD Category I banks in India. On a review of this facility, it has been decided to permit the central treasury (of the group and being a group entity) of such non-residents to undertake hedges for and behalf of such non-residents with AD Category I banks in India as per the existing Model I and Model II. The revised operational guidelines, terms and conditions are placed at Annex to this circular.

The directions contained in this circular have been issued under Sections 10 (4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

A.P. (DIR Series) Circular No. 08, October 12, 2017

For Full Text refer to https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11144

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Corporate Law Update

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MCA Updates:

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

The following changes have been made in the Companies (Acceptance of Deposits) Rules, 2014:

A. In Rule 3, in sub-rule (3), for the proviso, the following has been substituted:-

"Provided that a Specified IFSC Public company and a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Explanation.—For the purpose of this rule, a Specified IFSC Public company means an unlisted public company which is licensed to operate by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India from the International Financial Services Centre located in an approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006:

Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:—

(i) A private company which is a start-up, for five years from the date of its incorporation;

(ii) A private company which fulfils all of the following conditions, namely:—

(a) Which is not an associate or a subsidiary company of any other company;

(b) the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and

(c) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DPT-3"

B. Form DPT"3 for Return of deposits pursuant to rules 3 and 16 of the Companies (Acceptance of Deposits) Rules, 2014 has also been substituted.

[F. No. 1/8/2013-CL-Vdated 19/09/2017]

2. The Companies (Restriction on Number of Layers) Rules, 2017:

These Rules provides for restriction on number of layers for certain classes of holding companies and filing of return in Form CRL-1 (disclosing the details regarding number of layers) within 150 days from the date of publication of the this notification. These Rules shall be effective from 20.09.2017.

Restriction on Number of Layers for certain Classes of Holding Companies :

(1) No company, other than a company belonging to a class specified in sub-rule

(2), shall have more than two layers of subsidiaries:—

Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:

Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

(2) The provisions of this rule shall not apply to the following classes of companies, namely:—

(a) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(b) a non-banking financial company as defined in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) which is registered with the Reserve Bank of India and considered as systematically important non-banking financial company by the Reserve Bank of India;

(c) an insurance company being a company which carries on the business of insurance in accordance with provisions of the Insurance Act, 1938 (4 of 1938) and the Insurance Regulatory Development Authority Act, 1999 (41 of 1999);

(d) a Government company referred to in clause (45) of section 2 of the Act.

(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

(4) Every company, other than a company referred to in sub-rule (2), existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess of the layers specified in sub-rule (1) –

(i) shall file, with the Registrar a return in **Form CRL-1 disclosing the details specified therein, within a period of one hundred and fifty days from the date of publication of these rules in the Official Gazette;**

(ii) shall not, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and

(iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub rule (1), whichever is more

(5) If any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with fine which may extend to ten thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues."

Form CRL-1 for Return regarding number of layers as per clause (i) of sub-rule (4) of rule2) has been annexed to the rules notified.

[F. No. 01/13/2013 CL-V (Vol.III)] dated 20/09/2017]

3. Commencement of proviso to section 2(87) of Companies Act, 2013:

The Central Government has appointed the 20th September, 2017 as the date on which proviso to clause (87) of section 2 of the said Act shall come into force.

[F. No. 01/13/2013-CL-V dated 20.09.2017]

4. Clarification regarding the timelines for making applicable/available new Form DPT-3 issued vide the Companies

(Acceptance of Deposits) Second Amendment Rules, 2017:

This Ministry had issued the Companies (Acceptance of Deposits) Second Amendment Rules, 2017 and the said amendment Rules inter-alia provide for substitution of existing Form DPT-3 with a new Form DPT-3. In this regard the ministry has clarified that new Form DPT-3 shall be made available for E-filing after the month of November, 2017 and till the time the new e-form is made available, the existing e-form can be used.

[General Circular No. 11 /2017 dated 27.09.2017]

5. Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017:

W. e. f. 13thOctober, 2017, following changes have been effected vide The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2017.

1. In the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, (hereinafter referred to as the principle rules), in rule 6-(I) in sub-rule (1),—

   a. for the second proviso, the following proviso shall be substituted, namely:

   "Provided further that in cases where the period of seven years provided under sub-section (5) of section 124 has been completed or being completed during the period from 7th September, 2016 to 31st October, 2017, the due date of transfer of such shares shall be deemed to be 31st October, 2017.";

   b. after the second proviso, the following proviso shall be inserted, namely:

   "Provided further that transfer of shares by the companies to the Fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the fund."

(II) in sub-rule(3), for clause (d), the following clause shall be substituted, namely;

'(d) For the purposes of effecting the transfer shares held in physical form-

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;

(ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that "Issued in lieu of share certificate No for the purpose of transfer to IEPF" and the same be recorded in the register maintained for the purpose;

(iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.';

(III) after sub-rule (12), the following sub-rules shall be inserted, namely:

"(13) Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted into the specified account of the IEPF Authority maintained in the Punjab National Bank.

(14) Authority shall furnish its report to the Central Government as and when noncompliance of the rules by companies came to its knowledge."

2. In the principle rules, in rule 7—

   (a) after sub-rule (2), the following sub-rule shall be inserted, namely:

   "(2A) Every company which has deposited the amount to the Fund shall nominate a Nodal Officer for the purpose of coordination with IEPF Authority and communicate the contact details of the Nodal Officer duly indicating his or her designation, postal address, telephone and mobile number and company authorized e-mail ID to the IEPF Authority, within fifteen days from the date of publication of these rules and the company shall display the name of Nodal Officer and his e-mail ID on its website.";

   (b) after sub-rule (3), the following proviso shall be inserted, namely:

   "Provided that in case of non receipt of documents by the Authority after the expiry of ninety days from the date of filing of Form IEPF-5, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days."

   (c) after sub-rule (7), the following proviso shall be inserted, namely:

   "Provided that in case of non receipt of rectified documents by the Authority after the expiry of ninety days from the date of such communication, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days.".

   [F. No. 05/17/2017-IEPFdated 13.10.2017]

6. Transfer of Shares to IEPF Authority:

1. Pursuant to second proviso to Rule 6 of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 as amended time to time, wherein the seven years period provided under sub-section (5) of section 124 is completed for unpaid/unclaimed dividends during September 7, 2016 to October 31, 2017, the due date for transfer of such shares by companies is **October 31st, 2017.**

2. The IEPF Authority has opened demat accounts with National Securities Depository Limited (NSDL) and Central Depository Services Limited (CDSL) through Punjab National Bank and SBICAP Securities Limited respectively, as Depository Participants. The details of said accounts are as under:

Particulars	PNB	SBICAP
DP ID	IN300708	12047200
Client ID	10656671	13676780

3. These demat accounts will have features and functionality to support IEPF operations using paperless, digital processes and facilitate record keeping of shares transferred to the IEPF Authority to meet the requirements of the Rules.

4. All companies which are required to transfer shares to IEPF Authority under the aforesaid Rules, shall transfer such shares, whether held in dematerialised form or physical form, to the demat accounts of IEPF Authority by way of corporate action. The Information related to the shareholders, whose shares are being' transferred to IEPE's demat accounts with PNB or SBICAP shall be provided by the companies to NSDL or CDSL respectively as per the prescribed format by the concerned depository.

5. The Ministry of Corporate Affairs has held separate discussions with NSDL and CDSL during which they have agreed to levy reduced charges for account maintenance and record keeping pertaining to shares transferred to the demat accounts

of IEPF Authority. A Memorandum of Understanding (MOU) to the effect is being finalized with the two depositories and the same will also be uploaded on website www.iepf.gov.in on finalization. NSDL and CDSL shall, based on these discussions, separately notify the charges, which shall not be more than those finalized in the MOU. NSDL and CDSL are required to allow the services with immediate effect.

6. Any cash benefit accruing on account of shares transferred to IEPF such as dividend, proceeds realised on account of delisting of equity shares of the company, amount entitled on behalf of security holder if the company is being wound up as per Rule 6, sub-rule (10), (1 1) and (12) of Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, shall be transferred by companies to bank account opened by the Authority with Punjab National Bank, sansad marg. New Delhi, which has been linked to demat accounts mentioned at para 2 above.

7. It is clarified that **Only** amounts mentioned in para 6 above are to be transferred to Bank account indicated above. Transfer of amount due to be transferred under section 125(2) of the Companies Act, 2013 or any other amount to aforesaid account is strictly prohibited.

[General Circular No. 12/2017 dated 16.10.2017]

7. Notification for Commencement of section 247 of Companies Act, 2013:

The Central Government has appointed the 18thOctober, 2017 as the date on which the provisions of section 247 of the said Act shall come into force.

[F. No. 1/27/2013-CL-V dated 18.10.2017]

8. Delegation of powers to the Insolvency and Bankruptcy Board of India:

W. e. f. 23.10.2017, the Central Government has delegated the powers and functions vested in it under section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India, subject to the condition that the Central Government may revoke such delegation of powers or it may exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest.

[F. No. 01/13/2013-CL-V (Part-I) dated 23.10.2017]

9. Companies (Removal of Difficulties) 2nd Order 2017:

The Ministry has issued The Companies (Removal of Difficulties) Second Order, 2017 w. e. f. 23.10.2017 remove the doubts with respect to the valuers to be appointed for valuation required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities.

Vide this order, in the Companies Act, 2013, in section 247, in sub-section (1), for the words "a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as maybe prescribed", the words "a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed" shall be substituted.

[F. No. 1/27/2013-CL-V dated 23.10.2017]

10. Clarification regarding approval of resolution plans under section30 and 31 of Insolvency and Bankruptcy Code, 2016:

The Ministry has clarified about whether approval of shareholders/members of the corporate debtor/company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 (the Code) and after approval during its implementation, for any

contd. on page no. 386

Allied Laws Corner

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Notice issued by the Law Firm on behalf of the Operational Creditor without authorization is invalid and therefore application to initiate insolvency resolution process cannot be accepted.

Recently, the National Company Law Appellate Tribunal, Delhi Bench in the case of **Smartcity (Kochi) Infrastructure Pvt. Ltd. vs. Synergy Property Development Services Pvt. Ltd.** reported in 87 **taxmann.com 7** held that demand notice under section 8 on behalf of the Operational Creditor cannot be issued by any person in the absence of any authority of the Board of Directors, and holding no position with or in relation to the Operational Creditor.

A. Facts of the case :

The demand notice was issued by the Law Firm of the Operational Creditor (Synergy Property Development Services Pvt. Ltd.) u/s 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor (Smartcity (Kochi) Infrastructure Pvt. Ltd.). Thereafter, the application to initiate corporate insolvency process was filed by the Operational Creditor and the National Company Law Tribunal, Chennai Bench entertained the said application and passed the order u/s 9 of the Code admitting the application and appointing Interim Resolution Professional and ordered for Moratorium.

B. Appeal filed by the Corporate Debtor :

Aggrieved Corporate Debtor filed the appeal against the order passed by the Adjudicating Authority on the following grounds :

(*i*) Notice under sub-section (1) of Section 8 was not issued by the 'Operational Creditor' but by the 'Law Firm', which is not in accordance with law.

(*ii*) Notice under Rule 4(3) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was not sent by the 'Operational Creditor', but by a 'Law Firm' and,

(*iii*) There is a dispute in existence and therefore the application under Section 9 was not maintainable.

C. Findings of the NCLAT:

1. **Regarding the issuance of notice by the Law Firm, the Hon'ble NCLAT held as under :**

1.1 The Hon'ble NCLAT observed that similar issue fell for consideration before the Appellate Tribunal in ***Uttam Galva Steels Ltd.* v. *DF Deutsche Forfait AG*** **[2017] 84 taxmann.com 183/143 SCL 318 (NCLT - New Delhi)** wherein the Appellate Tribunal by its judgment dated 28th July, 2017 held as follows: —

"30. From bare perusal of Form-3 and Form-4, read with sub-rule (1) of Rule 5 and Section 8 of the I&B Code, it is clear that an Operational Creditor can apply himself or through a person authorised to act on behalf of Operational Creditor. The person who is authorised to act on behalf of Operational Creditor is also required to state "his position with or in relation to the Operational Creditor", meaning thereby the person authorised by Operational Creditor must hold position with or in relation to the Operational Creditor and only such person can apply.

31. The demand notice/invoice Demanding Payment under the I&B Code is required to be issued in Form-3 or Form - 4. Through the said formats, the 'Corporate Debtor'

is to be informed of particulars of 'Operational Debt', with a demand of payment, with clear understanding that the 'Operational Debt' (in default) required to pay the debt, as claimed, unconditionally within ten days from the date of receipt of letter failing which the 'Operational Creditor' will initiate a Corporate Insolvency Process in respect of 'Corporate Debtor', as apparent from last paragraph no. 6 of notice contained in Form - 3, and quoted above.

Only if such notice in Form-3 is served, the 'Corporate Debtor' will understand the serious consequences of non- payment of 'Operational Debt', otherwise like any normal pleader notice/Advocate notice, like notice under Section 80 of C.P.C. or for proceeding under Section 433 of the Companies Act, 1956, the 'Corporate Debtor' may decide to contest the suit/case if filed, distinct Corporate Resolution Process, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issue of notice under Section 8.

32. In view of provisions of I&B Code, read with Rules, as referred to above, we hold that an 'Advocate/Lawyer' or 'Chartered Accountant' or 'Company Secretary' in absence of any authority of the Board of Directors, and holding no position with or in relation to the Operational Creditor cannot issue any notice under Section 8 of the I&B Code, which otherwise is a 'lawyer's notice' as distinct from notice to be given by operational creditor in terms of section 8 of the I&B Code."

1.2 In the present case also the notice has been issued by a Law Firm and there was nothing on the record to suggest that the said Law Firm has been authorised by the Board of Directors of the 'Operational Creditor'- M/s. Synergy Property Development Services Pvt. Ltd. There was nothing on the record to suggest that any Lawyer or Law Firm hold any position with or in relation with the Respondents-'Operational Creditor'.

1.3 **In view of the aforesaid facts and the decision of this Appellate Tribunal in *Uttam Galva Steels Ltd.* (*supra*) we hold that the notice(s) issued by the Law Firm on behalf of Respondents-'Operational Creditor' cannot be treated as a notice under section 8 of the 'I&B Code' and for that the petition under section 9 at the instance of the Respondents against the appellant was not maintainable.**

2. **Regarding the existence of the dispute, the Hon'ble NCLAT observed as under:**

2.1 From bare perusal of the record, it was clear that on 12th November, 2016, one Mr. Govindan Kutty M on behalf of the Appellant- 'Corporate Debtor' intimated the Respondent-'Operational Creditor' that the Respondent discontinued the service and abandoned the work. The relevant portion of the letter reads as follows:—

"Synergy Property Development Services Pvt. Ltd.

Easwaravilasom Road

Vazhuthacaud, Trivandrum

Kerala - 695 014

Attn.: Mr. Liju Eapen - Associate Director

Dear Mr. Liju Eapen

We refer to the mail from Mr. Govindan Kutty M dated 4th November, 2016 with copy to you on discontinuation of PMC services on alleged non-payment of dues and wish to bring to your attention to the following aspects:

1. *This is the third unilateral discontinuation of the PMC services by you till date. We feel that such action of you by abandoning the work and withdrawing the staff without proper notice and formal handing over of documents is unprofessional and delaying the project completion resulting in losses to SCK for which you alone will be responsible. This action of you is against the true spirit of the engagement.*
2. *We confirm that all our commitments for payments, those are due as per conditions of extension letter will be honored and paid on the due dates. As a gesture of goodwill, an amount of Rs. 30 lakhs was paid as advance.*
3. *We also wish to bring to your notice that the documents especially those related to ongoing works including bills some of which are kept in the work stations allotted to you in SCK Pavilion, have not been handed over in an orderly manner with proper index thereby putting us in difficulty to trace out the same. We also would like to bring to your notice that keeping of official documents of SCK in your office outside SCK premises is detrimental to the contract conditions and you are requested to take immediate remedial steps.*
4. *The delays in completion of the project has mainly resulted from you non-adherence to PMC Services Contract conditions including taking over of certain responsibilities to be performed by the Lead Architect and Consultant while abandoning your own responsibilities with respect to design management and coordination of work under your scope. There are many instances of lack or poor coordination a few of which is pointed out here.*

   (i) Water cascading - The work was being executed without coordinated shop drawings approved by the Consultant or any coordination during work stage.

   (ii) Sliding doors provided by the Contractor in the reception lobbies. The installed units do not match with the BOQ or specification.

   Therefore, we request you to take necessary immediate action for completing your scope of work in an orderly fashion as envisaged in the contact.

   Yours faithfully.

   For Smart City (Kochi) Infrastructure Pvt. Ltd.

   Sd/-

   Kurian Kurjan

   Director Projects"

2.2 Accordingly, the Hon'ble Appellate Tribunal observed that it was clear that much prior to the so-called notice under section 8 of the 'I&B Code', a dispute was raised by Appellant-'Corporate Debtor' regarding non-completion and abandoning of the work.

2.3 In view of the aforesaid reasons and findings recorded above, it was held that the impugned order dated 9th June, 2017 is illegal and was required to be set aside the said order passed by Adjudicating Authority, Chennai Bench in CP/484 (IB)/ CB/2017.

2.4 The Hon'ble Appellate Tribunal further held that, order(s), if any, passed by Adjudicating Authority appointing any 'Interim Resolution Professional' or declaring moratorium, freezing of account and all other order(s) passed by Adjudicating Authority pursuant to

impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside.

2.5 The Hon'ble Appellate Tribunal directed the Adjudicating Authority to close the proceeding and declared the appellant company released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

2.6 The Hon'ble Appellate Tribunal further directed the Adjudicating Authority to fix the fee of 'Interim Resolution Professional', if appointed and the Respondent will pay the fees of the Interim Resolution Professional, for the period he has functioned.

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contd. from page 382

actions contained in the resolution plan which would normally require specific approval of shareholders/members under provisions of Companies Act, 2013 or any other law.

1. The matter has been examined in the Ministry in the light of provisions of sections 30 and 31 of the Code which provide a detailed procedure from the time of receipt of resolution plan by the resolution professional to its approval by the Adjudicating Authority and there is no requirement for obtaining approval of shareholders/members of the corporate debtor during this process.
2. It is understood that the requirement of section 30(2) (e) of the Code is to ensure that the resolution plan(s) considered and approved by the Committee of Creditors and the Adjudicating Authority is compliant with the provisions of the applicable laws and therefore is legally implementable
3. Section 31(1) of the Code further provides that a resolution plan approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The notes to clauses appended to the Insolvency and Bankruptcy Code, 2015 (Bill) in respect of such clause explains: "Therefore, if a plan requires stakeholders to do or not do certain actions for the successful implementation of a plan, it shall be binding on all the affected parties who shall be bound to undertake the actions set out in the plan".
4. in view of above, it is also clarified that the approval of shareholders/members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

[General Circular No. IBC/01/2017 dated 25.10.2017]

11. Relaxation of additional fees and extension of last date of filing AOC-4 and AOC-4 (XBRL non Ind AS) under the Companies Act, 2013:

The Ministry has extended the time for filing e-forms AOC-4 and AOC-4 (XBRL non Ind AS) and the corresponding AOC-4 CFS e-forms up to 28.11.2017.

[General Circular No. 14/2017 dated 27.10.2017]

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From Published Accounts

CA. Pamil H. Shah
pamil_shah@yahoo.com

Accounting Standard-20 Earning per Share (EPS) Notes Forming Part of Financial Statements For the year ended March 31, 2017

BGR Energy Systems Limited

a. Basic earning per share

Basic earnings per share is calculated by dividing

i. The profit attributable to owners of the Group

ii. By the weighted average number of equity shares outstanding during the financial year, adjusted for bonus elements in equity shares issued during the year and excluding treasury shares.

b. Diluted earnings per share

Diluted earning per share adjusts the figures used in the determination of basic earnings per share to take into account:

i. The after income tax effect of interest and other financing costs associated with dilutive potential equity shares, and

ii. The weighted average number of additional equity shares that would have been outstanding assuming the conversion of all dilutive potential equity shares.

Indian Terrain Fashions Limited

Basic earnings per share is computed by dividing the net profit after tax by the weighted average number of equity shares outstanding during the period. Diluted earnings per share is computed by dividing the profit after the tax by the weighted average number of equity shares considered for deriving basic earnings per share and also the weighted average number of equity shares that could have been issued upon conversion of all dilutive potential equity shares. The diluted potential equity shares are adjusted for the proceeds receivable had the shares been actually issued at fair value which is the average market value of the outstanding shares. Dilutive potential equity shares are deemed converted as of the beginning of the period, unless issued at a later date. Dilutive potential equity shares are determined independently for each period presented.

HOV Services Limited

Particulars	For the year ended March 31, 2017	For the year ended March 31, 2016
Net Profit/(Loss) as per Statement of Profit and Loss (Rs.)	(1,455,280,971)	(2.756.364.221)
Weighted average number of equity shares	12,532,522	12,524,217
Add: Effect of dilutive issue of options(Nos.)	54,902	40,208
*Diluted Weighted Average Number of Equity Shares (Nos.)	12,587,424	12,564,425
Basic and Diluted Earnings per Share	(116.12)	(220.08)
Normal value per Equity Share (Rs.)	10	10

*Not considered in view of loss.

Auro Laboratories Limited

The basic earnings per share (EPS) is computed by dividing the net profit after tax for the year by the weighted average number of equity shares outstanding during the year. For the purpose of calculating diluted earning per share, net profit after tax for the year and the weighted number of shares outstanding during the year are adjusted for the effects of all dilutive potential equity shares. The dilutive potential equity shares are deemed converted as of the beginning of the period, unless they have been issued at a later date. The dilutive potential equity shares have been adjusted for the proceeds

receivable had the shares been actually issued at fair value (i.e. the average market value of the outstanding shares.)

Abhishek Corporation Limited

The basic earnings per share (EPS) is computed by dividing the net profit/(loss) after tax for the year by the number of equity shares outstanding during the year.

Particulars	2016-17	2015-16
Net Loss after tax	107,73,88,952	948,883,302
Number of Equity Shares	1.60.08,462	1,60,08,462
Basic EPS	(67.30)	(59.37)

Ravi Kumar Distilleries Limited

In determining the Earnings Per share, the company considers the net profit after tax including any post tax effect of any extraordinary / exceptional item. The number of shares used in computing basic earnings per share is the weighted average number of shares outstanding during the period. The number of shares used in computing Diluted earnings per share comprises the weighted average number of shares considered for computing Basic Earnings per share and also the weighted number of equity shares that would have been issued on conversion of all potentially dilutive shares.

In the event of issue of bonus shares, or share split the number of equity shares outstanding is increased without an increase in the resources. The number of Equity shares outstanding before the event is adjusted for the proportionate change in the number of equity shares outstanding as if the event had occurred at the beginnings of the earliest period reported.

Manaksia Coated Metals & Industries Ltd

Basic earnings per share is calculated by dividing the net Profit or Loss for the period attributable to equity shareholders by the weighted average number of equity shares outstanding during the period. For the purpose of calculating diluted earnings per shares, the net profit or loss for the period attributable to equity shareholders and the weighted average number of shares outstanding during the period are adjusted for the effects of all dilutive potential equity shares.

Bajaj Hindusthan Sugar Ltd

Basic EPS is calculated by dividing the net profit or loss for the year attributable to equity shareholders by the weighted average number of equity shares outstanding during the year. Diluted EPS is computed using the weighted average number of equity and dilutive equity equivalent shares outstanding during the year.

Celebrity Fashions Limited

Basic earnings per share is computed by dividing the net profit after tax by the weighted average number of equity share is computed by dividing the profit after tax by the weighted average number of equity shares considered for deriving basic earnings per share and also the weighted average number of equity shares that could have been issued upon conversion of all dilutive potential equity shares. The diluted potential equity shares are adjusted for the proceeds receivable had the shares been actually issued at fair value which is the average market value of the outstanding shares. Dilutive potential equity shares are deemed converted as of the beginning of the period, unless issued at a later date. Dilutive potential equity shares are determined independently for each period presented.

The number of share and potentially dilutive equity shares are adjusted retrospectively for all periods presented for any share splits and bonus shares issues including changes effected prior to the approval of the financial statements by the Board of Directors.

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From the Government

CA. Kunal A. Shah
cakashah@gmail.com

Income Tax

1). Notification regarding Transfer Pricing

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

In the Income-tax Rules, 1962 (hereafter referred to as the Principal Rules), in Part II, after rule 10D, the following rules shall be inserted, namely:-

"**Information and documents to be kept and maintained under proviso to sub-section (1) of section 92D and to be furnished in terms of sub-section (4) of section 92D.**

10DA. (1) Every person, being a constituent entity of an international group shall,-

(i) if the consolidated group revenue of the international group, of which such person is a constituent entity, as reflected in the consolidated financial statement of the international group for the accounting year, exceeds five hundred crore rupees; and

(ii) the aggregate value of international transactions,-

(A) during the accounting year, as per the books of accounts, exceeds fifty crore rupees, or

(B) in respect of purchase, sale, transfer, lease or use of intangible property during the accounting year, as per the books of accounts, exceeds ten crore rupees, keep and maintain the information and documents of the international group as prescribed in the Notification No. 92/2017, dated 31/10/2017.

(2) The report of the information referred to in sub-rule (1) shall be in Form No. 3CEAA and it shall be furnished to the Director General of Income-tax (Risk Assessment) on or before the due date for furnishing the return of income as specified in sub-section (1) of section 139:

Provided that the information in Form No. 3CEAA for the accounting year 2016-17 may be furnished at any time on or before the 31st day of March, 2018.

(3) Information in,

(i) Part A of Form No. 3CEAA shall be furnished by every person, being a constituent entity of an international group, whether or not the conditions as provided in sub-rule (1) are satisfied;

(ii) Part B of Form No. 3CEAA shall be furnished by a person, being a constituent entity of an international group, in those cases where the conditions as provided in sub-rule (1) are satisfied.

(4) Where there are more than one constituent entities resident in India of an international group, then the report referred to in sub-rule (2) or information referred to in clause (i) of sub-rule (3),as the case may be, may be furnished by that constituent entity which has been designated by the international group to furnish the said report or information, as the case may be, and the same has been intimated by the designated constituent entity to the Director General of Income- tax (Risk Assessment) in Form 3CEAB.

(5) The intimation referred to in sub-rule (4) shall be made at least thirty days before the due date of filing the report as specified under sub-rule (2).

(6) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAA and Form No. 3CEAB and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

(7) The information and documents specified in sub-rule (1) shall be kept and maintained for a period of eight years from the end of the relevant assessment year.

(8) The rate of exchange for the calculation of the value in rupees of the consolidated group revenue in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year.

Furnishing of Report in respect of an International Group

10DB. (1) For the purposes of sub-section (1) of section 286, every constituent entity resident in India, shall, if its parent entity is not resident in India, intimate the Director General of Income-tax (Risk Assessment) in Form No. 3CEAC, the following, namely:-

(a) whether it is the alternate reporting entity of the international group; or

(b) the details of the parent entity or the alternate reporting entity, as the case may be, of the international group and the country or territory of which the said entities are residents.

(2) Every intimation under sub-rule (1) shall be made at least two months prior to the due date for furnishing of report as specified under sub-section (2) of section 286.

(3) Every parent entity or the alternate reporting entity, as the case may be, resident in India, shall, for every reporting accounting year, furnish the report referred to in sub-section (2) of section 286 to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAD.

(4) A constituent entity of an international group, resident in India, other than the entity referred to in sub-rule (3), shall furnish the report referred to in sub-rule (3) within the time specified therein if the provisions of sub-section (4) of section 286 are applicable in its case.

(5) If there are more than one constituent entities resident in India of an international group, other than the entity referred to in sub-rule (3), then the report referred to in sub-rule (4) may be furnished by that entity which has been designated by the international group to furnish the said report and the same has been intimated to the Director General of Income-tax (Risk Assessment) in Form No. 3CEAE.

(6) For the purposes of sub-section (7) of section 286, the total consolidated group revenue of the international group shall be five thousand five hundred crore rupees.

(7) Where the total consolidated group revenue of the international group, as reflected in the consolidated financial statement, is in foreign currency, the rate of exchange for the calculation of the value in rupees of such total consolidated group revenue shall be the telegraphic transfer buying rate of such currency on the last day of the accounting year preceding the accounting year.

(8) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronic filing of Form No. 3CEAC, Form No. 3CEAD and Form No. 3CEAE and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information furnished under this rule.

(For full text and new forms namely 3CEAA, 3CEAB, 3CEAC, 3CEAD, 3CEAE refer Notification No. 92/2017, dated 31/10/2017.)

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Association News

CA. Riken J. Patel
Hon. Secretary

CA. Maulik S. Desai
Hon. Secretary

1 **Forthcoming Programmes**

Date/Day	Time	Programmes	Speaker	Venue
25.11.2017		Cricket Match with Rajkot Branch of WIRC of ICAI	-	At Rajkot
15.12.2017	6.30 a.m.	CAA Foundation Day Celebration with Walkathon.	-	River Front, Near Vallabh Sadan, Opp. Gujarat Vidhyapith, Ashram Road, A'bad
15.12.2017	2.30 p.m. to 7.30 p.m.	Lecture meeting on "Current Issues in GST & Latest Judicial Decisions under Income Tax" under aegis of Late Shri K T Thakor & C F Patel Memorial Lecture	CA. V. Raghuraman (Bangaluru)	Atma Hall, Ashram Road, Ahmedabad

Glimpses of Past Events

01/11/2017 Diwali Get-together Celebration

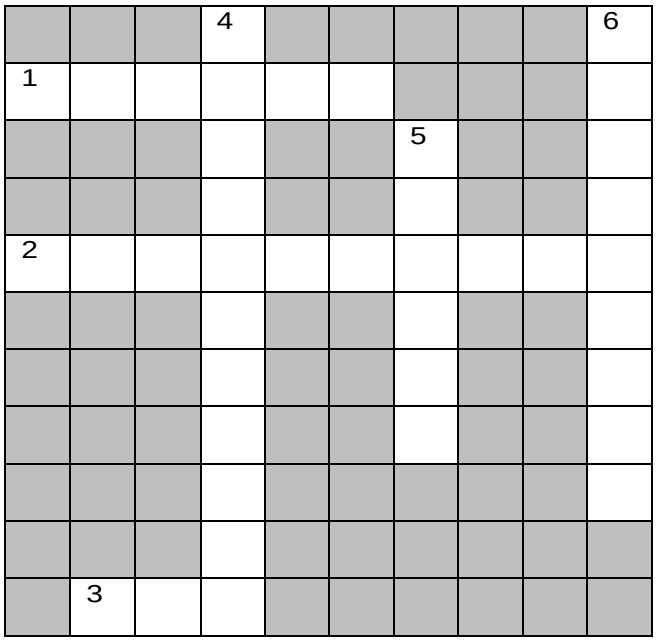
ACAJ Crossword Contest # 42

Across

1. The trigger point under CGST/SGST law for the levy of GST is _____.
2. The freedom to modify the past and to create a future, either for the better or for the worse, is _____ or self effort.
3. Buyer's credit can be availed for _____ year in case the import is for trade-able goods (Raw Material).

Down

4. Loss incurred by the assessee on account of settlement of future and option is not _____ loss and is eligible for set off against business profit.
5. A donation will be treated as _____ donation only if it is accompanied by a specific written direction of the donor.
6. Diwali Get-together of CAA was held at _____ Party Plot at Satellite, Ahmedabad.



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 27/11/2017.
5. The decision of Journal Committee shall be final and binding.

Winners of ACAJ Crossword Contest # 41

1. CA. M. R. Pandhi
2. CA. Hardik Vora

ACAJ Crossword Contest # 41 - Solution

Across

1. Partially
2. Information
3. Six

Down

4. Benami
5. Natural
6. Cancelled

❊ ❊ ❊

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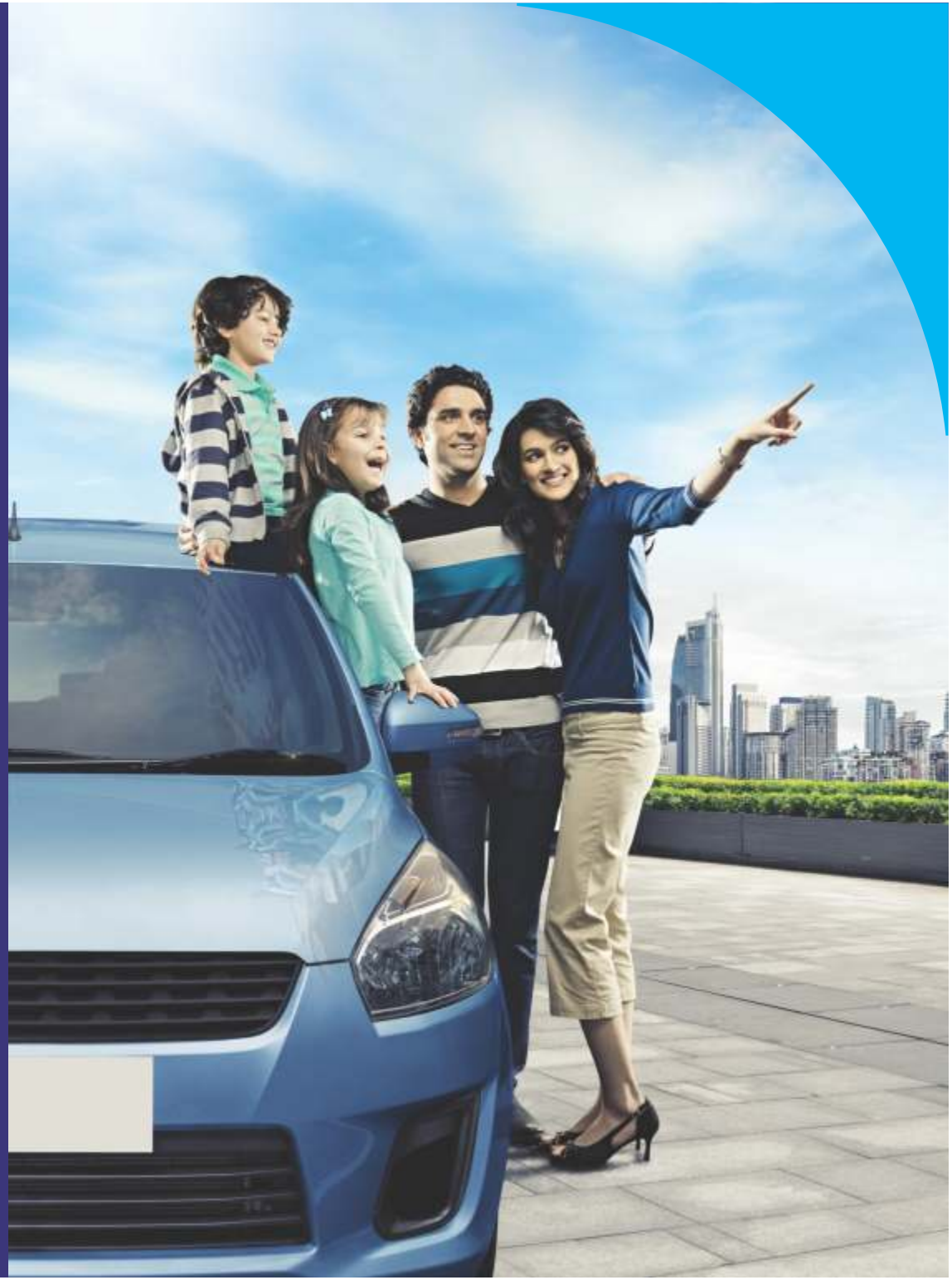

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