# Ahmedabad Chartered Accountants Journal

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## Attention

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Financial Year : April to March

## Professional Awards

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

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


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# Editor's Views

## Wake Up CA[LL]

Sometime back I was in a candid chat with a senior CA in industry on the overall scenario of employment opportunities in Gujarat in view of tall claims of economic growth made over last few years. The discussion took a serious turn to a specific segment of CAs who are having tough time to settle either in practice or in service. The feedback I received was quite shocking and alarming too. He said that the industry has a capacity to absorb a good number of CAs but the supply is much more than the demand. On one hand when industry is facing dearth of right candidate, many CAs are not able to get a posting of their choice. This was a mild and sober assessment but having a far reaching conclusion as to where the profession was heading. The underlying fact is that large numbers of CAs are simply not employable. Over the years, the employability of graduates is very low. The percentage is not even worthy of a mention here. The CAs also now fall short of expectations of the employer in all respects. If so is the case with the profession of CA, it is a wakeup call for the Regulators clearly warning that something is going wrong somewhere.

Going deeper into the issue, a question arises, why most of fresh CAs, despite coming out with brilliant academic records are lacking to properly apply themselves and in turn are not able to mould themselves as per the industry requirement. This ignorance towards the real life environment of the industry or even its visualization is indeed frustrating.

There was a time when a CA pass out had handful of offers of job. It was a world of '*swayamvar*'. Not because the CAs opting for industry were few in number, but it was because of the brand value of the qualification. No one dare ask what an IAS or IIM graduate is good for. So was the standing of CA. After a rigorous article-ship, coupled with wide industry exposure, the CA pass out epitomized a complete professional with an ideal blend of sound theoretical base and vivid practical exposure. Be it audit, accounts, finance, MIS or taxation, a fresh CA was fully equipped to manage the challenges competently and convincingly. And this despite no coaching classes, no guides, no tuitions. Overload of either weekly exams or submission of half a dozen of papers for each subject never proved an impediment but added to an ever improving aptitude of a CA student.

What that senior articulated may not be uniformly acceptable for all CAs but it definitely raised concerns that, "today's CA has high expectations, very low capabilities to begin with". The job seeker wants to begin career in finance, and he has no understanding what a finance manager has to do if asked to describe in three sentences. The complete picture of any subject is missing. It appears the students learn in bits and pieces through spoon-fed question papers with ready answers. There is no patience or inclination to learn the subject. The preparation seems to be for clearing examination rather than the learning for life-long application. As a result many candidates who are easily clearing in their exams are failing in the process called life.

From within, we all know this is not a lone cry. May be CAs in practice do not interact with pass outs as almost 80% of them opt for service. But if a fair assessment is made for their skills, competence, attitude and aptitude during articleship, it is not found better. All someday would have been worried for the profession CA and CA as professional in 2020. The million dollar question is, "what went wrong"? Without taking anything away from all deserving candidates, quick observations include –

(a) Complete disregard to active learning through articleship by most of the lot of the students.

(b) Entry into CA programs at slightly premature stage.

(c) Proliferation of coaching classes (minting machines for many!) poisoning the students' mindset to focus only on cracking exams.

(d) Institute's policy for churning out large number of CAs to exploit so called ever increasing job opportunities in the wake of opening of economy.

(e) Lower expectations of many industries needing large number of 'glorified clerks'.

(f) 'Low cost high earning potential' image of the program as a temptation to middle to upper middle class family students with a single minded goal to get tag of CA.

**It is high time the central authorities wake up to realize the fact that strength and standing of today's CA is on a downward scale from maestro to mediocrity.**

Few years back there were many Corporates and banks in India headed by CAs as stalwarts. Many of old generation CAs today adorn the posts of Chairman and Managing Director and Whole-time Directors. If we dream to see better days for CAs as respected professional, serious efforts are needed and to put it straight, they are overdue. Corporates that were managed by CAs in all fields from finance, technology, procurement, general management, governance to CSR are today wary of inducting CAs. It is a collective responsibility of one and all to reverse the trend. All know that there was a time when MBAs were ahead of CAs. Eventually the CAs crossed them steadily. Are the CAs going in the direction where they were?

And it may be added that the scenario in practice is none too happy. It is because practicing CAs are blessed by statutory compulsions providing them easy opportunities in practice. The potential is increasing due to wide spread changes in legal and accounting space. But the day the CAs are subjected to assessment and appraisal, many of them will surely face the tremors of earthquake.

Finally I will only add that profession CA in today's time probably is one of the few career options that is low-cost, safe, secured, rewarding, respected and with ample opportunities, both existing and emerging. Precondition is that we will have to raise the bar of quality and professional excellence. Holistic approach to make a future CA to be a complete professional with high standard of knowledge, application, soft skills and value system is the point of beginning. Apart from the regulatory authority, responsibility also dwell upon voluntary organizations like CAA and senior chartered accountants who have witnessed the growth of the profession, to rise to the occasion and pass on the legacy to the students of one of the finest profession who not only have the ability to clear the examinations but also make a respectful and a dignified carrier in the CA Profession. Let us take a pledge to restore the glory of our profession as a first step and take it to the pinnacle of excellence as the final destination.

**CA. Rajni M Shah**
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06.05.2013

## Revised Auditor's Report Format - SA 700

In compliance to the revised Standard on Auditing 700 (SA 700): "Forming an opinion and reporting on financial statements", audit reports of financial statements for periods beginning on or after 1st April 2012 are to be issued in new revised auditor's report format.

Revised SA 700 is available on website of ICAI

http://220.227.161.86/17874sa700annx1.pdf

## Congratulations

**CA. Ajit C. Shah**, Past President of the Association, has been appointed as a Professional Director on the Board of The Ahmedabad District Co-op. Bank Ltd.

# President's Message

**CA. Prakash B. Sheth**
shethpb@rediffmail.com

**Dear Professional Collegues,**

I am very glad to communicate to you for the first time after my dream comes true of becoming the President of this august Association. I would also like to thank all of you for having considered me for this post. As I assume the office of the president of this esteemed Association, I firmly believe "**If you think something cannot occur in your life, then there's no way you will take the action required to make that goal a reality.**"

As I take charge of the legacy of Chartered Accountants Association as the President, I thank God for blessing me with this beautiful life where I have been bestowed upon this magnificent opportunity to serve the Profession.

In my opening address as the President, I admitted that the Association has been a platform where I have grown personally as well as professionally. As the president I take this as an opportunity to pay back to the profession that has given everything to me as a Chartered Accountant.

Our profession has been continuously changing. We have not only to be equipped with legislative and statutory changes but also with technology. The change is imperative. We have no control over these external changes. Recognizing changes is not enough; we have to prepare ourselves to such an extent that we are able to adapt each and every change faced from external environment. Changes and its adaptation is a rule of survival. If we want to survive in the profession it is of utmost importance that we follow and abide by this rule. Thus my motto for the year is "CHANGE ADAPT ABIDE".

Under the backdrop of this motto I and my executive committee have decided:

(i) To appeal to the members who voluntarily wish to receive soft copy of journal in their mail box as against the physical copy.

(ii) To concentrate on I.T. infrastructure by developing an online application that would integrate entire members' data along with e-payment facility to every member.

(iii) To arrange study circle meetings covering procedural aspects of difference statutes as more and more young members are joining practice. I believe such study circles would help many professional brothers in their day to day practice.

(iv) To start knowledge clinic on every 4th Friday of the month where members can get advice from seniors to resolve their queries.

(v) To come out with new members directory during the year.

(vi) Apart from regular activities of the Association, we would like to bring in some changes in the format of Talent Evening, arrange for Gujarati Play and also members' picnic.

As we begin our tenure and start with the activities of the Association, I assure you that we shall always remain open to all suggestions from the members including criticism. I am sure whatever I have promised is achievable; we just need to concentrate our efforts on our goal to make the Association scale new heights. **Together we definitely can.**

I thank you all in anticipation of your support and co-operation round the year.

As I conclude my first message, CA students are undergoing the IPCE and Final examinations. Many young aspirants looking forward to excel in the profession would be toiling hard to get through in these examinations with flying colours. I wish all the students a great success not only in these examinations but in their pursuit ahead. The future of any Association depends on its youth. Every young chartered accountant joining this esteemed institution brings with him new ideas. Last few years have been a witness where young members of the Association have shouldered the responsibilities of various important events. I am confident that as more and more young members join, the Association will continue to scale new heights.

With best regards,
**CA. Prakash B. Sheth**
President
05.05.2013

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# Reverse Charge Mechanism under Service Tax- Emerging Issues

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In Service tax law, introduction of Reverse Charge Mechanism (RCM) in various types of services has affected various existing mechanisms like CENVAT Credit, Payment of Tax, Exemptions, Abatements etc. Many times, understanding of existing system collides with understanding of new mechanism and lots of new issues emerge. Many questions are raised by the tax payers, chartered accountants, consultants and even by departmental officers. Partial Reverse Charge Mechanism, where part of the service tax is to be paid by service provider and part of the service tax is to be paid by service recipient, is a new concept in Service Tax regime. Provisions related to Reverse Charge Mechanism are first summarised in the table and then the article attempts to answer or express views on various issues emerging due to Reverse Charge Mechanism.

**Reverse Charge Mechanism Applicable from 1st July, 2012/7th August, 2012**

| Sr. | Category of Taxable Service | Type of Service Provider | Type of Service Recipient | % of Total Service Tax to be paid by | |
|---|---|---|---|---|---|
| | | | | Service Provider | Service Recipient |
| 1 | Execution of Works Contract Service | Individual/HUF/Partnership Firm/AOP **located in Taxable Territory** | **Business Entity** Registered as **Body Corporate** Located in Taxable Territory | 50% | 50% |
| 2 | Manpower Supply Services | Individual/HUF/Partnership Firm/AOP located in Taxable Territory | **Business Entity** Registered as **Body Corporate** Located in Taxable Territory | 25% | 75% |
| 3 | Security Services (w.e.f. 07-08-12) | Individual/HUF/Partnership Firm/AOP located in Taxable Territory | **Business Entity** Registered as **Body Corporate** Located in Taxable Territory | 25% | 75% |
| 4 | Renting of Motor Vehicles designed to carry passengers | Individual/HUF/Partnership Firm/AOP located in Taxable Territory<br>If Value is **abated**<br>If value is **without abatement** | **Business Entity** Registered as **Body Corporate** Located in Taxable Territory | Nil<br>60% | 100%<br>40% |
| 5 | Service Provided by a Director (w.e.f. 07-08-12) | Director | Company | Nil | 100% |
| 6 | Goods Transport Agency in respect of transport of goods by road | Goods Transport Agency | **If the person liable to pay freight is --**<br>Factory registered under or governed by the Factories Act,1948/Registered Society/ Co-op. Society/Excise Dealer/ Body Corporate/P'ship Firm/ AOP | Nil | 100% |
| 7 | Legal Services | Individual advocate or Firm of Advocates | Business Entity Located in Taxable Territory | Nil | 100% |
| 8 | Arbitral Tribunal Services | Arbitral Tribunal | Business Entity located in Taxable Territory | Nil | 100% |

| Sr. | Category of Taxable Service | Type of Service Provider | Type of Service Recipient | % of Total Service Tax to be paid by | |
|---|---|---|---|---|---|
| | | | | Service Provider | Service Recipient |
| 9 | Support Services (not being Renting of Immovable Property Services/Postal Services/ Service in relation to Aircraft or Vessels/ Transportation) | Government or Local Authority | Business Entity located in Taxable Territory | Nil | 100% |
| 10 | Sponsorship Services | Any person | Body Corporate or Partnership Firm Located in Taxable Territory | Nil | 100% |
| 11 | Import of Services | Located in Non-Taxable Territory | Person Located in Taxable Territory | Nil | 100% |
| 12 | Insurance Agents Service | Insurance Agent | Person Carrying on the Insurance Business. | Nil | 100% |

## Emerging Issues

### Exemptions

1. Is Service Recipient liable to pay his share of service tax under Reverse Charge Mechanism (RCM) when basic exemption limit of Rs. 10 Lakhs is available to Service Provider?

**Ans.: Yes.** Service Recipient is liable to pay irrespective of fact that service provider is eligible to avail threshold exemption under Notification No. 33/ 2012-ST. Notification No. 33/2012-ST specifically provides that nothing contained in the notification shall apply to such value of taxable services in respect of which service tax shall be paid by such a person and in such manner as specified under sub-section (2) of Section 68 of the Finance Act, 1994 i.e. person liable to pay service tax under RCM.

2. On a portion of value of service, service recipient is liable to pay service tax. Is this value to be added while considering the limit of Rs. 10 Lakh for threshold exemption available to **service recipient** (for its output services) under Notification no. 33/2012-ST?

**Ans.: No.** Value of the service provided by service provider and not of the services received by the assessee is to be considered while calculating threshold limit of Rs. 10 Lakh. Second Proviso to Para 1 of the Notification No. 33/2012-ST Dated 20-06-2012 provides that the notification is not applicable to value of taxable services in respect of which service tax shall be paid by service recipient.

3. Is the portion of value on which service recipient is liable to pay service tax is to be added while considering the limit of Rs. 10 Lakh for threshold exemption available to **service provider** under notification no. 33/2012-ST?

**Ans.: Yes.** As per explanation B to the Para 3 of the said notification "aggregate value" means the sum total of value of taxable services **"charged".** Hence, total amount charged by the service provider, including the portion of value on which service recipient is liable to pay service, is to be considered for the threshold exemption and not just the value on which service provider is liable to pay.

However, it is not so for the service provider under Goods Transport Agency (GTA) Services. Para 3 of the Notification No. 33/2012-ST specifically states that for determining aggregate value for threshold exemption in relation to GTA services, amount for which the recipient is liable to pay service tax shall not be taken into account.

4. Some Exclusions (Negative List), Exemptions and Abatements are provided in the service tax law. Are such benefits also available to the service recipient liable to pay service tax under RCM?

**Ans.:** Yes, generally such benefits are available to the service recipient also.

**Except** threshold exemption of Rs. 10 Lacs under Notification No. 33/2012-ST, other exemptions are also available to the service recipient liable to pay service tax under RCM.

5. Service Provider has not availed exemption or abatement which is legally available and prepared the invoice without considering exemption or abatement. Can service recipient claim such exemption or abatement for payment of service tax under RCM?

   **Ans.: Yes.** At para No. 10.1.6 of the Education Guide Dated 20-06-2012 department has clarified that the **liabilities of service provider and of service recipient are different and independent of each other and service recipient can independently avail or forgo abatement or choose a valuation option depending upon the ease, data available and economics.** And on the same logic, service recipient can avail the exemption available even if it is not availed by service provider.

**Valuation**

6. Under reverse charge mechanism, if service tax is not charged separately, can value of service be considered as if it is inclusive of service tax?

   **Ans.:** No. As per Section 67 of the Finance Act, 1994 value on which service tax is to be charged is the gross amount charged by the service provider.

7. Is service provider, in his invoice, required to state service tax payable by service recipient under RCM?

   **Ans.:** Rule 4A(1)(iv) of Service Tax Rules, 1994(ST Rules) requires that the invoice issued by service provider shall contain "Service Tax Payable". Hence, "service tax payable" by service recipient also has to be stated in the Invoice.

   However, this may not be the intention. This rule has not been amended after the introduction of new RCM. As per Para 10.1.2 of the Education Guide Dated 20-06-2012 issued by the department states that "*the service tax payable would include service tax payable by the* ***service provider***". Hence, it seems that department is of the view that the service tax payable by the service recipient is not required to be stated in the invoice.

   It is further clear from the department's view at Para No. 10.1.6 of the Education Guide wherein department it has been clarified that the liabilities of service provider and of service recipient are different and independent of each other and service recipient can independently avail or forgo an abatement or choose a valuation option depending upon the ease, data available and economics. As service recipient is allowed to avail or forgo the abatement or exemption, it will make no difference even if his liability is stated in invoice.

8. An Indian firm has availed services from a service provider located in non-taxable territory and required to pay US $ 10,000 to him against bill dated 20-09-2012. US $ 10000 is remitted to Service Provider at exchange rate of Rs. 52.00 per US $ on 21-09-2012. What is the service tax liability of the Indian Firm under RCM?

   **Ans.:** As per Section 67A of the Finance Act, 1994 rate of exchange shall be determined as applicable at the time when the taxable service has been provided or agreed to be provided. As per Rule 7 of the Point of Taxation Rules, 2011, the point of taxation, in respect of the persons required to pay tax as recipients of service, shall be the date on which payment is made.

   Further, as per explanation to the said section "rate of exchange" means the rate of exchange referred to in the Explanation to Section 14 of the Customs Act, 1962. CBEC determines rate of exchange and periodically notifies "rate of exchange" for import and exports. For 21-09-2012, notified rate was Rs. 54.75 per US $ for import. (Notification No. 84/2012-Cus (NT) Dated 20-09-2012.

   Hence, service tax of Rs. 67,671/- (US$10000 X ***Rs. 54.75*** per US $ X Service Tax @ 12.36%) is to be paid under RCM irrespective of fact that actual remittance is at **Rs. 52.00** per US$.

**Payment of Tax**

9. A service recipient is liable to pay service tax under Reverse Charge Mechanism. However, he does not want to get service tax registration and tells his supplier of service to charge service tax and pay it to the service tax department. Can he do so?

   **Ans.: No**. When law makes the service recipient as person liable to pay service tax, it is advisable that the service recipient should pay his share of service tax himself.

10. Whether service tax under RCM is to be paid under the "00441080-Other taxable services" or under respective accounting code for each service?

    Ans.: Circular no. 165/16/2012-ST Dated 20-11-2012 has restored the system of old accounting codes for statistical purpose. 119 specific codes are prescribed specific categories of service and 120th code 00441080 is prescribed for "Other Taxable Services". Person liable to pay service tax under RCM has to classify service under RCM and has to select Accounting Code accordingly. For example, for services received from Advocate, service tax is to be discharged using the Accounting Code – 00440480- Legal consultancy service and not the general code 00441080.

**Point of Taxation**

11. What is Point of Taxation for recipient of the service where he is liable to discharge his liability under RCM? In other words, is he liable to pay service tax at the time when he receives invoice from service provider or at the time he pays to the service provider?

    **Ans.:** As per Rule 7 of the Point of Taxation Rules, 2011, the point of taxation, in respect of the persons required to pay tax as recipients of service shall be the date on which payment is made (to service provider). Hence, service recipient is liable to pay service tax under RCM when he makes payment to the service provider provided that payment is made to service recipient within six months from the date of invoice.

12. Service Recipient is liable to discharge his service tax liability under RCM when he makes payment to the service provider. What will be service tax consequences if payment to service provider is delayed for six months or more?

    **Ans.:** Point of Taxation for Service Recipient is date on which payment is made to service provider (Rule 7 of Point of Taxation Rules, 2011). However, first proviso to the said rule provides that if payment is not made within a period of six months of the date of Invoice, point of taxation shall be determined as if Rule 7 does not exist.

    If payment is not made by the service recipient within six months from the date of invoice, Point of Taxation shall be determined in accordance with other rules in Point of Taxation Rules and generally this will be the date of Invoice. Hence, in such case, service recipient is liable to discharge his liability of service tax under RCM even if payment to the service provider is not made.

13. Manpower supply service by an individual to a business entity registered as a body corporate is provided in the month of June, 2012 and the bill dated 30-06-2012 is raised by service provider. The Service receiver makes payment for the service on 15-07-2012 for this bill. Is the reverse charge mechanism applicable?

    **Ans.:** No. the Point of Taxation in this case shall be the date of invoice i. e. 30-06-2012. For this service, reverse charge mechanism has come into force from 01-07-2012. Hence, reverse charge mechanism is not applicable and service tax liability, if any, is to be discharged by the provider of service i. e. Individual supplying the manpower.

14. New RCM is effective from 01-07-2012. Manpower supply service by an individual to a business entity registered as a body corporate is provided in the month of June, 2012 but the bill dated 01-07-2012 is raised by service provider and payment is made thereafter. Is the reverse charge mechanism applicable?

    **Ans.: Yes**. The Point of Taxation in this case shall be the date of invoice i. e. 01-07-2012. Hence reverse charge mechanism is applicable to the

same and service tax is to be discharged accordingly by the recipient of service i. e. Body corporate receiving the service. CBEC Circular No. 162/13/ 2012-S.T., dated 6-7-2012 has clarified that the provisions of partial reverse charge would also be applicable in respect of such services where point of taxation is on or after 1-7-2012 under the applicable rule in respect of the service provider.

**Non-Profit Motive Organisations**

15. Residential Co-operative Society is receiving security/manpower supply/works contract services from Individuals/Partnership Firms. Whether a Residential Co-operative Society liable to pay service tax under Reverse Charge Mechanism?

    **Ans.: No.** As per para I (A) (v) of the Notification No. 30/2012-ST, RCM is applicable only when service recipient is **"a business entity registered as body corporate"**.

    Term body corporate is not defined in the said Notification however, as per Rule 2(bc) of Service Tax Rules, 1994 (ST Rules) body corporate has meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956. **This section specifically excludes** "a co-operative society **registered** under any law relating to co-operative society".

    Further, generally, a Residential Co-operative Society is not a Business Entity.

16. In above question, does it make any difference if Co-operative society is not registered?

    **Ans.: No.** Even if such entity is not excluded from the term "body corporate", such entity is not a "business entity".

17. Residential Co-operative Society is receiving Legal Services from Advocate. Is a Residential Co-operative Society liable to pay service tax under Reverse Charge Mechanism?

    **Ans.: No.** Generally Residential Cooperative Society is not a "Business Entity".

    As defined in the Section 65B(17) of the Finance Act, 1994 "Business Entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

18. "Helpers Hand", a non-profit motive organisation is registered as a Company under section 25 of the Companies Act, 1956. Is such a company required to pay service tax under reverse charge mechanism as recipient of legal service from an advocate?

    **Ans.: No.** Such company may be termed as a body corporate but generally such company is not a "Business Entity".

    As defined in the Section 65B(17) of the Finance Act, 1994 "Business Entity" means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.

**Renting of Motor Vehicle**

19. Whether a Company liable to pay service tax under RCM on reimbursement of motor vehicle hiring charges to its employee?

    **Ans.: Yes.** Constructive recipient of such service is the company and not the individual employee travelling by the car.

20. From the Invoice of service provider it is not clear whether he has claimed any abatement for Renting of Motor Vehicle Service? Is it going to affect service tax liability as recipient?

**Ans.: No.**

If service provider has opted for the abatement of 60% available under Notification No. 26/2012-ST, total tax liability will be on **40% of gross value** and that entire liability (100% of total liability) is to be paid by service recipient (Notification No. 30/2012-ST). If abatement is not claimed by service provider, service tax is to be paid on full value and out of that 60% of total liability is to be discharged by service provider and **40% of total liability** is to be discharged by service recipient.

Thus, irrespective of fact that the service provider has opted for abatement or not, service recipient is liable to pay service tax on 40% of total assessable value.

This can be understood from following example.

(Amt. in Rs.)

| Option | Is Abatement Claimed by Service Provider? | Assessable Value | Abatement Value | Net Taxable / Abated Value | Total Tax Liability | Service Tax to be paid by Service Provider | Service Tax to be paid by Service Recipient |
|---|---|---|---|---|---|---|---|
| 1 | **Yes** | 1000.00 | 600.00 | 400.00 | 49.44 | **NIL** | **49.44** (100% of Total Liability) |
| 2 | **No** | 1000.00 | **NIL** | 1000.00 | 123.60 | **74.16** (60% of Total Liability) | **49.44** (40% of Total Liability) |

21. An employee of a company has stayed in a hotel being a proprietary concern and also used motor vehicle services provided by the hotel. The hotel has charged a single bill for all services. Is the company liable to pay service tax under RCM on renting of vehicle services?

    **Ans.: If** value of motor vehicle hiring charges is **separately shown** in the invoice, the company is required to pay service tax under RCM.

    If it is not so, it will be a case of bundling of service and classification as required under Section 66F of the Finance Act, 1994 may be referred. If such services are naturally bundled in the ordinary course of business, the company is not required to pay service tax under RCM. But if such services are not naturally bundled in the ordinary course of business, the company will have to pay service tax under RCM.

22. A company has taken a bus and a tractor on rent from an individual service provider. Is the company liable to pay service tax under RCM?

    **Ans.:** As per notification No. 30/2012-ST renting of a motor vehicle *designed to carry passengers* are subject to RCM. Hence, the company is liable to pay service tax under RCM on getting the bus on rent but not for renting of tractor.

**Cenvat Credit**

23. Can CENVAT Credit be utilised to pay service tax as recipient under RCM?

    **Ans.: No.** As per explanation to Rule 3(4) of the CENVAT Credit Rules, 2004 (CCR), CENVAT credit cannot be used for payment of service tax in respect of services where the person liable to pay tax is the service recipient.

24. Can CENVAT Credit be availed for service tax paid as recipient under RCM?

    **Ans.: Yes.** Provided other terms of the CENVAT Credit Rules, 2004 are satisfied.

25. A portion of the service tax is to be paid by the service provider under RCM and rest of the service tax is duly charged by the service provider in its Invoice. Which is the document on basis of which CENVAT Credit can be taken, Invoice by service provider or Challan paid by recipient of service?

    **Ans.:** For **portion of the service tax charged by service provider**, credit may be taken based on Invoice of service provider.

    For **the portion of the service tax paid by the service recipient**, credit can be taken based on Challan of service recipient (Rule 9(1) (e) of CCR).

26. On 1st August, 2012 individual service provider has raised invoice for Rs. 10000/-(+ ST of Rs. 309/- i.e. 25% of total service tax liability) for manpower services provided in the month of July, 2012. Payment for the service along with service tax of Rs. 309 has been made in September, 2012 to service provider. Service tax of Rs. 927 (i.e. 75% of total liability as Recipient under RCM) has been paid on 5th October, 2012. On which date CENVAT credit for above tax payment can be taken?

    **Ans.:** As per Rule 4(7) of the CCR, credit in respect of input service shall be allowed on or after the day on which the Invoice is received. Hence,

CENVAT Credit for service tax of Rs. 309 charged by and paid to service provider can be taken on or after 1st August, 2012.

As per first proviso to Rule 4(7) of the CCR, in the case service tax is paid under reverse charge by the recipient of the service, the credit in respect of such input service shall be allowed on or after the day on which payment is made of the value of input service and the service tax as indicated in the invoice. Further, as per Rule 9(1)(e) of the CCR, a challan, evidencing payment of service tax by the service recipient is document, based on which credit may be taken by the service recipient. Hence, credit in respect of Rs. 927 can be taken on or after 5th October, 2012.

27. Due to reduced liability, a service provider is in situation where he has excess CENVAT Credit compare to his service tax liability. What can service provider do with this credit?

**Ans.:** If provider of services under RCM is unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, he shall be allowed refund of such unutilised CENVAT Credit. [Rule 5B of the CCR].

However, such refund is subject to procedure, safeguard, conditions and limitations as may be specified by the CBEC by notification and no such notification is issued by the CBEC till date.

28. Out of total taxable value of the services covered under RCM, some portion of value on which service tax is to be paid by service recipient, service provider is not required to pay service tax thereon. Is service provider required to follow Rule 6(3) of the CCR and reverse the proportional CENVAT Credit on the portion of value on which service provider is not liable to pay service tax?

**Ans.: No**.

The portion of value on which service tax is not payable by service provider but payable by service recipient is not the "exempted service" as defined in Rule 2 (e) of the CCR. Hence, service provider is not required to maintain separate account or pay amount equal to six percent on exempted service or proportionate reversal of CENVAT Credit as prescribed under Rule 6(3) of the CCR.

**Services Provided by Directors**

29. Whether a company liable to pay service tax under RCM on the salary paid to a director?

**Ans.: No.** Section 65B(44) of the Finance Act, 1994 specifically excludes provision of service by an employee to the employer in the course of or in relation to his employment.

Where relation between the company and a director is that of employer-employee, no service tax is payable and question of applying RCM to such payment does not arise.

30. A Director of the company has given a premises on rent to the company. Is the company liable to pay service tax under RCM on such rent paid to the director?

**Ans.:** Rule 2 (1) (d) (i) (EE) of the ST Rules, Para I (A) (iva) of Not. No. 30/2012-ST and Entry No. 5A in the Table at Para II of the Notification No. 30/2012-ST (as amended by Not. No. 45/2012-ST) provides that taxable services provided or agreed to be provided by a director of a company to the said company are subject to RCM. **It is nowhere provided that which type of services provided by a director to the company are subject to RCM**.

In absence of such specific wordings,

a. **One view** is that any service provided by a Director of the company to the said company is subject to RCM and company is liable to pay service tax.

b. **Another view** may be that when a premise is rented to the company by a director, such service is not provided as a Director but as a landlord of the property and hence RCM is not applicable.

Considering plain reading of the text of the ST Rules and Notification, I am of the view that all types of the services provided by a director to the company may be covered under RCM.

31. Mr. Obama, a foreign national is appointed as director in an Indian company. Is the company liable to pay service tax under RCM on the services provided by such director?

**Ans.: Yes**, subject to Place of Provision Rules, 2012.

32. Commission based on annual performance of the company is payable to a Director of a company. Is such a company liable to pay service tax under RCM?

    **Ans.:** If the commission is payable to the director (for example to Managing Director) in course of or in relation to his employment then it is not covered under the term "service" as defined in the Section 65B(44) of the Finance Act, 1994 and no service tax is payable thereon. But, if such commission is not in course of or in relation to his employment, service tax is to be paid by the company under RCM.

**Legal Services provided by an Advocate**

33. Mr. X is fighting his divorce suit and paying fees to an Advocate Firm. Is Mr. X liable to pay service tax under RCM on fees paid to advocates?

    **Ans.: No.** As per Para 6(b) (ii) of the Notification No. 25/2012-ST services provided by individual advocate or a firm of advocates by way of legal services **to any person other than a business entity** is exempt from the service tax.

34. A company has availed accounting services from an Advocate. Is company liable to pay service tax under RCM on such services?

    Ans.: **No.**

    As per Notification No. 30/2012-ST (as corrected by Corrigendum Dated 29-06-2012) only "*Legal Services*", and not every type of services, provided by or agreed to be provided by an advocate or firm of advocates are covered under RCM.

35. Mr. Chaiwala is running a Tea Stall. He has availed services of an advocate for his business and paid Rs. 500 as advocate fees. Is he liable to pay service tax under RCM?

    **Ans.:** As per Para 6(b) (iii) of the Notification No. 25/2012-ST services provided by advocates or firm of advocates by way of legal services to a business entity with a turnover up to rupees ten lakh in the preceding financial year is exempt from the service tax.

    Hence,

    1. If "Turnover" in business of Mr. Chaiwala is up to Rs. 10 Lakh, he is **not** required to pay service tax under RCM.
    2. Otherwise, **he is liable to pay** service tax of Rs. 61.80 (@12.36% on Rs. 500) under RCM.

36. Mr. Chaiwala was required to pay service tax of **Rs. 61.80** on fees of Rs. 500 he had paid to an advocate. Being nominal amount of service tax, he chooses not to get registration. This fact comes to the knowledge of the service tax department after one year. What will be the service tax and penalty implications for Mr. Chaiwala?

    **Ans.:** Besides service tax, interest thereon and penalties under section 76 or 78, he may face penalty under section 77(1) (a) of the Finance Act, 1994 for non-registration. As per the said section, one who is liable to pay service tax or required to take registration, fails to take registration shall be liable to pay penalty which may extend to **Rs. 10,000/-**. In addition to that late return filing fees up to **Rs. 20,000/-** per return may be demanded by the department.

37. A proprietary concern has paid fees to a Tax Practitioner for representation for their VAT litigation. Is such a service recipient liable to pay service tax under RCM?

    **Ans.:** Legal service provided by an **advocate (or firm of advocates)** is covered under RCM.

    Hence,

    a. **If Tax Practitioner is an "Advocate"** as the meaning assigned to it in clause (a) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961), **service recipient is liable to pay service tax** under RCM.

    b. But if **Tax Practitioner is not an "Advocate"**, **service recipient is not liable to pay service tax** under RCM.

**Execution of Works Contract Services**

38. A branch of a Nationalised Bank has got minor plumbing work for repairing from an individual service provider with labour and material. Rs. 1000/- is to be paid to service provider. Is the branch of a nationalised bank is liable to pay service tax thereon under RCM?

    **Ans.: Yes.** As per Section 66E(h) of the Finance Act, 1994 service portion in the execution of a

works contract is a declared service. Further, as per Section 65B (54) of the Finance Act, 1994, a contract for the purpose of carrying out repairing of moveable or immovable property wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, is a works contract. Hence, if such contract is subject to local VAT tax, it is a works contract for the purpose of service tax. As per Notification No. 30/2012-ST execution of works contract services provided by an individual to a body corporate is subject to RCM and branch of a Nationalised Bank is required to pay service tax thereon.

**Limited Liability Partnership**

39. Security Agency service is received by a Body Corporate where service provider is a Limited Liability Partnership (LLP). Is service recipient liable to pay service tax under RCM on such service?

    **Ans.: Yes**. Security service provided by partnership firm is subject to RCM. As per Rule 2(1)(cd) of the Service Tax Rules, 1994 partnership includes a limited liability partnership.

40. Is LLP liable to pay service tax as Recipient of service under RCM?

    **Ans:** For certain categories of services covered under RCM, a body corporate is liable to pay service tax as recipient of service. The term "body corporate" is not defined in the Notification No. 30/2012-ST. As per Rule 2(bc) of the Service Tax Rules, 1994, "body corporate" has the meaning assigned to it in clause (7) of section 2 of the Companies Act, 1956 (1 of 1956). This borrowed definition is inclusive definition and not exclusive one. Further, as per Section 2(d) of the Limited Liability Partnership Act, 2008, LLP is a body corporate. As the term is not defined in the Notification, we may rely on the definition adopted by the service tax law for other rules. However, as definition borrowed from the Companies Act, 1956 for Rule 2(bc) of Service Tax Rule, 1994 is inclusive, we have to rely on the general meaning of the term. Definition of LLP as adopted in principle statue for LLP itself considers it a body corporate, in my view LLP is a body corporate for the Notification No. 30/2012-ST and has to pay service tax under RCM as recipient of service.

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## On the Webiste of CAA

From this month, this column is introduced where in various updates on the website of the Association will be reported. The members may visit the website to get the full copies of the judgments and also other materials uploaded by the Information technology Committee of the Association.

Following latest information / judgments are available on the website of the Association www.caa-ahm.org

**News**

1. Gist of Amendments to Finance Bill 2013 as passed by Loksabha
2. Due date of Service Tax return for the period 1-10-2012 to 31-03-2013 extended up to 31-08-2013

**ITAT Judgments**

1. ITO v. Anil V. Shah (Ahmedabad)

   In case of depreciable assets when capital gain is taxable u/s 50, assessee is entitled to exemption u/s 54EC.

2. ACIT v. Yash Devendra Vaila (Ahmedabad)

   As per CBDT's Instruction No.1916, jewellery to the extent of 500 grams for a married lady and 100 grams per male person is considered reasonable and addition to income deleted by CIT(A), upheld by ITAT.

3. Harshadbhai Dahyabhai Vaidhya HUF v. ITO (Ahmedabad)

   When the donor has gifted the said amount to the HUF of his nephew, it is a sum of money received from a relative and that relative is as defined in *Explanation*, hence gift falls within the exception as prescribed.

**High Court Judgments**

1. Vijay Gupta v. ACIT (Gujarat)

   Section – 147 - If the Assessing Officer has acted only under compulsion of the audit party and not independently, the action of re-opening would be vitiated.

2. Vijay Prakash Agrawal & others v. CIT –

   Harassment to taxpayer in issue of refund and interest. Strictures passed and Costs awarded by High Court.

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# Salient Features of Domestic Transfer Pricing

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The Provisions of transfer pricing were applicable to an International transaction. However, the Finance Act, 2012 has made amendments to cover the applicability of transfer pricing provisions to specified domestic transactions which effects from A.Y. 2013-14. New section 92(2A) has been inserted to provide that any allowance for an expenditure or interest or allocation of any cost or exps. or any income in relation to specified domestic transaction shall be computed having regard to the arms length price (ALP).

**Objective :**

The objective behind the introduction of the amendment has been explained in the Memorandum explaining the provisions of the Finance Bill, 2012 as follows:

" Section 40A of the Act empowers the AO to disallow unreasonable expenditure incurred between related parties. Further, under Chapter VI-A and section 10AA, the AO is empowered to re-compute the income (based on fair market value) of the undertaking to which profit linked deduction is provided if there are transactions with the related parties or other undertakings of the same entity. However, no specific method to determine reasonableness of expenditure or fair market value to re-compute the income in such related transactions is provided under these section.

The Supreme Court in the case of CIT v. Glaxo Smith Kline Asia (P.) Ltd. [2010] 195 Taxman 35/8 tamann.com 5 in its order has, after examining the complications which arise in cases where fair market value is to be assigned to transactions between domestic related parties, suggested that Ministry of Finance should consider appropriate provisions in law to make transfer pricing regulations applicable to such related party domestic transactions.

The application and extension of scope of transfer pricing regulations to domestic transactions would provide objectivity in determination of income from domestic related party transactions and determination of reasonableness of expenditure between related domestic parties. It will create legally enforceable obligation on assesses to maintain proper documentation. However, extending the transfer pricing requirements to all domestic transactions will lead to increase in compliance burden on all assessees which may not be desirable.

Therefore, the transfer pricing regulations need to be extended to the transactions entered into by domestic related parties or by an undertaking with other undertakings of the same entity for the purposes of section 40A, Chapter VI-A and section 10AA. The concerns of administrative and compliance burden are addressed by restricting its applicability to the transactions, which exceed a monetary threshold of Rs.5 crores in aggregate during the year. In view of the circumstances which were present in the case before the Supreme Court, there is a need to expand the definition of related parties for purpose of section 40A to cover cases of companies which have the same parent company.

It is, therefore, proposed to amend the Act to provide applicability of transfer pricing regulations (including procedural and penalty provisions) to transactions between related resident parties for the purposes of computation of income, disallowance of expenses etc. as required under provisions of section 40A, 80-IA, 10AA, 80A, sections where reference is made to section 80-IA, or to transactions as may be prescribed by the Board, if aggregate amount of all such domestic transactions exceed Rupees 5 crore in a year. It is further proposed to amend the meaning of related persons as provided in section 40A to include companies having the same holding company."

**Applicability:**

- All assesses including sole proprietors, partnerships, companies etc incurring any kind of expenditure with a related party will be covered under the rules and regulations of domestic transfer pricing.
- Few examples of related party:
  - General relatives i.e. spouse, children, parents, siblings, etc.
  - Person of lineal ascendants or descendants.
  - Partners, directors would be classified as relatives for their relative organizations.
  - Businesses i.e. partnership, companies, etc. where substantial interest is held by the partners, directors or their relatives.

- Two or more than two businesses i.e. partnership, companies, etc. having common shareholding/ economic interest in excess of 20%.
- Two or more than two businesses i.e. partnership, companies, etc. having common executive management/control in excess of 20%.

◆ The Domestic transfer pricing provisions are applicable whenever transactions between related parties exceed the minimum threshold amount of INR 50 million. All related party transactions exceeding this basic threshold limit will be subject to domestic transfer pricing provisions.

◆ These transactions mainly includes the related party expenditures, debit notes and credit notes sent within the group companies (which may be in respect of Interest, corporate guarantee receipt /payment, cash pooling, group funding, etc.) transfer of goods or services from/to the tax holiday undertaking to/from non-tax holiday undertaking & business transaction between the tax-holiday undertaking produces more than ordinary profits with closely connected person, etc.

◆ To explain these new amendments in a simpler manner – earlier all transactions even between related parties were done at a *considerable FAIR value pricing concept* whereas after these amendments transactions between related parties will have to be done *at "Arms Length Price" (ALP)*.

**Method for Determining the Arm's Length Price:**

◆ Arm's Length price (ALP) means a price that is mutually decided by two unrelated parties (having no power to influence or control another) in normal course of business. As per the new regulations, the transfer pricing officer (TPO) will have the power to determine the ALP.

In case the ALP determined by the TPO is inconsistence with the pricing fixed by the assessee, then the TPO has the power to adjust the revenue/ expense accordingly which will thereby impact the taxable income of the concerned assessee. The ALP can be determined by any one of the following method as prescribed by Income-Tax Act, 1961:-

| Sr.No. | Method | Relevant in following transactions* |
|---|---|---|
| 1. | Comparable Uncontrollable Price Method (CUP) | Transfer of Goods Provision of servicesLoans, Provision of Finance |
| 2. | Resale Price Method (RSP) | Transactions involving distribution/sale of finished productsDistribution of goods involving no or little value-addition |
| 3. | Cost Plus Method | Where comparable data from industry not availableProvision of servicesJoint facility arrangementsTransfer of semi-finished goodsLong-term buying & selling arrangements |
| 4. | Profit Split Method | Integrated services provided by more than one enterpriseMultiple inter-related transactions, which cannot be separately evaluate |
| 5. | Transaction Net Margin Method (TNMM) | When all the above method fails this method is applicable |

*The above situations are indicative. Actual method determination depends on a case to case basis

**Documentation:**

◆ The assesse's who are covered by the domestic transfer pricing provisions are mandatorily required to maintain the requisite information & documents as mentioned hereunder.

◆ The documentation is divided into three phase:- *(Indicative, would differ from case to case)*

1. Entity related
   - Brief about Industry
   - Brief about the group
   - Profile of Assessee
   - Profile of Associate Enterprise with whom the transaction takes place
2. Transaction related
   - Agreement
   - Invoices
   - Price related correspondence (Letters, e-mails, fax, etc)
3. Price Related
   - Transaction terms which should include the detailed computation of the ALP arrived by the Assessee

- Functional Analysis (Function, Assets & Risks) which will help in deciding the margins
- Economic Analysis (method selection, comparable benchmarking Forecasts, budgets & estimates). This information can be obtained by way of internal information, external comparable companies, public domain such as websites, Indian databases such as prowess and capital line
- Reasons for selection of the most applicable method i.e. ALP as per the assessee

**Compliance and Penalty Provisions for non compliance:**

**Compliance provisions**:-

- The assesse's have to obtain & furnish a prescribed report from Chartered Accountants in Form 3CEB.
- The Chartered Accountants reports need to be submitted to the tax authorities by the due date of filling annual return of income. At present, the due date is 30th November.
- The documentation as mentioned above is not required to be submitted along with the report, but its needs to be obtained before the due date by the assessee.
- The documentation is required to be submitted during the course of assessment as and when the Transfer Pricing Officer (TPO) demands for the same.
- A separate cell consisting of transfer pricing officer will now perform the assessments/audits of Specified Domestic Transactions instead of the regular assessing officer.
- The time limit for completion of audit at present will 4 years from the end of relevant assessment year.

A stringent penalty regime has been prescribed for non compliance:-

| Sr. No. | Particulars | Penalty provisions |
|---|---|---|
| 1 | Failure to maintain documents | 2% of the value of the transaction |
| 2 | Failure to maintain the Chartered Accountant's report | 2% of the value of the transaction |
| 3 | Failure to Furnish the report by due date | INR 1,00,000 |
| 4 | Maintaining or furnishing incorrect information or documents | 2% of the value of the transaction |
| 5 | Adjustment for incorrect pricing | Penalty by way 100% to 300% of the additional tax payable. |

- Adjustments to MAT profits not to be made i.e. these regulations not to impact MAT liability.
- Threshold limit of INR 50 MN will be applicable to transactions in totality with a particular specified related party and not to transactions individually.
- Tolerable limit of ± 3% has been prescribed i.e. ALP derived by the assessee can vary in the range of 3% of the ALP arrived by the TPO.
- Few concepts/transactions that are applicable as in case of International transfer pricing have been done away with in case of domestic transfer pricing such as

A) *No requirement of maintaining advance pricing agreements (APA)*. These agreements are usually required to be maintained in case of cross border transactions between related parties. These agreements are like MOU's which basically include the price agreed for a particular related party transaction.

B) *Few transactions are also not covered such as interest free loans, provisioning of guarantees, use of intangibles*. Usually in these kind of cross border transactions, tax department urges the assesse's in India to book notional income on such transactions and thereby levy tax on such notional income irrespective of the fact that income has been agreed to be levied or not. However, such transactions involving charging of notional income are not covered under the concept of domestic transfer pricing.

**Comments :**

In this article I have deliberately not covered the intricacies of the new provisions as I intend to give birds eye view of the new provision for the benefit of all my professional brothers.

**Way Forward:**

It will be extremely important to map all the likely transactions that assesse's are certain to carry out with specified related persons. The assessee thereafter should analyze all transactions as to how these provisions are likely to impact them financially and from a taxation point of view. This analysis will help the assessee plan in a better way as to how to go forward in structuring the group transactions. It is extremely important to organize all relevant data in a timely manner so that necessary actions as well as compliance can take place.

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## Drafting of Appeals before First Appellate Authority Under the Income Tax Act, 1961

**Procedure in appeal**

- An appeal to the Commissioner (Appeals) is to be filed in Form No. 35.
- As per notes to the Form No. 35, the memorandum of appeal, statement of facts and the grounds of appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any. The statement of facts should clearly bring out the facts relating to disputed issue and the development during the course of assessment procedings leading to its ultimate disallowance/addition in the impunged order. The memorandum of appeal should also be accompanied by the prescribed fee. Further, where the appeal is filed against an order imposing penalty under section 271(1)(c) of the Act, a copy of assessment order must also be attached.

**Appeal fees**

- Fees payable for filing the appeal is given hereunder as Annexure. However, it may be noted that the Hyderabad Bench of the Tribunal in Andhra Pradesh State Electricity Board vs. ITO (1994) 49 ITD 552 (Hyd) have held that even where total income is computed at a loss and such loss exceeds Rs.1 lakh, the fees payable would be as per the slab prescribed for the income more than Rs. 1 lakh and therefore fees are to be determined on the basis as if loss determined is income.

**Who can sign the appeal memo**

- The form of appeal is to be signed and verified by the person who is authorised to sign the return of income under section 140 of the Act. As such the appeal to be filed by an individual must be signed and verified (i) by the individual himself, (ii) where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf (a valid Power of Attorney should be attached with the appeal) (iii) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf and where, for any other reason, it is not possible for the individual to sign the appeal, by any person duly authorised by him in this behalf (a valid Power of Attorney should be attached with the appeal). Therefore, unless any of such exceptional circumstances be present, an appeal in order to be valid, has to be signed by the individual himself.
- In case of Hindu undivided family, the appeal is to be signed by the Karta and where the Karta is absent from India or he is mentally incapacitiated from attending to his affairs, the appeal is to be signed and verified by any other adult member of such family.
- In a case of a company an appeal is to be signed and verified by the Managing Director thereof or where for any unavoidable reason, such Managing Director is not able to sign, by any Directors thereof or where there is no Managing Director by any Director thereof.
- In case of a firm the appeal is to be signed by the Managing Partner thereof or where for any unavoidable reason, such Managing Partner is not able to sign, by any partner thereof not being a minor or where there is no Managing Partner as such, by any partner thereof not being a minor.
- In case of a limited liability partnership, by the designated partner thereof, or where for any unavoidable reason, such designated Partner is not able to sign, or where there is no designated partner, by any partner thereof.

**Assessment order made by consent is appealable**

- The fact that the assessment is made by consent does not take an order passed u/s 143(3), outside the purview of section 246A(1)(a).

**Presentation of appeal**

- A memorandum of appeal to the Commissioner (Appeals) must be presented to the office of the Commissioner in person or by an agent or sent by Registered Post addressed to the Office of the Commissioner (Appeals).

**Time for filing an appeal**

An appeal to the Commissioner (Appeals) should be filed within a period of 30 days of the service of

the order against which the appeal is preferred. The Calcutta High Court in *Charki Mica Mining Co. Ltd. vs. CIT (1978) 111 ITR 193 (Cal)* has held that the period of limitation for filing an appeal to the Commissioner (Appeals) is to be computed from the date of the receipt of demand by the assessee and not from the date of receipt of assessment order by the assessee.

**Delay in filing an appeal**

Section 249 (3) gives a power to the Commissioner (Appeals) to condone the delay in filing the appeal to the Commissioner (Appeals). When an application for condonation of delay in filing an appeal is preferred, it is statutory obligation of the appellate authority to consider whether sufficient cause for not presenting the appeal in time was shown by the appellant.

**Payment of admitted tax**

As far as appeal before the Commissioner (Appeals) is concerned, section 249 (4) provides that no appeal shall be entertained under chapter XX unless at the time of filing the appeal the assessee has paid (a) the taxes due on the returned income or (b) where no return is filed, an amount equal to the amount of advance tax which was payable by him. The Commissioner (Appeals) is empowered, for any good and sufficient reason, to exempt the assessee from operation of this provision in case of (b).

**Death of an assessee**

Where an assessee to an appeal dies or is adjudicated insolvent or in the case of the company wound up, the appeal will not abate and will continue against the executor, administrator or other legal representatives of the assessee or by or against the assignee, receiver or liquidator as the case may be. In case of a death of assessee, the legal heirs of the assessee must file copy of death certificate and an affidavit of they being the legal heirs. A fresh memorandum of appeal signed by the legal heirs must be filed before the Commissioner (Appeals) or where the assessee is the appellant so that the legal heirs are brought on record.

**Drafting of Appeal**

The Income-tax Rules, 1962 ( the Rules) only provides that an appeal to the Commissioner (Appeals) shall be made in Form No. 35 and that the form of verification shall be signed and verified by the person who is authorised to sign the return of income under section 140 of the Income-tax Act, 1961 (the Act) (Rule 45) .

Form No. 35 requires to set out a statement of facts along with the ground of appeal. Therefore, it is necessary to present the statement of facts in such a manner so as to clearly bring out the issues in the assessment/penalty proceedings leading to the order under challenge.

**A specimen draft of grounds of appeal is as under:**

"On the facts and in the circumstances of the case and in law the Assessing Officer erred in ....without appreciating ......".

**A prayer should be made for deletion or addition/ disallowance after taking relevant ground as under:**

"The Appellant prays that the addition/ disallowance of Rs. ________ made in respect of/out of ....... be deleted."

**And at the end the Appellant should crave leave for addition, variation or withdrawal of grounds of appeal as under:**

"The Appellant craves leave to add, amend , alter vary and / or withdraw any or all the above grounds of Appeal."

If the statement of facts /grounds of appeal are separately annexed then the same should be signed by the Appellant.

**SCHEDULE OF FEES FOR FILING APPEALS TO THE COMMISSIONER OF INCOME-TAX (APPEALS)**

| Particulars | Fees for filing appeal before CIT (A) |
|---|---|
| Assessed total income Rs. 1 lakh or less | Rs. 250 |
| Assessed total income more than Rs. 1 lakh but not more than Rs. 2 lakhs | Rs. 500 |
| Assessed total income more than Rs. 2 lakhs | Rs. 1000 |
| Where subject matter is not covered under any of above | Rs. 250 |

# Glimpses of Supreme Court Rulings

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## 1 Tribunals which qualify as courts :

A tribunal may not necessarily be a court, in spite of the fact that it may be presided over by a judicial officer, as other qualified persons may also possibly be appointed to perform such duty. One of the tests to determine whether a tribunal is a court or not, is to check whether the High Court has revisional jurisdiction so far as the judgments and orders passed by the tribunal are concerned. The supervisory or revisional jurisdiction is considered to be a power vesting in any superior court or tribunal, enabling it to satisfy itself as regards the correctness of the orders of the inferior tribunal. This is the basic difference between appellate and supervisory jurisdiction. The appellate jurisdiction confers a right upon the aggrieved person to complain in the prescribed manner to a higher forum whereas, supervisory/ revisional power has a different object and purpose altogether as it confers the right and responsibility upon the higher forum to keep subordinate tribunals within the limits of the law. It is for this reason that revisional power can be exercised by the competent authority / court suo moto, in order to see that subordinate tribunals do not transgress the rules of law and are kept within the framework of powers conferred upon them. Such revisional powers have to be exercised sparingly, only as a discretion in order to prevent gross injustice and the same cannot be claimed, as a matter of right by any party.

The expression 'court' is understood in the context of its normally accepted connotation, as an adjudicating body, which performs judicial functions of rendering definitive judgments having a sense of finality and authoritativeness to bind the parties litigating before it. Secondly, it should be in the course of exercise of the sovereign judicial power transferred to it by the State. Any tribunal or authority, therefore, that possesses these attributes, may be categorized as a court.

Tribunals have primarily been constituted to deal with cases under special laws and to hence provide for specialized adjudication alongside the courts. Therefore, a particular Act / set of rules will determine whether the functions of a particular tribunal are akin to those of the courts, which provide for the basic administration of justice. Where there is a lis between two contesting parties and a statutory authority is required to decide such dispute between them, such an authority may be called as a quasi-judicial authority i.e. a situation where, (a) a statutory authority is empowered under a statute to do any act ; (b) the order of such authority would adversely affect the subject ; and (c) although there is no lis or two contesting parties, and the contest is between the authority and the subject; and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is a quasi-judicial decision. An authority may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a 'court', but not all. In case certain powers under CPC or CrPC have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a court.

***[State of Gujarat and another vs. Gujarat Revenue tribunal bar association and another (2012) (10 SCC 353)]***

## 2 Judicial decision / judicial function :

In a judgment there will be declaration of law and its application to the facts of the case to render a decision on the dispute between the parties to the lis. It is necessary to bear in mind that the principles in regard to the Supreme Court departing from its binding precedent are different from the grounds on which a final judgment between the parties can be reconsidered. A 'decision' of the Supreme Court must be distinguished from a 'view of law' expressed by the Supreme Court. These words are sometimes used interchangeably but not always, especially in the present context. In case of a 'decision', the appellate structure is exhausted after a pronouncement by the Supreme Court. Therefore, once a lis between parties is decided, the operative decree can only be opened in review under Article 137 or curative jurisdiction [a remedy carved out in *Rupa Ashok Hurra, (2002) 4 SCC 388*] and in no other way. After the exercise of those limited options, the parties concerned have absolutely no relief with regard to the dispute: it is considered settled for eternity in the eye of the law. However, what is not eternal and still malleable in the

**contd. on page no. 53**

# From the Courts

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## 1

**Disallowance of Keyman Insurance Premium :-**
**C.I.T. v/s. Gem Art**
**(2012) 252 CTR 451 (Guj.) (2012) 76 DTR (Guj) 374**

**Issue:-**

Whether Keyman Insurance Premium on the policy of partner is allowable?

**Held:-**

Finance Act, 1996 indicates that sums received by organisation of Keyman Policy should be taxed as business profits, the surrender value of policy enclosed in favour of the employee (Keyman) or the sum received by him at the time of retirement be taken as "profits in lieu of salary" for tax purposes; and in case of other persons having no employer employee relationship the surrender value of the policy of the sum received under the policy be taken as income from other sources and taxed accordingly. The premium paid on the Keyman Insurance Policy is allowed as business expenditure.

After going through the explanation of given in Section 10 (10D) High Court is of the view that the partner definitely comes within the purview of the person who is connected with in any manner whatsoever with the business of the firm.

## 2

**Sec. 271(1)(c) and Satisfaction :-**
**Mehson Exports v/s. I.T.O.**
**(2012) 347 ITR 639 (All)**

**Issue :-**

Whether "Satisfaction" of the A.O. is a must in Sec. 271(1)(c) proceedings?

**Held :-**

For imposition of penalty under clause (c) of Sub-Section (1) of Sec. 271 of the I.T. Act, 1961, it is necessary for the A.O. to be satisfied with regard to concealment of particulars of income or furnishing of inaccurate particulars. It is settled law that statutory provisions contained in taxing, statutes should be constructed strictly. Accordingly, the word, "Satisfaction" used by the legislature, should be constructed strictly and satisfaction must be based on some material evidence on record.

## 3

**Absence of notice u/s 143(2) within time is fatal for assessment :-**
**C.I.T. v/s. Cebon India Ltd.**
**(2012) 347 ITR 583 (P & H)**

**Issue :-**

Whether absence of notice u/s 143(2) to be served within time makes assessment invalid?

**Held :-**

A concurrent finding had been recorded by the C.I.T. (Appeals) and the Tribunal on the Question of date of service of notice. The notice was not served within the stipulated time. Mere giving of dispatch number would not render the finding perverse. In the absence of notice being served, the A.O. had no jurisdiction to make assessment. Absence of notice was not curable u/s 292BB of the Act.

## 4

**Sports Club : A Charitable institution :-**
**Director of I.T. v/s. Goregaon Sports Club**
**(2012) 347 ITR 338 (Bom)**

**Issue :-**

Is sports club a charitable institution?

**Held :-**

The main object of the assessee was to promote sports and athletic activities. The A.O. treated the assessee as a mutual concern and denied the exemption u/s 11 of the I. T. Act, 1961. The Commissioner (Appeals) held that the assessee had acquired land from the state Government which was utilised for facilities such as providing an olympic size swimming pool which was open to the general public on an annual membership basis

without restriction as to caste creed, religion or profession. The CIT(A) held that promotion of sports falls within the purview of Section 2(15) since it constituted advancement of any other object of general public utility. The order of the Commissioner (Appeals) was confirmed in appeal by the Tribunal. On appeal to the High Court:-

Held, that the assessee was a charitable institution since the objects of the club fall within the purview of Section 2(15).

## 5

**Cash Credit : Shifting of Onus** :-
**S. K. Bothra and Sons, HUF v/s I.T.O**
**(2012) 347 ITR 347 (Cal)**

**Issue :-**

How the onus shifts from assessee to A.O. and vice-versa?

**Held :-**

It is now settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the assessee is not satisfactory, the A.O. can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts to the A.O. and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the A.O. to the assessee.

## 6

**Sec. 10B : Exemption : Shifting of Unit :-**
**CIT v/s. Sasken Communication Tech Ltd.**
**(2012) 347 ITR 362 (Karn)**

**Issue :-**

Whether assessee would loose exemption u/s 10B, if the unit is shifted to another place?

**Held :-**

The assessee was carrying on business in software development. It commenced the business in 1989 in Gujarat. During the year 1992-93, it shifted the business from Gujarat to Bangalore and claimed deduction u/s 10B of the I. T. Act, 1961. The A.O. disallowed the claim on the ground that this would amount to reconstruction of business. The business was already in existence in accordance with section 10B (2)(ii) of the Act. The CIT (Appeals), the Tribunal held that the assessee was entitled to the exemption.

High Court held, dismissing the appeal that initially the unit was established at Gujarat. The asessee was entitled to the benefit u/s 10B for a period of 10 years. However, within two years from setting up the unit at Gujarat, it was shifted to Bangalore. The shifting had been done with the permission of the Government of India. In view of shifting there was only one undertaking whose identity, integrity and continuity was maintained. The assessee was not claiming any benefit u/s 10B in respect of any unit at Gujarat. The only benefit claimed was in respect of the unit at Bangalore as there was no unit at Gujarat and the only unit was at Bangalore. The assessee was entitled to the benefit u/s 10B.

## 7

**Setoff of b/f Unabsorbed Depreciation** :-
**CIT v/s GTM Synthetics Ltd.**
**(2012) 347 ITR 458 (P & H)**

**Issue :-**

Whether unabsorbed depreciation carried forward can be setoff against income under any other head even though no business is carried on?

**Held :-**

Sec.32(2) of the I. T. Act 1961, relates to carry forward of unabsorbed depreciation. It was amended by the Finance Acts 2000 with effect from April 1, 2001, and is applicable to the assessment year 2001-02.

The first proviso and word "further" in the second proviso was deleted.

The effect of omission of proviso was enumerated by the Central Board of Direct Taxes Circular No. 794 dated August 1, 2000 (2000) 245 ITR St-21, to the effect that the unabsorbed depreciation allowance could be setoff against the income under any other head even where the business was not carried on.

Held, the CIT (Appeals) and Tribunal, rightly allowed unabsorbed depreciation relevant to the assessment year 1996-97 to be set off against the income from long term capital gains and income from other sources for assessment year 2001-02.

❋❋❋

# Tribunal News

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## 1

**Gujarat Mineral Dev Corpn. Ltd. V. ACIT 140 ITD 603 (AHD.)**

**Asst.Year 2000-01 to 2002-03, Order Dated: 25th May, 2012**

**Basic Facts - I**

The assessee was engaged in the business of manufacturing of lignite. It set up a new power project and claimed deduction of expenditure incurred on the same as revenue expenditure.The AO held that product manufactured in the new power project was totally a new product. The power project was not expansion of the assessee's existing business and it was totally different and distinct industrial undertaking. He, therefore, disallowed the expenditure in question. On appeal, the CIT(A) upheld the order of the AO.

**Issue**

**Whether expenditure incurred to set-up a new line of business is revenue expenditure?**

**Held**

The Tribunal held that the power project is a new line of business because this is the first power project being put up by the assessee. The assessee did not have any business of power generation in the earlier assessment years. Further the product manufactured in the power project will be the power; whereas in the existing unit the product is different, i.e., lignite. Also the power project would not result into any substitute of import component being used by existing unit. When a new industrial undertaking is being constructed, it cannot be said that no new asset has come into existence. Therefore, the expenditure was not allowable as revenue expenditure. With regards to interest expenditure the Tribunal held that in the instant case, the borrowed funds were not used for setting up of a new unit of an existing running business, but it was setting up of a new unit for production of an altogether new product, i.e., power; whereas the existing business of the assessee was production of lignite. Since this aspect is not fulfilled, even interest expenditure is not allowable under section 36(1)(iii). Hence the ground of the assessee is rejected.

**Basic Facts -II**

The assesse claimed deduction of salary paid to staff appointed at the residence of the company's chairman. The AO disallowed the salary expenditure on the ground that the expenditure was not in accordance with the guideline issued by the Government of Gujarat dated 28-8-1998 and was also against article No.192 of the Article of Corporation. The CIT(A) confirmed the disallowance on the basis that the same was covered by Explanation to section 37(1).

**Issue**

**Whether disallowance of expenditure was justified?**

**Held**

The expenditure was held by AO & CIT(A) to be violation of the Guidelines issued by the Government of Gujarat and Articles of Corporation. This will not tantamount to an offence and also it does not tantamount to an expenditure which is prohibited by law. The guidelines of the Government of Gujarat and the Articles of Corporation cannot be considered as law of the country hence the disallowance was not justified.

## 2

**Hindustan Construction Co. Ltd. v. DCIT 140 ITD 642 (Mum.)**

**Asst. Year. 2003-04 to 2006-07, Order Dated: 28thMay, 2012**

**Basic Facts**

The AO has made disallowance u/s 14A while computing the book profit u/s 115JB. On appeal, the CIT(A) had confirmed the action of the AO.The assessee went in appeal before the ITAT regarding adjustment made in this.

**Issue**

**Whether any expenditure, which is disallowed under section 14A and has attained finality, has to be added back while computing book profit under section 115JB?**

**Held**

The Tribunal held that there was no dispute that as per the clause (f) of Explanation I to sec. 115JB the expenditure debited to P&L Account incurred in relation to the income exempt u/s 10 is to be added for computation of book profit. Therefore, so far as the expenditure incurred in relation to the income which does not form part of the total income as per section 10 of the IT Act, the said expenditure clearly falls under clause (f) of Explanation I to sec. 115JB. Therefore, in view of the decision of the Hon'ble High Court in the case of Godrej & Boyce Mfg Co. Ltd (supra), any expenditure which is disallowed u/s 14A and attained the finality has to be added back while computing the book profit.

## 3 L.G. Electronics India (P.) Ltd. V. ACIT 140 ITD 41 (DEL)(SB)

**Asst.Year2003-04 to 2008-09, Order Dated: 23rd January, 2013**

**Basic Facts**

L.G. Electronics India Private Limited the assessee is a subsidiary of L.G. Electronics Inc., Korea being Associate Enterprise (the AE"). Pursuant to Technical Assistance and Royalty agreement, assessee obtained a right from the AE to use technical information, designs, drawings and industrial property rights for the manufacture, marketing, sale and services of agreed products, for which it agreed to pay royalty @ 1 per cent. The AE allowed the assessee to use its brand name and trademarks to products manufactured in India "without any restriction".The Transfer Pricing Officer ("TPO") concluded that the assessee was promoting LG brand as it had incurred expenses on AMP to the tune of 3.85% of sales vis-à-vis 1.39% incurred by a comparable. Accordingly, TPO held that the assessee should have been compensated for the difference.Applying the Bright Line Test, the TPO held that the expenses in excess of 1.39% of the sales are towards brand promotion of the AE and proposed a transfer pricing adjustment. The Dispute Resolution Panel ("DRP") not only confirmed the approach of the TPO, but also directed to charge amark-up of 13% on such AMP expenses towards opportunity cost and entrepreneurial efforts.The assesse is in appeal before the Tribunal. Several other taxpayers joined the proceedings as interveners.

**Issue**

**Whether transfer pricing adjustment can be made in relation to advertisement, marketing and sales promotion expenses incurred by the taxpayer?**

**Whether the taxpayer ought to have been compensated by the AE in respect of such AMP expenses alleged to have been incurred for and on behalf of the AE ?**

**Held**

In respect of Question 1, the Tribunal has held as follows:

It confirmed validity of jurisdiction of the TPO by observing that the assessee's case is covered under section92CA(2B) of the Income Tax Act, 1961 ('the Act') which deals with international transactions in respect of whichthe taxpayer has not furnished report, whether or not these are international transactions as per the taxpayer.The incurring of AMP expenses leads to promotion of LG brand in India, which is legally owned by the foreignAE and hence is a transaction. The said transaction can be characterized as an international transactionwithin the ambit of Section 92B(1) of the Act, since (i) there is a transaction of creating and improving marketing intangibles by the assessee for and on behalf of its AE; (ii) the AE is non-resident; and (iii) such transaction is inthe nature of provision of service.The Tribunal accepted Bright Line Test to determine the cost/ value of the international transaction, in view of the fact thatthe taxpayer failed to discharge the onus by not segregating the AMP expense incurred on its own behalf vis-àvisthat incurred on behalf of the AE.The transfer pricing provisions being special provisions, override the general provisions such as section 37(1)/40A(2) of the Act.For determining the cost/value of international transaction, selection of domestic comparable companies notusing any foreign brand was relevant in addition to other factors.The Supreme Court of India in Maruti Suzuki's case examined the issue of AMP expenses where it directedthe TPO for a de novo determination of ALP of the transaction. The direction by the Supreme Court recognizesthe fact of brand building for the foreign AE, which is an international transaction and the TPO has thejurisdiction to determine the ALP of the transaction.In summary, the expenses incurred "in connection with sales" are only sales specific. However, the expenses"for promotion of sales" leads to brand building of the foreign AE, for which the Indian entity needs to becompensated on an arm's length basis by applying the Bright Line Test.

With regard to Question 2, the DRP's approach, of applying a mark-up on cost for determining the ALP of the international transaction, on the ground that the same has sanction of law under Rule 10B(1)(c)(vi) of the Income Tax Rules, 1962 was accepted.

The case was set aside and the matter was restored to the file of the TPO for selection of appropriate comparable companies, examining effect of various relevant factors laid down in the decision and for the determination of the correct mark-up.

## 4

**Ebay International AG vs. ADIT 140 ITD 20 (Mum)**

**Asst.Year2006-07, Order Dated: 21st September, 2012**

**Basic Facts**

eBAY International AG is a company incorporated under the law of Switzerland and is a tax resident of Switzerland.The assessee operated two websites which provided an online platform to facilitate purchase and sale of goods and services to users based in India. The assessee collected a user fee from the seller of goods for facilitating the sale. Additionally, the assessee collected a separate fee from the users for a more prominent display of the seller's product on the website.The assessee entered into a Marketing Support Agreement with eBay India Private Limited ('eBay India') and eBay Motors India Private Limited ('eBay Motors'), eBay group companies, for availing certain support services in connection with its India specific websites.The user fee for facilitating the transaction is collected by eBay India/eBay Motors from the seller and remitted to the assessee.

**Issue**

- **Whether assessee is liable to tax on income from India specific websites?**
- **Whether, though group companies were dependent agents because they exclusively assisted assessee in carrying on business in India, they could not be considered as 'Dependent agent PE' because they did not perform any function ?**

**Held**

The fee received by the assessee was in the nature of 'business profits'. eBay India was involved in making awareness in India about the websites of the taxpayer and the collection of payments from the Indian sellers. Though the Indian company created awareness towards the websites it had no role in introducing a specific customer to the assessee. Further, eBay India was mainly involved in facilitating the sellers to make payments to the assessee in India itself. As such it could be construed that eBay India was providing market support services to the assessee. The two Indian entities have no other source of income except that from the assessee; are exclusively assisting the assessee in carrying on business in India and hence would be considered dependent agents of the assessee. The two Indian entities had neither maintained a stock of goods or merchandize nor had manufactured or processed goods, as no goods or merchandize had passed through them. Further, the Indian entities have at no stage negotiated or entered into contract for or on behalf of the assessee. Simply by providing marketing services or receiving collections from customers and forwarding the same to assessee, it cannot be said that the Indian entities entered into contracts on behalf of the assessee. Hence, the activities of eBay India/ eBay Motors do not satisfy any conditions as specified under Article 5(5) or 5(6) of the DTAA to be considered as PE of the assessee. Thus, in the absence of a PE in India, the assessee would not be taxed as business profits under Article 7 of the DTAA. The Mumbai Tribunal held that the marketing and other support services rendered by Indian affiliates to the overseas entity, though considered as a dependent agent will not constitute PE in India, if any of the activities specified are not carried out by such dependent agent.

## 5

**My Home Power Ltd. vs. DCIT 151 TTJ 616(HYD)**

**Asst.Year2007-08, Order Dated: 2nd November, 2012**

**Basic Facts**

The assessecompany was generating power through biomass power generation unit. For the relevant year, it had received 1,74,037 CERs (carbon credits) for the project activity of switching off fossil fuel from naphtha and diesel to biomass and sold 1,70,556 CERs to a foreign company.The AO held sale proceeds of the CERs to be a revenue receipt since the CERs are a tradable commodity and even quoted in stock exchange. The CIT (A) besides confirming the order of the AO, also gave a finding that the amount which was considered as income of the

assesse could not be considered as income from business and as such the same was not entitled for deduction under section 80-IA.

**Issue**

**Whether realization of the carbon credits represent capital receipt or revenue receipt?**

**Held**

Carbon credit is in the nature of 'an entitlement' received to improve world atmosphere and environment reducing carbon, heat and gas emissions. The entitlement earned for carbon credits can at best be regarded as a capital receipt and cannot be taxed as a revenue receipt. It is not generated or created due to carrying on business but it is accrued due to 'world concern' and 'environment'. The amount received for carbon credits has no element of profit; thus it cannot be subjected to tax under any heads of income. As per the tribunal the carbon credit cannot be considered a by- product It is a credit given under the Kyoto Protocol and because of international understanding. The assessees who have surplus carbon credits can sell them to other assessees to have capped emission commitmentunder the Kyoto Protocol. Credit for reducing carbon emission or greenhouse effect can be transferred to another party in need of reduction of carbon emission. The amount received is not received for producing and /or selling any product, by-product or for rendering any service for carrying out business. As per tribunal carbon credit is entitlement or accretion of capital and hence income earned on sale of these credits is capital receipt. The Tribunal while so holding relied on the Supreme Court decision in the case of CIT V Maheswari Devi Jute Mills Ltd. 57 ITR 36.

**6**

**National Petroleum Construction Company v. ADIT (International Taxation) 151 TTJ 47 (Del.)**

**Asst. Year 2007-08, Order Dated: 5th October, 2012**

**Basic Facts**

The assessee, a tax-resident of UAE, was awarded a contract by ONGC on the basis of International Competitive Bidding process. The contract had two distinct components - one, for designing, fabrication and supply of material to be carried out exclusively in Abu Dhabi and the other, for installation and commissioning of the erected platform in India. Thus, the assessee fabricated the platform in Abu Dhabi, got it certified by ONGC's approved surveyors and thereafter, it was brought to India with the help of assessee's barges and the possession was handed over to ONGC. The A.O. held that the assessee had a Permanent Establishment (P.E.) in India and the entire receipts even for the activities undertaken and completed outside India were to be taxed in India by estimating such income @25% of the gross value of supplies made from outside India. The A.O. also considered the project a 'turnkey project' which was not divisible. DRP confirmed the finding of the AO. Hence the assessee went for an appeal before the Tribunal against the order passed u/s 143(3) r.w.s 144.

**Issue**

**Whether where the contract awarded to a non-resident is categorized as 'turnkey project' or is 'divisible into various revenue components', only so much of profits as are attributable to PE in India is liable to Indian taxation**

**Held**

The Tribunal held that income attributable to P.E. in India could not extend to the activities carried outside India and had to be therefore confined to incomes from activities carried in India. The segregation of the contract revenues into offshore and onshore activities was agreed upon between ONGC and the assessee at the stage of awarding the contracts and not afterwards. The bifurcation of revenues as 'inside India revenues' and 'outside India revenues' was also evident from the contract itself, invoices raised, insurance cover taken on the fabricated platform and surveyor's report issued at the time of load out of fabricated platform at Abu Dhabi port. The assessee had PE in respect of installation and commissioning but did not have a PE in respect of i.e. offshore supplier erection and fabrication of the platform in Abu Dhabi. Thus, the profits which could be attributed to the PE in India were only in respect of installation and commissioning activities and hence, profits attributable to the supplies i.e. erection and fabrication of the platforms at Abu Dhabi could not be brought to tax in India. Even if the contract was considered to be a turnkey contract, entire contract revenue could not be taxed in India but only so much of the profit as was attributable to the PE India was liable to Indian taxation.Hence the issue was decided in favour of the assessee.

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# Unreported Judgements

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In this issue we are giving gist of the decision rendered by the Hon'bleGujarat High Court in Tax Appeal No. 752 of 2012 filed by the Department in the case of Cadila Healthcare Ltd. Though this is more in respect of why several questions raised by the department had not been admitted, the view point expressed by the Hon'ble High Court in the decision while rejecting the questions raised by the department from admission throws light on some of the important issues and could be helpful in the routine practice.

**In the High Court of Gujarat at Ahmedabad**
**Tax Appeal No. 752 OF 2012**

**Commissioner of Income Tax-1 ….Appellant(s)**
**Versus**
**Cadila Healthcare Ltd.….Opponent(s)**

**Appearance :**

Mr. Bhatt, Sr. Adv. with Mrs. Mauna M. Bhatt, Advocate for the Appellant(s) No.1

Mukesh Patel with Mr. R. K. Patel, Advocate for the Opponent(s) No.1

CORAM :**Honourable Mr. Justice Akil Kureshi**
and
**Honourable MS Justice Sonia Gokani**

**Date : 20/03/2013**
**Oral Order**
**[Per: Honourable Mr. Justice Akil Kureshi]**

**Gist of the decision**

Four questions were admitted by the Court. However, following questions raised by Revenue were not admitted. They are reproduced with the reasoning given by the Hon'ble High Court.

1. "Whether the Appellate tribunal has substantially erred in holding that Product Registration expenses are revenue in nature, when the 'product registration expenses made to Drug Regulatory Authorities in various countries give enduring benefit of exporting the registered drugs for many years?"
2. "Whether the Appellate Tribunal has substantially erred in holding that Trademark Registration fee and Patent fee [Rs.37,92,606/- and Rs.1,15,49,880/-] are revenue expenses, when the expenses were incurred for registration of Trademark in that country and also for registration of Patent, which are intangible assets under section 32(1) (ii) of the Act?"

The Hon'ble Court observed as under:

i) These questions pertain to the expenditure incurred by the assessee towards product registration before the Drug Regulatory Authorities and registration of trademark and patent fees. It is the case of the Revenue that such registration gives enduring benefits and therefore should have been treated as capital expenditure and not revenue in nature. The Tribunal clubbed this expenditure for common consideration and in the impugned judgment held that pharmaceutical products manufactured by the assessee are to be registered with the local authorities as also medical association in India. Such products were in existence and nothing new were acquired by the assessee in the process. The Tribunal, therefore, held that the expenditure only enable the assessee to run the existing business smoothly and therefore, it cannot be stated that the assessee acquired any tangible or intangible assets.

ii) With respect to patent and trademark registration, the tribunal held that for protection of result of the research of the assessee, such patent had to be registered. It was observed that enduring benefit is not the only criteria. The same must be coupled with acquisition of asset.

iii) With respect to the expenditure incurred for production registration charges, we agree with the view of the tribunal that the assessee did not acquire any new asset. As per the rules and regulations, it was essential that the product, before marketing, would be registered with the regulating authorities. Any expenditure in the process would not be stated to ensure procurement of a new asset to the assessee. We are informed that a Division Bench of this Court in the case of CIT v. Torrent Pharmaceuticals Ltd., (2013) 29 taxmann.com 405 (Gujarat) also in somewhat similar facts had upheld the decision of the Tribunal.

iv) With respect to the expenditure for trademark and patent, learned counsel for the respondent-assessee rightly pointed out that such issue was examined by the Supreme Court in the case of 20 ITR 475, wherein it is observed that the advantage derived by the owner of the trade mark by registration falls within this class of expenditure, which is revenue in nature. The fact that a trade mark after registration could be separately assigned and not as a part of the goodwill of the business only, does not also make the expenditure for registration as a capital expenditure, that is only an additional and incidental facility given to the owner of the trade mark. It adds nothing to the trade marks itself. Following the above reasoning of the Supreme Court, departmental questions were not admitted.

v) The department has also raised another question as under :

"Whether the Appellate Tribunal has substantially erred in holding that the expenses incurred outside the approved R&D facility would also get weighted deduction based on the word under "on in house" interpreting contradictorily to the finding of coordinate bench in Concept Pharmaceuticals Ltd. v. ACIT (ITAT, Mum) reported at 43 SOT 423 ?

The facts in this regard are that the assessee carried out scientific research in the facility approved by the prescribed authority. It is also incurred various expenditure including on clinical trials for developing its pharmaceutical products. These clinical trials were conducted outside the approved laboratory facility. The revenue contested that such expenditure not having been incurred in the prescribed facility cannot form part of the deduction provided u/s 35(2AB) of the Act. The revenue also relied on the certificate issued by the prescribed authority, which segregated the expenditure in two parts, i.e. incurred on in-house facility and incurred out-side. The Tribunal had allowed the benefit to the assessee.The High Court confirmed the view of the Tribunal following the explanation to section 35(2AB)(1) and held that on the basis of said explanation the whole idea thus appears to be to give encouragement to scientific research. By the very nature of things, clinical trials may not always be possible to be conducted in closed laboratory or in similar in-house facility provided by the assessee and approved by the prescribed authority. Before a pharmaceutical drug could be put in the market, the regulatory authorities would insist on strict tests and research on all possible aspects, such as possible reactions, effect of the drug and so on. Extensive clinical trials, therefore, would be an intrinsic part of development of any such new pharmaceutical drug. It cannot be imagined that such clinical trial can be carried out only in the laboratory of the pharmaceutical company. If we give such restricted meaning to the term expenditure incurred on in-house research and development facility, we would on one hand be completely diluting the deduction envisaged under sub-section (2AB) of section 35 and on the other, making the explanation noted above quite meaningless. We have noticed that for the purpose of the said clause in relation to drug and pharmaceuticals, the expenditure on scientific research has to include the expenditure incurred on clinical trials in obtaining approvals from any regulatory authority or in filing an application for grant of patent. The activities of obtaining approval of the authority and filing of an application for patent necessarily shall have to be outside the in-house research facility. Thus the restricted meaning suggested by the Revenue would completely make the explanation quite meaningless. For the scientific research in relation to drugs and pharmaceuticals made for its own peculiar requirements, the Legislature appears to have added such an explanation.

vi) The High Court also drew support from the meaning of the scientific research described in Dy.CIT v. Mastek Limited in Tax Appeal No. 242 of 2000 and ultimately held that Tribunal has committed no error. Merely because the prescribed authority segregated the expenditure into two parts, viz those incurred within the in-house facility and those incurred outside, it would not by itself be sufficient to deny the benefit to the assessee u/s 35 (2AB) of the Act. The certificate issued was only for the purpose of listing the total expenditure under the Rules. Therefore, Tribunal has not committed any error and no question of law arises.

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# International Taxation

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## Transfer pricing aspects - Intra-group software development services

### Executive summary

This article summarizes a recent ruling of the Mumbai Income-Tax Appellate Tribunal (Tribunal) in the case of M/s. Capgemini India Private Limited (TS-45-ITAT-2013 (Mum) (Taxpayer) on transfer pricing aspects related to provision of intra-group software development and programming services. The Taxpayer's transfer pricing documentation supported an operating profit of 13.70% on operating costs as the arm's length price (ALP) for provision of services to its Associated Enterprise (AE) for the year under dispute (Financial Year 2006-07). The Tax Authority determined the arm's length margin at 27.82% during audit proceedings, which was further confirmed by the Dispute Resolution Panel (DRP). On appeal before the Tribunal against the transfer pricing adjustment, the Tribunal adjudicated on a number of transfer pricing issues, the key issue being whether quantitative criteria based on size is appropriate for accepting or rejecting potential comparables. The Tribunal rejected the use of the criteria in the facts of the case on grounds that there is no linear relationship between margin and turnover. However, the Tribunal held that potential comparables whose turnover is less than INR 1 billion should not be included to ensure that only established players in the sector are considered.

### Background and facts of the case

The Taxpayer is engaged by its parent company to render software programming services and was remunerated on a cost plus basis. The Taxpayer selected Transactional Net Margin Method as the most appropriate method to benchmark its international transaction. Based on the application of a combination of quantitative and qualitative screening filters, the Taxpayer arrived at a final set of comparable companies.

The Taxpayer considered a multiple-year average of the net margins of comparables to conclude the transaction to be at arm's length. During audit proceedings, the Tax Authority rejected the use of multiple-year average and directed the Taxpayer to submit updated margins of the comparable companies selected in the transfer pricing documentation with the relevant-year data. The Tax Authority rejected the use of consolidated financial statements and companies that failed the related party transactions filter on a standalone basis. The Taxpayer introduced additional companies that were also considered for analysis by the Tax Authority. In addition, the TPO treated the ESOP cost incurred by the taxpayer as operating expenses for the purpose of computing the net profit margin. Further the Tax Authority did not allow any benefit of working capital adjustment to arrive at the arm's length margin of comparable companies. Based on this analysis, the Tax Authority made an upward transfer pricing adjustment to the value of the international transactions undertaken by the Taxpayer without giving the benefit of the +/-5 percent range.

Being aggrieved by the Tax Authority's order, the Taxpayer filed its objections with the DRP, an alternate dispute resolution mechanism under the Indian Tax Law ("ITL"). The Taxpayer also identified new comparables at this level, which were completely disregarded by the DRP.

Accordingly, the DRP upheld the adjustment proposed by the Tax Authority.

The Taxpayer subsequently, filed an appeal before the Tribunal, the second-level appellate authority, against the aforementioned transfer pricing adjustment.

### Taxpayer's arguments

- The Taxpayer contended that ESOP cost, being an exceptional item, incurred on account of acquisition of KSIL Worldwide during the relevant year be excluded while computing the taxpayer's margin.
- The Taxpayer contended that a quantitative criteria based on turnover should be used and companies with higher turnover should not be regarded as comparable since they enjoyed economies of scale, better bargaining power, skilled employees and high risk taking capabilities, etc. The Taxpayer also relied on various rulings wherein a turnover filter of INR 10 million - 2 billion was applied.

- The Taxpayer contended that the use of consolidated financial statements is to eliminate the impact of related party transactions for the purpose of analysing the comparability of companies.
- The Taxpayer contended that working capital adjustment should be provided in order to establish comparability since accounts payable and accounts receivable would have an impact on the profitability of company.

**Tax authority's arguments**

- With regard to the inclusion of ESOP cost in the operating margin computation of the Taxpayer, the Tax Authority contented that the extraordinary factors/profitability adjustment is warranted only in the case of comparable companies and not in case of Taxpayer. Hence, no adjustment is permitted to the margin of the Taxpayer.
- On the inclusion of new comparable companies before the DRP, the Tax Authority contented that these were not discussed during the TPO proceedings. Hence, new comparable companies' arguments should not be considered.
- With respect to consolidated financial statements, the Tax Authority argued that it was appropriate to consider companies in India, i.e. in same geographical and socio - economic conditions as the Taxpayer. Since consolidated financial statements included financials of subsidiaries operating in different territorial jurisdictions, it was appropriate to reject these companies as they do not fulfill comparability criteria.
- On working capital adjustment, the Tax Authority contended that the Taxpayer has not made any working capital adjustment in the transfer pricing documentation and sought this adjustment as an afterthought to reduce margins of comparable companies only when the TPO rejected the comparable companies hence should not be allowed.

**Ruling of the Tribunal**

*Treatment of ESOP cost*

The Tribunal accepted the contentions of the Taxpayer to exclude one time ESOP cost while computing the margin of the taxpayer. The Tribunal held that ESOP cost incurred by the Taxpayer arose due to the acquisition of KSIL Worldwide by Capgemini Group in the relevant year and was an exceptional item that was amortized by the taxpayer over a period of five years. Hence, an adjustment in the margin of the taxpayer was allowed to remove impact of any extraordinary factors.

*Use of standalone vs consolidated results*

The Tribunal upheld the view of the Tax Authority that standalone financial statements should be considered for the purpose of comparison of margins of comparable companies. The consolidated results include profits from different jurisdictions having different geographies and market conditions and hence would not be comparable. Accordingly, the Tribunal rejected the use of consolidated financial statements and rejected companies for having substantial related party transactions on a standalone basis.

*Exclusion of companies with high turnover*

The Tribunal rejected the contention of the Taxpayer to apply a quantitative filter for screening comparable companies based on size/ turnover relative to the turnover of the Taxpayer. The Tribunal disregarded the reasons proposed by the Taxpayer for removing high turnover companies considering the economies of scale, greater bargaining power, more skilled employees and high risk taking capabilities enjoyed by large companies. The Tribunal upheld the views of the Tax Authority that the concept of economies of scale is relevant to manufacturing concerns that have high fixed assets and where the margin increases with an increase in turnover. The Tribunal concluded that no linear relationship existed between profitability and turnover. The Tribunal also stated that requirement of skilled employees is dependent on the nature of the business and not on the turnover of the company.

As for the bargaining power, the Tribunal held that taxpayer is a part of a well established multi-national group; it cannot be accepted that it has less bargaining power than any other Indian company, however big it may be. Accordingly, it would not be appropriate to use a turnover filter for purposes of comparing margins. The Tribunal clarified that Dun and Bradstreet makes classifications accordingly to size of the company i.e., large, medium and small and not on the basis of the margin. However, the Tribunal held that turnover criteria would be relevant only to ensure that the comparable selected is also an established player capable of executing similar work as the taxpayer. Accordingly, a quantitative criterion of INR 1 billion was applied to eliminate potential comparables that had turnover below this threshold.

*High profit/loss making companies*

The Tribunal held that comparable companies satisfying all the comparability criteria cannot be rejected merely on the ground of extremely high profit or for having a loss, unless it involves abnormal business conditions. The Tribunal agreed to reject companies that had abnormal operations during the financial year. Further, the Tribunal also emphasized the OECD guidelines, which also provide that loss making uncontrolled transactions should be further investigated and should be rejected only when the loss does not reflect normal business conditions.

*Inclusion of new comparables*

The Tribunal upheld the inclusion of new comparables during the DRP proceedings since the Taxpayer was not provided sufficient opportunity for analyzing new comparable companies at the time of TPO proceedings. Further, the Tribunal stated that it would be appropriate to take as many comparables as possible so that the mean margin is closer to the correct margin and small differences, if any, would be eliminated by increasing number of comparable companies.

*Working capital adjustment*

The Tribunal upheld the contentions of the Taxpayer that working capital adjustment is required to be made because it impacts the profitability of the company and the Indian Regulations also provide that comparability has to be judged with respect to various factors. Accordingly, the average of opening and closing balance of accounts receivables/ payables for the relevant year can be considered to compute the working capital adjustment. The Tribunal highlighted that the benefit of working capital adjustment cannot be denied merely because the Taxpayer had not made a claim in respect of the same in its transfer pricing documentation.

**Comments**

Globalization has led many multinational enterprises to establish information technology, research and development (R&D) and back office operations in India. Generally, the Indian affiliates providing services operate as "captive service providers" getting remunerated on a cost plus basis and are insulated from key business risks. Captive service providers have been subject to significant transfer pricing adjustments in the past few years in India. One of the key transfer pricing controversies that arise in cases of such transactions is the criteria for selection of comparable companies.

In practice, both quantitative and qualitative criteria are used to include or reject potential comparables. In a few decisions in the past Tribunal rulings, under similar facts, had upheld size criteria in terms of sales as appropriate, for selection of comparables. This ruling deviates from the earlier rulings and suggests the need to establish a correlation between profitability and the quantitative criteria to be applied. However, at the same time the Tribunal has applied quantitative criteria of INR 1 billion for rejecting potential comparables that are not established players, even though the ruling does not indicate the correlation between the two.

The ruling suggests that the choice and application of comparable selection criteria depends on the facts and circumstances of each case. Taxpayers would therefore need to appropriately consider the impact this ruling could have on their transfer pricing arrangements for similar transactions.

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# Controversies

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## Whether penalty u/s.271(1)(c) can be charged for any claim made by the assessee due to "silly mistake" or Human Error" ?

**Issue:**

The assessee made a wrong claim for expenditure regarding provision for gratuity though the gratuity fund was not an approved fund. Since it was a mere provision in the books of accounts, the claim was hit by the provisions of 40A(7). The AO levied penalty u/s.271(1)(c) for such wrong claim.

**Proposition :** No penalty can be charged or erroneous claim due to human error or silly mistake.

**View against the proposition:**

A. As per the wordings of this section, " If the assessing officer or the commissioner (Appeals) or the commissioner in the course of any proceeding under this act, is satisfied that any person-has concealed the particular of his income or furnished inaccurate particulars of such income" , penalty is leviable.

   Minimum penalty leviable is 100% of the tax sought to be evaded and maximum penalty leviable is 300% of the tax sought to be evaded by reason of the concealment of particulars of income, or furnishing inaccurate particulars of such income.

B. As per explanation 1 of this section, if the assessee offers no explanation or the explanation offered by the assessee is found by the assessing officer, CIT (A) or CIT to be false or

C. Such person offers an explanation but is not able to substantiate and fails to prove that such explanation is bonafide and all the facts relating to the same and material to the computation of his total income have been disclosed by him, penalty will be leviable.

D. As per explanation 4 of this section, if on account of addition there is reduction of loss, such addition will be considered as positive income and penalty will be leviable.

   Thus as per section 271 (1) (C), penalty is leviable for concealment of income or furnishing inaccurate particulars of such income.

In **CIT v. N Nandakumar, Aji Industries [2005] 279 ITR 80 (Ker)**, penalty deleted by the Tribunal was restored with reference to the Explanation to section 271(1)(c) on the ground that the assessee's explanation for the additions was not bona fide. It was also found that the Tribunal's understanding of the law, that fundamental principles of criminal law, will apply was totally mistaken after the decision of the **Supreme Court in K.P. Madhusudhanan v. CIT [2001] 251 ITR 99 (SC)**. The Tribunal in this case did not go by the parameters set out in the Explanation, but had misled itself in treating penalty under the income-tax law, which is a civil penalty on par with fine or imprisonment under the criminal law.

Penalty is leviable for lack of explanation for cash found during a search. IT was so held in **Sardar Bhagwan Singh Chawla V. CIT [2005] 279 ITR 142 (All)**. The assessee attributed the cash found as belonging to different persons in the family. It was found after elaborate enquiry, that the assessee's version was not believable. The Explanation itself did not accord with the two statements made during the search. It is in this background that the penalty was found justified by the High Court.

Debit of penalty disallowable items like payment of income-tax or write off of a capital assets like equipment in the books were not adjusted in the income reported in the return. Considering that the assessee was a company, which can be presumed to have preofessional assistance in computation of its income subject to compulsory audit, the **High Court in CIT v. Zoom Communication P. Ltd. [2010] 327 ITR 510 (Delhi)** restored the penalty of Rs.1 lakh deleted by the Tribunal. The High Court referred to the decision of the **Supreme Court in CIT v. Reliance Petroproducts P. Ltd. [2010] 322 ITR 158 (SC)** and did not accept the explanation that the mere fact that the factual information was already available in the P & L Account should spare penalty. Where the assessee had claimed a deduction knowing that they were incorrect, such a claim would be vulnerable for penalty to the extent, that taxable income gets reduced. Concealment would be either by way of under-statement of income or by a claim, which is inadmissible.

Where assessee had not disclosed capital gains even in the return filed in response to notice under section 148 and the assessee had also been convicted for concealment of income, penalty could not be avoided, The argument on the part of the assessee that the sale of the property was within the knowledge of the Assessing Officer in view of the application of clearance certificate prior to sale was not found acceptable for avoiding penalty, which was upheld in **Smt. Ram Piari V. CIT [2010] 327 ITR 318 (P&H).**

If there is suppression of purchases / sales, it is the duty of the assessee to prove that there was no suppression of purchases or sales and the difference was on account of guess work on the part of the assessing officer. In the case of **Commissioner of Income-Tax Vs Satish Medical Agencies reported in 277 ITR 394 Allahabad**, it was held that, the assessee could not prove that there was no willful or gross negligence on its part in disclosing the income. The onus cast on the assessee was not discharged by the assessee.

In this case there were search proceedings and purchases / sales were found suppressed. In this case penalty leviable was confirmed. Thus if assessee makes erroneous claims for deductions or makes silly mistakes in claiming deductions or in not disclosing income liable to tax, we cannot escape penalty u/s.271(1)(c) of the I.T. Act, 1961.

**View in favour of the Proposition :**

In concealment, there is suppression of truth by the assessee. In the case of **K.C. Builders V/s. ACIT reported in 265 ITR 562 S.C.**, it was held that word concealment inherently carried with it the element of mens rea. Concealment is attributable to an intention or desire on the part of the assessee to hide or conceal the income to avoid imposition of tax thereon. Thus if the income is not disclosed, it is the act of concealment but if the bogus transactions are recorded in the books of account and wrong deductions are claimed, it is the act of furnishing inaccurate particulars of income. In some cases there is element of concealment of income as well as furnishing inaccurate particulars of income. Where there is a failure of duty to disclose fully and truly particulars of income, the penal provision would operate as held in the case of **A.M. Shah & Co. V/s. CIT reported in 238 ITR 415 Gujarat High Court.**

As held in the case of **Peizer Ltd V/s DCIT by ITAT, Mumbai 'C' Bench reported in 146 TTJ 385**, "In concealment some income is not offered for taxation. Thus there is direct attempt to hide income or a part thereof. In furnishing in accurate particulars of income though certain income is offered for taxation but some other means have been employed for withholding the discloser thereof. This is indirect way of keeping back some part of income. In both the cases there is evasion of tax.

In penal proceedings, intention of the assessee is very important. If the intention of the assessee is found to be genuine but the default is on account of bona fide belief, the act of the assessee and subsequent conduct of the assessee etc. is also important and same should be kept in mind at the time of passing order of penalty for concealment. Land mark decisions were given in the following cases should be considered at the time of filing reply of penalty u/s. 271(1)(C).

In old days when the accounts were maintained manually, totaling mistakes were noticed. Now almost all the accounts are maintained on computer so such mistakes hardly occure. Due to software problem even other greater mistake may occure, but if it is proved by the assessee that the mistake was not committed with the consent or knowledge of partner / director, it is a reasonable cause and in such cases penalty is not leviable. Kindly refer **Commissioner of Income-Tax Vs Pitambardas Dulichand (Mp) reported in 273 ITR 271 M.P.**

Totaling mistakes does not happen in computer accounting but even more serious mistake may take place. In such cases this judgment can be useful.

Assessee's claim of exps. deductions, exemptions, allowance etc in the return on the basis of advise of their tax consultants. If such claim is rejected, whether penalty is leviable ?

Under such circumstances the assessee should obtain affidavit of their counsel, admitting his mistake. If this is done, no penalty u/s. 271 (1) (C) is levibale.

In the case of **CIT V/s. Deepak Kumar reported in 232 CTR 78 P&H 0020** the assessee claimed his income exempted u/s. 10 (36) on the basis of advise of his counsel. Claim of exemption was rejected. In penal proceedings the assessee filed affidavit of his counsel admitting his mistake. Penalty was cancelled looking to the facts of the case.

**Summation :**

In the context of concealment penalties the **Supreme Court has given two landmark judgement. Apex Court in DIlip N. Shroff v. Joint CIT (2007) 291 ITR 519 (SC) and T. Ashok Pai v. CIT (2007) 292 ITR 11 (SC).**

The Hon. SC declared following principles for penalty u/ s. 271(1)(c):

Mere omission or negligence would not constitute a deliberate act of suppression.

The assessing officer while considering levy of penalty should consider whether the assessee has been able to discharge his part of the burden. He should not begin with the presumption that the assessee is guilty.

Though the penalty proceedings under the income-tax law may not be criminal in nature, they are still quasi-criminal requiring the Department to establish that the assessee has concealed his income. For this purpose, the inference drawn in the assessment proceedings cannot automatically be adopted in penalty proceedings as decided in **Anantharam Veerasinghaiah and Co. v. CIT 123 ITR 437 (SC)**.

However, in the case of **Union of India v. Dharmentra Textiles Processors (2007) 295 ITR 244 (SC)** the Supreme Court, in the context of section 11AC of the Central Excise Act has held that the view in the case of Dilip N. Shroff is not correct. It has held that penalty under section 271(1)(c) is a civil liability and the willful concealment is not an essential ingredient for attracting civil liability unlike the matter of prosecution under section 276C. While considering an appeal against an order made under section 271(1)(c), what is required to be examined is the record which the officer imposing penalty had before him and if that record can sustain the finding that there has been concealment, that would be sufficient to sustain the penalty.

The views expressed by the Supreme Court in the case of **Dharmendra Textile Processors (supra)** cannot be viewed as an authority for the proposition that a penalty under section 271(1)(c) is an automatic consequence of an addition being made to income of the taxpayer, for the reason that, whether it is a civil liability or a criminal liability, penalty under section 271(1)(c) can only come into play when the conditions laid down under that section are satisfied. By no stretch of logic or rationale it could be said that imposition of penalty under section 271(1)(c) has a cause and effect relationship with addition being made to the returned income per se. An addition being made to income because of impact of the Explanation 1, does effectively raise a presumption against the assessee, but that is an entirely rebuttable presumption and the scheme of rebuttal is provided in the Explanation itself.

Where in respect of any facts material to the computation of total income of any person, if such person:

(a) (i) fails to offer an explanation; or

(ii) offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false; or

(b) (i) offers an explanation which he is not able to substantiate ; and

(ii) fails to prove that such explanations is bonafide; and

(iii) fails to prove that all the facts relating to the same and material to the computation of income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as result thereof, shall be deemed to represent the income in respect of which particulars have been concealed.

This Explanation places the onus of proof on the assessee to establish that income has not been concealed by him as the assessee has to offer an explanation which he has to substantiate and prove that is bona fide and prove that he has disclosed all facts which are material to computation of total income.

It is now important to refer to the decision of Hon. Supreme Court in the case of Price Waterhouse Coopers P. Ltd. v. CIT [TS-731-SC-2012]

In this case Hon. Supreme Court held that penalty could not be levied in cases of erroneous tax claims made due to "human error". Supreme Court further observed that "We are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even such assessee could make a "silly" mistake and, indeed this has been acknowledged both by the Tribunal as well as by the High Court."

The Supreme Court noted that the Tax Audit Report was filed along with the return unequivocally stated that the provision for payment was not allowable under sec 40A(7). This indicated that the assessee made a computation error in its return of income. SC also observed that not only the assessee but also the AO had overlooked the contents of the Tax Audit Report while framing the assessment.

The Supreme Court further observed that "The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appear to us that all that has happened in the present case is that through a bonafide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income."

Thus, finally it is submitted that there is no question of imposing penalty u/s. 271(1)(c) in respect of any erroneous claim for deduction due to human error even when assessee is having high expertise and reputation and even if the assessee is assisted by Tax experts as even they can make (silly mistake) and when appropriate disclosure is made in Tax Audit Report it clearly indicates there is no intention to furnish inaccurate particulars of income or concealment of income.

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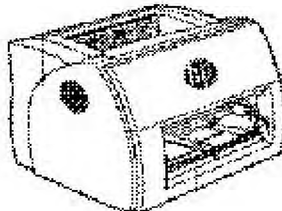

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# Judicial Analysis

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**Discharge of liability attached with a property can be treated as cost of improvement and allowable as such**

**1** **CIT v. Daksha Ramanlal. (1992) 197 ITR 123 (GUJ)**

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" Whether, on the facts and in circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to claim deduction of Rs. 25,000 paid by her for redemption of the mortgage for the purpose of computing capital gains?"

The facts giving rise to that question, briefly stated, are as under :

One SurottamHathising was the owner of land, admeasuring 584 sq. yards. He gifted half of that land to the assessee and the other half to Automi Harsh Hathising. Thus, the assessee received 292 sq. yards and became the owner of it. She sold the same during the accounting year ending on October 19, 1971, for Rs. 59,956. In the return filed for that year, she disclosed capital gain of Rs. 29,125 on the sale of the said land. Apart from other deduction with which we are not concerned, the assessee claimed deduction of Rs. 25,000 paid by her to the mortgagee, as the land, which was gifted to her, was subject to a mortgage. The Income-tax Officer rejected the assessee's claim for deduction of that amount, as he was of the view that it was not a liability which increased the cost of the land. The appeal filed by the assessee to the Appellate Assistant Commissioner of Income-tax was dismissed, as the Appellate Assistant Commissioner agreed with the view of the Income-tax Officer that the assessee's claim for deduction of Rs. 25,000 paid to the mortgagee was not valid. The assessee then approached the Tribunal by preferring an appeal. The Tribunal held that the assessee did not sell the capital asset that she had received by way of gift; what she had sold was something more than that, viz., the interest which the donor had transferred to the mortgagee. As she was required to redeem the mortgage and, for that purpose, she had to pay Rs. 25,000 to the mortgagee, being the mortgage amount, the said cost of acquisition was also required to be taken into account while computing the capital gain. Taking that view, the Tribunal further held that the assessee was entitled to deduction of the said sum of Rs. 25,000 under clause (ii) of section 48 of the Act. The Tribunal partly allowed the appeal and directed the Income-tax Officer to deduct Rs. 25,000 paid by the assessee to the mortgagee as the cost of acquisition. Aggrieved by the decision of the Tribunal, the Revenue has got the reference by the Tribunal of the question set out earlier.

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On a combined reading of the above provisions, it can be said that, if the capital asset sale of which has resulted in capital gains became the property of the assessee under a gift and, if the capital asset became the acquisition of such capital asset would be the cost of the capital asset to the previous owner or the fair market value of the asset on January 1, 1954, depending upon the option that may be exercised by the assessee in this behalf. What is submitted by learned counsel for the Revenue is gift and that the said capital asset had become the property of the assessee under a owner before January 1, 1954. The assessee had not exercised the option available to her and no material was brought on record to show as to what was the cost of the capital asset to the previous owner. The Income-tax Officer, therefore, noted the fair market value of the asset on January 1, 1954, and computed the capital again accordingly. It is submitted that the Tribunal overlooked this provision and committed an error in computing the capital gains in the mode provided by section 48(1)(ii). In support of his submission, learned counsel relied upon a decision of the Kerala High Court in AmbatEchukuttyMenon v. CIT [1978] 111 ITR 880. In that case, what had happened was that the assessee and his co-heirs had inherited a property which was earlier mortgaged by the previous owner. The assessee, along with his other co-heirs, discharged the mortgage. The assessee, along with his other co-heirs, discharged the mortgage. The said property was then sold and as the assessee had 1/5th share in the property, he declared the capital gain after deduction was claimed as the cost of acquisition. The

Income-tax Officer accepted the said method of computation and completed the assessment. Before the Appellate Assistant Commissioner, it was contended that the amount expended on discharging the mortgage ought to have been treated as the cost incurred by the assessee in effecting an improvement to the capital asset and deduction ought to have been allowed in respect of the said amount, but that contention was rejected. The matter was then carried to the Tribunal which also agreed with the view taken by the Appellate Assistant Commissioner. On a reference made to the High Court, the High Court held that the case was governed by section 49 and the cost of acquisition of the asset was deemed to be the cost at which the previous owner of the property had acquired it. As regards the claim for deduction under the head "cost of improvement", the High Court held that, in order to entitle the assessee to claim a deduction in respect of the cost of any improvement, the expenditure should have been incurred in making any additions or alterations to the capital asset that was originally purchased by the previous owner. If, subsequent to the purchase of the property by the previous owner, it was mortgaged by him and that mortgage was later discharged either by himself or by his successor-in-interest, that would not constitute an improvement to the capital asset which originally became the property of the previous owner. Thus, that was a case where the only question which arose for consideration was whether the amount spent by the assessee in order to discharge the mortgage created by the previous owner could be regarded as the cost of effecting any improvement to the capital asset. Even though we do not find any discussion in that judgment as regarded as the cost of effecting any improvement to the capital asset. Even though we do not find any discussion in that judgment as regards question No. 1, while answering the question, the High Court did hold that the Tribunal was right in holding that the sum spent by the assessee did not represent the cost of acquisition of the Act. Thus, though the said decision of the Kerala High Court supports learned counsel, with respect, it has to be stated that it does not contain the reasons for taking that view and, therefore, the said decision is not of much help to us.

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Though the Madras and Kerala High Court have taken the view that when a capital asset is received by an assessee in one of the modes specified in section 49, what has to be taken into consideration is the cost of acquisition to the previous owner and any sums paid by the assessee for removing any encumbrance thereon cannot be deducted while computing the capital gains on sale of such property. With due respect to them, we cannot agree with that view. In our opinion, what has been overlooked in those cases is that the word 'property' does not mean merely physical property, but also means the right, title or interest in it. In the case of a mortgage or lease, different persons will have different rights in the same property. If a person is an absolute owner of the property, then it can be said that he has all the right and interest in that property. If the property is mortgaged or leased, then the owner of the property would possess only those right which are not transferred to the mortgage or the lessee, as the case may be. When a person who has mortgaged the property transfers it to another person, what he transfers is only those rights which he possesses. The transferee would get the property subject to the rights created by the previous owner in favour of others. This aspect does not appear to have been considered while deciding the previous owner gifted the mortgaged property to the assessee, what he had transferred to the assessee was the right, title or interest which he had in that property. When the assessee discharged the mortgage by paying Rs. 25,000 to the mortgagee, what he did was to purchase that right or interest which the mortgagor did not then possess and which the mortgagee had in the property. When the assessee sold the property, he did not merely sell the right, title or interest which he had received from the donor, but also the right, title or interest which he had purchased from the mortgage. For this reason, the case would not be covered by section 49(1)(ii) nor by section 55(2)(ii) for the purpose of computation of the capital gains.

Section 55(2) can have application only in those cases where the capital asset becomes the property of the assessee by any of the modes specifies by sub-section (1) of section 49. The capital asset which the assessee sold had not become the property of the assessee by one of the modes specifies in sub-section (1) of section 49. It was partly by that mode and partly by purchasing the interest of the mortgagee in the property. Therefore, the case, in our opinion, will be governed either by section 48 read with section 55(2)(i) or partly by section 48(1)(ii) and parly by section 49(1) read with section 55(2)(i) of the Act. In either case, to the assessee. Payment of Rs. 25,000 to the mortgagee for removing that encumbrance was certainly the cost of acquisition of the interest of the mortgagee and, therefore, that was required to be taken into account for the purpose of computing the total cost of acquisition of the property which the assessee sold and thereby made capital gains.

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**2** **R. M. Arunachalam etc. v. CIT (1997) 227 ITR 222 (SC)**

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2. These appeals filed by the assessee involve the question whether the estate duty paid by the assessee under the provisions of the ED Act, 1953, to the extent it relates to the property that is transferred by the appellant, can be regarded as 'cost of acquisition' of the said property or 'cost of improvement' to the said property for the purpose of computation of capital gains under the IT Act, 1961 (hereinafter referred to as 'the Act')….

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3. RamanathanChettiar, who had considerable movable and immovable properties, died on 26th January, 1958 leaving behind his wife, Smt. UmayalAchi and daughter, Smt. S. Valliammai as his legal heirs. On his death the said properties devolved upon the aforesaid heirs in equal shares and a partition was effected between them under which certain properties were given to Smt. UmayalAchi and the rest to Smt. S. Valliammai. Smt. UmayalAchi adopted the assessee as her son in April, 1961. She later died on 20th August, 1964 leaving a will bequeathing all her properties to the assessee as her adopted son. During the previous years relevant to the assessment years in question the assessee disposed of various properties of RamanathanChettiar that were bequeathed to him by Smt. UmayalAchi. In respect of the asst. yrs. 1966-67, 1967-68, 1969-70 and 1970-71 the assessee offered Rs. 7,537, Rs. 1,84,480, Rs. 19,015 and Rs. 32,118 respectively as capital gains arising from the said transfers. For that purpose, the assessee had taken the cost of acquisition of the capital assets concerned at their market value as on 20th August, 1964, the date on which he became entitled to them under the will from his adoptive mother. The assessee claimed that since estate duty had been paid consequent upon the death of RamanathanChettiar and Smt. UmayalAchi, the proportionate part thereof as is attributable to the value of the properties sold should be deducted in computing the capital gains. The ITO rejected the said contention and computed the capital gains for the asst. yrs. 1966-67, 1967-68, 1969-70 and 1970-71 at Rs. 80,050, Rs. 4,89,876, Rs. 55,758 and Rs. 81,254 respectively on the ground that under Expln. to s. 49(1) of the Act, RamanathanChettiar alone should be considered as the 'previous owner' and that consequently the appellant would be entitled to adopt as the cost of acquisition of the properties sold their value as on 1st January, 1954. Appeals filed against the said orders of assessment of the ITO were rejected by the AAC as well as the ITAT (hereinafter referred to as 'the Tribunal'). At the instance of the assessee, the Tribunal referred the following question to the Madras High Court :

" Whether in computing the capital gains on the sale of properties made by the assessee during the previous years relevant for the asst. yrs. 1966-67, 1967-68, 1969-70 and 1970-71, proportionate estate duty paid on the death of Shri Ramanathan Chettiar and Shrimati Umayal Achi in respect of properties sold should be deducted ?"

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5. A perusal of the aforesaid provisions would show that for the purpose of computation of income chargeable under the head 'Capital gains" the cost of acquisition of the asset and cost of improvement thereto are to be deducted in view of s. 48(b).Under sub-s. (1) ofs. 49 in a case where the capital asset became the property of the assessee under any of the modes specified in cls. (i), (ii) and (iii), which include succession, testamentary as well as non-testamentary, the cost of acquisition of the asset is to be deemed to be the cost for which the previous owner of the property acquired it as increased by the cost of any improvement of the assets incurred or borne by the previous owner or the assessee, as the case may be. Under the Expln.to sub-s. (1) of s. 49 previous owner in relation to any capital asset owned by an assessee means the last previous owner of the capital asset who acquired it by a mode of acquisition other than that referred to in cls. (i), (ii) and (iii) of sub-s. (1).

6. In the present case, the capital assets became the properties of the assessee under the will executed by Smt. UmayalAchi, i.e., under cl. (ii) of sub-s. (1) of s. 49. The capital assets became the property of Smt. UmayalAchi under sub-cl. (a) of cl. (iii) of sub-s. (1) of s. 49 by succession after the death of her husband RamanathanChettiar. By virtue of the Explanation in sub-s. (1) of s. 49 RamanathanChettiar has been treated as the previous owner of the assets by the ITO. In view of s. 48(ii) for computation of

income chargeable under the head "Capital gains" deduction can be claimed in respect of cost of acquisition of the capital asset or the cost of improvement thereto.

7. The question for consideration is whether the estate duty paid in respect of the estate of RamanathanChettiar and the estate of Smt. UmayalAchi, to the extent such duty related to the assets in question, can be claimed as a deduction as 'cost of acquisition' or as 'cost of improvement'.

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14. While we are affirming the impugned judgment of the High Court, we are unable to endorse the view of the Kerala High Court in AmbatEchukuttyMenon vs. CIT (supra) to which reference has been made by the High Court in the impugned judgment. In that case, the assessee, as one of the heirs, had inherited property from the previous owner who had mortgaged the same during his life-time and after his death the heirs, including the assessee, had discharged the mortgage created by the deceased. The said property was subsequently acquired under the Land Acquisition Act and for the purpose of capital gains the assessee sought deduction of the amount spent to clear the mortgage. The High Court held that the capital asset had become the property of the assessee by succession or inheritance on the death of the previous owner under s. 49(1) of the Act and the cost of acquisition of the asset is to be deemed to be the cost for which the previous owner acquired it, as increased by the cost of any improvement of the assets incurred or borne either by the previous owner or by the assessee. According to the High Court, having regard to the definition of the expression 'cost of improvement' contained in s. 55(1)(b) of the Act, in order to entitle the assessee to claim a deduction in respect of the cost of any improvement, the expenditure should have been incurred in making any additions or alterations to the capital asset that was originally acquired by the previous owner and if the previous owner had mortgaged the property and the assessee and his co-owners cleared off the mortgage so created, it could not be said that they incurred any expenditure by way of effecting any improvement to the capital asset that was originally purchased by the previous owner. This decision has been followed in subsequent decisions of the High Court in SalayMohamad Ibrahim Sait vs. ITO &Anr. (1994) 120 CTR (Ker) 313 : (1994) 210 ITR 700 (Ker) : TC 21R.466 and K. V. Idiculla vs. CIT (1995) 123 CTR (Ker) 441 : (1995) 214 ITR 386 (Ker) : TC 22R.401. A contrary view has been taken by the Gujarat High Court in CIT vs. DakshaRamanlal (1992) 105 CTR (Guj) 207 : (1992) 197 ITR 123 (Guj) : TC 21R.471. In taking the view that in a case where the property has been mortgaged by the previous owner during his life-time and the assessee, after inheriting the same, has discharged the mortgage debt, the amount paid by him for the purpose of clearing off the mortgage is not deductible for the purpose of computation of capital gains, the Kerala High Court has failed to note that in a mortgage there is transfer of an interest in the property by the mortgagor in favour of mortgagee and where the previous owner has mortgaged the property during his life-time, which is subsisting at the time of his death, then after his death his heir only inherits the mortgagor's interest in the property. By discharging the mortgage debt his heir who has inherited the property acquires the interest of the mortgagee in the property. As a result of such payment made for the purpose of clearing off the mortgage the interest of the mortgagee in the property has been acquired by the heir. The said payment has, therefore, to be regarded as 'cost of acquisition' under s. 48 r/w s. 55(2) of the Act. The position is, however, different where the mortgage is created by the owner after he has acquired the property. The clearing off the mortgage debt by him prior to transfer of the property would not entitle him to claim deduction under s. 48 of the Act because in such a case he did not acquire any interest in the property subsequent to his acquiring the same. In CIT vs. DakshaRamanlal (supra) the Gujarat High Court has rightly held that the payment made by a person for the purpose of clearing off the mortgage created by the previous owner is to be treated as cost of acquisition of the interest of the mortgagee in the property and is deductible under s. 48 of the Act.

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## 3 V. S. M. R. Jagdishchandran (Decd) by LRS v. CIT (1997) 227 ITR 240 (SC)

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2. Whether the Tribunal was right in holding that mortgage debts does not constitute diversion at source?

3. Whether the debts discharged by the applicant on the properties cannot be said to enhance the cost of acquisition."

3. The assessee sold a house property No. 22, Chairman Muthuramalyer Road, Madurai for a sum of Rs. 90,000 subject to incumbrance in the asst. yr. 1975-76 and for the same assessment year he sold plot Nos. 1, 3 and half of plot No. 4 in T.S. No. 831/1 for a sum of Rs. 12,600. The ITO computed the capital gains in respect of the said properties at Rs. 68,400. The assessee questioned the computation of capital gains before the AAC and contended that the debts in respect of which mortgage had been executed were discharged by the buyer himself out of the sale proceeds, that the debts should be considered as increase in cost of acquisition of the properties and that in any event the debts may be treated as improvement to the property or as the cost of obtaining clear title to the property. The AAC rejected the said contention. He, however, upheld the contention of the assessee that there was an overriding title of the creditors in respect of the sale proceeds and, therefore, there was diversion at source on the basis of such overriding title and the assessee was not liable to charge under the capital gains in respect of the sale of the properties and, therefore, he deleted the capitals gains of Rs. 68,400 as computed by the ITO. The Tribunal, following the decision of the Kerala High Court in Ambat Echukutty Menon vs. CIT (1977) CTR (Ker) 307 : (1978) 111 ITR 880 (Ker) : TC 21R.461,, and the decision of the Madras High Court in CIT vs. V. Indira (1979) 13 CTR (Mad) 6 : (1979) 119 ITR 837 (Mad) : TC 22R.431, held that clearing of the mortgage debt could neither be treated as 'cost of acquisition' nor as an 'cost of improvement' made by the assessee. The Tribunal, therefore, held that the deduction of the capital gains was not justified. Since the Tribunal declined to refer to the High Court the questions referred to above, the assessee filed an application under s. 256(2) of the Act before the High Court which has been rejected by the impugned order. The High Court has relied upon the decision of the Full Bench of the High Court in S. Valliammai&Anr. vs. CIT (1981) 24 CTR (Mad) 313 (FB) : (1981) 127 ITR 713 (Mad) : TC 22R.412, and has held that by discharging the mortgage debt subsisting on the property which was the subject-matter of a sale, the assessee was not either improving or perfecting his title or improving the property in any manner and, therefore, the amount paid for discharging the mortgage debt cannot be taken to be for the cost of acquisition as contended by the assessee.

4. In Civil Appeals Nos. 6098-6101 of 1983 [since reported as R. M. Arunachalam etc. vs. CIT (1997) 141 CTR (SC) 348 filed against the judgment of the Full Bench of the Madras High Court in S. Valliammai&Anr. vs. CIT (supra) we have examined the correctness of the view of the Kerala High Court in AmbatEchukuttyMenon vs. CIT (supra) and have held that the said decision does not lay down the correct law in so far as it holds that where the previous owner had mortgaged the property during his life time the clearing off the mortgage debt by his successor can neither be treated as 'cost of acquisition' nor as 'cost of improvement' made by the assessee. It has been held that where a mortgage was created by the previous owner during his time and the same was subsisting on the date of his death, the successor obtains only the mortgagor's interest in the property and by discharging the mortgage debt he acquires the mortgagee's interest in the property and, therefore, the amount paid to clear off the mortgage is the cost of acquisition of the mortgagee's interest in the property which is deductible as cost of acquisition under s. 48 of the Act. In the present case, we find that the mortgage was created by the assessee himself. It is not a case where the property had been mortgaged by the previous owner and the assessee had acquired only the mortgagor's interest in the property mortgaged and by clearing the same he had acquired the interest of the mortgagee in the said property. The questions raised by the assessee in the application submitted under s. 256(2) of the Act do not, therefore, raise any arguable question of law and the said application was rightly rejected by the High Court. In the circumstances, even though we are unable to agree with the reasons given in the impugned order, we are in agreement with the order of the High Court dismissing the application filed by the assessee under s. 256(2) of the Act.

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## 4 Shri Vilas Kashinath Sakpal vs. ITO (ITA No.3885/ M/2010)

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11. We have heard both the sides and have also gone through the facts of the case and case laws pointed out by either side. The AO, undisputedly has brought out the correct facts as submitted by the assessee, that the loan was taken by the firm from DMK JaoliSahakari Bank Ltd., Mumbai, wherein assessee's father, late Mr.Kashinath K. Sakpal mortgaged his property. After the demise of the father, the property was inherited by the legal heirs of late Mr.Kashinath K. Sakpal and an amount of Rs. 28,53,245/- was payable to the bank. The AO also does not dispute the fact that the dues to the bank were actually cleared. We must also observe that the CIT(A), somehow, went on another line of thought, wherein he observed that it was the assessee who had mortgaged the property, which, to our mind is totally wrong, so far as the facts of the case are concerned.
12. We also feel that the case of the assessee is completely fortified by the decision of the Hon'ble Supreme Court in the case of CIT v/s RM Arunachalam (supra), wherein at page 239 it was held as under:

    "In CIT v. Daksha Ramanlal [1992] 197 ITR 123, the Gujarat High Court has rightly held that the payment made by a person for the purpose of clearing off the mortgage created by the previous owner is to be treated as cost of acquisition of the interest of the mortgagee in the property and is deductible under section 48 of the Act".
13. Respectfully following the decision of the Hon'ble Supreme Court, we allow the claim of the assessee. We, therefore, set aside the order of the CIT(A) and direct the AO to allow the claim of Rs.28,53,245/- made by the assessee.

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## 5 Lalitaben Hariprasad v. CIT (2010) 320 ITR 698 (Guj)

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"Whether on the facts and in the circumstances of the case, the assessee was entitled to claim Rs. 14,33,000 as additional cost of acquisition of the interest in property for purposes of computation of capital gains ?"

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The applicant in tax reference is Smt. LalitabenHariprasad Shah and the appellant in tax appeal is ShriHariprasad H. Shah. Assessment year in question is 1988-89. There was a Hindu Undivided Family (HUF) of Hariprasad H. Shah consisting of ShriHariprasad H. Shah (karta), his wife Smt. Lalitaben H. Shah and two sons Shri Deepak H. Shah and ShriUdayan H. Shah. The HUF owned immovable property known as 'Samir' situate in Ahmedabad and the said property was a residential property. On 3-11-1986 the property came to be divided as part and parcel of total partition which took place amongst members of HUF. In the process of such partition, the father and mother, viz., karta and his wife, the assessees before the Court, took one half share each of the immovable property as the property admitted of such physical partition. Necessary entries in the city survey records were also duly made pursuant to the said partition. On 11-8-1999 the Assessing Officer made an order under section 171 of the Act recognizing the partition.

Both the assessees, in their respective returns while computing capital gains on sale of their respective share of the immovable property claimed deduction of sum of Rs. 14,33,000 in hands of each one of them being the cost of acquisition of the house property. It is stated that at the time of partition Smt. Lalitaben H. Shah had undertaken to pay a sum of Rs. 14,33,000 to her son ShriUdayan H. Shah for an acquisition of his one fourth share in the immovable property; and similarly ShriHariprasad H. Shah had undertaken to pay a like amount to the other son Shri Deepak H. Shah. The claim made by both the assessees came to be disallowed by the Assessing Officer holding that the property being of HUF, the only cost of acquisition which could be allowed was under the provisions of section 49 of the Act, viz., the cost of acquisition in hands of the original owner from whom the property had been received on partition. Accordingly, deduction to the tune of the value of the property as on 1-4-1974 in hands of the HUF was granted to each of the assessees by taking one half of such value in their respective hands.

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The impugned orders of Tribunal cannot be sustained. The Court would not have gone behind the facts found by the Tribunal. But in the present fact situation, the Tribunal has not recorded the facts correctly in light of the statutory provisions engrafted by way of section 171

of the Income-tax Act. Under sub-section (1) of section 171 of the Act, it is provided that unless and until a finding is recorded by the Assessing Officer as to partition of a Hindu family hitherto assessed as undivided, such a family shall be deemed for the purpose of the Act, to continue to be a Hindu Undivided Family. Under section 172(2) of the Act, the Assessing Officer is obliged to make an inquiry as to whether any partial or total partition has taken place in a case, where, at the time of making assessment under section 143 or section 144 of the Act, such a partition is claimed by any member of the HUF. The said section further provides that the Assessing Officer shall make such inquiry after giving notice of the inquiry to all the members of the family. Thereafter, on completion of the inquiry, the Assessing Officer is bound to record a finding as to whether there has been a partial or total partition of the joint family property, and if a partition has taken place, the date of such partition. This is provided categorically under sub-section (3) of section 171 of the Act. For the present, it is not necessary to refer to other sub-sections of section 171 of the Act. Therefore, when Assessing Officer makes an inquiry by calling upon all members of HUF to inform the officer as to whether a partition as claimed has taken place or not, the members would have to either affirm or deny the factum of such partition. This process would require the member concerned to make a statement either orally before the Assessing Officer and the Assessing Officer recording such statement, or the member concerned, would make a statement by way of a declaration, or in writing, and tendering the same to the Assessing Officer. In the facts of the present case, admittedly while framing an order under section 171 of the Act, the Assessing Officer has taken on record declarations made by all the four members of the HUF. Thereafter, the Assessing Officer has by making an order on 11-8-1999 accepted the claim of partition. The said order has attained finality.

In light of the aforesaid position in law and the facts of the case it is apparent that the Tribunal has committed a grave error in law in terming the said declarations filed by the members of HUF before the Assessing Officer in proceedings under section 171 of the Act, as being self-serving, as being self-created charge. The Tribunal in fact failed to appreciate the said declarations made by all the members of the HUF, the authority before whom the declarations were filed, and the import of such declarations. The Tribunal, it appears, has lost sight of the procedure prescribed under the provisions of section 171 of the Act, while recording the finding in paragraph No. 8 of the impugned order dated 31-3-1997.

In the case of Narendra N. Chauhan (supra) this Court has in almost similar fact situation, observed as under :

"Having heard learned counsel for the parties, we are of the view that since at the time of partition the assessee was not entitled to get the entire property valued at Rs. 67,000 as the assessee's share in the property of the larger Hindu undivided family and since the entire amount of Rs. 23,000 paid by the assessee to the larger Hindu undivided family pertained to the additional interest in the property, i.e., interest in addition to the interest allottable to the assessee at the time of partial partition quantified at Rs. 44,000, the Tribunal was right in allowing the said amount of Rs. 23,000 as cost of acquisition to the assessee for the additional interest under section 48 of the Act. Obviously, this additional interest was not obtained by the assessee as a part of his share in the property of the larger Hindu undivided family at the time of partial partition. The provisions of section 49(1)(i) are applicable to only that portion of the property which the assessee got as the assessee's share in the property of the larger Hindu undivided family and not in respect of the property or interest which was in excess of such share."

Applying the ratio to the facts of the present case, it is apparent that the cost of acquisition in hands of the previous owner, viz., HUF, as proportionately available in hands of each of the assessees, would be governed by provisions of section 49(1)(i) of the Act; whereas the amount of Rs. 14,33,000 paid by each of the assessees to the other two members of the HUF would be termed to be the cost of acquisition to the assessees under section 48 of the Act, being cost of acquisition of the additional interest or additional share acquired by them at the time of partition.

In the circumstances, for the reasons stated hereinbefore, the impugned orders of the Tribunal cannot be sustained. The Tribunal committed an error in law in holding that the assessees were not entitled to claim Rs. 14,33,000 as additional cost of acquisition of interest in the property for the purpose of computation of capital gains in hands of each of the assessees.

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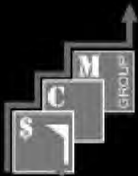


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# Statute Updates

## (A) Service Tax Judgements

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**On business auxiliary service and CENVAT**

1) **Whether an assessee manufacturing goods under own brand name, is regarded as a job-worker merely because he had received materials from a third party and who was acting as selling agent of assessee ?**

   **[2013] 32 taxmann.com 149 (Mumbai - CESTAT) CESTAT, Mumbai Bench. Y.M.Krishna SSK Ltd. v. Commissioner of Central Excise, Kolhapur.**

   **Facts:-**

   Assessee, a manufacturer of sugar, ethanol and country liquor under his own brand name - Assessee had hired M/s. T for marketing of its product - T was also supplying essence and packing materials to assessee for manufacturing of country liquor - Department argued that assessee was acting as job-worker of T and was liable to pay service tax.

   **Held :-**

   The appellant is a manufacturer of sugar and denatured spirit/denatured ethanol having its brand name as **"Pahili Dhar"**.. The appellants were having an agreement with M/s. Talreja Trade (HUF) for marketing of the said country liquor. M/s. Talreja Trade (HUF) is also supplying the essence and packing materials for manufacturing of country liquor to the appellants.

   The revenue is of the view that the raw material is being supplied by M/s. Telreja Trade (HUF) to the appellant and the appellant is a job-worker for Talreja Trade. Therefore, the appellants are liable to pay service tax under the category of "Business Auxiliary Service". Accordingly, the impugned demands are confirmed. Aggrieved by the said order, the appellant is before us.

   After considering the submissions made by both sides and going through the records, we find that the appellant is a manufacturer of country liquor under the brand name "Pahili Dhar" which is a registered trade name of the appellant themselves. The appellants are having the agreement with M/s. Talreja Trade (HUF) for marketing this liquor. Therefore, it cannot be said that the appellant are the job-workers for Talreja Trade as they are the selling agents of the appellants. With these observations, we find that the appellant are not liable to pay service tax under "Business Auxiliary Service" on the above mentioned activity. Accordingly, the appeal is allowed with consequential relief, if any. The stay application is also disposed off in the same manner.

   Hence, assessee was not liable to pay service tax under "Business Auxiliary Service"

2) **Whether Cenvat credit of service tax paid on input services availed during construction of mall, could be utilized for payment of service tax on renting of immovable property?**

   **[2012] 21 taxmann.com 375 (Ahd. - CESTAT) CESTAT, Ahmedabad Bench. Navaratna S.G. Highway Prop. (P.) Ltd. v. Commissioner of Service Tax, Ahmedabad.**

   **Facts:-**

   The assessee was engaged in the business of constructing commercial malls and renting of space in those malls. During the relevant period, the assessee had constructed a mall and during the construction of the mall it had availed different services. In the year 2008-09, the assessee became liable to pay service tax under the category of renting of immovable property after the mall was opened on 9-10-2008. The service tax liability was discharged by utilizing the Cenvat credit taken by the assessee in respect of services availed during construction of mall. However, the lower authorities held that the assessee was not eligible for Cenvat credit in respect of impugned services availed by it on the ground that the 'input services' were not used by the assessee for providing 'output service' which was taxable.

   **Held:-**

   The definition of 'input' is limited to the definition by 'input service'. Credit of duty paid on inputs is available when the inputs are used for providing an

'output' service'. Therefore, there is a need to say that the inputs have been used for providing an 'output service'. In the case of 'input service', the definition includes input services used by a provider of taxable service for providing an output service. Therefore, the definition of input and input service are pari materia as far as the service providers are concerned. That being the position, the decision of the High Court in CCE v. Sai Sahmita Storages (P.) Ltd. [2012] 34 STT 306/17 taxmann.com 107 (AP) would be applicable to the instant case. In that case also, the High Court took the view that without use of cement and TMT bars for construction of warehouse, the assessee could not have provided 'storage and warehousing service'. In the instant case, without utilizing the service, mall could not have been constructed and, therefore, the renting of immovable property would not have been possible. The issue involved is squarely covered by the above decision of the High Court. Since the service tax demand itself is not sustainable, the question of imposition of penalty does not arise.

Heard both sides, the learned counsel for the appellant submitted that the 'input services' were used for construction of mall and the mall was owned by the appellant and appellant has used the space in the mall for renting and leasing. He submits that without a mall there cannot be an 'output service' and therefore the services utilized by them during the construction of mall are to be treated as 'input service' only. He relies upon the decision of the Tribunal in the case of *Sai Sahmita Storages (P) Ltd.* v. *CC&CE* 2010 (255) ELT 91/28 STT 291 (Bang. - CESTAT) which has been upheld by the Hon'ble High Court of Andhra Pradesh as reported in *CCE* v. *Sai Sahmita Storages (P.) Ltd.* 2011(270) ELT 33/[2012] 34 STT 306/17 taxmann.com 107. He submits that in view of the fact that the decision squarely covers the issue the appellant is eligible for the benefit.

Further, he also relies on the decision of the Tribunal in the case of *Lakshmi Vilas Bank Ltd.* v. *CCE* [2010] 27 STT 145 (Chennai - CESTAT) and submits that in that case credit was allowed even in respect of construction of staff quarters. The learned AR on behalf of the Revenue relies on the Circular No.98/1/2008-S.T. dated 4.1.2008 and submits that it was clarified by the Board in this circular that the 'commercial or industrial construction service' or 'works contract service' is an input service for immovable property and immovable property is neither subjected to excise duty nor to service tax and therefore credit is not admissible.

Coming to the statutory definition of the word "input" in Rule 2(g) in the CENVAT Credit Rules, 2002, it may be noted that the said definition of the word "input" can be divided into three parts, namely:

(*i*) specific part
(*ii*) inclusive part
(*iii*) place of use

Coming to the specific part, one finds that the word "input" is defined to mean all goods, except light diesel oil, high speed diesel oil and petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. The crucial requirement, therefore, is that all goods "used in or in relation to the manufacture" of final products qualify as "input". This presupposes that the clement of "manufacture" must be present."

The definition of 'inputs' is limited to the definition of 'input services' as can be seen from the definition given above. Credit of duty paid on inputs is available when the inputs are used for providing an 'output service'. Therefore, there is a need to say that the inputs have been used for providing an 'output service'. In the case of 'input service', the definition includes input services used by a provider of taxable service for providing an output service. Therefore the definition of input and input service are *pari materia* as far as the service providers are concerned. That being the position, the decision of the Hon'ble High Court of Andhra Pradesh would be applicable to the present case. In that case also, the Hon'ble High Court took the view that without use of cement and TMT bars for construction of warehouse assessee could not have provided 'storage and warehousing service'. In this case also, without utilizing the service, mall could, not have been constructed and therefore the renting of immovable property would not have been possible. The issue involved is squarely covered by the decision of the Hon'ble High Court of Andhra Pradesh. Since the service tax demand itself is not sustainable, the question of imposition of penalty does not arise. The appeal is allowed with consequential relief to the appellants.

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# Statute Updates

## (B) Foreign Exchange Management Act (FEMA)

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1. **"Write-off" of unrealized export bills – Export of Goods and Services – Simplification of procedure**

   ***Ref.: A. P. (DIR Series) Circular No. 88 dated March 12, 2013***

   With a view to further simplifying and liberalizing the procedure and for providing greater flexibility to all exporters as well as the Authorized Dealer banks, it has now been decided to effect, the following liberalization subject to certain conditions in the limits of "write-offs" of unrealized export bills ***cumulatively*** during the year:

   a. Self "write-off" by an exporter (Other than Status Holder Exporter)- 5%*

   b. Self "write-off" by Status Holder Exporters 10%*

   c. 'Write-off" by Authorized Dealer bank- 10%*

   *of the total export proceeds realized during the previous calendar year.

2. **Money Transfer Service Scheme – Revised Guidelines**

   ***Ref.: A. P. (DIR Series) Circular No. 89 dated March 12, 2013***

   The MTSS Guidelines have been revised in consultation with the Government of India and the revised MTSS Guidelines are attached to Annex-I to **A. P. (DIR Series) Circular No. 89 dated March 12, 2013**. These guidelines would also be applicable mutatis mutandis to all Sub Agents of the Indian Agents under MTSS and it will be the sole responsibility of the APs (Indian Agents) to ensure that their Sub Agents also adhere to these guidelines

3. **Maintenance of Collateral by Foreign Institutional Investors (FIIs) for transactions in the cash and F & O segments**

   ***Ref.: A. P. (DIR Series) Circular No. 90 dated March 14, 2013***

   FIIs may offer such securities as permitted by the Reserve Bank from time to time as collateral to the recognized Stock Exchanges in India for their transactions in exchange traded derivative contracts as specified in sub-Regulation 6 of Regulation 5 of the said Notification and A.P. (DIR Series) Circular No. 4 dated July 28, 2006 and A.P. (DIR Series) Circular No. 47 dated April 12, 2010.

   It has been decided to permit FIIs to use, in addition to already permitted collaterals, their investments in corporate bonds as collateral in the cash segment and government securities and corporate bonds as collaterals in the F & O segment

   FIIs will now therefore be eligible to offer government securities/corporate bonds (acquired by FIIs in accordance with provisions of Schedule 5 to Notification No. FEMA 20 dated May 3, 2000), cash and foreign sovereign securities with AAA ratings in both cash and F & O segments.

4. **Foreign investment in India by SEBI registered FIIs in Government Securities and Corporate Debt**

   ***Ref.: A. P. (DIR Series) Circular No. 94 dated April 1, 2013***

   A brief summary of the above circular is as follows:

| Instrument/s | Limit | Eligible Investor | Remarks |
|---|---|---|---|
| Government securities including Treasury Bills | USD 25 billion | FIIs, QFIs and Long terms investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks. | Eligible Investors may invest in Treasury Bills only upto USD 5.5 billion within the limit of USD 25 billion. |
| Eligible instruments as referred to in Schedule 5 of Notification No. FEMA 20 /2000-RB dated 3rd May 2000. | USD 51 billion | FIIs, QFIs, Long terms investors registered with SEBI - SWFs, Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks . | Eligible Investors may invest in Commercial Papers only upto USD 3.5 billion within the limit of USD 51 billion. |

**5. Memorandum of Instructions governing money changing activities**

***Ref.: A. P. (DIR Series) Circular No. 96 dated April 5, 2013***

It has been decided that Authorised Money Changers (AMCs) may sell Indian rupees to foreign tourists /visitors against International Credit Cards / International Debit Cards and should take prompt steps to obtain reimbursement through normal banking channels

**6. Trade Credits for Imports into India – Review of all-in-cost ceiling**

***Ref.: A. P. (DIR Series) Circular No. 98 dated April 9, 2013***

It has been decided that the all – in – cost ceiling as specified under paragraph 4 of A.P. (DIR Series) Circular No.28 dated September 11, 2012 will continue to be applicable till June 30, 2013 and subject to review thereafter. All other aspects of Trade Credit policy remain unchanged.

**7. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eighth Amendment) Regulations, 2013**

***Ref.: Notification No.FEMA 272/2013-RB dated April 1, 2013***

***(Published in the Gazette of India on 1st April, 2013)***

Amendment of Schedule 5

In the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No.FEMA 20/2000-RB dated 3rd May 2000), in Schedule 5,

**(A)** In paragraph 1, the word "FII" has been replaced by "Eligible Investors" at respective places along with deletion of various phrases.

**(B)** In paragraph 1A, a new clause has been inserted after clause (iv)

"(v) QFI may purchase, on repatriation basis through SEBI registered Qualified Depository Participant (QDP), either directly from the issuer or through a registered broker on recognized Stock Exchange in India the securities specified in the circular, subject to certain terms and condition as specified by the SEBI and the Reserve Bank from time to time;

**(C)** In paragraph 1B,

(1) for the clause (i), the following shall be substituted:

"(i) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds, Pension Funds which are registered with SEBI as eligible investors in Infrastructure Debt Funds may purchase on repatriation basis Rupee Denominated bonds/units issued by Infrastructure Debt Funds."

(ii) the following shall be substituted for the existing clause (iii), namely:

"(iii) Long term investors like Sovereign Wealth Funds (SWFs), Multilateral Agencies, Endowment Funds, Insurance Funds and Pension Funds and Foreign Central Banks registered with SEBI may purchase, on repatriation basis, either directly from the issuer of such securities or through registered stock broker on a recognised Stock Exchange in India, the following securities, subject to the terms and conditions as specified by the SEBI and the Reserve Bank from time to time.

**(D)** In paragraph 2, in sub-paragraph (1A), the clause (iv) shall be substituted with the following,

"(iv) bonds/units issued by Infrastructure Debt Funds."

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# Statute Updates

## (C) Value Added Tax (VAT)

**CA. Bihari B. Shah**
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[I] **<u>Important Provision made in the Budget which is likely to increase the difficulties of a dealer in claiming and receiving the Tax Credit.</u>**

**<u>Amendment of Sec. 11 of the GVAT Act:</u>**

In the Principal Act, in section 11, after sub-section (7), the following sub-section is inserted with effect from 1.4.2013.

*"(7A) Notwithstanding anything contained in this section, in no case the amount of tax credit on any purchase of goods shall exceed the amount of tax in respect of the same goods, <u>actually paid</u>, under this Act or any earlier law, into Government Treasury".*

A small amendment made in section 11 by inserting the new sub-section 7A, is likely to increase the difficulties of dealers at large.

First of all, we have to understand the section 11 which is meant for admissibility of the Tax Credit under GVAT Act. The sub-section 7 of section 11 speaks about the dealer who without entering into a transaction of sale, issue tax invoices etc. with an intention to defraud the Govt. Revenue. In such case, the tax credit is not available under this section.

From 1.4.2013, the new section 7A is inserted as narrated above.

"The outcome of new sub-section is that if the selling dealer does not pay the tax collected by him from purchasing dealer, the purchasing dealer will not be entitled for tax credit.

In the present section it is said that the amount of tax collected by the selling dealer should be paid actually into Government Treasury. Under the Sales Tax Act, we are aware of the fact that in the scrutiny assessment of sales tax, while allowing the set-off, the department was doing the cross checking and asking for the confirmation letters from the about actual payment of tax and thereafter the set-off was granted to the dealer. But the same provision was not under the GVAT Act. Under GVAT Act, as soon as the purchasing dealer receives the tax invoice, he is entitled for tax credit in the month in which the tax invoice is received. Therefore, whether the selling dealer has paid the tax or not, would not affect much in granting the tax credit to the purchasing dealer.

Now after the introduction of section 7A while filing the monthly or quarterly return and before making the claim of tax credit, dealer has to verify whether the selling dealer has paid the tax or not in the Govt. Treasury and not at the assessment stage. If a wrong claim of tax credit is made, the interest and penalty will be levied from the date of filing of the return.

Moreover, this amended section has retrospective effect and hence the dealers should be careful while filing the return and claiming the tax credit. According to us, it is very difficult to verify at the interval of every month or quarter whether selling dealer has paid the tax or not? In most of the cases, selling dealers are not properly replying whether he has paid the tax or not and therefore the Government should come out with a system of verification of payment of tax by selling dealer.

The new amended section will be applicable even in the case when the registration is cancelled abinitio and as such the decision in the case of Meet Traders rendered by Hon. High Court of Gujarat may not remain useful.

In short, all Practitioners should advise to their clients the effect of this new section immediately and to take proper care in claiming the tax credit.

[II] **Important Judgments Under VAT :**

**[A] The Penalty at the highest rate of Rs. 10,000/- for not filing the return, whether it is discretionary or compulsory?**

In case of Prakash Jewellers and Pooja Exports, the GVAT Tribunal has given a a judgment that the Commissioner has discretion to decide the penalty under the limit of Rs. 10,000/- for not filing of the return under Rule 19(9) and main section 27(5) of the Act.

***The important paras of the said decision may be available from the office of the Association, on request..***

[B] **Judgments on scheduled entries : (Source : 2012 – GSTB-III)**

**Iron & Steel :**

Sales of Galvanized Channels, Angles, Runners, Sections etc.- Many decisions on interpretation of Entry Iron and Steel - Held as covered by Entry 5 of Schedule II-A of GST Act, 1969- M/s. India Gypsum Ltd.

**Laminated & Unlaminated HDPE Woven Bags:**

Determination Order holding covered by Entry 42A of VAT 2003 as Industrial Input confirmed – Decision of J. K. Cotton AIR 1961 SC 1170 and Chunilal Mayachand 86 STC 10(Guj), India Milk Prod. 33 STC 381 and interpretation of entry discussed. – M/s. Shreejee Plastics.

**PVC Resins :**

Set off u/r. 42 and GST Rules claimed was denied considering it as prohibited goods – Considered circular dt. 4.6.1977 and decision of M/s. Sagun Polmers 2010 GSTB 1251 – Set Off allowed. – M/s. Swastik Pipes and Profiles.

**Sugarcane – P.T.**

Purchase of sugarcane from farmers – P.T. levied – Discussion about article 269 and 286 of Constitution of India – Decision of National Thermal Power Corp. 127 STC 280 discussed and for Penalty decision of Gulabrai Trivedi SA 251 of 2008 dt. 23.3.2010 discussed – No. P.T. leviable. – M/s. Gorvardhna Sugar Industries.

**Sunglasses :**

Sunglasses are covered by entry 28A(ii) of SCH II read with Noti. u/s. 5(2) held as medical devices – Various decisions discussed at length including Maharashtra Sales Tax Tribunal in M/s. Chheda Marketing – M/s. Titan Industries Ltd.

**Toxin Binder :**

Item sold by the appellant was held as covered by entry 48 of Sch. I as poultry feed and not II-51 – Decision of Guj. High Court in Glaxo Laboratories 43 STC 386 and Pfizer Ltd. 1991 GSTB 18 and Sun Export 111 STC 69 relied. – M/s. G. M. Chemicals.

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# Statute Updates

## (D) Corporate Laws

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### Important Notifications issued by the Ministry of Corporate Affairs

1. **The Companies Directors Identification Number (Amendment) Rules, 2013.** ([F. No. 5/80/2012-CL.V] Date: 15th March, 2013.)

   If the Central Government or the concerned officer, is satisfied on verification of the proof attached with application received from any person seeking cancellation or deactivation of DIN, that–

   (a) the DIN is duplicate;

   (b) The DIN was obtained by wrongful manner or fraudulent means;

   (c) Of the death of the concerned individual;

   (d) The concerned individual has been declared as lunatic by the competent Court;

   then, the allotted DIN shall be cancelled or deactivated after giving the opportunity of being heard to the concerned person in case of point (b) *Supra.*

2. **The Companies (Acceptance of Deposits Amendment) Rules, 2013.**

   ([F. No. 11/22012-CL-V-(A)] Date: 21.03.2013)

   (i) In Rule 2, in Clause (b), for sub clause (x), the word "immovable property" has been replaced by the word "Fixed Assets" referred to in Schedule VI of the Act"

   (ii) For rule 11A, in addition to the Regional Director of Registrar of companies any other officer of the Central Government shall be authorized to make complaints under sub-section (2) of section 58AAA of the Act

### Important Circulars issued by the Ministry of Corporate Affairs, India

1. **Clarification under Section 372A(3) of the Companies Act, 1956:**

   *(General Circular No. 06/2013 File No. 5/03/2013-CL-V Date 14.03.2013)*

   Where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, there is no violation of Section 372A(3) of Companies Act, 1956.

2. **Relaxation of additional fees and extension of last date in filing of various forms with the Ministry of corporate Affairs:**

   *(Circular No. 07/2013 No. 17/187/2011-CL-V Date 20.03.2013)*

   The time limit for filing and relaxation of additional fee on forms has been extended till 31.03.2013. Further, following steps have also been taken:

   (1) Change of additional fee applicable against respective SRN in the database;

   (2) Regeneration of challan with revised additional fee;

   (3) Extension of validity period of the challan till 7 days from the date of change;

   (4) Sending an e-mail along with challan to the user requesting him to pay the amount as per the revised challan.

   The documents which have expired on or after 17.01.2013 due to non-submission / re-submission, PUCL will be restored back and the users will be given the time to file the documents within seven days of intimation to user. In case of failure to file the form within seven days no further relaxation shall be granted and the form shall be marked as NTBR.

3. **Relaxation of additional fees and extension of last date in filing of various forms with the Ministry of corporate Affairs**

   *Circular No. 08/2013 No.17/187/2011-CL-V Date 10.04.2013*

   The time limit for filing and relaxation of additional fee on forms has been extended till 15.04.2013.

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# Statute Updates

## (E) Circulars and Notifications

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### (A) Service Tax

**(1) Extension of date for filing service tax return – Form ST 3**

The Central Board of Excise & Customs vide Order No. 03/2013-Service Tax dated 23.04.2013 has extended the date of submission of Form ST-3 for the period from 1st October 2012 to 31st March 2013, from 25th April 2013 to **31st August 2013**.

Form ST – 3, for the period from 1st October 2012 to 31st March 2013, is expected to be available on ACES around 31st of July 2013.

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

In exercise of the powers conferred by sub-section(1) read with sub-section (2) of section 94 of the Finance Act 1994 (32 of 1994), the Central Government hereby makes the rules further to amend the Service Tax Rules, 1994, by amending form no ST-5 ( Appeal to CESTAT by assessee), ST-6 (Cross objections by assessee / department) and ST-7 (Appeal to CESTAT by department). ( The said rules shall come into force on and from the 1st day of June,2013)

**(For form ST-5,6 and 7 refer notification no-5, dated 10/04/2013)**

**(3) Clarification regarding levy of Service Tax on service provided by way of erection of pandal or shamiana.**

Several representations have been received seeking clarification on the levy of service tax on the activity of preparation of place for organizing event or function by way of erection laying of *pandal* and *shamiana*. The doubt that has been raised is that this may be a transaction involving "transfer of right to use goods" and hence deemed sale.

The issue has been examined. "Service" defined in section 65B (44) of the Finance Act, 1994, includes a 'declared service'. Activity by way of erection of *pandal* or *shamiana* is a declared service, under section 66E 8(f). The process of erection of *Pandal* or *shamiana* is a reasonably specialized job and is carried out by the supplier with the help of his own labour. In addition to the erection of *pandal* or *shamiana* the service is generally coupled with other services like supply of crockery, furniture, sound system, lighting arrangements, etc.

In the case of BSNL Vs. UOI [2006] 3 STT 245 Hon'ble Supreme Court held that to constitute the transaction for the transfer of the right to use the goods, the transaction must have the following attributes:-

- There must be goods available for delivery;
- There must be a consensus *ad idem* as to the identity of the goods;
- The transferee should have a legal right to use the goods and, consequently, all legal consequences of such use including any permissions or licenses required therefore should be available to the transferee;
- For the period during which the transferee has such legal right, it has to be the exclusion of the transferor : this is the necessary concomitant or the plain language of the statute, viz., a "transfer of the right to use" and not merely a license to use the goods
- Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

Thus applying the ratio of above judgments and the test formulated by Hon'ble Supreme Court, the activity of providing *pandal* and *shamiana* along with erection thereof and other incidental activities do not amount to transfer of right to use goods. It is a service of preparation of a place to hold a function or event. Effective possession and control over the *pandal* or *shamiana* remains with the service provider, even after the erection is complete and the specially made–up space for temporary use handed over to the customer and **accordingly services provided by way of erection of pandal or shamiana would attract the levy of service tax.**

**(Circular 168, dated 15/04/2013)**

## (B) Income Tax

1) In pursuance of section 295 of the Income Tax Act,1961, CBDT hereby makes the following amendments in rule 12 of Income Tax Rules, 1962:-

(i) in sub-item (iii) of sub-rule (1) (a) of rule 12 after the words " income from race horses" , the words " and does not have any loss under the head " has been inserted.

(ii) In clause (a) and (ca) of sub-rule (1) :-

- The prescribed ITR Form SAHAJ - ITR 1 and Form SUGAM – ITR 4S cannot be used by a resident Individual to file his return of income, if he has:
  a) assets (including financial interest in any entity) located outside India; or
  b) signing authority in any account located outside India.
- Claimed any relief of tax u/s 90,90A or 91; or
- Exempted income exceeding Rs.5000

(iii) Insertion in sub-rule(2):- It is now mandatory to file the Audit report u/s 44AB, 92E and 115JB electronically.

(iv) Clause (a) of sub-rule (3) :- A person other than a company and a person required to furnish the return in ITR-7 if his or its total income, or the total income in respect of which he is or it is assessable under the Act during the previous year, exceeds 5 lakh rupees, shall furnish the return for the assessment year 2013-14 and subsequent assessment years in the manner specified in clause (ii) ( electronically with digital signature) or clause (iii)( electronically and thereafter submitting the verification of the return in Form ITR-V

(v) Insertion of clause (aab) :- A Person claiming tax relief u/s 90 or 90A or 91 of the Act shall file the return for assessment year 13-14 and subsequent assessment years in the manner specified in clause (ii) ( electronically with digital signature) or clause (iii)( electronically and thereafter submitting the verification of the return in Form ITR-V

**(For full text refer Notification No - 34, dated 01/05/2013)**

**contd. from page 20**

**Glimpses of Supreme Court Rulings**

eye of the law is the opinion or 'view of law' pronounced in the course of reaching the decision.

Overruling the judgment – as a precedent – does not reopen the decree or the decision. When the Supreme Court overrules the view of law or principle of law expressed by it in an earlier case, it does not do so sitting in appeal and exercising an appellate jurisdiction over the earlier decision. It does so in exercise of its inherent power and only in exceptional circumstances such as when the earlier decision is per incuriam or is delivered in the absence of relevant or material facts or if it is manifestly wrong and productive of public mischief. This inherent power can be exercised as long as a previous decree vis-à-vis a lis inter partes is not affected. It is the attempt to overturn the decision of a previous case that is problematic. An appellate court vacates the decree (or writ, order or direction) or decision of the lower court when it allows an appeal.

***[Natural Resources Allocation, in RE, Special Reference No.1 of 2012 (10 SCC 1) ]***

### 3 Article 141 – Binding law:

'law declared' means the ratio decidendi i.e. principle(s) of law or an interpretation of a law or judgment by Supreme Court, culled out on reading of judgment as a whole in light of questions raised, based upon which the case is decided – Ratio decidendi is essence of decision and principle upon which case is decided, which has to be ascertained in relation to subject-matter of decision – Not everything said by a judge while giving a judgment can be ascribed precedential value – Hence, it is important to analyse a decision and cull out therefrom the ratio decidendi – Every part of a judgment is intricately linked to other parts, constituting a larger whole and thus must be read keeping the logical thread intact.

***[Natural Resources Allocation, in RE, Special Reference No.1 of 2012 (10 SCC 1) ]***

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

## AS-09 Revenue Recognition

**Godrej Properties Limited-Annual Report 2011-2012**

**Note 1: Accounting Policies**

**F) Revenue Recognition**

The company is following the "percentage of completion method" of accounting. As per this method, revenue from sales of properties is recognized in the statement of Profit and Loss in proportion to the actual cost incurred as against the total estimated cost of projects under execution with the company on transfer of significant risk and rewards to the buyer. If the actual project cost incurred is less than 20% of the total estimated project cost, no income is recognized in respect of that project in the relevant period. Determination of revenues under the percentage of completion method necessarily involves making estimates, some of which are of a technical nature, concerning, where relevant, the percentages of completion, costs to completion, the expected revenues from the project or activity and the foreseeable losses to completion. Estimates of project income, as well as project costs, are reviewed periodically .The effect of changes, if any, to estimates is recognized in the financial statements for the period in which such changes are determined. Losses, if any, are fully provided for immediately.

Revenue on bulk deals on sale of its properties is recognized on execution of documents.

Income from operation of commercial complexes is recognized over the tenure of the lease/service agreement.

Interest income is accounted on an accrual basis at contracted rates.

Dividend income is recognized when the right to receive the same is established.

**GMR Infrastructure Ltd.-Annual Report 2011-12**

**Note 2.1 Significant Accounting Policies**

**C) Revenue Recognition**

Revenue is recognized to the extent that it is probable that the economic benefits will flow to the Group and the revenue can be reliably measured. The following specific recognition criteria must also be met before revenue is recognized.

**Power sector business:**

In case of power generating companies, revenue from energy units sold as per the terms of the PPA and Letter of Intent ('LOI') (collectively hereinafter referred to as 'the PPAs")is recognized on an accrual basis and includes unbilled revenue accrued up to the end of the accounting year. Revenue from energy units sold on a merchant basis is recognized based on the units of energy delivered and the rate agreed with the customers.

Revenue from the sale of coal is recognized when the risks and rewards of ownership passes to the purchaser including delivery of the product, the selling price is fixed or determinable, and collectability is reasonably assured. Revenue earned in the pre-production stage and related operating costs have been recorded against the carrying value of mining and exploration and development properties.

Claims for delayed payments charges and any other claims, which the Group is entitled to, under the PPAs, are accounted for in the year of acceptance.

**Development of highways:**

In case of companies involved in construction and maintenance of roads, toll revenue from operation is recognized on accrual basis which coincides with the collection of toll. In annuity based projects, revenue recognition is based on annuity accrued on time basis in accordance with the provisions of the concessionaire agreement entered into with NHAI or with respective State Governments. Claims raised on NHAI concessionaire agreement are accounted for in the year of acceptance.

**Airport sector business:**

In case of airport infrastructure companies, aeronautical and non aeronautical revenue is

recognized on an accrual basis and is net of service tax, applicable discounts and collection charges, when services are rendered and it is possible that an economic benefit will be received which can be quantified reliably.

In case of cargo handling revenue, revenue from outbound cargo is recognized at the time of acceptance of cargo with respect to non-airline customers and at the time of departure of aircraft with respect to airline customers and revenue from inbound cargo is recognized at the time of arrival of aircraft in case of airline customers and at the point of delivery of cargo in case of non-airline customers. Interest on delayed receipts from customers is recognized on acceptance.

Revenue from commercial property development rights granted to concessionaires is recognized on accrual basis, as per the terms of agreement with customers.

Revenue share paid/payable to concessionaire/ grantors as a percentage of revenues, pursuant to the terms and conditions of the relevant agreement for development, construction, operation and maintenance of the respective airports has been disclosed under "other expenses".

Revenue from hotel operations comprises income by way of hotel room rent, sale of food, beverages and allied services relating to the hotel and is recognized net of taxes and discounts as and when the services are provided.

Revenue from the sale of goods at duty free outlets operated by the Group is recognized at the time of delivery of goods to customers which coincides with transfer of risks and rewards. Sales are stated net of discounts, rebates and returns.

Revenue from sale of fuel is recognized when fuel is transferred to the customers and is measured based at the consideration received or receivable, net of returns and trade discounts.

Revenue from developing, operating, maintaining and managing the sites at the airport for display of advertisements are recognized on the display of advertisements.

**Construction business:**

Construction revenue and costs are recognized by reference to the stage of completion of the construction activity at the balance sheet date, as measured by the proportion that contract costs incurred for work performed to date bear to the estimated total contract costs. Where the outcome of the construction cannot be estimated reliably, revenue is recognized to the extent of the construction costs incurred if it is probable that they will be recoverable. In the case of contracts with defined milestones and assigned price for each milestone, it recognizes revenue on transfer of significant risks and rewards which coincides with achievement of milestone and its acceptance by its customer. Provision is made for all losses incurred to the balance sheet date. Any further losses that are foreseen in bringing contracts to completion are also recognized.

**Others:**

i) Dividend income is recognized when the right to receive dividend is established by the reporting date.

ii) Income from management / technical services is recognized as per the terms of the agreement on the basis of services rendered.

iii) Interest income is recognized on a time proportion basis taking into account the amount outstanding and the applicable interest rate. Interest income is included under the head "other operating income" for companies engaged in investing activities and under the head "other income" for other companies in the companies in the statements of profit and loss.

iv) Benefits arising out of duty free scrips utilized for the acquisition of fixed assets or inventory are recognized as income once it is probable that the economic benefits will flow to the Group and the revenue can be reliably measured.

v) On disposal of current investments, the difference between its carrying amount and net disposal proceeds is charged or credited to the statement of profit and loss. Such income is included under the head "other operating income" for companies engaged in investing activities and under the head "other income" for other companies in the statement of profit and loss.

Revenue earned in excess of billings has been included under "other assets" as billings in excess of revenue have been disclosed under "other liabilities" as unearned revenue.

Expenditure including pre-operative and other incidental expenses incurred by the Group on projects that are in the process of commissioning, being recoverable from the respective entities created for carrying out these projects are not charged to the statement of profit and loss and are treated as advances to the respective entities.

# Association News

**CA. Chintan M. Doshi**
Hon. Secretary

**CA. Abhishek J. Jain**
Hon. Secretary

**At the 62nd Annual General Meeting**

At the 62nd Annual General Meeting of the members of the Association held on Saturday, 4th May 2013 at ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad, following Office Bearers and Executive Committee Members have been declared elected for the year 2013-14.

**Office Bearers**

| | | |
|---|---|---|
| 1 | CA. Prakash B. Sheth | President |
| 2 | CA. Shailesh C. Shah | Vice - President |
| 3 | CA. Chintan M. Doshi | Hon. Secretary |
| 4 | CA. Abhishek J. Jain | Hon. Secretary |
| 5 | CA. Gaurang M. Choksi | Imm. Past President |

**Executive Committee Members**

| | | | | | |
|---|---|---|---|---|---|
| 1 | CA. Bharat C. Mehta | 2 | CA. Bharat M. Vashi | 3 | CA. Bijalkumar J. Gandhi |
| 4 | CA. Hemant R. Vora | 5 | CA. Jitesh R. Patel | 6 | CA. Ketul R. Patel |
| 7 | CA. Rinkesh K. Shah | 8 | CA. Sandip A. Parikh | 9 | CA. Yash K. Shah |

**List of Sub Committees**

| Sr. | Name of Sub Committee | Chairman | Convenor | Members |
|---|---|---|---|---|
| 1 | Journal | CA. Rajni M. Shah | CA. Ashok C. Kataria | CA. Bharat C. Mehta<br>CA. Hemant N. Shah<br>CA. Jayesh C. Sharedalal<br>CA. Shailesh C. Shah<br>CA. Yogi K. Upadhyay |
| 2 | Residential Refresher Course | CA. Chandrakant H. Pamnani | CA. Ashok C. Kataria | CA. Ajit C. Shah<br>CA. Ashwin H. Shah<br>CA. Bharat M. Vashi<br>CA. Bipin M. Shah<br>CA. Monish S. Shah<br>CA. Mukesh M. Khandwala<br>CA. Nesal H. Shah |
| 3 | Brain Trust cum Workshop | CA. Ashok C. Kataria | CA. Surya O. Chhabria | CA. Anuj J. Shah<br>CA. Gaurang M. Choksi<br>CA. Jitesh R. Patel<br>CA. Ketul R. Patel<br>CA. Mukesh M. Khandwala<br>CA. Priyam R. Shah<br>CA. Varun D. Pandya |
| 4 | Study Circle | CA. Kunal A. Shah | CA. Ronak M. Khandwala | CA. Bijalkumar J. Gandhi<br>CA. Monish S. Shah<br>CA. Nirav R. Choksi<br>CA. Pathik B. Shah<br>CA. Rajesh C. Shah<br>CA. Sunny P. Parekh |

| Sr. | Name of Sub Committee | Chairman | Convenor | Members |
|---|---|---|---|---|
| 5 | Professional Development | CA. Mukesh K. Shah | CA. Rakesh G. Gupta | CA. Asutosh P. Nanavaty<br>CA. Harsh R. Rathi<br>CA. Karan D. Shah<br>CA. Rinkesh K. Shah<br>CA. Umesh R. Shah<br>CA. Varun D. Pandya |
| 6 | Legal and Representation - Direct Tax | CA. Jignesh J. Shah | CA. Uday I. Shah | CA. Assem L. Thakkar<br>CA. Kirit P. Shah<br>CA. Mukesh M. Khandwala<br>CA. Sandip A. Parikh<br>CA. Sunil H. Talati |
| 7 | Legal and Representation - Service Tax | CA. Ashwin H. Shah | CA. Bishan R. Shah | CA. Jatin K. Shah<br>CA. Mukesh M. Khandwala<br>CA. Nilesh V. Suchak<br>CA. Shailesh C. Shah<br>CA. Vinit N. Shah |
| 8 | Legal and Representation - Gujarat VAT | CA. Atul R. Shah | CA. Monish S. Shah | CA. Ajit C. Shah<br>CA. Ketul R. Patel<br>CA. Shailesh C. Shah |
| 9 | Legal and Representation - State Government | CA. Yamal A. Vyas | CA. Nesal H. Shah | CA. Bipin M. Shah<br>CA. Durgesh V. Buch<br>CA. Jainik N. Vakil<br>CA. Kaushik D. Shah |
| 10 | Information & Technology | CA. Anuj J. Sharedalal | CA. Vijay M. Valiya | CA. Ashok C. Kataria<br>CA. Atul R. Shah<br>CA. Chandrakant H. Pamnani<br>CA. Diti B. Vashi<br>CA. Jainee R. Shah<br>CA. Yash K. Shah |
| 11 | Publication | CA. Mukesh M. Khandwala | CA. Shailesh C. Shah | CA. Abhishek J. Jain<br>CA. Ashwin H. Shah<br>CA. Darshan A. Shah<br>CA. Deepak R. Shah<br>CA. Jignesh J. Shah |
| 12 | Cultural & Entertainment | CA. Devang A. Doctor | CA. Uday I. Shah | CA. Bharat M. Vashi<br>CA. Durgesh V. Buch |
| 13 | Membership Development & Library | CA. Monish S. Shah | CA. Umang B. Saraf | CA. Abhishek J. Jain<br>CA. Arvind R. Gaudana<br>CA. Diti B. Vashi<br>CA. Kandarp G. Trivedi |
| 14 | Sports | CA. Ajit C. Shah | CA. Atul R. Shah | CA. Priyam R. Shah<br>CA. Chandrakant H. Pamnani<br>CA. Gaurang M. Choksi<br>CA. Shailesh C. Shah |
| 15 | Members in Industry | CA. Nirav H. Patel | CA. Amitkumar K. Patel | CA. Hemant R. Vora<br>CA. Himanshu V. Patel<br>CA. Matulya N. Shah<br>CA. Niren M. Nagri<br>CA. Saurin T. Shah |
| 16 | Forum of Past Presidents | CA. Manubhai G. Patel | CA. Jayesh C. Sharedalal | CA. Ajit C. Shah<br>CA. Kaushik C. Patel<br>CA. Kaushik D. Shah<br>CA. Niren M. Nagri<br>CA. Sanjay R. Shah<br>CA. Shatayu J. Desai<br>CA. Sunil H. Talati |

**The following prizes and Medals were distributed:**
**Best Article in Ahmedabad Chartered Accountants Journal**

| Sr. No. | Name of the Trophy | Name of the Recipient | Title of the Article published in the Journal |
|---|---|---|---|
| 1 | Shri Gatorbhai Patel Shiva Pharma Foudation Trophy for Best Article on Direct Taxes 2012-13 | CA. Naishal Shah | "Commission payment to Non Resident under Section 195 of the Income Tax Act, 1961" - May - 2012 Issue |
| 2 | Shri U. R. Shah Memorial Funds Trophy for Best Article on Allied Law 2012-13 | CA. Dr. Nilesh V. Suchak | "A critical Review of Negative List based Service Taxation" December - 2012 Issue |
| 3 | Champaben Chandulal Shah Memorial Trophy for Best Article on Direct Taxes 2012-13 | CA. Jayesh C. Sharedalal and Jinal M. Gohel | "Issues under Wealth Tax Act" January - 2013 Issue |

**Best Study Circle Meeting Leader**

| Sr. No. | Name of the Trophy | Name of the Recipient | Name of the Study Circle Meeting |
|---|---|---|---|
| 1 | Shri Dwarkadas B. Shah Memorial Trophy for the Best Lead Study Circle Meeting 2012- 13 | CA. Chandravadan A. Shah | Study Circle Meeting on "Highlights & Issues under Foreign Contribution Regulation Act - 2010" |

**List of Students who have been awarded Medals/Prizes for the Year 2012**

| Sr. | Medal Name | Highest Mark in | PCC / Final C.A. Examination | Name of the Recipient Student |
|---|---|---|---|---|
| 1 | Avinash J. Budhdev Memorial CA Student Award (Cash Prize of Rs.11000/- each) | **Final Year Topper (Gujarat)** | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 100434 | Swati Jagdishbhai Sadhwani |
| 2 | Kantilal V. Patel Memorial Medal | **Best Student of the year 2012 (Gujarat)** | **Final/May-Nov. 2012** (Nov'12 -Roll No. 100434) | Swati Jagdishbhai Sadhwani |
| 3 | H. V. Vasa Memorial Medal | **Best Student (Ahmedabad)** | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 100434 | Swati Jagdishbhai Sadhwani |
| 4 | A. M. Thaker Memorial Medal | **Best Lady Student (Ahmedabad)** | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 100434 | Swati Jagdishbhai Sadhwani |
| 5 | Chandulal M. Shah Memorial Medal | **Paper 1** Financial Reporting | **Final/May 2012** Roll No. 100535 | Archit Surendrakumar Singhal |
| | | | **Final/Nov 2012** Roll No. 102264 | Vikramkumar Bhavarlal Shah |
| 6 | VNS & BNS Social Welfare Medal | **Paper 2** Strategic Financial Management | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 101030 | Anisha Nitinbhai Shah |
| 7 | Dhirubhai B. Shah Memorial Medal | **Paper 3** Advanced Auditing and Professional Ethics | **Final/May 2012** Roll No. 102696 | Priyam Chetankumar Shah |
| | | | **Final/Nov 2012** Roll No. 101168 | Akshay Rameshchandra Ramani |

| Sr. | Medal Name | Highest Mark in | PCC / Final C.A. Exam | Name of the Recipent Student |
|---|---|---|---|---|
| 8 | Mansukhbhai J. Shah Medal | **Paper 4** Corporate and Allied Laws | **Final/May 2012** Roll No. 100535 | Archit Surendrakumar Singhal |
| | | | **Final/Nov 2012** Roll No. 102431 | Rajvikrant Soni |
| 9 | Madhuben Prafulbhai Trivedi Memorial Medal | **Paper 5** Advance Management Accounting | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 100434 | Swati Jagdishbhai Sadhwani |
| 10 | VNS & BNS Social Welfare Medal | **Paper 6** Information Systems Control & Audit | **Final/May 2012** Roll No. 100434 | Bhavya Kamleshkumar Shah |
| | | | **Final/Nov 2012** Roll No. 102283 | Priyankkumar Chandreshbhai Fofaliya |
| 11 | A. M. Gnag Memorial Medal | **Paper 7** Direct Taxes laws | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 102431 | Rajvikrant Soni |
| 12 | C. F. Patel Memorial Medal | **Paper 7** Direct Taxes laws | **Final/May 2012** Roll No. 102567 | Roshni Ramesh Khanwani |
| | | | **Final/Nov 2012** Roll No. 102431 | Rajvikrant Soni |
| 13 | Jagrutiben K. Shah Memorial Medal | **Paper 8** Indirect Taxes Laws | **FINAL / May 2012** Roll No. | Nishit Rajesh Parikh |
| | | | **FINAL /Nov 2012** Roll No. 102240 | Mohit Ramkishore Tibrewala |
| 14 | Shri K. T. Thakore Memorial Medal | **Best Student of the year 2012 (Gujarat)** | **IPCE / May-Nov. 2012** (May'12-Roll No. 200820) | Jagravi Daivesh Shah |
| 15 | B. S. Soni Memorial Medal | **Best Student (Ahmedabad)** | **IPCE / May 2012** Roll No.200820 | Jagravi Daivesh Shah |
| | | | **IPCE / Nov 2012** Roll No. 200848 | Krishna Ashankbhai Contractor |
| 16 | Hasmukhbhai J. Patel Memorial Medal | **Paper -1** Accounting | **IPCE / May 2012** Roll No. 201231 | Vishal Manojkumar Purswani |
| | | | **IPCE / Nov 2012** Roll No. 204051 | Vishal Banwarilal Chitlangya |
| 17 | Shri V. R. Shah Memorial Medal | **Paper -2** Best Student for the year 2012 in Ahmedabad for Business Law Ethics and Communication | **IPCE / Nov 2012** Roll No. 200848 | Krishna Ashankbhai Contractor |
| 18 | Lalita Khanchand Tekwani Memorial Medal | **Paper 3** Cost Accounting & Financial Management | **IPCE / May 2012** Roll No. 201600 | Utsav Nishitbhai Sanghvi |
| | | | **IPCE / Nov 2012** Roll No. 204051 | Vishal Banwarilal Chitlangya |
| 19 | VNS & BNS Social Welfare Medal | **Paper - 4** Taxation | **IPCE / May 2012** Roll No. 200820 | Jagravi Daivesh Shah |
| | | | **IPCE / Nov 2012** Roll No. 201473 | Dhvani Shaileshbhai Chudgar |

| Sr. | Medal Name | Highest Mark in | PCC / Final C.A. Exam | Name of the Recipent Student |
|---|---|---|---|---|
| 20 | Rameshchandra S. Shah Memorial Medal | **Paper -5** Advance Accounting | **IPCE / May 2012** Roll No. 201600 | Utsav Nishitbhai Sanghvi |
| | | | **IPCE / Nov 2012** Roll No. 200995 | Amita Suryakant Shah |
| 21 | Akshay Trivedi Memorial Medal | **Paper 6** Auditing & Assurance | **IPCE / May 2012** Roll No.200880 | Kushal Bharatkumar Anadkat |
| | | | **IPCE / Nov 2012** Roll No. 201568 | Krunalkumar Prafulbhai Shah |
| 22 | Mansukhbhai S. Shah Memorial Medal | **Paper 7** Information Technology and Strategic Management | **IPCE / May 2012** Roll No. 200820 | Jagravi Daivesh Shah |
| | | | **IPCE / Nov 2012** Roll No. 200836 | Jatin Subhash Banka |

3 **M/s. Mukesh O. Parikh & Co., Chartered Accountants**, are appointed as Auditors of the Association for the financial year 2013-14.

4 At the 25th Annual General Meeting of the members of the Mutual Benefit Scheme held on Saturday, 4th May 2013 at ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad, **M/s. Mukesh O. Parikh & Co., Chartered Accountants**, are appointed as Auditors of the Mutual Benefit Scheme for the financial year 2013-14.

**At the 1st Executive Committee Meeting**

1 At the 1st Executive Committee Meeting held on 4th May 2013, three senior members of the Association namely (a) CA. Ajit C. Shah, (b) CA. Bipin M. Shah, (c) CA. Jayesh C. Sharedalal have been co opted as the members of the Executive Committee for the year 2013-14.

2 **Forthcoming Programmes**

| Date/Day | Time | Programmes | Speaker | Venue |
|---|---|---|---|---|
| 16.05.2013 Saturday | 05.00 pm to 07.00 pm | 1st Study Circle on "Important Ammendments for A.Y. 2013-14" | CA. Kaushik D. Shah | ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad. |
| 15.06.2013 Saturday | 09.00 am to 01.00 pm | 1st Brain Trust cum Worshop on "Issues in Income Tax - A Mixed Bag" | CA. Kapil Goel | ICAI Bhawan, 123, Sardar Patel Colony, Naranpura, Ahmedabad. |
| 29.06.2013 Saturday | 09.00 pm | Gujarati Drama "Rahi Gayo Hu Kuwaro" | | Jai Shankar Sundari Hall, Raikhad, Ahmedabad. |
| 02.08.2013 to 05.08.2013 | | 40th Residential Refresher Course | Various Speakers | Golden Palms Hotel & Spa, Bangalore. |
| 14.08.2013 Wednesday | 07.00 pm | Entertainment Evening | | Fire & Flames, Alpha One Mall, Vastrapur, Ahmedabad. |