



WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

DECEMBER 2013
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*Merry Christmas
&
Happy
New Year
2014*



Inauguration of Dhule Branch of WIRC held on 26th November, 2013



Group photograph taken during lighting the lamp. **(L-R):** CA. Shardul Shah, RCM, CA. Parag Raval, Vice Chairman, WIRC, CA. Prafulla Chhajed, CCM, CA. K. Raghu, Vice President, ICAI, CA. S. G. Mundada, RCM, CA. Arunbhai Gujrathi, Ex Speaker, Maharashtra Legislative Assembly, Chief Guest, CA. Girish Kulkarni, RCM, CA. Mangesh Kinare, Chairman, WIRC, CA. Manoj Fadnis, CCM, CA. Lokendra Mundada, Chairman, Dhule Branch, CA. S. B. Zaware, CCM, CA. Julfesh Shah, RCM, CA. Nilesh Vikamsey, CCM

Sub Regional Conference at Goa held on 15th & 16th November, 2013



Shri Manohar Parrikar, Chief Minister of Goa lighting the Traditional Lamp. **(Others L-R):** CA. Yeshwant Kamat, CA. Kiran Kharangate, CA. Anup Borkar, Chairman, Goa Branch, CA. Mangesh Kinare, Chairman, WIRC, CA. Kedar Kenkare, CA. Naveen Daivajna, CA. Vinesh Pikale

Mega Conference on New Companies Act, 2013 and Draft Companies Rules, 2013 held on 29th & 30th November, 2013



CA. Rajkumar Adukia, Chairman, CFMIP, ICAI, CA. Subodh Kumar Agrawal, President, ICAI, CA. Mangesh Kinare, Chairman, WIRC, CA. Mahesh Madkholkar, RCM

Lecture Meeting on Planning to Migrate to Australia held on 20th November, 2013



CA. Shardul Shah, RCM, CA. Mangesh Kinare, Chairman, WIRC, CA. Amar Dutia, Faculty & Vice Chairman, Melbourne Chapter of ICAI

Inauguration of Nanded Branch of WIRC held on 27th November, 2013



Group photograph taken at the time of Inauguration. **(Sitting L-R):** CA. Sanjay Jaju, CA. Vijay Kalani, CA. Mangesh Kinare, Chairman, WIRC, CA. S. B. Zaware, CCM, Shri D. P. Patil, Minister of State for Education, Govt. of Maharashtra, Chief Guest, Shri Bhaskarrao Patil, M.P. & Guest Honour, CA. Jayprakash Falor, Chairman, Nanded Branch, CA. Prafulla Chhajed, CCM, **(Standing L-R):** CA. Sunil Patodia, RCM, CA. Girish Kulkarni, RCM, CA. Bhagwandas Bhutada, CA. Tousif Ahmed, CA. Mahesh Totala, CA. S. G. Mundada, RCM, CA. Shardul Shah, RCM, CA. Parag Raval, Vice Chairman, WIRC

Inauguration of Satara Branch of WIRC held on 25th November, 2013



Group photograph taken at the time of Inauguration CA. S. R. Chourasia, CA. J. B. Chavhan, CA. S. B. Gokhale, Chairman, Satara Branch, CA. Prafulla Chhajed, CCM, CA. S. B. Zaware, CCM, CA. K. Raghu, Vice President, ICAI, Ch. Shivendraraje Bhosale, MLA & Chief Guest, CA. Mangesh Kinare, Chairman, WIRC, CA. Parag Raval, Vice Chairman, WIRC, CA. Atul Joshi, CA. R. G. Tanksale, CA. Vijay Kshirsagar

National Womens' Conference held on 16th November, 2013 at Nagpur



CA. Kavita Loya, CA. Sandeep Jotwani, CA. Julfesh Shah, RCM, CA. Sunil Patodia, RCM, CA. Kirti Agrawal, CA. Bhavana Doshi, Faculty, CA. Jaydeep Shah, Past President, ICAI, CA. Swapnil Agrawal, Branch Chairman, CA. Naveen Gupta, CCM, CA. Prafulla Chhajed, CCM, CA. Swapnil Ghate, CA. Umang Agrawal, CA. Suren Duragkar, CA. Kirit Kalyani

3rd All Region Conference held on 29th & 30th November, 2013 at Ahmedabad



CA. Parag Raval, Vice Chairman, WIRC, CA. Ranjeet Agarwal, Chairman, EIRC, CA. Vishal Garg, Chairman, NIRC, CA. Anil Bhandari, RCM, WIRC, CA. Purushottam Khandelwal, Chairman, Ahmedabad Branch, CA. Sunil Talati, Past President, ICAI, CA. S. K. Agarwal, R.D., Chief Guest, CA. Mangesh Kinare, Chairman, WIRC, CA. Amrishi Patel, CA. Vikas Jain, Chairman, CIRC



CHAIRMAN'S COMMUNICATION



Books are infinite in number and time is short. The secret of knowledge is to take what is essential. Take that and try to live up to it.... Swami Vivekananda

Respected Seniors & Dear Friends,

Winter is slowly setting in, but many Members are perspiring due to the letter received from ICAI regarding non-completion of CPE Hours and the probable action which will be taken against the Members for such non-completion. Members are fervently trying to attend seminars to complete their CPE Hours. However, let me remind Members, especially senior Members and Members in Industry, about the provisions regarding unstructured CPE Hours. We have provided the ready reference for guidelines on unstructured CPE Hours and the requisite forms thereof and I appeal to Members to make use of the same. As regards structured CPE Hours, WIRC has organised many programmes in order to facilitate Members to complete their obligations. Having said that, I sincerely appeal to Members to complete their CPE obligations regularly to avoid last minute panic. From our side it will be our endeavour to organise a variety of programmes for the benefit of Members and we will be very happy to receive suggestions in this regard.

Post Diwali vacations, there is a new zeal in professional work, which is also the case with WIRC activities. All programmes are getting overwhelming response as the CPE completion has been the priority for Members. Taking advantage of this, we have decided to hold more programmes on upcoming and non-conventional areas of professional opportunities. Seminars were organised on Allied Laws, Venture Capital, Financial Reporting, Management Accounting, International Tax and seminars on Competition Act, GAAR, Carbon Credit, Risk based Audit are being planned. We had also organised a unique lecture meeting on "Opportunities in Australia and Addressing Migration Difficulties". The lecture was addressed by Vice-Chairman of Melbourne Chapter of ICAI, CA. Amar Dutia. It was largely attended by young Members and we have received very good feedback about the same.

The Sub-Regional Conference at Goa was inaugurated by Hon'ble Chief Minister of Goa, Shri Manohar Parrikar. His encouraging words for the profession and willingness to give more opportunities, especially in State Government endeavours, set the right tone for the Conference. WIRC once again took the initiative to organise the 3rd All Region Conference, which was hosted by Ahmedabad Branch. Office Bearers of all the Regions and delegates from different parts attended this Conference. It was a very good opportunity for interaction and networking.

We also had the Regional Conference for Women in Pune, which received a very good response from women CAs from the Region. The grand response has encouraged us to organise bigger programmes for women CAs and we are now planning a International Women's Conference.

We also got an opportunity to attend the International Conference at Kolkata, which was inaugurated by Hon'ble President of India Shri Pranab Mukherjee who spoke about the vital role expected from CAs in the economic development of our country.

The CA examinations have just concluded and I thank all the co-ordinators, observers, officials, branch managing committee Members, RCMs and CCMs who have contributed for the smooth conduct of examinations in the Region. After the examination, WIRC is hosting a National Convention for CA Students which is going to provide great opportunity to the students to sharpen their skills.

In order to provide more facilities to students, we have requested Municipal Corporation of Mumbai to provide space in Municipal Schools to develop a few more reading rooms in Mumbai. The initial response has been quite encouraging and we hope to convey positive news soon.

On 14th November, CBEC had organised an interactive public meeting on VCES at our ICAI Tower. This meeting was addressed by Hon'ble Finance Minister of India, Shri P. Chidambaram and was also attended by Minister of State for Finance, Shri J.D. Seelam, CBEC Chairperson, Smt. Praveen Mahajan and host of other officials from CBEC and Service Tax department. On this occasion we also met Smt. V. R. Iyer, Chairperson of Bank of India. We presented our Reference Manual to her and also took suggestions from her regarding the same.

Three new Branches of WIRC at Satara, Dhule and Nanded were inaugurated last month. We had a grand reception from enthusiastic Members and Students at all three locations. Opening of these Branches is going to be immensely beneficial to the Members and more importantly to the Students from these towns. I congratulate them and thank ICAI President, Vice President and Central Council for this initiative. Two New Study circles were also inaugurated during last month at Gandhinagar and at Pune. The widening of network is expected to lead to more proactive participation of Members and I am sure that Members in the Western Region will respond positively.

The 28th Regional Conference has just concluded with grand success. With the record registration of about 1500 delegates and about 50 eminent faculties addressing the delegates in four different tracks at a time, this Conference has become a feather in the cap of WIRC. The Conference was inaugurated by Shri K. Subrahmanyam, Executive Director of Union Bank of India and saw our respected past presidents of ICAI, Padmashree CA. Y. H. Malegam, CA. Y. M. Kale, CA. N. P. Sarda and CA. Sunil Talati chairing the technical sessions with great enthusiasm.

Keynote addresses by CA. Mukund Chitale, Chairman of NACAS and past president of ICAI and CA. Suresh Prabhu, former Union Minister of India were eye openers. The third keynote address by CA. S. Gurusurthy gave a totally new perspective about our economy. It had a mesmerising impact on delegates and led to a spontaneous standing ovation. All the technical sessions at the Conference were appreciated by delegates and all the eminent faculties deserve credit for this. Despite initial hiccups due to the overwhelming response; Team WIRC, comprising my Regional Council colleagues and WIRC staff could ably face the challenge and make the Conference a memorable one for everybody. I sincerely appreciate the efforts put in by my team.

In the words of late Nelson Mandela, a global symbol for the cause of human rights and Nobel Prize winner, "Difficulties break some men but make others. No axe is sharp enough to cut the soul of a sinner who keeps on trying, one armed with the hope that he will rise even in the end."

With Best Wishes,

CA. Mangesh Kinare

OFFICE BEARERS

CA. Mangesh Kinare, Chairman **CA. Parag Raval**, Vice-Chairman
CA. Neel Majithia, Secretary **CA. Priti Savla**, Treasurer

EDITORIAL BOARD

Editor: **CA. Mangesh Kinare** Joint Editor: **CA. Neel Majithia**
Members: CA. Shrinivas Joshi • CA. Priti Savla • CA. Sunil Patodia
• CA. Anil Bhandari • CA. Shruti Shah • CA. Sushrut Chitale

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FORTHCOMING EVENTS

02
CPE HRS

Lecture Meeting on Health & Happiness through Breathing Techniques

DAY & DATE	WEDNESDAY, 18TH DECEMBER, 2013	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	ENTRY FREE
Time	6.00 p.m. to 8.00 p.m.	
Chief Co-ordinator	CA. Shardul Shah <i>(Regional Council Member)</i>	9820287625

TOPIC	SPEAKERS
Health & Happiness through Breathing Techniques	CA. Rahul Sutar Ms. Komal Tanna

S. Vaidyanathan Iyer Memorial Lecture Meeting (From Diabetes to Healthy Life)

No
CPE HRS

Followed by CPE Lecture Meeting on Stress Management

02
CPE HRS

DAY & DATE	FRIDAY, 20TH DECEMBER, 2013	
Venue	Yogi Sabha Gruha, Swami Narayan Temple, Dadar (E)	ENTRY FREE
Time	5.00 p.m. to 8.00 p.m.	
Chief Co-ordinators	CA. Dhiraj Khandelwal CA. Satyanarayan Mundada <i>(Regional Council Members)</i>	9867642684 9422080814

TOPIC	SPEAKERS
Stress Management	Adarsh Jeevan Swami
Precaution from Diabetes to healthy life	Dr. S. A. Merchant

02
CPE HRS

Lecture Meeting on Integrating Professional Experience with Social Obligations

DAY & DATE	MONDAY, 23RD DECEMBER, 2013	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	ENTRY FREE
Time	6.00 p.m. to 8.00 p.m.	
Chief Co-ordinators	CA. Sandeep Jain CA. Satyanarayan Mundada <i>(Regional Council Members)</i>	9819788099 9422080814

TOPIC	SPEAKER
Integrating Professional Experience with Social Obligations	CA. Sanjay Hegde

Industrial Visit at Reliance Communications Limited – DAKC - For Students

DAY & DATE	FRIDAY, 27TH DECEMBER, 2013	
Time	10.00 a.m. to 2.00 p.m.	
Fees	₹ 100/- Register your name by 20-12-2013	
Chief Co-ordinator	CA. Priti Savla <i>(Regional Council Member)</i>	9321426883
Student Co-ordinators	Mr. Ansul Agarwal Mr. Vishwas Mishra Mr. Harsh Malpani	8879022637 9167778313 9892648959

12
CPE HRS

Maharashtra VAT Conference

DAY & DATE	FRIDAY, 20TH & SATURDAY 21ST DECEMBER, 2013	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 2,000/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	

Registration closed – No spot registration

06
CPE HRS

Seminar on Corporate Social Responsibility and Corporate Governance vis-à-vis Amendments in the Companies Act, 2013

DAY & DATE	SATURDAY, 21ST DECEMBER, 2013	
Venue	Walchand Hirachand Hall, 4th Floor, IMC, Churchgate, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	

For more details visit www.wirc-icai.org

03
CPE HRS

Half Day Seminar on GST and Overview & Overlaps in Indirect Taxes

DAY & DATE	SATURDAY, 21ST DECEMBER, 2013	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 1.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 300/- (Please add ₹ 100/- towards CA Benevolent Fund)	

Registration closed – No spot registration

03
CPE HRS

Half Day Seminar on Sarbans Oxlay and Reporting under Internal Audit

DAY & DATE	SATURDAY, 21ST DECEMBER, 2013	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	2.00 p.m. to 6.00 p.m. (Registration & breakfast 1.30 p.m. to 2.00 p.m.)	
Fees	₹ 300/- (Please add ₹ 100/- towards CA Benevolent Fund)	

For more details visit www.wirc-icai.org

03
CPE HRS

Half Day program on Carbon Credit

DAY & DATE	SATURDAY, 21ST DECEMBER, 2013	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 1.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 300/- (Please add ₹ 100/- towards CA Benevolent Fund)	

For more details visit www.wirc-icai.org

12
CPE HRS

2nd Workshop on Increasing your Efficiency and Productivity through Mission Control

DAYS & DATES SATURDAY, 21ST & SUNDAY, 22ND DECEMBER, 2013

Venue	Seminar Hall, ICAI Tower, Near Standard Chartered Bank, Bandra-Kurla Complex, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & Breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 7,500/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Neel Majithia 9820327660 CA. Anil Bhandari 9821037605	(Regional Council Members)

TOPICS	SPEAKERS
Workshop on doubling your productivity, working with power, freedom and peace of mind, making your stress disappear and being in control of your work/life What is in it for YOU? Save 3 hours every day for the rest of your life! Hit your targets unquestionably with fun, ease and grace – beat your deadlines! Work with power, freedom and peace of mind – make your stress, demands on your time and work overload disappear! Have your arms around the totality of everything you have to do in your life – take charge of your life! Stay calm, focused and productive even when you are interrupted and distracted! Achieve intended outcomes in your meetings in half the time – stop aimless boring ineffective meetings! Manage the existence of all your promises – honour your word! Create an existence system to capture thoughts, ideas, and information before you forget them – execute your best thinking and realise your plans! Take projects that always mattered to you where time, clarity and resources were reasons that stopped you! Convert everything you “have to do” in to accomplishments – connect everything you are doing to your passion, a purpose!	CA. Manan Vasa & Shri Vivek Patki Certified Mission Control Trainers
Limited to 45 participants on first come basis	

06
CPE HRS

Seminar on Investigative & Forensic Accounting & Audit

DAY & DATE SATURDAY, 28TH DECEMBER, 2013

Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Neel Majithia 9820327660 CA. Dilip Apte 9930314856	(Regional Council Members)
Co-ordinators	CA. Kedar Limaye 9820287646 CA. Lalit Bajaj 9867692321 CA. Dhiraj Lalpuria 9820719873	

TOPICS	SPEAKERS
Window to World of Frauds & Forensic Accounting - Introduction, Red Flags, Why Frauds happen & Case Studies on business frauds and some novel methods on how to detect them	CA. Chetan Dalal
Mathematical Methods and use of CAATs in fraud detection, case studies & use of excel in Investigations	CA. Mahesh Bhatki
IT Forensic & Digital Methods for Investigations Anti Fraud Policy, Whistle Blower Policy, Hotline & Other Fraud Prevention Measurers	Dr. Vishnu Kanhere

12
CPE HRS

National Conference on Issues in Service Tax

DAY & DATE FRIDAY 27TH DECEMBER, & SATURDAY, 28TH DECEMBER, 2013

Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 2,500/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Conference Director	CA. Sanjay Agarwal, Chairman Indirect Tax Committee	
Conference Chairman	CA. Mangesh Kinare, Chairman, WIRC	
Chief Co-ordinators	CA. Hardik Shah 9825510422 CA. Sunil Patodia 9820344085 CA. Mahesh Madkholkar 9820075966	(Regional Council Members)
Co-ordinators	CA. Shantesh Warty 9819947969 CA. Hrishikesh Wandrekar 9892919239 CA. Ramesh Mishra 9820419606 CA. Mansi Nisal 9920775764	

TOPICS	SPEAKERS
Friday, 27th December, 2013	
Service & Declared Services – thin Demarcation Lines	CA. A. R. Krishnan
Negative List – Is it really Negative?	CA. Naresh Sheth
Mega Exemption Notification I Important Sectional Inputs (other than construction /WC)	Eminent Faculty
Major thrust upon Cross Border Transactions	Eminent Faculty
Saturday, 28th December, 2013	
Taxation of Works Contract & Constructions	Eminent Faculty
Issues & Challenges w.r.t. Valuations / Clarification / Abatements)	Eminent Faculty
Abatement / Reverse Charge Mechanism – A measure of widening Tax net?	CA. Rajiv Luthia
CENVAT Credit – Controversial issues in recent judgments	Eminent Faculty

Organised by: Indirect Tax Committee of ICAI
Hosted by: WIRC of ICAI

06
CPE HRS

Seminar on Standards of Auditing

DAY & DATE SATURDAY, 18TH JANUARY, 2014

Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Parag Raval 9824339200 CA. Sushrut Chitale 9821112904	(Regional Council Members)
Co-ordinators	CA. Nikhil Damle 9820170436 CA. Ritesh Hibare 9773418343 CA. Manak Daga 9322291921	

TOPICS
Standards on general principles and responsibilities (SA 200 – 299) • Standards on Audit evidence (SA 500 – 599) • Standards on Audit conclusions and reporting (SA 700 – 799) • Standards on Quality Control (SQCs) – Eminent Faculties

FORTHCOMING EVENTS

06
CPE HRS

Seminar on Role of CAs-Central & Maharashtra State Govt. Industrial Subsidies

DAY & DATE	SUNDAY, 29TH DECEMBER, 2013	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Julfesh Shah	9823096540
	CA. Girish Kulkarni	9225306814
	CA. Sarvesh Joshi	9822022292
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Gaurav Save	9969001607
	CA. Mukund Mall	9322224142
	CA. Kruti Goasar	9920217195

TOPICS	SPEAKERS
Package Scheme of Incentives 2013 Govt. of Maharashtra 2013	CA. Bhavesh Thakkar
Various central Govt. Subsidy Schemes:- • Gramin Bhandaran Yojna • Cold Storage Scheme • Strengthening of agricultural marketing infrastructure, grading & standardization of NABARD	CA. G.B.Modi
Maharashtra Textile Policy 2011 and Role of CA	CA. G.B.Modi
Mini & Mega Food Park Scheme of Central Govt.	Eminent Speaker
Accounting Treatment in books and Accounting standards for Industrial subsidies (AS 12) and Income Tax treatment with relevant IT Cases	CA. Kusai Goawala
Question & Answer with Panel Discussion	

06
CPE HRS

Seminar on Redevelopment of Property of Co-operative Societies

DAY & DATE	SATURDAY, 4TH JANUARY, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Girish Kulkarni	9225306814
	CA. Priti Savla	9321426883
	CA. Priyam Shah	9824096112
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Amol Kamat	9823018763
	CA. Abhimanyu Gupta	7666549469
	CA. Gaurav Parwani	9323674628

TOPICS	SPEAKERS
Important Issues relating to Redevelopment of Property of Co-operative Societies (including Deemed Conveyance)	CA. Ramesh Prabhu
Development Control Regulations and Important Issues relating to sanction of Building Plans	Eminent Faculty
Drafting of Documents relating to Redevelopment of Property of Co-operative Housing Society Ltd. (Agreement for Development, P.O.A., Deed of Indemnity, Declaration, Tripartite Agreement, etc.)	Adv. Pravin Veera
Provisions of Income Tax affecting Redevelopment of Property of Co-operative Societies	Eminent Faculty
Provisions of Service Tax, MVAT affecting Redevelopment of Co-operative Societies (Impact on Society, Members and Developers)	Eminent Faculty

06
CPE HRS

Seminar on Estate Planning

DAY & DATE	SATURDAY, 11TH JANUARY, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Shardul Shah	9820287625
	CA. Vishnu Agarwal	9833310916
	CA. Abhishek Nagori	9426075397
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Milind Joshi	9930033939
	CA. Sneha Jalan	9022978099
	CA. Hitesh Pasad	9869038488

TOPICS	SPEAKERS
Overview & Introduction of Estate Planning	CA. Dhishat Mehta
Direct Tax Provisions as applicable to Trusts / Beneficiaries	CA. Sanjeev Lalan
FEMA & RBI Provisions for Offshore Trusts / Beneficiaries	CA. Rajesh P. Shah
Domestic & International Structuring & Issues involved in Estate Planning	CA. Naresh Ajwani

04
CPE HRS

Competition-cum-Think-Tank on Financial Sector Reforms in India - Way Forward

DAY & DATE	SATURDAY, 18TH JANUARY, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	9.30 a.m. to 1.30 p.m. (Registration & breakfast 8.30 a.m. to 9.30 a.m.)	
Fees	₹ 500/- (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Shruti Shah	9892407988
	CA. Subodh Kedia	9879267750
	<i>(Regional Council Members)</i>	

This competition-cum-Think-Tank will have participants from 4 teams of 3 members each who will make in-depth presentations on their recommendations for Reforms in the Financial Sector in India that could change the FS landscape over the next 5 – 10 years.

Teams will study the existing Financial Sector Regulations of various Regulators in India i.e SEBI, RBI, IRDA, PFRDA, FMC etc, (all or any of them) as well as compare them with regulations by global regulators viz SEC, Regulatory Authorities in UK, Singapore etc.

Presentations would include learnings from recent global scams and financial crises – LTCM, Sub-Prime, Jerome Kerviel - SocGen, Libor scam etc. They will also study best practices in other countries and prepare a comparison with India and make recommendations for potential regulatory changes by various regulators in India.

Each team will get 25 -30 mins to make their presentation. These presentations will be judged by a panel of 4 judges on various pre-defined parameters.

INITIATIVES OF BFSI & CAPITAL MARKET STUDY GROUP OF WIRC

"Residential Refresher Course" (RRC) on 2nd, 3rd, 4th & 5th of January, 2014 (Thursday, Friday, Saturday and Sunday) at Pluz Resort, Silvassa (Nr. Dadra & Nagar Haveli-Gujarat). For further details contact CA. Jigar Chheda - 9833116653 Jointly with Dadar (E) CPE Study Circle. CPE 13 hours

06
CPE HRS

Conference of Chartered Accountants on MF, PMS and Investment Advisory Services

DAY & DATE SATURDAY, 28TH DECEMBER, 2013

Venue	Walchand Hirachand Hall, 4th Floor, IMC, Churchgate, Mumbai
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.30 a.m. to 10.00 a.m.)
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)

For more details visit www.wirc-icai.org

INTER FIRM CRICKET TOURNAMENT

Days & Dates	: Saturday 4th & 11th January, 2014
Venue	: Oval Maidan, Churchgate, Mumbai
Fees	: ₹ 8000/- per team

ENTRY CLOSED

M.L. D'Souza Rotating Trophy Cricket Match

WIRC is pleased to announce the M.L. D'Souza Cricket Match between Chartered Accountants XI and Commissioner of Income Tax XI. Dignitaries and officials from Income Tax Department will participate in this match. Chief Commissioner & many senior personalities from the Income Tax Department will grace the occasion

DAY & DATE: SATURDAY, 18TH JANUARY, 2014

Venue : Police Gymkhana Ground, Mumbai
Time : 5.00 p.m. to 10.00 p.m.

Co-ordinators

CA. Mahesh Madkholkar, RCM	9820075966
CA. Hardik Shah, RCM	9825510422
CA. Priyam Shah, RCM	9824096112
CA. Rakesh Upadhyaya	9821094698

**ALL ARE CORDIALLY INVITED
TO CHEER OUR TEAM**



Annual INDOOR SPORTS 2014

DAY & DATE SATURDAY, 25TH JANUARY, 2014

Venue	Goregaon Sports Club, Link Road, Goregaon (W)	
Time	10.00 a.m. to 6.00 p.m. (Registration 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 500/- for First Game (Including Lunch) ₹ 100/- for Every Additional Game	
Co-ordinators	CA. Ashok Manghnani	9820395195
	CA. Mahesh Chhabria	9867565118
	CA. M. Kalahasthi	9029006759
	CA. Mandar Date	9819487770

Members are Invited to Participate In Annual Indoor Sports Meet of 2014 of WIRC. Badminton (Singles & Doubles), Table Tennis (Singles & Doubles), Carrom (Singles & Doubles), Chess, will be played. Please send in your entries at the earliest.

SEPARATE FACILITIES FOR LADIES & GENTS MEMBERS

E-SAHAYATAA

E-Sahayataa is a grievance redressal mechanism hosted on ICAI website. Members and students are requested to visit www.icai.org to log in their grievances.

INTER-ACTIVE VOICE RESPONSE SYSTEM (IVRS) AT CUFFE PARADE, MUMBAI

Members and students are hereby informed the Inter-active Voice Response System (IVRS) at the Institute's office at Cuffe Parade, Mumbai is functional 24*7 for automated response on telephone calls. To avail of this facility, it is requested to call on landline telephone No: 022-3989 3989 during regular office hours on all working days between 10.00 am and 5.30 pm, if the telephone operator is busy, then the call will be directed to the automated response (IVRS) and also after office hours and on holidays.

Clarification on Applicability of CPE hours requirement for the newly enrolled members during the block of three years 1/1/2011 to 31/12/2013 - (09/12/2013)

- As per the Statement on CPE a member is exempted only for the particular calendar year during which he gets his membership for the first time.
- For example: members enrolled at any point of time during the Calendar year 2011 (1st January-31st December, 2011) are exempted for the calendar Year 2011. For the Calendar Years 2012 & 2013 they would be required to comply with proportionate CPE hours requirement. Members enrolled during the year 2011 with COP would be required to complete 60 CPE hours in the calendar years 2012 and 13. Out of 60 CPE hours, minimum 40 CPE hours should be under Structured Learning and 20 CPE hours under Structured/Unstructured Learning as per choice and Non-COP holders are required to complete 30 CPE hours under Structured/Unstructured Learning as per choice.
- Members enrolled at any point of time during the calendar year 2012 (1st January-31st December, 2012) are exempted for the calendar year 2012. For the calendar year 2013 they would be required to comply with proportionate CPE hours requirement. Members enrolled during the year 2012 with COP would be required to complete 30 CPE hours for the calendar year 2013. Out of 30 CPE hours minimum 20 CPE hours should be under Structured Learning and 10 CPE hours under Structured/Unstructured Learning as per choice and Non-COP holders are required to complete 15 CPE hours under Structured/Unstructured Learning as per choice for the calendar year 2013.
- Members enrolled at any point of time during the calendar year 2013 (1st January-31st December, 2013) whether holding COP or not are exempted for this block of three years (2011 to 2013).
- ICAI's CPE Advisory on Unstructured Learning and prescribed format for claiming Unstructured CPE Credit hours is available at URL: <http://www.cpeicai.org/Advisory-Unstructured%20Learning%20Activities.pdf>.

ICAI invites applications from highly competent candidates for the position of SECRETARY

Empanelment with CAG: Applications are invited online from the firms of Chartered Accountants and Chartered Accountants Limited Liability Partnerships (LLPs) who intend to be empanelled with this office for appointment as auditors of Government Companies/Corporations for the year 2014-2015. The format of application will be available on our website: www.saiindia.gov.in from 1st January 2014 to 15th February 2014. Chartered Accountant firms/CA LLPs can apply/update the data showing the status of their firm as on 1st January 2014 and generate online acknowledgement letter for the year. They are also required to submit related documents (to be notified in this office website) to this office by 31st March 2014. Only the Chartered Accountant firms/CA LLPs who have generated online acknowledgment letter for the year 2014-2015 and submitted the required documents before the due date will be considered for empanelment.

FORTHCOMING STUDY CIRCLE MEETINGS

Date & Day	Time	Subjects	Speaker(s)	Venue	Organised by / Convenor / Tel. No.
20/12/2013 Friday	5.30 p.m.	Workshop on Internal Audit Internal Audit: Risk management & Control Evaluation Reporting skills	CA. Huzeifa Unwala CA. Preeti Cherian	May Fair Banquet Hall, Near Prabhodhan Thakre Auditorium, Opp. ICICI Bank, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
21/12/2013 Saturday	6.30 p.m.	Issues under MVAT Audit and Revised Form No.704 with Annual Dinner (Study Group Meeting)	CA. Nikhil Bajoriya	MCF, Mandpeshwar Civic Federation, Prem Nagar, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
21/12/2013 Saturday	5.00 p.m.	Preparation for Appeals under the Income Tax Act	Susie Verghese	Smt. Mithibai College, 32nd T.P.S. III, S.V. Road, Bandra (W)	BKC CPE Study Circle CA. Ashok Shetty M: 9869039781
21/12/2013 Saturday	10.00 a.m.	Full Day Seminar on Companies Amendment Act	Eminent Speakers	Shubha Mangal Karyalaya, Near Railway Station	Dombivli CPE Study Circle CA. Shekhar Patwardhan M: 9930232717
21/12/2013 Saturday	8.30 a.m.	Seminar on Issues in TDS	CA. Mahendra Sanghvi CA. Manoj Shah CA. Jagdish Punjabi	Hotel Shantidoot, Dr. B. Ambedkar Road, Hindmata, Dadar (E)	Dadar (East) CPE Study Circle CA. Jasmine Sawla M: 9820585807
22/12/2013 Sunday	9.30 a.m.	Pathway to Financial Health	Shri Mukund Sheshari	SIMSIR, Vidyavihar	Chembur CPE Study Circle CA. Vrushi Thakkar M: 9867934666
24/12/2013 Tuesday	6.30 p.m.	BCSC Sneh Sammelan (Annual Get Together)	BCSC members and their families	May Fair Banquet Hall, Near Prabhodhan Thakre Auditorium, Opp. ICICI Bank, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
24/12/2013 Tuesday	5.30 p.m.	Importance of Digital Signature, Business Recovery Planning and Disaster Recovery Planning	CA. Sejal Agrawal	Hotel Kanak, Opp. Gujarat college, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
25/12/2013 Wednesday	11.00 a.m.	Indoor Sports - Badminton, Table Tennis, Carrom, Chess	BCSC Members	Goregaon Sports Club, Link Road, Goregaon	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
26/12/2013 Thursday	5.30 p.m.	CENVAT Credit Rules and Works Contracts – Recent Judgments	Adv. Nitin K. Mehta, Gujarat High Court	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
27/12/2013 Friday	5.00 p.m.	Overview of SA's	CA. Ramesh Shetty	Smt. Mithibai College, 32nd T.P.S. III, S.V. Road, Bandra (W)	BKC CPE Study Circle CA. Ashok Shetty M: 9869039781
30/12/2013 Monday	5.30 p.m.	Corporate Social Responsibility Issues in Taxation of Business Income & Capital Gains	CA. Durgesh Kabra CA. Rajesh Kothari	May Fair Banquet Hall, Near Prabhodhan Thakre Auditorium, Opp. ICICI Bank, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
05/01/2014 Sunday	9.30 a.m.	Service Tax on Stock Brokers Auditing of Stock Brokers	CA. S. S. Gupta CA. Kinjal Shah	Mayor Hall, All India Institute of Local Self Government, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500
11/01/2014 Saturday	5.30 p.m.	Recent amendments in Maharashtra Co-operative Housing Societies Act Taxation of Charitable Trusts	Eminent Faculty Eminent Faculty	Sarvoday A/c Hall, L. T. Road, Opp. Diamond Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
18/01/2014 Saturday	5.30 p.m.	Issues in Service Tax on Consideration received in form other than Cash & Point of Taxation Reverse Charge Mechanism	Eminent Faculty Eminent Faculty	Sarvoday A/c Hall, L. T. Road, Opp. Diamond Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
19/01/2014 Sunday	9.45 a.m.	Issues Under Direct Taxes (Study Group Meeting)	CA. Sunil Shah	Vrundas Veg, Gulmohar Road, Behind Ajanta Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
WIRC Programme Jointly Organised with Study Circle					
29/12/2013 Sunday	9.30 a.m.	Amendments in Companies Act and Corporate Responsibilities	CA. Nimesh Chothani	MCC College, Mulund (W)	Mulund CPE Study Circle CA. Sachin Maher M: 9869028560

FORTHCOMING BRANCH MEETINGS

Date	Time	Subjects	Speakers	Venue
JAMNAGAR				
28/12/2013	10.00 a.m.	Ind AS 24 Related Party Disclosures Ind AS 23 Borrowing Costs Ind AS 36 Impairment of Assets	Eminent Faculty Eminent Faculty Eminent Faculty	CA. Dilip H. Vadodaria Seminar Hall, Branch Premises
NAGPUR				
21/12/2013	2.00 p.m.	Seminar on VAT Audit	Eminent Faculty	Hotel Centre Point
22/12/2013		Branch Annual Picnic		
25/12/2013		Seminar on Direct Taxes Assessment of Hawala Transactions under Direct Taxes Taxation of Real Estate Transaction (only Direct Tax Perspective) Covering sections 43, CA, 56 (2) & 194 (IA) of Income-tax Act	CA. Bhupendra Shah Eminent Faculty	
28/12/2013		WICASA Youth Festival	Chief Guest : Shri Devendra Fadnavis, MLA	South Central Zone Cultural Centre, Civil Lines, Nagpur
VASAI				
21-22/12/2013	9.00 a.m.	Mega Members Conference	CA. Amarjeet Chopra Past President, ICAI & Various Speakers	GCC Club, Mira Road (East)
21/12/2013 5/1/2014 (Every Sat & Sun)	9.30 a.m.	Certificate Course on Concurrent Audit of Banks	Eminent Faculty	Branch Premises
29/12/2013	9.30 a.m.	Seminar on Project Finance	Eminent Faculty	GCC Club, Mira Road (East)

DIRECT TAX

(Contributed by CA. Haresh P. Kenia & CA. Deepak Lala)

Section 94A – Avoidance of tax – ‘Cyprus’ specified as notified jurisdictional area for the purpose of section 94A {218 TAXMANN 104(ST.)}

The Central Government *vide* Notification No. 86/2013 dated 1-11-2013, in exercise of the power conferred u/s. 94A(1) of the Income-tax Act, specifies ‘Cyprus’ as the ‘notified jurisdictional area’ for the purpose of said section. As per section 94A, the Central Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify the said country or territory as a notified jurisdictional area in relation to transactions entered into by any assessee.

India and Cyprus have entered into an agreement for avoidance of double taxation of income and prevention of fiscal evasion which is in force since 21st December, 1994 and are under legal obligation to exchange such information as is necessary, in particular for the prevention of fraud or evasion of taxes.

The implications of such a Notification are summarised as under :

- If an assessee enters into a transaction with a person in Cyprus, then all the parties to the transaction shall be treated as associated enterprises and the transaction shall be treated as an international transaction resulting in application of transfer-pricing regulations including maintenance of documentations [Section 94A(2)].
- No deduction in respect of any payment made to any financial institution in Cyprus shall be allowed unless the assessee furnishes an authorisation allowing for seeking relevant information from the said financial institution [Section 94A(3)(a) read with Rule 21AC and Form 10FC].
- No deduction in respect of any other expenditure or allowance arising from the transaction with the person located in Cyprus shall be allowed unless the assessee maintains and furnishes the prescribed information [Section 94(3)(b) read with Rule 21AC].
- If any sum is received from a person located in Cyprus, then the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee [Section 94A(4)].
- Any payment made to a person located in Cyprus shall be liable for withholding tax at 30 per cent or a rate prescribed in Act, whichever is higher [Section 94A(5)].

Treating e-return for the A.Y. 2013-14 as a deemed defective returns where unpaid self-assessment tax exists on the date of filing of return {218 TAXMANN 31(ST.)}

The CBDT *vide* Letter No. [F.NO. DIT(S)-III/ CPC/ 2013-14/ UNPAID SELF-ASSESSMENT TAX], dated 22/10/2013, directed to inform that number of e-returns have been submitted for A.Y. 2013-14 where unpaid self-assessment-tax existed on the date of submission of e-returns.

The Pan-wise data for A.Y. 2013-14 for assesseees who have not paid self-assessment-tax (₹100/- or more) on the day of filing of their e-returns is placed on i-Taxnet (<http://10.152.2.10/>) in the following path :

Resources > Downloads > DIT_SYSTEMS > Unpaid Self-Assessment-Taxes in e>Returns of A.Y. 2013-14

The CBDT directed the Assessing Officer in respective regions to issue notices and follow-up these cases to ensure that unpaid-self-assessment tax is deposited by the assessee at the earliest.

Section 245 – Set off of refunds against tax remaining payable {218 TAXMANN 31(ST.)}

The CBDT *vide* Letter No. [F.NO. DIT(S)-III/ CPC/ 2013-14/REFUND ADJUSTMENT], dated 22/10/2013, directed the CPC to issue the refund without adjustment of demand as an interim measure in cases where either the outstanding demand against the assessee was less than ₹ 5000/- or claim of refund was less than ₹ 5000/-.

A list of CCIT-wise cases where such refund/ demand in excess of ₹ 5000/- exist, and notices under section 245 have been issued is available on i-Taxnet (<http://10.152.2.10/>) on the following path :

Resources > Downloads > DIT_SYSTEMS > Notices issued under section 245 from CPC for confirmation of demands by AOs.

Section 192 – Deduction of tax at source on salary {218 TAXMANN 33(ST.)}

The CBDT *vide* Circular No. 08/2012 dated 5/10/2012 gives the rate for deduction of Income Tax from the payment of income chargeable under the head “Salaries” during the F.Y. 2013-14 and explains certain related provisions of the Act and Income Tax Rules, 1962.

Section 143 – Assessment – Revision of instruction on Receipt/ Revenue Audit Objections {218 TAXMANN 109(ST.)}

The CBDT *vide* instruction No. 16/2013 dated 31/10/2013 amended and supplemented its earlier instruction No. 9/2006 with effect from November 15, 2013. The CBDT has earlier issued instruction No. 9 of 2006 dated 7/11/2006 on Receipt/ Revenue Audit Objections. It was observed by the CBDT that despite a comprehensive procedure prescribed through the Instruction for action at different stages of Audit Objections, settlement track record is unsatisfactory and remedial action is delayed. There is also a need to provide that Internal Audit should normally precede Revenue Audit. The CBDT, therefore, decided to fine tune the procedure and strengthen the role of supervisory authorities and CIT (Audit).

The CBDT accordingly strengthened the role of CCIT (CCA)/ CCIT/ DGIT, Administrative CsIT and CIT (Audit). The definition of the Major Audit Objections, for the purpose of Revenue Audit, is revised to the Revenue effect of ₹ 2,00,000/- or more for the purpose of Corporation Tax and Income Tax. One may refer to the above magazine for detailed guidelines.

Internal Audit System – Revision of earlier instruction on New Internal Audit System – Strengthening of Role of Supervisory Authority {218 TAXMANN 27(ST.)}

The CBDT *vide* Instruction No. 15/2013 dated 18/10/2013 amended and supplemented its earlier Instruction No. 3/2007 with effect from October 28, 2013. The CBDT earlier issued Instruction No. 3 of 2007, dated 17/4/2007 on New Internal Audit System. The CBDT observed the slow progress of work relating to settlement of Internal Audit Objections and also quality and coverage of internal audit have been a matter of serious concern. The Public Account Committee has also commented adversely on the present state of affairs and directed proper monitoring mechanism for desired improvement. The CBDT in order to streamline the system decided to strengthen the system, and the role of supervisory authority.

The CBDT prescribed the role of CCIT (CCA), jurisdictional CCIT/ DGIT, CsIT (Audit) and Additional CsIT (Audit). The CBDT also suggested the revision of classification of major and minor Audit Objections. Presently, the Audit Objections in case of Income Tax/ Corporation Tax exceeding ₹ 1,00,000/- and ₹ 30,000/- in case of Other Taxes are classified as Major and remaining as minor. The CBDT has revised the limit of Major Audit Objections, for the purpose of Internal Audit, to the revenue effect of ₹ 2,00,000/- or more for the purpose of Corporation Tax and Income Tax.

MAHARASHTRA VAT (Contributed by CA. C. B. Thakar)

MVAT ACT, 2002

Orders

The Commissioner of Sales Tax has issued order under section 10(6) of the MVAT Act, 2002 dated 15-7-2013 whereby more powers are given to the Authorities covered under the said order.

The Government of Maharashtra has issued order under section 12B(d) of the Maharashtra Purchase Tax on Sugarcane Act, 1962 whereby Joint Commissioner of Sales Tax has been designated as an Authority for issuance and cancellation of Entitlement Certificate.

Circular

The Commissioner of Sales Tax has issued Circular 7T of 2013 dated 22-11-2013 clarifying the procedure for correction of mistake in the payment of taxes.

CORPORATE LAWS (Contributed by CA. Rahul Joglekar)

Relaxation of last date and additional fee in filing of e-Form 23C for Appointment of Cost Auditor

The MCA has issued General Circular No. 17/2013 on 01/11/2013 extending the last date of filing the Form 23C for appointment of Cost Auditor and relaxing the additional fee applicable on it further up to 30th November, 2013. The e-Form 23C can be filed for appointment of cost auditor with the normal applicable fee upto 30th November, 2013 or within 30 days of the commencement of the company's financial year to which the appointments relates, whichever is later. Previously the said extension was granted till 31st October 2013 via General Circular No.14/2013 on 3-9-2013 which is now extended further. For further details one may refer the link <http://www.mca.gov.in/>.

Clarification with regard to applicability of provision of Section 372A of the Companies Act, 1956

Since Ministry has received number of representations consequent upon notifying Section 185 of the Companies Act, 2013 dealing with loans to directors which is corresponding to Section 295 of the Companies Act, 1956. However section 186 of the Companies Act, 2013 is yet to be notified. In clarification of the same via General Circular No. 18/2013 dated 11/11/2013 it has been said that Section 372A of the Companies Act, 1956 dealing with inter-corporate loans continue to remain in force till section 186 of the Companies Act, 2013 is notified.

Compliance with the provisions of Equity Listing Agreement by listed companies – Monitoring by Stock Exchanges

The Equity Listing Agreement mandates listed companies to make periodic and event based disclosures which are price sensitive in nature and which will have bearing on the performance/operations of the company. It was also mandated that every recognised Stock Exchange shall put in place the system to monitor and review the compliance of respective listing conditions by the listed companies. Concerns have been raised that even though listed companies make disclosures to Stock Exchanges within the timeframe stipulated under the Listing Agreement; the contents of the disclosures made by such companies are not adequate and accurate. Therefore, investors are unable to take informed investment decisions based on such disclosures. To address these concerns, SEBI has mandated Stock Exchanges to adopt a 6-point approach which includes - Putting in place appropriate framework to effectively monitor the adequacy and accuracy of the disclosures, submit to SEBI an "Exception Report" etc. Complete text of the circular can be downloaded from http://www.sebi.gov.in/cms/sebi_data/attachdocs/1384773842436.pdf

Annual System Audit of Stock Brokers / Trading Members

In view of SEBI, Technological advancements and various market events have necessitated reviewing the existing system audit framework for Stock Brokers / Trading Members. Accordingly, system audit guidelines have been revised which includes System Audit Process, Auditor Selection Norms and Terms of Reference (TOR). SEBI vide circular no. CIR/ MRD/DMS/ 34 /2013 dated 6th November 2013 has given directions to stock exchanges in this regard. Exchanges are advised to keep track of findings of system audits of all brokers on quarterly basis and ensure that all major audit findings, specifically in critical areas, are rectified / complied in a time bound manner. Stock Exchange should report all major non-compliances / observations of system auditors, broker wise, on a quarterly basis to SEBI. Refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1383740120626.pdf for the complete text of the circular.

CENTRAL EXCISE (Contributed by CA. Jayesh Gogri)

Notifications

Tariff Notifications

Exemption to specified goods when supplied to specified Institutions

Notification No. 10/1997-CE dated 1st March, 1997 exempts specified goods when supplied to specified institutions. The exemption is expanded and now exemption is also available for following goods when supplied to Departments and laboratories of Central and State Governments excluding hospital:

- Scientific and technical instruments, apparatus, equipment including computers
- Accessories, spare parts and consumables thereof
- Computer software, CD ROM, recorded magnetic tapes, microfilms, microfiches and
- Prototypes

To avail this exemption, at the time of clearance of these goods, the manufacturers have to produce a certificate from the head of the institution certifying that the said goods are required for research purpose only and the aggregate value of prototypes received by an institution does not exceed ₹ 50,000/- in a financial year.

(Notification No. 28/2013-CE dated 1-10-2013)

Extended time limit increased to 90 days for exemption to scheduled formulations vide Notification No. 22/2013-CE dated 29th July, 2013

Vide, Notification No. 22/2013-CE dated 29th July, 2013, a conditional exemption from whole of Central Excise Duty was granted to scheduled formulations as defined under the Drugs Price Control Order, 2013, falling under Chapter 30 and which were subject to certain processes, in the premises which are not registered under Central Excise Laws. The exemption was available for a period of 45 days from the date of publication by NPPA of ceiling price for such scheduled formulations or such extended period not exceeding 30 days as may be permitted by the Department of Pharmaceuticals. Now, the extended time limit is increased to 90 days as against 30 days earlier.

(Notification No. 29/2013-CE dated 26-11-2013)

Exemption granted to specified goods required for the Revised National Tuberculosis Control Programme

An exemption from whole Excise Duty is being granted to specified Anti Tuberculosis Drug, Diagnostics and Equipments subject to the condition that at the time of clearance of these goods, the manufacturer produces, before the jurisdictional Assistant or Deputy Commissioner of Central Excise, a certificate from an officer not below the rank of Deputy Secretary to Government of India in the Ministry of Health and Family Welfare that the goods are required for the Revised National Tuberculosis Control Programme funded by the Global Fund to fight AIDS, Tuberculosis and Malaria.

(Notification No. 30/2013-CE dated 29-11-2013)

Non-Tariff Notifications and Circular

LTU facility extended to Kolkata

Notification No. 20/2006-CE (NT) dated 30th September, 2006 was issued for conditions and procedures to be followed to be eligible to opt as Large Tax Payer. Accordingly, if an assessee has paid Excise Duties, Service tax of more than ₹ 5 Crores (including payment through CENVAT Credit) or advance income tax of more than ₹ 10 Crores and is assessed by specified Jurisdictional Chief Commissioner, he is eligible to opt as Large Tax Payer. Now, Chief Commissioners of Income Tax of Kolkata i.e. Chief Commissioners of Income tax, Kolkata – I, II, III and IV, Kolkata and the Commissioners of Income tax (Central) – I, II and III, Kolkata and Director of Income-tax (International Taxation), Kolkata would also be covered in the list of specified Jurisdictional Chief Commissioner.

(Notification No. 13/2013-CE (NT) dated 25-10-2013)

Amendment in Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000

Rules 8, 9 and 10 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 (Valuation Rules) deal with valuation of goods when goods are captively consumed, sold to or through a related parties and sold to or through an inter-connected undertaking, respectively. With effect from 1st December, 2013, these rules are amended to clearly state that these rules apply irrespective of whether the whole or part of the clearances of manufactured goods are covered by the circumstances given in the rules.

It is clarified that each removal is required to be assessed independently. Referring to decision of Hon'ble Supreme Court in case of Fiat India Pvt. Ltd. 2012 (283) ELT 161 (SC), CBEC has clarified that the Valuation Rules are not required to be followed sequentially and each rule is framed to value goods under different contingencies. Consequently, Circular No. 643/34/2002-CX dated 1st July, 2002 is suitably amended.

(Notification No. 14/2013-CE(NT) dated 22-11-2013 and Circular No. 975/09/2013-CX dated 25-11-2013)

E-payment mandatory for assesseees who have paid Central Excise Duty of ₹ 1 lakh or more in the preceding Financial Year

Till now, it was mandatory to make payments electronically for the assesseees who had paid total Central Excise duty of ₹ 10 lakhs or more (including payment by way of utilisation of CENVAT Credit) in the preceding Financial Year.

Now, with effect from 1st January, 2014, if Central Excise duty payments (Cash and CENVAT Credit Utilisation) were ₹ 1 lakh or more in the preceding Financial Year, the assesseees are mandatorily required to make e-payment.

(Notification No. 15/2013-CE (NT) dated 22.11.2013)

SERVICE TAX (Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

Central Government vide Notification No.15/2013-ST dated 21st November, 2013 has amended Notification No.12/2013-ST dated 1st July, 2013 whereby the due date for furnishing quarterly statement in Form A-3 by developer/unit of SEZ claiming *ab initio* exemption under the said Notification is prescribed as 30th of the month following the particular quarter. The statement for the quarter July, 2013 to September, 2013 is required to be furnished before 15th December, 2013.

Central Government vide Notification No.16/2013-ST dated 22nd November, 2013 has amended Rule 6(2) of the Service Tax Rules, 1994 whereby the limit for mandatory electronic payment of Service Tax is reduced from Rs.10 Lacs to Rs.1 Lac w.e.f. 1st January,2014.

CBEC vide Circular No.174/9/2013-ST dated 25th November, 2013 has clarified on various issues related to the Voluntary Compliance Encouragement Scheme (VCES), 2013:

The designated authority shall ensure that no declaration is returned citing the reasons that the same is incomplete. In all cases, declaration should be promptly received and duly acknowledged. Request for clarification should be dealt with promptly. Defects in the application, if any, should be explained to the declarant and possible assistance be provided in rectifying these defects. The effort must be to accept a declaration, as far as possible, and recover the arrears of tax.

The conditions prescribed u/s.106(2) for rejection of declaration may be construed strictly and narrowly. The concerned Commissioner may ensure that no declaration is rejected on frivolous grounds or by taking a wider interpretation of the conditions enumerated in section 106(2). If the issue or the period of inquiry, investigation or audit is identifiable from summons or any other document, the declaration in respect of such period or issue alone will be liable for rejection under the said provision.

The designated authority, if he has reasons to believe that the declaration is covered by section 106(2), shall give a notice of intention to reject the declaration within 30 days of the date of filing of the declaration stating such reasons to reject the declaration. Commissioners should ensure that this time line is followed scrupulously.

In cases where documents like Balance Sheet, Profit and Loss Account etc. are called for by department in the inquiries of roving nature, while quoting authority of Section 14 of the Central Excise Act in a routine manner, the designated authority/ Commissioner concerned may take a view on merit, taking into account the facts and circumstances of each case as to whether the inquiry is of roving nature or whether the provisions of section 106 (2) are attracted in such cases.

The benefit of the Scheme would be available in respect of payments made after 10-5-2013 but before filing a declaration if such amount is declared under the Scheme subsequently, along with the remaining tax dues, if any, provided that CENVAT credit has not been utilised for payment of such amount.

No declaration can be made in such case where service tax pertaining to the period covered by the Scheme along with interest has already been paid by the parties, before the Scheme came into effect, so as to get waiver from penalty and other proceedings as no "tax dues" is pending in such case. However, in such cases, there may be a case for taking a lenient view on the issue of penalties under the provision of the Finance Act, 1994. In this regard attention is invited to Section 73 (3) and Section 80 of the Finance Act, 1994.

GUJARAT VAT (Contributed by CA. Kishor R. Gheewala)

Update of the Gujarat VAT Act, 2003

Time Limit Extension

Vide Circular No. GUJKA/VAT/13-14/otw.147/126 dated 30th October, 2013, due date for filing returns of Month/Quarter ended on 30th September, 2013, has been extended from 30th October, 2013 to 30th November, 2013 for the dealers liable to file returns manually.

Lump sum for Restaurants

The benefit of Lump sum scheme for Restaurants is admissible subject to, *inter-alia*, condition of consumption of locally tax paid goods only. Vide Notification No. (GHN-23) VAT-2013(33)-TH dated 8th October, 2013, a new proviso is added to Rule 28C(6)(b), with retrospective effect from 17th August, 2006, to allow the purchase of goods, which are not produced in the State due to legal constraints, for the purpose of sales in the same form, subject to the condition of payment of applicable tax on the same.

Gujarat Textile Policy, 2012

Vide Notification dated 25th June, 2013, Resolution No. TEX/102012/65117/T Gujarat Textile Policy – 2012 (5-9-2012) Integrated approach to strengthen the value chain, Farm-Fiber-Fabric-Fashion (Garment) to Foreign (Export) has been published. Vide Notification dated 11th October, 2013, amendments in the said Policy are notified.

Digital Signature

Vide Public Circular No. GUJKA/VAT-184/12-13/o.t.w.146/125 dated 9th October, 2013, use of Digital Signature is permitted, subject to the condition of submission of declaration by the dealer to the registering authority for the same.

FEMA (Contributed by CA. Manoj Shah & CA. Hinesh Doshi)

Amendment to the Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993

- (i) **Press Release dated September 27, 2013 and Notification No. G.S.R. 684(E) dated October 11, 2013 issued by the Government of India;**
- (ii) **A.P. (DIR Series) Circular No. 69 dated November 8, 2013**

Till now unlisted Indian companies were not allowed to directly list in overseas markets without prior or simultaneous listing in Indian markets. The Ministry of Finance has *vide* Notification No. G.S.R. 684(E) dated October 11, 2013 allowed the unlisted Indian companies to

raise capital abroad without requirement of prior or subsequent listing in India subject to certain specified conditions. This scheme will be implemented on a pilot basis for a period of two years from the date of notification i.e. October 11, 2013 subject to review thereafter.

Consequently RBI has allowed unlisted companies incorporated in India to raise capital abroad, without the requirement of prior or subsequent listing in India, initially for a period of two years, subject to specified conditions.

For detailed conditions, please refer circular & notification available on RBI website at:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/69APDIR081113.pdf>

Third party payments for export / import transactions

A.P. (DIR Series) Circular No.70 dated November 8, 2013

Normally payment for exports has to be received from the overseas buyer named in the Export Declaration Form (EDF) by the exporter and the payment shall be received in a currency appropriate to the place of final destination as mentioned in the EDF irrespective of the country of residence of the buyer. Similarly, the payments for the import should be made to the original overseas seller of the goods and the AD should ensure that the importer furnishes evidence of import, such as, Exchange Control copy of the Bill of Entry to satisfy itself that goods equivalent to the value of remittance have been imported.

With a view to further liberalising the procedure relating to payments for exports/imports and taking into account evolving international trade practices, RBI has decided as under:

1. In case of Export Transactions

AD banks may allow payments for export of goods / software to be received from a third party (a party other than the buyer) subject to conditions as under:

- Firm irrevocable order backed by a tripartite agreement should be in place;
- Third party payment should come from a Financial Action Task Force (FATF) compliant country and through the banking channel only;
- The exporter should declare the third party remittance in the Export Declaration Form;
- It would be responsibility of the Exporter to realise and repatriate the export proceeds from such third party named in the EDF;
- Reporting of outstandings, if any, in the XOS would continue to be shown against the name of the exporter. However, instead of the name of the overseas buyer from where the proceeds have to be realised, the name of the declared third party should appear in the XOS; and
- In case of shipments being made to a country in Group II of Restricted Cover Countries, (e.g. Sudan, Somalia, etc.), payments for the same may be received from an Open Cover Country.

Note: Restricted Cover Group II country is country which experiences chronic political and economic problems as well as balance of payment difficulties.

2. In case of Import Transactions-

AD banks are allowed to make payments to a third party for import of goods, subject to conditions as under:

- Firm irrevocable purchase order/tripartite agreement should be in place;
- Third party payment should be made to a FATF compliant country and through the banking channel only;
- The Invoice should contain a narration that the related payment has to be made to the (named) third party;

- Bill of Entry should mention the name of the shipper as also the narration that the related payment has to be made to the (named) third party;
- Importer should comply with the related extant instructions relating to imports including those on advance payment being made for import of goods; and
- The amount of an import transaction eligible for third party payment should not exceed US\$ 100,000. This limit will be revised as and when considered expedient.

Advance Remittance for Import of Rough Diamonds

A.P. (DIR Series) Circular No.71 dated November 8, 2013

AD Category-I banks are permitted to make advance remittance without any limit and without Bank Guarantee or standby Letter of Credit, by an importer (other than Public Sector Company or Department / Undertaking of the Government of India/State Governments), for import of rough diamonds into India from nine mining companies, subject to certain conditions.

Based on the recommendations of the Gems and Jewellery Export Promotion Council (GJEPC), the names of the two mining companies listed above have been changed as indicated below:

- De Beers UK Ltd. to De Beers Global Sightholder Sales Proprietary Ltd.
- BHP Billiton, Belgium to Dominion Diamond Marketing.

All the instructions issued in respect of advance remittance for import of rough diamonds, *vide* A.P. (DIR Series) Circular No.21 dated December 29, 2009 and Import of rough, cut and polished diamonds, *vide* A.P.(DIR Series) Circular No. 59 dated May 6, 2011, shall remain unchanged.

Clarifications on Import of Gold by Nominated Banks /Agencies/ Entities

A. P. (DIR Series) Circular No.73 dated November 11, 2013

Considering the representations received relating to Advance Authorisation (AA) / Duty Free Import Authorisation (DFIA), and in consultation with the GOI, RBI has clarified that any authorisation such as AA / DFIA is to be utilised for import of gold meant for export purposes only and no diversion for domestic use shall be permitted. For any AA / DFIA issued prior to 14th August, 2013 the condition of sequencing the imports prior to exports shall not be insisted upon.

Notwithstanding any of the foregoing directions, entities/units in the SEZ and EoUs, Premier and Star Trading Houses (irrespective of whether they are nominated agencies or not) are permitted to import gold exclusively for the purpose of exports only. Similarly, exports towards fulfilment of obligation under AA/DFIA scheme shall not qualify as export for the purpose of the scheme of 20:80.

Trade Credit for imports into India-Online submission of data on issuance of Guarantee/Letter of Undertaking (LoU) /Letter of Comfort (LoC) by ADs

A.P. (DIR Series) Circular No. 75 November 19, 2013

RBI has decided to shift the arrangement for reporting of data on issuance of guarantees/LoUs/LoCs by all AD banks in consolidated statement, at quarterly intervals, from manual submission (and in MS-Excel file through email) to eXtensible Business Reporting Language (XBRL) platform from quarter ended September 30, 2013.

The detailed procedure for reporting of data through XBRL can be accessed through the following link-

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CR75191113F.pdf>

The submission of manual statement (and in MS-Excel file through email) to the Reserve Bank is henceforth dispensed with. Those AD banks who have already submitted the manual statement (and MS-Excel file) for the quarter ended September 30, 2013 are also required to report the same data online. From the quarter ending December 31, 2013 onwards, the data should be submitted only in soft form on XBRL platform latest by 10th of the succeeding month.

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DIRECT TAX

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Supreme Court

S. 5 Year of Taxability of income from duty entitlement pass book

The income from duty entitlement pass book does not accrue in the year of export but in the year in which the imports are made. Court observed that when assessee has offered, income arising from duty entitlement passbook in the year of import, it is not as if the Revenue has been deprived of any tax especially when there is no change in tax rates. Under such circumstances the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect - *CIT vs. Excel Industries Ltd.* 38 taxmann.com 100 (Supreme Court) (Three member bench)

S. 133(6) Scope of enquiry of Assessing Officer

The powers under section 133(6) are in the nature of survey and general enquiry to identify persons who are likely to have taxable income and whether they are in compliance with the provisions of the Act. It would not fall under the restricted domains of being "area specific" or "case specific". Section 133(6) does not refer to any enquiry about any particular person or assessee, but pertains to information in relation to "such points or matters" which the assessing authority, issuing notices requires. This clearly illustrates that the information of general nature can be called for and names and addresses of depositors who hold deposits above a particular sum is certainly permissible - *Kathiroor Service Cooperative Bank Ltd. vs. CIT (CIB) Civil Appeal No. 7460 of 2013* (Supreme Court)

S. 271(1)(c) Concealment penalty

The AO, should not be carried away by the plea of the assessee like "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

Assessee has only stated that he had surrendered the additional sum of ₹ 40,74,000/- with a view to avoid litigation, buy peace and to channelise the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognise those types of defences under the Explanation 1 to Section 271(1)(c) of the Act. It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he had to be absolved from penalty. The AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing - *MAK Data (P.) Ltd. vs. CIT* 38 taxmann.com 448 (Supreme Court).

Consistency in the stand of revenues

The Revenue accepted the order of the Tribunal in favour of the assessee and did not pursue the matter any further but in respect of some assessment years the matter was taken up in appeal before the Bombay High Court but without any success. Court observed that, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it - *CIT vs. Excel Industries Ltd.* 38 taxmann.com 100 (Supreme Court) (Three member bench).

High Court

S. 32 Depreciation on imported cars acquired during merger

Imported motor cars were originally acquired by the merged entities between 1-3-1975 and 31-3-2001, but upon and in view of the scheme sanctioned by the High Court vide order dated 5th October, 2004, the said cars became the properties of the respondent-assessee w.e.f. 1-4-2004. It was held that the respondent assessee had acquired the asset i.e. imported cars after the cut off date i.e. 1st April, 2001 and, therefore, is entitled to depreciation and the bar/prohibition in clause (a) to proviso to Section 32(1) would not apply - *CIT vs. Mira Exim Ltd.* 38 taxmann.com 50 (Delhi).

S. 37(1) Cost of media used for creation of copies for selling

When incurred expenditure does lead to creation of an asset but of a limited or short life, it has to be treated as a liability and not as a fixed asset. Assessee imported master copies of the software which were used for duplication and the software replicated and transferred on the media as a result of the said activities was then sold, the master copy itself might not be stock-in-trade as such in strict sense, but it did not have a long life and its value and life span was small since it perished and diminished when the upgraded version or a better software in form of the next master copy was imported, for the purpose of duplication. In such circumstances the requirement of enduring benefit fails and it cannot be said that any capital asset was acquired or purchased. Accordingly it was held that cost of master copies of software is revenue in nature - *Oracle India (P.) Ltd. vs. CIT* [2013] 39 taxmann.com 150 (Delhi) A.Y. 1994-95 to 2004-05.

S. 37(1) Share issue expenses

Assessee claimed expenses incurred under various heads viz. 1. Despatch and out of pocket exp. 2. Registration Fees, 3. Printing exp., 4. Listing Fees, 5. Stationery exp., 6. Travelling & Meeting exp., 7. Bank Charges & Commission, 8. Lead Managers fees, 9. Advertisement, 10. Prof. Certificate, as share issue exp. It was held that out of the above total ten heads of expenses, expenses in respect of printing expenses, lead manager fees and advertisement expenses are capital in nature and others are revenue expenditure. *CIT vs. Kreon Financial Services Ltd.* [2013] 38 taxmann.com 46 (Madras).

S. 40A(2) Transactions between related parties

The rate at which the sister concern sold the electricity to various parties, it was observed that out of total ten instances, excluding the assessee, only in two cases, the rates were lower than the average rate at which electricity was supplied by the said company to unrelated parties. Court observed that that the isolated instance could not be a basis for making a meaningful comparison. It was held that the commercial consideration which permitted the assessee to purchase electricity at that rate could not be taken as a good ground for considering the question in favour of the Revenue - *CIT vs. OPG Metals (P.) Ltd.* 38 taxmann.com 274 (Madras) A.Y. 2008-09.

S.45 Amount received on retirement from Firm

The amount received by the assessee on retirement from partnership firm is not subject to capital gains tax. *CIT vs. Mr. Riyaz A. Sheikh* A.Y. 2002-03 I.T.A. No. 1969 of 2011 Bombay High Court

S. 45(4) Partner receiving money upon retirement from firm

When a retiring partner takes only the money towards the value of his share, the firm should be made liable to pay capital gains tax since there is no distribution of capital asset/assets among the partners under section 45(4). To attract Section 45(4) there should be a transfer of a capital asset from the firm to the retiring partners, by which the firms ceases to have any right in the property which is so transferred. In other words, its right to the property should stand extinguished and the retiring partners acquire absolute title to the property. Decision in case *CIT vs. A. N. Naik Associate - (2004) 265 ITR 346* (Bombay High Court) disapproved - *CIT vs. Dynamic Enterprises* AY 1995-96 I.T.A. No. 1414 of 2006 Karnataka High Court (Full Bench).

S. 254 ITAT's power

The Income Tax Appellate Tribunal is empowered to pass an order of refund of an amount illegally appropriated by the revenue in violation of the stay order. Court also observed that the vacillating stand of the revenue clearly indicates a confused state of mind, apparently compelled by the need to achieve targets fixed by superiors of the department - *DCIT vs. ITAT Civil Writ Petition No.8321 of 2013* (Punjab & Haryana High Court).

254 – Power of ITAT to dismiss appeal for non-appearance

The Tribunal has no power in terms of Rule 24 of the Tribunal Rules to dismiss an appeal before it for non-prosecution i.e. without considering the merits of the appeal. The Miscellaneous Application for recall of an order falls under Section 254(2) of the Act accordingly application should be made within period of four years from the date of order - *Bharat Petroleum Corporation Limited vs. ITAT Writ Petition No.1740 of 2013* (Bombay High Court).

ITAT

S. 43(5)(a) – Hedging transaction

Future Contracts (FCs) are “commodities”. However, considering the fact that these FCs are integral part or incidental to the core business of export or the outstanding receivables of export proceeds, in principle, the impugned FCs constitute ‘hedging transaction’ and not the ‘speculative contracts’. As such, the banks do not entertain FCs of speculative nature with the customers like the assessee, the exporter. As such, the extension of FCs, in case of non-receipt of export proceeds on the due dates, is not allowed without cancelling the existing FCs. However, the onus is on the assessee to explain satisfactorily why the assessee resorted to premature cancellation of some FCs. Further, it is not the requirement that there must be 1:1 precise correlation between FC and the corresponding export invoice. So long as the total FCs does not exceed the exports of the year plus outstanding export receivable, the FCs can constitute ‘hedging transaction’. Further also, the ‘premature cancellation of FCs may not alter the above conclusions so long as the assessee has valid and acceptable explanation for such cancellations. It should not be the case, to start with, FC can be a ‘hedging transaction’ but the ending of such FC is ‘speculation’ - *London Star Diamond Company (I) (P.) Ltd. vs. DCIT 38 taxmann.com 338* (Mumbai - Trib.)

S. 143(2) – Issue notice during reassessment

The Assessing Officer has completed the assessment u/s 143(3) read with section 147 of the Act without issuing any notice u/s 143(2) as per the statutory mandate, the assessment order passed is legally unsustainable – *ADIT (Exemption) vs. Vodithala Education Society A.Y. 1999-2000* 39 taxmann.com 100 (Hyderabad - Trib.)

S. 192, Rule 3(7)(iii) – Meal coupons

The disbursement of the meal coupons made by the appellant employer in the present case to its employees did not attract TDS u/s.192 *ACIT (TDS) vs. Cisco Systems Asia Services A.Y. 2008-09 & 2009-10* 38 taxmann.com 381 (Bangalore - Trib.)

S. 192, 201(1), 201(1A) – Medical reimbursement paid every month

The exemption on account of Medical expenditure and leave travel is granted even if the payment precedes the incurrence of expenditure. The interpretation of the word “actually paid” is not relevant while ascertaining the quantum of tax that has to be deducted at source u/s.192 of the Act. As far as the assessee is concerned, his obligation is only to make an “estimate” of the income under the head “Salaries” and such estimate has to be a *bona fide* estimate. Honest and bona fide estimate of taxable salary is made in the process of deducting tax at source u/s 192. Every effort is made by the assessee to comply with the requirements of section 192. The assessee is not benefited by allowing employees to claim exemption. The order passed by the AO u/ss. 201(1) & 201(1A) is therefore bad in law. ITAT also observed that the liability of the person deducting tax at source cannot be greater than the liability of the person on whose behalf tax at source is deducted - *ACIT (TDS) vs. Cisco Systems Asia Services A.Ys. 2008-09 & 2009-10* 38 taxmann.com 381 (Bangalore - Trib.)

206(1C) r.w.s. 2(31) Person for Tax collected at Source

An authority established by under Central, State or Provincial Act for managing affairs of the temple cannot be regarded to be a ‘person’. Temple, is different from its Managing Committee, which has been appointed under Shree Jagannath Temple Act (1955). The Assessing Officer has made Shree Jagannath Temple Office to be responsible to collect tax. Shree Jagannath Temple Office, cannot be a person as we find under section 2(31) of the Income Tax Act. It cannot also be ‘every person’ as referred to Section 206(1C) - *Shree Jagannath Temple Managing Committee vs. ACIT (TDS) 39 taxmann.com 71* (Cuttack - Trib.)

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INTERNATIONAL TAXATION

(Contributed by
CA. Hinesh Doshi & CA. Dolly Waghela)

DIT vs. Alcatel Lucent USA Inc. (ITA 328/2012, ITA 329/2012, ITA 336/2012, ITA 337/2012 & ITA 340/2012) (Delhi HC)

Facts of the case

The taxpayer, a US company and a part of the Alcatel Lucent Group. The taxpayer was having a subsidiary in India, which provided marketing support services to the taxpayer.

The taxpayer was engaged in the business of supplying telecom equipments to customers in India. The payers (i.e., Indian customers) did not deduct tax while making payments to the taxpayer.

The income tax authorities conducted a survey in the premises of Indian subsidiary and the Assessing Officer (AO) concluded that the taxpayer was having Permanent Establishment (PE) in India under the India-USA tax treaty and attributed 2.5 per cent of sale proceeds of the hardware as profit attributable to the PE in India. In addition to the aforesaid income, the AO also levied interest under sections 234A, 234B and 234C of the Act.

Initially, before the tax authorities, the taxpayer denied any liability to pay tax in India. However, before the Commissioner of Income Tax (Appeals) [CIT (A)], it did not press the claim that it was not liable to tax in India. However, the taxpayer contended that it is not liable to pay interest under section 234B of the Act.

The taxpayer claimed that it was not liable to pay interest under Section 234B of the Act, since the liability to deduct the tax on its income was on the payer. It was claimed that as per Section 209(1)(d)2 of the Act, the taxpayer was entitled to take credit of tax which was 'deductible' while computing its liability for paying advance tax and if the amount of tax so 'deductible' by the payer in India is given credit, there was no advance tax payable by the taxpayer.

The CIT(A) and Income Tax Appellate Tribunal (the Tribunal) ruled in favour of the taxpayer.

Issue before the High Court

Whether the taxpayer is liable to pay interest under section 234B of the Act, when the tax was deductible at source, but not deducted by the payer?

Held

In the case of *Jacobs*, the taxpayer admitted taxable income in the income-tax return. However, in the present case, the taxpayer did not admit any taxable income in the income-tax return. Accordingly, the facts of the present case were different from the facts of the case of *Jacobs*.

It would be inappropriate to hold that even though the taxpayer did not admit any tax liability in India while filing the income-tax return and correspondingly the payers were also not liable to deduct tax under section 195(1), still it can claim credit for the tax 'deductible', though tax was not deducted by the payers from the remittance made to the taxpayer.

The contention of the taxpayer that the liability of the payer under section 201 of the Act is different from the liability of the non-resident taxpayer under section 234B of the Act need not be examined, and in the present case it would not make any difference on account of the peculiar facts of the present case.

The taxpayer denied its tax liability in India while filing income-tax return and therefore, it can be inferred that the taxpayer would have asked its Indian payers not to deduct tax from the remittances made to it. If the taxpayer did not make such a representation, it would only be consistent with the taxpayer's stand regarding its tax liability in India. Therefore, even though there may not be any evidence to show that the taxpayer has made a representation to payers not to deduct tax from the remittances, such a representation or informal communication of the request can be reasonably inferred or presumed.

It was open to the taxpayer to deny its tax liability in India on whatever grounds it thinks fit and proper. Having denied its tax liability, it seems unfair on the part of the taxpayer to expect the Indian payers to deduct tax from the remittances.

It was open to the taxpayer to change its stand at the first appellate stage and submit the assessment of income. When it does so, all consequences under the Act follow, including its liability to pay interest under section 234B since it would not have paid any advance tax. Such liabilities would arise right from the time when the income was earned.

The High Court observed that it would be inequitable that the taxpayer, who accepted the tax liability after initially denying it, should be permitted to shift the responsibility to the Indian payers. Once the liability to tax is accepted by the taxpayer, all consequences follow.

UPS Worldwide Forwarding Inc. vs. ADIT/DIT (Writ Petition No. 1455 of 2013) (Bombay HC)

Facts of the case

The taxpayer, a US company, engaged in the business of international express delivery and has developed an international network of transporting documents, parcels and other items from one country to another.

The taxpayer entered into an agreement with an Indian company for rendering of services in respect of delivering parcels outside India having originated in India, while the Indian company renders services to the taxpayer in respect of documents or parcels to be delivered in India having originated outside of India.

For the services rendered for outbound documents, the taxpayer receives compensation and in respect of inbound documents, the taxpayer pays the compensation. The taxpayer claimed that the compensation received from its overseas customers in respect of parcels to be delivered in India was not taxable. However, the Assessing Officer (AO) did not agree on the same.

In view of this background, the taxpayer made an application to the US competent authority under MAP as per India-USA tax treaty, for A.Y. 2001-02 to 2009-10 and claimed that income received from the Indian company was not taxable. Subsequently, the taxpayer made an application for inclusion of A.Y. 2010-11 in the pending MAP proceedings.

Keeping in view the hardship faced by the taxpayer during pendency of the MAP proceedings, the competent authorities of India and USA entered into a Memorandum of Understanding (MOU). As per the MOU, the competent authorities have agreed to defer assessment and/or suspend collection of tax including collection of tax on income that is subject to MAP proceedings for prior, current or future taxable years. However, during the pendency of the MAP proceedings, the taxpayer was required to furnish a bank guarantee securing the dues of the Indian tax department in which the income is the subject matter of tax.

Consequent to the application made by the taxpayer to the AO, the AO issued nil withholding certificates for A.Y. 2007-08 to 2009-10 for which original MAP was pending. However, he declined to grant withholding certificate for A.Y. 2010-11.

Subsequently, the taxpayer filed an application with the AO for nil withholding certificates for A.Y. 2010-11 and furnished a bank guarantee in favour of the tax department, securing the tax department in respect of its legitimate tax dues in MAP proceedings. However, the AO rejected the application on the grounds that the taxpayer's request for inclusion of A.Y. 2010-11 was not pending before the Indian competent authorities.

The higher tax authority has not considered revision application made by the taxpayer and dismissed the same.

Aggrieved by the order of lower authorities, the taxpayer filed a writ petition before the High Court.

Issue before the High Court

Whether subsequent year is also covered under the original MAP for deferment of assessment proceedings and suspension of collection of taxes under the tax treaty?

Held

Perusal of the tax treaty read with MOU, it was clear that the suspension of assessment and collection of tax takes place, as soon as the application was made to the competent authorities to settle the dispute under MAP and the revenue is secured by the taxpayer furnishing a bank guarantee.

There is no provision either in the tax treaty or the MOU for a process of admission and thereafter final consideration from income-tax authority.

The MOU of the tax treaty explicitly provides that withholding of tax on income can be a subject matter of MAP for prior, current and future taxation years.

When an A.Y. for which a certificate as sought has expired, yet the suspension of assessment and collection of taxes will take place, if the proceedings are under consideration of competent authorities under the MAP.

The word 'admitted' by the Indian competent authority only means that the competent authority in India has to admit i.e. acknowledge that the MAP proceedings have been invoked by taxpayers through the US competent authority.

In view of the aforesaid findings, the High Court held that a subsequent assessment year is also covered under the original MAP application. Accordingly, the High Court directed the tax department to issue appropriate nil withholding tax certificate in respect of AY 2010-11 to the taxpayer, upon the taxpayer giving an undertaking to keep alive the bank guarantee already furnished and to give a further bank guarantee, if necessary, to secure the tax department of its dues with respect to tax and interest to the satisfaction of the tax department.

DIT vs. Infrasoftware Ltd. (ITA No. 1034/2009) (Delhi HC) Dated November 22, 2013

Facts of the case

The taxpayer is an international software marketing and development company. It is engaged in the business of developing and manufacturing civil engineering software. The taxpayer had opened a branch office in India.

The branch in India imports the package in the form of floppy disks or CDs depending on the requirements of their customers. The system was then delivered to a client/customer. The delivery of the system entails installation of the system on the computers of the customers and training of the customers for operation of the system. The branch office further undertakes the responsibility of updation and operational training apart from providing support for solving any software issues.

During the year under consideration the customised softwares were licensed to the Indian customers and the branch office of the taxpayer in India performed services involving interface to peripheral installation and training.

The Assessing Officer (AO) taxed the receipts on grant of licence for the use of software as 'royalty' as per Article 12 of the tax treaty.

Further Commissioner of Income-tax (Appeal) [CIT(A)] held that the amount received by the taxpayer from its Indian customers under software licence agreement was in the nature of royalty and same was chargeable to tax in India as per Explanation 2 to section 9(1) (vi) of the Act read with Article 12 of the tax treaty.

On the other hand, the Delhi Bench of Income Tax Tribunal (the Tribunal) relying on the decisions in the cases of Motorola Inc and Samsung Electronics Co. Ltd. held that the amount received by the taxpayer under the licence agreement for allowing the use of the software was not royalty either under the Act or under the tax treaty. Aggrieved by this order the tax department filed an appeal.

Held

The High Court observed that as per the Licensing Agreement the licence was non-exclusive, non-transferable and the software has to be used in accordance with the agreement. Only one copy of the software was being supplied for each site. The licensee was permitted to make only one copy of the software and associated support information and that also for backup purposes. It was also stipulated that the copy so made shall include Infrasoftware's copyright and other proprietary notices. All copies of the software were the exclusive property of Infrasoftware.

It was observed that a non-exclusive and non-transferable licence enabling the use of a copyrighted product cannot be construed as an authority to enjoy any or all of the enumerated rights ingrained in Article 12 of the tax treaty. Where the purpose of the licence or the transaction was only to restrict use of the copyrighted product for internal business purpose, it would not be legally correct to state that the copyright itself or right to use copyright has been transferred to any extent.

Distinction has to be made between the acquisition of a 'copyright right' and a 'copyrighted article'. Copyright is distinct from the material object, copyrighted. Copyright is an intangible incorporeal right in the nature of a privilege, quite independent of any material substance, such as a manuscript. Copyright or even right to use copyright is distinguishable from sale consideration paid for 'copyrighted' article. This sale consideration is for purchase of goods and is not royalty.

The High Court observed that Supreme Court in the case of Tata Consultancy held that software may be intellectual property and contained on a medium was a marketable commodity and an object of trade and commerce. A software programme may consist of various commands which enable the computer to perform a designated task. The copyright in that programme may remain with the originator of the programme. But the moment copies are made and marketed, it becomes goods, which are susceptible to sales tax.

Further intellectual property, once it is put on to a media, whether it be in the form of books or canvas (in case of painting) or computer discs or cassettes, and marketed would become 'goods'. There is no difference between a sale of a software programme on a CD/floppy disc from a sale of music on a cassette/CD or a sale of a film on a video cassette/CD. In all such cases, the intellectual property has been incorporated on a media for purposes of transfer.

The High Court distinguished the Karnataka High Court decision in the case of Samsung Electronics Co. Ltd. and held that the licence granted to the licensee permitting him to download the computer programme and storing it in the computer for his own use was only incidental to the facility extended to the licensee to make use of the copyrighted product for his internal business purpose. The said process was necessary to make the programme functional and to have access to it and is qualitatively different from the right contemplated by the said provision because it is only integral to the use of copyrighted product.

In view of above, the High Court held that there was no transfer of any right in respect of copyright by the taxpayer and it was a case of mere transfer of a copyrighted article. The payment is for a copyrighted article and represents the purchase price of an article and cannot be considered as royalty.

The High Court has not examined the effect of the retrospective amendment to section 9 (1)(vi) of the Act and also whether the amount received for use of software would be royalty in terms thereof as the taxpayer was covered by the tax treaty, the provisions of which were more beneficial.

DIT (Int. Tax) vs. A. P. Moller (ITA No.1807/Mum/2012) Dated: 8th November, 2013

Facts of the case

Assessee, a Danish public limited company, was engaged in the business of operation of ships, chartering and other related activities of shipping in international traffic, which was covered under Article-9 of DTAA. Its shipping operation in India was carried out by Maersk India Pvt. Ltd. (MIPL) which was an agent of the assessee.

The assessee, in its ROI, had shown gross freight earning which was claimed as not taxable as per Article 9(1) of the DTAA, as the profits derived from the operation of ships in international traffic carried out by the assessee was fully taxable in Denmark.

Assessee had recovered from MIPL share of cost of SAP Software Solution i.e., FACT for tracking and recording various transactions. AO held that, the share of cost of SAP software is in the nature of royalty and fees for technical services and, accordingly, taxed the amount @ 10% u/s 115A.

Issues before the Tribunal

Whether reimbursement of cost of software used by a shipping company is taxable as royalty or fee for technical services?

Whether profits derived from operations of the ships in international traffic shall be taxable at a place where the effective management of the enterprise is situated and such a profit is exempt from tax in the other contracting State ?

Whether the term "Profit" under this Article has to be construed more broadly so as to include not only the activities directly connected with the shipping operations but also to include income from activities which facilitates or support such operation as well as any ancillary activities?

Held

Tribunal held that, this software enables the various agents of the assessee all over the world in the container inland services which are part of the shipping operations only. This software for facilitating the freight receipts from shipping, for which they are reimbursing the cost to the assessee without any mark-up. This software in fact is a tool and integrated part of shipping operations only. Usage of software cannot be segregated from such activities of overall shipping operations so as to hold it as rendering of any independent technical services. Tribunal also held that any kind of receipts recovered by way of software usage / development cost from MIPL cannot be taxed in India under Article-9(1) of DTAA. Such a recovery of a cost cannot be held to be fees for technical services.

Article 9(1) of Indo Denmark DTAA provides that the profits derived from operations of the ships in international traffic shall be taxable at a place where the effective management of the enterprise is situated and such a profit is exempt from tax in the other contracting State.

The term "Profit" under this Article has to be construed more broadly so as to include not only the activities directly connected with the shipping operations but also to include income from activities which facilitates or support such operation as well as any ancillary activities. The OECD commentary on Article 8 (similar to Article 9 of the Indo-Denmark DTAA) also expresses the same view. If any activity is directly linked with carrying on shipping operations and results into some kind of an income, then it has to be treated as a part of such shipping operations only.

Deepak Fertilizers and Petrochemicals Corporation Ltd. vs. DDIT (Int. Tax)-I (ITA No.2040/PN/2012) Dated 29th October, 2013

Facts of the case

The assessee, Deepak Fertilizers and Petrochemicals Corporation Ltd., is engaged in the business of manufacture and sale of chemicals, fertilizers. The assessee embarked upon a project to produce Ammonium Nitrate Prill at its factory located at Taloja as a part of its expansion project of its existing business.

For this, the assessee had entered into an agreement with GPN Engineering & Process, France (GPN). The agreement was in two parts and was executed in France on January 1, 2009. Under Part I, GPN agreed to grant to the assessee, non-transferable and non-inclusive licence to use technical information. Whereas, under Part II GPN agreed for process for production of Ammonium Nitrate Prill.

The payment of consideration was agreed to be made on "net of tax" basis. Accordingly, the assessee remitted an amount of ₹ 2,10,000 being 70% of the total ₹ 3,00,000 as stated towards consideration for outright purchase of Process Book Package for Ammonium Nitrate Prill production.

The assessee paid tax of ₹ 15.20 lakhs on April 30, 2009. However, the assessee contended that the amount remitted by it for outright purchase of Process Book Package was not taxable and requested AO to refund the tax already deducted and deposited.

Issue before the Tribunal

Whether the payment had to be recognised as 'fees for technical services' and 'consultancy services' u/s 9(1)(vii) and is liable to deduction of tax at source in India?

Held

ITAT observed that the facts of the present case and that of the Royal Extrusion were similar. Therefore, following the same ratio, ITAT held that assessee was not liable to deduct tax on the amount remitted to GPN for acquisition of process, design, documentation called Basic Engineering Package on outright purchase basis for Ammonium Nitrate Prill production.

ITAT held that the amount could not be considered as fees for technical services liable to withhold tax in India. ITAT had accepted the assessee's contention.

Metro & Metro vs. Additional Commissioner of Income Tax (ITA No. 393 Agra 2012) Dated 1st November, 2013

Facts of the case

The assessee is a 100 per cent EOU engaged in the manufacture and export of leather goods. The assessee has made remittances to a Germany based company, in respect of leather testing charges, but did not withhold the applicable taxes from these remittances.

The Assessing Officer was of the view that since the assessee has made the remittances without withholding requisite tax deductions, the payments so made are not allowable as deductions in the hands of the assessee.

Aggrieved, assessee carried the matter in appeal before the learned CIT (A) but without any success.

Issue before the Tribunal

Whether the payment had to be recognised as 'fees for technical services' rendered in India u/s 9(1) (vii) and is liable to deduction of tax at source in India?

Held

Tribunal held that, the amount paid to foreign party was not taxable in India in the light of Legal position as it prevailed at that point of time, and it became taxable in India only as result of retrospective amendments in section 9(1), the said payment cannot be disallowed invoking provision of section 40(a) (i).

SERVICE TAX

(Contributed by CA. A. R. Krishnan & CA. Girish Raman)

Inter-unit services not taxable

SEZ unit and DTA unit of a company are not separate legal entities in general law (even though invoices have been issued and agreements have been entered) or under the definition of 'person' under section 2(v) of the SEZ Act read with Rule 19(7) of the SEZ Rules, and hence services provided by SEZ unit to DTA unit is not liable for service tax. [*L&T Ltd. vs. CCE, Vadodara-II, 2013(32) STR 113*].

Cargo Handling Services

The activity of moving coal from various quarries to the railway siding (within the mining area) using payloaders would not be liable for service tax under the category of "Cargo Handling Service" since for classifying an activity as Cargo Handling Service it must be proved that it is a service adjunct to the actual transportation of goods i.e. services just before transportation of goods or post transportation services when cargo has been discharged. The movement of goods within a mine from one place to another is not such a service. [*Anupama Coal Carriers Pvt. Ltd. vs. CCE 2013(32) STR 41 (Tri-Del)*].

Copyright Services

In a writ petition challenging the vires of the provision of section 65(105) (zzzzt) of the Finance Act, 1994 which defines taxable service in the context of temporary transfer or permitting the use or enjoyment of any copyright as defined under the Copyright Act, 1957, the Hon'ble High Court of Madras after analysing various agreements between producers and distributors and distributors and sub-distributors/exhibitors/theatre owners held that there is only a temporary transfer of copyright or permission to use or enjoy copyright of the film for a consideration and the producer retains the effective control over the film such as the right to deal with and dispose of the rights to any third parties, right to screen the picture over the satellite channels, Doordarshan channels, etc. Such transaction would not amount to "transfer of the right to use the copyright" by the producer to the distributor or distributor to exhibitor so as to amount as "sale" within the meaning of Article 366(29A)(d). It is only the permanent transfer of copyright (by assignment or otherwise) which will not amount to rendering of service and would be excluded from the purview of service tax. Accordingly the High Court held that the temporary transfer of copyrights or the permission to use or enjoy the copyright would not fall either under Entry 54 of List II or Entry 92A of List I but is well within the legislative competence of the Parliament for levying service tax under Entry 97 of List I [*AGS Entertainment Pvt. Ltd. vs. Union of India (2013) 32 STR 129 (Mad.)*].

Franchise services

Where on facts, it was noted that the assessee, (jewellery company) granted a licence to various retail shops (franchises) to sell jewellery of its brand / trademark, and the license to use was not exclusive (i.e. to the exclusion of the assessee who retained the right to licence others also), it was held that the consideration/royalty for transfer of right to use the trademark is not liable for sales tax as a deemed sale under article 366(29A)(d), but was a service liable for service tax under the category of "franchise services" [Malabar Gold Pvt. Ltd. vs. CTO (2013) 32 STR 3 (Ker.)]

The appellants imported technology from a Chinese company for production of cotton in the form of mother seeds containing "Fusion BT" genes, multiplied the same and gave it to its customers with a sub-licence for further multiplication of the seeds and onward sale of seeds to farmers in consideration for a royalty. The sub-licenceses sold the seeds in packages containing the mark "Fusion BT". The Revenue contended that the appellants are liable for service tax on the royalty received from the sub-licenceses under the category of "franchise services" since they granted the sub-licenceses a representational right to sell their products. The Tribunal observed that —

- The appellants did not receive any representational right from the Chinese company and did not grant any such right to the sub-licenceses;
- The mark "Fusion BT" only denoted technology and did not identify the product with the appellant.

Hence it held that the royalty would not be liable for service tax under the category of "franchise services". [Global Transgene Ltd. vs. CST 2013(32) STR 86 (Tri-Mum.)]

The assessee in the present case had entered into agreement (termed as joint venture agreements) with distinct entities to establish and manage school and provide quality education in different areas under its brand name. Under the terms of the agreement:

- The other party was granted a right to establish a school representing the assessee's name, motto and logo;
- The assessee would provide its established concepts of imparting education, managerial expertise and operational techniques and standards of imparting education to the other party;
- The other party was obliged to pay a fee to the assessee;
- The other party was obligated not to establish or administer an English Medium School identified with any person other than the assessee;
- All assets and liabilities including the entire financial responsibility was that of the other party.

The Revenue sought to levy service tax on fees received by the assessee under the category of franchise services which was challenged by the assessee. On appeal the Tribunal observed as follows:

- The assessee's contention that it had entered into a Joint Venture agreement with the other party and hence the service provided by the assessee is to itself is not acceptable since under the agreement the entire burden of establishing and maintaining the school, including the liability to fund the entire capital and non-capital expenditure, underwriting the entire financial liability, liability arising out of any obligation was on the other party and not the assessee. Further on determination of the agreements, all available and remaining assets too would revert to the other party alone. Also the inherence of risk and reward is on the franchisee and not the assessee. Hence regardless of the description of the arrangement as a Joint Venture or a collaborative arrangement, the same would not tantamount to a joint venture arrangement. The facts that the assessee was remunerated for services provided to the other party clearly showed that there is a service provided by the assessee to the other party for consideration.
- the agreement in the present case satisfied all the conditions of franchise agreement and hence the services were in the nature of franchise services.
- the contention that the services rendered by the appellants are in the nature of Intellectual Property right services is not acceptable since the assessee apart from merely allowing the use or enjoyment of the assessee's intangible property (in its name/ motto/ logo) provided several services for management

and administration of the schools and considered as a whole, its services more appropriately fall under 'Franchise Services' and not under intellectual property right services.

Accordingly the Tribunal held that the appellant would be liable for service tax under the category of franchise services [Delhi Pubic School Society vs. CST (2013) 32 STR 179 (Del.)]

Valuation

In this case, the Larger Bench of the Tribunal held that—

- The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and
- For the purposes of computing the 67% abatement under Notification No 15/2003 read with Notification No 4/2005 although the term 'gross amount' charged specifically includes value of goods 'supplied', 'provided' or 'used' by the service provider for providing the service, the value of free supplies would not be included in the term "gross amount charged" since only the value of goods provided by the service provider for which the service recipient is charged would be covered in the inclusion. [Bhayana Builders (P) Ltd. vs. CST (2013) 32 STR 49 (Tri. – LB)].

Refund

- Refund of service tax paid on freight charges in respect of transportation of empty containers from export terminal to factory is allowable under Notification No.17/2009- Service tax dated 7.7.2009 which allows refund of tax paid on input services used for export of goods. [Vippy Industries Ltd. vs. CCE (2013) 32 STR 213 (Tri-Del)]
- Where the Courier Agency had failed to specify the import-export number of the exporter on the receipt/ invoices issued by them, the Tribunal held that refund of Service Tax paid on the said input services under Notification No. 17/2009-S.T., was not admissible since there was a non-fulfillment of the conditions mentioned in the said Notification [Magsons Exports vs. CST (2013) 32 STR 222 (Tri. – Del.)]

Appeal

Dismissal of an appeal by the Tribunal for non-compliance of its stay order where an appeal by the appellant against the stay order was pending before the High Court was held to be incorrect [Saswad Mill Sugar Factory Ltd. vs. CCE (2013) 32 STR 177 (Bom)].

Cenvat Credit

The appellant, extracted oil with associated gases from oil wells and transferred it to offshore "well platforms" (connected to the oil wells through pipelines) and then to offshore "process platforms" (connected to well platforms) for processing. The crude (oil and gas) at this point which was in a semi-stabilized condition was an exempted product which was partly sold to other refineries and partly transferred to its on-shore plant (connected to process platforms) to obtain downstream excisable products. The assessee availed Cenvat credit of input services received in its offshore locations (well heads, well platforms, process platforms, etc.) which was denied by the Revenue on the ground that the input services were exclusively used for manufacture of exempt products viz., crude oil and gas in a semi-stabilised condition. On appeal, the High Court relying on *Escorts Ltd. vs. CCE (2004) 171 ELT 145* and *CCE vs. Solaris Chemtech Ltd. (2007) 214 ELT 481 (SC)* held that —

- Manufacture of dutiable products at the on-shore plant is fundamentally premised on the manufacturing process that commenced at the off-shore plants;
- The input services used at the off-shore plants is used by the appellant manufacturer "directly or indirectly in or in relation to" manufacture of dutiable products at its on-shore plant.

RECENT JUDGMENTS

Accordingly, the High Court allowed Cenvat credit on input services but subject to the qualification that it would be required to comply with the discipline and rigour of Rule 6 and would be entitled to take Cenvat Credit only on the quantity of input service which is used in the manufacture of the ultimate dutiable product. [ONGC vs. CST, 2013(32) STR 31 (Bom)]

- Where the appellant had proposed to enter into manufacturing of herbal products, for which they had availed R&D services but due to business exigencies had to abandon the venture it was held that since the definition of "input services" and "final products", both require the "use" of input services to manufacture of final products, the credit of service tax paid on R&D services which did not materialize into manufacture of excisable products would not be available. Further interest u/s 75 would also be payable for wrong availment of cenvat credit in view of the judgement of the Supreme Court in Ind-Swift Laboratories Ltd. (2011) 265 ELT 3(SC). However penalty u/r 15 was held to be not imposable. [Lyka Labs Ltd. vs. CCE, Surat, 2013(32) STR 79]
- Credit on services of the Mandap Keeper availed to celebrate the 'Annual Day' function of the company which was attended by the employees and their families is an integral part of the business activity and hence is admissible. [Endurance Technologies Pvt. Ltd. vs. CCE, Aurangabad, 2013(32) STR 95 (Tri-Mum)]
- Where the air travel was undertaken by the employees in connection with the business of appellant, cenvat credit on air travel agents services was held to be admissible. [Goodluck Steel Tubes Ltd. vs. CCE 2013(32) STR 123 (Tri-Del)]
- Cenvat credit can be utilized for payment of Service Tax under reverse charge basis u/s 66A of the Act. [Kansara Modler Ltd. vs. CCE (2013) 32 STR 209 (Tri.-Del.)]
- Outdoor catering services availed for providing lunch / dinner to customers is a part of business promotion for increasing the sale of manufactured goods. It is an activity relatable to manufacture of goods and hence Cenvat credit thereon is admissible. [Heubach Colour Pvt. Ltd. vs. CCE (2013) 32 STR 225 (Tri. - Ahmd.)]
- Cenvat credit of insurance services availed for insurance of plant, machinery and inventories being an activity in relation to manufacture is admissible [Grasim Industries Ltd. vs. CCE (2013) 32 STR 256 (Tri-Del)].

Personal Column

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CA. Varun Sushil Jhunjhunwala, M. No. 143868 left for Heavenly abode on 19/11/ 2013. May the departed soul rest in peace.

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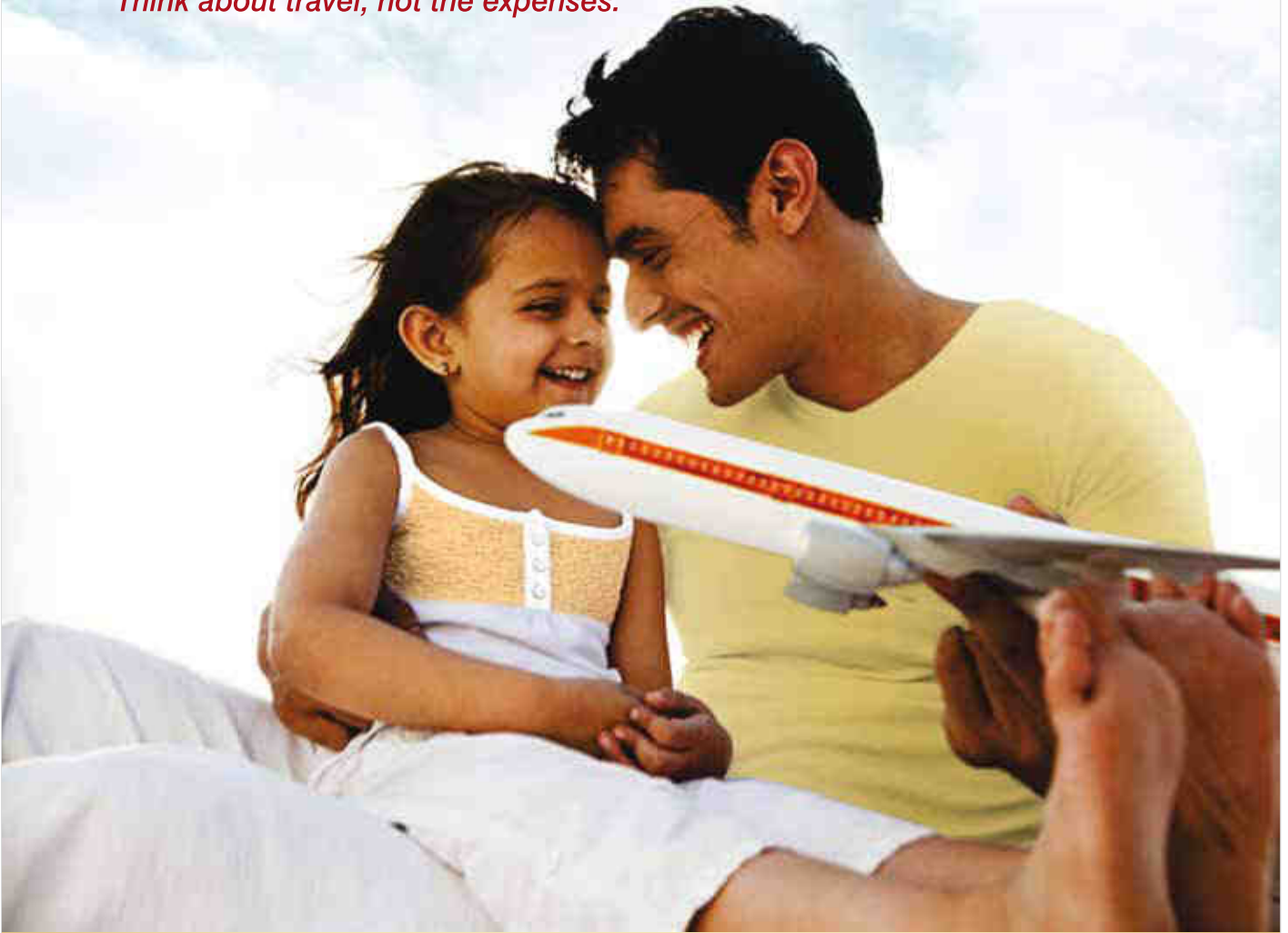
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Other Speakers



Shri Sharat Mathur



Shri Naveen Sadarangani



CA. Sunil Sharma



CA. Ashish Fafadia

Seminar on Value Addition through Management Accounting held on 16th November, 2013



CA. Medha Parekh, CA. Shardul Shah, RCM, CA. Nimesh Kampani, Faculty, CA. Aniket Kulkarni

Other Speakers



CA. Darshan Sheth



Shri Raghvendra Nath



Shri Deepak Jodhani

Seminar on Professional Opportunities in Allied Laws held on 30th November, 2013



CA. Jitendra Apte, CA. Shardul Shah, RCM, CA. Abhay Arolkar, Faculty, CA. Nikhil Garg

Other Speakers



CA. Vijay Joshi



CA. Bhupendra Shah



CA. Rajesh Haldipur

Seminar on Accounting & Taxation of Stock Brokers held on 23rd November, 2013



CA. Vishnu Agarwal, RCM, CA. Vishal Shah, Faculty, CA. Parag Raval, Vice Chairman, WIRC, CA. Adesh Gupta

Other Speakers



CA. Kinjal Shah



CA. Viraj Londhe



CA. Dhiren Dalal



CA. Manish Gadia

Regional Level Debate Competition - 2013 held on 16th November, 2013 at BKC, Mumbai



Group photograph taken during the Winners & Quiz Masters

Conference on Frequent Issues in Assessment and Appellate Proceedings held on 15th & 16th November, 2013



CA. Sunil Patodia, RCM, CA. Vishnu Agarwal, RCM, CA. Tarun Ghia, CCM & Faculty, CA. Manoj Fadnis, CCM & Faculty, Shri R. K. Gupta, Chief Commissioner of Income Tax - City VII, CA. Prafulla Chhajed, CCM

Inauguration of Gandhinagar CPE Study Circle of WIRC held on 16th November, 2013



CA. Parag Raval, Vice Chairman, WIRC, and others - CA. P. K. Modi, Shri J. G. Shah, CA. K. K. Jain, CA. K. K. Mishra, CA. Rakesh Parekh, CA. Ketan Mehta

Programme on Financial Reporting Practices held on 30th November, 2013



CA. Kedar Mehendale, CA. Suneet Mahale, CA. Sandeep Shah, Faculty, CA. Vijay Mathur, Faculty, CA. Mangesh Kinare, Chairman, WIRC, CA. Nilesh Vikamsey, Chairman, FRRB of ICAI & Faculty, CA. Shrinivas Joshi, CCM, CA. Dhiraj Khandelwal, RCM, Shri Dayal, CIT, CA. Lalit Bajaj



Amravati: Seminar on TDS on 18/11/2013. (L-R): Mrs. Rupa Dhande, ITO, Mrs. Swati Deshmukh, ITO, Shri Suhas Mistri, ACIT, CA. Rajesh Chandak, Branch Chairman, Shri Satish Goyal, CIT, Shri D. Ravikumar, Jt. CIT, Shri S. R. Kirtane, Jt. CIT



Anand: International Computer has celebrated by organising I.T. Awareness Programme. (L-R): CA. Sanjay Patel, CA. Daksh Patel, Faculty, CA. Ravi Shah, Branch Chairman, CA. Fenil Shah, Faculty



Aurangabad: Inaugural session of Certificate Course of Concurrent Audit on 9/11/2013. (L-R): CA. Vijay Rathi, CA. Girish Kulkarni, RCM, CA. Chandrashekhar Veerghanta, Faculty, CA. Ashok Patil, CA. Shiwaji Zaware, CCM & Chairman IASB, CA. Nayan Kothari, Faculty, CA. Rajkumar Kothari, Branch Chairman



Jalgaon: Inauguration of E-Library by CA. K. Raghu, Vice President, ICAI. (L-R): CA. Julfesh Shah, RCM, CA. Nilesh Vikamsey, CCM, CA. Manoj Fadnis, CCM, CA. Prafulla Chhajed, CCM, CA. Parikshit Bhadade, Branch Chairman, CA. Mangesh Kinare, Chairman, WIRC, CA. Shiwaji Zaware, CCM, CA. Parag Raval, Vice Chairman, WIRC, CA. Kaushal Mundada



Jamnagar: Seminar on Indirect Taxes held on 23 & 24/11/2013. (L-R): CA. Kaupil Doshi, CA. Priyam Shah, RCM & Faculty, CA. Bharat Bhatt, Branch Chairman, CA. Ravindra Manek, Faculty, CA. Parag Sumaria



Kolhapur: Seminar on MVAT on 23-24/11/2013. (L-R): CA. Satish Dakare, Adv. Abhijeet Berde, Faculty, CA. Dilip Phadke, Faculty, CA. Shrirang Kulkarni, Branch Chairman



Nagpur: CA. Nihar Jambusaria, CCM, lighting the traditional lamp on National Seminar on Companies Act, 2013 held on 16/11/2013. (L-R): CA. Kirti Agrawal, CA. Prafulla Chhajed, CCM, CA. Sunil Patodia, RCM, CA. Nirav Gala, CA. Julfesh Shah, RCM, CA. Swapnil Agrawal, Branch Chairman, CA. Swapnil Ghate, CA. Suren Duragkar, CA. Sandeep Jotwani, CA. Umang Agrawal



Pune: CA. Mangesh Kinare, Chairman, WIRC, lighting the lamp - Seminar on Recent Developments in International Tax held on 9/11/2013. Seen in picture CA. Dinesh Gandhi, CA. Neel Majithia, Secretary, WIRC, CA. S. G. Mundada, RCM, CA. Sarvesh Joshi, RCM, CA. Jagdeesh Dhongde, Branch Chairman, CA. Rajesh Patil, CA. Nilesh Kapadia, Faculty, CA. Sharad Shah, Faculty, CA. Yashwant Kasar



Vasai: Conference on Recent Controversial Issues in Direct and Indirect Taxes held on 30/11/2013. Seen in picture CA. Subodh Kumar Agrawal, President, ICAI, CA. Tarun Ghia, CCM, CA. Sandeep Jain, RCM, Shri R. K. Gupta, Chief Commissioner of Income Tax, CA. Ramanand Gupta, Branch Chairman & Managing Committee Members



Group photograph taken during the ICAI - MCA Investor Awareness Program held on 1/12/2013 at Mulund jointly with Mulund CPE Study Circle

Inauguration of 28th Regional Conference held on 7th & 8th December, 2013 at Mumbai.

Group photograph in presence of CA. Subodh Kumar Agrawal, President, ICAI, CA. K. Raghu, Vice President, ICAI, Shri K. Subrahmanyam, Executive Director, Union Bank of India, Chief Guest, ICAI Past Presidents, CCMS & RCMS



Interactive Session on Service Tax Voluntary Compliance Encouragement Scheme (VCES) - 2013 with Shri P. Chidambaram, Hon'ble Finance Minister of India in the presence of Shri J. D. Seelam, Hon'ble Minister of State for Finance (Revenue) held on 14th November, 2013



Presentation of WIRC Reference Manual to Mrs. V. R. Iyer, Chairperson, Bank of India



WIRC Chairman welcoming CBEC Chairperson Smt. Praveen Mahajan & other CBEC Officials at ICAI Tower

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