

The Institute of
Chartered Accountants of India
(Set up by an Act of Parliament)

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WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

OCTOBER 2013
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शुभ
दिपावलि

Training Programme on Service Tax for Mumbai Commissionerate of Service Tax held on 4th-6th September, 2013



CA. Gurpeet Singh, CA. Neel Majithia, Secretary, WIRC, CA. Prafulla Chhajed, CCM, CA. Tarun Ghia, CCM, CA. Mangesh Kinare, Chairman, WIRC, Shri Sushil Solanki, Commissioner, Service Tax, Shri V. S. Krishnan, Chief Commissioner of Central Excise & Service Tax, CA. Nilesh Vikamsey, CCM, CA. Rajkumar Adukia, CCM, CA. Priti Savla, Treasurer, WIRC, CA. Sandeep Jain, RCM, CA. Shardul Shah, RCM, CA. Shruti Shah, RCM



Service Tax officials attending the Training Programme in ICAI Tower, BKC, Mumbai

Seminar on Debt Restructuring & Securitisation held on 21st September, 2013



CA. Shardul Shah, RCM, CA. Sunil Patodia, RCM, Shri Omprakash Jain, Faculty, CA. Nikhilesh Soman

Other Speakers



CA. Pankaj Majithia



Shri Sudhir Rao



CA. Saket Jain

Seminar on NBFC, HFC, Chit Funds, MFI, CIS, Nidhi, Mutual Benefit Cos., Mortgage Guarantee Cos., SARFAESI Cos. Money Lending Activities held on 21st September, 2013



CA. Nilesh Vikamsey, CCM, CA. Rajkumar Adukia, Chairman, CFMIP of ICAI, CA. Nirmal Jain, Chairman, India Infoline Group, CA. Mangesh Kinare, Chairman, WIRC, CA. Sanjay Jhanwar, Faculty, CA. Anup Shah, Faculty

Lecture Meeting on Rupee Dollar War & Indian Economy held on 30th August, 2013



CA. Sunil Patodia, RCM, CA. Parag Raval, Vice Chairman, WIRC, CA. Dr. V. M. Govilkar, Faculty, CA. Mangesh Kinare, Chairman, WIRC, CA. Neel Majithia, Secretary, WIRC, CA. Shruti Shah, RCM

Half Day Seminar on Tax Audit held on 7th September, 2013



CA. Harshavardhan Shah, CA. Shardul Shah, RCM, CA. Satish Shanbhag, Faculty, CA. Kedar Limaye

National Seminar on Private Equity held on 7th September, 2013



CA. Prafulla Chhajed, CCM, CA. Sunil Sanghai, Faculty, CA. Vishnu Agarwal, RCM, CA. Shailendra Jindal, Faculty, CA. Rajkumar Adukia, Chairman, CFMIP of ICAI, CA. Lalit Bajaj

How to face CA Exam held on 6th September, 2013



CA. Mahesh Madkholkar, Chairman, WICASA, CA. Nilesh Gore, Faculty, CA. Shakuntala Chhangani, Faculty

ISCA for CA Final 6th & 7th Sept.



Prof. Jignesh Chheda, Faculty

Seminar on Issues in IND-AS for Banking & Finance Industry held on 14th September, 2013



CA. Tejas Gangar, CA. Shardul Shah, RCM, CA. Raghu Iyer, Faculty

Other Speaker



CA. Anand Banka



CHAIRMAN'S COMMUNICATION

In the world take always the position of the giver. Give everything and look for no return. Give love, give help, give service, give any little thing you can, but keep out barter. Make no conditions and none will be imposed on you. Let us give out of our own bounty, just as God gives to us.

– Swami Vivekananda

Respected Seniors & Dear Friends,

As I write this communication, the hectic Tax Audit season has concluded and the Navaratri festival has begun. I am very proud of my professional colleagues who accepted the challenge of the new procedure of e-filing of Tax Audit Reports. While Members in Gujarat got a reprieve by way of a fourteen day extension, Members in other States struggled to file reports/returns, especially on the last day, due to glitches on the Income Tax website. Our Institute has proactively represented the issues to CBDT who will look into these technical problems. I am hopeful that all the tension and complexities will be resolved as we invoke the blessings of the Goddess of energy, universal Mother "Durga", whose name literally means the remover of miseries of life.

For professionals, the work season and challenges never end. After completion of Tax Audits, we have the huge task of studying and understanding the new Companies Act so that we can guide our clients or employers to effectively implement the new provisions. The WIRC sub-group has undertaken an in-depth study on Draft Company Rules and a detailed representation has been submitted to ICAI. I respect the painstaking efforts undertaken by the members of the sub-group in studying the first set of draft rules.

WIRC's think-tank on corporate law suffered a setback last month due to the sudden demise of CA. Jayesh Thakur. As a member of this Newsletter team he was regularly in touch with Members through his column on Corporate Law Updates and a regular speaker at our various seminars and conferences. We were indeed privileged to have his involvement in the activities of WIRC.

The National Conclave on Internal Audit 2013, with the theme 'Internal Audit in Challenging Times: Emerging Trends and Outlook Ahead', took place at the ICAI Tower last month. Organised by IASB and hosted by WIRC, this Conclave was well received by Members who appreciated the expertise of the speakers. The keynote address by Shri Kishor Chaukar was an eye opener for professionals in the Internal Audit vertical.

We recently had an opportunity to participate in an interactive meet organised by Department of Customs, Excise and Service Tax with the Hon'ble Minister of State for Finance (Revenue), Shri J. D. Seelam. We took this opportunity to appraise him on certain issues relating to VCE Scheme and other procedural aspects of service tax.

The three-day training programme for service tax officials hosted by WIRC in Mumbai were very successful with around 450 officials attending them. I place on record our gratitude to the Indirect Tax Committee of ICAI for reposing confidence in WIRC and thank all the faculties for their contributions to these sessions.

Students are important brand ambassadors of our profession and it has always been our endeavour to provide them better services. With this in mind, WIRC has started a new study material distribution centre in Mumbai at the RVG Hostel, Andheri. I am sure students will take benefit of this facility. We also appreciate the kind gesture shown by the RVG Trust in giving us extra space for storing the study material.



Recently, the Board of Trustees of the Chartered Accountants Benevolent Fund (CABF) have decided to grant financial assistance to 300 students who are currently undergoing articled training. These students, who are meritorious but needy, requiring financial assistance to pursue the Chartered Accountancy course will receive ₹ 1000/- p.m. for one year. As responsible Members of this esteemed Institute, it is our duty to be part of such noble efforts, and I appeal to all Members to contribute generously to augment CABF.

The Students' Regional Quiz & Elocution Competition saw active participation and spirited engagement by the students. It was a very enjoyable and good learning experience for all.

The International Conference on 'Accountancy Profession: Emerging Frontiers of Future Growth' will be held from 21st to 23rd November, 2013 in Kolkata. It will cover issues in financial reporting, corporate finance, leadership, IT and global trade development, amongst others. I request Members to register and actively participate in the Conference.

The 28th Regional Conference of WIRC will be held on 7th and 8th December, 2013 at Hotel The Lalit, Mumbai. Like last year, this Conference will also be held in four track mode whereby members will be able to attend sessions of their liking. It will be a grand festival of knowledge and networking with the who's who from the profession and industry addressing Members. I am sure Members will take maximum benefit of this opportunity and make this Conference a grand success.

In a landmark verdict on the electoral system, the Supreme Court has given voters the right to reject via negative voting. The electronic voting machines will now have a "none of the above" button giving right to voters to reject all the candidates contesting elections in a constituency. However, the "none of the above" votes won't be counted, limiting the impact of the order. Nevertheless, this positive step would encourage more and more good people to consciously enter the political system with an objective of serving the country.

By the time you read this communication, Dussera festival would have been over and we will be preparing for Diwali. Both these festivals celebrate the victory of good over evil. Diwali is the festival of lights that illuminate our homes and hearts — the light that empowers us to commit ourselves to good deeds, that which brings us closer to divinity, which is the need of hour. I conclude by quoting a couplet from a poem by our former Prime Minister Shri Atal Bihari Vajpayee –

आहुति बाकी यज्ञ अधूरा; अपनों के विघ्नों ने घेरा;
अंतिम जय का वज्र बनाने - नव दधीचि हड़्डियां गलाएँ।
आओ फिर से दिया जलाएँ

Wishing you a Happy Diwali and a Prosperous New Year

With Best Wishes,



Mangesh Kinare
CA. Mangesh Kinare

OFFICE BEARERS

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

EDITORIAL BOARD

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• CA. Anil Bhandari • CA. Shruti Shah • CA. Sushrut Chitale

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OCTOBER 2013

Western India Chartered Accountants Newsletter

03



Mark your Calendar for

28th REGIONAL

7th & 8th December, 2013 at
 Hotel The Lalit Intercontinental, Andheri (E)
 Time 9.00 a.m. to 6.00 p.m.

Looking Forward by Looking Back ;

7th December, 2013

Address by CA. Subodh Kumar Agrawal, President, ICAI

KNOWLEDGE TRACK (K)	TECHNOLOGY TRACK (T)	FINANCIAL TRACK (F)	INDUSTRY TRACK (I)
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Keynote 1 : Challenges of Globalisation - A Flat World

<p>K1: Implementation of Accounting Standards & IND AS – Subjectivity overtaking Objectivity</p>	<p>T1: Practice Automation - Tools and Tips</p>	<p>F1: Identification of early warning signals and managing stressed accounts in current times</p>	<p>I1: Project Management – Is China Better?</p>
<p>K2: Statutory Audit Reports – Contents over Disclaimers; Looking beyond Standards</p> <p>Auditors’ Roles & Responsibilities vis-a-vis New Companies Act</p>	<p>T2: Forensic Audit Case Study</p>	<p>F2: Panel Discussion: Looking forward by Looking Behind - PE investor’s perspective from recent exits</p>	<p>I2: Meeting KPIs and Achieving Your Potential</p>

Keynote 2 : Revival of Indian Economy - Do we have the potential ?

<p>K3: Transfer Pricing of Domestic Transactions & Provisions of Section 40(A)(2)(b)- Contradictory or Complimentary</p> <p>Controversies in Taxation of Real Estate Transactions</p> <p>Chartered Accountant’s Reports & Certificates under Income-tax Act – A walk on Tight Rope</p>	<p>T3: ERP Selection - What are the key elements</p>	<p>F3: Approach to SME Credit appraisals in uncertain times</p>	<p>I3: Supply Chain Management - Key Aspects</p>
	<p>T4: Functional Audit Testing</p> <p>Why is it necessary and Why are Chartered Accountants better?</p>	<p>F4: Credit Rating- Importance, process, do’s and don’ts</p>	<p>I4: Post M & A Integration Challenges and Way Forward</p>

CONFERENCE OF WIRC



Register before 25th November, 2013
& avail early bird discount.

Fees for Registration up to 25th November, 2013 ₹ 3,500/-

Embracing the Flat World

8th December, 2013

Address by CA. K. Raghu, Vice President, ICAI

KNOWLEDGE TRACK (K)

TECHNOLOGY TRACK (T)

FINANCIAL TRACK (F)

INDUSTRY TRACK (I)

Keynote 1 : Ethics, Does it create value?

K1: Inbound Investment – Current Scenario

T1: Data Analytics – A new frontier

F1: Debt Funding in various sectors – Practical insights

I1: Investing Abroad – Challenges & Opportunities

K2: Bundled Services & Rules of Interpretation – Practical Aspects

T2: Vulnerability Assessments and Penetration Testing – Is it necessary?

F2: Foreign Exchange Risk Management an important tool for financial management

I2: Health Care Industry Challenges | Opportunities

Valuation Complexities in Composite Contracts

Cyberwar is India ready?

Education Sector - is there still room for investment?

Keynote 2 : Health Is Wealth/ If the world were to end in 2020–what are the three things that you must do?

K3: Changing Horizon of CA Profession

T3: Benefits of Cloud – Online Business Apps and Solutions

F3: Panel Discussion: Direction of Stock Market and Way Forward | Live Discussion

I3: Does Outsourcing Work for You

Risk Management

Corporate Training

K4: Panel Discussion - Role of CA in Nation Building Revenue | Social | Public | Civil Service

T4: Workshop – Leading ERP solution

I4: Insurance – Is your business covered?

FORTHCOMING EVENTS

06
CPE HRS

Seminar on Manifesting Companies Act, 2013 – Important Provisions

DAY & DATE	SATURDAY, 19TH OCTOBER, 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. Parag Raval	9824339200
	CA. Sushrut Chitale	9821112904
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Amol Kamat	9823018763
	CA. Sunil Dedhia	9820780040
	CA. Aalok Mehta	9892001645

TOPICS	SPEAKERS
Keynote Address	
High Impact Areas, Story so far and Broad Comparison between current <i>vis-à-vis</i> proposed provisions	CA. Anand Bathiya
New Regulatory Bodies (NCLT, NFRA, SFIO, etc.)	CA. Anand Bathiya
CSR and Regulations relating to the Foreign Companies and their Indian Subsidiaries, New Concepts – Small Companies/Dormant Companies/One Person Company	CA. Anand Banka
One Person Company, Penalties/Prosecution, Class Action, New Requirements relating to Corporate Governance, Independent Directors, New Concepts in Mergers and Amalgamations, Key Managerial Personnel and Officer in default, Certain related issues	CA. Chintan Patel
Administration and Governance (Small Companies, Dormant Companies, Foreign Companies, Directors, Members, Remuneration to Directors, etc.	

06
CPE HRS

Seminar on Professional Opportunities in Allied Laws

DAY & DATE	SATURDAY, 30TH NOVEMBER, 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. Anil Bhandari	9821037605
	CA. Girish Kulkarni	9225306814
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Jitendra Apte	9833060592
	CA. Pooja Aachra	9820138828
	CA. Nikhil Garg	9757423586

TOPICS	SPEAKERS
M. S. M. E. D. Act, 2006	CA. Abhay Arolkar
Labour Laws / ESI Certification	Eminent Faculty
Arbitration and Conciliation Act	CA. Bhupendra Shah
Competition Act, 2002	Eminent Faculty

**National Conference for CA Students
on 21st & 22nd December, 2013 in Mumbai**
For further details visit wirc-icai.org

12
CPE HRS

Workshop on Transfer Pricing

DAYS & DATES	FRIDAY, 25TH & SATURDAY, 26TH OCTOBER, 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	₹ 2,400/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Neel Majithia	9820327660
	CA. Abhishek Nagori	9426075397
	CA. Shruti Shah	9892407988
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Lalit Bajaj	9867692321
	CA. Mandar Bhate	9821470745
	CA. Kunal Parikh	9892429993
	CA. Vinay Mulye	9820140710

TOPICS	SPEAKERS
25th October, 2013	
Overview of Transfer Pricing Regulations in India (Both Domestic and International Transactions)	CA. Sharad Shah
Meaning of Associated Enterprises (In relation to both domestic and international transactions)	CA. Ameya Kunte
FAR Analysis – A Comparative Study	CA. Yashodhan Pradhan
Method of Computation – Comparable Uncontrolled Price Method	CA. Gaurav D. Shah
Method of Computation – Resale Price Method (RPM) and Cost Plus Method (CPM)	Eminent Faculty
Method of Computation – Transactional Net Margin Method (TNMM) and Profit Split Method (PSM)	CA. Pradip Modi
26th October, 2013	
Documentation for Arriving at Transfer Price – A Practical Insight	Eminent Faculty
Industry Benchmarking for Select Industries	Eminent Faculty
Use of Database – CMIE and others	Eminent Faculty
Drafting of Audit Report / Study Report	Eminent Faculty

06
CPE HRS

Seminar on Venture Capital & Fund Raising for SMEs

DAY & DATE	SATURDAY, 9TH NOVEMBER, 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. Dilip Apte	9930314856
	CA. Sunil Patodia	9820344085
	CA. Subodh Kedia	9879267750
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Suneet Mahale	9819966674
	CA. Ketan Mamanian	9820343953
	CA. Ankit Anjaria	9930001614
	CA. Sneha Jalan	9022978099

TOPICS	SPEAKERS
Overview of Indian & Global Venture Capital Scenario	Shri Sanjay Nath
Charting the Funding Route	Eminent Faculty
Fund Raising Process – Due Diligence	Shri Sharat Mathur
Term Sheet Negotiation & Documentation - I	CA. Ashish Phaphadia
Valuation aspects in Venture Capital Funding	Eminent Faculty

International Conference on

“Accountancy Profession : EMERGING FRONTIERS OF FUTURE GROWTH”

21st – 23rd November, 2013

Venue : Science City Auditorium, Kolkata

Time

4.00 p.m. to 6.00 p.m. 21st November, 2013

9.30 a.m. to 5.30 p.m. 22nd & 23rd November, 2013



Accounting profession has been recognised worldwide as key facilitator in promoting investment, enhancing economic stability, improving management of scarce resources, facilitating public revenues and strengthening enterprises. The Accountancy profession has grown tremendously in terms of capability and capacity. It has met the challenges of a high growth economy, the opening up of the country and competition due to globalisation. The ICAI being amongst the largest accounting bodies in the world has always endeavoured to position brand Indian Chartered Accountancy globally.

Shri Pranab Mukherjee, Hon'ble President of India has kindly consented to inaugurate the International Conference on November 21, 2013 at 4.30 pm.



The Institute of Chartered Accountants of India (ICAI) has been instrumental in providing quality education and continuous professional education to its members. As part of the continuous professional development of the members, ICAI is organising 2 and half days International Conference on “Accountancy Profession: Emerging Frontiers of Future Growth”

Panel Discussions/ Key Note Addresses

- Enhanced Regulation as key to Sustainable Growth
- Raising the voice of Asia in Global Accounting Profession
- Public Finance Management for Financial Inclusion
- Role of Public Sector Enterprises in Nation Building
- Public Sector Enterprises: Anchoring Economic Growth
- Competency Mapping for the Capacity Development
- Banking Sector – Navigating through Maze; Roadmap for Growth
- Developing Nation through Wealth Creation
- Emerging Paradigm in context of Education, Technical Standards and Company Law
- Empanelment as Key to Growth

Technical Sessions

- Promoting Excellence – New Dimensions of Reporting
- Corporate Finance – Way Forward
- Beyond Accountancy – Management & Leadership
- Information Technology – Rewriting the Rules of Business
- Global Competitiveness: Evolving Dimensions of Trade

Faculties

- Mr. Keith Wedlock, President, Confederation of Asian Pacific Accountants (CAPA)
- Mr. Sujeewa Mudalige, Deputy President, CAPA
- CA. P. K. Choudhary, Chairman, ICRA
- Shri Keki Mistry, Vice-Chairman, HDFC Ltd.
- Shri Sunil Kanoria, MD SREI Finance
- Shri Harish Bijoor, Bijoor Consulting

Particulars	Delegate Fees
Members (ACA and FCA)	INR 2,000/-
Non-Members	INR 2,500/-
Foreign Delegates	USD 100/-
SAFA Country Members	INR 2,000/-
CAPA Country Members	INR 2,000/-

The details of the Conference are available at the link http://www.icai.org/post.html?post_id=9718. You can also register yourself through online payment. The online payment facility is available at the link http://www.icai.org/post.html?post_id=9790.

For further details, please contact:

Shri Pradyut Chakraborty

Assistant Secretary
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Mob: 09674073910

FORTHCOMING EVENTS

New Members Meet and Felicitation of Rank Holders

DAY & DATE THURSDAY, 17TH OCTOBER, 2013

Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	3.30 p.m. to 7.30 p.m.	
Chief Co-ordinators	CA. Priti Savla	9321426883
	CA. Mahesh Madkholkar	9820075966
	CA. Satyanarayan Mundada	9422080814
	<i>(Regional Council Members)</i>	
Chief Guests	CA. Jayant Gokhale, Past Chairman, WIRC & Past CCM	
	CA. Sunil Goyal, Past Chairman, WIRC	

Students who have secured rank in May 2013 examination of CPT, IPCC, PCC & Final CA from the Western Region shall be felicitated.

02
CPE HRS

Lecture Meeting on Choosing Calmness over Chaos

DAY & DATE SATURDAY, 26TH OCTOBER, 2013

Venue	Madhuban Gardens, Opp. Badwaik Hospital, L. B. S. Road, Bhandup (W)	
Time	5.30 p.m. to 7.30 p.m.	
Chief Co-ordinators	CA. Priti Savla	9321426883
	CA. Priyam Shah	9824096112
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Sachin Maher	9869028560
	CA. Bhavesh Palan	9320166001
	CA. Bipeen Mundade	9223290561

TOPIC	SPEAKER
Choosing Calmness Over Chaos	BK E. V. Girlish

Jointly with Mulund CPE Study Circle

06
CPE HRS

Seminar on Value Addition through Management Accounting

DAY & DATE SATURDAY, 16TH NOVEMBER, 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. Shardul Shah	9820287625
	CA. Dhiraj Khandelwal	9867642684
	CA. Sarvesh Joshi	9822022292
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Aniket Kulkarni	9821690559
	CA. Rahul Nagda	9821552234
	CA. Prachi Kulkarni	9819179198
	CA. Medha Parekh	9819055331

TOPICS	SPEAKERS
Strategic Management	CA. Nimesh Kampani
Role of a CFO in an organisation (A Controller & Value Creator)	CA. Darshan Sheth
Value of Advice (Fund Management)	Shri Abizer Petiwalla
Funding Infrastructure Development (Current & Future Scenario)	Shri Amit Garg

12
CPE HRS

Workshop on Increasing your Efficiency and Productivity through Mission Control

DAYS & DATES SATURDAY, 26TH & SUNDAY, 27TH
OCTOBER, 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	₹ 6,500/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Neel Majithia	9820327660
	CA. Anil Bhandari	9821037605
	<i>(Regional Council Members)</i>	

TOPICS	SPEAKER
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 using the Mission Control System TM	CA. Manan Vasa Certified Mission Control Trainer
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!	

06
CPE HRS

Seminar on Accounting & Taxation of Stock Brokers

DAY & DATE SATURDAY, 23RD NOVEMBER, 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. Sandeep Jain	9819788099
	CA. Vishnu Agarwal	9324544607
	CA. Julfesh Shah	9823096540
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Gaurav Save	9969001607
	CA. Ramesh Mishra	9820419606
	CA. Jigar Gogri	9320467567
	CA. Nikhil Damle	9820170436

TOPICS
Internal Audit of Stock Brokers – KYC, PMLA & Policy Aspects
Internal Audit of Stock Brokers – Methodology, Reporting & Responsibility
Audit & Compliance of Depository Participant
Taxation of Stock Brokers & Depository Participants
Service Tax with respect to Stock Brokers & Depository Participants

12
CPE HRS

Conference on Frequent Issues in Assessment and Appellate Proceedings

DAYS & DATES **FRIDAY, 15TH & SATURDAY, 16TH
NOVEMBER, 2013**

Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	9.30 a.m. to 5.30 p.m.	
Fees	₹ 1,500/-	
Conference Chairmen	CA. Manoj Fadnis Chairman, Direct Tax Committee (M): 09302217716 Email: manoj@fngca.com	
	CA. Rajkumar S. Adukia Chairman, Committee on Government Accounting, ICAI (M): 09820061049; 09329061049 Email: rajkumarradukia@caaa.in	
Conference Director	CA. Tarun Ghia (M): 09821345687 Email: tarunghiaca@yahoo.co.in	
Conference Convenors	CA. Jignesh Savla	09820260070
	CA. Sharad Beria	09820508633
	CA. Snehal Kamdar	09869351460
	CA. Sunil Vankawala	09867338477

TOPICS TO BE COVERED

15th November, 2013 (Friday)

Capital Gains vs. Business Income w.r.t. transactions in securities including shares

Alleged – bogus share transactions, bogus purchases, bogus gifts

Section 14A, Rule 8D, how to keep away from Rule 8D

Recovery proceedings, stay – law vs. departmental practice – assessee's options

Survey, Search, Seizure, Declaration, Retraction – law, practice and assessee's options

16th November, 2013 (Saturday)

Revisions and Reassessments – law, practice and manner of representation

Transfer Pricing – key factors, issues, documentation, manner of representation

International taxation – key issues and manner of representation

Government Accounting and Taxation – developments, way forward and professional opportunities

For Registration

Secretary, Committee on Government Accounting, ICAI
Email Id: cga_pr@icai.in; 08130494945; 0120-3045968
Secretary, Direct Tax Committee (M): 09350572177

Ms. Amita Bapat
ICAI Bhawan, 27, Cuffe Parade, Colaba, Mumbai. (M): 09004213085

The cheque should be drawn in favour of "The Secretary, The Institute of Chartered Accountants of India", and should be sent to The Committee on Government Accounting "ICAI Bhawan", A-29, Sector 62, Noida 201309.

**Organised by: Direct Tax Committee
Jointly with Committee for Government Accounting of ICAI**

12
CPE HRS

Mega Conference on new Companies Act, 2013 and Draft Company Rules, 2013

DAYS & DATES **FRIDAY, 25TH & SATURDAY, 26TH
OCTOBER, 2013**

Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	9.30 a.m. to 5.30 p.m.	
Fees	₹ 1,500/-	
Programme Chairmen	CA. Rajkumar S. Adukia Chairman, Committee on Financial Markets & Investors' Protection, ICAI (M): 09820061049; 09329061049 Email: rajkumarradukia@caaa.in	
	CA. Anuj Goyal Chairman, Committee for Co-operatives and NPO Sectors (M): 09810041371; 09312258364 Email: anujgoel28@sify.com	
Programme Director	CA. Tarun Ghia (M): 09821345687 Email: tarunghiaca@yahoo.co.in	

TOPICS TO BE COVERED

25th October, 2013 (Friday)

New operative provisions and implications – Distinguishing aspects between old provisions and new ones – difficulties, issues and way ahead

Audit & Auditors–Appointment, Auditor Rotation, Removal, Role and Responsibilities, SA-700, Integrated Reporting

Corporate Social Responsibility (CSR) : Responsibility of companies and role of professionals

National Financial Reporting Authority (NFRA) – Constitution, Implications for an auditor, required changes in approach of an auditor, way ahead

Regulatory and Procedural aspects including Serious Fraud Investigation Office (SFIO) – new requirements, preparing for compliances and required precautions

26th October, 2013 (Saturday)

Formation of OPC, Dormant Cos., Inactive Cos., Board, Board of Directors, Independent Directors

Provisions for protecting Investors; Class Action Suits

Law and procedure in new company law tribunal, other related tribunals including SAT, FEMA, PMLA, Green Tribunal

Co-ordinating new provisions with accounting and auditing standards, Revision in audit reports withdrawal of audit reports

For Registration

Secretary, Committee on Financial Markets & Investors' Protection, ICAI,
Email Id: cfmpip_pr@icai.in; 08800092351; 0120-3045945
Ms. Amita Bapat
ICAI Bhawan, 27, Cuffe Parade, Colaba, Mumbai (M): 09004213085

The cheque should be drawn in favour of "The Secretary, The Institute of Chartered Accountants of India", and should be sent to The Committee on Financial Markets and Investors' Protection "ICAI Bhawan", A-29, Sector 62, Noida 201309.

**Organised by: Committee on Financial Markets & Investors' Protection
Jointly with Committee for Co-operative and NPO Sectors of ICAI**

FORTHCOMING BRANCH MEETINGS

Date	Time	Subjects	Speakers	Venue
NAGPUR				
16/10/2013	6.00 p.m.	Gurucool	--	ICAI Bhavan
19/10/2013	9.30 a.m.	Seminar on Companies Bill – 2013	Eminent Speakers	ICAI Bhavan
23/10/2013	6.00 p.m.	Gurucool	--	ICAI Bhavan
30/10/2013	6.00 p.m.	Gurucool	--	ICAI Bhavan
02/11/2013		Dhanteras Pooja	--	ICAI Bhavan
16/11/2013	9.30 a.m.	Women's National Conference	Eminent Speakers	Hotel Centre Point
21-22/11/2013 30/11-1/12/13		CAPL – 2013	--	
PIMPRI CHINCHWAD				
19/10/2013		Seminar on Assessment under Income Tax & MVAT Act for Purchase made from Suspicious Dealers	CA. Ratan Samal CA. Bhupendra Shah	Hotel Ambience, Survey No. 208/3, Kalewadi Chowk, Pune
SURAT				
19/10/2013	4.00 p.m.	Practical Aspects of VAT Audit	Eminent Speaker	2nd Floor, Saifee Building, Dutch Garden Road, Nanpura, Surat
26/10/2013	4.00 p.m.	Implication of Companies Act - 2013	Eminent Speaker	2nd Floor, Saifee Building, Dutch Garden Road, Nanpura, Surat
VASAI				
19/10 to 30/11/2013	9.30 a.m.	Certificate Course on Indirect Taxes	Eminent Speakers	Amruta Building, Indralok Phase-II, New Golden Nest Road, Bhayander (E)

FORTHCOMING STUDY CIRCLE MEETINGS

Date & Day	Time	Subjects	Speaker(s)	Venue	Organised by / Convenor / Tel. No.
15/10/2013 Tuesday	5.30 p.m.	Domestic Transfer Pricing	CA. Pradip K. Modi	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Rohit Chokshi M: 9879796807
20/10/2013 Sunday	9.30 a.m.	NBFC Transfer pricing issues and case study	CA. Bhavesh Vora CA Yashodhan Pradhan	Seminar Room [Mayor Hall], All India Institute of Local Self Government, Sthanikraj Bhavan, C D Barfiwala Marg, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500
17/11/2013 Sunday	9.30 a.m.	Amalgamation, mergers and restructuring for business growth	CA. Anup Shah	Seminar Room [Mayor Hall], All India Institute of Local Self Government, Sthanikraj Bhavan, C D Barfiwala Marg, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500
17/11/2013 Sunday	9.30 a.m.	Forensic Audit – Important Features	To be confirmed	Mysore Association Conference Hall, 2nd Floor, Bhaudaji Road, Matunga	Matunga CPE Study Circle CA. Atul Shahade M: 9821116850
12/11/2013 Tuesday	5.30 p.m.	Issues in Service Tax VCES	CA. Kewal Satra	D. R. Ghalla Memorial Hall, 304, Jasmine Apartment, Dadar (East)	Dadar East CPE Study Circle CA. Jasmine Sawla M: 9820585807
28/11/2013 Thursday	5.30 p.m.	Imp Judicial Pronouncements under VAT	Adv. Ratan Samal	D. R. Ghalla Memorial Hall, 304, Jasmine Apartment, Dadar (East)	Dadar East CPE Study Circle CA. Jasmine Sawla M: 9820585807
14-15/12/2013 Saturday & Sunday	9.00 a.m.	Two-Day Seminar on FEMA (Acquisitions of Immovable Property, Inbound Tax, Outbound Invest, Bank Deposit Regulations and other Proceedings etc.)	Various Eminent Faculty	Hotel United-21, 29 LBS Marg, Gokul Nagar, Thane (West)	Thane CPE Study Circle CA. Sarad Beria M: 9820508633

APPEAL TO ACTIVELY SUPPORT AND CONTRIBUTE GENEROUSLY TO CHARTERED ACCOUNTANTS BENEVOLENT FUND (CABF)

The objective of CABF is to provide financial assistance for maintenance, education, any other purpose to necessitate persons such as Member of the Institute, wife & children of the Member, Widow and children of deceased members, relatives or others or dependents of Member. Contributions to CABF are exempted under Section 80(G) of the Income-tax Act, 1961.

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E-SAHAYATAA

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

APPLICATION FOR FACULTIES FOR TAKING LECTURES FOR GMCS COURSE AT MUMBAI

WIRC of ICAI invites applications from members of the Institute who are experienced and interested in taking lectures for General Management and Communication Skills course at Mumbai. Interested members may send their resume by e-mail to wirc@icaai.in.

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.

MCA Appeals to Avoid Last Minute Filing of Return: To avoid last minute rush and system congestion in MCA21 towards end of October and November 2013, members are requested to expedite filing of balance sheet and annual return without waiting for the last days of the months. During October and November 2013, corporate seva kendra (help desks) would give priority in e-filing/answering queries of companies for filing balance sheet and annual return. Please plan your filing accordingly.

Lok Sabha Passes PFRDA Bill, 2011 with Amendments: The Pension Fund Regulatory and Development Authority Bill (PFRDA), 2011 was passed by the Lok Sabha recently with certain amendments. Besides seeking to empower PFRDA to regulate the New Pension System (NPS), the Bill would make the PFRDA a statutory authority and provide subscribers many choices to invest depending on their capacity to take risk.

New Chapter and Other Developments in Australia: The Brisbane Chapter of ICAI as 22nd Chapter of ICAI abroad, was inaugurated recently.

Student's CABF: The Board of Trustees of The Chartered Accountants Students Benevolent Fund have decided to grant financial assistance to 300 students (who are currently undergoing articulated training in accordance with The Chartered Accountants Regulations, 1988 and are poor, needy but meritorious) requiring financial assistance to pursue the Chartered Accountancy course @ Rs. 1000/- p.m. for one year with effect from 1st April, 2013 to 31st March, 2014 to be paid in lump sum, subject to filing of application for the same. The eligibility criteria for obtaining financial assistance from CASBF are hosted on the website of ICAI.

ICAI Awards 2013: The Committee for Members in Industry of ICAI is organising 7th ICAI's Corporate Forum on 10th and 11th January 2014 in New Delhi comprising of two days National Conference and ICAI Awards 2013. The ICAI Awards 2013 ceremony shall be organised on 11th January 2014 in Siri Fort Auditorium, New Delhi. Shri Deepak S. Parekh, Chairman, HDFC Limited has very kindly agreed to Chair the Jury Meet for the ICAI Awards - 2013. The Jury Meet shall be held on 2nd December 2013 at Hotel Trident, Mumbai. Members can send nominations for the awards by filling the online nomination form available on ICAI website.

Study Material distribution centre at RGV Hostel: To make it convenient for the students in Western Suburbs of Mumbai to collect their study material, WIRC has started a study material distribution centre at RGV Hostel, Andheri (W).

**For Work Disposal Status along with
discrepancy details log on to
www.wirc-icaai.org**

DIRECT TAX

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

DTA between India & Uruguay {217 TAXMANN 5 (ST.)}

The Central Government *vide* Notification No. 53/2013 dated 05/07/2013 notifies the agreement between Government of Republic of India and the Government of the Oriental Republic of Uruguay for the avoidance of double taxation and prevention of fiscal evasion with respect of taxes on income and on capital. It also notifies that the provision of DTAA shall be given effect to in the Union of India with effect from the 1st day of April, 2014.

Protocol amending Double Taxation agreement between India & Sweden {217 TAXMANN 29 (ST.)}

The Central Government *vide* Notification No. 63/2013 dated 14/8/2013 gives the protocol amending the convention between the Government of Republic of India and the Government of the Kingdom of Sweden for the avoidance of Double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, which was signed on 24/6/1997. This protocol was signed on 07/2/2013 in Stockholm. It also directs that all the provisions of the said protocol shall be given effect to in the Union of India w.e.f. 16/8/2013.

Double Taxation Avoidance Agreement (DTAA) – Agreement for exchange of information with respect to taxes with foreign countries – Bahrain {217 TAXMANN 38 (ST.)}

The Central Government *vide* Notification No. 44/2013 dated 19/6/2013 gives the agreement between Government of Republic of India and the Government of the Kingdom of Bahrain for the exchange of information with respect to taxes. It shall come into force from 11/4/2013.

Action on unmatched challans reflected in Form 26AS. {217 TAXMANN 47 (ST.)}

1. The CBDT *vide* Instruction No. 11/2013 dated 27/8/2013 directed the CPC(TDS)/AOs(TDS) to issue letters to the deductors in whose case TDS challans are unmatched with a view to verify and correct these challans. If necessary, the deductors may be asked to file correction statement, as per the procedure laid down and necessary follow-up action been taken. The CBDT also directs that the task should be completed by 31/12/2013 for the F.Y. 2012-13 in the case of CPC (TDS) and FYs 2011-12 & earlier in case of AOs (TDS).
2. The above instructions were issued in view of the direction of the Hon'ble Delhi High Court *vide* its judgment in the case (*Court on its own Motion vs. UOI and Ors (W.P) (C) 2659/2012 & W.P. (C) 5443/2012*) dated 14/3/2013) has issued seven mandamuses for necessary action by Income tax department, one of which is regarding the issue of 'Unmatched Challans' reflected in Form 26AS where the report by deductor in the TDS statement are not found available in the OLTAS database resulting in TDS mismatch.
3. The unmatched challans belong to two categories of TDS statements, viz. –
 - i. Statement pertaining to F.Y. 2011-12 and earlier which have been processed by jurisdictional TDS Assessing Officers [hereinafter AOs (TDS)]
 - ii. Statements pertaining to F.Y. 2012-13 onwards, now processed by CPC (TDS)

Refund – Set off of Refunds against tax remaining payables – Compliance of Section 245 {217 TAXMANN 58 (ST.)}

1. The CBDT *vide* Instruction No. 12/2013 dated 9/9/2013 directed and covered that the provision of section 245 of Income-tax Act be strictly adhered to before making any adjustment of refund. It was also directed that the procedure detailed in para No. 3 below may be adhered to while adjustments of refund payable by the CPC at Bengaluru. The Assessing Officer, in this regard should respond to CPC within 45 days from the date of communication of issuance of notice u/s. 245 by the CPC to the Assessing Officer.
2. The CBDT issued above instruction in view of the direction of

the Hon'ble Delhi High Court *vide* its judgment in case on its *Own Motion vs. UOI in W.P (C) 2659/2012*, dated 14/3/2013 which has issued seven Mandamuses for action by the Income Tax Department. One Mandamus is on compliance of section 245 of the Income tax Act, 1961.

3. The Hon'ble High Court in this context has issued interim directions *vide* its order dated 31/8/2012 as under :
 - "13. We issue interim direction to the respondents that they shall in future follow the procedure prescribed under section 245 before making any adjustment of refund payable by the CPC at Bengaluru. The assessee must be given an opportunity to file response or reply and the reply will be considered and examined by the Assessing Officer before any direction for adjustment is made. The process of issue of prior intimation and service thereof on the assessee will be as per the law. The assessee will be entitled to file their response before the Assessing Officer mentioned in the prior intimation. The Assessing Officer will thereafter examine the reply and communicate his findings, to the CPC, Bengaluru, who will then process the refund and adjust the demand, if any payable. CBDT can fix a time limit for communication of findings by the Assessing Officer. The final adjustment will also be communicated to the assessee."
4. In compliance with the above directions of Hon'ble Court, CPC Instruction No. 1 dated 27/11/2012 was issued explaining the step by step procedure for adjustment of refunds to be followed by Assessing Officers and CPC, followed by the DIT (Systems)-III letter dated 30/1/2013.
5. *Vide* its final order in writ petition dated 14/3/2013, Hon'ble High Court in Para 24 has confirmed its interim order and issued second Mandamus as under :
 - "24. The said interim order is confirmed. We notice that the respondent have taken remedial steps to ensure compliance of section 245 of the act as they now give an option to the assessee to approach the Assessing Officer. This is the second mandamus which we have issued. As noticed above, the interim order passed in the writ petition dated 31/8/2012 has been implemented."

Tax on distributed income by securitisation trust – S. 115TA(3) {217 TAXMANN 59 (ST.)}

The CBDT *vide* Notification No. 68/2013 dated 4/9/2013 gives Income Tax (15th Amendment) Rules, 2013. It inserts Rule 12BA being statement u/s. 115TA(3) of the Income tax Act being statement to be furnished in respect of income distributed by the securitisation trust. It prescribes the Form 63AA to be verified by the accountant in the manner indicated therein.

Payment to non-resident – Substitution of Rule 37BB & Form Nos. 15CA & 15CB {217 TAXMANN 48 (ST.)}

The CBDT *vide* Notification No. 67/2013 dated 2/9/2013 give Income tax (14th Amendment) Rules, 2013. It shall come into force from 1/10/2013. It substitutes rule 37BB. It also substitutes new Forms 15CA & 15CB.

The CBDT *vide* Notification No. 58/2013 dated 5/8/2013 amended the Rule 37BB of the Income Tax rule with a view to broaden the requirement of collecting information & reporting requirement for remittances outside India. The rule also provides that providing of information in cases where amounts are claimed as not liable to be taxed under the Income tax Act.

Subsequently, the CBDT has issued this Notification No. 67/2013 dated 2/9/2013 in supersession of the Notification No. 58/2013. The new rule 37BB now provides that any payment including any interest or salary or any other sum chargeable to tax under the Act shall be required to furnish details in a prescribed form. The information with respect to the payment which is not chargeable to tax has been done away with. This amended rule will be applicable from 1/10/2013.

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

MAVT ACT, 2002

Notifications

The Government of Maharashtra has issued notification dated 23/8/2013 by which Audit Form 704 is amended.

Circulars

1. The Commissioner of Sales Tax has issued Internal Circular No. 9A of 2013 dated 19/8/2013 by which the procedure for cross checking of transactions of sellers who have filed Annexure J1 for the F.Ys.2009-2010 & 2010-11 is explained.
2. The Commissioner of Sales Tax has issued Circular No. 6T of 2013 dated 1/10/2013 by which information about updating details like PAN/TAN and address of Profession Tax Payer is explained.

CORPORATE LAWS (Contributed by CA. Rahul Joglekar)

Relaxation of last date and additional fee for filing Form 23C for appointment of Cost Auditor

The MCA has issued General Circular No. 14/2013 on 03/09/2013 extending the last date of filing the Form 23C for appointment of Cost Auditor and relaxing the additional fee applicable on it upto 31st October, 2013. The e-form 23C can be filed for appointment of cost auditor with the normal applicable fee upto 31st October, 2013 or within 90 days of the commencement of the company's financial year to which the appointments relates, whichever is later. For further details one may refer the link <http://www.mca.gov.in/>.

Commencement of the Companies Act, 2013

The MCA has issued a notification on 12/09/2013 stating the provisions of the Companies Act, 2013 which would come into force from the said date. As many as 98 sections have been notified by the MCA. For further details one may refer the link <http://www.mca.gov.in/>

Clarification on the Notification dated 12/09/2013

The MCA has issued General Circular No. 16/2013 on 18/09/2013 stating that the relevant provisions of the Companies Act, 1956 which corresponds to the provisions of 98 sections of the Companies Act, 2013 brought into force on 12/09/2013 shall cease to have effect from the said date.

Clarification on the Notification dated 12/09/2013

The MCA has issued General Circular No. 15/2013 issued on 13/09/2013 giving clarification on the notification issued on the 12/09/2013. The Companies Act, 2013 received the assent of the president on 29th August, 2013 and was notified in the Gazette of India on 30th August, 2013. The first tranche of Draft Rules on 16 chapters have been placed on the website of the Ministry on 09/09/2013 for inviting comments and objections/suggestions from the general public/ stakeholders. Of the 16 chapters, only 13 chapters require specifying of Forms referred to in those chapters. The draft Forms shall be placed on the website shortly. The MCA has notified 98 sections for implementation of the provisions of the Companies Act, 2013 on 12/09/2013. With a view to facilitate proper administration of the said Act, it has further clarified that:

- Sub-section (58) of section 2: Registrar of Companies may register the Memorandum and Articles of Association received till 11/09/2013 as per the definition clause of the private company under the Companies Act 1956 without referring to the definition of private company under the Companies Act, 2013.
- Section 102: All companies which have issued notices of general meeting on or after 12/09/2013, the statement to be annexed to the notice shall comply with the additional requirements as prescribed in section 102 of the Companies Act, 2013
- Section 133: The existing Accounting Standards notified under the Companies Act, 1956 shall continue to apply till the Standards of Accounting or any addendum thereto are prescribed by the Central Government in consultation and recommendation of the National Financial Reporting Authority.
- Section 180: If notice for any general meeting was issued prior to 12/09/2013, then such ordinary resolution may be passed in accordance with the requirement of the Companies Act 1956 and not as per the requirements of special resolution under Section 180 of the Companies Act, 2013.

Simplification of registration requirements for Stock Brokers

The SEBI has issued Circular no. CIR/MIRSD/8/2013 on 30/09/2013 thereby simplifying the registration requirements for Stock Brokers after amending the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. As per the amendment, the existing practice of obtaining multiple

OBITUARY



With deep regret we inform Members of the passing away of our dear colleague, **CA Jayesh Thakur** on 22nd September 2013. He was a distinguished member of our fraternity making his presence felt through his regular column on "Corporate Law Updates" in the WIRC Newsletter. We will always remember him as a meticulous CA whose expertise and passion was evident in the fact that he had been a contributor to the WIRC Reference Manual for the past 10 years. He was a regular faculty at our seminars, conferences and meetings, giving Members insight through his knowledge. He was also one of the founding Member of the Andheri (West) CPE Study Circle. His untimely demise is a great loss to the entire Profession. We, the Members of the Western Region, offer our deepest condolences to the family of CA Jayesh Thakur.

registrations for operating in different segments of a stock exchange / clearing corporation has been done away with and instead a single registration per stock exchange / clearing corporation shall be required. For operating in multiple segments, approval will be required from the stock exchange or clearing corporation.

Amendment to bye-laws of recognised stock exchanges and adoption of Standard Operating Procedures

The SEBI has issued Circular no. CIR/MRD/ DSA / 31 /2013 on 30/09/2013 stating the Amendments to bye-laws of recognised stock exchanges with respect to non-compliance of certain listing conditions and adopting Standard Operating Procedure for suspension and revocation of trading of shares of listed entities for such non compliances. It has been decided that recognised stock exchanges shall use imposition of fines as action of first resort in cases of non compliances and invoke suspension of trading in cases of subsequent and consecutive defaults. To maintain consistency and uniformity of approach in this regard, it has been decided to lay down, in the bye-laws of the recognised stock exchanges, the uniform fine structure for non-compliance of certain clauses of the listing agreement and Standard Operating Procedure (SOP) for suspension and revocation of suspension of trading in the shares of such listed entities. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>.

Investor Grievance Redressal Mechanism

The SEBI has issued Circular no. CIR/MRD/ICC/30/2013 on 26/09/2013 giving out details of the Investor Grievance Redressal Mechanism. With a view to streamline and make more effective the investor grievance redressal mechanism at Stock Exchanges, and consequent to discussions with Stock Exchanges and Depositories, it has been decided to shorten the time taken for the proceedings as well as to give monetary relief to the investors, during the course of pendency of proceedings. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>.

Establishment of Connectivity with both depositories NSDL and CSDL

The SEBI has issued Circular no. CIR/MRD/DP/28/2013 on 24/9/2013 mentioning the companies eligible for shifting from Trade for Trade Settlement (TFTS) to Normal Rolling Settlement.

The stock exchanges may consider shifting from TFTS to Normal Rolling Settlement subject to the following:

- At least 50% of other than promoter holdings as per clause 35 of Listing Agreement are in dematerialised mode before shifting the trading in the securities of the company from TFTS to normal Rolling Settlement. For this purpose, the listed companies shall obtain a certificate from its Registrar and Transfer Agent (RTA) and submit the same to the stock exchange. However, if an issuer-company does not have a separate RTA, it may obtain a certificate in this regard from a practicing company Secretary/Chartered Accountant and submit the same to the stock exchange.
- There are no other grounds/reasons for continuation of the trading in TFTS. The Stock Exchanges are advised to report to SEBI, the action taken in this regard in the Monthly/Quarterly Development Report. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>.

Debt Allocation Mechanism for FII/QFI

The SEBI has issued Circular No. CIR/IMD/FIIC/15/2013 on 13/9/2013 stating the debt allocation mechanism for FII/QFIs. It has been decided that FIIs/QFIs can now invest in Government Debt without purchasing debt limits till the overall investment reaches 90% after which the auction mechanism shall be initiated for allocation of the remaining limits, as currently in place for FII investments in Corporate Debt. Consequent to the above changes, the facility of re-investment provided as well as the restrictions on re-investment shall no longer apply in respect of limits held/investments made by FIIs in the Government Debt category, till the limits are available on tap.

Further, those FIIs which had obtained Government Debt limits in the debt limit auctions held on August 20, 2013, the time period for utilisation of limits allocated through the bidding process shall be in terms of the SEBI circular CIR/IMD/FIIC/11/2013 dated July 31, 2013. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>.

KYC Requirements for Eligible Foreign Investors

The SEBI has issued Circular no. CIR/MIRSD/07/2013 on 12/9/2013 modifying the Know Your Customer requirements in case of foreign investors viz. Foreign Institutional Investors, Sub Accounts and Qualified Foreign Investors. Eligible foreign investors investing under Portfolio Investment Scheme (PIS) route shall be classified as Category-I which includes Government and Government related foreign investors, Category-II which includes appropriately regulated broad based funds such as Mutual Funds, Investment Trusts, Insurance / Reinsurance Companies, Other Broad Based Funds, etc., appropriately regulated entities, Broad based funds whose investment manager is appropriately regulated, University Funds and Pension Funds, University related endowments already registered with SEBI as FII/Sub Account and Category-III consisting of all other eligible foreign investors investing in India under PIS route not eligible under Category-I and II. The provisions of this circular are applicable for both the new and existing clients. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>.

Guidelines for dealing with Conflict of Interest for investment/trading by CRAs, Access Persons and other employees

The SEBI has issued Circular No. CIR/MIRSD/6/2013 on 28/08/2013 stating the Guidelines for dealing with Conflict of Interest for investment/trading by Credit Rating Agencies (CRAs), Access Persons and other employees. These Guidelines shall be applicable in case of investment / trading by CRAs and Access Persons connected to CRAs and in case of disclosures to all employees of CRAs. These guidelines shall cover transactions for purchase or sale of securities either individually or jointly or in the

name of their dependents or as a member of HUF. The CRAs shall adopt adequate systems, procedures and policies to ensure that they address conflict of interest while making their own investments in securities.

The CRAs, their employees and Access Persons shall not take undue advantage of any price sensitive information that they may have about any company. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/7/0/0/Circulars>.

General Guidelines for dealing with Conflicts of Interest of Intermediaries, Recognised Stock Exchanges, Recognised Clearing Corporations, Depositories and their Associated Persons in Securities Market.

Amendments to SEBI (Alternative Investment Funds) Regulations, 2012

The SEBI has issued Notification No. LAD-NRO/GN/2013-14/24/6573 issued on 16/9/2013 amending Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 as per the following:

- The existing funds which do not propose to accept any fresh commitments after commencement of the regulations shall not be required to obtain registration under the regulations subject to submission of information on their activities to the Board in the manner as may be specified.
- An Alternative Investment Fund that has been granted in-principle approval may accept commitments from investors but shall not accept any monies till it is granted registration.
- Further provisions relating to Angel Funds, Registration of Angel Funds, Investment in Angel Funds, Its schemes, Investment by Angel Funds, Obligations of Sponsors and Managers of Angel Fund, Prohibition of Listing, etc. have been suitably amended. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/3/0/0/Regulations>.

Amendments to SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2012

The SEBI has issued Notification No. LAD-NRO/GN/2013-14/22/22670 issued on 06/09/2013 amending the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. In Regulation 4, in sub regulation (2) of the said Regulations, the clause (t) is to be inserted which states the illegal mobilisation of funds by sponsoring or causing to be sponsored or carrying on or causing to be carried on any collective investment scheme by any person. For further details one may refer the link <http://www.sebi.gov.in/sebiweb/home/list/1/3/0/0/Regulations>.

CENTRAL EXCISE (Contributed by CA. Jayesh Gogri)

Notifications

Tariff

Unconditional exemption to building bricks from concessional rate of duty earlier

Earlier building bricks were leviable to Basic Excise Duty of 2% provided the facility of CENVAT Credit is not availed on inputs and input services. However, now complete unconditional exemption is being provided from Basic Excise Duty to such building bricks.

Suitable amendments are made in Notification Nos. 1/2011-CE dated 1st March, 2011 and 12/2012-CE dated 17th March, 2012.

(Notification No. 23/2013-CE dated 31.07.2013)

Increase in Basic Excise Duty on certain gold and silver products falling under Chapter 71

Gold products

Certain category of Gold bars falling under Chapter 71 were leviable to Basic Central Excise Duty of 3% vide Notification No. 12/2012-CE dated 17th March, 2012. The rate was increased to 5% vide Notification No. 1/2013-CE dated 21st January, 2013 and again to 7% vide Notification No. 20/2013-CE dated 5th June, 2013. Once again the rate of Basic Central Excise Duty on these goods is increased by 2% more resulting into effective rate of 9%.

Silver products

Certain category of silver products falling under Chapter 71 were leviable to a concessional rate of Basic Central Excise Duty of 4% vide Notification

No. 12/2012-CE dated 17th March, 2012 which is now increased to 8%.
(Notification No. 25/2013-CE dated 13/8/2013)

Amendment to exemption available to goods supplied for defence and other specified purposes

Notification No. 64/1995-CE dated 16th March, 1995 grants exemption from Basic Excise Duty to certain goods supplied for defence and other specified purposes. Recently, in March, 2013, the Notification was amended to provide exemption to equipments and stores when used for the systems and sub-systems of project ASTRA of the Government of India in the Ministry of Defence. Such exemption was granted only till 31st August, 2013. Now the exemption can be claimed for this project till 31st December, 2016.

Further, exemption is extended to machinery, equipment, instruments, components, spares, jigs, fixtures, dies, tools, accessories, computer software, raw materials and consumables required for the Long Range Surface to Air Missile (LR-SAM) Programme of Ministry of Defence subject to following conditions:

- Such goods are supplied to the Programme LR-SAM under the Ministry of Defence
- Before clearance of the said goods, a certificate from the Programme Director, Programme LR-SAM to the effect that such goods are intended for the said Programme LR-SAM, is produced to the proper officer

The exemption is available till 31st December, 2015.

(Notification No. 26/2013-CE dated 30/8/2013)

Expansion of exemption available to goods used for manufacture of rotor blades used for wind operated electricity generators

Conditional complete exemption was granted on specified goods falling under Chapters 32, 38, 39, 44 and 70 for the manufacture of rotor blades for wind operated electricity generators. Now the scope of such exemption is expanded to include specified goods falling under the said Chapters for the manufacture of rotor blades, intermediates, parts and sub-parts of rotor blades, for wind operated electricity generators.

(Notification No. 27/2013-CE dated 12/9/2013)

Non-tariff

Small Scale Industries exemption to certain specified goods for specified period in view of general trade practice of availing benefit of such Small Scale Industries exemption:

Following goods were manufactured by certain units affixing the brand name or trade name of another person during following periods, taking benefit of Small Scale Industries exemption under Notification No. 8/2003-CE dated 1st March, 2013:

Description	Period
Plastic containers and plastic bottles meant for use as packing material by the person whose brand name such goods bear	16th June, 2003 to 26th February, 2010
All packing material (other than printed cartons of paper or paper board, metal containers, high density polyethylene woven sacks, adhesive tapes, stickers, pilfer proof caps, crown corks, metal labels, plastic bags, printed laminated rolls and those covered by Sr. No. 1 above) meant for use as packing material by or on behalf of the person whose brand name they bear	16th June, 2003 to 28th April, 2010

Since this was a general trade practice to claim such exemption whereas the goods were actually leviable to Central Excise Duties, now, the Central Government has issued this notification under Section 11C of the Central Excise Act, 1944 and has directed that such Central Excise Duties would not be required to be paid in respect of specified goods for the aforesaid periods by such units not paying duty on the reasonable belief that it was entitled to avail such exemption.

(Notification No. 10/2013-CE(NT) dated 02.08.2013)

Exemption from registration of premises for affixing lower ceiling prices on pharmaceutical products to comply with the notifications issued by the National Pharmaceutical Pricing Authority under Drugs (Prices Control) Order, 2013

This notification is issued to grant exemption from registration to unregistered premises used solely for affixing a sticker or re-printing or re-labelling or re-packing of such pharmaceutical products falling under Chapter 30 of the First Schedule to the Central Excise Tariff Act, 1985 with lower ceiling price to comply with the notifications issued by the National Pharmaceutical Pricing Authority under Drugs (Prices Control) Order, 2013 dated 15th May, 2013 subject to conditions specified in Notification No. 22/2013-CE dated 29th July, 2013 exempting the pharmaceutical products from payment of Central Excise Duty.

(Notification No. 11/2013-CE(NT) dated 2/8/2013)

Amendment to Rule 3(5A) of the CENVAT Credit Rules, 2004

Till now, Capital goods removed as waste or scrap were treated at par with capital goods removed as capital goods and slab rates were provided to calculate reduced value of capital goods subject to minimum amount to be paid as equal to the duty leviable on transaction value.

Now, Rule 3(5A) of the CENVAT Credit Rules, 2004 is being amended and in case of capital goods removed as waste and scrap, the manufacturer shall pay an amount equal to the duty leviable on transaction value.

(Notification No. 12/2013-CE (NT) dated 27/9/2013)

Circulars

Clarification on non-reversal of CENVAT Credit under Rule 6 (3) of CENVAT Credit Rules, 2004 when payments made through debit in certain duty credit scrips

Conditional exemption is granted *vide* Notification Nos. 29/2012-CE, 30/2012-CE, 31/2012-CE, 32/2012-CE and 33/2012-CE all dated 9th July, 2012 to certain manufactured goods when cleared against the specified duty credit scrip issued to an exporter. The holder of the said scrip, to whom the goods are cleared, is entitled to avail CENVAT credit of Excise Duties, against the amount debited in the said scrip.

These clearances are presently treated as clearances of exempted goods and accordingly, reversal of proportionate CENVAT Credit under Rule 6 (3) of CENVAT Credit Rules, 2004 is being demanded.

The condition of such exemptions, is that duties leviable, but for such exemptions, shall be debited in or on the reverse of said scrip. Further, the scrip holder is permitted to avail CENVAT Credit of duties debited in the said scrip. Accordingly, it is now clarified that such debits in the scrip, should be treated as payment of duty and therefore, in such cases, there is no need to reverse proportionate CENVAT Credit under Rule 6(3) of CENVAT Credit Rules, 2004.

(Circular No. 973/07/2013-CX dated 4/9/2013)

Clarification on arrest and bail under Central Excise Act, 1944

Vide Finance Act, 2013 duty evasion exceeding ₹ 50 lakhs and contravention to any provisions of Central Excise Laws in relation to credit of any duty allowed to be utilised towards payment of excise duty exceeding ₹ 50 lakhs, was made cognisable and non-bailable offence. Accordingly, this Circular is issued to provide a detailed procedure to be followed by Central Excise Officers in case of bailable and non-bailable offences.

(Circular No. 974/08/2013-CX dated 17/9/2013)

SERVICE TAX

(Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

Central Government *vide* Notification No. 13/2013-ST dated 10th September, 2013 has amended Mega Exemption Notification No.25/2012-ST dated 20th June, 2012 by inserting Entry No. 9A granting exemption to any services provided by-

- the National Skill Development Corporation (NSDC) set up by the Government of India;
- a Sector Skill Council (SKC) approved by the NSDC;
- an assessment agency approved by the SKC or the NSDC;
- a training partner approved by the NSDC or the SKC in relation to-

- (a) the National Skill Development Programme implemented by the NSDC; or
- (b) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
- (c) any other Scheme implemented by the NSDC.

Central Government *vide ad-hoc* Exemption Order No. 1/1/2013 dated 17th September, 2013 has granted exemption to following taxable services provided to any person in the State of Uttarakhand from the levy of whole of the service tax u/s. 66B of the Finance Act, 1994 for the period from 17th September, 2013 to 31st March, 2014.

- 1) Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes;
- 2) Services provided in relation to serving of food or beverages by a restaurant, eating joint or mess

CBEC *vide* Circular No. 171/6/2013-ST dated 17th September, 2013 has issued guidelines for arrest and bail in relation to offences punishable under the Finance Act, 1994.

CBEC *vide* Circular No. 172/7/2013-ST dated 19th September, 2013 has clarified that by virtue of entry (I) in the Negative List u/s. 66D & Sr. No. 9 of Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012, all services relating to education are exempt from service tax. There are many services provided to an educational institution. These have been described as "auxiliary educational services" and they have been defined in the exemption notification. Such services provided to an educational institution are exempt from service tax. For example, if a school hires a bus from a transport operator in order to ferry students to and from school, the transport services provided by the transport operator to the school are exempt by virtue of the exemption notification. In addition to the services mentioned in the definition of "auxiliary educational services", other examples would be hostels, housekeeping, security services, canteen, etc.

GUJARAT VAT

(Contributed by CA. Kishor R. Gheewala)

Exemption

- A. *Vide* Notification No. (GHN-12) VAT-2013-S.5 (2)(38)-TH dated 6th August, 2013, a new entry 99 has been inserted to grant exemption from tax to sales of goods by unit canteens run by B.S.F. and Central Police Force in Gujarat to their members except for Motor Vehicles, T.V. Sets, Refrigerator, A.C., Camera, Mobile, Telephones and Computers.
- B. *Vide* Public Circular No. GUJKA/VAT-116/13-14/otw.143/124 dated 16th August, 2013, it is clarified that exemption from tax granted to Glass Pearls, *vide* entry No. 39 u/s. 5(2), will include exemption to Glass Beads also.

Additional Statutory Forms

Statutory Forms 'C', 'F' and 'H' are to be demanded online by the dealers, while e-filing their returns. Functionality of Additional Utility for claiming left out forms was available once only and therefore, the dealers had to pursue Add-on utility of making application to the Jurisdictional J.C.C.T. with relevant evidences for claiming still left out forms. For periods on and from 1st October, 2012, functionality of Additional Utility for claiming left out forms is now made available without any limit.

FEMA

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

Clarifications on rationalisation of Overseas Direct Investments (ODI)

Press Release No. 2013-2014/483 dated September 4, 2013 and A.P. (DIR Series) Circular No. 30 dated September 4, 2013

RBI has issued following clarifications on amendment to Notification No. FEMA 120/ 2004 - RB dated July 7, 2004 made *vide* A.P. (DIR Series) Circular No. 23 dated August 14, 2013 and Notification No. 283/2013-RB dated August 14, 2013.

RBI has clarified that all the financial commitments made on or before August 14, 2013, in compliance with the earlier limit of 400% of the networth of the Indian Party under the automatic route will continue to be allowed. In other words, such investments shall not be subject to any unwinding or approval from the RBI.

In terms of Regulation 6 of the Notification *ibid*, the limit of financial commitments for an Indian Party (presently 100% of its net worth) shall not apply to the financial commitments funded out of EEFC account of the Indian Party or out of funds raised by way of ADRs / GDRs by the Indian Party, as hitherto.

The limit of 400% of the net worth of the Indian Party for the financial commitments funded by way of eligible External Commercial Borrowing (ECB) raised by the Indian Party as per the extant ECB guidelines is retained.

ODI by an Indian Party for the purpose of A.P. (DIR Series) Circular No. 23 dated August 14, 2013 and this Circular would mean the total financial commitment as laid down in Regulation 2 (f) of Notification No. FEMA.120/RB-2004 dated July 7, 2004, as amended from time to time, by an IP and includes investment in equity, loan, corporate guarantee or bank guarantee [backed by a collateral or guarantee by the IP], performance guarantee (up to 50% of the performance guarantee), creation of charge over movable and immovable assets, pledge of shares, etc.

For further details on clarifications, refer circular available on RBI website at -

<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8369&Mode=0>

ECB from the foreign equity holder

Press Release No. 2013-14/483 dated September 4, 2013 and A.P. (DIR Series) Circular No.31 dated September 4, 2013

As per the existing ECB policy, borrowings in the form of ECB cannot be utilised for general corporate purpose.

RBI has now permitted eligible borrowers to avail of ECB under the approval route from their foreign equity holder company with minimum average maturity of 7 years for general corporate purposes subject to the following conditions:

- (i) Minimum paid-up equity of 25% should be held directly by the lender;
- (ii) Such ECBs would not be used for any purpose not permitted under extant the ECB guidelines (including on-lending to their group companies / step-down subsidiaries in India); and
- (iii) Repayment of the principal shall commence only after completion of minimum average maturity of 7 years. No prepayment shall be allowed before maturity.

The above modifications to the ECB guidelines will come into force with immediate effect.

Clarifications on Liberalised Remittance Scheme

Press Release No. 2013-14/483 dated September 4, 2013 and A.P. (DIR Series) Circular No. 32 dated September 4, 2013

RBI has issued certain clarifications on amendment to Notification No. FEMA 1/ 2000 - RB dated May 3, 2000 made *vide* A.P. (DIR Series) Circular No. 24 dated August 14, 2013 and Notification No. 282/2013-RB dated August 14, 2013.

For detailed clarifications, refer circular available on RBI website at -

<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8371&Mode=0>

Risk Management and Inter Bank Dealings

A.P. (DIR Series) Circular No. 36 dated September 4, 2013

Under the extant regulations, the facility of cancellation and rebooking is not permitted for forward contracts, involving Rupee as one of the currencies, booked by residents to hedge current and capital account transactions. However, exporters are allowed to cancel and rebook forward contracts to the extent of 25% of the contracts booked in a financial year for hedging their contracted export exposures.

With a view to providing operational flexibility to exporters and importers to hedge their foreign exchange risk, RBI has now decided to:

- (a) allow exporters to cancel and rebook forward contracts to the extent of 50% of the contracts booked in a financial year for hedging their contracted export exposures, and

- (b) allow importers to cancel and rebook forward contracts to the extent of 25% of the contracts booked in a financial year for hedging their contracted import exposures.

Issue of Bank Guarantee on behalf of person resident outside India for FDI transactions

- (i) **A.P. (DIR Series) Circular No. 37 dated September 5, 2013**
 (ii) **Notification No. FEMA.265/2013-RB dated March 5, 2013- The Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) (Fifth Amendment) Regulations, 2013 – Amendment to Regulation 10**
 (iii) **Notification No. FEMA.267/2013-RB dated March 5, 2013- The Foreign Exchange Management (Guarantees) (Second Amendment) Regulations, 2013 – Amendment to Regulation 4**

To provide operational flexibility and ease the procedures, RBI has permitted AD Category-I bank to issue bank guarantee, without prior approval of the RBI, on behalf of a non-resident acquiring shares or convertible debentures of an Indian company through open offers/delisting/exit offers, provided:

- (a) The transaction is in compliance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) [SEBI (SAST)] Regulations;
 (b) The guarantee given by the AD Category-I bank is covered by a counter guarantee of a bank of international repute.

It may be noted that the guarantee shall be valid for a tenure co-terminus with the offer period as required under the SEBI (SAST) Regulations.

In case of invocation of the guarantee, the AD Category-I bank is required to submit to the Chief General Manager-in-Charge, Foreign Exchange Department, Reserve Bank of India, Central Office, Mumbai-400 001, a report on the circumstances leading to the invocation of the guarantee.

Consequently, the RBI has issued Notification No. FEMA.265/2013-RB dated March 5, 2013 to amend the Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) Regulations, 2000 [Notification No. FEMA 20/2000-RB dated May 3, 2000] and Notification No. FEMA.267/RB-2013 dated March 5, 2013 to amend the Foreign Exchange Management (Guarantees) Regulations, 2000 [Notification No. FEMA 8/2000-RB dated May 3, 2000].

Purchase of shares on the recognized stock exchanges in accordance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations

- (i) **A.P. (DIR Series) Circular No. 38 dated September 6, 2013**
 (ii) **Notification No. FEMA.279/2013-RB dated July 10, 2013- The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Tenth Amendment) Regulations, 2013 – Amendment to Regulation 10**
 (iii) **Notification No. FEMA.280/2013-RB dated July 10, 2013- The Foreign Exchange Management (Deposit) (Second Amendment) Regulations, 2013 – Amendment to Regulation 5**

Presently, Foreign Institutional Investors, qualified Foreign Investors and Non-Resident Indians are eligible to acquire shares on the recognised stock exchanges in compliance with the conditions under Schedules 3, 4, 5 and 8 of FEMA Notification No. 20/2000. A non-resident is not permitted to acquire shares on stock exchange under FDI scheme under Schedule 1 of FEMA Notification No. 20/2000.

As a measure of liberalisation, RBI has allowed a non-resident including a Non-Resident Indian to acquire shares of a listed Indian company on the stock exchange through a registered broker under FDI scheme provided that:

- (i) The non-resident investor has already acquired and continues to hold the control in accordance with the SEBI (SAST) Regulations;
 (ii) The amount of consideration for transfer of shares to non-resident consequent to purchase on the stock exchange may be paid as below:
 (a) by way of inward remittance through normal banking channels, or

- (b) by way of debit to the NRE/FCNR account of the person concerned maintained with an authorised dealer/bank;
 (c) by debit to non-interest bearing Escrow account (in Indian Rupees) maintained in India with the AD bank in accordance with Foreign Exchange Management (Deposit) Regulations, 2000;
 (d) the consideration amount may also be paid out of the dividend payable by Indian investee company, in which the said non-resident holds control as (i) above, provided the right to receive dividend is established and the dividend amount has been credited to specially designated non-interest bearing rupee account for acquisition of shares on the floor of stock exchange.
- (iii) The pricing for subsequent transfer of shares to non-resident shareholder shall be in accordance with the pricing guidelines under FEMA;
 (iv) The original and resultant investments are in line with the extant FDI policy and FEMA regulations in respect of sectoral cap, entry route, reporting requirement, documentation, etc.

Consequently, the RBI has issued Notification No. FEMA.279/2013-RB dated July 10, 2013 to amend the Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) Regulations, 2000 [Notification No. FEMA 20/2000-RB dated May 3, 2000] and Notification No. FEMA.280/RB-2013 dated July 10, 2013 to amend the Foreign Exchange Management (Deposit) Regulations, 2000 [Notification No. FEMA 5/2000-RB dated May 3, 2000] to give effect to the above amendments.

Export and Import of Currency

A.P. (DIR Series) Circular No. 39 dated September 6, 2013 and Notification No. 258/2013-RB dated February 15, 2013

Presently, any person resident in India is allowed to take outside India or having gone out of India on a temporary visit, to bring into India (other than to and from Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ₹ 7,500 per person.

As part of providing greater flexibility to the resident individuals travelling abroad, the existing limit, mentioned above, has been enhanced to ₹ 10,000 per person.

Accordingly, any person resident in India:

- i) may take outside India (other than to Nepal and Bhutan) currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ₹10,000 (Rupees ten thousand only) per person; and
 ii) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding ₹10,000 (Rupees ten thousand only) per person.

The RBI has issued a Notification No. 258/2013-RB dated February 15, 2013 to amend the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 [Notification No. FEMA 6/2000-RB dated May 3, 2000] to give effect to the above amendment.

Enhancement of limit for Overseas Foreign Currency Borrowings by Authorised Dealer Banks

A.P. (DIR Series) Circular No. 40 dated September 10, 2013

AD Category - I banks are allowed to borrow funds from their Head Office, overseas branches and correspondents and overdrafts in nostro accounts up to a limit of 100% of their unimpaired Tier I capital as at the close of the previous quarter or USD 10 million (or its equivalent), whichever is higher, as against the existing limit of 50% (excluding borrowings for financing of export credit in foreign currency and capital instruments).

To give effect to the above amendment, the RBI has issued a Notification No. 286/2013-RB dated September 5, 2013 to amend the Foreign

Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 [Notification No. FEMA 3/2000-RB dated May 3, 2000].

Overseas Direct Investment

A.P. (DIR Series) Circular No. 41 dated September 10, 2013

The RBI has amended the para 2(iv)(b) of A. P. (DIR Series) Circular No. 69 dated May 27, 2011 to provide that in case of issue of corporate guarantee on behalf of second generation or subsequent level step down operating subsidiaries, the Indian Party shall indirectly holds 51% or more stake in the overseas subsidiary for which such guarantee is intended to be issued.

Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies

A.P. (DIR Series) Circular No. 42 dated September 12, 2013 and Notification No. 284/2013-RB dated June 7, 2013

RBI has amended the condition at (d) in para 6 (ii) of Annex to A.P. (DIR Series) Circular No. 1 dated July 4, 2013 to read as under:

"For the purpose of downstream investment, the Indian companies making the downstream investments would have to bring in requisite funds from abroad and not use funds borrowed in the domestic market. This would, however, not preclude downstream operating companies, from raising debt in the domestic market. Downstream investments through internal accruals are permissible by an Indian company, subject to the provisions of clause 6(i) and as also elaborated below:"

Simplification and Revision of Declaration Form for Exports of Goods/Softwares

A.P. (DIR Series) Circular No. 43 dated September 13, 2013

Presently, every exporter of goods or softwares has to give declaration in one of the forms (GR/PP/SDF/SOFTEX/Bulk SOFTEX) and submit it to the specified authority for certification.

In order to simplify the existing form used for declaration of exports of Goods/Softwares, a common form called "Export Declaration Form" (EDF) has been devised to declare all types of export of goods from Non-EDI ports and a common "SOFTEX Form" to declare single as well as bulk software exports. The EDF will replace the existing GR/PP form used for declaration of export of goods. The procedure relating to the exports of goods through EDI ports will remain the same and SDF form will be applicable as hitherto. Under the revised procedure, the exporters will have to declare all the export transactions, including those less than US \$ 25,000, in the form as applicable.

The RBI will be extending the facilities to exporters for online generation of SOFTEX Form No. (Single as well as Bulk) for use in Off-Site Software exports, in addition to EDF Form No. (Present web-based process of generation of GR Form No. gets replaced) through its website www.rbi.org.in. In order to generate the above number, the applicant has to fill-in the online form (Path www.rbi.org.in -> Forms -> FEMA Forms -> Printing EDF/SOFTEX Form No.), thereafter, the related EDF/SOFTEX Form No. would be generated for each transaction by the applicant exporter. The present facility of manual allotment of single as well bulk SOFTEX form number by Regional Offices of RBI would be dispensed with accordingly.

The Foreign Exchange Management Act (FEMA) requires exporters to complete the EDF/SOFTEX Form using the number so allotted and submit them to the specified authority first for certification and then to AD for necessary action as hitherto.

The above instruction will come into force from October 1, 2013.

For specimen of online form and the advice, refer circular available on RBI website at -

<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8411&Mode=0>

Definition for control and sector specific conditions

A.P. (DIR Series) Circular No. 44 dated September 13, 2013 and Notification No. FEMA 285/2013-RB dated August 30, 2013

Consequent to amendment to the Consolidated FDI Policy - Circular 1 of 2013 vide Press Note No. 1 (2013 Series) dated June 3, 2013, Press Note No. 3 (2013 Series) dated July 4, 2013 and Press Note Nos. 4, 5 and 6 (2013 Series) dated August 22, 2013 issued by DIPP, the RBI has amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 [Notification No. FEMA 20/2000-RB dated 3rd May, 2000] as under:

(i) The definition of the term 'control' revised as under:

'Control' shall include the right to appoint a majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

(ii) Government of Himachal Pradesh and Karnataka have given consent to implement the FDI policy on Multi Brand Retail Trading in Himachal Pradesh and Karnataka respectively. As such, the list of States/Union Territories which have conveyed their concurrence stands modified.

(iii) Further, the extant policy on FDI caps and routes for various sectors has since been reviewed. Accordingly, in order to bring uniformity in the sectoral classification position for FDI as notified under the Consolidated FDI Policy Circular with the FEMA Regulations, Annex B of Schedule 1 to Notification No. FEMA. 20/2000-RB dated 3rd May, 2000, has been suitably revised

For the revised Annex B and Sector-specific policy for foreign investment, refer circular and notification as available on RBI website at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=8413&Mode=0> and

<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8412&Mode=0>

External Commercial Borrowings (ECB) Policy - Liberalisation of definition of Infrastructure Sector

A.P. (DIR Series) Circular No. 48 dated September 18, 2013 and Notification No. FEMA. 281/2013-RB dated July 19, 2013

The existing definition of infrastructure sector for the purpose of availing ECB includes: (i) power, (ii) telecommunication, (iii) railways, (iv) road including bridges, (v) sea port and airport (vi) industrial parks (vii) urban infrastructure (water supply, sanitation and sewage projects), (viii) mining, exploration and refining, (ix) cold storage or cold room facility, including farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

RBI has decided to expand the above definition of infrastructure sector to include several other areas as well such as Energy, Communication, Transport, Water, Sanitation, Mining. Exploration & Refining, Social & Commercial Infrastructure.

Trade Credits for Import into India

A.P. (DIR Series) Circular No. 53 dated September 24, 2013

RBI has decided that AD category-I banks may approve all companies in all sectors to avail trade credit not exceeding USD 20 million up to a maximum period of five years for import of capital goods as classified by Director General of Foreign Trade (DGFT), which was earlier allowed only to the companies in the infrastructure sector, subject to certain terms and conditions stipulated therein.

RBI has also decided to relax the *ab initio* contract period of 15 (fifteen) months for all trade credits to 6 (six) months.

AD Category-I banks are, however, not permitted to issue Letters of Credit/Guarantees/Letter of Undertaking (LoU)/Letter of Comfort (LoC) in favour of overseas supplier, bank and financial institution for the extended period beyond three years.

The amended Trade Credit policy will come into force with immediate effect.

Professional Loan

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DIRECT TAX

(Contributed by CA. Paras K. Savla & CA. Deepak Tikekar)

Supreme Court

244A – Interest on interest

It was held that earlier decision in Sandvik case was misquoted and misinterpreted by the assessee and also by the Revenue, that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period. Accordingly it was held that it is only that interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest – *CIT vs. Gujarat Fluoro Chemicals SLP No. 11406 of 2008 Order dated 18-9-2013 (SC) (3 Member Bench)*.

High Court

12AA – Registration of Trust

The Trust has not commenced the activities, the Commissioner would have no authority to *ipso facto* reject the application for registration on that count alone. *DIT(E) vs. Panna Lalbhai Foundation [2013] 35 taxmann.com 104 (Gujarat)*.

S. 37(1) – Consultants fees for Corporate debt restructuring

The payment to financial consultants in connection with waiver of loans i.e. Corporate debt restructuring is revenue expenditure. Once the expenditure is held to be revenue in nature incurred wholly and exclusively for the purpose of business, it can be allowed in its entirety in the year in which it is incurred. However, considering the decision in the case of Madras Industrial Investment Corpn. Ltd., when the spreading is done for over a period of six years and as the assessee-respondent has no objection to such revenue expenditure being spread out, though it could have insisted for this amount to be allowed in the year under consideration, with no such objection having been raised, the Revenue's argument for considering such expenditure as capital expenditure is not tenable. *CIT vs. Gujarat State Fertilizers & Chemicals Ltd. 217 Taxman 343 (Gujarat)*.

S. 40(b)(v) Remuneration to partner

Assessing Officer contended that when the total payment of salary to all its employees was only ₹ 4,86,918/- then there was no justification for payment of ₹ 39,31,165/- as remuneration to the partners. It was held that the submission is wholly misconceived. The Parliament in its wisdom had fixed a limit on allowing the remuneration to the working partners and if the remuneration is within the ceiling limit provided then recourse to provision of section 40A(2)(a) of the Act cannot be taken. The Assessing Officer is only required to see as to whether the partners are the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and whether the remuneration provided is within the limits prescribed under section 40(b)(v) or not. If all the aforementioned conditions are fulfilled then he cannot disallow any part of the remuneration on the ground that it is excessive. (Ratio would also be applicable in case of Transfer Price) – *CIT vs. Great City Manufacturing Co. [2013] 33 taxmann.com 258 (Allahabad)*.

S. 40(b) Determination of Book Profit

For the purpose of ascertaining ceiling on the basis of book profit, the profit shall be as in the profit and loss account and is not to be classified under the different heads of income under section 40 of the Act. Hence it was held that whole income embedded in P&L account of assessee is to be taken into consideration for allowing deduction of remuneration paid to partners under section 40(b) without excluding interest income credited to P&L account even if it is not business income – *CIT vs. J.J. Industries [2013] 216 Taxman 162 (Gujarat)*.

S. 79 Carry forward of losses

During the earlier period 98% of the assessee's shares were held by IIPL. The holding company was amalgamated with the assessee company. However, the shareholders of that holding company i.e. IIPL continued to be shareholders of the assessee company itself. The shareholders beneficially entitled to 98% of the shares continued to be the same. In these circumstances, the prohibition from carrying forward the losses,

placed by section 79 does not operate; on the other hand section 79(a) makes the provision consequently inapplicable – *CIT vs. Select Holiday Resorts (P.) Ltd. [2013] 35 taxmann.com 368 (Delhi)*.

Ss. 139(5A), 272-B Non-quoting of PAN on TDS certificates

A bare reading of the provision of sections 272B, 273-B and sections 139A(5A) and 139A (5B), itself makes it clear that the penalty under Section 272-B will not ordinarily be imposed unless the assessee has either acted deliberately in defiance of law or was guilty of conduct which is contumacious, dishonest or acted in conscious disregard to its obligation. The penalty under section 272B cannot be imposed merely because it is lawful to do so. It can be imposed for failure to perform statutory obligation and it is a matter of discretion of the authority to be exercised judicially, after considering the explanation of reasonable cause submitted by the assessee and on a consideration of all the relevant circumstances. The use of the word 'may' in section 272-B, makes the levy of penalty discretionary, subject to the reasonable cause to be furnished by the assessee.

In absence of any record to show that the contractors to whom certain amounts were paid by the assessee, had intimated their permanent account number to the assessee as required under section 139A(5A) of the Act. Hence under these circumstances assessee successfully explained the reasonable cause to satisfy the provisions of Section 273B of the Act. *CIT vs. Gail (India) Ltd. [2013] 36 taxmann.com 336 (Allahabad)*.

ITAT

Condonation of Delay – Basic principles explained

Besides the above referred basic principles of condonation of delay, certain other general principles on the subject, culled out from various case laws, can be summarised as under:

- (i) If sufficient cause for excusing delay is shown, discretion is available to the FAAs to condone the delay and admit the appeal.
- (ii) The expression 'sufficient cause' is not defined, but it means a cause which is beyond the control of an assessee. For invoking the aid of the section any cause which prevents a person approaching the FAA within time is considered sufficient cause. In doing so, it is the test of reasonable man in normal circumstances which has to be applied. The test whether or not a cause is sufficient is to see whether it could have been avoided by the party by the exercise of due care and attention. In other words, whether it is *bona fide* cause, in as much as nothing shall be deemed to be done *bona fide* or in good faith which is not done with due care and attention. What may be sufficient cause in one case may be otherwise in another. What is of essence is whether it was an act of prudent or reasonable man. [*Ashutosh Bhadra vs. Jatindra Mohan Seal (AIR 1954 Cal. 238) & Hisaria Plastic Products vs. CST AIR 1980 (All.) 185*]. Subsequent decision of a Court cannot constitute sufficient cause.
- (iii) In every case of delay, there is some lapse on the part of the assessee. If there are no *mala fides* and it is not put forth as part of a dilatory strategy, the FAA should consider the application of the assessee. But when there is reasonable ground to think that the delay was occasioned otherwise than a *bona fide* conduct, then the FAA should lean against acceptance of the explanation.
- (iv) Section 249(3) of the Act is discretionary in nature and the assessee cannot seek condonation of delay under this provision as a matter of right, but has to satisfy the FAA by explaining the sufficient cause for the delay.
- (v) Just because there is merit in the appeal filed by the assessee, any amount of delay, however, negligently caused, cannot be condoned.
- (vi) Requirement of sufficient cause for delay cannot be ignored and it becomes very important and significant when the delay is inordinate and abnormal.
- (vii) In the matter of *J. B. Advani & Co. (P.) Ltd. (72 ITR 395)* Hon'ble Supreme Court had held that explanation of delay for the entire period is necessary. In other words what is expected of the appellant in such matters is to show that delay was occasioned due to some sufficient cause. The cause pleaded should not only be a probable one but it should be real and sufficiently reasonable. It would not be any sort of assertion that would amount to sufficient cause and would justify the condonation of delay. The cause pleaded must fit in the facts and circumstances of the given case

and the explanation offered regarding the delay occasioned by such cause should appeal to reasons so as to get judicial approval. In short in matters of delay it is neither practicable nor desirable to explain minute-to-minute/hour-to-hour delay, but delay has to be explained.

- (viii) When an application for condonation of delay is made; to consider whether a sufficient cause has been made out by the assessee; the order of the FAA should disclose that he had applied his mind to the question raised before it. Due exercise of judicial discretion is a pre-condition for allowing/refusing an application filed for condoning delay.
- (ix) The application for condonation of delay should contain substantially all the relevant material and as far as possible it should be supported by affidavit, showing that there is sufficient cause for condonation.
- (x) If the delay is not vitiated by any error of law it should be condoned.
- (xi) Any event, cause or circumstance arising after the expiry of the limitation period cannot constitute a sufficient cause.
- (xii) It is said that non-filing of appeal before the FAA, before the end of limitation period, creates a vested right in favour of the Revenue. As a result of not filing of an appeal by an assessee, Department gets a legitimate and undisputed right over the tax-revenue accruing to it in pursuance of the order of the AO. This right cannot be disturbed in a light-hearted manner.
- (xiii) In the cases of belated appeals matters have to be essentially analysed in the facts of each case – no general formula can be or should be applied, so as to ensure that an otherwise genuine cause of justice is not defeated by adherence to technical precedence.
- (xiv) Condonation of delay, though an equitable relief, however, cannot be accorded merely on sympathy or compassion and the grounds offered have to be evaluated to test whether the party in default had been guilty of conscious and deliberate inaction, culpable negligence and inexcusable indifference to the period of limitation mandatorily prescribed by law.

Prashant Projects Ltd. vs. DCIT [2013] 37 taxmann.com 137 (Mumbai - Trib.)

S. 2(22)(e) Money provided on account of specific commercial purposes is not loan or advance

This amount cannot be termed even as advance because S did not enter into any transaction with the assessee by which it was going to be liable for making any payment – *Shalimar Infonet (P.) Ltd. vs. ITO [2013] 37 taxmann.com 224 (Chandigarh - Trib.)*

S. 206C Scrap

In the context of the object sought to be achieved, mischief sought to be avoided, the language used in Explanation (aa)(i) of section 206C, and the clarity with which the legislative intent has been expressed, there is no room to construe the words “or any other mode” *ejusdem generis* the preceding words in Explanation (aa)(i). Accordingly it was held that a person who obtains specified goods in retail sale or by any other mode of sale would also be a buyer within the meaning of Explanation (aa) (i) as such sale would fall in the category of sale by “any other mode”. It was also held that there is no requirement that such a seller should himself generate scrap from the manufacture or mechanical working of materials undertaken by him – *Bharti Auto Products vs. CIT [2013] 37 taxmann.com 37 (Rajkot - Trib.) (SB)*

S. 206C New proviso to apply retrospectively

Considering the decision of Apex Court in case of Allied Motors (P) Ltd. it was held that the first proviso to section 206C(6A) is applicable to pending matters also notwithstanding the fact that it has been made effective from 1/7/2012. Special Bench also observed that said proviso seeks to rationalise the provisions relating to collection of tax at source but is also beneficial in nature in that it seeks to provide relief to the collectors of tax at source from the consequences flowing from non/short collection of tax at source after ensuring that the interest of the Revenue is well protected. (Note: Said ratio may also be apply in case of TDS provisions too) – *Bharti Auto Products vs. CIT [2013] 37 taxmann.com 37 (Rajkot - Trib.) (SB)*

S. 40A(2) – Interest on loans to family members

The assessee has taken the loans amounting to ₹ 57.92 lakhs from his wife, sons and from his own HUF and is paying interest at the rate of 18% on the same. The AO observed that the prevailing deposit rates



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with the bank during the relevant period were in the range of 7% to 8%. ITAT held that bank deposit interest is not a relevant factor to decide the allowability of rate of interest on the amount of loans to the relatives of the assessee under the provisions of section 40A(2) of the Act. It was also observed that the Revenue could not cite any instance wherein the assessee on unsecured loan account, other than his relatives account, has paid interest at less than 18% per annum and hence it was held that disallowance is not called for - *ACIT vs. Shirish Maganlal Ravani [2013] 35 taxmann.com 195 (Rajkot - Trib.) (Tm)*

S. 143(1)(a) Processing of return u/s. 143(1)(a) is not assessment

Processing of return u/s. 143(1)(a) does not amount to an assessment. Hence it was held that revised return filed after processing of return u/s. 143(1)(a) but within the statutory time allowed for filing revised return is valid - *ACIT vs. Kiran Infra Enhh Ltd. 35 taxmann.com 73 (Jaipur-Trib.)*

The department is required to give credit for TDS once valid TDS certificate had been produced or even where the deductor has not issued TDS certificates on the basis of evidence produced by assessee regarding deduction of tax at source and on the basis of indemnity - *Citicorp Finance (India) Ltd. vs. ACIT, ITA No. 8532/Mum/2011 AY 2007-08 order dated 13-9-2013, Mumbai ITAT 'C' Bench.*

INTERNATIONAL TAXATION

(Contributed by

CA. Hinesh Doshi & CA. Dolly Waghela)

Note

Detailed Judgments with 'Facts of the Cases' have been hosted on WIRC website. Please visit www.wirc-icai.org

DDIT vs. Abu Dhabi Commercial Bank Limited [2013] (37 taxmann.com 15) (Mum ITAT)

Issue before the Tribunal

Whether the provisions of section 195 of the Act are applicable in respect of the arrangers' fees remitted by ADCB to its overseas HO/branches for mobilising deposits overseas?

Held

The Tribunal, relying on the decision of Mumbai Tribunal in the case of Credit Lyonnais, held that the payments made to non-resident sub-arrangers are in the nature of commission and not FTS as prescribed under section 9(1)(vii) of the Act and therefore not chargeable to tax.

The provisions of section 195 of the Act are not applicable and consequently, the provisions of section 40(a)(i) of the Act do not come into play.

Once it is held that the said commission/brokerage is not chargeable to tax in India under the provisions of the Act, there remains no need to examine the taxability or otherwise under the tax treaty.

ADIT (IT) vs. WNS North America Inc. (I.T.A. No. 2944/Mum/2012) (Mum ITAT)

Issue before the Tribunal

Whether the amount received by the US company for rendering marketing and management services were in nature of fees for Included Services as per Article 12 of the tax treaty?

Whether the fees received by the US company for rendering marketing and management services outside India was attributable to the Service PE in India in view of the 'Force of Attraction' rule and taxable as business profits under Article 7 read with Article 5 of the tax treaty?

Held

Marketing & Management Services

In relation to the earlier AYs i.e. 2003-04 to 2006-07, an identical issue has been considered and decided by the Tribunal in favour of the taxpayer. Further, in the AYs 2004-05 and 2005-06 the order of this Tribunal has been confirmed by the Jurisdictional High Court.

As per Tribunal's order in relation to earlier AY, the taxpayer has not 'made available' any technical knowledge, experience, skill etc. to WNS India therefore the same cannot be subjected to tax as FIS under Article 12 of the tax treaty.

Based on the earlier AY's order of the Tribunal and the jurisdictional High Court, the marketing and management services were not taxable as FIS under the tax treaty.

'Force of Attraction' Rule

As per Tribunal's order in relation to the earlier AY, in relation to the receipts for provision of marketing and management services outside India, the same cannot be subjected to tax in India because such income cannot be said to have accrued or arisen or deemed to have been accrued or arisen to the taxpayer in India. Even the existence of the Service PE in India will not make it taxable because of no involvement of such PE in earning this income for which the services were rendered outside India.

As per Article 7(1) of the tax treaty, only in case when enterprise of Contracting State carries on business in the other Contracting State through its PE as well as otherwise and both the activities are of same or similar kind then the business activities carried or not through PE shall also be treated as attributable to the PE and the profit of the enterprise may be taxed in the other State, so much of them as it is attributable to PE.

The two essential conditions for applying the 'Force of Attraction' Rule are (i) the business activity carried on should be in the other State where the PE is situated (ii) the business activity carried on must be of the same or similar kind as those effected through PE.

In the present case, the condition of business activity carried on in the other State where the PE is situated is not satisfied because the marketing and management services are provided by the taxpayer outside India.

Since the marketing and management services were rendered outside India and income of such services was not accrued or arisen to the taxpayer or deemed to have accrued or arisen to taxpayer in India, the existence of Service PE in India would not make it taxable under Article 7 of the tax treaty.

United Helicharters Pvt. Ltd. vs. ACIT (ITA Nos. 5136 and 5135 of 2011) (Mum ITAT)

Issue before the Tribunal

Whether training expenditure incurred by the taxpayer are taxable as FTS under the tax treaty? Whether retrospective amendment made under the Act is applicable to the earlier payments of the taxpayer? Whether such expenditure is disallowed on account of non-deduction of tax?

Held

The lower authorities have disallowed the payment under the Act without considering the provisions of tax treaty.

There is no dispute that prior to the AY 2006-07 there was no disallowance under section 40(a) (i) of the Act. The retrospective amendment brought by the Finance Act, 2010 was not in existence when the taxpayer made the payments. Therefore, it cannot be ruled out that the taxpayer has acted under *bona fide* belief that no tax was required to be deducted on such payment.

There was no such disallowance prior to AY 2006-07 and it is not the case of the assessment of income in the hands of foreign recipient but it is a case of disallowance of the claim of expenditure claimed by the taxpayer. At the time of such payment, the provisions relied on by the CIT (A) was not in existence. Thus, the taxpayer was not expected to do something which was impossible to perform.

Relying on the decision of Ahmedabad Tribunal in the case of Sterling Abraive Ltd. it was held that the taxpayer had acted under *bona fide* belief that no tax was to be deducted on these payments.

As per Article 12(4)(b) of the tax treaty FIS means if such services made available technical knowledge, experience, skill, know-how, or processes, or consists of the development and transfer of a technical plan or technical design.

The training in the present case was given to the pilots and other staff as per the requirement of the DGCA Rules and therefore, it was only a part of the eligibility of the pilots and other staff for working in the industry of aviation and such training would not fall under the term 'service make available' under the tax treaty.

The decisions relied on by the tax department are on the taxability of the income in the hands of the non-resident in view of the retrospective amendment and therefore the said principle cannot be applied while deciding the issue of disallowance under section 40(a)(i) of the Act. Accordingly, the i) of the Act was deleted.

A P Moller Maersk vs. Deputy Director of Income-tax (IT) – 1(1) [2013-TII-156-ITAT-MUM-INTL]

Issue before the Tribunal

Whether once it is accepted that business of non-resident is shipping, then either the DTAA or section 44B shall apply. Whether when assessee could not produce details in respect of less than 0.5% of receipts, it is proper to treat the income in respect thereof as being not from shipping?

Whether income earned from cargo tracking information services provided to its agents/customers, is in the nature of FTS and attracts TDS liability?

Held

With regards to freight income – In so far as the business of the assessee is concerned, it is undisputed, that it is shipping business. If once, it is accepted it is shipping business then either the DTAA shall apply or section 44B shall apply. The AO had removed the receipts of four ships only because the details could not be produced in respect of less than 0.5% of receipts, cannot be a ground, because, the AO, has, with him powers to call for third party details/evidence, which he chose to ignore. Since there is no dispute with regard to the operation of ships in international traffic in case of four ships, it was observed that there was a close nexus and hence, DTAA would apply.

With regards to Income from cargo tracking services – since the issue was already decided by the Coordinate Benches in the assessee's own cases in preceding years, wherein also it was held that the payments received from its agents was not in the nature of FTS but reimbursements, not amounting to generation of income, therefore, the AO was directed to delete the addition.

Addl. Director of Income Tax vs. M/s Marks and Spencer Reliance India Pvt. Ltd. (2013-TII-165-ITAT-MUM-INTL)

Issues before Tribunal

Whether merely providing employees or assisting the assessee in the business and in the area of consultancy, management etc. would constitute 'make available' of the services of technical or consultancy nature.

Whether expatriation of employee under secondment agreement without transfer of technology would fall under the term 'make available' as per the Article 13(4)(c) of Indo-UK DTAA

Whether when the entire amount of salary received by seconded personnel has been subjected to tax in India at the highest average rate of tax, there can be any question of any default on the part of the assessee.

Held

Tribunal held that the payment is not in the nature of Fees for Technical Services (FTS). In the absence of "make available" technical knowledge, expertise, skill, know-how or process, etc. it cannot be held that the payment is FTS as per Article 13(4) of Indo-UK DTAA.

It was held that merely providing the employees or assisting the assessee in the business and in the area of consultancy, management, etc. would not constitute 'make available' of the services of any technical or consultancy in nature. As per the definition for fee for technical services means payment of any kind to any person in consideration for service or services of technical nature if such services make available technical knowledge, experience, skill know-how or process which enables the person acquiring the services to apply technology contained therein. Thus, expatriation of employee under seconded agreement without transfer of technology would not fall under the term make available as per the Article 13(4)(c) of Indo-UK DTAA. Accordingly it was held that the payment in question does not fall under the term 'fee for technical services' as per provisions of Indo-UK DTAA.

The assessee has made the payment towards part reimbursement of the salary expenditure which clearly shows that there is no element of profit in the said payment. This claim of the assessee was also supported by the various clauses of the agreement and seconded agreement. It was also observed that the entire amount of salary received by these personnel has been subjected to tax in India at the highest average rate of tax. Therefore there was no default on the part of the assessee.

In the result, the appeal of the revenue is dismissed

SERVICE TAX

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

Rate of Tax

The rate of tax applicable is the rate prevailing on the date of rendering of services and not the rate prevailing on the date of receipt of payments. [*CST vs. Consulting Engineering Services (I) Pvt. Ltd. (2013) 30 STR 586 (Del.)*].

The rate of tax applicable is the rate prevailing on the date of rendering of services and not the rate prevailing on the date of receipt of payments. Thus where services were rendered prior to 1/3/2008, the rate of service tax under the works contract composition scheme would be 2% although the payment was received after 1/3/2008 when rate of service tax was 4%. Circular No. F. No. 545/6/2007-TRU dated 28/4/2008 to the contrary was held to be invalid. [*Vistar Construction (P) Ltd vs. UOI (2013) 31 STR 129 (Del.)*].

Classification of Services – General

The appellant, a job-worker, manufactured goods for a company A by utilising the raw materials supplied by A for a consideration. Under Notification 214/86- CE 'A' had undertaken to pay the excise duty liability on such goods. Revenue sought to levy Service Tax on the charges collected by the appellant under the category of Business Support Service. On appeal the Tribunal held that the activities carried out by the appellant would not be liable for service tax since –

The appellant would be considered as 'manufacturer of goods' notwithstanding 'A' had undertaken to pay the excise duty in respect of such goods.

Since the process amounting to manufacture has been specifically kept outside the levy of service tax under the category of business auxiliary services, the same cannot be brought under the service tax levy under the category of business support services. [*Jubilant Industries Ltd. vs. CCE (2013) 31 STR 181 (Tri.-Del.)*].

Advertising Agency Services

Incentive received by an advertising agency as appreciation for performance cannot form part of the taxable value since it is not known at the time of provision of service. Similarly, it was held that bad debts and cash discounts, are not consideration received and hence not taxable. [*CCE vs. Facinate Advertising & Marketing (2013) 31 STR 77 (Tri.-Del.)*].

Cargo Handling Service

Movement of the excavated iron within the mining area from one place to another, activity would not be liable for service tax under the category of cargo handling service. [*Dilip Construction vs. CCE (2013)30 STR 668 (Tri.-Mum.)*].

Chit Fund Services

'Chit funds' are in the nature of cash management services which were brought within the ambit of service tax under the category of banking and other financial services w.e.f. 1/6/2007 in view of the deletion of the exclusion of cash management services from the fund management services which were included within the definition of banking and other financial services. [*All Kerala Association of Chit Funds vs. UOI (2013) 29 STR 557 (Ker) departing from A.P. Federation of Chit Funds vs. UOI (2009) 13 STR 350 (A.P.)*].

Construction of Residential Complex service (prior to 1/7/2010)

Where the assessee was engaged in construction of residential complexes on its own land and had entered into agreement for sale of residential units with the customers and also took advances from them but had not paid service tax thereon, the Tribunal relying on the Guwahati High Court decision in *Magus Construction Pvt. Ltd. vs. Union of India (2008) 11 STR 225 (Gau.)* held that no service tax is payable by the assessee [*CCE vs. Vee Aar Developers Pvt. Ltd. (2013) 30 STR 564 (Tri.-Del.)*].

Construction activity on own plot of land and sale thereof to prospective buyers is not taxable as there is no service provided. [*CCE vs. Bee Gee Construction Co. (2013) 31 STR 86 (Tri.-Del.)*].

N.B. This appears to be a decision on law prior to 1/7/2010.

Goods Transport Operator (GTO) Services

TISCO paid service tax on GTO services availed by it as payer of freight but the Supreme Court subsequently in the case of *Laghu Udyog Bharti vs. Uol (2006) 2 STR 276 (SC)* held the levy of service tax on the recipient of GTO services as unconstitutional and ordered refund of the service tax paid to such service recipients. However, the present appellants, applied and received refund of service tax paid by TISCO as its agents. Thereafter, the Finance Act, 2000 nullified the ruling of the Supreme Court and pursuant to such validation the department demanded service tax from the appellants (GTO). The applicant argued that it is not the person liable to pay the tax and hence tax cannot be demanded from it. On appeal, the High Court observed that since the amounts were returned to the assessee in its capacity as an agent of TISCO (person liable to pay) the refunds could also be demanded from it. Further, it was also held that in view of the specific provision of section 117 of the Finance Act, 2000 the assessee was liable to pay interest @ 24% from the expiry of 30 days from the date of enactment of the Finance Act, 2000. [*OTS Ltd. vs. CCE (2013) 30 STR 577 (Jhar.)*].

Management Maintenance or Repair Service

The explanation to section 65(105)(zzg) that specifies that goods includes computer software was operative as a charging provision from 1/6/2007 and the same cannot be applied retrospectively and hence the appellant providing software maintenance services would not be brought to the ambit of tax for the period prior to 1/6/2007. [*VGL Softech Ltd. vs. CCE (2013) 31 STR 123 (Tri-Del.)*].

The definition of 'maintenance and repair' during the period of dispute i.e. July to December, 2003 covered only those activities that were carried under a maintenance contract or agreement or where the assessee was a manufacturer of the goods or a person authorised by such manufacturer. Since the appellant had not entered into any maintenance contract or agreement with its client nor was he a manufacturer or a person authorised by him, their activity was not taxable under the category of "maintenance and repair services". [*Jain & Co. vs. CCE (2013) 31 STR 85 (Tri-Del.)*].

Security Agency Service

Prior to 18/4/2006, since only security services provided by commercial concern was liable for service tax. Security services provided by co-operative society for welfare of ex-servicemen, being held to be a non-commercial concern, was held not be liable for service tax. [*Rajputana Ex-Servicemen Co-op. Society vs. CCE (2013) 31 STR 248 (Tri-Del.)*].

Sponsorship Service

'IPL matches' being "sports events" would be excluded from the category of "sponsorship services" and accordingly the appellant who was one such sponsor would not be liable to pay service tax as a recipient of service. [*Hero Honda Motors Ltd. vs. CST (2013) 31 STR 162 (Tri-Del.)*].

Transmission and distribution of electricity

The activity of erection, commissioning and installation of meters and also technical testing and analysis is a service related to the transmission and distribution of electricity and hence exempt from service tax under Notification No. 45/2010-ST [*Purvanchal Vidyut Vitran Nigam Ltd. vs. CCE (2013) 30 STR 259 (Tri-Del.)*].

Demand

- The appellants were distributors of SIM cards and recharge coupons of BSNL for a commission. BSNL paid service tax on the MRP value of cards. Revenue sought to raise a service tax demand on the commission received by the appellant under the category of business auxiliary services. On appeal the Tribunal held that though the correct procedure for discharge of the service tax liability by the two parties is that the distributors raise bills for commissions that is due to them along with service tax and BSNL takes CENVAT credit of tax paid by distributors for discharging liability on the telecommunication service provided by BSNL, such procedure does not result in extra realisation of Revenue. Considering the special nature of the impugned activities and the fact that it can be easily verified that full taxable value of the service provided by BSNL to customers is subjected to tax, the Tribunal was of the

view that there is no case to undo decisions already taken by the Tribunal in this regard and therefore held the demand to be not payable. [*G.R. Movers vs. CCE (2013) 30 STR 634 (Tri-Del.)*].

- Where M/s. Airport Authority of India (AAI) had paid service tax on cargo handling services provided to various airlines, the Tribunal exonerated the appellant who was a sub-contractor of AAI from payment of tax, interest & penalties. [*Jac Air Services Pvt. Ltd. vs. CST (2013) 31 STR 155 (Tri-Del.)*].
- Where service tax on consideration for GTA services had already been deposited, appropriation of income out of such consideration between the appellant and the truck owner would not again be subjected to service tax under the category of business auxiliary services. [*Jai Shree Road Lines vs. CCE (2013) 31 STR 226 (Tri-Del.)*].

Limitation

- Where the appellant was regularly filing returns and the department could have called for records to verify the veracity of the appellant's claim, mere detection by the department during the course of audit of any defaults by the assessee cannot be a ground for invoking extended period of limitation. [*BCH Electric Ltd. vs. CCE (2013) 31 STR 68 (Tri-Del.)*].
- Where the issue involved was one of legal interpretations, the assessee cannot be held guilty of suppression or misstatement of facts and the extended period of limitation is not invocable. [*CCE vs. Bali Industries (2013) 31 STR 105 (Tri-Chennai)*].

Interest

Where CENVAT Credit was taken by Unit-I of the appellant and utilised by Units - I & II and later was reversed by Unit - I pursuant to an audit conducted in Unit - I, the Tribunal held that credit should be considered as not taken at all and hence interest thereon is not payable [*Sharvathy Conductors Pvt. Ltd. vs. CCE (2013) 31 STR 47 (Tri-Bang.)*].

Penalty

- The quantum of penalty to be imposed would be as per the provisions prevailing at the time of occurrence of offence and not at the rates prevailing on the date of review of order by the Commissioner in his review proceedings. [*BNP Paribas Equities India P. Ltd. vs. CST (2013) 31 STR 22 (Tri-Mum.)*].
- Prior to 27/2/2010 imposition of penalty under Rule 15(1) and Rule 15(2) of the CENVAT Credit Rules, 2004 for wrong availment of CENVAT credit on input services is not admissible since said rules did not cover wrong availment of input service credit. [*Oil & Natural Gas Corporation Ltd. vs. CCE (2013) 31 STR 214 (Tri-Mum.)*].

Refund

- Transportation of empty containers from yard to factory for stuffing of export goods would be covered within the expression "in relation to transport of export goods" appearing in Notification No. 41/2007-ST and hence service tax paid thereon would be eligible for refund under the said notification. [*CCE vs. R.A.K. Ceramics India Pvt. Ltd. (2013) 30 STR 609 (Tri-Bang.)*].
- Where the department had rejected the refund claim of the appellant filed under Notification No. 9/2009, on the ground that the appellant's manufacturing activity in the SEZ was not inter-related or connected with the services received under the category of scientific and technical consultancy services, the Tribunal held that credit on clinical testing services availed prior to commencement of commercial production is allowable in view of the fact that the final product could be manufactured only after obtaining regulatory approval of the clinically tested samples and therefore such services were directly related to the manufacture of the final product. The department's plea that unless goods reaches commercial production stage CENVAT credit was not admissible was rejected. Accordingly, the refund claim was held to be admissible. [*Zyduz Tech Ltd. vs. CST (2013) 30 STR 616 (Tri-Ahmd.) relying on Cadilla Healthcare Ltd. vs. CCE (2010) 17 STR 134 (Trib.)*].
- Mere non-mention of the commission paid to an agent outside India by the exporter on the shipping bill was only a technical error and would not disentitle the assessee from claiming refund in terms of Notification No. 17/2008-S.T. [*CCE & C vs. ABG Shipyard Ltd. (2013) 31 STR 11 (Guj.)*].
- When a notification [41/2007 dated 6/10/2007] exempts "whole of service tax", it implies that Education Cess and Secondary &

Higher Secondary Education Cess on the same are also exempted. [*Cauvery Coffee Traders vs. CCE (2013) 31 STR 126 (Tri.-Bang.)*].

- On facts, the appellant, an agent for overseas supplier, was held to have exported his services under the Export of Services Rules, 2005 and hence entitled to claim refund of service tax paid on input services under Notification No. 12/2005 ST dated 19/4/2005. The failure of the appellant to file a declaration envisaged under Notification No. 12/2005 was held to be procedural irregularity and the Tribunal directed the appellant to file the declaration and the department to process the claims thereafter. [*Kothari Infotech Ltd vs. CCE (2013) 31 STR 170 (Tri.-Ahmd.)*].
- Supply of goods to SEZ unit cannot be considered as "export" for the purpose of Rule 5 of the CENVAT credit Rules, 2004. "Export" means physical export out of the country. Thus, the assessee was held not entitled to refund of CENVAT credit on supplies to SEZ units. [*Everest Industries Ltd. vs. CCE (2013) 31 STR 189 (Tri.-Del.)*].
- The appellants, a Mandap Keeper, had paid tax on advances received from its customers but had refunded the amounts along with service tax to the customers since the service could not be provided. The appellants filed a refund claim u/s 11B for refund of the said tax which was rejected as being barred by limitation. However, on appeal the Tribunal observed that the assessee's case would be covered by provisions of Rule 6(3) of the Service Tax Rules, 1994 and since there is no time limit indicated in the provisions of Rule 6(3) for the appellant to utilise or take credit of excess tax paid by them, the Tribunal allowed the appellant to avail credit of such excess service tax paid by it against future liability. [*Aakash the Place to Celebrate vs. CST (2013) 31 STR 251 (Tri.- Ahmd.)*].
- The refund of CENVAT credit can be allowed irrespective of when the credit was taken in case of service providers exporting 100% of their services. Thus, where refund claim of October to December 2010 contained tax paid in respect of input services of earlier period, it was held that the refund claim cannot be denied. [*Amdocs Business Services vs. CCE, 2013(31) STR 249(Tri.-Mum.)*].

Refund claim

On the issues whether the appellant as SEZ unit would be entitled to claim exemption under Notification No. 9/2009 – ST dated 3/3/2009 in respect of the following services viz., –

- services which were received prior to issuance of Notification No. 9/2009-ST dated 3/3/2009 but the payment for which was made post 3/3/2009; and
- services received by its registered office which is situated away from SEZ unit.

the Tribunal observed that –

- In terms of para 3 of the Notification, the only requirement for claiming refund is that service tax on services should have been paid on or after 3/3/2009 and that the time of provision of services was irrelevant. Hence in respect of services mentioned in (a) above refund would be admissible.
- The preamble of the notification makes it abundantly clear that irrespective of the place where the services are rendered, whether inside or outside the unit, so long as the services are rendered in relation to authorised operations SEZ unit is entitled to claim refund subject to the satisfaction of other conditions stipulated in the notification. In the present case since services were utilised in relation to authorised operations refund was admissible. [*Wardha Power Co. Ltd. vs. CCE (2013) 30 STR 520 (Tri.-Mum.)*].

Appeal

Where the assessee is paying excise duty as well as service tax and availing CENVAT credit on input services, inputs and capital goods, an appeal relating to any dispute involving CENVAT credit must for administrative convenience be, treated as appeal filed under Central Excise. [*Wadpack Pvt. Ltd. vs. CCE (2013) 31 STR 24 (Tri.-Bang.)*].

Revision of order

Where the CCE(A) allowed the assessee's claim for benefit of deduction of value of materials by a reasoned order but remanded the case to the adjudicating authority for re-quantification of demand and no appeal was filed against the order of the CCE(A), the Tribunal held that since the department had not appealed against the order of CCE(A), the order of the adjudicating authority re-quantifying the demand by allowing the benefit of deduction cannot be interfered with by the CCE by issuing

a SCN for revision of the order passed by the adjudicating authority. [*Pentagon Intex Pvt. Ltd. vs. CCE (2013) 30 STR 685 (Tri.-Bang.)*].

Stay Order of Tribunal

Where the appeal before the Tribunal is not decided on the expiry of 180 days from the date of the order of the Tribunal dispensing with the pre-deposit of duty demanded and penalty levied, there is no automatic vacation of stay on expiry of 180 days since the assessee has no control in respect of matters pending before the Tribunal due to unavailability of infrastructure; the members of the Tribunal and the workload. But the revenue can seek vacation of stay after the expiry, if it is proved that it is the assessee who has defaulted and taken steps to delay the ultimate decision. [*PML Industries Limited vs. CCE (2013) 30 STR 113 (P&H)*].

Exemption

Notification No. 41/2007-ST exempted by way of refund services used for export of goods provided the exporter claimed refund within 6 months from the date of export. The said notification was superseded by Notification No. 17/2009-ST dated 7/7/2009 provided for a period of 1 year to claim refund. The Tribunal mainly relying on Trade Notice No. 7/2010 dated 4/3/2010 held that the period of one year under Notification No. 17/2009 – ST would apply even to refund claims made in respect of services received prior to the coming into force of that notification even though they were made beyond 6 months from the date of export. [*Sandoz Polymers Pvt. Ltd. vs. CST (2013) 30 STR 527 (Tri.-Ahmd)* See also *Adani Enterprises Ltd. vs. CST (2013) 30 STR 543 (Tri.-Ahmd.)*].

Export rebate

- Rebate of excise duty due to the assessee cannot be adjusted against alleged service tax dues recoverable from him during the pendency of the stay applications before the Tribunal without giving him a reasonable opportunity of being heard. [*Arunachala Gounder Textile Mills Pvt. Ltd. vs. CCE (2013) 31 STR 6 (Mad.)*].
- Where the expenses incurred by the exporter on services were such that the export could not have been occasioned without them, the Tribunal allowed the refund of service tax paid on such services even though the services are not mentioned in the registration certificate of the exporter since the legislative intention was not to permit export of taxes. [*CCE vs. Sigma Vibracoustic (India) Pvt. Ltd., 2013(31) STR 207(Tri.-Mum.)*].

CENVAT Credit

CENVAT credit on service tax paid on commission to the commission agents is inadmissible in view of the Gujarat High Court judgment in *Cadilla Healthcare Ltd.* Penalty cannot be imposed if the assessee had a *bona fide* belief that CENVAT credit was admissible. [*CCE vs. Paras Motors Mfg. Co. (2013) 31 STR 81 (Tri.-Mum.)*].

CENVAT credit on input services like Group Insurance of Employees, Health Insurance of Employees, Rent-a-Cab, Air Travel Services, Sodexo passes issued to employees etc. It was held that CENVAT credit on all these services except on Sodexo passes is admissible. [*CC&CE vs. Cholayil (P) Ltd. (2013) 31 STR 29 (Tri.-Bang.)*].

In this case, the Tribunal laid down that the services in inclusive part of the definition of input service need not satisfy the condition of the main part of the definition and

- Canteen services used for supply of food to employees (mandatory under the Factories Act)
- Valuation of Immovable Property services used for knowing life of factory and for depreciation purposes
- Consulting Engineer service used for machinery
- Air Travel Agent service used for travel
- Tour Operator service used for business – client's travel
- Business Exhibition service used for sales promotion
- Motor car repairing charges
- Photography service used for sales promotion
- Service tax paid on job work
- Service tax paid on Authorised Service Station

are used in relation to the business of manufacture and hence CENVAT credit on the same is admissible. [*Cadmach Machinery Co. (P) Ltd. vs. CCE (2013) 31 STR 33 (Tri.-Ahmd.)* See also *CCE vs. Aurobindo Pharma Ltd. (2013) 31 STR 38 (Tri.-Bang.)*].

Where there was no dispute as regards the receipt of services and payment of service thereon, CENVAT credit cannot be denied on the ground that invoices were not in accordance with rule 9 of CENVAT Credit Rules, 2004 read with rule 4A of Service Tax Rules, 1994 as it stood during the period under consideration i.e. prior to 1/3/2007. [*Electrotherm (India) Ltd. vs. CCE (2013) 31 STR 43 (Tri.-Ahmd.)*].

A company 'A' which was a job-worker for company 'B', a manufacturer, was issued a SCN for confirming a demand on services provided by A to B invoking the extended period of limitation. During the course of proceedings A paid the service tax and B claimed credit. Where the Revenue sought to be deny credit to B invoking the extended period of limitation, the Tribunal held that since during the relevant period such a provision for denying credit was prevalent only for excise duty and not made applicable to service tax, B could entertain a *bona fide* belief that it was entitled to CENVAT Credit and hence the demand against B was barred by limitation. [*Electrotherm (India) Ltd. vs. CCE (2013) 31 STR 43 (Tri.-Ahmd.)*].

Where the appellant, a manufacturer of cast iron pipes, at the behest of the buyer, arranged for inspection of the goods manufactured by him and recovered the cost of inspection separately from the buyer and did not include the said charges in the assessable value of the goods, the Tribunal held that CENVAT credit on the said inspection charges cannot be claimed. [*Kapilansh Dhatu Udyog Pvt. Ltd. vs. CCE (2013) 31 STR 50 (Tri.-Mum.)*].

CENVAT credit on royalty charges paid to owner of the brand name for manufacturing and clearing plywood bearing such brand name is admissible. [*Century Plyboards (I) Ltd. vs. CCE (2013) 31 STR 58 (Tri.-Kolkata)*].

CENVAT credit on commission paid to selling agents is admissible as they are in relation to the business of the appellant. [*M.K. Industries vs. CCE (2013) 31 STR 59 (Tri.-Ahmd.)*].

Credit distributed by the Head Office (HO) in respect of invoices received by the HO prior to its obtaining Input Service Distributor registration is admissible to the recipient unit in view of the decision in *Jindal Photo Limited (2009) 240 ELT 728 (Tri.-Ahmd.)*. [*Precision Wires India Ltd. vs. CCE (2013) 31 STR 62 (Tri.-Ahmd.)*].

CENVAT credit on security service utilised at the pump house for pumping water from the river and supplying it to the factory is admissible though the input service is received outside the factory. The pumping of water is integrally connected to the manufacturing business [*Welspun Maxsteel Ltd. vs. CCE (2013) 31 STR 64 (Tri.-Mum.)*].

CENVAT credit on Club Membership fees is admissible provided such membership has a nexus with the business. CENVAT credit on rent paid on car parking space used by the appellant's officers is admissible. [*BCH Electric Ltd. vs. CCE (2013) 31 STR 68 (Tri.-Del.)*].

CENVAT credit on banking services availed by the appellant based on debit advices issued by the bank containing all the particulars required under rule 4A of the Service Tax Rules, 1994 is admissible and cannot be denied on the ground that debit advices were not issued by the bank within the time limit prescribed under Rule 4A. [*MPI Machines Ltd. vs. CCE (2013) 31 STR 103 (Tri.-Del.)*].

A Large Taxpayer Unit (LTU) is not required to obtain ISD registration to transfer CENVAT credit from one registered unit to the other in view of Rule 12A(4) of the CENVAT Credit Rules. [*3M India Ltd. vs. CCE & S.T. (2013) 31 STR 110 (Tri.-Bang.)*].

Prior to 19/4/2006, payment of service tax in respect of goods transport agency services received by utilising CENVAT credit was permissible in view of the explanation to Rule 2(p) of the CENVAT Credit Rules, 2004 which defined output services. [*G. R. Corporation vs. CCE (2013) 31 STR 204 (Tri.-Del.)*].

(a) Where the SCN denied CENVAT credit on paints, thinners and welding electrodes alleging that the same would not qualify

as inputs, but the demand was confirmed on the grounds that assessee has not produced evidence with regards to its use, the Tribunal held that, confirmation of demand being beyond the scope of SCN, the same was not permissible. Further, relying on the judgment of the Chhattisgarh High Court in *Ambuja Cement Eastern Ltd. [256 ELT 690]* and *Hindustan Zinc Ltd. [228 ELT 517]*, the Tribunal allowed credit on welding electrodes which could either be used for fabrication of paints or for repairs and maintenance.

- CENVAT credit on H.R. coil, M.S. Bar, M.S. Plate, G.C. Sheets, M.S. Angles, Channels and steel items to the extent they have been used in fabrication of supporting structure would not be admissible and to the extent it has been used in fabrication of machinery or its parts would be admissible. [*DSM Sugar vs. CCE (2013) 31 STR 210 (Tri.-Del.)*].
- The appellants were engaged in production of crude oil at the oilfield of Mumbai offshore on which they paid cess under Oil Industry (Development) Act, 1974 and then transported the same to their Uran plant through a pipeline and used it to manufacture dutiable final products. It had availed CENVAT credit on input services used for manufacture of crude oil to set-off the excise duty payable on products manufactured at the Uran plant. Revenue denied credit on the ground that input services were used in manufacture of "exempted goods". On appeal, the Tribunal upheld the Revenue's contention and held –
 - Crude oil manufactured at Mumbai offshore is an "exempted product" and the fact that they are paying cess leviable under Oil Industry (Development) Act, 1974, is not relevant since the words "duty of excise" referred to in the definition of "exempted goods" and "excisable goods" refers to only duty of excise as specified in section 3 of the Central Excise Act, 1944.
 - The Mumbai offshore unit is not an integral part of Uran plant and the crude oil cannot be said to be an intermediate product so as to allow CENVAT credit of input services used in an exempt intermediate product which in turn is used for manufacture of dutiable final product since the crude oil manufactured at Mumbai offshore unit is a separate saleable commodity and in fact was partly being sold by the appellant at Mumbai offshore.

[*Oil & Natural Gas Corporation Ltd vs. CCE (2013) 31 STR 214 (Tri.-Mum.)*].

Advance Ruling

The applicants, 'A' was a subsidiary of B which in turn was a subsidiary of C, a Government company. 'A' sought an advance ruling on an issue which was identical with a question in respect of B which was pending before the CESTAT. Considering that a ruling in such a case could lead to incompatible decisions concerning the same question being rendered by two different authorities, the Authority on Advance Ruling rejected the application in exercise of the discretion vested in it u/s 96D(2) of the Act [Re: *GSPL India Transco Ltd. 2013(29) STR 642 (A.A.R.)*].

Regional Level Quiz & Elocution Competition held on 7th September, 2013



Photograph of prize winners in the competition with CA. Mangesh Kinare, Chairman, WIRC, CA. Mahesh Madkholkar, Chairman, WICASA, CA. Girish Kulkarni, RCM, CA. Jayant Gokhale, Past CCM & Judges and Quiz Masters for the competition – CA. Shekhar Kulkarni, CA. Bharat Kanabar, CA. Kishor Joshi, CA. Sonal Kapadia, CA. Mayur Chokshi, CA. Nilesh Gore, Shri Koshy John, Joint Secretary, ICAI



Ahmedabad: Workshop on Online Filing of tax audit and income tax return. (L-R): CA. Satyendra Jha, CA. Purushottam Khandelwal, Branch Chairman, CA Sanjay Vastupal, Faculty, CA. Vikash Jain, CA. Sundesh Mundra



Aurangabad: CA. Renuka Deshpande addressing Seminar on issues related to e-filing & uploading of Tax Audit report on 31/8/2013. (R-L): CA. Rajkumar Kothari, Branch Chairman, CA. R. H. Malpani, Faculty, CA. Vijay Rathi, CA. Nikhil Jaju, CA. Alok Singh, CA. Sachin Badjate



Goa: Talk on E-Filing of IT Return, Issues & Resolution held on 5/9/2013. (L-R): CA. Naveen Daivajna, CA. Abhijit Kelkar, Faculty, CA. Kedar Kenkre



Jamnagar: Photograph taken during the debate competition held on 8/9/2013. (L-R): CA. Parag Sumaria, CA. Trupti Shah, Judge, CA. Bharat Bhatt, Branch Chairman, Mrs. Sandra Moss, Judge, Mr. Bholanath Rindani, Judge, CA. Kaupil Doshi



Nagpur: CA. Nilesh Vikamsey, CCM Chief Guest inaugurating the Awareness Programme on Financial Reporting Practices. (L-R): CA. Kirti Agrawal, CA. Jelfesh Shah, RCM, CA. Jaydeep Shah, Past President, ICAI, Guest of Honour CA. Swapnil Agrawal, Branch Chairman, CA. Swapnil Ghate, CA. Suren Duragkar, CA. Kirit Kalyani, CA. Umang Agrawal



Latur: Photograph taken during the branch visit of WIRC office bearers along with branch committee members & other members



Pimpri Chinchwad: Workshop on Tax Audit held on 1/9/2013. (L-R): CA. Baban Dangale, CA. Ketan Ved, Faculty, CA. Santosh Sancheti



Pune: Inauguration of Seminar on "Limited Liability Partnerships - Formation and Tax Benefits" organised by Ministry of Corporate Affairs, Government of India in association with Pune Branch of WIRC of ICAI, Pune Chapter of WIRC of ICSI & Pune Chapter of Cost Accountants by the auspicious hands of Shri M. A. Kuvadva, Regional Director, Western Region, MCA held on 14/9/2013



Solapur: Seminar on E-filing of Tax Audit Report held on 1/9/2013. (L-R): CA. D. C. Patil, CA. R. A. Shah, Branch Chairman, CA. Sunil Agrawal, CA. Arvind Shankur, CA. Parag Raval, Vice Chairman, WIRC, CA. Mangesh Kinare, Chairman, WIRC, CA. Abhijit Kelkar, Faculty



Vasai: CA. Ramanand Gupta, Branch Chairman addressing the participants at Post Qualification on Information System Audit Course. (L-R): CA. Kishor Vaishnav, Shri Jitendra Sardesai, Faculty, Mrs. Srabani Kapoor, CA. Dayaram Paliwal

Interactive Meet with Hon'ble Minister of State for Finance (Revenue), Govt. of India, Shri J. D. Seelam on 20th September, 2013



CA. Mangesh Kinare, Chairman, WIRC & CA. Sunil Patodia, RCM welcoming Shri J. D. Seelam, Hon'ble Minister of State for Finance (Revenue), Govt. of India

Seminar on Companies Act, 2013 held on 4th October, 2013



CA. Mangesh Kinare, Chairman, WIRC, CA. Rajkumar Adukia, Chairman, CFMIP, ICAI, CA. Subodh Kumar Agrawal, President, ICAI, CA. Jay Chhaura, Vice Chairman, CFMIP, ICAI, CA. Tarun Ghia, CCM

National Conclave on Internal Audit 2013 held on 12th September, 2013



CA. Priti Savla, Treasurer, WIRC, CA. Vishnu Agarwal, RCM, CA. Anil Bhandari, RCM, CA. Sandeep Jain, RCM, CA. Mangesh Kinare, Chairman, WIRC, Shri Kishor Chaukar, Faculty, CA. S. B. Zaware, Chairman, IASB of ICAI, CA. Nihar Jambusaria, CCM, CA. Shruti Shah, RCM, CA. Shardul Shah, RCM

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