



WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

FEBRUARY 2014
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**WIRC bestowed with Record Number of Awards including
Best Regional Council Award and Best Students' Association
Award for the year 2013**

Please see page 9 for details

Seminar on Assessments under the IT Act - Practical Issues held on 25th January, 2014



CA. Shruti Shah, RCM, CA. Shardul Shah, RCM, Adv. Deepak Tralshawala, Faculty, CA. Abhijit Totade

Other Speakers



CA. H. N. Motiwalla



CA. Sanjeev Lalan



CA. Hiral Dedhia



CA. Haridas Bhat

Workshop on Competition-cum-Think-Tank on Financial Sector Reforms in India - Way Forward held on 18th January, 2014



CA. Manoj Alimchandani, CA. Shruti Shah, RCM, CA. Mangesh Kinare, Chairman, WIRC, CA. Nipun Mehta, Faculty, CA. Bharat Sampat, Faculty

Career Counselling Programme for Chartered Accountancy Course held on 10th January, 2014



CA. Uttam Prakash Agarwal, Past President, ICAI, CA. Mahesh Madkholkar, Chairman, WICASA, CA. Dhiraj Khandelwal, RCM, CA. Sandeep Jain, RCM, CA. Vishnu Agarwal, RCM & Others

Seminar on Estate Planning held on 11th January, 2014



CA. Vishnu Agarwal, RCM, CA. Shardul Shah, RCM, CA. Dhishat Mehta, Faculty, CA. Milind Joshi

Other Speakers



CA. Sanjeev Lalan



CA. Rajesh Shah



CA. Naresh Ajwani

Seminar on Redevelopment of Property of Co-operative Societies held on 4th January, 2014



CA. Amol Kamat, CA. Vimal Punmiya, Faculty, CA. Nilesh Gore, CA. Girish Kulkarni, RCM, Shri Mukund Godbole, Faculty, CA. Mangesh Kinare, Chairman, WIRC, CA. Ramesh Prabhu, Faculty, CA. Sunil Patodia, RCM, CA. Priti Savla, Treasurer, WIRC, CA. Gaurav Parwani

Other Speakers



Adv. Bharat Raichandani



Adv. Pravin Veera



CA. Sujata Rangnekar

Seminar on Standards on Auditing held on 18th January, 2014



CA. Gaurav Save, CA. Sushrut Chitale, RCM, CA. Kedar Mehendale, Faculty, CA. Ritesh Hibare

Other Speakers



CA. Adwait Morwekar



CA. Harnish Shah



CA. Himanshu Chapsey

Flag Hoisting Ceremony on Republic Day, 26th January, 2014 at ICAI Tower, BKC, Mumbai





CHAIRMAN'S COMMUNICATION



My name should not be made prominent. It is my ideas that I want to see realised. The disciples of all the prophets have always inextricably mixed up the ideas of the Master with person, and at last killed the ideas for the person. Work for the idea, not the person. Swami Vivekananda

Respected Seniors & Dear Friends,

As I pen down my last 'communication', we received the good news that WIRC has been adjudged the Best Regional Council (jointly with EIRC) and WICASA has won Best Students Association Award (jointly with SICASA). In fact this year, Western Region has bagged a record twelve awards which once again proves that 'West is the Best'. My congratulations to all the members of our Region on this glorious occasion.

It was one more proud moment for us when a student from our Region stood first in the CA Final November 2013 Examination. It was amazing to see all the major newspapers carrying the news that a student from a small town topped the CA examination. This is a clear indicator that Chartered Accountancy course really brings exceptional talent from all corners of the country to the forefront. I congratulate all the successful students and my best wishes for their future endeavours. Those students who could not pass the examinations should not lose hope but make little more effort and keep a positive attitude.

At the Convocation function on 9th January, it was a delight to see more than 3,000 newly qualified CAs being conferred the Membership Certificates. It was indeed exhilarating to see such a large number of young CAs standing and taking the oath. The enthralling speeches by the Chief Guest CA. Niranjana Hiranandani and other dignitaries made this function memorable. It was a very difficult task to control such a huge gathering and our RCMs and officials of WRO deserve compliments for the smooth conduct of the function which was also appreciated by the dignitaries.

After hectic academic activities throughout the year, we had a good break last month with a number of sports events. The Inter-Firm Cricket Tournament and Indoor Sports Meet saw substantially increased participation this year. All the games were played competitively and with sportsman's spirit. My congratulations to winners and all the participants. On 18th January we had the annual MLC D'Souza Cricket Tournament with Income-tax Department. This exciting match kept everyone on the edge of their seats and was finally won by the Income-tax Department due to a superb all round performance.

After a remarkable session by CA. S. Gurumurthy in the Regional Conference, we received requests from many members to organise some workshops for better understanding of economic concepts and deliberations thereof. Accordingly, we have planned the first such workshop of 'Monetary Policy and Fiscal Policy' and the response has been quite encouraging. On the basis of feedback received from members, we have also reworked the agenda of the Seminar on Redevelopment of Co-op Societies to make it a two day workshop.

With Bank Audit season nearing, we have planned bank audit seminars with a new structure in mind. These full day seminars will now have some advanced features with specific thrust on audit of sensitive accounts and forex transactions. We hope that this change in the structure will really help members sharpen their skills.

I consider myself fortunate that I could communicate to all our members through this 'Communication'. So while I write my last communication, I recollect all the fond memories of the year in which many of you have encouraged me by sending sms, mails and phone

calls of appreciation and suggestions. All such inputs have brought out an improvement in my personality, for which I am personally grateful.

As you all know, we at WIRC adopted the mission statement "Reform Perform Transform" for achieving the ultimate goals of sustainability, inclusive growth and overall development. While striving for Reforms we tried to involve the members across the Region to think about new processes and opportunities. A detailed compilation of these suggestions has already been submitted to our torch bearers. We have also given inputs on exposure drafts, research projects and students study material. For achieving high performance standards, certain unique initiatives like beginners workshops, intensive programmes, skill development programmes, innovative lecture meetings and online helpdesk for SMPs were undertaken.

To project brand ICAI, WIRC made various representations and acted as knowledge partners to state governments. Further, various social initiatives like training and encouraging education were also taken. But above all there were two major challenges in front of us viz. starting GMCS classes on completely 'In house' basis and making the ICAI Tower fully operational. Now WIRC is conducting GMCS classes for about 600 students every month and it is very satisfying that the ICAI Tower which was inaugurated in the beginning of my tenure has become fully operational now.

All these initiatives and achievements have been highlighted elsewhere in the Newsletter, with an intention of getting feedback from all of you for the benefit of the incoming team. We have also received good news recently that Municipal Corporation of Mumbai has given us in principle approval for setting up reading rooms in their three premises in Mumbai.

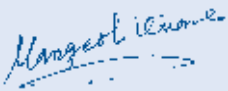
I am thankful to my Office Bearers, Regional Council Colleagues and the staff for their unstinted support and relentless efforts in pursuit of all the above initiatives and achievements. I am also grateful to Central Council Members, ICAI President CA. Subodh Kumar Agrawal and ICAI Vice President, CA. K. Raghu for their continuous guidance, co-operation and encouragement.

I would also like to thank the Office Bearers and Managing Committee Members of Branches, Convenors and Deputy Convenors of Study Circles, Co-opted Members, Faculties, Finesse Graphics – our designers and printers and various Contributors and above all to all of you for making the year memorable for me.

The New Team will soon take over in WIRC and I wish that their tenure be more exciting and successful and they go from strength to strength.

I bid adieu as Chairman of WIRC by quoting the famous Dnyanpeeth Award winner, poet Shri Vinda Karandikar, "देणाच्याने देत जावे, घेणाच्याने घेत जावे, घेता घेता एक दिवस, देणाच्याचे हात घ्यावे". (The giver should keep giving – the receiver should keep taking - and one day while taking – the receiver should take the giver's hand and imbibe this quality.)

With Best Wishes,


CA. Mangesh Kinare

OFFICE BEARERS

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

EDITORIAL BOARD

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

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06
CPE HRS

Seminar on Tax Planning, Investment & Compliances by NRI

DAY & DATE		SATURDAY, 1ST MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai		
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)		
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)		
Chief Co-ordinators	CA. Girish Kulkarni	9225306814	
	CA. Neel Majithia	9820327660	
	CA. Hardik Shah	9825510422	
	<i>(Regional Council Members)</i>		
Co-ordinators	CA. Gaurav Save	9969001607	
	CA. Nipun Dangaich	9004271997	
	CA. Vikram Joshi	9821733286	

TOPICS	SPEAKERS
FEMA Regulations relating to – a) Investments in India & b) Investments outside India with rupee funds	CA. Naren Madlani
Do's & Don'ts under FEMA for NRIs	CA. Rahul Manjrekar
Tax Planning for NRIs	CA. Mayur Nayak
TDS provisions for payment to non-residents	CA. Atul Suraiya

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CPE HRS

Two Days Seminar on Accounting Standards

DAYS & DATES		SATURDAY, 8TH & SUNDAY, 9TH MARCH, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade		
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)		
Fees	₹ 2,400/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)		
Chief Co-ordinators	CA. Shruti Shah	9892407988	
	CA. Sushrut Chitale	9821112904	
	CA. Parag Raval	9824339200	
	<i>(Regional Council Members)</i>		
Co-ordinators	CA. Y. R. Desai	9820448365	
	CA. Arun Prithwani	9167986549	
	CA. Amogh Pandit	8108132425	
	CA. Nehal Turakhia	9833991898	

TOPICS	SPEAKERS
AS-21 Consolidated Financial Statements	Eminent Faculty
AS-23 Accounting for Investments in Associates in Consolidated Financial Statements	
AS-27 Financial Reporting of Interests in Joint Ventures	Eminent Faculty
AS-30 Financial Instruments: Recognition & Measurement	
AS-31 Financial Instruments: Presentation	CA. Pooja Gupta
AS-32 Financial Instruments: Disclosures	
AS-25 Interim Financial Reporting	
AS-29 Provisions, Contingent Liabilities & Contingent Assets	CA. Mayur Chokshi
AS-26 Intangible Assets	Eminent Faculty
AS-28 Impairment of Assets	

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CPE HRS

Intensive Workshop on Procedure Redevelopment of Society

DAYS & DATES		FRIDAY, 21ST & SATURDAY, 22ND FEBRUARY, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade		
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)		
Fees	₹ 2,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)		
Chief Co-ordinators	CA. Mahesh Madkholkar	9820075966	
	CA. Girish Kulkarni	9225306814	
	CA. Sarvesh Joshi	9822022292	
	<i>(Regional Council Members)</i>		
Co-ordinators	CA. Vikas Vishwasrao	9892915272	
	CA. Aalok Mehta	9892001645	
	CA. Nikhilesh Soman	9869183643	

For more details visit www.wirc-icai.org

06
CPE HRS

Seminar on Mergers & Acquisitions

DAY & DATE		SATURDAY, 22ND FEBRUARY, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai		
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)		
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)		
Chief Co-ordinators	CA. Priti Savla	9321426883	
	CA. Julfesh Shah	9823096540	
	<i>(Regional Council Members)</i>		
Co-ordinators	CA. Siddharth Karani	9773507409	
	CA. Saurabh Saraf	9967090943	
	CA. Anil Haria	9869044504	
	CA. Sunil Dedhia	9820780040	

For more details visit www.wirc-icai.org

06
CPE HRS

Seminar on Service Tax for Beginners

DAY & DATE		SATURDAY, 22ND MARCH, 2014	
Venue	Sarvodya Hall, L. T. Road, Borivali (W)		
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. Hardik Shah	9825510422	
	CA. Priyam Shah	9824096112	
	<i>(Regional Council Members)</i>		
Co-ordinators	CA. Giriraj Khandelwal	9820344999	
	CA. Sharad Sheth	9820589448	
	CA. Kinjal Shah	9892100844	

TOPICS	SPEAKERS
Synopsis to Service Tax	Eminent Faculty
Reverse Mechanism	CA. Hardik Mehta
Service Tax Procedure	CA. Kruti Shah
CENVAT Credit	CA. Jinal Shah

Jointly with Borivali (Central) CPE Study Circle

06
CPE HRS

Seminar on New Companies Act

DAY & DATE	SATURDAY, 8TH MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Parag Raval CA. Sunil Patodia CA. Dilip Apte <i>(Regional Council Members)</i>	9824339200 9820344085 9930314856
Co-ordinators	CA. Aniket Kulkarni CA. Ramesh Mishra CA. Jitendra Apte CA. Pratik Jariwala	9821690559 9820419606 9833060592 9833217888

TOPICS	SPEAKERS
Novel concept under the New Companies Act	Eminent Faculty
Changes in Provision Effecting Private Limited Companies	Eminent Faculty
Decoding of Provision Relating to Finance Statement	CA. Anand Bathiya
Fair value under New Companies Act	CA. Anand Bathiya

06
CPE HRS

Seminar on Sectoral Performance and Market Survey

DAY & DATE	SATURDAY, 15TH MARCH, 2014	
Venue	Conference Hall, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Subodh Kedia CA. Dilip Apte CA. Sunil Patodia <i>(Regional Council Members)</i>	9879267750 9930314856 9820344085
Co-ordinators	CA. Mandar Bhate CA. Kunal Parikh CA. Vinay Mulye CA. Vipul Agrawal	9821470745 9892429993 9820140710 9821359804

TOPICS
Presentation on following Sectors:
• Construction Industry • Banking and Financial Services • Capital Goods • Consumer Goods • SME Performance
Panel Discussion on Market Survey

06
CPE HRS

Seminar on Statutory Audit of Bank Branches

DAY & DATE	SATURDAY, 15TH MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Dhiraj Khandelwal CA. Priyam Shah CA. Satyanarayan Mundada <i>(Regional Council Members)</i>	9867642684 9824096112 9422080814
Co-ordinators	CA. Shantesh Warty CA. Purva Mittal CA. Bipeen Mundade	9819947969 8655046341 9223290561

TOPICS	SPEAKERS
LFAR and various Certifications (Audit of Transactions other than advances, Suspense Accounts, Sensitive Accounts)	CA. Niranjan Joshi
Audit of Foreign Exchange Transactions (Deposits, Advances- Funded/Non funded)	Eminent Faculty
Audit of Advances – Funded & Non- Funded	CA. Shrinivas Joshi
Income Recognition, Asset Classification, and Provisioning Norms (NPA)	CA. Ketan Saiya

06
CPE HRS

Seminar on Audit & Compliance Applicable to Stock Broker & Depository Participants

DAY & DATE	SATURDAY, 15TH MARCH, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Vishnu Agarwal CA. Abhishek Nagori CA. Sandeep Jain <i>(Regional Council Members)</i>	9833310916 9426075397 9819788099
Co-ordinators	CA. Dattaray Pawar CA. Mukund Mall CA. Anjari Bihani	9967835454 9322224142 9819416535

TOPICS	SPEAKERS
Recent SEBI / Exchange / FMC/ Depository Circulars applicable to stock brokers / Commodity brokers / Depository Participants	CA. Ravi Ramaiya
Issues in various certification applicable to stock brokers/Commodity brokers/Depository Participants	Eminent Faculty
Issues in Audit of Stock brokers / Commodity brokers / Depository participants	Eminent Faculty
System Audit (CTCL Audit) of Stock Brokers	CA. Shardul J. Shah
Issues in Taxation of Stock Brokers & Commodity Brokers	Eminent Faculty

06
CPE HRS**Seminar on Statutory Audit of Bank Branches**

DAY & DATE	SATURDAY, 22ND MARCH, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Mahesh Madkholkar 9820075966 CA. Sushrut Chitale 9821112904 CA. Julfesh Shah 9823096540 (Regional Council Members)	
Co-ordinators	CA. Milind Joshi 9930033939 CA. Rupesh Gunjal 9987641644 CA. Nikhil Damle 9820170436	

TOPICS	SPEAKERS
LFAR and various Certifications (Audit of Transactions other than advances, Suspense Accounts, Sensitive Accounts)	CA. Abhay Kamat
Audit of Foreign Exchange Transactions (Deposits, Advances- Funded/Non funded)	Eminent Faculty
Audit of Advances – Funded & Non- Funded	CA. I. B. Sonawala
Income Recognition, Asset Classification, and Provisioning Norms (NPA)	CA. Vipul Choksi

Revisionary Crash Course for CA Final

DAYS & DATES	TUESDAY, 11TH MARCH TO WEDNESDAY, 30TH APRIL, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	9.00 a.m. to 5.00 p.m.	
Fees	₹ 6,500/-	
Chief Co-ordinator	CA. Mahesh Madkholkar 9820075966 Chairman, WICASA (Regional Council Member)	
Co-ordinators	CA. Devki Shah CA. Shakuntala Chhangani CA. Prashant Chaubal	

TOPICS
Financial Reporting • Eminent Faculty • Strategic Financial Management • Advanced Auditing & Professional Ethics • Corporate & Allied Laws • Advanced Management Accounting • Information System Control & Audit • Direct Tax Laws • Indirect Tax Laws

For more details visit www.wirc-icai.org**Study Group Meeting on BFSI & Capital Market****Date:** Friday, 28th March, 2014 **Time:** 5.30 p.m. - 8.30 p.m.**Venue:** ICAI Towers, BKC **CPE:** 3 hours**Fees:** ₹ 300/- (Not payable by Annual Members)**ROUNDTABLE DISCUSSION - TOPIC**

Mentorship and Planning for Growth - Mentorship Programmes - for Employers, Mentors and Mentees - with Case Studies

CA. Sunishi Gabhawala CA. Bharat Sampat
CA. Manoj Alimchandani**06**
CPE HRS**Seminar on Post Assessment Issues under IT Act**

DAY & DATE	SATURDAY, 22ND MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Neel Majithia 9820327660 CA. Sandeep Jain 9819788099 CA. Abhishek Nagori 9426075397 (Regional Council Members)	
Co-ordinators	CA. Hrishikesh Wandrekar 9892919239 CA. Neha Patel 9833678901 CA. Ritesh Hibare 9773418343	

TOPICS	SPEAKERS
Rectification of mistakes & powers relating to amendments of order	CA. Bhadrash Doshi
Issues relating to recovery & stay proceedings	Eminent Faculty
Appeal before CIT (Appeals) – Appealable Orders, procedure in appeal, additional evidence, powers of CIT (Appeals)	Eminent Faculty
Concealment penalties – proceedings & issues relating to representation in penalty proceedings	CA. Reepal Tralshawala

06
CPE HRS**Seminar on Statutory Audit of Bank Branches**

DAY & DATE	SUNDAY, 23RD MARCH, 2014	
Venue	Mandpeshwar Civic Federation Banquet, Borivali (W)	
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. Priti Savla 9321426883 (Regional Council Members)	
Co-ordinators	CA. Giriraj Khandelwal 9820344999 CA. Sharad Sheth 9820137240 CA. Yashesh Jakhelia 9967586811	

TOPICS	SPEAKERS
Audit Planning and Documentation	CA. Uday Sathe *
Risk based audit in CBS environment	Eminent Speaker
Audit of Advances & IRAC norms	CA. Vipul Choksi
LFAR Reporting & other certifications	CA. Manish Sampat

* Subject to confirmation

Jointly with Borivali (Central) CPE Study Circle

FORTHCOMING BRANCH MEETINGS

Date	Time	Subject(s)	Speaker(s)	Venue
AMRAVATI				
19/02/2014		Health Marathon - ISA Certification Course in Mid Feb.		
AURANGABAD				
27/02 to 16/03/2014		Information Systems Audit (ISA) Course		ICAI Bhawan
NAGPUR				
16/02/2014	9.30 a.m.	Understanding budget	Eminent Speaker	ICAI Bhawan
17/02/2014	10.30 a.m.	Live Screening of Budget		ICAI Bhawan
17/02/2014	4.00 p.m.	Immediate Reaction on Union Budget	Eminent Speakers	ICAI Bhawan
18-19/02/2014	9.00 a.m.	Campus Interview	--	ICAI Bhawan
19-20/02/2014	9.00 a.m.	Campus for Article Trainee	--	ICAI Bhawan
20/02/2014		Workshop on IT Basic Features of Advance Excel	Eminent Speaker	ICAI Bhawan
21/02/2014		Workshop on IT Excel as an Audit Tool	Eminent Speaker	ICAI Bhawan
22/02/2014		Workshop on IT Function in Excel	Eminent Speaker	ICAI Bhawan
VASAI				
23/02/2014	7.00 a.m.	Marathon jointly with WIRC-WICASA (for Members and Students)		Golden Nest Police Choki to Shivaji Statue, Kashmirira
16/03/2014	9.30 a.m.	Seminar on Bank Branch Audit	Eminent Speaker	New Zaika, Bhayandar (W)

FORTHCOMING STUDY CIRCLE MEETINGS

Date & Day	Time	Subject(s)	Speaker(s)	Venue	Organised by / Convenor / Tel. No.
19/02/2014 Wednesday	5.30 p.m.	Concurrent Audit of Banks – Practical and Procedural Aspects	CA. Sanjay Shah	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
22/02/2014 Saturday	6.00 p.m.	Study Group Mtg. on Issues on Service Tax	CA. Sandip Shah	Vrundas Veg., Gulmohar Road, Behind Ajanta Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
23/02/2014 Sunday	8.45 a.m.	Issues in NRI Taxation International Taxation	CA. Natwar Thakkar Eminent Faculty	Hotel Kohinoor, Andheri Kurla Road, J. B. Nagar, Andheri (E)	J. B. Nagar CPE Study Circle CA. Kamal Dhanuka M: 9867215281
23/02/2014 Sunday	9.00 a.m.	Reforms in the Companies Act – I Reforms in the Companies Act – II	CA. Anand Desai CA. Sanjeev Shah	Seminar Room, Sthanikraj Bhavan, C D Barfiwala Marg, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500
23/02/2014 Sunday	9.30 a.m.	Concurrent audit & Revenue audit of Banks Corporate Debt Restructuring, Activity Audit and Stock Audit	CA. Niranjan Joshi CA. Atal Bihari Bhanja	Shyam Kunj Haveli Hall, Chandavarkar Road, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
23/02/2014 Sunday	9.30 a.m.	Recent Pronouncement under Income-tax Act	CA. Ashok Sharma CA. Devendra Jain	Mulund College AC Auditorium, Near Mulund Railway Station, Mulund (W)	Mulund CPE Study Circle CA. Sachin P. Maher M: 9869028560
01/03/2014 Saturday	2.45 p.m.	Women Wing Programme Samarpan Mediation Techniques Using Tally ERP 9 as Audit Tool Cyber Crime Threats	Shri Prful Sanghani CA. Vandana Dhodia Eminent Faculty	Direct- I- Plex, Old Nagar Das Road, Near Andheri East Subway, Andheri (E)	J. B. Nagar CPE Study Circle CA. Kamal Dhanuka M: 9867215281
01/03/2014 Saturday	5.30 p.m.	NRI Taxation	CA. Anish Thacker	Roman Vision Banquet Hall, 99/101, Keshavji Naik Road, Chinchbunder Mahajan Wadi, 3rd Floor, Above Vijay Transport	Masjid Bunder CPE Study Circle CA. Bharat Vasani M: 9820075953
09/03/2014 Sunday	9.30 a.m.	Statutory Audit of Bank Branches	CA. Shrinivas Joshi	Seminar Room, Sthanikraj Bhavan, C D Barfiwala Marg, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500
09/03/2014 Sunday	9.30 a.m.	Basics of Excise & Customs Documentation & CENVAT credit rules under Central Excise	CA. Hasmukh Kamdar Adv. Shailesh Sheth	Sarvoday A/C Hall, L. T. Road, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
16/03/2014 Sunday	9.30 a.m.	Types of companies and incorporation of Co. under The Companies Act, 2013 Provisions relating to Accounts, Audit, Dividend, Appointment of auditor and acceptance of deposits under The Companies Act, 2013	CA. Avinash Rawani CA. Abhay Mehta	Shyam Kunj Haveli Hall, Chandavarkar Road, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
23/03/2014 Sunday	9.30 a.m.	Rectification, Revision and Appeals under Income-tax Act, 1961	CA. Sanjeev Lalan	Seminar Room, Sthanikraj Bhavan, C D Barfiwala Marg, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500

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DIRECT TAX

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

Issue of Intimation u/s. 143(1) beyond time

[219 Taxman (St.) 78]

CBDT *vide* instruction no 18/2013 dated 17-12-2013 relaxes the time frame prescribed in second proviso to section 143(1) of the Act in those cases where the return of income was filed by the assessee in accordance with section 139/142 of the act, but due to technical or some other reason not attributable to such assessee. The date of sending intimation u/s. 143(1) has lapsed before 01-04-2013. In such cases, CBDT directs that such returns shall be processed and intimation of processing of such returns shall be sent to the assessee concerned by the AO in accordance with section 143 of the Act, notwithstanding the time limit prescribed in second proviso to section 143(1) of the Act.

The CBDT further clarified that this instruction shall apply only to those cases where valid return of income was filed with refund claim but the same remained pending beyond the prescribed date due to reason not attributable to the assessee. Further this relaxation shall not be applicable to those cases where either demand is shown as payable in the return of income or as a result of processing beyond a date as prescribed under second proviso to the section 143(1), demand is determined as payable.

Rajiv Gandhi Equity Saving Scheme, 2013

[219 Taxman (St.) 79]

The Central Government *vide* Notification No. 94/2013 dated 18-12-2013 in exercise of the power conferred by section 80CCG(1) of the Income-tax Act, notifies the scheme which may be called as Rajiv Gandhi Equity Saving Scheme, 2013. This scheme shall apply for claiming deduction in the computation of total income of the assessment year relevant to the previous year beginning on or after 01-04-2013 on account of investment in eligible securities u/s. 80CCG(1) of the Income-tax Act. The objective of this scheme is to encourage investment of savings of small investors in domestic capital market. The full text of the scheme can be referred to at above magazine.

Transfer Pricing- Safe Harbour Rules- Report on details of Form 3CEFA

[220 Taxman (St.) 1]

The chairperson, CBDT issued the letter F No. 500/139/2012-FTD-1, dated 20-12-2013 with a view to appraise the CCIT(CCAs) about the provision of Safe Harbour Rules as notified by the Board *vide* So. No. 2810(E) on 18-09-2013. The CBDT chairperson, held a video conference with CCIT (CCAs) New Delhi, Mumbai, Kolkata, Bangalore, Ahmedabad, Hyderabad, Chennai, Pune, Chandigarh and DGIT (International Taxation) on 17th December at 10.30 a.m. It was directed to request that the issues and directions of the chairperson, CBDT may be brought to the notice of all concerned officers in their respective regions. All the AO's are required to ascertain and identify all Safe Harbour options filed with them in Form 3CEFA and furnish a certificate to this effect to concerned CIT. The gist of the issues discussed during the video conference can be referred to at above magazine.

Amendment In Rule 114 regarding application for allotment of PAN-substitution of Form Nos. 49A and 49AA

[220 Taxman (St.) 2]

The CBDT *vide* Notification No. 96/2013 dated 23-12-2013 gives Income Tax (19th Amendment) Rules 2013. It amends rule 114. The substitution (4) of rule 114 is substituted. The Form No. 49A and 49AA is also newly substituted. The major amendment is in relation to documentation requirement for proof of identify and proof of address. In case of individual who is a Citizen of India, the additional documentation requirement of proof of date of birth is introduced. In case of entities outside India, a new attestation authority has been introduced being authorised officials of overseas branches of schedule banks registered in India. The full text of the notification can be referred to at above magazine.

Constitution of Tax Administration Reform Commission

[220 Taxman (St.) 17]

The Notification No. A. 50050/47/2013-AD-I, dated 21-08-2013 gives the Constitution of Tax Administration Reform Commission (TARC).

The Government in its budget, 2013-14, had, *inter alia*, announced the setting up of a Tax Administration Reform Commission (TARC) with a view to reviewing the application of Tax Policies and Tax Laws in the context of global best practices and recommend measures for reforms required in Tax Administration to enhance its effectiveness and efficiency. Accordingly, it has been decided to constitute the Tax Administration Reform Commission with the following composition:

Dr. Parthasarathi Shome	Chairman
Shri Y. G. Parande	
Ms. Sunita Kaila	Full-time Members
Shri M. K. Zutshi	
Shri S. S. N. Moorthy	Part-time Members
Shri M. R. Diwakar	
Shri S. Mahalingam	

The notification gives the terms of reference of the commission. The full text of which can be referred to at above magazine.

MAHARASHTRA VAT

(Contributed by CA. C. B. Thakar)

MVAT ACT, 2002

Notifications

The Government of Maharashtra has issued Notification dated 1-1-2014 under section 20(6) specifying the returns for which late fee will not be applicable.

The Government of Maharashtra issued Notifications dated 24-12-2013 under section 41(5) to grant exemption to wine dealers in light of new taxation method for wine dealers.

The Government of Maharashtra has issued Notification dated 24-12-2013 under section 41(1) for adding more consulate in the said Notification.

The Government of Maharashtra has issued Notification dated 24-12-2013 under section 8(3B) to add more conditions in the Schedule to said section.

The Government of Maharashtra has issued Notification dated 24-12-2013 under section 9(1) whereby Entry A-63 is inserted for exemption to Motor Vehicles for handicapped persons.

Similarly, by Notification dated 24-12-2013 Entry D-3A is amended to change the rate of tax on wine. Entry D-3B for bulk sale of wine is inserted.

MVAT Rules, 2005

By Notification dated 24-12-2013 Rule 54(i) is amended to include wine in the same.

Circulars

The Commissioner of Sales Tax has issued Circular 1T of 2014 dated 4-1-2014, by which date for submission of audit report in Form 704 in case of Developers is extended till 15-02-2014.

The Commissioner of Sales Tax has issued circular bearing No. 2T of 2014 dt. 7-1-2014, by which modification has been done to Circular 1T above to clarify that the said extension will apply to developers other than under composition.

The Commissioner of Sales Tax has issued one more circular bearing No. 3T of 2014 dated 24-1-2014, by which Amnesty scheme for backward area units is clarified.

The Commissioner of Sales Tax has issued one more circular bearing No. 4T of 2014 dated 28-1-2014, by which Revised Procedure for submission of applications for CST e Declarations/certificates and issuance of the same electronically is explained.

CORPORATE LAWS

(Contributed by CA. Rahul Joglekar)

MCA General Circular No. 1/2014 dated 15th January 2014 - Report u/s. 394A of the Companies Act, 1956- Taking account of comments/ inputs from Income-tax Department and other sectoral Regulators while filing reports by Regional Directors (RDS)

MCA has directed that while responding to the notices on behalf of the Central Government under Section 394A, the Regional Director concerned shall invite specific comments from Income-tax Department within 15 days of receipt of notice before filing his response to Court. If no response from the Income-tax Department is forthcoming, it may

be presumed that the Income-tax Department has no objection to the action proposed under Section 391 or 394 as the case may be.

It is also emphasised that it is not for the Regional Director to decide the correctness or otherwise of the objections/ views of the Income-tax Department or other Regulators. If there are compelling reasons for doubting the correctness of such views, the Regional Director must make a reference to this Ministry for taking up the matter with the Ministry concerned before filing the representation under Section 394A. For complete text of the circular, please refer the link http://www.mca.gov.in/Ministry/pdf/General_Circular_1_2014.pdf

SEBI Notification No. LAD-NRO/GN/2013-14/43/207 dated 31st January 2014 – Securities and Exchange Board of India (Issue and Listing of Debt Securities) (Amendment) Regulations, 2014

SEBI has notified the aforesaid regulations w.e.f 31st January 2014. These amendments have been issued in light of the new provisions provided for in Companies Act, 2013 especially those dealing with filing of shelf prospectus in respect of public issue of debt securities. These regulations also list down the nature of entities that can file shelf prospectus under section 31 of Companies Act, 2013 for public issuance of their debt securities. Certain criteria have been prescribed for filing of information memorandum along with the shelf prospectus. It is further clarified that not more than four issuances can be made through a single shelf prospectus. For complete text of these regulations, please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1391166797224.pdf

SEBI notification No. LAD-NRO/GN/2013-14/40/52 dated 10th January 2014 – Securities and Exchange Board of India (Procedure for Search and Seizure) Regulations, 2014

SEBI has notified the aforesaid regulations w.e.f 10th January 2014 to provide for search in the premises of certain entities and seizure of documents and records recovered during such search. These regulations *inter alia* provide for detailed procedures to be followed for issuance of warrants and execution of search and seizure orders. As per these regulations, SEBI's Investigating Officer would have to request the SEBI Chairman for Warrants of Authority for execution of search and seizure of a person, an enterprise, building, place, vessel, vehicle or aircraft. These warrants would need to be returned to SEBI Chairman after being executed fully along with the seizure memo, or even if not executed within the authorised time. For complete text of these regulations, please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389603402631.pdf

SEBI Notification No. LAD-NRO/GN/2013-14/37/50 dated 9th January 2014 – Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014

SEBI has notified the aforesaid regulations w.e.f 9th January 2014 to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto. These regulations provide for guiding factors for dealing with the settlement process, while serious offences such as insider trading are excluded from the scope of settlement. As against the earlier settlement provisions, the list of violations that cannot be settled have been expanded widely under the new norms, which also provide for the involved entity to file settlement plea within 60 days of the showcause notice served by SEBI. For complete text of these regulations, please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389329695211.pdf

SEBI Notification No. LAD-NRO/GN/2013-14/39/51 dated 9th January 2014 – Securities and Exchange Board of India (Collective Investment Schemes) (Amendment) Regulations, 2014

SEBI has notified the aforesaid regulations w.e.f 9th January, 2014 to provide for certain amendments to the collective investment scheme regulations of SEBI. These regulations provide for registration of Collective Investment Management Company and also certain provisions wherein existing schemes or arrangements deemed to be a collective investment scheme have to obtain provisional registration. For complete text of these regulations, please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389268161963.pdf

SEBI Notification No. LAD-NRO/GN/2013-14/38/49 dated 9th January 2014 – Securities and Exchange Board of India (Investor Protection and Education Fund) (Amendment) Regulations, 2014

SEBI has notified the aforesaid regulations w.e.f 9th January, 2014 to widen the scope of the IPEF. These regulations seek to help aggrieved investors

by allowing it to utilise Investor Protection and Education Fund to refund their money in deserving cases. SEBI has stated that this would be done in certain cases it "deems fit" make "restitution to eligible and identifiable investors who have suffered losses resulting from violation of securities laws. For complete text of these regulations, please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389268047136.pdf

SEBI Notification No. LAD-NRO/GN/2013-14/36/12 dated 7th January 2014 – Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014

SEBI has notified the aforesaid regulations w.e.f 7th January, 2014 to put in place a framework for registration and procedures with regard to foreign investors who propose to make portfolio investment in India. These regulations also provide for categories of foreign portfolio investors into Category I, II and III based on certain parameters. They also seek to restrict the various avenues under which investments can be made by these foreign portfolio investors. For complete text of these regulations, please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389083605384.pdf. Within these regulations, certain depository participants are eligible as designated depository participants. Detailed operational guidelines for these entities have been issued *vide* circular no. CIR/IMD/FIIC/02/2014 dated 8th January, 2014. For complete text of that circular please refer the link http://www.sebi.gov.in/cms/sebi_data/attachdocs/1389173830887.pdf

CENTRAL EXCISE

(Contributed by CA. Jayesh Gogri)

Notifications

Tariff Notifications

Expansion to the list of ineligible export categories for exemption to specified goods when procured against Focus Market Scheme and Incremental Exports Incentivisation Scheme on annual basis

Notification No. 30/2012-CE dated 9th July, 2012 exempted all excisable goods when procured against a Focus Market Scheme duty credit scrip from whole Excise Duty and Additional Excise Duty levied under Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and Additional Excise Duty levied under Section 3(3) of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 subject to fulfilment of certain specified conditions.

One of the specified conditions was that the scrip should be issued against exports to the countries notified under Appendix 37C of the Handbook of Procedures in terms of entitlement under Focus Market Scheme, Incremental Exports Incentivisation Scheme (IEIS) on annual basis. However, certain categories of exports were specifically listed which shall not to be counted for calculation of export performance or for computation of entitlement under the said Schemes. The list for ineligible categories of exports for Focus Market Scheme is now expanded to include following export categories:

- Export of Meat and Meat Products
- Export of Cotton
- Export of Cotton Yarn
- Exports which are subject to Minimum Export Price or Export Duty

The list for ineligible categories of exports for IEIS on annual basis is now expanded to include following export categories:

- Cotton
- Cotton Yarn
- Export which are subject to Minimum Export Price or Export Duty.

(Notification No. 31/2013-CE dated 26-12-2013)

Kameng Hydro Electric Power Project, Arunachal Pradesh added to the list of Mega Power Projects eligible for exemption under Notification no. 12/2012-CE dated 17th March, 2012

Complete exemption from Basic Excise Duty was being provided to goods supplied to Mega Power Projects subject to fulfilment of specific conditions *vide* Notification No. 12/2012-CE dated 17th March, 2012. Now, Kameng Hydro Electric Power Project, Arunachal Pradesh-600 MW [North Eastern Electric Power Corporation Ltd. (NEEPCO)] has been added to the list of eligible Mega Power Projects.

(Notification No. 32/2013-CE dated 26-12-2013)

SERVICE TAX

(Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

Entry No. 11(a) of Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012 grants exemption to services by way of sponsorship of sporting events organised, by a national sports federation, or its affiliated federations where the participating teams or individuals represent any district, state or zone. **Central Government vide Notification No. 1/2014-ST dated 10th January, 2014** has amended the said entry to extend the exemption to sponsorship of those sporting events where the participating teams or individuals represent any country.

CBEC vide Circular No. 175/01/2014-ST dated 10th January, 2014 has clarified on various issues related to the scope of the exemption granted to Resident Welfare Associations (RWAs) under the negative list approach as provided under Entry No. 28(c) of Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012.

- If per month contribution of any member of a RWA exceeds Rs. 5,000/-, the entire contribution of such member would be ineligible for the exemption under the said notification.
- Threshold exemption of Rs. 10 Lakhs under Notification No. 33/2012-ST is applicable to a RWA, subject to conditions prescribed in the notification. As per Explanation B of the notification, the definition of "aggregate value" does not include the value of services which are exempt from service tax.
- Where the payment for an electricity bill raised by an electricity transmission or distribution utility in the name of the owner of an apartment is collected and paid by the RWA to the utility, without charging any commission or a consideration by any other name, the RWA is acting as a pure agent and hence exclusion from the value of taxable service would be available.
- However, in the case of electricity bills issued in the name of RWA, in respect of electricity consumed for common use of lifts, motor pumps for water supply, lights in common area, etc., since there is no agent involved in these transactions, the exclusion from the value of taxable service would not be available.
- RWA may avail CENVAT credit and use the same for payment of service tax, in accordance with the CENVAT Credit Rules.

CBEC vide Circular No. 176/02/2014-ST dated 20th January, 2014 has clarified that a declaration of VCES made u/s. 107 (1) of Finance Act, 2013 shall become conclusive only upon issuance of acknowledgement of discharge under Section 107 (7). Accordingly, CBEC has advised all the Chief Commissioners to ensure that the discharge certificate is issued promptly & not later than the stipulated period of 7 days from the date of furnishing the details of payment of the tax dues in full, along with interest, if any. CBEC further clarified that the eligibility of CENVAT credit of "tax dues paid" would be governed by the CENVAT Credit Rules, 2004.

GUJARAT VAT

(Contributed by CA. Kishor R. Gheewala)

Update of the Gujarat VAT Act, 2003

In case of Hotel Fountain and Guest House, S.A. No. : 234 to 237 of 2011, Hon'ble GVAT Tribunal has, vide its order dated 11th November, 2013, held as under.

- After Provisional Assessment, if audit assessment is not carried out, the provisional Assessment will survive and will be valid.
- Penalty cannot be imposed on additions made on estimated basis.

In case of Umang Marketing, S.A. No. : 380 & 381 of 2011, Hon'ble GVAT Tribunal has, vide its order dated 08th October, 2013 held that, if dealer has collected tax @ 12.50% and deposited the same in government treasury, but subsequently, the item is held to be taxable @ 4% in Determination u/s. 80, penalty cannot be levied u/s. 31(4) for excess collection of tax.

Vide Determination Order dated 30-11-2013 u/s. 80, in case of M/s. Purab Fashion, it has been held that Small Round Tikki obtained from Metalised Polyester Film by passing it through Punching Machine is Jari Material, Exempt from tax.

FEMA

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

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

A.P. (DIR Series) Circular No. 82, dated December 31, 2013

Considering the representations received related to import of gold dore, and in consultation with the GOI, RBI has issued the following clarifications which shall come into force with immediate effect:

- Refineries are allowed to import dore up to 15% of their gross average viable quantity based on their license entitlement in the first two months for making this available to the exporters on First in First out (FIFO) basis. Subsequent to this, the quantum of gold dore to be imported should be determined lot-wise on the basis of export performance.
- Before the next import, not more than 80% shall be allowed to be sold domestically.
- The dore so imported shall be refined and shall be released based on FIFO basis following 20:80 principle. This would be monitored by CBEC as earlier.
- The imports, thereafter, shall be allowed only up to 5 times the quantum for which proof of export has been submitted. This shall be on accrual basis.

Overseas Direct Investments – Rollover of Guarantees

A.P. (DIR Series) Circular No. 83, dated January 3, 2014

RBI has decided not to treat/reckon the renewal/rollover of an existing/ original guarantee, which is a part of the total financial commitment of the Indian party in terms of Regulation 6 of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004, as a fresh financial commitment, provided that:

- The existing / original guarantee was issued in terms of the then extant / prevailing FEMA guidelines;
- There is no change in the end use of the guarantee, i.e. the facilities availed by the JV/WOS/Step Down Subsidiary;
- There is no change in any of the terms & conditions, including the amount of the guarantee except the validity period;
- The reporting of the rolled over guarantee would be done as a fresh financial commitment in Part II of Form ODI, as hitherto; and
- If the Indian party is under investigation by any investigation/enforcement agency or regulatory body, the concerned agency/body shall be kept informed about the same.

In case, however, the above conditions are not met, the Indian party shall obtain prior approval of RBI for rollover/ renewal of the existing guarantee through the designated AD bank.

Foreign Direct Investment (FDI)

Clarifications on Issue of Non-convertible/redeemable bonus preference shares or debentures

Notification No. FEMA. 291/2013-RB, dated October 4, 2013 and A.P. (DIR Series) Circular No. 84 dated January 6, 2014

Till now, the RBI has been granting permission on a case-to-case basis for issue of non-convertible/ redeemable bonus preference shares or debentures to non-resident shareholders from the general reserve under a Scheme of Arrangement by a Court, under the provisions of the Companies Act.

With a view to rationalise and simplify the procedures, RBI has decided that the Indian company may issue non-convertible redeemable preference shares or debentures to non-resident shareholders, including the depositories that act as trustees for the ADR/GDR holders, by way of distribution as bonus from its general reserves under a Scheme of Arrangement approved by a Court in India under the provisions of the Companies Act, as applicable, subject to no-objection from the Income-tax Authorities. The issue of preference shares (excluding non-convertible/redeemable preference shares) and convertible debentures (excluding optionally convertible/partially convertible debentures) under the FDI scheme would continue to be subject to A.P. (DIR Series) Circular Nos. 73 and 74 dated June 8, 2007.

RBI has amended the Regulation 7 of Notification No. FEMA 20/2000-RB vide Notification No. FEMA 291/2013-RB dated October 4, 2013 effective from December 31, 2013.

Pricing Guidelines for FDI instruments with optionality clauses

- (i) **Notification No. FEMA. 294/2013-RB dated November 12, 2013**
- (ii) **Press release No. 2013-2014/1388 dated January 9, 2014**
- (iii) **A.P. (DIR Series) Circular No. 86 dated January 9, 2014**

As per the extant regulations, only equity shares or convertible preference shares/debentures without optionality clause are eligible instruments to be issued to persons resident outside India under the FDI policy.

On a review, RBI has decided that optionality clauses (but without any option/right to exit at an assured price) may henceforth be allowed in equity shares and compulsorily and mandatorily convertible preference shares/debentures to be issued to a person resident outside India under the FDI Scheme. The optionality clause shall oblige the buy-back of securities from the investor at the price prevailing/value determined at the time of exercise of the optionality so as to enable the investor to exit without any assured return subject to the following conditions:

- (a) Such instruments shall be locked-in period of one year or a minimum lock-in period as prescribed under FDI Regulations, whichever is higher (e.g. defence and construction development sector where the lock-in period of three years has been prescribed). The lock-in period shall be effective from the date of allotment of such shares or convertible debentures or as prescribed for defence and construction development sectors, etc. in Annex. B to Schedule 1 of Notification No. FEMA. 20 as amended from time-to-time;
- (b) After the lock-in period, as applicable above, the non-resident investor exercising option/right shall be eligible to exit without any assured return, as under:
 - (i) In case of a listed company, the non-resident investor shall be eligible to exit at the market price prevailing at the recognised stock exchanges;
 - (ii) In case of unlisted company, the non-resident investor shall be eligible to exit from the investment in equity shares of the investee company at a price not exceeding that arrived at on the basis of Return on Equity (RoE) as per the latest audited balance sheet. Any agreement permitting return linked to equity as above shall not be treated as violation of FDI policy/FEMA Regulations. For the above purpose, RoE shall mean Profit After Tax/Net Worth; Net Worth would include all free reserves and paid up capital.
 - (iii) Investments in Compulsorily Convertible Debentures (CCDs) and Compulsorily Convertible Preference Shares (CCPS) of an investee company may be transferred at a price worked out as per any internationally accepted pricing methodology at the time of exit duly certified by a Chartered Accountant or a SEBI registered Merchant Banker. The guiding principle would be that the non-resident investor is not guaranteed any assured exit price at the time of making such investment/agreement and shall exit at the price prevailing at the time of exit, subject to lock-in period requirement, as applicable.

All existing contracts will have to comply with the above conditions to qualify as FDI compliant.

Consequently, RBI has amended the Regulation 5 and Regulation 9 of Notification No. FEMA 20/2000-RB vide Notification No. FEMA 294/2013-RB dated November 12, 2013 effective from December 30, 2013.

Invitation for comments on 7th edition of Consolidated FDI Policy Circular

As the next edition of the Consolidated FDI Policy Circular i.e. 'Circular 1 of 2014' is scheduled to be issued on 31-03-2014 which will be effective from 01-04-2014, The Department of Industrial Policy & Promotion (DIPP) has invited comments/suggestions on 'Circular 1 of 2013' invited from stakeholders by 17-01-2014 for consideration. The comments may be sent to the Director, DIPP and/or emailed at circular2014.fdi@nic.in.

Review of the existing policy on FDI in the Pharmaceuticals Sector

Press Note No. 1 (2014 Series), dated January 8, 2014 issued by the Department of Industrial Policy & Promotion

The Government of India (GOI) has reviewed the position of FDI in the pharmaceuticals sector and has decided that the existing policy relating to FDI in the pharmaceuticals sector as given in paragraph 6.2.18 of 'Consolidated FDI Policy - Circular 1 of 2013' would continue with the condition that 'non-compete' clause would not be allowed except in special circumstances with the approval of the Foreign Investment Promotion Board.

This decision shall take immediate effect.

External Commercial Borrowing (ECB)

Liberalisation of definition of Infrastructure Sector

A.P. (DIR Series) Circular No. 85 dated January 6, 2014

The definition of infrastructure sector for the purpose of raising ECB was expanded vide Notification No. FEMA.281/2013-RB dated July 19, 2013 effective from September 12, 2013 A.P. (DIR Series) Circular No. 48 dated September 18, 2013 taking into account the Harmonised Master List of Infrastructure sub-sectors and Institutional Mechanism for its updation approved by Government of India vide Notification F.No.13/06/2009-INF dated March 27, 2012.

RBI has now decided that, for the purpose of ECB, 'Maintenance, Repairs and Overhaul' (MRO) shall also be treated as a part of airport infrastructure. Accordingly, MRO, as distinct from the related services which are other than infrastructure, will be considered as part of the sub-sector of Airport in the Transport Sector of Infrastructure.

Clarifications on Conversion of ECB and Lump sum Fee/Royalty into Equity

A.P. (DIR Series) Circular No. 94, dated January 16, 2014

Under the extant regulations, an Indian company can issue equity shares against ECB subject to certain conditions and pricing guidelines as prescribed by the RBI from time to time regarding value of equity shares to be issued.

On queries being raised as to how the rupee amount against which equity shares are to be issued shall be arrived at i.e. what rate of exchange shall be applied to the amount in foreign currency borrowed or owed by the resident entity from/to the non-resident entity, the RBI has clarified that where the liability sought to be converted by the company is denominated in foreign currency as in case of ECB, import of capital goods, etc. it will be in order to apply the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion. However, the borrower company may issue equity shares for a rupee amount less than that arrived at as mentioned above by a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

RBI has further clarified that the principle of calculation of INR equivalent for a liability denominated in foreign currency as mentioned above shall apply, *mutatis mutandis*, to all cases where any payables/liability by an Indian company such as, lump sum fees/royalties, etc. are permitted to be converted to equity shares or other securities to be issued to a non-resident subject to the conditions stipulated under the respective Regulations.

Liberalisation of regulations relating to Resident Bank accounts maintained by residents in India with relative Non-resident Indians (NRIs) as Joint holders

A.P. (DIR Series) Circular No. 87, dated January 9, 2014

Presently, individuals resident in India are permitted to include RBI close relative(s) (relatives as defined in Section 6 of the Companies Act, 1956) as a joint holder(s) in their resident savings bank accounts on "former or survivor" basis. Such NRI close relatives are, however, not eligible to operate the account during the life time of the resident account holder in terms of said instructions.

In view of the representations received by RBI, RBI has allowed to include NRI close relative (relatives as defined in Section 6 of the Companies Act, 1956) as joint holder with the resident account holder on "Either or Survivor" basis subject to certain conditions.

While extending this facility the AD bank should satisfy itself about the actual need for such a facility and also obtain the declaration duly signed by the non-resident account holder in the prescribed format.

For detailed conditions, please refer circular available on RBI website at: <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/AP87090114FS.pdf>

Clarifications on Provisions under section 6(4) of Foreign Exchange Management Act, (FEMA) 1999

A.P. (DIR Series) Circular No. 90, dated January 9, 2014

In terms of Section 6 (4) of FEMA, 1999, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security

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or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

In this regard, RBI has clarified that the following transactions shall be covered under section 6(4) of FEMA, 1999:

- Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
- Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India;
- A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of RBI, provided the cost of such investments and/ or any subsequent payments received therefore are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

Invitation of comments/views on Discussion paper on e-commerce in India

DIPP has prepared a Discussion Paper on e-commerce in India on the following aspects:-

- Introduction
- Status of the global e-commerce industry
- E-commerce in emerging economies

- Status of e-commerce in India
- Existing regulations on e-commerce in the country
- FDI in B2C e-commerce
- Advantages and disadvantages of FDI in B2C e-commerce
- Conclusion and recommendations.

The Discussion Paper is available on DIPP's website on the following link-

http://dipp.nic.in/English/Discuss_paper/Discussion_paper_ecommerce_07012014.pdf.

DIPP has invited comments/views/suggestions on the above discussion paper by January 30, 2014. The comments may be sent to the Director, DIPP and/or emailed at ahmed.i@nic.in.

Risk Management and Inter Bank Dealings

A.P. (DIR Series) Circular No. 92, dated January 13, 2014

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 50% of the contracts booked in a financial year for hedging their contracted export exposures and importers 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 import exposures.

On a review of the evolving market conditions and with a view to providing operational flexibility in respect of current and capital account transactions, RBI has allowed, in case of contracted exposures, forward contracts in respect of all current account transactions as well as capital account transactions with a residual maturity of one year or less to be freely cancelled and rebooked. As far as the exposure of the FIIs/QFIs/ other portfolio investors is concerned, forward contracts booked by these investors, once cancelled, can be rebooked up to the extent of 10% of the value of the contracts cancelled. The forward contracts booked by these investors may, however, be rolled over on or before maturity.

Clarifications on establishment of Liaison Office/ Branch Office/ Project Office in India by Foreign Entities – General Permission

Notification No. FEMA. 293/2013-RB, dated November 12, 2013 and A.P. (DIR Series) Circular No. 93, dated January 15, 2014

In terms of Regulation 4 of Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, no entity or person, being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, Iran or China shall establish in India, a branch office or a liaison office or a project office or any other place of business by whatever name called, without the prior permission of RBI.

RBI has now clarified that the provisions of the said Regulation 4 shall, *ibid* along with their specified conditions apply for entities from Hong Kong and Macau also. Accordingly, applications from entities registered in/resident of Hong Kong and Macau, for establishment of Liaison/Branch/Project Offices or any other place of business by whatever name called shall require prior approval from RBI.

Consequently, Regulation 4 of Notification No. FEMA 22/2000-RB is amended *vide* Notification No. FEMA 293/2013-RB dated November 12, 2013 effective from December 6, 2013.

Clarifications on Facilities for Persons Resident outside India

A.P. (DIR Series) Circular No. 96, dated January 20, 2014

Presently, Foreign Institutional Investors (FIIs) are allowed to approach any AD Category-I bank for hedging their currency risk on the market value of entire investment in equity and/or debt in India as on a particular date subject to certain conditions specified by RBI.

However, RBI has been receiving references from market participants as to whether, along similar lines, it is possible for FIIs and other foreign investors to effect remittances on cash/TOM/spot basis to a bank other than the designated AD Category-I custodian bank. In this connection, RBI has clarified that a foreign investor is free to remit funds through any bank of its choice for any transaction permitted under FEMA, 1999 or the Regulations / Directions framed thereunder. The funds thus remitted can be transferred to the designated AD Category-I custodian bank through the banking channel. Note should, however, be taken that KYC in respect of the remitter, wherever required, is a joint responsibility of the bank that has received the remittance as well as the bank that ultimately receives the proceeds of the remittance. Besides, the remittance receiving bank is required to issue FIRC to the bank receiving the proceeds to establish the fact the funds had been remitted in foreign currency.

DIRECT TAX

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

Supreme Court

S. 276CC Prosecution

Section 276CC applies to situations where an assessee has failed to file a return of income as required under Section 139(1) of the Act or in response to notices issued to the assessee under Section 142 or Section 148 of the Act. The proviso to Section 276CC gives some relief to genuine assessee. The proviso to Section 276CC gives further time till the end of the assessment year to furnish return to avoid prosecution. However the proviso would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. Prosecution proceedings could not be held till the culmination of assessment proceedings. The declaration or statement made in the individual returns by partners that the accounts of the firm are not finalized, hence no return has been filed by the firm, will not absolve the firm in filing the 'statutory return under Section 139(1) of the Act. Further this would not mean that failure to file return was not wilful. It was further held that prosecution of offence, like Section 276CC has to presume the existence of *mens rea* and it is for the accused to prove the contrary and that too beyond reasonable doubt. – *Sasi Enterprises vs. ACIT [2014] 41 taxmann.com 500 (SC)*.

High Courts

S. 2(47)(v) Transfer on execution of agreement

Assessee entered into agreement for development of property. It was observed that the agreement only permitted the development to be carried out by the said developer. It has been found that the entire control over the property was in fact with the assessee inasmuch as the licence to construct the property was also in the name of the assessee and the occupancy certificate was also given to the assessee. It was therefore, found that the execution of the agreement could not amount to transfer as contemplated under Section 53A of the Transfer of Property Act in year in which agreement was entered. – *CIT vs. Shri Sadiya Shaikh Tax Appeal Nos. 11 & 12 of 2013, order dated 2-12-2013 (Mumbai)*.

S. 4 Anti-Avoidance, genuineness of transaction

Assessing Officer submitted that it appears that all the companies who profited from the sale of the shares of 'I' resorted to the practice of entering into the transaction of buying and selling of shares of 'H' and, therefore, this is a pointer that these transactions were deliberately entered into for the purpose of reducing the liability to pay capital gain tax. It was observed that on the basis of a suspicion howsoever strong it is not possible to record any finding of fact. As a matter of fact, suspicion can never take the place of proof. Accordingly, it was held that transactions of purchase and sale of shares was not a colourable device. – *CIT vs. Lakshmanagar Estate & Trading Co. Ltd. [2013] 40 taxmann.com 438 (Kolkata)*.

S. 35(1)(iv) Expenditure on development of software

Assessee purchased software and expenditure for purchase of software was treated as capital in nature. Latter expenditure was also incurred on further development of software. It was held that such expenditure is also capital in nature. It was also held that development expenditure is on account of scientific research. The expenditure in respect of the scientific research, even if it is capital in nature as it was incurred in relation to the business carried on by the assessee under Section 35(1)(iv) of the Act, the said expenditure is to be deducted. – *CIT vs. Talisma Corporation (P.) Ltd. 40 taxmann.com 400 (Karnataka)*.

S. 37(1) Explanation Expenditure on secret commission and free distribution of books

Any secret transaction/payment that is made to secure an unfair advantage, would necessarily be repugnant to law. Transaction which is not transparent, offends normal business practice, must suffer scrutiny. Such unexplained and unvouched expenditure, if allowed, is likely to encourage illegal payments, evasion of tax and unscrupulous practices ushering in at both ends. The expenditure incurred on secret commissions would necessarily fall within the mischief of the Explanation added to Section 37 of the Act.

High Court remitted the case back to the Tribunal for deciding the question of allowability of deduction on secret commissions as also expenditure allegedly made on distribution of free books in the light of Explanation introduced and appended to Section 37(1) of the Act while evaluating and probing evidence of incurring of expenses on both the counts so as to give a finding with regard to reasonableness of such expenditure. – *CIT vs. Dhanpat Rai & Sons ITA No. 51 of 1999, Order dated 10-01-2014 (Punjab & Haryana)*.

S. 54F Date of commencement of construction of new house

One of the conditions u/s 54F is that construction of house is required to be completed within a period of 3 years after date of sale of original asset. It is not stipulated or indicated in the Section that the construction must begin after the date of sale of the original/old asset. Section 54F is a beneficial provision and is applicable to an assessee when the old capital asset is replaced by a new capital asset in form of a residential house. Once an assessee falls within the ambit of a beneficial provision, then the said provision should be liberally interpreted. – *CIT vs. Bharti Mishra [2014] 41 taxmann.com 50 (Delhi)*.

S. 69 Bogus purchases

In case conclusion arrived is that parties from whom purchases were allegedly made were bogus, not the entire amount covered under such purchase, but the profit element embedded therein would be subject to tax. – *CIT vs. Bholanath Poly Fab (P.) Ltd. [2013] 40 taxmann.com 494 (Gujarat)*.

S. 119 Condonation of delay should not be rejected on hyper technical ground

Assessee availed Optional Early Retirement Scheme of the employer RBI. RBI while making the payment to the petitioner under the Scheme had deducted as tax at. However, in the return of income for assessment year 2004-05 filed on 15th October, 2004 the petitioner did not claim any refund of tax as TDS paid by RBI on his behalf nor was the credit on tax utilized to discharge tax payable on any other income. On 8th May, 2009 that the CBDT issued a Circular clarifying that the employees of RBI who had opted for early retirement scheme during the year 2004-05 would be entitled for benefit of exemption under Section 10(10C) of the Act. In view of the above the petitioner filed a revised return of income on 8th September, 2011 claiming benefit of exemption available to the Scheme under Section 10(10C) of the Act which consequently would result in refund. However, there was no response to the above revised return of income from the respondent-revenue.

The petitioner in the meantime also filed an application with the Commissioner of Income Tax under Section 119(2)(b) of the Act seeking condonation of delay in filing his application for refund in the form of revised return of income for assessment year 2004-05. The respondent revenue by the impugned order dismissed the application under section 119(2)(b) of the Act on the ground that in view of Instruction No. 13 of 2006 dated 22nd December, 2006 by the CBDT an application claiming refund cannot be entertained if the same is filed beyond the period of 6 years from the end of the assessment year from which the application is made. In the affidavit in reply dated 19th November, 2013 the Commissioner of Income Tax states that he bound by the above instructions issued by the CBDT and consequently the claim for refund cannot be considered.

It was held that the application under Section 119(2)(b) of the Act is being denied by adopting a very hyper technical view that the application for condonation of delay was made beyond 6 years from the date of the end of the assessment year 2004-05 and not disputed the claim of the petitioner for refund on merits. In this case the revised return of income filed on 8th September, 2011 should itself be considered as application for condonation of delay under Section 119(2)(b) of the Act and refund granted. The court latter directed to grant refund due - *Devdas Rama Mangalore vs. CIT [2014] 41 taxmann.com 508 (Mumbai)*.

S. 194J r.w.s. 9(1)(2)(v) TDS on royalty

The agreement grants perpetual right for a period of 99 years, in terms of Section 26 of the Copyright Act, 1957. In the case of cinematographic film, copyright shall subsist until 60 years from the beginning of the calendar year next following the year in which the film is published. Therefore, it was held that the such agreement, is beyond the period of 60 years, for which the copyright would be valid, the document could only be treated as one of sale agreement and therefore, excluded from the definition of "Royalty" as defined u/s 9(1)(2)(v) & liable for TDS u/s 194J. – *Mrs. K. Bhagyalakshmi vs. DCIT [2013] 40 taxmann.com 350 (Chennai)*.

S. 272B Penalty for non-quoting of PAN

In case, the PAN Numbers are not furnished by the deductees, the respondent-assessee cannot be penalised under Section 272B. Section 139A also imposes the obligation on the deductees to furnish PAN Number to the deductor.

The Board in the letter dated 5-8-2008 vide No. 275/24/2007-IT(B) has clarified that penalty of ₹ 10,000/- under Section 272B is linked to the

person, i.e., the deductor who is responsible to deduct TDS, and not to the number of defaults regarding the PAN quoted in the TDS return. Therefore, regardless of the number of defaults in each return, maximum penalty of Rs. 10,000/- can be imposed on the deductor. – *CIT(TDS) vs. DHTC Logistics Ltd. ITA 314 of 2013 Order dated 26-7-2013 (Delhi High Court)*.

Article 226 Writ Jurisdiction of High Court

The Assessing Officer called upon the petitioner to show cause why its claim for deduction under Section 80-IA should not be disallowed. He has asked assessee to respond within 24 hours. It was held that granting of an opportunity to respond to the show cause notice in less than 24 hours is a flaw in the decision making process and therefore amenable to judicial review and matter was demanded to Assessing Officer.

Court also observed that writ petition under Article 226 of the Constitution of India is not entertained where an alternative remedy in the form of appeal is provided in the statute. In appropriate cases where there is a serious flaw in the decision making process or prejudice is caused to a party on account of breach of natural justice, High Court is enjoined to exercise our writ jurisdiction. In fact non exercise of our writ jurisdiction in appropriate cases would amount to abdication of High Court obligation to ensure that justice is done. Therefore the availability of an alternative remedy would not by itself bar the exercise of our writ jurisdiction, if the facts of the case so deserve. – *Vodafone India Ltd. vs. UOI [2013] 40 taxmann.com 545 (Mumbai)*.

ITAT

S. 2(22)(e) Inter-corporate deposit

Inter-corporate deposits cannot be treated as a loan falling within the purview of Section 2(22)(e) – *IFB Agro Industries Ltd. vs. JCIT I.T.A. No. 1721/Kol/2012 Order dated 12-3-2013 (Kolkata-Trib)*.

S. 12 AA Registration of trust

An institution which is otherwise engaged in charitable activities duly proved from the evidence on record which has remained un rebutted, deserves to get benefits of registration under Sections 12A and 80G. The same cannot be declined merely because once upon a time, its founder trustee, etc. had been accused of heinous crimes and that too, not related to the school in question. – *Sri Premananda Trust vs. ACIT [2013] 40 taxmann.com 514 (Chennai - Trib)*.

S. 54 Deduction where assessee is joint holder of house

If an assessee is jointly owning more than one property, then the assessee is not entitled for deduction u/s. 54F of the Act – *ITO vs. Apsara Bhavana Sai [2013] 40 taxmann.com 528 (Hyderabad - Trib)*.

S. 68 Ad hoc addition of cash credit

Section 68 contemplates that the satisfaction of AO has to be exercised qua each deposit or cash credit. Fiction created by deeming provisions of section contemplate any addition at all refers to a specific deposit and there is no provision for making estimated ad hoc addition @ 35%. – *Sahara India Financial Corpn. Ltd. vs. ACIT [2014] 41 taxmann.com 251 (Delhi - Trib)*.

S. 68 Donation

When there is no dispute that the amount in question was applied for educational purposes, the fact that the donations remained unverifiable due to non availability of donors at the addresses given in their confirmations does not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. It was held that that the provision of Section 68 of the Act has no application to the facts of the present case when list of donors with supporting evidence was filed, amounts were paid through banking channels, there is also no dispute that the objects and activities of the assessee were charitable in nature and it was duly registered under the provisions of Section 12A. – *Sunder Deep Educational Society vs. ACIT I.T.A. No. 2428/Del/2011 Order dated 6-12-2013, (Delhi-Trib)*.

S. 199 Credit for TDS

In the amended provisions of the Section 199 the words "for the assessment year for which such income is assessable" has been omitted. Meaning thereby, that the legislature was quite conscious about the facts and hardships faced by some assessee, while making the amendments in Section 199 and in amended provisions nothing has been stated about the year in which the credit of TDS is to be claimed. As per amended provisions of Section 199, in sub-Section 1, it has been stated that any deductions made in accordance with the foregoing provisions

of this chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made. Therefore, as per the amended provisions, once the TDS was deducted, a credit of the same to be given to the assessee, irrespective of the year to which it relates. – *Sadbhav Engineering Ltd. vs. DCIT I.T.A. Nos.610/Ahd/2008, 1834 & 2054/Ahd/2009, 1835 & 2055/Ahd/2009 and 2053/Ahd/2009 Order dated 19-12-2013 (Ahmedabad-Trib)*.

S.199 Credit for TDS

The assessee following cash system of accounting did not account for the fees not received during the year. However to the extent TDS was deducted and paid to the Central Government on behalf of the assessee the same was accounted for as income and benefit of TDS involved was claimed by the assessee. It was held that assessee's action is in accordance with provisions of Section 199 and the assessee is eligible for seeking credit of the TDS amount. – *Praveen Kumar Gupta vs. ITO I.T.A. No. 1252/DEL/2012 order dated 27-07-2012 (Delhi-Trib)*.

INTERNATIONAL TAXATION

(Contributed by

CA. Hinesh Doshi & CA. Dolly Waghela)

ITO vs. Device Driven (India) Pvt. Ltd. (ITA No. 282/Coch/2013) (Kochi ITAT)

Facts of the case

The taxpayer was engaged in development and sale of software. During the year under consideration, the taxpayer paid export commission to its non-resident director, acting as a commission agent, without deduction of tax.

The taxpayer claimed export commission as a deduction while computing its taxable income.

He was not having any Permanent Establishment (PE) in India. The non-resident director was a qualified architect and has got vast experience in the technical field, especially in mobile communication.

The terms of the commission agency agreement entered into between the taxpayer and commission agent are as follows:

- The commission agent will facilitate marketing of the taxpayer's services in the territory and will provide support as well as sales expertise for projects to be executed at the customer site or at the taxpayer's centre in India.
- The commission agent shall be responsible for generating leads and initiating interaction with end customers in the relevant competency areas of the taxpayer.
- The commission agent shall if required, provide support to taxpayer in evaluation from a business perspective, in the light of his relationships with the proposed clients and local expertise. He will also provide support to the taxpayer for presentations and other collateral proposals and contracts.

The Assessing Officer (AO) held that the terms of the agreement are beyond the scope of normal commission agency agreement, and the technical skills of the director have been utilised by the taxpayer. Accordingly, the payment made to a commission agent was accruing and arising in India and liable for deduction of tax. However, since the taxpayer did not deduct tax, the AO disallowed the payment under Section 40(a)(i) of the Act.

The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO

Held

Reference to the terms of the agreement, indicates that the responsibilities and obligations placed upon the commission agent is more than what is normally placed upon agents working in normal business transactions.

The work of the taxpayer does not end upon developing and installing the software at the client's site. It requires on site monitoring, especially when the customised software is developed. Hence, it cannot be equated with the commodities, where the role of a commission agent normally ends after supply of goods and receipt of money.

In the present case, the commission agent has vast technical knowledge and experience. Further, he is also one of the directors of the taxpayer. He is able to secure orders only because of his vast technical knowledge and experience.

As per the clauses of the agreement, the commission agent is responsible in securing orders and for that purpose he has to assist the taxpayer in all respects including identifying markets, making introductory contacts, arranging meeting with prospective clients, assisting in preparation of presentations for target clients.

The commission agent's duty does not end on securing the orders, but he has to monitor the status and progress of the project, meaning thereby, the commission agent is responsible for ensuring supply of the software and also for receiving the payments. All these activities could be carried on only by a person who has vast technical knowledge and experience. Accordingly, the payment made to a commission agent constitutes towards technical services.

The commission agent was the director of the company and also the sole foreign marketing agent. Hence, he has got responsibility to take care of business interests of the taxpayer. Hence, the office of the taxpayer can be treated as the fixed base of the commission agent, as per Article 14 (Independent Personal Services) of the tax treaty.

As a director, he has every right to look into and is required to take care of the affairs of the taxpayer. Hence, the office of the taxpayer can be treated as fixed base for the commission agent. The certificate/affidavit given by the taxpayer was not of any help due to the closeness of the non-resident director with the taxpayer.

The taxpayer would be liable to deduct tax on the payments made to a commission agent. Since tax has not been deducted under Section 195 of the Act, the payment was disallowed under Section 40(a)(i) of the Act. Mitsubishi Corporation (AAR No.1309 of 2012)

Facts of the case

The applicant, a tax resident of Japan, established a branch office in India after obtaining the necessary approvals from the Reserve Bank of India. The branch office provides support services to the applicant. During the year under consideration the applicant entered into two separate contracts with the Indian company, i.e. offshore supply contract and onshore service contract.

In order to determine the taxability of payments received on account offshore and onshore supply contract, the applicant made an application before the AAR. However, the tax department objected the admissibility of the application stating that return of income was filed by the applicant before filing the application. The tax department contended that when return of income is filed, it should be treated as pending before the income-tax authority.

AAR ruling

When return of income is filed, it is processed under Section 143(1) of the Act. While processing the return of income, the total income or loss are computed after making adjustments towards any arithmetical error in return or an incorrect claim, if such incorrect claim is apparent from any information in the return. However, no intimation shall be sent after the expiry of one year from the end of the financial year in which the return is made.

The tax department does not have any jurisdiction to examine or adjudicate any issue other than those mentioned in Section 143(1) of the Act. There is no scope for examining or adjudicating any debatable issue that require arguments.

Only in those cases where the Assessing Officer (AO) has reason to believe that any claim of losses, exemption, deduction, allowances or relief made in the return of income is inadmissible or if he considers it necessary or expedient to ensure that the taxpayer has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, he can serve notice under Section 143(2) of the Act.

Before or without issuing notice under Section 143(2) or notice under Section 142(1) in cases where return of income is not filed, there is no jurisdiction to examine or adjudicate debatable issue claimed or shown in the return of income.

In the cases of SEPCO III Electric Power Construction Corporation and NetApp BV it was held that by filing a return of income, the taxpayer invites adjudication of the question arising out of the return of income. However, as per the provisions of Sections 143(2) and 142(1) of the Act, it was not so, and only by issuing of notice under Section 143(2) of the Act, the AO assumes jurisdiction to adjudicate all the questions arising out of the return of income.

In the case of Jagtar Singh Purewal it was held that there was no pending dispute between the applicant and the tax department since the return of income had been processed under Section 143(1) and the refund had been granted. Further, in the return of income, the taxpayer had not raised any dispute regarding the assessability of the amount. Therefore, there was no ground to reject the application on any of the grounds mentioned in Section 245R(2) of the Act.

In the case of Hyosung Corporation Korea, it was held that mere filing of return does not attract bar on the admission of the application as provided in Section 245R(2) of the Act.

When the issues are shown in the return of income and notice under Section 143(2) is issued, the question raised in the application will be considered as pending for adjudication before the income-tax authorities. However, in the present case the application was filed after

filing of return of income, and notice under Section 143(2) of the Act was issued after the AAR application.

Following the ruling of Hyosung Corporation it has been held that the question raised by the applicant in the present case is not already pending before the income-tax authorities and therefore, the application is admitted.

ACIT vs. Sivagami Holdings Pvt. Ltd. (2014-TII-01-ITAT-Chennai-INTL)

Facts of the case

Sivagami Holdings Pvt. Ltd. is an investment company having its branch in Malaysia. The foreign investments are managed by the assessee's Malaysian branch through its duly appointed agent. The assessee acquired immovable property at Malaysia from which it received rental income.

In its return of income, the assessee admitted the fact of having foreign income from its Malaysian branch, however, claimed exemption on the income so earned in view of the India-Malaysia Double Taxation Avoidance Agreement ('DTAA'). The relevant Assessment Years ('AYs') in question are 2006-07, 2008-09 and 2009-10.

The Assessing Officer, in the subject AYs, held that the income of assessee's branch in Malaysia was taxable in India. The AO further held that although the assessee may be maintaining a fixed place of business in Malaysia by forming a company under Malaysian Laws, the Malaysian Branch was not a permanent establishment of the assessee.

Issue before the Tribunal

Whether the Malaysian branch of the assessee-company forms a permanent establishment and the income arising therefrom is taxable in India?

Held

ITAT followed the order of the co-ordinate bench of the Tribunal for the assessee's own case in earlier assessments years.

It noted that the co-ordinate bench of the ITAT, while passing its order for AYs 2000-01 to 2005-06, had also observed that the situs of the branch company was in Malaysia i.e. outside India, it was dealing in the affairs of the foreign investments of the assessee company and the branch office has been established as an independent legal entity in accordance with the Malaysian laws. With respect to the rent and interest income which was generated by the Malaysian branch from assets situated outside India, in terms of the India-Malaysia DTAA, it was held that the income of the Malaysian branch was liable for taxation only in Malaysia.

In such circumstances and in the absence of any record to deny the branch a permanent establishment status, it was held that the Malaysian branch formed a permanent establishment of the assessee in Malaysia and the income arising therefrom is not taxable in India in view of the Double Taxation Avoidance Agreement between India and Malaysia."

Tesco International Sourcing Limited vs. DDIT (International Taxation) (TS-664-ITAT-2013 (Mum.))

Facts of the case

Tesco International Sourcing Limited, Hong Kong, ('Tesco Hong Kong') was established in Hong Kong as a buying agent for Tesco group companies. It sources products for Tesco group companies and ensures that prices were competitive while maintaining the quality standards prescribed by Tesco group. The assessee, Tesco International Sourcing Limited – India Liaison Office ('Tesco India LO') was established in the year 2001 to act as a communication channel between Tesco Hong Kong and the manufacturers in sourcing apparels from India and undertaking liaison activities like co-ordinating with manufacturers and Head Office. The relevant assessment years are 2003-04 to 2007-08.

The Assessing Officer ('AO') observed that the activities of the assessee were not confined to the activities which were related to purchase of goods in India for the purpose of exports. Further, AO concluded that the activities of the assessee relate to supply chain management activities for Tesco Hong Kong and, hence, the activities of Tesco India LO were not covered under the exception provided in Explanation 1(b) of Section 9(1)(i) of the Income-tax Act, 1961.

Aggrieved, the assessee objected to the draft assessment orders before the Dispute Resolution Panel ('DRP'). However the DRP confirmed the view of the AO stating that the AAR decision in Columbia Sportswear [TS-444-AAR-2011] was squarely applicable to the assessee's case. Rejected reliance placed by the assessee on the Bengaluru ITAT decision

in Nike Inc India Liaison Office [122 TTJ 201] ('Nike Inc') on the basis that the decision of the ITAT had been contested by the Revenue before the Karnataka High Court and was pending disposal. Based on these directions of DRP, AO concluded the assessment and attributed 60% of the total commission earned by Tesco Hong Kong accruing or arising to the assessee to India.

Issue before the Tribunal

Where non-resident's activities were limited to procurement of goods for the purpose of export, whether the income would be deemed to accrue or arise in India under Section 9(1)(i) of the Income-tax Act, 1961?

Held

Referring the ITAT, while analysing the Karnataka HC decision in Nike Inc [TS-248-HC- 2013 (KAR)], made a detailed comparison of the facts in the case of Nike Inc and that in case of the assessee. The ITAT noted that the facts in both the cases were similar and further observed that in the present case, the condition "for the purpose of export" was satisfied more precisely than the case of Nike Inc as Tesco Hong Kong purchased the goods first and then re-invoiced them (without mark-up) to the buyer after charging a commission. Tesco India LO only facilitated the sourcing of the goods. In Nike Inc's case, Nike Inc acted as a sourcing agent for Nike affiliates and Nike LO helped source goods for the affiliates. The purchases from the vendors were, however, not made by Nike Inc itself for onward sales to its affiliates instead Nike Inc only arranged for the purchases by Nike affiliates from India.

Further, ITAT held that the facts in AAR decision in Columbia Sportswear were clearly distinguishable on facts. In case of Columbia Sportswear, the LO identified the manufacturer, negotiated prices, helped in choosing material and ensuring their quality, provided designs/specifications on basis of which manufacturer would manufacture products and also undertook quality controls through testing. However, in the present case, Tesco India LO had no signing/commitment power and was merely procuring goods for the purpose of export by the manufacturers directly to Tesco group companies.

Ruling in favour of the assessee, the ITAT held that Explanation 1(b) to Section 9(1)(i) is clearly applicable to the assessee's case and, thus, no income was derived by the assessee in India through its operations as a liaison office in India. Further, as no income was derived by the assessee through its operations in India, the question of attribution of income became superfluous.

Oman International Bank vs. DDIT (International Taxation) (2014-TII-08-ITAT-MUM-INTL)

Facts of the case

Oman International Bank, a non-resident bank headquartered in Muscat with two branches in India, is engaged in the business of banking.

The assessee credited the interest received from its Head Office in the profit and loss account but reduced this interest amount from taxable income in the computation of income filed, claiming that the interest was received from self. Similarly, interest paid to its HO was not claimed as deduction as it was a payment to self.

The AO rejected the assessee's contention in respect of reducing the amount of interest from taxable income but accepted the addition on account of interest paid to Head Office on the ground that no tax was deducted at source and accordingly as per the provisions of section 40(a)(i), the same was not allowable.

The DRP upheld the AO's order.

The assessee paid transaction charges on NOSTRO account with banks outside India without deduction of tax at source.

The AO, in the absence of any tax deduction at source on such payments, made a disallowance under section 40(a)(i).

The assessee had claimed deduction of specific expenses incurred by its HO on behalf of Indian branch under section 37.

The AO disallowed this deduction by processing the same under section 44C.

The HO deputed a bank employee to India for two years under an agreement with the Indian branch office. The salary paid to this employee while working in Indian Branch had been taxed in India. The assessee had claimed the expenditure incurred for the services of this employee in India under section 37.

The AO disallowed these expenses holding that these were HO expenses that could not be allowed of its branch office.

The assessee made provision for excessive expenditure in accordance with regular method of accounting followed by it.

The AO disallowed the net excess provision and added it back to the total income of the assessee. The DRP confirmed the action of AO.

Issue before the Tribunal

Whether interest income earned by the Indian branch of a non-resident bank from its head office is exempt from taxation?

Whether when Indian branch of a foreign bank had paid interest to head office without claiming deduction, disallowance of the same would amount to double disallowance?

Whether when Indian branch of foreign bank, had paid transaction charges on NOSTRO account with banks outside India without deduction of tax at source, disallowance can be made under section 40(a)(i)?

Whether expenditure incurred on the services of employee deputed to Indian branch office can be considered as part of head office expense u/s. 44C?

Whether provision for excessive expenditure allowed?

Held

Interest From Head Office

Following the decision of Special Bench of Tribunal in Sumitomo Mitsui Banking Corporation where it was held that Indian Branch of foreign bank being part of foreign bank was not a separate and distinct taxable entity in India as per the domestic law. The interest received by Indian branch of foreign bank from its head office, therefore, does not give rise to any income which is taxable in India because one could not make profit out of itself. It was also held that no deduction with respect to interest paid by the assessee branch of the assessee-company to its Head Office is to be allowed if the assessee itself had made the said disallowance.

Transaction Charges on NOSTRO Account

As the transaction charges paid on NOSTRO Account were in the nature of bank charges for maintaining the accounts with banks outside India. These charges were recovered directly by way of debits to the concerned accounts of the assessee with these banks and the same represented business income of those banks which accrued/arisen outside India. It was held by the Tribunal that no tax therefore was required to be deducted at source.

Specific Expenses

Similar issue was decided by ITAT in the assessee's own case for assessment year 2005-06 after considering the decision of the jurisdictional High Court in the case of Emirates Commercial Bank Ltd., wherein it was held that the travelling expenses incurred by the Head Office on travelling of its own staff are directly in connection with Indian branch and are allowable u/s. 37(1) of the Act and section 44C has no application to such expenses. The Jurisdictional High Court *vide* its order dated 26-02-2013 in assessee's own case has also confirmed the order of the Tribunal for Assessment Year 1996-97 on similar issue. In view of above, the disallowance was deleted.

Expenses on Employee Services

The employee was on full time basis for a period of two years at Mumbai Branch and also filed return of income in India for the assessment year 2006-07. Considering the above fact, it was held that the payment to employee has been made to him exclusively for the work performed by him for assessee's branch at Mumbai and the said expenses could not be considered a part of section 44C. The disallowance was deleted.

Provision for Excess Expenditure

At the time of hearing, AR submitted that if disallowance of the same is confirmed in the assessment year under consideration, this amount should be allowed as deduction without written back in the subsequent year. DR agreed to this contention of AR.

In view of above, the action of the AO was confirmed and as and when the assessee reverses the excess provision, the said amount should not be charged to tax in the subsequent years.

Cross Objection

It was held that the cross objection is to be decided as if it is an appeal filed by the party. The appeal against the assessment order can be filed only by an assessee and not by department.

SERVICE TAX

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

Business Auxiliary Services

The activity of the appellant providing comprehensive sanitation assistance to Municipal Corporation cannot be liable under Business

Auxiliary Services since Municipal Corporation was not doing business of providing sanitation work to be supported by auxiliary service. [*Global Waste Management Cell vs. CCE,, 2013(32) STR 734 (Tri-Del)*]

Construction Services

In a challenge to the validity of imposition of service tax on "commercial or industrial construction services" [S.65(105)(zzq)] and "construction of (residential) complex services" [S.65(105)(zzh)], the petitioners contended that in construction contracts which involved supply of labour and materials ("composite contracts"), service tax cannot be imposed under the aforesaid two taxing entries and the first time such composite contracts became taxable was when the taxing entry of "works contracts services" [S.65(105)(zzza)] was introduced w.e.f. 1-6-2007. The petitioners also contended that the notification nos. 15/2004-S.T. dated 10-9-2004, 19/2005 dated 7-6-2005, 18/2005-ST dated 7-6-2005 and 1/2006-ST dated 1-3-2006 granting abatements of 67% in respect of taxing entries u/s 65(105)(zzq) and section 65(105)(zzh) are also unconstitutional. Rejecting the contention of the petitioners, the High Court held:

Introduction and imposition of Service Tax on "works contract services" by Finance Act, 2007 does not mean that the scope and ambit of "commercial and industrial construction" service or "construction of (residential) complexes" services needs to be read down as excluding composite contracts and covering only labour contracts. The aforesaid taxing entries would cover pure labour contracts as well as composite contracts. The levy of service tax on composite contracts under sections 65(105)(zzh) and 65(105)(zzq) is valid.

Service Tax can be levied and imposed only on the "service" element and not levied and charged on material or goods used, as the power to levy sales tax or value added tax on the sales of goods is with the State Governments.

The notifications in question dated 10th September, 2004, 7th June, 2005 and 1st March, 2006 granting abatement of 67% towards the value of the material used for computing the Service Tax payable ensure that only the service element is taxable. It is an alternative to an otherwise subjective determination in each case, which may be cumbersome and require a detailed examination for ascertainment of the service element. The formula prescribed is not mandatory or compulsory. Further, it will apply at the option of an assessee. It will be applicable only when the required parameters are met and is not illegal and ultra vires the Act, i.e. the Finance Act, 1994. It is also not contrary to the charging section/provisions of the Finance Act imposing levy of Service Tax.

Merely because no rules are framed for computation of the service component, it does not follow that no tax is leviable. An assessee can state that the service component of a composite contract should be computed in a fair and reasonable manner and accordingly taxed. [*G.D. Builders v. UOI, 2013(32) STR 673 (Del)*]

Construction of Complex Service

The explanation inserted by the Finance Act 2010 to section 65(105)(zzq) and (zzh) that brings within the fold of taxable service a construction service provided by the builder to a buyer where there is an intended sale between the parties whether before, during or after construction is prospective in operation and hence not liable for the period prior to 1-7-2010. [*CCE vs. U.B. Construction (P) Ltd, 2013(32) STR 738 (Tri-Del)*]

Clearing and Forwarding agent

The activity of supervision and loading of coal at the collieries and arranging for transportation of coal by rail or road to client's plant/factory does not fall within the scope of "clearing and forwarding agent's service". [*CST vs. Shah Coal Pvt. Ltd. (2013) 32 STR 568 (Tri-Mum.)*]

Where the appellant provided services for movement of coal from collieries to their client's premises (purchasers of the coal), by co-ordinating with the collieries and railways (as agents of their clients), it was held that services provided by the appellant were liable for service tax under the category of "Clearing and Forwarding Agency services". [*Karamchand Thapar & Bros. (Coal Sales) Ltd. vs. CST (2013) 32 STR 577 (Tri-Kolkata)*]

Erection, Commissioning and Installation Service

The activities of executing heating, ventilation and air conditioning projects on turnkey basis are chargeable to Service Tax under Commissioning or Installation/Erection service, w.e.f. 1-7-2003. [*Suvidha Engineers India Ltd vs. CCE, 2013(32) STR 735 (Tri-Del)*]

Maintenance and Repair services

Goods which were deemed to be sold in the execution of a works contract shall be outside the ambit of service tax. [*CCE vs. Balaji Tirupati Enterprises 2013 (32) STR 530 (All.)*]

Repairs and maintenance work carried out by the appellant in respect of property of municipality is not taxable under the category of

"management maintenance or repairs services" since municipal roads are not immovable properties under the Transfer of Properties Act. [*Manjit Singh vs. CCE (2013) 32 STR 624 (Tri-Del.)*]

The activity of reconditioning old and worn out shells of sugar mills is not liable for service tax under the category of "management, maintenance and repair services" since –

In the absence of a maintenance contract between the appellant and its client such services would not be liable;

Further, the activity of 'reconditioning' and 'restoration' was liable to service tax under the category of maintenance or repair service only w.e.f 16-6-2005 and hence a service tax demand on such activity prior to 16-6-2005 is not sustainable. [*Jagat Machinery Manufactures P. Ltd. vs. CCE (2013) 32 STR 663(Tri-Del.)*]

Steamer Agent's service

Where the assessee, a steamer agent, did not pay service tax for the period 1-11-2003 to 19-11-2003 on services provided to their foreign principals for which they received their consideration in convertible foreign exchange, the Tribunal upheld the stand of the assessee on the ground that the benefit of the clarification issued by CBEC vide its circular no. 56/5/2003-S.T. dated 25-2-2003 (which clarified that service tax is a destination based consumption tax) would be available to the assessee and no service tax would be payable on the services exported by the assessee. [*Maersk India Pvt. Ltd. vs. CST 2013 (32) STR 546 (Tri. – Mum.)*]

Valuation

The value of diesel supplied free of cost by the service recipient to the assessee service provider for providing the taxable "site formation and clearance, excavation and earthmoving and demolition" service would not be a component of the gross value charged for the service provided, for computation of service tax. [*Karamjeet Singh & Co Ltd vs. CCE, 2013(32) STR 740 (Tri-Del)*]

Show Cause Notice

A revisionary show cause notice incorporating a completely new ground (ineligibility of refund) which was not taken in the original show cause notice (disallowance of refund due to non-production of documents) is not sustainable. [*AIA Engineering Ltd. vs. CCE (2013) 32 STR 610 (Tri-Ahmd.)*]

Demand/ Limitation

Where the appellant, engaged in the business of computer training, failed to pay service tax for the period July 2004 to March 2005 under a *bona fide* belief based on several Tribunal decisions in its favour, the Tribunal held that the demand was barred by limitation. [*Gargi Consultants Pvt. Ltd. vs. Commissioner of Central Excise (2013) 32 STR 654 (Tri-Del.)*]

Limitation

In a case where the SCN made a mere allegation without any reference to specific evidence showing wilful misstatement or suppression of facts and where the appellant had a bonafide belief based on Board Circulars, extended period of limitation was held to be not invocable. [*Karamchand Thapar & Bros. (Coal Sales) Ltd. vs. CST (2013) 32 STR 577 (Tri-Kolkata)*]

The appellant were carrying on the activity of reconditioning of old worn out rollers which was taxable only w.e.f. 16-6-2005. The demand pertaining to the period 16-6-05 to Feb' 06 was sought to be raised by a show cause notice dated 27-4-2007. It was held that the extended period of limitation is not invocable as there was no suppression of facts by the appellant as the appellant had written several letters to the department intimating to them that they have reversed the CENVAT credit pertaining to reconditioning activity and this fact was also reflected in their RG-1 (Stock) register and returns. [*Jagat Machinery Manufactures P. Ltd. vs. CCE (2013) 32 STR 663(Tri-Del.)*]

Where the appellants had submitted details of receipts (from executing HVAC projects) for the period 1-7-03 – 15-6-05 on which they did not pay service tax vide letter dated 5-9-05, the Tribunal held that SCN issued on 30-10-07 for the aforesaid period was barred by limitation since extended period cannot be invoked. [*Suvidha Engineers India Ltd v. CCE, 2013(32) STR 735 (Tri-Del)*]

Penalty

An interpretational error by the appellant without any malafide intent does not warrant a levy of penalty. [*Nectar Lifesciences Ltd.(Unit –I) vs. CCE (2013) 32 STR 659(Tri-Del.)*]

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Refund

Notification no. 9/2009-ST dated 3-3-09 read with 15/2009-ST dated 20.5.2009 allowed upfront exemption from payment of tax to the service provider where the services are consumed wholly within the SEZ unit. However, the appellant (an SEZ unit) paid the service tax to the provider and claimed refund which was disallowed by the adjudicating authority on the ground that refund of service tax paid on services wholly consumed within the SEZ is not allowed under the notification. On appeal, the Tribunal held that the over-arching provisions of Sections 7, 26 & 51 of the SEZ Act, 2005 provide immunity from service tax on services provided to an SEZ unit. Therefore, rejection of refund of service tax paid on services consumed wholly within the SEZ by a service recipient is not sustainable. *[Intas Pharma Ltd. vs. CST (2013) 32 STR 543 (Tri-Ahmd.)]*

Appellant was issuing invoices for their taxable services showing service tax amount separately. For their non-taxable services they issued invoices without collecting service tax but pursuant to a SCN demanding service tax on such non-taxable service, the appellant paid a service tax of ₹ 21,102/- out of their own pocket. Subsequently, the SCN proceedings were dropped and the appellant filed a refund claim. The Tribunal held that there was no unjust enrichment and the appellant was entitled to a refund in spite of the fact that the service tax paid was shown as 'expenditure' and not shown as 'receivable' *[Ranade & Co. vs. Commissioner of Service tax (2013) 32 STR 613 (Tri-Ahmd.)]*

Where the appellant had initially paid service tax 'under protest' during adjudication and claimed refund later when part of the demand was dropped and the refund was sought to be disallowed on the ground that it was not shown as 'receivables', the Tribunal upheld the claim since it was substantiated by a Chartered Accountant's certificate which stated that the appellant had not passed on the duty to any other person. *[Eastern Shipping Agency vs. CST (2013) 32 STR 630 (Tri-Ahmd.)]*

CENVAT credit of service tax paid on input services such as infrastructure support service, chartered accountant's service, pay roll processing service, management consultancy services, insurance auxiliary services

used for providing business auxiliary services is admissible being essential in running their business and accordingly refund of credit under rule 5 was allowed. *[Kijiji (India) Pvt. Ltd. vs. CCE (2013) 32 STR 661 (Tri-Mum.)]*

Notification 17/2009-S.T dated 7-7-2009 has been issued in supersession of Notification No. 41/2007 S.T. which extended the period for filing refund claim from 6 months to 1 year from the date of export. It was held that any refund claim filed after 7-7-2009 will be governed by time limit of 1 year under the Notification No. 17/2009 even though such refund pertains to a period prior to 7-7-2009. *[Havells India Ltd. vs. CCE (2103) 32 STR 668 (Tri-Del)]*

Appeal against provisional attachment of order

The order passed under Section 73C for provisional attachment would not be appealable before the Appellate tribunal. *[Kingfisher Airlines Ltd vs. CST, 2013 (32) STR 744 (Tri-Mum)]*

CENVAT credit

CENVAT credit available to the assessee for its manufacturing activities can be utilized for payment of service tax on Goods Transport Agency service as a payer of freight. *[CCE vs. Deepak Spinners Ltd. 2013 (32) STR 531 (H.P.)]*

CENVAT credit on input services utilized for installation of ammonia storage tanks situated outside factory of production is allowable on the ground that use of ammonia was an intrinsic part of the manufacturing of final product and there is no stipulation that the input services must be received in the factory. *[Deepak Fertilizers and Petrochemicals Corporation Ltd. vs. CCE 2013 (32) STR 532 (Bom.)]*

CENVAT credit on telecommunication services (interconnection services) availed by a telecom service provider from another telecom provider for servicing its customers located in areas serviced by the other telecom provider is admissible. *[Aircel Cellular Ltd. vs. Commissioner of Service Tax (2013) 32 STR 618 (Tri-Chennai)]*

- CENVAT credit on Pest Control Services and Manpower Supply Services used for maintaining a garden in the factory premises in a case wherein the appellant is required by law to maintain such garden is admissible.
- CENVAT credit on construction services utilised for constructing a compound wall around the factory is admissible since the compound wall is essential.

[Nirma Ltd. vs. CCE & ST (2013) 32 STR 622 (Tri-Ahmd.)]

Service tax paid as a recipient of GTA service by utilizing cenvat credit must be reversed and paid by debiting the PLA / TR - 6 challan. However, for such procedural error causing no loss of revenue to the department interest and penalty cannot be imposed. *[U.M. Cables Ltd. vs. CCE (2013) 32 STR 635 (Tri-Ahmd.)]*

- CENVAT credit on 'outdoor catering service' for providing food to its workers in a case where the appellant was not required by any law to provide such facility is not admissible.
- CENVAT credit on repairs and maintenance of guest house where the appellant claims that the guest house was used to accommodate business guests and conducting business meetings is not admissible in the absence of any positive evidence substantiating such claim.

[IFB Industries Ltd. vs. CCE (2013) 32 STR 650 (Tri-Bang.)]

- CENVAT credit on the service of dismantling a plant is not admissible as such input service does not give rise to any tangible output.
- CENVAT credit on installation charges of doors is not admissible when such doors were not proved to be capital goods under any tariff entry under the Central Excise tariff Act, 1985.
- CENVAT credit on services in relation to laying of roads is not admissible since no intimate connection with manufacture was clearly brought out.

[Nectar Lifesciences Ltd. (Unit -I) vs. CCE (2013) 32 STR 659 (Tri-Del.)]

CENVAT credit on banking charges paid in relation to purchase of raw material and sale of finished goods is admissible since such expenditure is relatable to the business of the manufacturer. *[Meghmani Dyes & Intermediaries Ltd. vs. CCE (2013) 32 STR 671 (Tri-Ahmd.)]*

Initiatives & Achievements

Creating History :- The first ICAI Tower at Bandra Kurla Complex, Mumbai



The iconic ICAI Tower, the first of its kind, which is the pride of the Institute was inaugurated on 15th March, 2013 by the worthy hands of Shri Sachin Pilot, Hon'ble Union Minister of State for Corporate Affairs (I/C) and was dedicated for the service of members and students. It was an honour and privilege for us at WIRC to play an active role in creating this history for ICAI.

This auspicious inaugural function which was presided over by the Hon'ble President, CA Subodh Kumar Agrawal and graced by the Hon'ble Vice President, CA K. Raghu, a galaxy of Past Presidents, Past Chairmen of WIRC, other dignitaries, and attended by over 500 members and students making it a grand event of ICAI for the year of 2013.



Enhancement in Branch Network of WIRC

It is a matter of great pride for any family to seeing the introduction of new members in the family. Similarly, WIRC witnessed 4 such proud moments during this year. In a major enhancement in the Branch Network of WIRC, four branches of WIRC were formed and inaugurated during the year:

❖ Nanded in Maharashtra



❖ Navsari in Gujarat



❖ Satara in Maharashtra



❖ Dhule in Maharashtra



These branches were inaugurated in the presence of Hon'ble President CA Subodh Kumar Agrawal and Vice-President, CA K. Raghu and other dignitaries of the branches. These branches will be immensely beneficial to the members and students from these towns.

Enhancement in Members Development and Support Services

1) E-Filing Help Desk on WIRC Website for resolving queries of E-filing of Income Tax Return and Tax Audit Reports and E-filing of TDS Returns:

WIRC had set up a help desk on WIRC Website for online help desk for resolving queries of E-filing of Income Tax Audit Returns and for more regular needs of E-filing of TDS Returns. Large number of members had taken advantage of this facility and was widely appreciated by all.

2) Help Desk for Voluntary Compliance Encouragement Scheme (VCES) of Central Board of Excise & Custom (CBEC):

WIRC had facilitated the Central Board of Excise & Customs (CBEC) to set up help desk for receiving applications of Voluntary Compliance Encouragement Scheme and resolving queries of Chartered Accountant.

3) Workshops For Beginners:

In order to provide adequate exposure to the new entrants in the CA fraternity, WIRC had undertaken a distinctive initiative to organise workshops/study courses for Beginners in the following topics:-

- i) FEMA
- ii) Transfer Pricing
- iii) Valuation
- iv) Due Diligence
- v) Forensic audit



These tailored programmes witnessed good response from the young members, who have largely benefited by participating in these courses. These beginner's workshops were designed to help promote the Certificate Courses provided by ICAI and such beginner's workshops gave members an insight on the subjects, thereby helping them take a more informed decision while opting for the certificate courses.



Initiatives & Achievements

4) Intensive Study Courses:

In line with the mission statement of WIRC 'Reform, Perform, Transform' WIRC had organised various Intensive Study Courses on various Topics such as :-

¿ Service Tax ¿ Accounting Standard ¿ Internal Audit • MVAT

These courses have enable members to update their skills and knowledge to embrace the reforms and perform to the highest standards and expectation of the stakeholders, thus transforming the Profession.



5) Innovative Lecture Meetings:

Another exceptional initiative of WIRC during the year has been that of organising lecture meeting on current and contemporary topics of professional interest and relevance to the members. The following lectures meeting were organised:

- Dealing with Ethical Dilemmas – To help members realise the importance of maintaining Ethics at their work place
- Rupee & Dollar War – To help members make better sense of the volatility attached with the currency markets and how they can better guide their clients, once they have a better perspective.
- Capital Market – To help members understand the deeper meaning of the movements in the stock markets
- Image Impact – IT Matters – To show how Information Technology can be used to improve the image and branding of CAs.
- Audit of Compliance of Deemed NBFCs etc. – Being an area where RBI was showing concern, this lecture meeting helped members become more aware about the NBFC Guidelines and resultant requirements of change in the audit process.
- Lecture Meeting on RTI
- Lecture Meeting on Basel-III
- Lecture Meeting on Integrating Professional Experience with Social Obligations

The massive response to all these lectures delivered by eminent personalities was of great satisfaction to us, at WIRC.



6) Encouragement to Women Chartered Accountants:



Further, considering the various events happening across the country to encourage Women Empowerment and to safeguard the interest of Women CA Members, WIRC took up unique steps to help Women CA members come together to deliberate on Networking amongst Women CAs in the region. In this context, Networking Meets for Women CAs and Women Conferences were held by WIRC, which received excellent responses. To focus on maintaining "work life balance", an exclusive networking meet for CA women members was organised in Mumbai which was attended

by sizeable number of participants. The following topics of interest was discussed and deliberated:

7) Networking Meets:

In order to encourage more and more members for Networking and Mergers WIRC organised various Networking Meets throughout the region. Further WIRC encouraged its branches and Study Circles to organise such meets more frequently highlighting following topics -

- i) Panel Discussion on Networking – its relevance in today's age and its impact on my career
- ii) Networking for business – finding customers, developing vendors and sourcing talent through networking
- iii) Networking amongst professionals – something that men can do well, but women can do even better!
- iv) Women CAs and their unique contribution to networking for their organisations
- v) Tips on being prepared for networking



WIRC as Knowledge Partner:

The role of "WIRC as a Knowledge Partner" was acknowledged and recognised by different departments of the State Government during the year. This is manifested by number of requests to either nominate representatives on important committees or to provide advice, suggestions, inputs on policy matters and for implementation of various schemes:

- 1) WIRC was asked to nominate members to work on Committee formed by Sales Tax Department for giving information regarding the judgments which are not accepted by the department and where further proceedings are pending therein, to enable the department to take appropriate action u/s 23(8) of the MVAT Act, 2002.
- 2) WIRC Representatives appointed by Co-operative Department on Committee to fix fees for Co-operative Audits.
- 3) Co-operative Audit Manual – The co-operative department of Maharashtra State reposed confidence in WIRC by entrusting with the task of preparing a comprehensive Co-operative Audit manual.
- 4) Transformation to Accrual System of Accounting of Govt. of Maharashtra – WIRC supported the Principal Accountant General's initiative by actively participating and providing guidance to them to seamlessly transition to the accrual system of accounting in the departments of the Govt. of Maharashtra.



Initiatives & Achievements

Members in Industry:

The composition of CA Members in Industry is quite significant out of the total CA population across the country. These members are holding eminent positions in various industries. They are the Brand Ambassadors of ICAI in the corporate sector and hence the Members in industry have always been high on agenda of WIRC. In order to reach out to them at their door step, the following activities were undertaken, during the year:

1) **Industry Connect Programmes:** At WIRC, during the year industry connect programmes were organised at ICICI Bank twice and at HDFC Standard Life Insurance Company. During such Industry connect programmes, efforts were made to:

- update them about the various initiatives undertaken by ICAI especially for Members in Industry,
- understand their expectations and the challenges faced by them to stay connected with the Institute.
- encourage and persuade the Chartered Accountants who are not members of the Institute to take membership/restore their membership,
- assess their concerns and requirements for skill enhancement and knowledge updation thus enabling to organise industry specific programmes.

2) **Formation of BFSI Study Group:** WIRC formed a Study Group for Banking, Finance, Stock Broking & Insurance (BFSI) sector. The Study Group held regular monthly meetings. Many eminent personalities from the sector attended the Study Group meetings regularly.



Global Forays:

The ICAI, over the years, has been playing an increasingly proactive role in the International affairs. The ICAI through its International Affairs Committee continues to endeavour to provide strong interface to Indian members for recognition of professional opportunities abroad. The prominent role of ICAI is evident from the nominations it enjoys in the governing boards of various international accounting bodies. Hence, in line with this objective, WIRC had organised various relevant programmes:-

Lecture Meetings:

- "How to migrate to Australia and professional opportunities available"
- Professional opportunities in Germany
- Singapore



- Meeting with Asian Development Bank officials
- Meeting with ICAEW officials
- Meeting with CFA Institute officials



International Study Tours to:

- Kenya
- Bali
- Sri Lanka
- China
- Dubai



STUDENTS DEVELOPMENT ACTIVITIES

1) **Mega Conference for Students:** WIRC had organised 5 National Conventions, 1 Regional Conference, 2 Sub-Regional Conferences and 2 State Level Conferences for students. Students actively participated in all these conferences right from organising to paper presentation. More than 12,000 students throughout the region took advantage of these conferences. Many eminent personalities and guests invited for the inauguration of these conferences. They appreciated initiatives of the Institute and enthusiasm of the students.

2) **Maintenance and Development of Reading Rooms:** Reading Room at ICAI Tower, BKC having capacity of 300 students was made functional from 1st July, 2013. Further in addition to the regular maintenance of the reading rooms at 5 places in Mumbai and various other branches, new reading rooms were opened at Thane, Baroda and Ahmedabad. Moreover proposal for additional 6 Reading Rooms has been submitted to the Brihanmumbai Municipal Corporation which has been accepted in principle by them. WIRC is also negotiating for the places for reading room with 2 private trusts in Mumbai.

3) **Mock Tests:** The Mock Tests for IPCC & final examination were successfully conducted with timely assessment of papers and solving the difficulties of students. The CPT Mock Test has been unique feature of WIRC which got overwhelming response throughout the region and the paper assessment was also done in the mechanised manner.



Initiatives & Achievements

SPREADING COMMERCIAL LITERACY IN SOCIETY AND CREATING AWARENESS ABOUT FINANCIAL & COMMERCIAL ASPECT, IN SOCIETY

WIRC has deemed and as a mean to spread the commercial / financial literacy in the various verticals of the society. The workshops and seminars were conducted for bringing the awareness about the financial aspects and financial principles amongst the various government authorities. Listed as:

- i) Training Courses were conducted for Service Tax Department in Mumbai and Raigad Commissionerate for bringing awareness of financial statement and underline principles.
- ii) One day Financial Awareness Programme was conducted for Mumbai Police which was highly appreciated by the Police Authorities.



- iii) Workshop was conducted about the principles of the Accrual Accounting for the staff of Principal Accountant General of Maharashtra .
- iv) Workshop on forensic Accounting was also conducted for the staff of Directorate of Enforcement.



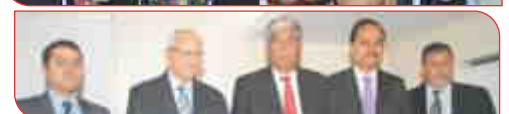
WIRC SOCIAL INITIATIVES

- 1) Commemorate on the occasion of CA Foundation Day – Different types of social programmes were organised by WIRC such as Blood Donation Camps, Tree Plantation Programmes, Distribution of Food and Clothes at Old Age Homes. Programmes for bringing awareness about women safety, Distribution of School Kits to the poor and needy students and so on.
- 2) For the benefit of members of society at large WIRC conducted many public Meetings on Budget.



PROGRAMMES WITH OTHER BODIES

- 1) International Banking Conference was organized jointly with Indian Merchants' Chamber inaugurated by RBI Governor.
- 2) Public Meeting for Interaction on VCES Scheme organised by CBEC and hosted by WIRC. This meeting was addressed by Finance Minister of India Shri P. Chidambaram.
- 3) National Conference on Indirect Tax organised for teaching staff and students by Birla College under the aegis of UGC was supported by WIRC.
- 4) Interactive meet with CBEC officials on VCES jointly with IMC.
- 5) Live screening & analysis of Finance Bill 2013 with Association of Indian Industries, Young Entrepreneurs Society & World Trade Centre, Mumbai



Initiatives & Achievements

MEGA CONFERENCE AND PROGRAMMES ORGANIZED / HOSTED BY WIRC

- 1) International Conference organized by ICAI in January 2013 was successfully hosted by WIRC wherein more than 1400 members attended the conference. The faculties of eminent background from India and Abroad addressed the conference and appreciated the same. The Union Minister of Law and Justice Shri Ashwani Kumar inaugurated the conference.
- 2) ICAI award for Excellence and Financial Reporting and ICAI Corporate Conclave was hosted by WIRC in the months of January & February 2013.
- 3) 28th Regional Conference of WIRC was organized in multi track mode saw the record attendance of more than 1500 members. All the delegates appreciated the conference and as a result there is a demand of videos for certain sessions from members who could not attend the conference.
- 4) For the first time National Conference on Service Tax was organized in WIRC which received an overwhelming response of more than 400 members.
- 5) Maharashtra VAT Conference was also organized for the first time which was attended by about 500 members and the delegates appreciated the initiatives of WIRC.
- 6) Mega Conference on Company Law, Co-operative and Re-development Laws organized by ICAI was successfully hosted by WIRC.
- 7) National Conference on Realty Manthan hosted by Pimpri-Chinchwad Branch of WIRC was one such unique conference.
- 8) The Sub-Regional Conferences, Regional Tax Conventions and many other conferences organized by WIRC were well received by the members.



WIRC AS THOUGHT LEADERS

- Various representations were made to State Governments on the matters of professional interest in the areas of VAT, Co-operative Act, LBT, Incentive Schemes, etc.
- Contributing by giving regular inputs on Exposure Drafts, Research Projects, Pre & Post Budget Memorandums, Draft Company Rules, TDS, etc.
- Contribution to ICAI for improvement in Website, Students Study Material and Members & Students' services.
- Formation of Study Groups in Banking Finance Sector, LBT, Govt. Incentive Schemes, Company Law and VAT.

Residential Refresher Course at Chiplun held on 24th & 25th January, 2014 Jointly with Ratnagiri Chapter of WIRC



CA. Shashikant Kale, CA. Sushrut Chitale, RCM, CA. Mangesh Kinare, Chairman, WIRC, CA. Mukund Chitale, Past President, ICAI & Faculty

Inauguration of Parbhani Chapter of WIRC on 9th February, 2014



CA. Mangesh Kinare, Chairman, WIRC, CA. Girish Kulkarni, RCM, CA. Shankar Gujarati, Convener, CA. Anup Shukla, Dy. Convener & Others



Vasai: Lecture meeting on VAT Issues held on 20/1/2014(L-R): Shri R. N. Mane, Shri V. C. Pichad, CA. Ramanand Gupta, Branch Chairman, Shri M. B. Munde, Shri N. B. Gawande, CA. Pramod Dhamankar



Thane: Group photograph taken during the 7th RRC for CA Students



Ahmednagar: Cricket Tournament between CA Members & Income Tax Dept., held on 26/1/2014. CA Members of Ahmednagar Branch have won the tournament. Seen in picture Shri Sarangi Saheb, Jt. Comm. of Income Tax, Shri Bhaskaran Saheb, ACIT, CA. Sanjay Deshmukh, Branch Chairman, CA. Ajay Mutha, CA. Milind Jangda, CA. Sushil Jain, CA. Prasad Bhandari



Aurangabad: Flag hoisting on 26/1/2014. (L-R): CA. Alkesh Rawka, CA. Vijay Rathi, CA. Girish Kulkarni, RCM, CA. Rajkumar Kothari, CA. S. A. Jaju, CA. Renuka Deshpande



Gandhidham: Inauguration of 2nd Batch of ISA Course held on 4/1/2014. (L-R): CA Shailesh Chothani, CA. Sanjay R. Mehta, Branch Chairman, Shri N. D. Kundu, Faculty, CA. Jitendra Khandol



Jalgaon: Sports meet inauguration by Shri Sanjay Kapdnis, Commissioner of Jalgaon Municipal Corporation



Pimpri Chinchwad: Seminar on "Latest Trends in Information Technology wrt CA Profession" held on 20/1/2014. (L-R): CA. Baban Dangale, CA. Jagdish Dhongade, Chairman, Pune Branch, CA. Sarvesh Joshi, RCM, CA. S. B. Zaware, CCM, CA. Ravi Pandit, CA. Dilip Apte, RCM, CA. Manojkumar Agarwal, Branch Chairman, CA. Rajeshkumar Patil



Amravati: Students Conference held on 18/1/2014. (L-R): Shri Rahul Khatri, CA. P. C. Agrawal, CA. Rajesh Chandak, Branch Chairman, CA. Ratan Sharma, CA. Jaydeep N. Shah, Past President, ICAI



Bharuch: Group photograph taken during the GMCS-1 Batch-2



Goa: CA. Anup Borkar, Branch Chairman, addressing the Investor Awareness Programme held on 9/1/2014. Seen in picture CA. Abhishek Nagori, RCM, Faculty, CA. Nayan Kothari, Faculty



Jamnagar: Republic Day Celebration on 26/1/2014. CA. Bharat Bhatt, Branch Chairman, CA. Kaupil Doshi, CA. Parag Sumaria, CA. Umesh Ravani & other Members



Vapi: Receiving Winning Trophy from Commissioner of Income Tax, Valsad



Nagpur: Interactive meet with Hon. CCIT Vidarbha Shri R. K. Gupta at Branch office on 9/1/2014. (L-R): CA. Kirti Agrawal, CA. Ashwini Agrawal, CA. Julfesh Shah, RCM, Shri R. K. Gupta, Hon. CCIT, CA. Swapnil Agrawal, Branch Chairman, CA. Swapnil Ghate, CA. Suren Durugkar, CA. Umang Agrawal

Inter Firm Cricket Tournament held on 4th & 11th January, 2014



Winner - S. H. Bathiya & Associates

Runner-up - Contractor, Nayak & Kishnadwala

M. L. D'Souza Rotating Trophy Cricket Match between Commissioner of Income Tax XI vs. Chartered Accountants XI held on 18th January, 2014



Annual Indoor Sports 2014 held on 25th January, 2014 at Goregaon Sports Club, Mumbai



Winners / Participants



Inauguration of Convocation 2014 held on 9th January, 2014 at Mumbai



CA. Neel Majithia, Secretary, WIRC, CA. Shardul Shah, RCM, CA. Sandeep Jain, RCM, CA. Priti Savla, Treasurer, WIRC, CA. Tarun Ghia, CCM, CA. Prafulla Chhajer, CCM, CA. K. Raghu, Vice President, ICAI, CA. Subodh Kumar Agrawal, President, ICAI, CA. Niranjn Hiranandani, Chief Guest & MD Hiranandani Group, CA. V. Murali, Vice Chairman, BOS, CA. Vijay Garg, Chairman, BOS, CA. Mangesh Kinare, Chairman, WIRC, CA. Manoj Fadnis, CCM, CA. Shriniwas Joshi, CCM, CA. Parag Raval, Vice Chairman, WIRC, CA. S. G. Mundada, RCM



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