



The Institute of
Chartered Accountants of India
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Western India Chartered Accountants Newsletter

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*Rise Above
the
Ordinary
&
Think
Beyond
Imagination*

INTEGRITY

“ The quality of being honest and having strong moral principles.

Integrity is a personal choice, an uncompromising and predictably consistent commitment to honour moral, ethical, spiritual and artistic values and principles...

...all of which are ingrained into the consciousness of a CA”



Log on to <http://wirc-icai.org>
for more information & updates



Our New Torch Bearers



CA. K. Raghu
President, ICAI, 2014-15

A worthy combination of youth, dynamism, experience and excellence, CA. K. Raghu has taken over as the supreme torch-bearer of the Indian accountancy profession as the President of the Institute of Chartered Accountants of India (ICAI) for the year 2014-15. His motto for the year is "Moving Towards New Frontiers". He was the Vice President of ICAI for the year 2013-14. An information technology maven regarded as a role model and mentor of the Gen Next Chartered Accountants, CA. K. Raghu is a fellow member of ICAI with more than 23 years of impeccable professional standing. Known for his altruism, openness to new ideas and dynamic and dedicated service to the accountancy profession, he is widely acknowledged for his pioneering and far-reaching initiatives of webcasting, e-learning and ICAI Web TV. He has been associated with ICAI for the last 22 years in various capacities including Chairman of Bengaluru Branch of SIRC, Chairman of SIRC and currently as the Central Council member since 2007 for three consecutive terms. He has particularly left an indelible mark in the service of the profession, mainly in his role as Chairman, Vice Chairman and member of the various Committees of ICAI. An illustrious and versatile professional, CA. K. Raghu represents the ICAI in the Board of Insurance Regulatory and Development Authority (IRDA), besides being the Chairman of XBRL India. He has also represented ICAI in "High level Steering Committee for Implementation XBRL based Data Submissions by Banks". He had also been nominated as ICAI representative on MCA 21 Stakeholders Committee constituted by the Ministry of Corporate Affairs for ensuring continuous improvement in service delivery under MCA 21. Also acknowledged for his international outlook and drive to promote brand "Indian CA" globally, he has also put forward Indian accountancy profession's views in various meetings and programmes of IFAC, SAFA, Confederation of Asian and Pacific Accountants (CAPA) and many other international bodies. As an avid academician and an orator of excellence, CA. K. Raghu has attended and contributed to numerous national and international seminars and conferences on the issues of professional interest, commendably demonstrating his passion for the profession and its core concerns. Besides his professional endeavours, CA. K. Raghu has a great inclination for social service and thus is also an active Rotarian. He is also a Paul Harris Fellow of Rotary Foundation of Rotary International.



CA. Satyanarayan Mundada
Chairman, WICASA



CA. Manoj Fadnis
Vice President, ICAI, 2014-15

A blend of erudition, experience, foresight, technical expertise and professional excellence worth, CA. Manoj Fadnis, has been elected as the Vice President of the Institute of Chartered Accountants of India (ICAI) on February 12, 2014 for the year 2014-15. A fellow member of ICAI with 27 years of standing, CA. Manoj Fadnis is bestowed with exceptional organisational, networking, administrative, leadership skills and he has been serving as a Central Council Member since 2001 for five consecutive terms. An illustrious and versatile accountancy professional, during his illustrious innings in the ICAI council, CA. Manoj Fadnis has made noteworthy contributions in whatever capacity he served the profession, particularly as the Chairman of various important Committees/Boards like Board of Studies, Accounting Standards Board, Direct Taxes Committee, Committee on Economic and Commercial Laws and WTO etc. He was also on various Standing Committees of the Institute like Disciplinary and the Examination Committee. As Chairman of ASB, he has been widely credited with the formulation of Indian Accounting Standards converged with the International Financial Reporting Standards which were eventually notified in February 2011. He has been the ICAI nominee in the meetings of the National Standard Setters and World Statistics Setters, Asia Oceania Standard setters group and Emerging economies Group. An outstanding facilitator of ICAI and accountancy profession, he has been actively involved as a Partner in Nation building. A prolific writer and ace speaker, his articles have been published in various magazines including The Chartered Accountants.

New OFFICE BEARERS of WIRC for the year 2014-15



CA. Anil Bhandari, Chairman, **CA. Julfesh Shah**, Vice Chairman,
CA. Shrut Shah, Secretary, **CA. Girish Kulkarni**, Treasurer



Dear Colleagues,

After Independence, the political consciousness in the country is perhaps at the highest level. There is little doubt that this would be a watershed election – bitterly contested, generating a

pan-India mass involvement with all the trappings of a media blockbuster.

With the election dates out, the countdown has begun. Whatever the outcome, the entire country is hoping for a stable, corrupt free and a dynamic government that would propel India back to the centre stage of world affairs.

While India will go for elections, we at the Institute already have our leadership in place. I take this opportunity to congratulate the newly elected ICAI President CA. K. Raghu, Vice President CA. Manoj Fadnis and Team ICAI. I am sure these stalwarts will lead ICAI to greater heights of glory.

This being my first communication to you as Chairman of WIRC, I would like to place on record my sincere appreciation for the confidence reposed upon me. Like my predecessors, I would work diligently for the Profession and hope to bring greater laurels to the Region.

I would like to congratulate the immediate past Chairman, CA. Mangesh Kinare for his sterling performance and securing a record number of 12 awards for the Region including the Best Region Award as well as CA. Mahesh Madkholkar for the Best WICASA Award for the year 2013-14. Congratulations are also due to the Regional Council Members and to the entire Members and Students fraternity for their whole hearted involvement in all WIRC activities.

President CA. K. Raghu has articulated the National Plan with great clarity. He has stated that ICAI exists as a facilitator to help CAs better themselves to enable them to conquer new frontiers. The National Plan looks forward to take the Profession up the professional order of our country – in terms of value-added skill-sets, knowledge, contextual intelligence and integrated networks. WIRC, as a team, will ensure that we align our plan with the National Plan and work towards achieving our national goal.

Our Profession has seen many evolutionary changes over the last few years. In an increasingly complex, demanding and competitive 21st century we still need to push the boundaries. With that in mind, the WIRC theme for 2014-15 is **'Thinking Above & Beyond'**. These three words encapsulate our ethos that growth is a way of life. We have to excel in all aspects to make an impact while we grow professionally and ethically so as to move beyond the set boundaries. To do this I urge Chartered Accountants to embrace the 4Cs – communication, collaboration, critical thinking and creativity. **'Thinking Above & Beyond'** will inspire us to move out of the mundane and routine into new and challenging fields – where CAs surge into a realm of innovation and creative growth. To provide new and innovative ideas that reflect our true heritage as professionals who not only deal with numbers but provide strategic solutions to provide continuous impetus for constant growth. Here I am reminded of the words by APJ Abdul Kalam who said, "Dream, Dream, Dream. Dreams transform into thoughts, and thoughts result in action. Dream is not that which you see while sleeping, it is something that does not let you sleep."

The Indian banking sector has long been a bulwark of the Indian economy. To bring our members up to date, WIRC has lined up a series of bank audit seminars at various locations across the Region. These seminars will update Members about the latest guidelines, notifications, circulars and other important information that will enable them to perform their bank audit assignments effectively. During the course of the year we will continue to organise similar knowledge based seminars which will go far in giving a professional boost to members across the Region.

We have just celebrated the colourful Holi festival and I take this opportunity to wish everybody a Happy Gudi Padwa!

We look forward to a year of momentous change – for our country as well as for the Profession – and I would leave you with the inspiring words by Gandhiji who said: "Be the change you wish to see."

With best regards,

CA. Anil Bhandari

OFFICE BEARERS

CA. Anil Bhandari
Chairman

CA. Julfesh Shah
Vice Chairman

CA. Shruti Shah
Secretary

CA. Girish Kulkarni
Treasurer

EDITORIAL BOARD

Editor:
CA. Anil Bhandari

Joint Editor:
CA. Shruti Shah

MEMBERS

CA. Mangesh Kinare | CA. Priyam Shah
CA. Hardik Shah | CA. Neel Majithia
CA. Sanjeev Maheshwari

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- 17 Recent Judgments



Forthcoming Events



Seminar on Post Assessment Issues under IT Act

Direct Tax

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
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Hrishikesh Wandrekar	9892919239
	CA. Neha Patel	9833678901
	CA. Ritesh Hibare	9773418343

For more details visit www.wirc-icai.org



Seminar on Statutory Audit of Bank Branches

Audit

DAY & DATE	SATURDAY, 22ND MARCH, 2014	
Venue	Hotel Kohinoor, Andheri-Kurla Road, J. B. Nagar, Andheri (E)	
Time	9.30 a.m. to 5.30 p.m. (Registration & breakfast 9.00 a.m. to 9.30 a.m.)	
Fees	₹ 1,400/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Dilip Apte	9823244383
	CA. Sunil Patodia	9820344085
	CA. Subodh Kedia	9879267750
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Pinki Kedia	9869030652
	CA. Anil Sharma	9870708060
	CA. N. M. Jain	9167769777
	CA. Kamlesh Kothari	9820083144

TOPICS

Audit Planning and Documentation
Income Recognition, Asset Classification & Provisioning
Audit of Advances
LFAR Reporting & other Certifications

SPEAKERS

CA. Ketan Saiya
CA. Vipul Choksi
CA. K. V. S. Shyamsunder
CA. Abhay Kamat

Jointly with J. B. Nagar CPE Study Circle

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 Study Group Members)
₹ 1000/- Annual Membership

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



Seminar on Statutory Audit of Bank Branches

Audit

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
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Milind Joshi	9930033939
	CA. Rupesh Gunjal	9987641644
	CA. Nikhil Damle	9820170436

For more details visit www.wirc-icai.org



Seminar on Service Tax for Beginners

Indirect Tax

DAY & DATE	SATURDAY, 22ND MARCH, 2014	
Venue	Sarvoday 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	9820137240
	CA. Kinjal Shah	9892100844

Jointly with Borivali (Central) CPE Study Circle

For more details visit www.wirc-icai.org



Seminar on Statutory Audit of Bank Branches

Audit

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
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Giriraj Khandelwal	9820344999
	CA. Sharad Sheth	9820137240
	CA. Yashesh Jakhelia	9967586811

Jointly with Borivali (Central) CPE Study Circle

For more details visit www.wirc-icai.org



06
CPE HRS

Seminar on “Important Provisions of Companies Act, 2013”

Corporate Law

DAY & DATE SATURDAY, 29TH 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 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Parag Raval	9824339200
	CA. Sarvesh Joshi	9822022292
	CA. Vishnu Agarwal	9833310916
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Suhas Gharat	9820420675
	CA. Nikhil Garg	9757423586
	CA. Gaurav Parwani	9323674628

TOPICS	SPEAKERS
Background of Companies Act, 2013 History, Reason, Objective, and the story so far...	CA. Anand Bathiya
Broad Overview New Challenges and Opportunities for CAs	
New Concepts – Small Companies/ Dormant Company/ One Person Company/ NFRA and all that New Regulatory Bodies (NCLT, NFRA, SFIO, etc.) Provisions relating to Corporate Social Responsibility	CA. Bharat Shetty
Changes Specifically affecting Private Limited Companies	CA. Anand Banka
Provisions relating to Accounts and Auditors in the new Act	CA. Jatin Thakkar

06
CPE HRS

Seminar on VAT–CST

Indirect Tax

DAY & DATE SATURDAY, 5TH APRIL, 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 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Mahesh Madkholkar	9820075966
	CA. Priti Savla	9321426883
	CA. Girish Kulkarni	9225306814
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Aalok Mehta	9892001645
	CA. Dharmen Shah	9820348100
	CA. Krunal Davda	9920375581

TOPICS	SPEAKERS
Registration of VAT-CST, PTR & PTE	CA. Manish Goel
E-filing of VAT-CST Return	CA. Pranav Kapadia
Set-off Rules	CA. Kiran Garkar
Declaration of Forms in CST	CA. Sujata Rangnekar

06
CPE HRS

Seminar on TDS– Law & Practice

Direct Tax

DAY & DATE SATURDAY, 12TH APRIL, 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 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Shruti Shah	9892407988
	CA. Abhishek Nagori	9426075397
	CA. Hardik Shah	9825510422
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Kedar Limaye	9820287646
	CA. Ramesh Mishra	9820419606
	CA. Kunal Parikh	9892429993
	CA. Nidhi Mewada	9619602084

TOPICS	SPEAKERS
Introduction by CIT TDS	Shri V. K. Pandey
TDS- Salary	CA. Atul Suraiya
TDS in respect of Residents	CA. Mahendra Sanghvi
TDS on Non-residents – Sec. 195	CA. Shailendra Sharma
Consequences of default	Eminent Faculty
Procedure under TRACES	Shri Ravi Agarwal

06
CPE HRS

Seminar on Prevention of Money Laundering Act (PMLA)

Insurance

DAY & DATE SATURDAY, 19TH APRIL, 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 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Shardul Shah	9820287625
	CA. Dhiraj Khandelwal	9867642684
	CA. Priyam Shah	9824096112
	<i>(Regional Council Members)</i>	
Co-ordinators	CA. Y. R. Desai	9820448365
	CA. Vipul Agarwal	9821359804
	CA. Mehul Sheth	9820297310

TOPICS	SPEAKERS
Inauguration	Shri S. W. Naqvi
Introduction & Overview	CA. Dilip Shah
Case studies under PMLA	CA. Rashmin Sanghvi
Regulatory Issues & importance of KYC	Shri Vikas Tandon
Conducting/supporting investigation process– Departmental Perspective	Shri D. K. Sinha



Forthcoming Events

03
CPE HRS

Half Day Seminar on Take Charge of Your Career for CAs

Other

DAY & DATE	THURSDAY, 27TH MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	5.00 p.m. to 8.00 p.m.	
Fees	₹ 500/-	
Chief Co-ordinators	CA. Shruti Shah CA. Subodh Kedia (Regional Council Members)	9892407988 9879267750
Co-ordinators	CA. Shantesh Warty CA. Viral Chheda	9819947969 9833594045

TOPIC	SPEAKER
Concept: Great Careers Don't just Happen. You must have a road map to your growth plan.	CA. Mayur Chokshi

03
CPE HRS

Half Day Seminar on Labour Laws

Corporate Law

DAY & DATE	FRIDAY, 28TH MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	5.00 p.m. to 8.00 p.m.	
Fees	₹ 500/-	
Chief Co-ordinators	CA. Sunil Patodia CA. Sarvesh Joshi (Regional Council Members)	9820344085 9822022292
Co-ordinators	CA. Abhijit Totade CA. Bipeen Mundade	9819659151 9223290561

TOPICS & SPEAKER
• Employees State Insurance Act (ESIS), 1948 • Employees Provident Funds & M. P. Act (PF) 1952 • Payment of Bonus Act 1965 • Payment of Gratuity Act 1972 • Mumbai Labour Welfare Fund Act 1953 – CA. R. L. Soni

06
CPE HRS

Seminar on Project Finance

Finance

DAY & DATE	SATURDAY, 26TH APRIL, 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 9.30 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Sushrut Chitale CA. Sandeep Jain CA. Vishnu Agarwal (Regional Council Members)	9821112904 9819788099 9833310916
Co-ordinators	CA. Amol Kamat CA. Shrikant Mundhra CA. Jignesh Vora	9823018763 9029629384 9819321123

TOPICS	SPEAKERS
Innovative Tools for Funding	CA. Sanjay Agrawal
Ratio Analysis	Eminent Faculty
Corporate Debt Restructuring	Eminent Faculty
Value Creation through Merger & Acquisition	Eminent Faculty

03
CPE HRS

Half Day Seminar on Recent Pronouncement under Service Tax

Indirect Tax

DAY & DATE	WEDNESDAY, 26TH MARCH, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	5.00 p.m. to 8.00 p.m.	
Fees	₹ 500/-	
Chief Co-ordinators	CA. Neel Majithia CA. Dilip Apte (Regional Council Members)	9820327660 9823244383
Co-ordinators	CA. Vinay Mulye CA. Prashant Koyande	9820140710 9892331890

TOPIC	SPEAKER
Recent Pronouncement under Service Tax	CA. Rajiv Luthia

Students Section

Organising Crash Courses & One day Programmes for CA Students for May 2014 Exam.

DAYS & DATES	MONDAY, 14TH, TUESDAY, 15TH & WEDNESDAY, 16TH APRIL, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	9.00 a.m. to 3.30 p.m.	
Fees	₹ 1,000/-	
Chief Co-ordinators	CA. Satyanarayan Mundada Chairman, WICASA CA. Mahesh Madkholkar (Regional Council Member)	9422080814 9820075966
Co-ordinators	Mr. Sumit Rathi Mr. Anshul Agarwal Mr. Swapnil Surolia	8898242257 8879022637 9022232197

TOPIC	SPEAKER
Forex Derivatives & Valuation for CA Final	Smt. Archana Khetan

DAYS & DATES	MONDAY, 28TH, TUESDAY, 29TH & WEDNESDAY, 30TH APRIL, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	9.00 a.m. to 2.00 p.m.	
Fees	₹ 1,000/-	
Chief Co-ordinators	CA. Satyanarayan Mundada Chairman, WICASA CA. Mahesh Madkholkar (Regional Council Member)	9422080814 9820075966
Co-ordinators	Mr. Sumit Rathi Mr. Swapnil Surolia Mr. Swapnil Kolte	8898242257 9022232197 9819988177

TOPIC	SPEAKER
Costing for CA Final	CA. Dani Khandelwal

DAYS & DATES	MONDAY, 28TH, TUESDAY, 29TH & WEDNESDAY, 30TH APRIL, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	2.30 p.m. to 7.30 p.m.	
Fees	₹ 1,000/-	
Chief Co-ordinators	CA. Satyanarayan Mundada Chairman, WICASA CA. Mahesh Madkholkar (Regional Council Member)	9422080814 9820075966
Co-ordinators	Mr. Sumit Rathi Mr. Anshul Agarwal Mr. Deepak Mehta	8898242257 8879022637 9664063109

TOPIC	SPEAKER
Indirect Taxes for CA Final	CA. Yashwant Mangal

06

MARCH 2014

Western India Chartered Accountants Newsletter

List of Committees of Western India Regional Council for 2014-15

Standing Committees



	Executive	Professional Development	Public Relations	Student	Career Counselling
Chairman	CA. Anil Bhandari	CA. Sunil Patodia	CA. Sandeep Jain	CA. S. G. Mundada	CA. Vishnu Agarwal
Convenor	CA. Shruti Shah	CA. Parag Raval	CA. Neel Majithia	CA. Mahesh Madkholkar	CA. Sarvesh Joshi
Office Bearers	CA. Julfesh Shah CA. Girish Kulkarni	CA. Anil Bhandari CA. Julfesh Shah	CA. Anil Bhandari CA. Shruti Shah	CA. Anil Bhandari CA. Girish Kulkarni CA. Julfesh Shah	CA. Anil Bhandari CA. Julfesh Shah
Regional Council Members	CA. Dilip Apte CA. Shardul Shah CA. Sunil Patodia CA. Mangesh Kinare CA. Hardik Shah	CA. Priti Savla CA. Priyam Shah CA. Vishnu Agarwal CA. Mangesh Kinare	CA. Parag Raval CA. Sushrut Chitale CA. Sarvesh Joshi CA. Subodh Kedia	CA. Priti Savla CA. Sandeep Jain CA. Hardik Shah	CA. Abhishek Nagori CA. Subodh Kedia CA. S. G. Mundada
Central Council Members (Ex-Officio)	CA. S. B. Zaware	CA. Pankaj Jain	CA. Nilesh Vikamsey	CA. Prafulla Chhajed	CA. Jay Chhaira

Non-Standing Committees

	Accounting Standards for Local Bodies	Banking, Insurance & Pension	Branch Co-ordination	Capacity Building	Co-op. Society (Maharashtra)
Chairman	CA. Sarvesh Joshi	CA. Dilip Apte	CA. Julfesh Shah	CA. Subodh Kedia	CA. Girish Kulkarni
Convenor	CA. Parag Raval	CA. Priyam Shah	CA. Girish Kulkarni	CA. Sandeep Jain	CA. Sushrut Chitale
Office Bearers	CA. Girish Kulkarni CA. Julfesh Shah	CA. Anil Bhandari CA. Julfesh Shah	CA. Anil Bhandari CA. Shruti Shah	CA. Julfesh Shah	CA. Julfesh Shah
Regional Council Members	CA. Sushrut Chitale CA. Dhiraj Khandelwal CA. Sandeep Jain	CA. Sunil Patodia CA. Neel Majithia CA. Abhishek Nagori	CA. Hardik Shah CA. Mangesh Kinare CA. Mahesh Madkholkar	CA. Parag Raval CA. Sunil Patodia CA. Priyam Shah CA. Sarvesh Joshi	CA. Mangesh Kinare CA. Neel Majithia CA. Mahesh Madkholkar CA. S.G. Mundada
Central Council Members (Ex-Officio)	CA. Dhinal Shah	CA. Shrinivas Joshi	CA. Pankaj Jain	CA. Nihar Jambusaria	CA. S. B. Zaware

	Co-op. Society (Gujarat)	Corporate & Allied Laws	CPE	Taxation	Editorial
Chairman	CA. Subodh Kedia	CA. Mangesh Kinare	CA. Hardik Shah	CA. Priyam Shah	CA. Anil Bhandari
Convenor	CA. Hardik Shah	CA. Sushrut Chitale	CA. Vishnu Agarwal	CA. Mangesh Kinare	CA. Shruti Shah
Office Bearers	CA. Shruti Shah CA. Girish Kulkarni	CA. Julfesh Shah	CA. Anil Bhandari	CA. Anil Bhandari CA. Julfesh Shah	CA. Julfesh Shah CA. Girish Kulkarni
Regional Council Members	CA. Parag Raval CA. Priyam Shah CA. Abhishek Nagori	CA. Parag Raval CA. Priti Savla CA. Shardul Shah CA. Sarvesh Joshi	CA. S.G. Mundada CA. Neel Majithia CA. Subodh Kedia CA. Shardul Shah	CA. Priti Savla CA. Hardik Shah CA. Sandeep Jain	CA. Mangesh Kinare CA. Priyam Shah CA. Hardik Shah CA. Neel Majithia
Central Council Members (Ex-Officio)	CA. Dhinal Shah	CA. Nilesh Vikamsey	CA. Prafulla Chhajed	CA. Rajkumar Adukia	CA. Sanjeev Maheshwari

	Exposure Draft	FMIP	GMCS Co-Ordination	Grievances	Hostel
Chairman	CA. Sushrut Chitale	CA. Abhishek Nagori	CA. Mangesh Kinare	CA. Hardik Shah	CA. Mahesh Madkholkar
Convenor	CA. Shardul Shah	CA. Sunil Patodia	CA. Sandeep Jain	CA. Sarvesh Joshi	CA. Sunil Patodia
Office Bearers	CA. Julfesh Shah CA. Girish Kulkarni	CA. Anil Bhandari	CA. Anil Bhandari CA. Girish Kulkarni	CA. Shruti Shah CA. Girish Kulkarni	CA. Julfesh Shah CA. Shruti Shah
Regional Council Members	CA. Priyam Shah CA. Dhiraj Khandelwal CA. Sarvesh Joshi	CA. Dilip Apte CA. Sushrut Chitale CA. Subodh Kedia CA. Dhiraj Khandelwal	CA. Priti Savla CA. Mahesh Madkholkar CA. Hardik Shah	CA. S.G. Mundada CA. Parag Raval CA. Priyam Shah	CA. Dhiraj Khandelwal CA. Vishnu Agarwal CA. S.G. Mundada
Central Council Members (Ex-Officio)	CA. Rajkumar Adukia	CA. Jay Chhaira	CA. NiharJambusaria	CA. Tarun Ghia	CA. Shrinivas Joshi



	IND AS (IFRS) Implementation	Information Technology	Internal Audit	Library	Management Accounting	Members in Industry
Chairman	CA. Parag Raval	CA. Shardul Shah	CA. Priti Savla	CA. Shruti Shah	CA. Sandeep Jain	CA. Dhiraj Khandelwal
Convenor	CA. Sarvesh Joshi	CA. Girish Kulkarni	CA. Mahesh Madkholkar	CA. Mangesh Kinare	CA. Subodh Kedia	CA. Dilip Apte
Office Bearers	CA. Shruti Shah CA. Julfesh Shah	CA. Anil Bhandari CA. Shruti Shah	CA. Anil Bhandari	CA. Anil Bhandari	CA. Julfesh Shah CA. Girish Kulkarni	CA. Anil Bhandari CA. Shruti Shah
Regional Council Members	CA. Dilip Apte CA. Sushrut Chitale CA. Abhishek Nagori CA. Dhiraj Khandelwal	CA. Neel Majithia CA. Priti Savla CA. Abhishek Nagori	CA. Vishnu Agarwal CA. Mahesh Madkholkar CA. Dilip Apte CA. Sushrut Chitale CA. Sandeep Jain	CA. Mahesh Madkholkar CA. Sunil Patodia CA. Priyam Shah CA. Sarvesh Joshi CA. S.G. Mundada	CA. Hardik Shah CA. Dhiraj Khandelwal CA. Sarvesh Joshi	CA. Priti Savla CA. Sunil Patodia CA. Neel Majithia
Central Council Members (Ex-Officio)	CA. Rajkumar Adukia	CA. Nihar Jambusaria	CA. Shriniwas Joshi	CA. Tarun Ghia	CA. Nilesh Vikamsey	CA. Tarun Ghia

	Public Finance & Govt. Accounting	Research	Study Circle Co-ordination	WICASA	Women Empowerment	Young Member Empowerment
Chairman	CA. Sushrut Chitale	CA. Parag Raval	CA. Mahesh Madkholkar	CA. S. G. Mundada	CA. Priti Savla	CA. Neel Majithia
Convenor	CA. Abhishek Nagori	CA. Dhiraj Khandelwal	CA. Neel Majithia		CA. Parag Raval	CA. Hardik Shah
Office Bearers	CA. Julfesh Shah CA. Girish Kulkarni	CA. Anil Bhandari CA. Girish Kulkarni	CA. Julfesh Shah CA. Shruti Shah		CA. Anil Bhandari CA. Shruti Shah	CA. Anil Bhandari CA. Shruti Shah
Regional Council Members	CA. Mangesh Kinare CA. Subodh Kedia CA. Vishnu Agarwal	CA. Subodh Kedia CA. Sushrut Chitale CA. Abhishek Nagori	CA. Subodh Kedia CA. Vishnu Agarwal CA. Sandeep Jain	CA. Priti Savla CA. Vishnu Agarwal	CA. Subodh Kedia CA. Shardul Shah CA. Dhiraj Khandelwal	CA. Abhishek Nagori CA. Vishnu Agarwal CA. Sandeep Jain
Central Council Members (Ex-Officio)	CA. Dhinal Shah	CA. Sanjeev Maheshwari	CA. Sanjeev Maheshwari		CA. Jay Chhaira	CA. Prafulla Chhajed

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- For BANKS

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- Preferably with exposure in audit of FMCG companies

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- Handling management accounting and advance analytics of each line items of P/L with cuts for category, formats & brands
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The candidate will also get an opportunity to work on various live projects providing experience closer to ground realities.

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Forthcoming Branch Meetings



Date	Time	Subject(s)	Speaker(s)	Venue
BARODA				
30/03/2014	10.00 a.m.	Full Day Seminar on Bank Branch Audit Expectation of Central Statutory Auditor from the Branch Auditor & recent circulars Advances & Case Studies Use of Technology (CBS) in Statutory Bank Branch audit Effective reporting including LFAR & practical issues related to Statutory Bank Branch audit	CA. Shrinivas Joshi CA. Amarjit Chopra CA. Kuntal Shah CA. Mayur Swadia	ICAI Bhawan, Kalali – Tandajla Road, Atladara, Baroda
GOA				
22/03/2014	9.00 a.m.	Seminar on Bank Branch Audit	—	—
JAMNAGAR				
22/03/2014	4.00 p.m. 6.00 p.m.	Discussion on Case Laws under Income Tax Drafting and Pleading of Appeals	CA. Bhavin Shah Eminent Faculty	CA. Dilip H. Vadodaria Seminar Hall
29/03/2014	4.00 p.m. 6.00 p.m.	Recovery of Taxes and penalties Interpretation of Taxing Statutes	CA. Ravi Tanna CA. Bhavik Dholakia	CA. Dilip H. Vadodaria Seminar Hall
NAGPUR				
23-24/03/2014		Branch Orientation Programme	—	WIRC
29/03/2014	4.30 p.m.	Half day Seminar	Eminent speakers	ICAI Bhavan
VAPI				
22/03/2014	4.00 p.m.	Case studies in Direct Taxes	CA. Sumit Doshi	

Forthcoming Study Circle Meetings



Date & Day	Time	Subject(s)	Speaker(s)	Venue	Organised by / Convenor / Tel. No.
20/03/2014 Thursday	5.30 p.m.	Bank Branch Audit under Computer Environment	CA. Kuntal P. Shah	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
22/03/2014 Saturday	6.00 p.m.	Bank Branch Audit	CA. Hemant Mehta	4th Floor, New SNTD College, Bhuriben, Cama Lane, Ghatkopar (W)	Ghatkopar CPE Study Circle CA. Hemang Shah M: 9223273189
23/03/2014 Sunday	8.30 a.m.	Seminar on Statutory Bank Branch Audit	Eminent Faculty	Shubha Mangal Hall, Opp. Dombivli Station (E)	Dombivli CPE Study Circle CA. Shekhar Patwardhan M: 9930232717
23/03/2014 Sunday	8.45 a.m.	Introduction and Overview of Prevention of Money Laundering Act Issues in Assessment of Builders and Developers under MVAT Act	CA. Shardul Shah CA. Harsh Bajaj	Hotel Kohinoor, Andheri-Kurla Road, J. B. Nagar, Andheri (E)	J. B. Nagar CPE Study Circle CA. N. M. Bansal M: 9322338652
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
28/03/2014 Friday	5.30 p.m.	VAT and Service Tax Implications on Hotel Industry	CA. Jimil B. Shah	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
29/03/2014 Saturday	5.30 p.m.	Bank Branch Audit Audit Planning, Audit documentation and understanding various reports in CBS environment Audit of Advances, IRAC norms, LFAR reporting and other certification	CA. Manish Sampat CA. Suresh Agaskar CA. Shrinivas Joshi	Shyam Kunj Haveli Hall, Chandavarkar Road, Borivali (W)	Borivali (Central) CPE Study Circle CA. Giriraj Khandelwal M: 9820344999
06/04/2014 Sunday	8.45 a.m.	AGM Service Tax Return, Registration, Payment etc.	CA. Sumit Jhunjhunwala	Hotel Kohinoor, Andheri-Kurla Road, J. B. Nagar, Andheri (E)	J. B. Nagar CPE Study Circle CA. N. M. Bansal M: 9322338652
06/04/2014 Sunday	9.30 a.m.	Amendments to Rule 58 for Builders under MVAT Act Set Off under MVAT Act	CA. Deepak Thakkar CA. Dilip Phadke	Bhatia Wadi, Opp. Veer Savarkar Udyan, T.P.S. Road, Borivali (W)	Borivali (Central) CPE Study Circle CA. Giriraj Khandelwal M: 9820344999
13/04/2014 Sunday	9.30 a.m.	Controversies relating to Composite contracts w.r. to MVAT / Service Tax (Except Real Estate Developers) Controversies relating to Composite contracts w.r. to MVAT / Service Tax (Except Real Estate Developers)	CA. Janak Waghani CA. Sunil Gabhawalla	Bhatia Wadi, Opp. Veer Savarkar Udyan, T.P.S. Road, Borivali (W)	Borivali (Central) CPE Study Circle CA. Giriraj Khandelwal M: 9820344999
20/04/2014 Sunday	9.30 a.m.	Preparing for Peer Review and Keeping of Audit Records	CA. Abhay Arolkar	Seminar Room, Sthanikraj Bhavan, C. D. Barfiwala Marg, Andheri (W)	Andheri (West) CPE Study Circle CA. Anand Desai M: 7666414500
20/04/2014 Sunday	9.45 a.m.	Study Group Meet on Issues in Adoption of IFRS	CA. Bhaskar R. Iyer	Vrundas Veg., Near Ajanta Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Giriraj Khandelwal M: 9820344999



E-SAHAYATAA

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

Online Registration Portal for ITT, OP and GMCS Courses

Board of Studies and IT Directorate of ICAI jointly have developed "Online Registration Portal for GMCS, ITT and Orientation Programmes" for Registration/Allocation of Batches for ITT, OP and GMCS courses to facilitate the students to register themselves from anywhere anytime for any training centre of ICAI across India. The online portal consists of 4 modules namely "Student Module", "Faculty Module", "POU Module" and "HO Admin Module".

Tax Audit Limit increased from 45 to 60 for audits conducted during the Financial Year 2014-15 and onwards

In view of the enhancement of professional competence of members to perform quality services in an IT-enabled environment, the Council has decided to increase the "specified number of tax audit assignments" for practicing Chartered Accountants, as an individual or as a partner in a firm, from 45 to 60. The said limit will be effective for the audits conducted during the Financial Year 2014-15 and onwards.

2014 Guidance Note on Audit of Banks released by Auditing and Assurance Standards Board

The Auditing and Assurance Standards Board of the Institute of Chartered Accountants of India has today issued Guidance Note on Audit of Banks 2014 edition. For the benefit of members, complete text of the Guidance Note along with the accompanying appendices etc. can be downloaded at:

- Guidance Note on Audit of Banks (2014 Edition)
- Contents of accompanying CD

ICAI launches "ICAI Knowledge Gateway", Knowledge Management Portal (3/3/2014)

The portal aims at providing you a destination for e-resources. It offers you latest books, articles, journals that has been subscribed by the ICAI on behalf of the students and the members. We encourage your feedback for betterment of the system in future.

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Keeping with the latest trends and technologies, ICAI introduces revolutionary services that will help all its members, students and other stakeholders access vital information from wherever, whenever. ICAI App – the Free Mobile Application and ICAI Knowledge Management Portal.

ANNOUNCEMENT

Restoration of Membership / Certificate of Practice for the Year 2013-14

It is just a gentle reminder that the last date for retrospective restoration of Associate/Fellow Membership and Certificate of Practice is 31st March, 2014.

Members whose Membership/COP has been removed/cancelled due to non-payment of Fee by 30th September, 2013 are requested to apply for retrospective restoration by remitting applicable Membership Fee/COP Fee along with Restoration Fee and Form-9, so that it may reach to the concerned Regional Office of the Institute latest by 31st March, 2014 positively.

The facility for online payment of Fee for Membership/COP and Restoration is available on:

Form for Renewal of Membership:
http://220.227.161.86/8593form%209_final.pdf

Online payment of Membership Fees:
<http://www.icai.org/memfee2.html>

For details please visit ICAI Website : www.icai.org

MC&MSS Section
ICAI

WIRC - AWARDS 2013

WIRC AWARDS TO BRANCHES OF WIRC

- 1) Best Branch of WIRC**

Very Large Branches Category	Ahmedabad Branch
Large Branch Category	Baroda & Nagpur Branches Jointly
Medium Branch Category	Pimpri Chinchwad & Aurangabad Branches Jointly
Small Branch Category	Jalgaon & Jamnagar Branches Jointly
- 2) Highly commendable performance**

Extra Large Branches Category	Pune & Thane Branches Jointly
Large Branch Category	Vasai & Surat Branches Jointly
Medium Branch Category	Rajkot & Nashik Branches Jointly
Small Branch Category	Anand & Goa Branches Jointly
- 3) Certificate for Best Concept paper**

	Goa Branch
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- 4) Certificate for Unique Activity**

	Baroda Branch
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WIRC AWARDS TO WICASA OF WIRC

- 1) Best Branch of WIRC**

Mega Branch Category	Ahmedabad & Surat Branches of WICASA Jointly
Large Branch Category	Nagpur & Baroda Branches of WICASA Jointly
Medium Branch Category	Aurangabad Branch of WICASA
Small Branch Category	Jamnagar Branch of WICASA
- 2) Highly commendable performance**

Mega Branch Category	Pune & Thane Branches of WICASA Jointly
Large Branch Category	Vasai Branch of WICASA
Medium Branch Category	Nashik Branch of WICASA
Small Branch Category	Ahmednagar Branch of WICASA

WIRC AWARDS TO CPE STUDY CIRCLE OF WIRC

Within Mumbai

- 1) Best CPE Study Circle of WIRC**

Large CPE Study Circle Category	Borivali (Central) & J. B. Nagar CPE Study Circle Jointly
Medium CPE Study Circle Category	Ghatkopar & Mulund CPE Study Circle Jointly
Small CPE Study Circle Category	Andheri (West) CPE Study Circle
- 2) Highly commendable performance**

Medium CPE Study Circle Category	Borivali Kandivali (East) CPE Study Circle
Small CPE Study Circle Category	Chembur & Kalbadevi CPE Study Circle Jointly

Outside Mumbai

- 1) Best CPE Study Circle of WIRC**

Large CPE Study Circle Category	Ellisbridge CPE Study Circle
Small CPE Study Circle Category	Gandhigram & Pune City CPE Study Circle Jointly
- 2) Highly commendable performance**

Large CPE Study Circle Category	Pune Camp CPE Study Circle
Small CPE Study Circle Category	Navjivan CPE Study Circle
- 3) Special Recognition for concept paper**

	J. B. Nagar CPE Study Circle
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- 4) Certificate of Appreciation – BFSI & Capital Market Study Group**



DIRECT TAX

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

SECTION 119 OF THE INCOME-TAX ACT, 1961 – INCOME-TAX AUTHORITIES – INSTRUCTIONS TO SUBORDINATE AUTHORITIES – DEDUCTION AT SOURCE – CLARIFICATION REGARDING TDS UNDER CHAPTER XVII-B ON SERVICE TAX COMPONENT COMPRISED IN PAYMENTS MADE TO RESIDENTS {220 TAXMANN (ST.) 41}

CIRCULAR NO. 1/2014 [F. NO. 275/59/2012-IT(B)], DATED 13/1/2014

The Board had issued a Circular No. 4/2008 dated 28/4/2008 wherein it was clarified that tax is to be deducted at source under section 194-I of the Income-tax Act, 1961 (hereafter referred to as 'the Act'), on the amount of rent paid/payable without including the service tax component. Representations/letters has been received seeking clarification whether such principle can be extended to other provisions of the Act also.

Attention of CBDT has also been drawn to the judgment of the Hon'ble Rajasthan High Court dated 1/7/2013, in the case of *CIT (TDS) Jaipur vs. Rajasthan Urban Infrastructure (Income-tax Appeal Nos. 235, 222, 238 and 239/2011)*, holding that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and was not included in the fees for professional services or technical services, no TDS is required to be made on the service tax component u/s 194J of the Act.

The matter has been examined afresh. In exercise of the powers conferred under section 119 of the Act, the Board has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B of the Act on the amount paid/payable without including such service tax component.

INCOME-TAX (FIRST AMENDMENT) RULES, 2014 – AMENDMENT IN RULE 44CA {220 TAXMANN (ST.) 41}

NOTIFICATION NO. 5/2014 [F. NO. 142/32/2013-TPL]/SO 108(E), DATED 15/1/2014

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called Income-tax (1st Amendment) Rules, 2014.
- (2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Income-tax Rules, 1962, in rule 44CA, –
 - (a) In sub- rule (1), for the bracket and words "(other than the Annexure and the statements)", the bracket and words "(including the Annexure and the statements)" shall be substituted;
 - (b) For sub-rule (2), the following sub-rules shall be substituted, namely:-

"(2) Where an application has not been declared invalid under sub-section (2C) of section 245D or an application has been allowed to be further proceeded with under sub-section (2D) of that section, all the material and other information produced by the assessee before the Settlement Commission shall be sent to the Commissioner to enable him to furnish the report under sub-section (3) of section 245D.

(3) Where the proceeding before the Settlement Commission abates, the Commission shall send, all the material and other information produced by the assessee before the Commission and the results of any enquiry held or evidence recorded in the course of proceedings before it, to the Commissioner."

SECTION 139A OF THE INCOME-TAX ACT, 1961 – PERMANENT ACCOUNT NUMBER – PROCEDURE FOR PAN ALLOTMENT – DECISION TO CHANGE PROCEDURE FOR PAN ALLOTMENT HAS BEEN KEPT IN ABEYANCE AND OLD PROCEDURE THEREOF TO CONTINUE TILL FURTHER ORDERS {221 TAXMANN (ST.) 2}

CBDT PRESS RELEASE, DATED 30/1/2014

The CBDT has decided to keep in abeyance the decision to change the procedure for PAN allotment till further orders. Accordingly the operation of circular No. 11 dated 16/1/2014 issued to PAN service providers has been directed to be put on hold till further orders. In the meantime the old procedure of PAN application and allotment shall continue.

SECTION 143 OF THE INCOME-TAX ACT, 1961 – ASSESSMENT – GENERAL – NON-FILING OF ITR-V IN RETURNS WITH REFUND CLAIMS – RELAXATION OF TIME-LIMIT FOR FILING ITR-V AND PROCESSING OF SUCH RETURNS

CIRCULAR NO. 4/2014 [F. NO. 225/198/2013-ITA.II], DATED 10/2/2014

Central Board of Direct Taxes, in exercise of powers under section 119(2) (a) of the Act, hereby further relaxes and extends the date for filing ITR-V Form for Assessment Years 2009-10, 2010-11 and 2011-12 till 31/3/2014 for returns e-filed with refund claims within the time allowed under section 139 of the Act. The taxpayer concerned may send a duly signed copy of ITR-V to the CPC by this date by speed post in such cases. Central Board of Direct Taxes also relaxes the time-frame of issuing the intimation as provided in second proviso to sub-section (1) of section 143 of the Act, and directs that such returns shall be processed within a period of six months from end of the month in which ITR-V is received and the intimation of processing of such returns shall be sent to the assessee concerned as per laid down procedure.

SECTION 14A OF THE INCOME-TAX ACT, 1961, READ WITH RULE 8D OF THE INCOME-TAX RULES, 1962 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME – CLARIFICATION ON DISALLOWANCE OF EXPENSES UNDER SECTION 14A IN CASES WHERE CORRESPONDING EXEMPT INCOME HAS NOT BEEN EARNED DURING THE FINANCIAL YEAR

CIRCULAR NO. 5/2014 [F. NO. 225/182/2013-ITA.II], DATED 11/2/2014

Central Board of Direct Taxes, in exercise of its powers under section 119 of the Act hereby clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income

MAHARASHTRA VAT

(Contributed by CA. C. B. Thakar)

MAVT ACT, 2002

Notification

The Government of Maharashtra has issued Notification dated 13/1/2014 under section 9 (1) whereby entry D-11 is amended to add certain more areas.

MVAT Rules, 2005

By Notification dated 29/1/2014, the Government of Maharashtra has amended Rules, amongst others, to provide rules for taxation of developers and builders.

Circular

The Commissioner of Sales Tax has issued Circular 5T of 2014 dated 6/2/2014, by which suggestions are invited for modification etc. in the automation system.

CORPORATE LAWS

(Contributed by CA. Rahul Joglekar)

MCA General Circular No. 3/2014 dated 14th February 2014 – Clarification with regard to Section 185 of the Companies Act, 2013

Section 372A of the Companies Act, 1956 specifically exempts any loans made, any guarantee given or security provided or any investment made by a holding company to its wholly owned subsidiary. Whereas, Section 185 of the Act prohibits guarantee given or any security provided by a holding company in respect of any loan taken by its subsidiary company except in ordinary course of business. In order to maintain harmony with regard to applicability of Section 372A and Section 185, the MCA has clarified that any guarantee given or security provided by a holding company in respect of loans made by a bank or financial institution to its subsidiary company, exemption as provided in clause (d) of sub section (8) of Section 372A shall be applicable till Section 186 of the Act is notified. This clarification shall be applicable only in cases where the loans so obtained are utilised for the principal business activities. For the complete text of this circular please refer to the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_3_2014.pdf



MCA General Circular No. 2/2014 dated 11th February 2014 – Use of word ‘National’ in the names of Companies or Limited Liability Partnerships (LLPs)

The MCA has directed that no company should be allowed to be registered with the word ‘National’ as part of its title unless it is a government company and the Central/State government(s) has a stake in it. Similarly, the word ‘Bank’ may be allowed in the name of an entity only when such entity produces a ‘No Objection Certificate’ from the RBI in this regard. By the same analogy the word “stock Exchange” or “Exchange” should be allowed in name of a company only where ‘No Objection Certificate’ from SEBI in this regard is produced by the promoters.

For the complete text of this circular please refer the link: http://www.mca.gov.in/Ministry/pdf/General_Circular_2_2014.pdf

MCA Notification No. – S.O(E) – Notification relating to effective date of provisions of section 135 and Schedule VII of Companies Act, 2013

In exercise of the powers conferred by sub-section (3) of section (1) of the Companies Act, 2013, the Central Government has appointed the 1st day of April, 2014 as the date on which the provisions of Section 135 and Schedule VII of the said Act shall come into force.

MCA Notification No. – G.S.R.(E) – Notification relating to Companies (Corporate Social Responsibility Policy) Rules, 2014 and Amendments to Schedule VII of the Companies Act, 1956

The MCA has notified that the Companies (Corporate Social Responsibility) Rules, 2014 shall come into force from the 1st day of April 2014. Various terms such as Corporate Social Responsibility (CSR), CSR Committee, CSR Policy, CSR Activities, Net Profit have been defined and explained in the notification. The notification also specifies a format for the Annual Report on CSR Activities to be included in the Board’s Report. The MCA has also made certain amendments in Schedule VII for the items (i) to (x). For the complete text of these regulations please refer the link: http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification2_2014.pdf and http://www.mca.gov.in/Ministry/pdf/CompaniesActNotification3_2014.pdf

SEBI Notification No. LAD-NRO/GN/2013-14/44/226 dated 4th February 2014 – SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2014

SEBI has notified the aforesaid regulation w.e.f 4th February 2014 wherein certain amendments made in regulation 26, sub-regulation (7) stated that an issuer making an IPO may obtain grading for such offer from one or more credit rating agencies registered with the Board. The SEBI has also notified certain changes to the Illustrative format of Statement of Assets and Liabilities in sub-para (IX), clause (B), sub-clause (9), item (f). For the complete text of these regulations please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1391509221289.pdf

SEBI Circular No. – CIR/MRD/DMS / 05 /2014 dated 7th February, 2014 – Guidelines for inspection of Depository Participants (DPs) by Depositories

The SEBI has constituted Depository System Review Committee (DSRC) to undertake a comprehensive review of the depository system of Indian Securities market. Considering the recommendations of the committee, it has been decided that depositories shall ensure the following while inspecting their DPs – Inspection Areas and Sample Size, Categorisation / Risk Rating of DPs and other requirements. The circular also lays down detailed guidelines regarding List of Inspection Areas, Adaptive Sample Size Determination methodology and DP Rating / Categorisation Model. For the complete text of these regulations please refer the link: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1391764467092.pdf

CENTRAL EXCISE (Contributed by CA. Jayesh Gogri)

Notifications

Tariff Notifications

Change in rates of duty levied on the basis of production capacity in case of pan masala with and without tobacco and change in duty ratio:

In respect of certain specified goods, the duty is levied on the basis of production capacity. Accordingly, (i) pan masala falling under tariff heading 21069020 of the First Schedule to the Central Excise Tariff Act, 1985 except the pan masala containing not more than 15% betel nut and (ii)

pan masala containing tobacco, commonly known as gutkha, falling under tariff heading 24039990 manufactured with the aid of packing machine, are leviable to duty based on packing machines *vide* Notification No. 42/2008-CE dated 1st July 2008. The Notification is amended to increase the rates of duty.

(Notification No. 1/2014-CE dated 24/1/2014)

Change in rates of duty levied on the basis of production capacity in case of branded unmanufactured tobacco and chewing tobacco and change in duty ratio

In respect of certain specified goods, the duty is levied on the basis of production capacity. Accordingly, (i) branded unmanufactured tobacco falling under tariff heading 2401 of the First Schedule to the Central Excise Tariff Act, 1985 and (ii) chewing tobacco falling under tariff heading 24039910, manufactured with the aid of packing machine, are leviable to duty based on packing machines *vide* Notification No. 16/2010-CE dated 27th February, 2010. The Notification is amended to increase the rates of duty.

(Notification No. 2/2014-CE dated 24/1/2014)

Exemptions provided to Dicalcium Phosphate (DCP) of animal feed and Railway or tramway track construction material of iron and steel

Notification No. 12/2012-CE dated 17th March, 2012 exempts specified excisable goods fully or partially subject to fulfilment of certain conditions. The said notification is amended to provide exemption from Central Excise Duty to following goods subject to following condition:

Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate
28	Dicalcium Phosphate (DCP) of animal feed grade conforming to IS specification No. 5470:2002	NIL
7302 or 8530	Railway or tramway track construction material of iron and steel. Explanation – For the purposes of this exemption, the value of the goods shall be the value of goods excluding the value of rails	12%*

*If manufactured out of rails on which duty of excise has been paid and no credit of duty paid on such rails has been taken under Rule 3 or Rule 13 of the CENVAT Credit Rules, 2004.

(Notification No. 3/2014-CE dated 3/2/2014)

Expansion of the list of exemption of excisable goods from excise duty, subject to the conditions annexed to the notification, if any specified and addition and deduction in few goods excisable under Central Excise

Notification No. 12/2012-CE dated 17th March, 2012 exempts specified excisable goods fully or partially subject to fulfilment of certain conditions. The said notification is amended through interim budget 2014-15. Accordingly, following amendments have been made:

- Unconditional exemption was provided to mobile handsets including cellular phones with effect from 1st March, 2013. Accordingly, in case of mobile handsets including cellular phones where Retail Sale Price (RSP) exceeds ₹ 2,000/-, the concessional rate of duty was 6% and in case of other mobile handsets including cellular phones, the concessional rate of duty was 1%. Now, the said exemption is being amended to provide that all mobile handsets including cellular phones can be removed at a concessional rate of duty of 1% subject to the condition that CENVAT Credit is not availed in respect of inputs or capital goods used in the manufacture of these goods. In cases where CENVAT Credit is taken, unconditional exemption survives and goods would be leviable to Basic Excise Duty @ 6%.
- Sports Utility Vehicles, which after clearance, have been registered for use solely as taxi were leviable to Excise Duty @ 72% of the Excise Duty paid at the time of clearance subject to fulfilment of specified condition. Now, the rate of duty has been increased to 80% of the Excise Duty paid at the time of clearance.
- Various goods are granted exemption under this Mega Exemption Notification majorly to give relief to automobile industry. All these exemptions are given for the limited period ending on 30th June, 2014.
- All machineries, including prime movers, instruments, apparatus and appliances, control gear and transmission equipments, power cables,



auxiliary equipments, all components or raw materials for manufacture of said goods and their components, supplied to specified Mega Power Projects from which the supply of power has been tied up through tariff based competitive bidding or Mega Power Projects awarded to developer on the basis of such bidding, were granted full exemption subject to specified conditions. One of such condition was that the developer should furnish the final Mega Power Status Certificate within a period of 36 months from the date of clearance of excisable goods, now the said limit has been increased to 60 months, failing which, the security shall be appropriated towards Excise Duty payable on such clearances which is not paid due to this exemption.

(Notification No. 4/2014-CE dated 17/2/2014)

Amendment 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) and IEIS on annual basis. However, certain categories of exports were specifically listed which shall not be counted for calculation of export performance or for computation of entitlement under the said Schemes. The list for ineligible categories of exports for IEIS on annual basis is now amended to exclude Cotton Yarn export i.e. now Cotton Yarn exports can be counted for calculation of export performance or for computation of entitlement under IEIS on annual basis.

(Notification No. 5/2014-CE dated 24/2/2014)

Non-tariff Notifications

Fixing tariff value for beauty or make-up preparations and preparations for the care of the skin

Beauty or make up preparations and preparations for the care of the skin falling under Tariff ID 3304 of the Central Excise Tariff Act, 1985, are valued at MRP less abatement provided it falls within the purview of Section 4A of the Central Excise Act, 1944. Till now, all goods not satisfying conditions under Section 4A were levied to Central Excise Duty at transaction value. Now, Central Government has fixed tariff value on such goods. Accordingly, hitherto, beauty or make up preparations and preparations for the care of the skin falling under Tariff ID 3304 in retail packages would be leviable to Central Excise Duty on tariff value = Retail Sales Price (RSP) less abatement *vide* Notification No. 49/2008-CE (NT) dated 24th December 2008. Further, RSP and retail packages are defined as under:

Retail Sale Price

'Retail Sale Price' means the maximum price at which the excisable goods in packaged form may be sold to the **ultimate consumer*** and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

Retail Package

'Retail Package' means a package which is intended for retail sale to the **ultimate consumer*** for the purpose of consumption of the goods contained therein and includes an imported package:

*For the purpose of the above explanation, the expression 'ultimate consumer' shall not include industrial or institutional consumer.

(Notification No. 16/2013-CE(NT) dated 31/12/2013)

Amendment to CENVAT Credit Rules, 2004

In case of goods lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or for marketing, before removal, the Commissioner has powers to remit the duty payable on such goods subject to conditions imposed by him.

Till now, in such cases of remission of duty, the manufacturer was required to reverse CENVAT Credit on inputs only. Now, the manufacturer would also be required to reverse CENVAT Credit on input services used in or in relation to manufacture of such goods.

Further, the amounts payable in following cases, as required under Rules 3 (5), 3 (5A), 3 (5B) and 3 (5C) of CENVAT Credit Rules, 2004, needs to be paid off at monthly intervals before 5th of next month except in the month of March when it shall be paid before 31st March through cash or CENVAT Credit:

- Inputs or capital goods removed as such (Rule 3(5))
- Capital goods removed after use (Rule 3(5A))
- Capital goods cleared as waste and scrap (Rule 3(5A))
- Inputs or capital goods before being put to use, written off fully or partially (Rule 3(5B))
- Remission of duty requiring reversal of CENVAT Credit on inputs and input services (Rule 3(5C))

Further, in case, amounts payable under Rules 3 (5), 3 (5A) and 3 (5B) of CENVAT Credit Rules, 2004, were not paid, the amount could be recovered under Rule 14 of CENVAT Credit Rules, 2004. Now, non-reversal of CENVAT Credit in cases of remission of duty i.e. Rule 3 (5C), would also attract provisions for recovery under Rule 14.

(Notification No. 1/2014-CE(NT) dated 08/1/2014)

Amendment to CENVAT Credit Rules, 2004

Under Central Excise Laws, manufacture at specified places such as Himachal Pradesh, Jammu & Kashmir etc., is duty free. If the manufacturer clears any inputs or capital goods from specified duty free zones i.e. North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim under specified notifications, CENVAT Credit is admissible as if no exemption was granted i.e. full CENVAT Credit is available even without payment of duty. Notification No. 1/2010-CE dated 6th February, 2010 is now added to the specified exemptions list. Accordingly, now if specified goods are cleared from units located in Jammu & Kashmir on which duty is exempted *vide* Notification No. 1/2010-CE dated 6th February, 2010, CENVAT Credit would be available *vide* Rule 12 of CENVAT Credit Rules, 2004

(Notification No. 2/2014-CE (NT) dated 20/1/2014)

Increase in the quantity deemed to be produced by each operating packing machine in respect of Pan Masalas and Pan Masalas containing tobacco, Commonly known as gutkha and change in duty ratio

Pan masala falling under tariff heading 21069020 except the pan masala containing not more than 15% betel nut and pan masala containing tobacco, commonly known as gutkha, falling under tariff heading 24039990, manufactured with the aid of packing machine and packed in pouches, are leviable to Excise Duty on the basis of production capacity. In this regard, Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008 were introduced. These rules are amended *vide* this notification as under:

- The quantity deemed to be produced by each operating packing machine is increased as specified in the given Notification
- Since the increase in production capacity is notified in-between the month i.e. on 24th January, 2014, calculation method for such transitional period is provided. Accordingly, for the period from 24th January, 2014 till 31st January, 2014, the annual capacity of production shall be calculated on *pro rata* basis for the total number of days in January, 2014 and number of days remaining in the month starting from and including 24th January, 2014.
- Further, the assessee is required to make monthly payment of duties and intimate Jurisdictional Superintendent of Central Excise in Form 2.

(Notification No. 3/2014-CE (NT) dated 24/1/2014)

Increase in the quantity deemed to be produced by each operating packing machine in respect of branded unmanufactured tobacco, chewing tobacco and jarda scented tobacco and change in duty ratio

Branded unmanufactured tobacco falling under tariff heading 2401, chewing tobacco falling under tariff heading 24039910 and jarda scented tobacco falling under tariff heading 24039930, manufactured with the aid of packing machine and packed in pouches, are leviable to Excise Duty on the basis of production capacity. In this regard, Chewing Tobacco And Unmanufactured Tobacco Packing Machines (Capacity Determination And Collection of Duty) Rules, 2010 were introduced. The quantity deemed to be produced by each operating packing machine is increased as specified in the Notification.



Since the increase in production capacity is notified in-between the month i.e. on 24th January, 2014, calculation method for such transitional period is provided. Accordingly, for the period from 24th January, 2014 till 31st January, 2014, the annual capacity of production shall be calculated on *pro rata* basis for the total number of days in January, 2014 and number of days remaining in the month starting from and including 24th January, 2014.

(Notification No. 4/2014-CE (NT) dated 24/1/2014)

SERVICE TAX (Contributed by CA. Rajiv Luthia)

SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS

Central Government vide Notification No. 2/2014-ST dated 30th January, 2014 has substituted clause(s) of para 2 of the Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012 wherein the term "governmental authority" is now defined as

"an authority or a board or any other body;

- (i) Set up by an Act of Parliament or a State Legislature; or
- (ii) Established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution".

Central Government vide Notification No. 3/2014-ST dated 3rd February, 2014 has granted retrospective exemption to the service tax payable on the services provided by an authorised person or sub-broker to the member of a recognised association or a registered association, in relation to a forward contract where such service tax was not being levied during the period from 10th September, 2004 to 30th June, 2012 in accordance with the generally prevalent practice during the said period.

Central Government vide Notification No. 4/2014-ST dated 17th February, 2014 has amended Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012 whereby exemption is granted to:

- (i) Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation (Entry 2A)
- (ii) Services by way of loading, unloading, packing, storage or warehousing of rice (Entry 40)

Central Government vide Notification No. 5/2014-ST dated 24th February, 2014 has amended the Notification No. 6/2013-ST dated 18th April, 2013 which grants exemption to the taxable services provided or agreed to be provided against a Focus Market Scheme duty credit script issued to an exporter by the Regional Authority subject to fulfilment in the said Notification.

CBEC vide Circular No. 177/3/2014-ST dated 17th February, 2014 has clarified that –

- i) Transportation of rice through rail, vessel or road is already exempted since rice is covered under the term "food stuff" under Entry No. 20(i) & 21(d) of Mega Exemption Notification No. 25/2012-ST dated 20th June, 2012, as amended from time to time.
- ii) Milling of paddy into rice on job work basis is also exempt under Entry No. 30 (a) since such milling of paddy is an intermediate production process in relation to agriculture.

Tax Research Unit of Ministry of Finance (DR), vide DOF No. 334/03/2014-TRU dated 17th February, 2014 has clarified that exemption granted to services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation would cover services provided by cord blood banks, such as collection of umbilical cord blood, processing the same for segregation of stem cells, testing and cryo-preservation of stem cells.

Commissioner of Service Tax, Mumbai-I vide Trade Notice No. 18/2013-ST dated 19th December, 2013 in supersession of Trade Notice No. 03/2007-ST dated 30th March, 2007, has issued guidelines detailing the procedure to be followed for surrender/cancellation of Service Tax registration –

- Submit online application on the ACES website www.aces.gov.in
- Submit signed copy of online application along with
 - Application form & undertaking in Annexure-I

- Service Tax Returns filed from the date of obtaining registration till the date of surrender (maximum up to last 6 returns)
 - In case ST-3 returns are not filed due to threshold limit, it is not necessary to file returns & the assessee can apply for waiver of late fees under Rule 7C for non-filing of returns. The fact of non-filing of returns to be mentioned clearly in the undertaking.
- Profit & Loss A/c & Balance Sheet from the date of obtaining registration till the date of surrender (maximum up to last 3 financial years)
 - In case Profit & Loss A/c. & Balance Sheet are not prepared, copy of IT return may be submitted
 - If IT Returns are also not submitted, copy of bank statements may be submitted to satisfy the correctness of reason for surrender
- Details of Show Cause Notice pending adjudicating, details of confirmed demands, details of courts cases, details of audit conducted etc. in Annexure-II.
- Attach copy of death certificate in case of death of service provider.
- Necessary document like Partnership Deed or MOA/AOA in case of change in constitution.
- Order passed by Hon'ble HC in case of merger or acquisition
- Copy of centralised registration certificate in case of surrender of decentralised registrations due to obtaining centralised registration.
- Copy of registration certificate for which the service provider wants to continue the registration in case of multiple registrations granted due to technical errors in system.
- Failure to submit above documents within 15 days of submission of online application would result into rejection of application.
- Applications to be accepted in person between 3.00 pm and 5.00 pm in the division.
- The superintendent may require further information like reconciliation of income shown in Profit & Loss A/c with ST-3 return. Reconciliation not required when surrender/cancellation is on account of
 - Obtaining centralised registration
 - Shifting of office from one jurisdiction to other jurisdiction
 - Multiple registration due to technical errors
 - Turnover below threshold limit as per Profit & Loss A/c.
- No requirement to submit online application for assessee who has obtained registration prior to 1/4/2010 & not migrated to ACES. Intimation for cancellation to be sent by the department by post.
- Assessee to apply in Form Annexure-III for regeneration of T-pin in case of forgotten user ID or password.
- Assessee to be informed through email after successful cancellation of registration.

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

UPDATE OF THE GUJARAT VAT ACT, 2003

NATURAL CALAMITY – NO ITC REVERSAL

Hon'ble Gujarat High Court has, in the case of *State of Gujarat vs. S.A. Himnani Distributors Private Limited, Tax Appeal No. 1112 of 2013*, held, vide its order dated 6/12/2013, that there is no breach of any of conditions u/s. 11 of the GVAT Act, on Destruction/Loss of Goods due to Natural Calamity and hence, dealer is entitled to full Input Tax Credit on such goods.

BILLING TURNOVER

In case of *M/s. SKFC Industries Pvt Ltd vs. State of Gujarat, S.A. No. 671 of 2010*, Hon'ble VAT Tribunal has come down very heavily on the dealers involved in billing activity. In this case, the dealer had confessed that it had issued and received fake invoices of Sales & Purchases, to inflate the turnover, to avail higher bank credit facilities. The dealer claimed refund of Tax Paid on such fake turnover, as there was no Purchase/Sale. The A.O. imposed penalty u/s. 31(3) & 31(4), for illegal collection of tax and raised demand, rejecting the refund claim. The Hon'ble Tribunal, vide its order dated 9/1/2014, disapproved A.O.'s action and has remanded the matter to the A.O., suggesting denial of ITC on fake purchases, besides applicable Penalty & Prosecution Provisions.

FEMA

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

Foreign Direct Investment (FDI)

Foreign investment in India by SEBI registered Long term investors in Government dated Securities

A. P. (DIR Series) Circular No. 99 dated January 29, 2014

Currently, the limit for investments by SEBI registered Foreign Institutional Investors (FIIs), SEBI registered Qualified Foreign Investors (QFIs) and long term investors registered with SEBI in Government securities stands at USD 30 billion, out of which a sub-limit of USD 5 billion is available for investment by long term investors in Government dated securities.

On a review and in consultation with GoI, RBI has decided to enhance, with immediate effect, the existing sub-limit of USD 5 billion available to long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/Insurance/Endowment Funds and Foreign Central Banks for investment in Government dated securities to USD 10 billion, within the total limit of USD 30 billion available for foreign investments in Government securities.

The operational guidelines in this regard shall be issued by SEBI.

Review of the existing policy on FDI in the Insurance Sector

Press Note No. 2 (2014 Series) dated February 4, 2014 issued by the Department of Industrial Policy & Promotion

Presently, FDI in the Insurance sector is permitted up to 26%, under the automatic route subject to the conditions stated in paragraph 6.2.17.7 of the Circular 1 of 2013 – 'Consolidated FDI Policy, effective from April 5, 2013'.

The Government of India (GOI) has vide Press Note No. 2 (2014 Series) dated February 4, 2014 revised paragraph 6.2.17.7 of the Circular 1 of 2013 to allow FDI under automatic route in Insurance sector which would cover Insurance Company, Insurance Broker, Third Party Administrators and Surveyors and Loss Assessors up to 26% which would include FDI, FI and NRI investment subject to certain conditions specified.

For detailed conditions please refer the said Press Note issued by DIPP at: http://dipp.nic.in/English/acts_rules/Press_Notes/pn2_2014.pdf

Reporting under FDI Scheme – Amendments in Form FC-GPR

A. P. (DIR Series) Circular No. 102 dated February 11, 2014

As per the extant regulations, Indian companies are required to report the details of the amount of consideration received for issuing shares and convertible debentures under the FDI scheme to the Regional Office of RBI in whose jurisdiction the Registered Office of the company operates, within 30 days of receipt of the amount of consideration. Further, in terms of Para 9 (1) B of Schedule IBID, the companies are required to report the details of the issue of shares / convertible debentures in form FC-GPR, to the Regional Office concerned, within 30 days of issue of shares/convertible debentures.

In order to further capture the granular details of FDI as regards brownfield/greenfield investments and the date of incorporation of Investee Company, Form FC-GPR has been revised. The details of FDI should, henceforth, be reported in the revised Form FC-GPR.

For revised Form FC-GPR, please refer the circular available on RBI website at: <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/102APD110214.pdf>

Foreign investment in India by SEBI registered FII, QFI and long-term Investors in Corporate Debt

A. P. (DIR Series) Circular No. 104 dated February 14, 2014

The present limit for investment by SEBI registered Foreign Institutional Investors (FIIs), SEBI registered Qualified Foreign Investors (QFIs) and long term investors registered with SEBI in corporate debt stands at USD 51 billion, out of which, a sub-limit of USD 3.5 billion is available for investment by eligible investors (viz. FIIs, QFIs and Long terms investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, Foreign Central Banks) in Commercial Paper (CP). This sub-limit is being presently utilised only to the extent of around 58% of the limit put in place by SEBI.

On a review, in order to encourage long term investors, RBI has now decided, to reduce, with immediate effect, the existing Commercial Paper sub-limit of USD 3.5 billion by USD 1.5 billion to USD 2 billion. The balance USD 1.5 billion shall, however, continue to be part of the total corporate debt limit of USD 51 billion and will be available to eligible foreign investors for investment in corporate debt.

The operational guidelines in this regard will be issued by SEBI.

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All other existing conditions for investment in Corporate debt shall remain unchanged.

FDI in Small Scale Industrial Undertakings (SSI) / Micro & Small Enterprises (MSE) and in Industrial Undertakings manufacturing items reserved for SSI/MSE

A. P. (DIR Series) Circular No. 107 dated February 20, 2014

With the promulgation of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act), the extant policy for FDI in Small Scale Industrial unit and in a company which has de-registered its small scale industry status and is not engaged or does not propose to engage in manufacture of items reserved for small scale sector, has since been reviewed and RBI has decided that:

- (a) A company which is reckoned as MSEs (earlier SSIs) in terms of MSMED Act and not engaged in any activity/ sector mentioned in Annex A to schedule 1 of Notification No. FEMA. 20/ 2000-RB dated 3rd May 2000 may issue shares or convertible debentures to a person resident outside India, subject to the limits prescribed in Annex B to Schedule 1, in accordance with the entry routes specified therein and the provision of FDI Policy, as notified by the Ministry of Commerce & Industry, the GOI, from time to time.
- (b) Any Industrial undertaking, with or without FDI, which is not an MSE, having an industrial licence under the provisions of the Industries (Development & Regulation) Act, 1951 for manufacturing items reserved for manufacture in the MSE sector may issue shares in excess of 24% of its paid up capital with prior approval of the Foreign Investment Promotion Board (FIPB) of the GOI.

Further, in terms of the provisions of MSMED Act:

- (i) In the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951, a micro enterprise means where the investment in plant and machinery does not exceed ₹ 25 lakh; a small enterprise means where the investment in plant and machinery is more than ₹ 25 lakh but does not exceed ₹ 5 crore;



- (ii) in the case of the enterprises engaged in providing or rendering services, a micro enterprise means where the investment in equipment does not exceed ₹ 10 lakh; a small enterprise means where the investment in equipment is more than ₹ 10 lakh but does not exceed ₹ 2 crore.

RBI had amended the Notification No. FEMA 20/2000–RB *vide* Notification No. FEMA 230/2012-RB dated May 29, 2012 effective from February 27, 2009 read with Corrigendum dated September 10, 2013 notified *vide* G.S.R. No.624(E) dated September 12, 2013.

Export/Import transactions

Third party payments for export / import transactions

A. P. (DIR Series) Circular No. 100 dated February 4, 2014

RBI *vide* A. P. (DIR Series) Circular No. 70 dated November 8, 2013 permitted AD Category-I banks to allow third party payments for export of goods & software / import of goods subject to the conditions stated therein.

However, in view of the difficulties faced by exporters/importers in meeting the condition “firm irrevocable order backed by a tripartite agreement should be in place” specified in the aforesaid circular, RBI has now decided that this may not be insisted upon in case where documentary evidence for circumstances leading to third party payments/name of the third party being mentioned in the irrevocable order/ invoice has been produced. This shall be subject to the following conditions–

- (i) AD bank should be satisfied with the bona fides of the transaction and export documents, such as, invoice / FIRC.
- (ii) AD bank should consider the FATF statements while handling such transaction.

Further, with a view to liberalising the procedure, RBI has also withdrawn the limit of USD 100,000 eligible for third party payment for import of goods.

Export Data Processing and Monitoring System (EDPMS) for Export of Goods and Services

A. P. (DIR Series) Circular No. 101 dated February 4, 2014

Under the extant regulations, AD banks are required to submit various returns like XOS (export outstanding statements), ENC (Export Bills Negotiated/sent for collection) for acknowledgement of receipt of Export documents, Schedules 3 to 6 (realisation of export proceeds), EBW (write-off of export bills), ETX (extension of realisation of export bills) relating to Export transaction under FEMA to RBI. These returns are being managed on a different solo application or manually.

In order to simplify the procedure for filing various returns and for better monitoring, a comprehensive IT-based system called EDPMS has been developed by RBI which will facilitate the banks to report all the above-mentioned returns through a single platform.

For detailed specifications and procedure for submission through the said system, please refer the circular available on RBI website at:

<http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8733&Mode=0>

A cut-off date for shipping documents to be reported in the new system will be notified shortly which will be the commencement date of the new system. The entire shipping document should be reported in the new system after cut-off date and old shipping documents would continue to be reported in the old system till completion of the cycle. Both the old and

Personal Column

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new systems will run parallel to each other for some time before the old system is discontinued.

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

A. P. (DIR Series) Circular No. 103 dated February 14, 2014

GoI and the RBI have been receiving representations related to Advance Authorisation (AA) / Duty Free Import. Accordingly, in consultation with GoI, RBI has issued the following clarifications which shall come into force with immediate effect:

- (a) In case of AA / DFIA issued before August 14, 2013, the condition of sequencing imports prior to exports shall not be insisted upon even in case of entities/units in the SEZ and EoUs, Premier and Star Trading Houses.
- (b) The imports made as part of the AA / DFIA scheme will be outside the purview of the 20:80 scheme. Such Imports will be accounted for separately and will not entitle the Nominated Agency/ Banks/ Entities for any further import.
- (c) The Nominated Banks/Agencies/Entities may make available gold to the exporters (other than AA/DFIA holders) operating under the Replenishment Scheme. They can resort to import of gold for the purpose, if considered necessary. However, such import will be accounted for separately and will not entitle them for any further import.
- (d) Import of gold in the third lot onwards will be lesser of the two:
 - (i) 5 times the export for which proof has been submitted; or
 - (ii) Quantity of gold permitted to a Nominated Agency in the first or second lot.

Further with reference to A.P. (DIR Series) Circular No. 82 dated December 31, 2013 on import of Gold Dore, RBI has clarified that:

- (a) The refiners are allowed to import Gold Dore of 15% of their licence for each of the first 2 months.
- (b) In case, the quantity has already been identified by DGFT for first 2 lots, import of such quantity will be in compliance with the guidelines issued *vide* A.P. (DIR Series) Circular No. 82 dated December 31, 2013.
- (c) DGFT, through a notification, may include new refiners, and fix licence quantity for them.

For revised working example of the operations of 20:80 scheme envisaged in terms of the revised instructions, please refer the circular on RBI website at: <http://rbidocs.rbi.org.in/rdocs/notification/PDFs/APDIR103NT0214.pdf>

External Commercial Borrowings (ECB) – Reporting arrangements

A. P. (DIR Series) Circular No. 105 dated February 17, 2014

In order to capture details of the financial hedges contracted by corporates of their foreign currency exposure relating to ECB and their foreign currency earnings and expenditure, RBI has modified the format of ECB-2 Return (Part-E). The reporting in the modified ECB-2 Return shall be applicable from the return of the month April 2014 onwards.

There is, however no change in the reporting procedure. The revised format of ECB-2 Return can be accessed on RBI website at:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/105AP170214F.pdf>

Liberalisation in Reporting Requirement for NRIs/PIOs and Foreign Nationals

A. P. (DIR Series) Circular No. 106 dated February 18, 2014

Under the extant regulations, AD Category-I banks are required to furnish on a quarterly basis a statement on the number of applicants and total amount remitted out of balances in NRO accounts in the prescribed format, to the Chief General Manager-in-Charge, Foreign Exchange Department, Foreign Investments Division (NRFAD), RBI, Central Office, Mumbai-400001 within 10 days of the reporting quarter.

With a view to having access to more real time data, RBI has decided to collect this information on a monthly basis. Accordingly, AD Category-I banks may furnish on a monthly basis, a statement on the number of applicants and total amount remitted, as per the proforma, to the Chief General Manager-in-Charge, NRFAD, RBI, Central Office, Mumbai-400 001 within 7 days of the end of the reporting month. The data may be sent preferably by e-mail on fedconrfad@rbi.org.in as per the proforma.

It may be noted that the proforma has been revised to also include “Transfers from NRO to NRE account”.

The proforma is available on RBI website at:

<http://rbidocs.rbi.org.in/rdocs/notification/PDFs/CAO18022014F.pdf>



DIRECT TAX

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

Ss. 2(7) & 244A Interest on refund to deductor

Assessee having deducted TDS from the payments made to ITC and remitted the same to the Department. ITC did not claim credit for TDS and the Department refunded TDS to assessee. Thus deductor is an assessee and also a deemed assessee and the said TDS being excess payment of tax liability of ITC, Department is liable to pay interest on the refund of TDS made to the assessee from the date of assessment of ITC in respect of the TDS till the date of refund.

Raj & Company vs. Union of India & Ors. (2014) 264 CTR (Gau.) 209

Ss. 10(6)(viii), 40(a)(i), 40(a)(iii) & 192 No liability to effect TDS under either section in respect of exempt salary

Salary paid to non-resident employees was not chargeable under the head 'Salaries' as it was exempt under S. 10(6)(viii) and therefore no tax was deductible at source and S. 40(a)(iii), which was relevant, could not be invoked; alternatively S. 40(a)(i) was also not attracted.

Director of Income Tax & Anr. vs. Dolphin Drilling Ltd. (2014) 264 CTR (Uttarakhand) 319.

S. 10(23C)(iiiad) Exemption to educational institutes

Once a society is formed under Societies Registration Act, 1860, it is assessable as artificial juridical person and not as an AOP or BOI.

Aggregate annual receipts of other educational institutions referred to in S. 10(23C)(iiiad) means total annual receipts of each educational institution viz. engineering, medical etc. and not the aggregate of annual receipts of all educational institutions run by the assessee society put together.

If the donations are received by the assessee from the students who are studying in the schools run by it and the same are properly accounted for in the building fund/ infrastructure fund and the said amount is utilized for construction of building which is used for imparting education, it would constitute charity and therefore, the assessee – society would be entitled to exemption under S. 10(23C)(iiiad); matter is remanded back to assessing authority for giving an opportunity to the assessee to produce the ledger and other accounts showing the receipt of such money and utilisation thereof for the purpose of construction so that the assessing authority can pass suitable orders on merits.

Commissioner of Income Tax vs. Children's Education Society (2014) 264 CTR (Kar.) 389.

S. 10A Meaning of term computer software and benefit available from subsequent years also

There is no implied or express provision in the Act to the effect that an assessee can claim the benefit u/S. 10A only from the inception of its new unit.

Assessee having set up the new unit in the special economic zone termed as a software technology park with the approval of the prescribed authority, the assumption of the AO that the new unit was formed by splitting up the existing unit was unfounded on facts and, therefore, deduction under S.10A could not be refused to the assessee.

The "programme management services" rendered by the assessee being a method of providing software to achieve a particular end, it cannot be excluded from the term "computer software" and therefore the assessee is entitled to deduction u/S. 10A.

Commissioner of Income Tax vs. EDS Electronic Data Systems (India) (P) Ltd. (2014) 265 CTR (Del.) 31.

Ss. 10A & 10B Interest on EEFC eligible for deduction

Profits and gains derived from export of articles is different from the income derived from the profits of the business of the undertaking; interest derived from deposits in the EEFC account and the interest income earned on inter-corporate deposits have clear nexus with the business of the undertaking and the same is entitled to exemption under Ss. 10A and 10B in view of sub-S.(4) as substituted w.e.f. 1st April, 2001; however, exemption was not available for asst. yr. 1998-99.

Commissioner of Income Tax & Anr. vs. Motorola India Electronics (P) Ltd. (2014) 265 CTR (Kar.) 94.

Ss. 22 & 28(i) Business Income vs. Income from House Property

Assessee company has stopped its business activities long back and is not carrying out any other business activity and the assessee has parted with the commercial assets and confined solely to receive some income by virtue of ownership thereof by lease or otherwise; lease rent was thereof assessable as income from house property.

Rayala Corporation (P) Ltd. vs. Assistant Commissioner of Income Tax & Anr. (2014) 264 CTR (Mad.) 282.

Ss. 28(i) & 43(5) Damages for breach of contract is business income

When the assessee has been able to satisfactorily prove that he was able to receive the damages for the breach of the contract and the contract was for supply of goods, it was a business transaction and the damages received was certainly in the nature of business profits and not speculative in nature.

Commissioner of Income Tax vs. Premier Vegetable Products Ltd. (2014) 264 CTR (Raj.) 417

Ss. 36(1)(va) & 43B Belated payment of labour dues eligible for deduction

Employees' contributions towards GPF, CPF and ESI deposited by the assessee on or before the due date of filing of returns under S. 139, though beyond the due dates as given under the respective Acts, cannot be disallowed under S. 43B or under S. 36(1)(va).

Commissioner of Income Tax vs. Jaipur Vidyut Vitran Nigam Ltd. (2014) 265 CTR (Raj.) 62.

S. 37(1) Product development expenditure in rapid changing technology is revenue expenditure

Keeping in view the rapid changing requirements, every company in the field of software development specially in mobile phoning has to keep modifying and enhancing their products and provide updates on regular basis and therefore product development expenditure for the new product (software) were allowable as revenue expenditure.

Commissioner of Income Tax vs. ACL Wireless Ltd. (2014) 264 CTR (Del.) 164.

S. 43B Applies only to statutory liability and not to contractual liability

Section 43B applies only to statutory liability to pay customs duty cast on importers and not to the contractual liability of assessee to pay the same to importers under a contract with the importers.

Oswal Agro Mills vs. CIT (2014) 42 taxmann.com 100 (Del.)

Ss. 68 & 69 Genuineness of gifts

Even when the donor had the means to make the gifts, there being neither any relationship nor there being any circumstances to show natural love and affection of the donor for the donee nor there being any occasion to make such gifts to the assessee, gifts could not be treated as genuine; Tribunal was therefore justified in sustaining addition made by AO.

Hanuman Dass vs. Commissioner of Income Tax & Anr. (2014) 264 CTR (P & H) 211.

S. 69A Unexplained money

Apart from producing savings bank account passbook, when the amounts in the savings bank account of the assessee remained unexplained, the AO was justified in making addition under S. 69A.

K. V. Mathew vs. Income Tax Officer (2014) 264 CTR (Ker.) 110.

S. 80-IB Gas and cylinder are independent products but bottling of gas into cylinder amounts to production

Process of bottling of gas cylinders, which requires a very specialised process and an independent plant and machinery, amounts to production of 'gas cylinders' containing gas for the purpose of claiming deduction under S. 80-IB.

Puttur Petro Products (P) Ltd. vs. Assistant Commissioner of Income Tax (2014) 264 CTR (Kar.) 307

S. 147 Reassessment after intimation u/S. 143(1)

If the ingredients of S. 147 are satisfied the AO is empowered to initiate proceedings, even though no proceedings were taken under S. 143(3) and the AO is empowered to initiate reassessment proceedings even when intimation under S. 143(1) has been issued.

Rayala Corporation (P) Ltd. vs. Assistant Commissioner of Income Tax & Anr. (2014) 264 CTR (Mad.) 282.

S. 147 Reasonable belief for reopening

AO had duly recorded reasons and had formed a belief and it could not be held by the Tribunal that the AO had not recorded any valid reasons



Recent Judgments

regarding the escapement of assessee's income before issuing notice; reopening was therefore sustainable.

Commissioner of Income Tax vs. All India Children Care & Educational Development Society (2014) 264 CTR (All.) 532.

Ss. 153(2A), 153(3) & 240 Refund pursuant to order passed to give effect to directions of ITAT

When the Tribunal remitted the matter back to the AO and the AO was required to pass a fresh order of assessment, the case would be covered by S. 153(2A) and not S.153(3); assessment proceedings for the Assessment Year 1988-89 are declared to have abated as having become time – barred ; assessee entitled to refund of tax except self assessed tax paid by it.

Instruments & Contol Company vs. Chief Commissioner of Income Tax & Ors. (2014) 264 CTR (Guj.) 427.

Ss. 194-IA & 194-LA. TDS @ 10 % u/S. 194LA applies only to compulsory acquisition of land

Land of assessee having been acquired by Government after negotiations, tax is liable to be deducted from the sale consideration payable to the assessee at 1 per cent of the sum under S. 194-IA since the total sale consideration exceeds ₹ 50 lakhs.

M. C. Thomas vs. District Collector & Ors. (2014) 264 CTR (Ker.) 437.

S. 249(4)(a) Opportunity of hearing to be given

Where the assessee has sought adjustment of the amount admittedly lying with the Revenue towards the tax payable on the returned income, the assessee cannot be denied a hearing; Tribunal was correct in holding that the requirements of S. 249(4)(a) were duly complied with.

Commissioner of Income Tax vs. Pramod Kumar Dang (2014) 265 CTR (Del.)

S. 253(1) Appeal to ITAT and meaning of “aggrieved assessee”

CIT(A) has categorically held that the UK firm is taxable in India and the share of profits of the appellant is exempt from income under S. 10(2A); however, once the partnership firm is taxable in India then the appellant would become liable to pay tax under S. 188A; consequently, the appellant is an aggrieved assessee in terms of S. 253(1) in the facts of the present case and appeal filed by it was maintainable.

Maersk BV vs. Deputy Director of Income Tax (International Taxation) (2014) 264 CTR (Bom.) 26.

S. 271(1)(c) Penalty proceedings and bona fide claim

When the assessee had disclosed material facts that it was under bona fide belief that 80% of plant and machinery was new and consequently it was entitled to deduction u/S. 80-IA and the Tribunal has found that neither there is suppression of fact or misrepresentation of fact by the assessee, the order of penalty was not sustainable in law.

Commissioner of Income Tax vs. Patels Engineers (P) Ltd. (2014) 264 CTR (Bom.) 577.

S. 271(1)(c) Making of incorrect claim of set off of b/f losses not liable for penalty

Claiming set off of the loss carried forward would not amount to either concealment of income or furnishing inaccurate particulars, though the assessee was informed that he was not entitled to carry forward the business loss since the return was filed belatedly, more so when it is not in dispute that the assessee did not suffer loss.

Commissioner of Income Tax & Anr. vs. Makino Asia (P) Ltd. (2014) 264 CTR (Kar.) 172.

Rule 10 of Second Schedule Attachment of PPF

PPF Account is immune from attachment and sale for recovery of income tax dues.

(2014) 42 taxmann.com 300 (Guj.).

ITAT DECISIONS

S. 6(5) Place of rendering services important and not deposit of salary into NRE A/c

Salary income accrues at the place where the services are rendered and not where the appointment letter is received. If salary, after accrual abroad,

is brought into India, it is not taxable on receipt basis. S. 6(5) which deals with residential status is redundant

Arvind Singh Chauhan vs. ITO (ITAT Agra) February 14, 2014.

S. 10(14)(i) “Uniform” does not include normal dress

Normal dress worn by employees in office is not “uniform” for the purpose of exemption of uniform allowance u/s 10(14)(i)

ONGC Bassin Baroda vs. ACIT (TDS) (2014) taxmann.com 350 (Ahd.)

S. 14A & Rule 8D No disallowance where object of investment is not to earn tax free income

No disallowance u/S. 14A/ Rule 8D if primary object of investment is to hold controlling stake in group concern and not to earn tax-free income

Garware Wall Ropes Ltd vs. ACIT (ITAT Mumbai) February 21, 2014.

S. 80-IA(8)

Carbon Credit receipts are not chargeable to tax as “income”. For S. 80-IA(8) if there are multiple “market values” assessee has the right to choose the suitable one.

Shree Cement Ltd vs. ACIT (ITAT Jaipur) January 31, 2014.

S. 80-IB(10) Amendment applicable prospectively

Limit on extent of commercial area imposed by clause (d) of S. 80-IB(10) inserted w.e.f. 1/4/2005 does not apply to projects approved before that date.

I.T.O. vs. M/s Yash Developers (ITAT Mumbai) February 26, 2014.

S. 195, S. 40(a)(i) Liability to effect TDS and retrospective amendment of law

S. 195 TDS obligation depends on law prevailing on date of payment and is not affected by retrospective amendment. No disallowance u/s. 40(a)(i) can be made if that law did not require TDS to be deducted.

DCIT vs. Virola International (ITAT Agra) February 14, 2014.

INTERNATIONAL TAXATION

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

Endemol India Pvt Ltd. Mumbai (2014-TII-08-ARA-INTL) vs. CIT (Mumbai), Dated February 19, 2014

Facts of the case

The assessee is an Indian company engaged in the business of producing and distributing television programmes and was producing reality show ‘Khatron Ke Khiladi – Series-3’ in Brazil in the Financial Year 2010-11 in which it engaged Utopia Films, a Brazil incorporated company, for providing line production services and for providing line producer, local crew for providing stunt services and transport necessary for stunts for production of the show in Brazil.

According to the assessee, the payment made to Utopia Films outside India as per the agreement did not fall within the purview of “Fees for Technical Services” or Royalty under the Income Tax Act and that the payments are not taxable under the India-Brazil Tax Treaty as Royalty and Independent Personal Services as defined in the Treaty.

The Revenue on the other hand submitted that the services rendered by Utopia Films to the assessee are composite services that include materials and equipment along with requisite qualified technical personnel to operate the equipments and are therefore covered under “Fees for Technical Services”.

Issues

Whether payment made to a Brazilian company for providing line production and related services in Brazil for the production of a film can be treated as being in the nature of fee for technical services?

Whether TDS liability u/S. 195 arises while making such payments?

Held

It was held that since the services provided by the non-resident companies to the applicant company are line production services which are specifically characterised as work for the purpose of Section 194C of the IT Act by Explanation to that section and they will not be taxable without Permanent Establishment in India.

It also concluded consequently that the payment will not suffer withholding of tax under Section 195 of the Income-tax Act, 1961

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DCIT vs. Virola International [TS-79-ITAT-2014(AGR)] Dated February 15, 2014

Facts of the case

The assessee, Virola International, is an exporter of leather footwear and footwear uppers.

During scrutiny assessment proceedings for AY 2008-09, the AO noticed that the assessee had, *inter alia*, made payments towards 'design and development expenses' of ₹ 51 lakhs to various non-residents, without deducting tax at source ('TDS').

The AO ascertained that the aforementioned payments fall u/S. 9(1) (vii) of the Income-tax Act and the FTS clause of the respective DTAA. As the assessee has failed to comply with tax withholding requirements of the same, they are ineligible for deduction in light of Section 40(a)(i).

On appeal, the CIT (A) deleted the disallowance u/S. 40(a)(i). Aggrieved, the Revenue preferred an appeal with Agra ITAT.

Issue before DCIT

Whether Retro amendment changes tax liability of "income", TDS liability & disallowance under Section 40(a)(i)?

Held

ITAT holds that, pre-Finance Act, 2010 amendment to Section 9(1), Section 40(a)(i) disallowance cannot be made for failure to deduct tax from FTS payments to Non-Resident, unless such services were rendered in India. Retrospective amendment in law does change the tax liability in respect of an income, with retrospective effect, but it cannot change the tax withholding liability, with retrospective effect. TDS liability depends

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Joint Secretary

on the law that exists at the point of time when payments, from which taxes ought to have been withheld, are made. Consequent Section 40(a)(i) disallowance can be made only when assessee had an obligation to deduct tax from payments to NRs and assessee had failed to comply.

M/s Anand Transport (Pvt) Ltd. vs. Asstt Commissioner of Income Tax (2014-TII-04-HC-MAD-INTL) dated February 5, 2014

Facts of the case

The assessee, Anand Transport (Private) Ltd., is engaged in the business of transportation of coal between two Indian Ports. For the said purpose, the assessee entered into an agreement with M/s. Jaldhi Overseas Private Limited ("JOPL"), Singapore, for transportation of coal. The validity of the agreement between the assessee and JOPL was for a period of five years. Further, the agreement provided that assessee had to make periodic freight payments to JOPL, in US Dollars, for transportation of coal on tonnage basis as per the rates agreed upon.

The assessee had filed an application u/S. 195(2) of the Income-tax Act, 1961, *inter alia* stating that, in terms of Article 7 of the India-Singapore DTAA, the freight payable to JOPL is not taxable in India, no consequent tax withholding obligation and therefore prayed for issuance of a nil deduction of tax certificate.

The AO held that u/S. 44B of the Act, the nature of works undertaken by JOPL, was chargeable to tax under the head "Profits and Gains of Business or Profession". Observing that the assessee's contract was for a period of five years, AO stated that if the activities continue for a period of 90 days in aggregate in a fiscal year, then JOPL will be deemed to have a PE in India. AO also stated that Article 8 of the DTAA would have no application to the case in hand as it is not applicable to coastal traffic in a contracting state. In view of this, the AO authorised the assessee to deduct tax at the rate of 3.167% on the gross payments made in the first quarter of AY 2010-11.

The assessee filed a revision application u/S. 264 before the Director of Income Tax (International Taxation) ('Revisonal Authority'), Chennai. The Revisonal Authority elaborately considered the issue and arrived at a categorical finding that none of the items as contemplated in Article 5(2) of the India-Singapore DTAA existed in the assessee's case.

The business transaction between the appellant and JOPL was covered by Article 8 of the DTAA and Section 44B had no application in the present case. In view of this, the Revisonal Authority directed AO to give Nil TDS certificate to the assessee. The Revenue did not challenge the order of the Revisonal Authority passed in revision and it therefore became final.

During the course of the assessment proceedings for AY 2009-10, AO made a disallowance u/S. 40(a) (i) of the Act on payments made to JOPL. On appeal, CIT (A) considered the order passed by the Revisonal Authority and held that no evidence was brought on record to show that JOPL is not a tax resident of Singapore and by virtue of Articles 7 & 8 of DTAA, provisions of Sections 9 and 44B of the Act stand superseded. Holding that the payments were not taxable in India and therefore no corresponding tax withholding obligation, CIT(A) deleted the disallowance made u/s 40(a) (i). During the assessment proceedings for AY 2010-11, AO held that as the Explanation 2 to Section 195 which is effectively retrospectively from April 1, 1962, tax withholding had to be made on payments made to JOPL. As no tax withholding was made from the payments to JOPL, AO disallowed the same u/S. 40(a)(i). Consequent demand notice u/s 156 and penalty notice u/S. 274 r.w.s. 271 were also issued to the assessee.

The assessee moved a Writ Petition before Madras HC and also moved a Miscellaneous Petition praying for stay of operation of the order, pending disposal of the Writ Petition.

Issues before ACIT

Whether freight charges paid to JOPL are liable to tax deduction at source under Section 195 of the Income-tax Act, 1961?

Whether when the DIT has passed an order u/S. 264 giving a clear finding that the assessee was not liable to tax in India but in Singapore in terms of the DTAA between India and Singapore and no tax was deductible from the payment made to the assessee, the AO can subsequently take recourse to the amended Section 195(2) to deny the deduction on the ground that tax has not been deducted at source?

Whether when the order of the DIT has become final and the CIT(A) has also taken a similar view that was not challenged by the Revenue, the action of the AO becomes *prima facie* unsustainable and liable to be quashed under the writ jurisdiction of the High Court?

Held

HC opined that in terms of the India-Singapore DTAA, the remittances made to JOPL are not chargeable to tax in India. In this regard, HC held that "The facts of the present case would disclose that the income earned by JOPL,



is taxable at Singapore and the Double Taxation Avoidance Agreement would also come to their rescue as the income earned by the said concern, are not liable to be taxed in India and would be taxable only in Singapore.” Therefore, the payment made to JOPL will not come within the ambit of tax deduction at source.

HC noted that, though the Revisional Authority is superior officer to AO, he sought to distinguish the order by taking a stand that it is applicable only for the first quarter commencing from April to June 2009. The CIT(A), in respect of AY 2009-10, had taken into consideration the order passed by the Revisional Authority, arrived at the same conclusion, which was not disputed by Revenue. In view of this, HC held that “this Court is of the considered view that the stand taken by the Assessing Officer, on the face of it, is unsustainable both in law and on facts.”

HC also rejected Revenue’s contention that since appeal remedy was available, therefore, the present writ petition was not maintainable. In this regard, HC held that, in the light of the orders passed by the Revisional Authority, the stand taken by Revenue that tax should be deducted at source in respect of the payment made to JOPL was unsustainable and therefore, for the said reason, the non-availment of the appeal remedy could not be put against the assessee.

Ruling in favour of the assessee, HC allowed the Writ Petition and quashed the assessment order for AY 2010-11 in respect of disallowance u/S. 40(a) (i) for non-deduction of tax at source in terms of Section 195.

CIT vs. Southern Bore wells (2014-TII-03-HC-KERALA-INTL) Dated December 10, 2013

Facts of the case

The assessee is a domestic company. It entered into a contract for providing marketing support to win the contract for construction of bore wells in a foreign country.

The agent, M/s. Mozambique Holdings Ltd., did not have a permanent establishment in India and the agency commission had to be paid in a foreign country.

The assessing officer found that agency commission has been debited in the accounts without deducting tax on it.

On appeal, with reference to agency commission, the CIT (A) held that the agency commission had accrued in India and therefore the assessee was liable to deduct tax on such payments in the foreign country. On further appeal, the Tribunal found that the agency commission was payable in foreign exchange.

Issue

Whether when the foreign agency provides services to the assessee outside India, TDS obligation would arise in respect of the agency commission payable abroad merely because the payer is a tax resident of India?

Whether the amendment by the Finance Act, 2008 with effect from 1st April, 2008 will not apply for the period prior to the same?

Held

High Court held that, the payment made outside the country cannot be construed as income accrued in India and therefore no part of the income of M/s. Mozambique Holdings Ltd. in India is taxable under the Income-tax Act. The High Court referred to the judgment of the Supreme Court in *GE Technology Centre Pvt. Ltd. vs. Commissioner of Income Tax* and found that the assessee is not liable to deduct tax since no part of the payment made to M/s. Mozambique Holdings Ltd. is liable to tax in India.

The Supreme Court in *GE Technology Centre Pvt. Ltd.* referred to the amendment made to the Finance Act, 2008 with effect from 1st April, 2008 and observed that since the provision has been brought into force only from 1/4/2008, it will not apply for the period prior to the same.

SERVICE TAX

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

Business Auxiliary Service

Where the appellant did electroplating of electrical contacts on Job-work basis and supplied the same to its clients an EOU unit, the Tribunal held that the services of the appellant not liable for service tax under the category of ‘business auxiliary services’ since –

- The process amounted to manufacture [in view of Note No. 6 to Section 16 of the Central Excise Tariff and as held by the Tribunal in *Modison Metal Refiners vs. CCE* (1996) 88 ELT 292 (T)] and process amounting to manufacture is specifically excluded from Business auxiliary services.

- The appellant is also entitled to exemption under Notification No. 8/2005 which exempts goods supplied to principal manufacturer on job-work basis who uses such goods for further manufacture and pays ‘appropriate duty of excise’ on the final products. The term ‘appropriate duty of excise’ excludes Nil rate of duty or duty wholly exempt. The EOU availed exemption under Notification No. 24/2003–CE dated 31/3/2003 which exempted goods manufactured in an EOU provided the goods are not brought to any other place in India. However, in spite of the exemption to the EOU, the Tribunal held that the exemption envisaged in the definition of ‘appropriate duty of excise’ in Notification No. 8/2005 is an unconditional exemption and since the EOU exemption was not an unconditional exemption the EOU would be deemed as having paid ‘appropriate duty to excise’ Hence the appellant is entitled for exemption under Notification No. 8/2005 even if it is assumed that the process does not amount to manufacture.

[Interplex Electronics India Pvt Ltd vs. CST 2014(33) STR 56 (Tri.- Bang.)]

The assessee DTIPL provided services to DT, USA for preparation and filing of US Federal, State and local tax returns, and property tax returns, as well as for computing advance tax estimates, wage card processing and transfer pricing planning and execution which involved data entry, data processing, and such other incidental and support services. They paid service tax on the said services under the category of “Business Auxiliary Services”. Further they also claimed CENVAT credit on various input services and claimed refund of input credit on the basis that their services were exported. The Department denied refund on various grounds one of which was that the services were in the nature of ‘information technology service’ not liable under business auxiliary services and accordingly input credit cannot be taken. The Tribunal dismissed the Revenue’s contention and held that the services are not information technology services since the use of computer or computer programme for their services is only secondary and the primary activity that of is business-related services. Hence their services would be liable as “Business Auxiliary Services”. On the department’s appeal, the AP High Court upheld the order of the Tribunal *[CCE vs. Deloitte Tax Services India Pvt. Ltd. (2014) 33 STR 129 (A.P.)]*.

On facts it was held that activity of placement of channels of different broadcasters at desired frequency and carrying the channel to the users through own cable network ‘in consideration for a ‘carriage fee’ is liable for service tax under the category of ‘business auxiliary service’ *[Indusind Media & Communications Ltd. vs. CCE (2013) 32 STR 418 (Tri.-Del.)]*

Prior to 9/7/2004, service tax is not payable by a commission agent (broker) dealing with Mutual Funds i.e. marketing of mutual funds *[CCE vs. Yogesh J. Shah (2014) 33 STR 163 (Tri. - Mum.)]*

Cargo Handling Services

Where the assessee was engaged in loading/unloading/handling of coal into tipper trucks and its transportation from coal face surfaces to coal stock yard, the Tribunal held that the services were in the nature of handling of cargo and accordingly the same would be liable for service tax under the category of cargo handling services and not mining services as contested by the assessee. *[CCE vs. Gayatri Carriers Pvt. Ltd. (2013)32 STR 367 (Tri.-Del.)]*

Clearing & Forwarding Agent Services

The assessee society was receiving the goods from its member-manufacturers at its doorstep for auction sale to member merchants. It stored the products, tested its quality, provided a finance facility for the manufacturers by way of advances, sold the products on auction whereafter the buyer took delivery of the goods. The Court held that in absence of any responsibility to collect the goods from the manufacturer’s premises nor to arrange for dispatch to the buyer, the assessee cannot be held to be a clearing and forwarding agency. *[CCE Salem vs. Salem Starch & Mfr’s Service Indl. Co-op. Society Ltd., 2014 (33) STR 16 (Mad.)]*

Freight forwarding is distinct and different from “Clearing & Forwarding Agency Service” as defined in law and hence not liable for service tax under the category of “Clearing & Forwarding Agency” service. *[Swagat Freight Carriers Pvt Ltd vs. CST, Mumbai, 2014(33) STR 81 (Tri.- Mum.)]*

Commercial or Industrial Construction service

Sports Complex Stadium constructed for the purpose of holding games which was allowed to be used by the public later on, on payment of user charges is a public facility for the recreation of the public and it does not come under the category of commercial or industrial construction merely because some amount is charged for using the facility. Hence construction



Recent Judgments

of sports stadium being a non-commercial construction is not liable for service tax under the category of "Commercial or Industrial Construction service". [*B. G. Shirke Construction Technology Pvt. Ltd. vs. CCE, 2014(33) STR 77 (Tri.-Mum.)*]

Commercial training and Coaching centre

The explanation to Section 65(105)(zcc) inserted w.r.e.f. 1/7/2003 by the Finance Act, 2010 had clarified that profit motive is not an essential ingredient for bringing a centre or institute within the fold of "commercial training or coaching centre". However, where non-profit organisations provided management courses or other post-graduate courses (not recognised by law) an issue remained as to whether they would be considered as in the nature of "education" and not "training" or "coaching" and hence not liable for service tax. The matter was referred to the Larger Bench of the Tribunal and the Larger Bench held the taxable services of "commercial training or coaching" occurs when any institute or establishment is engaged in the activity of imparting skill, knowledge or lessons on any subject or Field (excluding sports), irrespective of whether such imparting of skill, knowledge or lessons is in respect of particular discipline or a broad spectrum of disciplines/academic areas; irrespective of the nomenclature or description of the institute or establishment, as a coaching or training centre or an educational institution; regardless of whether an institute or establishment is incorporated or registered under any law; and irrespective of distinctions on the basis of curriculum, course content, teaching methodology, course duration or otherwise. [*Great Lakes Institute of Management Ltd. vs. CST (2013) 32 STR 305 (Tri.-LB)*]

Commissioning and Installation Service

The laying of pipeline for the period 1/7/2003 - 31/3/2004 does not fall under the category of "Commissioning or Installation Service", since

- Pipelines are not "plant, machinery or equipment" and
- Such service were specifically brought under 'Commercial Construction Service' w.e.f. 16/6/2005. [*CST vs. Hyundai Heavy Industries Co. Ltd. 2014(33)STR 111(Tri.-Mum.)*]

Consulting Engineer service

The activity of operation and maintenance of windmills not being in the nature of rendering any advice, consultancy or technical assistance in any field of engineering, is not liable for service tax under the category of "Consulting Engineer Service". [*Suzlon Windfarm Services Ltd. vs. CCE, 2014 (33) STR 65 (Tri.-Mum.)*]

Supply of technical know-how in consideration for a royalty or licence fees is not liable for service tax under the category of Consulting Engineering Service [*CCE vs. Leibert Corporation (2014) 33 STR 161 (Tri. -Mum.)*]

Sponsorship Services

BCCI organised a cricket tournament called "IPL" and granted rights to the company M/s GMR to form a team that can play in it. GMR in turn contracted with the appellant to sponsor its team in consideration for which it received benefits such as printing its name and logo on player's appearances, display of motorcycles for promotion, participative rights in prize presentation, celebrity events etc. In case of sponsorship services, it is the recipient who is liable to pay service tax but sponsorship of 'sports events' is not liable. The revenue contended that while the appellant is a recipient of sponsorship services, the appellant did not sponsor a 'sports event' since neither GMR nor its team nor BCCI was a sporting event. On appeal, the Tribunal held that the only purpose of the agreement was to sponsor the cricket tournament through GMR's team and hence the appellant had sponsored a sports event and accordingly not liable for service tax. [*Hero Motorcorp Limited vs. CST (2013) 32 STR 371 (Tri.-Del.)*]

Tour operator Service

Renting of vehicles by assessee was held not taxable since they cannot be said as person engaged in the business of planning, scheduling, organising or arranging tours and thereby cannot be termed as "Tour Operators" [*Divisional Controller vs. CCE (2014) 33 STR 168 (Tri.-Mum.)*]

Export of Service / Place of provision of service

Where the applicant proposed to engage itself in providing Marketing and Sales Support Services to a US and Chinese companies for sale of their products in India, for which it was to receive monies in convertible foreign exchange, the Authority on Advance Ruling held that the place of provision service to be provided by the applicant would be outside India since the

location of the service recipient is in China and US respectively (*vide* rule 3 of the Place of Provision Rules, 2012). Further, since the case met with the requirements of Rule 6A of Service Tax Rules, 1994, the applicants service would also be considered as "export" of service. [*Tandus Flooring India Pvt. Ltd. vs. CST 2014(33) STR 33 (AAR)*]

Valuation/Telecom Service

The assessee, a telecom company, supplied SIM cards/recharge coupon for the value of talk time to its subscribers and also charged them an activation charge. It paid service tax on the activation charges but not value of SIM cards and recharge coupons contending that it is value of goods sold which is exempt under Notification No. 12/2003- ST dated 20/6/2003. The Tribunal held, the supply of SIM cards/recharge coupons are not supply of "goods" and service tax alone can be levied on these supplies. Further, it was also held that the rate of tax at the time of rendering the service and not at the time of consideration is relevant. Hence the advance rentals received on post-paid cards used after the increase in the rate of tax and the talk time utilised on pre-paid cards after the increase in the rate of tax would be liable at the increased rate. [*Bharati Tele-Ventures Ltd. vs. CCE (2014) 33 STR 86 (Tri.-Mum.)*].

Valuation

When the transfer of title to the goods sold is to be at the place of the seller, subsequent charges for transportation and installation of goods at the buyer's place on which service tax has been separately levied and paid cannot be subjected to VAT/sales tax [*Prakash Retail P. Ltd. vs. Dy. Comm. of Commercial Tax (Audit) (2013) 32 STR 388 (Kar.)*]

Amount received by a clearing and forwarding agent towards reimbursement of expenditure incurred for their client would not be includible in taxable value of 'clearing and forwarding agents service' unless it has the character of the remuneration/ commission [erstwhile Rule 6(8)] [*CST vs. Sangamitra Services Agency (2014) 33 STR 137 (Mad.)*]

Value of spare parts sold not includible in value of Maintenance or Repair Service. In this case, the Tribunal held that –

- The transactions involving only sale of spare parts should be excluded for the purpose of computation of service tax demand;
- Even in case where the transaction involves [composite transaction] both sale of spare parts and also rendering of service, the value of spare parts should be excluded if sales tax/ VAT liability has been discharged on such sales as is evident from the invoices/ bills issued in this regard

[*Ketan Motors Ltd. vs. CCE (2014) 33 STR 165 (Tri.-Mum.)*]

Payment of tax through agent

The appellant provided modelling services to various clients who paid his agent, M. M paid service tax on the receipts on behalf of the appellant and paid the balance to the appellant after deducting his commission. Where the department alleged non-payment of service tax by the appellant, the Tribunal held that the Department cannot issue a show cause notice on the appellant for non-payment of service tax since as per Section 65(7) an assessee includes his agent and the appellant had discharged his liability through his agent M. [*Zaheer Khan B. Khan vs. CST (2014) 33 STR 75 (Tri.-Mum.)*].

Show Cause Notice

Where the show cause notices did not specify the specific clauses in the definition of Business Auxiliary services where the activity of assessee falls nor has characterised the activity with reference to the distinct attributes of any clause the Tribunal quashed the SCNs and the adjudication orders holding that the defect in the SCNs are incurable. However, the Tribunal granted liberty to the Revenue to initiate proceedings afresh by issuing new SCNs with reasons. [*ITC Ltd. vs. CST, (2014) 33 STR 67 (Tri.-Del.)*]

Demand

Where the show cause notices were issued upon the applicants seeking to raise a service tax demand under the category of Stock Broker services and the adjudication order confirmed the demand under the category of Stock Exchange Services, the Tribunal held that the impugned order is beyond the scope of the show cause notice and set aside the demands [*I.S.E. Securities & Services Ltd. vs. CST (2013)32 STR 442*].

Demand – Limitation

When dutiable and exempted products were produced by the assessee and the assessee took CENVAT credit in respect of input services utilised for both without maintaining separate records, the Tribunal sustained the demand of the adjudicating authority even for the extended period of

limitation but deleted the penalty with a passing observation that there was no intention to evade tax. On appeal the Hon'ble High Court held that the fact that the Hon'ble CESTAT deleted the penalty based on the said passing observation, will not nullify or negate the fact that the principal finding of the adjudicating authority [invocation of extended period] has been confirmed by the Tribunal and that no substantial question of law arises [R. R. Paints Pvt. Ltd. vs. CCE (2014) 33 STR 156 (Bom.)]

Limitation

Where availment of CENVAT credit was reflected by the assessee in their periodical returns, the Tribunal held that the same was sufficient to prove the *bona fides* of the assessee. It further observed that in absence of any requirement to furnish to the department the documents on which credit was availed, non-placement of the documents cannot be considered as ground to allege *mala fides* on the part of the assessee. Accordingly, it held that the extended period or limitation was not invocable. [CCE vs. Platichemix Industries (2013) 32 STR 383 (Tri.-Ahmd.)]

Where the adjudicating authority had dropped part of the demand on the ground that extended period of limitation is not invocable since the records of the appellant were audited and there was no suppression of facts, the balance demand for the same period cannot be sustainably by invoking extended period of limitation. [Bharati Televentures Ltd vs. CCE 2014(33) STR 86 (Tri.-Mum.)]

Penalty

In this case, the appellants who are franchisees of Hindustan Lever Ltd. had provided beauty parlour services on behalf of Hindustan Lever Ltd. and had not discharged the service tax liability. Further on investigation, the amount of service tax along with interest was discharged. The Delhi Tribunal in this case held as follows:

- Payment of service tax along with interest before issue of show cause notice but after investigation does not indicate *suo moto* payment and therefore it will attract provisions of Section 73 and penalty will be applicable.
- If the penalty is not paid within one month of receipt of the order the benefit of 25% of tax amount as penalty is not given.
- Prior to 10/5/2008 (i.e., before the amendment to S. 78), penalties u/S. 76 and 78 could simultaneously be levied since Sections 76 (penalty for failure to pay service tax) and 78 (penalty for suppressing value of taxable service) operated in distinct and separate fields even if the offences are committed in the course of same transactions or arise out of the same act.

[Care & Cure Pvt. Ltd. vs. CCE (2014) 33 STR 176 (Tri.-Del.)]

On a question whether the penalty u/S. 76 can be reduced below the limit prescribed by Section 76, the Gujarat High Court held that –

- The quantum of penalty has been specified in Section 76 by laying down minimum and maximum limits. Hence it is not possible to read any further discretion, than the discretion provided by the legislature when legislature has prescribed minimum and maximum limits. Thus, Section 76 does not give any discretion to the authority to reduce the penalty below the minimum prescribed.
- Section 80 says **no penalty** is imposable once the assessee establishes reasonable cause. The provision does not say that even upon establishment of reasonable cause a reduced quantum of penalty is imposable.

Therefore on a conjoint reading of Sections 76 and 80 of the Act it is not possible to envisage discretion as being vested in authority to levy a penalty below the minimum prescribed limit [CCE vs. Ashish Amand & Co. (2014) 33 STR 153 (Guj.)]

Where SCN had sought to impose penalties under Sections 76, 77, 78 but the adjudicating authority had confirmed penalties only under Sections 77 and 78 against which an appeal was filed before the CCE (A), the Tribunal held that there was no bar for the reviewing authority to initiate proceedings for imposition of penalty under Section 76. [Professional Couriers vs. CST (2013) 32 STR 348 (Tri.-Mum.)]

Where the appellant a service recipient had discharged its service tax liability along with interest post receipt of SCN but before adjudication and where the credit of service tax paid on such services was available to the appellant as CENVAT credit for discharging duty liability on its final products, the Tribunal held that imposition of penalties was not warranted [Matrix Telecom P. Ltd vs. CCE (2013) 32 STR 423 (Tri.-Ahmd.)]

Late Fees for filing returns

Where the appellants who were registered for Service Tax did not provide



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any service during the period April 2005 to March 2008 but *suo motu* filed 'nil' returns belatedly on 18/11/2008, it was held that penalty u/S. 77 and late fees under rule 7C of the Service Tax Rules was not imposable in view of the following –

- Circular dated 23/8/2007 clarified that in the event no service is rendered by the service provider there is no requirement to file ST-3 return; and
- As per proviso to Rule 7C it was a fit case to waive late fees for filing ST-3 returns

[Amrapali Barter Pvt. Ltd. vs. CST (2013) 32 STR 456 (Tri.-Kolkata)]

Prosecution

In absence of any specific provision in the Finance Act, 1994, only criminal courts are competent to try the offence punishable under Section 89 of the Finance Act, 1994 in accordance with the Parent Act i.e. the Code of Criminal Procedure, 1973 and not by the Commissioner, Central Excise or officers of the Central Excise Department.

Additional Advocate Generals /Public or Assistant public prosecutors/ panel lawyers of State cannot appear for the accused-assessee since administration of criminal justice has been entrusted to the office of the Advocate General.

Considering that out of ₹ 2.17 crores collected and not paid, Rs 87 lakhs has been deposited and post dated cheques clearing the balance dues within 3 months has been given, the Court granted a conditional and temporary bail to the appellant subject to conditions.

[Sandeep Nair vs. Union of India (2014) 33 STR 7 (Chhattisgarh)]

Appeal

An appeal against the CESTAT's order involving a question whether the activity carried on by the assessee falls within 'business auxiliary service' or 'business support service', being a question having a relation to the rate of duty or the value of goods for purposes of assessment, the same would lie before the Supreme Court u/s 35L and is not maintainable before the High Court u/s. 35G. [CCE vs. Chadha Auto Agencies (2013) 32 STR 265 (Kar.)].



Recent Judgments

Review

Where an appeal against the order of the adjudicating authority has been preferred before the CCE(A), the CCE has no power to review the order of the adjudicating authority under Section 84 of the Finance Act, 1994.

[Alpha Polypropylene vs. CCE (2013) 32 STR 352 (Tri.-Ahmd.)]

Miscellaneous Application

When the Miscellaneous Application filed for additional evidence was listed for hearing, the Tribunal took up the stay application before considering the Miscellaneous Application causing grave prejudice to the petitioner and therefore the order passed by the Tribunal was set aside [SCV Cable Net vs. CESTAT (2014) 33 STR 144 (A.P.)]

Recovery

Where the department froze the bank accounts of the assessee after the issue of SCN but before adjudication the court held –

- Section 87 is one of the methods of recovery of the amount due and payable only after adjudication is done and the amount due and payable by the assessee is quantified and not at the Show Cause Notice stage.
- There is no power to freeze the Bank accounts u/S. 87(b). At the most, the money due payable after adjudication can be claimed from the bank.

[R. V. Man Power Solution vs. CCE, 2014(33) STR 23 (Uttarakhand)]

CENVAT Credit

Removal of inputs from the factory premises for providing output services does not warrant reversal of CENVAT Credit in view of the proviso to sub-rule (5) of Rule 3 of the CENVAT Credit Rule, 2004 [Protech Galvanizers & Fabricators Pvt. Ltd. vs. CCE (2013) 31 STR 298 (Tri.-Del.)]

Where the department denied CENVAT credit availed on the strength of insurance policy, the Tribunal observed as follows

- According to Rule 4A of Service Tax Rules, 1994, in case of banks, financial institutions and NBFCs, an invoice includes 'any document' by whatever name called whether or not serially numbered whether or not containing address of the person receiving taxable service but containing other information in such document as required under sub-rule 4A of the Service Tax Rules; and
- The terms 'Invoice', 'bill' or 'challan' have not been defined but the statute only provides for the details that are required to be given in such documents. Therefore what is required to be seen is whether the document on the basis of which the credit has been taken, shows all the necessary details or not. And where the document does not contain all the details, whether it is covered by provisions which empower the proper officer to allow the credit even when there are deficiencies in such documents.

Since the Tribunal found that the insurance policy contained serial No., service tax and cess credit it was held that credit could not be denied. [CCE vs. Shree Khedut Sahakari Khand Udyog Mandli Ltd, (2013) 31 STR 555 (Tri.-Ahmd.)]

(i) CENVAT credit on Travel Agent's services availed by the officers of the assessee company in connection with the company business is admissible.

- Services of maintenance of the head office being an activity relating to manufacturing business of the assessee, CENVAT credit thereon is admissible.

[Jindal Pipes Ltd. vs. CCE, (2013) 31 STR 588 (Tri.-Del.)]

CENVAT Credit on security service availed for securing safe custody of inputs is admissible. [Triveni Engineering & Industries Ltd. vs. CCE, (2013) 31 STR 632 (Tri.-Del.)]

Where the service provider charged service tax on 'documentation charges' under the category of 'Clearing and Forwarding Agency Service', the Tribunal held that refund of same to the service recipient under Notification No. 17/2009-S.T. cannot be denied by its jurisdictional officers on the ground that the said charges would not be covered under the category of 'clearing and forwarding agent services' [Jollyboard Ltd. vs. CCE (2013) 32 STR 357 (Tri.-Mumbai)]

CENVAT Credit in respect of erection, commissioning, installation, manpower recruitment and civil construction services used in the employees' staff colony, canteen and residence of the executive director

of the assessee-company was held to be inadmissible [Shree Cement Ltd. vs. CCE (2013) 32 STR 416 (Tri.-Del.)].

CENVAT Credit on management consultant's services in relation to merger of other companies into the appellant company is admissible as being for the business of manufacturing [Cable Corporation of India Ltd. vs. CCE (2013) 32 STR 434 (Tri.-Mum.)]

CENVAT Credit on rent-a-cab services and contract bus services utilised to transport workers or executives between factory / office and their residences; and telephone services used by the assessee in its business is admissible. The Tribunal also observed that so long as the expenditure is incurred by the company in its books of account there is a presumption in favour of the appellant that the service is availed in relation to their business unless proved to the contrary by the Revenue [Thiru Arooran Sugars Ltd. vs. CCE (2013) 32 STR 435 (Tri.-Chennai)]

Where the appellant hired JCB machine for uprooting trees to get charcoal required in manufacture of calcium carbide, cenvat credit of service tax paid on hire of JCB machines was held to be admissible. [DCM Shriram Consolidate Ltd. vs. CCE 2013 (32) STR 440 (Tri.-Del.)]

CENVAT Credit of service tax paid on telephone services in respect of mobiles and telephones installed at the residence of the Managing Director or senior employees is admissible since they have a nexus with the business of manufacturing [Golden Tobacco Ltd. vs. CCE (2013) 32 STR 474 (Tri.-Mum.)].

CENVAT Credit of service tax paid by the assessee manufacturer on services for dismantling and handling of unusable material used for repair or renovation of factory machinery and pipes is admissible being specifically covered in the definition of input service. [Hindustan Zinc Ltd. vs. CCE, 2014(33) STR 71 (Tri.-Del.)]

Where the appellant was a provider of management consultancy services, credit of service tax on—

- Management, maintenance or repair service of common areas of the business premises of the appellant;
- Employee Mediclaim Insurance
- Rent-a-cab service for transportation of employees
- Car Parking rentals to provide parking space to its employees who use their own cars was held to be admissible. [KPMG vs. CCE, New Delhi, 2014(33) STR 96 (Tri.-Del.)]

No CENVAT credit is permissible in respect of services utilised only in the activity of trading of components and on services which are utilised only for export of such traded items which were not used in the stream of manufacture [Crossword Agro Industries vs. CCE (2014) 33 STR 185 (Tri.-Ahmd.)]

CENVAT credit of service tax on outward transportation from the depot/factory is admissible as being 'clearance of final products from the place of removal' (as the definition of input service stood before 1/4/2008) since the service extends to the stage of handing over the goods to the customers for whom it is meant and therefore any service tax paid up to that point is to be taken into consideration while granting the CENVAT credit benefit. [Rohit Surfactant Pvt. Ltd. vs. CCE (2014) 33 STR 194 (Tri.-Del.)].

Utilisation of CENVAT Credit for payment of service tax on Goods Transport Agency services is permissible for the period 1/1/2005 to 30/9/2005 [CCE vs. Cheran Spinners Ltd. (2014) 33 STR 148 (Mad) following Nahar Industrial Enterprises Ltd. (2012) 25 STR 129 (P&H)]

MODVAT credit in respect of Service tax paid on Custom House Agent services availed at the port for export of goods is admissible [Stovec Industries vs. CCE (2014) 33 STR 155 (Tri.Ahmd) relying on CCE vs. Fine Care Biosystems (2010) 17 STR 168 (Tri.-Ahmd.) & CCE vs. Anani Pharmaceuticals P. Ltd. (2008) 12 STR 593]

Credit of service tax paid on Gardening services i.e. services used for maintaining garden is admissible since maintaining garden was required as per law [Murugappa Morgan Thermal Ceramics Ltd. vs. CCE (2014) 33 STR 181 (Tri.-Ahmd.)]

Threshold exemption

In a lump sum contract for sale of goods and services the value of services alone would be considered for reckoning the threshold limit [₹ 4 lakhs as it stood then]. [CCE vs. Amarjit Agarwal & Co. (2014) 33 STR 59 (Tri.-Del.)]



Ahmedabad: Ahmedabad Branch of WIRC of ICAI has been awarded the best branch of ICAI. Moment of pride and joy for the entire branch. Chairman of Ahmedabad Branch CA. Purushottam Khandelwal with Managing Committee members receiving the shield and certificate on 12/2/2014



Gandhidham: Shri S. N. Misra, ROC felicitating at the Seminar of New Companies Act, 2013. (L-R): CA. Sanjay Mehta, Branch Chairman, Shri Bachubhai Ahir, CA. Vishal Lalka, CS. Ashish Doshi



Jalgaon: Inauguration of Jalgaon Members Directory by MLC Shri Manishdada Jain & Managing Committee Members



Kolhapur: Seminar on Company Law, 2013 on 14/2/2014. (L-R): CA. R. R. Ponshe, CA. Satish Joshi, CS. Vishram Panchpor, CA. Shirang Kulkarni



Pimpri Chinchwad: Seminar on LBT & Service Tax held on 22/2/2014. (L-R): CA. Kishor Gujar, CA. Prasadh Saraaf, CA. Manojkumar Agarwal, Branch Chairman, CA. Santosh Sancheti, Shri Rajeev Jadhav, Commissioner of PCMC, CA. Pankaj Patni, CA Baban Dangale, CA. Suhas Gardi



Aurangabad: Two day workshop on Companies Act, 2013 held on 7-8/2/2014. (L-R): CA. Renuka Deshpande, CA. Parag Raval, Vice Chairman, WIRC, CA. Rajkumar Kothari, Branch Chairman, CA. Janak Bathiya, Faculty, CA. Girish Kulkarni, RCM, CA. Sushrut Chitale, RCM & Faculty



Goa: CA. Naveen Daivajna, Branch Chairman, addressing the One Day Seminar on Issues in Income Tax & Goa Commercial Taxes held on 21/2/2014. (L-R): CA. Anup Borkar, CA. Nihar Jambusaria, CCM, CA. Mangesh Kinare, Imm. Past Chairman, WIRC, CA. Yeshwant Kamat



Jamnagar: CA. Parfulchandra Purohit, Founder Chairman of Jamnagar Branch Inaugurating Accountancy Museum of India on 22/2/2014.



Nagpur: CA. Swapnil Agrawal, Chairman receiving Highly Commendable Certificate at the hands of President & Vice President, ICAI



Vasai: CA Daud Inaugurated by Dr. Sanjeev Naik, MP, Mira Bhayandar Corporator- Ms. Suman Kothari, Mr. Yashwant Kangne, Mr. Dhruv Kishor Patil, Mrs. Deepa & many more eminent dignitaries and Managing Committee Members held on 23/2/2014 at Jesal Park, Bhayandar (E)



Certificate Course on IFRS held from 1st - 22nd February, 2014



CA. Parag Raval, RCM, CA. Pooja Gupta, Faculty & Participants



Group photograph taken during the Inauguration of Palghar CPE Chapter of WIRC held on 19th February, 2014

Two Day Residential Refresher Course at Tarkarli Beach, Sindhudurg held on 7th & 8th February, 2014



CA. Suhas Palav, CA. Niranjana Joshi, Faculty, CA. Gajanan Prabhu, CA. Mangesh Kinare, Imm. Past Chairman, WIRC, CA. Sunil Saudagar, CA. Dilip Phadke, Faculty, CA. Amol Khonalkar



Ahmednagar: Installation of New Office Bearers for 2014-15 held on 26/2/2014. (L-R): CA. Prasad Bhandari, CA. Sushil Jain, CA. Ajay Mutha, CA. Sanjay Deshmukh, CA. Milind Chhallani, CA. Paras Chhallani, CA. Dnyanesh Kulkarni and other CA members



Rajkot: Group photograph taken of the New Managing Committee 2014-15

Reforms in Indirect Tax Administration on 22nd February, 2014



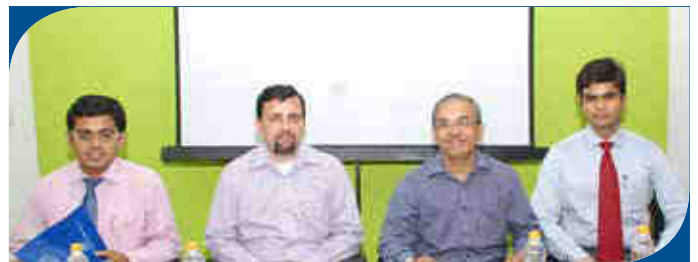
CA. Pankaj Jain, CCM, CA. Mangesh Kinare, Imm. Past Chairman, WIRC, Shri Sanjay Bhatia, MD, CIDCO, Shri V. S. Krishnan, Chief Commissioner – Mumbai Zone-1, Shri T. Koshy, Partner – E&Y, Shri R. Sekar, Commissioner Service Tax-II, Shri Alok Chopra, Commissioner Service Tax-II

Study group meeting on BFSI held on 28th February, 2014



CA. Manish Chokshi, CA. Pramod Agarwal, CA. Manoj Alimchandani, CA. Vijay Bhayani, CA. Kinner Mehta

Workshop on Fiscal Policy & Monetary Policy held on 15th February, 2014



CA. Vikram Joshi, CA. Sushrut Chitale, RCM, CA. Dr. Abhijit Phadnis, Faculty, CA. Gaurav Save

Other Speaker



CA. Dr. V. M. Govilkar



Thane: Group photograph taken during the RRC at Hotel Usha Ascot, Matheran held on 22nd and 23rd February, 2014 with Dombivli CPE Study Circle



Seminar on Internal Audit held on 1st February, 2014



CA. Amogh Pandit, CA. Shardul Shah, RCM, CA. Haresh Dua, Faculty, CA. Sonia Dawar

Other Speakers



CA. Kamlesh Khanchandani



CA. Ashwin Dedhia



CA. Manoj Agarwal

Seminar on Companies Act, 2013 - Impact Areas for CAs held on 15th February, 2014



CA. Sushrut Chitale, RCM, CA. Paresh Clerk, Faculty, CA. Shantesh Warty

Other Speakers



CA. Abhay Arolkar



CA. Diwakar Sapre



CA. Shabbir Readymadewala



Adv. Prachi Manekar

Intensive Workshop on Procedure Redevelopment of Society held on 21st & 22nd February, 2014



CA. Vikas Vishwasrao, CA. Girish Kulkarni, Treasurer, WIRC, CA. Sunil Patodia, RCM, Adv. Pravin Veera, Faculty, CA. Shantesh Warty

Other Speakers



CA. Ramesh Prabhu



CA. Naresh Sheth



CA. Vimal Punmiya



Shri Mukund Godbole

Seminar on Industry wise Analysis of Service Tax Issues held on 8th February, 2014



CA. Shardul Shah, RCM, CA. Mangesh Kinare, Imm. Past Chairman, WIRC, CA. Atul Gupta, CCM & Faculty, CA. Suneet Mahale

Other Speakers



CA. Divyesh Lapsiwala



CA. Anand Desai



CA. Narendra Soni

Seminar on TDS held on 15th February, 2014



CA. Anil Bhomawat, CA. Neel Majithia, RCM, CA. Avinash Rawane, Faculty, CA. Dattaray Pawar

Other Speakers



CA. Rutvik Sanghvi



CA. Shreyas Shah



CA. Ravi Soni

Seminar on Mergers & Acquisitions held on 22nd February, 2014



CA. Siddharth Karani, CA. Priti Savla, RCM, CA. Shailesh Haribhakti, Faculty, CA. Nitant Trilokekar, Faculty

Other Speakers



CA. Anup Shah



CA. Hasmukh Dedhia



CA. Ajay Agashe



Adv. Sanjay Buch



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