



# WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER

JANUARY 2014  
VOL. 40 | No. 01



Best wishes for  
Republic Day,  
Makarsankranti &  
Uttarayan





## 28th Regional Conference of WIRC held on 7th & 8th December, 2013

### Knowledge Track



CA. Sushrut Chitale, RCM, CA. Uday Phadke, Faculty, Padmashree CA. Y. H. Malegam, Past President, ICAI, Session Chairman, CA. Rajkumar Adukia, CCM, CA. Sunil Patodia, RCM



CA. Priyam Shah, RCM, CA. Himanshu Kishnadwala, Faculty, CA. Y. M. Kale, Past President, ICAI, Session Chairman, CA. Nilesh Vikamsey, CCM, CA. N. Venkatram, Faculty, CA. Dilip Apte, RCM



CA. Dhiraj Khandelwal, RCM, CA. M. M. Chitale, Past President, ICAI, CA. Jay Chhaira, CCM



CA. Sarvesh Joshi, RCM, CA. Anil Sathe, Faculty, CA. Rajan Vora, Faculty, CA. Sunil Talati, Past President, ICAI, Session Chairman, CA. Prafulla Chhajed, CCM, CA. Milin Mehta, Faculty, CA. Shardul Shah, RCM



CA. Shruti Shah, RCM, CA. S. Gurumurthy, Faculty, CA. Mangesh Kinare, Chairman, WIRC, CA. Subodh Kedia, RCM



CA. Girish Kulkarni, RCM, CA. Hitesh Gajaria, Faculty, CA. Jayant Gokhale, Session Chairman, CA. Priti Savla, Treasurer, WIRC, CA. Vishnu Agarwal, RCM



CA. Julfesh Shah, RCM, CA. Madhukar Hiregange, Faculty, CA. Atul Bheda, Session Chairman, CA. S. S. Gupta, Faculty, CA. Abhishek Nagori, RCM



CA. Parag Raval, Vice Chairman, WIRC, CA. Suresh Prabhu, Former Union Minister of India, CA. Shriniwas Joshi, CCM, CA. Mahesh Madkholkar, RCM



Ms. Rajani Kesari, Faculty, CA. Murali Ganapathy, Faculty, CA. Nihar Jambusaria, CCM, CA. N. P. Sarda, Past President, ICAI, Session Chairman, CA. Sujal Shah, Faculty, CA. Abhijit Phadnis, Faculty, CA. Sandeep Jain, RCM

### Seminar on Role of CAs – Central & Maharashtra State Govt. Industrial Subsidies held on 29th December, 2013



CA. Mukund Mall, CA. Maheshwar Marathe, Faculty, CA. Bhavesh Thakkar, Faculty, CA. Kusai Goawala, Faculty, CA. Girish Kulkarni, RCM, Shri Dinesh Waghmare, Chief Guest, CA. Mangesh Kinare, Chairman, WIRC, CA. Neel Majithia, Secretary, WIRC, CA. G. B. Modi, Faculty, CA. Gaurav Save

### Sub-Regional Conference held on 12th & 13th December, 2013 at Nashik



CA. Parag Raval, Vice Chairman, WIRC, CA. Girish Kulkarni, RCM, CA. Shriniwas Joshi, CCM, CA. Mangesh Kinare, Chairman, WIRC, Shri Deepak Karanjikar, Chief Guest, CA. Mahesh Madkholkar, RCM, CA. Ulhas Borse, Chairman, Nashik Branch, CA. Neel Majithia, Secretary, WIRC, CA. Dr. V. M. Govilkar, CA. Manoj Shah, Faculty, CA. Ravi Rathi, CA. Vikrant Kulkarni



## CHAIRMAN'S COMMUNICATION

*Let us make our hearts as big as an ocean, to go beyond all the trifles of the world and see it only as a picture. We can then enjoy the world without being in any way affected by it. Swami Vivekananda*



Respected Seniors & Dear Friends,

The year 2013 was a year of ups and downs, economically, financially, politically, socially and environmentally. In fact every sphere of the common man's life was affected in some way or another. Towards the end of the year the much-awaited anti-corruption measure – Lokpal – became a law with President Pranab Mukherjee giving assent to the Lokpal and Lokayuktas Bill, 2013.

For our Profession too, the year 2013 brought a lot of new changes and challenges in the form of changes in audit report formats, electronic filing of tax audit reports, changes in co-operative laws and above all, the New Company Law. We at WIRC have tried our level best to play our role in enabling our Members to equip themselves to face these challenges.

In the last month we had organised more than twenty-five programmes in addition to the Regional Conference. All these programmes got an overwhelming response, not only in terms of number of participants but also in terms of active participation from Members. The success of programmes on off-beat topics like Mutual Fund Industry, Government Incentive Schemes, Carbon Credit, Competition Law etc., was very satisfying. We were pleased that Members could choose the programmes of their liking to complete their CPE requirement.

For the first time WIRC had organized the Maharashtra VAT Conference on a mega scale while also hosting two National Conferences on Service Tax and Accounting Standards. Our unique programme of Networking Meet for women CAs was the first of its kind and the concept was well appreciated by the delegates. The Sub-Regional Conference at Nasik was very successful as was the Regional Taxcon at Thane and the Conference on 'Changing Face and Phase of CA Profession' at Pune. I compliment these branches for their tremendous efforts in hosting these WIRC Conferences.

Now that the deadline for completion of CPE hours has been extended, the Members will be relieved of the pressure. But I am quite sure that most of the Western Region Members would have completed their CPE hours by 31st December itself. For those Members who could not complete their CPE hours so far, I appeal them not to wait till the last moment.

The National Convention of CA students held in Mumbai on 14th and 15th December also saw an excellent response from students. It was gratifying to see the delegate students take keen interest in all the technical sessions. While the efforts of all the paper writer students was commendable, the session of 'Differently abled Students and Members' was the most stunning. The performance by the Baroda students on women's safety in the cultural programme was a class apart. My compliments to WICASA Chairman CA. Mahesh Madhokar and the entire WICASA Team for their herculean efforts.

Despite our hectic schedule of programmes, we also undertook lot of other initiatives and activities to further the interest of our profession. The sub-groups on LBT and Incentive Schemes prepared their representation on these topics which were submitted to the Chief Minister of Maharashtra and Industry Secretary of

Maharashtra. Our Co-operative Committee of Maharashtra also prepared responses to the Draft Co-operative Rules which was submitted to the Co-operative department well in time. Our representation to Sales Tax Department in Maharashtra on issues relating to Form 704, especially regarding audit of builders was also submitted and has received a very positive response.

WIRC has also been in the forefront in making contributions to ICAI. Our sub-group on students' study material has prepared inputs on study material of seven different subjects which has been forwarded to the Board of Studies. We have also sent our contributions on four research subjects of the Institute during the month. I thank all Members who have contributed to these representations and suggestions.

In between these academic activities we had an exciting experience when we visited Surat for the CA Premier League-Cricket Carnival; the 'All India Inter Branch Cricket Tournament'. RCM CA. Hardik Shah and other Members in Surat had done an excellent job of organising this tournament. I congratulate the winning team of Pune and also thank all the participating Branches, who, with their sporting participation made this tournament a grand success.

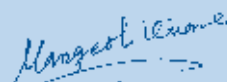
The career counselling programmes were organised in Somaiya College, Mumbai and at Billimora, Gujarat. The programme at Billimora was hosted by the newly formed Navsari Branch and was attended by more than 1200 students from nearby villages.

To increase studying facilities for students in Mumbai, WIRC submitted a proposal to Brihanmumbai Municipal Corporation (BMC) for allotting space in BMC schools at six locations in Mumbai which has been accepted in principle by BMC with final approval expected soon.

With the beginning of the New Year we will be shifting the decentralised Office (DCO, Mumbai) of ICAI and WIRC office to the ICAI Tower in BKC. We expect the shifting to complete by January end and are aware that Members might face some difficulties. While we are taking extra efforts to see that no inconvenience is caused, I request all to bear with us during this period.

We will be celebrating our Republic Day on 26th January, the day on which the Constitution, as drafted and approved by the Constituent Assembly of India, was mandated to take effect thereby declaring India a Republic in 1950. On this occasion let us resolve to always follow the path laid down by our great freedom fighters reminiscing the words of our First President Dr. Rajendra Prasad who in his speech on 26th January, 1950 said "It is up to us to preserve and protect the Independence that we have won and to make it really bear fruit for the man in the street. Let us launch this new enterprise of running our Independent Republic with confidence, with truth and non-violence and above all, with heart within and God above".

With Best Wishes,

  
CA. Mangesh Kinare

### OFFICE BEARERS

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

### EDITORIAL BOARD

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

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# FORTHCOMING EVENTS

**06**

CPE HRS

## Seminar on Standards of Auditing

**DAY & DATE SATURDAY, 18TH JANUARY, 2014**

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

For more details visit [www.wirc-icai.org](http://www.wirc-icai.org)

**04**

CPE HRS

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

**DAY & DATE SATURDAY, 18TH JANUARY, 2014**

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

INITIATIVES OF BFSI & CAPITAL MARKET STUDY GROUP OF WIRC

**06**

CPE HRS

## Seminar on Assessments under the Income-tax Act – Practical Issues

**DAY & DATE SATURDAY, 25TH JANUARY, 2014**

<b>Venue</b>	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade
<b>Time</b>	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)
<b>Fees</b>	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)
<b>Chief Co-ordinators</b>	CA. Shruti Shah 9892407988 CA. Shardul Shah 9820287625 CA. Dhiraj Khandelwal 9867642684 (Regional Council Members)
<b>Co-ordinators</b>	CA. Abhijit Totade 9819659151 CA. Rupesh Gunjal 9987641644 CA. Gaurav Parwani 9323674628

### TOPICS

Scheme of Assessments under Income-tax Act (including self assessments, regular assessment, best judgment assessments, reassessments & assessment in search cases), limitations, notices, section 292BB etc. • Practical aspects relating to representation, importance of production & furnishing of evidence, cross-examination, rebuttals, retractions, powers of various authorities, section 142 & important matters relating to search assessments • References to & proceedings before valuation officers & transfer pricing officers & issues connected therewith & dispute resolution procedures • Rectifications, Revisions & Appeals.

**06**

CPE HRS

## Seminar on Internal Audit

**DAY & DATE SATURDAY, 1ST FEBRUARY, 2014**

<b>Venue</b>	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade
<b>Time</b>	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)
<b>Fees</b>	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)
<b>Chief Co-ordinators</b>	CA. Anil Bhandari 9821037605 CA. Sandeep Jain 9819788099 (Regional Council Members)
<b>Co-ordinators</b>	CA. Kedar Mehendale 9820819459 CA. Amogh Pandit 8108132425 CA. Sonia Dawar 9920283330

### TOPICS

Conducting risk assessment – Different methods  
Report writing – Key elements  
Data analytic for internal audit – CA. Nilesh Likhite  
Roles and responsibilities of internal audit under the new Companies Act

**06**

CPE HRS

## Seminar on Industry wise Analysis of Service Tax Issues

**DAY & DATE SATURDAY, 8TH FEBRUARY, 2014**

<b>Venue</b>	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade
<b>Time</b>	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)
<b>Fees</b>	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)
<b>Chief Co-ordinators</b>	CA. Vishnu Agarwal 9833310916 CA. Hardik Shah 9825510422 CA. Priyam Shah 9824096112 (Regional Council Members)
<b>Co-ordinators</b>	CA. Suneet Mahale 9819966674 CA. Lalit Bajaj 9867692321 CA. Sachin Holmukhe 9820561266

### TOPICS

Real Estate Sector  
Media Entertainment & Software Industry  
Banking, Finance & NBFC  
Restaurants, Hotels, Travel & Tourism

### SPEAKERS

Eminent Faculty  
CA. Divyesh Lapsiwala  
CA. Anand Desai  
Eminent Faculty

**04**

CPE HRS

## Workshop on Fiscal Policy & Monetary Policy

**DAY & DATE SATURDAY, 15TH FEBRUARY, 2014**

<b>Venue</b>	Conference Room, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai
<b>Time</b>	2.00 p.m. to 6.30 p.m.
<b>Fees</b>	₹ 500/- (inclusive of course material & refreshment) (Please add ₹ 100/- towards CA Benevolent Fund)
<b>Chief Co-ordinators</b>	CA. Sunil Patodia 9820344085 CA. Dilip Apte 9930314856 (Regional Council Members)
<b>Co-ordinators</b>	CA. Shantesh Warty 9819947969 CA. Vikram Joshi 9821733286 CA. Gaurav Save 9969001607

### TOPICS & SPEAKERS

Role of money supply in the economy, Bank money, Purchasing power and inflation, Budget deficit and issue of currency, Bank credit, rate of interest, priority sector lending, refinancing, credit for manufacturing, exports and MSMEs. Consumer credit. Role of FII and FDI in effectiveness of monetary policy • Impact of Government sources of revenue on industry and commerce, government expenditure and the economy, deficit in budgets and the sources to finance the deficit, direct and indirect taxes, disinvestment by the Govt., Indian budgets, linkage between Monetary and Fiscal policy - **CA. Dr. V. M. Govilkar & CA. Dr. Abhijit Phadnis**

**06**  
CPE HRS

## Seminar on Companies Act, 2013 – Impact Areas for CAs

The Companies Act, 2013 has brought about significant changes. There are a number of provisions in the new Act which affect chartered accountants, and specifically auditors. This programme focuses on changes which affect chartered accountants in their practice areas as well as chartered accountants who are in employment.

DAY & DATE	SATURDAY, 15TH FEBRUARY, 2014	
Venue	Khimji Kunverji Vikamsey Auditorium, ICAI Tower, Near Standard Chartered Bank, BKC, Mumbai	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Parag Raval CA. Sushrut Chitale (Regional Council Members)	9824339200 9821112904
Co-ordinators	CA. Kedar Limaye CA. Deepika Agarwal CA. Prashant Koyande	9820287646 9920178908 9892331890

TOPICS	SPEAKERS
Private Limited Companies – Concessions removed by new Act	CA. Abhay Arolkar
Impact of provisions pertaining to Company Accounts	CA. Paresh Clerk
Auditors' roles & responsibilities vis-a-vis Companies Act, 2013	CA. Diwakar Sapre
Related party transactions	CA. Shabbir Readymadewala
Class action suits – Implications for chartered accountants	Adv. Prachi Manekar

**06**  
CPE HRS

## Seminar on Mergers & Acquisitions

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

TOPICS	SPEAKERS
Keynote Address	CA. Shailesh Haribhakti
Corporatisation of Non Corporate Entity, Conversion of Proprietary Concern & Partnership to Company	Eminent Faculty
Corporate Restructuring	Eminent Faculty
Legal & Tax implications	CA. Anup Shah
Stamp Duty Aspects	Eminent Faculty
Accounting Implications	CA. Hasamkh Dedhia
Restructuring Case Studies	CA. Ajay Agashe

**Two Days Residential Refresher Course at Tarkarli Beach, Sindhudurg, Maharashtra on 7th & 8th February, 2014. CPE 10 hours**

For more details visit  
[www.wirc-icai.org](http://www.wirc-icai.org)

**06**  
CPE HRS

## Seminar on TDS

DAY & DATE	SATURDAY, 15TH FEBRUARY, 2014	
Venue	J. S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade	
Time	10.00 a.m. to 6.00 p.m. (Registration & breakfast 9.00 a.m. to 10.00 a.m.)	
Fees	₹ 1,200/- (inclusive of course material, breakfast & lunch) (Please add ₹ 100/- towards CA Benevolent Fund)	
Chief Co-ordinators	CA. Neel Majithia CA. Satyanarayan Mundada CA. Abhishek Nagori (Regional Council Members)	9820327660 9422080814 9426075397
Co-ordinators	CA. Dattaray Pawar CA. Bipeen Mundada CA. Anil Bhomawat	9967835454 9223290561 9323243205

TOPICS
Issues & Challenges in Application of provisions including recent decisions
TDS u/s. 195 on various payments including reimbursements
TDS on Real Estate Transactions
Issues & Challenges in E-TDS Returns

**12**  
CPE HRS

## Intensive Workshop on Procedure Redevelopment of Society

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

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

**Restricted 100 participants only**

# FORTHCOMING EVENTS

## I.P.C.C. & FINAL CA STUDENTS' EDUCATION CRASH COURSES FOR MAY & NOVEMBER, 2014 EXAMINATIONS

Courses for	
CA IPCC	CA Final
<ul style="list-style-type: none"> <li>Accounting / Advanced Accounting</li> <li>Business &amp; Company Laws</li> <li>Cost Accounting &amp; F.M.</li> <li>Taxation</li> <li>Auditing &amp; Assurance</li> <li>Information Technology &amp; Strategic Management</li> </ul>	<ul style="list-style-type: none"> <li>Financial Reporting</li> <li>Strategic Financial Management</li> <li>Advanced Auditing</li> <li>Corporates &amp; Allied Laws</li> <li>Advanced Management Accountancy</li> <li>Information Systems Control and Audit</li> <li>Direct Taxes</li> <li>Indirect Taxes</li> </ul>
<b>Time</b>	6.15 p.m. to 8.30 p.m. (Monday to Friday)
<b>Venue</b>	Sydenham College, 'B' Road, Churchgate
<b>Duration</b>	From 24th January, 2014
<b>Fees</b>	₹ 1,500/- per student for IPCC or Final
<b>Co-ordinators</b>	CA. Mahesh Madkholkar 9820075966 (Regional Council Members) CA. Chandrakant Ruparelia 02261377600

For further information kindly contact on 3980 2923 (Jointly with BCAs)

## FORTHCOMING STUDY CIRCLE MEETINGS

Date & Day	Time	Subject(s)	Speaker(s)	Venue	Organised by / Convenor / Tel. No.
18/01/2014 Saturday	5.30 p.m.	Issues in Service Tax on Consideration received in form other than Cash & Point of Taxation – Reverse Charge Mechanism	Eminent Faculty	Sarvoday A/C Hall, L. T. Road, Opp. Diamond Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
18/01/2014 Saturday	5.00 p.m.	Recent issues in TDS	Eminent Faculty	TMA, Hall, Near Dwarka Hotel, Wagle Estate, Thane West	Thane Midtown CPE Study Circle CA. Vijay Jain M: 9869010681
19/01/2014 Sunday	9.45 a.m.	Issues Under Direct Taxes (Study Group Meeting)	CA. Sunil Shah	Vrundas Veg, Gulmohar Road, Behind Ajanta Talkies, Borivali (W)	Borivali (Central) CPE Study Circle CA. Dushyant Bhatt M: 8655016163
23/01/2014 Thursday	5.30 p.m.	Use of RTI in Income Tax Proceedings	CA. Satyapal K. Sadhwani	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
28/01/2014 Tuesday	5.30 p.m.	Advance Pricing Agreements and Safe Harbour Rules	CA. Namita R. Jhaveri	Hotel Kanak, Opp. Gujarat College, Ellisbridge, Ahmedabad	Ellisbridge CPE Study Circle CA. Kartik Dave M: 9427525676
01/02/2014 Saturday	5.00 p.m.	Central & State Government Industrial Subsidies and Professional Opportunities for CAs	CA. G. B. Modi	TMA, Hall, Near Dwarka Hotel, Wagle Estate, Thane West	Thane Midtown CPE Study Circle CA. Vijay Jain M: 9869010681
05/02/2014 Wednesday	6.30 p.m.	CA : What to Do and Not to DO (On Professional Ethics) Problem and Solution of TDS CPC E-filing	CA. Parag Raval CA. Shainan Shah	Hotel Woodland, Nadiad	Nadiad CPE Study Circle CA. Hitesh Shah M: 9428435900

## FORTHCOMING BRANCH MEETINGS

Date	Time	Subject(s)	Speaker(s)	Venue
<b>PUNE</b>				
17-18/01/2014		Seminar on Direct Tax		
19-25/01/2014	9.00 a.m.	Certificate course on FAFD		ICAI Bhawan, Bibwewadi
23-26/01/2014		Inter Firm Cricket Tournament		Katariya Cricket Ground, Mukundnagar
28-30/01/2014		RRC, 2014		Saj Resort, Mahabaleshwar
<b>VASAI</b>				
20/01/2014	3.00 p.m.	Seminar on VAT issues	Eminent Faculty	ICAI Bhawan
<b>NAGPUR</b>				
17/01/2014		Managing Committee	--	ICAI Bhawan
18/01/2014	6.15 p.m.	Joint Programme with VMA	Mr. Ranjit Dual, Ex. IB Chief	Deshpande Hall
25/01/2014		Inter department Sports Meet		
26/01/2014		Indoor Sports Festival		
28/01/2014		WICASA Election		ICAI Bhawan
29/01/2014		International RRC		Nepal
21-23/01/2014		Workshop on Advance features of Excel	Eminent Faculty	ICAI Bhawan
22/01/2014 to 05/02/2014		GMCS	Eminent Faculty	ICAI Bhawan

## ANNUAL INDOOR SPORTS 2014

### DAY & DATE SATURDAY, 25TH JANUARY, 2014

**Venue** Goregaon Sports Club, Link Road, Goregaon (W)

**Time** 10.00 a.m. to 6.00 p.m.  
(Registration 9.00 a.m. to 10.00 a.m.)

**Fees** ₹ 500/- for First Game (Including Lunch)  
₹ 100/- for Every Additional Game

**Co-ordinators** CA. Ashok Manghnani 9820395195  
CA. Mahesh Chhabria 9867565118  
CA. M. Kalahasthi 9029006759  
CA. Mandar Date 9819487770

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

### SEPARATE FACILITIES FOR LADIES & GENTS MEMBERS

Residential Refresher Course at Silvassa will be held on 30th January to 1st February 2014 CPE 15 hours. For further details contact CA. Sachin Maher 9869028560, CA. Sanjay Sardhara 9820515808  
Jointly with Mulund & Ghatkopar CPE Study Circle



# Vertex

## ONLINE BACKUP

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### E-SAHAYATAA

E-Sahayataa is a grievance redressal mechanism hosted on ICAI website. Members and students are requested to visit [www.icaai.org](http://www.icaai.org) to log in their grievances.

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

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

### Extension of last date "for complying with the CPE hours requirement for the block period 2011-13" - from 31st December, 2013 to 31st March, 2014

This is for kind information of the members that it has been decided to extend the last date for complying with the CPE hours requirement for the block period 2011-2013 - from 31st December, 2013 to 31st March, 2014

### Empanelment of CA Firms for 2014-15

Office of the Comptroller and Auditor General of India has invited online applications from the firms of chartered accountants, who intend to be empanelled with their office for appointment as auditors of the Government companies/corporations for the year 2014-2015. Format of the application will be available on [www.saiindia.gov.in](http://www.saiindia.gov.in) from 1st January, 2014, onwards and stay for one and a half months.

### ICAI Connect and e-Samadhan Portals for Members

A self-service portal and a portal for resolving the professional queries for our members was launched - ICAI Connect and e-Samadhan respectively-during the International Conference held last month in Kolkata. The self service portal includes features including My Profile, My Announcements, My Payments, My Articles, My Application Status, e-Services, My Firms, My Software(s), Letters & Certificates, CPE Hours, Guidelines of Networking, Merger & Demerger, etc. Empanelled professionals will answer the queries of our members on e-Samadhan portal. Members are required to log in to SSP and click on 'e-samadhan' to register their query.

### RESTORATION OF NAME

In our endeavour to help members to get their names, restored Form No 9 with updated details is hosted on the WIRC website ie. [Wirc-icaai.org](http://Wirc-icaai.org). Members may download the form, sign it and after requisite payment send it to Mumbai office of the Institute.

Form 9 signed and scanned can also be sent along with email at [jorapur@icaai.in](mailto:jorapur@icaai.in).

The fees should be paid as under

- Annual fee for the year of removal of name.
- Current year annual fees.
- Restoration fees.

Details of fees application from time-to-time is shown on the link.

Please note your name will be restored effective from the date of submission of Form No. 9 and payment of requisite fee to our office.

### Study Group Meeting on BFSI & Capital Market

**Date:** Friday, 28th February, 2014 **Time:** 5.30 p.m. - 8.30 p.m.

**Venue:** ICAI Towers, BKC

**CPE:** 3 hours

**Fees:** ₹ 300/- (Not payable by Annual Members)

### ROUNDTABLE DISCUSSION - TOPIC

Overview of Financial Markets- Asset Allocation and Investment Strategies - CA. Manoj Alimchandani

Equities - CA Vijay Bhayani

Debt Markets - CA Kinner Mehta

## 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 – EXTENSION OF LAST DATE OF PAYMENT OF DECEMBER QUARTER INSTALMENT OF ADVANCE TAX FOR FINANCIAL YEAR 2013-14 FROM 15-12-2013 TO 17-12-2013 FOR ALL ASSESSEES, CORPORATES AND OTHER THAN CORPORATES

ORDER [F. NO. 385/8/2013-IT(B)], DATED 13-12-2013

In exercise of power conferred under section 119(2)(a) of the Income-tax Act, 1961, the Central Board of Direct Taxes has decided to extend the last date of payment of the December Quarter Instalment of Advance Tax for the Financial year 2013-14, from 15th December 2013 to 17th December 2013 for all the assesseees, Corporates and other than Corporates.

### SECTION 40(a)(ia) OF THE INCOME-TAX ACT, 1961 – BUSINESS DISALLOWANCE – INTEREST, ETC., PAID TO RESIDENT WITHOUT DEDUCTION OF TAX AT SOURCE – CLARIFICATION REGARDING CONFLICTING INTERPRETATIONS BY JUDICIAL AUTHORITIES ON APPLICABILITY OF PROVISIONS OF SECTION 40(a)(ia) WITH REGARD TO AMOUNT NOT DEDUCTIBLE IN COMPUTING INCOME CHARGEABLE UNDER HEAD 'PROFITS AND GAINS OF BUSINESS OR PROFESSION'

CIRCULAR NO.: 10/DV/2013[F. NO. 279/MISC./M-61/2012-ITJ(VOL.II)], DATED 16-12-2013

It has been brought to the notice of the Board that there are conflicting interpretations by judicial authorities regarding the applicability of the provisions of section 40(a)(ia) of the Income-tax Act, 1961 ('the Act') with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'.

2. Section 40(a)(ia) of the Act reads as under:

"...any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in sub-section (1) of section 139..."

3. In the case of *Merilyn Shipping & Transports vs. Addl. CIT [2012] 20 taxmann.com 244 (Visakhapatnam)* it was held by Special Bench of ITAT, Visakhapatnam, that the provisions of section 40(a)(ia) of the Act would apply only to the amount which remained payable at the end of the relevant financial year and could not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source. The order of the Special Bench has since been put under interim suspension by the Andhra Pradesh High Court.

3.1 The Hon'ble Calcutta High Court and Hon'ble Gujarat High Court in the case of *Commissioner of Income-tax, Kolkata-XI vs. Crescent Exports Syndicate [2013] 33 taxmann.com 250 (Kolkata)* and *Commissioner of Income-tax-IV vs. Sikandarkhan N Tunvar [2013] 33 taxmann.com 133 (Gujarat)* respectively, have held that section 40(a)(ia) of the Act would cover not only the amounts which are payable at the end of the previous year but also which are payable at any time during the year.

3.2 The Hon'ble High Courts have further held that the intention of the legislation was to disallow certain types of expense, subject to provisions of Chapter XVII-B which are payable at any time during the year but no tax was deducted at source or if deducted was not paid within the stipulated time. There is no such condition that amount should remain payable at the end of the year.

3.3 The Hon'ble Allahabad High Court in *CIT vs. Vector Shipping Service (P.) Ltd. [2013] 38 taxmann.com 77 (Allahabad)* has affirmed the decision of the Special Bench in *Merilyn Shipping* that for disallowance under section 40(a)(ia) of the Act, the amount should be payable and not which has been paid during the year. However, the decisions of the Hon'ble Gujarat and Calcutta High Courts (supra) were not brought to the attention of the Hon'ble Allahabad High Court.

3.4 In the case of ACIT, Circle 4(2), *Mumbai vs. Rishti Stock and Shares Pvt. Ltd. in ITA No. 112/Mum/2012*, Hon'ble ITAT, Mumbai in its order dated 2-8-2013 has examined the decision of the Hon'ble Allahabad High Court (supra) as regards to section 40(a)(ia) of the Act and concluded that the same was an 'orbiter dicta' while the decisions of the Hon'ble Gujarat and Calcutta High Court (supra) were 'ratio decidendi'. The ITAT accordingly applied the view taken by the Hon'ble Gujarat and Calcutta High Court as *ratio decidendi* prevails over an *orbiter dicta*.

4. After careful examination of the issue, the Board is of the considered view that the provision of section 40(a)(ia) of the Act would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia) of the Act the term "payable" would include "amounts which are paid during the previous year".

5. Where any High Court decides an issue contrary to the 'Departmental View', the 'Departmental View' thereon shall not be operative in the area falling in the jurisdiction of the relevant High Court. However, the CCIT concerned should immediately bring the judgment to the notice of the CTC. The CTC shall examine the said judgment on priority to decide as to whether filing of SLP to the Supreme Court will be adequate response for the time being or some legislative amendment is called for.

6. The above clarification may be brought to the notice of all officers.

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

### MVAT ACT, 2002

#### Corrigendum

The Commissioner of Sales Tax has issued Corrigendum dated 4-9-2013, to the notification dated 16-11-2012, wherein certain changes are made about area covered by the said notification.

#### Order

The Commissioner of Sales Tax has issued order dated 14-11-2013 under section 10(6) of the MVAT Act, whereby delegation of powers to different authorities is specified.

#### Circulars

- The Commissioner of Sales Tax has issued Circular 8T of 2013 dated 29-11-2013, which is clarifying applicability of set off to developers of SEZ and units in SEZ.
- The Commissioner of Sales Tax has issued Circular 9T of 2013 dated 11-12-2013 by which procedure about getting refund of the ITC, which was denied earlier due to non filing of returns etc. by the suppliers is clarified.
- The Commissioner of Sales Tax has issued Circular 10T of 2013 dated 16-12-2013 by which the procedure and date of uploading VAT Audit report and physical submission of VAT Audit report is clarified.

## CORPORATE LAWS (Contributed by CA. Rahul Joglekar)

### MCA General Circular No. 20/2013 dated 27th December 2013 – Clarification with regard to holding of shares or exercising power in a fiduciary capacity – Holding and Subsidiary relationship under Section 2(87) of the Companies Act, 2013.

The MCA had received numerous representations w.r.t the notified Sec. 2(87) of the Companies Act, 2013 defining "subsidiary company" or "subsidiary" to clarify whether shares held or power exercisable by a company in a 'fiduciary capacity' will be excluded while determining if a particular company is a subsidiary of another company. In terms of section 4(3) of the Companies Act, 1956, such shares or powers were excluded from the purview of holding-subsidiary relationship. The Ministry vide General circular no. 20/2013 dated 27th December 2013 clarified that the shares held by a company or power exercisable by it in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the holding-subsidiary relationship in terms of the provision of section 2(87) of the Companies Act, 2013.

### MCA General Circular No. 19/2013 dated 10th December 2013 – Clarification with regard to applicability of provision of Section 182(3) of the Companies Act, 2013

With the coming into force of the scheme relating to 'Electoral trust companies' in terms of section (24M) of the Income-Tax Act, 1961 read with Ministry of Finance Notification No. S.O.309(E) dated 31st January,



2013, the MCA has received number of representations consequent upon notifying Section 182 of the Companies Act, 2013 in so far as it deals with disclosures to be made under that Section. General Circular No. 19/2013 dated 10-12-2013 has been released by the Ministry clarifying the legal provision in this regard. It is clarified that companies contributing any amount or amounts to an Electoral Trust Company for contributing to a political party or parties are not required to make disclosures required under section 182(3) of Companies Act, 2013. It will suffice if the Accounts of the company disclose the amount released to an Electoral Trust Company. Companies contributing any amount or amounts directly to a political party or parties will be required to make the disclosures laid down in section 182(3) of the Companies Act, 2013. Electoral Trust companies will be required to disclose all amounts received by them from other companies/sources in their Books of Account and also disclose the amount or amounts contributed by them to a political party or parties as required by section 182(3) of Companies Act, 2013.

## **SEBI Circulars No. CIR/CFD/DIL/15/2013 dated 3rd December 2013 – Illustrative format of Statement of Assets & Liabilities in SEBI (ICDR) Regulations, 2009**

Regulation – (2)(IX)(B)(9)(f) of Part-A of Schedule VIII of SEBI (ICDR) Regulations, 2009 provides for the illustrative format of Statement of Assets and Liabilities in offer document which is in accordance with the erstwhile format of Schedule VI of the Companies Act, 1956. SEBI has released the aforesaid circular to clarify that after the notification and implementation of the revised Schedule VI of Companies Act, 1956, the aforesaid format has been updated and brought in line with the requirements of the Companies Act, 1956. The revised format is also in line with the requirements of Companies Act, 2013 as Schedule III of Companies Act, 2013 has adopted the same format as notified under revised Schedule VI of Companies Act, 1956. The complete text of the circular can be referred at [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1386071665107.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1386071665107.pdf)

## **Amendments to Securities Contracts (Regulation) Rules 1957 to enable Limited Liability Partnerships to become members of the stock exchange**

The Central Government has amended the SCRR 1957 to enable LLPs to become members of stock exchanges subject to them fulfilling the eligibility criteria as laid down by SEBI from time-to-time. The complete Gazette Notification can be referred to at the link [http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1385551232538.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1385551232538.pdf)

## **SERVICE TAX (Contributed by CA. Rajiv Luthia)**

### **SYNOPSIS OF NOTIFICATIONS, CIRCULARS & LETTERS**

**Central Government vide Notification No. 17/2013-ST dated 26th December, 2013** 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 Letter F. No. B1/19/2013-TRU (PT.) dated 11th December, 2013** has clarified on various issues related to the Voluntary Compliance Encouragement Scheme (VCES), 2013:

- In terms of the Scheme, a declaration of tax dues has to be made in Form VCES-I, which includes an undertaking that the information given in the declaration is correct and complete. Therefore, the Designated Authority should not ask for any other undertaking or declaration from the declarant that he had no unpaid "tax dues" for the remaining period covered by the Scheme where the declarant has "tax dues" only for a part of the period covered by the Scheme.
- The Scheme only prescribes that the declarant would pay a minimum amount of 50% of the tax dues by 31-12-2013. Rest of the payment may be made by 30/06/2014, without any interest, and any amount remaining unpaid on 30-06-2014 shall be paid by 31-12-2014, with interest for the period of delay beyond 30-6-2014. There is no bar to pay these amounts in instalments.
- While the designated authority may cause arithmetical check as regards the correctness of computation of tax dues, the Scheme does not envisage investigation by the designated authority into the veracity of declaration. Only if the Commissioner has reason to believe that the declaration filed by the declarant is substantially

false he may, for reasons to be recorded in writing, serve notice on the declarant requiring him to show cause why he should not pay the tax dues not paid or short-paid.

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

### **Update of the Gujarat VAT Act, 2003**

#### **Exemption from Tax**

*Vide* Notification No. (GHN-27) VAT-2013-S.5(2)(40)-TH, dated 2nd November, 2013, u/s. 5(2)/ GVAT Act, a new Entry No. 79 has been inserted to grant exemption from tax to sale and purchase of toys including rubber balloons (except electronic and battery operated).

#### **Movement of Goods**

*Vide* order No.GVL/VAT/RULE/R.51(1)/(3) dated 2nd November, 2013, U/s. 68 of the Gujarat Value Added Tax Act, 2003, list of Specified Goods, requiring pre-authenticated online Form No. 402, for sending such goods outside the state of Gujarat, is amended to exclude entry Serial No. 7 – Cumin Seeds (Jeera) and entry at Serial No. 8 – Ani seeds (Variali) from the said list. Movement of these goods to outside the State of Gujarat, therefore, will not require pre-authenticated online Form No. 402 w.e.f. 2-11-2013.

#### **VAT Audit Report**

- Vide* Circular No. GUJKA/VAT-17C/13-14/OTW 149/128 dated 20th December, 2013, time limit for obtaining VAT Audit Report has been extended from 31st December, 2013 to 31st January, 2014.
- Vide* Circular No. GUJKA/VAT-17C/13-14/OTW 148/127 dated 11th November, 2013, relaxation granted in earlier years, for not filling certain details in VAT Audit Report, has been continued for F.Y. 2012-2013 also.

#### **Annual Return**

*Vide* Circular No. GUJKA/VAT-15/13-14/OTW 150/129 dated 20th December, 2013, time limit for submitting Annual Return by dealers, liable for VAT Audit, has been extended from 31st December, 2013 to 31st January, 2014.

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

### **External Commercial Borrowings (ECB) by Holding Companies/ Core Investment Companies for the project use in Special Purpose Vehicles (SPVs)**

#### **A.P. (DIR Series) Circular No. 78 dated December 3, 2013**

In order to strengthen the flow of resources to infrastructure sector, RBI has decided to permit Holding Companies / Core Investment Companies (CICs) coming under the regulatory framework of RBI to raise ECB under the automatic route/approval route, as the case may be, for project use in Special Purpose Vehicles (SPVs) with the following terms and conditions:

- The business activity of the SPV should be in the infrastructure sector where "infrastructure" is defined as per the extant ECB guidelines;
- The infrastructure project is required to be implemented by the SPV established exclusively for implementing the project;
- The ECB proceeds is utilised either for fresh capital expenditure (capex) or for refinancing of existing Rupee loans (under the approval route) availed of from the domestic banking system for capex as per the extant norms on refinancing;
- The ECB for SPV can be raised up to 3 years after the Commercial Operations date of the SPV;
- The SPV should give an undertaking that no other method of funding, such as, trade credit (if for import of capital goods), etc. will be utilised for that portion of fresh capital expenditure financed through ECB proceeds;
- The ECB proceeds should be kept in a separate escrow account as per the extant guidelines on parking of ECB proceeds pending utilisation for permissible end-uses and use of such proceeds should be strictly monitored by the ADs for permissible uses;



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(g) In case of Holding Companies that come under the Core Investment Company (CIC) regulatory framework of RBI, the additional terms and conditions for raising ECB for project use in SPVs will be as under:

- The ECB availed is within the ceiling of leverage stipulated for CICs, i.e., their outside liabilities including ECB cannot be more than 2.5 times of their adjusted net worth as on the date of the last audited balance sheet; and
- In case of CICs with asset size below ₹ 100 crore, the ECB availed of should be on fully hedged basis.

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

**Amendment to the policy on issue of shares by unlisted Indian Companies under FCCB/ADR/GDR pursuant to the Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism)(Amendment) Scheme, 2013**

**Press Note No. 7 (2013 Series) dated December 3, 2013 issued by the Department of Industrial Policy & Promotion**

Consequent to issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) (Amendment) Scheme, 2013 vide notification No. G.S.R. 684(E) dated October 11, 2013 issued by the Government of India, the paragraph 3.3.4(iii) of the Consolidated FDI Policy effective from April 5, 2013 is replaced as under:

"Unlisted Companies shall be allowed to raise capital abroad without the requirement of prior or subsequent listing in India initially for a period of two years subject to the following conditions:

- Unlisted Indian companies shall list abroad only on exchanges in IOSCO/FATF compliant jurisdictions or those jurisdictions with which SEBI has signed bilateral agreements;
- The companies shall file a copy of the return which they submit to the proposed exchange/regulators also to SEBI for the purpose of Prevention of Money Laundering Act (PMLA). They shall comply with SEBI's disclosure requirements in addition to that of the primary exchange prior to the listing abroad;
- While raising resources abroad, the listing company shall be fully compliant with the FDI policy in force;
- The capital raised abroad may be utilised for retiring outstanding overseas debt or for operations abroad including for acquisitions;
- In case the funds raised are not utilised abroad as stipulated at (d) above, such companies shall remit the money back to India within 15 days and such money shall be parked only with AD Category Banks recognized by RBI and may be used domestically."

The above modifications shall come into immediate effect.

**Borrowing and Lending in Rupees - Investments by persons resident outside India in tax free, secured, redeemable, non – convertible bonds**

**A.P. (DIR Series) Circular No. 81 dated December 24, 2013 and Notification No. FEMA 287/2013-RB dated September 17, 2013**

RBI has permitted resident entities / companies in India, authorised by the Government of India, to issue tax-free, secured, redeemable, non-convertible bonds in Rupees to persons resident outside India to use such borrowed funds for the following purposes:

- For on lending/re-lending to the infrastructure sector; and
- For keeping in fixed deposits with banks in India pending utilisation by them for permissible end-uses.

Consequently, the RBI has issued Notification No. FEMA.287/2013-RB dated September 17, 2013 to amend the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 [Notification No. FEMA 4/2000-RB dated May 3, 2000] to give effect to the above amendment.

## Personal Column

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## DIRECT TAX

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

### HIGH COURTS & SUPREME COURT DECISIONS

#### S. 2(15), provisos, 10(23C)(iv) & 11(4A) Charity vs. Business post 1-4-2009

Assessee institution promoted by Government for creating awareness and promoting study of global standards regarding Company Prefix Number (GS1 Standards), location numbering, EDI, ECR, automatic data collection and related services and technologies, research and development into these global standards, and providing education in universities and colleges regarding these standards was a charitable institution, not engaged in any trade, commerce or business; neither proviso first nor proviso second to s. 2(15) was applicable; assessee was entitled to approval under s. 10(23C)(iv)

Business activity has an important pervading element of self-interest, though fair dealing should and can be present, whilst charity or charitable activity is antithesis of activity undertaken with profit motive or activity undertaken on sound or recognised business principles. Charity is driven by altruism and desire to serve others, though element of self preservation may be present. A small contribution by way of fee that the beneficiary pays would not convert charitable activity into business, commerce or trade in the absence of contrary evidence. *GS1 India vs. Director General of Income Tax (Exemption) & ANR.* (2013) 262 CTR (Del.) 585

#### S. 10A Change in constitution and claim for deduction

Conversion of proprietary concern into partnership will not entail disallowance of exemption under s. 10A. *Commissioner of Income Tax vs. Bullet International* (2013) 263 CTR (All.) 44

#### S. 32(1)(ii) Depreciation on passive use of machinery

On the admitted case that business was a going concern and the machinery could not be put to use due to raw material paucity, assessee's claim for depreciation could not be rejected. *Commissioner of Income Tax vs. Chennai Petroleum Corporation Ltd.* (2013) 262 CTR (Mad.) 664

#### S. 32(1)(ii) Depreciation available to lessor

Assessee lessor is an owner and thus is entitled to depreciation on assets leased out in the course of leasing business. *Commissioner of Income Tax vs. BAID Leasing & Finance Company Ltd.* (2013) 262 CTR (Raj.) 553

#### S. 36(1)(v) Payment to LIC Group Gratuity Fund eligible for deduction

Though a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the section, a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the Act.

Payment made by the assessee company directly to LIC towards group gratuity fund is deductible under s. 36(1)(v). *Commissioner of Income Tax vs. Textool Co. Ltd.* (2013) 263 CTR (SC) 257

#### S. 37(1) Accounting treatment not detrimental to claim

Merely because the assessee has firstly shown the entire amount in the books of account as deferred revenue expenditure and thereafter debited ₹ 29,51,909/- in the P & L A/c cannot be made a ground to disallow the advertisement expenses of ₹ 77,16,120/-. *Commissioner of Income Tax & ANR. vs. Modi Olivetti Ltd.* (2013) 263 CTR (All.) 28

#### S. 37(1) Payment to retiring partner not eligible for deduction

Deduction for payment to a retiring partner towards alleged goodwill was not allowable, it being only towards share of capital invested in the firm. *Oberon Trading Corporation vs. Income Tax Officer.* (2013) 263 CTR (Ker.) 494

#### Ss. 40(a)(i) & 195 Prior period expenditure allowable in the year of payment of TDS

Assessee had made a provision for royalty payable for the period 1st Jan., 1990 to 31st March, 1991 and R & D cess and the tax deductible on this payment was duly shown as deduction in the books of account on 31st March, 1991 and therefore disallowance under s. 40(a)(i) for asst. year 1991-92 was not sustainable. *Commissioner of Income Tax & Anr. vs. Modi Olivetti Ltd.* (2013) 263 CTR (All.) 28

#### S. 40(a)(ia) Amendment effective retrospectively

Tribunal was justified in holding that the amendment made to s. 40(a)(ia) by the Finance Act, 2010 should be given retrospective effect and applicable to asst. year 2008-09 in question. *Commissioner of Income Tax vs. Naresh Kumar* (2013) 262 CTR (Del.) 389

#### Ss. 40(a)(ia) & 194C In the absence of Privity of Contract no liability to effect TDS

Assessee engaged in booking cargo for other transporters against commission, there was no privity of contract between assessee and the clients, hence assessee was not obliged to deduct tax at source under s. 194C and therefore disallowance under s. 40(a)(ia) was not called for. *Commissioner of Income Tax vs. Hardarshan Singh* (2013) 263 CTR (Del.) 466

#### Ss. 43B & 145A Excise duty liability and disallowance u/s. 43B

Excise duty was not paid but the goods were admittedly removed and therefore duty was payable; AO was justified in making addition as per provisions of s. 43B r/w section 145A. *Commissioner of Income Tax vs. Lakshmi Sugar Mills Co. Ltd.* (2013) 263 CTR (Del.) 470

#### S. 54F Exemption available for investment in house within extended period u/s 139(4)

Assessee having paid substantial amount for purchase of house within extended period of filing the return, exemption under s. 54F was allowable. *Commissioner of Income Tax vs. Jagtar Singh Chawla* (2013) 259 CTR (P & H) 388

#### S. 56(2)(vi) Gifts on the occasion of marriage of daughter are taxable

Clause (b) of proviso to cl. (vi) to sub-s. (2) of s. 56 is applicable only to gifts received on the occasion of the marriage of the assessee and not to the gifts received on the occasion of marriage of his daughter. *Rajinder Mohan Lal vs. Deputy Commissioner of Income Tax* (2013) 263 CTR (P & H) 231

#### S. 74 Capital loss on sale of shares to group company allowable

Merely because the assessee has claimed set off of capital loss incurred on sale of shares to a group company against the capital gain earned during the same period, the transactions cannot be branded as a colourable device or method of tax avoidance, more so when the valuation report of the valuer which formed the basis of share transaction did not suffer from any legal infirmity. *Commissioner of Income Tax vs. Special Prints Ltd.* (2013) 262 CTR (Guj.) 119

#### S. 145 Different accounting treatment for financial accounts and tax purposes

Assessee bank is entitled to show securities held by it as investment in balance-sheet and as stock-in-trade for income-tax purposes. *Karnataka Bank Ltd. vs. Assistant Commissioner of Income Tax* (2013) 263 CTR (Kar.) 299

#### Ss. 145 & 145A Excise duty and valuation of stock

Excise duty payable was includible in closing stock; opening stock and closing stock should be maintained in the same manner. *Krishni Discs (P) Ltd. vs. Commissioner of Income Tax & Anr.* High Court Allahabad (2013) 263 CTR (All.) 476

#### S. 147 Reopening of intimation u/s. 143(1) requires tangible material

Even where proceedings under s. 147 are sought to be taken with reference to an intimation under s. 143(1), the ingredients of s. 147 have to be fulfilled; there should exist "reason to believe" that income chargeable to tax has escaped assessment; in the absence of any tangible material in possession of AO subsequent to intimation under s. 143(1), reopening was not sustainable. *Commissioner of Income Tax vs. Orient Craft Ltd.* (2013) 263 CTR (Del.) 335

#### S. 147 Basis of reopening of assessment

Reasons recorded by the AO for reopening the assessment which contain a mere narration of facts and the observation that the assessee, a non-resident company, had a PE in India as per the provisions of the DTAA and do not indicate or state why and how the PE had adversely impacted the tax payable or income assessed in the original assessment cannot constitute valid reasons to believe that income has escaped assessment so as to justify reopening of assessment. *G. S. Engineering & Construction Corporation vs. Deputy Director of Income Tax (International Taxation) & Ors.* (2013) 263 CTR (Del.) 195.

#### Ss. 192, 201(1) & 201(1A) bona fide belief and TDS default

Assessee was under bona fide belief that the conveyance allowance was exempt under s. 10(14) and tax was not deductible at source and therefore assessee could not be treated as assessee in default for charging interest under s. 201(1A). *Commissioner of Income Tax & Anr. vs. I.T.C. Ltd.* (2013) 263 CTR (All.) 241

#### S. 194H U.P. Stamp Rules, 1942, RR. 157 & 161 Discount vs. Commission

Assessee Chief Treasury Officer, selling stamp papers to licenced stamp vendors on discount, the discount does not constitute commission so as to require tax deduction at source under s. 194H; sale of stamp papers by the assessee to the licenced vendor is a sale on principal to principal basis. *Chief Treasury Officer, Agra vs. Union of India & Ors.* (2013) 263 CTR (All.) 346

## **Ss. 194C, 197 & 201 Composite Contract and liability for TDS**

All the three agreements for supply of (i) equipments and materials, (ii) labour-cum-erection, and (iii) for construction of refinery were essentially the contract was for work and labour and therefore assessee was liable to deduct tax at source under s. 194C. *Essar Oil Ltd. vs. Income Tax Officer* (2013) 262 CTR (Guj.) 63

## **S. 199, Income Tax Rules, 1962, R. 37BA TDS credit where income offered to tax**

Assessee-company, a co-venture in joint venture responsible for a specific share in the work, and in whose hands the income is assessable is entitled to the credit of the TDS mentioned in the TDS certificates irrespective of the fact that such certificates are issued in the name of the joint venture or in the name of a director of the assessee-company. *Commissioner of Income Tax vs. Bhoortnam & Co.* (2013) 262 CTR (AP) 405

## **S. 244A Interest on interest**

When the Revenue does not pay full amount of refund but part amount is paid, they will be liable to pay interest on the balance outstanding amount; the balance outstanding amount may consist of the tax paid or the interest, which is payable till the payment of the part amount and interest payable on the principal amount, which remained outstanding thereafter. *India Trade Promotion Organisation vs. Commissioner of Income Tax* (2013) 263 CTR (Del.) 18

## **S. 271(1)(c) Making of a debatable claim not liable for penalty**

Law does not bar or prohibit an assessee from making a claim, when he believes may be accepted or is plausible; when such a claim is made during the course of regular or scrutiny assessment, liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinised both on facts and in law. *Commissioner of Income Tax vs. DCM Ltd.* (2013) 262 CTR (Del.) 295

## **S. 271(1)(c) Change of head of income, no penalty can be levied**

A.O. having assessed the premium received on redemption of debentures under the head 'Income from other sources' which was disclosed by the assessee under the head 'Capital Gains' and the Tribunal having deleted the levy of penalty under s. 271(1)(c) on the ground that there is only a change of head of income which is not shown to be perverse, no substantial question of law arises. *Commissioner of Income Tax vs. Bennett Coleman & Co. Ltd.* (2013) 259 CTR (Bom.) 383

## **S. 271(1)(c) Amount disclosed in Balance Sheet not liable for penalty**

Assessee having not offered to tax the amount of the awards received by her but disclosed the same in the statement of affairs filed along with the return which was accepted by the AO, and later voluntarily offered the amount for tax when the assessment was reopened, it cannot be said that there was any concealment and, therefore, penalty under s. 271(1)(c) is not leviable. *Commissioner of Income Tax vs. Sania Mirza* (2013) 259 CTR (AP) 386

## **ITAT DECISIONS**

### **S. 2(22)(e) Deemed Dividend & ICDs**

Intercompany Deposits are not loans and advances and are not assessable as "Deemed Dividend". *IFB Agro Industries vs Jt. CIT (ITAT Kolkata)*

### **S. 32(1)(ii) Depreciation on Leasehold Right**

Any right including leasehold right which enables carrying on business effectively and profitably is an "Intangible Asset" & eligible for depreciation.

### **S. 41(1) Remission or cessation of Liability**

Liability outstanding for long period of time is assessable as income despite no write back in profit and loss account if assessee is unable to prove genuineness of liability.

### **S. 14A & Rule 8D Disallowance u/s. 14A**

Disallowance applies to tax-free securities held as stock-in-trade. *D.H. Securities Pvt. Ltd. vs. DCIT (ITAT – Mumbai – Third Member)*

## **S. 74 Business Loss vs. Capital Gain**

Loss incurred from transaction in derivative by assessee, being sub-account FIT, could not be treated as business loss rather it has to be considered as short term capital gain arising from sale of shares. *Platinum Asset Management Ltd. vs. DDIT* (2013) 40 taxmann.com.80 (Mumbai-Tribunal). *Tirumala Music Centre (P) Ltd. vs. ACIT (ITAT Hyderabad)*

## **INTERNATIONAL TAXATION**

(Contributed by

**CA. Hinesh Doshi & CA. Dolly Waghela)**

### **Samsung Heavy Industries Co. Ltd. vs. DIT (2014-TII-01-HC-UKHAND-INTL) dated December 27, 2013**

#### **Facts of the case**

Samsung Heavy Industries Co. Ltd. was a tax resident of South Korea filing NIL returns claiming to have losses. It had entered into a contract with ONGC and Larsen & Toubro Ltd. as a consortium partner under which it received certain payments – the part payment was in relation to activities inside India.

With respect to these activities, the assessee incurred certain expenses and after deducting the same it had recorded loss. But the AO declined to accept some of the deductions and found that in addition to the sum of money shown to have been received; the assessee had received other sums of monies under the contract and claimed that the same were in respect of outside India activities. The AO held that 25 per cent of the revenues received from outside India activities, should be brought to tax in India. The AO's order was confirmed by the Tribunal.

#### **Issue before the High Court**

Whether a non-resident assessee having a project office in India, earns revenues from within Indian activities as also from activities outside India, without giving a finding that the project office was associated with the outside India activities, can 25% of outside India revenues be brought to tax?

#### **Held**

HC noted that the assessee had a tax identity in India as well as outside India and, accordingly its tax liability in India was required to be apportioned. It also noted that the mechanism to be adopted for apportionment for the same was not provided in DTAA between India and Korea. In this regard, HC referred to para 1 of Article 7 of the said DTAA, which provides that the profits of the enterprise may be taxed in the other State only to the extent attributable to that PE.

In terms of para 1 of Article 7, assessee would acquire its tax identity in India only when it carried on business in India through a PE. Further, it was observed that the assessee did not contend that a part of the revenue received by it for doing certain work in India was done by or through its PO in Mumbai. HC noted that the Revenue had also not recorded any findings in this regard.

Ruling in favour of the assessee, HC rejected the Revenue's contention that PO of assessee in Mumbai was its PE in India through which it carried on business and 25% of the gross receipt was attributable to the said business. HC observed that neither AO, nor ITAT had made any effort to bring on record any evidence to justify the same.

It was concluded that the tax liability could not be fastened on assessee without establishing that the same was attributable to the tax identity or PE of assessee situated in India. Thus, the Revenue cannot arbitrarily fix a part of the revenue to the PE of assessee in India.

### **DDIT vs. MSM Satellite (Singapore) Pte. Ltd. (TS-664-ITAT-2013(Mum) dated December 27, 2013**

#### **Facts of the case**

The assessee company incorporated in Singapore was engaged in the business of telecasting channels by the name of 'SET MAX' over the Indian Territory. The assessee had entered into an agreement, with M/s. Global Cricket Corporation for acquiring rights to telecast live cricket matches over various countries including the Indian sub-continent.

The Revenue held the payment by MSM Satellite was in the nature of royalty income arising in India as per Article 12(7) of DTAA between India and Singapore. Further, the AO denied the treaty benefits to the assessee on the ground that 'Limitation of Benefit' ('LOB') clause as per Article 24 was applicable in the instant case. However, the CIT(A) ruled in favour of the assessee.

Aggrieved, the Revenue preferred an appeal before the Mumbai Bench of ITAT. ITAT relied on co-ordinate Bench ruling in assessee's own case for AY 2003-04. ITAT noted that no distinguishing facts were brought on record by the Revenue.

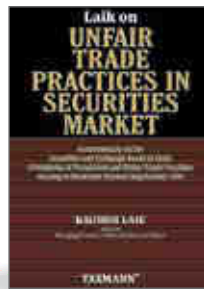
#### **Issue before the Tribunal**

Whether the broadcasting rights payment by MSM Satellite (Singapore) Pte. Ltd. to Global Cricket Corporation was taxable as royalty?



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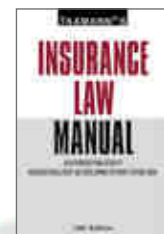


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## Held

Referring to Article 12(7) of India-Singapore DTAA, co-ordinate Bench noted that as per first limb of Article 12(7), royalties did not arise in India as the assessee was not a resident of India. According to the Bench, such royalty had risen in Singapore as the assessee was a tax resident of Singapore.

Referring to second limb of Article 12(7) of the Treaty, co-ordinate bench noted that it dealt with a scenario where the payments were made by a non-resident, where such non-resident has a PE in India. However, it was noted that a mere existence of a PE in India cannot lead to a conclusion that royalties arise in India. Co-ordinate Bench further noted that in addition to existence of PE, for royalties to arise in India under Article 12(7) of the Treaty, it was essential that liability to pay such royalties had been "incurred in connection with" and was "borne by" the PE of the payer in India.

The Bench also referred to OECD Commentary on Article 12 dealing with royalty. It provides that for royalties to arise in India, an existence of an economic link between the liability for payment of such royalties and PE was necessary. However, in the present case it was noted that there was no economic link between the payment of royalties and the alleged PE of assessee in India (i.e. SET India).

The Bench observed that the economic link was entirely with assessee's HO in Singapore. Therefore it was held that the payments to GCC cannot be said to have been incurred "in connection" with assessee's PE in India (i.e. SET India). Further, it was observed that SET India was also not involved in any way with the acquisition of the right to broadcast cricket matches, nor did it bear the cost of payments to GCC. Thus, the payments to GCC cannot be said to have been "borne by" the assessee's PE in India (i.e. SET India).

The Bench had ruled that "hence even if it is assumed that the payment for broadcasting cricket constitutes Royalty, in our opinion such royalty does not arise in India within the meaning of provisions of Article 12(7) of the Tax Treaty."

On reference to LOB clause as per Article 24, co-ordinate Bench noted that such clause becomes applicable only when there is income exempt from tax in India. Further it was held that there was a distinction between income 'exempt from tax' and income which is 'not taxable'. Co-ordinate Bench ruled that in the instant case there was no question of income being exempt from tax in India and therefore Article 24 should not apply on this count.

Therefore, based on the documents filed, it was clear that the amount paid by assessee to GCC, in Jersey, was subject to tax in Singapore under its domestic laws and hence Article 24 cannot apply on this count too. Co-ordinate Bench, thus, held that "We therefore believe that the provisions of Article 24 of the DTAA do not apply to the facts of this case and the assessee is entitled to the benefits under the India-Singapore Treaty."

ITAT, therefore, dismissing the Revenue's appeal, held that payments in question were not taxable as royalty in India.

**DIT vs. Dolphin Drilling Ltd. (ITA No. 38 of 2009) (2013-TII-58-HC-UKHAND-INTL) dated December 19, 2013**

## Facts of the case

The assessee, Dolphin Drilling Ltd., entered into a contract with Alfa Crew, pursuant to which it provided crew services to the assessee. Under the contract, Alfa Crew became entitled to receive from the assessee: (i) a fixed fee of U.S. \$869 per day, (ii) salary of crew to be provided by Alfa Crew in U.S. dollars as per invoices and (iii) handling charge of 5% on such salary.

During AY 2004-05, the assessee paid ₹ 2.03 Crs. to Alfa Crew on account of fixed fee and handling charges, on which the assessee deducted tax at source ('TDS'). Further, the assessee paid to Alfa Crew a sum amounting to ₹ 26 Crs. on account of salary payable to crew on which it did not deduct any TDS. The AO disallowed ₹ 26 Crs. u/s. 40(a)(i) holding that the same was part of fees for technical services ('FTS'), on which tax was deductible at source and was not deducted. The CIT (A) further confirmed the action of the AO. However, ITAT ruled in favour of the assessee.

Aggrieved, the Revenue preferred an appeal before Uttarkhand HC.

## Issue before the High Court

Whether payment of ₹ 26 Crs. Paid by Dolphin Drilling Ltd. to Alfa Crew is in the nature of salaries or fees for technical services (FTS)?

If in the nature of salaries whether it can be deductible while computing income as no TDS deducted?

## Held

HC upheld the finding of ITAT that the payment disallowed was in the nature of salary and not on account of FTS. It was held that in such case, it was obligatory on part of assessee to deduct TDS u/s. 192 of the Act at the time of payment of salary. HC, thus, held that the Revenue erred in applying the provisions of Sec. 40(a)(i) which provides for disallowance on account of non-deduction of TDS in respect of royalties or FTS.

HC referred to Sec. 40(a)(iii) which provides for disallowance on account of non-deduction of tax on any payment chargeable under the head "Salaries". Further it was analysed whether the payment was chargeable under the head "Salaries".

On further reference to Sec. 10(6)(viii) which provides for exemption of salaries to foreign individual, accrued or received by him, in connection with his employment on a foreign ship where his total stay in India does not exceed 90 days, HC noted that as per the findings of ITAT, exemption u/s. 10(6)(viii) was available as the stay of employee was not exceeding 90 days. It was thus held that salary payment covered by Sec 10(6)(viii) exemption was not chargeable under the head "Salaries".

HC concluded ruling in favour of the assessee, that "in the instant case, the income derived thereby by those, who received the same, was though regarded as salary but never regarded as salary chargeable under this Act, as the same was outside the purview of the provisions of the Income-Tax Act by reason of Section 10(6)(viii) of the Act."

HC, thus, upheld ITAT's order and deleted the disallowance of ₹ 26 Crs. on account of salary paid to crew.

**DDIT vs. J P Morgan Securities Asia Pvt. Ltd. (2013-TII-203-ITAT-MUM-INTL)**

## Facts of the case

The assessee is a tax resident of Singapore. The assessee had claimed benefit under the India-Singapore DTAA and offered its interest income to tax at 15% as per the provisions of Article 11(2)(b) of the tax treaty. The AO, while processing the assessment under section 143(1) levied surcharge and education cess on the interest income.

In appeal, the CIT(A) deleted the surcharge and education cess on the ground that the scope of adjustment under section 143(1) was limited and the question of upper ceiling for the rate of tax of interest of Article 11 of DTAA as well as surcharge and education cess cannot be decided while accepting the return under section 143(1).

## Issues before the Tribunal

Whether tax payable under Article 11(2) of the India-Singapore tax treaty is inclusive of surcharge and education cess?

## Held

On appeal before the Tribunal, the Revenue submitted that the levy of surcharge and cess was a mandatory simple mechanical and compulsorily levy in all the taxpaying cases.

The assessee submitted that an identical issue had been considered and decided in the assessee's favour by the Co-ordinate Bench of this Tribunal in the case of *Sunil V. Motiani vs. ITO (International)*.

The case of Sunil V. Motiani stated since he was a non-resident based at UAE and w.r.t. to the DTAA treaty of India-UAE, his interest income was taxable at the rate specified in DTAA. The tax referred in Article 11(2) of DTAA stated that 12.5% also includes surcharge. Further, nature of education cess and surcharge being same as held by the Tribunal in the case of *DIC Asia Pacific Pte Ltd. (supra)*, education cess and surcharge cannot be levied separately and will be included in tax rate of 12.5%.

As a result, the appeal of the revenue was dismissed.

## SERVICE TAX

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

## Business Auxiliary Services

Where on facts, the appellant was granted an exclusive privilege to carry on wholesale trade in liquor but never had the ownership/title in the liquor supplied to it by the distilleries the Tribunal held that the appellant was providing services in relation to marketing/sale of goods belonging to the distilleries (and not purchase and sale of liquor) and accordingly the same would be liable for service tax under the category of business auxiliary services [*Rajasthan State Beverages Corpn. Ltd. vs. CCE (2013) 32 STR 329 (Tri-Del.)*].

Where the appellant was engaged in using their infrastructure, staff and expertise to market the service of banks (their customers), it was held that they were liable to pay service tax under the category of business auxiliary services since 1-7-2003 as being 'promoting and marketing of services provided by client' [*Ace Credit vs. CCE (2013) 32 STR 407 (Tri-Bang.)*].



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++ Conditions Apply

## Commercial or Industrial Construction service

Where the assessee constructed a hostel for residence of students studying in a medical institute, it was held that the hostel was not used for an activity of commercial or industrial nature, in view of CBEC Circular No 80/10/2004-ST dated 10-9-2004 and accordingly the appellants were held as not liable to pay service tax [Anand Construction Co vs. CCE (2013) 32 STR 451 (Tri-Mum.)].

## Commercial Training and Coaching centre

Where the assessee was engaged in imparting skills in areas relevant to journalism, print or audio-visual and documentary film making and had claimed exemption as a 'vocational training centre' under notification nos. 9/2003-S.T and 24/2004-S.T. it was held that the exemption cannot be denied on the ground that there was no evidence of employment / self-employment by trainee after completion of course as was sought to be done by the Revenue [IILM Film & Media School vs. CST (2013) 32 STR 321 (Tri-Del.)].

Where the appellants conducted training programme for various bank officials and also post-graduate diploma for the students in Banking Management, for which it charged a lump-sum amount from the participants or sponsors, the Tribunal held that the appellant's activity would be covered under the category of 'Commercial Coaching or Training' services and accordingly would be liable for service tax [National Institute of Bank Management vs. CCE (2013) 32 STR 340 (Tri-Mum.)].

Where the appellant providing Commercial Training and Coaching services recovered the cost of books purchased from another company and supplied to the students in addition to the coaching fee, the Tribunal held that the cost of such books is excludible from the taxable value on the basis of Notification No. 12/2003-ST dated 20th June, 2003 which seeks to exempt value of goods/material sold during the course of provision of taxable service. The Tribunal also held that the exemption cannot be restricted only to 'standard textbooks' as was clarified by CBEC in Circular no. 59/8/2003 dated 20-6-2003 since the notification has not used expression "standard textbooks" [Cerebral Learning Solutions Pvt. Ltd. vs. CCE (2013) 32 STR 379 (Tri-Del.)].

## Management and Consultancy services

A, acted as a managing director of BCS Ltd. and BBI Ltd. and spent 80% of his time for BCS and 20% for BBI for separate remuneration. BBI paid its share of remuneration to BCS Ltd. which paid over such amount to A along with its share of remuneration. The revenue sought to tax the amounts received by BCS from BBI under 'Management Consultancy services'. On appeal, the Tribunal on facts held that, BCS cannot be made liable under the 'Management Consultancy services' and if at all any consultancy services were rendered service tax demand can only be fastened on A and not on BCS. Further, A had not rendered any consultancy services since he only functioned as the Managing Director and hence the remuneration is also not liable under the category of 'Management Consultancy services' in terms of Board's Circular No. 11 5/9/2009-S.T dated 31-7-2009 [Bosch chassis Systems India Ltd. vs. CCE (2013) 32 STR 301 (Tri-Mum.)].

## Renting of immovable property

On facts of the case, where the appellants rented out immovable property to tenants and also recovered electricity charges separately from them, the Tribunal held that electricity is 'goods' Chargeable to excise duty (nil rate) under the Central Excise Act, 1944 and Maharashtra Value Added Tax Act, 2005 and accordingly the electricity charges collected from the tenants would not be liable for service tax under the category of "renting of immovable property services" [ICC Reality (India) Pvt. Ltd vs. CCE (2013) 32 STR 427 (Tri-Mum.)].

## Valuation

On the facts where storage of frozen goods in cold storage formed an inseparable part of assessee's 'Clearing and Forwarding' activity, the Tribunal held that amounts received towards the cold storage would be includable in the taxable value of Clearing and Forwarding agent's services. [Monsanto Manufacturers Pvt. Ltd. vs. CCE (2013) 32 STR 364 (Tri-Del.)].

## Demand

Where the assessee has not collected service tax from recipient of services, the entire consideration received by the appellant has to be treated as cum-tax and the amount received should be apportioned between the assessable value and the service tax liability [Professional Couriers vs. CST (2013) 32 STR 348 (Tri-Mum.)].

## Interest

The appellant had paid service tax on commission paid to foreign agents under reverse charge mechanism and took CENVAT credit of the same. Subsequently, on realising that the said services were not liable for service tax it reversed the CENVAT credit availed by it and filed a refund claim which was sanctioned by the department. However, when the department sought to recover interest u/r. 14 of the credit rules on account of wrong availment of CENVAT credit, the Tribunal on facts held that there is no wrong availment of CENVAT credit and hence no interest u/r. 14 was payable [Steelco Gujarat Ltd vs. CCE (2013) 32 STR 448 (Tri-Ahmd.)].

## Limitation

Where the revenue had become aware through correspondence about the fact that the appellant was not discharging service tax liability on cold storage charges received by it during the course of providing clearing and forwarding agent's services in year 2002, the Tribunal held that issuance of SCN in year 2006 by invoking the extended period of limitation is not permissible [Monsanto Manufacturers Pvt. Ltd. vs. CCE (2013) 32 STR 364 (Tri-Del.)].

## Penalty

Where the assessee had defaulted in payment of service tax on several occasions but had paid the tax along with interest before issuance of Show Cause Notice, the Tribunal held that in absence of suppression, fraud, wilful misstatement issuance of show cause notice was not warranted and accordingly no penalty u/s 76 was imposable [CCE vs. OTS Advertising Pvt. Ltd. (2013) 32 STR 303 (Tri-Bang.)].

## Refund

Where the High Court had in a Writ filed by the assessee held that members of the assessee club cannot be considered as customers of the club on the grounds of mutuality and hence the mandap keeper services provided by the club to its members cannot be said to be liable for service tax, the Tribunal held that the bar of unjust enrichment would not be applicable to the assessee while refunding the amount of service tax paid by the assessee club under protest [Karnavati Club Ltd vs. CST (2013) 31 STR 445].

The appellants in this case filed the refund claim within the time stipulated in Notification No. 41/2007, dated 6-10-2007 but filed the supporting document (Certificate from Port Trust) at a later date as it was received from the Port Trust authorities after a considerable delay, it was held that the denial of refund as being time barred is unwarranted [Hari & Co. vs. CCE (ST) (2013) 31 STR 681 (Tri-Chennai)].

Where the appellant, a 100% Export Oriented unit, had exported during the period 2007-08, software maintenance service (taxable service) and software development/ Software consultancy service (exempted service) it was held that refund of the unutilised credit under Rule 5 of the CENVAT Credit Rules, 2004, is permissible even though software development/ consultancy services were exempt [M/s. KPIT Cummins Infosystems Ltd. vs. CCE 2013(32) STR 356 (Tri-Mumbai)].

Recipient of Goods Transport agency Service being the person liable to pay service tax would be considered as an assessee and accordingly he is entitled to the benefit of adjustment of any excess payment of service tax as envisaged under rule 6(3) of Service tax Rules, 1994. [Inox Air Products Ltd. vs. CCE 2013(32) STR 336 (Tri-Chennai)].

## CENVAT Credit

Where the department had sought to recover proportional CENVAT credit attributable to the amount of bad debts written off by the appellant on the ground that no Service Tax was realised on the output services in which such input services has been used, the Tribunal held that the same was not permissible since:

- On facts there was no dispute as to the eligibility of availment of CENVAT credit and about the receipt and utilisation of input services for providing output service;
- It is a settled law that there cannot be one-to-one co-relation in availing of CENVAT credit of the input service and provision of output service; and
- There is no provision in the CENVAT credit rules to deny proportional credit on the inputs which were used in providing the output services realisation of which are pending.

[CST vs. Krishna Communication (2013) 31 STR 285 (Tri-Ahmd.)].

The appellant, a manufacturer of cigarettes, supplied tobacco seeds free of cost to the farmers and under an agreement with a third party, paid the third party for providing expert supervisory and advisory services to the farmers for cultivation of Tobacco. On the issue whether CENVAT credit on the services provided by the third party was available to the appellants, the Tribunal held that –

- The appellant who entered into the agreement, paid for it and included the cost of such service in their cost of production was the recipient of services.





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- The service had a nexus with the manufacturing of cigarettes.

Accordingly the Tribunal allowed CENVAT credit on the above services [VST Industries Ltd. vs. CCE (2013) 31 STR 357 (Tri-Bang.)].

Where the telephones installed at the residences of the officials were used for business purposes the Tribunal held that the same being integrally connected with the business of the manufacture of final product CENVAT credit thereon is admissible [Bharat Petroleum Corporation Ltd vs. CCE (2013)31 STR 455 (Tri-Mum.)].

CENVAT credit of tax paid on Construction services availed for construction of workers quarters and 'Vastuwall' within the factory premises would not be admissible since the same does not have any relationship with the manufacturing activity of the appellants. However, construction services availed for construction of godowns within the factory premises for storing of inputs and finished goods being an activity relating to business, CENVAT credit of tax paid thereon is admissible [Polylink Polymers (P) Ltd vs. CCE (2013)31 STR 457 (Tri-Ahmd.)].

CENVAT credit on security services utilized at the premises of the job worker to guard inputs sent for processing would be allowed since –

- The definition of input services nowhere specifies that they must be utilised inside the factory and
- rule 3 of CENVAT Credit Rules specifically allows credit on services utilized by a job worker availing benefit of Notification No. 214/86 - C.E.

MRF Ltd. vs. CCE. & ST (LTU) (2013) 31 STR 689 (Tri-Chennai)].

Credit on security services at the guest house maintained by the assessee for use of the employees is not allowable due to an element of personal use involved [MRF Ltd. vs. CCE. & ST (LTU) (2013) 31 STR 689 (Tri-Chennai)].

Following *Union of India vs. Ind - Swift Laboratories Ltd.*, the Tribunal held that interest is payable on irregular availment of credit from the date of wrong availment of credit till the date of payment of tax to the service provider in terms of Rule 4(7) of the CENVAT Credit Rules, 2004. [Ballarpur Industries Ltd. vs. CCE, C & ST (2013) 31 STR 745 (Tri-Kolkata)].

In this case the Tribunal held as follows:

CENVAT Credit availed on Input services such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., which were availed by the assessee company for maintenance of the residential staff colony of the assessee company situated in a remote location, is admissible as being directly and intrinsically linked to the manufacturing activity of the assessee company since in absence of provision of accommodation to its employees it was not feasible for the assessee company to carry out its manufacturing activity.

Availment of CENVAT credit on various input services on the basis of invoices issued by the Head Office of the assessee company cannot be denied on the ground that the Head Office was not registered as Input Service Distributor, since during the relevant period of time i.e. prior to June 2005 there was no requirement for the Head Office to be registered as Input Service Distributor [CCE vs. Plastichemix Industries (2013) 32 STR 383 (Tri-Ahmd.)].

CENVAT credit on courier services used by the appellant's factory for sending documents to head office and to their customers is admissible since it is relatable to manufacture [Hindalco Industries Ltd. vs. CCE (2013) 32 STR 433 (Tri-Ahmd.)].

Although it is mentioned that the assessee can take credit immediately there is no prescribed time limit either in the CENVAT Credit Rules nor in the Central Excise Act for taking credit and the stand of the Revenue that credit is to be taken within a period of one year is incorrect [Central Bank of India vs. CCE & ST (2013) 32 STR 525].

When all the conditions of the Board's Circular No. 97/8/2007 - ST dated 23-8-2007 for treating a sale as FOR destination sale are met by the appellant, CENVAT credit on –

- Outward freight for transportation of goods up to the customer's premises; and
- Godown rental for storage of goods (raw material and finished goods) before reaching the customer's premises

were held to be admissible since the customer's premises is the place of removal [Lumax Automotives Systems Ltd. vs. CCE (2013) 32 STR 526 (Tri-Del.)].

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**Ahmedabad:** Inaugural of Additional reading room at Maninagar (E) Ahmedabad by worthy hand of Hon'ble President of ICAI CA. Subodh Kumar Agrawal on 27/12/2013



**Amravati:** CPE Mahotsav 2013 inauguration on 24/12/2013. (L-R): CA. D. D. Khandelwal, CA. Ratan Sharma, CA. Julfesh Shah, RCM, CA. Rajesh Chandak Branch Chairman, Shri Anandraoji Adsul, MP, CA. Brijesh Phafat, CA. Mahesh Laddha



**Aurangabad:** National Seminar on Direct Taxes held on 15/12/2013. (L-R): CA. Girish Kulkarni, RCM, CA. Renuka Deshpande, CA. Rajkumar Kothari, Branch Chairman, CA. Shruti Shah, RCM, CA. Bhupendra Shah, Faculty, CA. Snehal Shah, Faculty, CA. Vijay Rathi



**Baroda:** Intensive Course on International Taxation and FEMA organised by International Taxation Committee of WIRC held on 1/12/2013. (L-R): CA. Yogesh Thar, Faculty, CA. Yash Bhatt, CA. Ashish Parikh, Branch Chairman



**Bharuch:** Two day Workshop on Enabling Service Tax practice on 28-29/12/2013. (L-R): CA. Kaushal Surti, CA. Jayesh Gogri, Faculty, CA. Anand Mundra





**Gandhidham:** Felicitation of CA. Kamlesh Vikamsey, Past President, ICAI on his visit at Gandhidham on 27/12/2013. (L-R): CA. Sanjay Mehta, Branch Chairman, CA. Shailesh Chothani, CA. Jyoti Harsh, CA. V. M. Thacker



**Goa:** Seminar on Companies Act, 2013 and Goa VAT-Amendments & Issues held on 20-21/12/2013. Seen in picture CA. Yagnesh Desai, Faculty, CA. Anup Borkar, Branch Chairman



**Jalgaon:** Group photograph taken during the Inauguration of Seminar on MVAT & Service Tax held on 14/12/2013



**Jamnagar:** Workshop on Ind AS held on 28/12/2013. (L-R): CA. Chetan Agrawal, CA. Parag Raval, Vice Chairman, WIRC, CA. Pratiq Shah, Faculty, CA. Bharat Bhatt, Branch Chairman, CA. Kaupil Doshi



**Kolhapur:** RRC at Malvan (Devbag) on 14-15/12/2013. (L-R): CA. Abhijit Kelkar, Faculty, CA. Shrirang Kulkarni, Branch Chairman, CA. Sunil Saudagar



**Nagpur:** Shri Nitinji Gadkari, Former President, BJP inaugurating the Seminar on MVAT Audit. (L-R): CA. Bharat Gosar, Faculty, CA. Deepak Thakkar, Faculty, CA. Julfesh Shah, RCM, CA. Kirti Agrawal, CA. Jaydeep Shah, Past President, ICAI, CA. Ashwini Agrawal, CA. Subodh Kumar Agrawal, President, ICAI, CA. Prafulla Chhajed, CCM, CA. Swapnil Agrawal, Branch Chairman, CA. Kirit Kalyani, CA. Suren Duregar, CA. Umang Agrawal, CA. Sandeep Jotwani



**Pimpri Chinchwad:** National Conference on Direct & Indirect Tax held on 16-17/11/2013. (L-R): CA. Kishor Gujar, Shri Dilip Walse Patil, CA. Uttam Prakash Agarwal, Past President, ICAI, CA. Manojkumar Agarwal, Branch Chairman, CA. Manoj Fadnis, Chairman, Direct Tax Committee, ICAI, CA. S. G. Mundada, RCM, CA. S. B. Zaware, CCM, Shri Vilasrao Lande, MLA, CA. Baban Dangle



**Rajkot:** National Conference 2013 on 28-29/12/2013. (L-R): CA. Dhinal Shah, CCM, CA. Mahesh Sardar, Past CCM, CA. Jay Chhaira, CCM, CA. Subodh Kumar Agrawal, President, ICAI, CA. Chetan Gajera, Branch Chairman, Shri Vajubhai Vala, Hon'ble Speaker of Gujarat Legislative Assembly, Chief Guest, CA. Priyam Shah, CA. Khushboo Ganatra, CA. Sunil Gabhawalla, Faculty



**Pune:** Victorious Team of CA Premier League Cricket Carnival at Surat



**Vasai:** Mega Members Conference held on 21-22/12/2013. (L-R): CA. Sandeep Jain, RCM, CA. Lalit Bajaj, CA. Ramanand Gupta, Branch Chairman, Shri Narendra Mehta, Chief Guest, BJP President, Mira-Bhayandar, CA. Neel Majithia, Secretary, WIRC, CA. Sunil Patodia, RCM, CA. Vimal Agarwal, CA. Anil Bhandari, RCM, CA. K. B. Kothari



28th Regional Conference held on 7th & 8th December, 2013

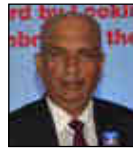
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Shri N. S. Rao



Shri K. Balakrishnan



CA. Mridul Mehta



Shri Dushyant Dave



Shri Sanjay Agrawal



Shri Sanjay Goyal



CA. Sanjay Agarwal



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Ms. Dipti Chitale



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CA. Nipun Mehta



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CA. Vijai Mantri

## Industry Track Speakers



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Shri J. Ravi Kumar



CA. Mitil Chokshi



CA. Anup Shah



Shri Durgesh Mehta



CA. Goverdhan Modi



Shri Prasanna Bharatan



Shri Mukundan K. V.



Shri Badri Kishnaswami

## Technology Track Speakers



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CA. Sandeep Baldava



CA. Suhas Deshpande



Shri Ashutosh Bahuguna



Shri Dinesh Bareja



CA. Sunder Krishnan



Shri Devendra Parulekar



CA. Ashwin Dedhia



Shri Prashant Athalye



Shri Prasad Rajappan



CA. Nilesh Likhite

## Lecture Meeting on Effective use of Google & Smart use of Smart Phone held on 17th November, 2013



CA. Priti Savla, Treasurer, WIRC, CA. Sachin Maher, CA. Sanjay Chheda, Faculty

## Seminar on GST Overview & Overlaps in Indirect Taxes held on 21st December, 2013



CA. Y. R. Desai, CA. Vishnu Agarwal, RCM, CA. Shardul Shah, RCM, CA. Milind Sahastrabudhe, Faculty, CA. Adesh Gupta

## Other Speaker



CA. Gurudas Pai

## Other Speaker



CA. Arihant Jain

## Lecture Meeting on Amendment in Companies Act-2013 and Corporate Social responsibility held on 29th December, 2013



CA. Bhavesh Palan, Adv. CA. Nimesh Chothani, Faculty, CA. Sachin Maher, CA. Dhaval Thakkar

## Seminar on Sarbanes Oxley and Reporting under Internal Audit held on 21st December, 2013



CA. Shardul Shah, RCM, CA. Shailendra Kothavale, Faculty, CA. Vikas Vishwasrao



## Seminar on Competition Act & Consumer Protection held on 14th December, 2013



CA. Nilam Shah, Adv. Anand Patwardhan, Faculty, CA. Milind Joshi

## CA Women Network Meet held on 27th December, 2013



CA Ameet Patel, Faculty, CA. Priti Savla, Treasurer, WIRC, Ms. Tasneem Lakadwalla, Faculty, CA. Mangesh Kinare, Chairman, WIRC, Ms. Vandana Poria, Faculty, CA. Nandita Parekh, Faculty, CA. Kamal Dhanuka

## Half Day Programme on Carbon Credit held on 28th December, 2013



CA. Priti Savla, Treasurer, WIRC, Shri P. Sreenivasa Raju, Faculty, CA. Amod Wandrekar

## Lecture Meeting on Business / Professional Opportunities in Germany held on 17th December, 2013



CA. Mangesh Kinare, Chairman, WIRC, CA. Prafulla Chhajed, Vice Chairman, CECL & WTO, CA. Manoj Fadnis, Chairman, CECL & WTO, Ms. Asha Maria Sharma, Faculty, CA. Harsha Rawal, Faculty

## Public Meeting on Deemed Conveyance and Redevelopment held on 22nd December, 2013



CA. N. M. Bansal, CA. Mahesh Bhageria, CA. Mangesh Kinare, Chairman, WIRC, Shri Krishna Hegde, MLA, Shri Vikas Rasal, Faculty, CA. Ramesh Prabhu, Faculty, CA. Kamal Dhanuka

## Speakers at the Networking Summit held on 29th December, 2013



CA. Atul Bheda



CA. Shrinivas Joshi, CCM



CA. Milind Kothari



CA. N. K. Jain

## Seminar on Direct Tax Code & GAAR Provisions – Way Forward held on 14th December, 2013



CA. Girish Kulkarni, RCM, CA. Sanjeev Lalan, Faculty, CA. Aniket Kulkarni

## Maharashtra VAT Conference held on 20th & 21st December, 2013



CA. Nehal Turakhia, CA. Mangesh Kinare, Chairman, WIRC, CA. Janak Vaghani, Faculty, CA. Girish Kulkarni, RCM, CA. Ritesh Hibare

## Other Speakers



CA. Deepak Thakkar



CA. Rajat Talati



CA. Dilip Phadke



Adv. C. B. Thakar



CA. Vikram Mehta



CA. Umesh Sharma



CA. Kiran Garkar

## Lecture Meeting on Health & Happiness through Breathing Techniques held on 18th December, 2013



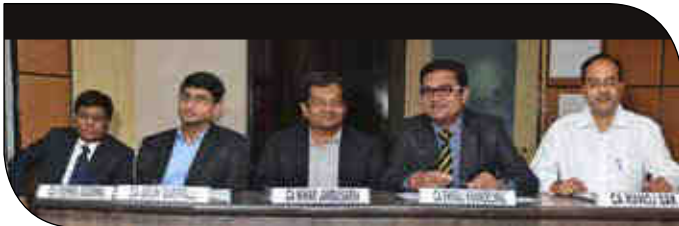
CA. Shardul Shah, RCM, Ms. Komal Tanna, Faculty, Mrs. Vasundhara Sutar, Faculty, CA. Rahul Sutar, Faculty, CA. Jesal Khakharia

## Lecture Meeting on Integrating Professional Experience with Social Obligations held on 23rd December, 2013



CA. Mangesh Kinare, Chairman, WIRC, CA. Sanjay Hegde, Faculty, CA. Sandeep Jain, RCM

## Direct Tax Series held on 14th, 21st & 28th December, 2013



CA. Vishnu Agarwal, RCM, CA. Arun Saripalli, Faculty, CA. Nihar Jambusaria, Faculty, CA. Dhiraj Khandelwal, RCM, CA. Manoj Dak

### Other Speakers



Shri R. K. Gupta, CCIT



CA. Vimal Punmiya



CA. Harish Motiwala



CA. Tarun Ghia

## Seminar on Code of Ethics & Peer Review held on 28th December, 2013



CA. Y. R. Desai, CA. Bhupendra Shah, Faculty, CA. Rajkumar Adukia, CCM & Faculty, CA. Priti Savla, Treasurer, WIRC, CA. Prathmesh Prabhu

### Other Speakers



CA. Uday Sathaye



CA. Abhay Arolkar

## National Conference on Issues in Service Tax held on 27th & 28th December, 2013



CA. Shantesh Warty, CA. Sunil Patodia, RCM, CA. A. R. Krishnan, Faculty, CA. Mangesh Kinare, Chairman, WIRC, CA. Hrishikesh, Wandrekar

### Other Speakers



CA. Sunil Gabhawalla



CA. Naresh Sheth



CA. Bharat Shemlani



Adv. Shailesh Sheth



CA. Rajiv Luthia



CA. Sagar Shah

## Seminar on Corporate Social Responsibility and Corporate Governance vis-a-vis Amendments in the Companies Act, 2013 held on 21st December, 2013



CA. Nikhil Damle, CA. Parag Raval, Vice Chairman, WIRC, CA. Khushroo Panthaky, Faculty

### Other Speakers



CA. Durgesh Kabra



CA. Gautam Shah

## Conference on Mutual Funds, PMS & Investment Advisory Services held on 28th December, 2013



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### Other Speakers



Shri B. P. Singh



Shri Rajashekhar Iyer



Shri Sandesh Kirkire



Shri Rahul Rathi

## Seminar on Investigative & Forensic Accounting & Audit held on 28th December, 2013



CA. Nainesh Soni, CA. Neel Majithia, Secretary, WIRC, CA. Chetan Dalal, Faculty, CA. Dhiraj Lalpuria

### Other Speakers



CA. Mahesh Bhatki



Dr. Vishnu Kanhere



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Mr. Justin West



Ms. Vandana Poria



CA. Manaswini Goel



CA. Harish Gupta



CA. C. S. Nanda, CCM



CA. Manan Vasa



CA. Darshan Patel



CA. Mayur Choksi

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Group photograph taken during the study group meeting on BFSI & Capital Market held on 20th December, 2013

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### National Conference on Accounting Standards held on 13th & 14th December, 2013

#### Other Speakers



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CA. Ramakrishna Prabhu



CA. Himanshu Chapsey



CA. Anand Banka



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