

WESTERN INDIA CHARTERED ACCOUNTANTS NEWSLETTER



**THE INSTITUTE OF
CHARTERED ACCOUNTANTS
OF INDIA**

(Set up by an Act of Parliament)



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CHAIRMAN'S COMMUNICATION

Respected Members,

WIRC has always strived and proven its mantle by walking the extra mile in its quest to ensure that each and every Member and Student across the entire Region is up to date with relevant information either through the elite galaxy of our expert members, who are always graciously ready to share their wide vista of knowledge and experience or the respected officers and representatives from the various regulatory authorities, who have always agreed to grace us at a very short notice.

As usual this was a busy month with a number of academic activities for the Members and Students. WIRC organised a number of seminars on ICDS; Tax Planning for NRIs; Business Restructuring; FEMA; Internal Audit; HUF & Family Arrangements; Transfer Pricing and on Evolving Investment Strategies & Opportunities for CAs. Research and productive

deliberations have been at the forefront for us and we specially focused on our study group meetings to create better insights on relevant subjects i.e. 'BFSI Study Group Meeting' and the 'Insolvency Study Group Meeting.'

We were proud to welcome and interact with Shri Bandaru Dattatreya, Hon'ble Minister of Labour, Government of India alongwith the Secretary and Commissioner at our ICAI Tower, BKC. We discussed and briefed him of how Chartered Accountants can provide our professional services for conducting audits and other professional services.

WIRC, in its spirit and focus of spreading and exchange of knowledge, held a training programme on Goods and Services Tax (GST) for the Mumbai Commissionerate - GST at New Custom House, Mumbai. We had an interactive meeting with respected officers of the Economic Offence Wing (EOW) and we pledged our support to them. This healthy interaction with regulators is a very positive way for the professionals and regulators to come to a better understanding of each other.

The Sub-Regional Conference at Goa was a great success and greatly appreciated by members attending from across the Region. Ahmedabad and Jalgaon Branches hosted very well conceived and executed GST Conclaves respectively.

It was a privilege for WIRC to have an interactive meeting with senior members of New Zealand Trade & Enterprise (NZTE) and with the promoters and management Xero, one of one of the top organisations in New Zealand, with a view of exploring professional opportunities in New Zealand for our members.

Continuing our ethos of an overall development of our Students we also organised workshop on 'GST - Practical Aspects' as well as Refresher Courses on GST for Students. To ensure they receive practical experience to mould them into finance professionals, WIRC organised multiple placement program's for Industrial Training and Articleship placements. These were highly appreciated by our enthusiastic Students and Companies/Members in Practice who attended the program in large numbers.

The Orientation and Placement program for newly qualified Chartered Accountants was conducted successively. Many large public and private organisations and CA Firms participated in the placement program and selected a large number of young members at very lucrative remunerations. I express gratitude to the participating organizations and staff for the immaculate execution of this program.

We celebrated our Independence Day in the esteemed presence of CA B.R. Bhaskaran, Hon'ble ITAT Member, ICAI President CA Nilesh Vikamsey, CA K.C. Jain, Past Chairman, WIRC, CA Dhiraj Khandelwal, CCM who hoisted the tricolour at ICAI Tower, BKC, in the presence of our Office Bearers, Members and Students.

Wishing all respected Members and Students a busy season ahead.

With Warm Regards

CA. Vishnu Agarwal
Chairman

Forthcoming Events
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Programme with GST & Income Tax Commissioner



Interactive Meeting with Economic Offenses Wing



**Shri Ashutosh Dumbare
JCP**



**Shri Parag Manere
DCP**



**Shri Arun Sondey
ACP**

Interactive Meeting with New Zealand Trade & Enterprise (NZTE)



Literacy Kit Distribution



Sub Regional Conference at Goa



Jalgaon Branch Visit





ICAI Tower, Bandra Kurla Complex, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
16/09/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Project Finance <ul style="list-style-type: none"> • Insolvency & Bankruptcy Act • PE Funding • Infrastructure Finance • Stress Assets Funding (Restructuring & Alternative Fund raising options) 	Eminent Faculty Shri Raja Ganapathi Shri Shishir Jain Eminent Faculty	CA. Sushrut Chitale 9821112904 CA. Umesh Sharma 9822079900 CA. Pradeep Agrawal 9898560967	CA. Vidhyut Jain 9892414386 CA. Abhishek Shah 9773050495 CA. Kinjal Mirani 9930187990
23/09/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Transfer Pricing <ul style="list-style-type: none"> • Analysis of Provisions of Transfer Pricing under the Income-tax Act, 1961 • Valuation Approaches and their applicability under Transfer Pricing • Functions, Assets and Risk Analysis under Transfer Pricing • Case laws and Case Studies relating to Transfer Pricing 	CA. Darpan Mehta CA. Rakesh Kotak CA. Arun Saripalli CA. Ronak Doshi	CA. Drushti Desai 9820335923 CA. Purushottam Khandelwal 9825020844 CA. Lalit Bajaj 9867692321	CA. Abhishek Agrawal 9619818336 CA. Preeti Singhania 9892986278 CA. Virag Shah 7943154500
07/10/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Mergers & Acquisitions <ul style="list-style-type: none"> • Corporatisation of Non-Corporate Entity, Conversion of Proprietary Concern & Partnership to Company and Corporate Restructuring • Legal & Tax Implications • Stamp Duty Aspects • Accounting Implications • Restructuring Case Studies 	CA. Umesh Gala CA. Anup Shah Adv. Sharad Abhayankar Eminent Faculty CA. Ajay Agashe	CA. Priti Savla 9321426883 CA. Shilpa Shinagare 9820053395 CA. Purushottam Khandelwal 9825020844	CA. Ashish Bakliwal 9004315053 CA. Jayesh Kala 9892001113 CA. Navneet Lahoti 9324236755
07/10/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Mock Tribunal <ul style="list-style-type: none"> • Mock Tribunal 	CA. Sanjiv Brahme CA. Paras Savla CA. Vimal Punmiya	CA. Aniket Talati 9825551448 CA. Priti Savla 9321426883 CA. Purushottam Khandelwal 9825020844	CA. Vishesh Sangoi 9819281830 CA. Milind Joshi 9930033939 CA. Bipeen Mundade 9223290561
14/10/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Fraud & Forensic <ul style="list-style-type: none"> • Window to the world of fraud- forensic accounting; use of simple forensic tests • Novel methods of investigation • Novel methods of investigation • Case studies on fraud, interviewing and field investigations 	Eminent Faculties	CA. Aniket Talati 9825551448 CA. Manish Gadia 9820537986 CA. Satyanarayan Mundada 9422080814	CA. Ritesh Hibare 9773418343 CA. Shipra Mittal 8080000809 CA. Nehal Turakhia 9833991898
28/10/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Concurrent Audit of Banks <ul style="list-style-type: none"> • Introduction to Concurrent Audit & KYC / AML compliances with practical examples • Advances Exposure Norms and IRAC Norms • Forex related areas including Advances/ Deposits and highlights of FEMA/RBI Regulations • Usage of CBS system for Concurrent Audit 	CA. Nayan Kothari CA. K. V. S. Shyamsunder CA. Heneel Patel CA. Sandeep Welling	CA. Priti Savla 9321426883 CA. Sarvesh Joshi 9822022292 CA. Kamlesh Saboo 9819195333	CA. Y. R. Desai 9820448365 CA. Kanchan Goel 9987705466 CA. Aniket Kulkarni 9821690559
04/11/2017 Saturday 6 CPE Hrs	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Pharma Industry with GST <ul style="list-style-type: none"> • Accounting: R&D expenditure – Bio Batches, Clinical Training Bio Equivalence Studies, Basic Research – Pharmaceuticals, Biological. Foreign technical collaboration, in-licencing-royalty aspects. Joint venture. Consolidation of accounts • Pharma Industry & Capital Markets • Discussion on Pharma sector finance and Facilities requirements from banking perspective • Income Tax: Transfer Pricing in Pharma Industry • GST Impact on Pharma Industry 	Eminent Faculties	CA. Sandeep Jain 9819788099 CA. Priyam Shah 9824096112 CA. Rakesh Alshi 9819427242	CA. Vinit Vyas 9930766805 CA. Bhushan Ramani 9819666708 CA. Prajakta Patil 9819041003



ICAI Tower, Bandra Kurla Complex, Mumbai

Date, Day & CPE Hrs	Time & Fees	Topic(s)	Speaker(s)	Chief Co-ordinators / Mobile Nos.	Co-ordinators / Mobile Nos.
11/11/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Media & Entertainment Industry with GST <ul style="list-style-type: none"> • Know the industry & trends that will impact the media industry (Current issues – Business models, cash flows, vehicle for investments, etc. Digitisation impact on media industry) • Direct Taxation (Direct tax issues in media and entertainment industry, including: Cross-border taxation of entertainers, sportsmen and news channel, Transfer Pricing provisions, etc.) • GST issues in media and entertainment industry • Revenue Accounting (Accounting and auditing aspects – Revenue recognition, Multi rights, valuation, etc.) 	Eminent Faculties	CA. Pradeep Agrawal 9898560967 CA. Abhijit Kelkar 9422126890 CA. Hardik Shah 9825510422	CA. Riya Agarwal 9820101808 CA. Rakesh Tulsyan 7021176211 CA. Meera Joisher 9819354164
18/11/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Information Technology with GST <ul style="list-style-type: none"> • Using the Power of Microsoft WORD for Business Communication: Formatting Documents, Using cover page, Header/footer variants, Captions, Bibliography, Citation, Mail Merge, Document Management • Art of presentation using Microsoft POWER POINT: Templates, Themes, Slide Master, Group/Ungroup Objects, Multimedia Usage, Transition & Animations, Auto run Presentation, • E-mail Etiquettes – Art of using Microsoft EXCEL for Data Analysis: Working with Advanced Formulas/ Pivot Tables and Pivot Charts, Lookups and Data Tables, Data structuring and Data Validation, Exporting and Importing text files, Using Analytical Options • Data Management with MICROSOFT ACCESS: Database Objects, Import and Export from/to Excel, Structure and Data Types, Normalisation and Relationships, Tables, Forms, Reports, Switchboard, Queries and its Types • GST Impact on Information Technology Sector 	Eminent Faculties	CA. Sarvesh Joshi 9822022292 CA. Balkishan Agarwal 9377110634 CA. Vikrant Kulkarni 9881880073	CA. Gaurav Save 9969001607 CA. Amol Kamat 9823018763 CA. Parul Saraf 9821162477
25/11/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Arbitration & Competition Act <ul style="list-style-type: none"> • Arbitration – An emerging era for profession • Competition Act – Recent developments and case studies 	Eminent Faculties	CA. Sushrut Chitale 9821112904 CA. Rakesh Alshi 9819427242 CA. Lalit Bajaj 9867692321	CA. Vikram Joshi 9821733286 CA. Dhvani Karia 9819900489 CA. Nidhi Pandya 7506358911
02/12/2017 Saturday 	10.00 a.m. to 6.00 p.m. ₹ 1,416/-	Seminar on Valuation <ul style="list-style-type: none"> • Valuation of equity shares – Concept, approaches, selection of methods, requirements under various laws & situations • DCF – A method of valuation – Overview, review of Financial projections, Determination of WACC & Computation of DCF value • Case studies • Drafting Reports and Proposals 	Eminent Faculties	CA. Kamlesh Saboo 9819195333 CA. Satyanarayan Mundada 9422080814 CA. Sandeep Jain 9819788099	CA. Mukund Mall 9322224142 CA. Nikita Mall 9969873294 CA. Aditi Chaturvedi 9768350383



Information Technology Update Corner

CA. Ajay Dave

The IT Update Corner' is intended to keep members abreast with news and views on the topic with short-url link to read the update in detail on the source webpage.

#Accounting #SME #ArtificialIntelligence The disruptive impact of these technologies is challenging the traditional business models and practices like never before. The professions of Accounting and Bookkeeping are no exceptions, quite the opposite in fact. Artificial Intelligence, Machine Learning (ML) and Cloud technologies are all set to change how accounting and bookkeeping for small and medium businesses have operated over the last couple of decades. Read more at: <https://goo.gl/DoaoW2>



#FinTech #Banking #ArtificialIntelligence #InfoGraphic Banking the Unbanked is a \$380B Opportunity. In the Asia-Pacific, the World Bank sees increased banking penetration as a \$79 billion opportunity for personal banking of individuals with under \$8k in annual income. Likewise, it sees a \$95 billion opportunity in micro and small business banking in the region. Review the infographic at: <https://goo.gl/CTXuvi>



#DarkNet #CyberCrime #TakeDown In a co-ordinated International operation, EuroPol along with FBI, DEA (Drug Enforcement Agency) and Dutch National Police have seized and taken down AlphaBay & HANSA, one of the largest criminal marketplaces on the Dark Web. The federal authorities revealed that they secretly took control over the Hansa market on 20th June 2017 and kept it running for at least a month in an effort to monitor the activities of vendors and buyers without their knowledge. During the same period, authorities purposely only took down AlphaBay, forcing their users to join the Hansa market for illegal trading and purchasing. They also seized Bitcoins (worth \$33.6 million, at that time) from the dark web site and were later sold in a series of auctions by the United States Marshals Service (USMS). Read more at: <https://goo.gl/DrBU1s>



#Blockchain #SIG IT and services industry body Nasscom on Tuesday said it has started a Special Interest Group (SIG) for Blockchain in the National Capital Region. This SIG is primarily powered by BlockSmiths, a Delhi NCR based firm that helps businesses leverage the Blockchain technology and Quattro, a global fintech service provider. Blockchain SIG will focus on four core areas: Blockchain for FinTech, Internet of Things (IoT), Smart Contracts and Applications, and General Blockchain Applications. Read more at: <https://goo.gl/wJJ2eN>



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TAXMANN®'S

GST Law Guide

CA Ishaan V. Patkar
LL.B

August 2017

GST Law Guide

Author

Ishaan V. Patkar
CA, LLB

Highlights:

- Detailed legal analysis with lucid explanations
- Concise and practical comments
- Plenty of illustrations
- Relevant international judgments
- Law updated till August 2017

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DIRECT TAX

(Contributed by

CA. Haresh P. Kenia & CA. Deepak Lala)



Section 143 of the Income-tax Act, 1961 – Assessment – General – Guidelines for Selection of Cases for Scrutiny During Financial Year 2017-18

Instruction No. 5/2017 [F. No. 225/180/2017/ITA.II], dated 7/7/2017

In supersession of earlier Instructions on the above subject, the Board hereby lays down the following procedure and criteria for compulsory manual selection of returns/cases requiring scrutiny during the financial-year 2017-18:

- (i) Cases involving addition in an earlier assessment year(s) on a recurring issue of law or fact of following amounts:
 - In excess of ₹ 25 lakhs in eight metro charges at Ahmedabad, Bengaluru, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune, while at other charges, quantum of such addition should exceed ₹ 10 lakhs;
 - For transfer pricing cases, quantum of such addition should exceed ₹ 10 crore and where:
 - (a) Such an addition in assessment has become final as no further appeal was/has been filed; or
 - (b) Such an addition has been confirmed at any stage of appellate process in favour of revenue and assessee has not filed further appeal; or
 - (c) Such an addition has been confirmed at first appeal stage in favour of revenue or subsequently and further appeal of assessee is pending.
- (ii) All assessments pertaining to Survey under section 133A of the Income-tax Act, 1961 ('Act') excluding those cases where books of account, documents etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where the assessee retracts from disclosure made during the Survey, such cases will not be covered by this exclusion.
- (iii) Assessments in search and seizure cases to be made under section(s) 158B, 158BC, 158BD, 153A & 153C read with section 143(3) of the Act and also for the returns filed for the assessment year relevant to the previous year in which authorisation for search and seizure was executed u/s. 132 or 132A of the Act.
- (iv) Return filed in response to notice u/s. 148 of the Act.
- (v) Cases where registration/approval under various sections of the Act such as 12A, 35(1)(ii)/(iii), 10(23C) etc. of the Act have not been granted or have been cancelled/withdrawn by the competent authority, yet the assessee has been claiming tax-exemption/deduction in the return. However, where such order of withdrawal of registration/approval has been reversed/set aside in appellate proceedings, those cases will not be selected under this clause.
- (vi) Cases in respect of which specific and verifiable information pointing out tax-evasion is given by any Government Department/Authority. However, before selecting a case for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from the concerned jurisdictional Pr. CIT/Pr. DIT/CIT/DIT.

2. Computer Aided Scrutiny Selection (CASS): Cases are also being selected under CASS-2017 on the basis of broad based

selection filters and in a non-discretionary manner in two categories viz. Limited Scrutiny & Complete Scrutiny. List of such cases is being separately intimated by Pr. DGIT (Systems) to the concerned jurisdictional authorities for further action in these cases.

For more details visit www.wirc-icai.org

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



The Maharashtra Goods and Services Tax Act, 2017

Circulars

The Commissioner of Sales Tax, Maharashtra State, has issued following circulars:

1. Circular bearing No. 34T of 2017 dated 3/8/2017 by which the grant of refunds of amount deposited by way of security deposit at the time of Voluntary Registration under MVAT Act in cases of deemed cancelled registration is clarified.
2. Internal Circular bearing No. 16A of 2017 dated 3/8/2017 by which the guidelines regarding cross checking of Input Tax Credit is given.
3. Internal Circular bearing No. 17A of 2017 dated 10/8/2017 by which the guidelines regarding passing of assessment orders is given.
4. Circular bearing No. 35T of 2017 dated 11/8/2017 by which the Distribution of GST Provisional ID and Access Token of Phase 9 dealers is explained.
5. Circular bearing No. 36T of 2017 dated 18/8/2017 by which the Distribution of GST Provisional ID and Access Token of Phase 10 dealers is explained.

For more details visit www.wirc-icai.org

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



Time Limit Extended

- (a) *Vide* Public Circular No. GUJKA/VAT-15/17-18/OTW 201/175, dated 14/8/2017, time limit for filing Monthly/Quarterly Return for June 2017, has been extended from 15/8/2017 to 29/8/2017.
- (b) *Vide* Public Circular No. GUJKA/VAT-86/17-18/OTW 200/174, dated 14/8/2017, time limit for accepting Manual Challans has been extended up to 31/8/2017.

Transit Forms

Vide Notification No. (GHN-50) GSTR-2017(4)/TH, dated 30/6/2017, the documents prescribed under Rules 51 & 52 of GVAT Rules, 2006 (Forms 402, 403, 405, etc.) shall be the documents for consignment of goods under the Gujarat GST Act, 2017. *Vide* Order No. VU/GST-2017/333, dated 30/6/2017, a detailed procedure for Transit Forms, including the validity period, is laid down.

Advance Ruling

(a) Authority

Vide Notification No. (GHN-58) GST-2017-S.96(1)-TH, dated 12/7/2017, Authority for Advance Ruling, comprising of Shri Gyan Chand Jain, Jt. Com., CGST, Ahmedabad North and Shri Rajan B. Mankodi, Jt. Com. (Legal) of State Tax, has been constituted.

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(b) Appellate Authority

Vide Notification No. (GHN-59) GST-2017-S.99(1)-TH, dated 12/7/2017, Appellate Authority for Advance Ruling, comprising of the Chief Com. of Central Tax as designated by the Board and the Com. of State Tax, has been constituted.

CORPORATE LAWS
(Contributed by CA. Rahul Joglekar)



MCA (www.mca.gov.in)

MCA Circular 08/2017 dated 25th July, 2017 – Clarification regarding applicability of exemption given to certain private companies under section 143(3)(i) of the Companies Act, 2013

MCA has clarified that the exemption as aforesaid shall be applicable for those audit reports in respect of financial statements pertaining to financial years commencing on or after 1st April, 2016, which are made on or after the date of the said notification. For complete text of the notification, please refer the link: http://www.mca.gov.in/Ministry/pdf/GeneralCircular8_25072017.pdf.

SEBI (www.sebi.gov.in)

SEBI Circular No. CIR/CFD/CMD/93/2017 dated 4th August 2017 – Disclosures by listed entities of defaults on payment of interest/repayment of principal amount on loans from banks / financial institutions, debt securities, etc.

Specific disclosures are required under the SEBI LODR Regulations in certain matters such as delay/default in payment of interest/principal on debt securities, including listed Non-Convertible Debentures, listed Non-Convertible Redeemable Preference Shares, Foreign Currency Convertible Bonds (FCCBs) etc. Similar disclosures are presently not stipulated with respect to loans from banks and financial institutions. Henceforth, any listed entities which have listed any of the following: specified securities (equity and convertible securities), non-convertible debt securities and non-convertible and redeemable preference shares will be required to disclose when the entity has defaulted in payment of interest/instalment obligations on debt securities (including commercial paper), Medium Term Notes (MTNs), Foreign Currency Convertible Bonds (FCCBs), loans from banks and financial institutions, External Commercial Borrowings (ECBs) etc. This circular shall come into effect with effect from October 1, 2017. For complete text of the circular, please refer the link: http://www.sebi.gov.in/legal/circulars/aug-2017/disclosures-by-listed-entities-of-defaults-on-payment-of-interest-repayment-of-principal-amount-on-loans-from-banks-financial-institutions-debt-securities-etc_35538.html.

CO-OPERATIVE SECTION
(Contributed by CA. Ramesh Prabhu)



(1) Supreme Court of India: Civil Appeal 82-85 of 2013 decided on 13th July, 2017, *State of Maharashtra vs. Maharashtra Certified Auditors Association*, dismissed the appeal filed by Govt of Maharashtra and directed to refund 20% of audit fees Collected from Chartered Accountants and Auditors as per Circular dated 4th June, 1992 by 30th September, 2017 else pay interest at 12% p.a w.e.f 1st October 2017.

(2) Supreme Court of India: Civil Appeal No. 10245 of 2017 decided on 8th August, 2017: *The Citizen Cooperative Society Ltd. vs. Asst. Commissioner of Income Tax, Hyderabad* dismissed the appeal filed by cooperative Credit Society claiming relief under section 80P(2)(a)(i) for allowing 100% of the income/

interest earned by providing credit facilities to its members. It is held that the credit society which grants credit facilities to its members and nominal/associate or non-members are covered by section 80P(4) and therefore, becomes disentitled to get the benefit.

(3) RERA Update:

(a) UT Administration of Dadra and Nagar Haveli & Daman and Diu has designated Maharashtra Real Estate Regulatory Authority (MahaRERA) as the Regulatory Authority for the respective UTS under the Real Estate (Regulation and Development) Act 2016 vide Notification No. TPS/DNH/105(17)/REA-2016/2016(15) and Notification No. UD/DMN/Real Estate/97/2017/1022/433 dated 1/8/2017 and accordingly website: www.maharera.mahaonline.gov.in has been updated with the relevant circulars/notification applicable to them.

(b) MahaRERA has passed further two orders case Nos. 2 and 3 regarding the amount of penalty of ₹ 50,000/- for the on going projects registered on 1st and 2nd August and ₹ 1,00,000 or the amount of registration fees whichever is more who have applied for registration between 3rd and 16th August, 2017 and to decide the penalty amount for the application received on or after 17th August as per section 59(1) of the RERA which may be up to 10% of the cost of the project.

INTERNATIONAL TAXATION
(Contributed by CA. Hinesh Doshi & CA. Ronak Soni)



Cooper Standard Automotive India Pvt. Ltd. vs. ACIT, Chennai dated 12/4/2017. [TS-311-ITAT-2017(CHNY)]

Facts

The assessee, an Indian company, made payment for professional and management charges in AY 2003-04 and deducted TDS u/s. 195 but TDS was remitted to the Government post the due date specified u/s. 200(1).

In view of the above, AO disallowed and made additions u/s. 40(a) (i).

Moreover, AO found that the assessee made payments against server maintenance charges and testing and development charges without TDS deduction u/s. 195. Accordingly AO made additions for the same. CIT(A) confirmed AO's order on appeal being made.

Aggrieved by the order the assessee filed an appeal before ITAT.

Issue

Whether any relief is to be granted to the assessee under non discriminating article under respective DTAAs for disallowance u/s. 40(a) (i) for belated TDS remittances u/s. 195 on payment of professional and maintenance charges?

Whether payments made in relation to server maintenance charges and testing and development charges are in the nature of FTS and whether TDS needs to be deducted u/s. 195?

Held

ITAT noted that as per the proviso to Section 40(a)(i), the deduction of expense is allowed in the year of payment not only on deduction of TDS but also on payment of TDS to Government.

However, relying on Co-ordinate Bench ruling of Millennium Infocom Technologies Ltd HC held that disallowance u/s. 40 (a)(i) shall tantamount to discrimination and thus HC deleted the additions.



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ITAT noted that as there was no element of human intervention for server maintenance, the assessee was merely using the technology provided by the parent company and no managerial, consultancy and technical services are provided by the parent company.

Relying on the rulings of Cairn Energy Pvt. Ltd., Siemens Ltd. and Bharti Cellular, ITAT held that payment was not FTS but reimbursement of expenses and hence no TDS was applicable u/s. 195.

Relying on the SC ruling of Ishikawajima-Harima Heavy Industries Ltd., despite of the deeming fiction of Section 9, there must be sufficient territorial nexus between such income and the territory of India as the services were rendered outside India.

It further held that for establishing such territorial nexus, the services have to be rendered in India as well as utilised in India.

Relying of the ITAT ruling in Channel Guide India Ltd., ITAT held that payment made by the assessee as FTS outside India will not be taxed u/s. 9(1)(vii) and thus rejected the order for disallowance.

ITAT thus ruled in favour of the assessee.

Vanenberg Facilities BV vs. DCIT (International Taxation), Hyderabad dated 16/6/2017. [(2017) 81 taxmann.com 368 (Mumbai-Trib.)]

Facts

The assessee is a tax resident of Netherlands and also a shareholder of Indian company. It sold all its shares of an Indian company to Singapore based company for a consideration. However, due to delay in payment of consideration, the Singaporean company agreed to pay interest @7% p.a.

As per assessee the transfer of shares were falling under Article 13(4) and Article 13(5) hence not taxable in India. However, AO and CIT(A) considered of bringing the said transaction of sale of shares into taxation purview by applying Article 13(1) of the DTAA between India and Netherlands and the contention of assessee company of applying Article 13(5) of the DTAA was thus set aside.

Aggrieved by the order, the assessee filed the appeal before the Tribunal.

Issue

Whether the shares sold can be considered as transfer of immovable property and be brought into purview of Article 13(1) of the DTAA or the residual Article shall apply?

Whether the interest arising out of sale of shares shall be taxed in India?

Held

Tribunal held that article 13(1) shall not be referred as the assessee company did not sell any immovable property or any rights in immovable property in which the shareholders enjoyed ownership as contemplated in section 269UA(d).

Due to non-applicability of Article 13(1) of the DTAA, Article 13(5) of the DTAA shall be referred, the one being a residual Article wherein the transaction shall be exempted from taxation of its capital gains in India due to the same being taxable in Netherlands.

The interest portion shall not be considered to be taxable in India as the interest even if arose in India was paid to a resident of Netherlands and thus normally the said transaction shall be taxable in Netherlands.

Article 11(6) of the DTAA between India and Singapore clearly states that penalty charges for late payment shall not be regarded as interest for the purpose of the said Article. However, since the agreement clearly contemplated extension of the closing date by

the parties and since no penalty charges for late payment was envisaged by either of the two, Article 11(1) shall apply and thus irrespective of whether such interest accrued or arose or deemed to accrue or arisen in India under section 9(1)(i), exemption is being granted as per the said Article.

Thus the appeal of the assessee was held to be allowed by the Tribunal.

DIT vs. Mitsui & Co. Ltd. [TS-310-HC-2017(DEL)] dated 27th July, 2017

Facts

Mitsui & Co. Ltd. ('assessee') is a non-resident company headquartered in Japan, and has two projects in India viz., the Anpara Thermal Power Project of the UPSEB ('Anpara') and the New Delhi Cable Project of DESU ('DESU').

Upon scrutiny assessment, AO made additions to the Income, as AO concluded that assessee had a Permanent Establishment (PE) in India within the meaning of the Indo-Japanese Double Taxation Avoidance Agreement ('DTAA').

Assessee maintained before the AO that the said LOs merely provided information to overseas offices and, therefore, declared nil income in respect of its liaison activity in India.

The income from the DESU Power Project was also held taxable by the AO u/s. 44BBB and accordingly, income was added and the loss of the DESU Power Project claimed was disallowed. On appeal, ITAT dismissed Revenue's order.

Aggrieved Revenue filed an appeal before Delhi HC.

Issue

Whether the Indian LO/PO of the assessee company and their activities can be regarded as permanent establishment of the assessee in India?

Held

Delhi HC confirms ITAT's order for AYs 1994-95 and 1995-96, holds that assessee's (a Japanese company) liaison office ('LO') in India, doesn't constitute its PE.

RBI had accepted the functioning of assessee's LO for over three decades and that assessee was adhering to the conditions imposed by RBI, one of which was to not carry any business or trading activity in the LO.

Revenue could not demonstrate that assessee's LO was PE within the meaning of Article 5 of DTAA. HC also holds that merely keeping books of account, apportioning some portion of telephone expenses to LO or having a common manager for LO and Project Office (PO) was not sufficient to conclude that LO was being used to carry on the business. According to the AO, LO helped the assessee in finding new purchasers and sellers of goods and merchandise.

HC observed that, the CIT(A) found that the POs were treated as separate taxable units. In fact the profits therefrom were brought to tax by invoking section 44 BBB of the Act. After having treated the POs as separate taxable units and offered the profits therefrom to tax under section 44 BBB, the said POs cannot also be treated as PEs for the purpose of the DTAA. Thereafter HC affirmed that CIT(A) had correctly concluded that the AO was unable to prove that assessee had maintained a PE upon a collective reading of Articles 5 (1) and 5 (2) of the DTAA.

Thus HC finally ruled that ITAT was correct in holding that assessee did not have a PE in India and was therefore exempt under the provisions of the DTAA between India and Japan.

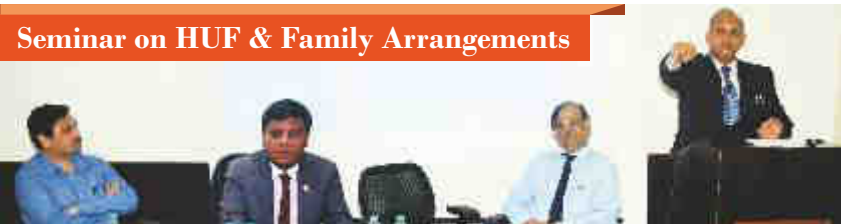
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Printed and published by Shri Abhay Nath Tiwari, Dy. Secretary on behalf of Western India Regional Council of The Institute of Chartered Accountants of India and printed at Finesse Graphics & Prints (Pvt) Ltd., 309, Parvati Industrial Estate, Sunmill Compound, Lower Parel, Mumbai – 400 013 and published at Western India Regional Council of the Institute of Chartered Accountants of India, ICAI Tower, Plot No. C-40, G Block, Opp. MCA Academy, Next to Standard Chartered Bank, Bandra Kurla Complex, Bandra East, Mumbai - 400051.

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