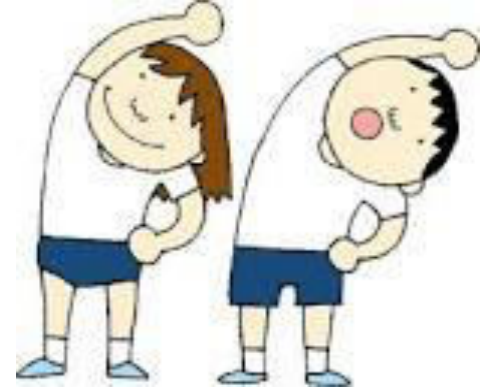




**Seminar on Tax Audit
WIRC of ICAI**

**Legal Issues in Tax Audit
CA Ketan L. Vajani
9th September, 2017**

Let's Warm Up



- ▶ Purpose of Tax Audit
- ▶ Relevance of Accounting and Auditing Standards and Principles of commercial accounting
 - Materiality
 - Prudence
 - Substance Vs. Form
- ▶ ICDS notified in September 2016 applicable from A.Y. 2017-18
- ▶ Concept of Test Check
- ▶ True & Fair Vs. True & Correct
- ▶ Guidance Note issued by ICAI

Amendments for A.Y. 2017-18

- ▶ No change in Limit – It continues to be Rs. 1 Crore for business and 50 Lakhs for profession
- ▶ Amendments made in 44AD
 - Limit enhanced to Rs. 2 Crores only if profit declared under the scheme
 - No Deduction of Interest and Remuneration to Partners
 - Commitment for 5 years
- ▶ New Section 44ADA for professionals
 - Applicable if Gross Receipt is < 50 Lakhs
 - 50% of Gross receipt will be deemed income
 - No Interest and Remuneration to partners permissible (absence of provisions similar to pre-amended section 44AD)
 - Commitment for 5 years (as provided in 44AD) not required

Failure to get Tax Audit done

- ▶ Section 271B – 0.5% of Turnover – Maximum Rs. 1,50,000/-
- ▶ Section 273B – Penalty not to be imposed if there is a reasonable cause
- ▶ Reasonable Cause can be
 - Bona Fide interpretation of turnover based on expert advice
 - Death or physical disability of partner in charge of accounts
 - Labour Problems
 - Fire, Theft, etc.
 - Non availability of accounts due to seizure
 - Natural Calamity
 - Non completion of audit of earlier years



Legal Issues



Presumptive Taxation – Cl. 12

- ▶ One of the business is eligible business u/s. 44AD + There are other businesses
- ▶ As per scheme, T/O of eligible business is to be excluded for computing limit
- ▶ Expenses for Eligible Business are deemed to have been allowed.
- ▶ What about common expenses for both eligible and non eligible business – Whether any proportionate disallowance is to be made :
 - *CIT Vs. Indian Bank Ltd 56 ITR 77 (SC)*
 - *Rajasthan State Warehousing Corporation Vs. CIT 242 ITR 450 (SC).*

Method of Accounting – Clause 13

- ▶ A change in method of accounting need not have the approval of I.T. authorities
 - *Snow white Food Products Limited 141 ITR 861 (Cal.)*
- ▶ If a regular method is changed for a permanent period and which is to be followed consistently, it has to be accepted by the department, even if it results in a reduction of tax liability
 - *CIT v. Carborandum Universal Limited 149 ITR 759 (Mad)*
 - *Melmould Corporation Vs. CIT 202 ITR 789 (Bom.)*
 - *CIT Vs. Atul Products Ltd. 255 ITR 85 (Guj.)*

Method of Accounting

- ▶ Different method of accounting can be followed for different heads of income
 - *J. K. Bankers Vs. CIT 94 ITR 107 (All.)*
- ▶ Different method of accounting for different source of income under the same head of income
 - *Vishwanath Acharaya Vs. ACIT 157 ITD 1032 (Mum.)*
- ▶ Project Completion for one project and Percentage completion for another project
 - *CIT Vs. Umang Hiralal Thakkar (2014) 42 taxmann.com 194 (Guj)*
- ▶ Clauses (d) to (f) added in Clause 13 dealing with ICDS
 - Increase / Decrease in clause (e)
 - Disclosures in clause (f)

Valuation of Inventory – Section 145A – Clause 14



- ▶ An incorrect method whether allowed if followed consistently
 - CIT Vs. British Paints Ltd. 188 ITR 44(SC)
 - AS – 2 issued by ICAI
- ▶ Section 145A – What if closing inventory is valued at market price – Whether taxes to be included for valuation?
- ▶ Modvat Credit on Closing stock of Raw Material – Whether to be included when assessee follows Net Method
 - CIT Vs. Indo Nippon Chemical Co. Ltd. (2000) 245 ITR 384 (Bom) approved in 261 ITR 275 (SC) – A.Y. 1989–90
 - CIT Vs. Shri Ram Honda Power Equipment Ltd. (2013) 352 ITR 481(SC) – A.Y. 1995–96
 - 145A inserted w.e.f. 1–4–99
 - CIT Vs. M/s. Diamond Dye Chem Ltd. (ITA No. 146 of 2015 – Order dated 7th July, 2017 – itatonline.org) – A.Y. 2008–09

Section 43CA or 50C – Clause 17



- ▶ Whether reporting is at all required for items covered by Section 50C
 - Scope shall be confined to Business Income
 - Clause 28 and 29 deals with Section 56(2)(viiia) and 56(2)(viiib)
- ▶ Clause 17 :
 - Details in respect of the land or building or both transferred during the year for a consideration less than value adopted or assessed or assessable by *authority of state government referred to in section 43CA or 50C.*
- ▶ Clause talks about authority referred to in section 50C and not the transactions referred to in section 50C.
- ▶ Ghai Constructions Vs. State of Maharashtra – Bom HC – Order Dt. 30-4-2007
 - Requirement of compulsory audit is only in respect of business carried on by the person and not in respect of his income from other sources.

Section 43CA – Issues

- ▶ Section 43CA – whether applies in the case of Percentage completion method
 - Section 43CA applies in the year of transfer
 - Whether transfer is complete on entering agreement or registration ?
- ▶ Whether section 43CA has to be considered for computing deduction u/s. 80-IBA
- ▶ Sub-section (3) of section 43CA : Whether payment by journal entries will get the benefit of valuation on date of agreement
 - Sub-section (4) : “Any mode other than Cash”

Section 50C – New Developments

- ▶ New provisos w.e.f. A.Y. 2017–18
- ▶ Value as on date of agreement to be taken where there is difference in date of agreement and date of registration
- ▶ Condition : consideration or part thereof has been received by A/c. payee cheque or Draft or ECS on or before the date of agreement
- ▶ Difference between second proviso and 43CA(4) – A/c. payee cheque / Draft / ECS Vs. Other than cash
- ▶ Provisos held to be retrospective – *Dharmshibhai Sonani Vs. DCIT 161 ITD 627 (Ahd.)*

50C – Applicability and Non–Applicability

- Tenancy Right – Kishori Sharad Gaitonde – ITA No. 1561 /M/09 Dated 27–11–09 – itatonline.org
- Leasehold Rights – Atul G. Puranik Vs. ITO 132 ITD 499 (Mum). / Greenfield Hotels & Estates P. Ltd. – ITA No. 735/2014 – Bom. HC – Order dated 24–10–16 – itatonline.org
- TDR / FSI – ITO Vs. Prem Ratan Gupta 31 CCH 384 (Mum.)
- Development Rights – Chiranjeev Lal Khanna Vs. ITO 132 ITD 474 (Mum) – Peculiar facts – May not apply to Co. Op. Societies

50C – Applicability and Non–Applicability

- Shares of the company holding immovable property – Irfan Abdul Kadar Fazlani Vs. ACIT 56 SOT 12 (Mum.)
 - Impact of Section 50CA and Rule 11UA w.e.f. A.Y. 2018–19
- Depreciable Asset – ITO Vs. United Marine Academy 130 ITD 113 (Mum. SB) – Interplay between Section 50C and section 50
- Slump Sale – Section 50B – Dy. CIT Vs. Summit Securities Ltd. 135 ITD 99 (Mu. SB) – Undertaking as a whole not Land or building or both

Depreciation – Clause 18



- ▶ Functional Test for deciding whether plant or building
 - ACIT Vs. Victory Aqua Farm Ltd. 379 ITR 335 (SC)
 - CIT Vs. Anand Theatres 224 ITR 192 (SC)
 - CIT Vs. Dhampur Sugar Mills Ltd. 375 ITR 296 (All) – Tubewell held to be plant
 - CIT Vs. Express Resorts & Hotels Ltd. 230 Taxman 424(Guj) – Electrical Installations and Sanitary Fittings in hotel treated as plant
- ▶ Depreciation on Individual assets which are not used but forming part of block of asset
 - CIT Vs. G. R. Shipping Ltd. – ITA No. 598 of 2009 (Bom HC)
 - CIT Vs. Sonic Hiochem Extraction P. Ltd. 94CCH 99 (Bom.)
 - DCIT Vs. Boskalis Dredging India P. Ltd. 53 SOT 17 (Mum.)

Depreciation – Clause 18

▶ Depreciation on Intangibles

- Goodwill – CIT Vs. Smifs Securities Ltd. 348 ITR 302(SC)
- Stock Exchange Card – Techno Shares & Stocks Ltd. Vs. CIT 327 ITR 323 (SC)
- SEBI Registration Fees – DIT Vs. HSBC Asset Management India Pvt. Ltd. 228 Taxman 365 (Bom.)
- One time Licence Fees – ACIT Vs. GKN Sinter Metal P. Ltd. 153 ITD 311 (Pune)
- Compensation paid to retiring partner is goodwill and eligible for depreciation – Pr. CIT Vs. Swastik Industries 240 Taxman 510 (Guj)
- Excess amount paid over Net asset value for acquiring business is goodwill – Triune Energy Services P. Ltd. Vs. Dy. CIT 129 DTR 422 (Del. HC)
- Non Compete Fees
 - Medicorp Technologies India Ltd. – (2009) 30 SOT 506 (Mad)
 - Srivastan Surveyors P. Ltd – (2009) 318 ITR 283 (Chennai Trib.)
 - ACIT Vs. Real Image Tech P. Ltd. 120 TTJ 983 (Chennai Trib.)

Depreciation – Clause 18

- ▶ Rate of Depreciation on Computer peripherals
 - CIT Vs. Birlasoft Ltd. ITA 1284/2011 Dt. 15-12-11 – Del. HC
 - Hapag Lloyd India P. Ltd. Vs. DCIT 117 DTR 113 (Mum. Trib.)
 - ACIT Vs. H T Media Ltd. 43 CCH 516 (Del. Trib.)
 - IBAHN India P. Ltd. Vs. Dy. CIT 157 ITD 382 (Mum.)
- ▶ Car Registered in Partner's / Director's name – Reflected in Firm / Company's Balance Sheet
 - CIT Vs. Aravali Finlease Ltd. 341 ITR 282 (Guj)
 - Edwise Consultants P. Ltd. Vs. DCIT 44 ITR 236 /45 CCH 392 (Mum. Trib.)
- ▶ Depreciation on vehicles for personal use
 - Microsoft Corporation India P. Ltd. Vs. Addl CIT 37 ITR 290 (Del. Trib.) – No Personal use in the case of companies
 - Difference in section 32 and section 37(1)



Section 36(1)(va) – Clause 20

- ▶ Section 2(24)(x) – Employees' contribution is Income
- ▶ Section 36(1)(va) – Deduction allowable if paid within Due date under relevant law
- ▶ Due Date is which date – Difficulties on Late Payment
- ▶ Days of Grace under the relevant Law ?
- ▶ Decisions
 - ITO Vs. LKP Securities Ltd. 36 CCH 93 (Mum.) – Employee's contribution is not covered by section 43B – Due date as per the relevant law – Days of Grace allowed
 - CIT Vs. Sabari Enterprises 298 ITR 141 (Kar)
 - CIT Vs. Vijay Shree Ltd. – Cal HC– ITA No. 245/2011 – itatonline.org
 - CIT Vs. Mark Auto Industries Ltd. 358 ITR 43 (P & H)
 - CIT Vs. Hindustan Organics Chemicals Ltd. 366 ITR 1 (Bom)

Capital or Revenue Expense

- ▶ Few Relevant Tests – Para 30.2 of GN of ICAI
 - Creation of New Asset or Enduring Benefit
 - Fixed Capital or Fixed Asset Vs. Working Capital or Current Asset
 - Whether it relates to basic framework of business
 - Acquisition of an Intangible Asset

Capital or Revenue –Principles

- ▶ Royalty paid to Foreign Collaborator for technical know how fees
 - No business in existence – Capital Expenditure – Honda Siel Cars India Ltd. Vs. CIT (2017) 99 CCH 39 (SC)
 - Subsequent years – business in existence – Royalty paid for improvement in the business – Revenue Expense – CIT Vs. Hero Honda Motors Ltd. 372 ITR 481 (Del.)
- ▶ Expense incurred for carrying on existing business in a more efficient manner incidentally resulting in enhancement of capacity – Revenue in nature – No enduring benefit or creation of income generating apparatus – *CIT Vs. Television Eighteen India Ltd. 364 ITR 605 (Del.)*
- ▶ Expenses on upgradation of application software
 - Revenue Exps. : *ACIT Vs. Sanghvi Savla Stock Brokers Ltd. 152 ITD 820 (Mum.)*

Capital or Revenue – Principles

- ▶ Construction Expenditure incurred on an abandoned project is allowable as revenue expenditure – No asset is created – *Binani Cement Ltd. Vs. ACIT 380 ITR 116 (Cal.)*
- ▶ Fees paid for technical collaboration agreement which had to be terminated – Capital in nature – *Oriental Seritech Ltd. Vs. CIT 149 ITD 350 (Mum.)*
- ▶ Assessee engaged in production of audio cassettes and CDs – payment made for purchase of copyrights of sound tracks of films – Revenue Expenditure – *ITO Vs. Five Star Audio 143 ITD 288 (Chennai)*.
- ▶ DCIT Vs. Gujarat Narmada Valley Fertilizers Co. Ltd. 215 Taxman 72 (Guj)
 - Loan taken for the purpose of business – Expenditure incurred on restructuring of such loan is revenue in nature
 - Premium on Redemption of Debentures which were issued for working capital requirements – Revenue Expenditure

Capital or Revenue – Principles

- ▶ Cyanamid Agro Ltd. Vs. ACIT 148 ITD 606 (Mum.)
 - Payment made for avoiding competition over a reasonable long period of time – Capital in nature
 - If the period is uncertain and competition can again start any time – Revenue Expenditure
- ▶ Rent Income assessed as Business Income – Payment of compensation to existing tenant to obtain vacant possession of building so as to earn higher rent – Revenue Expenditure – *Shyam Burlap Co. Ltd. Vs. CIT 380 ITR 151 (Cal.)*
- ▶ Expenses on Medical treatment of Eyes in the case of an advocate – Personal in nature – *Dhimant Hiralal Thakkar Vs. CIT 380 ITR 275 (Bom.)*
- ▶ Expenses to perfect the title of the land is capital expenditure – No Depreciation is allowable since do not pertain to Building – *Sandvik Asia Ltd. Vs. DCIT 378 ITR 114 (Bom.)*

Expln to 37(1)



- ▶ Penalty or fine for violation of any law for the time being in force
 - Penalty paid for delay in supply of material – Whether allowable
 - Penalty for procedural lapses in compliance of Rules & Regulations of associations etc
 - LKP Securities 36 CCH 93 (Mum)
 - Dy. CIT Vs. Kisan Ratilal Choksey Shares & Securities Pvt. Ltd. 41 (ITR Trib) 114 (Mum.)
- ▶ Prakash Cotton Mills P. Ltd. Vs. CIT 201 ITR 684 (SC)
 - AO Should examine the scheme of the relevant statute to decide the nature of the particular levy to decide whether it is compensatory in nature or penal in nature – Nomenclature is not relevant while deciding the issue. In case of composite payment – amount is to be bifurcated appropriately
- ▶ Penal Interest Vs. Compensatory Interest under various laws like Sales Tax, Excise, Service Tax etc
- ▶ Penalties for Late filing of VAT Returns / Late filing Fees for Service Tax

Expln to 37(1)

- ▶ CIT Vs. Ahmedabad Cotton Mfg. Co. Ltd. 205 ITR 163 (SC)
 - Penalty for infraction of law is not permissible but payment in obedience of law as a measure of business expediency can not be subject to disallowance. Payment made towards exercise of option given by the scheme is not to be disallowed.
- ▶ Expense for any purpose which is an offence or which is prohibited by law
 - Compounding Fees / Consent Fees for settling Dispute – *ITO Vs. Reliance Share & Stock Brokers P. Ltd. 67 SOT 73 (Mum.)*
 - Advocate Fees – *T & T Motors Vs. Addl CIT 154 ITD 306 (Del.) – against*
 - Ransom Money



Expln. to Sec. 37 (1)



- ▶ Compromise payment made to landlord to protect the Leasehold right – not an offence – allowable – *CIT Vs. Sports Field Amusement 231 Taxman 252 (Bom.)*
- ▶ Assessee guaranteed payment by third party – Third party failed – Decree executed against assessee – Payment made to avoid defamation of name – Held allowable – *CIT Vs. Hitachi Koki India Ltd. 230 Taxman 643 (Karn.)*
- ▶ Additional Filing Fees paid to ROC – Compensatory in nature – Allowable – *Cummins Turbo Technologies Ltd. Vs. DCIT 169 TTJ 358 (Pune)*



40(a)(i) – 40(a)(ia)

- ▶ Can Auditor rely on Certificates issued u/s. 195 or he should examine all the documents / treaties etc.
- ▶ Section 40(a)(i) – Whether deduction is required to be made when the relevant income is not taxable in India due to DTAA
 - GE India Technology Centre Pvt. Ltd. Vs. 327 ITR 456 (SC)
- ▶ Deduction of TDS at lesser rate – Whether disallowance to be made u/s. 40(a)(ia)
 - DCIT Vs. Chandabhoy and Jassobhoy 49 SOT 448 (Mum.)
 - DCIT Vs. S. K. Tekriwal 48 SOT 515 (Cal.) – confirmed in CIT Vs. S. K. Tekriwal 361 ITR 432 (Cal.)
 - Contra View – CIT Vs. PVS Memorial Hospital Ltd. 380 ITR 284 (Ker)



40(a)(i) – 40(a)(ia)

- ▶ No TDS on Reimbursement of Expenses – *CIT Vs. DLF Commercial Project Corporation 379 ITR 538 (Del.)* ; *Hightension Switchgears P. Ltd. Vs. CIT 385 ITR 575 (Cal.)*
- ▶ Tax Deducted and Paid but no TDS Return filed – whether disallowance is to be made
- ▶ Form 15G / 15H not filed with Department – Whether Disallowance to be made
- ▶ No Disallowance where the expenditure is capitalised in the books of accounts – *CIT Vs. Mark Auto Industries Ltd. 358 ITR 43 (P & H)*
- ▶ No Liability to deduct tax on transport charges where primary contract is for supply and Transport is incidental – *CIT Vs. Krishak Bharati Co. Op. Ltd. 349 ITR 68 (Guj)*



40(a)(i) – 40(a)(ia)

- ▶ No TDS on Overseas Commission to Foreign Agent
 - Circular No. 23 of 1969
 - Circular No. 7 Dated 22-10-2009
 - CIT Vs. Toshoku Ltd. 125 ITR 525 (SC)
 - CIT Vs. Gujarat Reclaim & Rubber Products Ltd. – ITA No. 2116 of 2013 – Order dated 8-12-2015 / 94 CCH 148 (Bom.)
 - Sesa Resources Ltd. Vs. DCIT 287 CTR 89 (Bom.)
- ▶ Second proviso to Section 40(a)(ia) – If tax paid by the recipient – No disallowance to be made
- ▶ Amount of Disallowance – Restricted to 30% w.e.f. A.Y. 2015-16
 - Deduction allowed in subsequent year on payment basis – w.e.f. 2015-16 also restricted to 30%
 - Disallowance in earlier year @ 100% and deduction now @ 30%

40(a)(i) – 40(a)(ia) – Paid Vs. Payable

Favourable Decisions

- Merilyn Shipping & Transports Vs. Addl CIT 136 ITD 23 (Viz) (SB)
- CIT Vs. Vector Shipping Services 357 ITR 642 (All)

Contra View :

- CIT Vs. Crescent Exports Syndicate – 94 DTR (Cal) 81
- CIT Vs. Sikandarkhan N. Tunvar & Ors. 357 ITR 312 (Guj)

Now settled and concluded

- Palam Gas Service Vs. CIT (2017) 394 ITR 300 (SC)

Section 40A(3)

- ▶ Rule 6DD - Exceptions to be taken care of
- ▶ Genuine Payments made in excess of the prescribed limit may still not be disallowed if they are made to meet the business exigencies and the payee can be identified
 - Honey Enterprises Vs. CIT 381 ITR 258 (Del.)
 - Anupam Tele Services Vs. ITO 366 ITR 122 (Guj)

Section 14A – Rule 8D



- ▶ Rule 8D – Significance of the phrase “having regard to”
- ▶ Conclusive finding necessary
 - Godrej & Boyce Mfg. Co. Ltd. Vs. DCIT (2010) 328 ITR 81 (Bom.)
 - Maxopp Investment Ltd. Vs. CIT (2011) 347 ITR 272 (Del)
 - CIT Vs. I. P. Support Service India P. Ltd. – 94 CCH 37 (2015) (Del)
- ▶ No Disallowance in absence of exempt income :
 - CIT Vs. Delite Enterprises – ITA No. 110 of 2009 (Bom) – itatonline.org
 - CIT Vs. Shivam Motors Pvt. Ltd. – (2015) 230 Taxman 63 (All)
 - CIT Vs. Corrttech Energy Pvt. Ltd. 223 Taxman 130 (Guj)
 - Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33(Delhi)(HC) – SB decision overruled

Section 14A – Rule 8D



- ▶ Meager Dividend Income
 - DCM Ltd. Vs. DCIT (Del. Trib) – ITA No. 4467/Del/2012 Dated 1-9-15 – following HC decision in Cheminvest

- ▶ Disallowance cannot be in excess of expenditure incurred
 - ACIT Vs. Iqbal M. Chagla – 67 SOT 123 (Mum)(URO)
 - Gillete Group India P. Ltd. 22 taxmann.com 61
 - Haresh S. Jhaveri – ITA No. 8518/Mum/2010

14A in MAT Scenario



- ▶ 115JB is a self contained code – Book Profit as per Explanation
- ▶ Clause (f) – Expenses in connection with incomes exempt u/s. 10, 11 and 12
- ▶ Expense to be added back “if debited to P & L A/c.” – Only Actual Expenses – No scope for Rule 8D
- ▶ Decisions
 - Essar Teleholdings Ltd. Vs. DCIT – ITA No. 3850/M/2010 (Mum.)
 - Quippo Telecom Infrastructure Ltd. Vs. ACIT – ITA No. 4931/Del/2010 (Del.)
 - Everest Kanto Cylinders Ltd. Vs. ACIT 167 TTJ 204 (Mum.)
- ▶ Clause (f) will not be applicable in case of no exempt income earned during the year – Minda Sai Ltd. Vs. ITO 114 DTR 50 (Del. Trib)

Subsidiaries / Strategic Investments



- ▶ Purpose of Investment
- ▶ Favourable Decisions
 - Oriental Structure Engineers Pvt. Ltd. – 35 taxmann.com 210 (Del HC)
 - East India Associated Hotels Ltd. Vs. DCIT – Chennai Tribunal – ITA No. 1503/M-2012
 - Garware Wall Ropes Ltd Vs. ACIT– ITA No.5408/M/2012)(Mum)
 - M/s JM Financial Limited Vs. ACIT– ITA No. 4521/M/2012)(Mum)
- ▶ Contra view :
 - Coal India Ltd – ITA No 1032 and 1238/Kol/2012
 - Smt. Leena Ramachandran (ITA No. 1784 of 2009) – Kerala HC

Applicability to Stock in Trade

- ▶ Purpose of buying shares as stock in trade – Dividend Incidental
- ▶ Strict Interpretation Vs. Purposive Interpretation
- ▶ ITO Vs. Daga Capital Management Pvt. Ltd. 117 ITD 169 (Mum – SB)
- ▶ Godrej & Boyce Mfg. Co. Vs. DCIT (2010) 328 ITR 81 (Bom)
- ▶ DCIT v. M/s India Advantage securities Ltd (ITA No. 6711 / Mum / 2011) (Mum ITAT) (2012) Confirmed by BOM HC
 - Followed in Few Tribunal Decisions
 - R. R. Chokhani Stock Brokers Pvt. Ltd v ITO – ITA No.6826/M/2014)(Mum)
 - KSM Securities & Finance Pvt. Ltd. v. DCIT – ITA No.3632/M/2013)(Mum)
 - Devkant Synthetics (India) Pvt. Ltd. v. ITO – ITA No.2663/M/2015)(Mum)

Interest Disallowance – Mixed Funds

- ▶ Common Funds – Sufficient funds available for making Tax Free Investment
 - Woolcombers of India Ltd v. CIT 134 ITR 219 (Cal) / East India Pharmaceutical Works Ltd v. CIT 224 ITR 627(SC)
 - CIT Vs. Reliance Utility and Power Ltd. 313 ITR 340 (Bom) – section 36(1)(iii)
- ▶ CIT V. HDFC Bank Ltd. 366 ITR 505 (Bom.) – section 14A – applying ratio of Reliance Utility
- ▶ Similar view : CIT Vs. UTI Bank Ltd. 215 Taxman 8 (Guj) / CIT Vs. Torrent Power Ltd. 363 ITR 474 (Guj)



Profit from Partnership Firm

Vishnu Anand Mahajan Vs. ACIT 137 ITD 189 (Ahd. SB)

- ▶ Funds are borrowed and Introduced as Capital in Firm
- ▶ Also other expenses are incurred by partner – Motor Car Expenses – Car Depreciation etc.
- ▶ Partner earns Remuneration + Interest + Share of Profit from Firm
- ▶ Section 14A applies to Interest and Other Expenses
- ▶ Disallowance to be made by apportionment
- ▶ Section 14A do not apply to depreciation

Section 41 – Clause 25



- ▶ Liability which is time barred but not written back in the accounts
 - CIT Vs. Vardhman Overseas Ltd. 343 ITR 408 (Del)
 - CIT Vs. Bhogilal Ramjibhai Atara 88 CCH 49 (Guj)
 - Contra view : ITO Vs. Shailesh D. Shah – Mum ITAT – itatonline.org – doubting genuineness

- ▶ Refund of excise duty / sales tax etc. where the department is in appeal at higher forums – whether section 41 gets attracted ?
 - CIT Vs. Hindustan Housing and Land Development Trust Ltd. 161 ITR 524 (SC) – Regarding compensation for land acquisition

- ▶ If liability disallowed u/s. 43B or 40(a)(ia) etc. whether the same can be added as income u/s. 41

Section 43B – Clause 26



- ▶ Exclusive Method of accounting – Service Tax shown as liability – Not paid whether disallowance is to be made u/s. 43B
 - CIT Vs. Noble & Hewitt (India) Pvt. Ltd. 305 ITR 324 (Del.)
 - CIT Vs. Ovira Logistics Pvt. Ltd. 377 ITR 129 (Bom.) – Service Tax Liability not due as per Service Tax Rules and hence not paid
 - Shri Kalu Karman Budhelia Vs. ACIT TS-749-ITAT-2012(Mum) – Liability due but not paid

- ▶ Whether Service Tax collected is Income
 - Chowringhee Sales Bureau P. Ltd. Vs. CIT 87 ITR 542 (SC) – Sales tax collected is Income
 - ACIT Vs. Real Image Media Technologies P. Ltd. 114 ITD 573 (Chennai) – Service provider is agent of government and analogy of Sales Tax / Excise does not apply to Service Tax

- ▶ Effect of Section 145A – Applies to Purchase, Sales and Inventories



Section 43B – Clause 26

- ▶ Taxes paid after the completion of audit but before filing of report
 - Effect in Audit Report and computation
 - Amendment in section 143(1) by FA 2016
- ▶ Section 43B is a disallowance section – Taxes paid in advance though not due as per law not allowable as deduction on payment basis
 - Gopikrishna Granites India Ltd v. DCIT (251 ITR 337)(AP)
 - Hindustan Liver limited v. V.K. Pandey, JCIT, (251 ITR 209) (Bom)
- ▶ Both Employer and Employee Contribution is allowable as deduction in the year of actual payment if not allowed earlier – *CIT Vs. Ghatge Patil Transports Ltd. 368 ITR 749 (Bom.)*
- ▶ Circular No. WSU/9(1) 2013/ Settlement – Dt. 8-1-16 – Availability of 5 days of grace has been discontinued

Prior Period Items – Clause 27

- ▶ Liability Materialised or Crystallised during the year is not prior period item
- ▶ Liability to Sales–tax arises right in the year of sale and the fact that assessment is made later on or appeal is decided later on is not relevant
 - Kalinga Tubes Ltd Vs. CIT 218 ITR 164 (SC)
 - Hajilal Mohd. Biri works 224 ITR 591 (SC)
- ▶ Error or omission in preparation of Accounts of last year – Prior period
- ▶ Revision of Estimates due to event in the current year – Not Prior Period



Prior Period Items

- ▶ Short Provision for expenses made in earlier year – what about differential payment made in the current year on receipt of the bill.
- ▶ Expenses of earlier year for which bills were also received in the earlier year but left out to be booked due to error or omission
- ▶ Liability under dispute in earlier year – Now paid
- ▶ Section 43B items – VAT paid of earlier year during the current year
 - Due to order passed in the current year
 - Order passed earlier but not paid then and paid now

Section 56(2)(viiia) – Clause 28

- ▶ Applies where a firm or a CHC receives shares of a CHC without consideration or for at less than FMV
- ▶ Whether fresh issue of shares is covered
 - Khoday Distilleries Ltd. Vs. CIT 307 ITR 312 (SC) – Allotment of shares is appropriation out of unappropriated share capital – Does not amount to transfer
- ▶ Whether Bonus shares received will be covered
 - CIT Vs. Dalmia Investment Co. Ltd. 52 ITR 567 (SC) – Bonus shares are without payment but not without consideration
- ▶ Whether Right Shares subscribed at less than FMV will be covered
 - Proportionate allotment
 - Disproportionate allotment
 - Sudhir Menon HUF Vs. ACIT 148 ITD 260 (Mum.)



Sec. 269– SS / 269 T – Clause 31

- ▶ Transactions by Journal entry whether covered :
 - CIT Vs. Triumph International Finance (I) Ltd. 345 ITR 270 (Bom)
 - CIT Vs. Noida Toll Bridge Co. Ltd. 262 ITR 260 (Del.)
 - CIT Vs. Worldwide Township Projects Ltd. 367 ITR 433 (Del.)
 - CIT Vs. Bombay Conductors & Electricals Ltd. 301 ITR 328 (Guj)
 - CIT Vs. Saurabh Enterprises – 106 DTR 137 (All.)
 - Lodha Builders Vs. ACIT – 106 DTR 226 (Mum. Trib)
 - CBDT Circular No. 387 Dated 6–7–1984

Clause 32 – Explanation to Sec. 73

- ▶ Explanation applies where any part of business of company includes buying and selling of shares of company
- ▶ Exceptions carved out
- ▶ Amendment – Company whose principle business is trading in shares also covered in exception w.e.f. A.Y. 2015–16
- ▶ What about set off of the losses of past in similar transaction – whether speculative or non speculative ?
 - Fiduciary Share & Stock P. Ltd. Vs. ACIT 159 ITD 554 (Mum.)

Clause 32 – Section 79

- ▶ Past losses are not allowed to be set off in a case where the change in shareholding results in diversion of voting power to the extent of more than 51%
- ▶ CIT Vs. Amco Power Systems Ltd. 379 ITR 375 (Kar).
 - What is relevant is voting power and not shareholding pattern
 - Change of shareholding between the existing shareholders will not have any impact

Clause 33 – Chapter VI A

- ▶ Section 80-IB – “Derived from Vs. Attributable to”
- ▶ Liberty India Vs. CIT 317 ITR 218 (SC) – DEPB Licence not entitled to deduction u/s. 80-IB
- ▶ CIT Vs. Meghalaya Steels Ltd. 383 ITR 217 (SC) – Transport subsidies / Power Subsidies / Interest Subsidy
- ▶ Excise Duty Refund
 - CIT Vs. Dharmpal Premchand Ltd. 317 ITR 353 (Del.)– Pre Liberty India
 - CIT Vs. Meghalaya Steels Ltd. 332 ITR 91 (Gau.) – Post Liberty India
- ▶ Exchange Rate Difference – *CIT Vs. Rachna Udhyog 230 CTR 72 (Bom.)*
- ▶ VAT Incentive – M/s. Diamond Tools Industries Vs. JCIT – ITA No. 136/Mum/2009 – Order dated 14-12-2011
- ▶ First Degree nexus necessary for claiming deduction

Date of Audit Report

- ▶ Language of Section 44AB
- ▶ Audit Report to be obtained before the due date and Return to be filed on or before due date
- ▶ If Audit Report Dated – 30th September – whether 44AB violated ?
 - Chandra Kumar Seth Vs. ITO 62 ITD 106 (All.)
 - Chopra Properties Vs. ACIT ITA No. 6199/Del/2015 – itatonline.org

Broad Message

- ▶ CA – **C**onsistent **A**chiever
- ▶ Do Remember : When the going gets tough the Tough gets going



THANK YOU
FOR YOUR
TIME

