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A Monthly Journal of
The Chamber of Tax Consultants

The Chamber's Journal

March 2013

Vol. 1 | No. 6

Your Monthly Companion on Tax & Allied Subjects

Finance Bill 2013

The factors noted in the economic survey, as well as the economic and political environment mentioned earlier show that the Finance Minister indeed had little elbow room to make significant changes. He has indeed shown the prudence and the restraint that he mentions.

(Read further from page 21 onwards)

Other Contents

Direct Taxes

International Taxation

Indirect Taxes

Corporate Laws

Other Laws

Best of the Rest

Economy & Finance

Your Questions & Our Answers

The Chamber News

"and more..."

and more

The Chamber of Tax Consultants

Heaven be our guide

The Chamber's Journal

Finance Bill 2013

Transforming Information into Knowledge

March 2013 | Vol. 1 | No. 6

CMYK

RESIDENTIAL REFRESHER COURSE & PUBLIC RELATIONS COMMITTEE

36th Residential Refresher Course held on 21st February, 2013 to 24th February, 2013 at Heritage Village Resort & SPA, Manesar, Gurgaon.

CA Manoj Shah, President addressing the delegates. Seen from L to R : CA Charu Parekh, Convenor, Shri Kishor Vanjara, Past President, Shri Y. P. Trivedi, Senior Advocate & Past President, CA Vijay Bhatt, Chairman.

CA Vijay Bhatt, Chairman welcoming the delegates. Seen from L to R : CA Charu Parekh, Convenor, Shri Kishor Vanjara, Past President, Shri Y. P. Trivedi, Senior Advocate & Past President, CA Manoj Shah, President.

Shri Y. P. Trivedi, Senior Advocate & Past President, inaugurating the Conference by lighting the lamp. Seen from L to R : Shri Kishor Vanjara, Past President, CA Charu Parekh, Convenor, CA Manoj Shah, President, CA Vijay Bhatt, Chairman.

Shri Y. P. Trivedi, Senior Advocate & Past President addressing the delegates. Seen from L to R : CA Charu Parekh, Convenor, Shri Kishor Vanjara, Past President, CA Manoj Shah, President, CA Vijay Bhatt, Chairman.

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CONTENTS

Vol. I No. 6
March – 2013

Editorial .... *K. Gopal* 5
From the President .... *Manoj Shah* 6
An Introduction to – Ved and Vedanta .... *V. H. Patil* 9

1. **SPECIAL STORY : Finance Bill, 2013**
   1. An Overview of the Finance Bill, 2013 .... *Jayant Gokhale* 21
   2. Rates of Taxes .... *Mohan S. Phadke* 26
   3. Amendments related to Immovable Properties .... *Apurva R. Shah* 31
   4. Amendments related to Non-residents and GAAR–Part-I .... *Mayur B. Nayak* 34
   5. Amendments related to Non-Residents and GAAR–Part-II .... *Natwar Thakrar* 40
   6. Amendments relating to Securities .... *Bhavesh Vora* 45
   7. Buy-back of Unlisted shares .... *Yogesh Thar* 51
   8. Amendments related to Procedures – Part-I .... *Ketan Vajani* 55
   9. Amendments related to Procedures – Part-II .... *Mandar Vaidya* 61
   10. Exemptions and Deductions – Part-I .... *Paras K. Savla* 64
   11. Exemptions and Deductions – Part-II .... *Shailesh Bandi* 69
   12. Investment Allowance – Section 32AC .... *Ashok L. Sharma* 73
   13. Budget changes amendments in Service Tax by Finance Bill, 2013 .... *Rajkamal Shah* 75
   14. Service Tax Voluntary Compliance Encouragement Scheme, 2013 .... *Naresh K. Sheth* 79

2. **DIRECT TAXES**
   - Supreme Court .... *B. V. Jhaveri* 83
   - High Court .... *Ashok Patil, Mandar Vaidya & Priti Shukla* 85
   - Tribunal .... *Jitendra Singh & Sameer Dalal* 89
   - Statutes, Circulars & Notifications .... *Sunil K. Jain* 94

3. **INTERNATIONAL TAXATION**
   - Case Law Update .... *Tarunkumar Singhal & Sunil Lala* 99

4. **INDIRECT TAXES**
   - Central Excise and Customs – Case Law Update .... *Hasmukh Kamdar* 111
   - VAT Update .... *Nikita Badheka & Janak Vaghani* 113
   - Service Tax – Statute Update .... *Rajkamal Shah & Naresh Sheth* 114
   - Service Tax – Case Law Update .... *Bharat Shemlani* 115

5. **CORPORATE LAWS**
   - Company Law Update .... *Janak C. Pandya* 118

6. **OTHER LAWS**
   - FEMA Update .... *Mayur Nayak, Natwar Thakrar & Pankaj Bhuta* 121

7. **BEST OF THE REST** .... *Ajay Singh & Suchitra Kamble* 129
8. **ECONOMY & FINANCE** .... *Rajaram Ajgaonkar* 136
9. **YOUR QUESTIONS & OUR ANSWERS** .... *V. H. Patil* 139
10. **THE CHAMBER NEWS** .... *Hitesh Shah & Paras Savla* 141

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Editorial

In a global economy, major and path-breaking decisions are taken not just at one point of time in a year, but whenever the need arises – things do not wait for February to dawn upon. However, the month of February is marked in every Indian's mind as the month of annual budget when people from all walks of life engage themselves in financial introspection and realignment of their pockets. Public mind as well as media indulges in pre-budget and post-budget analysis making it appear as 'The Exercise' of the year. This February too, the Government has presented perhaps its last Railway and General Budget. The exercise had been a mixed bag – both pleasant and baffling at the same time; pleasant – as it didn't come up with the usual populist measures that usually governments shower, in their pre-election budgets and baffling because no steps were taken up to pull the economy out of the downward trend and important policy decisions which were discussed and debated widely have been halted in their tracks. Such an exercise raises a few question – did the people in power at last understand that the common man would no more fall for the periodical baits that they throw expecting in return, electoral favours! Is it lack of vision or lack of elbow room that is behind government's shying away from taking the steps which are critical to pull the economy out of its nosedive? Does the Government of the day have any moral right not to take actions critical for the well-being of the country, keeping in view, electoral fears just as no government has any right to throw pre-electoral doles keeping in view electoral gains? Whatever and however, this year's budget had been cold and made itself look like a routine exercise with both the pomp of promise and the heat of controversy missing. Anyway, let us give hope, a chance, as at least after 66 years of independence, people have risen to the level where they can and do differentiate between practices which separate good governance from poor governance and the Government of the day seems to have realised it. This, by itself, would help the cause of Democracy in India.

The Special Story for the current issue of the Chamber's Journal is the Finance Bill, 2013. Eminent professionals have spared their valuable time to place this issue, in time, in your hands. In appreciation of their sincere efforts, I thank all the contributors to this issue. My special thanks to the Chamber's Journal Committee, Mr. Sanjay Parikh and Mr. Jayant Gokhale for helping me design and print this issue in a short period of time.

K. GOPAL
Editor

From the President

Dear Readers,

The 36th RRC at Manesar, Gurgaon turned out to be a glittering event. Continuing with the trend, this RRC also had a perfect balance of education and entertainment; hence I call it an ‘edutainment’ event. One of the highlight of the RRC was that we were fortunate to have Honourable Member of Rajya Sabha and our past president, Shri Y.P. Trivedi, inaugurating the RRC. In addition, knowledge absorbing technical sessions of discussion papers and entertainment events of visit to ‘Kingdom of Dreams’, ‘Antakshari’ and ‘Gala Diner’ were thoroughly enjoyed by delegates. Icing on the cake was – Brains Trust Session as the Trustees were at their best while replying to very well drafted questions. Direct Tax RRC is a flagship event of the Chamber, and I am very pleased that it served its purpose of imparting training and fellowship amongst delegates.

While Direct Tax RRC is over, preparations have started for 7th RRC on International Taxation to be held in June, 2013. The announcement has already appeared in CITC Newsletter of March, 2013 and I request members to enrol at the earliest. International Taxation is the most happening field and Chamber’s RRC provides great opportunity to keep abreast with latest happenings.

Allied Laws Committee jointly with International Taxation Committee has planned a unique two days’ conference on Intellectual Property Rights – dealing with Legal, Taxation and Accounting aspects. IPRs are having great impact on cross border taxation, however, we as a tax professionals many a times lack knowledge of laws dealing with IPR *per se*, and hence the two committees have chalked out this programme.

India’s 82nd Budget (till now there have been 65 normal annual budgets, 12 interim budgets, and 4 mini budgets) neither has any populist measures nor any major reformative measures. In a way rightly so, Indian budget is more hyped event. In fact, many of the reformative measures have been taken outside budget, such as opening up Retail and Aviation sector for FDI, subsidy cuts on oil and gas, etc. Considering the high fiscal and Current Account Deficit, there was hardly any room for populist measures and therefore the FM has refrained from such populist measures even though it is last budget of UPA Government before the General Elections. This is Mr. P. Chidambaram's eighth budget, only one FM, Mr. Morarji Desai has presented greater number of budgets than him – he had presented ten budgets. Shri P. Chidambaram, as a F.M., has however, continued with his trade mark practice of introducing new taxes and this time it is 'Commodity Transaction Tax' (as reader would recollect, he has in past introduced many innovative taxes as Banking Transaction Tax, Fringe Benefit Tax, STT etc.). Rumours of introducing inheritance tax or Estate duty have been put to rest, as nothing of this sort has found its place in Finance Bill, 2013. In a way rightly so, time is not yet ripe to introduce inheritance tax, though, liberalisation of Indian economy since past two decades, has resulted in HNIs number going up substantially. Introduction of Estate duty at this juncture may tempt, Indians to shift their base to countries where there are no inheritance taxes.

GAAR is proposed to be deferred to A.Y. 2016-17, however, it was expected, based on recommendations of Dr. Shome Committee that there would be threshold limit for applicability of GAAR provisions; however, expectations on this front have turned sour with no such announcement. Another 'not so good' feature of this Finance Bill is proposed amendment to Sec. 90(5) dealing with Tax Residency Certificate. It is proposed that TRC is necessary but not a sufficient condition for Non-Resident while granting treaty benefit. To such a proposal, there were sever criticisms from Non-Resident tax payer community as well as investors, as such provision provides wide discretion to Assessing Officer in addition to disregard with respect to TRC which is being issued by Tax Department of home country of Non-Resident. More the objectivity in tax laws, the better it would be as it would dilute discretionary power which at times can lead to misuse of authority. Having realised the gravity of problem and sense of fear from foreign investors, the Government has very next day issued press release clarifying its stand that it gives respect to TRC and CBDT Circular 789 dealing with TRC holds still good. It is an example of improper drafting and therefore FM had to intervene swiftly to allay fears of foreign investors. With Current Account Deficit alarmingly high, India needs forex inflow which could come from, as announced by FM in his budget speech, FIIs, FDI and ECBs. India at this juncture, therefore, cannot displease foreign investors.

While March will keep the tax professionals busy, March end also brings festival of colours –'Holi'. Wish you all a very Happy Holi, in advance.

With best regards

Manoj C. Shah
President

The Chamber of Tax Consultants

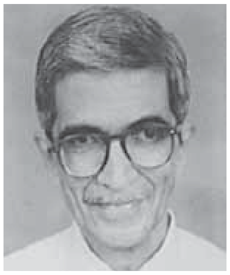
Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre–eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility.



V. H. Patil, *Advocate*

Ved and Vedanta

BHAGAVAD GITA

Jnyana of Life and Vidnana of Living

Jnyana of (Philosophy) of life is the knowledge of self (Atma) of the God (Paramatma) and of Nature and the interrelation between these three and Vidnana is of the Art of living and the one of achieving Atma's Goals of merging with the Paramatma, to become part of PARAMATMA. The Phrase Yoga means joining, and the ways and methods of achieving the union of `Atma with PARAMATMA' by various ways (PATHS) by which the goal of achieving Yoga. The paths are Hatha Yoga, Raja Yoga, Dnyana Yoga, Bhakti Yoga and Karma Yoga, and the integrated Yoga of Poorna of Shri Maharshi Arvindo.

In the right view of life and Yoga all is consciously or sub consciously a Yoga. It is a methodical effort of self perfection and the merging with God.

Now with this background of Jnana Vidnana of life and Art of living (Vidnana), let us consider the various PATHS of Yoga and let us deal with these ways one by one.

(1) Jnana Yoga the Path of knowledge (2) Raja (Dhyana) Yoga the path of Meditation (3) Bhakti Yoga, the path of love and (4) Karma Yoga, the path of right action.

All persons have the faculty of intellect, of mind, a heart and body, Indriyas (part of the Body). Jnana Yoga, the way of achieving the goal through intellect Raja Yoga (Dhyana) to the reach the same goal through mind control. The Bhakti Yoga is through the Heart and Karma Yoga is through Indriyas.

With this background of Yoga and the ways of Yoga, let us deal with them one by one, let us first deal with 'Karma Yoga, a Yoga of action, the reason being among various yogas it is most popular and more persons are practicing it, more than any other Yoga.

KARMA YOGA SLOKAS OF BHAGAVAD GITA

Chapt – II

47. The right is to work only; but never to the fruits thereof. Be thou not the producer of the fruits of (thy) actions; neither let thy attachment be towards inaction.

48. Being steadfast in Yoga, O Dhananjaya, perform actions, abandoning attachment, remaining unconcerned as regards success and failure. This evenness of mind (in regard to success and failure) is known as Yoga.

Chapt – III

3. In the beginning (of creation), O sinless one, the twofold path of devotion was given by Me to this world; – the path of knowledge

for the meditative, the path of work for the active.

4. By non-performance of work none reaches worklessness; by merely giving up action no one attains to perfection.

5. Verily none can even rest, for even an instant, without performing action; for all are made to act, helplessly indeed, by the Gunas born of Prakrti.

6. He, who restraining the organs of action, sits revolving in the mind, thoughts regarding objects of sense, he, of deluded understanding, is called a hypocrite.

7. But, O Arjuna, he who, controlling the senses by the mind, unattached, directs his organs of action to the path of work, excels.

8. Do thou perform obligatory action; for action is superior to inaction; and even the bare maintenance of the body would not be possible if thou art inactive.

9. The world is bound by actions other than those performed for the sake of Yajna; do thou, therefore, O son of Kunti, perform action for Yajna alone, devoid of attachment.

20. Verily by action alone, Janaka and others attained perfection; also simply with the view for the guidance of men, thou shouldst perform action.

21. Whatsoever the superior person does, that if followed by others. What he demonstrates by action, that people follow.

25. As do the unwise, attached to work, act, so should the wise act, O descendant of Bharata, (but) without attachment, desirous of the guidance of the world.

29. Men of perfect knowledge should not unsettle (the understanding of) people of dull wit and imperfect knowledge, who deluded by the Gunas of Prakrti attach (themselves) to the function of the Gunas.

33. Even a wise man acts in accordance with his own nature, beings follow nature; what can restraint do?

Chapt – IV

16. Even sages are bewildered, as to what is action and what is inaction. I shall, therefore, tell you what action is, by knowing which you will be freed from evil.

18. He who sees inaction in action, and action in inaction in intelligent among men, he is a Yogi and a doer of all action.

19. Whose undertakings are all devoid of plan and desire for results, and whose actions are burnt by the fire of knowledge, him, the sages call wise.

22. Content with what comes to him without effort, unaffected by the pairs of opposites, free from envy, even-minded in success and failure, though acting, he is not bound.

31. All of these are knowers of Yajna, having their sins consumed by Yajna, and eating of the nectar – the remnant of Yajna – they go to the Eternal Brahman. (Even) this world is not for the non-performer of Yajna, how then another, O best of the Kurus?

32. Various Yajnas, like the above, are strewn in the storehouse of the Veda. Know them all to be born of action; and thus knowing, thou shalt be free.

33. Knowledge-sacrifice, O scorcher of foes, is superior to sacrifice (performed) with (material) objects. All action in its entirety, O Paritha attains its consummation in knowledge.

37. As blazing tire reduces wood into ashes, so, O Arjuna, does the fire of knowledge reduced all Karma to ashes.

38. Verily there exists nothing in this world purifying like knowledge. In good time, having reached perfection in Yoga, one realises that oneself in one's own heart.

41. With work renounced by Yoga and doubts rent asunder by knowledge, O Dhananjaya, actions do not bind him who is poised in the Self.

Chapt – V

4. Children, not the wise, speak of knowledge and performance of action, as distinct. He who truly lives in one, gains the fruits of both.

7. With the mind purified by devotion to performance of action, and the body conquered, and senses subdued, one who realises one's self, as the self in all beings, though acting, is not tainted.

11. Devotees in the path of work perform action, only with body, mind, senses, and intellect, forsaking attachment, for the purification of the heart.

Chapt – VI

1 He who performs his bounden duty without leaning to the fruit of action – he is a renouncer of action as well as of steadfast mind; not he who is without fire, nor he who is without action.

2. Know that to be devotion to action, which is called renunciation, O Pandava, for none becomes a devotee to action without forsaking Sarikalpa.

Chapt – XVIII

2. The renunciation of Kamya actions, the sages understand as Sannyasa; the wise declare the abandonment of the fruit of all works as Tyaga.

7. But the renunciation of obligatory action is not proper. Abandonment of the same from delusion is declared to be Tamasika.

9. When obligatory work is performed, O Arjuna, only because it ought to be done, leaving attachment and fruit, such relinquishment is regarded as Sattvika.

11. Actions cannot be entirely relinquished by an embodied being, but he who relinquishes the fruits of action is called a relinquisher.

56. Even doing all actions always, taking refuge in Me by My grace he attains to the eternal, immutable State.

57. Resigning mentally all deeds to Me, having Me as the highest goal, resorting to Buddhi – Yoga do thou ever fix they mind on Me.

Karma Yoga, very briefly stated is the Yoga that is reaching one's goal by right way of doing work and continue to do right work every moment, every day, every year and if necessary in every life, till the goal of karma yoga of union with Paramatma through the doing of right Karma is reached.

Now every act of our's leaves an impression on our character and right action takes us towards our goal and a wrong action takes us backwards from our goal. The right work is a selfless, and unattached and not caring for the results it produces. As Lord Sri Krishna puts in it in Gita. We have to do our work as a duly, and not for its results. We have not to do work with an eye on its results, and we should be unattached to the work we are doing (Sl. No. 47 of Chapt. II).

Now continuing with that description of right action, He explains that one is to do selfless and unattached, activity with love and to do work for the benefit of others and not for our own benefit.

We have to do our work in a Yajna spirit and, to do work, as an obligation and not as matter of right.

The spirit of Yajna

One of the most significant contributions of the Bhagavad Gita is its new version of the traditional concept of Yajna. In normal concept of Yajna, in the sacred Five certain material things like ghee, etc., are offered to the deity while performing certain rites, chanting Mantras, invoking the blessings of that deity. To this traditional concept of Yajna the Bhagavad Gita gives an extended and very reaching meaning. According to the Bhagavad Gita, whatever is done in the spirit of sacrifice can be said to be done in Yajna spirit. Therefore, whatever is performed by way of selfless service or by way of selfless contribution to the other human beings welfare and to the society would be characterised as something done in the Yajna spirit. As such, whatever selfless service that is rendered without expecting any return or if one does the work as an obligation to do such service would constitute doing work in the Yajna spirit which according to the Bhagavad Gita does not lead to any bondage but will help one to reach one's own salvation.

The Bhagavad Gita attaches great importance to the Yajna spirit of doing work. In fact, the Bhagavad Gita goes on to say that Yajna has been born along with the birth of human race. So according to the Bhagavad Gita, both human beings and Yajna were created by God and God along with human beings created Yajna. He ordained human beings to do everything by way of Yajna and prosper together. This spirit of Yajna has a great significance because it underlines that the society will prosper as a whole only if the individuals, who constitute the society, believe in selfless service of others and the society. As such, for the happy development, progress and welfare of the society, according to the Bhagavad Gita, the human beings must do work in the Yajna spirit which means rendering selfless service to others. Therefore, according to it, whatever work that an individual has to do, it has to do in the spirit of Yajna i.e. carry out the work as a selfless service without expectation of any return. If this Yajna spirit is imbibed, not only brings individual welfare but it will lead to overall welfare of the society as a whole. This adoption of Yajna spirit like doing one's work as a duty without any expectation and without having a selfish motive, and doing the service for service sake i.e. doing work for work sake, is the basic foundation on which the entire structure of Karma Yoga has been built by the Bhagavad Gita.

There is a tremendous significance and truth in the concept of Yajna. Every individual is very much indebted to the society in many ways for his growth and development. Many individuals and the society have contributed directly and indirectly to his growth and welfare. Therefore, every individual for his very existence, progress and welfare is indebted to many other individuals which form the society. Therefore one has to repay these debts to the society and the members of the society. One can do this only by rendering selfless service in the spirit of Yajna. The Indian scriptures therefore prescribe that every individual must do five kinds of Yajnas daily for repaying the debts which he owes to the society. The first one is Pitru Yajna i.e. service of the parents and elders because of whose tender care and upbringing with love and care has made us useful citizens in the society. As such, service of elders is one of the prescribed modes of Yajna. The second mode is Rishi Yajna i.e. service of the good people i.e. the gurus and the teachers who have given us the understanding of life and its purpose. The third mode is Nara Yajna i.e. the service of other human beings in the society who have directly or indirectly contributed towards our development, our welfares and living. It also includes the service of the poor and the needy. Society, as a whole has allowed us to live peacefully and to achieve our goals. As such, one has to repay the debts by helping and serving other human beings who are in need of such services. The fourth one is Pashu Yajna i.e. one has to feed the animals and treat them with kindness. The fifth mode is Deva Yajna i.e. one is indebted to God and service to God is also one of the prescribed daily obligations of a human being. Here service of God means, worshipping God, purifying one's self divinising oneself, and serving the poor people is the best Deva Yajna. These five obligations which one has to fulfil as an individual in society are known as five daily Yajnas.

The prescription of doing one's work in the spirit of Yajna is a great foundation for the society's welfare and development and also the welfare of the doer. The whole society is itself a sacred fire or Yajna Mandap in which each and every individual has to offer his everything as sacrifice at the altar of the society. One has to do work in the spirit of sacrifice and in a spirit of service. Therefore, service of others and sacrifice at the altar of others is a firm foundation for the growth and welfare of the society and individual himself. Here what we offer is not so important. In what spirit the same is offered is important. One may offer to the society in form of charity, in the form of knowledge, in the form of service etc. As such as long as the offer is made in spirit of yagna, what you offer in what form you offer is not material.

To this ethical way of living in the society in the spirit of selfless service and sacrifice, Bhagavad Gita gives an excellent spiritual foundation. One of the great contributions of the Bhagavad Gita is bringing of fine synthesis between the ethical and spiritual values of life. The Bhagavad Gita has spiritualised the social life which has made spiritual life practical. According to the Bhagavad Gita one cannot be spiritual without being ethical i.e. one's spiritual living is for the service of God in the form of human beings and one's ethical living is the service of God through the service of other human beings. By bringing a fine synthesis between spiritual and ethical values of life the Bhagavad Gita has spiritualised our daily life and it has made our spiritual life practical. In short, the Bhagavad Gita has brought a fine synthesis and union between the outer world and the inner world of the human being, to make one's life both spiritual and ethical at one and the same time because these two are as per Gita complimentary to each other and not opposite to each other.

While dealing with the concept of Atma, Paramatma and the creation of the world and how Atma comes into the world in the form of Jeeva by mingling with the nature, the Bhagavad Gita declares that Paramatma is the cause of all creation and is the cause of each and every creation. The whole universe is a creation of God. The whole universe is a reflection of God and God is everywhere and everything belongs to him – Vasudev Sarvam. The Bhagavad Gita also goes on to declare that God dwells in each and every part of the universe and particularly in each and every human being. Therefore, everybody has to realise that each and every one is not only a creation of God but God dwells in each and every individual. Therefore, the real enlightened individual will find God everywhere including himself and therefore, he realises that he is in everybody and everybody is in himself. This is well explained in the famous shloka of the Bhagavad Gita wherein it says that an enlightened person will see himself in everybody and everybody in himself, such is the perfect unity between an individual and the society. When we see ourselves in others and others in one's selves, there is perfect unity and equality among all human beings. According to the Bhagavad Gita, as God is reflected in each and every individual, the same spirit dwells in each and every individual. Therefore, one has to realise this and see one's self in all other individuals and all other individuals in one's self. One should realise that there is absolutely no difference whatsoever between two individuals, They are two parts of the same body the whole universe is one indivisible organ and all human beings are part and parcel of that great unified one organ. As such, the question of quarrel, the question of liking or disliking, in principle, can never come between two individual because they are part and parcel of the same organ. It is just like the right hand of the body fighting with the left hand or quarrelling with the ear or shouting at the leg. All human beings, therefore, being essentially part of the same organ there is a universal unity. The whole universe is a glorious reflection of the Almighty. Once this basic truth is realised, all the differences, all the conflicts and all the disagreements will disappear and the whole universe will prosper as one whole being.

One should realise that every human being is in one's self and one's self is in every human being.

Then naturally, one would certainly love all the human beings. It is quite natural because once this is certain that every individual loves himself the most. If one loves himself the most and if the other individual is himself, then naturally the question of not loving that individual who is nothing but himself will not arise. Therefore, if the other individual is himself only, naturally one has to love that individual and serve that individual.

Karmayoga Sutras

1) One has to do work. One cannot do without doing work. Work is a MUST and, as such, one has to do work.

2) One has to do his work as his duty. Every work which has come to his part, should be performed by him in a spirit of duty and in the spirit of Yajna.

3) The work should be done without any attachment. Work is to be done for work's sake, without any expectation of any kind of result. The work must be done without any desire. Nishkama Karma is doing work unattached and without any desire, and without any expectation of its fruits. The work done as a duty in the Yajna spirit, is the sum and substance of Karma Yoga.

4) The doing of work in the Yajna spirit that is doing selfless service with a sense of sacrifice is possible, only if one becomes selfless and desireless. Desires and expectations, are the root causes of one's misery and sorrow. If one becomes desireless and expectation less, it is possible to do work in Yajna spirit.

5) If one becomes desireless, and one does not expect any result or craves for fruits of doing a work and if such work is done without attachment then it is possible to adopt the spirit of evenness, towards success or failure, towards happiness or sorrow, towards the gain or loss, towards praise or criticism, towards love or hate. The even mindedness while doing the work or while living itself, is necessary for true Karma Yoga.

6) Doing works in its Yajna spirit is possible if one is really selfless. According to Swami Vivekananda 'Selfishness is PAAP. Selflessness is PUNYA. One who lives for others really lives. One who lives for himself is as good as dead.'

7) True work in the form of service is possible if one cultivates and develops the sense of true love. As all men are equal and all have the same origin and that all human beings are children of God, it is natural to love each other. True love is always selfless and does not expect anything in return. Love for love's sake, should be the motto.

8) The work should be done in the spirit of service. A person whom we love we always want to serve him to make him happy. We are born to serve others. The life is service oriented. As the famous couplet goes " I slept and dreamt that the life is beauty. I woke up and found that life is a duty."

9) As other human beings are representatives of God, and if we see God everywhere and in everybody, serving others would be serving God himself. The true Karma Yogi will find God in human form in everybody and in serving other human beings he feels that he is worshipping God himself. Work for him becomes Puja maya.

10) As the Karmayogi advances in his pursuit of Yoga, he will not claim the authorship of doing any work. Akarta Bhavan will characterise his doing of any work. He realises that it is God only who is doing the work through him. He is only an instrument through whom God works. If the Akarta Bhav is adopted, the work one is doing becomes Dev Maya. 'Nimitta Matvam Bhava' advises Lord Krishna to Arujn. Thus, by stages, the work becomes Premamaya, Sevamaya, Bhaktimaya and Devamaya. By way of an illustration of the works of real Karma Yogi, the following episode from Ramayana be noted. Laxman, when he was fighting Indrajeet, the son of Ravana, fell unconscious. A rare medicine was available in a faraway forest. Hanuman went flying to the forest and

brought the whole mountain itself as he could not recognise the medicine required. With the medicine brought by Hanuman, Laxman was cured and regained his consciousness. Lord Rama was very pleased and praised Hanuman a lot. Hearing his praise, Hanuman smiled. When Lord Rama asked Hanuman why he is smiling Hanuman replied "What is this, Bhagavan. You have done all the work through me, and you are unnecessarily praising me." This spirit of Hanuman should be adopted by the Karma Yogi.

11) After surrendering to God and allowing him to do work through him, the Karma Yogi, offers the fruits of his karma to God in the spirit of Samarpana. In fact he offers himself to God.

12) The true Karma Yogi, always remembers God while doing his work. As Lord Krishna advise "All the time, remember me and do your work. One's mind, one's intellect, one's heart, and all his work, should become divine. As such, everything must be done in divine spirit, as the work of God. As such, a true Karmayogi, does the divine work, for God and offers the fruits of such divine work to God. As such, a true Karma Yogi lives divinely, works divinely, does work for divine, becomes God's divine instrument and offers the fruits of his work to God and at the end totally surrenders himself to God. In short, he lives divine life. He does divine work and he merges with God while doing divine work.

13) Lord Krishna, explains that Paramatma himself is a true Karma Yogi. He is always working without any rest, without any attachment, and with equal vision everywhere. He is not expecting anything in return nor he is getting anything by the work he is doing as a creator, protector and destroyer of the Universe.

14) Nature itself is a true Karma Yogi, Whether it is Sun, Moon, river or trees, all are doing their work as real, Karma Yogis. The sun gives light to everybody without any distinction. River gives cool water to everybody without any favour to anybody. Tree gives fruits to everybody, each and every part of tree is useful to the humanity. Agni (fire) and Vau and Akash are all real Karma Yogis.

15) When five elements, by which a human being is made PANCHAMAHA BHUTAH, each and every element is selfless and doing their duties in the Yajna spirit as Karma Yogis, when all five elements are present in the human body, the human being is really duty bound to be Karma Yogi doing work in yajna spirit.

16) In the recent times one would find by way of SAKAR yogis in Swami Vivekananda, Mahatma Gandhi, Maharshi Arbindo and Vinoba Bhave.

Requisites of Yoga Practice

The process of achieving one's perfection, that one's divinity, is a long drawn and difficult one. However, that being the ultimate goal of human life, one has to achieve it. In this difficult task of achieving, there are certain guidelines to help the aspirant in his path of Yoga. Let us deal with them in brief.

(1) Shraddha – Faith and belief

An unqualified and absolute faith in God and in one's ability is a starting point in this journey. It gives you a head start, Unequalified, unshaken, firm and total belief in God and Godly qualities, that he is sat-chit. Anand. He is all knowledge, He is all powerful, that He is omnipotent. omniscient and omnipresent. That he is creator and protector of the whole universe, and that we have to and will re-unite with him. One should have not an iota doubt in these. As such to start with full and unqualified faith in God and in one's origin and in one's own abilities, and in one's real nature is necessary. Such belief will give one a firm foundation for building the beautiful structure of Yoga.

(2) Aspiration

To support Shraddha there should be intense aspiration or urge to achieve God, of attaining one's full perfection and to divinise oneself. This intense and burning urge to achieve God is necessary qualification for the desired progress in the practice of Yoga. An intense desire to achieve God is of great help.

(3) Determination

A firm and unshakeable determination, is a requisite condition this firm determination to attain the God at any cost will be of great help. This grim and firm determination is a must for one's success.

(4) 'Avbhyasa' – Practice

One has to remember and constantly put in practice the fundamental, rules and regulations governing the yoga practice. Practice makes man perfect is the saying. It is applicable here also. The principle of diverting all our activities from I and mine to you and yours, must be put in practice in all our activities; practice to bring in your all thoughts words and deeds, the concern for others that your words and deeds are full of truth and love, full of compassion slowly and gradually try to live for others. Remember that any service, or any work, you are doing is God's work. Therefore while doing your work always remember God, do work for God, do work in his name. In fact live for him live like him.

(5) Sama Drishti – Equanimity

While doing any work or in fact while living in this world, we should live with same or equal vision. That is we must accept success or defeat, gain or loss. Pain or pleasure in the same spirit. He is not disturbed by sorrow, nor elated by pleasure and a sense of Equanimity governs his living.

(6) Tyagabuddhi – Renunciation

The aspirant must realise that nothing in the world really belongs him. He should realise that everything belongs to God or to the society. As such he must renounce for the benefit of others. He enjoys renouncing. As Isa Upanishad put "Tena taktena Bhunjitah". We know only pleasure of taking. but really greater pleasure is there in giving.

(7) Yajna Drishti

He should be governed by Yajna bhava, that is, he must be ready to sacrifice everything at the altar of the society. He must sacrifice everything whatever he has got, for the benefit of the society, and after such sacrifice whatever remains he must use it as Yajnashesha, which is like nectar. He who retains without distribution is like a thief, so declares Bhagavad Gita. It also declares that whoever is eating without feeding others is eating sin. The aspirant therefore whatever he does must do in the spirit of sacrifice in the spirit of selfless service. In fact, he must live for others and not for himself.

There is a very touching episode in Mahabharata, illustrating the spirit of sacrifice. After the Mahabharata war the Pandavas performed Rajasooya Yajna. In that Yajna, Dharmaraj, gave lot of things by way of charity and he was feeling that nobody can beat him in doing sacrifice. At that time a squirrel appeared and began to roll itself in the Yajna Mantap where all the guests had taken their food. On seeing the act of the squirrel, Dharmaraj, out of curiosity asked the squirrel, what it was doing. To that the squirrel replied 'Raja, you are not the greatest Yajna Performer. Raja asked why it is saying so. To that the squirrel replied 'Raja You see that half of my body is golden and the other half is not golden. There lived a Brahmin couple in a town. They had one son who was married. The four were living together. In that town once there was a great famine and it was very difficult to get food. That Brahmin family did not get anything to eat for four days. Then they succeeded in getting some food, which was sufficient for them for a meal. When they were about to eat that food, there was a knock at the door. When the door was opened, a stranger came and pleaded with them, that he had no food for couple of days and that he was very hungry and asked for food. The Brahmin family had never sent back the guests without food. So the Brahmin gave his food to the guest stranger. On eating that the guest said that he was still very hungry. The wife of the Brahmin gave her food to him. After eating that he was still hungry. The son and his wife in turn gave their food to the guest. The guest was satisfied and left the place blessing the family. However as the members of the family had no food for days together, they died with hunger. At that time I had come there and rolled at the place where the guest had eaten. The food particles which had fallen there came in touch with my half body which turned golden. Afterwards I had visited many places where Yajnas were performed to make other half of my body golden, but without success. I heard about your great sacrifice, and with a great hope I came here to make any other half of my body golden. But your sacrifice was not as great as that of that Brahmin family, to make other half of my body golden.

Another episode from Puranas can be cited to illustrate the concept of sacrifice at the cost of one's own life. A war was going on between Gods and Demons. The Gods were about to lose the battle. At that time, it was suggested that if weapons are prepared by the bones of Rishi Dhadhichi, the Devas will win. The Devas went to Dhadhichi and requested him for his bones to be used for making weapons. When Dhadhichi came to know that it was for a good cause, he readily agreed and gave up his life, so that his bones may be used for making weapons. Such should be the spirit of a true Karma Yogi.

(8) Anusmaran (Remembering)

While doing the work and the duty that have fallen to his part, he must always remember God and in his name he must do his work 'Sarveshu kaleshu, mam Anusmara, yuddhaschacha." Adding God's name to your work, or by associating God with your work, you would be making the work pure and divine. In fact you must realise that you are doing God's work, nay God is doing his work, through you.

(9) Samarpana – Dedication

The aspirant must try to cultivate the spirit of Samarpan, by offering to God whatever he is doing and whatever he has done. In the famous shloka 'Yad Karroshi Yad Dadasi..., Gita ordains that whatever is done by one must be offered to God.

(10) Sharanagati – Surrender

The true Yogi totally surrenders himself to God. He knows that everything belongs to God, God is everywhere, He is the Karta and the Kuravita, that is he is doing he causes it to be done through you. So the true Yogi totally surrenders himself, following the dictates of God and that he should surrender to God in all facets. 'Sarvabhavena Sharanam Gachha'.

11) Action Against Evil

The aspirant, must realise that he has come to this world to fight the battle on behalf of Dharma, to remove Adharma. As such he must work to remove the evils and Adharma in the society. First of all one should fight against one's own internal enemies like Ego, Pride, Greed, Anger, Lust and Envy. One should wage a bitter battle to master one's senses and mind. Then one should join the Army of good and Dharma abiding persons, to fight against various social evils, to remove Adharma.

12) Meditation

Meditation is of immense value in Yogasadhana. It helps a lot in controlling the unruly horses, the mind and the senses. Concentration and practices in Meditation, calm down one's mind and senses, increase the virtues of tolerance and patience. Coupled with Japa and Sankirtan Practices, they purify one's senses and mind.

(13) Satsang

Association with and to be in the company of Godly persons is of immense help to make fast advance in one's ones yogic practice. These Godly people, will become models and in their presence one gets peace. Their one compassionate loving glance would go a long way to purify a person.

(14) Reading

Study of scriptures and reading of Biographies of the realised souls, will give lot of inspiration to the Sadhakas, Reading the Books written by Swami Vivekananda, Biography of Ramkrishna Paramahansa, Books of Mahatma Gandhi and Vinoba Bhave Upanishads Bhagavad Gita, books written by Sankaracharyas, Bakta Kabir Dohas, Meera's Bhajans, Tulsi Ramayan, are some of the lights leading to right path.

(15) Patience, perseverance, regularly, periodical analysis of one's progress positive outlook cheerfulness optimism will be of great help. In Kabir's Language, Detach and attach Detach, from worldly desires and Attach Yourself, to God, pump out bad qualities and Pump in Good qualities Develop Satwik Qunas, Suppress Rajasie and totally destroy Tamasic qualities March ahead lead by Abhaya, fearlessness and courage be protected by Vinay; Humility. Determine to serve till your last breath, and sacrifice till your lost paise. The Vedie Call, Awake, Arise and stop not till the Goal is reached be your Mantra.

(16) Cultivate loving and compassionate heart, the giving hand, Madhur Speech, life of service and sacrifice, equal vision, Calm and cool mind, pure intellect. Treat Your body as a temple, clean it with broom of Vairagya to drive away the dirt of desires and Vasanas, rub it with the infecticide of Meditation, to destroy insects of Lust anger and greed wash it with water of Bhakti and detergent of Gnana, decorate the Deity with kunkum (vermilion) of truth, show the Arati of selfless service, offer as sacrifice your ego and pride and worship him with a pure heart, decorate him with flowers of pure thoughts and deeds, offer him as Naivedya of fruits of selfless work and service and eat the prasad of the Lord, in the form of Divine Grace.

Yogi's way of living

As we have seen above, a Yogi is in Sansar and at the same time Sansar is not in him. On superficial look he is like any other being. He eats, he works, he sleeps, he talks, all like ordinary human being, but if one observes his living closely one will realise the difference. Here, what he does is not so important. How he does makes all the difference. A Yogi, who is on the right path of Yoga, will have the following elements in his living:

He gets up very early in the morning at about 4.00 a.m. First thing before he leaves his bed, is he prays intensely not for any material things, but for strength, determination, steadfastness in his pursuit in the goal of life the Union with God. He prays to God that he may see that he will not stray away from his journey towards God. He will pray for Sat Buddhi. He prays for others welfare. He prays that all human beings may attain happiness serve Sukhino Bhavantu. He prays, the gracious Lord for his blessings for all.

After prayers, he repeats his daily morning resolution, that he will not hurt anybody by his thoughts, by his words or by his deeds (Kaya Vachha Manasa). He further resolves that he will at his best, extend help to other human being, by his thoughts, words and deeds. For that purpose, he earnestly prays God for enough strength and determination. He resolves that he will see that all his thoughts are Madhur, his words are Madhur, and deeds are Madhur. Then he reminds himself that he is really Sat Chit Anand. He is pure soul and is part of Lord and his determination to achieve his original Divinity, Sat Chit Anand and he will not stop till he achieves it. He will gradually purify his all thoughts, words and deeds, he will purify his intellect, his mind, his heart, his senses and his body in the goal of attaining total Divinity, in all facets of his existence.

Then he will have some reading of any one of the scriptures. He recites with full devotion, preferably the shlokas of Gita, preferably the shlokas describing the qualities of Sthitha Pragna of Karma-Yogi of Gunateeta of Gnani and of Bhakta and tries to imbibe all these qualities in him. He then hears some Bhajans singing the glory of God. He then does his daily "Japa'. After that he starts his daily work. No doubt, like others he also does the same work, but the manner and purpose of his doing work are different. First of all, while doing any work, he remembers God, he does that work for God and dedicates the fruits of the work to God. He is not attached to the work, nor he has any desire for any result. He does everything as duty, he does all the small or big works in the spirit of love, in the spirit of service, in the spirit of worship. All the works he does, he does them as worship of God and whatever fruits he receives out of his worship like work, he offers them with all the devotion and reverence to God. He always remembers that his body, his mind, all his possessions, all belong to God. He knows that all these are given to him for the service of God. He is also quite aware that this service to God, is the service of God in human form, He very well knows that Manav Seva is the best form of worship of Madhav. He sees God everywhere and in everything. With that divine vision he moves in the world. He never misses any opportunity of helping and serving others. He takes it as his privilege to help and serve others and for that he is grateful to them for providing an opportunity to serve them. All his actions, words and deeds are full of love, full of compassion. He is always cheerful and contended. His heart is full of compassion and love. All his work is service of others. All his words are like Nectar. All his thoughts, words and deeds in fact all his life is Madhur Madhur Madhur. He has renounced his "I" ness and "My ness". He is steadfast like a mountain. He is sacrificial like a tree. He is like chandan tree. The chandan tree smears suvas to the face of the axe which cuts it. Like a chandan tree, he also wishes and does well to all those who have harmed him and who have abused him. He maintains his peace and tranquillity at all times at all cost. He accepts everything that has come to his part, whether sorrow or happiness, pleasure or pain, success as defeat, all in the spirit of Prasad, the grace of God. He complains against nobody, against nothing, accepts everything as VARDAAN from God. He is always serene. He is like a air conditioner. Whatever comes to him, he takes from it what is cool, what is pure, like an air conditioner.

He is always vigilant. He time and again introspects, takes note of his progress. For any deviation from his chosen path, he greatly regrets it and asks forgiveness from God, and punishes himself for that lapse. As far as his own defects are concerned he watches them in Microscope and he is a very strict with himself. But as far as others' defects are concerned, he does not notice them at all. He forgives and forgets any harm done to him, by others.

He always shares others' sorrows and tries his best to console them, sharing their sorrows. He is ready to do anything, sacrifice anything, for the benefit of other I am here reminded of an episode from Mahabharat, relating to that Great Karma Yogi, Raja Janak, the father of Seeta Raja Janak, was such a great Karma Yogi that, Gita, while illustrating Yogis refers to Raja Janak, as model Yogi. No doubt as he was great Yogi, he was bound to go to heaven. However he had committed a minor sin as a punishment for that he was to pass through the hell before going to heaven. When he came near the hell along with Devadoots accompanying him, there he heard lot of cries of pains and sufferings. He asked Doots accompanying him, as to what for these cries and suffering. The Doots explained to him, that these cries and sufferings are of those who have come to the hell, to suffer the punishment, for the sins committed by them on the earth. When Raja Janak entered the hell, all cries and, suffering stopped at once and there was cool peace everywhere. When Raja Janak asked the doots what was the reason for this sudden change. The devdoots replied, that the presence of the Great yogi Raja Janak, has brought in the peace, and relief from pains and sorrows. Then devdoots requested Raja Janak, to proceed with them to the Heaven Raja Janak refused and remarked that if his presence in the hell would give relief and peace to so many people, let him continue to live in hell and he does not want to come to heaven. Such is the sense of sacrifices of a real Karma Yogi. To the same effect is an episode from Lord Buddha's life. When Lord Buddha completed his journey in this world, he was entitled to and was offered, Nirvana, but that great soul, refused to accept Nirvana stating that he will take Nirvana after all human beings got Nirvanas. Swami Vivekananda advises, Go to hell yourself to buy salvation for others there is no mukti on earth to call my own. There is an episode from the life of Vivekananda, where a similar advise was given to him by his Guru Ramakrishna Paramahans. Once when the Guru, asked Vivekananda, as to what he wants, Narendra (Vivekananda) replied he wants Mukti. The Guru fired him what is this why you are so selfish to ask Mukti for yourself. No you have come here to do lot of good work for the benefit of others. You have to help others to get Mukti and should not desire Mukti for himself. Yes according to these great souls even desiring 'Mukti' for oneself is selfishness, then now can they desire for any worldly things?

The Yogi acts as a Moon, Moon takes away the heat from Sunrays and gives everybody cool rays, similarly a true Karma Yogi, tries to take away sorrow from others and tried to give them relief from suffering, by showing great 'Sahanubhooti' sharing the sorrows of others.

The yogi's way of life, of worshipping God in human forms, is well described by Swami Vivekanand in his poem.

"From highest Brahmin to the Yonder Wam to the Minutestatom.

Every where is the same God the all love
Friend offer mind soul body at their feet
These are his manifest forms before thee
Rejecting them where seekest thou for God
Who loves all beings without distinction
He indeed is worshipping best his God"

Yogi believes, and acts, that he has to live for others and not for himself.

Yogi believes in giving and giving and never expects or accepts anything in return not even name and fame. He believes that charity done by his right hand should not be known even to his left hand.

Yogi's works deeds by gradual process, become Premamya, Seva-Maya, Yajna Maya, Pooja Maya and Ultimately Devamaya. At the final stage of his progress he only becomes a divine instrument in the hands, of God, like a flute in the hands Lord Krishna, through which God gets his Godly works done. He gets his Mukti Salvation when he is still alive.

What I call the law of Satyagraha is to be deduced from an appreciation of duties and rights flowing therefrom.

Satyagraha is a law of universal application. Beginning with the family, its use can be extended to every other circle.

— *Mahatma Gandhi*

CA Jayant Gokhale

An Overview of the Finance Bill, 2013

The task of balancing the budget is never easy. Any housewife (including those in the middle-income group) will confirm that the question is not just of adequate funding. It is more about meeting rising expectations. As income levels rise, aspirations rise higher. Therefore balancing the budget and sticking within the available means while meeting the investment targets is always a tough job. Increase the complexity, the expectations and the constraints to the power of "n" and you have an estimate of the tough job faced by any Finance Minister of the Government of India.

Mr. P. Chidambaram occupies this hot seat and is faced with the task of presenting a budget which must meet a number of conflicting demands. He needed to give a fiscally prudent budget which would not cause the Indian economy to lose steam more rapidly than the slowdown that is already visible. He needed to deliver a budget that would rebut the allegations of a 'policy paralysis' but would proactively push India along the growth path rather than let it continue its current drift. But to give such a push to development expenditure, and boost growth and employment, he needed to increase expenditure on social welfare while continuing to keep a strict check on the already rising inflation. Mr. Chidambaram's budget also needed to strike a chord with the common man in a manner that will improve his party's chances in the forthcoming elections. Yet while being populist, he had little room to enhance taxes or to displease powerful industrial lobbies that are already making it a habit to appreciate the "Gujarat model" of growth. To meet all these pulls and pressures in opposite directions and yet present a picture of progress and confidence is no mean task. The adroit politician and skilful lawyer that he is, Mr. Chidambaram has indeed done a wonderful job of tightrope walking. In terms of policy initiatives and support to industry and growth, there is precious little, bar the packaging. But one must appreciate admit that the packaging of an empty gift hamper has been done beautifully. In terms of growth plans and commitments to social project funding, numerous initiatives have been spoken about but how much of these ambitious plans can be implemented will remain to be seen. But the 'feel good factor' has been delivered well. The hard realities of balancing the books and finding the resources to meet the expenditures would probably be looked at more closely only after the next elections or at the time of the next budget (whichever is later). So therefore before even beginning to look at the substance of the budget, one can only appreciate, the highly skilled and professional manner in which a budget which really contains very little has been neatly packaged and delivered. There are enough small points to keep the highly influential media busy with their debates, programmes and analytical articles. The attention of tax professionals and lawyers is focused on arcane issues such as a benefit of ₹ 2000 introduced by way of S. 87A or the amendments in and the wording of S. 10(10D) and its explanation. Industry is given a small slice of a carrot by throwing in S.32AC (more about that later). And the number of amendments in procedures and so-called rationalisation have ensured that the flourishing service industry viz. "the great Indian Budget Hungama" continues uninterrupted. A by-product of the numerous small amendments would be also to soothe the nerves of the 'babus' who might have been in a state of panic, if the Finance Minister had overtly done, what he really intended to do. That is – do nothing.

In a sense, one cannot find fault with this approach. There is a maxim that "no news is good news." The fact that there are very few real changes is not really something to be critical about. Ever since budgets for India were presented in Westminster in England, Budget Day has been a big day for business and media in India. There is no logical reason why this should continue. In any case, the present government has very shrewdly downgraded the importance of the budget by raising revenues and resources every month by the methodology of "de-regulating petrol and diesel pricing." Hence one must appreciate that it is not imperative that every budget must bring in large number of changes. The Finance Minister recognises this and therefore from a policy perspective, the changes introduced by the budget are minimal. This is not necessarily bad. Rather, it shows a recognition of the ground realities which is welcome.

The Finance Minister in PARA 124 (Part B) states *"In a constrained economy, there is little room to raise taxes or large amounts of additional revenues. Equally there is little room to give away tax revenues or the tax base. It is a time for prudence, restraint and patience.* "Mr. Chidambaram has been frank and realistic in recognising the limitations in which he operates. It is within this framework that one must consider the pluses and minuses of the budget which has been presented. One must also consider the factual inputs provided by the economic survey presented earlier in the same week under the guidance of another brilliant economist, Mr Raguram Rajan. The economic survey records the backdrop and sets the stage for the presentation of a budget. In its first chapter dealing with the state of the economy the Survey makes the following important points which, though widely known, need to be noted here since they are mentioned in the official document laid before Parliament.

- India has been in the midst of a slowdown - which is brought about not just by the external economic environment but also domestic factors - and this has had an economy wide impact.
- Inflation has touched double-digit level and coupled with the levels of food inflation is at worrisome levels.
- Tax collections have fallen short of targets.

The factors noted in the economic survey, as well as the economic and political environment mentioned earlier show that the Finance Minister indeed had little elbow room to make significant changes. He has indeed shown the prudence and the restraint that he mentions. It would appear that much of the other changes would be driven more by the bureaucracy than by the FMs policy initiatives. It is these changes, that more often than not, serve as irritants in the wider economic canvas. Some of these go against the grain of what the Finance Minister sets out to achieve namely *"clarity in tax laws, a stable tax regime, a non-adversarial tax administration, a fair mechanism for dispute resolution and an independent judiciary...."* the Finance Minister reiterates that this is the underlying theme of his tax proposals. While his priorities cannot be contested, somewhere down the line, the bureaucracy under the guise of fine tuning the tax laws with the objective of bringing clarity, have ended up muddying the waters rather than bringing clarity. In the process, some of these proposals disturb the stability of the tax regime and raise questions about the commitment of the Indian tax system to principles of equity and natural justice. It is true that most of these provisions undoubtedly have limited applicability and do not have a sweeping impact. Therefore it is possible to argue that one should not make too much of provisions that may apply to a select few. This argument begs the question: if these amendments are not so significant and material to large number of taxpayers, are they really material and therefore desirable in a macro-economic perspective? While clearly not impacting the tax collections significantly, they have an effect of undermining certain principles which in turn has a much larger and broader negative impact on the mindset of domestic as well as foreign taxpayers. The adverse psychological impact may often be far more disturbing and therefore not worth adopting in a macro-economic perspective.

However, once proposed, the amendments sought to be introduced have already revealed the mindset of the legislator/bureaucrat and I would believe that the damage done in terms of undermining the sense of confidence in a fair and just tax system is difficult to repair.

It is with this perspective that one may examine some of the specific direct tax proposals and some other announcements made in the speech of the Finance Minister.

Some of the reliefs given such as S. 87A, S. 80D and S. 10(10D) are more of playing to the gallery - which in an election year is entirely understandable. The overall impact of these provisions is likely to be so limited that further discussion in this regard is not warranted. Similarly the reliefs in the following sections, while undoubtedly laudable, operate in a very narrow sphere and are hence only mentioned as under.

- changes in sections 80G, 80CCG and
- rationalisation in regard to cascading effect of DDT,
- exemption from taxation of securitisation trusts in certain circumstances (Chapter XII-EA),
- exemption to NFHCL [S. 10(49)],
- pass through status of certain venture capital funds [S. 10(23FB)] and
- exemption to certain investor protection funds [S. 10(23ED)]

On the other hand, the relief sought to be given by introduction of section 80EE reveals the intention to show some relief being given to the growing numbers of middle-class voters, without really giving away much. The drafting of the section shows that while some relief is being conceded, it is fenced in with so many conditions in S. 80EE(3); as to make the concession difficult to claim in totality. The Finance Minister statement highlighted in the budget speech (Para 132) *"I propose to allow such homebuyers and additional deduction ..... . this deduction will be over and above the deduction of ₹ 1,50,000 allowed for self occupied properties u/s 24 .."* raises hopes of some additional benefit being made available. The fine print of the section however reveals the limited scope of the applicability and benefit of S. 80EE and thereby indicates that even concessions that are given seem to be driven more by a spirit of compulsion rather than the spirit of magnanimity.

Much the same approach pervades the introduction of section 32AC and the extension in 80-IA(4) for a year. As mentioned earlier it seems that the check box had to be ticked – 'Offer something to industry'. So it is stated *"to encourage substantial investment in plant and machinery .. "* which is required to be invested by way of *acquiring and installing* within the period of April 13 to March 15, a minimum amount of ₹ 100 crores….. One can only wonder whether this is a benefit intended for some projects already in the pipeline or for encouraging fresh investments? The latter seems highly unlikely because in the real world in which business functions in India, projects do not materialise out of thin air. Such projects take a long time to conceptualise, plan, finance, build and make operational. ₹ 100 crore plus projects do not happen overnight. And in order to meet these conditions, corporates would have to ensure that the entire investment must result in an "installed" plant and machinery within the space of less than 24 months (from the date of Presidential assent). If you juxtapose this with the fact that India ranks 173rd out of 185 countries surveyed by the World Bank in terms of ease of starting a business the extreme optimism of this proposal is evident. The economic survey goes on to observe in PARA 2.28 *"After getting done with the initial procedures, entrepreneurs have to obtain a number of clearances when applying for building/occupancy permits and utility connections. These require separate visits to various authorities whose employees often inspect the site. It takes as long as 1.5 months to obtain an electricity connection ......"* It therefore appears that 32AC is less about encouragement to invest in plant and machinery and more a vehicle to ensure that there is something in the budget that enables the Finance Minister to have a speaking point in the budget to say that he has offered fresh incentives for industry.

In dealing with tax avoidance measures, it is inevitable that the law is likely to be harsh to a certain extent. However, three out of the four items mentioned in Part E (dealing with anti-avoidance measures) of the memorandum explaining the provisions of the Bill, may end up creating more procedural difficulties and litigation than successfully dealing with the problem of tax avoidance that the said provisions seek to address. Thus the problem arising out of the use of the word "transfer" in the newly introduced 43CA could give rise to certain loopholes/litigation. Similarly the newly introduced 194-IA which casts a burden on the transferee making a payment to a transferor of immovable property, to deduct tax will give rise to a host of administrative issues. Huge sums of money will remain blocked in cases where the transferor is entitled to claim exemption. Considering that this will affect large number of upper-middle-class taxpayers, I would not be surprised if we see various carve outs and concessions being provided in this section to give relief from such blocking of funds and causing hardships to genuine taxpayers. This will inevitably make the administration of this section more complex, more prone to interpretation and therefore more subjective. Even if no changes are made, hardships are inevitable for persons such as salary earners and pensioners wishing to purchase property who will have to undergo an additional set of procedures in obtaining TAN numbers, filing of returns, etc.

Similarly, in extending the applicability of section 56(vii) to immovable property, purportedly transferred at a value less than its fair value (which is measured by reference to the circle rates prescribed under the stamp duty ready reckoner) will bring with it a host of controversies and litigation. While the intention of plugging such loopholes may be absolutely justified, the overbearing approach in simply shifting the onus of establishing that the price is fair puts at naught all concepts of equity. It proceeds on the haughty assumption of the bureaucrat that a person is guilty (of undervaluing his property) until proven innocent. The burden of proving that certain disabilities may attach to the property or that the stamp duty rates may not necessarily reflect the current valuation of the specific property is entirely cast on the hapless taxpayer. The reason why this trend is deplorable (and not befitting one of the top 10 economies of the world) is the fact that there is enough machinery and power vested with the tax officials to establish the fact of undervaluation if they choose to do so. However, the entire bureaucracy from the top to the grassroots seem to be content to cast the burden on the taxpayer, secure in their knowledge that their incompetence and/ or lethargy in establishing the correct facts is covered up by the legislature by simply casting the burden on the taxpayer. While one opposes in principle such an approach as being contrary to the rules of equity, it has the greater consequence of leading to the atrophy of the limbs of the tax system. Is it a surprise then that tax revenues are falling? When the muscle provided by the law to enforce demands are withering away — the remedy that the FM and top brass in the Ministry provide is not to strengthen the muscles but to provide an artificial crutch, which can only result in the weakening of the entire tax system over a period of time. It is this passive acceptance (born out of lack of accountability) by the Finance Minister and the CBDT that is the more significant cause of concern.

Coupled with this is the continuing trend of ignoring the norms of equity in the quest for accelerating revenue collection. It is understandable that the Ministry expects taxpayers to pay their tax dues as per their return. In the event of failure to do so the entire machinery of interest, penalties and coercive recovery is available. Where in certain circumstances the taxpayer files a return disclosing a self-assessment tax payable but does not pay such tax; knowing fully well that he is automatically drawing attention to the return and exposing himself to the risk of interest and penalty, one must assume that there would be good and sufficient reasons for his non-payment of SA Tax. Such returns can be easily identified through the e-filing machinery and the officers of the Department can act where required as mentioned above. But rather than doing this, by requiring the officers to take action which they ought to do, an innocuous looking clause is introduced in 139(9). What this insertion says in effect is that unless the tax is paid, the return shall be treated as defective (and eventually non-est). Thus, the "extremely busy assessing officer" has not to lift a finger to even examine why the same has happened. The operation of law simply renders the return defective. This could hit genuine cases as has been explained in the article by -- ***** such as where due to the artificial pre-ponement *vide* S. 2(47), the taxpayer has not received money to pay the taxes although his income is brought to tax. There would also be Catch-22 situations that an assessee's appeal disputing taxability is pending. If he pays the tax accepting the department's position there is every possibility that the return would get accepted under 143(1) and he would have no recourse or remedy available. On the other hand if he does not disclose the disputed income, there is absolute certainty of levy of penalty for concealment. And now (post amendment) if he discloses such income (to guard against penalty), but does not pay the tax (since he is genuinely contending that tax is not payable), his exposure to penalty is increased. Now, not only would he be liable for non-disclosure/concealment but he would also be liable for penalty for not having filed a return when required to do so. The approach sounds profoundly Kafkaesque*.

Coupled with this is the approach that seems to border on arrogance in dealing with measures relating to treaties with foreign countries. On the one side the Finance Minister has emphasised *"I have been at pains to state over and over again that India, does not have the choice between welcoming and spurning foreign investment. If I may be frank, foreign investment is an imperative. What we can do is to encourage foreign investment that is consistent with our economic objectives."* The actual budget proposals as tabled by the Finance Minister however seem to move in a different direction. How would the foreign investors look at the situation that a treaty entered into by two sovereign powers will be interpreted and decided upon unilaterally by India? This is hardly an approach that inspires confidence. The clauses relating to treaty override do not find mention and yet the amendments in Sec. 90(5) and S. 90A(5) can only undermine the confidence in the consistency of Indian tax legislation. Similarly the manner in which section 115A has been amended would create doubts about the certainty of doing business with India. While one recognises the right of the Indian Parliament to tax income such as royalty, at rates considered appropriate, the sentiment is surely affected because unless the foreign party is covered by a provision that entitles it to net of tax benefit, it would suffer a higher rate of tax (unless covered by DTAA) on income already contracted much earlier.

To be fair to the Finance Minister, one cannot please all. Yet in matters relating to bilateral issues, the imperious message that goes out when one adopts a certain interpretation or approach unilaterally, does more damage to the national economy than the meager gains that may result from such amendments. More importantly, such amendments tend to move away from the Finance Minister's objectives as quoted earlier. In the same vein the utterances in PARA 121 where he proposes to set up a tax administration reform commission to review the application of tax policies and tax laws creates just that bit of uncertainty which the economy could have done without.

One must however appreciate that the Finance Minister has been sensitive to the widespread unease caused by some of the harsh provisions proposed to be introduced in GAAR provisions. That he has clearly postponed the applicability of the entire Chapter X-A to April 2016 shows Mr. Chidambaram's pragmatism and ability to change course were politically expedient. This one act, culminating from the appointment of the Shome Committee, shows that he is entirely right to in quoting Swami Vivekananda in the concluding paragraph of the budget speech to say *"all the strength and succour you want is within yourself. Therefore, make your own future."* Not only does this statement apply to this country's its taxpayers and citizens but also to the economy; ironically, it applies equally to the Finance Minister himself. He has within himself, the strength and ability to understand the finer nuances of some of the problems that may arise from the Finance Bill as he has presented in Parliament. The question really is, what is the future that Mr. Chidambaram feels we should move towards!

While one can endlessly debate on whether certain amendments are in the right direction or are correctly drafted, one can draw strength from the fact that barring the tendency to ride roughshod over rules of equity, the Finance Minister has, by and large, pursued the right direction, namely: when the fiscal and political elbowroom is very limited — it is best to be prudent and patient and not to do too much while appearing to have done a lot.

* After Franz_Kafka who wrote the novel 'The Trial' and Explained in Wikipedia as situations "in which people are overpowered by bureaucracies, often in a surreal, nightmarish milieu which evokes feelings of senselessness, disorientation, and helplessness". http://en.wikipedia.org/wiki/Franz_Kafka

CA Mohan S. Phadke

Rates of Taxes

I. Rates of Income Tax in respect of income liable to tax for the assessment year 2013-14

a) In respect of income of all categories of assessees liable to tax for the assessment year 2013-14, the rates of income tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2012, for the purposes of computation of "Advance Tax", deduction of tax at source from "Salaries and charging of tax payable in certain cases".

b) The surcharge shall be levied in respect of income liable to tax as under:

   i. In case of domestic company, having total income exceeding 1 crore rupees, @5% of such income tax

   ii. In case of foreign company, having total income exceeding 1 crore rupees, @2% of such income tax

c) The marginal relief is allowed in appropriate cases where total income exceed 1 crore rupees.

d) In case of company, having total income chargeable to tax u/s. 115JB and where such income exceeds 1 crore rupees, surcharge is levied and marginal relief is also provided as stated above.

II. Rates for deduction of Income Tax at source during the financial year 2013-14 from certain income other than "Salaries".

a) The rates for deduction of income tax at source during the financial year 2013-14 from certain income other than "Salaries" have been specified in Part-II of the First Schedule to the Bill.

b) The rates for all the categories of persons will remain the same as those specified in Part-II of the First schedule to the Finance Act, 2012 for the purposes of deduction of income tax at source during the financial year 2012-13.

c) However in case of certain payments made to non-resident person (other than a company) or a foreign company in nature of income by way of royalty or fees for technical services, the rate shall be 25% of such income.

d) The surcharge @10% of tax shall be levied in case of payment to Non-Resident person (other than company) in case the income exceeds 1 crore rupees. The surcharge @2%

of tax shall be levied in case of payment to foreign company if total income exceeds 1 crore but is less than 10 crores and @5% of tax in cases where income exceeds 10 crores.

e) Education cess and Higher Education cess shall continue to be levied at 2% and 1% respectively of Income Tax including surcharge wherever applicable only in case of Non-Resident person and foreign companies.

III. Rates for deduction of Income Tax at source from "Salaries", computation of "Advance Tax" and charging of income in special cases during the financial year 2013-14

A.1) In case of Individual:

a) The slab rates and tax savings are as under (Excluding Education Cess).

		Resident senior citizens (60 years and above but below 80 years)		Resident senior citizens (80 years and above)		Others	
		Tax rates	Savings	Tax rates	Savings	Tax rates	Savings
1	Up to 2,00,000	NIL	NIL	NIL	NIL	NIL	NIL
2	2,00,001 to 2,20,000	NIL	NIL	NIL	NIL	10%	Rebate of ₹ 2000 or tax whichever is less
3	2,20,001 to 2,50,000	NIL	NIL	NIL	NIL	10%	Rebate of ₹ 2,000
4	2,50,001 to 5,00,000	10%	NIL	NIL	NIL	10%	Rebate of ₹ 2,000
5	5,00,001 to 10,00,000	20%	NIL	20%	NIL	20%	NIL
6	10,00,001 to 1,00,00,000	30%	NIL	30%	NIL	30%	NIL
7	Above 1 core (including surcharge)	33%	NIL	33%	NIL	33%	NIL

b) The marginal relief is available in appropriate case in case of individual where income exceeds 1 crore.

c) A new section 87A is sought to be introduced providing for Rebate of 10% of tax up to maximum of ₹ 2,000 for resident individuals having total income up to ₹ 5 lakhs. This provision is similar to old section 80C for resident women.

A.2) HUF, AOP, BOI, Artificial jurisdiction person –

1. In the case of HUF, AOP, BOI, Artificial Jurisdiction Person, the rates of income tax have been specified in Paragraph A of Part III of the First Schedule to the Bill.
2. There are no changes in the rate of income tax and cess.
3. The amount of income tax shall be increased by a surcharge at the rate of 10% of such income tax in case of a person having a total income exceeding one crore rupees.
4. The marginal benefit is available in the appropriate cases where income exceeds 1 crore.

B) Co-operative Societies

1. In the case of co-operative societies, the rates of income tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2012-13.

2. There are no changes in the rate of income tax and cess.

3. The amount of income tax shall be increased by a surcharge at the rate of 10% of such income tax in case of a co-operative society having a total income exceeding one crore rupees.

4. The marginal benefit is available in the appropriate cases where income exceeds 1 crore.

C) Firms

1. In the case of firm, the rates of income tax have been specified in Paragraph C of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2012-13.

2. There are no changes in the rate of income tax and cess.

3. The amount of income tax shall be increased by a surcharge at the rate of 10% of such income tax in case of a firm having a total income exceeding one crore rupees.

4. Marginal benefit is available in the appropriate cases where income exceeds 1 crore.

D) Local authorities

1. In the case of Local authorities, the rates of income tax have been specified in Paragraph D of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2012-13.

2. There are no changes in the rate of income tax and cess.

3. The amount of income tax shall be increased by a surcharge at the rate of 10% of such income tax in case of a Local authority having total income exceeding one crore rupees.

4. Marginal benefit is available in cases where income exceeds ₹ 1 crore.

E) Companies

1. The rates of income tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for financial year 2012-13.

2. Surcharge in case of domestic company –

   i. The existing surcharge of 5% shall continue for taxable income above ₹ 1 crore but up to ₹ 10 crore

   ii. The higher surcharge of 10% shall be leviable in case of taxable income above ₹ 10 crore.

3. Surcharge in case of foreign company –

   i. The existing surcharge of 2% shall continue for taxable income above ₹ 1 crore but up to ₹ 10 crore.

   ii. The higher surcharge of 5% shall be leviable in case of taxable income above ₹ 10 crore.

4. Marginal relief is available in all the appropriate cases where income exceeds ₹ 1 crore or ₹ 10 crore as the case may be.

5. Consequently effective MAT rate for domestic companies would be 19.055% (up to ₹ 1 crore), 20.00775% (between 1 and 10 crore) and 20.9605% (above 10 crores)

6. Effective rates

*	Category of assessee	A.Y. 2013-14 Existing effective rate	A.Y. 2014-15 Proposed effective rate
*	On Domestic companies		
*	Income does not exceed 1 crore	30.90%	30.90%
*	Income more than 1 crore up to 10 crore	32.445%	32.445%
*	Income more than 10 crore	32.445%	33.99%
*			
*	On foreign companies		
*	Income does not exceed 1 crore	41.20%	41.20%
*	Income more than 1 crore up to 10 crore	42.024%	42.024%
*	Income more than 10 crore	42.024%	43.260%

IV. Education Cess

The additional surcharge called education cess and secondary & higher education cess remain unaltered.

V. Securities Transaction Tax (STT)

1. Securities Transaction Tax (STT) on transactions in specified securities was introduced *vide* Finance (No. 2) Act, 2004.

2. It is proposed to amend section 98 of the Finance (No. 2) Act, 2004 to reduce STT rates in the taxable securities transactions as indicated hereunder:

TABLE

Sr. No.	Nature of taxable securities transaction	Payable by	Existing rate (in per cent)	Proposed rate (in per cent)
1	Delivery based purchase of units of an equity oriented fund entered into in a recognised stock exchange	Purchaser	0.1	NIL
2	Delivery based sale of units of an equity oriented fund entered into in a recognised stock exchange	Seller	0.1	0.001
3	Sale of futures in securities	Seller	0.017	0.01
4	Sale of units of any equity oriented fund to the mutual fund	Seller	0.25	0.001

3. The proposed amendment in the rates of transaction tax will be effective from 1st June, 2013 and will accordingly apply to any transaction made on or after that date.

VI. Commodities Transaction Tax (CTT)

1. A new tax called Commodities Transaction Tax (CTT) is proposed to be levied on taxable commodities transactions entered into in a recognised association.

2. It is proposed to define "taxable commodities transaction" to mean a transaction of sale of commodity derivatives in respect of commodities, other than agricultural commodities, traded in recognised associations.

3. The tax is proposed to be levied at the rate, given in the Table below, on taxable commodities transactions undertaken by seller as indicated hereunder:

Sr. No.	Taxable commodities transaction	Rate	Payable by
1.	Sale of commodity derivative	0.01 per cent	Seller

4. This tax is proposed to be levied from the date on which Chapter VII of the Finance Bill, 2013 comes into force by way of notification in the Official Gazette by the Central Government.

VII. Tax on income distributed by UTI/Mutual Fund under section 115R

In order to provide uniform taxation for all types of funds, other than equity oriented fund, it is proposed to increase the rate of tax on distributed income from 12.5% to 25% in all cases where distribution is made to an individual or a HUF.

Tax on income distributed by UTI / Mutual Fund shall be charged as follows:

		Income Tax A.Y. 13-14	**Income Tax A.Y. 14-15**
1	Income distribution to a unit-holder of equity oriented funds or any income distributed by the Administrator of the specified undertaking to unit-holder	NIL	NIL
2	Money market mutual fund or liquid fund –		
	- Unit–holder is individual /HUF	25	30
	- Unit–holder is any other person	25	30
3	Income distribution by a fund other than money market mutual fund or a liquid fund –		
	- Unit–holder is individual /HUF	12.5	25 (increased)
	- Unit–holder is any other person	30	30

VIII. Sections 115JB, 115JC, 115O, 115R, 115TA, 115QA

In all above cases surcharge shall be increased to the rate of 10% from existing 5%.

IX. Additional surcharge

As per the Budget speech the additional surcharge will only be for financial year 2013-14.

CA Apurva R. Shah

Amendments related to Immovable Properties

The Finance Bill 2013 has seen many changes in respect to taxation of transactions related to immovable properties as compared to other transactions or heads of income.

While the Real Estate Industry is still facing a slow down, looks like the present proposals could help push the sector into an even slower mode whereas the sector was certainly looking for a fillip. The Government continues to presume that unaccounted money changes hands in transaction related to purchase and sale of immovable property. While the presumption cannot be brushed aside as baseless, using of fiscal presumptive measures such as Section 50C of the Income Tax Act, 1961 to plug such usage seems to be draconian and it is with the same pace that the law is striding forward. The key changes proposed are explained herein below:-

Section 194IA

The said section aims at encouraging the reporting of immovable property sale transactions and accordingly proposes as under;-

Whenever a person is paying a consideration of ₹ 50 lakhs or more for the acquisition of a property (being an immovable property other than agricultural land) TDS @ 1% of such consideration shall be deducted and paid on behalf of the transferor / seller. TDS shall be done at the time of credit or payment whichever is earlier, in line with the other provisions of TDS dealing with payments to Residents.

This provision restricts itself to payments made to Resident Transferors – since non resident transferors would be covered by Section 195.

A similar provision was proposed to be introduced by the Finance Bill 2012 but was not ultimately included in the Finance Act 2012 and hence one does wonder what the changed circumstances have been to merit a reintroduction this year.

The related controversies would be as under:-

1. There is no provision as of now to seek a lower or Nil deduction of TDS by making an application u/s 197 to a Tax Officer. Thus a 1% deduction would be done in all cases so long as the consideration is not less than ₹ 50 lakhs.

2. The said provision therefore does consider that a transferor may have no tax liability if he sells the immovable property at a loss (probably post indexation), invests a sum u/s 54EC or is entitled to the benefit of reinvestment through Section 54 or 54F or if he has brought forward capital losses for set off.

3. The said provision would apply as much to a transferor who holds this as a capital asset as it would to a transferor who holds it as stock in trade and would also apply to situations where payments are made in instalments based on stage of completion. In the latter case, the issue of mismatch between year of TDS and year of offering income from tax would also arise.

4. A lot of buyers are individuals to whom TDS provisions are not applicable. Such individuals will be required to obtain TANs and comply with TDS provisions including filing of returns. The proposed provisions in the preceding bill provided for a simple one page challan based on PAN but there are no similar provisions in the current proposed amendment.

5. Mercifully the amendment does not require proof of TDS for registration of the transaction like in the preceding year's proposal.

Form the government's perspective, they would now be able to collect a 1% tax even in cases where the transaction is not reported and will not be able to chase the transferor as well.

The said TDS provisions applies to all transactions done since 1.6.2013.

Section 43CA

Taxing the sale of immovable property based on stamp duty values has been in existence for capital gains (Section 50C) since a while. The provision is now proposed to be extended to the computing business income as well. From A Y 2014-15, the consideration for sale of land and building will be the actual consideration or the value adopted/ assessed / assessable by the stamp duty authorities.

The only standardized tool available to the government it seems is the stamp duty valuation adopted by various State Government authorities and this is thus being used as a yardstick.

U/s 43CA as well, one still has the option to plead that the fair market value of a specific property is lower than the stamp value in the same manner as an option can be exercised u/s 50C(2) and in that case the matter will be referred to a Valuation Officer.

Section 50C on its own has had various controversies – including whether it applies to transfer of tenancy rights, whether the value given by a Valuation Officer is final or some amount of leeway is possible and whether a reference to a Valuation Officer is mandatory in cases where the assessee pleads that the Fair Market Value is lower than Stamp Duty Values. All these and more controversies will continue while determining business income as well.

In cases where the date of fixing the value of the agreement precedes the date of registration and some amount of consideration has been discharged on or before the date of such agreement, otherwise than in cash, then the assessee is now given the right to plead that the stamp duty value on the date of the agreement fixing the price be adopted rather than the value on the date of registration – and this would be a beneficial provision for an assessee.

The above amendment would have a ramification on computing business income, particularly because income from real estate transactions is often computed using the percentage completion method.

Further, it does appear that immense importance is being given to stamp duty values which are revised in an ad hoc manner at the beginning of every financial year.

Section 56(2)(vii)(b)

With effect from Asst year 2014-15, if any individual / HUF receives an immovable property for a consideration which is lower than the stamp duty value, then the benefit so received will be deemed to be income unless the seller is a 'relative'.

Here it's interesting to note that the similar provision were introduced through the Finance (No.2) Act,2009 and same was removed from the statute wide Finance Act, 2010. This is yet another effort to bring back an aborted tax proposal.

This is now a classic situation where both the buyer and the seller will pay a tax if cash is potentially used in a transaction.

If X sells a property to Y for ₹ 10 crores when stamp value is ₹ 12 crores, he is assumed to have received ₹ 12 crores and he pays a tax based on that.

Further Y, the buyer will now be assumed to have actually paid a ₹ 12 crores, and the ₹ 2 crores which is not reported will be assumed as income.

Further, this doesn't even become the cost in the hands of Y – when he in turn sells this property, he will get a deduction of ₹ 10 crores only towards cost.

In this case, the buyer does not even have an option to plead that the fair market value of the property was lower than the stamp duty value.

Mercifully, in cases where the date of fixing the value of the agreement precedes the date of registration and some amount of consideration has been discharged on or before the date of such agreement, otherwise than in cash, then the assessee will have the right to plead that the stamp duty value on the date of the agreement fixing the price be adopted for comparison rather than the value on the date of registration – and this would be a beneficial provision for an assessee.

The above efforts would certainly result in agreements inching as close as possible to stamp duty values. However genuine cases where properties have lower value would get affected. And the issue of whether stamp duty values are determined scientifically or based on revenue considerations still looms large.

Section 2(1A) and 2(14) of the Income Tax Act and Section 2(ea) of the Wealth Tax Act

For A Y 2014-15 onwards the provisions dealing with exemptions provided to agricultural lands./ urban lands have been further codified as under:

U/s 2(1A), income derived from agricultural land was exempted provided the land was not situated within the jurisdiction of the local limits a municipality or a cantonment board or within such limits thereof not exceeding 8 kms. Such land was also excluded from the definition of capital asset u/s 2(14) which excluded agricultural land situated in India. The Wealth tax Act also contained a similar provision in Section 2(ea) wherein urban land was included as a taxable asset and what is urban land was based on similar considerations.

The present amendments now provide as under:-

1. The distance mentioned will now be counted as aerial distance.
2. The population of the area will be determined based on the last preceding census whose figures have been published before the first day of the previous year.
3. The local limits of the municipality / cantonment Board shall be as under:-
   (a) Not exceed 2 kms. Where the population is between 10,000 and 100,000
   (b) Not exceed 6 kms. where the population is between 100,000 and 10,00,000
   (c) Not exceed 8 kms. where the population exceeds 10,00,000

It would be appreciated if direct steps were taken to levy a tax on that which the government seeks to tax rather than amendments of the kind mentioned above – the effort to include into the tax bracket some element of what would otherwise be agricultural income continues.

CA Mayur B. Nayak

Amendments related to Non-residents and GAAR – Part-I

1. Introduction

General Anti Avoidance Rules (GAAR) were first proposed to be introduced as a part of Direct Tax Code (DTC) which was to replace the existing Income-tax Act, 1961. However the same was introduced in the Finance Act 2012 under Chapter X-A of the Income-tax Act, 1961 ("Act") which was supposed to be effective from 1st April, 2013.

A number of representations were made against the new provisions. Therefore, an expert committee under the Chairmanship of Dr. Parthasarathi Shome was constituted to consult stakeholders and finalise the GAAR guidelines and a road map for its implementation. The "Memorandum regarding Delegated Legislation" forming part of the Union Budget 2013-14 provides that in terms of section 101 of Chapter X-A pertaining to GAAR, it is proposed to empower the CBDT to make rules relating to GAAR guidelines and conditions for the application of the provisions of the said Chapter. The modified provisions preserve the basic thrust and purpose of GAAR. It is now provided that impermissible tax avoidance arrangements will be subjected to tax after a determination is made through a well laid out procedure involving an assessing officer and an Approving Panel headed by a Judge.

2. Significant amendments proposed to GAAR

2.1 Effective Date (Clause 24 of the Finance Bill, 2013 Part A)

Chapter X-A and section 144BA relating to GAAR which were supposed to be effective from 1st April 2014 have been replaced by a new Chapter X-A and section 144B respectively which will be effective from 1st April, 2016 i.e. A.Y. 2016-17 (Financial Year 2015-16). Thus, GAAR has been postponed for two years.

The proposed new provisions of GAAR takes into account some of the recommendations of the Expert Committee headed by Dr. Parthasarathi Shome.

2.2 The Trigger Point – Tax Benefit (Section 96)

As per the proposed GAAR, an arrangement would be an impermissible avoidance arrangement only if the "main purpose'' is to obtain a tax benefit (subject to other prescribed conditions) as against the present provision which includes "the main purpose or one of the main purposes" was to obtain a tax benefit.

This is a major relief as it would drastically reduce the scope of invoking GAAR provisions.

2.3 Commercial substance (sub-section (4) of section 97)

The provisions of GAAR are sought to be diluted a little bit by providing that following criteria which were not allowed to be taken into consideration earlier would now be considered relevant but not sufficient for determining whether an arrangement lacks commercial substance:

(i) the period or time for which the arrangement (including operations therein) exists;

(ii) the fact of payment of taxes, directly or indirectly, under the arrangement;

(iii) the fact that an exit route (including transfer of any activity or business or operations) is provided by the arrangement.

Clause (d) of sub-section (1) of section 97 provides that an arrangement shall be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained.

The acceptance of relevance of certain facts such as existence of long-term relations/arrangement as also payment of taxes, etc. in applicability or otherwise of GAAR provisions is a welcome change, however, addition of criteria such as existence of significant business risks or net cash flows may result into some litigation.

2.4 Approving Panel (AP) (Section 144BA)

The major change in the GAAR provisions is relating to the Panel approving GAAR cases, which was earlier confined to only bureaucrats, would now consist of following personnel:

- A Chairperson who is or has been a Judge of a High Court; and
- One Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and
- One Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices.

It has been further proposed that the AP shall issue directions within a period of six months from the end of the month in which reference from the Commissioner is received. However, the period during which the proceedings of the AP is stayed by an order or injunction of any court or the time taken by it for getting the inquiries conducted through the competent authority under the Act is not to be included in the time limit of six months.

Sub-section (14) of section 144BA provides that directions issued by the AP shall be binding on the assessee and the Commissioner and the Income-tax authorities subordinate to him. It is interesting to note that the previous GAAR provisions did not have a binding effect on the tax payer, whereas, it was binding on the income tax department.

Some of the other significant provisions concerning AP embodied in sub-sections (17) to (21) of section 144BA are as follows:

(i) The term of the Approving Panel shall ordinarily be for one year which may be extended for a period of three years.

Looking at the nature of complexities involved and the potential need for details from foreign countries, the tenure of one year is grossly insufficient.

(ii) Powers of AP would be same as that of Advance Ruling Authority under section 245U.

(iii) The Board shall provide necessary staff and also make rules for efficient functioning of the AP. AP should meet as and when required and draw remuneration as may be prescribed.

2.5 Treaty Override

Section 95 provides that "Notwithstanding anything contained in the Act" may lead to a conclusion that GAAR would override tax treaty provisions as was initially proposed.

Dr. Parthasarathi Shome Committee recommended that where anti-avoidance rules are provided in a tax treaty in the form of limitation of benefit (e.g., Singapore Treaty) etc., the GAAR provisions should not apply overriding the treaty. However, this recommendation has not been accepted.

3. Certain key existing provisions and corresponding amendments in provisions of Chapter X-A and section 144BA proposed in the Bill are summarised hereunder. At relevant places reference to the recommendations given by Dr. Parthasarathi Shome Committee (referred to as "Shome Committee") are given in the Remarks Column:

Particulars	Existing Provisions	Proposed Amendments	Remarks
Effective Date of GAAR Provisions (Clause 24 of the Finance Bill, 2013 Part A)	Assessment year 2014-15	Assessment year 2016-17	Shome Committee recommended GAAR to be effective from A.Y. 2017-18
Meaning of Impermissible Avoidance Arrangement (Section 96 of the Act, Chapter X-A)	An arrangement would be an impermissible avoidance arrangement if the "the main purpose or one of the main purposes" was to obtain a tax benefit	An arrangement would be an impermissible avoidance arrangement only if the "main purpose" is to obtain a tax benefit (subject to other prescribed conditions)	Same as per Shome Committee's recommendation
Factors relevant for determining as to whether the arrangement lacks commercial substance or not: • period or time for which the arrangement exists; • payment of taxes, directly or indirectly, under the arrangement ; • availability of an exit route is provided by the arrangement; [Section 97(4)]	As per the existing provisions the mentioned factors were not considered to be relevant	As per the proposed amendments the mentioned factors are considered to be relevant but not sufficient for determination of commercial substance	Same as per Shome Committee's recommendation

Additional criteria for determination of commercial substance of an arrangement: [(Section 97(1)(d)]	Not in existence	As per the proposed amendments, an arrangement shall be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement	Same as per Shome Committee's recommendation
Approving Panel: (Section 144BA)	The Approving Panel shall consists of not less than three members being income-tax authorities not below the rank of Commissioner and an officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.	The Approving Panel is proposed to have the following composition: • A Chairperson who is or has been a Judge of a High Court • One Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax. • One Member who shall be an academic or scholar having special knowledge of direct-taxes, business accounts and international trade practices	Shome Committee Recommended as follows: The Approving Panel should consist of five members including Chairman The Approving Panel should consist of five members including Chairman • The Chairman should be a retired judge of the High Court • Two members should be from outside Government and persons of eminence drawn from the fields of accountancy, economics or business, with knowledge of matters of income-tax • Two members should be Chief Commissioners of income tax; or one Chief Commissioner and one Commissioner

Binding nature of directions issued: [Section 144BA (14)]	The directions issued by the Approving Panel shall be binding only on the Assessing Officer	As per the proposed amendments, the directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act	Shome Committee did not prescribe any such direction
Term of Approving Panel: [Section 144BA (17)]	Not Prescribed	It is proposed that the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years	Shome Committee did not prescribe any such direction
Definition of 'Associated Person' and 'Connected person' [Section 102(4)]	There are two separate definitions given	It is proposed to combine both the definitions; Comments: However, the definition is inclusive in nature and is not restrictive or definitive as suggested by the Shome Committee	The Shome Committee recommended that the term 'Connected person' may be restricted only to 'Associated person' and 'Associated Enterprise' as defined u/s 92A of the Act

4. Consequential amendments proposed are as follows

All consequential amendments are made only to provide the change in the effective date of application, as GAAR provisions are deferred for two years i.e. from 1st April, 2013 to 1st April, 2015, i.e. A.Y. 2016-17.

4.1 Section 144C(14A)

The provisions relating to the Dispute Resolution Panel will not be applicable to any assessment or reassessment order passed by the Assessing Officer relating to impermissible avoidance arrangement under section 144BA i.e. GAAR provisions.

4.2 Section 153D

It is currently provided in the section that any order of an assessment or reassessment in cases where a search or requisition has been done would be passed by an Assessing Officer (AO) only with prior approval of the Joint Commissioner.

It is proposed to amend the section 153D assessment or reassessment order, as the case may be, is required to be passed by the AO with the prior approval of the Commissioner under sub-section (12) of section 144BA then the conditions of this section shall not apply. In other words, where GAAR is applicable further approval of Jt. Commissioner would not be required.

4.3 Section 245N(iv)

Under the meaning of "Advance Rulings", under section 245N, the advance rulings made by the authority as to whether an arrangement undertaken by the assessee (being a resident or a non-resident) is an impermissible arrangement or not, are proposed to be included.

In other words provisions of Advance Rulings are extended to determine whether a particular arrangement would fall within GAAR i.e. Chapter X-A.

4.4 Section 245R(2)(iii)

Section 245(2)(iii) of the Act provides that AAR can deny the ruling where the application relates to a transaction or issue which is designed *prima facie* for the avoidance of income tax. However, an exception is made to this effect and that is an application for determination of an arrangement or transaction whether falling within GAAR provisions.

4.5 Section 246A(1)

Section 246A, relating to appealable orders before Commissioner (Appeals). It is proposed to amend the relevant clauses of section 246A [clauses (a), (b), (ba), and (c)] to provide that an order of assessment or reassessment passed with approval of Commissioner under GAAR, shall not be appealable before Commissioner (Appeals).

4.6 Section 253(1)(e)

Section 253 is relating to Appeals to the Appellate Tribunal. It is proposed to amend section 253(1) (e) to provide that an order of assessment or reassessment passed with approval of Commissioner under GAAR, then such an order shall lie before the Appellate Tribunal.

5. Conclusion

One cannot deny the Government's right to enact laws to curb unethical practices and protect its tax base; at the same time they should not encroach upon taxpayer's right to minimise his tax obligation in a legal manner. Legitimate tax planning or arranging one's affairs in a permissible way to reduce one's tax cost is termed as tax mitigation, whereas, dubious tax planning is regarded as tax evasion. India chose to curb tax evasion by enacting General Anti Avoidance Rules. GAAR, as an anti-avoidance measure, has far reaching implications and therefore Dr. Parthasarathi Shome Committee was set up. The Committee assumed a lot of significance as Dr. Shome, besides the Chairman of the Committee, is also an economic advisor to the Government.

Some of the recommendations of the Committee were accepted, whereas host of other significant recommendations are ignored. Some of them are as follows:

- Monetary threshold of ₹ 3 crore of tax benefits to trigger GAAR;
- Grandfathering of all investments made by a resident or non-resident and existing as on the date of commencement of GAAR so that upon exit on or after the GAAR is in place, tax benefits are not denied;
- Where SAAR (Specific Anti-Avoidance Rules, e.g. Limitation of Benefits, Transfer Pricing, etc.) is applicable to a particular aspect/element, then GAAR shall not be invoked to look into that aspect/element.
- Limited application of GAAR, only to that part of the arrangement, which is impermissible;
- Corresponding adjustment in case of same taxpayer

Let us hope that all these significant recommendations are incorporated in the guidelines for the administration of GAAR to be published by the Government. One needs to appreciate that an advance incorporation of GAAR provisions is a step in the right direction. One only hopes that GAAR should be administered fairly and tax administration also catches up and reforms with introduction of complex laws, such as GAAR.

CA Natwar Thakrar

Amendments related to Non-residents and GAAR – Part-II

Introduction

Presenting the Union Budget in Parliament, the Finance Minister Mr. P. Chidambaram at paras 146 & 147 of his speech, *inter alia,* proposed to plug certain arrangements which, in his view, were tax avoidance arrangements and he termed payment of royalty as one of such arrangements. According to him payment of royalty is the distribution of profits by a subsidiary to a foreign parent company to avoid payment of dividend distribution tax.

Currently, the rate of tax on royalty and fees for technical services under the Act, are lower than the tax withholding rates agreed in a number of Double Tax Avoidance Agreements signed by India. These rates were reduced to ten per cent by the Finance Act, 2005 with effect from 1-4-2006. The Bill now proposes to increase the rate of tax on such payments to non-residents from 10 per cent to 25 per cent. To that extent this is a step in the reverse direction.

Though, the rate of tax on payment of royalty and fees for technical services will be finally determined by the DTAAs, the eligibility conditions for claiming treaty benefits are being tightened. Last year, the Finance Act, 2012 introduced sub-sections 4 to sections 90 and 90A which provided that furnishing of Tax Residency Certificate (TRC) will be mandatory for claiming treaty benefits. Now, the Finance Bill 2013 proposes to introduce sub-section 5 to both sections 90 and 90A with retrospective effect from Assessment Year 2013-14 to provide that the certificate of being a resident (TRC) in a specified territory outside India referred to in sub-section (4), shall be necessary but not a sufficient condition for claiming any relief under the agreement referred to therein. This measure has invited apprehensions from various investors & eminent personalities forcing government to clarify the position.

In the above backdrop, this article examines provisions relating to proposed amendments to Ss. 90, 90A, 115A & 194LC by the Finance Bill, 2013 pertaining to non-residents.

1. Agreement with foreign countries or specified territories

[Amendment to Section 90]

Existing Provision

Section 90 confers power upon the Central Government to enter in to an agreement with the Government of any specified territory outside India in addition to entering in to agreement with foreign countries.

Sub-section (2A) of section 90 inserted by the Finance Act, 2012 provided notwithstanding clause overriding sub-section 2, that the provisions of Chapter X-A relating to General Anti-Avoidance Rule shall apply even if such provisions are not beneficial to the assessee [old GAAR].

Sub-section (4) to section 90 inserted by the Finance Act, 2012 provides that an assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing prescribed particulars, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

Proposed Amendment

Clause 21 of the Finance Bill has sought to omit existing sub-section (2A) of section 90 and insert a new sub-section (2A) to section 90 so as to provide that the provisions of newly inserted Chapter X-A relating to General Anti Avoidance Rule shall apply even if such provisions are not beneficial to the assessee [new GAAR].

Further, it seeks to insert a new sub-section (5) in the aforesaid section 90 so as to provide that the certificate of being a resident in a country outside India or specified territory outside India, as the case may be, referred to in sub-section (4), shall be necessary but not a sufficient condition for claiming any relief under the agreement referred to therein.

A literal reading of the proposed amendment would possibly suggest that a Tax Residency Certificate (TRC) cannot be regarded as a sufficient proof to claim the treaty benefits

Reasons for the amendment

Tax residency certificate is issued by a contracting state to a person who is tax resident under the provisions of its domestic tax laws. It is believed that in many instances unintended persons have claimed treaty benefits on the basis of Tax Residency Certificate (TRC). For example, in a scenario of dual tax residency under the domestic laws of two contracting states requiring application of tie-breaker test (contained in Article 4 of most of the treaties), a company will be determined to be tax resident under a treaty of the state in which its place of effective management is situated. If the place of effective management of such a company is not situated in the country issuing tax residency certificate (TRC), such a company is not entitled to the concessional rates provided under the treaty. Another essential condition is that the recipient person must satisfy that he is the beneficial owner of the remittance wherever conditions for beneficial ownership are prescribed under the DTAA.

The proposed amendment therefore seeks to clarify that Tax Residency Certificate (TRC) by itself will not make the taxpayer eligible to claim benefits of a DTAA between the two contracting states.

Effective date

The amendment in relation to omission of sub-section (2A) [relating to old GAAR] of section 90 is proposed to take effect retrospectively from 1st April, 2013.

The amendment in relation to insertion of new sub-section (2A) of section 90 [relating to new GAAR] is proposed to take effect from 1st April, 2016 and it shall accordingly, apply in relation to the Assessment Year 2016-17 and subsequent years.

The amendment in relation to insertion of new sub-section (5) is proposed to take effect retrospectively from 1st April, 2013 and it shall accordingly, apply in relation to the Assessment Year 2013-14 and subsequent years.

Press Release/Clarifications by the Finance Minister

Many investors & eminent personalities expressed their apprehensions on the ambiguity of the proposed provision and feared that the tax authorities in India could question the validity of Tax Residency Certificate (TRC) to deny treaty benefits.

Pursuant to this, the Finance Ministry *vide* press release dated 1st March, 2013 has clarified that proposed amendment does not in any way intend to dilute the current legal position on validity of the Tax Residency Certificate (TRC) and the same would continue to be accepted as an evidence of Treaty Residency. It is clarified that intent of the provision is to ensure that furnishing of Tax Residency Certificate (TRC) should not preclude tax authority from looking into compliance of other treaty conditions, such as beneficial ownership of the recipient of dividend, interest, royalty, etc.

It is further clarified that in the case of Mauritius, Circular No. 789 dated 13-4-2000 continues to be in force, pending ongoing discussions between India and Mauritius. However, since a concern has been expressed about the language of sub-section (5) of section 90, this concern will be addressed suitably when the Finance Bill is taken up for consideration.

2. Adoption by Central Government of agreement between specified association for double taxation relief

[Amendment to Section 90A]

Existing Provision

The existing provisions of Section 90A provides that any specified association in India may enter into an agreement with any specified association in a specified territory outside India and the Central Government may, by notification in the Official Gazette, make necessary provisions for adopting and implementing such agreement for grant of double taxation relief, for avoidance of double taxation or exchange of information for the prevention of evasion or avoidance of income-tax or for recovery of income-tax.

Sub-section (2A) inserted by the Finance Act, 2012 provides that notwithstanding anything contained in sub-section (2) [relating to beneficial applicability of DTAA *vis-à-vis* income-tax provisions], the provisions of Chapter X-A of the Act shall apply to the assessee, even if such provisions are not beneficial to him [old GAAR].

Sub-section (4) to section 90A also inserted by the Finance Act, 2012 provides that an assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing prescribed particulars, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

Proposed Amendment

Clause 22 of the Bill seeks to amend section 90A of the Income-tax Act relating to adoption by Central Government of agreement between specified associations for double taxation relief [in view of new GAAR].

It is proposed to omit existing sub-section (2A) of section 90A and insert a new sub-section (2A) to section 90A so as to provide that the provisions of newly inserted chapter X-A relating to General Anti-Avoidance Rule shall apply even if such provisions are not beneficial to the assessee [new GAAR].

Further, it is also proposed to insert a new sub-section (5) in the aforesaid section 90A so as to provide that the tax residency certificate (TRC) of being a resident in a country outside India or specified territory outside India, as the case may be, referred to in sub-section (4), shall be necessary but not a sufficient condition for claiming any relief under the agreement referred to therein.

Reasons for the amendment

The proposed amendment is for the identical reasons for which the amendments in section 90 are proposed to plug the treaty benefits to unintended beneficiaries.

Effective date

The amendment in relation to omission of sub-section (2A) of section 90A [relating to old GAAR] is proposed to take effect retrospectively from 1st April, 2013.

The amendment in relation to insertion of new sub-section (2A) of section 90A [relating to new GAAR] is proposed to take effect from 1st April, 2016 and it shall accordingly, apply in relation to the Assessment Year 2016-17 and subsequent years.

The amendment in relation to insertion of new sub-section (5) is proposed to take effect retrospectively from 1st April, 2013 and it shall accordingly, apply in relation to the Assessment Year 2013-14 and subsequent years.

3. Tax on Royalty and Fees for Technical Services

Amendment to Section 115A

Existing Provision

The existing provisions of clause (b) of sub-section (1) of section 115A provides for the rates of tax in respect of income by way of royalty or fees for technical services in the case of non-residents (not being a company) or a foreign company.

Various sub-clauses of the said clause provide for different rates of tax in case of income by way of royalty or fees for technical services based on the dates of agreement under which such income is received by the non-resident (not being a company) or a foreign company as follows:

(i) 30% if income by way of royalty or FTS is received in pursuance of an agreement entered on or before 31-5-1997;

(ii) 20% if income by way of royalty or FTS is received in pursuance of an agreement entered after 31-5-1997 but before 1-6-2005; and

(iii) 10% if income by way of royalty or FTS is received in pursuance of an agreement entered on or after 1-6-2005.

Proposed Amendment

Clause 25 of the Finance Bill seeks to substitute sub-clauses (A), (AA), (B) and (BB) of the aforesaid clause (b) with new clauses (A) & (B), so as to provide that income by way of royalty or fees for technical services shall be taxable at a uniform rate of twenty-five per cent if it has been received under an agreement entered after 31st day of March, 1976.

Reason for amendment

The Finance Minister in his budget speech mentioned that the rate of tax on royalty in the Income-tax Act is lower than the rates provided in a number of Double Tax Avoidance Agreements. This is an anomaly that he said must be corrected. Hence, the proposal to increase the rate of tax on payments by way of royalty and fees for technical services to non-residents from 10 per cent to 25 per cent. However, in case where the non resident assessee is entitled to double tax avoidance treaty benefits, the applicable rate will be the rate of tax stipulated in the DTAA.

Effective Date

This amendment will take effect from 1st April, 2014 and will, accordingly, apply in relation to the assessment year 2014-15 and subsequent assessment years.

4. Concessional rate of tax withholding on Income by way of Interest from Indian company on rupee denominated long-term infrastructure bonds

[Amendment to Section 194LC]

Existing Provision

Under the existing provisions of sub-section (2) of section 194LC, where an Indian company borrows money in foreign currency from a source outside India either under a loan agreement or by way of issue of long term infrastructure bonds which are approved by the Central Government, it would be eligible for tax withholding at the concessional rate of tax of 5 % in accordance with sub-section (1) of the said section.

Proposed Amendment

Clause 43 of the Bill seeks to amend the said sub-section (2) so as to provide that where a non-resident (not being a company) or a foreign company has deposited any sum of money in foreign currency in a designated account through which such sum, as converted in rupees, is utilised by the non-resident or the foreign company, as the case may be, to subscribe to any long term infrastructure bonds issued by the specified company in India, then, such borrowing for the purposes of section 194LC shall be deemed to have been made by the specified company in foreign currency.

The designated account means an account of a person in a bank which has been opened solely for the purpose of deposit of money in foreign currency and utilisation of such money for payment to the specified company for subscription in the long term infrastructure bonds issued by it.

Effective date

These amendments will take effect from 1st June, 2013.

Reasons for the amendment

To facilitate subscription by non-residents in the long term rupee denominated infrastructure bonds issued by Indian companies.

Conclusion

Provisions of s. 206AA which made PAN mandatory for application of treaty rates coupled with Rule 21AB (inserted *vide* Notification dated 17th September, 2012) which has prescribed certain particulars to be contained in a tax residency certificate (TRC) by a foreign state (which many not always oblige to do so) has effectively pushed the cost of doing business in India to 20%. The proposed amendments will certainly impact technology imports and push the cost of doing business in India effectively to 25%.

CA Bhavesh Vora

Amendments relating to Securities

Mr. P. Chidambaram, Hon'ble Finance Minister presented the Union Budget, 2013 before the Parliament on 28th February, 2013.

People were expecting major relief on account of elections due in next year, but the budget turned out to be a routine budget. This budget appears to balance between managing the difficult economic scenario and forthcoming election.

India's GDP growth has slowed down as compared to last year. The story of 'INDIA SHINING' is becoming reality or it is still a story, time will only tell.

The scope of this article is to discuss about the budget provisions relating to Commodity Transaction Tax, Security Transaction Tax and Taxation of Securitisation Trust.

Commodities Transaction Tax (CTT)

The Finance Bill proposes to charge a new tax CTT. The rate of CTT proposed is 0.01% on the seller on sale of commodity derivative entered on a recognised association. The same is payable by seller on the price at which the commodity derivative is traded. However the CTT will not be applicable on Agricultural Commodities. Here it is pertinent to note that the term "Recognised Association" has been used.

The CTT will be levied from a date to be notified in the Official Gazette.

Commodity Derivative as per Chapter VII of Finance Bill means -

i) a contract for delivery of goods which is not a ready delivery contract; or

ii) a contract for differences which derives its value from prices or indices of prices –

   (A) of such underlying goods; or

   (B) of related services and rights, such as warehousing and freight; or

   (C) with reference to weather and similar events and activities,

   having a bearing on the commodity sector.

Recognised Associations have not been defined under the Bill. However the bill provides that the words and expressions used but not defined in this chapter and defined in the Forward Contracts (Regulations) Act, 1952, the Income-tax Act, 1961 or the rules made thereunder, shall have the same meanings respectively assigned to them in those Acts.

Section 2(j) of the Forward Contracts (Regulations) Act, 1952 defines Recognised Association as follows:

"recognised association" means an association to which recognition for the time being has been granted by the Central Government under Sec. 6 in respect of goods or classes of goods specified in such recognition.

All the Associations concerned with the regulation and control of business relating to forward contracts in commodities, which are notified u/s. 15 of the Forward Contracts (Regulations) Act, 1952 have to obtain recognition from the Central Government.

At present 22 exchanges are recognised /registered for forward/futures trading in commodities.

Every recognised association shall collect the CTT from the seller who enters into taxable commodity transaction in or through the recognised association.

CTT collected during any calendar month will have to be paid by recognised association by the seventh day of the month immediately following the said calendar month.

In addition to above, provisions related to filing of returns, rectifications, assessments, appeal, interest and penalty are also prescribed for recognised associations.

It is also proposed to provide that an amount equal to the commodities transaction tax paid in the course of business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head Profits and gains of business or profession. **[Section 36(1)(xvi) w.e.f. A.Y. 2014-15]**

It may be noted that budget speech of Finance Minister under para 149 mentions that the trading in commodity will not be considered as a 'speculative transaction' and CTT shall be allowed as deduction if the income from such transaction forms part of business income. However, the corresponding amendment u/s 43(5) of the Income-tax Act, 1961 related to speculative transaction has not been made.

The bill also provides that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this chapter.

Securities Transaction Tax (STT)

It is proposed to reduce Securities Transaction Tax (STT) on transactions in specified securities as under:

Nature of taxable securities transaction	Value on which STT payable	Payable by	Existing rates (%)	Proposed rates (%)
Delivery based purchase of units of an equity oriented fund entered into in a recognised stock exchange	Price at which units are purchased	Purchaser	0.10	Nil
Delivery based sale of units of an equity oriented fund entered into in a recognised stock exchange	Price at which units are sold	Seller	0.10	0.001
Sale of a futures in securities	Price at which future is traded	Seller	0.017	0.01
Sale of a unit of an equity oriented fund to the mutual fund	Price at which units are sold	Seller	0.25	0.001

This amendment will take effect from 1st June, 2013.

For following transactions, the rate of STT has not been changed:

Nature of taxable securities transaction	Value on which STT payable	Payable by	Rates (%)
Delivery based purchase of equity shares entered into in a recognised stock exchange	Price at which shares are purchased	Purchaser	0.10
Delivery based sale of equity shares entered into in a recognised stock exchange	Price at which shares are purchased	Seller	0.10
Non Delivery based transactions in equity shares or units of an equity oriented fund entered into in a recognised stock exchange	Price at which shares/ units are sold	Seller	0.025
Sale of an option in securities	Option Premium	Seller	0.017
Sale of an option in securities where option exercised	Settlement price of an option	Purchaser	0.125
Sale of unlisted equity shares under an offer for sale	Price at which shares are sold	Seller	0.20

Amendment provisions related to Securitisation Trust

"Securitisation" is a financial transaction in which assets are pulled and securities representing interest in the pool are issue to the investors representing undivided interest in such assets.

A company which has given large number of loans against the assets and wants to further expand the business has three options – either to borrow or to infuse the more capital or by selling interest in the existing loan accounts in the pool to the investors. These existing loan accounts are pooled as "portfolio" and transferred to a separate company/trust known as Special Purpose Vehicle (SPV). The investors invest into the SPV for the purpose of funding the purchase of portfolio. This activity is known as Securitisation. In case of securitisation, risk and reward of portfolio loans are transferred to SPV and therefore to the investors. For investors, securitisation creates diversified pool of portfolio which can generate higher rate of return as well as the positive difference between the acquired price of portfolio and future realisation.

In typical example, owner (originator) of the Financial Assets sells those assets to a SPV to whom the cash flows from the financial assets transferred. The SPV subsequently distributes the collection and income generated from the assets to the investors of that SPV. Generally, the SPV is a trust from where income passes to the investors.

The Finance Bill, 2013 proposes to introduce special provisions relating to taxation of income of securitisation entities, set up as trusts and distribution of income by them to the investors. Securitisation trusts have been defined to mean a trust being a

– 'Special purpose distinct entity' regulated under the SEBI (Public Offer and listing of Securitised Debt Instruments) Regulations, 2008 and

– 'Special Purpose Vehicle' regulated by the guidelines on securitisation of standard assets issued by Reserve Bank of India.

The securitisation industry has been facing several taxation issues. At times, the investor of the SPV are Mutual Funds, and if the Mutual Fund Income is exempt, whether SPV (Trust) shall be liable (to the extent of share of Mutual Fund) to tax or not was always a question. The litigation was on, however the Finance Bill has attempted to address this litigation.

From the provisions of Finance Bill, it appears that following transactions of securitisation may qualify under relevant provisions.

I. Transactions of Securitisation of Standard Assets as regulated by RBI (Bank and NBFCs)

II. Transactions of Securitisation where securities are listed on Stock Exchanges.

For such qualifying transactions, the following are implications.

1. Any income of securitisation trust from activity of securitisation is exempt (10(23DA))

2. There are no tax on income of an investor by virtue of section 10(35A)

3. The trust has to pay tax on distributed income (section 115TA)

The provisions pertaining to Securitisation are laid down in three different sections inserted in the Finance Bill. i.e. (1) 10(23DA), (2) 10(35A) and (3) 115TA to 115TC.

(1) Section 10(23DA)- any income of a "securitisation trust" from the activity of "securitisation" is exempt.

Let us understand what Is 'Securitisation' and 'Securitisation Trust'

For the purposes of this clause,—

A. Securitisation has the following meaning.

(i) As per Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008, – Para 2(1)(r) "securitisation" means acquisition of debt or receivables by any special purpose distinct entity from any originator or originators for the purpose of issuance of securitised debt instruments to investors based on such debt or receivables and such issuance;

(ii) As per RBI Guidelines on Securitisation of Standard Assets "Securitisation" means a process by which a single performing asset or a pool of performing assets are sold to a bankruptcy remote SPV and transferred from the balance sheet of the originator to the SPV in return for an immediate cash payment.

B. "securitisation trust" shall have the following meaning.

(i) As per Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 Para 2(1)(u) "special purpose distinct entity" means a trust which acquires debt or receivables out of funds mobilised by it by issuance of securitised debt instruments through one or more schemes, and includes any trust set up by the National Housing Bank under the National Housing Bank Act, 1987 (53 of 1987) or by the National Bank for Agriculture and Rural Development under the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);

(ii) As per Para 8 of RBI Guidelines on Securitisation of Standard Assets – SPV is a special purpose vehicle set up during the process of securitisation to which the beneficial interest in the securitised assets are sold / transferred on a without recourse basis.

(2) Section 10(35A) – any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust is proposed to be exempted.

For the purposes of this clause, the expressions "investor" and "securitisation trust" shall have the meanings respectively assigned to them in the Explanation below section 115TC;

"investor" means a person who is holder of any securitised debt instrument or securities issued by the securitisation trust.

(3) Special provisions relating to tax on distributed income by Securitisation Trust – Chapter XII-EA

The provisions are given below.

115TA (1) Notwithstanding anything contained in any other provisions of the Act, any amount of income distributed by the securitisation trust to its investors shall be chargeable to tax and such securitisation trust shall be liable to pay additional income-tax on such distributed income at the rate of – (i) twenty-five per cent on income distributed to any person being an individual or a Hindu Undivided Family; (ii) thirty per cent on income distributed to any other person:

Provided that nothing contained in this sub-section shall apply in respect of any income distributed by the securitisation trust to any person in whose case income, irrespective of its nature and source, is not chargeable to tax under the Act.

(2) The person responsible for making payment of the income distributed by the securitisation trust shall be liable to pay tax to the credit of the Central Government **within fourteen days from the date of distribution or payment of such income, whichever is earlier.**

(3) The person responsible for making payment of the income distributed by the securitisation trust shall, **on or before the 15th day of September** in each year, **furnish** to the prescribed income-tax authority, a **statement** in the **prescribed form** and **verified in the prescribed manner**, giving the details of the amount of income distributed to investors during the previous year, the tax paid thereon and such other relevant details, as may be prescribed.

(4) **No deduction** under any other provisions of this Act shall be allowed to the securitisation trust in respect of the income which has been **charged to tax** under sub-section (1)

115TB. Where the person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust fails to pay the whole or any part of the tax referred to in sub-section (1) of section 115TA, within the time allowed under sub-section (2) of that section, he or it shall be liable to pay **simple interest at the rate of one per cent every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.**

115TC. If any person responsible for making payment of the income distributed by the securitisation trust and the securitisation trust does not pay tax, as referred to in sub-section (1) of section 115TA, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of income-tax shall apply.

Explanation.— For the purposes of this Chapter,—

(a) "investor" means a person who is holder of any securitised debt instrument or securities issued by the securitisation trust;

(b) "securities" means debt securities issued by a Special Purpose Vehicle as referred to in the guidelines on securitisation of standard assets issued by the Reserve Bank of India;

(c) "securitised debt instrument" shall have the same meaning as assigned to it in clause (s) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956;

(d) "securitisation trust" means a trust, being a —

  (i) "special purpose distinct entity" as defined in clause (u) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 made under the Securities and Exchange Board of India Act, 1992 and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations; or

  (ii) "Special Purpose Vehicle" as defined in, and regulated by, the guidelines on securitisation of standard assets issued by the Reserve Bank of India,

which fulfils such conditions, as may be prescribed.'.

The object of introducing this chapter is to put to the rest litigation issues regarding taxation of securitisation trusts, which in my opinion is not fully achieved. One will have to wait for notifications, clarifications and final enactment.

Section 10(23DA) and section 10(35A) are applicable from 1st April, 2013 and additional taxation scheme on distributed income under Chapter XII EA is applicable from 1st June, 2013. As section 10(35A) refers to section 115TA, the effective date will always be 1st June, 2013. Any distribution prior to this date will continue to be governed by existing provisions.

The additional income distribution tax to be paid by securitisation trust is 25% plus surcharge for distributed income in case investors are individuals and HUF and 30% plus surcharge if distributed income in other case.

In case the Investors are individuals, HUF, there is apparent disadvantage for not getting benefit of basic exemption limits. This is because SPV has to bear the tax at 25% +SC flat. Even the expenses cannot be deducted by the investors as the income is exempt. Here, one should keep in mind the provisions of section 14A and rule 8D in relation to the exempt income received through distributed income.

It is also not known why the words "additional income distribution tax" have been used?

The amount of additional tax is on the income distributed to the investor. How the same will be calculated is again going to be a debate as normally the distribution amount encompasses capital component accumulation of income and the income out of activities other than securitisation also. If the distribution is in parts whether the initial payments would be considered as a repayment of capital or income or proportionate of both, may lead to litigation.

Though there is a direct relief for mutual fund industry, whether securitisation industry as a whole will revive or not, has to be seen.

CA Yogesh Thar

Buy-back of Unlisted Shares

1. Present provisions

When shares of any company are bought back in accordance with the provisions of section 77A of the Companies Act, 1956, ("the 1956 Act"), the tax treatment of the gains or losses arising to the shareholder is dealt with in accordance with the provisions of section 46A of the Income-tax Act, 1961 ("the Act"). This section essentially provides that the difference between the cost of acquisition and the value of consideration received by the shareholder shall be deemed to be the capital gains arising to such shareholder in the year in which such shares are purchased by the company. Besides, since section 46A is made "subject to the provisions of section 48", the shareholder is entitled to claim indexation benefits if the gains are long-term in nature. The shareholder is also entitled to claim cost of improvement, if any. This provision applies to buy-back of shares of any company, whether listed or unlisted.

2. Proposed amendments

Finance Bill, 2013 enacts a new chapter in the Act, namely, Chapter XII-DA comprising sections 115QA to 115QC providing special provisions relating to taxation of buy-back of shares. Section 115QA deals with basic provisions for taxation; section 115QB deals with levy of interest for non-payment of tax; and section 115QC provides as to when the company is deemed to be an assessee in default.

The provisions of this chapter apply:

- only in respect of buy-back which is under section 77A of the 1956 Act;
- If such buy-back is carried out by a domestic company; and
- The shares bought back are not listed on any recognised stock exchange in India.

In other words, where the buy-back is not under section 77A of the 1956 Act or where the buy-back is by a foreign company or the buy-back is of listed shares, this chapter will not apply and the provisions of section 46A and other applicable provisions of the Act will continue to govern the tax implications. We shall see more about such cases in later paragraphs.

3. The New Proposed Scheme of Taxation

A domestic unlisted company that buys back its own shares under section 77A of the 1956 Act is required under section 115QA to pay tax on "distributed income" as defined therein at the rate of 20% (plus applicable surcharge).

The term "distributed income" is defined in the Explanation to sub-section (1) of section 115QA to mean the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares. Thus, if the shares are of face value of ₹ 10 each that were issued at a premium of ₹ 5 per share, and if the consideration for buyback is ₹ 100 per share, then the "distributed income" would be ₹ 85 (i.e., ₹ 100 minus ₹ 15) and tax thereon would be ₹ 17 (being 20% of ₹ 85). This tax would be payable by the company in addition to the tax (if any) on its total income.

The shareholder, on the other hand, enjoys complete exemption from tax under the newly inserted section 10(34A).

4. Various implications of this new provision

a. Buy-back of shares under section 77A of the 1956 Act is permitted out of: (i) free reserves; (ii) share premium account; and (iii) proceeds of the new issue of shares. Now, a buy-back from items (ii) and (iii) could clearly not be regarded as a distribution of income of the company. Unlike section 115-O which applies to distribution of dividend which is nothing but distribution of income of the company, buy-back in such cases would not be a distribution of income. There is, therefore, a grave doubt as to whether tax on such buy-back can pass the test of being a tax on income in order to pass the test of constitutional validity.

b. The title of the newly inserted chapter is "Special Provisions Relating to Tax on Distributed Income of Domestic Company for Buy-Back of Shares". Indeed, as explained above, in all cases, the tax on the amount paid on buy-back may not qualify as a tax on "distributed income of the domestic company". To that extent the title is misleading.

c. In the illustration we saw in para 3 above, assume that the shareholder had acquired the shares at a cost of ₹ 50. The shareholder would be liable to tax on capital gains of ₹ 50 (₹ 100 minus ₹ 50) and that too subject to indexation. 20% tax on long term capital gain would work out to ₹ 10 (ignoring indexation). However, the tax payable by the company under the new provision would be ₹ 17, being 20% of ₹ 85. Clearly this is a case of double taxation. To the extent of the tax on the difference between the cost of acquisition (₹ 50) and the issue price (₹ 15), it is not a tax on income of the shareholder. Such tax cannot, arguably, stand the test of being tax on "income" so as to be constitutionally valid.

d. A shareholder earning capital gains on buy-back was in a position to set off his loss under the head capital gains against the gains on buy-back. However, this new scheme shall not permit set off of such losses, if any.

e. Indeed, even though this tax is described as "additional income-tax" in the hands of the company, the company will not be in a position to set off any losses that it might have incurred in its business against the so called "distributed income". This again reinforces the contention that this is not a tax on income at all.

f. The income is exempt in the hands of the shareholder. Therefore, in view of section 14A, the shareholder will not be in a position to claim any deduction in respect of expenses that he may have to incur in connection with transfer of the shares. Under section 46A, however, it was possible for the shareholder to claim deduction for such expenses.

5. Rationale explained in the Explanatory Memorandum

The Explanatory Memorandum explains the reason for this enactment in the following words:

> "Unlisted Companies, as part of tax avoidance scheme, are resorting to buy back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT particularly where the capital gains arising to the shareholders are either not chargeable to tax or are taxable at lower rate. In order to curb such practice it is proposed to amend the Act…"

From the above, it seems that the grievance of the law makers is as regards "non-taxability" and as regards "lower rate". Interestingly, "lower rate" cannot be an issue because, capital gains are taxable at the rate of 30% if short-term and 20% if long-term, whereas, the DDT is chargeable under section 115-O at the rate of 15%! Besides, it is also intriguing to note that if the intention of the legislators is to bring buy-back at par with dividends, then why the tax rate is 20%. It ought to have been 15%!

6. AAR Ruling – A, In re (2012)343 ITR 455(AAR)

It appears, though not stated in the Explanatory Memorandum, that the real trigger for such an amendment is the ruling of the AAR in the case of A, *In re (2012)343 ITR 455(AAR).* In that case, an Indian company (the Applicant) was owned predominantly by a Mauritius Company, a US company, a Singapore Company and some minority Indian shareholders. The Applicant had huge accumulated profits. It had not declared any dividend ever since 2003 when the provisions for dividend distribution tax (DDT) were introduced in the Act. It now offered its shares for buy-back to its shareholders. Only the Mauritius shareholder agreed to the buy-back. Other shareholders didn't. The Applicant went for an advance ruling on the question whether the Mauritius shareholder will be eligible for exemption from capital gains on buy-back in view of the India-Mauritius DTAA. The AAR, took note of the peculiar facts and held in para 15 as under:

> *"In this case, there is no dispute that no dividend had been paid to any of the shareholders after April 1, 2003, on which date section 115-O of the Act was introduced in its present form. The accumulation in the reserves was allowed to be increased considerably. It may be noted that the major shares are held by the "A" group and only 1.76 per cent of share are outstanding with the general public. The payment of dividend in the normal course by a company making profits, would have meant that the applicant would have been obliged pay tax on distribution of profits to its shareholders. Instead of distributing the dividend on the basis of profits that accrued, the applicant allowed the reserves to grow. The proposed buy-back, if followed up, would mean that considerable sums would be repatriated to "A" (M) in Mauritius without the tax on the distributed profits being paid, by resort to paragraph (4) of Article 13 of the DTAC between India and Mauritius. In this context, it is significant to note that neither "A" USA nor "A" (S) accepted the offer of buy-back, obviously because in the case of one it would have been taxable in India as capital gains and in the case of the other, its taxability would have depended on certain conditions being fulfilled, whereas under the India-Mauritius DTAC, capital gains is totally out of the Indian tax n et. There was no proper explanation on the part of the applicant as to why no dividends were declared subsequent to the year 2003 when the company was regularly making profits and when dividends were being distributed before the introduction of section 115-O of the Act in its present form. We are, therefore, satisfied that the proposal projected before us of buy-back is a scheme devised for avoidance of tax. In fact, it is a colourable device for avoiding tax on distributed profits as contemplated in section 115-O of the Act. "*

Now, it seems, the legislature wants to pre-judge all cases of buy-back of unlisted shares with the same subjective standards and build in an "anti-avoidance provision" with an underlying presumption that all "unlisted companies, as part of tax avoidance scheme, are resorting to buy-back of shares instead of payment of dividends in order to avoid payment of tax by way of DDT". There are several questions that bother the genuine taxpayers and would like the legislators to answer before passing this as a law. For example:

(a) What if an unlisted company has declared dividends from year to year, though on a conservative dividend policy ploughed back significant profits and augmented its reserves? Why should such companies also be labelled as "tax avoiders" as is sought to be done by the Explanatory Memorandum?

(b) What if all the shareholders agree to buy-back, irrespective of whether they are located in a tax friendly jurisdiction or not? Why should they be labelled as "tax avoiders" as is sought to be done by the Explanatory Memorandum?

(c) What if minority shareholders have incurred some losses under the head capital gains and by this mechanism they are precluded from adjusting such losses and yet, the exchequer collects full amount of tax only on this transaction of buy-back?

(d) The Companies Act recognises the difference between a dividend and a buy-back. The legal requirements and the effects of the two are different. Then why should the Income-tax Act refuse to recognise that difference?

(e) And finally, why should the same gain suffer tax twice, once in the hands of the shareholder (see paragraph 4(c) above) and again in the hands of the company?

7. Cases to which this Chapter shall not be applicable

Some of the instances where this chapter shall not apply could be:

a. Where the shares are purchased by the company pursuant to the scheme of arrangement under sections 391 to 394 of the 1956 Act – such buy back is not one under section 77A and hence its taxability will continue to be governed by section 46A;

b. Where the shares are cancelled pursuant to the provisions for reduction of capital under section 77 read with 100 of the 1956 Act – this also is not a buy-back under section 77A. The amount received, to the extent of accumulated profits will be taxed as dividend under section 2(22)(d) of the Act;

c. Where the shares bought back are those of an unlimited company – as unlimited companies are not governed by section 77 and hence are able to reduce its capital independent of any requirements of section 77A of the 1956 Act;

d. Where the shares bought back are of a foreign company – the normal capital gains provisions read with the relevant tax treaty provisions shall continue to govern taxation of such buy-backs;

e. Where the shares bought back are of a listed company;

f. Redemption of preference shares at a premium – this will continue to be charged as capital gains in view of the decision of the Supreme Court in the case of *Anarkali Sarabhai vs. CIT 224 ITR 422 (SC);*

g. Conversion of preference shares into equity or equity into preference – such conversion is generally treated as "transfer" for tax purposes [see *Addl. CIT vs. Trustees of HEH Nizam's Family Trust (1976) 102 ITR 248(AP)* and *CIT vs. Santosh Chowgule (1998) 234 ITR 787(Bom.)*] and hence liable to capital gains tax.

8. Concluding remarks

The tendency of collecting tax on the income earned by *Ram* from the payer of that income, *Rahim*, is becoming more and more popular. We already have section 115-O where the tax on income of the shareholder is made the responsibility of the company itself and section 115R where the tax on income of the unit holder is made the responsibility of the mutual fund. We now have section 115TA where the tax on income distributed to investors is the responsibility of the securitisation trust and we have this section 115QA, where the tax on capital gains of the shareholder is now the responsibility of the company buying back the shares. With these provisions, coupled with the expansion of scope of the TDS provisions, I hope that in March 2014, we will get no phone calls from the tax officers requesting (read as 'requiring') us to pay more advance tax on the 15th of March so that their targets are met!

CA Ketan Vajani

Amendments related to Procedures – Part-I

The Finance Bill, 2013 which was presented in the Parliament on 28th February, 2013 is having some small surprising elements. One such surprising element is that this year there are not many amendments with retrospective effect as per the practice for past many years and accordingly not many settled principals have been unsettled as far as charging provisions are concerned. However, when it came to the procedural sections, the Finance Minister could not refrain from making few amendments which are altering some of the settled concepts.

This article proposes to deal with some of the procedural amendments proposed in the Finance Bill, 2013. Other Procedural amendments are covered in a separate article by Advocate Mandar Vaidya. In this article, we shall discuss the amendments proposed to sections 132B, 139, 142, 153 and 153B of the Income-tax Act.

Amendment to section 132B of the Income-tax Act

Existing Provision

Section 132B of the Income-tax Act provides for application of seized or requisitioned assets during the course of search. As per the existing provisions, the seized assets may be adjusted against any existing liability under the Income-tax Act, Wealth-tax Act, Expenditure-tax Act, the Gift-tax Act and the Interest-tax Act. Further the seized assets can also be adjusted against the amount of liability determined on completion of assessments pursuant to search, including penalty levied or interest payable and in respect of which the assessee is in default or deemed to be in default. There is an Explanation to the section, which defines the terms "block period" and "execution of an authorisation for search or requisition" for the purpose of the section.

Amendment

Clause – 31, of the Finance Bill seeks to insert Explanation – 2 to section 132B so as to provide that the term "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII

Reason for the Amendment

As per the Explanatory Memorandum, "various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee, which is not in consonance with the intention of the legislature. The legislative intent behind this provision is to ensure the recovery of outstanding tax/interest/penalty and also to provide for recovery of taxes/interest/penalty, which may arise subsequent to the assessment pursuant to search."

Effective date

The amendment is sought to be made with effect from 1st June, 2013

Background

In the following cases, a view has been adopted that the term "existing liability" includes advance tax liability of the assessee and therefore the seized assets can be appropriated towards the advance tax liability. Due to this view, the assessee could reduce the burden to interests charged u/s. 234A, 234B and 234C to the extent of the seized assets appropriated towards the Advance Tax Liability.

- *CIT vs. Pandurang Dayaram Talmale (2004) 187 CTR (Bom) 625*
- *Vishwanath Khanna vs. Union of India (2011) 335 ITR 548 (Del.)*
- *Sudharkar M. Shetty vs. Asst. CIT (2008) 10 DTR (Mumbai)(Trib)(173)*
- *Nikkamal Baburam vs. Asst. CIT (2010) 41 SOT 407(Chd)*
- *Gianchand Gupta vs. DCIT (2002) 80 ITD 548 (Del)*
- *Asst CIT vs. Raghu Nandan Lal (2002) 82 ITD 436)(Chd)*

However, a contrary view to the above is also expressed in the following decisions :

- *Ramjilal Jagannath & Ors. vs. Asst. CIT (2000) 241 ITR 758 (MP)*
- *Dy. CIT vs. Goldtax Furnishing Industries (2001) 73 TTJ (Del.) 223*

Comments

In many cases, all the assets of the assessee are seized during the course of search and the assessee is not having sufficient money to make payment of advance tax. In such a situation, the assessee could resort to getting the seized assets adjusted against advance tax liability and could avoid the burden of interest u/ss. 234A, 234B and 234C. Considering the practical difficulty for payment of advance tax when the assets are seized by the department, the above decisions favouring the assessee were of a great help in reducing the interest burden.

Further, the courts have also taken a view that the adjustment against the advance tax liability can be made only after the determination of the tax liability u/s. 132(5) and first appropriating the seized assets against the liability arising as a result of search. Accordingly the above amendment could have been avoided since the interest of revenue as regards the tax liability pursuant to search was any way protected, having first charge on the seized assets and adjustment against advance tax was permissible only in respect of the remainder of the seized assets.

Explanation 2 is proposed to be inserted with effect from 1st June, 2013. However, it is also stated that the Explanation is sought to be inserted "For the removal of doubts". Accordingly it seems that the said Explanation will be applicable to all the applications which are pending as on 1st June, 2013.

The amendment would result in additional liability towards interest under sections 234A, 234B and 234C since now the seized assets would not be allowed to be appropriated against the Advance Tax Liability of the assessee.

Amendment to section 139 of the Act

Existing provision

Sub-section (9) of section 139 of the Income-tax Act lays down provisions about a "defective return". The Explanation to this sub-section provides for conditions which if not fulfilled, may render the return of income as defective.

Amendment

Clause 32 of the Finance Bill seeks to amend the said Explanation by adding one more clause in the said Explanation so as to provide that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A, has been paid on or before the date of furnishing of the return.

Reason for amendment

Section 140A provides that where any tax is payable on the basis of any return, after taking into account the prepaid taxes, the assessee shall be liable to pay such tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return. However, there are no express provisions, which can have some consequence in case of non-compliance with provisions of section 140A of the Act. The Delhi High Court, however, held in the case of *Sudhir Sareen vs. CIT (2000) 239 ITR 440 (Del.)* that the Return of Income is to be treated as defective in a case where the proof of payment of Self-assessment tax is not accompanied with the Return of Income.

As per the Explanatory Memorandum, it has been noticed that a large number of assessees are filing their returns of income without payment of self-assessment tax. The amendment is made with a view to not to permit such practice of filing returns without payment of self-assessment tax.

Effective date

The amendment is sought to be made with effect from 1st June, 2013 and will accordingly apply to all the returns filed on or after 1st June, 2013.

Comments

In many cases, it may so happen that the assessee is not having sufficient money to make the payment of taxes and interest before filing the Return of Income. A classic example may be a case where the capital gains are assessed to tax on receipt of just small portion of consideration on transfer of immovable property due to operation of section 2(47)(v). This amendment will create additional burden on the assessee to make payment of taxes and interest before filing the Return of Income. If that is not done, the Return of Income is likely to be treated as defective. Fortunately though, the assessee is having an option to rectify the said defect within 15 days of receipt of the notice for defective return due to inbuilt provisions of section 139(9) of the Act.

Amendment to section 142 of the Act

Existing provision

Section 142 of the Act lays down provisions in connection with inquiries before assessment. Sub-section (2A) of the section *inter alia* provides that if at any stage of the proceedings before him, the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue, is of the opinion that it is necessary to do so, he may with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by a Chartered Accountant and furnish a report of such audit.

Amendment

Clause 33 of the Finance Bill seeks to amend clause (2A) of section 142 so as to expand the scope of the said sub-section (2A). As per the proposed sub-section (2A), if at any stage of the proceeding before him, the Assessing Officer, having regard to :

(a) the nature and complexity of the accounts;

(b) volume of the accounts;

(c) doubts about the correctness of the accounts;

(d) multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and

(e) the interest of the revenue,

is of the opinion that it is necessary to do so, he may with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get his accounts audited by a Chartered Accountant and to furnish a report of such audit.

Reason for Amendment

As per the Explanatory Memorandum, the expression "nature and complexity of the accounts" has been interpreted in a very restrictive manner by various courts. The amendment is sought to be made with a view to expand the scope of clause (2A) of section 142.

Effective date

The amendment is sought to be made with effect from 1st June, 2013.

Background

In the case of *Bata India Ltd. vs. CIT (2002) 257 ITR 622 (Cal.)*, it is held that appointment of special auditor is not justified merely on the ground that some vital information was not ascertainable from the accounts.

In *Rajesh Kumar & Others vs. DCIT (2006) 287 ITR 91 (SC)*, the Apex Court observed that the expression "complexity" would mean the state or quality of being intricate or complex or that it is difficult to understand. Difficulty in understanding would however not lead to the conclusion that the accounts are complex in nature.

Further, recently the Bombay High Court in the case of *Nickunj Eximp Enterprises Pvt. Ltd. vs. Asst CIT (2012) 346 ITR 6 (Bom.)*, has observed that the primary requirement of section 142(2A) is a recording of an opinion by the assessing officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue that it is necessary to get the accounts audited in terms of the said section. The assessing officer must do so before he orders special audit. The High Court further observed that recourse cannot be taken to the provisions of section 142(2A) lightly and without fulfilment of the statutory requirements.

Comments

The amendment is sought to be made to overcome some stray decisions of Courts where on facts of the relevant cases, the provisions of section 142(2A) were held to be not applicable. With this amendment, the scope of the section 142(2A) will be widened considerably and it will be difficult for an assessee to avoid the special audit on reasoning that the accounts are not complex in nature. The amendment will take within its ambit the situations where the accounts are voluminous or where the assessing officer has doubts about the correctness of the accounts or where there is multiplicity of transactions or specialised nature of business activities.

As such, the scope is widened to a great extent. The worst part in the amendment is the reference to "doubt about the correctness of the accounts". In most of the cases, the assessing officer may doubt the correctness of the accounts and in such cases it will be possible for him to order special audit. This will give lot of discretionary powers to the assessing officers and may result in unnecessary hardship to many genuine assessees. Even though, the section has the inbuilt provision of approval of higher authorities, in practical life it is very common for the higher authorities to grant approvals without really going to the merits of the case. Here it may not be out of content to note that usually the special audit is ordered when the assessment about to get time barred.

Whether amendment will be applicable to pending assessments ?

Since section 142 is primarily a procedural provision, the amendment will be also applicable in respect of all the assessments which are pending as on 1st June, 2013. Accordingly the amended provisions can get triggered even for assessments for A.Y. 2011-12 or 2012-13 which may be pending as on 1st June, 2013. Though the amendment is not retrospective, it will certainly be retro operative in that sense.

Amendments to section 153

Existing provisions

Section 153 of the Act provides for time limit for completion of assessments and reassessments. Explanation 1 to the section provides that certain periods specified therein shall be excluded while computing the period of limitation for the purposes of the said section.

Clause 37 of the Finance Bill seeks to amend clauses (iii), (viii) and (ix) of the said Explanation 1. We shall take each of these three clauses which are to be amended separately in the following paragraphs.

Amendments

(a) Clause (iii) of Explanation 1

Under the existing clause (iii) of Explanation 1, it is provided that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with the last date on which the assessee is required to furnish a report of such audit, is to be excluded in computing the period of limitation for the purposes of assessment or reassessment.

Clause – 37(a) of the Finance Bill seeks to substitute clause (iii) of Explanation 1 to section 153 so as to provide that the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending with

a) the last date on which the assessee is required to furnish a report of such audit under that sub-section; or

b) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner, shall be excluded in computing the period of limitation for the purposes of section 153.

Reason for amendment

The amendment is sought to be made in order to provide for exclusion of time in case the direction of the Assessing Officer is set aside by the court.

Effective date

This amendment will be applicable with effect from 1st June, 2013.

(b) Clause (viii) of Explanation 1

The existing clause (viii) provides that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

Clause 37 (b) of the Finance Bill seeks to substitute the said clause (viii) so as to provide that the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Commissioner or a period of one year, whichever is less, shall be excluded in computing the period of limitation for the purposes of section 153.

Reason for amendment

At times, it may so happen that more than one reference is made by the competent authority for exchange of information. Similarly it may also happen that the information sought under section 90 or 90A is received in part from the other contracting states. In such situations, there might be issues about the starting period and ending period of the exclusions. The amendment in clause (viii) of Explanation 1 to section 153 is in order to provide greater clarity in respect of such issues.

Effective date

This amendment will be applicable with effect from 1st June, 2013.

(c) Clause (ix) of Explanation 1

The existing clause (ix) of Explanation 1 to section 153 provides for exclusion of time period commencing from the date on which a reference for declaration of an arrangement to be impermissible avoidance arrangement is received by the Commissioner under sub-section (1) of section 144BA and ending on date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the Assessing Officer.

Clause 37 (c) of the Finance Bill seeks to omit this clause (ix) of Explanation 1 to section 153 for the reason that the provisions of section 144BA are redrafted and also that the provisions of GAAR are postponed to 1st April, 2016.

Clause 37 (d) of the Finance Bill further seeks to insert another clause (ix) in the Explanation 1 to section 153. The new clause (ix) seeks to provide that the period starting from receipt of reference by the Commissioner under sub-section (1) of newly inserted 144BA and ending on date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of newly inserted section 144BA is received by the Assessing Officer shall be excluded for the purpose of computation of time limit u/s. 153.

Effective date

This amendment will be applicable with effect from 1st April, 2016 in line with all the other provisions of GAAR which will be implemented with effect from 1st April, 2016.

Amendments to section 153B

Existing provisions

Section 153B of the Act provides for time limit for completion of assessment under section 153A i.e. the assessments in case of search or requisition. Explanation to the section provides that certain periods specified therein shall be excluded while computing the period of limitation for the purposes of the said section.

Amendments

Clause 38 of the Finance Bill seeks to amend some of the clauses of the Explanation. These amendments are exactly on similar lines as the amendments made by the Clause 37 of the Finance Bill in relation to the time limits for the assessment or reassessment.

As such, what Clause 37 seeks to provide for the normal assessment or reassessment (Section 153) is also sought to be provided by Clause 38 for the assessment in case of search or requisition (Section 153B). The reasons for the amendments and the effective dates are also similar to the amendments sought to be made in section 153 of the Act.

Mandar Vaidya, *Advocate*

Amendments related to procedures – Part-II

Finance Bill, 2013. Sections 167C, 179, 295 of the Income Tax Act and sections 14A & 46 of the Wealth Tax Act.

The Finance Bill, 2013 carries a few amendments which are intended to get over a few judicial decisions. The amendments to sections 167C and 179 are two such amendments. Clause 40 of the Bill provides as under:

In section 167C of the Income-tax Act, the following Explanation shall be inserted with effect from the 1st day of June, 2013, namely:––

'Explanation.–– For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.'.

Similarly clause 41 of the Bill provides as under:

" In section 179 of the Income-tax Act, after sub-section (2), the following Explanation shall be inserted with effect from the 1st day of June, 2013, namely:––

'Explanation.–– For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.."

Section 179 of the Income-tax Act provides that where the tax due from a private company cannot be recovered from such company, then the director (who was the director of such company during the previous year to which non-recovery relates) shall be jointly and severally liable for payment of such tax unless he proves that the non-recovery of tax cannot be attributed to any gross neglect, misfeasance or breach of duty on his part. This provision is intended to recover outstanding demand under the Act of a private company from the directors of such company in certain cases. Similarly, section 167C intends to recover the tax dues from partners where the demand is against a partnership firm.

The Hon'ble Delhi High Court, in the case of 'Sanjay Ghai W.P. (C)5175/2012 & 2303/2012' dated 11th October 2012 and the Hon'ble Gujarat High Court in the case of 'Maganbhai Hansraj Patel Special Civil Application nos.3910 & 4227 of 2012' dated 25th September 2012 had held that the term 'tax' used in sections 179 (the same would apply to section 167C) would not include 'interest' and 'penalty' since the terms 'tax', 'penalty' , 'interest' are have distinct meanings, as stipulated by section

2(43) of the Act. In order to get over these decisions, the above amendments have been brought in.

Although the 'Memorandum/notes on clauses' says that the amendment is made to 'clarify' that tax includes penalty and interest, still the amendments are made effective 1st June, 2013. To the humble understanding of the author, it would mean that these amendments would apply to demands created u/ss. 167C &179 after 1st June 2013. This is for the reason that since the amendments create fresh liabilities, the same cannot be given retrospective effect unless expressly stated or could be inferred, by implication.

Clause 49 of the Bill seeks to amend section 295 (2) of the Income-tax Act by inserting a new clause, being clause (ee). On insertion the existing clause (ee) shall be renumbered as clause (e). The new clause (ee), in sub-section (2), with effect from the 1st day of April,2016 shall be as follows:

"(ee) the matters specified in Chapter X-A;";

Similarly, after clause (eec) of section 295(2), the following clause shall be inserted, namely:—

"(eed) remuneration of Chairperson and members of the Approving Panel under sub-section (18) and procedure and manner for constitution of, functioning and disposal of references by, the Approving Panel under sub-section (21) of section 144BA".

The above amendments are consequential in nature and have been brought in to implement the GAAR provisions which are to take effect wef April 2016.

Amendments to Wealth Tax Act

The Finance Bill 2013 proposes to insert two new sections being section 14A & 14B. These amendments have been brought in to facilitate annexure-less, electronic filing of the return. These amendments have been brought in by clauses 52 & 53 of the Bill. Consequential amendments are made to section 46, to provide for rule-making powers to the Board (clause 53).

Clause 52 provides as under:

After section 14 of the Wealth tax Act, the following sections shall be inserted with effect from 1st day of June 2013:

Section 14A

The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents, which are otherwise under any other provisions of this Act, except section14B, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

Section 14B

The Board may make rules providing for-

a) The class or classes of persons who shall be required to furnish the return in electronic form,

b) The form & the manner in which the return in electronic form may be furnished,

c) The documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents, which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer.

d) The computer resource or the electronic record to which the return in electronic form may be transmitted.

Section 46.

In section 46 of the Wealth tax Act, in sub-section (2), after clause (b), the following clauses shall be inserted wef. 1st June 2013, namely:

(ba) The documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents, which may not be furnished along with the return but shall be produced before the Assessing Officer on demand under section 14A.

(bb) The class or classes of persons who shall be required to furnish the return in electronic form; the form and the manner in which the return in electronic form may be furnished; documents, statements, receipts, certificates, audit reports, reports of registered valuer or any other documents, which may not be furnished along with the return in electronic form and the computer resource or the electronic record to which such return may be transmitted under section 14B.

The memorandum explaining the provisions states as under:

"Section 14 of the Wealth-tax Act provides for furnishing of return of net wealth as on the valuation date in the prescribed form and verified in the prescribed manner setting forth particulars of the net wealth and such other particulars as may be prescribed. Currently, certain documents, reports are required to be furnished along with the return of net wealth under the provisions of Wealth-tax Act read with the provisions of Wealth-tax Rules. Sections 139C and 139D of the Income-tax Act contain provisions for facilitating filing of annexure-less return of income in electronic form by certain class of income-tax assessees. In order to facilitate electronic filing of annexure-less return of net wealth, it is proposed to insert new sections 14A and 14B in the Wealth-tax Act on similar lines.

Consequently, it is also proposed to amend provisions of section 46 of the Wealth-tax Act which provides for rule making powers of the Board.

These amendments will take effect from 1st June, 2013."

"I have not failed. I've just found 10,000 ways that won't work."

— *Thomas Alva Edison*

"It was the experience of mystery — even if mixed with fear — that engendered religion."

— *Albert Einstein*

CA Paras K. Savla

Exemptions and Deductions – Part-I

I) Section 10(10D) – Taxability of receipts under Life insurance policy

A. Life Insurance on live's of persons with disability or persons suffering from specified diseases

Current Provision

Finance Act, 2012 has inserted sub-clause (d) to clause (10D) of section 10. It provided that any receipts under life insurance proceeds in respect of policy issued on or after 1-4-2012 would be exempt if premium payable for any year on such policy during the term does not exceed 10% of the actual capital sum assured. 'Actual Capital Sum Assured' means minimum amount assured under the policy on happening of the event during term of policy but excluding value of any premium agreed to be returned or any benefit by way of bonus or otherwise over and above the sum actually assured.

Proposed Amendment

It is proposed that life insurance policies taken on the life of the person with disability / severe disability as referred to in section 80U or who is suffering from disease / ailment as specified in the rules made under section 80DDB limit of 10% of the actual capital sum has been raised to 15% of the actual capital sum.

Applicability

Amendment applies from 1-4-2014.

Implication

With the proposed amendment, in order to enjoy benefits under Income-tax Act, minimum period of the life insurance policy has been reduced to 6.67 years from 10 years for the persons with disability or persons suffering from specified diseases.

B) Keyman Insurance policy

Current provision: Sub-clause (d) to clause (10D) of section 10 provided that any sum received under Keyman life insurance policy would not be entitled for the exemption under section 10(10D). There was anomaly whether receipt of life insurance policy would be exempt or chargeable to tax in case such Keyman life insurance policy is assigned to the Keyman. The Delhi High Court in case of Rajan Nanda[1] has held that once there is assignment of Keyman life insurance policy by a company / employer in favour of the individual, the character of the insurance policy changes and it gets converted

1 CIT vs. Rajan Nanda [2012] 18 taxmann.com 98 (Delhi)

into an ordinary policy and such person in whose favour insurance policy is assigned at the time of maturity can claim exemption u/s 10(10D).

Proposed amendment
It is proposed to amend the Explanation providing that Keyman insurance policy on assignment to Keyman, with or without consideration, would continue to remain keyman insurance and accordingly, any receipt from it would not be exempt.

Applicability
Amendment applies from 1-4-2014.

Implication
Any receipt on Keyman life insurance policy post its assignment (with or without consideration) to the employee / Keyman would be now chargeable to tax. Though this amendment is prospective, it may have retrospective effect in the sense that it applies to existing policies too. Amended provisions would apply in respect of any Keyman insurance policy whether taken before or after 1-4-2013. It would even apply to those life insurance policies which has assigned before 1-4-2013 and whose maturity falls on or after 1-4-2013. Issue would arise as under which head sums would be taxable? Whether such maturity proceeds would be taxable as salaries or business income or capital gain or income from other sources? Whether whole maturity proceeds would be taxable or maturity proceeds less consideration on transfer, if any, would be taxable. Whether any benefit in respect of premium paid by assignor would be available or not? Can assignee claim indexation benefit on consideration paid by him or paid by the assignor? What would be the implications if assignee is not the employee? Specific provision to rest above issues needs to be introduced. Otherwise change in tax treatment would invite undrawn litigation.

II) Securitisation Trust

A) Section 10(23DA) – Income of Securitisation Trust

Current provision
New provision.

Proposed Amendment
It is proposed to provide that any income of a securitization trust referred under section 115TC, arising out of the activity of securitisation is exempt from tax.

Applicability
Amendment applies from 1-4-2014.

Implications
Finance Bill has introduced new Chapter XII-EA – Special Provisions Relating to tax on distributed income by securitisation trusts. It provides that any income earned by the Securitisation Trust as regulated under SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 or under any regulations of Securities Contract (Regulation) Act, 1956 or by Reserve Bank of India would be exempt from tax. However income distributed by these trusts would be subject to additional income-tax at the specified rate.

B) Section 10(35A) Income received by investor from Securitised Trust

Current provision
New provision.

Proposed Amendment
It is proposed to provide that any income received by an investor (who is liable to pay income-tax) by way of distribution by a securitisation trust on which distribution tax has been paid under section 115TA, is exempt from tax.

Applicability
Amendment applies from 1-4-2014.

Implications
As per new Chapter XII-EA, distribution of income by a securitisation trust is subject to special rate of tax under section 115TA on similar lines as dividend distribution tax. In order to avoid double taxation, it is provided that no tax would be paid by recipient when such income is subject to distribution tax. But such exemption would create various issues in the hands of the recipient. Investor may not be allowed deduction in respect of any expenditure incurred for making contribution to the securitisation trust. In case loss is incurred by such investor, such losses may not be deductible. Probably, banks and financial institutions would be hit by new exemption provisions. However moot question may be raised whether such distribution of income can be subject to charge under Income-tax Act, 1961?

III) Section 10(23ED) – Income of Investor Protection Fund of depositories

Current Provisions
New provision.

Proposed Amendment
It is proposed to introduce clause (23ED) to section 10, providing that any contribution received by investor protection fund, set up as per the regulation notified by Central Government, from a depository would not be subject to tax. It is also provided that when any balance in fund, which is not subject to income-tax, is shared amongst the depository, it would be included in the income of the depository.

Implication
No tax is required to be the paid by the notified Investors Protection Funds in respect of the contribution received from depository. However sharing out of the credit balance (on which no tax has been paid) to the depository would be deemed to be income of the previous year, in which amount was shared.

IV) Section 10(23FB) – Venture Capital Entities

Current Provisions
Income of a venture capital company or a venture capital fund setup to raise funds for investment in a venture capital undertaking is exempt. Explanation 1 defines Venture Capital Company, Venture Capital Fund and Venture Capital Undertaking.

Proposed Amendment
The amendment replaces definition of Venture Capital Company, Venture Capital Fund, and Venture Capital Undertaking.

1) 'Venture Capital Company' means:
   - A company which is granted certificate of registration as a venture capital fund before 21-5-2012 under SEBI (Venture Capital Fund Regulations) 1996 or
   - A company which is granted certificate of registration as a venture capital fund being a sub category/alternative investment fund under the SEBI (Alternate Investment Funds Regulations) 2012 and fulfils following conditions:
     - o it is not listed on recognised stock exchange,
     - o it has invested not less than 2/3rd of its investible funds in unlisted equity shares or equity linked instruments or venture capital undertaking,
     - o there is no investment in any venture capital undertaking in which its director / substantial investor has

substantial interest of over 10%, individually and collectively 15%.

2) 'Venture capital fund' means Fund registered under the provisions of Registration Act 1908 as a trust and

- Fund which has been granted certificate of registration before 21-5-2012 as venture capital fund under Venture Capital Funds Regulation or
- Fund granted a certificate of registration as Venture Capital Fund a sub category/alternative investment fund under the SEBI (Alternate Investment Funds Regulations) 2012 and fulfils following conditions:
  - o it has invested not less than 2/3rd of its investible funds in unlisted equity shares or equity linked instruments or venture capital undertaking
  - o there is no investment in any venture capital undertaking in which its trustee / settlor has substantial interest of over 10%, individually and collectively 15%.

3) 'Venture Capital Undertaking' means a venture capital undertaking as defined

- in Regulation 2(n) of Venture Capital Fund Regulations or
- in Regulation 2(1)(aa) of Alternative Investment Funds Regulation

Implication

During 2012 SEBI (Venture Capital Fund Regulations) 1996 has been replaced by SEBI (Alternate Investment Funds Regulations) 2012. Venture Capital Company, Venture Capital Fund and Venture Capital Undertaking would now be registered under new regulations. At the same time these entities registered under erstwhile guidelines would co-exist. Hence in order to recognise entities in both the regulations, present amendment has been made. It only alters the definition of the 3 terms. However, amendment will not affect the applicability of various rulings/circulars on the subject.

V) Section 10(34A) – Receipt of buy-back of shares

Current provision

Receipt on buy back of shares is subject to tax under the head Profits and Gains of Business or Profession or Capital Gains.

Proposed Amendment

It is proposed to provide that any income arising to a shareholder, on account of buyback of shares of an unlisted company on which tax is paid under section 115QA, would be exempt.

Applicability

Amendment applies from 1-4-2014.

Implication

As per new Chapter XII-DA – Special Provision Relating to Tax on Distributed Income of Domestic Company for Buy-back of Shares, income arising out of buy back of shares of unlisted company is subject to special rate of tax under section 115QA on similar lines as dividend distribution tax. In order to avoid double taxation, it is provided that no tax would be paid by recipient when such income is subject to distribution tax. However, proposed provisions try to nullify treaty benefits on account of capital gains. Authority of Advance Ruling in Armstrong World Industries Mauritius Multiconsult Ltd., in re[2], considering the provision of India-Mauritius DTAA, has held

2 [2012] 24 taxmann.com 213 (AAR - New Delhi)

that capital gain from buy-back of shares is not taxable in India.

Authority of Advance Ruling in RST in re[3], held that if a share holder receives any consideration from any company for purchase of its own shares, section 46A, special provisions would be applicable and it would prevail over the general provision of section 45 of the Act. It also held that provisions of section 47 overrides section 45 and not 46A. however no consequential amendment has been proposed under section 46A.

Income on buy back would be exempt only if buy back is subject to compliance of Section 77A of the Companies Act, 1956. In case provision of section 77A are not complied, distribution on buyback would not be subject to tax under section 115QA and consequently not exempt under new provisions. However in case a scenario issue may arise whether such proceed would be treated as dividend and provisions of section 115-O triggered? If so, whether, company would be liable to pay DDT @ 16.995% instead of 22.6600% and income in the hands of share holders would be exempt under section 10(34)?

New exemption would also create various other issues. Investors would not be allowed deduction of any expenditure incurred or cost of improvement with respect to shares. In case loss is incurred by the investor, loss may not be allowed for set off or carry forward. Issue may also arise whether credit of the tax so paid would be allowed to the non-resident in his country as per the provisions of DTAA? Further moot question may be raised whether such distribution of income can be subject to charge under Income-tax Act, 1961?

VI) Section 10(49) – Income of National Financial Holding Company Limited

Current provision
New Provision

Proposed provision
Clause (49) has been inserted to provide exemption in respect of any income earned by National Financial Holding Company Limited (NFHCL).

Applicability
Amendment applies from 1-4-2014.

Implication
Unit Trust of India has been succeeded by Specified Undertaking of Unit Trust of India (SUUTI). Now new company NFHCL was incorporated to succeed SUUTI. Hence any income earned by NFHCL is proposed to be exempt.

3 [2012] 19 taxmann.com 215 (AAR – New Delhi)

"We all agree that your theory is crazy, but is it crazy enough?"

— *Niels Bohr*

"Wit is educated insolence."

— *Aristotle*

CA Shailesh Bandi

Exemptions and Deductions – Part-II

The Hon'ble Finance Minister presented the last Budget of the UPA-2 Governance in back drop of the ailing economy and to put India on the Recovery path of the economic growth by taking hard decision to Improve the Strength.

This article deal with the Amendments made in the Finance Bill 2013 thru which the Hon'ble Finance minister has provided with certain reliefs and taken sum welfare measures under the Income Tax Act for providing balanced growth.

Let us understand the Changes provided as relief and welfare measures.

1. Section 80C – [Clauses 10] – Raising the limit of eligible premium for life Insurance policies of persons with disability or disease

It is proposed to amend sub section (3A) of section 80C so as to provide that the deduction under the said section on account of premium paid in respect of a policy issued on or after 01.04.2013 for insurance on the life of any person with disability or a person with severe disability as referred to in section 80U, or suffering from disease or ailment as specified in the rules made under section 80DDB,shall be allowed to the extent of premium paid where the premium does not exceed 15% of the 'actual capital sum assured' as against the existing limits of 10%. The aim is to provide a benefit to persons suffering from certain disabilities since the premium payable by them is generally higher than that applicable to others.

This amendment shall apply from assessment year 2014-15 and onwards.

2. Section 80CCG – [Clause 11] – Expanding the scope of deduction and its eligibility under section 80CCG – the Rajiv Gandhi Equity Savings Scheme

With a view to further liberalize the incentive available for investment in capital markets by the new retail investors, it is proposed to amend the provisions of section 80CCG so as to extend the benefit of the deduction even to investment in listed units of an Equity Oriented Fund, as defined in section 10(38), in addition to the Equity shares acquired in accordance with the Scheme notified by the Central Government – the RGESS.

It is further proposed to provide that the deduction under this section shall be allowed for investments made during three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units were first acquired. Earlier the deduction was available only in the first year of investment.

The deduction is also now available to a new retail investor whose gross total income for the relevant assessment year does not exceed ₹ 12,00,000/-. The earlier limit on GTI was ₹ 10,00,000/-.

The amount of deduction shall continue to remain the same i.e the deduction shall be allowed only to the extent of 50% of the amount invested in such equity shares or Equity Oriented Fund and the said deduction does not exceed ₹ 25000/-.

The government has thus made a further attempt to promote the RGESS and permit investment through equity oriented Mutual Funds rather than just equity.

This amendment shall apply from assessment year 2014-15 and onwards.

3. Section 80D – [Clause 12] Deduction for contribution to Health Schemes similar to CGHS

In order to bring schemes of the Central and State Governments at par with the CGHS, it is proposed to amend section 80D, so as to allow the benefit of deduction under this section within the said limit, in respect of any payment or contribution made by the assessee to such other health scheme as may be notified by the Central Government. However the limit of deduction has remained unchanged to ₹ 15,000/-

This amendment shall apply from assessment year 2014-15 and onwards.

4. Section 80EE – [Clause 13] Deduction in respect of interest on loan sanctioned during financial year 2013-14 for acquiring residential house property

Keeping in view the need to encourage affordable housing, an additional benefit for first-home buyers is proposed to be provided by inserting a new section 80EE in the Income-tax Act relating to deduction in respect of interest on loan taken for residential house property.

The benefit of this deduction is being extended only to individuals.

The proposed new section 80EE seeks to provide that in computing the total income of an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

It is further provided that the deduction under the proposed section shall not exceed ₹ 1,00,000/- and shall be allowed in computing the total income of the individual for the assessment year beginning on 1st April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than 1,00,000, the balance amount shall be allowed in the assessment year beginning on 1st April, 2015.

It is also provided that the deduction shall be subject to the fulfillment of the following conditions:-

(i) the loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014;

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed Rs. 25,00,000/-;

(iii) the value of the residential house property does not exceed Rs. 40,00,000/-;

(iv) the assessee does not own any residential house property on the date of sanction of the loan.

It is also provided that where a deduction under this section is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income-tax Act for the same or any other assessment year.

The term "financial institution" has been defined to include banks and housing finance companies.

It has been provided that the deduction under this section is in addition to the deduction of ₹ 1,50,000/- in respect of the loans for self Occupied property u/s 24 of the I. T. Act. . However, it appears that there is an anamoly of providing deduction in section 24 as well as in the proposed new section, as the proposed section is subject to certain conditions of which Two Conditions are that 1) where a deduction under this section is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income-tax Act and for the same or any other assessment year and 2) the assessee does not own any residential house property on the date of sanction of the loan, restricting the Value of the new House to ₹ 40,00,000/-.

In the First Condition mentioned above, it is stipulated that Once Claim of Interest is made in this section then the Deduction of the Same is not available under any other section, therefore in such a case Deduction under section 24 will have to test the waters of the Assessing Officers as it provides for a situation where part of the Interest is claimed u/s 24 to the extent of ₹ 1,50,000 and Balance amount of Interest is Claimed under this proposed new section, to the extent of ₹ 1,00,000/-

In the second Condition also it restricts the deduction available only to the buyers of the House for the First time, where the value of the house is Restricted to ₹ 40,00,000/-. Looking at the prices prevailing in any of the Grade 1 and 2 cities, the limit set is too low, and it is really Doubtful as any Assessee will be able to take the Benefit of this proposed new provision.

The section puts a cap on the value of the house at ₹ 40,00,000 – though what will be construed as 'value' is not defined under the section and the word 'cost' has not been used. This will therefore be subject to its various interpretations. The section also puts a further cap on the amount borrowed at ₹ 25,00,000.

This amendment shall apply from assessment year 2014-15 and onwards.

5. Section 80 G – [Clause 14] – 100% Deduction for donation to National Children's Fund

In the case of donations made to the National Children's Fund, deduction is allowed at the rate of 50% of the amount so donated. Donations to Funds which are of national importance have been generally provided a deduction of 100% of the amount donated.

It is now proposed to allow 100% deduction in respect of any sum paid to the National Children's Fund in computing the total income of an assessee as the fund is of national importance,.

This amendment shall apply from assessment year 2014-15 and onwards.

6. Section 80GGB & Section 80GGC – [Clauses 15 & 16] – No deduction for Contribution to Political Party, Local Authority and Artificial Juridical Person in cash

Under the existing provisions of section 80GGB and 80GGC, any sum contributed, by an Indian company to any political party or an electoral trust and other than local authority and artificial juridical person, respectively, in the previous year, is allowed as deduction in computing the total income of such Indian company.

With a view to discourage cash payments by the contributors, it is proposed to amend the provisions of aforesaid sections, so as to provide that no deduction shall be allowed under section 80GGB and 80GGC in respect of any sum contributed by way of Cash.

This amendment shall apply from assessment year 2014-15 and onwards.

7. Section 80IA – [Clause 17] – Extension of the sunset date under section 80IA for the power sector

Under the existing provisions contained in the clause (iv) of subsection (4) of section 80IA, a deduction of profits and gains is allowed to an undertaking upon fulfilling Certain Conditions.

With a view to provide further time to the undertakings to commence setting of generation of or generation and distribution of Power or to start transmission or distribution by laying a network of new transmission or distribution lines or undertake substantial renovation and modernization of the existing network of transmission or distribution lines , to avail the tax incentive, it is proposed to amend the above provisions so as to extend the terminal date by a further period of one year i.e. up to 31st March, 2014.

This amendment shall apply from assessment year 2014-15 and onwards.

8. Section 80 JJA – [Clause 18] – Deduction for additional wages in certain cases

The existing provisions contained in section 80JJAA of the Income-tax Act provides for a deduction of an amount equal to 30 % of additional wages paid to the new regular workmen employed in any previous year by an Indian company in its industrial undertaking engaged in manufacture or production of article or thing.

The tax incentive under section 80JJAA was intended for employment of blue collared employees in the manufacturing sector whereas in practice, it is being claimed for other employees in other sectors also. To plug this Loop hole, it is proposed to amend the provisions of section 80JJAA so as to provide that the deduction shall be available to an Indian Company deriving profits from manufacture of goods in its 'factory'.

The deduction shall be of an amount equal to 30% of additional wages paid to the new regular workmen employed by the assessee in such factory, in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

It is also proposed to provide that the deduction under this section shall not be available if the factory:

i) is hived off; or

ii) transferred from another existing entity; or

iii) acquired by the assessee company as a result of amalgamation with another company.

This amendment shall apply from assessment year 2014-15 and onwards.

9. Section 87A [Clauses 19 & 20] – Rebate of ₹ 2,000/- for individuals having total income up to ₹ 5,00,000/-

With a view to provide tax relief to the individual tax payers who are in lower income bracket, it is proposed to provide rebate from the tax payable by an assessee, being an individual resident in India, whose total income does not exceed ₹ 5,00,000/-.

The rebate shall be equal to the amount of income-tax payable on the total income for any assessment year or an amount of ₹ 2000/- , whichever is less.

Thus while relief from tax has been given, the requirement for such individuals to file a tax return continues to exist since the taxable income is more than the minimum amount exempted from tax.

Effectively, an individual earning an income between ₹ 200,000 and ₹ 220,000 will have to file a tax return, but the tax payable on such income will be Nil due to the rebate of ₹ 2,000 u/s 87A.

This provision however applies only to an individual resident in India and not to an HUF.

This amendment shall apply from assessment year 2014-15 and onwards.

CA Ashok L. Sharma

Investment Allowance – Section 32AC

Objective of the Provisions

Finance Minister in his speech has said that to attract new investment and quicken the implementation of the projects, investment allowance provision has been introduced for new high value investments. He has also stated that no large economy can become truly developed ,without a roboust manufacturing sector.

Provisions Analysed

A new section 32AC has been introduced to provide deduction to the companies engaged in the business of manufacture or production of any article or thing and invests a sum more than ₹ 100 crore in the new asset. New asset has been defined to mean any new plant and machinery other than ship or aircraft and excludes few items of plant or machinery. The deduction is allowable if company acquires and installs new asset after the 31-3-2013 but before 1-4-2015 and the aggregate amount of actual cost of such plant and machinery exceeds ₹ 100 core.

The deduction will be allowed as under:

a) For financial year 2013-14 of a sum equal to 15% of the actual cost of assets acquired and installed after 31-3-2013 but before 1st April, 2014 if the aggregate investment exceeds ₹ 100/- core.

b) For financial year 2014-15 of a sum equal to 15% of the actual cost of assets acquired and installed after 31-3-2013 but before 1st April 2015 as reduced by deduction allowed, if any, as per (a) above.

In case ₹ 100 crore criteria is not met in financial year 2013-14 then no deduction will be allowed in that year. If actual cost of both the year exceeds ₹ 100 core during financial year 2014-15 then the deduction in respect of entire cost including cost incurred in financial year 2013-14 will be allowed in financial year 2014-15.

The above deduction is in addition to the depreciation allowance u/s. 32. In computing book profit u/s. 115JB, no deduction is allowable for such allowance.

The phrase "new asset" has been defined as discussed above. It does not include following –

(i) any plant or machinery which before its installation by the assessee was used either within or outside India by any other person;

(ii) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;

(iii) any office appliances including computers or computer software;

(iv) any vehicle;

(v) ship or aircraft or

(vi) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profit and gains of business or profession" of any previous year.

To restrict the transfer plant or machinery, it is provided that if any new asset acquired and installed, is sold or otherwise transferred within a period of five years from the date of its installation, the amount of deduction allowed, in respect of such new asset shall be deemed to be the income of the assessee chargeable under the head profits and gains of business or profession. The income will be of the previous year in which such asset is sold or otherwise transferred; this will be in addition to the taxability of gains arising on account of transfer of such new asset.

In case new asset is sold or otherwise transferred in connection with the amalgamation or demerger within a period of 5 years from the date of installation, the provision for withdrawal of the allowance will not apply. However, the amalgamated company or resulting company would have to continue to hold the new asset for the balance period of 5 years.

Comparison between old Provisions of Investment Allowance and Proposed Provisions

Sr. No.	Section 32A	Section 32AC
1	An assessee was granted deduction of 25% / 20% on the actual cost of plant and machinery, ships and aircraft.	Investment allowance is allowable only on plant and machinery and it excludes ships and aircrafts.
2	There was no minimum threshold for the actual cost for grant of investment allowance.	Minimum investment of ₹ 100 crore in plant and machinery is required.
3	Deduction was to be allowed in respect of the previous year in which ship or aircraft was acquired or the machinery or plant was installed or if the ship, aircraft, machinery or plant is first put to use in the succeeding previous year.	To claim deduction u/s. 32AC, acquisition and installation must be in the specified financial years.
4	New machinery or plant included machinery or plant which before its installation by the assessee was used outside India by any other person. This was again subject to certain conditions.	Deduction is not allowed on plant or machinery used outside India.
5	Deduction was allowable subject to creation of reserve and use of such reserve for acquisition of, new plant or machinery before 10 years.	Requirement of creation of reserve and its utilisation is not there under the proposed section.
6	The deduction was withdrawn if the plant or machinery was sold or otherwise transferred to any person before the period of 8 years or the assessee did not utilise the investment allowance reserve for purchase of plant and machinery or if out of investment allowance reserve any amount is distributed as dividend.	The deduction granted becomes taxable if the new asset is transferred within 5 years from the date of installation.
7	Under the provisions of investment allowance there was a condition that plant or machinery be wholly used for the purpose of business.	No such condition of user is there under the section.
8	Unabsorbed investment allowance was to be c/f under separate provisions.	Unabsorbed Investment Allowance is part of business Loss.

CA Rajkamal Shah

Budget changes amendments in Service Tax by Finance Bill, 2013

The Finance Minister presented the Budget for financial year 2013-14 in the Parliament on 28-2-2013. The proposed amendments in service tax (The Finance Act, 1994) are dealt with in this article. The salient features of Voluntary Compliance Encouragement Scheme, 2013 is not discussed here. The changes are effective from the date of enactment of the Finance Bill, unless otherwise specified.

Negative list of services

- **Education as a part of approved vocational education course**

The negative list of service hitherto included service by way of education as a part of an approved vocational education course. "Approved vocational education course" was defined as a course run by an industrial training institute or an industrial training centre affiliated to the National Council for Vocational Training offering courses in designated trades notified under the Apprentices Act, 1961 and thus the vocational educational courses approved by an industrial training institute or centre affiliated to National Council for Vocational Training were not liable to service tax. Now, it is proposed that such courses will be liable to tax.

Courses offered by an industrial institute or an industrial training centre affiliated to State Council for Vocational Training are proposed to be covered under the Negative List and not liable for service tax. [S. 65B(11) read with S. 66D(l)(iii)]

- **Any process amounting to manufacture or production of goods**

The "process amounting to manufacture or production of goods" was defined to mean, "a process on which duties of excise are leviable under section 3 of the Central Excise Act, 1944 (1 of 1944) or any process amounting to manufacture of alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs and narcotics on which duties of excise are leviable under any State Act for the time being in force". The definition is proposed to be amended to include any process which is liable for excise duty under "Medicinal and Toilet Preparation (Excise Duties) Act, 1955". Thus, job work done on or for products liable for excise duty under this Act is proposed to be covered under the Negative List of services not liable for service tax. [S. 65B(40) read with S. 66D(f)]

- **Services relating to agriculture or agricultural produce**

Hitherto, Negative List of services under this head was *inter alia* restricted to seed related testing only. Now any testing relating to agriculture or agricultural produce is proposed to be covered under the Negative List of services and such testing is not liable for service tax. [S. 66D(d)(i)]

Validity of Show Cause Notice not sustainable for extended period

When any Appellate Authority,Tribunal or a court concludes that extended period of limitation is not sustainable, the show cause notice will be considered as valid for liability covered under the normal period of limitation i.e. 18 months. [S. 73(2A)]

Maximum penalty for delayed application for registration

Hitherto, the maximum penalty for delayed application for registration was ₹ 200/- per day of the period of default or ₹ 10,000/-, whichever higher. This penalty will now be restricted to ₹ 10,000/- only. [S. 77(1)(a)]

Penalty on director, manager or secretary or other officer-in-charge

A new provision have been inserted to the effect that a director, manager, secretary or other officer-in-charge responsible for conduct of the company's business shall be liable to penalty up to ₹ 1 lakh if knowingly concerned with any of the following contraventions by the company:

- evasion of service tax; or
- issuing invoice, bill or challan without providing taxable service; or
- availing and utilising CENVAT credit without actual receipt of taxable service or excisable goods; or
- failing to pay any amount collected as service tax to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

[S.78A]

Compounding of offence

Enabling provision is made to authorise the Chief Commissioner of Central Excise to compound any offence, either before or after the institution of prosecution on payment of such amount as may be prescribed.

[Substitution of S. 9A with S. 9A(2) of CE Act in S. 83 of FA]

Delay in filling appeal or cross objection by the assessee

Hitherto, the appellate tribunal was empowered to condone the delay in filing of an appeal or cross objection by the Commissioner. The Tribunal is now empowered to condone the delay in filing appeal or cross objection by the assessee also.

[S. 86(5)]

Extension of imprisonment provisions for offences

Hitherto, imprisonment provisions were attracted only in case of collection of an amount as service tax but failure to pay the same beyond the period of six months to the Central Government. Now these provisions have been proposed to be extended to cover the other offences. A chart showing the offences and the prescribed imprisonment period is appended hereto.

[S. 89 amended and S. 90, S. 91 inserted]

Exemptions – Changes effective from 1-4-2013

1. Exemption to service by educational institution withdrawn

The exemption to services, by way of auxiliary educational services and renting of immovable property by educational institutions in respect of education (not liable for service tax) is withdrawn. These services provided to such educational institutions will continue to remain exempt. [entry 9]

2. Exemption to cinematographic films restricted

The benefit of exemption in relation to copyrights for cinematograph films is restricted only for exhibition in a cinema hall or cinema theatre. [entry 15]

3. Exemption to air-conditioned or centre heated restaurants

All air conditioned or centrally heated restaurants whether having license to serve alcoholic beverages or not, are liable for service tax. Non air-conditioned/Non centrally heated restaurants will continue to enjoy the exemptions. [entry 19]

4. Exemption to transportation by rail or vessel curtailed

The exemption available to transportation of petroleum and petroleum products, postal mails or mail bags and household effects by railway and vessel is withdrawn. [entry 20]

5. Exemption to goods transport agency extended

Transportation of agricultural produce, foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil (excluding alcoholic beverages), relief materials for specified purposes, chemical fertilisers and oilcakes, registered newspapers or magazines and defence or military equipments by goods transport agency (GTA) is exempt. [entry 21]

6. Exemption for vehicle parking withdrawn

Exemption in respect of vehicle parking to general public is withdrawn. [entry 24]

7. Exemption in relation to repair or maintenance to Government aircraft

Exemption in respect of services provided to Government, a local authority or any governmental authority by way of repair or maintenance of aircraft is withdrawn. [entry 25]

8. Exemption to charitable organisation curtailed

The exemption available to charitable organisations providing services for advancement of any other object of general public utility up to ₹ 25 lakh is withdrawn.

[All the above entries are contained in Notification No. 25/2012-ST dated 20-6-2012 as amended by Notification No. 3/2013–ST dated 1-3-2013. This Notification is effective from 1-4-2013]

Conclusion

Many had hoped that after introduction of negative list based taxation, the Government would not have much areas to tinker with in the Finance Bill. However, old habits die hard, which has resulted into small amendments with insignificant revenue implications made in the exemptions and abatements apart from some procedural changes. The amendments pertaining to imprisonment, cognizable and non-cognizable offences are very harsh and capable of filling the jails with the service tax assessees by driving out the criminals. The directors, managers, secretaries who are not involved in day-to-day tax relating affairs now runs the risk of getting penalized. The Government must keep in mind that service tax assessees at large are in unorganized sector having minimal or no staff and cannot be subjected to such kind of harsh treatment. It is upon the industry, trade associations and all stake holders to strongly register their protest to the authorities so that such kind of draconian provisions do not see the light of the day.

Prescribed imprisonment period against nature of offence

- Involving an amount exceeding ₹ 50 lakhs

  [The Commissioner of Central Excise is empowered to authorise any officer whose rank is not below the Superintendent to arrest the person at default]

  - Knowingly evasion of payment of service tax
  - Availment and utilisation of CENVAT credit without actual receipt of service or excisable goods
  - Maintaining false books of account, failure to supply/supply of false information

    ⇩

    Imprisonment:
    Min – 6 Months
    Max – 3 years

    ⇩

    Non-Cognizable & bailable

  - Non-payment of service tax collected beyond six months from due date

    ⇩

    Imprisonment:
    Min – 6 Months
    Max – 7 years

    ⇩

    Cognizable

- Involving an amount not exceeding ₹ 50 lakhs

  - Knowingly evasion of payment of service tax.
  - Availment and utilization of CENVAT credit without actual receipt of service or excisable goods.
  - Maintaining false books of account, failure to supply/supply of false information.
  - Non-Payment of service tax collected beyond six months from due date

    ⇩

    Imprisonment:
    Min – Not prescribed
    Max – (i)1 year – for first offence committed.
    (ii) 3 years – for second and subsequent offences committed

    ⇩

    Non-cognizable & bailable

Note:

- In case of cognizable offence, arrested person should be produced before the Magistrate within 24 hours of the arrest.
- In case of non-cognizable and bailable offence, the Assistant Commissioner or Deputy Commissioner is granted same powers as those of officer in-charge of police station to grant bail or release the person under section 436 of the Code of Criminal Procedure, 1973.

CA Naresh K. Sheth

Service Tax Voluntary Compliance Encouragement Scheme, 2013

1. Preamble

Service tax has been a complicated legislation from inception and the law is yet to settle. There are typical issues of service tax administrations. The combined effect of this is a non-compliance of service tax across the country. Generally, such non-compliances are on account of inadvertence and interpretational issues.

Hon'ble Finance Minister in his budget speech announced the new scheme "Service Tax Voluntary Compliance Encouragement Scheme, 2013" to address above referred issue of non-compliances. This is first ever immunity scheme under service tax legislation. Following extract of Finance Minister's budget speech gives the fair idea of legislative intent behind the scheme and also the expectations of the Government:

"183. While there are nearly 17,00,000 registered assessees under the service tax, only about 7,00,000 file returns. Many have simply stopped filing returns. We cannot go after each of them. I have to motivate them to file returns and pay the tax dues. Hence, I propose to introduce a one-time scheme called 'Voluntary Compliance Encouragement Scheme'. A defaulter may avail of the scheme on condition that he files a truthful declaration of service tax dues since 1-10-2007 and makes the payment in one or two installments before prescribed dates. In such a case, interest, penalty and other consequences will be waived. I hope to entice a large number of assessees to return to the tax fold. I also hope to collect a reasonable sum of money."

Chapter VI of Finance Bill, 2013 deals with above referred scheme (for sake of convenience, hereinafter referred to as "the scheme"). Sections 94 to 104 are proposed to be inserted in the Act to introduce this one time amnesty scheme to encourage voluntary compliance. This is popularly known as amnesty scheme.

An attempt is made here to explain the scheme in a simple, non-technical and reader friendly manner.

Reference to "the scheme" in the Article means "Service Tax Voluntary Compliance Encouragement Scheme, 2013" and reference to "the Act" means "Finance Act, 1994". The "Declarant" means a person applying for the scheme.

2. Salient features of the Amnesty Scheme

2.1 Effective date

The scheme will be effective from date of enactment of the Finance Bill, 2013. To avail benefit of Amnesty Scheme, one will have to wait till Finance Bill, 2013 gets Presidential assent.

2.2 Dues covered

The following dues payable for the period 1st October, 2007 to 31st December, 2012 are covered under the Amnesty Scheme.

- The service tax due or payable;
- Any excess amount or amount wrongly collected by service provider which is due or payable under section 73A of the Act and remains unpaid as on 1st March, 2013.

One may wonder why the dues from October, 2007 is only covered. It appears that the period prior to 30th September, 2007 has become time barred in normal course and hence same might have been excluded from the scheme.

2.3 Dues not covered under the scheme

The following dues are not covered under the scheme:

- The tax or any other amount due or payable for the month of January, 2013 and the subsequent period.
- The tax dues in respect of show cause notice or an order is issued under sections 72, 73 or 73A of the Act.
- The tax dues pertaining to issues for which show cause notice or order has been issued for the earlier period. However, the tax dues pertaining to other issues not covered in such notice or order are still covered in the scheme.
- The unpaid tax dues correctly disclosed in the returns filed by the declarant.

2.4 Persons eligible

- Any person liable for payment of tax and registration but not registered.
- Person registered but:
  – has not filed service tax return (non-filers); or
  – has stopped filing the return (stop-filers); or
  – failed to disclose true liability in the return.

The causal reading of the scheme may give an impression that the non-filers / stop filers having 'nil' tax liability are also covered in this scheme to get immunity from late fees payment (extending to ₹ 20,000/- per return) prescribed u/s. 70(1) of the Act. On detailed reading of the scheme, it is clear that scheme is meant only for those assessees defaulting in payment of tax dues. The non filers or stop filers having 'nil' tax liability may not be eligible for the scheme.

2.5 Immunity available for

- Interest.
- Penalty.
- Prosecution.
- any other proceedings under the Act.
- Re-opening of any matter concluded under the scheme by any authority or court.

The immunity from interest is a unique feature of this scheme. In many cases, service provider is in a position to recover the service tax dues for past period from his client but not the interest. The immunity from interest would definitely attract such service provider to take benefit of the scheme.

3. Obligations and procedures for declarant

3.1 The declarant is required to file a declaration in the prescribed form to the designated authority on or before 31st December, 2013. The Government is yet to prescribe the declaration form and the designated authority.

3.2 The declarant is required to make payment of declared dues as under:

- Not less than 50% of the declared tax dues by 31st December, 2013.
- The balance tax dues on or before 30th June, 2014.
- If balance tax dues is not paid by 30th June, 2014, the same can be paid on or before by 31st December, 2014 with interest at applicable rate for the period 1st July, 2014 till the date of payment.

3.3 The declarant is required to furnish details of payment made from time to time under the scheme along with a copy of acknowledgement of the declaration to the designated authority.

3.4 If the declarant fails to pay declared tax dues (either full or in part) till 31st December, 2014, such dues along with interest thereon can be recovered under normal recovery proceedings under the Act.

4. The obligations of prescribed authority

The designated authority shall issue an acknowledgment of:

- declaration filed by declarant;
- discharge of declared dues in the manner to be prescribed.

5. The powers of designated authority

5.1 Commissioner of Central Excise has power to issue the show cause notice on declarant for recovery of tax dues not paid or short paid when he has reason to believe that the declaration made is substantially false.

5.2 The designated authority, after recording reasons in writing, has power to pass an order rejecting the declaration made by a person against whom an inquiry or investigation is pending as on 1st March 2013 by way of :

- search of premises under section 82 of the Act; or
- issue of summons under section 14 of Central Excise Act, 1944.
- requirement of production of account, document or other evidence.

Apart from this, the designated officer can reject the declaration by a person for whose accounts the audit was initiated and pending as on 1st March, 2013.

It is a general feeling that the scheme may not get desired response due to above referred provisions. It is common experience that the summons is issued in a routine manner. The books of account, documents and evidences are called for even in general notices issued for collection of details and data. Even the condition of audit pending as on 1st March, 2013 is unfair. Statutory time limit is not prescribed for acceptance or rejection of declaration by designated authority.

One of the valid apprehensions of the tax payer is that in case of a rejection of declaration for any reason, what would be his fate as far as the tax dues disclosed under the scheme and also of the payment made under the scheme. The issue becomes serious as the amount paid under scheme is non-refundable under any circumstances.

Whether investigations or audit initiated after 1st March, 2013 will debar the declarant to avail benefit of the scheme is a frequently asked question. It appears that there is no such legislative intent to debar such declarant. However, the Government should specify this in the scheme to clarify the mist. The practical issue for the probable declarant would be how to handle the investigations initiated after 1st March, 2013 till December 2013.

6. Other worth noting points

6.1 After expiry of one year from the date of declaration, the Commissioner of Central Excise does not have power to issue the show cause notice on declarant for recovery of tax dues not paid or short paid when he has reason to believe that the declaration made is substantially false.

6.2 Any amount paid under the declaration shall not be refunded under any circumstances.

7. Conclusion

The citizens expect Government to give them a fair chance to come clean out of non-compliances for the reasons of inadvertence or other valid reasons. The atmosphere of confidence between Government and tax payers is a pre-requisite for success of any immunity scheme. The Government needs to further refine the scheme to create a conducive atmosphere for amnesty scheme to serve its purpose.

B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

Principles of mutuality – Interest earned by the mutual association from the fixed deposit kept with its member banks – Not exempt from tax on the ground of 'mutuality'

M/s. Bangalore Club vs. Commissioner of Income-tax & Anr. – Civil Appeal No. 124 of 2007

The assessee a mutual association, sought an exemption in respect of interest earned on the fixed deposits kept with certain banks, which were corporate members of the assessee, on the basis of doctrine of mutuality. The AO rejected the claim of the assessee by treating the said interest as business income because there was a lack of identity between the contributors and the participators to the fund. Both the CIT(A) and Tribunal allowed the claim of the assessee by holding that the doctrine of mutuality clearly applied to the assessee's case.

Allowing the appeal of the Department, the High Court restored the order of the Assessing Officer.

The assessee preferred an appeal before the Hon'ble Supreme Court wherein the issue to be decided was "whether or not the interest earned by the assessee on the surplus funds invested in fixed deposits with the corporate member banks is exempt from levy of income tax, based on the doctrine of mutuality?"

Dismissing the assessee's appeal, their Lordships observed that in order to qualifying a receipt to be exempt on the principles of mutuality, three cumulative conditions should be fulfilled. As per the first condition there must be a complete identity between the contributors and participators. The second condition demands that the actions of the participators and contributors must be in furtherance of the mandate of the association. Thirdly, there must be no scope of profiteering by the contributors from a fund made by them which could only be expended or returned to themselves.

It was held that in the instant case the arrangement lacks a complete identity between the contributors and participators. Till the stage of generation of surplus funds, the setup resembled that of mutuality; the flow of money, to and fro, was maintained within the closed circuit formed by the banks and the club, and to that extent, nobody who was not privy to this mutuality, benefited from the arrangement. However, as soon as these funds were placed in fixed deposits with banks, the closed flow of funds between the banks and the club suffered from deflections due to exposure to commercial banking operations. During the course of their banking business, the member banks used such deposits to advance loans to their clients. Hence, in the present case, with the funds of the mutuality, member banks engaged in commercial operations with third parties outside of the mutuality, rupturing the 'privity of mutuality', and consequently, violating the one to one identity between the contributors and participators as mandated by the first condition. In respect of second condition, it was held that the surplus funds were not used for any specific service, infrastructure, and maintenance or for any other direct benefit for the member of the club. The said funds were used by the member banks for their business and hence this arrangement lacked the degree of proximity between the club and its member, which may in a distant and indirect way benefit the club, nonetheless, it cannot be categorised as an activity of the club in pursuit of its objectives. Hence, the second condition was also violated. Further, the third condition that the contributors should derive profits from contributions made by them to a fund which could only be expended or returned to themselves was also failed to be satisfied as in the present case, though the funds were returned to the club, they were expended on non- members i.e. the clients of the bank. Banks generated revenue by paying a lower rate of interest to club-assessee, that makes deposits with them, and then loan out the deposited amounts at a higher rate of interest to third parties.

Hence, it was held that the amount of interest earned by the assessee from the four member banks would not fall within the ambit of the mutuality principle and therefore, chargeable to tax in the hands of the assessee.

Ashok Patil, Mandar Vaidya & Priti Shukla
Advocates

DIRECT TAXES
High Court

1. Capital receipt – Compensation paid on account of impairment of its profit making structure – Not taxable

Khanna & Annadhanam vs. Commissioner of Income-tax [2013] 30 taxmann.com 322 (Delhi)

The assessee being a firm of Chartered Accountants, under an arrangement with a foreign firm named, 'DTTI' had been getting referred work through another firm named 'DHS'. Later on, arrangement between the assessee and 'DTTI'/'DHS' failed. In consideration of the termination of the services of the assessee-firm, a compensation of certain sum was paid by DHS/DTTI to the assessee-firm. The Assessing Officer took the view that the receipt was taxable as part of the professional income of the assessee-firm and treated it as a revenue receipt. On appeal CIT (Appeals) allowed the appeal of the assessee and treated it as capital receipt and on further appeal by the revenue; the Tribunal affirmed the findings of the Assessing Officer. On an appeal in High Court, the Hon'ble court reversed the findings of Tribunal and held that in a firm of chartered accountants there could be separate sources of professional income such as tax work, audit work, certification work, opinion work as also referred work. Under the arrangement with DHS there was a regular inflow of referred work from DHS through the Calcutta firm in respect of clients based in Delhi and nearby areas. The Court also held that there was no evidence that the assessee-firm had entered into similar arrangements with other international firms of chartered accountants. The arrangement with DHS was in vogue for a fairly long period of time – 13 years – and had acquired a kind of permanency as a source of income. When that source was unexpectedly terminated, it amounted to the impairment of the profit-making structure or apparatus of the assessee-firm. It was for that loss of the source of income that the compensation was calculated and paid to the assessee. The compensation was thus a substitute for the source and treated the receipt as capital receipt.

2. Deduction – Interest earned on Non-SLR deposits by a Co-operative Bank is exempt u/s. 80P(2)(I) of the Act

CIT vs. Muzaffarnagar Kshetriya Gramin Bank Ltd. (2013) 256 CTR (All.) 322

The question of law framed before the Hon'ble High Court was whether the Tribunal was justified in law in holding that interest earned by the assessee which is a co-operative bank on the deposits of its non-SLR funds is income from banking business and consequently exempt under s. 80P(2)(a)(i) of the IT Act, 1961?

It was held by the court that the question as to whether the business is derived from or attributable to SLR or non-SLR funds would not make any difference for the purposes of qualifying the interest earned by the co-operative bank u/s 80(P)(2)(a)(i) as the deposits of surplus idle money available from working capital, including reserves, excess collection of interest tax and other incomes are all attributable to the business of banking. The interest from such deposits cannot be said to be beyond the legitimate business activities of the bank. The appeal of the revenue was dismissed accordingly.

3. Deduction – Sec. 80HHC – Surrender of income during survey on excess valuation of stock – Assessee was entitled to deduction u/s. 80HHC

CIT vs. Haswani Arts (2013) 83 DTR (Raj.) 81

There was survey action on the assessee u/s 133A, during which the assessee accepted the surrender of income on account of excess valuation of stock, which resulted in the increase in profits, but since there was no sale of such closing stocks during the year under consideration, the sale and export figures were not disturbed by the Department. The assessee was eligible for deduction u/s 80HHC, and there was no dispute that the assessee had satisfied all the relevant conditions for grant of such deduction for the relevant year under consideration and therefore was eligible for deduction u/s 80HHC.

4. Forfeiture of earnest money arising out of agreement to sale of a property is not liable to tax

Commissioner of Income-tax vs. Meera Goyal [2013] 30 taxmann.com 128 (Delhi)

The assessee entered into an agreement to sell his house property to a company and in terms of agreement received certain sum as earnest money. Since purchaser failed to pay balance consideration by stipulated period, the assessee forfeited the earnest money and claimed same as capital receipt. The Additional Commissioner on reference under section 144A directed the Assessing Officer to effect that earned money so received and forfeited was to be adjusted against the cost of property and capital gain was to be worked out on the basis of the resultant cost as and when the property was sold. The Additional Commissioner on reference under section 144A directed the Assessing Officer to effect that earned money so received and forfeited was to be adjusted against the cost of property and capital gain was to be worked out on the basis of the resultant cost as and when the property was sold. The Commissioner (Appeals) set aside impugned order of the Assessing Officer in view of direction given by Additional Commissioner to the Assessing Officer. The Tribunal upheld the order of Commissioner (Appeals) observing that the earnest money was received through banking channels and genuineness of the receipt was not in dispute. On further appeal by the revenue in High Court, the Hon'ble court dismissed the appeal of the revenue and held that the Tribunal has rightly noted that the provisions of section 51 of the said Act would come into play as it specifically covers this type of a transaction. Once the transaction has been held to be genuine, there is no question of the transaction being without any consideration.

5. Exemption – Sec. 54F – Sale of Capital Asset by husband – House property purchased in the name of wife – Exemption available – A.Y. 2008-09

CIT vs. Kamal Wahal [2013] 351 ITR 4 (Delhi)

The assessee had inherited 50% share in a house property along with his brother who inherited the other 50%. They jointly sold the property. The assessee purchased a house in the name of his wife and claim exemption u/s 54F. The same was disallowed by the AO. The High Court held that the assessee had purchased the house in the name of his wife and not some stranger, and there was no dispute that the entire investment came out of the sale proceeds of the inherited house and therefore held that the assessee was eligible for deduction u/s 54F.

6. Reassessment – Sections 147, 148 – On the basis of complaint by Directors – Constitutes tangible material for formation of Belief – Notice Valid – A.Y. 2003-04

Rambagh Palace Hotels Pvt. Ltd. vs. Deputy Commissioner of Income Tax [2013] 350 ITR 308 (Delhi)

The reason for reopening was based on the basis that the department had received a complaints from the directors of the assessee that the assessee had siphoned off monies as foreign exchange travelling expenses, no details filed during assessment proceedings was held to be failure to disclose fully and truly all material facts and the complain constitutes tangible material, issue of notice u/s148 was held to be valid.

7. Revised Return – Sections 139(5), 143(1)(a) – Intimation u/s. 143(1)(A) does not constitute assessment so as to disentitle the assessee to file a revised return – A.Y. 2005-06

Tarsem Kumar vs. ITO (2013) 256 CTR (P&H) 116

The assessee had filed its return of income on 26-7-2005. The return was processed and intimation u/s. 143(1)(a) was issued on 8-12-2005 along with which refund of ₹ 240/-. The assessee due to oversight had not claimed a credit of ₹ 3,60,000/-, and therefore filed a revised return of income on 26-9-2006. The department held that the return is invalid as revised return is filed after the issue of intimation u/s. 143(1)(a). The High Court while allowing the writ petition held that intimation u/s. 143(1)(a) does not constitute an assessment so as to disentitle the assessee to file the revised return, and held that the revised return filed was valid and the assessee was eligible for the refund as claimed in the revised return of income.

Unreported

8. Business Income – Section 28 – Interest on margin money kept with bank for issuance of bank guarantee

CIT vs. K & Co. ITR no. 60-61/1999 & ITR 69-72/1999. Order dated 14-2-2013.

Held that where income is received from deposits made by the assessee to a bank for issuance of a bank guarantee, the deposits would be treated as inextricably linked to the business of the assessee. On the given set of facts, it was held that margin money requirement was an essential element for obtaining the bank guarantee which was necessary for the contract between the assessee and the other party in whose favour the guarantee was issued. If the assessee had not furnished the guarantee, it would not have got the contract. Hence the interest received on such margin money was inextricably linked to the business of the assessee and was to be treated as 'business income'.

9. Business Expenditure – Explanation to section 37 – Prohibited business expenditure

Confederation of India Pharmaceutical Industry vs. CBDT CWP No. 10793 of 2012 dated 26-12-2012 (HP High Court).

The CBDT has issued a circular, being circular No.5/2012 dated 1st August, 2012 wherein it is directed that expenses by pharma companies which are in the nature of freebies/travel facilities and hospitalities extended to medical practitioners, were not eligible for deduction in the hands of the pharma companies since the Medical Council Regulations prohibit medical practitioners from accepting such gifts and hospitalities. The validity of the said circular was challenged in a petition before the Hon'ble Himachal Pradesh High Court. The Hon'ble High Court has upheld the validity of the circular and has held that such expenditures are caught within the mischief of Explanation to section 37 and hence such expenditures are not allowable as deduction.

Author's view

With great respect, it is submitted that this view may require reconsideration because even if the freebies are accepted in violation of the Medical Council Regulations, still it cannot amount to any 'offence' or any 'illegality' within the meaning of Expl. to section 37; at best it would amount to 'professional misconduct' and that too on part of the medical practitioners and not on part of the pharma companies. And so long as it is not an offence or illegality, there can be no prohibition on deductibility.

10. Reassessment – Section 147 & 148(b) – Reopening on the basis of retrospective amendments

It was held that reopening can be validly done to give effect to amendments made effective retrospectively. In this case reopening was done within four years to give effect to retrospective amendment made to section 115JB. It was held that retrospective amendments amount to 'information' and hence reopening can be validly done to give effect to retrospective amendments. (provided of course the reopening is within four years because beyond four years the condition of failure on part of the assessee would come into play) – Ester Industries Ltd. W.P. (Civil) No. 7482/2011 dated 28th January, 2013.

Jitendra Singh & Sameer Dalal
Advocates

DIRECT TAXES
Tribunal

1. Accrual of income – Section 5 of the Act – Retention money – Retention money did not accrue as income to assessee on raising accrues bill when the condition is performed by the assessee. A.Y. 2009-10

Dy. CIT vs. Angelique International Ltd. (2013) 55 SOT 226 (Del.)

Assessee a contractor had not offered for taxation the amount of retention money retained by the customer to be realised after satisfactory performance of a contract. The assessee submitted before the Assessing Officer that in some business transactions, a part of the income was retained by the customer to be realised after satisfactory performance of a contract or upon fulfilment of certain conditions. The assessee further submitted that it was a common business practice for customer to retain 2% to 10% out of the contract amount; that this amount was realised after a stipulated period or upon satisfactory performance of the entire contract; and that in most of the cases, the retention money was adjusted against claim for delay in completion of contract, on quality goods or on any other ground.

The Assessing Officer, however, was of the view as the assessee was following the mercantile system of accounting, the money retained by the customers from the contract payments made to the assessee constitutes income accrued to it. The income is taxable in the relevant year irrespective of the fact that the actual money may or may not have been received by it in that year.

On appeal the Tribunal held that the customers of the assessee retained money in respect of a completed contract for satisfactory performance of the contract for which the due diligence is undertaken. On demonstration of satisfactory performance of the contract, the money as released finally to the assessee, otherwise it has to repair the fault or pay liquidated damages. Thus, under these circumstances, the money withheld by the customer does not accrue as income to the assessee on completion of the project, the reason being that right to receive the money does not accrue to the assessee. The retention money accrues as income when the stipulated condition is satisfied which may be in the nature of showing satisfactory performance of the project. Thus, the retention money retained by the customer was taxable only on accrual basis in the year in which stipulated condition is satisfied.

2. Additional Claim – Section 251 of the Act – If a revised return cannot be filed due to late filing of original

return – Claim could be made before appellate authority and he is duty-bound to consider same. A.Y. 2007-08

Rakesh Singh vs. Asstt. CIT (2013) 82 DTR 235 (Bang.) (Trib.)

The assessee filed its return of income belatedly and thereafter it filed a revised return revising the computation of short-term capital gains and made fresh claim of depreciation on car. The Assessing Officer rejected the plea of the assessee to consider the revised return. The CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that when the original return of income is filed by the assessee belatedly the revised return cannot be taken cognisance. However, the CIT(A) is empowered to consider additional claim made before him, though not made in the return filed by the assessee. The CIT(A) being the First Appellate Authority is duty-bound to consider the same and examine the issue in correct perspective.

3. Business expenditure – Exempted Income – Disallowance under section 14 A read with Rule 8D(2)(ii) – Where assessee had not made investment in shares and units out of surplus funds – Interest which is not directly related to earning of dividend income cannot be disallowed under the provisions of rule 8D(2)(ii) read with section 14 A of the Act. A.Y. 2008-09

Asstt. CIT vs. Mohan Exports (P.) Ltd. (2013) 82 DTR 110 (Del.) (Trib.)

The assessee had made investments in shares of companies and units of mutual funds. The Assessing Officer held that the investments had been made with a view to earn dividend, therefore, invoking the provisions of section 14A of the Act read with rule 8D (ii) of the Income-tax Rules, 1962, disallowed the interest expenditure incurred by the assessee during the previous year which was not directly attributable to earning of dividend income. On appeal the CIT(A) after examining the bank account found that the investments have been made in this year from interest-free funds available with the assessee. Accordingly, he held that no disallowance is warranted under Rule 8D(2)(ii). On appeal by the Revenue the Tribunal held that there is no evidence on record to suggest that any investment in shares or units has been made in this year out of borrowed funds on which interest is payable by the assessee and the CIT(A) had given a specific finding that the investments were made out of interest-free funds available with the assessee. In other words, the payment of interest was made with respect of income other than dividend income. In such a situation, the interest cannot be said to be a kind of general expenditure incurred for earning of various kinds of incomes. Therefore, Rule 8D(2)(ii) which deals with a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any exempt income was not applicable in the present case.

4. Disallowance under section 14A – Apportionment of expenditure – Onus is on the A.O. to show that that expenditure was incurred for earning the exempt income – No disallowance out of interest, administrative or administrative cost. A.Y. 2002-03

DCIT vs. Jammu & Kashmir Bank Ltd. [2013] 83 DTR (Asr) (Trib.) 187

The assessee explained before the A.O. with proper evidence that it has interest free funds for making investment in tax-free securities and infrastructural advances. However, the A.O. has rejected the contention of the assessee by observing that the assessee has not given entry-wise details to prove that the assessee is having interest-free funds and the same were invested in exempt securities and made disallowance under section 14A of the Act. On appeal the First Appellate Authority has partially allowed the claim of the assessee and restricted the disallowance made by the A.O. The department went in further appeal before the Appellate Tribunal. The assessee has also filed cross objection before the Appellate Tribunal challenging the action of the Learned CIT(A) in partially sustaining the disallowances made by the A.O. under section 14A of the Act. The Appellate Tribunal has dismissed the appeal of the department and allowed the claim of the assessee by observing that the A.O. has note been able to identify from the details filed by the assessee that any expenditure has been actually incurred by the assessee for earning the exempt income. Therefore, the action of the A.O. in making disallowance under section 14A out of interest, management or administrative cost is unwarranted.

5. Cash credit – section 68 – repayment of deposits through banking channels – Confirmation of bank showing the cheques issued encashed by parties – Identity of persons with complete address was also furnished – Addition under section 68 is invalid. A.Y. 2008-09

ABT Ltd. vs. ACIT (2013) 83 DTR (Chen.) (Trib.) 178

The revenue has challenged the order of the First Appellate Authority in granting relief to the assessee and thereby deleting the addition made under section 68 of the Act. The Appellate Tribunal has dismissed the grounds raised by the revenue and upheld the order passed by the Learned CIT(A) by observing that during the course of appellate proceedings the assessee has furnished details of repayment made through cheques. Even bank confirmations were filed which shows the cheques issued by the assessee were encashed by the respective parties. The assessee also furnished the identity of persons with complete addresses. Therefore, no fault can be found with the of the Learned CIT(A) and the ground raised by the revenue is devoid of any merit.

6. Revision – Section 263 – Order passed by A.O. after sufficient enquiry and accepting the claim of Long Term Capital Gain – Order cannot be held to be erroneous and prejudicial to the interest of revenue – Invoking provisions of section 263 is not justified – A.Y. 2007-08

HB Stockholdings Ltd. vs. CIT (2013) 83 DTR (Delhi)(Trib.) 210

The assessee maintains dual portfolios – one for trading and another for capital investment. In return of income filed the assessee declared business profits from dealing in shares apart from Short Term Capital Gain and Long Term Capital Gain on the sale of shares and securities held as investment. The A.O. while passing the Assessment Order treating the Short Term Capital Gain as Business Income however, the A.O. has allowed the claim of Long Term Capital Gains as such. The Learned CIT has invoked the provisions of section 263 of the Act for the reason that the A.O. while passing the Assessment Order has accepted the Long Term Capital Gain without sufficient enquiries to ascertain that the stock of shares declared as investment in Long Term Capital Gain has been correctly shown and the same do not constitute stock-in-trade of the assessee. The Learned CIT further observed that the A.O. has not made any enquiries to the transactions in securities dealing by way of derivatives trading constituted speculative transactions within the meaning of section 43(5) of the Act. The Learned CIT has with the above observations set aside the Assessment Order and directed the A.O. to reframe the assessment. The assessee preferred an appeal before the Appellate Tribunal challenging the jurisdiction of the LearnedCIT in passing the order under section 263 of the Act. The Appellate Tribunal has quashed the order passed under section 263 of the Act and held that the A.O. has accepted the Long Term Capital Gain shown by the assessee on sale of investment and loss in derivative trading having regard to the past history of the case and after conducting necessary enquiry, assessment order cannot be held to be erroneous and prejudicial to the interest of the Revenue.

7. Tax Deduction at Source – Failure to deduct tax at source – Sections 201 (1) & 201(1A) – Where deductee / payee having no tax liability, penalty under section 201(1) and interest under section 201(1A) and cannot be levied on deductor for failure to tax at source. A.Ys. 2005-06 to 2008-09

Thomas Muthoot vs. Dy. CIT (2013) 55 SOT 390 (Coch.)

The assessee borrowed money from the partnership firm in which he was partner. However, while repaying the loan the assessee did not deduct tax at source, as per the provisions of section 194A. Before the Assessing Officer it was submitted by the assessee that the partnership firm, which received interest from the assessee, had included the interest receipts in the income statement and even after the inclusion of the interest income the firm had declared losses and, filed a nil return of income and there was no liability to pay taxes, in the circumstance, it could not be held that the assessees have withheld the tax due to the Government. The Assessing Officer however, levied penalty under section 201(1) and interest under section 201(1A) for all the years for failure to deduct tax.

The Tribunal relying upon the decision of Apex Court in the case of *Hindustan Coca Cola Beverage (P.) Ltd. vs. CIT [(2007) 293 ITR 226]* deleted the penalty levied under section 201(1) of the Act holding that the recipient partnership firm had declared losses and filed nil return therefore, there was question of liability for tax or 'tax due' in the hands of partnership firm as such, the assessee cannot be held liable for penalty for withholding the tax due to the Government. Therefore, no penalty under section 201(1) was called for.

The Tribunal deleting the levy of interest under section 201(1A) of the Act held that, interest charged under the section is compensatory in nature, as the Government is deprived of its funds or any loss is caused to the Government. In the present case, the recipient of interest that is, the partnership firm have declared losses even after accounting for the interest paid by the assessee. Under theses circumstance, even if the assessee would have deducted and remitted the tax amount on the interest paid to the partnership firm, the same was liable to be refunded to the said firm, as there is no tax liability in the hands of the firm. Therefore, it cannot be said that the Government is deprived of the funds due to it or any loss is caused to the Government so as to be compensated with interest.

UNREPORTED DECISIONS

8. Block Assessment – Notice under section 143(2) of the Act issued after expiry of prescribed period is an incurable defect – Provisions of section 292B are not applicable in a case where Assessing Officer has not issued notice under section 143(2) within period as prescribed – Thus, consequently, block assessment framed in pursuance of said notice is also not sustainable in law. Block Periods: 1-4-1989 to 21-12-1999

Sanjeev R. Arora vs. Asstt. CIT [I.T(SS).A. Nos.: 103 & 110 / Mum / 2004; Order dated: 25-7-2012; Mumbai Tribunal]

A search and seizure operation under section 132 was conducted in the case of the assessee's brother. During the course of search and seizure certain documents were also seized pertaining to the assessee accordingly, notice under section 158BD was issued to the assessee and the Assessing Officer framed the block assessment under section 158BD read with section 143(3) computing the total undisclosed income of the assessee. The CIT(A) allowed partial relief to the assessee.

The assessee filed appeal before the Tribunal challenging the validity of block assessment contending that notice issued under section 143(2) was barred by limitation, as the same was issued beyond the prescribed statutory period. The revenue authorities contended that the assessee had not raised any objection during the assessment proceedings regarding the validity of notice under section 143(2) as such, the assessee was precluded from raising objection in view of section 292B of the Act.

The Tribunal held that the requirement of section 143(2) cannot be dispensed with as it is mandatory and therefore, the notice under section 143(2) issued after the expiry of prescribed period is an incurable defect and consequently, the block assessment framed in pursuance to such notice is also erroneous and not sustainable in law. The Tribunal further held that the irregularity in proper service of notice which can be treated as curable under section 292B of the Act is only in the cases where the notice under section 143(2) of the Act was issued properly and within the period of limitation and the assessee did not raise any objection regarding the service of the notice during the assessment proceedings and also participated in the assessment proceedings then at a later stage the assessee is precluded from raising such objection. Thus, the provisions of section 292B are not applicable in the case where the assessing officer has not at all issued notice under section 143(2) within the period as prescribed.

9. Reassessment – Section 148 – Notice under section 148 issued by assessing officer who was not vested with jurisdiction over assessee is patently illegal and void and, the reassessment order passed in pursuance of said notice were liable to be quashed and set aside. A.Y. 2003-04

Indorama Software Solution Ltd vs. ITO [I.T.A. No. 5211 and 5290 / M / 2011; Order dated: 7-9-2012; Mumbai Tribunal]

The assessment for the year was completed under section 143(3) of the Act. Subsequently, the assessing officer initiated reassessment proceedings under section 147. The assessee challenged validity of reassessment proceedings on the ground that due to change of address of assessee, the assessing officer who issued notice under section 148 of the Act did not have jurisdiction to issue said notice and, thus, notice so issued was invalid. The Assessing Officer rejecting the objections of the assessee passed the reassessment order. The reassessment was upheld by the CIT(A).

On appeal the Tribunal held that the notice under section 148 is required to be issued by the assessing officer who is vested with the jurisdiction over the assessee on the basis of the criteria of territorial area, a person or classes of persons, income or classes of incomes and cases or classes of cases as enumerated in sub-section (3) of section 120 of the Act. Thus, when the notice under section 148 is issued by the officer who was not vested with the jurisdiction over the assessee then, the same was patently illegal and void and the reassessment proceedings and order passed in pursuant to such illegal notice are also void *ab initio* and liable to be set aside.

CA Sunil K. Jain

DIRECT TAXES
Statutes, Circulars & Notifications

Notifications

Section 35(1)(ii) of the Income-tax Act, 1961 – scientific research expenditure – approved scientific research associations/institutions

The organisation(s) International Institute of Information Technology Bengaluru, Bengaluru and Foundation for Revitalization of Local Health Traditions, Bengaluru (PAN-AAATF 3402F) have been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 from assessment year 2012-2013 and from 27-9-2011 respectively, onwards in the category of 'University, College or other Institution', engaged in research activities subject to the conditions mentioned therein.

(Notification No. 12/2013 and 13/2013 respectively dated 20-2-2013)

Income-tax (second amendment) rules, 2013 – amendment in rules 31A & 31AA; substitution of rules 31ACB, 37J and Form Nos.15G, 15H, 16, 16A, 24Q, 26Q, 27C, 27D, 27Q & 27EQ and insertion of Form No. 26B

The Central Board of Direct Taxes made the rules further to amend the Income-tax Rules, 1962, *vide* the Income-tax (2nd Amendment) Rules, 2013 which shall come into force on the date of their publication in the Official Gazette. Significant amendments and substitutions have been made in Rules 31 A, 31 AA, 31ACB and 37 J in respect of statement of quarterly TDS, statement of collection of tax, form for furnishing certificate of accountant and consequential changes in relevant form nos. 27 A, 26 B, 27 BA, 15 G, 15 H, 16, 16 A, 24 Q, 26 Q, 27 C, 27 D, 27 EQ and 27 Q.

(Notification No. 11/2013-IT dated -19-2-2013)

Electoral Trusts Scheme, 2013 notified

The Central Government made the scheme for approval of electoral trusts, namely the Electoral Trusts Scheme, 2013 to come into force on the date of its publication in the Official Gazette and shall apply for the approval of any electoral trust under clause (22AAA) of section 2 of the Act. Objectives of the Scheme are to lay down a procedure for grant of approval to an electoral trust which will receive voluntary contributions and distribute the same to the political parties. A company registered for the purposes of section 25 of the Companies Act, 1956 (1 of 1956) satisfying all the prescribed conditions shall be eligible to make an application for approval as an electoral trust. The procedure for approval of an electoral trust has been provided in the details of the scheme for which the application in the prescribed Form A shall be accompanied by the documents mentioned in the scheme.

(Notification No. 9/2013 dated 31-1-2013)

Income-tax (First Amendment) Rules, 2013 – Insertion of rule 17CA and Form No. 10BC regarding functions of Electoral Trust

Rule 17 C of the Income Tax Rules 1962 provide forms or modes of investment or deposits by a charitable or religious trust or institution. The Central Government have now made the rules further to amend the Income-tax Rules, 1962, which shall be called the Income-tax (First Amendment) Rules, 2013 and shall come into force on the date of their publication in the Official Gazette. Now after Rule 17C, Rule 17CA, indicating functions of electoral trusts have been inserted while prescribing Form 10 BC along with its annexure for Audit Report of electoral trust.

(Notification No. 8/2013, dated 31-1-2013)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement - Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Malaysia

An agreement between the Government of the Republic of India and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed in May, 2012 shall enter into force w.e.f. 26th December, 2012, being the date of the later of the notifications after completion of the procedures as required by the laws of the respective countries for the entry into force of the DTAA, in accordance with Article 30 of the said DTAA.

Now the Central Government directed that all the provisions of the DTAA annexed in the said agreement shall be given effect to in the Union of India in accordance with Article 30 of the said DTAA with effect from the 1st day of April, 2013.

(Notification No. 7/2013 - dated 29-1-2013)

Gold Deposit Scheme, 1999 – Amendment in Notification No. GSR 634(E), dated 14-9-1999

The Central Government, with a view to bringing privately held stock of gold in circulation, reduce the country's reliance on import of gold and providing its owners with some income apart from freeing them from the problems of storage, movement and security of gold in their possession, had notified Gold Deposit Scheme, 1999. With a view to also enable Mutual Funds/Exchange Traded Funds registered under SEBI (Mutual Fund) Regulations to deposit part of their gold and to make the scheme more attractive for individuals to deposit their idle gold, with the banks under the scheme, the Central Government made certain amendments in the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs), dated the 14th September, 1999 published in the Gazette of India, relating to definition of " Gold Certificate", Procedure of operation of scheme, making application for subscription of Gold and transferability of Gold Certificate.

(Notification No. GSR 46(E) [F. No. 7/32/2012-BOA] dated 24-1-2013)

Instructions

Vesting of property in Central Government – Disposal of properties acquired property is to be referred to Valuation Cell of the Department – Supersession of instruction No. 1857, dated 19-9-1990

In supersession to CBDT Instruction No. 1857 dated 19-9-1990 for auction of properties purchased under Chapter XX-C of the Income-tax Act, 1961, comprehensive instructions on the modalities of fixing the reserve price for auction of properties acquired under Chapter XX-C have been notified as under:

i. The reserve price of the property is to be fixed with reference to fair market value of the property.

ii. For obtaining the fair market value of the property, the acquired property be referred to Valuation Cell of the Department. Valuation Cell shall submit a Detailed Valuation Report to the Appropriate Authority.

iii. This detailed valuation report should take into account comparative market analysis by quoting at least three sale instances of similar land use cases/properties in the vicinity.

iv. The Appropriate Authority shall, based on the Valuation Report, arrive at the reserve price of the property. In case, it is considered necessary by the Appropriate Authority to fix reserve price below the valuation given by the Valuation Cell, proposal shall be sent to the Board giving detailed reasons seeking prior permission.

v. The reserve price so determined shall be valid for a period of six months from the date of determination of the same.

(Instruction No. 2/2013 dated. 5-2-2013)

Section 261 of the Income-tax Act, 1961 – Supreme Court – Appeals to – Delay in filing of SLP in Supreme Court – fixing of responsibility

Instructions issued *vide* letter below the government has expressed serious concern over delay in filing the SLP in case of Appeals to Supreme Court and mentioned that the delay in filing of SLP is a serious cause of concern. One of the reasons for delay in filing of SLP is inordinate delay in receiving the SLP proposals in the Directorate of Legal & Research. Even after conveying the concern of the Board in this regard, it is observed that about 50% proposals are received after 60 days of the date of impugned judgment of High Court as against 21 days prescribed in instruction No. 4 of 2011 laying down the SOP for filing SLP. In the light of serious view taken by the FM in this matter, it has been decided that from the date of this letter, in cases where SLP proposal is sent to the Directorate of Legal & Research after more than 90 days from the date of judgment, the CCIT/ DGIT concerned shall fix responsibility for the delay and the name of officer(s) responsible for delay would be specified in the proposal itself.

(Instruction vide letter No. DGIT (L&R)/SOP for SLP/2012-13/04, dated 4-2-2013)

Order instructions regarding action to be taken on E-filed ITRs of A.Y. 2012-13 pending for processing at CPC having refund greater than or equal to ₹ 10 Lakhs

For the A.Y. 2012-13 e-filed returns cases till 22nd Jan. 2013, where refund is likely to be > = ₹ 10 lakhs are 28,444 in number, which are currently pending for processing at CPC. These ITRs are categorised as under: (a) Cases where there are refunds likely to be > = ₹ 10 lakhs. (b) Cases where there are likely refunds > = ₹ 10 lakhs as well as demands have been uploaded as per CPC-FAS. The above data can be accessed on i-Taxnet on the following path: resources / downloads / dit_systems refund_ereturn_ processing_cpc_a.y. 2012_13

The Assessing Officers have been directed to take action as under:

- for the cases falling at (a) above, i.e. where there is refund without demand as per the CPC-FAS, to get it checked whether any demand remains outstanding in those cases. If yes, the AOs may upload these demands on CPC-FAS. Regarding cases at (b) above, i.e. where there is refund with demand, they may reconfirm or update the demands, so that during processing refunds can be adjusted with updated demands outstanding as per CPC-FAS. Each CCIT is directed to monitor the above action to be taken by the AOs and certify within a period of 21 days. A compliance report is also to be sent to respective zonal members, CBDT with a copy to CIT (CPC), Bengaluru, at his e-mail id cit.cpc.bangalore@incometaxindia.gov.in and DIT(S)-III on e-mail id dmc.dits@gmail.com. In case no response is received, the e-returns shall be processed at CPC, Bengaluru. (Letter [F.NO.DIT(S)-III/CPC/2012-13/Demand Management], dated 30-1-2013).

Press Release / Memorandum

Government once again urges all Tax Payers to Disclose their true income and pay Appropriate Taxes within the Current Financial Year

The Union Finance Minister emphasised that there is need for a non-intrusive tax administration to enable the tax payer to file his return and pay appropriate taxes. In the statement made by the Revenue Secretary to the media he stated that there is no advantage in suppressing the true income or avoiding paying income tax that is due because, sooner or later, the information available with the Income-tax Department will lead the department to the doors of such persons.

The Directorate of Systems of the Income Tax Department has undertaken a business intelligence project to identify PAN holders who have not filed Income Tax Return and about whom specific information is available in 148 information codes of Annual Information Return (AIR), Central Information Branch (CIB) data and TDS/TCS Returns. Information in the Cash Transaction Reports (CTRs) of FIU-IND has also been included as part of this data matching exercise. This data analysis has identified target segment of 12,19,832 non-filers linked to more than 4.7 crore information records. Rule based algorithms have been used to identify high priority cases for follow-up and monitoring. In the first batch, letters are being sent to 35,170 PAN holders by the Directorate of Intelligence and Criminal Investigation. The letter contains the summary of the information of financial transaction(s) along with a customised response sheet and seeks to know whether the person had filed his Income Tax return or not. A nodal cell has been set up to capture the response and take follow-up action. There will be an online monitoring system to ensure follow-up action and track return filing and tax payment of the target segment. The Government once again urged all tax payers to disclose their true income and pay appropriate taxes within the current financial year. (Press Release, dated 11-2-2013).

Protocol Amending the Convention and the Protocol between the Republic of India and the Kingdom of Sweden signed

The Convention and Protocol between the Government of the Republic of India and the Government of the Kingdom of Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (DTAC) was first signed in June 1997. In April 2011, both India and Sweden concluded a Protocol to amend the Article 27 of the DTAC concerning Exchange of Information to bring it in line with the international standards and to add an Article in the Protocol to the DTAC to include tax examination abroad.

India and Sweden have now signed the Amending Protocol at Sweden in February, 2013 by Ambassador of India to Sweden and Latvia and Ministry of Finance, Sweden. The Protocol will replace the Article concerning Exchange of Information in the existing DTAC between India and Sweden and will allow exchange of banking information as well as information without domestic interest. It will, now, allow use of information for non-tax purpose if allowed under the domestic laws of both the countries, after the approval of the supplying state. The Article added in the Protocol to the DTAC will enable both the countries to assist in conducting tax examination abroad by allowing officials of one country to enter the territory of other country for this purpose.

(Press release, dated 8-2-2013)

CBDT's memorandum as issued regarding Preventive Vigilance to reiterate Government's resolution to provide a tax administration that is free of corruption

In the recent past, instances of some officers of the Central Board of Direct Taxes (CBDT) and Central Board of Excise and Customs (CBEC) being subjected to searches investigations by Anti-Corruption Branch of the Central Bureau of Investigation (CBI) have been reported. Some complaints alleging misconduct, misdencesour exhibited by Officers in their official conduct/ duties have also been received. Incidents of this nature have the potential of eroding the confidence of the taxpaying community and public at large in the Department. It is to emphasise that the Government servants are expected to discharge their official functions with utmost devotion and integrity. The Government has laid down elaborate do's and don'ts governed by the Conduct Rules and it is expected that officers abide by them scrupulously.

The Vigilance Wings of both the Boards have the prime responsibility to expeditiously conclude disciplinary proceedings in the case(s) of charged officers. While the innocent must be protected, those found indulging in gross misconduct must be subjected to strict punitive action as per extant rules/instructions expeditiously. Preventive Vigilance is critical for any organisation, senior officers must regularly inspect the work of their subordinates. Periodical meetings with Taxpayers, Tax Bar, Chartered Accountants Association, Trade Associations etc., will serve as a good feedback mechanism. Personal counselling, especially of the younger officers is also a mode of correcting instances of inadvertent infringement of Conduct Rules etc.

The general reputation of an officer is also an important input for the Administration before taking a view about transfers/postings. The Administration Division in CBDT and CBEC and the field formations must be sensitised about the criticality of rotation of officers between sensitive and non-sensitive assignments. Besides facilitating exposure to all areas of work, this also prevents the possibility of officers developing any vested interest which in turn adversely impacts objective official functioning. The work environment must maintain zero tolerance towards malpractices and corruption. An onerous responsibility is cast on the Senior Officers to lead by example. It is expected that all the vulnerable areas will be secured effectively to eliminate any possible misuse, explanation or unintended abuse. Not only is personal integrity necessary, it is incumbent upon the supervisory cadre to promote good and ethical behaviour in their subordinate officers.

The CBDT and CBEC being the most important revenue garnering agencies of the Central Government, the revenue mobilisation endeavour must be premised on the Departmental personnel exhibiting complete objectivity, integrity and sincerity in their conduct. The Chief Commissioners/ Directors General are advised to sensitise the field formations suitably and reiterate the Government's resolve to provide a tax administration that is free of corruption, bias or favouritism.

(Office Memorandum issued vide dated 22-1-2013)

CA Tarunkumar Singhal & CA Sunil Lala

INTERNATIONAL TAXATION
Case Law Update

A] HIGH COURT JUDGMENTS

I India – France DTAA – Whether capital gains arising from transfer of shares of a French company which in turn held controlling stake in an Indian operating company is taxable in France and not in India? Held: Yes – Whether retro amendments made to overcome Vodafone's decision are fruitless exercises as the same do not contain a non-obstante clause to override treaty? Held : Yes

Sanofi Pasteur Holding SA vs. Department of Revenue, Ministry of Finance [2013] 30 taxmann.com 222 (AP)

Facts

1 The petitioners, Sanofi Pasteur Holdings SA ("Sanofi"), Merieux Alliance ("MA") and Groupe Industrial Marcel Dassault ("GIMD") are all companies registered and resident in France.

2 On 10-7-2009, a Share Purchase Agreement ("SPA") was entered into between MA/GIMD as the sellers and Sanofi as the buyer whereby GIMD and MA sold their entire shareholding in ShanH, a joint venture company resident in France, to Sanofi.

3 ShanH has a subsidiary SBL, a company registered and resident in India, and holds around 80% of its share capital and voting rights.

4 MA and GIMD had made separate applications to the Hon'ble AAR for a ruling on the taxability of the gains arising out of the proposed transaction of sale of its shareholding in ShanH to Sanofi in India in terms of the India – Germany Double Taxation Avoidance Agreement ("the DTAA"). The above applications were admitted by the Hon'ble AAR for final hearing under Section 245R(4) of the Act.

5 At the time of final hearing, the Hon'ble AAR ruled in favour of the Revenue holding that the transaction of sale of shares was taxable in India in terms of Article 14(5) of the DTAA. It also held that clause (iii) of Section 245R(2) of the Act would apply as the scheme was for avoidance of tax in India.

6 In the case of Sanofi, the Assessing Officer ("AO") had passed an order under Section 201(1)/(1)(A) of the Act holding it as "assessee in default" for non deduction TDS under section 195 from payments to GIMD and MA and was held liable to tax and interest.

7 Aggrieved, MA, GIMD and Sanofi filed writ petition before Hon'ble High Court challenging the above orders.

Judgment

Commercial substance of ShanH

1 The Hon'ble High Court observed that ShanH as a French resident corporate entity was a distinct entity of commercial substance, distinct from MA and GIMD. It was incorporated to serve as an investment vehicle, this being the commercial substance and business purpose i.e. of foreign direct investment in India by way of participation in SBL.

2 ShanH received and continues to receive dividends on its SBL shareholding which had been and were assessable to tax under provisions of the Act; and even post the transaction in issue, the commercial and business purpose of ShanH as an investment vehicle was intact. These indicators/factors were, in the light of Vodafone International Holdings B. V., adequate base to legitimise the conclusion that ShanH was not a sham or conceived only for Indian tax-avoidance structure.

Lifting of corporate veil of ShanH

3 The Hon'ble High Court on an analysis of the transactional documents and surrounding circumstances, observed that ShanH was not conceived for avoiding capital gains liability under the provisions of the Act and the same had also not been contested by the Revenue. Thus in light of the ratio laid down by the Supreme Court in Azadi Bachao Andolan and Vodafone International Holdings B.V., it held that ShanH was not a corporate entity brought into existence and pursued only or substantially for avoiding capital gains tax liability under the provisions of the Act.

4 It further observed that ShanH was conceived and incorporated in conformity with MA's established business practices and organisational structure.

5 Also, the fact that a higher rate of capital gains tax was payable and had been remitted to Revenue in France, lended further support to the Sanofi's contention that ShanH was not conceived, pursued and persisted with to serve as an India tax-avoidance device.

6 Accordingly, it held that since the Revenue failed to establish that the genesis and continuance of ShanH establishes as an entity of no commercial substance and/or that ShanH was interposed only as a tax avoidant device, no case could be made out for piercing or lifting the corporate veil of ShanH. Further, even subsequent to the transaction, ShanH continued in existence as a registered French resident corporate entity and as the legal and beneficial owner of shares of SBL.

7 It further held that even on piercing the corporate veil of ShanH, the transaction in issue was clearly one of transfer by MA and GIMD of their shareholding in ShanH to Sanofi and not a case of transfer of shareholding in SBL, which continues with ShanH.

Liability to tax in India

8 The Hon'ble High Court observed that as per Article 14(4) of DTAA gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.

9 Thus, the transaction neither constitutes the transfer nor deemed transfer of shares or of the control/management or underlying assets of SBL and hence Article 14(4) of the DTAA would not be applicable.

10 Accordingly, it held that the present transaction was for alienation of 100 per cent of shares of ShanH held by MA and GIMD in favour of Sanofi and such transaction fell within Article 14(5) of the DTAA according to which gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 10 per cent in a company

would be taxed in the Contracting State in which the company is resident. Therefore, the gains arising from the sale of shares would be taxable in France where ShanH was a resident.

11 It further held that the controlling interest of ShanH over the affairs, assets and management of SBL being identical to its shareholding and not a separate asset, the same could not be considered or computed as a distinctive value. The assets of SBL could not be considered as belonging to a share holder (even if a majority share holder). The value of the controlling rights over SBL attributable to ShanH shareholding was also incapable of determination and computation. There was also the issue of value of Shantha West, a subsidiary of SBL. For these reasons, the computation component which is inextricably integrated to the charging provision (Section 45 of the Act) fails, and consequently the charging provision would not apply.

12 The Hon'ble High Court thus concluded that the transaction was not liable to tax in India under the provisions of the Act read with the provisions of the DTAA.

Impact of retrospective amendments

13 The Hon'ble High Court observed that the Finance Act, 2012 introduced GAAR provisions(sections 95 to 102) which override treaties in case of abuse of treaty provisions which was proposed to be operationalised with effect from 1-4-2014. Section 90(2A) inserted by Finance Act, 2012 enables application of GAAR even if same is not beneficial to assessee

14 However, in contra-distinction, retrospective amendments relied upon by Revenue – Explanation 2 to section 2(47) and Explanations 4 and 5 to section 9 are not fortified by a non-obstante clause to override the provisions of the DTAA. Thus it rejected the Revenue's contentions that the retrospective amendments by Finance Act, 2012 would override the provisions of the DTAA.

15 It observed that there is a presumption against a repeal by implication and the reason underlying this principle is permised on the theory that Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provision it signals an intention not to repeal existing legislation..

On order of the AAR

16 The Hon'ble High Court observed that in 2009, applications for advance ruling (by MA and GIMD) were allowed by the Hon'ble AAR under section 245R(2), recording a clear finding that the applications were not hit by Clause (iii) of the proviso to section 245R(2). In 2010, considering Revenue's objections to admissibility of the applications, AAR found no reason to revoke its earlier order. In 2011, writ petitions by Revenue were dismissed by the HC. However, in its final ruling on merits, the Hon'ble AAR declined to rule on questions raised, citing tax avoidance as the cause.

17 It further observed that the AAR's observations on this aspect signal the clear inference that the learned Authority was revisiting its decision dated 17-12-2009 (admitting the applications, for eventual determination on merits), reiterated on 8-7-2010; and reviewed its earlier decision admitting the applications. Relying on various case laws, it held that judicial and quasi-judicial authorities exercising jurisdiction under a legislative grant have no inherent power to review their decision. Thus, the decision of the Hon'ble AAR reviewing its earlier decision was unsustainable.

18 It further observed that the transaction did not involve tax avoidance. The core issue was regarding allocation of the tax to either India or France under the provisions of the DTAA. France is neither a low tax jurisdiction nor a tax haven and is the natural jurisdiction of all the entities involved in the transaction-MA, GIMD, ShanH and Sanofi. Thus the Hon'ble AAR ruling providing that the capital gains arising out of

the transaction was liable to tax in India was unsustainable.

Is Sanofi an assessee in default

19 The Hon'ble AAR observed that the liability of Sanofi to deduct tax at source while making payments to MA and GIMD for acquisition of shares of ShanH is contingent on the consequent gain being chargeable under the provisions of the Act. If the gain was not chargeable to tax, the corresponding tax withholding obligations does not arise.

20 It thus held that since the tax on capital gains on the transaction was not allocated to India and was exclusively allocated to France, Sanofi had not violated any provision of the Act in not withholding tax on payments made to MA and GIMD and hence it would not be treated as an 'assessee in default' under section 201(1) of the Act.

II. India – Netherlands DTAA – Whether the DTAA benefit with respect to lower rate of tax on royalties/fees for technical services can be granted to a Netherlands company in view of the fact that it is a beneficial owner of the royalty received and there is a certificate issued by Revenue Authorities in Netherlands to that extent? Held : Yes

DIT(IT) vs. M/s Universal International Music B.V. [TS-56-HC-2013(Bom.)]

Facts

1 The assessee had claimed benefit of Article 12 of India-Netherlands Double Taxation Avoidance Agreement ("the DTAA") for paying tax at concessional rate of 10% on royalty income received by it from Universal India P. Ltd.

2 The AO however, denied the benefit of the concessional rate of tax provided in Article 12 of DTAA on the ground that it is not the beneficial owner of the musical tracks in respect of which the royalty income was earned.

3 On appeal, the CIT(A) and the Hon'ble Tribunal arrived their finding placing reliance on the Certificate dated 25-7-2003 received from revenue authorities in Netherlands certifying that the assessee was a beneficial owner of the royalty received in respect of musical track given to M/s Universal Music Pvt. Ltd.

4 The Hon'ble Tribunal also relied upon the CBDT Circular No. 789 dated 13-4-2000 which stated that certificate from revenue authorities is sufficient evidence of beneficial ownership.

5 Aggrieved, the Revenue appealed to the Hon'ble High Court.

Judgment

1 The Hon'ble High Court observed that the Revenue has not been able to show anything on record to controvert the finding of fact arrived by the CIT(A) and the Hon'ble Tribunal that the assessee was the beneficial owner of the royalty received on the musical tracks given to Universal Music Private Limited.

2 The Hon'ble High Court thus held since the decision of the Tribunal being based on a finding of fact, the proposed question of law could not be entertained.

III. Whether Advance Ruling in assessee's own case cannot be overruled by a subsequent Advance Ruling in case of another assessee? Held : Yes – Whether reopening of assessment under section 147 on the ground that the advance ruling obtained by the assessee had been overruled by a subsequent Advance Ruling in case of another assessee was not valid? Held : Yes

DIT vs. Prudential Assurance Co. Ltd. [2013] 30 taxmann.com 126 (Bom.) Assessment Year: 2003-04

Facts

1 The assessee, a non-resident company, had obtained a ruling from the Hon'ble AAR on 30th April, 2001, whereby it was held that profits arising to it from realisation of portfolio investments in India would be treated as business profits.

2 Accordingly, for A.Y. 2003-04, the assessee claimed loss on sale of shares to the extent of ₹ 48.80 crores under the head "Profits and gains of business or profession" in its return of income which was accepted by the Assessing Officer ("AO") under section 143(3) of the Income-tax Act, 1961 ("the Act").

3 Subsequently, a notice to reopen the assessment was issued under section 147 on grounds that the Advance Ruling in assessee's own case was overruled by a subsequent Advance Ruling in another case, which held that earnings on purchase and sale of shares would be taxable under the head 'Capital gains' and not 'Profits and gain from business or profession' and thus resulting in escapment of income and accordingly reassessment order.

4 On appeal, the Hon'ble Tribunal set aside the order of the Assessing Officer on the ground that for two A.Y.s 2004-05 and 2005-06, the Director of Income-tax had initiated proceedings under section 263 on identical grounds which had been set aside in a writ petition.

5 Aggrieved, the Revenue appealed to the Hon'ble High Court.

Judgment

1 The Hon'ble High Court held that the notice for reopening was not sustainable since it was issued on 31-3-2010, which was beyond a period of four years from the end of the relevant assessment year 2003-04 and the reasons recorded for re-opening did not allege that there had been any failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of assessment.

2 It observed that even on merits, this Court in writ petition *Prudential Assurance Co. Ltd. vs. DIT (IT) [2010] 191 Taxman 62/324 ITR 381 (Bom.)* filed by the assessee for A.Ys. 2004-05 and 2005-06 against section 263 proceedings had held that the ruling of Hon'ble AAR in the assessee's case would not be overruled by subsequent decision of the Hon'ble AAR in the case of another assessee. Consequently, initiation of action under section 263 for assessment years 2004-05 and 2005-06 was quashed on the ground that the assessment order could not be said to be prejudicial to the revenue or erroneous as the AO was merely following a binding ruling of the Hon'ble AAR.

3 It further observed that the Hon'ble Tribunal relied upon the aforesaid facts and held that the re-opening of assessment was not justified, as the finding of the Hon'ble AAR in the assessee's own case would continue to govern the assessee's assessments.

4 Accordingly, it held that the decision of this Court in the assessee's own case in *Prudential Assurance Co. Ltd. vs. DIT (IT)* was wholly applicable to the facts of the present case as held by the Hon'ble Tribunal and dismissed the appeal filed by the Revenue.

C) TRIBUNAL DECISIONS

IV India-Singapore DTAA – Article 12 – 'Concept of make available' – Fees for Technical Services – Whether fees paid for availing services for testing and identifying toxins in samples of dog food in laboratories outside India, amounts to FTS under Article 12 of the DTAA – Whether mere rendering services of technical nature amounts to making available technical

knowledge under the Treaty – Held: No; in assessee's favour.

Romer Labs Singapore Pte. Ltd. vs. ADIT [2013-TII-31-ITAT-DEL-INTL] Assessment Year: 2005-06

Facts

1 The assessee, incorporated under the laws of Singapore, is engaged in the business of rendering services relating to testing solutions, sample analyses and analytical testing of food and feed samples.

2 The assessee provided services to Indian companies, for testing of dog feeds and similar products to check the mycotoxin level and to ascertain whether the same was within permissible limit or not.

3 For testing purposes, Indian company sent samples to the laboratory of the assessee located in Singapore. After testing, the test reports were sent to Effem India Pvt. Ltd. located in India and the assessee received service fee for the same. The assessee claimed that these receipts were business income not taxable in India.

4 The AO held that the assessee has made available technical knowledge, skill or know-how to Indian customer and as such, the payments made to it were to the nature of FTS as defined under Article 12 (4) of the DTAA. The CIT(A) upheld the order of the AO.

5 The assessee submitted that the payments received were not taxable as FTS within the meaning of Article 12 (4) of the Treaty; that the prerequisite of applying Article 12(4)(b)(c) of Tax Treaty was that the services should be provided in a manner to make available technical knowledge to the recipient of services which enable the person acquiring the services to apply the technology contained therein. The assessee also submitted that in the facts of the assessee's case, the Indian company received test reports but it did not acquire any technical knowledge from the assessee which could enable it to apply the technology to produce test report independent of the services of the assessee.

Decision

The Tribunal held in assessee's favour as under:

1 The assessee provided testing services and issued test reports. These reports cannot be said to make available any technical knowledge, experience, skill, knowhow or processes which enables the Indian company to acquire the services able to apply the technology contained therein. Therefore, these receipts cannot partake the fees for technical services as defined in DTAA with Singapore.

2 The samples were sent by India company, M/s. Effem India for testing in Singapore. These samples were comprising broken rice, maize, pet food, wheat gluten sodium caseinate, poultry meal, soya protein isolate, copra press cake, etc. These samples were tested to detect the presence of mycotoxin. The presence of these toxins is hazardous to human and animal health. The Indian company Effem India which manufactures the dog foods regularly sent such samples to appellant for detection of such toxins prior to the utilisation of these items in the manufacturing process.

V. Section 9(1)(vii) – Fee for technical services – Assessee, a non-resident company, entered into a Buying Agency Services Agreement with an Indian company, AIMPL – For sourcing merchandise to AIMPL, assessee received commission – Whether services rendered by assessee in this case were purely in nature of procurement services and cannot be characterised as 'managerial', 'technical' or 'consultancy' services – Held, yes – Whether, accordingly, consideration received by assessee was appropriately classifiable as 'commission' as against 'fees for technical services' – Held :

Yes - In favour of assessee.

Adidas Sourcing Ltd. vs. ADIT [2012] 28 taxmann.com 267 (Delhi) Assessment Year: 2007-08

Facts

1 The assessee, a tax resident of Hong Kong, had entered into a Buying Agency Services Agreement with AIMPL, an Indian Company.

2 As per the agreement, the assessee was broadly required to provide the following services to AIMPL in relation to the sourcing of goods from outside India: maintain relationship with the manufacturers outside India and search for new potential manufacturers; supply AIMPL with credit reports and other marketing information concerning manufacturers; co-ordinate between AIMPL and manufacturers for the purpose of buying the merchandise and the same included placing the purchase order, assisting in negotiations, etc.; assist in procurement of samples and sending the same to AIMPL with other terms and conditions for approval; provide translation services as required for communication between AIMPL and the manufacturers.

3 It was receiving buying commission at the rate of 8.25 % of the value of the merchandise sourced to AIMPL.

4 At the time of filing the return of income, the assessee did not offer the income received from AIMPL for providing sourcing services, to tax since the assessee did not have a place of business in India from where such sourcing services were provided to AIMPL.

5 The Assessing Officer, however, held that the buying commission income received by the assessee was in the nature of fees for technical services ('FTS') and the same should be taxable in India in its hands.

Decision

The Tribunal held in assessee's favour as follows:

1. It is evident that for a particular stream of income to be characterised as 'fees for technical services', it is necessary that some sort of 'managerial', 'technical' or 'consultancy' services should have been rendered in consideration. The terms 'managerial', 'technical' or 'consultancy' do not find a definition in the Income-tax Act, 1961 and it is a settled law that they need to be interpreted based on their understanding in common parlance. The Delhi High Court in the case of *J.K. (Bombay) Ltd. vs. CBDT [1979] 118 ITR 312/ 1 Taxman 537* referred to an article on 'Management sciences' in Encyclopaedia 747, wherein it is stated that the management in organisations includes at least the following: (a) discovering, developing, defining and evaluating the goals of the organisation and the alternative policies that will lead towards the goals; (b) getting the organisation to adopt the policies; (c) scrutinising the effectiveness of the policies that are adopted; and (d) initiating steps to change policies when they are judged to be less effective than they ought to be. Management thus pervades all organisations.

2 In the case of *Skycell Communication Ltd. vs. Dy. CIT [2001] 251 ITR 53*, the High Court has held that the popular meaning associated with the word 'technical' is 'involving or concerning applied and industrial science'.

3 Consultancy is generally understood to mean an advisory services. Further, it may be fair to state that not all kind of advisory could qualify as technical services. For any consultancy to be treated as technical services, it would be necessary that a technical element is involved in such advisory. Thus, the consultancy should be rendered by someone who has special skills and expertise in rendering such advisory.

4 The copies of the Buying Agency Services agreement are placed on record; the nature of services have not been disputed. Department has only interpreted them to be amounting to 'fees for technical services'. These are not technical services but routine services offered in the procurement assistance. The agreements demonstrate that the assessee was to receive commission for procuring the products of

AIMPL and rendering incidental services for purchases.

5 The services rendered by the assessee in this case were purely in the nature of procurement services and cannot be characterised as 'managerial' 'technical' or 'consultancy' services. Accordingly, the consideration received by the assessee was appropriately classified as 'commission' as against 'fees for technical services'.

VI. Whether Payment made by assessee to a German company not only towards repairs but also for preventive maintenance of its machinery, amounted to 'fee for technical services' and thus, assessee was required to deduct tax at source while making said payment

Bosch Ltd. v. ITO [2012] 28 taxmann.com 228 (Bang.) Assessment Year: 2011-12

Facts

Re: Payment to Non-Residents for rendering repair services

1 The assessee was a manufacturing company with both imported and indigenous plant and machinery. Annual maintenance contracts were entrusted to foreign suppliers of machinery and equipment. Likewise, repair contracts were also entrusted to the foreign suppliers who were residents of Germany.

2 According to the assessee, the payments represented business receipts of non-resident companies as none of the non-residents had PE in India and those payments were not chargeable to tax in India.

3 The Assessing Officer as well as the Commissioner (Appeals) concluded that the payments made by the assessee to the non-residents towards repairs and AMC were not their business profits but were 'fees for technical services'.

4 Accordingly, the CIT(A) held that the assessee was liable to withhold tax at the rate of 20%.

Re: Payment towards preventive maintenance of Machinery.

5 The assessee received services of repairs of its machinery from the non-residents which included assistance in analysing and solving technical problem and dysfunctions by locating and mending the cause of the dysfunction by providing telephonic advice, analysis and assistance to the operator and for preventive maintenance.

6 The assessee made payments of repair charges without deducting tax at source. The Assessing Officer taking a view that said payments amounted to 'fees for technical services' held that assessee was liable to deduct tax at source.

7 The Assessing Officer further held that since non-resident recipients did not furnish its PAN to assessee-deductor, tax at source was required to be deducted at higher rate under section 206AA.

8 The Commissioner (Appeals) upheld the order of Assessing Officer.

Decision

The Tribunal held partly in favour of the assessee, as under:

Whether amount received by non-residents for rendering repairs services amounted to 'fee for technical services'

1 For determining the question as to whether any income is chargeable to tax in India, it has to arise or accrue in India, and thus, the nature of the income has to be determined first. Therefore, the first question to be considered is the nature of the services, rendered by the non-resident company to the assessee, whether it is 'mere repairs' or 'technical services'.

2 From a plain reading of the purchase order and invoices, it appears that the machinery

has to be repaired and not to be modified or 'improved'. Every repair needs a technical skill or expertise. But can any and every activity which involves skill and expertise be called as technical services. As per the Cambridge Dictionary, the word 'repair' means to put something, damaged, broken or not working correctly back into condition or make it work again.

3 This definition pre-supposes that there is a machinery or a tool which is damaged and which has to be brought back to its original working condition. This cannot be done without the knowledge about the machinery and the skill to bring it back to its original working or to workable condition.

4 The word 'services' denotes that it is an activity to help achieve something or result in something useful or purposeful. Explanation 2 to clause (vii) of sub-section (1) of section 9 defines 'fees for technical services' as any consideration for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like projects undertaken by the recipients or consideration which would be income of the recipients chargeable under the head 'salaries'.

5 Thus, it can be seen that the definition not only contains the positive constituents of the services being managerial technical or consultancy services but also enumerates the services which are not included in the technical services. The 'positive constituents' of the definition are that they should be managerial, technical or consultancy services. These terms are very wide and need to be considered with an exhaustive meaning attributable to them. The definition of 'fees for technical services' as given in the DTAA between India and Germany also contains similar language. Whether services rendered by the recipients repairing the machinery of the assessee would fall within the scope of definition of 'fees for technical services' under the Act or under the DTAA is to be examined.

6 In the case of *Lufthansa Cargo India (P.) Ltd. vs. Dy. CIT [2004] 140 Taxman 1 (Delhi) (Mag.)* it was held that the payments made by the assessee to the non-resident workshops outside India do not constitute payment of fees for managerial, consultancy or technical services as defined in Explanation 2 to section 9(1)(vii). As facts of the case are very much similar to the facts of the case before the Delhi Bench of the Tribunal in the case of Lufthansa Cargo India (P.) Ltd., it is held that the payments to the recipients in Germany do not come within the purview of fees for technical services.

7 This, therefore, cannot be treated as FTS but is business income of the non-resident company. As per the law in force, business income of a non-resident recipient is chargeable to tax in India only if it is arising or accruing or deemed to arise or accrue in India provided that they have permanent establishment in India. As it is not disputed that the non-resident recipients of the remittances have no PE in India, their business income is not chargeable to tax in India. Since the very nature of income has been decided to be business income and not fees for technical services, the payments do not require withholding of tax at source under section 195.

8 In the result, the assessee is not under an obligation to withhold tax leave alone at the rate of 20 per cent under section 206AA and the issue of grossing up would not arise.

Whether payments made towards preventive maintenance of machinery amounted to 'fee for technical services'

9 The services rendered by non-resident company clearly fall within the purview of definition of 'fees for technical services'. This is so because, the services are not mere repairs but are towards preventive maintenance which clearly show that the recipients are providing technical assistance and services to the assessee in India. Therefore the assessee is liable to

withhold tax from the payment of fees for technical services. In view of Explanation 2 to clause (vii) of section 9(1), the 'fees for technical services' is chargeable to tax in India and the assessee is liable to deduct tax at source.

VII. Secondment Agreement – Where an Indian company pays all expenses incurred by a foreign parent company towards employees seconded to Indian company, such payment, being pure reimbursement, cannot be regarded as income in hands of foreign company; neither can it amount to fees for technical services

Abbey Business Services (India) (P.) Ltd. vs. DCIT [2012] 23 taxmann.com 346 (Bang.) Assessment Years: 2005-06 & 2006-07

Facts

1 The assessee, an Indian company, was a subsidiary of foreign company, Anitco.

2 Anitco was a group company of Abbey UK, based at UK. Abbey UK entered in to an agreement with one Indian company, Msource, to outsource the provision of certain process and call centres to Msource. Under said outsourcing agreement, the Msource was to provide financial and insurance services to customers of Abbey UK in the UK.

3 In order to ensure that high quality services were provided by Msource, Abbey UK entered into a consultancy agreement with the assessee. The assessee was to be compensated at cost plus 12%.

4 In order to facilitate the 'outsourcing agreement' between the Abbey UK and the Msource, an agreement for 'secondment of staff' was entered in to between the Abbey UK and the assessee, whereunder Abbey UK seconded its trained staff to assessee. As per the terms of the secondment agreement, secondees were under the direct management, supervision and control of the assessee during the periods of secondment; and Abbey UK was not responsible for any loss or damage occasioned by the works done by the secondees; secondees performed the tasks at such place, as assessee would instruct.

5 However, at the same time, Abbey UK remained as an employer of the secondees during the secondment; therefore, secondees were not entitled to any remuneration, employment benefits from the assessee. It was Abbey UK who was responsible, as an employer, to pay remuneration, to bear other responsibilities like pension contributions, statutory payments etc., as an employer.

6 Under further terms of the secondment agreement, assessee was to reimburse all payments and expenses incurred by the Abbey UK in respect of seconded employees. Abbey UK deducted income tax at source under section 192 in respect of salaries paid to secondees.

7 During the year, total 168 employees were seconded by the Abbey UK. The salary costs of those employees, incurred and paid by Abbey UK, amounted to ₹ 16.62 crore on which TDS of ₹ 4.98 crore was deducted u/s 192. Other administration costs incurred in respect of seconded employees, was ₹ 10.96 crore. Thus, the total amount to be reimbursed by the assessee to Abbey UK was ₹ 27.58 crore.

8 The assessee debited ₹ 27.58 crore in its profit and loss account and claimed the same as deduction in computing its total income. The Assessing Officer, however, formed an opinion that assessee was liable to deduct tax at source under section 195 on payment of ₹ 27.58 crore, on the reason that secondees, as employees of Abbey UK, provided managerial services to the assessee, which constituted 'fees for technical services' under section 9(1)(vii).

9 The A.O. rejected the plea of assessee that payment of ₹ 27.58 crore constituted reimbursement of expenditure incurred by Abbey, UK. Accordingly, the payment of ₹ 27.58 crore was disallowed by invoking section 40(a)(i).

10 On appeal, the Commissioner (Appeals) partly allowed the claim of assessee.

Decision

On appeal, the Tribunal held in assessee's favour, as under:

(i) Whether the assessee can be regarded as the real and economic employer of the employees seconded to the assessee under the secondment agreement?

If the assessee was regarded as employer under clause 3.6, then the secondees would have to severe their employment with Abbey UK resulting in their not being entitled to benefits of pension contributions, social security and insurance contributions under the laws of UK. In view of this, the employee status of secondees with Abbey UK was kept intact. This, it was held, would not alter the position that the assessee should be regarded as the real and economic employer of the secondees. When the requirements of employer-employee relationship such as the right to hire or accept the secondment, right to control and supervise, right to instruct, right to terminate from secondment are satisfied as in the case of the assessee and secondees, Abbey UK was only an employer in a legal sense. The mere fact that the secondees remained on the pay roll of Abbey UK does not lead to the conclusion that Abbey UK is the actual employer. In view of the above reasons, it is held that the real employer of the secondees was the assessee. The OECD Model Convention on Income from capital gains in Article 15 thereof, holds a view that in case of secondment arrangements, the person under whose supervision and control they are employed should be considered as the real and economic employer. It is, therefore, held that the assessee should be considered as the real and economic employer of the secondees.

(ii) Whether the payments made by the assessee to Abbey UK were pure reimbursement of expenses and if so whether the said reimbursements constituted income in the hands of Abbey, UK?

The impugned payments were pure reimbursements of expenses and, therefore, did not constitute income in the hands of Abbey UK so as to warrant deduction tax at source thereon. Clause 4.1 of the secondment agreement states that in consideration for secondment of staff by Abbey UK, the assessee shall make payments equivalent to the remuneration, pension contribution, expenses, statutory payments and any other sums incurred by Abbey UK applicable to each secondee during his or her period of secondment.

The Appellate Tribunal relied on the decision of the Supreme Court in the case of *TISCO vs. Union of India [2001] 2 SCC 41* and the Appellate Tribunals decision in the case of *IDS Software Solutions (India) (P.) Ltd. vs. ITO (International Taxation) [2009] 32 SOT 25 (Bang.) (URO)* to hold that reimbursement of salary costs and other expenses made by the assessee to Abbey UK under the secondment agreement cannot be regarded as income chargeable in the hands of Abbey UK.

(iii) Whether payment made by the assessee to Abbey UK constitute 'fees for technical services' under section 9(1)(vii)?

In the instant case, the agreement entered in to by the assessee with Abbey UK was for secondment of staff and the consideration paid was for this purpose only and not for the rendering of any services. Therefore, in the instant case, the secondment of staff/personnel would not tantamount to rendering of technical, professional or consultancy services. Section 9(1)(vii) is attracted if there is rendering of service for which a consideration should follow. In the instant case, it was specifically agreed by the parties that Abbey UK would only second staff to the assessee as per the secondment agreement. No services were rendered by Abbey UK to the assessee. The reimbursement of salary costs and other administration costs did not contain any mark up as clearly brought out in the clause 4.1 of the secondment agreement. As the reimbursement to Abbey UK did not result in any profit or gain or income to it, these reimbursements cannot be treated as 'consideration.'

In the instant case, Abbey UK has not rendered any services to the assessee. It has only deputed secondees to the assessee. The expression 'provision of services of technical or other personnel' used in the definition of 'fees for technical services' is thus not satisfied.

In view of the above discussion, it is held that the reimbursement of salary costs and other administration expenses made by the assessee cannot be categorised as 'fees for technical services' under section 9(1)(vii).

(iv) Whether payments made by the assessee to Abbey UK constitutes 'fees for technical services' under Article 13 of DTAA between India and UK?

The requirement of 'make available' is to be satisfied for a payment to fall under Article 13 of the India UK Treaty. The meaning of the term 'make available' under the Treaty has been elaborately dealt with in the decision of the jurisdictional High Court in the case of *CIT vs. De Beers India Minerals (P.) Ltd. [2012] 21 taxmann.com 214 (Kar.).* Applying the principles laid down by the Karnataka High Court in the case of De *Beers India Minerals (P.) Ltd (supra)* to the instant case, it would be evident that there is no 'make available' of technology, processes, skills, experience etc,. by Abbey UK to the assessee. The payments made by the assessee to Abbey UK is reimbursement of salaries, costs, etc. of seconded staff and not for rendering of any services. As a result of the said payments, the assessee, is not equipped with transfer of technology, processes, skills, etc., by Abbey UK to the assessee. Therefore, the reimbursement of salary and other costs by the assessee to Abbey UK cannot be regarded as 'fees for technical services' under Article 13 of the India-UK Treaty [Para 16.6].

(v) Whether the payments made by the assessee to Abbey UK were liable for TDS under section 195 and the payments made by the assessee to Abbey UK were liable for disallowance under section 40(a)(i)?

In view of the findings that the assessee was the real and economic employer of the secondees under the secondment agreement and that the reimbursement of salary costs and other expenditure was without any profit element, same, cannot be regarded as income chargeable in the hands of Abbey UK under Article 13 of the India-UK Treaty. In other words, the reimbursement of salary and other expenditure made by the assessee to Abbey UK under the secondment agreement were not liable for TDS under section 195 and, consequently, the said payments are not liable for disallowance under section 40(a)(i).

CA. Hasmukh Kamdar

INDIRECT TAXES
Central Excise and Customs – Case Law Update

Recovery of Government Dues

Commissioner of Central Excise vs. Ashima Dycot Ltd. [2013 (288) ELT 244 (Tri. Ahmed. Decided on 28-9-2012]

The issue involved in this case was whether the First Appellate Authority was correct in setting aside the adjustment of sanctioned rebate against the dues from the assessee as the dispute, was before the higher forum i.e., Tribunal.

1. The assessee, a merchant exporter, exported excisable goods on which duty was paid by the manufacturer. The merchant exporter therefore filed a rebate claim in terms of Rule 18 of the Central Excise Rules, 2002 read with the Notification Number 19/2004-C.E (N.T.) dated 6-9-2004. Since rebate claim was filed in time and all documentation was in order, the Assistant Commissioner sanctioned the rebate claim. He however, in terms of Section 11 of the Central Excise Act, 1944, adjusted the rebate amount against the arrears of demand arising out of an another Order in Original passed against the assessee.

2. Aggrieved by such an order of adjustment of the rebate claim towards the dues which arose out of an Order-in-Appeal the assessee preferred an appeal before the First Appellate Authority. The First Appellate Authority after considering the provisions of Section 11 of the Central Excise Act, 1944 and the C.B.E. & C. circular dated 25-5-2004 and 2-6-1998 held that the adjudicating authority had incorrectly adjusted the dues of the assessee from their rebate claims against the government arrears.

3. The Revenue preferred an Appeal before the hon'ble CESTAT against the order in Appeal. It was submitted on behalf of the Revenue that:

a. provisions of Section 11 of the Central Excise Act provides for recovery of duty or any other sums of amount payable to Central Government under the Act, by way of deduction of the said amount from any money owing to the person from whom such sums is recoverable or due.

b. in the present case, the demand in case of Order-in-Appeal was a confirmed demand and therefore rebate due to assessee was rightly adjusted against the dues arising out of Order-in-Appeal.

c. there was no stay order given against order-in-appeal, at the time of adjustment of dues hence there was no bar in law for appropriating the amount of rebate sanctioned against the government dues.

d. the First Appellate Authority has erred in relying upon Board's Circular dated 25-5-2004. The said Board's Circular discusses about non-adjustment or using coercive method only in respect of stay petitions pending before the First Appellant Authority and does not bar the authorities from recovering/adjusting the amount due from an assessee against the amounts to be paid to him either by way of refund, rebate, etc.

4. It was submitted on behalf of the assessee that appropriation of the amount against the dues can be done only if there is confirmed demand. It was further submitted that the Order -in-Appeal is under challenge and unconditional stay has been granted by the Tribunal and hence there cannot be any adjustment of the amounts which has been done so by the lower authorities. The reliance was placed on the following judgments of the Tribunal:

a. The *Commissioner of Central Excise, Indore vs. Girdharilal Sugar Allied Industries Ltd [2004 (168) E.L.T 350]* and

b. *The Commissioner of Central Excise, Bangalore-III vs. Stella Rubber Works (Unit-II) [2012 (275) E.L.T 404 (Kar)].*

I have considered the submissions made at length by both sides and perused the records.

5. The Hon'ble Tribunal observed that the First Appellate Authority in her impugned order has recorded the following findings;

> "9. In view of the above I find that adjudicating authority has incorrectly adjusted the dues of the appellant from their rebate claims because the OIO Number 21/JC/2010 has not been confirmed by Commissioner (Appeals). This appears to be premature action on the part of the AC. The AC has in this respect violated the C.B.E. & C. circular, supra, by which, he being a departmental officer, is bound.
>
> 10. Moreover, now as stated by the appellant the situation has been reversed in respect of the OIA Number 313/2009 (AHD-I)CE/RLM/COMMR (A) AHD, dated 29-10-2009 as well. The CESTAT by their Order No. 5/987/WZB/AHD/2010 dated 25-8-2010, has granted unconditional stay of the aforesaid OIA. Hence, the dues are no longer recoverable and accordingly I direct the AC/DC to grant the sanctioned rebate, to the appellant if no stay has been obtained by the department against the order of the CESTAT."

6. It was further observed that from the above reproduced findings as well as the grounds of appeal of the department, it is not in dispute that that there is an appeal against Order-in-Appeal and Tribunal has granted an unconditional stay. The invocation of provisions to Section 11 of the Central Excise Act, 1944 to such an amount which is unconditionally stayed by the Tribunal and adjusting the said amount from the rebate claim sanctioned to the respondent is incorrect, as there is no government dues as on date against the respondent. The First Appellate Authority was correct in coming to the conclusion while setting aside the impugned order in original which did the adjustment of the dues against the rebate claim filed by and sanctioned to the assessee. The ratio of the decision of the Tribunal in the case of Girdharilal Sugar Allied Industries Ltd. (supra) is also in favour of such a proposition.

7. Accordingly, it was observed that the impugned order is correct, legal and does not suffer from any infirmity.

8. In view of the foregoing, the appeal filed by the Revenue was rejected.

Nikita Badheka, *Advocate* & *Notary* and CA Janak Vaghani

INDIRECT TAXES
VAT Update

1) Notification u/s 31A (1) and (2) of the MVAT Act, 2002, No. VAT 1512/CR-149/Taxation-1, dated 2nd February, 2013

Authorities Responsible to Collect Tax at Source

The Government of Maharashtra, in exercising power conferred on it u/s 31A (1) and (2) of the MVAT Act, 2002 has issued notification, dated 2nd February 2013 whereby w.e.f. 15th February, 2013 following authorities are notified to collect sums from the successful bidders, who have been awarded rights for excavation of sand, in addition to the amount fixed for auction of the sand, at the rate specified in column (3) of the Schedule appended thereto.

Schedule

Sr. No.	Class of Authorities	Amount to be collected
(1)	(2)	(3)
(a) (b) (c)	District Collector, or Cantonment Boards, or Any other authority under the State Government or Central Government.	Ten per cent of the auction amount

2) Maharashtra Ordinance No. V of 2013, dated 2nd March, 2013

Amendment to MVAT Act, 2002 – Extension of Time Limit for Completion of Assessment for the periods 2005-06 and 2008-09.

The Governor of Maharashtra has promulgated Maharashtra Ordinance No. V of 2013 amending sections 23(2) and (3A) of the MVAT Act, 2002 for extending time limit for completion of assessment for the periods 2005-06 and 2008-09 from 31st March, 2013 to 30th June, 2013.

CA. Rajkamal Shah & CA. Naresh Sheth

INDIRECT TAXES
Service Tax – Statute update

1. Date of filing of service tax returns extended

Date of filing of return of service tax for the period 1-7-2012 to 30-9-2012 is extended to 15th April, 2013 from 25th March, 2013 by Order No. 1/2013 dtd. 6-3-2013.

Earlier, the Government had prescribed new format of ST- 3 return *vide* Notification No. 1/2013-ST dtd. 22-2-2013 and 25th March, 2013 was announced to be the last date by which the return required to be filed.

Salient features of the revised format:

- in ST-3 For it states clearly that "Gross Amount" for service provider as well as for the service receiver while calculating value of taxable service and service tax payable would include amount of export of service and exempted service and the same has to be shown separately in the value of taxable service.
- Taxable service which makes the assessee liable to service tax now also includes Payment of service tax under Partial Reverse Charge [section 68(2)].
- As precisely explained though with effect from 1st July, 2012, classification of services has been dispensed with, the assessee is required to mention service wise details of taxable service(s) as per the annexure given with the notification.

2. Reduction in abatement on sale of under constructed units (effective from 1-3-2013)

Abatement in respect of construction of a complex, building, civil structure, etc. for residential units – reduced from 75% to 70% in cases other than,

i) a residential unit having a carpet area up to 2000 sq. ft.

ii) a residential unit having value of less than ₹ 1 crore.

[Entry 12 in Notification No. 26/2012 – ST dtd.20-6-2012 as amended by Notification No. 2/2013-ST dated 1-3-2013 effective from 1-3-2013]

3. CENVAT Credit Rules, 2004 (CCR)

When a manufacturer or a service provider removes inputs or capital goods, on which CENVAT credit is taken, and if:

- Capital goods removed as such or cleared as waste and scrap or written off either in part or full;
- Inputs removed as such or written off;

then, such manufacturer or service provider is required to pay an amount towards CENVAT credit taken.

If such manufacturer or service provider fails to pay such amount, it can be recovered in a manner provided in Rule 14 for recovery of CENVAT credit wrongly taken and accordingly interest and penalty as provided in Central Excise Act or the Finance Act, 1994, as the case may be, are applicable.

[Explanation to Rule 3 of CCR inserted vide Notification No. 3/2013 – CE (N.T.) dated 1-3-2013, effective from 1-3-2013]

4. Advance Ruling

The benefit of advance ruling authority is now extended to resident public limited companies. [Notification No. 4/2013 – ST dtd. 1-3-2013 effective from 1-3-3013)

CA. Bharat Shemlani

INDIRECT TAXES
Service Tax – Case Law Update

1. Services

Cargo Handling Service

1.1 Beena Pradeep vs. GOI 2013 (29) STR 225 (Ker.)

The High Court in this case held as under:

- The activity of group packing in rough form just for easy loading into containers or ships, of goods taken by shipping companies in loose form for transport of the same to destination is classifiable under Cargo Handling Service.
- Packing of cargo is covered by Cargo Handling Service and also under Packaging Service. However, packing covered under Packaging Service is basic packing of products either in course of manufacturing or subsequent to manufacturing for marketing, whereas packing covered by broad definition of Cargo Handling Service is group packing of cargo for easy handling.
- Exemption provided to export cargo is to reduce cost of exporters to send goods for sale in international market at competitive rates. If service tax is demanded at last point packaging of goods for loading into containers or ships, it will lead to escalation of cost for export by way of freight increase.

Tour Operators Service:

1.2 Choudhary Yatra Co. Pvt. Ltd. vs. CCE, Nashik 2013 (29) STR 240 (Tri. Mumbai)

The appellant in this case supplied ordinary buses (not tourist vehicles) on rent basis to other tour operators such as ITDC, etc., who were discharging service tax and also to other commercial or non-commercial concerns. The Tribunal held that, as service tax has been paid by other tour operators, it could not be demanded second time on same activity however, buses provided to other commercial concerns/schools are liable to service tax.

It is further held that, persons neither holding tourist permit nor having tourist vehicles were not liable to pay service tax for period prior to 10-9-2004. It is also held that, since issue involved interpretation of law, neither extended period is invocable nor penalty is imposable.

1.3 Mangalore Tourist Service vs. CCE, Mangalore 2013 (29) STR 244 (Tri.-Bang.)

The appellant in this case provided tour operators services by using own vehicles and also of third parties. They contended that service provided by using third parties vehicles should be treated as Business Auxiliary Service and only amount of commission retained by them should be subjected to Service Tax. The Tribunal held that, this contention of the appellant is not acceptable and entire amount is liable to service tax.

Business Auxiliary Service – Export of Service

1.4 Paul Merchants Ltd. vs. CCE, Chandigarh 2013 (29) STR 257 (Tri.-Del.)

In this case, the Tribunal held that services provided by Indian agents/sub-agents to Money transfer company collecting money from abroad to be remitted to intended beneficiary in India is liable to service tax under BAS and since it has satisfied all the conditions mentioned in rule 3(2) of ESR, 2005, the said services qualifies as export of service and can be exported without payment of tax.

It is further held that, reimbursement received towards advertisement and sales promotions is also to be treated as export of service.

2. Interest/Penalties/Others

2.1 Vodafone Digilink Ltd. vs. CCE, Jaipur 2013 (29) STR 229 (Raj.)

The appellant in this case availed CENVAT credit on exempted services in excess of prescribed limit and utilised also. The Tribunal observed that, no disclosure in this regard has been made in returns filed. It is held that, disclosure of such facts were incumbent on assessee, and especially so as it was a professionally managed corporate. It is wilful suppression of facts for which extended period is invocable and also liable for penalty.

2.2 SKP Securities Ltd. vs. Deputy Director (RA-IDT) 2013 (29) STR 337 (Cal.)

The High Court in this case held that, rule 5A(2) of STR, 1994 does not empower CAG to audit accounts of any assessee and it is more so as it is framed under power from section 94(2) of FA, 1994 which does not empower Central Government to frame rules for such audit. It only casts obligation on assessee to make records and documents as specified therein available to officer authorised by Commissioner, or audit party deputed by Commissioner or CAG.

2.3 India Trimmings Pvt. Ltd vs. CCE&ST, Coimbatore 2013 (29) STR 383 (Tri.-Chennai)

In this case, the department denied refund claim as time barred filed under Notification No. 5/2006-CE(NT) under rule 5 of CCR, 2004. The Tribunal observed that, dispute of eligibility of credit settled in assessee's favour on 28-1-2009 and claim filed within one year from that date. It is held that, assessee entitled for refund from date of settlement of dispute and claim is filed within the time prescribed.

2.4 Shree Perfect Security Services (India) P. Ltd. vs. CST, Ahmedabad 2013 (29) STR 389 (Tri.-Ahmd.)

The appellant in this case claimed refund of penalty paid. The department sought to reject the same on the ground of unjust enrichment. The Tribunal held that, decision in *Unitech Spirits Ltd. (2009) (240) ELT 513 (Bom.)* supports that principle of unjust enrichment is inapplicable to penalty and the burden of proving passing on of penalty is on department and not on assessee as in case of duty.

2.5 Tata Consultancy Services Ltd. vs. CCE&ST (LTU) Mumbai 2013 (29) STR 393 (Tri.-Mumbai)

The Tribunal in this case held as under:

- Even though the appellant is not eligible for refund of service tax paid on services used in relation to authorised operation in SEZ under Notification No. 9/2009-ST, they are certainly eligible for refund under section 11B of CEA, 1994 r.w.s. 83 of FA, 1994.
- Once Approval Committee gave nexus and justification, it was unwarranted for adjudicating and appellate authorities to go into the question and come to their own findings in matter.
- Though under Notification No. 9/2009-ST. in case of services wholly consumed within SEZ, there is no necessity to discharge Service Tax liability *ab initio*, it does not mean that, in case where Service Tax liability has been discharged, assessee is not eligible for refund of Service Tax paid under Section 11B of CEA, 1994 r.w.s. 83 of FA, 1994.

3. CENVAT Credit

3.1 CST vs. Hero Honda Motors Ltd. 2013 (29) STR 358 (Del.)

The High Court in this case held that, there is no bar on utilisation of CENVAT credit for payment of service tax on GTA by recipient of such service. It is permissible under rule 3(4)(e) of CCR, 2004 and Revenue's contention that, tax liability had to be discharged in cash, and assessee was only recipient of taxable service and not its provider, rejected in view of fiction created by section 68(2).

3.2 C. Cubed Solutions Pvt. Ltd. vs. CCE, Bengalurue 2013 (29) STR 385 (Tri.-Bang.)

The Tribunal in this case allowed CENVAT credit of service tax paid on Manpower Recruitment or Supply service, Security Agency service, Chartered Accountants service, Advertisement, Housekeeping service, Annual Maintenance Contract service and Clearing & Forwarding service as the same were used in relation to the IT enabled output service.

3.3 Bharti Airtel Ltd. vs. CCE, Pune 2013 (29) STR 401 (Tri.-Mumbai)

The Tribunal in this case held that, Cell Site comprising Base Trans-receiver Station and other equipments housed in prefabricated building is immovable property and non-excisable and it is neither classifiable under Heading 85.25 nor capital goods under rule 2(a) of CCR, 2004. Credit cannot be claimed on tower either as components, part or accessory of Cell Site as Capital Goods or as item used for providing output service. Towers are immovable structures and *ipso facto* non-marketable and non-excisable and cannot be considered as inputs.

Officer chairs used by telecom service provider are classifiable under Chapter 94 which, is not specified in rule 2(a) of CCR, 2004 and hence not a capital goods. Further, there is no evidence of their use for providing telecom service hence, they are not inputs also.

Though Printers used by the appellant are covered under the definition of Capital goods, credit is not admissible as no nexus is established with output service.

Janak C. Pandya, *Company Secretary*

CORPORATE LAWS
Company Law Update

Case Law No. 1

[2013] 176 Comp Cas 297 (Guj.) – In the Gujarat High Court – Elitecore Technologies P. Ltd.

Section 391 of the Companies Act, 1956 ("Act") is a complete code and the principle of single window clearance permits all other formal requirements for implementing the scheme under the Act would also apply to the case of demerger as well as amalgamation.

Brief facts

The petitions are filed for the approval of scheme of arrangement. The two companies namely are M/s. Elitecore Technologies P. Ltd., which is a transferor company/ demerged company ("Transferor") and M/s. Cyberoam Technologies P. Ltd, the Transferee Company / resulting company ("Transferee"). Transferee is a wholly owned subsidiary ("WoS") of a Transferor. Transferor and Transferee are in the business of Information technology products and solutions. However, nature of business of both the companies is different and has different risks, which requires different kind of management and also investors. Due to the above reasons, the Transferor proposed to re-organise and segregate by way of demerging its Cyberoam Division and its transfer to Transferee.

The Board of Directors of Transferor and Transferee have passed the resolutions for approving the Scheme of Arrangement ("Scheme"). Share holders of each company approved the scheme. The secured and unsecured creditors of Transferor have also provided their respective consent for the Scheme.

As both the companies have obtained the consent of their shareholders and creditors, both have applied to the court for the dispensation of holding the meetings of their respective share holders and creditors. The court has granted the said dispensation to both the companies. The court has also granted the permission to both the companies for not to issue notice to the Official Liquidator as companies were not getting wound up. The other formalities have been completed and final notice also serviced on the Central Government.

The Regional Director ("RD) has filed its report along with the report of the Registrar of Companies, Gujarat ("RoC"). The RD has opposed the scheme on the ground that the Scheme is not in compliance of sections 94, 97 read with section 192 of the Companies Act, 1956 ("Act").

In response to the RD's objections, the petitioner companies have filed their reply which states that as per the Scheme, the authorised capital of the Transferor would stand reduced and the same will be transferred to the Transferee. The reduction and transfer of authorised share capital and consequent increase of authorised capital of Transferee has been taken under sections 391 to 394 of the Act which are a complete code.

Thus, as per submission by the petitioner companies, having complied with the requirement under sections 391 to 394 of the Act and obtaining the consent of share holders and creditors of the companies, there is no separate requirement for compliances under sections 94 and 97 read with section 192 of the Act. It is also submitted that the proper stamp duty has already been paid on the authorised capital and there is no need to pay the same again while transferring the said authorised capital to the Transferee.

The further objections raised by RD is as follows:

a. The Act does not provide any system and manner to ascertain the unit wise / undertaking wise authorised share capital in case of demerger. Thus same is unlawful.

b. The Act has no mechanism to devise or reduce the authorised share capital of the company and give credit for fees and stamp duty already paid to another company.

c. The Act has no provisions for decrease and reduction in authorised capital.

d. In absence of specific provisions under the Act, MCA 21 does not allow the RoC to effect such reduction in capital.

The further submission from the petitioner side is as follows:

a. Share holders' funds comprising of capital, reserves and surplus of demerged company will no longer be fully represented by the available assets and for reflecting the same as integral part of Scheme, same will have to be reduced or utilised.

b. The Scheme is already approved by the shareholders.

c. The reconstruction under sections 391 to 394 envisages the business wise bifurcation.

d. Section 391 is a complete code in itself and once scheme falls under the four corners of this section, it can be sanctioned.

e. There are number of judgments of High Courts approving the principle of single window clearance permits all other formal requirements of the Act.

f. As demerged company has already paid the stamp duty and fees, there is no requirement for payment of additional fees. Reliance is placed on judgments such as in *Bazley Finvest Ltd., [2005] 64 SCL 480 (Guj.), Alchemist Ltd.*, and *Alchemist Foods Ltd. [2010] 160 Comp Cas 469 (Delhi), Aegis Healthcare P. Ltd [2008] 146 Comp Cas 53 (Guj.).*

From the Central Government side it was contended that the judgment in Bazley Finvest and Aegis Healthcare have been rendered in case of amalgamation, where as the present case is of demerger.

Judgments and reasoning

Court has approved the Scheme with the acceptance of reliance placed by the petitioner companies on various judgments. Court has also observed that the principle of law laid down in various judgments under section 391 is a complete code. Further, the principle of single window clearance permits all other formal requirements of the Act required for implementing the scheme would also apply to the case of demerger as well as amalgamation.

Case Law No. 2

[2013] 176 Comp Cas 337 (Guj.) – In the Gujarat High Court – Milestone Tradelinks P. Ltd., in re

In a scheme of arrangement, a company may deviate from the requirement of following the

Accounting Standard AS 14 read with section 211(3A) of the Companies Act, 1956 and may use amalgamation reserve created on amalgamation for dividend distribution, provided that necessary disclosures of such deviation from AS 14 is made in its financial statements as per section 211(3B) of the Companies Act, 1956.

Brief facts

These petitions have been filed under sections 391 to 394 of the Companies Act, 1956 ("Act"). The petitions are for seeking sanction of Scheme of Arrangement ("Scheme") between *Aditya Corpex P. Ltd, Ambitious Tradelinks P. Ltd, Anand Trade-Movers (Gujarat) P. Ltd, Hinduja Exports P. Ltd, Midex Overseas Ltd., Nabh Tradelink P. Ltd* and *Surya Rath Tradelinks P. Ltd ("Transferors") with Milestone Tradelinks P. Ltd. ("Transferee").*

Transferors and Transferee have filed various applications with the court seeking exemptions from holding the meetings of the secured creditors, unsecured creditors, equity share holders and preference share holders (as applicable to respective companies). The court has granted the exemptions to the Transferors and Transferee as mentioned above.

Transferors and Transferee have filed final petitions with the court seeking the approval of the Scheme. As required under the Act, necessary advertisements in newspaper have been published and notices were sent to the Central Government i.e., Regional Director ("RD") and Official Liquidators ("OL").

RD has filed the common report for all the above companies. The RD has raised the following objections and prayed that the court may direct the Transferee to strictly follow accounting standard.

a. As per Accounting Standard 14 ("AS 14") notified by the Central Government under section 211(3A) of the Act, it is necessary to make necessary entries/adjustments in the books of account of respective companies.

b. The entire clause related to accounting treatments in the Scheme neither refers nor ensures compliances of the requirement of AS 14.

c. As per the Scheme, in the books of Transferee the residual amount of amalgamation reserve arising after recording assets and liabilities of the Transferors shall be treated as "Free Reserves". Further, this free reserve can be used for distribution of dividend which is in the form of capital reserve and hence not allowed as per AS 14 and principles of accountancy.

In reply to the RD's objection, the Transferee has filed additional affidavit stating that the deviation from the AS 14 is permissible under section 211(3B) of the Act. Further, upon Scheme being sanctioned, Transferee shall make necessary disclosures in its financial statements as required under section 211(3B). In its support, Transferee has quoted various judgments such as *Hindalco Industries Ltd. [2009] 151 Comp Cas 446 (Bom)* and *Sutlej Industries Ltd. [2007] 135 Comp Cas 394 (Raj.)*

Judgments and reasoning

Court has sanctioned the Scheme. Court has observed that in case of Hindalco Industries Ltd., Bombay High Court has observed that on conjoint reading of sub-sections (3A) and (3B) of section 211, it necessarily follows that deviation from the Accounting Standard is permissible subject to necessary disclosures in the profit and loss account and balance sheet. Court has also referred the judgment in the case of Sutlej Industries Ltd. Court has noted that in the said petition, same argument was put forward by the RD. It was further observed that in the said petition, court has made the comments that arrangement/amalgamation reserve cannot be utilised for distribution to the share holders which was not objected by the share holders and they have approved the Scheme unanimously.



CA. Mayur Nayak, CA. Natwar Thakrar &
CA. Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed changes to FEMA law brought about by RBI Notifications issued since calendar year 2012 till now and recent RBI Circulars:

A. NOTIFICATIONS

1) Definition of security

In pursuance of clause (za) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) (FEMA), the Reserve Bank has notified Indian Depository Receipts (IDRs) as defined under clause c of sub-rule (i) of Rule 3 of Companies (Issue of Indian Depository Receipts) Rules, 2004, as "security" for the purposes of FEMA.

(Notification No. FEMA/223 dt. 7-3-2012)

2) FEM (Transfer or Issue of Security by a Person Resident Outside India) (Second Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA 20/2000-RB, dated 3rd May 2000) to give, effect to directions issued *vide* AP (DIR) Series Circular No. 5 dated 22-7-2009.

These amendments are pertaining to foreign investment in India and shall be deemed to have come into effect from 22-7-2009.

(Notification No. FEMA/224 dt. 7-3-2012)

3) FEM (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 (Notification No. FEMA.120/RB-2004, dated July 7, 2004) to give effect to directions issued *vide* AP (DIR) Series Circular No. 05 dated 22-7-2009.

These amendments are pertaining to outbound investments and shall be deemed to have come into effect from 22-7-2009.

(Notification No. FEMA/225 dt. 7-3-2012)

4) FEM (Foreign Exchange Derivative Contracts)(Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000, (Notification No. FEMA 25/RB-2000 dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 68 dated 20-5-2011 and *vide* AP (DIR) Series Circular No. 03 dated 21-7-2011.

These amendments are pertaining to foreign exchange derivative contracts and shall come into effect from the dates specified in these regulations.

(Notification No. FEMA/226 dt. 16-3-2012)

5) FEM (Guarantees)(Amendment) Regulations, 2010

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Guarantees) Regulations, 2000 (Notification No. FEMA 8/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 54 dated 29-4-2011.

These amendments are pertaining to guarantees and shall come into effect from the dates specified in these regulations.

(Notification No. FEMA/227 dt. 30-3-2012)

6) FEM (Transfer or Issue of Security by a Person Resident Outside India) (Third Amendment) Regulations, 2012

RBI vide this Notification has made amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 74 dated 30-6-2011.

These amendments are pertaining to foreign investments in India and shall be deemed to have come into effect from 31-3-2011.

(Notification No. FEMA/229 dt. 23-4-2012)

7) FEM (Transfer or Issue of Security by a Person Resident Outside India) (Fourth Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000).

These amendments are pertaining to foreign investment in India and shall be deemed to have come into effect from 27-2-2009.

(Notification No. FEMA/230 dt. 29-5-2012)

8) FEM (Transfer or Issue of Any Foreign Security) (Second Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 (Notification No. FEMA 120/ RB-2004 dated July 7, 2004) to give effect to directions issued *vide* AP (DIR) Series Circular No. 64 dated 5-1-2012.

These amendments are pertaining to outbound investment and shall be deemed to have come into force from the dates specified in these regulations.

(Notification No. FEMA/231 dt. 30-5-2012)

9) FEM (Borrowing or Lending in Foreign Exchange) (Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, (Notification No. FEMA.3/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 59 dated 19-12-2011.

These amendments are pertaining to borrowing or lending in foreign exchange and shall be deemed to have come into force from the date specified in these regulations.

(Notification No. FEMA/232 dt. 30-5-2012)

10) FEM (Foreign Currency Accounts by a Person Resident in India)(Second Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments n the Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000 (Notification No. FEMA 10/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 15 dated 15-9-2011.

These amendments are pertaining to foreign currency accounts by a person resident in India and shall be deemed to have come into force from 15-9-2011.

(Notification No. FEMA/239 dt. 25-9-2012)

11) FEM (Foreign Exchange Derivative Contracts) (Second Amendment) Regulations, 2012 – Amendment in Schedule I

RBI vide this Notification has made amendments in the Foreign Exchange Management (Foreign Exchange Derivative Contracts) Regulations, 2000 (Notification No. FEMA 25/2000-RB dated 3rd May, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 32 dated 28-12-2010.

These amendments are pertaining to foreign exchange derivative contracts and shall come into force from the date of their publication in the Official Gazette.

(Notification No. FEMA/ 240 dt. 25-9-2012)

12) FEM (Transfer or Issue of Security by a Person Resident Outside India) (Sixth Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (Notification No. FEMA. 20 / 2000-RB dated 3rd May 2000) to give effect to directions issued following circulars :

1) A.P. (DIR Series) Circular No. 38 dated 3-12-2003
2) A.P. (DIR Series) Circular No. 93 dated 25-5-2004
3) A.P. (DIR Series) Circular No. 44 dated 30-5-2008
4) A.P. (DIR Series) Circular No. 63 dated 22-4-2009
5) A.P. (DIR Series) Circular No. 45 dated 15-3-2011
6) A.P. (DIR Series) Circular No. 55 dated 29-4-2011
7) A.P. (DIR Series) Circular No. 57 dated 2-5-2011
8) A.P. (DIR Series) Circular No. 08 dated 9-8-2011
9) A.P. (DIR Series) Circular No. 42 dated 3-11-2011
10) A.P. (DIR Series) Circular No. 43 dated 4-11-2011
11) A.P. (DIR Series) Circular No. 49 dated 22-11-2011
12) A.P. (DIR Series) Circular No. 55 dated 9-12-2011
13) A.P. (DIR Series) Circular No. 56 dated 9-12-2011
14) A.P. (DIR Series) Circular No. 66 dated 13-1-2012
15) A.P. (DIR Series) Circular No. 67 dated 13-1-2012
16) A.P. (DIR Series) Circular No. 89 dated 1-3-2012

17) A.P. (DIR Series) Circular No. 93 dated 19-3-2012

18) A.P. (DIR Series) Circular No. 120 dated 8-5-2012

19) A.P. (DIR Series) Circular No. 127 dated 15-5-2012

20) A.P. (DIR Series) Circular No. 133 dated 20-6-2012

21) A.P. (DIR Series) Circular No. 135 dated 25-6-2012

22) A.P. (DIR Series) Circular No. 137 dated 28-6.2012

23) A.P. (DIR Series) Circular No. 07 dated 16-7-2012

24) A.P. (DIR Series) Circular No. 19 dated 28-8-2012

25) A.P. (DIR Series) Circular No. 32 dated 21-9-2012

26) A.P. (DIR Series) Circular No. 36 dated 26-9-2012

27) A.P. (DIR Series) Circular No. 41 dated 10-10-2012

These provisions of these regulations shall come into force from the date of publication of this notification except where otherwise provided in these Regulations as to the coming into force of any particular provision.

(Notification No. FEMA/ 242 dt. 19-10-2012)

13) FEM (Deposit) (Third Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Deposit) Regulations, 2000 (Notification No. FEMA.5/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 7 dated 16-7-2012.

These amendments are pertaining to Qualified Foreign Investor (QFI) and shall be deemed to have come into effect from 16-7-2012.

(Notification No. FEMA/ 243 dt. 19-10-2012)

14) FEM (Borrowing or Lending in Foreign Exchange) (Second Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA.3/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 54 dated 26-11-2012.

These amendments are pertaining to borrowing or lending in foreign exchange and shall come into force from the date of their publication in the Official Gazette.

(Notification No. FEMA/ 245 dt. 12-11-2012)

15) FEM (Borrowing or Lending in Foreign Exchange) (Third Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA.3/2000-RB dated May 3, 2000) to give effect to directions issued vide AP (DIR) Series Circular No. 61 dated 17-12-2012.

These amendments are pertaining to borrowing or lending in the foreign exchange and shall come into force from the date of their publication in the Official Gazette.

(Notification No. FEMA/ 246 dt. 27-11-2012)

16) FEM (Borrowing or Lending in Foreign Exchange) (Fourth Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 (Notification No. FEMA 3/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 28 dated 26-9-2011 of existing Notification No. 3/2000-RB dated 3-5-2000.

These amendments are pertaining to borrowing or lending in foreign exchange and shall be deemed to have come into force from 26.09.2011

(Notification No. FEMA/250 dt. 6-12-2012)

17) FEM (Guarantees) – Third Amendment) Regulations, 2012

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Guarantees) Regulations, 2000 (Notification No. FEMA 8/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 28 dated 26-9-2011.

These amendments are pertaining to guarantees and shall be deemed to have come into effect from 26-9-2011.

(Notification No. FEMA/251 dt. 6-12-2012)

18) FEM (Deposit) (Amendment) Regulations, 2013

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Deposit) Regulations, 2000 (Notification No. FEMA.5/2000-RB dated May 3, 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 82 dated 11-2-2013.

These amendments are pertaining to opening of accounts by Individuals/Entities of Bangladesh subject to fulfilment of prescribed conditions and shall come into force from the date of their publication in the Official Gazette.

(Notification No. FEMA/ 253 dt. 2-1-2013)

19) FEM (Transfer of Issue of Security by a Person Resident Outside India) (Second Amendment) Regulations, 2013

RBI *vide* this Notification has made amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) to give effect to directions issued *vide* AP (DIR) Series Circular No. 80 dated 24-1-2013.

These amendments are pertaining to foreign investment in India and shall come into force from the date of their publication in the Official Gazette.

(Notification No. FEMA/ 255 dt. 19-1-2013)

B. CIRCULARS

1) Opening of NRO accounts by individuals of Bangladesh Nationality

As per extant regulations contained in Para 1 of Schedule 3 of Foreign Exchange Management (Deposit) Regulations, 2000 contained in Notification No. FEMA 5/2000-RB dated May 3, 2000, opening of NRO Accounts by individuals/entities of Bangladesh/Pakistan nationality/ownership requires prior approval of RBI.

RBI *vide* this circular has henceforth permitted Authorised Banks to open NRO Accounts of individual/s of Bangladesh nationality without the approval of RBI subject to the following conditions :

a. The bank concerned should satisfy itself that the individual is holding valid visa and valid residential permit issued by Foreigner Registration Office (FRO)/ Foreigner Regional Registration Office (FRRO) concerned;

b. The authorised bank should put in place a system of quarterly reporting whereby each branch of the authorised bank shall maintain a record of the bank accounts opened by individual/s of Bangladesh nationality and details of such account shall be forwarded to their Head Office. The Head Office of the bank shall furnish details of such accounts on quarterly basis to the Under Secretary (Foreigners), Ministry of Home Affairs, NDCC-II Building, Jai Singh Road, New Delhi – 110 001.

c. The report shall contain details of Name/s of the Individual/s, Date of arrival in India, Passport No. and Place/ Country of issue, Residential permit reference and date and place of issue, Name of the FRO/ FRRO concerned and the complete address and contact number of the branch where the bank account is being maintained.

Further, RBI has clarified that opening of the accounts by entities of Bangladesh ownership shall continue to require approval of Reserve Bank, as hitherto.

Necessary amendments to the Notification No. FEMA.5/2000-RB dated May 3, 2000 have been issued by RBI *vide* Notification No. FEMA.253/2013-RB dated January 2, 2013.

(A.P. (DIR Series) Circular No. 82 dated 11th February, 2013)

(This step by RBI is consistent with the policy for improving economic relations with Bangladesh in recent times while keeping proper checks.)

2) Foreign Exchange Management Act,1999 – Import of precious and semi precious stones – Clarification

Vide A.P. (DIR Series) Circular No. 34 dated September 24, 2012, RBI had clarified that Suppliers' and Buyers' Credit (trade credit) including the usance period of Letters of Credit opened for import of gold in any form including jewellery made of gold/precious metal or and studded with diamonds/semi precious/ precious stone should not exceed 90 days from the date of shipment.

RBI has further clarified *vide* this circular that Suppliers' and Buyers' Credit (trade credit) including the usance period of Letters of Credit opened for import of precious stones and semi-precious stones should not exceed 90 days from the date of shipment.

The instructions issued for direct import of gold *vide* A.P. (DIR Series) Circular No.2 dated July 9, 2004, import of Platinum / Palladium/ Rhodium /Silver *vide* A.P. (DIR Series) Circular No.12 dated August 28, 2008, advance remittance for import of rough diamonds, *vide* A.P. (DIR Series) Circular No.21 dated December 29, 2009, import of rough, cut and polished diamonds *vide* A.P. (DIR Series) Circular No.59 dated May 6, 2011 and import of gold in any form including jewellery made of gold/precious metal or and studded with diamonds/semi- precious/ precious stone vide A.P. (DIR Series) No. 34 dated September 24, 2012 shall remain unchanged.

(A.P. (DIR Series) Circular No. 83 dated 20th February, 2013)

(RBI has now clarified that trade credit period for even import of precious stones and semi-precious stones irrespective of whether embedded in jewellery or not should not exceed 90 days from the date of shipment.)

3) Know Your Customer (KYC) norms/Anti-Money Laundering (AML) Standards/Combating the Financing of Terrorism (CFT) Standards – Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 as

amended by PML (Amendment) Act, 2009 Money Changing activities

As per extant customer identification procedure under KYC guidelines prescribed by RBI and as per Rule 9(1A) of Prevention of Money Laundering Rules, 2005, every Authorised Person under money changing activity has to identify the beneficial owner and take all reasonable steps to verify his identity.

The term "beneficial owner" has been defined under Rule 9(1A) of Prevention of Money Laundering Rules, 2005, as the natural person who ultimately owns or controls a client and/or the person on whose behalf the transaction is being conducted, and includes a person who exercises ultimate effective control over a juridical person.

Government of India has now specified the procedure for determination of Beneficial Ownership. The procedure as advised by the Government of India is as under:

A. Where the client is a person other than an individual or trust, the Authorised Person shall identify the beneficial owners of the client and take reasonable measures to verify the identity of such persons, through the following information:

   (i) The identity of the natural person, who, whether acting alone or together, or through one or more juridical person, exercises control through ownership or who ultimately has a controlling ownership interest.

   Explanation: Controlling ownership interest means ownership of/entitlement to more than 25 per cent of shares or capital or profits of the juridical person, where the juridical person is a company; ownership of/entitlement to more than 15% of the capital or profits of the juridical person where the juridical person is a partnership; or, ownership of/entitlement to more than 15% of the property or capital or profits of the juridical person where the juridical person is an unincorporated association or body of individuals.

   (ii) In cases where there exists doubt under (i) as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interests, the identity of the natural person exercising control over the juridical person through other means.

   Explanation: Control through other means can be exercised through voting rights, agreement, arrangements, etc.

   (iii) Where no natural person is identified under (i) or (ii) above, the identity of the relevant natural person who holds the position of senior managing official.

B. Where the client is a trust, the Authorised Person shall identify the beneficial owners of the client and take reasonable measures to verify the identity of such persons, through the identity of the settler of the trust, the trustee, the protector, the beneficiaries with 15% or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

C. Where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any share holder or beneficial owner of such companies.

These guidelines are also applicable *mutatis mutandis* to all agents/franchisees of Authorised Persons and it will be the sole responsibility of the franchisers to ensure that their agents / franchisees also adhere to these guidelines.

(A.P. (DIR Series) Circular No. 84 dated 22nd February, 2013)

(RBI *vide* this circular has detailed the procedure to identify beneficial owner although the requirement to identify them was present even earlier.)

4) Memorandum of Instructions for Opening and Maintenance of Rupee/ Foreign Currency Vostro Accounts of Non-Resident Exchange Houses

Under the extant Rupee Drawing Arrangements (RDAs), cross-border inward remittances are received in India by AD Category-I banks through Exchange Houses situated in Gulf countries, Hong Kong, Singapore and Malaysia (for Malaysia only under Speed Remittance Procedure). With a view to extending the scope of the said arrangement to certain other jurisdictions, RBI has now decided to extend the RDAs only under the Speed Remittance Procedure to Exchange Houses situated in all countries which are FATF compliant.

Accordingly, RBI has brought about certain modifications in Items No. 7 & 8 under Part (B) Permitted Transactions of Annex-1 to the A.P. (DIR Series) Circular No. 28 [A.P.(FL/RL Series) Circular No. 2] dated February 6, 2008 and the said modified items may be read as under :

a) Payments to medical institutions and hospitals in India, for medical treatment of NRIs / their dependents and nationals of all Financial Action Task Force (FATF) countries.

b) Payments to hotels by nationals of all FATF complaint countries/NRIs for their stay.

All other instructions issued *vide* A.P. (DIR Series) Circular No. 28 [A. P. (FL/RL Series) Circular No. 2] dated February 6, 2008, as amended from time to time will remain unchanged.

The directions contained in this circular have been issued under section 10(4) and Section 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

(A.P. (DIR Series) Circular No. 85 dated 28th February, 2013)

(Drawing arrangements with Exchange Houses are primarily designed to channel cross-border inward personal remittances. *Vide* A.P.(DIR Series) Circular No. 81 dated 24-1-2013, scope of Items No. 7 & 8 under Part (B) Permitted Transactions of Annex-1 to the A.P. (DIR Series) Circular No. 28 [A.P.(FL/RL Series) Circular No. 2] dated February 6, 2008, had been extended to nationals of Hong Kong, Singapore and Malaysia. *Vide* this circular, the scope has now been extended to cover nationals of all FATF countries.)

Ajay Singh & Suchitra Kamble, *Advocates*

BEST OF THE REST

1. Joint Hindu Family – Succession – When claimant was born, there was neither Joint Hindu family nor any property belonging to Joint Hindu family – Self acquired property held as individual property and not joint family property – Will – Disproportionate Bequest Valid in law: Hindu Succession Act, 1956 – S. 8, S. 63

The common ancestor to whom the parties trace their lineage was one Roop Narain, who was the perpetual lessee, as per perpetual lease of plot of land at New Delhi. He admittedly died intestate and was survived by two sons one of them is Amar Nath and four daughters. The brother and the four sisters executed a relinquishment deed in favour of their brother Amar Nath, who thus inherited the perpetual lease hold rights in the property upon the death of Roop Narain. A residential building was inherited by Amar Nath. Amar Nath had two wives named Kamla Devi and Chand Rani both of whom pre-deceased Amar Nath. Dispute arose on account of Prem Bhatnagar and his brother Daya Narain i.e. the two sons born to Amar Nath.

With respect to the property being ancestral in the hands of Amar Nath case of the protagonist i.e. those who questioned the Will was that since Amar Nath inherited the property from his father Roop Narain, law imparted an ancestral character to the property. Secondly, that when Roop Narain died, the Hindu Succession Act, 1956 had been promulgated, as per section 4 whereof the provisions of the Act expressly had overriding effect over any text, rule, custom or usage amongst Hindus which was contrary to the Act.

The Delhi High Court held that the text of Hindu Law is that a male Hindu, on birth, acquires an interest in the joint Hindu family properties. If there was a joint Hindu family property when Prem Bhatnagar was born, he could have possibly argued that he acquired an interest in the property by birth. But, when Prem Bhatnagar was born, there neither was a joint Hindu Family nor any property belonging to the joint Hindu family. The suit property was owned by his grandfather Roop Narain and parties are not at variance that Roop Narain acquired the property from his own funds. Thus Roop Narain held the property as his individual property and not as Joint Hindu family property. He died on 1957 by which date the Hindu Succession Act, 1956 was in operation. Thus, succession to the estate of Roop Narain was as per Section 8 of the Hindu Succession Act, 1956 since Roop Narain died intestate.

The High Court further held that people making disproportionate bequest, is not an unknown thing in law. After all, one object of a Will is to alter the natural line of succession or a share in a property which may be inherited by devolution of interest. A disproportionate bequest by itself is not a suspicious circumstance. That relationship between a father and all his children was equally good and yet in spite thereof only one child is made the beneficiary is again not a suspicious circumstance by itself. The Will was registered before the Sub-Registrar the day next of his execution. The High Court finally held that the testator has written that the beneficiary i.e. Ravi Mohan would need the consent of Roop Rani before he would sell the property does not make Roop Rani an interest witness. She has no interest in as xmuch as nothing has been bequeathed to her. The condition in the Will that if Ravi Mohan were to sell the property, he would need the permission from Roop Rani is void, for the reason the bequest in favour of Ravi Mohan is absolute and since mode of enjoyment cannot be curtailed; a clause curtailing the same in the bequest is void.

Dr. Prem Bhatnagar through LRs. vs. Ravi Mohan Bhatnagar and Ors. AIR 2013 Delhi 20

2. Doctrine of part performance – When can be invoked – No evidence adduced to prove he had delivered possession in part performance of contract – Hence, doctrine of part performance cannot be invoked. Transfer of Property Act, 1882, S. 43A

The (now appellant) defendant filed first appeal under section 96 of the Code of Civil Procedure against the judgment and decree passed by Second Additional District Judge whereby and whereunder the Plaintiff's suit filed for eviction of the appellant has been decreed. The facts of the case are Smt. Savita Devi owned a plot. Late Shri Aditya Narayan Tiwari was a tenant on this plot on a monthly rent and he was running saw mill there. According to the original plaintiff Smt. Sheela Devi, purchased the suit accommodation from Smt. Savita Devi through registered sale deed and since then she is the owner of the suit accommodation. The intimation about the purchase was given by the plaintiff to the tenant. However the original tenant Aditya Narayan Tiwari did not pay the rent and stated that prior to transfer of suit accommodation to the plaintiff, he had entered in to an oral agreement for sale with the original owner Smt. Savita Devi for some consideration. However, this contention was denied by Smt. Savita Devi. Said Aditya Narain Tiwari filed suit for specific performance of contract. The said suit was decreed in his favour. The Plaintiff and Smt. Savita Devi preferred first appeal against the judgment and decree and the same was dismissed and against the same judgment and decree the Plaintiff preferred second appeal. The second appeal was allowed and set aside the judgment and decrees of both the courts below. Aditya Narain Tiwari preferred a SLP which was dismissed. Original Plaintiff gave legal notice to Aditya Narain Tiwari directing him to vacate the suit accommodation and to pay arrears of rent for three years. However, the appellant/defendant did not vacate the suit accommodation nor did pay the arrears of rent. After dismissal of the SLP Plaintiff filed the suit for eviction and arrears of rent. The trial court directed the defendants to pay arrears of rent and hand over the vacant possession to the Plaintiff. Hence the first appeal was filed before High Court.

The High Court held that the Appellant was tenant of suit house and claimed himself to be in possession of suit house in part performance of agreement to sell. However, suit by appellant for specific performance was dismissed. The Appellant failed to fulfill pre-condition for application of doctrine of part performance, that he had performed or was willing to perform his part of contract. Also he had paid rent after alleged oral agreement of sale. No evidence adduced to prove he was delivered possession in part performance of contract. Hence, doctrine of part performance cannot be invoked. Appeal was dismissed.

Girija Shankar vs. Smt. Sheela Devi & Ors. AIR 2013 Chhattisgarh 30

3. Termination of tenancy – Validity of notice – Failure to make mention of any time or exact date determining tenancy would not invalidate it provided suit is instituted after expiry of notice period provided under Act – Statutory period of 30 days would be period of notice in such case – Validity of notice would depend upon date of service/deemed service and date of institution of suit. Transfer of Property Act, 1882, Ss. 106, 111

In this revision under section 25 of the Provincial Small Causes Act, 1887 the only question which has been raised for consideration by the parties is as to the validity of the notice by which the lease/ tenancy is said to have been determined under section 106 of the Transfer of Property Act, 1882.

The Suit of the landlady against the tenant for his eviction and for recovery of certain rent due has been decreed by the Small Causes Court. The Court below held that the notice was valid and was duly served. There was a finding that the provisions of U.P. Act, 1972 are not applicable to the said shop and that the tenant has defaulted in payment of rent. The Court below further held that the notice demands arrears of rent and requires the tenant to vacate the premises and further held that the notice is not invalid as the notice is to be construed liberally and not with an eye to find fault with it.

A combine reading of sections 106 and 111 of the Transfer of Property Act, 1882 provides that in the absence of any contract or law, lease of immovable property other than for agricultural or manufacturing purposes shall be a lease from month to month which is terminable on 15 days notice which in its applicability to the State of U.P. is 30 days from the date of receipt of the notice. The Act itself provides for a statutory period of 30 days from the date of receipt of notice from which the tenancy would stand determined. Section 106 further provides that a notice determining lease shall be in writing and signed by or on behalf of the person giving it and that it shall not be invalidated merely because the period mentioned in the notice is short of the period specified under sub-clause (1) of section 106 of the Act provided the suit is filed after the expiry of the period mentioned in section 106 of the Act.

In view of the specific provision that the mention of the shorter period in the notice than statutory provided would not invalidate it provided the suit is instituted after the expiry of the notice period provided under section 106 of the Act leads to an inevitable conclusion that it would not affect the notice even if no period is mentioned therein subject to the above condition. In the said event the statutory period of 30 days would be taken as the period of notice. In the circumstances where the notice fails to make mention of any time or the exact date determining tenancy, the only things relevant for consideration is to find out the date of service of notice and the expiry of the statutory period of notice as contemplated by section 106 of the Act and then to see if the suit is filed thereafter. In the absence of any period and date mentioned in the notice, the validity of the notice is dependent upon two factors; namely, the date of service/deemed service; and the date of institution of the suit.

In the present case the High Court observed that the notice has been described to be a notice under section 80 of C.P.C. However, ignoring the provision mentioned and treating the notice to be one under section 106 of the Act and applying the decision of the *Supreme Court in Bhagwan Das Agarwal vs. Bhagwan Das Kanu and Ors. AIR 1977 SC 1120* which lays down that a notice to quit must be construed not with a desire to find fault in it rather it must be construed *ut res magis valeat quam per eat* which means that an act may avail rather than perish. The intention of the said notice is manifest so as to determine the tenancy and requiring the tenant to vacate it and to handover possession on the expiry of the statutory period of notice which certainly is 30 days from the date of service of the notice.

Thus the High Court in the present case found that the Court below had not recorded any finding as to the date of service/deemed service of notice and the date of institution of the suit. As the finding on the above aspects are crucial and goes to the root of the matter, therefore remanded back the matter to the court below and allowed the Revision.

Renu Gupta vs. Kanti Devi & Ors. AIR 2013 Allahabad 26

4. Compensation – Accident – It is well settled that the owner of the goods means only the person who travels in the cabin of the vehicle – Travelling with the goods itself does not entitle anyone to protection under section 147 of the Motor Vehicles Act – Motor Vehicles Act, 1988 S. 147(1)(b)(i)

The appellant, insurance company, is in appeal by Special Leave against the judgment and order whereby the Division Bench of the Kerala High Court allowed the review petition and reviewed its order and held that the insurance company was liable to pay compensation in sum of ₹ 2,88,000/- with 9% interest thereon to the claimant awarded by the Motor Accident Claims Tribunal.

The question of law that arose in the appeal was as to whether having regard to the provisions of the Motor Vehicles Act, 1988, the insurance company is liable to pay compensation for the bodily injury caused to the claimant who was travelling in a goods vehicle as a spare driver though he was employed as a driver in another vehicle owned by the owner of the vehicle under the policy of insurance.

Saju P. Paul, claimant, was a heavy vehicle driver. He was employed with Respondent No. 2 as a driver in some other vehicle. On the incident, he was travelling in a goods vehicle in the cabin. The goods vehicle was being driven by one Jayakumar. In that vehicle, many other persons were also travelling. At Nilackal, due to rash and negligent driving of the driver Jayakumar, the goods vehicle capsized. As a result of which the claimant suffered fracture and injuries. The claimant remained under treatment for quite some time and the injuries that he sustained in the accident rendered him permanently disabled. In the claim petition filed by him before the Motor Accident Claims Tribunal, Pathanamthitta, he claimed compensation of ₹ 3,00,000/-. The owner and insurer were impleaded as respondent No. 2 and respondent No. 3 respectively in the claim petition. The Tribunal, after recording the evidence and hearing the parties, passed an award in favour of the claimant holding that he was entitled to a total compensation of ₹ 3,00,000/-. The liability of the insurer was made joint and several with the owner and driver. Being not satisfied with the award of the Tribunal, the insurer filed an appeal before the Kerala High Court. The Division Bench of that Court allowed the appeal of the insurer. The Division Bench held that insurer was not liable as gratuitous passengers travelling in a goods vehicle were not covered under the policy and the claimant shall be entitled to recover the awarded amount from the owner or driver of the vehicle. The claimant sought review of the order and, as noted above, by the impugned order that review application has been allowed. While allowing the review application, the Division Bench held as under: "It has already been noticed that the petitioner was admittedly a spare driver of the vehicle. It may be true that he was not driving the vehicle at the relevant point of time; but he was directed to go to the worksite by his employer as a spare driver in the vehicle. Therefore, the petitioner was not travelling in the vehicle in the course of his employment and as directed by his employer. Section 147(1)(b)(i) takes within its fold any liability which may be incurred by the insurer in respect of the death or bodily injury to any person. The first proviso to section 147(1) will cast a liability on the insurer to indemnify the owner in respect of the injury sustained by the employee of the insured arising out of and in the course of his employment.

The Hon'ble Court observed that sub-clause (i) of clause (b) of sub-section (1) of section 147 speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place, whereas sub-clause (ii) thereof deals with liability which may be incurred by the owner of a vehicle against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place. An owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers. If a liability other than the limited liability provided for under the Act is to be enhanced under an insurance policy, additional premium is required to be paid. There is no provision similar to clause (ii) of the proviso appended to section 95 of the old Act prescribing requirement of insurance policy. Even section 147 of the Act mandates compulsory coverage against death of or bodily injury to any passenger of "public service vehicle". The proviso makes it clear that compulsory coverage in respect of drivers and conductors of public service vehicle and employees carried in goods vehicle would be limited to liability under the Workmen's Compensation Act, 1923. There is no reference to any passenger in "goods carriage".

It is now well settled that the owner of the goods means only the person who travels in the cabin of the vehicle. In this case, the High Court had proceeded on the basis that they were gratuitous passengers. The admitted plea of the respondents themselves was that the deceased had boarded the lorry and paid an amount of ₹ 20 as transport charges. It has not been proved that the deceased was travelling in the lorry along with the driver or the cleaner as the owner of the goods. Travelling with the goods itself does not entitle anyone to protection under section 147 of the Motor Vehicles Act. For the reasons aforementioned, the appeal was allowed. The High Court misconstrued the proviso following sub-section (1) of section 147 of the 1988 Act. What is contemplated by proviso to section 147(1) is that the policy shall not be required to cover liability in respect of death or bodily injury sustained by an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923. The claimant was admittedly not driving the vehicle nor was he engaged in driving the said vehicle. Merely because he was travelling in a cabin would not make his case different from any other gratuitous passenger. The impugned judgment is founded on misconstruction of section 147. The High Court was wrong in holding that the insurance company shall be liable to indemnify the owner of the vehicle and pay the compensation to the claimant as directed in the award by the Tribunal.

The next question that arises for consideration is whether in the peculiar facts of this case a direction could be issued to the insurance company to first satisfy the awarded amount in favour of the claimant and recover the same from the owner of the vehicle. In the present case, the accident occurred in 1993. At that time, claimant was 28 years old. He is now about 48 years. The claimant was a driver on heavy vehicle and due to the accident he has been rendered permanently disabled. He has not been able to get compensation so far due to stay order passed by this Court. He cannot be compelled to struggle further for recovery of the amount. The claimant was allowed to withdraw the amount deposited by the insurance company before the Court along with accrued interest. The insurance company (appellant) thereafter had to recover the amount so paid from the owner by following the procedure as laid down in the case of Challa Bharathamma. Appeal is allowed.

Manager, National Insurance Company Ltd. vs. Saju P. Paul and Another [Civil Appeal No. 5 of 2013 arising out of SLP (C) No. 20127 of 2011] dated 3-1-2013.

5. Consumer Protection Act –Land & Property – Allotment of Plot – Respondent – Complainant filed complaint before District Consumer Forum contending that appellant – Opposite party after receiving deposit failed to allot plot even after several communications

Shyam Kapoor, the respondent herein, preferred a complaint before the District Consumer Forum, Lucknow, asserting that he had deposited a sum of ₹ 5,000/- with the Lucknow Development Authority, i.e., the appellant. The aforesaid deposit had been made for allotment of a 6,000 sq. ft. plot in the 'A' category under the Gomti Nagar Residential Scheme. It was alleged, that the Lucknow Development Authority had neither allotted any plot to the respondent-complainant, nor returned the deposit tendered by him. The appellant, however, issued a press notice in 1991 requiring persons similarly situated as the respondent-complainant, to deposit an additional amount by January 1992, so as to be eligible for consideration, for such allotment. On account of the fact, that the deposit of the differential amount was imperative for future consideration, the respondent-complainant deposited a further amount of ₹ 15,000/- on 30-1-1992. Still, no plot was allotted to the respondent-complainant. Shyam Kapoor, addressed a communication to the Lucknow Development Authority, requiring it to furnish him with details in the matter of allotment of plots. Since the Lucknow Development Authority did not respond to the aforesaid communication, Shyam Kapoor preferred the complaint. In its defence, the appellant, while admitting the factual position expressed by Shyam Kapoor in his complaint, raised a number of legal/technical objections. The stand of the appellant so as to defeat the claim of the respondent-complainant included a plea, that the complaint was barred by time. It was also contended that the complainant was not a consumer, and as such, the District Forum had no jurisdiction in the matter. Besides the aforesaid, it was asserted by the appellant before the District Forum, that the respondent-complainant had changed his registration from the Scheme under which he had originally applied, and as such, his claim could not be considered on the basis of the original deposit made by him. The entitlement of the respondent complainant for allotment of a plot under the Scheme was also sought to be disputed on the ground that he was unsuccessful in obtaining a loan from a financial institution.

Despite the defences raised by the Lucknow Development Authority before the District Forum, the prayers made by the complainant were allowed.

Aggrieved with the order passed by the District Forum, the appellant preferred an appeal before the Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow. The State Commission having entertained the appeal preferred by the appellant, issued notice to the respondent herein on 1-11-2006. While issuing notice, the State Commission stayed the order of the District Forum. Even though notice had been issued, in the appeal preferred by the Lucknow Development Authority, the appellant failed to deposit process fee. Therefore, when the matter was taken up for hearing, the State Commission dismissed appeal. Dissatisfied with the effect of the order of the State Commission, which had resulted in dismissal of the appeal preferred by the Lucknow Development Authority before the State Commission, the appellant chose to file a Revision Petition before the National Consumer Disputes Redressal Commission, New Delhi. According to the pleadings filed by the appellant, its choice for not filing an application for recall of the impugned order dated 11-5-2007 before the State Commission was, that the State Commission did not have the jurisdiction to set aside or recall, an order of the nature passed.

The National Commission dismissed the Revision Petition as frivolous, and imposed cost of ₹ 10,000/- on the Lucknow Development Authority. Aggrieved with the order passed on 30-3-2012 by the National Commission, dismissing the Revision Petition preferred by the appellant, the appellant has approached the Supreme Court by preferring the appeal.

The first question which was concerns was the conclusion drawn by the National Commission, that the Revision Petition filed by the appellant was frivolous. The legislature chose to give the National Commission power to review its ex parte orders. Before amendment, against dismissal of any case by the Commission, the consumer had to rush to this Court. The amendment in section 22 and introduction of section 22A were done for the convenience of the consumers. The choice of the appellant, in approaching the "National Commission" rather than the "State Commission" could not have been described as frivolous. The revision petition filed by the Lucknow Development Authority before the National Commission was procedurally in order. And as such, the choice of the appellant to file a revision petition to assail the order of the "State Commission" dated 11-5-2007, could not be faulted. The fact that the Lucknow Development Authority was duly represented before the State Commission, as also, when the order dated 11-5-2007 was passed by it, reveal that the appellant was aware of the said order right from the beginning. Yet the appellant waited for over four and a half years, to approach the National Commission. Even before this Court, the appellant has failed to express any valid justification for having approached the National Commission belatedly. The Hon'ble Supreme Court found no good ground to set aside the order passed by the National Commission on 30-7-2012. Accordingly, the costs imposed on the appellant was however the order of the National Commission was upheld on other grounds. The appeal was accordingly disposed.

Lucknow Development Authority vs. Shyam Kapoor [Supreme Court of India, 5 Feb., 2013] 2013 STPL (Web) 94 SC (Civil Appeal No. 936 of 2013)

CA. Rajaram Ajgaonkar

ECONOMY AND FINANCE

UNCERTAIN SENTIMENTS

The month of February has been a reminder to the world that revival from an economic slowdown is not easy. The performance of the leading economies over the last few months was encouraging. It was expected that due to the revival in the growth rate of the two big economies, of the US and China; in spite of the difficulties in Europe, the world economy will grow better. However, in the month of February, uncertainties have crept in. If the sailing of the major global economies would have been smooth, the two growth engines of the world would have performed well and given a better direction to the world economy. The improvement of the Japanese economy due to the weakening of the Japanese yen would have been another positive development for the world. However, there is a possibility of a sudden fading of confidence in the Euro Zone. Due to the slowing down of some major economies in the Euro Zone, risk has increased. The result of the Italian elections has further added to the risk. Italy has voted for a hung Parliament and the tilt of voting indicates that the local population is not fully supporting the economic austerity measures that are needed. When the popular vote is against austerity, the politicians may have to pay heed to the population to remain in power. Considering the hung Parliament, it will not be easy for the country to implement the required level of austerity measures in the economy, which may lead to higher risk, not only to that country, but also to the Euro Zone. Currently, some of the major countries of Euro Zone such as Greece, Spain, Portugal and Italy are under pressure from other countries to embrace the required austerity measures and even if one country defies the expectations due to populist sentiments, the others may follow. Such a situation can be risky for the Euro Zone as well as the individual economies therein.

Today's developed world is becoming increasingly democratic and therefore, populist vote has acquired extreme importance. Hard economic decisions are done away with to appease the voters and therefore the task of the Government and the respective Central Banks to manage a balanced growth becomes very difficult. In many cases, for long-term benefits, short-term pains are needed to be inflicted; but it is getting difficult to do so. Managing sentiments of public as well as investors has become an important task for the Government. For sustaining the economic recovery, positive sentiments should be developed and maintained across the world. This is not an easy job as there is no single policy maker for the world. Every country tries to give priority to its own economic and political interest. The ultimate equation developing in the world is a derivative of a number of small equations and riders being developed in various countries and various pockets therein. An economic derailment in any part of the world can create uncertainty and risk, not only for that country but for a number of other countries. The overall economic situation of the world is delicate and it needs to be handled very carefully for sustainability of a positive momentum. The recent growth achieved by some of the developed as well as developing economies was on account of deliberated policies of their Governments and the Central Banks. These policy measures are like medicines which cannot be dosed indefinitely as they have side effects like increase in inflation, distortion of balance of payment, creation of asset bubbles etc. After using a slew of such measures for a few years, economies need to withdraw them at an appropriate time. Withdrawal of these measures may have negative impact on those economies but it is essential to bite the bullet for the long-term betterment.

The world is currently passing through a peculiar phase wherein growth is not happening as quickly as expected, in spite of huge efforts. This is because of structural imbalances, which have developed in various economies over a period. Many economies have knowingly remained passive to such a development of imbalances with a hope that they will be controllable in the due course of time. However, these are not getting controlled or cured as easily as expected. Some countries need to reduce their debts which have neared or even crossed 100% of their annual GDP. These countries need to control their expenses as they cannot increase their income quickly. Some countries need to control their ballooning trade deficits. A country cannot indefinitely support excess imports over exports out of borrowed funds. Some countries suffered from overheating of economies. Measures are needed to be taken to subside the overheating, even at the cost of the economic growth. The mother of economic development is need, which gives birth to ambition. Ambition, when excessive becomes greed. Greed is a major cause of the overheating of an economy and is difficult to control. This greed can take various forms and shapes under various circumstances. It can be the greed of bankers, fund managers, investors or even that of politicians and bureaucrats. For achieving their objectives people go overboard and ignore risk. Risk assessment and control is very crucial for long-term sustainability. It is one of the most difficult things to control. Greed can be disastrous, if not controlled and moderated. Invariably the world keeps on failing in the control of greed, which time and again lands it into recession.

The global stock markets are currently in good shape and equities are appreciating across the major markets on account of an increase in liquidity. How long they can sustain this increase is a million dollar question. Though there is no reversal of sentiment or a feel that the stocks are overpriced, further appreciation will depend on the actual growth numbers and the global liquidity levels. The asset allocation pattern of major players in the financial markets will also make an impact. Caution is needed, though an upside does exist over short as well as long term horizons.

The Indian stock markets have corrected in the last month and it is a welcome development for their future health. The recently declared budget has failed to provide any stimulus to the stock market or its sentiment. A small reduction in Security Transaction Tax has not provided any boost to the sagging Indian stocks. The growth rate has slowed down and this concern is clouding the sentiments. The Finance Minister has promised an increase in the growth rate and reduction of the budgetary deficit in the years to come, but these are long-term promises. The corporate results of the quarter ended 31st December, 2012, were not bad but were not very encouraging either. The Reserve Bank of India has started the reduction of interest rates and even easing of liquidity; but the positive effects of the same will be visible only in the long run. The concerns of the investors are justified but a reversal of the negative trend has probably started. There can be small corrections from time to time but the medium term trend seems to be upwards. As it is not possible to perfectly time the market, it is essential for the long-term investors in the equity markets to take their positions. They may start buying value stocks. The midcaps and small caps have taken a bad beating in the recent correction. Many of them are getting attractively priced considering their fundamentals. Selective investment can be made in such stocks. Investors may also increase their exposure to the stock markets through investing in equity oriented schemes of mutual funds. There is a fair chance of their appreciation over the months to come.

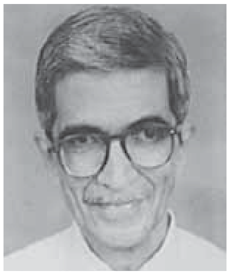
In the current uncertain times, the debt investment continues to look attractive. The rates of interest have started falling but they are still high enough to justify investments in debt. The month of March being the last month of the fiscal year in India is always a financially tight month for the economy. In this month, liquidity is low and so the interest rates are high. Banks take deposits at high interest rates to overcome their assets and liabilities mismatch. Traditionally March is one of the best months for investment in fixed deposits and debt securities. There is a likelihood of reduction of prime lending rate in the month of April. Therefore, interest rates in late April are likely to be lower than that of March. It will be advisable for an investor to take long-term commitments of deposits in the month of March itself. Investors can also aggressively invest in debt oriented mutual fund schemes as well as fixed maturity plans offered by mutual funds. By holding the investment for about 13 months till April 2014, they can get benefit of double indexation and can reduce their tax on gains.

In the words of the Finance Minister, he has tried to give incentives to the housing sector by giving a certain one time deduction, mainly applicable to the incoming financial year. However, the impact of the same on demand is likely to be marginal. The property market is suffering due to excessive leverage and low sales due to high prices. This phenomenon can continue for a while and the properties may not appreciate quickly. If the economic growth rate remains low, it may further dampen the sentiments of the property market. Commercial property is facing the problem of oversupply in many pockets. High value pre lease properties can be purchased with rental yields of 9% to 11%. However, due to uncertainty in the sector, and high value per investable unit, only high net worth entities with large cash surplus can invest in such properties. Such properties generally have exit options after the expiry of three years for the lessee and that can turn out to be very tricky for the lessor, if the lessee gives up the lease, as getting a new tenant for high value properties is not easy. Rental yields for residential properties continue to rule low and do not seem very lucrative. The appreciation of the properties may not happen fast due to current economic environment and high values. Such investments are not likely to fetch high returns for investors, but they can be a fair safeguard against high inflation.

Tax free bonds of Public Sector Undertakings are looking attractive. Their post tax yield is about 7.5%, which results into pre tax return of about 11% for investors in the highest tax bracket. This is a high return considering the top notch safety of these bonds. Investors are also likely to gain from appreciation due to fall in interest rates as these bonds are of reasonably long tenure. Currently, they are one of the safest bet.

Gold has started losing its lustre. It has not only fallen in Dollar terms in the international markets but it has also reacted in Indian markets and has come below ₹ 30,000 level. Gold is not looking attractive and some major investors are already bearish on the same. Investors are advised to reconsider their strategy as regards allocation for investment in gold. The prices of diamonds have marginally improved in the recent months. However, they are not expected to improve much from the current levels and so diamonds may not give good returns to investors in the near future.

The global as well as local uncertainties prevail and taking investment decisions has become more complicated. However, it seems that fixed deposits and bonds will give reasonably good returns for conservative investors and aggressive investors may take recourse to the stock market. Good days may start returning gradually.



V. H. Patil, *Advocate*

YOUR QUESTIONS & OUR ANSWERS

Facts & Query

Q.1 The assessee is owner of kirana store. During Financial Year 2011-12, turnover of the business is ₹ 80,00,000/-. No separate books of accounts are maintained by the assessee. As per the rough workings and details available assessee has arrived at profit of ₹ 15,00,000/-. Whether it is mandatory to offer higher profit to tax or assessee can offer 8% of ₹ 80,00,000/- to tax u/s 44AD.

Ans. Under the provisions of S. 44AD a kirana store which has a small turnover or trading receipts not exceeding ₹ 60 lakhs need not keep proper books of account and need not get the books audited. However if the turnover or receipts in particular year exceed, the said limit of ₹ 60 lakhs they are under an obligation like other assessees to keep proper books of account and get them duly audited.

As in the case of the querist its turnover exceeds the said limit of ₹ 60 lakhs, he is bound to keep proper books of account and get them duly audited and if the real profits are less than 8% he can offer those profit for taxation and if they are higher than 8% he cannot offer at 8% of turnover and he has to offer the real profits.

Q.2 Whether the interest expenditure can be disallowed u/s. 40(a)(ia) on the ground that the Form No. 15G/15H collected from the payee for non-deduction of tax are not submitted by the payer within the prescribed time?

Ans. The filing of the form in prescribed forms 15G/15H is a formality and if tax has not been deducted, and after getting these forms later on and file these forms at the time of assessment, then no disallowance can be made under S. 44AD of the Act.

Q.3 AB P. Ltd. a company engaged in manufacture of chemicals having turnover exceeding ₹ 60 Lakhs in preceding 3 financial years amalgamates with PQ P. Ltd., company having income from letting out of office premises and having no business income. Post the amalgamation, management of PQ P. Ltd. wish to convert it to an LLP. Will the conditions of section 47(xiiib) be considered as met?

Ans. Unlike a partnership firm, an LLP is a legal entity independent of its members. As such conversion of a Pvt. Ltd., company into LLP is a transfer. In the case of partnership firm it's taking over the business of it's partner does not constitute a transfer, as a partnership firm is not an entity independent of its partners.

However, as an LLP is a separate legal entity, conversion of a Pvt. Ltd. company into, an LLP is a transfer unless the conditions prescribed under S. 47(xiiib) are fulfilled and in the case of the querist as its turnover exceed the prescribed limit of ₹ 60 lakhs, it is not fulfilling one of the conditions of said sub-section, and as it is not fulfilling one of the conditions of S. 47(xiiib) it is not entitled to the benefit of exemption under said sub-section.

Q.4 The Government of Maharashtra have appointed authorised stamp vendor to sale stamp papers and other stamps at fixed rate of commission and he purchased stamp papers from stamp office after deducting his commission amount from value of stamp paper. The total stamp paper purchased during the year exceeds ₹ 60 lakhs for F Y 2011-12 but commission amount is approximately ₹ 2 lakhs.

Query: Whether provision of Section 44AB is attracted ?

Ans. S. 44AB is as under:

Every person, —

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds [sixty lakh rupees] in any previous year; or

(b) carrying on profession shall, if his gross receipts in profession exceed [fifteen lakh rupees] in any [previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under [section 44AE] [or section 44BB or section 44BBB], as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any [previous year; or]

(d) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,] get his accounts of such previous year audited by an accountant before the specified date and [furnish by] that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed

The purpose and the object of S. 44AB is to exempt businessmen with a small turnover or trading receipt from keeping proper books of account and to get them duly audited. The limit that is prescribed for this purpose is ₹ 60 lakhs turnover or trading receipt. Under the said provisions, if the turnover does not exceed the said limit is ₹ 60 lakhs he would be taxed at that rate of 8% of such turnover. If however, per cent of profit is less than 8% of turnover is more than ₹ 60 lakhs, he has to keep proper books of account and get them duly audited, to get taxed on the actual profits.

Now, the said provisions will apply in case of the person who is conducting business. Now the question that arises in the case of the querist is whether he is carrying on business, whether his activities for earning the said commission or income constitute business.

Now on the facts of the querist's case, he is a Govt. appointed agent to sell stamp papers, under the rules and regulation and is getting commission on such sales at the prescribed rate. As such he is only an agent of the Govt. to sell stamp duty papers. He cannot be considered as a businessman carrying on commission business. As such the said provisions do not apply to the querist's as his commission income does not constitute business income and as such the commission receipts do not constitute business turnover.

Alternatively it could be argued on behalf of the querist, that if the rate of commission is less than 3.5%, the turnover of business on income of ₹ 2 lakh would be more than ₹ 60 lakhs and he will have to keep proper books of accounts and get them duly audited. However, if the rate of interest is more than 3.5% the turnover on ₹ 2 lakhs commission would be less than 60 lakhs and in that case the querist need not keep proper books of account and get them duly audited.

As such my answer to the query raised is that the said provisions of 44AB will not apply to the querist's case.


Hitesh R. Shah & Paras Savla, *Hon. Jt. Secretaries*

THE CHAMBER NEWS

Through this column, we communicate with you about, and keep you abreast with, the events and the happenings that take place at the CTC. The events that have taken place after the previous issue of the Income Tax Review from 8th February, 2013 till 8th March, 2013 and also some of the important future events which are as under –

I. Admission of New Members

The following new members, were admitted in the Managing Council meeting held on 8th March, 2013.

LIFE MEMBERSHIP

1	SHRI BHUTA NITIN SURESHCHANDRA	CA	MUMBAI
2	MRS. KAMDAR BHAKTI MUDIT	CA	MUMBAI
3	SHRI GOSAR KALPESHKUMAR T.	CA	MUMBAI
4	SHRI P.V.N.R.N. PAVAN KUMAR	ITP	ANDHRA PRADESH

ORDINARY MEMBERSHIP (APRIL, 2013 TO MARCH, 2014)

1	MRS. THAKURDESAI AARTI U.	ICSI	MUMBAI
2	SHRI MEHTA HARSHIT N.	CA	MUMBAI
3	SHRI MUNNOLI SHRISHAIL S.	CA	MUMBAI
4	SHRI S. JAYDEEP SELVARAJU	ADV.	MUMBAI
5	SHRI GOYAL AMIT KUMAR	CA	MUMBAI
6	SHRI GARG AJAY S.	CA	NEW DELHI
7	MS SHARMA VIJEETA	ITP	NEW DELHI
8	SHRI SHAH PRITEN B.	CA	MUMBAI

ASSOCIATE MEMBERSHIP (APRIL 2013 TO MARCH 2014)

1	BP INDIA SERVICES PVT LTD.		MUMBAI
2	UNI GEM INDIA PVT LTD.		MUMBAI

2. Past Events

1. ALLIED LAWS COMMITTEE

Study Circle Meeting was held on 12th February, 2013 where CA Sachin Dedhia addressed the members on the Subject "'Cyber Crime Dangers and Its Prevention".

2. DIRECT TAXES COMMITTEE

A The 7th Intensive Study Group (Direct Tax) Meeting was held on 14th February, 2013.

The meeting was addressed by Shri Ajay Singh, Advocate.

B The remaining two sessions of the "Study Course on Interpretation of Taxing Statutes" was held on 8th and 9th February, 2013. The course was addressed by S/Shri B.V. Jhaveri, Advocate, Aaron Solomon, Solicitor and Advocate, Advaid Sethna, Advocate and Ms Nikita Badheka, Advocate.

The committee has announced "Second Essay Competition-2013" for students of Law & Article Trainees pursuing C.A. Course.

3. INDIRECT TAXES COMMITTEE

The ongoing sessions of the Workshop on MVAT & Service Tax jointly with AIFTP (WZ), BCAS, MCTC and STPAM was held on 16th & 21st February and 2nd, March, 2013. The Workshop was addressed by Shri Naresh Thacker, Advocate, CA Deepak Thakkar, CA Bharat Shemlani , Shri Deepak Bapat, Advocate and Shri Ashwin Acharya, Advocate.

The Students programme was held on 23rd February, 2013 where CA Sheel Bhanushal addressed the students on the subject "Basic Threshold Limit Exemptions, Taxation Rules, 2011; Documentations for basic Procedural Compliance in Services Tax".

4 INTERNATIONAL TAXATION COMMITTEE

a. The 3rd Intensive Study Course on Transfer Pricing (Including Domestic Transfer Pricing) was held on 16th & 23rd February, 2013. On 16th February, 2013, the course was addressed by CA Vispi T. Patel, CA Vaishali Mane, CA Vishwanath Kane, CA Umang Someshwar and on 23rd February, 2013, the course was addressed by CA Jigar Saiya, CA Vineet Chhabra, and CA Gaurav Shah.

b. The Public meeting on Union Budget-2013 was held jointly with Investors' Grievances Forum, Welingkar Institute of Management, The Chamber of Tax Consultants, Matunga Gymkhana and Forum of Free Enterprise on 3rd March, 2013 where CA Kanu Doshi addressed the members on the subject Direct Taxes Provisions on Union Budget- 2013 and Mr. Mehraboon Irani and Mr. S. P. Tulsyan addressed the members on the subject "Implication and Analysis of Union Budget on Capital Market" .

c. The meeting on Intensive Study Group was held on 25th February, 2013 where Mr. Jay Shah lead the discussion on the subject " Article – 5 of OECD Model – "PE" proposed Amendments to the Model Commentary" and on 7th March, 2013 Mr. Ramesh Iyer, Mr. Ganesh Rajagopalan, and Mr. Deepak Kanabar lead the discussion on the subject "Analysis of International Tax Amendments in Finance Bill, 2013 related to GAAR, Buy Back of Shares etc;" and on 7th March, 2013 on the subject " "Analysis of International Tax

Amendments in Finance Bill-2013". The discussion was led by CA Ramesh Iyer, CA Ganesh Rajagopalan and CA Deepak Kanabar.

5. RESIDENTIAL REFRESHER COURSE & PUBLIC RELATIONS COMMITTEE

The 36th Residential Refresher Course was held on 21st February to 24th February, 2013 at Heritage Village Resort & SPA, Manesar, Gurgaon. The course was attended by 144 delegates out of which 40 delegates were from outstation including 10 NRRC.

6. STUDY CIRCLE & STUDY GROUP COMMITTEE

a. The Study Group Meeting was held on 26th February, 2013, on the subject "Recent Judgments under Direct Taxes" and was led by CA Kishor B. Karia.

b. The Study Circle Meeting was held on 27th February, 2013, on the subject "Recoveries and Stay proceeding under Income-tax Act," and was led by Shri Ajay Singh, Advocate.

7. LECTURE MEETINGS

A) AMITA MEMORIAL LECTURE MEETING

A lecture meeting under the auspicious of Amita Memorial Trust, jointly with BCAS was held on 11th February, 2013. The meeting was addressed by Brahmakumari Shivani on the subject "Future without Fear".

B) UNION BUDGET–2013 – AN ANALYSIS

A Public Meeting on "Union Budget" on Direct Taxes and Services Taxes jointly with Ghatkopar CA Study Circle, Forum of Free Enterprises and other organisations was held on 3rd March, 2013. Mr. Raghav Narsale addressed the members on the subject "Economic Aspects", CA. Gautam Nayak addressed on the subject "Direct Tax Proposals" and CA. Rajiv Luthia addressed on the subject "Indirect Taxes Proposals."

III. Future Events

1. ALLIED LAWS COMMITTEE

a. Study Circle Meeting is scheduled on 16th April, 2013 on the subject "'FEMA provisions in respect to Inbound and Outbound Investments in Real Estate". The meeting will be addressed by Shri D.T. Khilanani.

b. Workshop on "Statutory Audits of Bank Branches and Practical Issues" is scheduled on 21st March, 2013 where CA Vipul Choksi will addresse the members on the subject "Prudential Norms and LEAR" and CA Hemant Parab will address the members on the subject "Audit Programme for Bank Branch Audit".

c. Seminar on Intellectual Property Rights – Legal, Taxation & Accounting Aspects jointly with International Taxation Committee will be held on 19th and 20th April, 2013. The seminar will be addressed by eminent Solicitors, Advocates and Chartered Accountants.

2. DIRECT TAXES COMMITTEE

a. The Workshop on Finance Bill, 2013 (Direct Taxes Provisions) jointly with WIRC of ICAI will be held on 9th March, 2013. The Workshop will be chaired by CA. Kishore Karia and will be addressed by CA. Gautam Nayak and CA. Yogesh Thar.

3. INDIRECT TAXES COMMITTEE

a. The ongoing sessions of the Workshop on MVAT & Service Tax jointly with AIFTP (WZ), BCAS, MCTC and STPAM will be held on 16th, and 30th March, 2013. The Workshop will be addressed by CA Sujata Rangnekar, CA Manish Gadia and Ms Nikita Badheka, Advocate.

b. The Workshop on Finance Bill, 2013 (Indirect Taxes Provisions) jointly with WIRC of ICAI will be held on 9th March, 2013. The Workshop will be addressed by CA A. R. Krishnan and Shri Vipin Jain, Advocate.

4. INTERNATIONAL TAXATION COMMITTEE

a. The ongoing sessions of 3rd Intensive Study Course on Transfer Pricing (Including Domestic Transfer Pricing) will be held on 16th, 23rd & 30th March, 2013 and 6th April, 2013.

b. Publication on INTERNATIONAL TAXATION – A Compendium

The Committee has come with a publication of 4 volume set on "International Taxation – A Compendium". The Special Pre-Publication price for 4 volume set for members is ₹ 3,250/-, if booked before 15th March, 2013 and ₹ 3,500/-, if booked after 15th March, 2013.

c. The 7th Residential Conference on International Taxation-2013 will be held on 20th June to 23rd June, 2013 at The Golden Palms Hotel & Spa, Bengaluru. The Conference will be addressed by eminent faculties in the field of International Taxation.

5. JOURNAL COMMITTEE

The Committee has planned to bring special story "Cooperative Housing Society" in the forthcoming issue for the month of April, 2013.

6. MEMBERSHIP & EOP COMMITTEE

The Committee has organised Seminar on "Direct Taxes" on 16th March, 2013 jointly with Jalgaon Branch of WIRC of ICAI. The Seminar will be addressed by Shri Ajay Singh, Advocate, CA Reepal Tralshawala, and Shri Vipul Joshi, Advocate,

7. RESIDENTIAL REFRESHER COURSE & PUBLIC RELATIONS COMMITTEE

The Chamber is going to launch its revamped website and E- Journal on Friday, 19th April, 2013, the auspicious day of Ram Navami. The RRC & PR Committee jointly with the Membership & EOP Committee has planned a Musical Orchestra show at the Mysore Association Hall, Matunga (Central) from 7.00 p.m. onwards for CTC members, their family and friends.

8. STUDY CIRCLE & STUDY GROUP COMMITTEE

The Study Circle Meeting will be held on 11th March, 2013 on the subject "Finance Bill-2013". The meeting will be chaired by CA P.N. Shah and will be led by CA N. C. Hegde.

9. RENEWAL NOTICE – 2013-14

The renewal fees for Annual Membership, Subscription of IT Review, Study Group and Study Circles meeting and Other Subscription for the financial year 2013-14 falls due for payment on 1st April, 2013.

The details of the Fees are as under:

		FEES	SERVICE TAX	TOTAL
1.	Membership Renewal Fees (for 1 year)	₹ 1,300/-	₹ 161/-	₹ 1,461/-
2.	The Chamber's Journal Subscription (Life Members)	₹ 550/-	–	₹ 550/-
3.	The Chamber's Journal Subscription (Non-Members)	₹ 1,000/ -	–	–
4.	Associate Membership	₹ 2,000/-	₹ 247	₹ 2,247
5.	Student Membership Fees	₹ 250/-	₹ 31/-	₹ 281/-
6.	Study Group (Direct Taxes)	₹ 1,250/-	₹ 155/-	₹ 1,405/-
7.	Study Circle (Indirect Taxes)	₹ 700/-	₹ 87/-	₹ 787/-
8.	Study Circle (International Tax)	₹ 1,000/-	₹ 124/-	₹ 1,124/-
9.	Study Circle (Allied Laws)	₹ 700/-	₹ 87/-	₹ 787/-
10.	Study Circle (Direct Taxes)	₹ 700/-	₹ 87/-	₹ 787/-
11.	Study Circles	₹ 1,000/-	₹ 124/-	₹ 1,124/-
	(Direct Tax & Allied Laws Combined)			
11.	Self Awareness Series	₹ 350/-	₹ 43/-	₹ 393/-
12.	Intensive Study Group on Direct Tax	₹ 1,000/-	₹ 124/-	₹ 1,124/-

(*) The amount of Service Tax and Cess may change if there is change in the rate.

10. PUBLICATIONS FOR SALE:

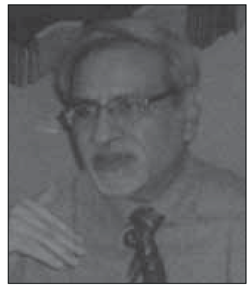
- 1st Residential Refresher Course on Service Tax held on 4-6 January, 2013 Course Material ₹ 300/-.
- 36th Residential Refresher Course held on 21-24 February, 2013 Course Material ₹ 225/-.

(For Enrollment and further details of all the future Events, please refer to the March, 2013 Issue of CITC News or visit the website www.citcindia.org)

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Circle Meeting held on 27th February, 2013 on the subject "Recoveries and Stay proceeding under Income Tax Act".

Shri Ajay Singh, Advocate addressing the members.



Study Group Meeting held on 26th February, 2013 on the subject "Recent Judgments under Direct Taxes".

CA Kishor B. Karia addressing the members.

INDIRECT TAXES COMMITTEE

Indirect Tax Study Circle Meeting held on 19th February, 2013 on the subject "Recent Judgment under MVAT Laws".

Shri Kantilal Jain, Advocate addressing the members. Seen from L to R : S/Shri CA Pranav Kapadia, Vice Chairman, C. B. Thakar, Advocate, Session Chairman and CA Narendra Soni, Convenor.

Student Seminar on Service Tax held on 23rd February, 2013 at Directplex, Andheri.

CA Sheel Bhanushali addressing the students.

INTERNATIONAL TAXATION COMMITTEE

Intensive Study Group on International Taxation held on 25th February, 2013 on the subject "Article – 5 of OECD Model – "PE" – Proposed Amendments to The Model Commentary".

Mr. Jay Shah addressing the members.

ALLIED LAWS COMMITTEE

Allied Laws Study Circle Meeting held on 12th February, 2013 on the subject "Cyber Crime Dangers and Its Prevention".

CA Sachin Dedhia addressing the members.

AMITA MEMORIAL LECTURE MEETING

Amita Memorial Lecture Meeting jointly with BCAS held on 11th February, 2013 on the subject "Future without Fear".

Brahmakumari Shivani addressing the members.

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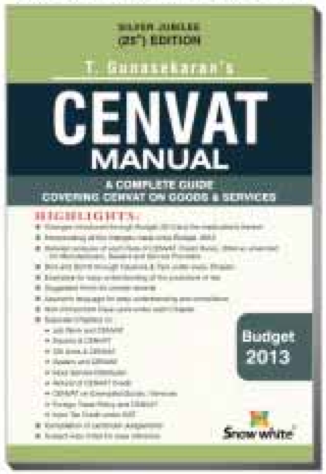

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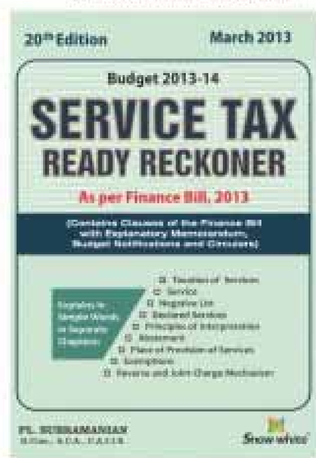

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