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THE CHAMBER'S JOURNAL

JULY - 2014

VOL. II | NO. 10

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

Finance (No. 2) Bill, 2014

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FINANCE (NO. 2) BILL, 2014

JULY- 2014 VOL. II | NO.10

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Shri Paras Savla, President along with Past Presidents at the Annual Dinner.

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Editorial

At the outset I congratulate Mr. Paras Savla for being elected as the President of Chamber of Tax Consultants. He is a very young and dynamic leader who is going to usher in fresh breeze of change into the Chamber and he and his team will achieve new milestones. I wish his team members also best of luck and success. This issue reaches you when you are busy uploading returns to meet the 31st July, deadline. We were compelled to seek an extension of the posting date to bring out the special story on Finance (No. 2) Bill, 2014 which was presented on 10th July, 2014 in the Parliament. In this issue's special story we are covering the provisions of the Finance (No. 2) Bill, 2014 pertaining to indirect taxes also. We are publishing articles from some experts who give us the perspective of the industry and financial world. I thank all the authors who contributed to the special story of this month in spite of very short notice. My special thanks to Ms. Bhavna Doshi, Mr. Vijay Mantri, Mr. Virendra Parekh, Mr. Ninand Karpe, Mr. Mayur R. Parekh and Mr. Jayant Gokhale.

Somehow, I am reminded of the words of Alexander Pope "Blessed is the one who expects nothing, for he shall never be disappointed". I am not blessed in that sense. I did not expect any land breaking announcement on economic reforms from the new Government when it went on back foot after increasing railway fare. But, I definitely expected the Hon'ble Finance Minister who was an eminent lawyer as well, not to tinker with some sections of the Income-tax Act, 1961 to neutralise some court rulings. These sections dealing with exemptions from Capital Gains tax are mainly applicable to individuals and HUFs. The sheen of magnanimity shown in raising limit of taxable income, increasing the limit under section 80C and section 24 of the Income tax Act, 1961 is dimmed due to these amendments. We once again request the Hon'ble Finance Minister to interact with professional organisation like the Chamber directly and not use the bureaucrats as ears to listen to us. Any suggestion by the bureaucrats to amend any section to neutralise a ruling of the court should be discussed with professional bodies. Such engagement with professional bodies directly with Finance Minister will help tax collection and restore the confidence of the assessee in the system. Otherwise these amendments encourage cynicism that any fight for justice can be neutralised by the might of legislative power. The practice of amending the statute to neutralise court rulings has a negative impact on the concept of voluntary compliance.

I once again thank all the contributors of this issue for extending all the co-operation in spite of their busy professional schedules.

K. GOPAL
Editor

From the President

Dear Friends,

Among the various events in my life, no event could have filled me with greater joy and happiness than that of reposing trust and confidence in me for the coveted position of President of this prestigious organisation. With blessings of the Almighty and my parents I have accepted this post. With pride coupled with a sense of responsibility, I am writing my first communication as a President.

I am confident that with help of Past Presidents, who are friends, philosophers and guides and with current team consisting of my colleagues in the managing council and members of committees who are soldiers, I will be able to live up to the expectations of each of you. Individually, I am like a drop but together with you all, I am an ocean. Like my predecessors I would work conscientiously for the Chamber and look forward to lead this august organisation to newer heights.

Tax terrorism!

What does tax terrorism mean?

In order to understand this, it would be best to look at a layman's expectation from the Taxman. A layman would expect that the taxman would collect the taxes in a fair manner. He would not use his powers in such a way that would swindle honest taxpayers. Taxman would treat taxpayers with the dignity and respect. Taxman would not always proceed with suspicion and would implement the law in a just and equitable manner. High Courts have regularly passed strictures on the conduct and behaviour of the tax officers. Bombay High Court in the case of Mahindra & Mahindra observes that it's a very shocking and sad state of affairs in the IT Department. Bombay High Court again in the case of Vodafone Essar South observed that conduct of officers is not only high handed but it is in gross abuse of the powers vested in them. It further went to say that officers have totally flouted the norms laid down under the Act and have terrorised the company officer with the threat of arrest. It is the usual practice of the tax officer in not following the favourable decision of the High Court and pass order against the assessee. On such non-following the decision of higher authority Bombay High Court in case of Legrand (India) Private Ltd. has observed that in not following the decisions was calculated to undermine the dignity and majesty of the Court and impair the Constitutional Authority of High Court. Couple of years back CBDT Chairman issued instruction to link promotions and postings of officers with tax collection made by them. Later on judiciary has come down heavily on this instruction.

However as per the current Government, the UPA Government's move to impose retrospective tax is "tax terrorism". This has been iterated by the Ministers regularly at the public places. But while replying on the Budget discussion, the Hon'ble Finance Minister has stated that Government would be working to bring civility in the tax regime. Let's look forward for the civility in the approach by the tax department.

Maiden budget of the Modi Government was much awaited and also had created huge expectations. It is certain that we cannot expect all things from a Government that has been in power for 45 days. But this Budget has a colour of the UPA Government. Tradition of reversing the decisions against tax department

also continues. But the good thing is that the Government has kept its eyes and ears open and is in a listening mode. Like the steps taken for removing hardship under the Companies Act 2013 it is hoped that various difficulties in the Finance (No.2) Bill are ironed out before it is passed by the Parliament.

Indian economy was in doldrums. Investors had lost confidence and doubts were being raised on India growth story. The new Government appreciates its role for increasing growth rate of the country's economy. It also understands the need to provide support to the business for carrying on its work. Many steps are being planned to be taken for the sustainable growth, off budget.

New Companies Act has started rolling out in a phased manner. GST is on its way. Still many things like DTC are being talked about. Newer laws, bring in new challenges. These challenges have opportunities within them. The dynamic regulatory environment, would necessitate every professional to keep on learning and exploring new ideas. The Chamber, being a catalyst, between professionals and their need to remain updated on the developments, will have a very important role to play going forward. Thrust would lie in capitalising on these challenges, hence mission statement for the year is "Capitalising The Challenges".

During the year the Chamber would use Technology in new and innovative ways and try to be in touch with more members through the use of technology. Considering large number of students pursuing accountancy and legal curriculum, this year a separate committee for students is started. The committee would be organising programmes considering the needs and requirements of students, with an objective to expand students horizons and nurture them to become competent professionals.

One of the visions of the Chamber is that it shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations. The Chamber has sent representations on issues arising on implementation of the Companies Act, and Pre and Post budget memorandam. Last month, the Chamber's representatives had met the concerned Member of Parliament to apprise the issues arising out of the implementation of the Companies Act 2013. Post introduction of the Finance Bill again in a meeting, the concerned Member of Parliament was apprised of the issues arising out of the Bill.

Each of the committees has been geared up for various activities at the Chamber. Two lecture meetings have been planned during first week of August, 2014. On 1st August 2014 Corporate Members Committee has organised lecture meeting to understand the scenario of the Capital Market post budget. On 8th August Direct Tax Committee has organised a lecture meeting on Purchases from Suspicious Dealers – Impact in Income-tax. All the members are requested to take benefit of both the lecture meetings.

Special story of the Chamber's Journal is on Finance Bill. The Special Story includes various analytical articles not only on the direct and indirect tax but also on the economic front. Even Maharashtra State Finance Act has been covered. I congratulate the Chairman of Journal Committee CA Sanjeev Lalan for the innovativeness.

Napoleon Hill said that *"Ideas are the beginning points of all fortunes"*. I would be happy to receive ideas and suggestions for the benefit of the profession. I look forward for active participation of all the members in the activities of the Chamber.

Paras Savla
President

Chairman's Communication

Dear Esteemed Readers,

At the outset I would like to thank the President CA. Paras K. Savla and the Council for having reposed confidence in me to Chair this very important Journal Committee for the year 2014-15. It shall be my and Committee's endeavour to live up to the exacting standards set in respect of publication of The Chamber's Journal.

As it transpires, the new Council took over the reins at Chamber on 4th of July and the Union Budget was presented on 10th of July and within the short span of time we had to plan for the special story on the Finance (No. 2) Bill, 2014. With due co-operation from the authors of the articles, hard work by the Committee members – especially the Convenors and guidance from the Office Bearers and Editorial team we have been able to come out with Special Story on Finance (No. 2) Bill, 2014 in this issue in very short span of time. Special thanks are due to all the authors for agreeing to write the articles on the respective topics allotted to them. The contributors of articles have not only delivered the same in shortest possible time, but also provided in-depth analysis for the benefit of the readers to understand the finer points of the various proposals made in the Finance Bill.

Apart from the analysis of the proposals emanating from the Finance Bill, relating to the Direct and Indirect Tax proposals, in this issue we have also included an Article on amendments made in Maharashtra Value Added Tax and allied laws. In this issue, apart from the amendments to tax laws, we have for the first time also included three articles giving economic perspective of the budgetary proposals. We hope you will find the same interesting in understanding the macro-economic aspects of the budget.

Friends at the Chamber it shall be our endeavour to provide to the members and readers, through the medium of this Journal, flavour of various issues that are relevant for knowledge enhancement in lines with the vision statement viz. – The Chamber shall be a powerhouse of knowledge in the field of fiscal laws in the global economy. We look forward to your critical feedback always and feel free to write for improving the standard of the Journal with your constructive suggestions. These shall go a long way in improving the utility of this mouth-piece of the Chamber.

Looking forward to being in touch with you all, through this Journal for the next twelve months.

Sanjeev Lalan
Chairman – Journal Committee

CA Jayant Gokhale

An Overview of Direct Tax Proposals in the Finance (No. 2) Bill, 2014

In India, the Budget has traditionally been looked forward to with a sense of anticipation or apprehension. This year was no exception. Rather the sense of expectation on part of the 'aam-aadmi' was heightened because of the highly effective campaign run by the BJP which had raised hopes amongst the masses that the Modi magic would bring about the dawn of 'Acche din'. Apart from this, the business community and industry, analysts and armchair intellectuals were all expecting something by way of a major directional thrust because after a long gap of 30 years, a government not shackled by the compulsions of coalition politics was presenting its first Budget after receiving a clear mandate.

It is in this backdrop that one is taking an overview and evaluating the Budget as has been presented. [I have consciously used the word 'Budget' rather than the technically correct expression – Finance Bill, because the expectations arise more in regard to the policy statements and other utterances of the Finance Minister (FM) made when introducing the Finance Bill (FB) rather than the amendments in tax laws itself]. It is my earnest belief that we as finance and tax professionals tend to take a rather narrow and blinkered view. Our entire focus remains on the provisions of the FB rather than on the sweep of the Budget proposals as a whole. What really affects the corporates and the common man is the impact of the Budget on business, day to day life and the economy as a whole. We, as advisers, therefore need to look at this larger canvas and the overall impact on the economy rather than merely on the changes in the Income Tax Act. However, since this issue of the Journal focuses on the Finance Bill [FB], I have concentrated on the direct tax provisions of the FB.

You will note that as compared to the 253 clauses in the speech made by the FM, the direct tax proposals in the FB are contained in only 71 clauses. This is quite natural because the Budget is an occasion to define policy approaches of the new Government – not all of which translate into direct tax proposals. In any case, in a mature economy, sudden and drastic revisions in the tax provisions are avoided by all political parties. Therefore, those studying and analysing the tax laws would find that over the last decade FBs have generally avoided introduction of sweeping changes in the tax provisions. What is usually done is more of tinkering with existing provisions (or ones that were earlier tried and abandoned). This is basically because the pace at which the tax laws have been amended in the last 50 years, virtually every avenue of tax collection (except agricultural income tax) has already

been explored, tried and tested. There are very few new and innovative concepts that remain. The areas of possible changes are very few, unless one were to change the overall vision or framework within which the tax system functions. This is a task which is normally too technical and formidable for any Finance Minister, unless he happens to know the subject himself. The FM, Mr. Arun Jaitley, is a senior counsel of great intellect and ability, having intimate knowledge of the legal issues and interpretation. Yet not being a tax professional it is too much to expect him to go into the nitty-gritty of tax legislation. It is therefore but natural that the FM gives the broad policy perspective and leaves the nuts and bolts to the Ministry officials. These officers in the Finance Ministry, with their years of experience, have evolved a certain formula whereby, irrespective of which FM occupies the seat, which party forms the government, the FB will always contain what are the priorities of the Ministry rather than the priorities of the Government of the day. As the legendary Sir Humphrey expressed in Yes Minister " while it has been government policy to regard policy as a responsibility of Ministers and administration as a responsibility of Officials, the questions of administrative policy can cause confusion between the policy of administration and the administration of policy, especially when responsibility for the administration of the policy of administration conflicts, or overlaps with, responsibility for the policy of the administration of policy."

Given this formidable machinery of bureaucracy, and the fact that each year the Journal comes out with an Overview of the Finance Bill which in reality is the handiwork of the Ministry and not of the FM, I thought it might be better if I can share with you what I believe is the formula which is used by the Finance Ministry to prepare a Finance Bill. Just as Bollywood makes formula films, so that after each 'Zanjeer' or 'Deewar' there is a spate of films which contain the same basic ingredients, mixed in different measure; so also each Finance Bill contains basically the same formula. Until the formula changes it is futile to try and analyse the contents of each Finance Bill. The answer will always be the same. You may test this theory by looking at the formula given below and the contents of the last 5 years finance bills. I may further venture to suggest that this formula will hold good even over the next five years, unless there is a major policy initiative by the Finance Minister. I therefore proceed to share with you the 'hit formula' for Finance Bills, which may do away with writing an overview over the next few years. You may refer to the same formula (substituting only the respective sections in each successive Finance Bill).

The formula for the Finance Ministry bureaucrats drafting the Finance Bill is:

A] Find out which judgments in the past (not just recent past) are disliked by the Department and introduce amendments to overturn them [Refer S.11(6), proviso of S.54(1), 54 EC].(Refer article by Ketan Vajani – para entitled Provisions related to Capital Gains).

B] Identify real and imagined areas of revenue leakages and introduce amendments to plug them. [Ref. 56(2)(ix), 2(42A) & 115O] Although this may cause some collateral damage to the honest taxpayer, this has to be executed with ruthless efficiency.

C] Add a couple of clauses which the rank and file (the Assessing Officers and Senior Field Officers) have been clamouring for, to cover up for their inefficiency. This must be done; because even those in the exalted corridors of North Block must demonstrate their empathy and solidarity with their colleague officers. These clauses generally result in enhancement of

powers of the AO, the DCIT, CIT etc. to something like the power given to Agent 007- 'Licence to Kill'. This year we have the extension of powers u/s. 133A and the new Sec. 142A. The latter gives the power to refer to valuation, for any reason, any asset (of any person?) for valuation. It incidentally also provides an easy escape route for assessments getting time barred.

Somewhere, the Bill (or at least the FM's speech), makes reference to concepts which have indefinitely been on the drawing board but never brought to fruition. This is to show that all those proposals gathering dust on which thousands of man hours have been spent on discussion, have not been entirely forgotten. The threat of their revival (just like a sequel) should always remain. A case in point is the concept of 'Standards' that was introduced by the Finance Act 1995. The purported reason for this was that 'there is flexibility in the standards issued by the ICAI which makes it possible for an assessee to avoid the payment of correct taxes'. Having realised this grave deficiency, two standards were issued under the powers assumed under section 145 and paradoxically both these standards were practically verbatim reproductions of ICAI Standards. With no further progress happening for a period of 7 years, a committee concluded in 2002 that it was 'impractical for a tax payer to maintain two sets of books of account.' Having reached this momentous conclusion, a new Accounting Standards Committee was set up by the CBDT 8 years thereafter. Matters of such importance cannot be seen to gather dust and therefore since 2010 when this committee was constituted, a set of standards was issued for public debate. It appears from the amendments now proposed that in the last 4 years apart from the drafts that have been issued , the only conclusion to have been arrived atwas that since the 'standards' drafted do not deal with entries in books of account and are not given effect to in the books (which in any case had been concluded in 2002 - more than 10 years earlier), it is a misnomer to refer to them as 'accounting standards'. The Finance Bill 2014 therefore now refers to them as 'income computation and disclosure standards'. One can only wonder how many more years will be required to come to the realisation that in fact what has been exposed as 'draft standards' do not constitute 'standards' but are in reality nothing but rules for computation. Besides if the standards as exposed are in fact notified, the very purpose for which the whole exercise was started in 1995 viz. to reduce litigation and provide certainty would be negated.This is because corporates (who contribute more than half the direct tax collections) are mandated to follow the standards notified under the Companies Act 2013. Now they would be required to follow an entirely different set of rules for the purpose of determination of taxable income. This would inevitably lead to conflicting interpretations, litigation and uncertainty. The FM has expressed in very clear terms that it his objective to minimise this. Therefore, one can only conclude that these five innocent looking words "income computation and disclosure standards" substituted for the words 'accounting standards' in S. 145(2) and the consequential amendment in sub-clause (3) are only intended to demonstrate that the Finance Ministry still intends to pursue this matter and that notwithstanding the dust that these files have gathered, the same are still under 'active consideration'.In similar manner,this year we have references to

GAAR, and the Direct Tax Code, only to keep the Sword of Damocles hanging.

Incidentally it may be pointed out that the language in the proposed S.145(3), indicates a possible interpretation that if the income is not computed in accordance with "computation and disclosure standards" referred to in S.145(2), the Assessing Officer shall be entitled to make a best judgement assessment u/s 144. Surely, if the computation and disclosure standards are applicable, and an assessee fails to make the computation in accordance thereto; the Assessing Officer should be empowered to compute the income in accordance with the said notified standards [145(2)] and not according to his 'best judgement'. Experience has shown that where wider powers than what is required are vested; they will surely be used. Or should I say more often than not; misused. Surely this sort of bureaucratic overreach is not what the FM envisages when he sets out to provide certainty and reduce litigation.

D] In order to show that the FM and his political philosophy does play a role in framing the tax proposals, the Finance Ministry always keeps ready some items of tax relief that can be directly linked to the agenda or manifesto of the party in Government. While this may seem an indication of excellent foresight and planning; in reality it is a reflection of the fact that irrespective of which party is in power, proposals relating to attracting foreign direct investments, giving boost to development in backward regions, promoting the interest of small and medium enterprises are in fact the buzzwords used by every political party that aspires to have any say in the Central Government. The Finance Ministry surely keeps these proposals ready, fine tuning them only by substituting one backward region for the other, or a particular grouping of SMEs as would suit the political inclination of whoever occupies the position of FM.

E] This year posed a seemingly major challenge since the Budget came so soon after the election that the poll promises were fresh in people's minds. Yet our bureaucracy is more than equal to the task. The BJP 2014 manifesto clearly mentioned encouragement to FDI, emphasisedthe role of PPP, maintaining certainty, doing away with Tax Terrorism and rationalization and simplification of tax. All of these issues have been clearly addressed in the Finance Bill. The FDI issue is addressed by a host of measures including S.2(14) S.194LC. (Refer Article by CA Anish Thacker). The emphasis placed on PPP model is evident in the passthrough status given to Infrastructure Investment Trusts and Real Estate Investment Trust and introduction of Chapter XII FA.

F] Finally, as with all legislation, the finance bill must contain some lofty and positive object. It is therefore a *sine qua non* that the Finance Bill must contain measures for 'Rationlisation' of the Income tax Act. The Finance Bill 2014 contains ample initiatives classified under the head "Rationalisation Measures". This Part of the Explanatory Memorandum lists 48 clauses under the head. Thus 2/3rd of the Bill consists of Rationalisation measures. Since our FM was not a tax practitioner, one can only presume that these rationalisations are the product of the wisdom and experience of the men in the Finance Ministry! They obviously have kept all these 'Rationalisations' ready for the FM to act on as soon as he assumed office. One only wonders that when every successive Finance Bill

over the last 5 decades has introduced so many 'Rationalisations'; why is the Income Tax Act still so difficult to comprehend and administer?

G] The bureaucracy having added all the ingredients of a well crafted Finance Bill only the final step remains for the Finance Minister in office to make his personal contribution to the whole process. Needless to say given that the above formula has already resulted in the addition of not less than 60 clauses to the draft Finance Bill, not too much space remains for the poor FM. In any case, usually given the economic and financial environment, any FM has very limited room for manoeuverability by way of giving too many sweeteners or tax reliefs unless he's willing to take a bold step of adding to some taxes which may make him highly unpopular both in industry and amongst his own party colleagues. It is thus only at this stage that the Finance Minister can add his own bit under the head 'Relief &Welfare Measures'. This the present FM has done (as every FM does as per the Formula) by raising the personal tax threshold for tax payers and senior citizens (raising the limit by ₹ 50,000/-); increasing rebate u/s 24(b) interest on Housing Loans by ₹ 50,000/- and raising the limit for S.80C by like amount. (See Article by KetanVajani)

So finally; what is the role of the FM in the FB preparation?

The FM really plays a role only in giving a directional thrust or bringing about certain policy changes which impact the Direct and Indirect Tax Laws. In terms of announcing policy and giving certain direction the FM has certainly adopted the right approach within the limited time and economic freedom available to him.

The emphasis given to public-private partnership [PPP] both in the BJP manifesto as well as in the economic survey has in fact been translated into reality by the introduction of the Infrastructure Investment Trust And the Real Estate Investment Trust. A full chapter XII –FA has been added, giving these entities a pass through status, thus providing a viable avenue for financing of core infrastructure and housing development activities. This is indeed commendable and overdue. In fact, one would have hoped that rather than providing just a vehicle for facilitating such investment, the FM could have given a better boost to this sector by introducing a liberal concession on the lines of 80- CCB for such 'Business Trust' investments up to Rs. 50,000. However, if one looks at the overall provisions made in the Finance Bill, this is one area of a positive initiative which is very welcome.

In terms of givinga more conducive environment and sense of confidence to industry and investors the FM has not taken any major steps. The small initiatives that have however been taken up clearly in the right direction. Thus extension of time for availing benefits under 32 AC and simultaneously lowering the threshold for availing these benefits is welcome. The manner in which these changes have been effected is equally important. Care has been taken to ensure that even in the case of entities that have made partial investments, needless hurdles on technical grounds would be avoided. Thus where benefit is sought to be given, the same has been given in a positive manner. In the past, one has often seen that when some concessions were made, they were given in an almost reluctant and grudging manner, which invariably leads to litigation and needless controversy.

The FM has also emphasised that he wishes to reduce litigation and has also given an assurance that he would strive to "provide a stable and predictable taxation regime" and accordingly he has stated that this government "will not ordinarily bring about any change retrospectively". This again is a very welcome step, but the carefully guarded statement of the FM clearly indicates that while this remains a statement of intent it is not a binding commitment. At the same time one must appreciate that he has acted in accordance with the spirit of this statement. In making amendments which effectively override certain judicial decisions in regard to S. 54, 54F, 54EC etc. the FM has consciously made these changes only prospectively. Thus by implication, all those who have in the past claimed the benefit (which as per the thinking of a Finance Ministry, they were not eligible); would still not be subjected to litigation. Rather, the prospective nature of the amendment would indicate, that the past is forgiven and forgotten. While some may still quibble about the iniquity of this approach; I would believe that from a macroeconomic perspective this makes abundant sense. It also shows that the FM, who has made a highly successful career in litigation, is serious about minimising tax litigation rather than promoting it.

Some other initiatives such as expanding the scope of Advance Rulings, giving greater leeway to Settlement Commission, rationalising provisions in regard to transfer pricing and opening the doors to facilitate foreign direct investment (FDI) are also positives in the Finance Bill. Numerous other bureaucracy driven changes such as enhancement of powers of officers to refer to valuation, powers of survey and the clumsily worded explanation and proviso to S. C 10(23C) reduce the overall positivity to a certain extent. However in taking a broader view of the situation I personally do not hold these negatives against the FM, because as explained earlier, most of the Finance Bill itself is the handiwork of the bureaucracy rather than of the FM. If at all one feels a sense of disappointment, it arises from the fact that the budget and the budget speech is verbose without having clear deliverables. There is no bold initiative, no significant and sweeping 'big ticket' reform or a 'jorkajhatka' which bears the personal imprimatur of the FM. One misses this because going as per the formula may keep the economy largely in the same rut in which which it has been in the recent past. Something is needed that would take this Government out of the inertia of 'policy paralysis' which the BJP has spoken about so often in the recent past. That is sadly missing.

Of course, it may be too harsh to expect the FM to do create such a 'big bang' in the few weeks since he took over this onerous responsibility. He has given numerous indications in his Budget speech. But somehow the sheer number of disparate targets referred to by him and the nominal Budgetary allocations made towards many of them brings to mind an image of shooting at multiple targets with a shotgun full of pellets, hoping that at least some of the pellets would hit the mark and get the economy back on track. Possibly what is needed is a silver bullet. Undoubtedly, crafting the silver bullet takes time. Perhaps, we need to wait another seven months for the FM to deliver such a silver bullet by way of a bold and innovative budget.One can always hope for ‘acche din’.

CA. Shailesh Bandi

Rates of Taxes

The Hon'ble Finance Minister Mr. Arun Jaitley has presented his first Budget in back drop of growing aspirations of people in the development strategy of the Government led by the Hon'ble Prime Minister Shri Narendra Modi and its mandate of *"Sab ka Saath Sab ka Vikas"* and outlining the road map for Fiscal consolidation and discipline .

This article deals with the Rates of Taxes (clause 2 read with The First Schedule) and certain other special provisions in the Finance Bill 2014.

A. Rates of Income-tax in respect of income liable to tax for the Assessment Year 2015-16

In respect of income of all categories of Assessees liable to tax for the assessment year 2014-15, the rates of income tax have been specified in Part I of the First Schedule to the Finance (No. 2) Bill 2014, which is similar to that of the Finance Act 2013 and also The Finance Bill 2014 as passed by Parliament by taking the Vote on Account in February 2014..

However, Part III of the First Schedule to the Finance (No. 2) Bill, 2014, has provided Rates for the purposes of computation of "Advance Tax", deduction of tax at source from "salaries and charging of tax payable in certain cases" for the Assessment Year 2015-16.

1. Tax Rate Chart

For Individual other then Resident Individuals mentioned below, Every HUF, AOP/BOI.

Sr. No.	Net Income Range	Income Tax Rate
1	Up to ₹ 2,50,000	Nil
2	₹ 2,50,001 to ₹ 5,00,000	10%
3	₹ 5,00,001 to ₹ 10,00,000	20%
4	Above ₹ 10,00,000	30%

For Resident Individuals Who is of the age 60 Years or more but less then age of 80 yrs at any time during the Previous year

Sr. No.	Net Income Range	Income Tax Rate
1	Up to ₹ 3,00,000	Nil
2	₹ 3,00,001 to ₹ 5,00,000	10%
3	₹ 5,00,001 to ₹ 10.00,000	20%
4	Above ₹ 10,00,000	30%

For Resident Individuals Who is of the age 80 Years or more at any time during the Previous year

Sr No.	Net Income Range	Income Tax Rate
1	Up to ₹. 5,00,000	Nil
2	₹ 500001 to ₹ 10,00,000	20%
3	Above ₹ 10,00,000	30%

2. There has been no change in Rate of Taxes in other cases. The rates in all other cases is as under

Sr	Type of Assessee			Income Tax Rate
1	Co-operative societies			
	Net Income Range			
	i	Up to ₹ 10,000		10%
	ii	₹ 10,001 to ₹ 20,000		20%
	iii	Above ₹ 20,000		30%
2	**Firms**			30%
3	**Domestic company**			30%
4	**Companyies other then Domestic Co.**			
	i	On the Income consisting of		
		A	Royalties in pursuance of agreement entered on or after 1-4-1961 but on or before 31-3-1976	50%
		B	F.T.S. received in pursuance agreement entered on or after 1-3-1964 but on or before 31-3-1976	50%
	ii	On the balance income		40%

3. Minimum Alternate Tax (MAT) u/s. 115 JB and Alternate Minimum Tax (AMT) u/s. 115JC

The effective MAT rate for domestic companies u/s. 115JB and under the Special provisions of AMT applicable to persons other then Company claiming deduction heading C of Chapter VI-A or section 10AA also remain unchanged and would be:

Sr. No.	Net Income Range	Income Tax Rate including surcharge and E. Cess
1	Up to ₹ 1 crore	19.055%
2	between 1 and 10 crore	20.00775%
3	Above ₹ 10 crore	20.9605%

4. There has been no changes in the Rates for deduction of tax at source u/ss 193, 194,194A, 194B, 194BB, 194C, 194D, 194EE, 194F, 194G, 194 H, 194I, 194J, 194LA, 195 and are to be deducted as per rates in force but subject to the rates provided in part II of the First Schedule which interalia provide the rates of deduction of tax at source for the Non-Resident Assessees governed by section 115A to 115F, which have also remained unchanged

5. Education Cess

The Education Cess and Secondary Higher Education Cess will continued to be levied @ 2% and 1% respectively in all cases except for TDS u/ss 193 to 194LA

6. Surcharge

a. The surcharge @10% of tax shall be levied in case the income exceeds ₹ 1 crore in all cases where the Income of the above referred person exceeds ₹ 1 crores except as stated in clause b, c and d below.

b. The surcharge shall be levied in respect of income liable to tax in case of domestic company, having total income exceeding ₹ 1 crore rupees but not exceeding ₹ 10 crores @5% of such income tax and in case where the Income exceeds ₹ 10 crores the Surcharge shall be levied @ 10%.

c. In case of Company other than mentioned in b above, having total income exceeding 1 crore rupees, but not exceeding 10 crores @ 2% of such income tax and in case where the Income exceeds ₹ 10 crores the surcharge shall be levied @ 5%.

d. The marginal relief is Continued to be allowed in appropriate cases where total income exceed ₹ 1 crore rupees or ₹ 10 Crore as the case may be..

7. The benefit of section 87A introduced by Finance Act 2013 providing for Rebate of 10% of tax up to maximum of ₹ 2,000 for resident individuals having total income up to ₹ 5 lakhs continues and no additional relief has been provided.

B. Tax on Income Distributed by way of Dividend

1. Dividend received from Foreign companies – Clause 37 – Section 115BBD

Prior to the introduction of Section 115BBD Dividend earned from the Investment held in the Foreign

Company was Taxable in the hands of Resident shareholder at the Applicable rates of Taxes.

The Finance Act 2011 provided Relaxation to the Indian Companies by Introducing section 115BBD wherein it was provided that any Dividend income earned by the Indian Company from the Investment held in the Specified Foreign Company would be taxed @ 15%.

The concession was the extended to the Subsequent Asst. Years i.e A.Y. 2013-14 and 2014-15 as well.

Vide Clause 37 of the Finance Bill, the Benefit of lower rate of Tax has further been extended without restriction of it being available for a particular Asst. Year. Thereby the lower rate of Tax shall apply henceforth to A.Y. 2015-16 and subsequent years as well.

2. Dividend and Income distribution Tax – Clause 40 and 41 – section 115 O and 115R

Section 115 O was introduced by Finance Act 1997 whereas Section 115R was introduced by Finance Act 1999.

Section 115 O deals with tax on distributed profits of domestic Companies whereas section 115R deals with Tax on Distributed Income of the unit holders.

Prior to the introduction of both these sections, the dividend were taxable in the hands of the shareholder / unitholder, as the case may be, which were taxed on the gross amount of such dividend recd.

Subsequent to the introduction of both the sections, the Tax was levied and collected from the domestic company and/ or the administrator of the Mutual Fund fund, as the case may be, on the amount declared, distributed or paid.

The Finance bill proposes to amended both the sections on the pretext of having a lower effective tax rate in this respect to compute the Dividend and Income Distribution Tax on Gross basis.

Thus w.e.f. 1-10-2014 the Dividend and Income Distribution tax will have to Calculated as follows

1	Dividend Amount Distributed	₹ 50
2	Rate of Dividend or Income distribution Tax**	15%**
3	Amount on which Dividend / Income Distribution tax to be paid i.e ₹. 50 * 15 / 85	₹ 58.82
4	Dividend or Income distribution Tax u/s 115 O or 115R- Being 15% of ₹. 58.82	₹ 8.82
5	Prior to the proposed Amendment - Dividend or Income distribution Tax was (Being 15% of ₹. 50.00)	₹ 7.50
6	The additional revenue on Account of DDT generated shall be	₹ 1.32
7	Additional Revenue generated in terms of %	17.6%

** The Rate of Taxes for the Income to be Distributed u/s 115R has been specified in Sub section (2) of the said section and as per the said sub-section the word used for the rates of Taxes is "Additional Income Tax" which range from 25% to 30% , instead of 15% as given above, depending on person to whom the income is to be Distributed and the type of scheme. The comprehensive chart is as under :

Sr. No.	Types of Scheme	Rates of Tax for Ind./ HUF	Rates of Tax for others
1	Money Market Mutual Fund or Liquid Fund	25%	30%
2	Other then 1 Above	25%	30%

Note : In case of the Income to be Distributed by a mutual fund under an Infrastructure Debt Scheme to the Non- Resident (other than Co), the mutual fund shall pay the Additional Income tax @ 5% on the Income Distributed, instead of the rates mentioned in the table.

Instead of increasing the rates of the Dividend/ Income Distribution Tax, directly, the Finance Bill Proposes to increase the same Indirectly.

CA Anish Thacker

Taxation of Foreign Portfolio Investors & REITS and InvITs

Introduction

Foreign Institutional Investors (FIIs), now rechristened as Foreign Portfolio Investors (FPIs) are significant contributors to the market capitalisation of the Indian companies' stocks and to the volumes of the transactions on the Indian Stock Exchanges. These have now become stakeholders whose views on tax policy and tax law changes are now sought:

FIIs are subjected to a special scheme of taxation in the Income-tax Act, 1961. Section 115 AD of the Act is a self-contained code which provides for their taxation. As per section 115 AD of the Act, FIIs' income is taxed as under:

Income	Rule of tax
Income (other than dividends) from securities (other than units and bonds eligible to concessional tax treatment)	20 per cent
Interest income on bonds eligible to concessional tax treatment u/s 194 LD	5 per cent
Short term capital gains referred to in section 111 A [on sale of shares listed on a recognised stock exchange) which are subject to Securities Transaction Tax (STT)]	15 per cent
Long term capital gains on sale of shares listed on a recognised stock exchange which are subject to STT	NIL
Capital gains (long term or short term) on transfer of securities (other than units and listed shares of the type mentioned above)	25 per cent
Any other short term capital gains	30 per cent
Any other long term capital gains	20 per cent

FIIs are not allowed currency conversion or indexation benefit in computing taxable long term capital gains.

Section 115 AD of the Act is however subject to Section 90 of the Act read with the provisions of the Double Tax Avoidance Agreement (DTAA) of the home country of the FII which if more beneficial will override the provisions of section 115 AD.

The Controversy and the FIIs' apprehension

Characterisation of income from purchase and sale of securities has been a vexed issue for all taxpayers whether resident or non-resident. There are no specific guidelines under the Act

or Rules (and probably understandably) on characterisation of such income. The Central Board of Direct Taxes (CBDT) has come out with Circular No. 4/2007 dated 15th June 2007 which dealt with a list of factors to be considered to arrive at whether shares were trading assets or capital assets. In the cases of domestic taxpayers the tax authorities are known to apply a very low threshold for characterising these gains as business income rather than as capital gains. In the cases of FII taxpayers, usually the income is taxed as capital gains.

Some FIIs however had obtained rulings from the Authority for Advance Rulings (AAR) in the context of income from their transactions in derivatives on the stock exchanges. (Illustratively please see *Royal Bank of Canada in Re [2010] 323 ITR 380 (AAR)).* These FIIs and some others were also offering the said income to tax as business income. In fact, there are contrary decisions of the Mumbai Tribunal, one of them being *LG Asian Plus vs. Addl DIT (Intl. Tax) [2011] 46 SOT 159* where it has been held that the income from exchange traded derivatives of FIIs should be taxed under the head 'capital gains' only as the Foreign Direct Investment (FDI) policy only permits FIIs to make portfolio investments in India and not to trade in these securities. There was thus the controversy as to how the income of an FII from purchase and sale of securities was to be taxed. Though in the very recent past, admittedly no significant litigation has been brought to attention on this issue.

Because of an apprehension that the income of FIIs from the purchase and sale of Indian securities could be taxed as 'business income', FIIs were naturally worried about constitution of a Permanent Establishment (PE) in India, if the Fund Manager who took the purchase/ sale decisions, was located in India. It was apprehended that if the fund manager, i.e. the person taking buy/ sell decisions on behalf of the Fund was located in India, the presence of this Fund Manager could expose the Fund to having a taxable presence in India either under the 'Fixed Place' PE provisions or under the 'agency PE' provisions. This was the reason why the Fund Managers of these Funds operated from outside India with the result that the country lost out in terms of not generating tax revenue from taxing the fund management fees in India. Anecdotally, it was also being heard that the uncertainty around taxation of these funds encouraged non-residents to reconsider higher exposure to the Indian capital markets.

The Proposal

The investor community as well as the global asset managers had represented to the erstwhile government that a clarification to the effect that the presence of a fund manager in India should not lead to a PE or indeed a taxable presence in India, would go a long way in creating certainty on the tax front for all foreign funds. It is in response to these requests that an amendment has been proposed in the Finance (No.2) Bill, 2014 vide clause 3(ii) which seeks to amend section 2(14) of the Act, with effect from 1 April 2015 i.e. Assessment Year 2015-16. The clause provides to include within the definition of 'capital asset' defined in section 2(14), any securities held by a FII which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (SEBI Act).

As a consequence of this proposal, any income from purchase and sale of securities (as defined in section 2(h) of the Securities Contract Regulation Act, 1956) should be regarded as 'capital gains' and be taxed accordingly.

The intention behind the introduction of this amendment is spelt out in Paragraph 201 of the Finance Minister's speech which reads as under:

"Foreign Portfolio Investors have invested more than ₹ 8 lakh crore (about 130 billion US dollars) in India. One of their concerns is uncertainty in taxation on account of their income. Moreover the fund managers of these foreign houses remain outside India under the apprehension that their presence in India may have adverse tax consequences. With a view to put an end to this uncertainty and to encourage these fund managers to shift to India, I propose to provide that income arising to foreign portfolio investors from transactions in securities will be treated as capital gains".

Implications of the proposed amendment

The proposed amendment can have far reaching consequences for foreign portfolio investors. It is a very welcome and a pragmatic measure to get in more funds into the Indian capital markets. Some of the implications on a few categories of taxpayers are:

1) This proposal only seeks to treat 'securities' as capital assets and consequently income from transactions therein as capital gains. This therefore gives a virtual 'green' signal to managers of offshore funds only making investments in Indian securities to set up shop in India. For funds which have a wider canvas, for example, funds investing in South East Asia or Asia or even globally with a portion of the allocation to Indian securities, the 'green' signal appears to be missing. While this may not be intended, clarifying this unequivocally would be welcome as it eliminates even the slightest degree of uncertainty that the fund managers may have and then they are able to set up their operations in India without any apprehensions whatsoever.

2) The proposal applies only to securities invested by FIIs (now rechristened as FPIs). The proposal does not appear to be applicable to securities (listed or unlisted) held by Private Equity Funds (which typically invest under the Foreign Direct Investment (FDI) policy in Indian start-ups or unlisted companies). Private Equity Funds also have been asking for similar leeway to have the fund managers located in India and it may be worth considering for the Government to accord similar treatment to securities held by Private Equity Funds.

3) For those Foreign Portfolio Investors who were treating the income from transactions in securities as business income, particularly those who had income from derivative transactions, the proposal may not be greeted with enthusiasm. The said income which potentially was not being subject to tax in India on account of the absence of a PE will now be characterised differently and those investors may or may not now need to pay tax on the said income depending upon their home jurisdiction. If their home jurisdiction has a DTAA with India where capital gains are taxed only in the home country and not in India, those investors may not be impacted but not the investors from other countries.

Conclusion

The proposal is certainly a welcome proposal and is a positive development for the capital markets. It also sends out a very positive signal to foreign investors. Like all proposals, this too may not be as much of good news for some but then, it is only to be expected that any change in law benefits as large a section of its intended beneficiaries as possible.

Taxation of REITS and InvITs

Introduction

With the economy growing at a robust pace in the past decade, the real estate sector has witnessed rapid growth. With corporates growing significantly, the demand for commercial space and buildings like office buildings, convention centres, shopping centres, warehouses etc. has increased. The finance for these constructions was primarily obtained by the developers through the banking sector. Foreign Direct Investment in Real Estate is permitted subject to certain conditions only which are quite stringent. So, there was a clear need to access the retail market for financing the constructions and Real Estate Investment Trust (REITS) then evolved in the country.

By their very nature, REITS are beneficial both to the industry and the investors in different ways. For a developer of a completed project or a private equity investor therein, REITS provide an exit mechanism and increased liquidity whereas for investors they provide an alternative investment avenue that is less risky than investing in under construction projects.

Globally, REITS invest primarily in completed revenue generating real estate projects and distribute majority of their earnings back to their investors. Typically, most of such investments are in completed properties which are rented out to corporate or other actual users and the rentals provide a regular income to the investors in the REITS.

The features of REITS that have made the popular investment vehicles across the world are:

- REITS are usually managed by experienced property managers which have experience in the Real Estate sector thus maximising returns from the properties
- REITS may provide retail investors to invest in properties that they otherwise may not have been able to invest in.
- REITS are a popular investment for long term pools of capital such as pension funds and insurance companies
- REITS whose units are listed provide investment avenues in liquid securities to retail investors
- REITS bring in transparency and liquidity in the Real Estate Sector.

Keeping the above in mind, the Securities and Exchange Board of India (SEBI) in October 2013 came out with the Draft REIT regulations and a consultation paper thereon. The key features of REITS as per these draft regulations were:

- REITS would be set up a Trusts
- Units of REITS would be mandatorily listed
- The size of assets under REITS would be not less than ₹ 1000 crore so that initially only large assets and established players enter the market
- The minimum initial offer would be of ₹ 250 crore and there should be a minimum of 25% public float
- The unit size of a REIT should be ₹ 1 lakh and the minimum subscription should be that of ₹ 2 lakh i.e. of 2 units
- Minimum 90% of the investments of REITS should be in revenue generating properties either in the properties themselves or in Special Purpose Vehicles (SPVs) i.e. companies to which the property has been transferred by the developer and which have other assets only to the extent of a maximum of 10%
- REITS can also raise debt from both resident and non-resident investors.
- REITS will distribute at least 90% of their post tax income to the investors

A proper tax regime for the REITS is necessary as the provisions relating to taxation of trusts in India are quite complex though very simple and clear in their intention. Sometimes practical challenges are encountered by trustees of contributory trusts in strictly complying with the provisions contained in sections 160 to 166 of the Income-tax Act, 1961 (Act).

With this in mind, the Hon. Finance Minister (FM) said in his budget speech on 10 July 2013 as under:

"Real Estate Investment Trusts (REITS) have been successfully used as instruments for pooling of investments in several countries. I intend to provide necessary investments for REITS which will have passthrough for the purpose of taxation. As an innovation, a modified REITS type structure for infrastructure projects is also being announced as Infrastructure Investment Trusts (InvITs) which would have a similar tax efficient passthrough status, for PPP and other infrastructure projects. These structures would reduce the pressure on the banking system while also making available fresh equity. I am confident these two investments would attract long term finance from foreign and domestic sources including NRIs".

The proposals

Clause 3(i) of the Finance (No. 2) Bill, 2014 (Bill) seeks to insert a new clause, clause (13A) in section 2 which defines 'business trusts' as REITS and InvITs the units of which are required to be listed on a recognised stock exchange, in accordance with the SEBI Regulations on REITS and InvITs (these are still in draft form).

Clauses 5(b), 5(c), 18, 20, 33, 35, 43, 47, 54, 56, 57 and 61 all deal with the taxation of these business trusts. The provisions are explained briefly below.

These clauses propose to put in place a specific taxation regime for providing the way the income in the hands of the business trusts is to be taxed and the taxability of the income distributed by the business trusts, in the hands of the investors i.e. the unitholders of the units of these trusts. The main features of the scheme of taxation are:

i. The transactions in the listed units of the business trusts on the stock exchange would be subject o Securities Transaction Tax (STT) at the same rates as shares i.e. 0.125%. and the gains on the transfer of these units would be treated akin to the gains on transfer of listed shares. So, long term capital gains on transfer of these units would be exempt from income-tax and short term capital gains on transfer of these units would be subject to income-tax at 15% (plus surcharge and education cess as applicable).

ii. In case of capital gains that would arise to the sponsor at the time of exchange of the shares of the SPV with the units of the business trust (as the business trust would eventually own the SPV and in turn, the property) provisions analogous to section 45(2) of the Act are proposed to be enacted. Thus, the gains if any at the time of such an exchange will not be taxed at the time of the exchange itself but deferred to a point in time when the sponsor sells the units of the business trust that he had got in exchange for the shares in the SPV. If however this transaction of sale of units happens on the stock exchange, the benefit of exemption of the gains for long term gains and taxation at 15% for short term gains would not be available to the sponsor. He would compute his gains in accordance with section 48 of the Act and the cost of acquisition of the shares of the SPV would be deemed to be the cost of acquisition of the units for him. The holding period of the shares shall be included in the holding period of the units. In short his taxation is deferred to the point of eventual sale but the eventual sale does not enjoy tax concessions while still being liable to STT. This appears to be a double whammy.

iii. Interest income received by the business trust from the SPV is proposed to be accorded a 'pass through' treatment. The SPV when paying interest to the trust is not required to deduct tax at source. The trust is also not liable to tax in respect of this income, i.e. it is proposed to be exempted in the hands of the business trust. When the trust pays over the interest to the unit holders though, it is required to deduct tax at source therefrom at the rate of 5% when the said interest is paid over to non resident unitholders and 10% when the interest is paid over to resident unit holders. This is not a classical 'pass

through' because in a classical pass through, the question of tax deduction at source does not arise.

iv. If the business trust has borrowed money under the External Commercial Borrowings (ECB) mechanism, for the period provided in section 194LC of the Act and subject to the conditions mentioned therein, the rate of deduction of tax at source from the interest payable by the trust will be 5% as is the case for all similar borrowings under section 194LC of the Act.

v. The dividend paid by the SPV to the business trust shall be subject to Dividend Distribution Tax (DDT) (like in the case of any other company) and there shall be no further distribution tax payable when the business trust pays out income to its unitholders (there is none presently for trusts other than mutual funds that distribute income).

vi. If the business trust realises capital gains either on sale of shares of the SPV or indeed the property itself (as noted above the regulations as they are presently drafted appear to permit direct holding too) are proposed to be taxable in the hands of the business trust ait applicable rates (these will differ based on the asset transferred i.e. property or shares and the period of holding-unlisted shares will now have to be held for more than 36 months to qualify as long term capital assets) and the component of income distributed by the trust to the unitholders as is attributable to the capital gains earned by it, would not be taxable in the hands of the unitholders, i.e. that part of the income would be exempt from income-tax in their hands.

vii. Any other income of the trust (rentals etc) is proposed to be taxed at the Maximum Marginal Rate (MMR). Illustratively, rental income if any received by the trust would be so taxed if the proposed amendment is enacted.

viii. It shall be mandatory for a business trust to file a return of income irrespective of whether its income is taxable or not.

ix. The set of proposed amendments will take effect from 1st October, 2014.

Industry's concerns

Though by and large, the Real Estate industry has received the proposals in the Bill with enthusiasm, they have two concerns which are paramount. One, the DDT payable by the SPV results in higher taxation and as such lower yields to the investors and two, the capital gains on sale of the units received on exchange of the SPVs shares are not in line with those of other listed securities. Representations have as one understands, already been made to the Government in connection with these two issues. Also, the fine print may need to be read through in greater detail to ascertain if there are any other issues that may make these investments less attractive.

Conclusion

The proposals for taxation of REITs and InvITs are welcome provisions as they provide certainty in terms of how these business trusts and their unitholders are to be taxed when the regulations are notified by the SEBI. The taxation of these business trusts and their investors may not be at par with how other countries tax REITS (in developed countries, REITS are provided a complete 'passthrough payment or complete exemption is provided for both REITS and the unit holders on their income) and also as mentioned above the industry has certain asks which if looked at favourably, could be a sigh of relief to it. It remains to be seen as to what exactly pans out on these provisions going forward and how investors react to this alternative investment avenue.

CA Atul T. Suraiya

Proposals relating to Business Income

In this article, I propose to deal with the provisions contained in the Finance (No. 2) Bill of 2014, which pertain or relating to business.

A. Deduction in respect of Capital Expenditure on specified business

Presently, section 35AD of the Act, allowed a deduction of the Capital Expenditure (other than expenditure on land, goodwill and financial instruments) incurred wholly and exclusively, for the purposes of the "specified business" during the previous year in which such expenditure is incurred.

Currently, the following "specified businesses" are eligible for availing the investment-linked deduction under section 35AD as enumerated in clause (c) of sub-section (8) of the said section:-

(i) setting up and operating a cold chain facility;

(ii) setting up and operating a warehousing facility for storage of agricultural produce;

(iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;

(iv) building and operating, anywhere in India, a hotel of two-star or above category as classified by the Central Government;

(v) building and operating, anywhere in India, a hospital with at least one hundred beds for patients;

(vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation, framed by the Central Government or a State Government, as the case may be, and notified by the Board in accordance with the prescribed guidelines;

(vii) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in accordance with the prescribed guidelines;

(viii) production of fertilizer in India;

(ix) setting up and operating an inland container depot or a container freight station notified or approved under the CustomsAct, 1962;

(x) bee-keeping and production of honey and beeswax; and

(xi) setting up and operating a warehousing facility for storage of sugar;

It is now proposed to include two new businesses as "specified business" for the purposes of the investment-linked deduction under section 35AD which are :-

(a) laying and operating a slurry pipeline for the transportation of iron ore;

(b) setting up and operating a semiconductor

wafer fabrication manufacturing unit, if such unit is notified by the Board inaccordance with the prescribed guidelines. The date of commencement of operations for availing investment linked deduction in respect of the two new specified businesses shall be on or after 1st April, 2014.

II. Presently section 35AD does not provide for a specific time period for which capital assets on which the deduction has been claimed and allowed, are to be used for the specified business. It is proposed to provide a period of eight years beginning with the previous year in which the asset is acquired or constructed, as the period for which the asset should used for the purpose of business.

The new sub-section (7A) provides that if any asset on which a deduction under section 35AD has been allowed, is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax under clause (vii) of section 28. This does not take into accounta case where asset on which deduction under section 35AD has been claimed is used for any purpose other than the specified business by way of a mode other than that specified above. Accordingly, it is proposed to insert sub-section (7B) to provide that if such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of Business or Profession" of the previous year in which the asset is so used.

Example (as provided in the Explanatory Memorandum):

Deduction claimed under section 35AD on a capital asset : Rs. 100

Depreciation eligible on such asset under section 32 : Rs. 15

Profit chargeable to tax in accordance with the proposed sub-section (7B) of section 35AD : Rs. 85

The provisions contained in the proposed sub-section (7B) of the said section would, however, not apply to a company which has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 within the time period specified in sub-section (7A).

III. The existing provisions of sub-section (3) of the aforesaid section provide that where any assessee has claimed a deduction under this section, no deduction shall be allowed under the provisions of Chapter VIA for the same or any other assessment year. As section 10AA also provides for profit linked deduction in respect of units set-up in Special Economic Zones, it is proposedto amend section 35AD so as to provide that where any deduction has been availed of by the assessee on account of capital expenditure incurred for the purposes of specified business in any assessment year, no deduction under section 10AA shall be available to the assessee in the same or any other assessment year in respect of such specified business.

Section 10AA is also proposed to be amended so as to provide that no deduction under section 35AD shall be available in any assessment year to a specified business which has claimed and availed of deduction under section 10AA in the same or any other assessment year.

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

Investment Allowance to a manufacturing company.

Finance Act, 2013 inserted section 32AC in theAct to provide that where an assessee, being a company, is engaged in the business of manufacture of an article or thing and invests a sum of more than Rs.100 crore in new assets (plant and machinery) during the period beginning from 1st April, 2013 and ending on 31st March, 2015, then the assessee shall be allowed a deduction of 15% of cost of new assets for assessment years 2014-15 and 2015-16. This provision was introduced in order to encourage the companies engaged in the business

of manufacture or production of an article or thing to invest Substantial amount in acquisition and installation of new plant and machinery.

It is proposed:

a. to extend the deduction available under section 32AC of the Act for investment made in plant and machinery up to 31-3-2017.

b. that the deduction under section 32AC of the Act shall be allowedif the company on or after 1st April, 2014 invests more than Rs.25 crore in plant and machinery in a previous year.

c. that the assessee who is eligible to claim deduction under the existing combined threshold limit of Rs.100 crore for investment made in previous years 2013-14 and 2014-15 shall continue to be eligible to claim deduction under the existing provisions contained in sub-section (1) of section 32AC even if its investment in the year 2014-15 is below the proposed new threshold limit of investment of Rs. 25 crore during the previous year.

The above amendments are proposed in order to simplify the existing provisions of section 32AC of the Act and also to make medium size investments in plant and machinery eligible for deduction.

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

B. Corporate Social Responsibility (CSR)

It is proposed to introduce and Explanation to Section 37(1) to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfillment of conditions, if any, specified therein.

Under the Companies Act, 2013 certain companies (which have net worth of Rs.500 crore or more, or turnover of Rs.1000 crore or more, or a net profit of Rs.5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income.

The Explanatory Memorandum further seek to explain that

"CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold.

If such expenses are allowed as tax deduction, this would result in subsidising of around one-third of such expenses by the Government by way of tax expenditure.

The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act."

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

The position that emerges is that one statute is encouraging and mandating the spending of money

for the common causes of the society, and then another statute is discouraging the same; both the statutes being brought in at almost the same time. Perhaps some intellectuals may call this as "Intellectual dishonesty". Proper representation needs to be made on this particular provision.

C. Disallowance of expenditure for non-deduction of tax at source

Section 40(a)(i) of the Act provides that the following payments:

i. interest,

ii. royalty and fee for technical services made to a non-resident shall not be allowed as deduction for computing business income if tax on such payments was not deducted, or after deduction, was not paid within the time prescribed under section 200(1) of the Act.

Section 40a(ia) provides in respect of payments to residents in respect of :

i. payments to contractors

ii. interest,

iii. rent,

iv. commission or brokerage,

v. fees for professional or technical services and

vi. rent, the deductor is allowed to claim deduction for payments as expenditure in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return of income under section 139(1) of the Act. However, in case of disallowance for non-payment of tax from payments made to non-residents, this extended time limit of payment up to the date of filing of return of income under section 139(1) is not available.

The new proposals are:

a. In respect of payments made to non-residents, it is proposed that the deductor shall be allowed to claim deduction for payments made to non-residents in the previous year of payment, if tax is deducted during the previous year and the same is paid on or before the due date specified for filing of return under section 139(1) of the Act.

b. in case of non-deduction or non-payment of TDS on payments made to residents as specified in section 40(a)(ia) of the Act, the disallowance shall be restricted to 30% of the amount of expenditure claimed.

c. The disallowance u/s 40a(ia) which was hitherto not attracted in respect of certain payments like salaries paid to residents, now will fall within the provisions of disallowance; thus all payments mentioned under Chapter XVIIB now fall within the purview of disallowance u/s. 40a(ia).

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

The Act has sufficient deterrent measures to ensure the compliance of the provisions of Tax Deducted at Source in as much as the interest u/s 201, 221, 234E and penalty u/s. 271C, 272A(2) and prosecution u/s. 276B and 276C. Even when the disallowance u/s. 40(a)(ia) was introduced in 2005 the question was raised as to whether such a harsh provision is called for. The fact that the disallowance is now proposed to be reduced, from 100% to 30% is no doubt welcome, but the question still remains whether it is necessary and required. The provisions of section 201 have been so modified, that where the deductee provides a certificate that the necessary tax on the income in respect of the expenditure of the deductor, has been paid, the deductor need not pay the tax to the government. In such a scenario, the provisions of section 40a(ia) should have been deleted altogether.

D. Speculative transaction in respect of commodity derivatives

Section 43(5) defines the term speculative transaction. The proviso to the said clause (5) excludes certain category of transactions as speculative transactions.

Finance Act, 2013 made a provision for levy of commodities transaction tax on commodity derivatives in respect of commodities other than agricultural commodities. Consequent to the levy of commodities transaction tax, clause (e) was inserted in the proviso to clause (5) of section 43 of the Act, to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association shallnot be considered as speculative transaction. Vide Circular No. 3 dated 24-1-2014 explaining the provisions of the FinanceAct, 2013, it was clarified that the eligible transaction shall include only those transactions in commodity derivatives which are liable to commodities transaction tax.

It is now proposed to give legislative assent and amend clause (e) of the proviso to the said clause (5) so as to provide that eligible transaction in respect of trading in commodity derivatives carried out in a recognised association and chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 shall not be considered to be a speculative transaction.

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

This proposed amendment is a welcome clarificatory amendment.

E. Losses in Speculation Business

Section 73 of the Act provides that losses incurred in respect of a speculation business cannot be set off or carried forward and set off except against the profits of any other speculation business.

Explanation to section 73 provides that in case of a company deriving its income mainly under the head "Profits and gains of business or profession" (other than a company whose principal business is business of banking or granting of loans and advances), and where any part of its business consists of purchase or sale of shares, such business shall be deemed to be speculation business for the purpose of this section.

Sub-section (5) of section 43 defines the term speculative transaction as a transaction in which a contract for purchase or sale of any commodity, including stocks and shares, is settled otherwise than by way of actual delivery. However, the proviso to the said section exempts, *inter alia*, transaction in respect of trading in derivatives on a recognised stock exchange from its ambit.

It is proposed to amend the aforesaid Explanation so as to provide that the provision of the Explanation shall also not be applicable to a company the principal business of which is the business of trading in shares.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent assessment years.

This is a welcome amendment which will go on to reduce litigation and incorrect interpretation.

F. Extension of the sunset date under section 80-IA for the power sector

The existing provisions of Section 80(IA) which allowed deduction in respect of certain infrastructure facilities have laid down, amongst the conditions, the dates before which the facility ought to have started. These sunset dates were contained in clause (iv) of sub-section (4) of section 80-IA of the Income-tax Act, a deduction of profits and gains is allowed to an undertaking which,—

(a) is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2014;

(b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2014;

(c) undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2014.

The sunset dates required to be extended in order to extend the benefit of the deduction and hence it is proposed to amend the above provisions to extend the terminal date for a further period up to 31st March, 2017 i.e. till the end of the 12th Five Year Plan.

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

The extention of dates is welcome, though it has come after the expiry of the old dates and many projects may already have been negatively impacted by now.

G. Alternate Minimum Tax

Section 115JC of the Act provides that where the regular income tax payable by a person, other than a company, for a previous year is less than the alternate minimum tax for such previous year, the person would be required to pay income tax at the rate of eighteen and one half per cent on its adjusted total income. The section further provides that the total income shall be increased by deductions claimed under Part C of Chapter VI-A and deductions claimed under section 10AA to arrive at adjusted total income.

The section was not attracted where the taxable income was reduced by claiming the deduction u/s 35AD, wherein the capital expenditure (other than land and building) is allowed as a deduction in case of the assessee carrying on specified business.

Therefore, with a view to include the investment linked deduction claimed under section 35AD in computing adjusted total income for the purpose of calculating alternate minimum tax, it is proposed to amend the section so as to provide that total income shall be increased by the deduction claimed under section 35AD for purpose of computation of adjusted total income. The amount of depreciation allowable under section 32 shall, however, be reduced in computing the adjusted total income.

Example:

Total income : ₹ 60

Deduction claimed under Chapter VI-A : ₹ 40

Deduction claimed under section 35AD on a capital asset : ₹ 100

Computation of adjusted total income for the purposes of AMT

Total income : ₹ 60

Addition:

(i) deduction under Chapter VI-A (on non-specified business) : ₹ 40

(ii) deduction under section 35AD (on specified business) : ₹ 100

Less: depreciation under section 32 Rs. 15 : ₹ 85

Adjusted total income under section 115JC : ₹ 185

These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

H. Credit of Alternate Minimum Tax

It is proposed to provide that the credit for the AMT paid will be allowed in the subsequent years even if the assessee does not fulfil the conditions prescribed for applicability of AMT in the subsequent year.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent assessment years.

The amendments made in the sections related to business are all applicable for A. Y. 2015-16, and more than four months having already passed, the real benefit may not reach all businesses, but at least the intention seems to be beneficial, which is what we should appreciate.

CA Ketan Vajani

Proposals related to Taxation of individuals and Capital Gains

The Finance Bill (No. 2) 2014 has been presented in the Parliament on 10th July, 2014. This year the expectations from the budget were quite high since it was the maiden budget of the new government. People of the country have voted in favour of the new Government with a very large heart and as a reciprocal it was expected that the government would also be large hearted while presenting the budget. At the same time, both the Prime Minister and also the Finance Minister had already indicated that there might be some tough measures on the cards considering the overall situation of the economy and the long run benefit which is desirable.

There is a clear message in the speech of the Finance Minister that amendments with retrospective effect will be an exception rather than a rule, which has been observed over the period of past many years. Though this principle has been followed in this year's Finance Bill, unfortunately the Finance Minister could not avoid the temptation of making certain amendments, in the name of rationalisation matter, only with a view to settle the controversial views in favour of the revenue. Only solace is that all these amendments are prospective in nature.

This article seeks to deal with some of the provisions of the Finance Bill in the area of Taxation of Individuals and Capital Gains. I express my sincere thanks to the Journal Committee and the Editorial Board for allowing me to express my views on these provisions through the Chamber's Journal.

Provisions related to Taxation of Individuals

The Finance Bill has brought some good news for the individuals in the form of various benevolent provisions. These provisions coupled with the increase in basic threshold limit will certainly reduce the burden of tax on an individual to a reasonable extent. The specific provisions are being discussed hereunder:

Higher amount of deduction of interest on Self Occupied Property

Section 24 of the Income-tax Act provides for various deductions available while computing the Income from House Property. Clause (b) of the section provides for deduction of interest on borrowed capital. The second proviso to clause (b) of the said section, *inter alia*, provides that in case of a self-occupied property where the acquisition or construction of the property is completed within three years from the end of financial year in which the capital is borrowed, the amount of deduction under that clause shall not exceed one lakh fifty thousand rupees.

Clause–10 of the Finance Bill seeks to amend the second proviso to clause (b) of section 24, so

as to increase the limit of deduction on account of interest in respect of such self occupied property to two lakh rupees and thereby allows a further benefit to the assessees to the extent of ₹ 50,000/- under this section with effect from A.Y. 2015-16.

Amendment to Section 44AE

Section 44AE of the Act lays down special provisions in relation to presumptive taxation for person engaged in business of plying, hiring or leasing of goods carriage. The amounts deemed to be the income of the assessee are provided in sub section (2) of the section. Clause – 16 of the Finance Bill seeks to substitute the said sub-section (2) of the section so as to change the amount of presumptive income. The existing amounts prescribed and the amendments proposed are as tabulated hereunder :

Profits and Gains from each goods carriage	Existing Provision	Proposed Amendment
being a heavy goods vehicle	₹ 5,000/- for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount of claimed to have been earned from such vehicle, whichever is higher	₹ 7,500/- for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount of claimed to have been earned from such vehicle, whichever is higher
other than a heavy goods vehicle	₹ 4,500/- for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount of claimed to have been earned from such vehicle, whichever is higher	

The amendments seek to do away with the different amounts prescribed for a heavy goods vehicle and other than heavy goods vehicle. The amendments are proposed considering the erosion in the real values of the amount of specified presumptive income due to inflation over the years and also in order to simplify the presumptive taxation scheme.

Higher deduction under Section 80C and also consequential amendment to section 80CCE

Sub-section (1) of Section 80C provides that in computing the total income of an individual or a Hindu undivided family, a deduction will be allowed for the whole of the amount paid or deposited in respect of the sums referred to in sub-section (2), which lists down various tax saving instruments for which the deduction is permissible. Presently the maximum amount of deduction permissible under this section is fixed at Rs. One lakh.

Section 80CCE of the Act provides that the aggregate amount of deduction under section 80C, 80CCC and 80CCD shall not exceed Rs. One Lakh.

Clause – 27 of the Finance Bill seeks to amend sub-section (1) of section 80C so as to raise the limit of deduction from ₹ 1,00,000/- to ₹ 1,50,000/- . This amendment will take effect from 1st April, 2015 and will accordingly apply with effect to assessment year 2015-16.

Clause – 29 of the Finance Bill proposes a consequential amendment to section 80CCE by increasing the aggregate limit for deductions also to ₹ 1,50,000/-.

Amendment to Section 80CCD

Section 80CCD of the Act provides for deduction in respect of contribution to pension scheme of the Central Government. As per the sub-section (1) of the section, in the case of an individual, employed by the Central Government or any other employer on or after 1st January, 2004, who has in the previous year paid or deposited any amount in his account under a pension scheme duly notified, a deduction is allowed subject to maximum limit of 10% of the Salary. This is also subject to overall ceiling of ₹ 1,00,000/- provided in section 80CCE.

Clause – 28 of the Finance Bill seeks to amend section 80CCD so as to provide that an individual employed by the Central Government on or after 1st January, 2004 or, being an individual employed by any other employer shall be allowed a deduction of the amount deposited by him in his account under a pension scheme notified subject to the limit of 10% of his salary. As such, effectively the amendment seeks to permit the deduction to any employee (other than Central Government employee) even if he is employed by the employer prior to the date of 1-1-2004. The condition as regards being employed after 1-1-2004 is now confined to the employees of Central Government only.

Clause – 28 also seeks to insert new sub-section (1A) so as to provide that the amount of deductions under sub-section (1) shall not exceed ₹ 1,00,000/-. These amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

Provisions related to Capital Gains

The Finance (No. 2) Bill, 2014 has proposed few amendments to the provisions dealing with Capital Gains. The amendments proposed have changed some of the settled concepts of taxation of capital gains. A couple of amendments, though proposed as rationalising amendments, have in fact the effect of settling some of the age old controversies in favour of the revenue. The amendments in the area of Capital Gains and some consequential amendments to the same are discussed hereunder :

Change in the definition of Short Term Capital Asset – Section 2(42A)

Section 2(42A) of the Act defines the term "short term capital asset". As per the existing provisions, short term capital asset means a capital asset held by an assessee for not more than thirty-six months immediately preceding the date of its transfer. However, there are few exceptions to the above period. In the case of (a) shares held in a company, (b) any other security listed in a recognised stock exchange in India, (c) unit of the Unit Trust of India, (d) unit of a Mutual Fund and (e) zero coupon bond, the period of holding for qualifying it as a short term capital asset is not more than twelve months instead of thirty six months.

Clause – 3 (VIII) of the Finance Bill seeks to amend the definition of the term short term capital asset so as to provide that the period of holding in case of (a) share held in an unlisted company and (b) unit of a mutual fund other than equity oriented fund will be thirty six months as against the period of twelve months as provided at present. Explanation – 4 is also proposed to be inserted in the clause so as to define the expression "equity oriented fund" to have the same meaning assigned to it in the Explanation to clause (38) of section 10.

As a consequence of the above amendments, the shares in an unlisted company and the unit of a debt oriented mutual fund will have to be held for thirty six months to be qualified as a long term capital asset. The memorandum explaining the provisions states that the shorter period of holding of not more than 12 months was introduced for encouraging investment on stock market where prices of the securities are market determined. The amendment accordingly is proposed with the object to give such benefit only to those assets whose prices are market determined.

The amendment is sought to be made w.e.f. 1-4-15 and will apply for assessment year 2015-16 and onwards.

Amendment to Section 112

Section 112 of the Act provides for levy of tax on Long Term Capital Gains. The proviso to sub-section (1) provides that in the case of a long term capital asset being listed securities or unit or zero coupon bond the tax under this section shall be restricted to 10% of the amount of capital gains without giving effect to the indexation as provided in the second proviso to section 48 of the Act.

Clause – 34 of the Finance Bill seeks to amend the said proviso so as to provide that the above benefit of restricting the tax to 10% of capital gains without indexation will be restricted to the capital gains arising on account of transfer of listed securities (other than a unit) or zero coupon bonds.

Accordingly the above amendment seeks to deny the above benefit of restricting the tax liability to 10% of capital gains in respect of transfer of units of mutual fund.

The amendment is sought to be made w.e.f. 1-4-2015 and will apply for assessment year 2015-16 and onwards.

Amendment to Section 45

Section 45 of the Act is the charging section under the head Capital Gains. Sub-section (5) of section provides for taxation of capital gains arising from transfer by way of compulsory acquisition, where the compensation is enhanced or further enhanced by a Court, Tribunal or other authority. Clause (b) of the said sub-section provides that where the amount of compensation is enhanced by any Court, Tribunal or other authority, it shall be deemed to be income chargeable of the previous year in which amount is received by the assessee.

Clause – 17 of the Finance Bill seeks to amend insert a proviso the clause (b) of sub-section (5) so as to provide that any amount of compensation received in pursuance of an interim order of a Court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which the final order of such Court, Tribunal or other authority is made.

The above amendment is sought to be made w.e.f. 1-4-2015 and will accordingly apply for assessment year 2015-16 and subsequent years.

Note : There have been disputes in relation to the interim compensation received by the assessees. The assessees have been justified in contending that the amount received is only interim compensation which may or may not be ultimately accepted on finality of the proceedings and hence the same does not bear the colour of income at the stage where interim order is passed. This view of the assessee has also found favour with the courts. The amendment sought to be now made is in line with the decisions in the following cases :

- *Chief CIT & Another vs. Smt. Shantavva (2004) 267 ITR 67 (Kar.)*
- *CIT vs. T. Girija Ammal (2006) 282 ITR 614 (Mad.)*
- *Anil Kumar Forma HUF & Others vs. CIT (2007) 289 ITR 245 (Mad.)*

Amendment to Section 48

Section 48 of the Income-tax Act provides for mode of computation of capital gains chargeable under section 45. Clause (v) of the Explanation to the said section defines the term "Cost Inflation Index" in relation to the previous year to mean index as may be prescribed having regard to seventy five per cent of average rise in the Consumer Price Index (CPI) for urban non-manual employees (UNME) for the immediately preceding previous year to such previous year.

The release of CPI for UNME has been discontinued now. Accordingly with a view to rationalise the above definition, clause – 19 of the Finance Bill seeks to amend the said clause so as to provide that "Cost Inflation Index" in relation to the previous year, means Index as may be prescribed having regard to seventy-five per cent of average rise in the Consumer Price Index

(Urban) for the immediately preceding previous year to such previous year.

This amendment will take effect from 1st April, 2016 and will, accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years.

Amendments to Section 51, Section 56 and Section 2(24)

The provisions of section 51 of the Income-tax Act deal with advance money received for transfer of a capital asset. As per the existing provisions where any capital asset was on any previous occasion the subject of negotiations for its transfer, any advance or other money received and retained by the assessee in respect of such negotiations shall be deducted from the cost of acquisition of the asset or the WDV or Fair Market Value as the case may be.

As such the effect is that if an assessee receives some advance money which is forfeited without the asset being actually transferred, the cost of acquisition in the hands of the assessee gets reduced and as such the amount forfeited gets taxed in the year when the asset is actually transferred in an indirect manner by reducing the cost of acquisition. This is for the obvious reason that though the advance money has been received by the assessee, it cannot be taxed under the head of capital gains in absence of "transfer" which is essential for invoking the provisions of section 45 of the Act.

Amendments proposed by Finance Bill

Clause – 25 of the Finance Bill seeks to insert an additional clause (ix) in section 56(2) of the Act so as to provide that any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset will be treated as Income from Other sources if (a) such sum is forfeited and (b) the negotiations do not result in transfer of such capital asset.

Clause – 3(VI) of the Finance Bill seeks to amend the definition of "Income" as given in clause (24) of section 2 to cover such amount within the definition of Income.

As a consequential amendment, Clause – 21 of the Finance Bill seeks to insert a proviso in section 51 of the Income-tax Act so as to provide that where any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year in accordance with the provisions of clause (ix) of sub-section (2) of section 56, then, such sum shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

Effectively, therefore the above amendments seek to prepone the taxability of the advance money forfeited to the year of receipt of the money as against the current provision where the same is taxed in an indirect manner in the year of transfer of the capital asset. Since in the year of receipt of advance money, the essential element of transfer is missing, it cannot be taxed as Capital Gains and hence the Finance Bill seeks to tax it as Income from other sources in the year of receipt of the money.

All the above amendments are sought to be made with effect from 1st April, 2015 and therefore they will apply for assessment year 2015-16 and subsequent years.

Amendments to Sections 54 and 54F

Section 54 of the Income-tax Act provides for exemption from long term capital gain arising on transfer of a residential house. As per sub-section (1) of section 54, where capital gain arises from the transfer of a long-term capital asset, being a residential house, and the assessee within a period of one year before or two years after the date of transfer purchases, or within a period of three years after the date of transfer constructs, a residential house then the amount of capital gains to the extent invested in the new residential house is exempted. As of now there is no restriction provided in section 54 that the new residential house shall be situated in India.

Section 54F(1) of the Act grants similar exemption in respect of long term capital gains arising on transfer of any capital asset other than a residential house. The basic scheme under both the sections is similar barring few differences which are not the subject matter of amendment proposed by the current Finance Bill and hence not relevant for the purpose of this article.

Clause – 22 of the Finance Bill seeks to amend sub-section (1) of section 54 so as to provide that the exemption from long term capital gains on transfer of a residential house will be available, if the investment is made in purchase or construction of one residential house situated in India. Clause – 24 of the Finance Bill seeks to amend sub-section (1) of section 54F on similar lines.

Comments

The issue as to whether the assessee will be eligible for investment made in more than one house has been of considerable debate and dispute over the period of past few years. The decisions of Tribunals and High Courts have also been diverse on the subject thereby multiplying confusion on the subject. The Special Bench of the Tribunal in the case of *ITO vs. Ms. Sushila M. Jhaveri (2007) 107 ITD 321 (Mumbai)(SB)* was dealing with a situation where the assessee had invested the capital gains in two residential houses situated in different localities of the city and was claiming exemption in respect of both the residential houses. The Special Bench held that the assessee would be entitled to exemption in respect of investment in any one house of her choice and not for investment in both the houses situated in different localities.

Converse to this, the Karnataka High Court in the case of *CIT vs. D. Ananda Basappa (2009) 309 ITR 329 (Kar.)* has held that the expression "a residential house" should be understood in a sense that the building should be of residential nature and "a" should not be understood to indicate a singular number. This decision has also been subsequently followed in various other decisions like *(a) CIT vs. K. G. Rukminiamma (2011) 331 ITR 211 (Kar.) (b) CIT vs. Syed Ali Adil (2013)352 ITR 418 (AP) (c) CIT vs. Gita Duggal (2013) 357 ITR 153 (Del.).*

However again the Punjab and Haryana High Court in the case of *Pawan Arya vs. CIT (2011) 49 DTR 123 (P & H)* has held that the exemption cannot be available for both the houses. The High Court distinguished the decision of the Karnataka High Court in the case of D. Anand Basappa and has followed the decision of the Special Bench in the case Sushila M. Jhaveri on facts of the case.

The above amendment will settle the above controversy to rest once and for all and hence forth it will not be possible for an assessee to claim exemption in respect of investment in more than one residential house.

However at this juncture, one must also take a note that the exemption is sought to be allowed for one residential house as against one unit. It is common now-a-days that more than one residential unit which are continual units are used as a single residential house and in such a situation the amendment will not have any implication considering the fact that there may be a single kitchen and single ration card etc. If as a matter of fact the house is used as one residential house, then it should not matter even if it is consisting of more than one units or flat numbers. The exemption in such a situation will continue to be available in respect of investment in multiple units.

Investment in One Residential House in India

One more aspect of the above amendments is that the exemption will be available in respect of investment in one residential house in India. As stated earlier, under the existing provisions there is no restriction or condition that the new residential house shall be situated in India. Due to this it is possible for an assessee to make investment in a residential house even outside India with a view to save on the long term capital gains tax.

The Mumbai bench of the ITAT in the case of *Mrs. Prema P. Shah vs. ITO (2006) 100 ITD 60 (Mum.)* has held that the exemption under section 54 of the Act cannot be denied to the assessee merely for the reason that the property acquired

is in a foreign country if all other condtions of the section are satisfied. However now due to the above amendment, the ratio of the above decision will be nullified and it would not be possible to claim exemption in such a situation.

Effective Date : The above amendments are sought to be made with effect from 1st April, 2015 and will accordingly apply from assessment year 2015-16 and onwards.

A practical difficulty is likely to arise in the cases of those assessees who have already purchased more than one residential house during the period from 1st April, 2014 to 10th July, 2014 relying on the favourable decisions of the High Courts.

Amendment to Section 54EC

Section 54EC of the Act provides for exemption from long term capital gains in a case where the assessee makes investment in specified bonds within a period of six months of the date of transfer of the original asset. The proviso to sub-section (1) of section 54EC provides that the investment made in the long-term specified asset during any financial year shall not exceed fifty lakh rupees.

Clause – 23 of the Finance Bill seeks to insert one more proviso in the sub-section (1) so as to provide that the investment made by an assessee in the long-term specified asset, from capital gains arising from transfer of one or more original assets, during the financial year in which the original asset or assets are transferred and in the subsequent financial year shall not be exceed fifty lakh rupees.

Effectively the amendment seeks to provide that maximum investment which can be made by an assessee to avail exemption in respect of each of capital gain transaction can be ₹ 50 lakhs.

The amendment is sought to be made with a view to address a controversy which is prevalent as of now due to language of section 54EC. An interesting issue comes up in a case where the assessee transfers his capital asset in the latter half of a financial year and makes investment of ₹ 50 Lakhs in the same financial year and further ₹ 50 Lakhs in the next financial year so however that both the investments are made within the period of six months from the date of transfer of the original asset. Say for example – The asset is transferred on 15-1-2014. The assessee makes first tranche of investment for ₹ 50 Lakhs in the specified bonds on 25-3-2014. The assessee again makes further investment of ₹ 50 Lakhs in the bonds on 15-5-2014 and claims exemption u/s. 54EC of the Act for aggregate investment of ₹ 1 Crore. Whether in such a situation, the exemption will be available for ₹ 1 Crore or for ₹ 50 Lakhs ?

The views of various benches of the Tribunal on this issue are divided as of now. In the following cases, the issue is decided in favour of the assessee :

- *Aspi Ginwala & Others vs. Asst. CIT & Others (2012) 52 SOT 16 (Ahd.)*
- *ITO vs. Ms. Rania Faleiro (2013) 142 ITD 21 (Panaji)*

As against these favourable decisions, the Jaipur Tribunal in the case of *Asst. CIT vs. Raj Kumar Jain & Sons (HUF) (2012) 50 SOT 213 (Jaipur)* has adopted a view that in such situation the exemption will be available for only ₹ 50 lakhs and not more.

The amendment sought to be made by the Finance Bill will once again settle the controversy in favour of the revenue and henceforth maximum exemption will be of ₹ 50 lakhs in such a situation.

I would once again like to express my sincere thanks to the journal committee for giving me this opportunity. This opportunity made me study the provisions of the Finance Bill 2014 in greater detail and enabled me in gaining perpetual likely benefit in the form of additional knowledge.

CA Rajesh S. Athavale

Proposals relating to Transfer Pricing

Pre-Budget Scenario

1. India has been witness to rapid development which is taking place in the area of Transfer Pricing (TP) by way of legislative amendments and rendition of a large number of judicial pronouncements having a far reaching impact. In recent times, the Indian Transfer Pricing scenario is making headlines, with rampant transfer pricing adjustments running into several thousand crores and the zealous approach adopted by the Revenue officials for garnering tax revenue. Although the Transfer Pricing Law was enacted almost 13 years ago, it is still evolving and we find a new trend in transfer pricing adjustments year after year.

2. As per the "White Paper on Black Money" released by Ministry of Finance in May 2012, transfer pricing has emerged as the biggest tool for generation and transfer of black money. As per the White Paper, International taxation and transfer pricing are new focus areas to check both the menace of black money and for augmentation of tax collection.

3. India has become a very controversial country in relation to transfer pricing adjustments so far made in last 10 rounds of audit. Despite promises made by the then Prime Minister and Finance Minister of a friendly foreign investing environment, India has gained a reputation of adopting a very aggressive posture in taxing foreign enterprises, which can evidenced from the following statistics of TP adjustments:

Financial Year	No. of TP Audits Completed	No. of Adjustment Cases	% of Adjustment Cases	Amount of Adjustments (INR in crores)
2004-05	1,061	239	23	1,220
2005-06	1,501	337	22	2,287
2006-07	1,768	471	27	3,432
2007-08	219	84	39	1,614
2008-09	1,726	670	39	6,140
2009-10	1,830	813	44	10,908
2010-11	2,301	1,138	49	23,237
2011-12	2,638	1,343	52	44,531
2012-13	3,200	1,600	50	70,000
2013-14	(Data not available in public domain)			59,000

4. The figures are mind boggling. However, one needs to introspect as

to how many of the demands arising out of the transfer pricing adjustments which have reached the appellate stage, be it the Income tax Appellate Tribunal or High Courts, were upheld and that would have been a better indicator of whether really tax evasion was indulged in or whether these were cases of just high pitched demands – made because of the dire need to meet tax targets.

Budget Proposals

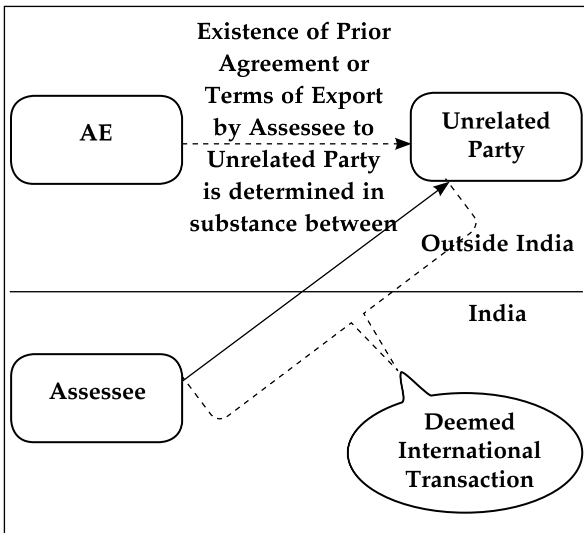
5. Deemed International Transaction – Section 92B(2)

5.1 The existing provisions of section 92B of the Act define 'International transaction' as a transaction in the nature of purchase, sale, lease, provision of services, etc. between two or more associated enterprises (AEs), either or both of whom are non-residents. The scope of the definition of international transaction has been extended in sub-section (2) to cover a transaction entered into with an unrelated person as deemed to be a transaction with an AE, if there exists a prior agreement in relation to the transaction between such other person and the AE, or the terms of the relevant transaction are determined in substance between the other person and the AE. This deeming fiction has led to a doubt whether or not, for the transaction to be treated as an international transaction the unrelated person should also be a non-resident.

5.2 Section 92B(2} was enacted to cover those cases where two AEs intended to have an international transaction but wanted to circumvent transfer pricing provisions by interposing a third party as an intermediary. In such cases, the third party intermediary was generally not the ultimate consumer of the services or goods. The intermediary would facilitate the transfer of services or goods from one enterprise to its AE with no value addition or insignificant value addition. The intermediary was used to break a transaction into two different parts, which parts when viewed in isolation would not satisfy the requirements of section 92A, which provides the meaning of AE. The legal form of the transaction in such circumstances is ignored. The substance of the transaction is given effect to, not by disregarding the existence of the intermediary but by deeming the transaction with the intermediary itself to be one with an AE.

5.3 The Circular No. 14 of 2001 explaining the scope of section 92B(2) has given an illustration which deals with an Indian company exporting goods to an unrelated person abroad. A separate arrangement between the unrelated person and the AE influences the prices at which the assessee in India exports goods. In such circumstances the Circular contends that the transaction between the assessee in India and the unrelated entity abroad would be governed by transfer pricing provisions. The "unrelated entity" in the illustration is stated to be abroad and therefore, considering the fact that the transfer pricing provisions would be applicable to a transaction between two AEs, either of the parties to be a non-resident, it appears that such unrelated party should be a non-resident. Only then, the basic premise of the transaction being subject to transfer pricing provisions would suffice.

5.4 The above illustration can be explained diagrammatically as under:



5.5 The controversy had arisen in the case of the *Swarnandhra IJMII Integrated Township Development Co. P. Ltd. vs. DCIT (reported in ITA No. 2072/Hyd/2011) dated 31 December 2012* wherein the Hyderabad Tribunal held that the legal fiction created in respect of the transaction with unrelated party can be used only for the purpose of examining whether such transaction constitutes an 'international transaction' under section 92B(1). In case section 92B(1) is not attracted, the fiction under section 92B(2) ceases to operate. Accordingly, it was further held that deemed international transaction fiction is not applicable to transactions between Indian entities.

5.6 It appears that to overcome the above interpretation of law it is proposed to amend section 92B of the Act to provide that where, in respect of a transaction entered into by an enterprise with a person other than an associated enterprise, there exists a prior agreement in relation to the relevant transaction between the other person and the associated enterprise or, where the terms of the relevant transaction are determined in substance between such other person and the associated enterprise, and either the enterprise or the associated enterprise or both of them are non-resident, then such transaction shall be deemed to be an international transaction entered into between two associated enterprises, whether or not such other person is a non-resident. The proposed amendment now ropes in a resident also.

(Clause 31)

6. Roll-Back Mechanism in APA Scheme – Section 92CC

6.1 Section 92CC dealing with the Advance Pricing Agreement (APA) mechanism was introduced by the Finance Act, 2012. It empowers the Central Board of Direct Taxes, with the approval of the Central Government, to enter into an APA with any person for determining the Arm's Length Price (ALP) or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered into by the person. The agreement entered into is valid for a period, not exceeding 5 previous years, as may be mentioned in the agreement. Once the agreement is entered into, the ALP of the international transaction, which is subject matter of the APA, would be determined in accordance with such an APA. The assessees would be relieved of future litigation and also numerous compliance procedures.

6.2 In many countries such as USA, UK, Singapore, Netherlands, China, Japan, Spain, etc. the APA scheme provides for "roll back" mechanism for dealing with ALP issues relating to transactions

entered into during the period prior to the period for which APA is applicable. However, the "roll back" relief is provided on case to case basis subject to certain conditions. Providing of such a mechanism in Indian legislation would also lead to reduction in large scale litigation which is currently pending or may arise in future in respect of the transfer pricing matters.

6.3 Therefore, it is proposed to amend the Act to provide roll-back mechanism in the APA scheme. The APA may, subject to such prescribed conditions, procedure and manner, provide for determining the ALP or for specifying the manner in which ALP is to be determined in relation to an international transaction entered into by a person during any period not exceeding four previous years preceding the first of the previous years for which the advance pricing agreement applies in respect of the international transaction to be undertaken in future.

6.4 In Financial Year 2012-13, 146 companies had applied for APA and out of that, the authorities have so far signed 5 'unilateral APAs' making it one of the fastest turnarounds in transfer pricing history across the world. These agreements cover different industrial sectors like pharmaceutical, telecom and financial services. The tax department received 232 applications from MNCs in Financial Year 2013-14 and out of that 206 companies are seeking 'unilateral APA' (pact between tax payer and CBDT). The rest applied for 'bilateral APA' (pact between taxpayers, tax authorities of the host country and the foreign tax administration).

6.5 Considering the above encouraging statistics about India's response on APA proposals and the way in which the aggressive transfer pricing adjustments made by the Indian tax authorities, introduction of roll -back provision is a welcome step towards reducing the disputes and litigations in the cross-border related party transactions. One needs to see how the roll-back mechanism is implemented effectively. Clarity would be required on roll-back mechanism where the matter is pending before the appellate authorities and penalty levied on the similar transfer pricing issues in the past.

6.6 This amendment will take effect from 1 October 2014. Consequently, the roll-back mechanism would be applicable to the applications which would be filed after 1 October 2014. Further, one needs to see how the roll-back mechanism can be used for those APAs which are already concluded and whether the applicant is required to pay additional fees for past years. It is expected that the CBDT would come out with the clarification by way of circular or FAQs on the roll back mechanism.

(Clause 32)

7. Penalty for non-furnishing specified information or documents – Section 271G

7.1 The existing provisions of section 271G of the Act provide that if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such document or information as required by sub-section (3) of section 92D, then such person shall be liable to a penalty which may be levied by the Assessing Officer (AO) or the Commissioner (Appeals). However, there is no provision whereby the Transfer Pricing Officer (TPO) can levy a penalty in such cases. Although

as per the provisions of section 92CA, the circular issued by the CBDT and the judicial pronouncement the transfer pricing being a specialised subject the AO has to make reference to a TPO for determination of ALP, the TPO is not authorised to levy penalty in the above transfer pricing related matters.

7.2 It is, therefore, proposed to amend section 271G of the Act to include TPO, as referred to in section 92CA, as an authority competent to levy the penalty under section 271G in addition to the AO and the Commissioner (Appeals).

7.3 This amendment will take effect from 1 October 2014.

(Clause 67)

8. Multiple year data and Range Concept – Section 92C and Rule 10B

8.1 The OECD Guidelines on transfer pricing, and for that matter the transfer pricing (TP) regulations of many countries, allow taxpayers the use of data of multiple years since it generally captures market, product life cycles, business cycles and smoothens effects of yearly aberrations, giving a better overall statistical result. However, the Indian TP regulations take a different approach in this regard. The Indian regulations [specifically Rule 10B(4) and its proviso] allow only the data for the financial year in which the international transaction took place and in limited cases, depending on their "influence" on the transfer price, data of preceding two years be used.

8.2 Further, the OECD Guidelines allow for a range of comparable data. As per the OECD Guidelines the transfer pricing is not an exact science. There will be many occasions when the application of the most appropriate method or methods produces a range of figures all of which are relatively equally reliable. In these cases, differences in the figures that comprise the range may be caused by the fact that in general the application of the arm's length principle only produces an approximation of conditions that would have been established between independent enterprises. However, the Indian TP regulations require computation of the arithmetical mean if more than one price is determined on application of one of the prescribed methods. It is difficult to assume and perceive that all taxpayers are conducting business transactions at a single mean price and hence a "range of prices", like the one prescribed by the OECD, seems appropriate.

8.3 The use of the arithmetic mean as opposed to inter-quartile range seems to be unique to India and has come under criticism on many occasions. Furthermore, there has been much controversy regarding the application of +/- 5% tolerance band which has been addressed by the amendments to the proviso of section 92C(2) from time-to-time.

8.4 As per the speech given by the Finance Minister, it appears that the Government has realised the above anomaly and therefore, he has announced the use of "multiple year data" and "range concept" instead of "arithmetical mean" for computing ALP (when adequate comparable not available). However, while going through the fine print the said proposals are not reflected in the Finance Bill. One would expect the necessary amendment while moving the Finance Bill or by way of amendment in rules in this regard.

CA Hitesh R. Shah

Proposals related to Tax Deduction at Source and Annual Information Report

Hon'ble Finance Minister Shri Arun Jaitley's maiden budget was devoid of any blockbuster announcements and same is true with respect to Direct Tax Proposals including TDS provisions. Every Budget has proposals relating to TDS provisions and this Budget is also not an exception.

The law should ensure proper levy as well as timely collection of taxes. The primary purpose of a fiscal levy is to collect taxes. Tax Deduction at Source (TDS) has become major part of our system of collection of tax.Year by year law is being made more and more stringent to widen tax base and its compliances.

TDS is always considered as a tedious branch of the income tax law. Compliance procedures are becoming more and more stringent and cumbersome, as a result, cost of compliance has increased enormously. At times it also leads to double taxation of income which is against the basic principles of Direct Tax Laws.

Law maker should realise that the substantial part of Tax is collected by deductor on behalf of Government. Hence procedures prescribed for TDS under the Income-tax Act (the Act) should be made easy, if not beneficial.Instead stringent penal provisions have been prescribed in case a person fails to comply with TDS provisions.

We shall now examine the changes proposed by the Finance Bill 2014.

1. Section 194DA: Payment in Respect of Life Insurance Policy

It is proposed to insert a new section wherein any person responsible for paying to a resident any sum under a Life Insurance Policy, including the sum allocated by way of bonus on such policy, other than the amount not includible in the total income under section 10(10D), shall, at the time of payment thereof, deduct income-tax thereon @ 2% where such payment exceeds Rs.1,00,000/- in a financial year.

Sum received under Life Insurance Policy is exempt under section 10(10D) except the following :

a) any sum received under section 80DD(3)

b) any sum received under a Keyman Insurance Policy

c) any sum received under an insurance policy issued on or after 1-4-2003 but on or before 31-3-2012 in respect of which the premium payable for any of the years during the term of the policy exceeds (i) 20% of the actual capital sum assured or (ii) 10% of capital sum assured, where policy is issued on or after 1-4-2012 or (ii) 15% of the capital sum assured where policy is on life of disabled person as defined u/s 80U and person suffering from disease or ailment as specified in section 80DDB .

Comment:- In case of amount received under a Life insurance cover not exempt under section 10(10D) spread over various years and where the amount does not exceed ₹ 1,00,000/- in a financial year, then the same shall not be liable to TDS as per the proposed section.

As per section 190 of the Act,Tax at Source shall be deducted only in respect of the income . So in my view tax at source shall be deducted only on income i.e the difference between the amount contributed towards the premium and amount received under life insurance policy andit is possible for insurance company to ascertain income.

2. Section 200 : Duty of person deducting tax

Under Chapter XVII-B of the Act, a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. The person deducting tax ('the deductor') is required to file a quarterly statement of tax deduction at source (TDS) containing the prescribed details of deduction of tax made during the quarter by the prescribed due date.

Currently, a deductor is allowed to file correction statement for rectification/updation of the information furnished in the original TDS statement as per the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013 notified vide Notification No.03/2013 dated 15th January, 2013. However, there does not exist any express provision in the Act for enabling a deductor to file correction statement.

In order to bring clarity in the matter relating to filing of correction statement, it is proposed to amend section 200 of the Act to allow the deductor to file correction statements.

3. Section 200A : Processing of Statements of Tax Deducted at Source

It is also proposed to amend provisions of section 200A of the Act for enabling processing of correction statement filed in consequence to section 200(3).

4. Section 201 : Consequences of failure to deduct or pay

The existing section 201(3) provides that no order shall be made under subsection (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of two years from the end of the financial year in a case where the statement of TDS referred to in section 200 has been filed, and in any other case six years from the end of the financial year in which payment is made or credit is given.

It is proposed to substitute section 201(3) so as to provide that no order shall be made under sub-section (1) of the said section deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

It has proposed to omit clause (i) of subsection (3) of Section (201), which provides time limit of two years for passing order for cases where TDS statements have been filed.

Rationale given in Memoradum to the Finance Bill for omission of Section 201(3)(i) - Time limit for 2years for passing order u/s 201(1):

Currently, the processing of TDS statement is done in the computerised environment and mainly focuses on the transactions reported in the TDS statement filed by the deductor. Therefore, there is no rationale for not treating the deductor as assessee in default in respect of the TDS default after two years only on the basis that the deductor has filed TDS statement as TDS defaults are generally in respect of the transaction not reported in the TDS statement. It is, therefore, proposed to omit section 201(3)(i) of the Act which provides time limit of two years for passing order under section 201(1) of the Act for cases in which TDS statement have been filed.

Rationale in Memoradum to the Finance Bill for amending Section 201(3)(ii) - extending time limit for passing order u/s 201(1) up to 7 years:

Notice under section 148 of the Act may be issued for reassessment up to 6 years from the end of the assessment year for which the income has escaped assessment. Therefore, section 148 of the Act allows reopening of cases of one or more preceding previous year than specified under section 201(3)(ii) of the Act. Due to this, order under section 201(1) of the Act cannot be passed in respect of defaults relating to TDS which comes to the notice during search/reassessment proceeding in respect of previous year which is not covered under section 201(3)(ii) of the Act but covered under section 148 of the Act. In order to align the time limit provided under section 201(3)(ii) and section 148 of the Act, it is proposed that time limit provided under section 201(3)(ii) of the Act for passing order under section 201(1) of the Act shall be extended by one more year.

Comment

(i) In my view for deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax, the time limit to pass an order u/s 201(3)(i) should be brought in consonance with the time limit given in Section 153 (1) for completion of assessment u/s 143 or 144 which is two years from the end of the assessment year in which the income was first assessable. Honourable Supreme Court in *ITO vs. Delhi Development Authority [(252 ITR 772 (2001)]* approved the view of Delhi High Court that the order u/s 201(1) is an order of assessment.So accordingly the limit of 2 years can be extended to 3 years from Financial Year rather than 7 years as proposed in the Finance Bill where statement of TDS has been filed . It is well known that the assessment year follows previous year and therefore reasonable time limit of three years is required to be considered from the end of the financial year as accepted under Section 153 of the Act though for completion of assessment proceedings.

(ii) Logically the person responsible for paying sum chargeable to tax can be treated as assessee in default at any time prior to the assessment of the payee or the time available for the making of the assessment of the payee. If the persons responsible is deemed to be an assessee in default after the assessment of the payee or the time available for making assessment has expired then such amount of tax will be incapable of adjustment against tax liability of the payee. Moreover it will also result in double taxation, as on one side deductor pays the taxes and on the other side it becomes very difficult for payee to claim credit of TDS once the time available for making assessment expires.

(iii) Further it is also mentioned in Memorandum to Finance Bill that in case where payment has not been made the same will not be captured in statement of TDS filed by deductor, there by justifying extension of time limit to 7 years.

As per existing provision Assessing Officer has the power to call for the information or records and arrive at a conclusion for a default if any made by an assessee, though the information of default is not captured in the TDS statement filed by assese. Hence the time limit for treating assessee in such default may be extended to three years rather than extending to seven year.

(iv) Now in case of proposed amendment to section 201(3) where the assessee has not filed the TDS statement the Assessing Officer has the power to pass an order within 7 years from the end of the Financial Year in which payment is made or credit is given. In my view proposed section needs to end with the word "........in which either payment is made or credit is given whichever is

earlier" otherwise it shall give power to the Income-tax Authority to calculate time limit of seven years from the end of the financial year, in which TDS is paid or credit is given whichever is beneficial to the revenue.

(v) In my view order can be passed u/s. 201(3) within a period of seven years as proposed only in cases were the Income-tax authority has a bonafide reason to believe that the deductor has failed to deduct tax at source or has not filed statement of TDS as required under section 200, rather than extending time limit of passing order under section 201(3) in all cases whether the statements of TDS have been filed or not . Accordingly, amendment proposed shall be brought as in line with section 147 of the Act.

Law maker has failed to appreciate the difference between provisions of section 201(3)(i) and 201(3)(ii) .

(vi) Proposed amendment gives unfettered powers to A.O. for passing an order treating assessee in default for failure to deduct whole or part of tax at source.This will result in delay in passing orders, harassment to deductor, creation of backlogs, non-accountability and more litigation.

(vii) There is a likely possibility that proposed time limit of 7 years for treating assesse in default u/s 201 in all cases, can also be challenged on ground of reasonable period. Recently in case of *DIT (IT) vs. Mahindra & Mahindra Limited (Bom) ITATONLINE dt. 3.7.2014 concerning AY 1998-99*, High Court rules that limitation period apples to TDS order u/s 201(1)/(1A) even though no time limit prescribed under the Act. Hon'ble Court has observed that the time limit would be three years from the end of the financial year. This seems to be a reasonable period as accepted u/s 153 of the Act, though for completion of assessment proceedings. Even though the period of three years would be a reasonable period as prescribed by s. 153 of the Act for completion of proceedings, the Income Tax Appellate Tribunal has taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed. The rationale for this seems to be quite clear if there is a time limit for completing the assessment, then the time limit for initiating the proceedings must be the same, if not less. Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings. *(NHK Japan Broadcasting Corp 305 ITR 137 (Del) & Hutchison Essar Telecom 323 ITR 230 (Del)* followed)

5. Section 271FA – Penalty for failure to furnish Annual Information Return

The Bill seeks to amend section 271FA of the Income-tax Act relating to penalty for failure to furnish Annual Information Return (AIR).

It proposes to amend marginal headingof Section 271FA i.e. Penalty for failure to furnish 'Annual Information Return ' with that of'Annual statement of financial transaction or reportable account '.

The existing provisions of section 271FA provides for penalty for failure to furnish an AIR. It is proposed to amend the said section so as to provide for penalty for failure to furnish Annual Information statement (AIS) of financial transaction or reportable account.

The word return has been replaced by the word Statement. In my view Return means a declaration in respect of information in writing whereas the dictionary meaning of statement is ' something that is stated' or statement of facts or information . Since information to be given pertains of the third party it is called a statement and does not require any declaration. Annual information statement shall be in respect of financial transaction or reportable account as specified u/s 285BA.

This amendment will take effect from 1st April, 2015.

6. 271FAA-Penalty for furnishing inaccurate information in Annual Information Statement

The Bill seeks to insert a new section 271FAA in the Income-tax Act to provide for penalty for furnishing inaccurate statement of financial transaction or reportable account.

It is proposed to insert a new section 271FAA so as to provide that if a person referred to in section 285BA(1)(k) i.e prescribed reporting financial institution, who is required to furnish a statement of financial transaction or reportable account, provides inaccurate information in the statement and where:

(a) the inaccuracy is due to a failure to carry out due diligence requirement for the purpose of identification of reportable account which Central Govt may by rules prescribef as per proposed amendment to section 285BA(7) or isdeliberate on the part of that person; or

(b) the person knows of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income-tax authority or such other authority or agency; or

(c) the person discovers the inaccuracy after the statement offinancial transaction or reportable account is furnished and failsto inform and furnish correct information within 10 days as specified under sub-section (6) of section 285BA.

then, the prescribedincome-tax authority may direct that such person shall pay, byway of penalty, a sum of fifty thousand rupees.

This amendment will take effect from 1st April, 2015

Comment: Insertion of section 271FAA will now make the person more accountable while reporting transactions to Income Tax Authorities so as to provide accurate and timely information.

7. 285BA – Obligation to furnish statement of financial transaction or reportable account

Bill seeks to substitute section 285BA of the Income-tax Act relating to obligation to furnish annual information return with a new section. The existing provisions of section 285BA provide for filing of an annual information return by specified persons in respect of specified financial transactions which is registered or recordedby them and which is relevant and required for the purposes of the Act to the prescribed income-tax authority.

With a view to facilitate effective exchange of information in respect of residents and non residents. It is proposed to amend the said section as follows :

(i) Now prescribed financial institutions to furnish statement of information in respect of any specified financialtransaction or reportable account to the prescribed income-taxauthority.

(ii) statement of informationshall be furnished for such period, within such time, in the form and manner as may be prescribed.

At present the statement of informationshall be furnished in form 61A in respect of a financial year on or before 31st August immediately following the financial year in which transaction in registered or recorded.

(iii) person furnishing a statement of information shall inform within a period of ten days, the income-tax authority or any other authority referred to in sub-section (1) the inaccuracy in such statement which he discovers or comes to know and furnish the correct information in the manner as may be prescribed.

(iv) It is also proposed that the Central Government may, by rules, specify,—

(a) the persons referred to in sub-section (1) to be registered with the prescribed income-tax authority;

(b) the nature of information and the manner in which such information shall be maintained by the persons referred to in clause (a); and

(c) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in sub-section (1).

Comment: Specified persons are liable for penalties for non furnishing Annual Information Statement or furnishing inaccurate information to Income Tax Authorities. In addition to this, now their tasks have become more onerous since they need to register with the Income Tax Authorities and also carry out due diligence as may be prescribed.

Existing reportable financial transactions by specified person as per Rule 114E :

Sl. No	Class of Person	Nature and Value of transaction
1	A Banking company/Banking institution	Cash deposits aggregating to ₹ 10,00,000/- or more in a year in any savings account of a person.
2	A Banking company /Banking institution / any other company or institution issuing credit card.	Payments made by any person through credit card against bills aggregating to ₹ 200,000/- or more in a year
3	Mutual Fund	Receipt of ₹ 200,000/- or more from any person for acquiring units .
4	A company/ institution issuing bonds or debentures.	Receipt of ₹ 500,000/- or more from any person towards issue of bonds or debentures
5	A company issuing shares through a public or rights issue.	Receipt of ₹ 100,000/- or more from any person towards issue of shares .
6	Registrar / Sub-Registrar	Purchase or sale by any person of immovable property valued at ₹ 30,00,000- or more
7	Reserve Bank of India,	Receipt of ₹ 500,000/- or more from any person towards issue bonds by RBI

This amendment will take effect from 1st April, 2015.

8. 271H: Penalty for failure to furnish statements etc.

The existing provisions of section 271H of the Act provides for levy of penalty for failure to furnish TDS/TCS statements in certain cases or furnishing incorrect information in TDS/TCS statements which shall not be less than Rs.10,000 but may extend to Rs.100,000 . The existing provisions of Section 271H do not specify the authority which would be competent to levy penalty under the said section. Hence, provisions of section 271H are proposed to be amended to provide that the penalty under the section 271H of the Act shall be levied by the Assessing Officer .

This amendment will take effect from 1st October, 2014

At the end I would like to conclude that friendly approach of Tax Department in dealing with assessee is always necessary and goes a long way for compliance of TDS provisions.

I thank the Chamber of Tax Consultants for giving me an opportunity to express my view through this article.

CA Bhadresh Doshi

Proposals related to Procedural and Other Matters

1. Introduction

The new Government was elected with a mandate for change. However, the trend of the amendments under the Income-tax Act to overrule the court decisions continues but fortunately with only prospective effect and that is the only change which we are witnessing. Though the amendments are made to the Act to bring clarity to the taxpayers on tax treatment in specific situations, at times such changes create more ambiguity than that prevailing prior to such changes and result into further uncertainty. This article deals with some of the procedural changes which are proposed by the Finance (No. 2) Bill, 2014 which are of such nature.

2. Amendment in Section 220 for determination of interest payable

2.1 Present position

Section 220 provides that when the assessee is served with any notice of demand u/s. 156 then he should pay that demand within thirty days of the service of such notice. In case of failure in making such payment he shall be charged with interest under sub-section (2) on the defaulted amount for the period commencing from the expiry of the period allowed to make the payment and ending with the date of actual payment. The interest is 1% for every month or part of a month which is included in such period of default.

At present, first proviso to Section 220(2) provides that in a case where the amount on which interest was payable has been reduced in consequence of any subsequent order under the specified sections then interest shall be reduced accordingly. Such subsequent order can be an order of rectification or amendment u/s. 154 or 155, an order of Appellate Authorities u/s. 250 or 254 or 260 or 262, an order of revision by Commissioner u/s. 264 or an order of Settlement Commission u/s. 245D. Therefore, a provision has been made to levy an interest on the reduced amount if the assessee has been given relief under any appeal or such other proceedings.

2.2 Interpretations by the Courts

Though the present law provides for the reduction in the interest if amount of demand gets reduced, it does not provide any clarity in a case where in the course of proceedings, the original demand raised subsequently gets restored because of further appeal which might have been filed by the department against the relief given to the assessee. Let's take an example to understand this position. If the assessee is served with a notice of demand for ₹ 1,00,000 as a result of an assessment order u/s. 143(3) then the interest can be charged u/s. 220(2)

on the amount remaining unpaid within the given period of time. However, if the assessee is given partial relief by the CIT(A) and the demand gets reduced to ₹ 25,000 then as per the Proviso to Section 220(2) the interest can be charged only on such reduced demand for the period of default. Thereafter upon the further appeal by the department if ITAT set aside the relief given by CIT(A) and restores the order of the Assessing Officer then the assessee shall be liable to pay full amount of ₹ 1,00,000 which was originally demanded from him. In such case, how the interest u/s. 220(2) shall be reworked has not been provided under the present law.

In the case of *Vikrant Tyres Ltd. vs. ITO* (247 ITR 821), Hon'ble Supreme Court held that if there was no default on the part of the assessee at the first instance then the interest u/s. 220(2) cannot be charged at all. This applies even if he was refunded the amount which was paid by him as a result of first appeal and it was again recoverable from him due to subsequent appeal decided against him. In the facts of this case, assessment order was served on the assessee and demand notice was issued. The assessee complied with the demand by paying the tax due. The Appellate Authority on an appeal preferred by the assessee, allowed the same and the tax paid was refunded to the assessee. The Tribunal dismissed the appeal filed by the Revenue and on a reference made to the High Court, the same came to be allowed thereby upholding all the assessment orders. Thereafter, the Revenue made fresh demand and the assessee repaid the tax as assessed and demanded. However, the Revenue invoked Section 220(2) and demanded interest in respect of the tax assessed for the period commencing with refund of the tax consequent upon the first appellate order till the tax was finally paid after disposal of references. The Supreme Court held that interest cannot be charged in such a case because the condition precedent under Section 220(2) for charging interest is that there should be a demand notice and there should be a default to pay the amount so demanded within the time stipulated in the said notice. In the case before the Supreme Court, the assessee satisfied the demands and nothing was due pursuant to the demand notices. Therefore, admittedly, on a literal meaning of the provisions of Section 220(2), such a demand for interest cannot be made.

In the case discussed above, the Supreme Court never dealt with an issue regarding the period for which interest can be charged u/s. 220(2) in case where there is a default on the part of the assessee but for intervening period relief was available to him either fully or partly and hence amount was not recoverable from him to that extent for such intervening period. In effect, in the example discussed above if the assessee pays full demand of ₹ 1,00,000 in compliance with the original notice of demand u/s. 156 then he shall not be liable to pay any interest u/s. 220(2) for the intervening period upon revival of demand in consequence of ITAT's order as this issue had been settled by the Supreme Court in the case of *Vikrant Tyres Ltd. (supra)*. However, assuming that the assessee pays demand only in part say ₹ 25,000 and succeeds before the CIT (A) in respect of the balance demand of ₹ 75,000 but loses upon further appeal by the department before ITAT, the issue still remained as to whether he can be charged for the interest on that unpaid amount of ₹ 75,000 for the entire period of default i.e. starting from the due date of payment as per original notice of demand and up to the date of actual payment or the period during which that demand was not operative i.e. starting from the date of CIT(A)'s order till the date of ITAT's order should be excluded while calculating the interest. This issue was open for debate even after the decision of Supreme Court.

In the case of *New United Construction Co. vs. CIT* (P&H) 270 ITR 224, the assessee had defaulted in making the payment of penalty as per the notice of demand. Though CIT(A) deleted the penalty, ITAT restored the order of the Assessing Officer imposing the penalty. In this case, the Punjab & Haryana High Court held that it could

not be said that during the period for which the order of CIT(A) was operative, there was any outstanding demand for penalty against the assessee and, therefore, it could not be said that there was a default in payment of penalty making it liable for the interest during that period. Therefore, it was held that the interest can be charged only for the original period of default of non-payment till the date of CIT(A)'s order and period subsequent to the date of ITAT's order until the recovery of penalty. While concluding so, the High Court relied upon the decision of Supreme Court in the case of Vikrant Tyres Ltd. (supra).

The Delhi High Court took a contrary view on this issue in the case of *Girnar Investment Ltd. vs. CIT* (87 DTR 329). In view of the High Court, a distinction has to be drawn between a case where the assessee pays up the entire demand raised pursuant to the assessment order within the period specified in notice u/s. 156, wins in appeal and the amount is refunded and subsequently loses in further appeal and has to repay the taxes. In such a case, as the assessee is not in default in the first instance, no interest u/s. 220(2) is payable for the period when the favourable verdict of the Appellate Authority was operative. However, if the assessee has not paid up the entire tax within the specified period, it is liable to pay interest u/s. 220(2) from that date on the unpaid amount and any variation in the amount of the demand favourable to the assessee which was directed by any of the Appellate Authorities in the interregnum has no effect on the liability of the assessee to pay the interest. On facts, as the assessee had paid only a part of the demand at the first stage, it was held liable to pay interest for the entire period including the period when the favourable CIT(A)'s order was operative.

While dealing with the applicability of interest u/s. 220(2), the Courts have also referred to Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964. According to Section 3 of the said Act, where any notice of demand in respect of any Government dues had been served upon an assessee by a taxing authority under the specified Act and on appeal or other proceedings the demand is enhanced or reduced it shall not be necessary for the such authority to serve a fresh demand notice on the assessee, except to the extent of the increase in the demand as a result of the enhancement. In the case of a reduction, it shall be sufficient if the taxing authority gives intimation of the reduction to the assessee. Sub-cl. (iii) of cl. (b) of the section further provides that "any proceeding initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to that amount so reduced from the stage at which such proceedings stood immediately before such disposal". Thus the situation arising out of non-issue of fresh demand notices or recovery certificates was redeemed and the validity of the notices already issued by the taxing authority on completion of the assessment was continued by a validating legislation. The Supreme Court in the case of Vikrant Tyres Ltd. (supra) held that these provisions of Section of the said Act was enacted to cope up with a different fact-situation and cannot be relied upon for levy of interest u/s. 220(2).

2.3 Proposed amendments

The following two amendments have been proposed in Section 220 by the Finance (No. 2) Bill, 2014 with effect from 1st October, 2014:

(i). A new sub-section (1A) shall be inserted in Section 220 as follows:

> "Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority or disposal of the proceedings, as the case may be, and any such notice of demand shall have the effect

as specified in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964."

(ii). Second Proviso to Section 220(2) shall be inserted as follows:

"Provided further that where as a result of an order under sections specified in the first proviso, the amount on which interest was payable under this section had been reduced and subsequently as a result of an order under said sections or section 263, the amount on which interest was payable under this section is increased, the assessee shall be liable to pay interest under sub-section (2) from the day immediately following the end of the period mentioned in the first notice of demand, referred to in sub-section (1) and ending with the day on which the amount is paid."

2.4 Effects of the proposed amendments

The notice of demand has been given the validity irrespective of the fact that it has been disputed by way of appeal or any other proceeding. Further, such validity continues till the disposal of appeal or such other proceeding by the last appellate authority. The amended provision does not provide specifically that such deemed validity applies only in a case where the assessee has defaulted in paying any demand in response to the notice of demand.

Further, now a specific provision has been inserted to provide for calculation of interest u/s. 220(2) in a case where though the amount on which interest was payable had been reduced earlier but subsequently it is increased. In such case, the interest is payable on the defaulted amount for the entire period starting from the expiry of time allowed in the original notice of demand and ending with the actual date of payment though for the intervening period such defaulted amount was not recoverable either fully or partly from the assessee as a result of any appeal or such similar order allowing relief to the assessee.

The effects of the proposed amendments under various alternatives can be as follows:

Status of compliance with original notice of demand and subsequent events	**Applicability of interest u/s. 220(2)**
The assessee complied with the notice of demand fully and paid the tax. Upon granting of relief at the initial stage, the assessee was issued refund (along with interest u/s. 244A). At the subsequent stage upon withdrawal of relief, demand is restored.	Interest cannot be charged in such case even under the amended provisions. Under the amended provisions, "the amount on which interest was payable" should be into existence at the first place. In this case, the assessee had satisfied the notice of demand fully at the initial stage itself and hence there was no default at all for which interest can be charged. Even the interest cannot be charged on the amount which was refunded to the assessee. However, interest which was granted u/s. 244A shall be withdrawn. Further, there will be no need to serve fresh notice of demand to recover the amount in respect of withdrawal of relief. The assessee shall be required to pay back the amount forthwith and in case of failure the interest can be charged for such fresh default.

Assessee has not paid the demand at all. But he succeeds at the initial stage and demand becomes inoperative. Thereafter he loses at the subsequent stage and hence demand gets restored again	Interest u/s. 220(2) is payable in such case on the defaulted amount for the period starting from the expiry of the time allowed to make the payment in the original notice of demand and ending with the date of payment. Even the intervening period for which the demand was inoperative shall be included for charging the interest.
Assessee has paid the demand but after the time to make such payment was allowed in the original notice of demand. Thereafter the refund was issued to the assessee as a result of relief available at the intermediate level which is now recoverable from the assessee as a result of withdrawal of relief.	In such case, the interest u/s. 220(2) can be charged on the defaulted amount for the period starting from the expiry of the time allowed to make the payment in the original notice of demand and ending with the date on which he first paid that demand and not the date on which he pays such demand again as a result of withdrawal of relief. In a case where the relief is partially withdrawn and partially retained, the initial payment by the assessee should first be appropriated towards the liability arising on account of withdrawal of relief.

Therefore, effectively in the first and second cases the department was not holding any sum of the assessee during the intervening period for which the demand was not operative. In the first case, the amount already paid by the assessee was refunded and in the second case the assessee did not pay at all. Though in both the cases, money remained with the assessees during that intervening period, the interest is leviable only in the second case where there was a default in complying with the original notice of demand.

Further, the interest can be charged u/s. 220(2) only till the date on which the amount mentioned in the notice of demand is paid. So technically, if the assessee pays the full demand just few days prior to the date on which he was granted the refund of the same amount (knowingly that he will be getting the refund as a result of the relief) then he can reduce the period for which the interest can be charged in his case.

2.5 Issues arising out of the proposed amendments

The following issues may arise due to the proposed amendments:

1. The proposed second proviso to Section 220(2) envisages a situation wherein the amount payable by the assessee as mentioned in the notice of demand had been reduced first and thereafter it is increased. There may be a case where such amount ceases to exist fully as a consequence of the appellate order wherein all the grounds are decided in favour of the assessee. Thereafter if the demand is again restored back then whether such a case would be covered under the amended provision can be an issue. In such case, can it be said that the demand had been reduced and it is now increased? Can it be said that the word used "increased" presupposes that there exists an amount on which interest was otherwise payable and it is now getting increased?

2. If the assessment is set aside by the higher authority and the Assessing Officer is directed to do the assessment *de novo* then in such case the original notice of demand ceases to have the effect. In such case, CBDT *vide* Circular No. 334 dated 3rd April, 1982 clarifies that where an assessment order is cancelled/set aside by an appellate/revisional authority and the cancellation/setting aside becomes

final (i.e., it is not varied as a result of further appeals/ revisions), no interest u/s. 220(2) can be charged pursuant to the original demand notice. The necessary corollary of this position will be that even when the assessment is reframed, interest can be charged only after the expiry of time allowed under new demand notice pursuant to such fresh assessment order. This position was also confirmed in the case of *CIT vs. Rajesh Kumar Dinesh Kumar* 325 ITR 346 (Raj). It seems that the proposed amendment shall not have any impact over this position of law. However, in the absence of clarity on this issue it may be open to fresh debate.

3. Under the amended provisions, the case wherein the demand is increased in consequence of an order of CIT u/s. 263 is also sought to be covered. However, in a case where the original demand directly gets increased as a result of an order of CIT u/s. 263 without any reduction first, the interest on such increased amount cannot be charged with reference to the first notice of demand. This is so because the amended provision allowing charging of interest applies only in a case where there was first reduction in the demand and then increase thereafter and not to a case where there is an increase in the demand directly. Further, assuming that there was a reduction in the demand at the initial stage and thereafter there is an increase in the demand as a result of an order of the CIT u/s. 263, can the amended provisions be applied to charge interest right from the beginning irrespective of the fact that the issue on which demand was reduced and issue on which demand is increased are totally unconnected to each other? Let's take an example to understand this issue better. The CIT(A) allows a relief to the assessee on issue of deductibility of certain expenses which were disallowed by the Assessing Officer e.g. payments made to specified persons covered u/s. 40A(2). Thereafter the CIT invokes his jurisdiction u/s. 263 and disallows certain other expenses u/s. 14A. Both the issues are totally unconnected. In such case, though the demand was reduced in consequence of the CIT(A)'s order, it got increased again in consequence of the CIT's order. In such case, it is not fair to charge the interest u/s. 220(2) with reference to the original notice of demand since the issues raised by the CIT were not into existence at that point of time.

   Therefore, logical interpretation should be that if CIT's order u/s. 263 results in the enhancement of the demand on the very same issues due to which the demand had been reduced earlier (e.g. CIT setting aside the order of rectification of AO u/s. 154) then only period of default can relate back to the original notice of demand. Such clarity under the proposed amendments is needed to avoid any unintended consequences.

4. The amendments are effective with prospective effect from 1st October, 2014. There can be multiple ways in which such effective date can be interpreted:

   a. It applies only to the assessment year 2015-16 onwards.

   b. It applies to a case wherein the increase in demand takes place on or after 1st October, 2014.

   c. Though it applies to earlier cases but the interest can be charged only for a period starting from 1st October, 2014 though the date of expiry of time allowed to make the payment as per notice of demand was earlier than such date.

In the absence of any clarity on this issue, there will be unwanted litigation even on such limited issue.

3. Substitution of Section 142A

Under the present provisions of Section 142A, the Assessing Officer can make a reference to the Valuation Officer for estimating the value of any investment, bullion, jewellery or other valuable article or thing as referred to in Section 69/69A/69B or of any property referred to in Section 56(2). In the case of *Sargam Cinema vs. CIT* 328 ITR 513 (SC), it was held that assessing authority could not have referred the matter to the DVO without the books of account being rejected. Following this judgment, Allahabad High Court in the case of *CIT vs. Lucknow Public Educational* Society 339 ITR 588 held that a reference cannot be made u/s. 142(2A) without first rejecting the books of account of the assessee. However, Andhra Pradesh High Court in the case of *Bharathi Cement Corporation (P) Ltd. vs. CIT* 356 ITR 74 took a contrary view and held that there is no pre-condition that books of account produced by assessee have to be rejected first before making such reference u/s. 142A. While taking such a contrary view, the High Court observed that the decision of Supreme Court in the case of Sargam Cinema (supra) was prior to the enactment of Section 142A and hence not relevant to decide the issue.

In order to overcome this issue and also to provide for the time bound process of reference to the Valuation Officer the new section 142A is proposed to be substituted with effect from 1st October, 2014 which inter alia provides as under:

a. The Assessing Officer may for the purpose of assessment, reassessment make a reference to the Valuation Officer to estimate the value, including the fair market value of any asset, property or investment.

b. The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about correctness or completeness of the accounts of the assessee.

c. The Valuation Officer shall estimate the value of asset, property or investment after taking into account the evidence produced by the assessee and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

d. The Valuation Officer may estimate the value of the asset, property or investment to the best of his judgement, if the assessee does not co-operate or comply with his direction.

e. The Valuation Officer shall send a copy of the report of the estimate made by him to the Assessing Officer and assessee within a period of six months from end of the month in which reference is made to him by Assessing Officer.

f. The Assessing Officer on receipt of the report from Valuation Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

Further, the amendments have also been proposed in Section 153 as well as 153B to the effect that in computing the period of limitation for completion of the assessment or reassessment the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer u/s. 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer shall be excluded. These amendments are also effective from 1st October, 2014.

4. Income computation and disclosure standards

Section 145 of the Act authorizes the Central Government to notify accounting standards for any class of assessees or for any class of income. Since the introduction of these provisions, only two Accounting Standards relating to disclosure of accounting policies and disclosure of prior period and extraordinary items and changes in accounting policies have been notified. The CBDT had constituted an Accounting Standard Committee in 2010. The Committee has submitted its Final Report in August, 2012. The

Committee recommended that the AS notified under the Act should be made applicable only to the computation of taxable income and a taxpayer should not be required to maintain books of account on the basis of AS notified under the Act.

In order to clarify that the standards notified under section 145(2) of the Act are to be followed for computation of income and disclosure of information by any class of assessees or for any class of income, Section 145(2) is proposed to be amended to provide that the Central Government may notify in the Official Gazette from time to time income computation and disclosure standards to be followed by any class of or in respect of any class of income. It is further proposed to provide that the Assessing Officer may make an assessment in the manner provided in section 144, if the income has not been computed in accordance with such standards notified under section 145(2). These amendments are effective from Assessment Year 2015-16.

5. Other miscellaneous amendments

a. The provisions of Section 139 are proposed to be amended with effect from 1st April, 2015 to provide that Mutual Fund referred to in Section 10(23D), securitisation trust referred to in Section 10(23DA) and Venture Capital Company or Venture Capital Fund referred to in Section 10(23FB) shall furnish their return of income if their total income without giving effect to the provisions of Section 10, exceeds the maximum amount which is not chargeable to income-tax. As a consequence of this, the requirement of filing of statements before an income-tax authority giving the details of the amount of income distributed to unit holders or investors in the case of Mutual Funds and securitisation trusts u/s. 115R & 115TA has been dispensed with.

b. The existing provisions of section 140 provide that the return u/s. 139 shall be signed and verified in the manner specified therein. With a view to enable the verification of returns either by a sign in manuscript or by any electronic mode, it is proposed to amend section 140 with effect from 1st October, 2014 so as to provide that the return shall be verified by the persons specified therein.

c. Under the provisions of Section 281B, the Assessing Officer may provisionally attach the properties of the assessee during the pendency of the assessment proceedings. Such order of provisional attachment can remain into operation maximum for a period of six months from the date of the order. However, the Chief Commissioner, Commissioner, Director General or Director were given the power to extend such period but maximum for two more years. The amendment is proposed with effect from 1st October, 2014 whereby the Chief Commissioner, Commissioner, Director General or Director can extend the period for which such order of provisional attachment shall remain effective, but only for a period of two more years or upto sixty days after the date of assessment or reassessment, whichever is later.

d. In the hierarchy of the income-tax authorities, the following new posts have been created with retrospective effect from 1st June, 2013:

   (i) Principal Directors General of Income-tax;

   (ii) Principal Chief Commissioners of Income-tax;

   (iii) Principal Directors of Income-tax;

   (iv) Principal Commissioners of Income-tax.

Suitable changes have been proposed under the Act to give effect to the creation of the above new Income-tax Authorities.

CA Arvind H. Dalal

Amendments related to Charitable Trusts

In any major exercise of amending the Income-tax Act, the provisions relating to charitable trusts are bound to receive substantial attention. Some of them are beneficial to charitable trusts but majority of them are affecting them adversely. The purpose of this article is to examine only the amendments relating to charitable trusts without touching other provisions.

Clause 5 of the Bill seeks to amend section 10 of the Income-tax Act relating to incomes not included in total income.

Under the existing provisions contained in clause (23C) of the aforesaid section, exemption is provided in respect of income of university or other educational institutions, hospital or any other institution mentioned therein, if such university or other educational institution, hospital or any other institution are wholly or substantially financed by the Government.

It is proposed to amend the aforesaid clause so as to insert an Explanation to provide that any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions as may be prescribed, of such university or other education institution, hospital or other institution, as the case may be, during the relevant previous year.

Educational and Medical Institutions substaintially financed by the Government –

The existing sub-clause (iiiab) and (iiiac) of section 10(23C) grant exemption to educational institutions, universities and hospitals that satisfy certain conditions and which are wholly or substantially financed by the Government. The term "substantially financed by the Government" was not defined and hence has resulted in litigation. It is now clarified that if the Government grant to such institutions exceeds the prescribed percentage of the total receipts, including voluntary contributions, then it will be considered as being substantially financed by the Government.

This amendment is not likely to solve the problem relating to "substantial finance, " as

(i) The percentage will have to be prescribed every year.

(ii) The test of substantial finance will be required to be prescribed every year, as the amendment does not envisage a fixed percentage to be considered.

(iii) Year wise percentage will create its own problems instead of bringing about certainty. Perhaps, the Government considered that the percentage to be prescribed will also depend on the grant it can give in a particular year. All in all the amendment will not solve the problem, which it was intended to solve.

It is further proposed to amend the said clause to provide that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause(vi) or any hospital or other medical institution referred to in sub-clause (via), has been notified by the Central Government or approved by the prescribed authority and the notification or the approval is in force for any previous year, then nothing contained in any other provision of this section [other than clause (1) thereof] shall operate to exclude any income received on behalf of such fund or trust or institution or university or other educational institution or hospital or other medical institution, as the case may be, from the total income of the person in receipt thereof for that previous year.

As a result of the above amendments charitable and religious entities will not be entitled to claim exemption under general provisions of section 10.

A trust or institution which is registered or approved or notified as a charitable or religious entity under section 12AA or 10(23C) will not be entitled to claim exemption under any of the general provisions of section 10. The intention is that such trusts should be governed by the special provisions of sections 11, 12 & 13 or section 10(23C), which is a code by itself and should not be eligible to claim exemption under other provisions of section 10. Therefore, a trust will now not be entitled to claim that its income, like dividend income (exempt u/s.10(34) or income from mutual funds (exempt u/s.10(35)), which is not applied for charitable objects, is exempt under section 10 and hence not liable to tax.

Agricultural income of such a trust however will continue to enjoy exemption as provided under section 10(1). Similarly, a trust eligible for exemption under section 11 will not be barred from claiming exemption under section 10(23C).

Depreciation

It is also proposed to provide that income for the purposes of application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under clause (23C) of section 10 or section 11 in any previous year.

Expenditure incurred to acquire a capital asset for carrying out charitable or religious activity is treated as application of income on objects of the trust and hence fully allowed as a deduction in computing the income of the trust. There is a controversy whether such trust is also entitled to claim depreciation on such assets where full deduction has been claimed at the time the asset was acquired.

The Bombay High Court has rejected the reference application of the Income-tax Department, in case of *CIT vs. Framjee Cawasjee Institute* (1993) 109 CTR 463 holding that the answer to the question whether depreciation was allowable to a charitable trust was self-evident, even if the capital value of the assets on which depreciation was claimed had been allowed as a deduction under section 11 as an application of income for religious or charitable purposes. Once again in *CIT vs. Institute of Banking Personnel Selection* (IBPS), 264 ITR 110, the Bombay High Court held that depreciation should be allowed even on assets, the cost of which had been allowed as exempt u/s. 11 in the preceding years. The Bombay High Court also held that depreciation should be allowed even on assets received on transfer from another charitable trust on which no cost was borne by the assessee

trust. Other High Courts which have also taken the view that depreciation is deductible are the Karnataka High Court in the case of *CIT vs. Society of the Sisters of St. Anne* (1984) 146 ITR 28. The Madhya Pradesh High Court in the case of *CIT vs. Raipur Pallottine Society* (1989) 180 ITR 579, and the Gujarat High Court in the case of *CIT vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trus*t (1992) 198 ITR 598.

In order to avoid this double benefit, it is now provided that from A. Y. 2015-16 depreciation will not be allowed in computing the income of the trust in respect of an asset where its cost of acquisition has already been claimed as deduction by way of application of income in the current or any earlier year. The effect of the amendment will be that depreciation will not be application of income as was the case so far.

Clause 8 of the Bill seeks to amend section 12A of the Income-tax Act relating to conditions for applicability of sections 11 and 12.

Under the existing provisions of aforesaid section 12A, conditions to be fulfilled by a trust or an institution before it can claim exemption have been provided under sections 11 and 12 of the Act. It is provided that before any benefit of exemption is claimed, the trust or institution should apply for registration under section 12AA and only after such registration has been granted, the trust or institution shall be eligible to claim the benefit of such exemption. In case of trusts or institutions which apply for registration after the 1st day of June, 2007, the registration shall be effective only for the assessment years following the financial year in which application has been made.

It is proposed to amend the said section so as to provide that once a registration under section 12AA is granted to a charitable organisation in a financial year, then such registration would also entitle the entity for the benefits of sections 11 and 12 in cases for prior years where the assessment proceedings are pending before the Assessing officer on the date of registration, if the objects and the activities are the same which have been considered by the Commissioner while granting registration.

No action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding first assessment year for which the registration applies, merely for the reason that such trust or institution has not obtained registration under section 12AA for the said assessment year.

Further, the above benefits would not be available where the registration to the trust or institution has been refused or cancelled by the Commissioner at any time.

Presently, a trust or an institution can claim exemption only from the year in which the application for registration under section 12AA has been made. As such, registration is applicable only prospectively and this has caused genuine hardships to several charitable organizations. It is now provided that the benefit of sections 11 and 12 will be available to such trusts for all pending assessments on the date of such registration, provided the objects and activities of such trust in these earlier years are the same as those on the basis of which registration has been granted. It is also provided that no action for reopening under section 147 shall be taken by the Assessing Officer merely on the ground of non registration. Accordingly, completed assessments in which benefit under section 11 is granted will not be adversely affected.

It is clarified that such benefit will not be available to trusts where the registration was earlier refused or was cancelled.

This amendment is effective from 1st October, 2014.

The amendment should have been applicable also to cases where registration is refused or cancelled by the Commissioner at any time.

Clause 9 of the Bill seeks to amend section 12AA of the Income-tax Act relating to procedure for registration.

Under the existing provisions contained in sub-section(3) of the aforesaid section, where a trust

or an institution has been granted registration and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, then he shall pass an order in writing, cancelling the registration of such trust or institution.

It is proposed to insert a new sub-section (4) in section 12AA so as to provide that where a trust or an institution has been granted registration and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then the Commissioner or Principal Commissioner may by order in writing cancel the registration of such trust or institution. However, the registration shall not be cancelled under the said sub-section, if the aforesaid trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

This amendment will take effect from 1st October, 2014.

Presently registration of a trust once granted can be cancelled only under two circumstances.

1) The activities of the trust are not genuine, or

2) The activities are not being carried out in accordance with the objects of the trust.

Now, from 1st October, 2014 the Commissioner also has powers to cancel registration if it is noticed the trust carries on activities in contravention of section 13(i) i.e. :

(i) Income does not enure for the benefit of the public;

(ii) Income is applied for the benefit of any religious community or caste;

(iii) Income is applied for the benefit of specified persons;

(iv) Funds are invested in prohibited modes.

It is however provided that registration will not be cancelled if the trust proves that there was reasonable cause for violating any of the above conditions.

At present, it is held in number of cases that even if due to the application of the proviso to Sec.2(15) , the trust was considered to be taxable from Asst. Year 2010-11, the registration granted under Sec.12AA cannot be cancelled unless – (i) the activities carried on by the trust are not genuine or they are not in accordance with the objects of the trust. Maharashtra Housing And Area Development Authority vs. ADIT(E) 58 SOT 196 MUM In my opinion, even though, the amendment is made to link it up with clauses 13(1) & (3), it will not affect the ratio of the judgments of the Tribunal.

Anonymous Donations

Anonymous donations in excess of 5% of the total donations received or ₹ 1 lakh (whichever is higher) are taxed at the rate of 30% in the case of certain charitable entities. The residual income of such trust is computed after deducting the anonymous donations. Thus 5% of the total donations or ₹ 1 lakh whichever is higher is neither taxed as anonymous donation nor considered as part of the residual income of the trust. It is therefore provided that the residual income of the trust will be computed by reducing from the total income of the trust, the anonymous donations that have been taxed at the rate of 30% and not the total anonymous donations received by the trust. Such residual income will be eligible for exemption under section 11/10(23C) subject to satisfaction of conditions of that section.

To sum up, whereas the amendment relating to registration of the trust for earlier years where it was refused is beneficial to the trust, the other amendments regarding definition of substantial finance, depreciation and cancellation of registration when, linked up with Sec. 13 are going to affect the trusts adversely.

Ajay R. Singh & Rahul R. Sarda, *Advocates*

Proposals related to Survey & Search

I. 'Power of Survey :Section 133A:

1. The Income-tax Act, 1961 (the "Act") gives power to an income-tax authority to conduct a survey. He may enter any place within the limits of area assigned to him or any place which is occupied by any person over whom he exercises jurisdiction, where business or profession is carried on. This power can be exercised in accordance with the provisions of section 133A of the Act. The term `SURVEY' has not been defined in the Income tax Act, 1961, Section 133A, though discuses power of survey, the term `Survey' has not been defined in section 133A. Generally, action u/s. 133A can be called `Survey'.

In the context of the Act, the term `Survey' means to collect information and data for the purpose of the Act on the spot, at the place of business or profession.

The powers contained in the existing section 133A are very wide.

Widening of powers of survey:

2. Clause 45 of the Finance Bill, 2014 seeks to further widen the power of survey by inserting sub-section (2A) in section 133A.

As per the new provision an income tax authority may for the purpose of **verifying that tax has been deducted or collected at source in accordance with the provisions of chapter XVII-B or Chapter XVII-BB,** as the case may be, enter any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or any such place in respect of which he is authorized for the purpose of this section by such income tax authority who is assigned the area within which such place is situated where books of account or documents are kept. The income tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work, -

(i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and (ii) to furnish such information as he may require in relation to such matter.

It is also proposed to provide that an income tax authority may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. However, while acting under sub-section (2A) he shall not impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuables.

3. Under the existing provision, Income Tax Authority includes ITO (TDS) and after obtaining the approval of competent authority he has the authority for survey. In *N.K. Mohnot v. Dy. CIT (1999) 240 ITR 562 (Mad)*, it was observed that power of Asst. Commissioner and Tax Recovery Officer under sec. 133A is wide enough so as to allow him to be present at the time of survey and to provide necessary supervision for concluding the same. However, it should be confined only to the purpose for which the survey is authorized; i.e. to verify the TDS related matters. It cannot extend to the verification of such and Bank statements, stocks etc.

Where the ITO TDS having jurisdiction in respect of TDS functions of a branch of the assessee, conduct survey u/s. 133A, the same was held to be valid. *Peerless General Finance and Investment & Anr. vs. Assessing Officer & Ors. (2001) 248 ITR 113 (All.) (HC)*

4. The existing provision such power was available with the authority for matters relevant to Tax Deducted at Source. If the survey was for TDS, it could not extend to probe into other matters. It was so held by the Calcutta High Court, in the case of *Reckitt and Colman of India Ltd vs. ACIT (2001) 251 ITR 306 (Cal) and (2001) 252 ITR 550 (Cal.)*

5. This amendment seeks to expressly give powers to the authorities to conduct survey for TDS matters. It appears that this amendment is more in the nature of clarification especially when Courts had upheld the power of the authorities to conduct TDS survey. However, the power so given has been defined and restricted to matters pertaining only to TDS.

These amendments will take effect from 1st October 2014 (Clause 45)

6. The existing provision contained in sub section (3) of section 133A of the Act enables the Income tax authority to enter any premises in which business or profession is carried out for the purposes of survey. An income tax authority acting under this section may impound and retain in his custody any books of account or documents inspected by him during the course of survey. However, he shall not retain in his custody any such books of account or document for a period exceeding ten days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General therefor, as the case may be.

An Income tax authority acting under sec. 133A has the powers as conferred upon it under sub section (1) of sec. 131.

With a view to align the time period and the authority for approval beyond the specified time period it is proposed to provide that an income tax authority under section 133A shall not retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner of Principal Director General or Chief Commissioner or Director General or Principal Commissioner of Principal Director or Commissioner or Director therefor, as the case may be.

7. Section 116 of the Act is also proposed to be amended for creation of new income tax authorities. As per clause 3, 4 and 44 of the Finance Bill it is proposed to insert clauses (34A), (34B), (34C) and (34D) in section 2 of the Act so as to define the terms "Principal Chief Commissioner of Income tax", "Principal Commissioner of Income tax", "Principal Director General of Income tax" and "Principal Director of Income tax" to mean a person appointed to be an income tax authority under section 117 of the Act. It is also proposed to make consequential amendments in clauses (15A), (16) and (21) of section 2 of the Act and in other sections of the Act.

8. It may be noted that the Hon'ble Supreme Court in the case of *ITO vs. U.K. Mahapatra & Co. (2009) 225 CTR 131 (SC)* had held that retention of documents beyond unreasonable period was not proper, and directed to return the documents.

II. Inquiry by prescribed Income tax authority

9. With a view to enable prescribed income tax authority to verify the information in its possession relating to any person, it is proposed to insert a new section 133C in the Act so as to provide that for the purposes of verification of information in its possession relating to any person, prescribed income tax authority, may, issue a notice to such person requiring him, on or before a date to be therein specified, to furnish information or documents, verified in the manner specified therein which may be useful for, or relevant to, any enquiry or proceeding under this Act.

It may be noted that under the existing section 133(6), the officer has power to call for information in course of enquiry even where no proceedings are pending as held by Supreme Court in *Kathiroor Services Co-op. Bank Ltd. vs. CIT (CIB) (2014) 360 ITR 243 (SC).*

The powers are wide enough which will enable the prescribed income tax authority to make enquiries in relation to any person. Therefore, it is desirable that this wide discretionary power is subject to certain checks so as to prevent harassment of taxpayers in the name of investigation.

This amendment will take effect from 1st October, 2014 (clause 46)

III. Assessment of income of a person other than the person who has been searched

10. Section 153C of the Act relates to assessment of income of any other person. The existing provisions contained in sub section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149 section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of sec. 153A.

It is proposed to amend sec. 153C of the Act to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of sec. 153A if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub section (1) of sec. 153A.

It is now a settled position that the satisfaction as required by section 153C (erstwhile section 158BD) must be manifest from the records and is subject to judicial scrutiny. Therefore, as per the amended provision, the satisfaction note must be recorded by the AO of person searched, as well as by the AO of such other person. It may be apropos here to mention that this satisfaction as contemplated is different from recording of reasons under section 147/ 148 of the Act.

The amendment will take effect from 1st October 2014 (Clause 53)

Rahul K. Hakani, *Advocate*

Proposals related to Acceptance or Repayment of Loans & Deposit and Prosecution

I. Introduction

(i) Clause 63 of the Bill seeks to amend Section 269SS of the Income-tax Act relating to mode of taking or accepting certain loans and deposits. Clause 64 of the Bill seeks to amend section 269T of the Income-tax Act relating to mode of repayment of certain loans and deposits.

(ii) The Finance Bill proposes to treat loans or deposit taken or repaid by Electronic Clearing System through a Bank Account as not violating provisions of Section 269SS and Section 269T.

II. Existing Provisions

(i) The existing provisions of Section 269SS provides that no person shall take from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft, if the amount of such loan or deposit or aggregate of such loans or deposits is twenty thousand rupees or more.

(ii) Similarly the existing provisions of the Section 269T provides that no loan or deposit shall be repaid otherwise than by an account payee cheque or account payee bank draft, if the amount of such loan or deposit together with interest or the aggregate amount of such loans or deposits together with interest, if any payable thereon, is twenty thousand rupees or more.

(iii) The violation of provisions of section 269SS and 269T leads to levy of penalty u/s. 271D.

III. Proposed Amendment

(i) The Finance Bill seeks to amend Section 269SS so as to provide that accepting any loan or deposit of ₹ 20,000/- or more in aggregate or otherwise from any other person by use of Electronic Clearing System through a bank account will not violate the provisions of Section 269SS .

(ii) Similarly it is proposed to amend section 269T so as to provide that if a person repays any loan or deposit of twenty thousand rupees or more including interest in aggregate or otherwise by use of Electronic Clearing System through a bank account, it will not violate the provisions of Section 269T.

(iii) The amendments will take effect from 1st April, 2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent years.

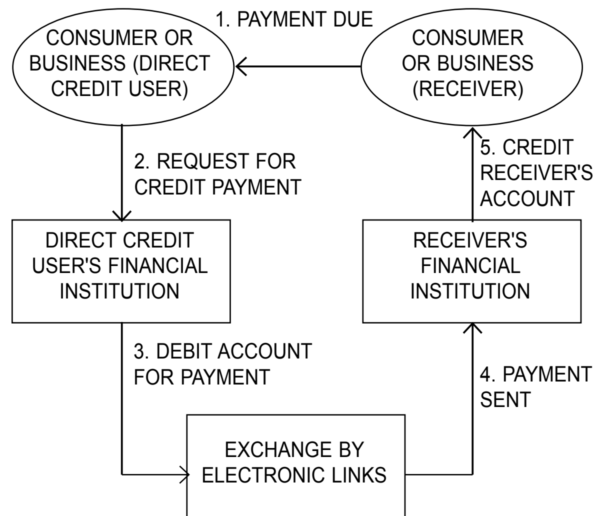
IV. Analysis of the Proposed Amendment

(i) The payments system in India is transforming from paper to electronic at a very rapid pace. Also, the enactment of the Payment and Settlement Systems Act, 2007, clearly sets out the objective of Reserve Bank Of India of ensuring "that all the payment and settlement systems operating in the country are safe, secure, sound, efficient, accessible and authorised". The Negotiable Instruments (Amendment & Miscellaneous Provisions) Act,2002 has amended the definition of Cheque contained in Negotiable Instruments Act 1881 to include transactions by Electronic Clearing System through Bank account. Thus, besides traditional means like cash, cheque, bank draft, etc., many novel means of payment have evolved through banking channels like internet banking, E-cheques, RTGS (Real Time Gross Settlement), Electronic Fund Transfer System (EFT), National Electronics Funds Transfer System (NEFT), Electronic Clearing System(ECS) etc. Infact, Internet banking has percolated down and is being used at an individual level as well as by medium and large enterprises.

(ii) The proposed Amendment permits usage of Electronic Clearing System for accepting and repaying loans and deposits. However neither the Act nor the current Finance Bill defines an ECS or explains its scope.

(iii) ECS is an electronic mode of funds transfer from one bank account to another. It can be used by institutions for making payments such as distribution of dividend, interest, salary, pension, among others. It can also be used to pay bills and other charges such as telephone, electricity, water or for making equated monthly installments payments on loans as well as SIP investments. ECS can be used for both credit and debit purposes. ECS works well since they take away the pain of writing cheques, especially for recurring payments. It pretty much puts the cumbersome task of paying EMIs , SIPs and bills on auto pilot. It enables faster Collection of bills by the companies and better cash management by them. It eliminates the need to go to the collection centres/banks by the customers and no need to stand in long 'Q's for payment. Infact, the Income-tax Department has also started making payment of refunds through ECS. Mahanagar Telephone Nigam Ltd. and others are now also offering facilities to their subscribers to pay their utility bills through ECS.

(iv) A typical ECS functions as under:



(v) Though the proposed amendment is a welcome change but the same should have been made in the Act, earlier itself. In fact, the definition of cheque under the Negotiable instruments act is amended way back in 2002 . Even,

Section 36(1)(ib) and Section 40A(3) of the Income Tax Act are suitably amended earlier to provide for payments through Electronic Clearing Systems. Prior to Amendment of Section 36(1)(ib), the said section provided that the deduction in respect of insurance premium of the employee paid by the employer shall be allowed in the books of the employer only if it is paid by cheque. However in this electronic age, payment of such premium can be made through other mediums like Electronic Clearing System (ECS), credit cards, etc. Thus to incorporate the same, the said section was amended from Assessment year 2008-09 onwards so as to allow deduction in respect of payments made through any other mode except cash thereby permitting deduction in respect of payments made through Electronic Clearing System. Similar amendment was made in Rule 6DD by IT(Eight Amendment) Rules 2007, with effect from Assessment Year 2008-2009 and thereby payments exceeding ₹ 20,000 if made by Electronic Clearing system through a Bank Account would be allowed as deduction under the Income Tax Act and the provisions of Section 40A(3) would not be triggered.

(vi) As pointed out earlier the term ECS is not defined in the Act. An issue may arise about permissibility of other means of payment through banking channels like internet banking, E-cheques, RTGS (Real Time Gross Settlement), Electronic Fund Transfer System (EFT), National Electronics Funds Transfer System (NEFT) etc. In CIT v. Venkatadhri Constructions [2013] 213 Taxman 180 (Mag.)/31 taxmann.com 71 (Mad.). it was held that where assessee deposited amount in excess of Rs. 10,000 to supplier's bank account it would be treated as cash payment and provisions of section 40A(3) would be applied in such case. Though the decision pertains to Assessment Years prior to amendment of Rule 6DD whereby payment through ECS is permitted, an issue may arise whether such mode of payment can be construed as made by using ECS. Infact, deposit of cash in seller's bank account in a Core Banking Solution (CBS) branch by the buyer is also very common these days. It may be argued that Electronic Clearing System covers such cases and a wider interpretation is to be given in view of the wide language used in Memorandum Explaining the provisions of the Finance Bill which provides "In the present times many banking transactions take place by way of internet banking facilities or by use of payment gateways" . However, in the ordinary and strict sense it seems to cover ECS facility only i.e., direct transfer of funds to one's bank account only.

(vii) The proposed amendment is effective only from A.Y 2015-2016.Hence an issue may arise whether payments accepted or repaid as loans and deposits through ECS prior to A.Y 2015-2016 would amount to violation of Section 269SS or Section 269T as the case may be and thereby become susceptible to penalty u/s 271D. Penalty u/s 271D is subject to the provisions of Section 273B i.e if an assessee is able to demonstrate a reasonable cause for violation of Section 269SS or Section 269T then penalty u/s 271D would not apply. The proposed amendment itself can be construed as a reasonable cause for not levying penalty u/s 271D as payments through ECS is not covered by the mischief for which the provisions of Section 269SS and 269T were introduced. Further payments through ECS are akin to

payments through cheques. This is because under ECS payer needs to ensure enough funds in the account, so that ECS gets cleared. If an ECS bounces one has to bear the same fines as for a bounced cheque. Also the payment is to be made to a specific person and in a way ECS leaves a more concrete trail than even account payee cheques Thus one could always have a Bonafide belief that transactions through ECS are nothing but transactions by way of account Payee Cheques and they do not violate the provisions of Section 269SS and Section 269T. In ACIT vs Jag Vijay Auto Finance (P) Ltd (2000) 68 TTJ (jpTrib) 44 it was held that deposits by transfer voucher of bank is not a violation of section 269SS . The said ratio can certainly be stretched for transactions through ECS and no penalty may be levied u/s 271D for transaction through ECS prior to A.Y.2015-2016.

V. Conclusions/Suggestions.

(i) The Proposed amendment by not defining the scope and ambit of ECS will certainly invite uncalled litigations. Hence the Finance Act must provide for the same.

(ii) In the alternative, an amendment similar to amendment made u/s 36(1)(ib) should be carried out in the Act whereby every other mode of transaction except cash would be a permissible transaction.

(iii) The proposed amendment is a welcome change in the correct direction.

Clause 69 – Section 276D

I. Introduction

(i) Clause 69 of the Bill seeks to amend section 276D of the Income-tax Act which relates to prosecution in case of failure to produce accounts and documents as required by Assessing Officer u/s 142(1) or 142(2A). The proposed amendment seeks to make punishment of rigorous imprisonment compulsory.

II. Existing Provisions

(i) The provisions of Section 276D were inserted by the Taxation Laws (Amendment) Act,1970 w.e.f 1-4-1971. The existing provisions of section 276D provide for punishment of rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both if a person wilfully fails to produce accounts and documents as required in any notice issued under sub-section (1) of section 142 or willfully fails to comply with a direction issued to him under sub-section (2A) of section 142.

(ii) Thus under the existing provisions of 276D right from 1971, the punishment of rigorous imprisonment was not compulsory.

III. Proposed Amendment

(i) The current Finance Bill proposes to amend section 276D, so as to provide punishment of rigorous imprisonment for a term which may extend to one year and with fine if a person wilfully fails to produce accounts and documents as required in any notice issued under sub-section (1) of section 142 or wilfully fails to comply with a direction issued to him under sub-section (2A) of section 142. This amendment will take effect from 1st October, 2014

(ii) Thus the proposed amendment seeks to make it mandatory to render punishment of both i.e imprisonment and fine. Hence, the provisions of Section 276D are sought to be made more strict and punishment more harsh.

IV. Analysis of the Proposed Amendment

(i) The proposed amendment makes the punishment u/s. 276D on par with punishment u/s 276B, S/ 276BB, S/ 276C, S/ 276CC i.e. cases of evasion of taxes and non payment of taxes. However, the bill does not give any explanation or reason why a change in the nature and manner of punishment has been made after a period of more than 44 years.

(ii) Under Criminal Jurisprudence, the quantum and manner of punishment has to be proportionate with the gravity of the crime. Non compliance of provisions of S. 142(1) and 142(2A) permits the AO to make assessment u/s. 144 and recover tax due thereon. Thus, the department is not remediless and the non-compliance does not lead to loss of revenue. Hence, it is apparent that the proposed mandatory punishment of both imprisonment and fine is not proportionate with the stated offence covered u/s. 276D.

(iii) It is to be noted that a Corporate entity cannot be punished with imprisonment. Hence, one of the way of looking at the proposed amendment would be that it has diluted the punishment as far as corporate entity is concerned as they cannot be prosecuted at all as the mandatory punishment of compulsory imprisonment cannot be implemented. However, this is not a correct view as the Supreme Court in *Standard Chartered Bank and other vs. Directorate of Enforcement and others reported in (2005)* 275 ITR 81 has held that a Corporate Body can be prosecuted where imprisonment is compulsory but punishment will only be fine. Further, under the Income tax Act, S. 278B which deals with offences by companies (includes a firm, AOP or BOI whether incorporated or not) was amended by Finance (No.2) Act 2004 w.e.f. 1/10/2004 by inserting sub section (3) to provide that where punishment prescribed for a offence under the Income tax Act, is imprisonment and fine then the company shall be punished with fine and every person responsible for such offence shall be punished with imprisonment and fine.

V. Conclusion/Suggestion

(i) As already pointed out, the memorandum explaining the Finance Bill do not give any compelling reason for making punishment harsher that too compulsory imprisonment after forty four years of introduction of Section 276D.

(ii) The proposed amendment appears to be arbitrary and infringing the fundamental rights of the citizen guaranteed under the Constitution Of India as it gives a complete goby to the theory of having a nexus between quantum of punishment and gravity of the offence which was appreciated for almost forty four years u/s. 276D by the legislature itself.

Hence, the proposed amendment needs a relook.

CA Bhavna Doshi

An overview of the Indirect Tax Proposals of Finance (No. 2) Bill, 2014

As the Hon'ble Finance Minister, Mr Arun Jaitley, stood up to present his maiden Budget on 10 July, 2014, all were eagerly awaiting announcement of several measures which could give rational, simple, stable, certain, non-adversarial and conducive tax environment; the key message of the newly elected government during its election campaign.

There were several areas that needed changes be it, the policy, the act, the rules or implementation and administration of the law. The hopes were really high and, I must say, there was immediate disappointment. But, then, that too was expected! While people at large and businesses did know and understand that this needs time, the feeling was that some measures will be announced to bring about 'feel good' factor; a move away from so called 'tax terrorism'. And, if you go through the detailed analysis of the new amendments and its implications, you may start thinking as to whether it is really so?

We do see some signs of short term measures to improve tax environment through tax proposals, be it direct tax or indirect tax, we, as tax professionals, do feel that there is a long way to go. We need several short term, medium term and long term measures and the Hon'ble Finance Minister has focused on areas that needed immediate attention. Take for example, the much needed amendment to the Valuation Rules under Central Excise Law to address challenges arising on account of the view taken by Supreme Court in situations where goods are sold, over a period of time, at lower than cost of manufacturing. But, then, there are other measures which are causing huge anxiety like the rate of interest going up to 30% for delay in payment of taxes beyond 1 year. Will such harsh measures improve compliance? Experience and economists would say otherwise.

Faced with multiplicity of taxes, huge compliance cost and litigation, double taxation and sometimes, multi-fold taxation of same transaction coupled with uncertainties, industry has been relentlessly pushing for implementation of Goods and Services Tax. Finance Minister, during very little time that he had from the time of assuming charge and presenting Budget, did meet with the State Finance Ministers and also, the Empowered Committee and has expressed confidence that they will be able to address the concerns of

States and create conducive environment for GST introduction.

While GST is a major initiative which will address several issues, one needs to be cautious of the challenges in its implementation. There are issues about dealing with Central Sales Tax, should it be abolished altogether or should it continue in same or other form, how to deal with digital transactions, whether any goods or services should be kept out of GST (ideally, none should be kept outside the purview of GST), which goods or services should have concessional rate (again, ideally, the list should be minimal to achieve tax efficiency), what should be the common threshold and the rate, common IT enabled platform (significant work is done on this), dealing with common disputes raised in different states and between Centre and State(s) and so on.

Achieving resolution of all these, besides the Big Daddy of all, Constitutional Amendment, will take some time and Finance Minister has treaded cautiously and has, to my mind, very rightfully, not set any specific time frame or roadmap though, the resolve to go ahead with full vigour is indicated.

Mounting litigation is a worry for all; government and tax payers and, here again, there is no easy solution. Stay applications is a process which adds to the time and cost for both tax payers and appellate forum. Reducing that one step, though, against a fixed amount, will help reduce the backlog. Every such measure will have negatives and this measure too has such negatives which, if addressed, could be a great boon for all. These are dealt with in another detailed article in this publication. One only hopes that the significant negative of not paying interest on such pre-deposit and possible application of provisions of unjust enrichment are appropriately dealt with. One also expects the officers to be more accountable and answerable for their actions which, often, though fully unjustified is taken 'to protect revenue' and such other grounds.

In a bid to assuage concerns of investors, especially, foreign investors, Finance Minister has made a very strong averment that ordinarily there will not be any retroactive amendments which could create liabilities in respect of the past periods; there will be stable tax regime. This is music to our ears, if actually implemented. Reading of all the provisions of the Budget, however, belies these hopes and, I am not referring to Vodafone and other cases pending in Courts in relation to indirect transfers. These are in litigation at different stages and will be dealt with appropriately. The case in point is the power taken to add a clarification, by way of explanation, to any notification or order within one year from the date of issue of notification or order and that such explanation will be effective from the date of issue of the original notification or order in which the explanation is inserted [S 5A(2A) of the Central Excise Act, 1944 made applicable to Service Tax]. If the explanation is beneficial, retrospective application is the need but, if it is not, it will create liabilities retrospectively and will have other consequences in terms of interest, penalty, recovery and so on.

Education is a focus area for all and ordinarily, entire educational activities are freed of taxes. Our service tax law also does not levy tax on school, college - recognized degree education as also on vocational education. These are covered in the negative list of services. However, if the services used for providing such education are taxed, the burden of tax remains and that also needs to be freed. This was sought to be achieved

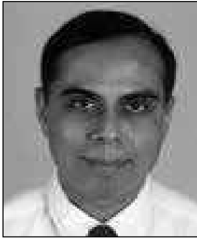
by specific exemption to specified 'auxiliary' educational activities. But, not so happily worded exemption had created confusion and the intended benefit was being lost. This is sought to be clarified in this Budget but, while doing so, a very important exemption for rent paid by educational bodies is taken away. Various issues arising from the new amendments is dealt with in another article in this Journal. We hope that Government will either consider this exemption or provide information/reason for withdrawing the benefit. Surely, it cannot be for expanding tax net as education is expected to be and is, to some extent, freed of the tax burden.

One of the causes of significant anxiety to businesses is the time limit provided for availing CENVAT Credit. While one cannot possibly quarrel with the objective of government in bringing this time limit – to have some measurable time within which taxes paid are claimed back – this provision misses the reality of the situation. There is another provision which prescribes the time when one can claim CENVAT Credit i.e., when the payment for service is made to the vendor. This results in anomalous situation whereby if one has not made payment for the service availed within six months from the date of receipt of the invoice, one would lose the substantive right to avail CENVAT credit. This amendment could lead to additional litigation and go against the very objective of the government. Remedy is to do away with the provision that CENVAT Credit can be availed only after payment is made to the vendor. When a person is required to pay service tax on accrual basis, the principles of Value Added Tax require that credit to the receiver is immediate.

On the whole, the Budget for this year is only a directional Budget. It gives us an indication of the approach of the Government and, as Finance Minister has been repeatedly saying, in post Budget meetings, that this is only the beginning of the journey and not the end; government is open to resolving issues and making tax policy and administration transparent, pro-active and pro-people. We do hope that representations will be considered with open mind and the 'babu' approach will be given a go-by; revenue will not be the only consideration; health of the businesses and tax payers will be given equal, if not more, weightage.

One of our suggestions to the government, in the light of its intent to provide efficient and non-adversarial tax regime, could be to bring about all amendments only through a Taxation Amendment Bill with adequate time for response, effective consideration of the suggestions/issues and reasonable time for implementation. Let us hope that every proposal for change in law is presented in the Parliament with expected revenue impact and estimated cost of compliance for the tax payers. Is it too much to expect?

> The nearest way to glory is to strive to be what you wish to be thought to be.
>
> — *Socrates*



CA Rajkamal Shah & CA Naresh Sheth

Proposals relating to Service Tax

The Honourable Finance Minister presented union budget in Lokhsabha on 11-7-2014., The Finance Bill, 2014 proposes various amendments in Chapter V of Finance Act,1994 (Service Tax). The stated objective of amendments is to widen the tax base, enhance compliance, ensure stability in Negative List based levy. The Tax research unit (TRU) has come out with letter No. D.O.F. No. 334/15/2014 – TRU dated 10-7-2014 explaining Finance Bill proposals. However, the tax rate of 12.36% and threshold exemption limit of ₹ 10 Lakh is maintained.

Various Finance Bill proposals impacting service tax are discussed hereunder.

- Legislative Amendments by Clause 106 of the Finance (No. 2) Bill, 2014
- Amendment to Service Tax Rules, 1994 – [Notification No. 9/2014 – ST]
- Amendment to exemptions - [Notification No. 6/2014 – ST]
- Amendment to abatements – [Notification No. 8/2014 – ST]
- Amendment to Service Tax (Determination of Value) Rules, 2006, - [Notification No. 11/2014 – ST]
- Amendment to Point of Taxation Rules, 2011 – [Notification No. 13/2014 – ST]
- Amendment to Place of Provision of Service Rules, 2012 – [Notification No. 14/2014 – ST]
- Amendment to Cenvat Credit Rules, 2004 – [Notification No. 21/2014 – CE(NT)]
- Amendments as regards to Special Economic Zones – [Notification No. 7-2014 – ST]

All the notifications are dated 11-7-2014. The same are discussed below in the chronological order with the effective dates.

1. Legislative Amendments – [effective from the date to be notified after enactment of the Finance (No. 2) Bill, 2014]

a) Insertion/ Amendment in statutory definitions:

- Definition of "Meter Cab" is amended to exclude the Radio taxi [Section 65B(32)].
- "Print media" to mean book and newspaper as defined u/s 1 (1) of the Press and Registration of Books Act, 1867 and does not include business directory, Yellow pages and trade catalogues primarily meant

for commercial purpose [Section 65B(39a)]

b) Amendment in Negative list of services effective from the date to be notified after enactment of Finance (No.2) Bill, 2014:

- Presently "Radio taxi services" is covered in Negative List and hence not liable to service tax. It is now proposed to exclude "Radio Taxi service" from negative list. Consequently the same will be taxable [Section 66D (o) (VI)].
- Presently, sale of space or time slot for advertisement (other than advertisement broadcast by Radio or television) is in negative list. Consequently, advertisements in internet website, cell phones, bill boards, conveyances, automated teller machines, aerial advertising, theatre screen etc. are excluded from service tax levy.

  It is proposed to restrict coverage of Negative List only to Advertisement in print media as defined u/s 65(39a).Consequently, only Print media advertisements will not be liable to service tax. All other advertisements including advertisements in business directories, Yellow page and trade catalogues will be taxable.

c) Rate of Exchange for valuation of import or export of services to be amended effective from the date to be notified after enactment of Finance (No.2) Bill, 2014:

Presently valuation of import or export of services is done at custom notified rates of exchange [Explanation to Section 67A]. It is proposed to delink rate of exchange from custom notified rates. The valuation of import or export of services will have to be done in accordance with Rules to be prescribed by the Central Government.

d) Time Limit is now prescribed for completion of adjudication proceedings. The same shall be effective from the date of enactment of Finance (No.2) Bill, 2014 S. 73(4B):

Show Cause Notice issued for*	Prescribed Time Limit*
Normal period	6 months from date of Notice
Extended period of five years	One year from the date of Notice

**It is provided that this time limit should be adhered to as far as possible.*

e) Power to waive penalty is proposed to be amended effective from the date of enactment of Finance (No.2) Bill, 2014:

Presently, proviso to section 78(1) prescribes the reduction of 50% in penalty where true and complete details of transaction are available in specified records. Section 80(1) provides for waiver of said penalty where assessee proves reasonable cause for non-payment or short payment of tax.

It is proposed to amend Section 80 (1) for removal of power to waive such penalty even though details may be available on the records.

f) Power to search premises is proposed to be amended effective from the date of enactment of Finance (No.2) Bill, 2014:

Presently, only Joint Commissioner of Central Excise has power u/s 82 to search or authorize superintendent of Central Excise to search any place and seize any documents, books or things. It is now proposed to empower the Additional Commissioner of Central Excise or any other Central excise officer notified by the board also to exercise above referred powers.

g) Certain provisions of Excise are proposed to be made applicable to service tax effective from the date of enactment of Finance (No.2) Bill, 2014:

Section 83 is being amended to make following provisions of Central Excise Act, 1994 applicable to service tax:

i. Section 5A(2) prescribes that any explanation inserted in a notification or special order at any time within one year of issue of notification or order clarifying the scope or applicability thereof shall have effect from the date of issue of such notification or order.

ii. Section 15A provides that the assessees or specified authority (such as VAT / Sales Tax authorities, Income Tax authorities, State Electricity Board, Registrar of Companies etc.) will be required to submit an information return in prescribed format to an authority / agency. Penalty of ₹ 100/- per day is imposable (S.15B) on a person required to furnish such information for failure to provide the same.

iii. At present Tribunal has discretionary power u/s 35B to refuse admission of appeal involving stake of ₹ 50,000. Such limit is proposed to be enhanced to ₹2,00,000.

iv. First, Second and Third Proviso to Section 35C relating to validity period of the stay order is proposed to be deleted.

v. The proposed substitution of Section 35F provides for mandatory fixed pre-deposit of duties and penalties for filing appeals before Commissioner (Appeals) and Tribunal. The mandatory pre deposits will be as under:

- 7.5% of the duty/tax or penalty or both for filling appeal with Commissioner (Appeals) or the Tribunal at the first stage;
- 10% of the duty/tax or penalty or both for filing second stage appeal before the Tribunal;
- The ceiling for total pre-deposit will be ₹ 10 Crore.

With this amendment the right to apply for a stay of demand before appellate authorities is effectively withdrawn. This provision is not applicable to pending stay applications/appeals made prior to the date of applicability of these provisions.

h) The Board is empowered to constitute committee of Commissioners to review orders, by passing an order instead of notification. [Section 86(1A)].

i) The words "for grant of stay or" are omitted in section 86(6A).

j) The Commissioner is now empowered to recover dues of a predecessor assessee from the assets transferred to his successor. [Section 87]

k) Additional powers granted to the Central Government in relation to levy and collection of tax, furnishing of information, imposition on persons liable for service tax to maintain records, withdraw facility or restrict CENVAT credit utilization and authorizing CBEC to issue instructions for incidental or supplementary issues. [Section 94(2)]

l) The Central Government is empowered to issue order for removal of difficulty for any amendment made by the Finance (No.2) Act, 2014 within one year from the date of its enactment. [Section 95]

m) Section 94 is proposed to be amended effective from the . date of enactment of Finance (No.2) Bill, 2014 to provide for rule making powers:

- to impose the duty of furnishing information, keeping records and making returns on assessee and specify the manner in which they shall be verified.
- For withdrawal of facilities or imposition of restrictions (including restrictions on utilization of Cenvat credit) on service provider or exporter, to check evasion of duty or misuse of CENVAT credit.
- To issue instructions in supplemental or incidental matters.

n) It is proposed to empower Central Government u/s 95 to issue orders for removal of difficulty in case of certain provisions inserted by the proposed legislation in this Chapter, up to one year from the date of enactment of the Finance (No.2) Bill, 2014.

o) It is proposed to insert Section 100 for granting exemption for Services provided by Employees State Insurance Corporation to persons governed under Employees Insurance Act, 1948 with retrospective effect prior to 1-7-2012.

2. Amendments to Service Tax Rules, 1994-

Payment under Reverse Charge-Rule 2(1)(d) (effective from 11.7.2014):

- In relation to service by a recovery agent to a banking company, a financial institution or a NBFC, the recipient of service is now liable to pay tax in full on reverse charge basis. [Rule 2(1)(d)]
- In addition to service provided by directors of a company, reverse charge is also applicable to services provided by directors to a body corporate. (This will cover the institution like RBI, SEBI which are not companies under the Companies Act but they are body corporates).
- Payment under partial reverse charge in case of renting of motor vehicle [effective from 1.10.2014]:

In case of service by way of renting of motor cab (where no abatement is availed), the receiver of service who is a business entity registered as body corporate, is required to pay 50% of service tax under partial reverse charge mechanism as against earlier 40% [Amendment to Notification No. 30/2012 – ST].

Mandatory E-payment of service tax for all assessees (effective from 1.10.2014)

Every assessee is now required to pay service tax electronically through internet banking. Presently, the assessee paying service tax of ₹1lakh (inclusive of payment by way of CENVAT credit) in the preceeding financial year is only required to pay service tax electronically through internet banking. [Rule 6(2)]

3. Amendments to exemptions-NN. 25/2012 – ST (effective from 11.07.2014):

New Exemptions-

a) Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto. [entry 2B]

b) Services of life insurance business provided in relation to life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees. [entry 26A(c) and definition of life micro insurance product under para 2(xa)]

c) Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves such as external asset management, custodial services, securities lending service etc. [entry 41]

d) Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India. This exemption is available to an Indian tour operator in case they organize tours for foreign tourists wholly outside India, for e.g. a tour is organized for British tourists to America by an Indian tour operator. [entry 42]

Modification in existing exemptions:

a) Education related services:

Presently, all services provided by the educational institutions to their students, faculty and staff are covered under Negative list. The services as defined under 'Auxiliary Education Services' [para 2(f) of notification No. 25/2012 – ST] provided to the educational institutions including renting of immovable property was exempt. The "auxiliary educational services" covered the services provided to educational institutions viz. any service relating to imparting any skill, knowledge, education or development of course content or any other knowledge enhancement activity whether for student or faculty or any other services which educational institution ordinarily carry out themselves but may obtained as outsourced from any other person. Now, the exemption is rationalized to define specific exemptions under entry 9 as under and the reference to 'auxiliary education services' is removed:

i. Services provided by educational institution to its students, faculty and staff. [entry 9(a)]

ii. Services provided to an educational institution by way of,

- transportation of students, faculty and staff;
- catering including any mid-day meal sponsored by the Government;
- security or cleaning or house-keeping services performed in such educational institution and
- services relating to admission or conduct of examination by such institution.

Thus the exemption is now partly curtailed. Further, services in relation to renting of immovable property to an educational institution in respect of education is now taxable.

Only those kinds of educational institutions covered under the negative list cl. 66D (l) are eligible for the exemption. This means the educational institution providing services by way of a) pre -school education and education up to higher secondary school or equivalent; b) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; c) education as a part of an approved vocational education course are only covered. [by insertion of clause (oa) in para 2 of exemption notification 25/2012 – ST]. [Substitution of entry 9 and omission of Para 2(f)]

b) Presently, exemption is provided to service by a hotel, inn, guest house, club or campsite, whether commercial or otherwise, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or

equivalent. The word, 'other commercial places' are now substituted by the words, 'whatever name called'. It is thus made clear that dharamshalas, ashrams etc., charging less than ₹ 1000/- per day for accommodation will also be exempt. [Substitution of entry 18]

c) Presently, service by way of transportation of fertilizer and oil cakes by rail or vessel from one place in India to another is exempt. Further, transportation of chemical fertilizers and oil cakes by road is also exempt. Now the exemption in relation to transportation of chemical fertilizer, organic manure, oil cakes cotton, ginned or baled, by rail or vessel or road, from one place in India to another is harmonized. [entry 20 (j) and (k) & entry 21 (e) and (i)]

d) Exemption in relation to services by way of transportation of passengers with or without accompanied belongings, excluding for tourism, conducted tour, charter or hire, is now restricted to transportation by non air-conditioned contract carriage other than radio taxi. [Substitution of entry 23(b)]

"Radio taxi" means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS). [insertion of Para 2 (za)].

e) Presently, services provided to Government, a local authority or a governmental authority for carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation is exempt. Now the exemption is available specifically to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation and would not extend to other services such as consultancy, designing etc., which are not directly connected with the specified services. [Substitution of entry 25(a)]

f) Presently, exemption services by way of loading, unloading, packing, storage or warehousing of rice is exempt. The exemption is now extended to cotton, ginned or baled. [Substitution of entry 40]

Exemption withdrawn:
Exemption to service by way of technical testing or analysis of newly developed drugs including vaccines and herbal remedies on human participants by approved clinical research organizations is withdrawn. [omission of entry 7]

4. Amendment to abatements - NN. 26/2012 – ST -

a) In relation to service of goods transport agency for transportation of goods, it is clarified that the condition as regards to non-availment of CENVAT credit is applicable qua service provider only. Thus, the service recipient is not required to satisfy this condition which is applicable to service provider only. [entry 7 – effective from 11.7.2014]

b) In relation to transport of passengers by any motor vehicle (motor cab from 1.10.2014) designed to carry passenger, the abatement of 60% would now be allowed even if the credit of in relation to input service from another renting of motor cab service provider is taken in the manner:

   i) such service provider has paid service tax on 40% of value (i.e. after abatement of 60%), or,

   ii) such service provider has paid service tax on full value and Cenvat

credit of 40% of such service tax is taken.

iii) In cases other than mentioned hereinabove, no Cenvat credit of input, input service and capital goods should have been taken.

[entry 9 – effective from 1.10.2014]

c) In relation to transport of passengers, with or without accompanied belongings, by a contract carriage other than motor cab (and radio taxi, as and when notified) 60% of abatement is allowed to be taken with the condition that CENVAT credit on input, capital goods and input services used for providing the taxable services is not taken. [insertion of entry 9A effective from the date to be notified]

d) Abatement in relation to Tour operators:

Abatement of 60% will be allowed even if Cenvat credit of such input service received from a tour operator is taken. However, other than this, no Cenvat credit of input, input service and capital goods should be taken for providing the taxable services. [entry 11 - effective from 1.10.2014]

e) Abatement in relation to transport of goods in a vessel is proposed to be restricted from 50% to 40%. [entry 10 – effective from 1.10.214]

5. Amendments to Service Tax (Determination of Value) Rules, 2006 ('Valuation Rules') – effective from 01.10.2014

Rule 2A (ii) of Valuation Rules provides mechanism to determine the value of service portion in the Works contract on presumptive basis. The present position of value of works contract other than that of original work and the proposed provision is shown below:

Category	Works contracts covered	value of Service at present	Proposed value of Service
A	Original works i.e. new constructions	40%	40%
B	Maintenance, repair, reconditioning, restoration or servicing of goods	70%	70%
C	Not covered under A & B including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tilling, installation of electrical fittings of an immovable property	60%	70%

Thus, the category B & C is proposed to merged under the new dispensation.

6. Amendment in rate of interest applicable on delayed payment of service tax - effective from 01.10.2014:

Presently, the normal rate of interest for delayed tax payment is 18% p.a. The interest rate for service providers having taxable services not exceeding ₹ 60 lakhs ('small service providers') in immediately preceding financial year is reduced by 15% p.a. (Proviso to section 75).

It is proposed to introduce progressive rate of interest depending on delay in payment as under:

Period of Delay	Simple Interest Rate
Up to six months	18% p.a.
More than six months and up to one year	18%p.a.for the first six months of delay;
	24% for the delay beyond six months
More than one year	18 % for the first six months of delay;
	24%p.a. for delay six months up to one year;
	30 %p.a. for any delay Beyond one year.

For small service provider, interest rate will be 15%, 21% and 27% respectively.

(Notification No. 12/2014-ST dated 11.07.2014).

7. Amendments to Point of Taxation Rules, 2011 – effective from 1.10.2014

Presently, Point of Taxation for service recipient (liable to pay service tax under reverse charge mechanism) u/r 7 of POTR is as under:

payment from the invoice date	Point of Taxation
Where payment is made within 6 months from the invoice date	Payment date
Where payment is not made within 6 months from the invoice date	POT shall be determined as if Rule 7 does not exist POT in such case would be as per applicable Rule i.e. Rule 3, 4 or 8. Rule 3 is a general rule where POT will be earlier of: ▪ Invoice date (when invoice is issued within 30 days from completion of service) and if invoice is not issued within 30 days, date of completion of service; or ▪ Date of Payment

The Rule is proposed to be amended to reduce period for payment of invoice from 6 months to 3 months.

(Notification No. 13/2014-ST dated 11.07.2014.)

8. Amendments to Place of Provision of Service Rules, 2012 (POSP) – effective from 01.10.2014:

a) Presently, Intermediary is defined u/r 2(f) of POSPR to mean service intermediary. It does not include goods intermediary. The service tax implications thereof are as under:

Nature of Intermediary service provider	Applicable sub-Rule of POSP	Place of provision	Implications
Service intermediary	Rule 9	Location of service provider	Not liable where intermediary is located in taxable territory. However, liable where the intermediary is located in the taxable territory.
Goods intermediary	Rule 3	Location of service receiver	Not liable where service receiver is located in non - taxable territory. However, liable where the service receiver is located in the taxable territory.

It is proposed to amend the definition of 'intermediary' u/r 2(f) of POSP to include goods intermediary (excluding person supplying goods on his account).this means the service intermediary and goods intermediary shall now be treated as par so far as tax treatment under PPSR is concerned.

b) Presently, Place of provision in respect of short term hiring (for a period upto one month) of any means of transport u/r 9(d) is deemed to be location of service provider.

Rule 9(d) is proposed to be amended to exclude hiring of vessels (excluding yachts) and aircraft. Irrespective of the time period, hiring of vessel and aircraft will fall under general rule 3 and place of provision will be deemed to be location of service receiver.

c) Presently, repair, reconditioning and re-engineering services in respect of goods imported into India temporarily and re-exported are deemed to have been provided at the location of service recipient (Proviso to Rule 4(a) of POPS).

It is proposed to amend proviso to Rule 4(a) to exclude reconditioning and restoration services. Further, the repaired goods should be re – exported without putting it to use in India. Thus, service of re-conditioning and re-engineering will be deemed to have been provided at the location of service provider. Further, in relation to containers etc which are brought into India for repairs purpose and after repairs used for the purpose of export of goods would become liable to tax.

(Notification No.14/2014-ST dated 11-7-2014)

9. Scope of Advance Ruling extended – effective from 11.07.2014:

It is proposed to extend the Scheme of Advance Ruling to Resident Private Limited Companies.

"Private limited company" shall have the same meaning as is assigned to "private company" in clause (68) of section 2 of the Companies Act, 2013.

"Resident" shall have the same meaning as is assigned to it in clause (42) of section 2 read with sub-section (3) of section 6 of the Income-tax Act, 1961

(Notification No. 15/2014 –ST dated 11.07.2014).

10. Amendments to Cenvat Credit Rules, 2004 - [Notification No. 21/2014 – CE(NT)]

a) Time limit for taking CENVAT credit -

A manufacturer or provider of output service cannot take CENVAT credit of duty / service tax paid on inputs or input services after six months of the date of issue of any of the documents specified in Rule 9(1) of CENVAT Credit Rules, 2004.[Rule 4(1) and 4(7) effective from 01/09/2014]

With this amendment, the assessee's right to avail Cenvat credit without any time limit is taken away. This amendment has nullified the effect of decision of Allahabad High Court in case of Ram Swarup Electricals Ltd[1] and various other judgments allowing availment of Cenvat credit without any time limit.

b) In respect of input services where the whole of the service tax is liable to be paid by the recipient of service, it

1. 2007 (217) ELT 12 (All.)

is now provided that, CENVAT credit shall be allowed after the service tax is paid. Hence, the earlier condition which stipulated payment of invoice value to the service provider for availing credit of input services is withdrawn. However, there is no change in conditions for availing CENVAT credit of input services, in respect of payments made under partial reverse charge. In such a case, the recipient of input service can take credit at the time of receipt of invoice, bill or challan as referred to in R.9. However, if the payment of value of such service is not made within three months from the date of such invoice etc., the receiver of service is required to pay the Cenvat credit so taken and shall be entitled to take credit after the day on which payment is made of the value of service and service tax paid or payable as indicated in the invoice,. [Rule 4(7) effective from 11/07/2014]

c) In case of export of service, a provision is made whereby if payment is received after the specified or extended period allowed by RBI but within one year from such period, the provider of output service shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier in terms of Rule 6(3) to the extent it relates to such payment, on the basis of documentary evidence of the payments received. This is a beneficial provision and the exporter of the service can re-take the Cenvat credit used for providing such service if the payment in convertible foreign exchange is received within the stipulated period. Earlier, the export of such service was not treated as exempt service if the payment not received within a period of six months or extended period as may be allowed by the RBI and the credit was required to be reversed. [Rule 6 (8) effective from 11/07/2014]

d) Clarification as regards to distribution of Cenvat credit to Input service distributor- The rule is now amended to allow distribution of input service credit to all units which are operational in the ratio of their turnover in the previous year. Previously the words, 'such unit' used in R.7(d) were capable to interpret that the distribution of credit would be restricted to only those units where the services were used resulting into reduction of distribution of the CENVAT credit by the proportion of the turnover of those units where the services were not used. A clarification is now issued by way of circular[2] and an illustration is given to the effect of the amendment carried out vide Notification No. 5/2014 – CE (NT) dtd. 24.2.2014.

e) "Place of removal" is defined in Rule 2(qa) to mean:

- a factory or any other place or premises of production or manufacture of the excisable goods;
- a warehouse or any other place or premises wherein the excisable goods are permitted to be deposited without payment of duty;
- a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory, from where such goods are removed [insertion of R.2(q) effective from 11/07/2014]

f) Large Tax Payer Unit

Transfer of CENVAT credit by a larger tax payer from one unit to another is now not permitted. [Rule 12A effective from 11/07/2014]

2. Circular No. 178/04/2014 – ST dtd. 10.7.2014

11. Services provided to a unit of SEZ or the developer of SEZ - [Notification No. 7-2014 – ST] [effective from 11/7/2014]

a) The jurisdictional Deputy Commissioner is required to issue authorization within 15 working days from the date of submission of Form A-1.

b) Such authorization shall be valid from the date of verification of Form A-1 by the specified officer of the SEZ. If Form A-1 is not submitted to the jurisdictional AC / DC within 15 days of verification by the specified officer, the authorization shall be valid from the date on which the same is submitted.

c) Pending issuance of the authorization, the provider of specified service may provide such service without payment of service tax on the basis of Form A-1 and the unit or developer shall provide a copy of authorization to the service provider immediately on receipt of such authorization. If the SEZ unit or developer does not provide copy of the said authorization to the provider of specified service within the period of 3 months from the date of provision of the specified service, then such service shall deemed to have been provided in terms of POT Rules, and the service provider shall pay service tax on such service.

d) For the purpose of this notification, a service shall be treated as used exclusively for the authorized operations if the service is received by the SEZ Unit or the Developer under an invoice in the name of such Unit or the Developer and the service is used only for furtherance of authorized operations in the SEZ.

e) Service Tax Registration No. is not applicable in Form A-1 and A-3 if the specified service is covered under full reverse charge.

Conclusion:

Honourable Finance Minister has presented his maiden budget within 45 days from formation of new government. It was unreasonable to expect miracle from him in such a short time. The Finance Bill has almost maintained status quo. 'Achchhe din' are not in immediate sight. However, 'achchhi niyat' is definitely visible when one sees amendments proposing time limit for adjudication and issue of form A-2 to SEZ unit, coinciding effective date of major amendments with service tax return cycle etc. One feels that avoidance of amendments proposing mandatory pre-deposit of tax before hearing of the appeal, abnormal hike in interest rates and restriction on availment of Cenvat credit for the invoices older than 6 months etc. would have made Finance Bill better looking. It is hoped that these unjustified amendments will not find place when the Bill take shape of the law.

However, let's be optimistic about future relying on words of Finance Minister, "This is the beginning of our journey, not the end. "Abhi hum jitna kar sakte the, humne utna kiya hai" (whatever I could do now, I have done) & all the decisions are not taken on day one." Let's hope that one day India will witness fair taxation law and tax administration.

CA Hasmukh Kamdar

Proposals relating to Central Excise

[Changes in the Central Excise Act, 1944 (the Act) are effective from the date of enactment of the Finance (No. 2) Bill 2014, except where stated otherwise]

1 Changes in the Central Excise Act, 1944

i. Section 35F of the Act is substituted with new Section The substituted section 35F provides for a mandatory fixed pre-deposit of 7.5% of the duty demanded or penalty imposed or both for filing an appeal with Commissioner (Appeals) or Tribunal at the first stage and additional 10% of the duty demanded or penalty imposed or both for filing second stage appeal before the Tribunal. However the amount of pre-deposit payable shall be subject to a ceiling of rupees ten Crores. Further First, Second and Third proviso to section 35 C (2A), relating to granting of stay are omitted.

   In view of the above amendment, the filing of stay application would not be necessary and Commissioner (Appeals) and Tribunal would be able to deicide the Appeal itself provided pre-deposit is made as per new provision. The appellant would not be facing highhanded recovery action from the Department on expiry of stipulated 180 /365 days, since the three provisos to Section 35 C (2A), relating to granting of stay are also omitted. At the same time it is clear that due to mandatory pre-deposit as prescribed, the appellant would not be able get the benefit of full/partial waver of pre-deposit on the basis of prima facie strong case on merits or on limitation or otherwise and /or financial hardship

ii. A new Section 15A in inserted in the Act to provide that any person being an assessee, or a local authority or other public body or association or VAT/sales tax authority, or income tax authority, or a banking company, or State Electricity Board, Registrar or sub-Registrar under Registration Act, or Registrar of Companies, RTO, or Collector appointed under Land Acquisition Act, or Officer of recognised Stock Exchange, or Security Depository or an Officer of RBI shall furnish an information return to such an authority or agency as may be prescribed. If such a person fails to submit the information within the time prescribed, the authority may direct the person to pay a penalty of one hundred rupees for each day for such a failure.

   As a result of the above amendment, Department can now ask for and receive information about any manufacturer

from third parties/persons/government authorities listed above. If proper information is not provided, penal provisions are applicable. The provision gives sweeping power to make enquiries about any manufacturer whether there is possibility of leakage of revenue.

iii. Section 35B(1) is amended to increase the discretionary powers of the Tribunal to refuse admission of appeal from existing ₹ 50,000/- to ₹ 2,00,000/- As per present provisions CESTAT could refuse to admit the Appeal if the demand of duty /service tax was less than ₹ 50,000/-. This limit is increased to ₹ 2,00,000/- .The amendment may result into reduction in number of appeals filed. However small assessee, where demand is less than ₹ 2,00,000/- may suffer as their appeal may not be admitted by the CESTAT, thereby losing an opportunity of review of demand by an impartial legal forum like CESTAT and thereafter Courts.

iv At present Appeal against the Tribunal's order in respect of determination of any question having relation to rate of duty lies with the Hon'ble Supreme Court. It is now provided that the term 'determination of any question having relation to rate of duty' shall also include determination of disputes relating to taxability or excisability of goods. Appeal against Tribunal orders in such matters would lie before the Supreme Court. Since Central Excise Act is a Central Act, question of excisability or otherwise of any particular goods has all India implication, appeal on such a question from the order of the CESTAT would now lie directly to the Hon'ble Supreme Court and not to Jurisdictional High Court.

v. The CBEC has instructed the Excise Officers to avoid filing Appeal to CESTAT in small value case where demand is less than four lakhs rupees. However with a view to pre-empt an argument from the assessee that department has accepted such decisions by not filing an appeal against the same, Section 35 R of the Act is amended to enable the Commissioner (Appeals) hearing the appeal, revision or reference to take into consideration, in case of a precedent order, the circumstances under which the appeal, application, revision or reference was not filed by the Commissioner on the same issue, having regard to the low amount of demand.

vi. The Scheme of Advance Ruling is extended to Resident Private Limited companies. The 'private limited company' shall have the same meaning as defined in the Companies Act, 2013, and "resident 'have the same meaning as defined in Income -tax Act, 1961

vii. Recently new posts of Principal Chief Commissioner of Central Excise, and Principal Commissioner of Central Excise are created by the Department. To enable such designated officers to exercise powers of a Central Excise Officer, Section 2(b) of the Act is amended to provide for inclusion of Principal Chief Commissioner of Central Excise and Principal Commissioner of Central Excise in the definition of the Central Excise Officer. Further any reference to a Chief Commissioner of Central Excise or a Commissioner of Central Excise may also include a reference to the Principal Chief Commissioner of Central Excise of Principal Commissioner of Central Excise, as the case may be.

vii. Section 31 of the Act is amended to rename the "Customs and Central Excise Settlement Commission" as Customs, Central Excise and Service Tax Settlement Commission".

2 Changes in Central Excise Rules 2002

i. At present vide Notification No. 4/2010-CE-NT, an assessee who has paid duty of Rs. 10 lakhs in the preceding financial year, is required to deposit duty electronically through internet Banking. Now sub-Rule 1B of Rule 8 provides that w.e.f. 1-10-2014, every assessee shall electronically pay duty through internet banking, except where Assistant Commissioner of Central Excise, for reasons to be recorded in writing, allows an assessee to make payment of duty by any mode other than internet banking.

ii. At present Rule 8(3A) provides that if the assessee defaults in payment of duty beyond thirty days from the due date ,the assessee is required to pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon. And in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in Rules shall follow. This provision has been matter of lot of litigation as it does not make a distinction between cases of bonafide mistake which can result into default in payment of duty and cases of wilful default. The Rule is replaced by new rules which now provides that w.e.f. 11-7-2014, if an assessee fails to pay the duty declared as payable by him in the return within a period of one month from the due date, penalty at the rate of one per cent on such amount of duty not paid, is payable for the period during which such failure continues.

3. Changes in the Central Excise Valuation Rules, 2000

In the case of Fiat India Limited, the apex Court has upheld rejection of transaction value on grounds that the assessee was selling cars manufactured by him at a price substantially lower than cost of the manufacture over a period of five years and the reason for adoption of such pricing was to penetrate the market. The Court held that such reason would constitute extra commercial consideration and not the sole consideration. The court did not accept the contention that whenever goods are sold in the competitive market , at a price at arm's length, it should be treated as assessable value. The Department has tried to interpret the decision in such a way that whenever goods are sold at loss, the transaction value should be rejected and extra consideration should be deemed to the extent of loss and duty should be payable thereon. A proviso is being inserted in Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 to provide that where price is not the sole consideration for sale of such excisable goods and they are sold by the assessee at a price less than manufacturing cost and profit, and no additional consideration is flowing directly or indirectly from the buyer to such assessee, the value of such goods shall be deemed to be the transaction value. This effectively means that the declared value should be accepted as transaction value even in cases when sale price is below the cost of production and profit if no additional consideration flows directly or indirectly from buyer to such assessee.

4. Changes in CENVAT Credit Rules, 2004

i. The term 'place of removal' is now defined as

(a) a factory or any other place or premises of production or manufacture of the excisable goods;

(b) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(c) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory,

From where such goods are removed.

[effective from 11-7-2014]

ii At present there is no time limit for availing CENVAT Credit. W.e.f. 1st September 2014 a manufacturer or provider of output service shall not take CENVAT credit after six months of the date of issue of any of the documents specified in sub-rule (i) of Rule 9. The validity of CENVAT credit documents is now therefore restricted to six months

iii Rule 12 (4) is amended to deny the facility of transfer of CENVAT credit from one registered unit to another registered unit to a large tax payer. W.e.f. 11-7-2014 a large tax payer unit cannot transfer CENVAT credit availed at one unit to any other unit.

5. Unit Quantity of Codes

The Schedules to the Central Excise Tariff Act, 1985 are amended in respect of selected goods to match the Unit Quantity prescribed therein with the ones that are actually used in trade and commerce. This would facilitate trade and improve data quality and compliance.

6 Major changes in Rates of Duty [effective from 11-7-2014]

i An additional duty of 5% is imposed on aerated waters containing added sugar falling under Chapter heading 2202.10

ii specific rate of duty on cigarettes is increased by 72% on cigarettes of length not exceeding 65 mm and by 11 % to 21% on other cigarettes.

iii Basic excise duty is increased from 12% to 16% on pan Masala, from 50% to 55% on unmanufactured tobacco and from 60% to 70% on jharda, scented tobacco, gutkha and chewing tobacco

iv Excise duty on Branded petrol is reduced from ₹ 7.50 per litre to ₹ 2.35 per litre

v Excise duty of 6% is levied on writing and printing paper for printing educational text books instead of optional excise duty of 2% without CENVAT and 6% with CENVAT

vi Excise duty on footwear of retail price exceeding ₹ 500/- per pair but not exceeding ₹ 1000/- per pair is reduced from 12% to 6%.

vi Excise duty on machinery for preparation of meat, poultry, fruits, nuts or vegetables, wine, cider, fruit juices etc is reduced from 12% to 6%

vii Full exemption is provided to:

- LPG supplied to Non- Exempted Category customers of IOL, HPCL and BPCL
- Specified raw materials and solar tempered glass used for manufacture of solar photovoltaic cells or modules
- Security thread and Security fibre supplied to Security paper mills.
- Parts consumed within the factory of production for manufacture of non conventional energy devices.
- Reverse osmosis membrane element for water filtration or purification equipment
- Specified HIV/AIDS drugs and diagnostic kits supplied under National Aids Control Programme.
- Education Cess and Secondary and Higher Secondary Cess (customs component) on goods cleared by an EOU into DTA

CA Udayan Choksi & Meetika Baghel, *Advocate*

Proposals relating to Customs Duty

This article discusses the key proposals in relation to customs duty. Clearly, the focus of these amendments is tax certainty. An endeavour has also been made to reduce litigation, and to streamline procedures. In this connection, the FM indicated in his Budget Speech his intention to set up a High Level Committee, which will give recommendations on necessary tax clarifications to the Central Board of Excise and Customs (CBEC) on the basis of its regular interactions with the trade and industry, and that the CBEC will be mandated to issue suitable clarifications within a defined time limit. Lastly, there have been rate changes, essentially with a view to support the growth of domestic industry.

Advance ruling accessible to resident private limited companies

Reference to the Authority for Advance Rulings (AAR) has been a useful route for those seeking certainty of tax outcome. It had been a long standing demand from Indian industry to allow Indian residents access to the AAR process that was originally available to only to non-residents, JVs with non-residents and wholly-owned subsidiaries of foreign companies. In line with this request, this facility has, over the years, been made available to a wider set of applicants. Public sector companies and importers undertaking project imports became eligible in August 2009, and resident public limited companies became eligible in September 2011. To further encourage ease of doing business in India and to further enable tax certainty, this facility has now been extended to domestic private companies by Notification No. 51/2014-Cus. (NT) dated 11.07.2014.

Access to Settlement Commission

Where a demand has been raised by the Department and the assessee accepts liability, there is the facility of settlement of cases to end litigation and reduce the quantum of penalty. There was a pre-requisite, under section 127B, of a bill of entry (in respect of import) or shipping bill (in respect of export) being filed before an application for settlement could be made. This list of documents, and thereby situations, has been expanded to include cases in which the applicant has filed a bill of export, baggage declaration, label or declaration accompanying the goods affected through post or courier.

Clarification re: subsequent application to Settlement Commission where penalty imposed on grounds of concealment in earlier order of settlement

Per section 127L, there is a bar on filing a subsequent application before the Settlement

Commission where the Settlement Commission passes an order imposing penalty on grounds of concealment of particulars of duty liability in a previous matter. An explanation to this section has been inserted to clarify that such "concealment" is vis-à-vis the customs officers in relation to the previous matter, and not concealment from the Settlement Commission in the course of the settlement process.

Fixed mandatory pre-deposits to be made for filing appeal

Section 129E is proposed to be substituted to provide for a mandatory fixed pre-deposit to be paid by the assessee for filing an appeal before the appellate authorities. As per the provisions no appeal shall be entertained by the Commissioner (Appeals) against an order passed by an officer lower in rank than the Commissioner of Customs, or by the CESTAT against an order passed by the Commissioner of Customs as an adjudicating authority, unless the appellant has deposited 7.5% of the duty demanded or penalty imposed or both. Similarly, no appeal shall be entertained by the CESTAT unless the appellant has deposited 10% of the duty demanded or penalty or both imposed by an order of the Commissioner (Appeals). However, the amount to be deposited under the section cannot exceed Rs. 10 crore. Whereas the Finance Bill does not specify whether the 10% pre-deposit would be in addition to the 7.5% amount in a second appeal, the TRU Circular states that in a second appeal the additional payment would be of "another 10%", implying that the total pre-deposit amount would total to 17.5%. Given the wording in the Finance Bill, it can be argued that in a second appeal the differential pre-deposit amount should only be 2.5%. This uncertainty should be clarified before the enactment to prevent litigation. In this connection, it is interesting that the TRU Circular on the service tax amendments (which include the same mandatory pre-deposit) did not use the word "another" for the 10%. There is a further open point about a situation in which the demand amount is reduced in the first appeal, as to how much pre-deposit will be required for the second appeal. Time limits fixed under the Act for disposing appeals and in relation to expiry and extension of stay applications have been done away with by omitting the provisos to sub-section (2A) of section 129B.

These amendments, though arguably harsh and possibly unjustified vis-à-vis an honest tax-payer, have been introduced with an intent to streamline the stay procedure, save the time which was otherwise dedicated to hearing stay applications and prevent recovery proceedings initiated by the Revenue Authorities during the pendency of the appeals. Further, the changes have been introduced to put to rest the various litigations and controversies which arose with the introduction of the limit of 365 days on the extension of stay orders, which led to the initiation of recovery proceedings for various assessees by the Department. Readers will recall that these provisions for fixed pre-deposit are similar to provisions under various State VAT legislations.

Discretionary power of CESTAT to refuse admission of appeal enhanced

To further ease the Indian judiciary of the ever increasing litigation, a proposal has been made to amend Section 129A to enhance the monetary limit of the discretionary power of the CESTAT to refuse admission of appeals from Rs. 50,000 to Rs. 2 lakh.

Additional designations introduced

In addition to above, Section 3 is proposed to be amended to include a new class of officers referred to as Principal Chief /Principal Commissioner of Customs belonging to the Higher Administrative Grade ('HAG') in the list of administrative authorities. These additions are to bring into effect the re-designation of various HAG posts by the Government.

Date for determination of duty and tariff valuation for imports through vehicles, and bill of entry can be filed before the import manifest /import report in case of imports by vehicles

Care has been taken to make amendments in the provisions to incorporate necessary inclusion, like adding the reference of 'vehicles' in important sections of the Customs Act, 1962 relating to determination of rate of duty and time of import [Sections 15 and 46] to make provision for imports through land route. Section 15 is proposed to be amended to include vehicles whereby in cases where the bill of entry has been presented by the importer before the arrival of the vehicle by which imports are undertaken, the bill of entry is deemed to have been presented on the date of arrival of the vehicle for the purposes of determining the rate of duty and tariff valuation. Further, sub-section (3) of section 46 is proposed to be amended to allow the filing of bill of entry prior to filing of the import manifest /import report if the vehicle by which the goods have been shipped is expected to arrive within 30 days from the date of the presentation of the bill of entry. The current proviso only applied to vessels and aircraft.

Review Committee can be constituted by an 'order' of the CBEC and discretionary power given to CBEC to provide 30 days extension to the Committee of Commissioners

The role of the CBEC is sought to be enhanced to improve governance. Some significant modifications are the proposed amendment to sub-section (1B) of section 129A to enable the CBEC to create a Review Committee for the purpose of an appeal to the CESTAT by an 'order' instead of by way of a notification and the amendment to section 129D to give discretionary power to the CBEC to extend the time taken for the passing of an order by the Committee of Chief Commissioners /Commissioners of Customs directing a Commissioner to apply to the CESTAT / Commissioner (Appeals) by another 30 days.

Commissioner (Appeals) to have regard to circumstances where appeal not filed by Department

Sub-section (4) of Section 131BA is proposed to be amended to fix a responsibility on the Commissioner (Appeals) that while determining an appeal, consideration should be made that a particular order being cited as precedent by the assessee was not appealed against by the Department for reasons that the value involved in the matter was below the monetary limit prescribed for filing appeals. The earlier provisions placed this responsibility only on the CESTAT and the Courts, for no specific reason Commissioner (Appeals) although, being an appellate authority, was left out of the provisions. However post the correction, plea of the assessee that the matter stand decided in their favour would now be a subject of greater scrutiny at all appellate levels.

Clarifications issued by the TRU

Various clarifications, have also been provided by the TRU with respect to the availability of exemptions to importers from the infrastructure and aircraft industries under various exemption notifications in light of various on-going disputes between the importers and the Department. For example, the importers [being members of a consortium] from infrastructure industry for road construction have been denied exemptions under Notification 12/2012-Cus. dated 17.03.2012 on grounds of non-fulfilments of conditions prescribed under the Notification; it has been clarified that individual constituents of a consortium whose name appears in the contract can import the road construction machinery in their name. Further, it has been clarified that aircraft engines and parts thereof are eligible for customs duty exemption under Notification No. 12/2012-Cus. Dated17.03.2012 when imported for servicing, repair or

maintenance of aircrafts. Also, exemption from BCD and CVD is available to all paints, consumables, metallic and non-metallic materials etc., in any form under Notification No. 39/96-Cus. Dated 23.07.1996 provided they conform to aeronautical specifications accompanied with certificate of conformance/ release note/ airworthiness certificate for development.

Customs duty rate changes

With the intent to rationalize tax structure and encourage domestic manufacture, the new Government has introduced various tax rate changes to benefit specific industry sectors. The BCD has been reduced/ exempted on the import of various inputs to encourage the production of final goods in India for example, colour picture tubes for the manufacture of cathode ray TVs [exempt], LCD and LED TV panels [from 10% to 'nil'], EVA sheets or backsheet used in the manufacture of solar photovoltaic cells or modules [exempt], forged steel rings used in the manufacture of bearings of wind operated electricity generators [from 10% to 5%], coal tar pitch [from 10% to 5%], inputs for manufacture of spandex yarn [from 5% to 'nil'], crude palm stearin and crude glycerine used for manufacture of soap [7.5% to 'nil'], steel grade limestone and steel grade dolomite [from 5% to 2.5%], battery waste and battery scrap [from 10% to 5%] etc. Duty concessions have been given to imports undertaken by chemicals and petrochemical sector to encourage growth and investment.

Also, due amendments have been proposed to retrospectively exempt mineral oils extracted and produced in in the continental shelf / EEZ of India prior to 07.02.2002 to end the on-going disputes in this area and the import of liquefied propane, butane and mixture LPG by the Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited or Bharat Petroleum Corporation Limited for supply to Non-Domestic Exempted Category (NDEC) customers has been exempted with effect from 08.02.2013. The customs duty rate of all kinds of non-agglomerated coal and ships imported for breaking have been streamlined. Pre-forms of precious and semi-precious stones have been exempt from export duty to encourage exports.

On the other hand, BCD has been increased on certain electronics and stainless steel items to control imports and provide level playing field to the domestic industry. Customs duty of 2.5% has been imposed on semi-processed, half cut or broken diamonds, cut and polished diamonds and coloured gemstones to bring them at par with cut and polished diamonds and gemstones. Further, safeguard duty imposed by the Central Government on imported articles causing or threatening to cause serious injury to domestic industry has been extended to articles imported (on which safeguard duty is leviable) by EOUs and SEZ which are then cleared as such by these units into the Domestic Tariff Area ('DTA') or used in manufacture of goods that are cleared into the DTA. Lastly, the import free baggage limit has been increased for passengers returning from foreign trips; however, predictably import free limit of tobacco products has been reduced by 50%.

Concluding remarks

Unfortunately, no mention has been made in this Budget for streamlining the valuation procedure under Customs, which needs to be codified to ensure uniform practice and set time lines for concluding proceedings and measures to expedite customs clearances. However, the changes mentioned above though not extensive to cover all industry issues, are still positive indicators of the progressive tax policy of this government and the likely approach to be adopted by it in the coming five years.

CA Mayur R. Parekh

Recent Amendments in MVAT & Allied Laws

In this article I have tried to cover various recent amendments under MVAT, Professional Tax and Luxury Tax.

As you all must be aware that Hon'ble State Finance Minister has presented the State Budget on 5th June, 2014. L.A.Bill No.XIX of 2014 was passed on 9th June, 2014. In the said L.A. Bill it was specified that the amendments pertaining to Stamp Act, Professional Tax on salaries, Luxury Tax rates and late fees for Return would be applicable w.e.f. 1st July, 2014 and rest of the amendments would become effective from the date it becomes an Act. On 7th July, 2014 Maharashtra Act No. XXVII of 2014 was made available to general public with a mention that Governor has given Assent on 26th June, 2014. Hence, the rest of the Amendments other than mentioned above would be effective from 26-6-2014. This Act may be called the Maharashtra Tax Laws Levy, Amendment and Validation) Act, 2014.

Now Let me take up Amendments made in respective Acts. Firstly I will take up amendments in Professional Tax.

(A) Profession tax

1. Returns: Sec. 6(3) Proviso added from 26-6-2014 (PTRC – Employee P.T.)

Proviso: State Govt. empowered to issue Notification to exempt any class of Employers from late fees for return, either wholly or partly, for any period either prospectively or retrospectively;

Prior to the amendment Employer defaulter was liable for late fee of ₹ 1000/- per return, w.e.f. 1st May 2012. The said late fee of ₹ 1000/- was fixed but now State Government has taken power to issue Notification for any class of Employers to exempt either fully or partly from payment of Late Fees. Such type of Notification has already been issued under MVAT vide Notification No. VAT-1513/CR-124/Taxation-1, Dated 1-1-2014.

2. Exemptions:

Gist of Amendment :
Sec. 27A, Clause (e) substituted W.e.f. 26-6-2014

Any person with Intellectual & Development Disabilities (Mental Retardation) as per Rules, which is certified by a psychiatrist working in a Govt. Hospital and which has the effect of reducing considerably such individual's capacity for normal work or engaging in a gainful employment or occupation and parents or guardian of such person.

The condition for granting such exemption is that Such Individual or Employer shall

produce such Certificate in 1st assessment year for which he claims deduction under this clause.

Originally exemption from payment of Professional tax was granted to parents or guardian of such individual person who was suffering from aforesaid disabilities (Refer Trade Circular 19T of 2005, Dt.19-9-2005) but now as per the amendment this exemption is granted to such individual person who is suffering said disabilities. To produce Certificate from a psychiatrist working in a Govt. Hospital in reality it will create unnecessary burden on the persons who are in fact suffering from such mental retardation and as per my information in a day Government Hospitals are issuing only 25 such Certificates.

3. Schedule I of Professional Tax Act: Entry 1 amended from 1st July, 2014

Gist of Amendment

Salary & Wages per month : Professional Tax (PT)

Do not exceed ₹ 7,500......................PT Nil

Exceed ₹ 7,500 up to ₹ 10,000.........PT ₹ 175

Exceed ₹ 10,000 ....PT ₹ 200 (For Feb ₹ 300)

Now considering the said increase in limit of Salary the question may arise that from which Month this provision would apply whether for the month of June, 2014 salary which will be paid in July, 14 or July, 2014 month salary which will be paid in August, 2014. For the same I have gone through the Trade Circular No.5 of 1989 Dt. 12-4-1989 and arrived at the conclusion that Professional Tax would be levieble on "salary earned" and hence according to me the said amendment would be applicable for salary for the month of July, 2014.

(B) Luxury Tax

1. Levy of Luxury Tax (LT) : Sec. 3(2): amended from 1st July, 2014

Gist of Amendment :

Charges for luxury provided in a hotel per day per accommodation:

Do not exceed ₹ 1000......................... LT @ Nil

Exceed ₹ 1000 upto ₹ 1,500............... LT @ 4%

Exceed ₹ 1,500..................................... LT @ 10%

As per the amendment limit, levy of Luxury Tax has been increased from 1-7-2014. As we are aware that the luxury tax would be levieable on luxury provided in a hotel per day per accommodation but let me clarify that though the word hotel is mentioned but as per the provisions of the said Act "Hotel" includes

(i) A Residential accommodation, a club, a lodging house, an inn, a public house or a building or part of a building, where a residential accommodation is provided by way of business; and

(ii) A club where supply is made or given of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) by way of or as part of any service or in any other manner whatsoever, for cash, deferred payment or other valuable consideration by way of business.

So after considering above one must take care for discharging liability of Luxury Tax. There may be chances that Room Rent are inclusive of Either Breakfast/Lunch/Dinner and if breakup of such cost is not separately given in Bill than Rule 59 of MVAT Rules has to be applied and VAT should have been discharged on Food etc.

2. Defn. & Levy: Secs. 2, 22A & 22B: w.e.f. 26-6-2014

Reference made to Tourism Policy 2006 and calculation of CQB for new PSI made there under.

(C) Maharashtra Value Added Tax

1. Turnover limits for Registration: Sec. 3(4)(b): wef 26-06-2014

As we are aware that Prior to 01-05-2012 : Turnover Limit for Registration was only based on sales.

W.e.f. 1st May 2012: If turnover of sales or purchases liable for Purchase Tax u/ss. 6A and 6B exceeds ₹ 5 lakhs during the year and value of taxable goods sold or purchased is not less than ₹ 10,000 the dealer was liable for Registration.

Gist of Amendment

- **T.O. limit of sales or purchases liable for Purchase Tax U/S. 6A and 6B increased from ₹ 5 lakhs to ₹ 10 lakhs**
- **T.O. limit of ₹ 1 lakh for importer, unchanged**

So considering aforesaid amendment if on or after 26-6-2014 T.O.of either sales or purchases liable for Purchase Tax U/S. 6A and 6B of any dealer exceeds ₹ 10 Lakhs and if he also fulfill condition of value of taxable goods sold or purchased is not less than ₹ 10,000 then he should apply for Registration. However please note that there is no change in condition for Importer. Since the said amendment is applicable from 26-6-2014 if T.O. of any of the dealer up to 25-6-2014 has crossed the limit of ₹ 5 Lakhs and he also fulfills condition of taxable turnover of ₹ 10000 then he will be liable for registration on 25-6-2014.

2. Cancellation of Registration: Sec. 16(6)(c) added w.e.f. 26-6-2014

Gist of Amendment

The registered dealer, other than an importer, whose Turnover of Sales has not exceeded the T.O. limit as specified in Section 3(4) during. FY 2013-14 may apply for cancellation of RC on or before 30th September, 2014 w.e.f. 1st October 2014.

Please note that T.O. limit to be considered of ₹ 10 Lakhs for F.Y. 2013-14 and the said dealer has to apply for cancellation on or before 30th September 2014.

3. Late Fees: Sec. 20(6) amended w.e.f. 1st July 2014

As we are aware that Fees for filing return late was ₹ 5,000 per return wef 1st Aug 2012; [Prior to this it was Penalty U/S 29(8)]

Gist of Amendment :

W.e.f. 1st July 2014: If the return is filed within 30 days from due date then late fees is ₹ 2,000, else it will be ₹ 5,000.

We all know that in a way also the original provision of levying Late Fees of ₹ 5000 was very harsh. But now It seems that due to representations from Various Tax practitioners Associations and Trade Associations State Legislature must have thought it fit to reduce the Late Fees.

But now the question may arise what will be the due date to be considered for a particular Month. Say for example for the Month of June, 14 Due Date is 21st July, 14 . But as we all are aware that date for uploading of Return was extended by way of Trade Circular No.16 T of 2008, Dt. 23-4-2008 and 31 T of 2008, dt. 8-9-2008, for 10 days if Tax payment was made before prescribed date. Now considering this whether due date would be 21st July, 14 or 31st July, 14. According to me the extension of 10 days wa granted by the Hon'ble Commissioner was only an administrative relief. So 30 days (not a month) to be counted from the 22nd July 2014 only and hence, Return for June 2014 is due on 21st July, 2014. If filed upto 20 Aug 2014 then late fees ₹ 2,000; and thereafter ₹ 5,000.

At this juncture let me inform you that in Budget speech though Hon'ble Finance Minister has announced to allow pending Returns to be filed with penalty of ₹ 1000/- but in "Bill" or in "Act" it was not incorporated.

4. Assessment: Sec. 23(9) w.e.f. 26-6-2014

Prior to the Amendment in case of pending assessment proceedings, dealer could apply in Form 305 (Rule 22) to Commissioner for issuing directions to guide assessing authority to complete assessment.

Gist of Amendment :
Said application and provision is deleted.

According to me it was a beneficial provision for the dealer because whenever there were any issues regarding whether Set-off would be available or not, Tax Rate of items etc. which was debatable then dealer could apply to Higher Officer for Guidance. Since the said provision is deleted this option would not be available to a dealer and hence according to me we should represent to the concerned authority to bring back the same on statute.

5. Assessment: Proviso added to Sec. 23(10): w.e.f. 26-6-2014

Gist of Amendment :
Proviso: In respect of period after 1 April, 2011 where dealer is required to file more than one return in different forms, may be assessed separately for each return form.

According to me it would be applicable to a dealer who is having normal unit and PSI Unit. (Form 231 and 234)

6. Assessment: Sec. 23(11) amended: w.e.f. 26-06-2014

As we are aware that prior to amendment in case of ex-parte assessment under sub- section (2)/ (3)/ (4) for non- attendance, such order can be cancelled by applying in Form 316 within 30 days of date of service of Order. But there was no time limit within which the concerned Authority has to pass cancellation order in Form 317.

Gist of Amendment :
Authority shall cancel such Order within 3 months from end of the month in which such application is made; else such order will be deemed as cancelled.

According to me it is beneficial provision for the dealer but please take care that the submission of Form 316 will be applicable only if dealer has failed to attend on Final hearing otherwise Appeal is only the Remedy.

7. Appeals: Proviso added to Sec. 26 (6): w.e.f. 26-6-2014

Gist of Amendment
Proviso : In case of an appeal filed on or after 1st July, 2014 against any Order in which claim against declaration or certificate(Form C/E-I/ E-II/F/ H/ etc.) is disallowed for non-production then where appeal is filed after 2 years from end of the relevant year, then the stay shall not be granted unless the appellant makes 100% payment of tax as part payment; where such appeal is filed before expiry of such 2 years, the stay shall stand vacated if the appellant fails to produce required declarations before the expiry of said period of 2 years.

According to me the said amendment is not viable. Actually the said period should be more than 4 years because legislature itself has provided to complete the assessment within 4 years. Since as per the amendment only 2 years have been provided than hardly any year would fall under this provisions. Say for eg. for F.Y. 10-11, Assessment can be completed up to 31-3-2015 whereas aforesaid provision will be applicable up to 31-3-2013.

One point came to my mind whether Declaration Forms produced before Assessing officer which are defective would be considered as forms Submitted or not. According to me the answer is No.

Another important point which I would like to draw the attention of the members is suppose

appeal of a dealer containing various disputable issues like difference in VAT due to disallowance of Set off , Difference in Tax Rate, Non receipt of declaration etc. then 100 % payment of tax to be made would be applicable only to the extent of liability arise due to non-receipt of declarations.

8. Penalty: Sec. 29(3) amended w.e.f. 26-6-2014

Gist of Amendment

[While or after passing any order] under this Act, in respect of any person or dealer, the Commissioner, on noticing or being brought to his notice, that such person or dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax or has concealed or has knowingly mis-classified any transaction liable to tax or has knowingly claimed set-off in excess of what is due to him, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose upon him, in addition to any tax due from him, a penalty "not exceeding the amount of tax due but not less than Twenty Five per cent" of the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

Considering the said amendment and since the word "May" is already provided under the above provisions and also relying on the Bombay High Court Judgment in the case of Ankit International (2011) 46 MTJ 491 (Bom.) now according to me Assessing Officer either not levy the penalty or if he decided to levy penalty then he has to levy minimum 25% of tax due and maximum up to the amount of tax due.

9. Penalty: Sec. 29(7A) added w.e.f. 26-6-2014

As we are aware that Penalty u/s. 29(8) for late filing of return was replaced by levying late fee u/s. 20(6) w.e.f. 1st August, 2012.

Gist of Amendment

If the dealer has paid such late fee & yet such penalty was levied then such penalty shall not be recovered.

The said amendment seems to be clarificatory in nature. But If both have been paid, then according to me no Refund.

10. Penalty: Sec. 29(11A) added w.e.f. 26-6-2014

Gist of Amendment

Penalty u/s. 29 may be imposed while passing an Order under this Act, notwithstanding 8 years of time limit provided u/s. 29(11).

In my view the said amendment has been made to provide for levy of penalty in a case where the Assessment which can be passed beyond 8 years. For instance u/s. 23(5) for initiation of Assessment time limit is there but for completing Assessment no time limit so Assessment Order u/s. 23(5) can be passed beyond 8 years and hence in the said case penalty can be levied.

11. Penalty: Sec. 29(12) deleted w.e.f. 26-6-2014

Prior to amendment Section 29(12) provides that No order imposing a penalty under any of the foregoing sub-sections shall be made, –

(a) By a Sales Tax Officer or an Assistant Commissioner where the penalty exceeds rupees 10 [five lakh] except with the prior approval of the Deputy Commissioner;

(b) By a Deputy Commissioner 11 [or a Senior Deputy Commissioner], where the penalty exceeds rupees 12 [ten lakh] except with the prior approval of the Joint Commissioner:

Provided that, nothing in this sub-section shall apply to any penalty which may be imposed by an appellate authority.

Gist of Amendment :
Prior approval of DC or JC before levying penalty exceeding ₹ 5 Lakhs or ₹ 10 Lakhs, done away with.

Now Assessing Officer is not required to take prior approval of Deputy Commissioner or Joint Commissioner as the case may be before levying penalty exceeding ₹ 5 Lakhs or ₹ 10 Lakhs.

12. Additional Interest: Sec. 30(4) amended W.e.f. 26-6-2014

Gist of Amendment :
If additional tax liability arises due to non-production of declarations or certificates then additional interest shall not be payable;

If tax paid as per revised return is less than 10% of the aggregate amount of tax paid as per original returns in respect of corresponding period, then additional interest not payable.

- **"Tax paid as per Original returns" shall include tax paid as per revised return filed before commencement of proceedings u/s. 30(4);**
- **"Tax Paid" shall mean tax paid after adjustment of set off.**

It is welcome amendment. There was long pending request from all of us that no interest u/s. 30(4) would be levied in the case of dues pertaining to non-production of declaration forms as there was no fault of the selling dealer for non receipt of the same and ultimately it was accepted by State Legislature. Now coming to other provision let me explain with the help of an example. Suppose Tax paid with original Return is ₹ 1,00,000 and Tax paid with Revised Return filed before commencement of proceedings u/s. 63(7) is ₹ 20,000. Additional dues raised is ₹ 10000 then no interest u/s. 30(4) would be levied. But if additional dues raised exceed ₹ 12000 than such benefit will not be available.

13. Tax collection at source: Sec. 31A added w.e.f. 26-6-2014

Gist of Amendment
"Who awards quarrying lease or quarrying permit in respect of minor minerals to a dealer, within their jurisdiction to collect an amount at the time of such award or, as the case may be, auction, at such rate as provided in sub-section (2) towards the liability of sales tax to be incurred on sale of minor minerals".

Now in addition to who auctions the rights for excavation of sand one more category has been added under Tax Collected At Source as mentioned above. To understand meaning of "minor minerals" one can refer Trade Circular No. 13T of 2005 dt, 7-6-2005 which clarifies that "minor minerals" means building stones, gravel, ordinary sand other than sand used for prescribed purposes, and any other minerals which the Central Government may, by notification in the official Gazzette, declare to be a minor mineral.

14. VAT Audit: Sec. 61 (1) (a) & (2) amended w.e.f. 26-6-2014

Gist of Amendment
If the aggregate T.O. of sales and value of inter-state stock transfers or T.O. of purchases exceeds ₹ 1 Crore in any year, than dealer is required to get his books of account audited under the provisions of VAT.

Section 61(1)(b) is deleted and hence Such T.O. limit also applies to dealers holding Liquor Licence i.e. including even Hoteliers and Restaurants who holds Liquor Licence ;

Now the relief from penalty, if audit report filed within 1 month from due date for beyond control reasons, is removed. (Proviso to section 61(2))

Due to the said amendment the dispute would arise about Valuation in respect of Interstate Stock Transfer? How to value Stock transfer of

Gift articles, stationery, etc. or say goods sent for display having no commercial value? Suppose goods worth ₹ 10 lakhs sent for Interstate Stock Transfer at ₹ 1 lakh how to justify. All such practical problems would arise due to the said amendment.

Since section 61(2) proviso (one month time) is also deleted it seems that the intention behind removal of said proviso is to overcome rulings of various judgments like Bombay High Court Judgment in the case of *Ankit international (2011) 46 MTJ 491 (Bom)* as well as Maharashtra tribunal Judgment of *Shree Gajanan Sahakari Sakar Karkhana S.A.No.160-62 of 2011, Dt.15-12-2012* relying on Nitco Paints 42 VST 71 (Bom) wherein drastically penalty was reduced. But according to me the representation to be made to the concern authority to bringback the said provision to the statutes as this provision was really helpful to those genuine dealers who cannot file their VAT Audit Report within the prescribed time due to some unavoidable circumstance. Please also note that T.O. limit of ₹ 60 Lakhs increased to ₹ 1 Crore w.e..f F.Y. 2013-14 as per Statement of Object and Reasons appended to Law Amending Bill dt. 9th June 2014.

15. Intimation in Form 604 u/r. 67(2) r/w. Sec. 63(7) : w.e.f. 26-6-2014

Gist of Amendment :

During the course of any proceeding if it appears to Commissioner that quantum of tax or set off is varied, resulting in tax dues then issue of intimation in Form 604, is must.

As we know that earlier they were not issuing Form 604 but now since it becomes must it has to be issued.

16. Sch. Entry A-26A inserted

Exemption – "Copyrights, for distribution and exhibition of cinematographic films in theatres and cinema halls, sold during the period commencing on the 1 April 2005 and ending on the 30th April 2011"

Ultimately a long back debatable issue came to an end. But now the question may arise what will happen for those who have paid taxes during aforesaid period. According to me Refund has to be granted (Refer *Corporation Bank vs. Saraswati Abharansala (2009) 19 VST 84 (SC)* - Retrospective Beneficial Amendment).

17. Sch. Entry C-55A inserted

"Tool, alloy and special steels of any of the categories, specified in clause (x) to clause (xv) of entry 55 of this schedule, sold during the period commencing on the 1st April 2005 and ending on the 1st May 2011"………..VAT @ 4%

18. Sch. Entry C-55B inserted

"Tool, alloy and special steels of any categories, specified in clause (x) to clause (xv) of entry 55 of this Schedule, sold on or after the 1st May 2011"……VAT @ 5%

It seems that considering the Supreme Court Judgment in the case of *Bansal Wire Industries (42 VST 272)* dtd. 26 April 2011 ultimately the debate came to a rest.

Friends, in this article I have tried to interpret the amendments made under the aforesaid Acts as per my understanding. The views may differ from person to person for which please pardon me.

CA Ninad Karpe

Expectations Unlimited!

When the new Finance Minister, Mr. Arun Jaitley, rose to make his Budget speech in Parliament on 10th July 2014, he had an unenviable job of presenting a Budget within 45 days of taking over as the Finance Minister.

His party had been elected to power with an unprecedented majority and expectations of the people of India were sky-high. Everyone expected a magical, almost surreal Budget, which would immediately solve all their problems.

The GDP was growing at a sub five per cent range, a cause for immense frustration amongst the youth who acutely felt the lack of job creation. Inflation was also gnawing at the monthly income of middle-class families. Each segment of society had some major expectation from the Budget. So, how did Mr. Jaitley fare?

There are some bright sparks in the Budget and there are some areas of concern. Here is a brief summary…

FDI in Defence manufacturing and the Insurance sector has now been allowed to the extent of 49 per cent. Both these sectors are in dire need of funds and technology and hence, these higher limits should result in higherthe inflow of FDI in the country. However, there are strings attached – voting rights will remain at 26 per cent.

Real Estate Investment Trusts (REITS) will now be allowed a tax-efficient pass-through mechanism. There are many foreign investors who want to invest in real estate in India, without getting into the quagmire of the legal and operational issues surrounding that industry. REITS is an excellent model to channelize such large investments.

Infrastructure investments have received renewed focus. New airports will be built, increased investments will be made in the roads sector and 100 smart cities will be built. All these investments will create more jobs and kick-start the economy.

A long standing issue of tax treatment of foreign fund managers located in India is resolved by this Budget and with no tax payable for these foreign funds, we are likely to witness a large number of fund managers and advisors based in India. This will deepen the Indian capital market.

The current account deficit has been maintained at an aggressive 4.1 per cent. Inherent in this deficit figure is a high amount of disinvestment of public sector, higher dividends to be received by the government

and some tax buoyancy. Restricting the CAD to 4.1 per cent in the current year and further reducing it to 3.6 per cent for 2015-16 and 3 per cent in 2016-17 will certainly have a salutary effect on the economy.

Implementation of GST across the country is bound to improve transparency in tax collections and by plugging leakages the GDP will get a bump up between 1-2 per cent. Understanding the importance of this, the Finance Minister has reiterated that he hopes to find a solution to all issues raised by the States in the current year.

The overall quantum of subsidies has not been reduced. However, there is renewed focus on ensuring that subsidies are more "outcome based". In an ideal economic situation, subsidies should be scaled down dramatically. However, given the large number of Indians below subsistence levels, there is a strong case for support to the poor.

Public sector banks need large sums of capital to meet international norms and are in urgent need of funds. These banks will be allowed to offer their shares to the public, maintaining the majority shareholding of the government. Hopefully, these banks will also get more operational autonomy in future.

One industry which has received repeated references in the Budget speech is the Education and Skilling sector. A new SKILL INDIA programme has been announced; various new Institutes will be set up in many States (IIT, IIM); virtual classrooms will be set up and teacher training will get a support of ₹ 500 crores. Truly unprecedented in scope and sweep, this sector has been well served.

In the past couple of years, India's image of a good investment destination has been dented by the retrospective amendment ("Vodafone case") and the blatantly unpredictable tax regime ("tax terrorism"). To add insult to injury, GAAR was to become applicable from 1st April 2015.

The question of whether GAAR will become effective from 1st April, 2015 is not yet put to rest. These rules need some evolution and implementing them from 2015 will further make the tax environment more complex and make potential foreign investors jittery. This Budget would have been a good opportunity to keep GAAR in cold storage for some time.

The Finance Minister has promised to make the tax administration more stable and predictable and hopefully, the message percolates to the lower levels of the administration.

Retrospective amendment of tax laws is a sovereign right. However, in the Vodafone case, it did a far greater damage to the country's reputation as a good destination for investment. Although the Government has repeatedly affirmed that retrospective amendments would not be done without good logic and reason, an innocuous amendment increasing the time limit for long term capital gains for debt mutual fund from 12 to 36 months and increasing the tax rate from 10 per cent to 20 per cent is a back door retrospective amendment. Hopefully, the Government will apply the principle of "grandfathering" these provisions and not taxing existing investments.

In his Budget speech of record length, Mr. Jaitley had some bright sparks. There is focus on infrastructure investments and education. Direct tax relief has also been provided. However, overall, this Budget looks more like a missed opportunity – a golden chance to reignite the animal spirits of the economy and the confidence of the people.

CA Vijay Mantri

Budget Impact on Economy

The maiden Budget of the newly formed BJP-led government brought with it both cheers and tears.

People cheered the hike in the minimum Basic Tax Exemption limit, which has been raised from ₹ 2 lakh to ₹ 2.5 lakh, the hike in limit u/s 80C has been increased from ₹ 1 lakh per individual per annum to Rs.1.5 lakh and the hike in home loan interest amount allowed to be deducted from total income from ₹ 1.5 lakh to ₹ 2 lakh. All these proposals give taxpayers to reduce their annual tax liability significantly. Another proposal that was welcomed with open arms was the increase in limit of fresh deposit amount in PPF accounts from Rs.1 lakh per annum to Rs.1.5 lakh now.

Continuation of tax benefit under Section 87A, which was introduced last year will give relief of up to ₹ 2,000/- to marginal taxpayers above the newly set limit of ₹ 2.5 lakh, leading to NIL tax liability for annual incomes up to ₹ 2.70 lakhs. Contrary to market expectations, RGESS Scheme (Rajiv Gandhi Equity Saving Scheme) has not been discontinued and still continues as an additional tool for saving tax for first time investors in equity markets.

The move to increase the limit under 80C is a clever move to divert household savings from physical assets like Real Estate and Gold to Financial Assets like Mutual Funds, Insurance and Bank FDs.

One proposal that caught the mutual fund industry off guard is changing the definition of long-term for the purpose of taxation of debt funds and FMPs (Fixed Maturity Plans). Earlier, if an investment was held for more than 12 months, it qualified for long-term capital gains tax. This definition has now been changed to 36 months. Also, dividend distribution tax has now been mandated to be calculated on a gross-up basis, leading to lower post tax dividend in the hands of the investor. These provisions are rather unfair to investors who are risk averse but require liquidity.

The finance minister announced that investors can now operate all their financial products through a single operating demat account and Know Your Customer (KYC) norms will also be uniform across the financial sector. This will lead to lesser hassles for investors when investing with different intermediaries.

The Budget ratified the governments focus on building infrastructure, creating jobs and promoting entrepreneurship while taming inflation.

The biggest focus of the budget is in reviving the infrastructure sector and this has been tackled from a from a number of angles. The government has provided tax incentive for investment in the sector by extending the 80 IA tax benefit by three years.

Investment in infrastructure has been made easier for banks by allowing them to avail of long term deposits as well as giving investment in this sector will make them eligible for SLR and CRR exemption. Apart from direct financial allocations to the roads sector in particular, and to urban infrastructure, the Budget offers the promise of PPP (public-private-partnership) projects.

The continued commitment to bring in GST in the near future reaffirmed the government's focus on creating a business friendly atmosphere. The Rs. 10,000 crore fund for start-ups will help many budding entrepreneurs to set-up their own ventures without having to worry about financial funding.

The government has also laid a lot of emphasis on SMEs and Banking and tried to address challenges faced by these sectors. By extending the Investment Allowance Reserve to companies with ₹ 25 crores capital, the government has tried to bring down NPAs of banks in SME sector and also increase employment.

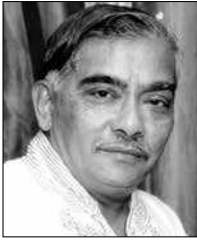
The government has increased avenues for foreign investments by hiking the FDI limits in Insurance, E-commerce and Defense. Further to encourage development of smart cities, the requirement of the built up area and capital conditions for FDI is being reduced from 50,000 sq m to 20,000 sq m and from USD 10 million to USD 5 million respectively with a three years post completion lock in. The government reassured foreign investors that they will get fair treatment. By addressing contentious issues of retrospective tax implication, bringing much required changes in transfer pricing and allowing offshore money managers to operate from India the government has brought a lot of confidence in the overseas investment community.

Overall, the Government took efforts to understand the problems being faced by the industry and the investment community and has tried to address most of the issues. We are very confident and very excited by the budget. This budget has laid down a strong foundation for the next four budgets to come.

How far that little candle throws its beams !

So shines a good deed in a naughty world.

— *Shakespeare*



CA Virendra Parekh

Long on intent, short on content

The much-awaited budget has been unveiled. Faced with sky-high expectations, an economy mired in stagnation and inflation, depleted treasury and imperatives of fiscal consolidation, the finance minister Arun Jaitley has acquitted himself well with a budget which is centred on accelerating growth without sacrificing fiscal prudence. He has announced numerous measures to boost investment – both domestic and foreign – but refrained from populist giveaways. Addressing the woes of tax payers, pushing for economic reforms and reaching out to states for cooperation—he has not forgotten any of these.

Critics have accused him of missing the opportunities, not outlining any long-term vision, not doing enough, falling short of expectations, not going the whole hog on something or the other; and they have a point. Mr. Jaitley, however, knows his mind. Proceed slowly and cautiously, keep bolder actions for the future but avoid getting caught on the wrong foot, do not ruffle too many feathers and do not spring nasty surprises — this seems to be emerging as Modi government's style of economic management. The budget follows the same approach: Errors of omission are acceptable but errors of commission are to be avoided.

The biggest positive of the budget is that it has no negatives. If the economy is picking up, this budget will not do anything to retard it. Except smokers and tobacco addicts, no one can claim to be worse off. If we put together the several little details given in Mr. Jaitley's long and often tedious budget speech, a big picture does present itself. The budget is focused on the three most pressing challenges facing the economy: food, growth and jobs. Every provision, every detail in the budget is meant to address one of these challenges.

The budget, thus, speaks of technology initiatives, soil repair, focus on proteins and a price stabilisation fund as a medium term solution for the sharp rise in food prices, especially in items like pulses, milk, vegetables etc. These have to be accompanied by a rollback of a distorted incentive structure that encourages production of massive amounts of wheat and rice. The budget makes no direct reference to procurement reforms, but it does speak of the intent to create a genuinely national market for agricultural commodities by amending state-level agricultural produce marketing committee (APMC) Acts, as also of reform of the Food Corporation of India. The budget does not give details about these, but the direction of the intended change is clear.

Accelerating growth by inducing massive investment in infrastructure and reviving the manufacturing sector to create jobs is the overarching objective of the budget.

The budget provides a massive thrust to infrastructure across sectors, making it a dream budget for construction, real estate and housing. National highways and state roads have been allocated ₹ 37,850 crore, including around ₹ 3000 crore dedicated to the North-East. Rural roads development gets another ₹ 14,389 crore. As many as 16 port projects, with a focus on their connectivity to the hinterland, will be awarded this year. ₹ 11,635 crore has been set aside for development of harbours.

Access to funds has been a key bottleneck for infrastructure sector whose funding demand is pegged at $1 trillion in the current five-year plan ending 2017. Here, besides the FDI route, Mr. Jaitley has invested hope in the public-private-partnership route. He is aware that the PPP model currently in use does not have the capacity to shoulder the kind of risk it needs to. He has promised to develop more sophisticated models of contracting along with a suitable dispute redressal mechanism and institutionalise the scheme with the creation of the '3P India' organisation, to be set up with a corpus of ₹ 500 crore.

Another remarkable initiative is liberalizing bank funding regime for infrastructure projects. Banks will be encouraged to extend long-term loans to the infra sector with flexible structuring, including the 5/25 structure (allowing banks to give a 25-year loan for a project but the loan would get transferred to another entity's balance sheet after five years). Very significantly, banks will be allowed to raise long term funds for infra projects without attracting obligations like Cash Reserve Ratio (CRR), Statutory Liquidity Ratio (SLR) and priority sector lending.

Public sector banks will be allowed to sell their shares to Indian public to raise funds to meet their capital requirements under the new global norms, though the government will retain majority shareholding.

Some help will also come from the pass-through facility provided to infrastructure investment trusts, which will allow projects to broaden and diversify their sources of funds.

Real estate is one of the few sectors to win big benefits in an otherwise frugal budget. The budget provides ₹ 7060 crore for development of 100 smart cities. The increase in interest deduction limit on home loans will boost buyer enthusiasm in a sector afflicted with low sales.

As regards funding, FDI is sought to be encouraged with positive changes in FDI structure for the development of 'smart cities', and the reduction in built-up area and size of projects to boost affordable housing.

Secondly, introduction of Real Estate Investment Trusts (REITs) should help the sector attract new funding as developers and private equity funds can exit their commercial investments by selling their holdings to these funds. Tax structure was a major hurdle in REIT structures and the proposal to allow pass-through status to REITs is a positive.

On the jobs front, the focus is on reviving the manufacturing sector. India's manufacturing sector growth contracted by 0.7 per cent in the fiscal year ended on March 2014. The budget naturally has numerous measures to boost local production. The 15 per cent deduction on annual investments above ₹ 25 crore in plant and machinery for the next three years, which can be set off against profits for computing tax, is an incentive for manufacturing firms to go ahead with their capex plans. The FDI cap in defence sector (as also in insurance) has been raised from 26 per cent to 49 per cent.

Other measures include rectification of duty structure, setting up a single-window services portal and venture capital fund, and steps to speed up work on industrial corridors and clusters. The strategic focus on MSME (redefined) and building an ecosystem for innovations, incubation and a venture corpus fund of ₹ 10,000 crore, as well as a multi layer skill development plan, will boost the culture of

bare foot innovators. Labour reforms are being talked about, but the Budget speech itself silent on this issue.

The troubled power sector, a vital part of infrastructure and key to the revival of manufacturing sector, has naturally received lot of attention in the budget. The 10-year tax holiday has been extended by three years until March 2017. The finance minister also unveiled plans for the national gas grid — a 15,000 km pipeline — via the public-private partnership (PPA) route, at an estimated to cost of ₹ 60,000 crore. The tax holiday for power units will benefit projects worth over ₹ 5 lakh crore being implemented under the 12th Plan programme. The finance minister also allocated ₹ 500 crore for the installation of separate feeders and to strengthen sub-transmission and distribution networks in rural areas. The government, he said, also proposes rationalising existing coal linkages to improve fuel supply to new power plants by diverting coal from ageing and derated power plants which are unable to utilise allocated coal. The budget also proposes customs and excise duty exemptions on renewable power equipment to help domestic manufacturers reeling under cheaper imports from US and China.

Tax reforms

As part of the exercise to strengthen investor confidence and business sentiment, the finance minister has announced a number of measures to address the proliferation of litigation in domestic taxes. Currently, tax demands of more than ₹ 4 lakh crore are under dispute and litigation before various courts and appellate authorities.

Mr. Jaitely has resolved two issues which have been agitating foreign investors for long. He has decreed that securities held by foreign institutional investors (FIIs) will be treated as capital and profits made from sale of such securities will be treated as capital gains. This will enable FIIs to pay much lower tax on their profits, and in some cases none at all.

He has also addressed transfer pricing woes of multinational companies by allowing rollback of Advance Pricing Agreements (APAs) to previous years. The APA scheme, introduced in 2012, provides certainty to taxpayers by specifying in advance the arm's length price in cross-border transactions between related parties for next five years. The rollback would mean an APA for future transactions may also be applied to international transactions undertaken in the previous four years in specified circumstances. This will help resolve thousands of transfer pricing disputes and is a key element of reforms in the tax regime.

The finance minister has also proposed to introduce the "range concept" to determine arm's length price. Current rules allow only one year's data to be used for comparable analysis; the Budget proposed to allow the use of multiple year data.

Another major reform in tax administration is extending the advance ruling regime to domestic companies above a certain threshold. Earlier, the facility was available only to foreign companies. The budget also proposes to set up more benches of the Authority for Advance Rulings, to enlarge the scope of the Income Tax Settlement Commission and to set up a high-level committee to interact with trade and industry on a regular basis to establish clarity in tax laws.

The finance minister promised to accelerate introduction of the long-delayed Goods and Services Tax (GST). On the Direct Tax Code (DTC), he said the government would consider the comments received from stakeholders and review the DTC in its current shape.

The flip side: doubts and resentment

All this is true, say critics, but the Mr. Jaitley does not deserve high marks for the budget because his numbers are doubtful and he has shied away from radical reforms which he could and should have announced.

It is surprising, for example, that Mr. Jaitley has chosen to stick to his predecessor P Chidambaram's target of a fiscal deficit at 4.1 per cent of gross domestic product (GDP) for 2014-15. That target is based on revenue estimates that were dismissed by experts, as also by BJP, as bogus and inflated. To cite one instance, excise duty collections are slated to rise 15.4 per cent as compared to last year's 1.7 per cent. Now, Mr. Jaitley has accepted these numbers as his own. In a stagnated economy with a poor monsoon and a tough external environment, chances of gross tax revenues growing 18 per cent are remote. He has a cushion in disinvestment and spectrum sale, but these are unlikely to make up for the shortfall.

Worse, he stuck to the fiscal deficit target of 4.1 per cent for 2014-15 laid down by his predecessor, after increasing the expenditure by about ₹ 31,000 crore and giving away a net amount of about ₹ 9,000 crore in tax giveaways (on central account). Why? Because he has accepted it as a challenge!

Mr. Jaitley could and should have restated the deficit numbers given by Mr. Chidambaram so as to present a more realistic picture of government finances. Apart from exposing the numbers jugglery played by his predecessor, such an exercise would have eased the burden on him to lower the deficit. But the finance minister has blithely accepted the numbers given by his predecessor, which the BJP itself, then in opposition, had rightly questioned.

Even if we factor in some economic recovery leading to tax buoyancy, the fiscal deficit ceiling is most likely to be breached. This is largely because Mr. Jaitley has done little to phase out wasteful subsidies. The Centre's total subsidy bill is pegged at ₹ 260,658 crore, almost ₹ 5150 crore more than the revised estimates for 2013-14. Beyond a vague promise of forming a new urea policy there is nothing to indicate how the government plans to rein in the burgeoning subsidy burden.

This is sad. The money which could have gone into creating more roads, ports, metro transport systems, airports, broadband lines to every village, industrial corridors, smart cities etc. will continue to be spent on subsidies on fuel, fertilizers and food which in practice benefit the non-poor, although they are given in the name of the poor.

The Modi government, which came to power on promise of change, appears too reluctant to junk bad ideas and policies of the UPA government. There is talk, but no details, of revamping the rural job scheme, but there is no sign of any rethinking of the food security scheme which has the potential to bankrupt the government finances, disrupt food market and ruin Indian agriculture.

In another act of lack of courage and poor judgment, the finance minister has chosen to retain the retrospective tax amendment implemented in 2012 which had seriously damaged India's image as an investment destination. Yes, he did pledge that the NDA government will not bring about any change retrospectively that creates a fresh liability. He also said that for future, cases arising out of this amendment will be reviewed by a high level committee of tax body before initiating any action. However, the ongoing disputes at various courts and legal fora will have to reach their natural conclusion.

If a law is bad, it has to be scrapped and all cases initiated under it should be withdrawn. This is what was expected from a government that promised clean break from a shady past. By retaining the law and opting for a "case-by-case" approach, Mr. Jaitley has only kept the door open for further harassment, lobbying and corruption.

Yet it would be a mistake to dismiss this budget as a non-event or inconsequential. It contains several welcome announcements and, as a statement of intent, points in the right direction. This is a Budget that needs to be allowed time to work and must be followed by other, more radical measures once the economy starts getting back on its feet.

B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

Department's SLP against High Court's verdict that s. 40(a)(ia) disallowance applies only to amounts "payable" as of 31st March and not to amounts already "paid" during the year dismissed

CIT vs. Vector Shipping Services (P) Ltd. [Petition(s) for Special Leave to Appeal (C).....] [CC No.(s) 8068/2014]

In *CIT vs. Vector Shipping Services (P) Ltd 357 ITR 642*, the Allahabad High Court held that disallowance u/s. 40(a)(ia) applies only to amounts "payable" as of 31st March and not to amounts already "paid" during the year. The majority judgment in *Merilyn Shipping 136 ITD 23 (SB)* was approved. The department filed a Special Leave Petition (SLP) in the Supreme Court. The said SLP has been dismissed by the Supreme Court *in limine* by its order dated 2nd July, 2014.

S. 2(47)/ 54: If an agreement to sell is entered into within the prescribed period, there is a transfer of some rights in favour of the vendee. Fact that sale deed could not be executed within the time limit owing to supervening problem is not a bar for section 54 exemption

Sh. Sanjeev Lal etc. vs. Commissioner of Income Tax, Chandigarh & Anr. [Civil Appeal Nos.5899-5900 of 2014] [Arising out of SLP (c) Nos.16958-59 of 2013, dated 1st July, 2014)]

One Shri Amrit Lal had purchased a residential house which he had through his Will given to his wife and after her death to two sons of his predeceased son and his daughter-in-law. After the death of Shri Amrit Lal, his wife, Smt. Shakuntaladevi had become the owner, who also died on 29th August, 1993. As per the Will of Shri Amrit Lal, on the death of his wife, the ownership in the said house had vested in his two grandsons and the daughter-in-law.

The daughter-in-law and one of the grandsons decided to sell the house and accordingly entered into an Agreement to sell with one Shri Sandeep Talwar on 27th December, 2002 for a consideration of ₹ 1.32 crores of which ₹ 15 lakhs were paid as earnest money. The daughter-in-law and the grandson decided to purchase a residential house for them out of the sale proceeds and the capital gains and accordingly the house was purchased on 30th April, 2003 i.e., well within a period of one year from the date on which the Agreement to Sell was entered into by them.

The validity of the Will of Shri Amrit Lal was challenged by his another grandson, Shri Ranjeet, by filing a suit wherein the interim order was passed restraining the parties from dealing with the property. During the pendency

of the suit, the said grandson expired and therefore, the suit was dismissed in May, 2004 as there was no representation on his behalf in the suit.

Due to the aforesaid interim order the daughter-in-law and the grandson could not execute the Sale Deed and accordingly the Sale Deed was executed and registered on 24th September, 2004.

As the daughter-in-law and the grandson had already purchased a new residential house utilising the capital gain on sale of the old residential house the capital gain was not disclosed in their returns of income for A.Y. 2005-06.

The A.O. rejected the claim of deduction u/s. 54 of the Act on the ground that the assessees had sold the property on 24th September, 2004 whereas the new property was purchased on 30th April, 2003 i.e., one year prior to the sale of the old residential house and therefore, the deduction u/s. 54 of the Act was not available. The order of the Assessing Officer was upheld by the Commissioner (Appeals) and the Appellate Tribunal. The High Court dismissed the appeals of the assessees u/s. 260A of the Act.

Allowing the appeals, their Lordships of the Supreme Court held as under:

"20. The question to be considered by this Court is whether the agreement to sell which had been executed on 27th December, 2002 can be considered as a date on which the property i.e. the residential house had been transferred. In normal circumstances by executing an agreement to sell in respect of an immovable property, a right in *personam* is created in favour of the transferee/vendee. When such a right is created in favour of the vendee, the vendor is restrained from selling the said property to someone else because the vendee, in whose favour the right in *personam* is created, has a legitimate right to enforce specific performance of the agreement, if the vendor, for some reason is not executing the sale deed. Thus, by virtue of the agreement to sell some right is given by the vendor to the vendee. The question is whether the entire property can be said to have been sold at the time when an agreement to sell is entered into. In normal circumstances, the aforestated question has to be answered in the negative. However, looking at the provisions of Section 2(47) of the Act, which defines the word "transfer" in relation to a capital asset, one can say that if a right in the property is extinguished by execution of an agreement to sell, the capital asset can be deemed to have been transferred. Relevant portion of Section 2(47), defining the word "transfer" is as under:

"2(47) "transfer", in relation to a capital asset, includes,-

(i) ……………

(ii) the extinguishment of any rights therein; or ………………………………"

"21. Now in the light of definition of "transfer" as defined under Section 2(47) of the Act, it is clear that when any right in respect of any capital asset is extinguished and that right is transferred to someone, it would amount to transfer of a capital asset. In the light of the aforestated definition, let us look at the facts of the present case where an agreement to sell in respect of a capital asset had been executed on 27th December, 2002 for transferring the residential house/original asset in question and a sum of ₹ 15 lakhs had been received by way of earnest money. It is also not in dispute that the sale deed could not be executed because of pendency of the litigation between Shri Ranjeet Lal on one hand and the appellants on the other as Shri Ranjeet Lal had challenged the validity of the Will under which the property had devolved upon the appellants. By virtue of an order passed in the suit filed by Shri Ranjeet Lal, the appellants were restrained from dealing with the said residential house and a law-abiding citizen

cannot be expected to violate the direction of a court by executing a sale deed in favour of a third party while being restrained from doing so. In the circumstances, for a justifiable reason, which was not within the control of the appellants, they could not execute the sale deed and the sale deed had been registered only on 24th September, 2004, after the suit filed by Shri Ranjeet Lal, challenging the validity of the Will, had been dismissed. In the light of the aforestated facts and in view of the definition of the term "transfer", one can come to a conclusion that some right in respect of the capital asset in question had been transferred in favour of the vendee and therefore, some right which the appellants had, in respect of the capital asset in question, had been extinguished because after execution of the agreement to sell it was not open to the appellants to sell the property to someone else in accordance with law. A right in *personam* had been created in favour of the vendee, in whose favour the agreement to sell had been executed and who had also paid ₹ 15 lakhs by way of earnest money. No doubt, such contractual right can be surrendered or neutralized by the parties through subsequent contract or conduct leading to no transfer of the property to the proposed vendee but that is not the case at hand.

"22. In addition to the fact that the term "transfer" has been defined under Section 2(47) of the Act, even if looked at the provisions of Section 54 of the Act which gives relief to a person who has transferred his one residential house and is purchasing another residential house either before one year of the transfer or even two years after the transfer, the intention of the Legislature is to give him relief in the matter of payment of tax on the long term capital gain. If a person, who gets some excess amount upon transfer of his old residential premises and thereafter purchases or constructs a new premises within the time stipulated under Section 54 of the Act, the Legislature does not want him to be burdened with tax on the long term capital gain and therefore, relief has been given to him in respect of paying income tax on the long term capital gain. The intention of the Legislature or the purpose with which the said provision has been incorporated in the Act, is also very clear that the assessee should be given some relief. ..... Considering the aforestated observations and the principles with regard to the interpretation of Statute pertaining to the tax laws, one can very well interpret the provisions of Section 54 read with Section 2(47) of the Act, i.e. definition of "transfer", which would enable the appellants to get the benefit under Section 54 of the Act.

"23. Consequences of execution of the agreement to sell are also very clear and they are to the effect that the appellants could not have sold the property to someone else. In practical life, there are events when a person, even after executing an agreement to sell an immovable property in favour of one person, tries to sell the property to another. In our opinion, such an act would not be in accordance with law because once an agreement to sell is executed in favour of one person, the said person gets a right to get the property transferred in his favour by filing a suit for specific performance and therefore, without hesitation we can say that some right, in respect of the said property, belonging to the appellants had been extinguished and some right had been created in favour of the vendee/transferee, when the agreement to sell had been executed.

"24. Thus, a right in respect of the capital asset, viz. the property in question had been transferred by the appellants in favour of the vendee/transferee on 27th December, 2002."

Ashok Patil, Mandar Vaidya & Priti Shukla
Advocates

DIRECT TAXES
High Court

Reported

1] Section 80-IB – Land not owned by assessee – Permissions also not in name of assessee – Only development done by assessee – Eligible for deduction

CIT vs. Moon Star Developers & Others (2014) 103 DTR (Guj.) 278

In the instant case the assessee developer had developed a project and had claimed deduction u/s. 80IB. The same was disallowed by the AO on the ground that the assessee did not own the land nor were the permissions were in his name. The Tribunal held in favour of the assessee. On appeal to the High Court, which held that where the assessee did not own the land nor the development permissions was entitled to deduction though the land on which the construction was done was not owned by the assessee, nor was the development permissions were in the name of the assessee the assessee was entitle to deduction u/s.80-IB.

2] Section 10B – Process of segregating the metal scrap from cable scrap amounts to manufacture – Eligible for deduction

CIT vs. Mitesh Impex & Others (2014) 104 DTR (Guj.) 169

The assessee was involved in the segregating metal scrap from cable scrap. The assessee used to process cable scrap, mix metal scrape and old transformers from which it used to extract metal by subjecting the scrape to a series of manual and mechanical process, which resulted in an entirely new, distinct and marketable commodity. The Tribunal allowed the deduction in favour of the assessee. On appeal by the department to the High Court, the High Court while deciding the case in favour of the assessee held that the activity done by the assessee resulted in a new, different and marketable product amounts to manufacturing and hence eligible for deduction u/s.10B.

3] Late payment and deposition of service tax – Allowable Business Expenditure

CIT vs. Kaypee Mechanical India (P.) Ltd. [2014] 45 taxmann.com 363 (Gujarat)

During assessment proceedings, it was pointed out that assessee had not collected and deposited service tax on some services in earlier years and a demand of service tax was raised including interest thereon. Assessee paid up said amount thought it was not his

primary liability and treated it as business expenditure. The stand of the revenue was that this amount having been expended by the assessee for infraction of law, deduction thereof was not available. The Commissioner (Appeals) as well as the Tribunal accepted the claim of the assessee. On appeal in High Court the court dismissed the appeal of the revenue and held that the view of the CIT(Appeals) and by the Tribunal was to be upheld. The amount was expended by the assessee during the course of business was wholly and exclusively for the purpose of business. If the assessee had taken proper steps and charged service tax to the service recipients and deposited with the Government, there was no question of assessee expending such sum. It is only because the assessee failed to do so, that he had to expend the said amount, though it was not his primary liability. Be that as it may, this cannot be stated to be a penalty for infraction of law. Court also held that it is equally well settled that payment of interest is compensatory in nature and would not partake the character of penalty.

4] Share dealings – Trading or Investment Activity

CIT vs. Ashok Wadia [2014] 45 taxmann.com 182 (Delhi)

The assessee was engaged in dealing with shares. During the course of assessment proceeding, the assessee claimed short-term capital gain arising out of such dealing. The AO treated assessee's income from sale of shares as business income on grounds that the assessee was dealing in stock on continuous and aggressive basis. The frequency of trades and the time gap between buying and selling of various scrips showed same as a cautious decision to earn from price movement of stocks on regular basis. The pattern of account indicated a level of volume that would engage considerable time and attention of the assessee. On appeal, the CIT(A) reversed this decision at the assessee's behest, holding that the assessee had always shown the shares as investment in his account; while the volume of transaction was an important indicator of the intention of the assessee, it was not the sole criterion; the AO's conclusion that since sale and purchase had been determined by the volatility of the market, it could not be classified as investment was incorrect, as there was not bar in law to liquidating investment based on market factors. Dividend income was always based on the holding of shares on the record date, and thus, will not arise in case of shares sold before the record date or purchased after the record date. Absence of dividend income, thus, did not lead to any conclusive findings. On Second Appeal, the Tribunal sustained findings, holding that -in more than 90 per cent of transaction, there had been only one transaction of sale and purchase and the ratio of dividend income to investment income was insufficient, to bracket the income from impugned transactions as business income. On appeal to the High Court dismissed the appeal of the revenue and held that the shares were shown as investments by the assessee, and not as stock-in-trade. The fact that in this case the shares were traded irregularly is a strong pointer that they were held as investment, lest there be a new category of static trading or business. Further there was a limited dividend drawn from these shares, though relevant, does not displace from the conclusion, since dividend earned depends on whether the shares were held on the record date, and does not directly correlate to the time for which they have been held. Also the general trend (notwithstanding only one share) cannot colour the entire portfolio as business. The fluctuation in the number of shares held, and also the companies in which shares are held, was minimal. The accounts extracted indicated that the same scrips were held throughout the entire period, with the (limited) change occurring within the shares already held. Even the sale/purchase

transactions that have taken place as a ratio of the total shares held for that company is low, thus indicating the volume of shares held has not varied much. Just as aggressive and constant behaviour as regards the portfolio suggests business activity, its absence suggests that the shareholding was as an investment The fact that the assessee has transacted in shares does not necessarily mean that it is a trading activity; shares held as investment may also be sold and purchased, the crucial factor being the frequency and volume of the trades to determine the true intention for which they are held. Considering the limited activity surrounding the shareholding of the assessee in relation to the 13 scrips, the concurrent findings of the CIT (Appeals) and the Tribunal was upheld. It was held, therefore, that the amount reported by the assessee was to be treated as STCG.

5] No Deemed Dividend u/s 2(22(e) of the IT Act – When Contract was executed in the normal course of the business as builder and advance was received in connection with construction work could not be taxed in assessee's hands

CIT vs. Madurai Chettiyar Karthikeyan [2014] 45 taxmann.com 274 (Madras)

Assessee was proprietor of 'V' Builders and was also Managing Director of 'S' Limited, in which he held 63 per cent shareholding in 'S' Ltd. awarded construction contract to assessee's proprietary concern. Assessee's case was that it being a normal business transaction, advance received for purpose of executing construction work would not fall within scope of 'loans and advances' under section 2(22)(e). AO however, viewed that since assessee was having more than 10 per cent share holding in 'S' Ltd., amount in question was liable to be assessed as deemed dividend. On appeal before CIT(A), CIT(A) allowed assessees appeal and held that Commissioner viewed that the trade advance was in the nature of money given for the specific purpose of constructing the building for the private limited company and hence the payment could not be treated as deemed dividend falling within the ambit of Section 2(22)(e) of the Income-tax Act, 1961. On further appeal in Tribunal, Tribunal confirmed the findings of CIT(A). On appeal in High Court, Hon'ble High Court dismissed revenue's appeal and held that going by the undisputed fact that the Revenue had not disputed the fact that the assessee had executed work for the company in the nature of construction of buildings and the said transaction being in the nature of a simple business transaction, there was not a justifiable ground to bring the case of the assessee within the definition of deemed dividend under Section 2(22) (e) of the IT 1961.

Unreported

6] Section 4 – Income – Profit on repatriation of foreign exchange on account of variation in forex rates

CIT vs. Tata Power Co. Income Tax Appeal No. 251 of 2012 dated 11th June, 2014. Bombay High Court

The assessee had issued Euro Notes in 1997 for raising funds for financing the assessees' capital expenditure programmes and for general corporate purposes. The entire proceeds raised abroad were held in interest for a period of 3 years pending deployment and utilisation. During the year ended 31st March, 2001, the funds were repatriated to India as per the requirement of Reserve Bank of India. As a result of the intervening fall in the value of the Indian Rupee, a gain in terms of Indian rupees has arisen to the assessee, on the repatriation of funds. The above gain was credited to Profit and Loss Account. The Assessing Officer has treated the profit on repatriation of certificates of deposit as taxable

income. HELD that the purposes for which the notes were raised was 'capital'. The gain arose, not in the course of trading activities but due to conversion of the currency of one country into the currency of another country. The gain is, therefore, on capital account and not in the nature of income. Further, the gain has arisen at that point of time when the funds were repatriated to India. If the Notes were issued for meeting capital expenditure, and remained outside India, the taxability has to be determined at the point of time when the profit arose. Their subsequent utilisation was irrelevant.

7] Section 14A – Expenditure incurred to income not forming part of the total income

CIT vs. Lakhani Marketing INCL Income Tax Appeal No. 970 of 2008 dated 2nd April, 2014 – Punjab & Haryana High Court.

For making a disallowance under section 14A, a definite finding of incurring of expenditure is necessary. The contention of the revenue that directly or indirectly some expenditure is always incurred which must be disallowed under section 14A, cannot be accepted. A nexus between the exempt income & the expenditure is imperative.

8] Section 271(1)(c) – Penalty for concealment/furnishing of inaccurate particulars

CIT vs. Dharamshi Shah Tax Appeal No. 189 of 2014 dated 9th June 2014 – Gujarat High Court.

Merely because the High Court has admitted the appeal of the assessee in quantum proceedings, the penalty does NOT become unsustainable. This is because, admission of a Tax Appeal by the High Court, in many a cases, is exparte and without recording even prima facie reasons. Further the admission of a Tax Appeal by the High Court only indicates that a prima facie case has been made out and the Court feels that the issue requires further consideration. Mere admission of an appeal by the High Court cannot be an indication that the issue is debatable one so as to delete the penalty under Section 271(1)(c), unless there is some indication in the order of admission itself that the issue is a debatable one.

9] Section 271(1)(c) – Penalty for concealment/furnishing of inaccurate particulars r/w S. 263 – Revision

CIT vs. Padmini Mishra ITA No. 541 of 2013 dated 27th May, 2014. Delhi High Court.

The Commissioner, in exercise of the powers u/s. 263 observed that the certain income was taxable and ought to be brought to tax. He directed the AO to complete the assessment accordingly but neither recorded any satisfaction about concealment nor gave any such directions to the AO. In assessment pursuant to such revision, the AO initiated penalty. HELD, in an assessment pursuant to section 263, the AO cannot levy penalty, in absence of any satisfaction recorded by the CIT.

10] Section 260A – Appeal to High Court – Substantial question of law

CIT vs. Parvez Poonawala Income Tax Appeal no. 874 of 2013 dated 9th June, 2014. Bombay High Court.

An issue which has not been raised before the Tribunal and not discussed by the Tribunal, cannot be raised before the High Court for the first time.

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DIRECT TAXES
Tribunal

Reported decisions

1. Assessee in default – section 201(1) – Recovery provisions under section 201(1) can be invoked only when loss to revenue is established. A.Ys. 2001-02 to 2007-08

Allahabad Bank vs. Income-tax Officer [2014] 46 taxmann.com 200 (Agra - Trib.)

The assessee before the Hon'ble Appellate Tribunal is a nationalised bank. The assessee's business premises were subjected to survey action under section 133A of the Act for examining compliance with tax withholding obligations. During the course of this survey, it was noticed that the assessee has not complied with tax deduction at source obligations in as much as taxes were not properly withheld in respect of interest on certain deposits placed by the customers with the assessee. Hence, the order under section 201(1) was passed treating the assessee in default in respect of non-deduction of tax at source. On appeal, the Ld. CIT(A) upheld the order of the A.O. The assessee being aggrieved filed further appeal before the Hon'ble Agra Bench of Income Tax Appellate Tribunal. The Hon'ble Tribunal allowed the appeal of the assessee by observing that the onus is on the revenue to demonstrate that the taxes have not been recovered from the person who had the primary liability to pay tax, and it is only when the primary liability is not discharged that vicarious recovery liability can be invoked. Once all the details of the persons to whom payments have been made are on record, it is for the A.O., who has all the powers to requisition the information from such payers and from the Income tax authorities, to ascertain whether or not taxes have been paid by the persons in receipt of the amounts from which taxes have not been withheld.

2. Revision – erroneous and prejudicial order – section 263 of the Act – the issue of Short Term Capital Gain and set off of brought forward Short Term Capital Loss against the said gain examined while framing the assessment order under section 143(3) – CIT was not justified in invoking the provisions of section 263 of the Act to treat the Short Term Capital Gain as business income. A.Y. 2010-11

Deepchand Surana vs. CIT (2014) 104 DTR (Jd.) (Trib) 251

The assessee filed his return of income declaring total income at ₹ 17,09,980/-. Later on, case was selected for scrutiny. The Assessing Officer during the course of assessment proceedings, noticed that the assessee had shown income of ₹ 27,42,135/- from Short Term Capital Gain

under section 111A of the Act and claimed set off of brought forward short term capital loss of ₹ 12,32,523/-. The assessee produced all relevant details of short term capital gain for this year and short term capital loss for the preceding year and also produced books of account and contract notes for share transactions which were examined. The Assessing Officer framed the assessment under section 143(3) of the Act accepting the income of ₹ 17,09,980/-. Thereafter, Ld. CIT, Jodhpur exercised his revisionary powers under section 263 of the Act by observing that the assessee had disclosed short term capital gain at ₹ 27,42,135/- out of which brought forward short term capital loss amounting to ₹ 12,32,523/- was claimed. He also noticed that the assessee had made share transactions of more than 200 listed shares of different companies during the year with three share brokers and in a number of transactions, delivery of shares was not taken. He also pointed out that the shares were sold within a short period and in a number of cases, the holding period was less than 60 days. The Ld. CIT also noted that the assessee had paid different amount to sharebrokers after netting with purchase and sales and that the assessee had disclosed a small amount of dividend of ₹ 1,29,232/- only. The Ld. CIT issued notice under section 263 of the Act. In reply to the said notice the assessee has explained that the issue of Short Term Capital Gain was examined by the A.O. during the course of assessment proceedings. The assessee has been doing share trading activity and investment in shares which has been accepted by the department in earlier assessment years. The assessee relied on the department Circular No. 4 of 2007 to support his contentions. However, the Ld. CIT. has passed the order under section 263 of the Act setting aside the original assessment order passed under section 143(3) of the Act treating the same as erroneous as well as prejudicial to the interest of the revenue. The assessee being aggrieved filed an appeal before the Hon'ble Jodhpur Bench of the Appellate Tribunal. The Tribunal allowed the appeal of the assessee by observing that A.O. had examined the issue of Short Term Capital Gain under section 111A and set off of brought forward Short Term Capital Loss as evident from the assessment order. Thus, the Ld. CIT was not justified in passing the order under section 263 of the Act to treat the assessment order as erroneous and prejudicial to the interest of the revenue simply because he wanted that the Short Term Capital Gain should be treated as Business Income.

3. Exemption under section 10A – adjustment and set off of losses – loss in eligible unit under section 10A can be set off against non-eligible unit. A.Y. 2006-07

Qualcomm India (P) Ltd. vs. ACIT (2014) 103 DTR (Del) (Trib) 241

During the year the Hyderabad Unit of the assessee had earned profit of ₹ 14,90,62,148/- and the same was claimed as deduction under section 10A of the Act. However the Bangalore unit has suffered a loss and hence no deduction was claimed under section 10A of the Act. In its return of income filed for the year, the assessee had set of the losses of Bangalore unit of ₹ 1,49,49,710/- with profit derived from Mumbai unit. The A.O. did not allow the set off of the losses of Bangalore Unit on the basis that income of STPI unit is exempt under section 10A of the Act and hence cannot be adjusted with other income. The assessee challenged the action of the A. O. before Delhi Bench of the Appellate Tribunal. Hon'ble Appellate Tribunal relying on the decision of the Third Member of the Mumbai Appellate Tribunal in the case of *Navin Bharat Industries Ltd. vs. DCIT (2005) 92 TTJ 1166 (Mumbai) (TM)* allowed the claim of the assessee and held that the loss in eligible unit under section 10A can be set off against the non-eligible unit.

4. Rectification – section 254(2) – Non consideration of the decision of the jurisdictional High Court and jurisdictional Bench of the Tribunal amounts to a mistake apparent on record – Rectifiable under section 254(2) of the Act. A.Y. 2004-05

Gopal Ram Pema Ram vs. ACIT (2014) 104 DTR (Jd) (Trib.) 287

The assessee filed a miscellaneous application against the order passed by the Hon'ble Appellate Tribunal on the ground that the decision of the jurisdiction High Court has not been considered while passing the impugned order. The assessee before the Appellate Tribunal contended that the judgment of the Hon'ble Jurisdictional High Court has a binding nature and if it is not followed, the order would suffer from apparent mistake on record. The Hon'ble Appellate Tribunal allowed the miscellaneous application by observing that Non-consideration of the decision of jurisdictional High Court and jurisdictional Bench of the Tribunal amounts to a mistake apparent on record which is rectifiable under section 254(2) of the Act.

Unreported decisions

1. Business Expenditure – Explanation to section 37(1) of the Income-tax Act, 1961 – Job work charges paid to related party without obtaining approval of the Central Government in accordance with the provisions of Companies Act – The approval was obtained subsequently – Payment of job work charges cannot be termed as payment for an offence or is prohibited by law – The disallowance of the job work charges is unjustified. A.Y.: 2009-10

Jai Surgicals Ltd. vs. ACIT – [I.T.A. No.: 844 /Del/ 2013; Order dated 26-6-2014; Delhi Bench]

During the course of assessment proceedings the A.O. noticed that the assessee entered into transactions of payment of job work charges to a related party, viz., M/s. Razormed Inc. during the year under consideration without obtaining prior approval of the Central Government in accordance with the provisions of section 297 of the Companies Act, 1956. The assessee explained to the A.O. that the approval for the transactions with the related parties was obtained from the Company Law Board on payment of compounding charges for the condonation of delay. Hence, there was no violation of law. However, the A. O. made the addition on account of job charges paid to M/s. Razormed Inc. invoking Explanation to section 37(1) of the Act by observing that the on the day of payment, prior approval from the Central Government was not obtained. On appeal, the first Appellate Authority confirmed the action of the A.O. The assessee being aggrieved by the order of the first Appellate Authority preferred an appeal before the Hon'ble Delhi Bench of the Appellate Tribunal. The Tribunal deleted the addition made by the A.O. by observing that it is not the case of the Revenue and naturally cannot be that the payment of job work charges is an offence or is prohibited by law. What the authorities below have taken into consideration while making the disallowance is that since there was no prior approval from the Central Government, the expenditure of job work charges became disallowable. We fail to understand as to how the payment of job work charges can by any stretch of imagination be construed as offence or prohibited by law simply because the necessary permission from the Central Government was obtained belatedly. When the language of the Explanation is crystal clear and does not encompass the incurring of expenses for a lawful purpose, such as the job charges, within its ambit, it is wholly impermissible to import a further requirement in the language of the Explanation to make the otherwise lawful purpose as unlawful for lack of the prior approval of the Central Government. As the 'purpose' of incurring the expenditure of job charges is neither an offence nor is prohibited by law, we fail to comprehend as to how the otherwise lawful purpose would become contingent upon obtaining or not obtaining the prior approval of the Central Government. Since such expenditure in itself is neither an offence nor prohibited by any law and there is a valid and lawful *quid pro quo* for the same, we are disinclined to uphold the view canvassed in the impugned order.

CA Sunil K. Jain

DIRECT TAXES

Statutes, Circulars & Notifications

NOTIFICATIONS

Constitution of special investigation team for purpose of bringing back unaccounted money unlawfully kept in bank accounts abroad

The Central Government in the Ministry of Finance, Department of Revenue constituted the Special Investigation Team, comprising of the following:

(a) Hon'ble Mr. Justice M.B. Shah, former Judge of Supreme Court – Chairman (b) Hon'ble Mr. Justice Arijit Pasayat former Judge of Supreme Court - Vice Chairman (c) Revenue Secretary – Member (d) Deputy Governor, Reserve Bank of India – Member (e) Director (IB) – Member (f) Director, Enforcement Directorate – Member; (g) Director, CBI – Member; (h) Chairman, CBDT - Member; (i) Director General, Narcotics Control Bureau – Member; (j) Director General, Revenue Intelligence – Member; (k) Director, Financial Intelligence Unit – Member; (l) Joint Secretary (FT & TR-I), CBDT – Member; and (m) Director, Research and Analysis Wing – Member.

The terms of reference of the Special Investigation Team will be as per order dated 4-7-2011 of Hon'ble Supreme Court and includes as under:

(i) The Special Investigation Team shall function under the guidance and direction of Chairman and Vice-Chairman. (ii) The said Special Investigation Team shall be charged with the responsibilities and duties of investigation, initiation of proceedings, and prosecution, whether in the context of appropriate criminal or civil proceedings of : (a) all issues relating to the matters concerning and arising from unaccounted monies of Hassan Ali Khan and the Tapurias; (b) all other investigations already commenced and are pending, or awaiting to be initiated, with respect to any other known instances of the stashing of unaccounted money in foreign bank accounts by Indians or other entities operating in India; and (c) all other matters with respect to unaccounted money being stashed in foreign banks by Indians or other entities operating in India that may arise in the course of such investigations and proceedings. (iii) It is also the responsibility of SIT to ensure that the matters are also investigated, proceedings initiated and prosecutions conducted with regard to criminality and/or unlawfulness of activities that may have been the source for such money, as well as the criminal and/or unlawful means that are used to take such unaccounted moneyout of and/or bring such money back into the country, and use of such money in India or abroad. (iv) The Special Investigation Team shall also be

charged with the responsibility of preparing a comprehensive action plan, including the creation of necessary institutional structures that can enable and strengthen the country's battle against generation of unaccounted money, and their stashing away in foreign banks or in various forms domestically.

The said Special Investigation Team should be responsible to the Hon'ble Supreme Court and that it shall be charged with the duty to keep Supreme Court informed of all major developments by filing of periodic status reports and following of any special orders that Supreme Court may issue from time-to-time; The Special Investigation Team is also empowered to further investigate even where charge-sheets have been previously filed and that the Special Investigation Team may register further cases, and conduct appropriate investigations and initiate proceedings, for the purpose of bringing back unaccounted monies unlawfully kept in bank accounts abroad.

Remuneration, allowances, facilities etc. for Hon'ble Mr. Justice M. B. Shah and Hon'ble Justice Arijit Pasayat, appointed as Chairman and Vice Chairman to supervise the Special Investigation Team shall be as per judgment dated 4-7-2011. The Department of Revenue, Ministry of Finance, and Government of India will be responsible for creating the appropriate infrastructure and other facilities for proper and effective functioning of the Special Investigation Team. JS(R) Department of Revenue, Ministry of Finance would be Member-Secretary of SIT.

(Notification F. No. 11/2/2009-Ad.E.D., dated 29-5-2014)

Income-tax (Sixth Amendment) Rules, 2014 – Amendment in Rule 12 and Substitution of Forms ITR-3, ITR-4, ITR-5, ITR-6 & ITR-7 :

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes made the following rules further to amend the Income-tax Rules, 1962, as the Income-tax (6th Amendment) Rules, 2014 which shall be deemed to have come into force with effect from the 1st day of April 2014. In the Income-tax Rules, 1962 (hereinafter referred to as the said rules), in Appendix-II, new FORM ITR-3, FORM ITR-4, FORM ITR-5, FORM ITR-6 and FORM ITR-7, the FORMS respectively have been substituted.

(Notification No.28/2014 Dated 30-5-2014)

Section 80G(2)(b) of the Income-tax Act, 1961 – Deductions – Donations to religious/charitable funds etc. – Notified places of worship

In exercise of the powers conferred by clause (b) of sub-section (2) of section 80G of the Income-tax Act, 1961 (43 of 1961), the Central Government notified "Sivasuriyaperuman Temple, Suriyanarkoil, Thiruvaidaimarudur Taluk, Thanjavur District, Tamil Nadu", to be a place of public worship of renown throughout the State of Tamil Nadu for the purposes of the said section.

(Notification No. 29/2014 dated 3-6-2014)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Agreement for exchange of information with respect to taxes with foreign countries – Principality of liechtenstein:

An agreement between the Government of the Republic of India and the Government of the Principality of Liechtenstein, for the exchange of information on tax matters was signed, Switzerland in March, 2013; and, the date of entry into force of the said agreement is the 20th of January, 2014, being one month from the relevant date on which the last of the notifications of completion of the procedures as required by the respective laws for entry into force of the said agreement was received, in accordance with paragraph 1 Article 11 of the said agreement.

The said agreement shall have effect for all requests made in respect of taxable periods beginning on or after 1st April, 2013, in accordance with Article 11 of the said agreement. Now, therefore, the Central Government directed that the said agreement between the Government of the Republic of India and the Government of the Principality of Liechtenstein on the exchange of information on tax matters, as set out in the annexure thereto, shall have effect for all requests made in respect of taxable periods beginning on or after 1st April, 2013.

(Notification No. 30/2014 dated 6-6-2014)

Senior Citizen Savings Scheme (Amendment) Rules, 2014 – Amendment in Rule 8 :

The Central Government made the rules to amend the Senior Citizens Savings Scheme Rules, 2004 as the Senior Citizen Savings Scheme (Amendment) Rules, 2014 which shall come into force on the date of their publication in the Official Gazette.

In Senior Citizen Savings Scheme Rules, 2004, after sub-rule (3) of rule 8, it has been inserted "that in the case of a joint account, or where the spouse is the sole nominee, the spouse may continue the account on the same terms and conditions as specified under these rules and that in case the spouse does not continue the joint account, the account shall be closed on an application in Form-F and the deposit refunded along with interest as above".

(Notification No. GSR 392(E) dated 9-6-2014)

Section 48, Explanation (V) of the Income-tax Act, 1961 – Capital Gains – Computation of – Notified Cost Inflation Index for Financial Year 2014-15

The Central Government made the amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), Central Board of Direct Taxes published in the Gazette of India, Extraordinary. In the said notification, in the Table, after serial number 33 and the entries relating thereto, the following serial number and entries have been inserted, namely:—

Sl. No.	Financial Year	Cost Inflation Index
(1)	(2)	(3)
"34	2014-15	1024"

(Notification No. 31/2014 dated 11-6-2014)

Wealth-tax return to be furnished electronically (First Amendment) Rules, 2014 – Substitution of Rule 3 and insertion of Form BB

The Central Board of Direct Taxes made the rules to amend the Wealth-tax Rules, 1957 as the Wealth-tax (First Amendment) Rules, 2014 substituting rule 3, which comes into force on the date of their publication in the Official Gazette. Accordingly subject to the provisions of sub-rule (3), for the assessment year 2014-15 and any other subsequent assessment year, the return of net wealth shall be furnished electronically under digital signature.

In case of individual or Hindu undivided family to whom the provisions of section 44AB of the Income-tax Act, 1961 are not applicable, the return of net wealth referred to in sub-rule (1) may be furnished for assessment year 2014-15 in paper form. The return of net wealth required to be furnished in Form BB shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax and interest paid, or any document or copy of any account or form of report of valuation by registered valuer required to be attached with the return of net wealth under any provisions of the Act.

The Director General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing

appropriate security, archival and retrieval policies in relation to furnishing the returns in the manners specified in sub-rule (2)."

(Notification No.32/2014 dated 23-6-2014)

CIRCULARS

Sharing of asset details as per wealth tax returns of loan defaulters with public sector banks :

Section 42B of the Wealth-tax Act, 1957 states that where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form, seeking any information relating to any assessee in respect of any assessment made under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment. In view of the fact that every Return of Wealth filed by the assessee is subject to assessment under section 16 of the Wealth-tax Act, the information contained therein qualifies for being supplied u/s 42B of the Wealth-tax Act, provided the CCWT/CWT is satisfied that supply of such information to PSBs is in public interest. CBDT in this context clarified that information on assets of loan defaulters to enable recovery of loans by PSBs from such defaulters is in public interest.

It clarified that such information may be provided in respect of the borrower/mortgager/guarantor of the loan only. At the time of supply of such information a confidentiality clause may be included specifying that such information be used only for the purpose of recovery of loan and will not be shared with any other person/agency. An undertaking to this effect shall be obtained from the Bank (to be signed by an officer not below the rank of the Manager of the Branch concerned) before furnishing the information.

In order to ensure that the tax dues of the Department against the defaulter (if any) are safeguarded, an undertaking be obtained from the PSB to obtain a No Objection Certificate (NOC) from the jurisdictional CIT of the loan defaulter before appropriation of the surplus amount recovered from sale of immovable/movable asset of the defaulter, information in respect of which is shared, after adjustment of its loan dues.

(Letter [F. No.328/10/2014-WT], dated 28-5-2014)

Remittances to Non-residents – deduction of tax at source

The Central Board of Direct Taxes (CBDT) had revised the existing instructions to be followed while allowing remittances to the non-residents, with effect from October 1, 2013. It also issued Income Tax Rules, 2013 *vide* Notification dated September 2, 2013 on furnishing of information under section 195(6) of the Income-tax Act, 1961 and prescribed the rules and forms to this effect.

Reserve Bank of India has now reviewed the policy relating to issue of instructions under Foreign Exchange Management Act, 1999 (FEMA), clarifying tax issues. It has now been decided that Reserve Bank of India will not issue any instructions under the FEMA, in this regard. It shall be mandatory on the part of Authorised Dealers to comply with the requirement of the tax laws, as applicable.

Authorised Dealers have to bring the content of this circular to the notice of their constituents concerned. Further, they are advised to approach CBDT for any clarification in this regard. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

(A.P. (DIR Series)(2013-14) Circular No. 151, dated 30-6-2014)

Instruction on standard operating procedure on filing of appeals/Special Leave Petitions (SLPS) by the income tax department in the Supreme Court

and related matters revised Proforma B to Instruction No. 4/2011, dated 9-3-2011

The revised Proforma B to the Instruction No. 4/2011, dated 9-3-2011 for immediate compliance has been introduced *vide* Annexure B for submission of proposal to file SLP.

(Letter [F. No 279/MISC/M-20/2011-1TJ], dated 1-7-2014)

PRESS RELEASE

Section 139 of the Income-tax Act, 1961 – Return of income – Updation and validation of tax-payer e-mail ID and mobile number for their e-filing account

A valid E-mail ID and mobile number has to be registered/updated on the e-filing website of the Income Tax Department so that direct communication with taxpayer can be possible. For details, taxpayers can logon to: https://incometaxindiaefiling.gov.in/eFiling/Portal/StaticPDF/Update_Contact_Details.pdf).

1. The Department will send separate One Time Passwords (OTP) also referred as PIN on the mobile and e-mail provided by the taxpayer. The OTPs have to be entered by the taxpayer after logging into their e-filing account to authenticate the same. The OTPs will remain valid for 24 hours within which the taxpayer has to complete the process. For 'Foreign/ NRI' taxpayers, the OTP validation of the e-mail ID would be sufficient.

2. Validation of e-mail and mobile numbers has been introduced to facilitate taxpayers as in many cases incorrect e-mails and mobile numbers have been provided and taxpayers did not receive important communication from the Department. Further, it has been observed that in many cases taxpayers are not able to reset their password since the new temporary password from the Department may be sent to their registered e-mail which may be different from the taxpayer's personal e-mail, e.g. e-mail of their intermediary.

3. This is a one-time process to validate the mobile number and e-mail ID. However, whenever the taxpayer changes the mobile number or e-mail ID in their Profile, the process will be repeated to ensure that the particulars provided are correct. Further, this validation will ensure that Department can send an OTP for resetting the password used for login in case the taxpayer has forgotten the password.

4. One mobile number or e-mail ID can be used for a maximum of 10 user accounts as the Primary Contact- Mobile Number and e-mail ID in e-filing. This is to ensure that family members and related business concerns (not exceeding 10 separate users) not having personal e-mail or mobile can be covered under a common email or mobile, but in general taxpayers should have their own unique e-mail ID and mobile registered with the Department.

5. The taxpayer can enter any other person's e-mail or mobile number in addition, as a Secondary Contact (without any restriction on the number of user accounts linked as a Secondary Contact). Using "Profile Settings – My Profile" the taxpayer can select to include the Secondary Contact to also receive e-mails, alerts etc.

6. It is advised that the e-mails and SMS from the Income tax Department may be included in the 'safe list' or 'white list' to prevent the communications from the Department from being blocked or rejected or sent to spam folder. Taxpayers are also advised not to share their user-ID and password of their e-filing account with others to prevent unauthorized access. Taxpayers can reset their password using the 'Forgot Password?' link while logging in to their e-filing account and by providing the necessary details.

7. The Department requests the co-operation of all taxpayers for completing this validation process at the earliest for a smooth and convenient return filing process.

(Press Release, dated 4-7-2014)

CA Tarunkumar Singhal & CA Sunil Moti Lala

INTERNATIONAL TAXATION
Case Law Update

A] HIGH COURT JUDGMENT

I. Whether payment of transmission / wheeling and SDLC charges by Electricity Distribution Company were in the nature fees for technical services was to be decided by the AO after examining a technical expert to decide whether any human intervention, in the activity, was involved or not in view of the decision of Apex Court in Bharati Cellular Limited

CIT (TDS) vs. Dakshin Haryana Bijli Vitran Nigam Limited. [Income Tax Appeal No. 652 of 2010. Order dated 8th May, 2014. Punjab & Haryana High Court]

Facts

1. The assessee, a company registered under Companies Act, 1956, was engaged in distribution of power in the State of Haryana. It purchased power from one company and transmitted it to the consumer through the network of another company called Haryana Vidyut Prasaran Nigam ("HVPN"). The assessee made payment to HVPN on account of transmission charges called 'wheeling charges' and State Load Dispatch Centre Charges ("SLDC").

2. The AO was of the view that HVPN was rendering technical services within the meaning of Explanation 2 to Section 9(1)(vii) of the Income-tax Act, 1961 ("the Act") and thus, the assessee was under obligation to deduct tax at source while making payment of wheeling and SDLC charges under Section 194J of the Act. Accordingly, the AO passed an order under Section 201 of the Act, treating the assessee as 'assessee in default'.

3. On appeal, the CIT(A) upheld the order of the AO that the services rendered by HVPN were in the nature of technical services on which tax was liable to be deducted by the assessee.

4. On appeal, the Hon'ble ITAT, relying on the decision of the Jaipur Bench of ITAT in case of *Jaipur Vidyut Vitran Nigam Limited vs. ITO (ITA Nos. 127 to 131/JP/2009)*, held that assessee was not liable to deduct tax at source on transmission/wheeling charges and SDLC charges.

5. Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Judgment

1. The Hon'ble High Court noticed that Hon'ble Supreme Court, in case of *CIT vs. Bharati Cellular Limited (330 ITR 239)*, held that wherever there was any human intervention

requiring examination of technical data, services would partake the character of technical services and in the absence thereof, the same would not partake the character of technical services. The Apex Court in that case had remitted the matter to the AO to examine the technical expert and adjudicate the matter afresh.

2. In the present case, since from the orders of the lower authorities it was not clear whether any human intervention was involved or not in rendering of services, the Hon'ble High Court remitted the matter to the AO to decide the issue afresh after considering the observations of the Hon'ble Apex Court in case of *CIT vs. Bharati Cellular Limited (supra).*

II. Reimbursement even though involves charging of cost without mark-up, transaction being between 2 AEs, it is necessary to test whether cost itself is not inflated by carrying out comprehensive transfer pricing analysis – Sets aside ITAT order deleting adjustment and directs TPO to verify actual activity carried out and cost incurred by AE along with attendant benefit to assessee for determining ALP – AO's reference to TPO is for limited purpose of determining ALP, it does not curtail powers of AO under section 37 of the Act to check if expenditure is wholly and exclusively incurred for business

CIT vs. Cushman & Wakefield (India) Private Limited [ITA No. 475 of 2012] [Order dated 23rd May, 2014] (Delhi High Court) : *Assessment Year : 2006-07*

Facts

1. The assessee was engaged in the business of rendering services in relation to the real estate sector. Services were provided to its clients within as well as outside India.

2. During A.Y. 2006-07, the assessee entered into various 'international transactions' with its Associated Enterprises ('AEs') which *inter alia* included reimbursement to Cushman & Wakefield, Singapore ('CWS') and Cushman & Wakefield, Hong Kong ('CWHK') for certain co-ordination and liaison services in respect of one of its client and referral fees paid to various AEs for the referral of clients by these AEs to the assessee.

3. The assessee, in its Transfer Pricing study report, took a stand that the reimbursements were charged back to the assessee based on actual costs incurred by the AEs on behalf of the assessee and no additional services were provided by the AEs. Further, it was stated that reimbursements also included costs shared between the assessee and its AEs certain employees of its AEs who assisted Cushman & Wakefield group entities in maintaining relationships with its global clients. Therefore, no benchmarking or a transfer pricing analysis was conducted by the assessee for the transaction. As regards the referral fees, the assessee benchmarked the same by applying the Comparable Uncontrolled Price ('CUP') Method.

4. The Transfer Pricing Officer ('TPO'), as regards the payment of the referral fees, stated that "no adverse inference is drawn". However, in respect of the reimbursement of costs to the AEs, the TPO disallowed deduction of the expenditure on the ground that no intra-group services were provided as the assessee had failed to submit any evidence to support its claim. Accordingly, he determined the Arm's Length Price ('ALP') of the transaction as NIL.

5. The Assessing Officer ('AO') on the basis of the recommendation of the TPO disallowed the reimbursements of expenses. As regards the referral fees, the AO disallowed the same on the ground that no benefit was derived by the assessee and it had failed to demonstrate the genuineness of transaction through any evidence or the link between any income and the said expense.

6. Aggrieved, the assessee preferred objections before the Dispute Resolution Panel ('DRP') against both the findings. The DRP however, confirmed the conclusions of the AO.

7. On appeal, the Hon'ble ITAT reversed the findings of the lower authorities in respect of both the additions. As regards the referral fees, the addition was reversed on two grounds. The first was that the AO, after referring the international transaction to the TPO, could not reopen or re-examine the transaction since the order of TPO was binding on the AO under section 92CA(4) of the Act as amended by Finance Act, 2007 with effect from 1st June 2007. Secondly, it was held by the Hon'ble ITAT that the assessee had demonstrated, through evidences, the relation between the revenue generated and the referral fees. In respect of the second disallowance, it held that the evidences submitted, which included a detailed break up of costs incurred by the AE, validated the fact that services were actually rendered.

8. Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Judgment

1. The Hon'ble High Court set aside the Hon'ble ITAT's order on both the issues and directed fresh determination as per its guidelines (discussed hereunder).

Referral Fees

2. The Hon'ble High Court, while bringing out the distinction between the powers of the AO under section 37 of the Act and of the TPO under section 92CA of the Act, noted that a referral by the AO to the TPO is only for the limited purpose of determining the ALP, based on a *prima facie* view that such a referral was necessary. It does not indicate a concrete view as to the existence of services, or the accrual of benefit (such that allowance under section 37 of the Act must be permitted). It is within the powers of the AO to determine under section 37 of the Act that the expenditure claimed was not for the benefit of the business, and thus, disallow that amount.

3. The Hon'ble High Court also relied on the rulings of *Deloitte Consulting India Pvt. Ltd. v. DCIT [2012] 137 ITD 21 (Mum.)* and *Sony India Pvt. Ltd. vs. CBDT and Anr., [2007] 288 ITR 52 (Delhi),* wherein a similar view had been taken by the courts.

4. The Hon'ble High Court held that post 2007, TPO's determination of ALP is binding on the AO. Therefore, AO was not correct in reassessing or drawing adverse conclusions on the quantum of referral fees. However, it was open for him to verify if services or work were actually rendered and if the services were genuine or, on a broader scale, whether the expenses were incurred "for the purpose of the business" of an assessee. Thus in view of the Hon'ble High Court, the Hon'ble ITAT was not right in concluding that since the expenditure was accepted as at ALP by TPO, AO could not have disallowed it under section 37 of the Act.

5 On merits, it observed that neither the AO nor the Hon'ble ITAT had discussed the evidences submitted by the assessee and accordingly it set aside the matter to the AO for detailed verification and give a reasoned conclusion. However, it instructed the AO to be bound by the pricing of the referral fees, as determined by the TPO.

Reimbursement of Expenses

6 As regards the second disallowance, the Hon'ble High Court noted that it was an undisputed fact that the AEs had indeed incurred the costs and that the assessee as well as the lower authorities did not attempt to benchmark the subject international transaction through any prescribed methods.

7 The Hon'ble High Court while examining provisions of section 92(3) of the Act, held that if an assessee was paying greater income tax than would otherwise be paid in an uncontrolled transaction, section 92 of the Act will not alter

the income stated in the return of that assessee. However, such conclusion, could only be reached after an assessment of the ALP and comparison with the income stated in the return.

8. It further observed that deduction of business expenditure under section 37 of the Act for work undertaken by the AEs allows only for deduction of such amounts as incurred for the benefit of the assessee. The reimbursement claimed by the assessee, therefore, should relate to work done by the AEs that has benefited it – the presence of a benefit and the costs incurred in creating that benefit form part of the same matrix of consideration under section 37 of the Act. Thus, only those costs incurred by CWS and CWHK which led to a benefit to the assessee can be claimed by it under section 37 of the Act.

9. After discussing at length, the provisions of Chapter X of the Act, the Hon'ble High Court observed that mere claim of a reimbursement, does not imply that the costs may not have been inflated, and only once the ALP is determined, it can be verified whether section 92(3) of the Act can be invoked. Thus, it was necessary to test if third party, in an uncontrolled transaction would have charged lower, equal or greater amount as compared what was charged by AE. It thus held that since the transaction was between related parties, whether that cost itself was inflated or not only was a matter to be tested under a comprehensive transfer pricing analysis.

10. As regards costs incurred by the AEs, the Hon'ble High Court noted that CWS has charged costs incurred by one of its employee of CWS for the benefit of the assessee which was a detailed exercise. However, no such details were available in respect of cost recharge by CWHK which was acted as the co-ordinating entity for the Client Solutions Group. The cost allocation to the assessee was on the basis of a percentage of the cost relatable to the revenue generated by Cushman & Wakefield Asia. It observed that for 82.44% share of the revenue from the services of the Client Solution Group, the relatable cost allocation was 72.5%. However, the precise activities conducted by Client Solutions Group for the benefit of the assessee out of the entire range of activities conducted by it, and the cost applicable to such activities had not provided by the assessee. Instead a broad-brush approach at flatly 'equating' the costs relatable to the revenue generated was provided.

11. The Hon'ble High Court further observed that it was essential to relate the cost of specific activities conducted to the benefit incurred by the assessee, rather than allocate cost from a common pool or basket of revenue generated through an unexplained percentage relation to the revenue generated. It held that the basis for the costs incurred, the activities for which they were incurred, and the benefit accruing to the assessee from those activities must all be proved to determine first, whether, and how much, of such expenditure was for the purpose of benefit of the assessee (deductible under Section 37 of the Act), and secondly, whether that amount passed muster under a transfer pricing analysis.

12. It noted that TPO, and Hon'ble ITAT had placed reliance, on the 2009 Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organization for Economic Cooperation and Development ("OECD"), specifically paragraphs 7.4-7.6, which deal with intra-group services. The Hon'ble High Court stated that this guidelines were not binding and further the said para 7.4 also recognised that each case would depend upon facts and circumstances.

13. The Hon'ble High Court relying upon, the decisions in the case of *Dresser Rand India Pvt. Limited [2012] 13 ITR (Trib.) 422 (Mum.)* and *Deloitte Consulting India Pvt. Limited (*supra*)* held that the authority of the TPO is to conduct a transfer pricing analysis to determine the ALP and not to determine whether there is a service or not from which the assessee benefits and that aspect of the exercise was left to the AO.

14. The Hon'ble High Court also noted that neither the Revenue, nor any Court, must question the commercial wisdom of an assessee,

or replace its own assessment of the commercial viability of a transaction.

15. Since the details of specific activity carried out and cost incurred by CWS and CWHK and attendant benefit to the assessee had not been considered by TPO/Hon'ble ITAT, the Hon'ble High Court remitted the matter back to TPO for consideration of ALP determination.

III. [Note: The Hon'ble Authority of Advance Ruling ('AAR') in [2012] 18 taxmann.com 45 had held that the consortium of CTCI Overseas Corporation Ltd. ('the assessee') and CINDA Engineering and Construction Private Limited constituted an Association of Persons ('AOP'). Aggrieved by the order, the assessee filed a Writ Petition before Hon'ble High Court which has set aside the order of AAR with a direction that constitution of AOP was to be examined on basis of principles laid down by the Hon'ble Delhi High Court in the case of *Linde AG, Linde Engineering Division vs. DDIT [2014] 44 taxmann.com 244 (Delhi)]*

CTCI Overseas Corporation Ltd. vs. DIT [2014] 45 taxmann.com 445 (Delhi High Court)

B] Tribunal Decisions

I) Whether Indian subsidiary of a foreign telecom company constitutes a PE under India-US tax treaty – Held: Yes, on the peculiar facts of the Case-Tribunal Attributed 50% of profit to the PE in India – Held against the assessee

Nortel Networks India International Inc. vs. DDIT 2014-TII-71-ITAT-Del-Intl. Assessment Years: 2003-04, 2004-05 & 2005-06

Facts

i) The assessee was a company incorporated in USA. It is a group concern of Nortel group, which was a leading supplier of hardware and software products for GSM cellular radio telephones system. The Indian subsidiary of the Nortel group, Nortel Networks India Pvt. Ltd., entered into a contract with Reliance Infocom for supply of hardware equipment. Immediately after the signing this contract, it was assigned by the Indian subsidiary to the assessee without any consideration.

ii) In terms of the said contract, the assessee has supplied telecommunication hardware to Reliance Infocom. The equipments supplied by the assessee was purchased from a group company i.e. Nortel Canada. Nortel Canada was not engaged in providing any services and undertook only liaison activities in India.

iii) The assessee did not file its return of income for the relevant year and, it did not file any audited accounts. The profit and loss account of the assessee was unaudited and certified by the tax manager. In the said profit and loss account, the assessee has booked huge gross losses.

iv) The Assessing Officer (AO) held that the assessee does not have any manufacturing or trading infrastructure. It does not have any financial or technological capability of its own. The assessee was only a paper company incorporated for the sole purpose of evading taxes in India. Nortel India was a fixed place of business and dependent agent Permanent Establishment (PE) of the assessee as well as it was business connection of the assessee in India. The AO observed that the assessee and Nortel Canada cannot be held as two separate entities. The Commissioner of Income Tax Appeals [CIT(A)] upheld the order of the AO.

Decision

The Tribunal held against the assessee as follows:

A) On Permanent Establishment

i) The contract entered between the Nortel group and the Reliance Infocom was a turnkey contract, indivisible contract for supply, installation, testing, commissioning etc. Nortel India had undertaken the responsibility for negotiating and securing the contracts. The contract for installation and commissioning was also undertaken by Nortel India.

ii) The above arrangements indicate that the assessee was getting its work executed through Nortel India. The assessee was merely a shadow company of Nortel group and for all practical purposes, all the facilities and services available to the Nortel group of companies are equally available to the assessee.

iii) Since the hardware supplied by the assessee was installed by Nortel India and the contracts were prenegotiated by the same, it was constituted a fixed place of business and dependent agent PE of the assessee in India

iv) The Liaison Office (LO) of Nortel Canada was rendering all kinds of services to all the group companies including the assessee. The LO pertaining to Canadian company constituted fixed place PE of the assessee in India.

v) The assessee through Nortel India and LO approached the customer, negotiated the contract, bagged the contract, supplied equipment, installed the same, undertook acceptance test after which the system was accepted. The equipment remains in the virtual possession of Nortel group till the equipment is set up and acceptance test is done.

vi) Employees of group companies did visit in India in connection with project in India. Thus, this indicates the employees of the group companies did carry out business of the assessee through the premises of LO or the premises of the subsidiary. Thus, the entire business enterprise activities of the assessee were managed by the subsidiary in India and the requisite supply is made from abroad.

vii) The contract does not only need loading of the equipments in the ship, but includes number of activities which are carried out in the Indian territory and the compensation/remuneration for that was also included in the consideration. The compensation which has been represented to a sale consideration for the equipment represents the payment for works contract where entire installation and customisation has been carried out in India.

viii) The subsidiary has not only acted as a service provider for the assessee, but at the same time acted as a sale outlet co-operating with after sale service and also providing any assistance or service requested by the assessee.

ix) The assignment agreement between Indian subsidiary, the assessee, the parent company i.e. Nortel Network Canada, and Reliance Infocom, indicates that the contract initially signed by the Indian company which in turn assigned to the assessee and all the risk and responsibility in this regard are assumed by the parent company.

x) Accordingly, the activities of the assessee in India constitute PE under Article 5 of the India-USA tax treaty (tax treaty). The activities carried out by the PE are the core activities of the assessee resulting in generation of income to the assessee and they cannot be considered to be preparatory and auxiliary and therefore, the contention of the assessee that it does not have PE in India was rejected.

B) On Profit Attribution

i) The accounts of the assessee furnished in the assessment proceedings have no sanctity and the same were not audited. The gross trading loss incurred from transaction within the group cannot be explained except for the reason, that it has been designed as such to avoid taxation in India.

ii) The Tribunal observed that for all purposes, the accounts of the Nortel Group, would give a true and correct picture of the profit of the assessee.

Hence, AO's reference to the global accounts of the Nortel and gross profit margin percentage as 42.6% was accepted. Further, the AO has

only allowed 5% of the turnover as deduction pertaining to other selling general and marketing expenses.

iii) The lower authorities were justified in resorting to Rule 10 of the Rules. However, when profits are computed under Rule 10 of the Rules after applying the profit rate, the expenses pertaining to the PE have to be allowed as deduction.

iv) Income of the PE has to be computed based on the facts of each case. In the present case, an attribution of 50% of the profits to the activities of PE in India would be a reasonable attribution in the assessee's case.

v) Various rates of profit attribution applied in various cases relied on by the assessee, cannot be accepted to the facts of the present case, since the facts of those respective cases are different.

vi) The Tribunal observed that the CIT(A) has directed the AO to allow expenses relatable to PE. Further, it was directed to allow selling general and marketing expenses and R&D expenses. Thereafter, 50% of the resultant figure has been attributed to PE. The Tribunal uphold the CIT(A)'s order.

Other Relevant decisions

i) ZTE Corporation and Huawei Technologies Co. Ltd. vs. ADIT [2014] 44 taxmann.com 296 (Del.)

ii) Convergys Customer Management vs. ADIT [2013] 58 SOT 69 (Del.) (URO)

iii) Hukum Chand Mills Ltd. vs. CIT [1976] 103 ITR 548 (SC)

iv) Huawei Technologies Co. Ltd. vs. ADIT [2014] 44 taxmann.com 296 (Del.)

II) Sections 40(a)(i) / 40(a)(ia) – No disallowance of expense for not withholding taxes as payment became taxable on account of amendments made subsequently with retrospective effect

M/s Kerala Vision Limited (TS-342-ITAT-2014-Coch)

Facts

i) The assessee, a company, was engaged in the business of distributing cables signals. It received satellite signals from various channel companies and, thereafter, transmitted/ distributed the same to television channels through cable.

ii) The assessee made payments to the channel companies, without withholding tax at source. The Tax Officer contended that the payment was in the nature of "royalty" and, hence, the Assessee was liable to withhold tax at source while making the payment to the channel companies.

iii) Accordingly, the Tax Officer disallowed the payment expenses in the hands of the Assessee on account of failure to withhold tax at source. The First Appellate Officer confirmed the views of the Tax Officer, the Assessee appealed before the Tribunal.

Decision

i) The retrospective amendments made to the provisions of the Income-tax Act, 1961 dealing with taxation of royalty payment was clarificatory in nature and, hence, applicable to the relevant year under consideration.

ii) Payment made to channel companies for transmission of signals through satellite was covered within the ambit of the amended definition of royalty and, hence, taxable in the hands of the recipient channel companies.

iii) However, the income was taxable by virtue of retrospective amendments in the ITL. The income under consideration was not taxable at the time of payment by the Assessee, in view of the Delhi High Court decision in the case of *Asia Satellite Telecommunications Ltd. vs. DIT [332 ITR 340]*

iv) Therefore, the assessee cannot be held liable for withholding tax at source on payment which became taxable in the hands of the recipient due to retrospective amendments made subsequent to the year of payment.

v) Accordingly, the Tribunal directed the Tax Officer to delete the disallowance of payment expenses in the hands of the assessee.

Other Relevant decisions

i) *Metro & Metro [TS-551-ITAT-2013(AGR)],*

ii) *Virola International [TS-79-ITAT-2014(AGR)],*

iii) *New Bombay Park Hotel Pvt. Ltd. [TS-522-ITAT-2013(Mum.)]*

III) India-France DTAA – Application of 'Make Available' concept by virtue of MFN Clause in Protocol to the Treaty – Held that Payments for BSP link services are not 'Fees for Technical Services' under India-France tax treaty by virtue of MFN clause in Protocol to the Treaty – In favour of the assessee

DDIT vs. IATA BSP India [2014] 46 taxmann.com 150 (Mumbai - Trib.)

Facts

i) The assessee is a branch office of IATA, Canada. The said branch office is established with the permission of the Reserve Bank of India (RBI) for the purpose of undertaking certain commercial activities on no profit basis.

ii) In pursuance of an agreement entered into by IATA Canada through its administrative office in Switzerland, ADP-GSI, a French entity developed the system as per the specific need of the airlines and agents. The said system called BSP link, whereby the manual operations such as issue of debit notes/credit notes, issue of refund, billing statement, etc., relating to tickets are carried out electronically for agents as well as airlines who participate in the BSP Link.

iii) These BSP Link services were provided to the agents and airlines operating in India, for which invoices were initially raised by ADP-GSI on Switzerland office of IATA, Canada who in turn raised the invoices on IATA, India. The payment against the said invoices thus was liable to be made by the assessee to Switzerland office of IATA, Canada.

iv) An application under Section 195(2) of the Act was filed by the assessee before the Assessing Officer (AO) seeking permission to remit the said amounts to Switzerland office of IATA, Canada without deduction of tax on the ground that the Switzerland office of IATA, Canada was not rendering any service to IATA, India and it was only collecting the funds from various IATA offices including IATA, India for making payments to ADP-GSI.

v) The AO held that, the actual beneficiaries of DSP Link services were airlines and agents in India. The payment for the said services was in the nature of FTS chargeable to tax in India at 10 per cent as provided in Article 13 of the India-France tax treaty. Accordingly, the AO directed the assessee to deduct tax from the remittances made to Switzerland Office of IATA, Canada.

vi) The Commissioner of Income Tax (Appeals) [CIT(A)] held that the amount paid by the assessee to Switzerland office of IATA, Canada was not taxable in India as it was not in the nature of Fees for Included Services (FIS) under Article 12(4)(b) of India-USA tax treaty read with Article 13 of the India-France tax treaty and protocol thereto. Therefore, the assessee was not liable to deduct tax from the payment of the said amount.

Decision

On Revenue's Appeal, the Tribunal held in assessee's favour as under:

i) As per clause 7 of the Protocol in the India-France tax treaty, if under any convention, agreement or Protocol signed after 1st September 1989 between India and a third state which is a member of the OECD, India limits its taxation at source *inter alia* on FTS or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope

provided for in the India-France tax treaty, the same scope as provided for in that convention, agreement or Protocol on the said items of income shall also apply under the India-France tax treaty.

ii) On 12th September 1989, India has entered into a tax treaty with USA, which is a member of OECD and as per Article 12(4)(b) thereof, the scope of FIS is restricted. India has also entered into an tax treaty with Portuguese Republic on 11th September 1998 and as per Article 12(4)(b) of the said tax treaty the concept of FIS is further restricted to mean the services which make available technical knowledge, experience, skills, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein.

iii) This restricted scope provided in the India-USA tax treaty and India-Portuguese tax treaty is applicable to the India-France tax treaty, as per clause 7 of the Protocol. As per the restricted scope of the tax treaty, the BSP link services provided by ADP-GSI France did not make available to the agents/airlines any technical knowledge, experience, skill, know-how, or processes so as to enable them to apply the technology.

iv) Perusal of the clauses of the agreement entered by IATA Canada with its administrative office in Switzerland, does not indicate that the services provided by ADP-GSI France made available to the agents/airlines any technical knowledge, experience, skill, know-how or processes so as to enable them to apply the said technology.

v) The services envisaged in certain clauses of the agreement related to development services, testing and other facilities which were provided to the agents/airlines to enable them to operate and implement BSP link services in order to utilise the same for their own use.

vi) The decision of the Karnataka High Court in the case of *CIT vs. De Beers India Minerals (P) Ltd. [2012] 346 ITR 467 (Kar.)* and the decision of the Kolkata Tribunal in the case of *DCIT vs. ITC Ltd. [2002] 82 ITD 239 (Kol.)* explaining the concept of 'technology being made available' fully support the view of the assessee.

vii) The decisions of Officer for Advance Rulings (AAR) in the case of *Cargo Community Network Pte Ltd. [2007] 289 ITR 355 (AAR)* and ABC, in re [1999] 238 ITR 296 (AAR) are on different facts and the same cited by the tax department in support of the new plea that the payment being royalty, cannot be relied upon, as it was not even the case of the AO.

viii) Accordingly, the Tribunal upheld the order of the CIT(A) holding that the payment made for BSP link services rendered by ADP-GSI France is not in the nature of FIS chargeable to tax in India.

(Note: the Karnataka High Court in the case of *CIT vs. ISRO Satellite Centre [2013] 35 taxmann.com 352 (Kar.)* applied the 'make available' clause in the India-USA tax treaty while interpreting the India-France tax treaty by virtue of MFN clause under India-France tax treaty.

However, the AAR in a recent case of *Steria (India) Ltd. [2014] 45 taxmann.com 281 (AAR)* has denied the benefit of MFN clause under the India-France tax treaty and held that payment for management services will be taxable as FTS since the Protocol cannot be treated as the same with the provisions contained in the tax treaty itself, though it may be an integral part of the tax treaty. It is pertinent to note that the entire purpose of a MFN clause is to grant benefit of a restricted scope and/or a rate to a treaty country by providing the MFN clause in the treaty or in the protocol. The current decision of the Mumbai Tribunal would help the countries having MFN clause under their respective tax treaties by applying the benefits of restrictive scope or lower rate prescribed by the subsequent tax treaty entered by India)

IV) Explanation (a) to Section 6(1) (c) – Whether benefit of 182 days for determination of residential status available for self-employed professionals going abroad – Held : Yes – In assessee's favour

Jyotinder Singh Randhawa vs. ACIT [2014] 46 taxmann.com 10 (Delhi – Trib.) Assessment Year: 2009-10

Facts

i) The assessee had filed his India tax return for the Assessment Year (AY) 2009-10 as non-resident. He claimed to be a non-resident as per the Act. His stay in India was for 167 days for the said A.Y.

ii) The Assessing Officer (AO) did not agree with assessee's contention on the basis that the assessee could not prove that he was not in India for 365 days during the four years preceding the previous year, and considered the assesse as resident as per the Act.

iii) Accordingly, the AO made an addition of INR 4.77 crores to the assessee's income which was accrued and received by him outside India.

iv) The assessee filed an appeal against the AO's order before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) referred to the decision of the Kerala High Court ruling in the case of *CIT vs. Abdul Razak [2011] 337 ITR 350 (Ker)* and observed that going abroad for the purpose of employment also meant going abroad to take up employment or any allocation which takes into account self-employment like business or profession. The CIT(A) held in favour of the assessee that he shall be treated as a non-resident, and accordingly the income accrued and received outside India was not taxable in India.

v) Aggrieved by the CIT(A)'s order, the Revenue filed an appeal before the Delhi ITAT.

Decision

The Tribunal observed that the assessee is a professional golfer and a 'self-employed' professional who carries his talent as a sportsperson by participating in golf tournaments conducted in various countries. Relying upon the High Court's ruling in the case of Abdul Razak, the Tribunal held that for determining residential status under the Act, going abroad for the purpose of employment also means going abroad to take-up employment or any allocation which takes into account self-employment like business or profession. Accordingly, the Tribunal upheld the CIT(A)'s decision that the assessee shall be treated as a non-resident during the year under consideration.

V) Taxation of Composite Contract for supplying telecommunications network equipment which included hardware and software both – Entire income from supply of equipment was to be assessed as business income arising from assessee's business connection/PE in India – Held : Yes – In favour of the assessee

Huawei Technologies Co. Ltd. vs. ADIT [2014] 44 taxmann.com 296 (Delhi - Trib.) Assessment Years : 2005-06 to 2008-09

Facts

i) The assessee company incorporated in China, was engaged in the business of supplying telecommunications network equipment.

ii) The assessee had not filed any return of income. During the course of survey undertaken at the office premises of assessee's branch office in India, several documents were found and statements of various senior executives were recorded.

iii) On basis of said documents, Assessing Officer opined that there was one consolidated price for supply of the network equipment. The Assessing Officer allocated revenue from supply of equipment between two portions i.e., hardware/equipment supplied and the software which was embedded with the hardware/equipment.

iv) Thereupon, Assessing Officer allocated the receipt from supply of equipment between hardware and software in the ratio of 70 % for hardware and 30% for software. In respect of supply of hardware, the Assessing Officer estimated operating profit and then attributed 20% towards the PE in India.

v) In respect of software portion, he treated the receipt from software as income from royalty and held that same was to be charged to tax at the rate of 10 per cent.

vi) In appeal before the Tribunal, the assessee filed instant appeal contended that there was no separate supply of software. Software is embedded with the hardware/equipment and was necessary for the operation of the equipment.

vii) The assessee further submitted that a consolidated price was charged for the supply of equipment which included hardware as well as software and, in such a situation, entire receipt from the supply of equipment was to be assessed as business income as was done by the Assessing Officer in respect of hardware.

Decision

The Tribunal held in favour of the assessee as follows:

i) In terms of contract of supply of equipment, it is evident that the equipment, i.e., the hardware supplied by the assessee contained the software and the software was not separately supplied. Moreover, the buyer is granted a non-exclusive, non-transferable and non-sub-licensable licence to use the software. It is also clarified that buyer is granted no title or ownership rights or interest in the software.

ii) After reading the agreement between the assessee and the buyers, it is opined that there was only one contract for supply of equipment which included hardware and software both and, therefore, the income from supply of the equipment was to be assessed as business income arising from the assessee's business connection/ PE in India. Therefore, the Assessing Officer was directed to rework the assessee's income accordingly.

Cases followed

i) DIT vs. Ericsson A.B. [2012] 343 ITR 1170/204 Taxmann 192/[2011] 16 taxmann.com 371 (Delhi)

ii) DIT vs. Infrasoft Ltd. [2014] 220 Taxmann 273/ [2013] 39 taxmann.com 88 (Delhi)

VI) Transfer Pricing – Levy of Concealment Penalty @ 100% of tax liability arising from transfer pricing adjustments – Filing of Revised Return without revised TP Accountants' Report after initiation of TP Audit proceedings – Penalty upheld due to lack of "Bonafides", "Good Faith" and "Due Diligence" – Against the assessee

Deloitte Consulting vs ACIT 2014-TII-101-ITAT-MUM-TP / TS-148-ITAT-2014 (Mum.) – TP Assessment Years: 2004-05 & 2005-06

Facts

i) The assessee, a joint venture company between Mastek Limited and Deloitte Consulting (DC), is engaged in providing software development and information technology (IT) services. While DC is responsible for the generation of sales, management and delivery of projects, managing and maintaining customer relationship etc., Mastek provides and manages the infrastructure, operations, recruitment, training, administration and supports delivery capability and project quality.

ii) DC enters into consulting assignments with clients in the US and the areas pertaining to provision of software development and information technology services are sub-contracted to the assessee.

iii) As per the Master Service Agreement, DC is responsible for undertaking marketing activities and the entire turnover of the assessee represents earnings from DC for providing the above-mentioned services.

iv) During FY 2003-04 and F.Y. 2004-05, the Assessee and DC had entered into several international transactions namely (i) provision of software and IT services; (ii) availing Software and IT services; (iii) reimbursements for receipt of marketing services; and (iv) reimbursement for receipt of support services availed.

v) The issue under contention relates to reimbursement for receipt of marketing services, which has been disallowed by the Tax Officer by way of a TP adjustment and tax holiday on enhanced income denied in accordance with provisions of the tax law. The TP adjustment and tax holiday denial was confirmed by the Mumbai ITAT.

vi) Owing to the confirmation of the adjustment by the ITAT, penalty proceedings were initiated by the Tax Officer on grounds that the assessee had concealed true particulars of income (did not disclose full information regarding income). The Tax Officer thereafter levied a penalty equal to the amount of tax arising from the TP adjustment. The same was confirmed by the First Appellate Officer. The assessee appealed before the ITAT on the validity of levy of penalty.

Decision

The ITAT held in favour of the revenue as under:

i) Since no marketing function was assigned to the assessee and its role was limited to provision of software development services, the argument of the assessee that it bore a portion of the marketing expense out of commercial expediency is not valid.

ii) "Voluntariness" and *"bona fides"* are essential ingredients of a valid revised tax return. However in the present case the assessee had filed a revised tax return after the Tax Officer initiated the TP audit, in anticipation of a TP adjustment and is thus not voluntary but was guided by the motive to avoid an adjustment and the impact of tax holiday denial on enhanced income in case of an adjustment.

iii) The revised tax return was in itself not valid and hence the valid return should be the original return filed by the assessee. Consequently, the enhancement of income is on account of TP adjustment and therefore the provisions relating to denial of tax holiday for enhanced income should apply.

iv) It is unacceptable that the assessee seeks to justify that revised Form 3CEB was not submitted due to the absence of specific provisions enabling the same. Anything which is wrong or discovered to be wrong is not valid and has to be necessarily withdrawn and correct information should be furnished.

v) In the case of a TP adjustment, a assessee may be protected from penalty, if the assessee can establish to the satisfaction of the tax Officer, that price charged or paid in an international transaction was computed in accordance with provisions of the TP regulations, in good faith and with due diligence. The Assessee had not computed the ALP or reported the transaction in good faith or with due diligence. The proceedings before the Tax Officer brought to light that no services were actually received by the Assessee. Unable to prove the truthfulness of the transaction, the assessee contended that the amount claimed as reimbursement of marketing expenses should be treated as a discount to its principal buyer. This position adopted by the assessee is in contradiction to its own report in Form 3CEB, which a assessee is under law obliged to defend and prove as representing a true and correct account of its international transactions.

vi) In light of the above, ITAT observed that protection against penalty levy for cases that are *"bona fide"* and ALP determined in "good faith" and "due diligence" would not be available to the assessee. Hence, the ITAT upheld levy of penalty.

CA. Hasmukh Kamdar

INDIRECT TAXES
Central Excise and Customs – Case Law Update

CENVAT CREDIT

Commissioner of Central Excise, Nasik vs. Mahindra & Mahindra Ltd. [2014 (304) E.L.T. 626 (Tri. – Mumbai)]

Facts in this case were as follows;

The appellant is a manufacturer of motor vehicles and parts thereof. They had purchased certain components and parts for use in the manufacture of motor cars and had availed CENVAT credit. Due to modernisation of technology, certain inputs became obsolete. These inputs were written off as obsolete in the books of account and value was reduced to 5%/10% of the value...

These inputs were cleared after paying duty on such goods on transaction value. The Department was of the view that as these inputs have been cleared "as such"; therefore, they are required to pay duty equivalent to the credit taken by them on these inputs, instead of on transaction value which was less than cost of purchase.

Accordingly, show cause notice was issued. The learned Commissioner, after considering the reply filed by the assessee, arrived at a decision that the proceedings initiated under show notice are not sustainable. The demand raised *vide* the show cause notice was therefore dropped.

On behalf of the Revenue it was submitted that Board's Circular No. 645/36/2002-CX, dated 16-7-2002 at per paragraph 3.3, clarifies that , if capital goods namely components, spare parts etc. which are written off before use and they are not proposed to be used the CENVAT credit will have to be reversed. Therefore, the assessee is required to reverse the credit taken on these inputs.

On the other hand, on behalf of the assessee it was submitted that in the assessee's own case (for Kandivli East unit), for the same period, proceedings on the same issue were initiated and the show cause notice was dropped by the learned Commissioner *vide* order dated 12-3-2003 and the said order has been acceptable by the department. Therefore, for the same period against the same assessee, other proceedings are not sustainable. Assessee placed reliance on the judgment of the Hon'ble Apex Court in the case of *CCE vs. Novapan Industries Ltd. [2007 (209) E.L.T. 161 (S.C).]*

It was further submitted that as per procedure for disposal of these obsolete inputs, such inputs which are written off, are to be auctioned and the duty is to be payable on the transaction value. The

fact of disposal has been informed to the department *vide* their letter dated 6-1-1994. The said fact was therefore in the knowledge of the department. As this fact was in the knowledge of the department, therefore, for the period from 1998 to 2002, the show cause notice issued on 3-4-2003 is barred by limitation.

On merits it was submitted that as per the Board's Circular dated 16-7-2002, the paragraph 3(ii) of the said Circular is applicable to the facts of this case in particularly where the inputs became obsolete but these inputs are not written off fully and are available for use therefore they are to required to reverse the credit equivalent to credit availed on these inputs.

In alternate, it was submitted that the quantum of the demands proposed in the show cause notice is not correct as the amount of duty demanded has been calculated on the basic of amount written off in the Balance Sheet but not on the actual value of inputs therefore show cause notice is not sustainable. It was also further submitted that the provision of raising the demand amount equivalent to credit taken were came into statue book only on 11-5-2007 when the provisions of Rule 5B of Central Excise Rules 2002, 2004 were inserted.

The Hon'ble Tribunal observed that in the case, the fact is that the inputs were reduced to the value of 5%/10% of the actual value, but not less than 5% actual value, at the time of writing off in the books of account which shows that the inputs were not absolutely held obsolete. Therefore, the provision of paragraph 3(iii) of Circular dated 16-7-2002 is not applicable as the same is applicable for inputs which have been written off fully. In these circumstances, paragraph 3.2 of the Circular dated 16-7-2002 is relevant to the facts of this case and were in knowledge of the department that the inputs which has been written off in the books of account by the respondents are to be treated as auction sale and on this auction sale amount, they are paying duty. Therefore, as per the Circular dated 16-7-2002, they have discharged the duty liability and the same has been considered by the by the learned Commissioner in the impugned order. Accordingly, the arguments advanced by the learned A.R. that when inputs have been absolutely obsolete is not sustainable when the fact on record is that they are able to fetch same value. In these circumstances, the respondent has made out a case on merits as well as on limitation. Therefore, the learned Commissioner rightly dropped the show cause notice.

Accordingly, the impugned order is upheld and the Revenue's appeal was dismissed.

The most manifest sign of wisdom is continued cheerfulness.

— *Montaigne*

Nikita Badheka, *Advocate & Notary*

INDIRECT TAXES
VAT Update

The State of Maharashtra had introduced a bill no. X1X of 2014 on 9th June 2014. The bill is passed and converted to Act by notification dtd. 26-6-2014 (Mah. Act. No. XXVII of 2014).

Amendments, except where specifically provided will be effective from the date of notification i.e. 26-6-2014.

A. Amendment to Maharashtra Purchase Tax on Sugarcane Act, 1962.

New section 12AA is introduced to authorise the recovery of Tax under this act as arrears of Land Revenue.

As per this amendment the provisions of MVAT Act 2012 and rules made thereunder relating to recovery of tax as arrears of Land Revenue shall *mutatis mutandis* apply for the purpose of recovery of tax under Maharashtra Purchase Tax on Sugarcane Act. The Authorities under this Act can exercise all the powers and perform all the duties of the equivalent authorities appointed under MVAT Act.

In section 12B, clause 'e' is added as 'for the purpose of assisting the sugar factories in the State, to give the fair and remunerative price to the farmers for the year 2013-2014'.

B. Amendments to Profession Tax Act

1. In section 6 relating to returns, a proviso is added to sub clause 3. The State Government is now empowered to exempt whole or any part of late fee payable under this sub-section by such class or class of employers, for such period or periods, either prospectively or retrospectively by way of notification in official Gazette.

2. Clause 'e' is added to section 27A. This section relates to Exemption. The new clause exempts any person with intellectual and development disabilities (mental retardation) specified in the rule from payment of Profession Tax provided he is certified by a Psychiatrist working in a Government Hospital. Such disability should have the effect of reducing such individual's capacity for normal work or engaging in gainful employment or occupation. The parents or guardian of such persons are also exempt from payment of Profession Tax. The certificate has to be produced before the Assessing authority in respect of the first assessment year for which the deduction is claimed.

3. ***Amendment to schedule one appended to Profession Tax Act.*** This is a schedule of rates of Tax on profession. Serial No. 1 of schedule one is amended. The minimum limit for payment of Profession Tax in case of salary and wage earners is enhanced from ₹ 5,000 to ₹ 7,500. This section is specifically made effective from 1st July 2014.

C. Amendments to Luxuries Act

1. Section 3 of the Luxuries Act is relating to incidence and levy of tax. The minimum limit for levy of Tax on the charge for luxuries provided in a Hotel is enhanced from ₹ 750/- per residential accommodation, per day to ₹ 1,000. The Luxury Tax for the charge for luxury between ₹ 1,000 to ₹ 1500 per day would be@ 4%. Similarly for the charge of luxury beyond ₹ 1,500 per day per residential accommodation, the luxury tax will be @ 10% of such turnover receipt. These amendments are specifically made applicable from 1st July, 2014.

2. Section 22A of this Act is relating to calculation of CQB under new package scheme of incentive for tourism projects. This rule will now apply to any of the entries of schedule appended to notification issued from time-to-time. This section is also made applicable to tourism policy 2006.

3. As per newly inserted Rule 22B, notwithstanding anything to the contrary contained in Tourism policy 2006, certificate of entitlement in respect of Tourism Policy 2006 shall be granted to the eligible unit situated in areas specified in zone B or zone C as per annexure B to the said policy. It is further provided that certificate of entitlement to the expansion unit under this scheme shall be granted only if there is an increase in capacity of the existing unit. In terms of sub-section (2) an eligible unit under Tourism Policy 2006 who is granted entitlement certificate for expansion shall be entitled to draw the benefits under the Act in any year, on the part of the turnover of receipts as maybe determined as per sub-section 3.

4. ***Determination of CQB – Calculation of Benefits of Tourism Policy***

As per Section 22B(3)

(a) If the unit has maintained separate account of receipts and able to identify the receipts pertaining to increased capacity then the benefits under the scheme shall be decided on the basis of identification.

(b) If separate accounts are not maintained and the identification is not possible then the following formula should be applied to calculate the benefit for the increased capacity.

Formula:

$$\text{Eligible turnover of receipts} = \frac{\text{Turnover receipts} \times \text{increase in capacity}}{\text{Total capacity after such increase}}$$

(*Explanation* – increase in capacity shall have the same meaning as defined in Tourism Policy 2006)

D. Amendments to MVAT Act

1. Turnover limit for Registration Enhanced – Sec 3(4) (b) (dealers other than importers) is amended to enhance the limit of turnover for registration from ₹ 5 lakhs to ₹ 10,00,000/-. Kindly note all the rest of limits, including of Importer remains the same. The small dealers would not be required to get registered now.

2. The post of Senior Deputy Commissioner is deleted by making amendment in Section 10 of MVAT Act.

3. Section 16 – Cancellation option to small dealers – Registration. A grammatical mistake is corrected in Section 16(6)(b). After Section 16 (6) Clause (b) a new clause C is added. In terms of this new sub-clause if the turnover of sale of a registered dealer, other than an importer, during the year 2013-14 below the limit specified in Section 3(4) i.e. ₹ 10,00,000/- then as per this sub-section he can apply for cancellation of his registration on or before 30th September, 2014 and the Commissioner may after inquiry cancel the registration w.e.f. 1st October, 2014.

4. Partial relief in late fee for belated returns – An amendment is made under Section 20(6) whereby if the return is filed within 30 days

from the expiry of the due date prescribed for filing of returns then the late fee would be ₹ 2,000/-. For delay beyond 30 days the late fee is maintained for ₹ 5,000/-. This section is specifically made effective from 1st July, 2014.

Amendment to Assessment Proceedings

5. Directions and guidance by the Commissioner no more available. Section 23(9) is deleted and hence the dealer will not be able to seek any guidance or direction from the Commissioner for the purpose of assessment.

6. Section 23(10) is amended. A proviso is added to enable separate assessment of the dealers who are filing separate returns in different forms like in case of PSI unit. This provision will be applicable for the period commencing after 1st April, 2011. This will mainly apply to PSI units.

7. Deemed cancellation of ex-parte order

Section 23 (11) is amended. If the intimation about cancellation of ex-parte assessment is not given within 3 months from the end of the month in which application is made then the assessment order shall be deemed to be cancelled. Consequential amendment is made in Section 23(12).

8. Dues on account of missing declarations:- Appeal provisions Section 26 amended. Stringent amendments regarding declarations are made in this Section.

Section 26(6) relates to the part payment directions during the appeal or second appeal proceedings. A new proviso is added to this sub-section to the effect that if an appeal is filed on or after 1st July, 2014 in which claim against declaration or certificate is disallowed for non production of the same then if the appeal is filed after 2 years from the end of the year to which such claim relates, the stay shall not be granted unless the dealer makes 100% payment of tax in respect of such claims. Similarly, if the appeal is filed before the expiry of 2 years from the end of the year to which such claim relates, the stay if any shall be vacated if the dealer fails to produce the required declarations within 2 years. If any part payment is made the same shall be considered to calculate the tax payable as per this sub-section.

9. Amendment to penalty provisions : Section 29 of the MVAT Act relates to the penalty. An amendment is made to Section 29 (3) to restrict the levy of penalty by the authorities. The Assessing Authority can now levy maximum penalty equal to the tax due. However the minimum limit is now provided as "not less than 25% of the Tax due". Therefore once the officer decides to levy penalty, he has to levy minimum 25% penalty.

10. A new Section 29(7A) is inserted. The dealer who have filed late return on or after 1st August, 2012 and have also paid late fee under Section 20(6), then further penalty under Section 29(8) as it existed (₹ 5,000/-) shall not be recovered.

11. A new Section 11A is introduced to Section 29. Section 29(11) states that no order levying penalty under Section 29(1) to 29(10) shall be passed in respect of any periods after 8 years from the end of the year contained in the said year. However, as per new Section 11A, notwithstanding anything contained in sub section 11, penalty under Section 29 may be imposed while passing an order under MVAT Act.

12. Section 29(12) under which it was mandatory for the lower authority to take sanction of the higher authority before levying the penalty in certain circumstances, is deleted. Now no such prior sanction would be required by Assessing Authority.

13. No interest u/s 30(4) if liability on account of declaration - Two proviso's are added to Section 30(4). In terms of first proviso now inserted to Section 30(4) the interest under Section 30(4) shall not be payable if the additional tax liability arrived as a result of proceedings under this section is on account of non-production of declaration or certificate.

The second proviso further states that if amount of tax paid as per revised return filed in consequence

to the intimation is less than 10% of the total amount of tax paid as per original return, then no interest under this sub section shall be payable. The term "tax paid as per original returns", as per explanation shall include amount of tax paid as per revised returns filed before the commencement of proceedings specified in clause "a" or before the receipt of intimation specified as per clause "b" of section 30(4). The term "Tax Paid" shall mean the amount of tax paid by such person or dealer after adjustment of set off.

14. Section 31A relates to collection at source and payment towards tax. In sub-section (1) clause C is added to provide for tax collection at source from the person who awards quarrying lease or permit in respect of minor minerals to a dealer within their jurisdiction to collect an amount at the time of such award or auction at such rate as provided in sub-section 2 towards the liability of sales tax. Consequential amendments are made in sub-sections 2 and 3.

15. In Section 51(3) various PSI Schemes which were not included so far are included.

MVAT Audit limit Enhanced

16. The limits of turnover of a dealer liable for MVAT Audit is enhanced to ₹ One Crore in a year. In addition to the aggregate of turnover of sales, the value of goods transferred outside the States otherwise then a result of sale, will also be included to determine the ₹ One Crore limit. Section 61 (2) which enabled the Commissioner to waive the penalty for late filing of audit report, if the audit report is filed within 1 month of the due date, is now deleted. As the audit for 2013-2014, is pending, and as announced by the FM, the new limits will apply from F.Y. 2013-2014.

An announcement is being made in Maharashtra Government official website to the effect that dealers having turnover between ₹ 60 lakhs to 1 crore for the F.Y. 2013-14 and who have not filed Annexure J1 & J2 can file the same with return for the period ending 30-9-2014.

17. Under Section 63(7) it is now mandatory for the Commissioner to send an intimation communicating to the dealer likely additional tax or other liability.

18. The amendments are made in Section 88 pertaining to the definition of PSI, to include various new schemes of PSI are added. Similarly, amendments are made in Section 89 relating to grant of EC Certificate or identification certificate.

Amendment to Schedule A

19. New Entry no. 26 A is inserted. Copyrights, for distribution and exhibition of cinematography films in theatres and cinema halls, sold during the period commencing from 1st April, 2005 and ending on 30th April, 2011 is made tax free by this retrospective amendment.

Amendment to Schedule C

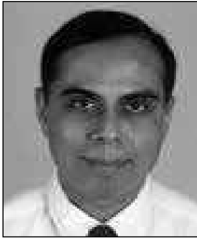
20. To overcome the decision of Supreme Court in Bansal Wire and to avoid litigation on account of the said decision two new entries are included in Schedule C.

21. Entry 55 A makes tools, alloy and special steel of any of the categories specified in Clause (X) to Clause (XV) of Entry C-55 sold during the period 1st April, 2005 to 30th April, 2011 to be taxed at 4% and 5% on or after 1st May, 2011.

E. Draft Rules for Check-post and Transit pass

1 A Notification dt. 23rd May 2014 No. VAT 1514/CR30/Taxation 1, (now available on website), the State Government has notified certain places where the checkpost will be established w.e.f 25th July, 2014.

2. Elaborate amendments are proposed in MVAT Rules to facilitate the implementation of checkpost and transit pass. The draft rules available on website by notification dt. 23rd June 2014 will be considered for discussion from 25th July onwards.



CA. Rajkamal Shah & CA. Naresh Sheth

INDIRECT TAXES

Service Tax – Statute Update

The Central Board of Excise and Custom (CBEC) has issued an instruction to the Chief Commissioners of Central Excise, Customs and Service Tax for following judicial discipline in adjudication proceedings. Hon'ble Gujarat High Court in the case of *M/s. E.I. Dupont India Pvt. Ltd (2013-TIOL-1172-HC-AHM-CX)* have made adverse observations as to failure of adjudicating authorities to maintain judicial discipline in adjudication proceedings and hence these instructions by CBEC to its field officers.

CBEC has instructed its officers to follow the binding precedents while adjudicating the case. CBEC has also drawn the attention to its existing circular no. 695/11/2003-CX dated 24-2-2003 on the subject of consequential refund and reinstated that such circular is binding on all adjudicating officers. The CBEC has further instructed its officers to peruse the judgment of hon'ble Supreme Court in the case of *Union of India vs. Kamlakshi Finance Corporation Limited (2002-TIOL-484-SC-CE-LB)* on the subject and to follow the same scrupulously.

[Instruction no. F.No. 201/01/2014-CX.6 dated 26th June 2014 by CBEC]

In a disordered mind, as in a disordered body, soundness of health is impossible.

— *Marcus Tullius Cicero*

But the real secret to lifelong good health is actually the opposite: Let your body take care of you.

— *Deepak Chopra*

CA. Bharat Shemlani

INDIRECT TAXES

Service Tax – Case Law Update

1. Services

Works Contract Service

1.1 Kone Elevator India Pvt. Ltd. vs. State of Tamil Nadu 2014 (34) STR 641 (SC)

The Hon'ble Supreme Court in this case held that, composite contract for manufacture, supply and installation of lift in a building is a works contract and not a contract for sale of goods. Works contract is indivisible contract but by legal fiction is divided into two parts, one for sale of goods, and other for supply of labour and service. The 'Dominant nature test' or 'Degree of intention test' or 'overwhelming component test' for treating contract as works contract is not applicable. Works Contract in Article 366(29A) of Constitution of India takes in its sweep all genre of works contract, and is not to be narrowly construed to cover one species of contract to provide for labour and service alone. Once characteristics of works contract are met, any additional obligation in contract would not change nature of contract. Incidental part as regards labour and service pales into insignificance for determining nature of contract.

Cargo Handling Service

1.2 National Construction Company vs. CCE, Jaipur 2014 (34) STR 739 (Tri-Del.)

The Tribunal in this case held that, loading of mined lignite within mining area on to trucks or railway wagons is not a contract for handling cargo. The appellant had also undertaken clearance of site and removal of top soil and overburden for which no separate payment is received is activity to be treated as ancillary to mining and not subjected to service tax during the impugned period.

Business Support Service

1.3 Srinivasa Transporters vs. CCE&ST, Visakhapatnam-I 2014 (34) STR 765 (Tri-Bang.)

The appellant in this case supplied tractor trailers along with trained drivers to undertake transportation of containers within terminal and they were responsible for payment of wages, salaries etc. to employees. The Tribunal held that, service classifiable under Supply of Tangible Goods for use Service and demand under BSS is clearly unsustainable in law.

Goods Transport Agency Service

1.4 Nandganj Sihori Sugal Co. Ltd. vs. CCE, Lucknow 2014 (34) STR 850 (Tri-Del.)

The appellant in this case recipient of service received transportation of sugarcane by individual truck owners from cane collection centre to assessee's sugar mill without issuance of consignment note, GR, billties etc. The Tribunal held that, mere transportation of

goods in motor vehicle cannot be treated as service provided by GTA and fortnightly bills cannot be treated as consignment note. The GTA service not only involves transportation but also delivery of goods and temporary storage till delivery. The Transporters are not GTA and no service tax liability on sugarcane mills.

2. Interest/Penalties/Others

2.1 *Glyph International Ltd. vs. UOI 2014 (34) STR 727 (Del.)*

The Delhi High Court in this case held that, amendment to section 83 of FA, 1994 specifically referring to section 35EE of CEA, 1944 did not limit appellate power of CESTAT in any manner and it continued to possess appellate jurisdiction exercisable by it under section 86 of FA, 1994 to decide matters pertaining to rebate and refund. Parliament always intended that appellate remedy should be available in respect of refund and rebate claims and exclusion of jurisdiction of courts and tribunals should be by way of express provisions or through necessary intendment. Hence, relegation of assessee by CESTAT to revision to Central Government in respect of rebate and refund appeals is set aside.

2.2 *Quintiles Technologies (India) Pvt. Ltd. vs. CST, Ahmedabad 2014 (34) STR 753(Tri-Ahmd.)*

The appellant in this case claimed refund of CENVAT credit pertaining to exempted service exported. The Tribunal held that, no distinction has been made with respect to payments received from export of service in Rule 5(1)(D) of CCR, 2004. The turnover of exempted export service is to be added to export turnover of service and entire unutilised service tax credit pertaining to exported service is admissible as refund under rule 5.

2.3 *Payal Electric Decoration vs. CCE&ST, Rajkot 2014 (34) STR 777 (Tri-Ahmd.)*

The Tribunal in this case held that, since assessee was under *bona fide* belief that, no tax liability arises for services rendered to State Government for celebration of national holidays, set aside the penalty under sections 76 and 77.

2.4 *JCT Electronics Ltd. vs. CCE&ST, Vadodara 2014 (34) STR 778 (Tri-Ahmd.)*

The appellant in this case, *suo motu* adjusted differential service tax amount after a long lapse of period and not in succeeding month or quarter. The Tribunal held that, there is no reasonable explanation from the appellant for doing so, and procedure prescribed by the legislation for availing an exemption/concession to be followed strictly in that fashion only. Further, *mala fides* are not attributed on the part of appellant hence, penalties are not imposable.

2.5 *CST, Delhi vs. Menon Associates 2014 (34) STR 793 (Tri-Del.)*

The Tribunal in this case held that, marketing of products of overseas principal is BAS, qualified as export of service since consideration thereof is received in CFE.

2.6 *CST, Delhi vs. A. P. Engineers 2014 (34) STR 795 (Tri-Del.)*

The Tribunal in this case held that, if contract value is inclusive of taxes, the tax variation being not part of the contracted value, would not result in any unjust enrichment.

2.7 *Commissioner vs. Tejas Agency 2014 (34) STR 803 (Guj.)*

The High Court in this case held that, when there is finding of fact that this was not a case of non-payment of Service Tax with intent to evade payment of tax, question of applying sub-section (4) of section 73 of FA, 1994 and resultantly exclusion of application of sub-section (3) would not arise. The Tribunal's order that, no penalty is imposable under section 73(3) has been upheld.

2.8 *CCE, Belapur vs. Pratap Re-rolling Pvt. Ltd. 2014 (34) STR 868 (Tri-Mum.)*

The Tribunal in this case allowed refund of service tax paid on THC as notification no.

41/2007-ST grants exemption to 'service provided for export of goods' and no condition is attached for claiming refund.

2.9 Hindustan Aeronautics Ltd. vs. CST, Bangalore 2014 (34) STR 874 (Tri-Bang.)

The Tribunal in this case observed that, cost of materials is not arrived on notional basis and shown separately from the ATF value and also CENVAT credit has not been availed therefore conditions of Notification No. 12/2003-ST has been fulfilled, hence benefit is not deniable.

2.10 Vodafone Cellular Ltd. vs. CCE, Pune-III 2014 (34) STR 890 (Tri-Mum.)

The appellant in this case provided telecom service in India to international inbound roamers registered with Foreign Telecom Network Operators. The Tribunal held that, it is export of service and appellant is eligible for refund of service tax paid on input service under rule 5 of STCR, 2002 read with Notification No. 11/2005-ST. Further, it is held that, unjust enrichment principles are not applicable to export transactions. It is also held that, provisions of section 11B of CEA, 1944 in respect of time limit are applicable even if no time limit is set out in Notification No. 11/2005-ST.

2.11 Maersk India Pvt. Ltd. vs. CST, Mumbai 2014 (34) STR 894 (Tri-Mumbai)

The department in this sought to deny the benefit of export of service by contending that, exports proceeds earned by the appellant have been repatriated by way of dividends to equity holders outside India. The Tribunal held that, dividend declared is not only from income earned from steamer agent service rendered to principal by appellant and profit earned there from but lot of other activities also hence, benefit of export of service is available.

3. CENVAT Credit

3.1 Anand Nishikawa Co. Ltd. vs. CCE, Chandigarh 2014 (34) STR 751 (Tri.-Del.)

In this case the department denied CENVAT credit on the ground that, input service invoices issued in the name of head office but credit taken by unit at Mohali. The Tribunal held that, since there is no dispute of receipt of service or service tax paid, procedural violation cannot result in denial of substantive right.

3.2 BAL Pharma Ltd. vs. CCEC &ST, Bangalore-I 2014 (34) STR 752 (Tri.-Bang.)

The Tribunal in this case allowed CENVAT credit of service tax paid on commission paid to agent, hazardous waste material incineration charges, pest control service, Xerox machine service, membership fee, professional charges and employee transport charges as the said services cannot be said to have been obtained after removal of goods.

3.3 Mersen India Pvt. Ltd. vs. CCEC & ST, Bangalore-I 2014 (34) STR 756 (Tri.-Bang.)

The Tribunal in this case allowed CENVAT credit on following services;

- Repair and maintenance of photocopier;
- Rent a cab services used for inspection of goods quality and specification which is required to be completed before removal of goods.
- Freight inwards relating to transport of raw material.

3.4 Demosha Chemicals Pvt. Ltd. vs. CCE&ST, Daman 2014 (34) STR 758 (Tri.-Ahmd.)

The appellant in this case distributed Cenvat credit without taking registration as ISD. The Tribunal held that, fact of services rendered not disputed and there is no allegation that appellant availed more than the eligible CENVAT credit of the service tax paid. Further prior to 17-5-2012, there was no provision for distribution of CENVAT credit availed by the HO as ISD proportionately to various units, credit is not deniable.

3.5 *CCCE & Ace Glass Container Ltd. 2014 (34) STR 805 (Uttarakhand)*

The High Court in this case held as under;

- Welding electrodes used in relation to manufacture of final products eligible for credit.
- Plastic crates and pallets used for transferring unprinted bottles for printing used in relation to manufacture of final product hence eligible for credit.
- Mobile phones and phones, taxi service used in relation to manufacture of final product eligible for credit.

3.6 *CCCE, Hyderabad-III vs. Grey Gold Cement Ltd. 2014 (34) STR 809 (AP)*

The assessee in this case, availed CENVAT credit of tax paid on outward transportation of final products from the place of removal. The High Court held that, Service tax and Excise duty being consumption taxes to be borne by the consumer, if credit is denied on the transportation service, the levy of service tax on transportation will become a tax on business rather than being a consumption tax. The order of Tribunal holding the manufacturer to be entitled to take credit of the service tax on the value of transportation service is proper and sustainable.

3.7 *Astik Dyestuff Pvt. Ltd. vs. CCE &C 2014 (34) STR 814 (Guj.)*

The High Court in this case held that, appellant is not entitled to claim CENVAT credit on sales commission services obtained by them. If there is any conflict between jurisdictional High Court and CBEC Circular, the decision of jurisdictional High Court is binding on the Department rather than CBEC Circular.

3.8 *Nitco Ltd. vs. CCE, Raigad 2014 (34) STR 835 (Tri-Mum.)*

The appellant in this case availed CENVAT credit without being registered as ISD and without being in possession of requisite documents. The Tribunal held that, ISD scheme is a special scheme and if anybody wants to avail the benefit thereof, the terms and conditions have to complied with completely. Further, service tax credit can be distributed only if the services were received at the manufacturing premises and if it is received elsewhere, it is not permissible to avail of the service tax credit. In the instant case, distribution of credit by HO of appellant was without being registered as ISD and without ascertaining receipt of services at its factory, same are against the provisions of CCR, 2004.

It is further held that credit on construction service and insurance service is not available as construction was for storage of imported goods and was in respect of trading activity. Similarly for insurance service, bulk of it being in connection with traded goods, the appellant could not have taken credit in respect of this service.

3.9 *Treat Convenience Foods vs. CCE&ST, Kanpur 2014 (34) STR 854 (Tri-Del.)*

The Tribunal in this case restricted CENVAT credit of service tax paid on repair and maintenance services to the extent of area let out and on which service tax is paid under Renting of immovable property service.

Janak C. Pandya, *Company Secretary*

CORPORATE LAWS
Company Law Update

Indian Bank Association and Others vs. Union of India and Another – *[2014] 184 Comp Cas 377 (SC) [In the Supreme Court of India]*

Direction issued to all courts in India for speedy disposal of cases under Section 138 of the Negotiable Instruments Act, 1881 related to dishonour of cheques.

Brief Facts

The Indian Banks' Association ("IBA") along with Punjab Bank and Another ("Banks") had filed a Writ Petition with the Supreme Court of India ("SC") under Article 32 of the Constitution of India. The same has been filed for seeking following reliefs:

a. To lay down appropriate guidelines / directions to be followed by all courts in India trying a compliant under Section 138 of the Negotiable Instruments Act, 1881 ("NIA") for dishonour of cheques.

b. To follow and comply with the mandate of Section 143 of the NIA read with Sections 251 to 265 of the Criminal Procedure Code, 1973 ("Cr. P.C.") for summary trial of complaints under above section of the NIA.

c. Issue a Writ of Mandamus directing the respondents to adopt necessary policy and legislative changes to deal with such changes.

The Petitioner, IBA, is a voluntary association of 174 banks and had the following grievances:

a. Banking Industry is at a disadvantage for delay in disposal of cases under Section 138 of the NIA.

b. Huge amount of public money is blocked under Section 138 of NIA.

c. The desired object of Chapter XIV of NIA and Section 4 of the Banking Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988 related to drawer's liability for penalty has not achieved the desired results.

d. Knowing the aforesaid deficiency, the legislature had inserted new Sections 143 to 147 in the NIA in 2002 for speedy disposal of dishonour of cheques by summary trials and making such offence compoundable.

e. However, no uniform practice is followed by various Magistrate Courts in the country.

Judgments and Reasoning

The SC analysed the provisions of the NIA and various judgments delivered by it. The court also referred the judgments in *Electronics Trade and Technology Development Corporation Ltd vs. Indian Technologies and Engineers (Electronics) P. Ltd [1996] 2 SCC 739* on provisions of Section 138 of the NIA and its objects and ingredients. Also reference was made in *Goa Plat P. Ltd vs. Chico Ursula D'Souza [2004] 2 SCC 235.* The SC also reviewed the intent of Bill to amend the NIA and introduction of Sections 143 and 145. The judgments in *Mandavi Co-operative Bank Ltd. vs. Nimesh B. Thakore [2010] 3 SCC 83 and Other* cases were also reviewed by the SC. With regard to the procedure for summary case, the SC has referred its judgment *Nitinbhai Saevantilal Shah vs. Manubhai Manjibhai Panchal [2011] 9 SCC 638.*

The SC also referred judgments of various High Courts, which laid down certain procedures for speedy disposal of cases under Section 138 of the NIA. The Bombay High Court's judgment in *KSL and Industries Ltd. vs. Mannalal Khandelwal [2005] Cri LJ 1201,* Calcutta High's Court judgment in *Magma Leasing Ltd. vs. State of West Bengal [2007] 3 CHN 574* and Delhi High Court's judgment in *Rajesh Agarwal vs. State ILR 2010 (6) Delhi 610* were also referred.

The following directions were laid down by the SC to be followed by all criminal courts dealing with Section 138 cases.

a. Upon presentation of complaint under Section 138 of the NIA along with affidavit and other required documents, the Metropolitan Magistrate ("MM") / Judicial Magistrate ("JM") shall scrutinise the same.

b. If complaint is in order, then cognisance of same to be taken and summons must be issued.

c. MM/JM to adopt pragmatic and realistic approach while issuing summons.

d. Summons must be properly addressed and sent by e-mail as well as by post.

e. In appropriate case, assistance from police or nearby court may be taken to serve notice to the accused.

f. For notice of appearance, a short date is to be fixed. In case of undelivered summons, immediate follow up action must be taken.

g. In case accused makes a compounding application in first hearing, then court may pass appropriate order at the earliest.

h. In case, accused appears with bail bond, court to ensure his appearance for trial and to take notice of Section 251 of Cr.P.C for plea of defence and for fixing case for its evidence.

i. Within 3 months of assigning the case, all procedure of examination must be conducted.

[In the Gujarat High Court] – Dhaval N. Patel vs. Commissioner of Income Tax and Another. [2014] 184 Comp Cas 367 (Guj.)

The lifting of corporate veil is continuously applied in two situations. One, where the statute itself so permits or provides for and secondly when due to glaring facts established on record it is found that complex web has been created only with a view to defraud revenue interest of the State.

Brief Facts

This Petition was made under Article 226 of the Constitution of India for issuance of order under Section 179 of the Income-tax Act, 1961

("ITA") and order passed under Section 264 of the ITA.

The Petitioner was a promoter/director of a public limited company named Lanzorate Finance (India) Ltd. ("Co."). The Co. had made its public issue and started its leasing activities. The Petitioner resigned from the Co from May 31, 2000. For the assessment year 1996-97, a tax demand was raised on the Co. Being a director of the Co., a show cause notice under Section 179 of the ITA was issued against the Petitioner for recovery of tax.

The Petitioner contested the said notice by replying that the Co. was a public company and hence notice u/s. 179 would not be applicable. However, the Income Tax Officer passed an order and held the Petitioner liable for tax payment. The Petitioner made a Special Civil Application against the said order challenging the validity of such notice. The said application was rejected on the ground that no evidence was placed before the court that the Co. is a public company. The Petitioner made a revision application under Section 264 of the ITA. The Commissioner of Income Tax ("CIT") in its order dismissed the said application.

The present petition is against the said order passed by the Hon'ble Court and the CIT.

The Petitioner prayed for the following reliefs:

1. Direction to the respondents to quash and set aside order under Sections 179 and 264 of the ITA.
2. Pending final disposal, to stay operation and implementation of said order.

The submissions from both the sides were made to support their views. From Respondent's side, it was contended that while filing the tax return, the status code as to company's status, was mentioned as "a domestic company which is not a company in which the public are substantially interested during the said assessment period".

Judgments and Reasoning

The court allowed the Petition and quashed the order under Sections 179 and 264 of the ITA.

The court has observed that the Co. is a public company based on various documents presented. The court also analysed the provisions of Section 179 of the ITA which relates to "liability of directors of a private company in liquidation…." The court referred to its judgments in *Radhey Mohan Sharma vs. Dy CIT (OSD) [2014] 184 Comp Cas 358 (Guj.)* and in *Pravinbhai M. Kheni vs. Asst. CIT [2013] 353 ITR 585 (Guj.).* In these said judgments, the court viewed that the concept of lifting or piercing the corporate veil is to be applied by courts sparingly and cautiously. However, irrespective of any cautious approach, in two cases, the lifting of corporate veil is continuously applied. One, where the statute itself so permits or provides for and secondly when due to glaring facts established on record it is found that complex web has been created only with a view to defraud revenue interest of the State. The court has also referred the judgment in Special Civil Application in *Sandeep A. Mehta vs. ITO decided on October 15, 2013.* The fact of present case is similar to that in above case.

CA. Mayur Nayak, CA. Natwar Thakrar &
CA. Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Circulars/Notifications issued by RBI:

1. Exim Bank's Line of Credit of USD 46 million to the Government of the Republic of Mauritius

The Credit Agreement under the LOC is effective from May 15, 2014 and the date of execution of Agreement is February 12, 2014.

(A.P. (DIR Series) Circular No. 137 dated 3rd June, 2014)

2. Liberalised Remittance Scheme (LRS) for resident individuals increase in the limit from USD 75,000 to USD 125,000

In terms of A.P. (DIR Series) Circular No. 24 dated August 14, 2013 and the subsequent clarifications issued *vide* A.P. (DIR Series) Circular No. 32 dated September 04, 2013 regarding the Liberalised Remittance Scheme (LRS) for Resident Individuals (the Scheme), the RBI has now enhanced the existing limit of USD 75,000 per financial year (April-March) as indicated in paragraph 13 of the Second Bi-Monthly Monetary Statement, 2014-15, to USD 1,25,000 per financial year, under the Scheme, for any permitted current or capital account transaction or a combination of both.

The Scheme should not be used for making remittances for any prohibited or illegal activities such as margin trading, lottery, etc.

(A.P. (DIR Series) Circular No. 138 dated 3rd June, 2014)

(This is a welcome step taken in the light of increase in forex reserves & appreciating rupee. However, the change does not restore original permission to purchase immovable property under the Liberalised Remittance Scheme)

3. Foreign investment in the Insurance Sector – Amendment to the Foreign Direct Investment Scheme

Currently, Annex B of Schedule 1 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 (the Principal Regulations) permits Foreign Direct Investment (FDI) up to 26 per cent under the automatic route in insurance sector.

Now, with effect from February 4, 2014, foreign investment by way of FDI, investment by FIIs/FPIs and NRIs up to 26% under automatic route shall be permitted in insurance sector subject to the conditions specified in the Press Note 2 (2014 Series) dated February 4, 2014.

(A.P. (DIR Series) Circular No. 139 dated 5th June, 2014/ Notification No. 301/2014-RB dated 4th June, 2014)

(This Circular has ratified/incorporated changes made through FDI Policy vide Circular No. 1 dated 17th April, 2014. Apart from permitting FII/FPIs & NRIs to invest within the overall cap of 26%, the change has classified the sector into four categories viz. Insurance Company, Insurance Brokers, Third Party Administrators and Surveyors and Loss Assessors bringing in clarity about the sector)

4. Foreign investment in India – participation by registered FPIs, SEBI registered long term investors and NRIs in non-convertible/redeemable preference shares or debentures of Indian companies

Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (the Principal Regulations) notified *vide* Notification No. FEMA.20/2000-RB dated May 3, 2000, permits investments by Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (FPIs) and long term investors registered with SEBI, on repatriation basis, in Government securities and non-convertible debentures (NCDs)/bonds issued by an Indian company subject to such terms and conditions as mentioned therein and the limits as prescribed for the same by RBI and SEBI. The present limits for investments by FIIs/FPIs, QFIs and long term investors registered with SEBI in corporate debt stands at USD 51 billion.

The RBI has now allowed FIIs, QFIs deemed as registered Foreign Portfolio Investors, FPIs, long term investors registered with SEBI – Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/ Insurance/ Endowment Funds, foreign Central Banks to invest on repatriation basis, in non-convertible/redeemable preference shares or debentures issued by an Indian company in terms of A.P. (DIR Series) Circular No. 84 dated January 6, 2014 and listed on recognised stock exchanges in India, within the overall limit of USD 51 billion earmarked for corporate debt. Further, NRIs may also invest, both on repatriation and non-repatriation basis, in non-convertible/redeemable preference shares or debentures as above.

(A.P. (DIR Series) Circular No. 140 dated 6th June, 2014/ Notification No. 304/2014- RB dated 22nd May, 2014)

(This is a welcome move by RBI permitting 1) NRIs also to make investment in the prescribed securities and 2) investment in redeemable preference shares within the overall ceiling of US $ 51 billion earmarked for corporate debt)

5. Pledge of shares for business purposes in favour of NBFCs

RBI *vide* Para. 2 (i) of A. P. (DIR Series) Circular No. 57 dated May 2, 2011, permitted pledge of shares of an Indian company held by the non-resident investor in favour of a bank in India to secure the credit facilities being extended to the resident investee company for bonafide business purposes subject to the conditions stipulated therein.

Now, AD Category–I banks are authorised to permit pledge of equity shares of an Indian company held by non-resident investor/s in accordance with the FDI policy, in favour of the Non-Banking Financial Companies (NBFCs) – whether listed or not, to secure the credit facilities extended to the resident investee company for *bona fide* business purposes / operations, subject to compliance with the conditions indicated below:

(i) only the equity shares listed on a recognised stock exchange/s in India can be pledged in favour of the NBFCs;

(ii) in case of invocation of pledge, transfer of shares should be in accordance with the credit concentration norm as stated in the Master Circular DNBS(PD).DNBS.(PD). CC.No.333/03.02.001/2013-14 dated July 01, 2013 as amended from time to time;

   a. The AD may obtain a board resolution *'ex ante'*, passed by the Board of

Directors of the investee company, that the loan proceeds received consequent to pledge of shares will be utilised by the investee company for the declared purpose;

b. The AD may also obtain a certificate 'ex post', from the statutory auditor of investee company, that the loan proceeds received consequent to pledge of shares, have been utilized by the investee company for the declared purpose.

(iii) the Indian company has to follow the relevant SEBI disclosure norms, as applicable;

(iv) under no circumstances, the credit concentration norms should be breached by the NBFC. If there is a breach on invocation of pledge, the shares should be sold and the breach shall be rectified within a period of 30 days from the date of invocation of pledge.

(A.P. (DIR Series) Circular No. 141 dated 6th June, 2014/ Notification No. 305/2014- RB dated 22nd May, 2014)

(This is a welcome move by RBI. Permission for pledge of shares held by non-resident holders in favour of NBFCs will provide greater flexibility to both lenders as well as the borrowers)

6. Transfer of assets of Liaison Office (LO) / Branch Office (BO) / Project Office (PO) of a foreign entity either to its Wholly Owned Subsidiary (WOS) / Joint Venture (JV) / Others in India– Delegation of powers to AD Banks

Presently ADs are delegated with powers to allow closure of the accounts of LO/BO and repatriate the surplus balances subject to submission of prescribed closure documents *vide* A.P (DIR Series) Circular No.24 dated December 30, 2009. The details of opening and closing POs are laid down in Circular No.37 dated November 15, 2003.

With a view to smoothen the entire process of closure of LO/BO/PO, RBI has delegated the powers relating to transfer of assets of LO/BO/PO to AD Category-I banks subject to compliance with the following stipulations:

i. Such proposals will be considered only from LO/BOs who are adhering to the operational guidelines stipulated in our AP DIR Circular Nos. 23 & 24 of December 30, 2009 such as (i) submission of AACs (up to the current financial year) at regular annual intervals with copies endorsed to DGIT (International Taxation) and (ii) obtained PAN from IT Authorities and have got registered with ROC under Companies Act 1956. Similarly, proposals from POs should conform to the guidelines issued in AP DIR Cir.No.44 dated May 17, 2005 with regard to initial reporting requirements (para 2.3) and submission of CA certified annual report indicating project status (para 2.4).

ii. A certificate is to be submitted from the Statutory Auditor furnishing details of assets to be transferred indicating their date of acquisition, original price, depreciation till date, present book value or WDV value and sale consideration to be obtained. Statutory Auditor should also confirm that the assets were not re-valued after their initial acquisition. The sale consideration should not be more than the book value in each case.

iii. The assets should have been acquired by the LO/BO/PO from inward remittances and no intangible assets such as goodwill, pre-operative expenses should be included. AD bank should scrutinise and ensure that no revenue expenses such as leasehold improvements incurred by LO/BOs are capitalised and transferred to JV/WOS.

iv. AD bank to ensure payment of all applicable taxes while permitting transfer of assets.

v. Transfer of assets to be allowed by AD banks only when the foreign entity intends to

close their LO/BO/PO operations in India. Subsequently, the AD banks should ensure closure of LO/BO in accordance with the stipulations indicated in para 5 (iii) of A.P (DIR Series) Circular No.24 of December 30, 2009 and para 5 of A.P (DIR Series) Circular No.37 of November 15, 2003 in respect of POs.

vi. Credits to the bank accounts of LO/BO/PO on account of such transfer of assets will be treated as permissible credits.

vii. The relevant documents are to be preserved separately for scrutiny by their own auditors and RBI auditors.

(A.P. (DIR Series) Circular No. 142 dated 12th June, 2014/ FEMA Notification No. 295/2014- RB dated 24-2-2014)

(This is a welcome delegation by RBI which will result in expeditious transfer of assets and smoothen the entire process of transfer/ closure of the LO/BO/PO)

7. Money Changing Activities –Powers of Director to impose fine

The A.P. (DIR Series) Circular No.17 [A.P. (FL/ RL Series) Circular No.04] dated November 27, 2009 pertains to 'Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/ Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act, (PMLA), 2002, as amended by Prevention of Money Laundering (Amendment) Act, 2009 - Money changing activities', as amended from time-to-time.

The RBI has amended Section 13 of the Prevention of Money Laundering (Amendment) Act, 2012 which provides for "Powers of Director to impose fine" and the amended section 13(2) is:

"If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

1. issue a warning in writing; or
2. direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
3. direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
4. by an order, levy a fine on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure."

Authorised Persons may nominate a Director on their Boards as "designated Director" to ensure compliance with the obligations under the Prevention of Money Laundering (Amendment) Act, 2012.

(A.P. (DIR Series) Circular No. 143 dated 16th June, 2014)

8. Cross-Border Inward Remittance under Money Transfer Service Scheme (MTSS) enactment

Authorised Persons, who are Indian Agents under MTSS, may nominate a Director on their Boards as "designated Director" to ensure compliance with the obligations under the amended section 13 of Prevention of Money Laundering (Amendment) Act, 2012 which provides for "Powers of Director to impose fine" read with A.P. (DIR Series) Circular No.18 [A.P.(FL Series) Circular No.05] dated November 27, 2009.

Amended provision of section 13 reads as follows:

"If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may

be taken under any other provisions of this Act, he may—

1. issue a warning in writing; or

2. direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

3. direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

4. by an order, levy a fine on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure."

(A.P. (DIR Series) Circular No. 144 dated 16th June, 2014)

9. Annual Return on Foreign Liabilities and Assets – Reporting by Indian Companies – Revised format

Annual Return on Foreign Liabilities and Assets (FLA) has to be filed with RBI by sending it in soft copy to the Reserve Bank by July 15 every year by all Indian companies which have received FDI and/or made FDI abroad in the previous year(s) including the current year.

RBI has now modified FLA Return in order to collect information on Indian companies' Outward Foreign Affiliated Trade Statistics (FATS) as per the multi-agency global 'Manual on Statistics of International Trade in Services'.

(A.P. (DIR Series) Circular No. 145 dated 18th June, 2014) / Notification No.FEMA.307/2014-RB dated May 26, 2014)

(Section IV-A titled Outward Foreign Affiliated Trade Statistics (FATS) has been added to FLA Return whereby Indian Companies are required to provide the information of subsidiaries abroad relating to all purchases (including capital and revenue of goods and services)/sales made domestically as well as exports during the reference period (April - March). It may be noted that collating amounts relating to all exports/imports (i.e. foreign sales/purchases) out of its total sales/purchases could be an additional burden for Indian companies in case the financial reporting format in the host country does not require disclosure of such details separately.)

10. Export and Import of Currency: Enhanced facilities for residents and non-residents

Hitherto, any Person Resident in India could take outside India or having gone out of India on a temporary visit, could bring into India (other than to and from Nepal and Bhutan) Indian currency notes up to an amount not exceeding ₹ 10,000 (Rupees Ten Thousand only). Further, Persons Resident Outside India coming to India are not permitted to bring Indian currency notes, neither are they permitted to take them outside India while returning abroad.

In view of the evolving economic conditions and with a view to facilitating travel requirements of residents travelling aboard as well as non-residents visiting India, RBI had announced rationalisation of existing Regulations as well as liberalisation of limits in Second Bi-Monthly Monetary Policy Statement, 2014-15 released on June 3, 2014.

This circular has been issued in pursuance to the aforesaid policy statement. Updated Regulations after issuance of this circular can be summarised as under:

A. any person resident in India:

   (i) can take outside India (other than to Nepal and Bhutan) Indian currency notes up to ₹ 25,000; and

   (ii) who had gone out of India on a temporary visit, can bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), Indian currency notes up to ₹ 25,000.

B. Any person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveller coming from and going to Pakistan and Bangladesh, and visiting India:

(i) can take outside India, Indian currency notes up to ₹ 25,000 while exiting only through an airport; and

(ii) can bring into India, Indian currency notes up to ₹ 25,000 while entering only through an airport.

(A.P. (DIR Series) Circular No. 146 dated 19th June, 2014) / (Notification No.FEMA.309/2014-RB dated June 4, 2014)

(Apparently there was an anomaly under the erstwhile Regulations since persons Resident Outside India could not bring even a single rupee while entering India nor could carry a single rupee while returning abroad. This anomaly has been corrected. Further, enhancement of limit would grant some relief to persons resident outside India, particularly NRIs, who visit India at regular intervals.)

11. Risk Management and Inter-bank Dealings: Guidelines relating to participation of Residents in the Exchange Traded Currency Derivatives (ETCD) market

In terms of the present regulatory framework, domestic participants in the currency futures and exchange traded options markets are not required to have any underlying exposure while requirement of underlying is mandatory for taking a position in the over-the-counter (OTC) derivatives markets. With a view to bringing about an alignment between the two markets, RBI has introduced the following terms and conditions for domestic participants in the currency futures and exchange traded currency options markets:

a. Domestic participants would be allowed to take a long (bought) as well as short (sold) position upto USD 10 million per exchange without having to establish the existence of any underlying exposure. For the purpose of convenience, exchanges can prescribe a fixed limit for the contracts in currencies other than USD such that the limit is within the equivalent of USD 10 million.

b. Domestic participants who want to take a position exceeding USD 10 million in the ETCD market would have to establish the existence of an underlying exposure. The procedure for the same would be as under:

(i) For participants who are exporters or importers of goods and services, the eligible limit up to which they could take appropriate hedging positions in ETCDs would be determined as (a) higher of the (I) average of the last three years' export turnover, or (II) previous year's export turnover, in case they are exporters and (b) fifty per cent of the higher of the (I) average of their last three years' imports turnover or (II) the previous year's turnover, in case they are importers.

(ii) The participants should furnish, to the trading member of the exchange, a certificate(s) from their statutory auditors regarding the limit(s) mentioned above along with an undertaking signed by the Chief Financial Officer (CFO) to the effect that at all time, the sum total of the outstanding OTC derivative contracts and the outstanding ETCD contracts would be corresponding to the actual exports or imports contracted, as the case may be.

(iii) Based on the above certificate, a trading member can book ETCD contracts upto fifty per cent of the eligible limit [as at paragraph (i) above] on behalf of the concerned customer. If a participant wishes to take position beyond the fifty per cent of the eligible limit in the ETCD, it would

have to produce a certificate from the statutory auditors certifying that the sum total of the outstanding OTC derivative contracts and outstanding ETCD contracts has generally been in correspondence with the eligible limits. Based on such a certificate, the trading member can book ETCD contracts beyond fifty per cent of the limit and up to limit mentioned in paragraph (i) above.

(iv) For all other participants having an underlying foreign currency exposure in respect of both current and capital account transactions as also exporters and importers who wish to access the ETCD market on the basis of contracted exposure, they would have to undertake the transaction through AD Category-I bank/s who operate as trading members. In such cases, the responsibility for verification of the underlying exposures and ensuring that the ETCD bought/sold is in conformity with the underlying exposure and that no OTC contract has been booked against the same underlying exposure would rest with the concerned (AD Category I bank) trading member.

(v) All participants in the ETCD market, except those covered by paragraph (iv) above, would be required to submit to the concerned trading member of the exchange a half-yearly certificate from their statutory auditors as on March 31st and September 30th, within fifteen days from the said dates, to the effect that during the preceding six months, the derivative contracts entered into by the participant in the OTC and the ETCD markets put together did not exceed the actual exposure.

c. The onus of complying with the provisions of this circular would rest solely with the participant

Further, in terms of A.P. (DIR Series) Circular 86 dated March 1, 2013, AD Category-I banks were not allowed to offset their positions in the ETCD market against the positions in the OTC derivatives market and in terms of A.P. (DIR Series) Circular No. 7 dated July 8, 2013 they were not allowed to carry out any proprietary trading in the ETCD market. Keeping in view the evolving market conditions, RBI has now decided that:

a. AD Category-I banks can undertake proprietary trading in the ETCD market within their Net Open Position Limit (NOPL) and any limit that would be imposed by the exchanges for the purpose of risk management and preserving market integrity.

b. AD Category-I banks can also net / offset their positions in the ETCD market against the positions in the OTC derivatives markets. Keeping in view the volatility in the foreign exchange market, RBI could however stipulate a separate sub-limit of the NOPL (as a percentage thereof) exclusively for the OTC market as and when required.

Excepting the above, RBI has also clarified that there would be no other upper limit on the position that can be taken by any participant, resident or non-resident, in the ETCD market. The exchanges under appropriate directions from SEBI could however impose any limit for risk management and preserving market integrity.

(A.P. (DIR Series) Circular No. 147 dated 20th June 2014)

(This move permits domestic participants to take a long (bought) as well as short (sold) position up to USD 10 million per exchange without having to establish the existence of any underlying exposure. Exchange-traded currency derivatives significantly help small importers and exporters to hedge their exposures at a reduced cost compared to the OTC currency market. This move could also bring some depth in short term currency derivatives market and may also encourage long-term derivatives contracts)

12. Risk Management and Inter-bank Dealings: Guidelines relating to participation of Foreign Portfolio Investors (FPIs) in the Exchange Traded Currency Derivatives (ETCD) market

RBI has now decided to allow foreign portfolio investors (FPIs) eligible to invest in securities as laid down in Schedules 2, 5, 7 and 8 of the Foreign Exchange Management (Transfer or Issue of Security by a person resident outside India) Regulations, 2000) to enter into currency futures or exchange traded currency options contracts subject to the following terms and conditions:

a. FPIs would be allowed access to the currency futures or exchange traded currency options for the purpose of hedging the currency risk arising out of the market value of their exposure to Indian debt and equity securities.

b. Such investors would have to participate in the currency futures / exchange traded options market through any registered / recognised trading member of the exchange concerned.

c. FPIs would be allowed to position – both long (bought) as well as short (sold) – in foreign currency up to USD 10 million or equivalent per exchange without having to establish existence of any underlying exposure. The limit will be both day-end as well as intra-day.

d. An FPI would not be allowed to take a short position beyond USD 10 million at any time and in order to take a long position beyond USD 10 million in any exchange, it would be required to have an underlying exposure. The onus of ensuring the existence of an underlying exposure would rest with the FPI concerned.

e. The exchange would, however, be free to impose additional restrictions as prescribed by the Securities and Exchange Board of India (SEBI) for the purpose of risk management and fair trading.

f. The exchange/ clearing corporation would provide FPI wise information on day-end open position as well as intra-day highest position to the respective custodian banks. The custodian banks would aggregate the position of each FPI on the exchanges as well as the OTC contracts booked with them (i.e. the custodian banks) and other AD banks. If the total value of the contracts exceeds the market value of the holdings on any day, the concerned FPI would be liable to such penal action as may be laid down by the SEBI in this regard and action as may be taken by Reserve Bank of India under the Foreign Exchange Management Act (FEMA), 1999. The designated custodian bank would be required to monitor this and bring transgressions, if any, to the notice of RBI / SEBI.

(A.P. (DIR Series) Circular No. 148 dated 20th June 2014/ Notification No. 303/2014- RB dated 21st May, 2014)

(This is a welcome move by RBI permitting FPIs to take position – both long (bought) as well as short(sold) – in foreign currency up to USD 10 million or equivalent per exchange without having to establish existence of any underlying exposure. The limit will be both day-end as well as intra-day. Allowing FPIs to participate in the ETCD market could enhance the depth of the foreign exchange market. This move could result in depth in short term currency derivatives market and may encourage long term derivatives market)

13. Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/ Combating the Financing of Terrorism (CFT)/ Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 – Money Changing Activities – Change in period of maintenance and preservation of records

In terms of para 4.13 of A. P. (DIR Series) Circular No.17 [A.P. (FL/RL Series) Circular No.04] dated

November 27, 2009, authorised persons are required to maintain and preserve records mentioned therein for a period of at least ten years. In view of the amendment to Section 12 of Prevention of Money Laundering Act, 2002 through Prevention of Money Laundering (Amendment) Act, 2012, RBI has stated that authorised persons would now be required to maintain and preserve records for a period of at least five years instead of at least ten years earlier.

(A. P. (DIR Series) Circular No. 149 dated 25th June 2014)

14. Know Your Customer (KYC) norms/Anti-Money Laundering (AML) standards/Combating the Financing of Terrorism (CFT)/Obligation of Authorised Persons under Prevention of Money Laundering Act (PMLA), 2002 – Money Transfer Service Scheme – Change in period of maintenance and preservation of records

In terms of clause (a) of para 3.2 and clause (iii) – 'Maintenance and Preservation of Record' of para 5.12 of A.P. (DIR Series) Circular No.18 [A.P. (FL/RL Series) Circular No. 05] dated November 27, 2009, authorised persons who are Indian agents under MTSS are required to maintain and preserve records mentioned therein for a period of at least ten years. In view of the amendment to Section 12 of Prevention of Money Laundering Act, 2002 through Prevention of Money Laundering (Amendment) Act, 2012, RBI has stated that authorised persons who are Indian agents under MTSS are now required to maintain and preserve records for a period of at least five years instead of at least ten years earlier.

(A. P. (DIR Series) Circular No. 150 dated 25th June 2014)

15. Remittances to non-residents – Deduction of Tax at Source

RBI had previously issued A.P. (DIR Series) Circular No. 56 dated November 26, 2002 and A. P. (DIR Series) Circular No. 3 dated July 19, 2007 with regard to the procedure to be followed by Authorised Dealers in respect of deduction of tax at source while allowing remittances to the non-residents.

The Central Board of Direct Taxes (CBDT) has since revised the existing instructions to be followed while allowing remittances to the non-residents, with effect from October 1, 2013. It has issued Income Tax (14th Amendment) Rules, 2013 *vide* Notification No. S.O 2659(E) dated September 2, 2013 on furnishing of information under Section 195(6) of the Income Tax Act, 1961 and prescribed the rules and forms to this effect.

After review of the policy relating to issue of instructions under Foreign Exchange Management Act, 1999 (FEMA) for clarifying tax issues, Reserve Bank of India has stated that It would not issue any instructions under the FEMA in this regard henceforth and that it would be mandatory on the part of Authorised Dealers to comply with the requirement of the tax laws, as applicable. Further, RBI has also stated that Authorised Dealers could approach CBDT for any clarification in this regard.

(A.P. (DIR Series) Circular No.151 dated 30th June 214)

(Through this Circular, RBI seems to have indirectly withdrawn its earlier A. P. (DIR Series) Circular No. 3 dated July 19, 2007 which resulted in insistence by Authorised Dealers for CA certificates for foreign remittances even in the nature of trade transactions such as import payments. Current A.P. (DIR Series) Circular assumes more significance since although latest CBDT Notification did not require certification under Form 15CB and filing of Form 15CA for sums which are not chargeable to tax, few Authorised Dealers were still insisting for the same before allowing remittances to be effected. Henceforth, only CBDT will be the authority to prescribe such certifications and the same will be binding on the ADs)

Ajay Singh & Suchitra Kamble, *Advocates*

BEST OF THE REST

1. Suit for recovery – Against guarantor – Bar of limitation – Suit filed within three years from date of acknowledgement by principal borrower – As suit against principal borrower on same date would not have been barred by limitation – Suit against guarantor well within time. Limitation Act, 1963, Article 19

In the present case the appellants were guarantors. Respondent No. 1 gave a loan to the principal borrower in the year 1991 for which the appellants signed the deed of guarantee. The principal borrower/defendant no. 1 signed the balance confirmatory-cum-acknowledgment and suit was filed by the Respondent No. 1 Bank within three years thereafter. The substantial question of law raised was whether the acknowledgement of debt by principal debtor would not extend limitation *qua* the guarantors ?

The High Court observed that the guarantee bond states that the guarantors agreed to pay and satisfy the Bank 'on demand'. It specifically provides that the liability to pay interest would arise upon the guarantor only from the date of demand by the Bank for payment. It also provides that the guarantee shall be a continuing guarantee for payment of the ultimate balance to become due to the Bank by the borrower. The terms of guarantee, thus make it clear that the liability to pay would arise on the guarantors only when a demand is made. Article 55 provides that the time will begin to run when the contract is 'broken'. Even if Article 113 is to be applied, the time begins to run only when the right to sue accrues. In this case, the contract was broken and the right to sue accrued only when a demand for payment was made by the Bank and it was refused by the guarantors. When a demand is made requiring payment within a stipulated period, say 15 days, the breach occurs or right to sue accrues, if payment is not made or is refused within 15 days. If while making the demand for payment, no period is stipulated within which the payment should be made, the breach occurs or right to sue accrues, when the demand is served on the guarantor.

The High Court held that acknowledgement of debt by the principal borrower waives the earlier demands made against the guarantor because by acknowledgement executed there is no default of the principal borrower and existence of which is a *sine qua non* for the liability of the guarantors to commence. Once the suit against the principal borrower is held to be within limitation, suit against the appellants/guarantors is also within limitation, in as much as suit is not filed as against the appellants/ guarantors after three years of making of the demand after signing of the acknowledgement of debt letter. The question raised was accordingly answered in favour of the respondent Bank.

Subhash Chand & Anr. vs. State Bank of Patiala & Anr. AIR 2014 Delhi 82

2. Valuation of suit – Expression – "Value of property" – Cannot be substituted with expression "market value of property" – A.P. Court Fees and Suits Valuation Act (7 of 1956), S. 37

The Andhra Pradesh High Court placing reliance on the Full Bench judgment of the Madras High Court in *Kolachala Kutumba Sastri vs. Lakkaraju Bala Tripura Sundaramma & Ors. AIR 1939 Mad. 462* and the Division Bench Judgment of the Andhra Pradesh High Court in *Lakshminagar Housing Welfare Association vs. Syed Sami alias Sayed Samiuddin & Ors. (2010) 5 ALT 96* held that in a suit for cancellation of sale deed, court fee has to be determined on the market value of the property as on the date of presentation of the plaint and not the value shown in the registered sale deed.

The legality of the same was under challenge before the Supreme Court. The Supreme Court held that S. 37 of the Act, which deals with the suits for cancellation of decrees etc. is not governed by other Section of the Court Fee Act, such as S. 7 and other related provisions. If Section 37 is interpreted in the light of the expression "save as otherwise provided" use in S. 7 of the Act, it becomes clear that the rule enshrined therein is the clear departure from the one contained in Section. 7 read with other Sections which provide for payment of court fee on the market value of the property. In that context, it could be seen that S. 37 is standalone provision, wherein the legislature has designedly not used the expression "market value of the property." S.37 of the Act therefore, contains a special rule for valuing the property for the purpose of court fee and jurisdiction and there is no reason why the expression "value of the property used in S. 37 be substituted with the expression "market value of the property." Thus, in a suit for cancellation of sale deed which was executed for a specified amount, the court fee has to be paid on that amount and not on the basis of the market value of the property at the presentation of the plaint.

Polamrasetti Manikyam & Anr. vs. Teegala Venkata Ramayya & Anr. AIR 2014 Supreme Court 1286

3. Change of user – Area reserved for civic amenities – Cannot be converted by Development Authority for activities not falling within definition of civic amenities – Site earmarked for bank – Could not be allotted for petrol pump

The Karnataka High Court has declared the allotment of civic amenity site No. 2 to Bharat Petroleum Corporation (respondent No. 3) for establishment of petrol pump, null and void. The allotment made in favour of respondent no. 3 has been set aside.

The Supreme Court held that under Section 38A(1), the Development Authority, BDA, would have the authority to lease, sale or otherwise transfer any area reserved for the purpose for which such area is reserved, and no other. This clearly means that the Government can pass on the responsibility to another concern, be it individual, company or corporation for the purpose of carrying on the activity for which the plot has been reserved as a civic amenity. It does not give a licence to the BDA to convert the area reserved for civic amenities for activities which do not fall within the definition of civic amenities. Sub-section (2) of Section 38 is an embargo that even such sale or disposal otherwise of an area reserved for public parks, playgrounds would not be permitted to private parties. Though such spaces, playgrounds and parks can be transferred to public authorities, but the user would be limited to the purpose for which they are reserved under the scheme. In case, a disposition is made for a purpose other than the one for which is reserved, the Act has declared that, it shall be null and void. Rule 3 of the Rules cannot be permitted to override the statutory provision contained in Section 38A(1) and (2). Even otherwise, the rule only reiterates the statutory provision in Section 38A (1) and (2). Therefore the site earmarked for use as "bank" cannot be allotted for petrol pump.

Bangalore Development Authority (Civic Amenity Site) Allotment (Rules) (1989), R.3 AIR 2014 Supreme Court 1430

4. Consumer Forum – Jurisdiction of Deficiency in Service – Statutory Boards and Development Authorities which are allotting sites with promise of development – Are amenable to jurisdiction of consumer forum. Consumer Protection Act, 1986, Ss. 12, 18, 22, 2(1)(g)

The respondents were allotted plots by the appellant upon depositing the 25% of the price of the said plots. Admittedly the respondents did not pay the installments in terms of the allotment letters. The district forum awarded the respondents interest @ 12% per annum on the entire deposited amount after two years from the date of issuance of allotment letters to the respondents till the development and notification of the area in question is not done. Being aggrieved, the appellant went in appeal before State Commission wherein the appeals were rejected. It was the case of the appellant that all the three fora below have erred in fact and in law by omitting to take into consideration the fact that the payment of installments towards the cost by the respondents was unconditional. It was further contended that it was not subject to fulfillment of any condition on the part of the appellant as a pre-requisite. Moreover, all the three fora lost sight of the fact that under Section 8 of the Punjab Agricultural Produce Markets Act, 1961 after creation of a sub-market yard by notification under Section 7(2) of the said Act, no person could be allowed to trade in agricultural produce without licence and they had to apply for the same under Section 9 of the said Act, and further to obtain a licence under Section 10 of the said Act.

The Supreme Court held that inaction on the part of the appellant in providing the requisite facilities for more than a decade clearly establishes deficiency of services as the respondents were prevented from carrying out the grain business. However, the respondents were also incorrect in refusing to pay the installments and violating the terms of the installment letter. Thus, considering the surrounding circumstances wherein the appellant has been unable to develop the area for more than two decades and the resultant loss suffered by the respondents, there is a need for proportionate relief as the levy of penal interest and other charges on the respondents will be grossly unfair. Thus the Supreme Court confirmed the order of the District Forum.

Harayan State Agricultural Marketing Board vs. Bishamber Dayal Goyal and ors. AIR 2014 SC 1766

5. Tenant in occupation of bank premises under Rent Control Act – From time before enforcement of Act – Not liable to be evicted under Act – Constructive *res judicata*

The Delhi High Court directed to evict the appellant from the concerned premises. The case of the appellant is that the appellant has been occupying the premises since 1952 and the respondent Bank became owner of this property in 1978.

The Supreme Court held that the Bombay Rent Act would not prevail *qua* the repugnancy between it and the Public Premises Eviction Act as per Supreme Court judgment in case of *Kaiser-I-Hind Pvt. Ltd. & Anr. vs. National Textiles Corporation (2002) 8 SCC 182.* This aspect was not contradicted in Dr. Suhas H. Pophale's Case *(2014 AIR SCW 1171).* It also relied upon the judgment in *Ashoka Marketing Limited (AIR 1991 SC 855)* which says that the Public Premises Act as well as the State Rent Control Laws are both referable to entries in concurrent list and they operate in their own field. It is only in the area of its own that the State Rent Control Act applies and in its own time frame. The judgment in Dr. Suhas Pophale's case accepts that the Public Premises Act will prevail over the Bombay Rent Act to the extent of repugnancy i.e. for eviction of unauthorised tenants and for collection of arrears of rent, but not prior to 1958 when the Public Premises Act became applicable. Thus the appeals were allowed and the Division Bench order was set aside.

M/s. Band Box Private Limited vs. Estate Officer, Punjab and Sind Bank & Anr. AIR 2014 SC 1602.

CA. Rajaram Ajgaonkar

ECONOMY AND FINANCE

WINDS OF SPRING

The month of June generated comfort level in the minds of Indians in spite of rain God frowning on them. The new Government was placed in power with a thumping majority. Indians have a lot of expectations from it. Though the days to come will unveil how good the future can be under the new Government as promised, expectations are high and soaring. The optimism of the Indians has improved substantially over the last few months. There are no great changes which have taken place in the economy or in the life of the public, but none the less there are great hopes. The hope for better days has made people across India optimistic. People are subtley warned that there is no magic wand and they may have to bite the bullet of higher taxes and reduced subsidies. Surprisingly many Indians seem to be currently in the mood to gulp the bitter pill for a better future. What the Government does for living up to the expectations will be visible in the days to come. Still the power of the feel good factor will enable the Indian economy to perform better. The momentum, which can be achieved thereby, may have the power to push the economy upward and make the country grow at a better speed. The game is going to be more and more interesting in the days to come. Many new policy initiatives are expected to change the economic direction of the country and bring it back to a higher rate of growth, which was achieved a few years back. Every person in India needs to chip in with his efforts, be a catalyst and work hard. Success is beckoning as the environment is right. The world is coming out of one of the most dreaded recessions and growth is visible across the world. Investment and spending are likely to be increased sustainably and it is likely to lead to better days ahead. The positive environment across the world is definitely going to help India. The cost structure in India is fair and attractive by the global standards. The resources are available and people are eager to excel. What is needed is the political will and probably it exists now. Concentrated efforts and resource allocation will be required for improving the infrastructure in India. Inadequate infrastructure has been the biggest dampener to Indian economic growth and the country needs to overcome it at the earliest. If we succeed to do that, India will not remain a service hub but it can turn out to be a great manufacturing hub as well. Slow down in China is creating a latent opportunity for India. India is rightly positioned to avail of the same. Such

times are rare and the opportunity needs to be seized.

The month of June turned out to be reassuring for the emerging economies. The US continued its progress with minor hiccups. Japanese economy has started showing improvement. China slowed down a bit but still performed better than expected. Europe has finally started giving sustained signals of revival. As things stand, there are hardly any reasons to be pessimistic in the near future. There are some hiccups like war in Iraq between the Government and the rebels. There is an uneasy calmness in Croatia. Terrorist activities in the Middle East can create uncertainties. Iraq being the second largest producer of crude oil in OPEC, the uncertainties therein may have global impact. In spite of these issues, the spirit across the world is improving. Psychology of investors has taken an upturn and they are becoming more aggressive and less averse to risks. The liquidity is good and willingness to invest has emerged. If this tempo is kept for a few more years, the world can become a much better place to live in. Poverty can be reduced, diseases can get controlled and there need not be any starvation in the world. To achieve betterment of people, the major countries should not remain self-centered. They need to focus for the betterment of their subjects but at the same time, need to be conscious enough not to harm other economies by their policies. This doesn’t mean that competition should get watered down. Competition is a great force for anybody to excel and to reach better heights. Healthy competition amongst nations can do great good to people around the world. The leaders do need to control their ambitions, their egos and their selfishness. If they are kept under control, great things can happen to the world and the people across the continents.

India is likely to emerge as a great place of opportunity for global investors. The new Government is expected to amend the outdated laws, liberalize the rules, remove the tax terrorism and liberalise the policies. It is likely to reduce the hurdles faced by a number of developmental projects due to policy paralysis. It is expected to give boost to the infrastructure development, which can change the face of the country in the years to come. The possibility of these changes is making India a very attractive destination not only to Indians but investors across the world. The Indian stock markets are on a roll for the last few months and they have appreciated more than 20% over the last six months, giving phenomenal returns to the investors and increasing their wealth substantially. It has improved their risk taking ability and their boldness. But for minor hiccups, the uptrend is expected to continue unabated, albeit at a slower pace.

The stock markets in India are expected to give good returns not only over a short run but over an extended period of next 2 to 3 years and even thereafter. Stocks are likely to outperform all the other classes of assets. The Indian story is becoming loud and prominent even for global investors. The improved market sentiments are likely to bring up public offerings of a number of companies, who were waiting for improvement in the market sentiment. The Government in its quest to reduce the budgetary deficit is likely to sell its holding in its blue chip public sector undertakings, which will give good opportunities to investors and especially to retail investors. There are a number of companies who are waiting to raise public money by follow up offerings to public or through Qualified Institutional Placement (QIP). The buoyancy in the market will allow the industry to raise funds from the public in the form of equity to strengthen their balance sheets. Many of them will be able to re-leverage their finances, which got stressed up on

account of slow down of economy. Their financial ratios will improve, which will allow them to invest more in new projects. New investments can increase employment as well as consumption. Infrastructure is likely to improve due to increase in demand for the same and positive efforts from the Government. Impetus to development of infrastructure can increase opportunities across sectors and investors can expect better days ahead. Many multibagger investment opportunities can emerge over the next 3-5 years, and those who can catch them will reap huge gains. An adequately reined capitalism is likely to emerge in India, which can make the rich richer but at the same time elevate a large population above the poverty line. What is needed is simple blessings by the Government in the form of removal of hindrance of bureaucracy and positive policy decisions. Opening up of the economy to foreign investment can do great economic good to the nation. It can change the current equations and can change how business is done in the country. The change will be beneficial to the investors, the consumers and so obviously to the common man in the country.

Though the stock markets are looking very positive and investors in stocks are likely to reap substantial benefits, the risks should not be ignored. It should be kept in mind that when the stock markets are buoyant, the number of rights issues and public issues flood the markets at high premium. In case of rights issues, there are possibilities of price manipulation. In case of public issues, there is a tendency on the part of the offerers to try to extract as much premium as possible. In the process, the offerings can get overpriced and the subscribers to the issue can suffer losses after the initial euphoria is over. Therefore, the investors need to study the offer documents properly or seek advice from the experts, specially regarding the quality as well as the pricing of the issues. It should be appreciated that even the best quality issues can make the investors incur losses, if they are overpriced.

As of now, the rate of return on fixed deposits, as well as short maturity debentures is reasonably good. Though there were initial expectations of the interest rate easing in the near future, inflation is not coming under control and that can deter the Reserve Bank of India (RBI) from reducing the bench mark interest rate. The party of high returns on deposits may continue for some more time and conservative investors need not change their allocation strategy for fixed interest earning investments.

The bond yields have gradually started dropping. This may be a prelude to easing of interest rates but substantial easing may not happen over a short period. The long term returns on the bonds may remain attractive over the period as the yields are expected to ease gradually on the back of improving economy and reducing inflation. The advantage of investments in the listed and traded bonds as compared to fixed deposits is the liquidity. Investors should be conscious about their investment horizon when they are investing in bonds. Liquid bonds will fetch a bit lower yield than those which are non liquid. If the investment horizon is short, liquid bonds are more suitable. For long term investors with a 3 to 5 years horizon, high yielding bonds of many finance companies can be attractive.

Some of the finance companies have recently floated high yielding preference shares. These companies are reputed and are very likely to maintain the preference dividend on a very regular basis. The opportunity looks attractive, specially for high net worth individuals as their effective returns on this investment can work out to 13 to 14% on pre tax basis. However, investment should

be made in such preference shares which are not only listed but are regularly traded on the stock exchanges so that investors need not sacrifice their liquidity. Such preference shares can also fetch appreciation when liquidated on secondary markets especially when the interest rates start falling as investors will be in search of higher yields.

The property market remains subdued in the absence of adequate liquidity. Though there are hopes, things may not change suddenly for this asset class. There is substantial oversupply of properties in many areas due to high construction activities and this can remain as a dampener for firming of prices of properties in those areas. Increase in the cost of construction and increased levies by states under various acts is escalating the cost of properties. The tax levies need to be relooked by the Government, if this sector needs to be given an impetus. Improved economic growth can make more surplus available in the hands of the common man, which can improve the outlook of the property markets over a period. High interest rate is one of the major hindrances for the investment in properties by investors as well as actual users. If inflation comes under control, the interest rates can get reduced and such situation can give a fillip to the property market. Rationalisation of taxes in this sector can improve the demand and bring back the consumers and investors to this sector, which can improve property prices over a period. As the things stand today, residential property has better prospects than commercial property. Prime properties will remain more in demand than the properties in the mass market.

Indian Rupee is getting stronger on the back of more and more inflow of foreign funds in India in stock as well as bond markets. The influx is expected to continue due to increased interest of investors from the overseas markets in developing countries and specially in India due to high expectations from the new Government. Indian Rupee can strengthen further and gradually appreciate over the next couple of years, if inflation is controlled. On the back of improved economic growth across the world, the opportunity to invest outside India has also improved. High net worth investors may take advantage of Liberalised Remittance Scheme and start investing in global markets which can effectively balance their portfolio.

The budget for the current year will soon be announced and there are a lot of expectations. The budget can be harsh for some sectors of the economy but it is expected to give a boost to the infrastructure sector, the slowdown of which was one of the major reasons for the slowdown of the Indian economy. The budget is expected to give momentum to new investments. Rationalisation of tax laws, which can improve the sentiment of Indian investors, is expected. If the budget turns out to be as per the expectations, the Indian economy can grow at five and a half per cent for the current financial year and six and a half per cent for the next financial year. If the growth rate improves, the investors can definitely reap rich dividends over the next few years. The current times are likely to be one of the most opportune times for the investors in recent history of the country. Investors need to act quickly but with caution.

CA. Ninad Karpe

THE LIGHTER SIDE

JUMPING IN JULY!

July is normally a busy month in the life of a tax professional – the big excitement being the finalisation and filing of the tax returns.

As Indians, we love doing everything at the last moment. Look at people running into the cinema hall minutes before the movie starts or rushing to the airport at the last minute or paying school fees on the last day. Even the government indulges in this. More than 17 per cent of the government expenditure is actually incurred in the month of March.

So, how does a tax professional handle the last minute pressure of filing tax returns?

There could be some marketing lessons which could be applied…

How about an "early bird" discount? If the tax return is filed in April, the client could get a 50 per cent reduction in the fees, 25 per cent if it is filed in May and so on… Indians are suckers for discounts and this scheme will become a roaring success!

Another idea could be to have a lucky dip for all those who file returns in April and May. In the office, a box should be kept, where the client writes his name, address and other details on the card and also adds, "I love my tax professional because………" (in 170 words). The winners could potentially get a brand new refrigerator or a car.

Also, it would not be a bad revenue generating idea for the tax professional to charge double the normal fees for all returns filed in the last three days of the due date.

There are plenty of marketing ideas which can be clearly applied to the practice of a tax profession.

This year, in July, there is the added excitement of presentation of the Union Budget by the new Government. Expectations from the Budget are sky-high and after the Budget, all the tax professionals will be huddled to figure out the real implications.

To get over all this madness in July, a good idea is to buy a ticket to Brazil, switch off your mobile phone and watch a live soccer match – that would be a truly audacious tax professional !

ML-676

CA Hinesh R. Doshi, Ajay Singh, *Advocate*
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th June, 2014 to 8th July, 2014 are being reported as under.

I. Admission of New Members

1) The following new members were admitted in the Managing Council Meeting held on 26th June, 2014.

Life Membership

1	Mr. Thakore Milin Dilip	CA	Mumbai
2	Mr. Ved Parag Shamji (Tr. from Ord to Life)	CA	Mumbai
3	Mr. Shetty Jayprakash Babu	CA	Mumbai
4	Mr. Upadhyay Ram Baboo	Advocate	Mumbai
5	Mr. Devani Jimit Kishor	CA	Mumbai
6	Mr. Mehta Hardik Dipak	CA	Mumbai
7	Mr. Desai Yatin Kirtanlal Tr. from Ord to Life)	CA	Mumbai
8	Mr. Shirsat Rajesh Ramakant	ITP	Mumbai
9	Mr. Thakore Milin Dilip	CA	Mumbai

Ordinary Membership

1	Mr. Radadia Hiren Ravjibhai	CA	Mumbai
2	Miss Sayta Dhruti Jaykumar	CA	Mumbai
3	Mr. Sundarrajan Jeychandran J.	CA	Mumbai
4	Mr. Barlota Samip Parasmal	CA	Mumbai
5	Mr. Surti Navroz Abdulhusein	ITP	Mumbai
6	Mr. Agrawal Navin Purshottam	CA	Thane
7	Miss Savla Richa Dhirajlal	CA	Mumbai
8	Mr. Erra Srinivas Hari Mohan	FCA, ISA	Kakinada
9	Mr. Jogani Mitul Sudhirkumar	CA	Mumbai
10	Mr. Khairnar Kaustubh Dattatray	Advocate	Pune
11	Mr. Somane Omprakash Kapurchand	CA	Nashik
12	Mr. Gupta Jitendra Jagdish	CA	Thane
13	Mr. Gazi Munir Abdul Latif	ITP	Mumbai
14	Mr. D.l. Suresh Babu	CA	Basavangudi
15	Mr. Yadav Avdhesh Siyaram	CA	Ulhasnagar
16	Mr. Shah Ishan Nitin	CA	Mumbai
17	Mr. Dalal Shaileen Vinod	CA	Mumbai
18	Mr. Agarwal Umesh S.	CA	Mumbai
19	Mr. Dave Ygnesh Hasmukh	ITP	Thane

Student Membership

1	Mr. Parmar Ankit Kirit	Bcom	Mumbai
2	Mr. Gupta Raghavindra Vimal	Law student	Mumbai

Associates Membership

1 Bhansali and Shah — Mumbai

2 The following new members were admitted in the managing council meeting held on 4th July, 2014.

Life Membership

1	Ms. Savla Maitri Paras	CA	Mumbai
2	Mr. Shah Jigar Pravin	CA	Hyderabad
3	Mr. Bhatt Vijay Upendra (Tr. from Ord to Life)	CA	Mumbai

Ordinary Membership

1	Miss Patni Palak Tejkumar	CA	Mumbai
2	Mr. Shah Jayesh Jashvantlal	CA	Mumbai
3	Mr. Sagothia Pritesh Dilip	CA	Mumbai
4	Mr. Mutha Sanjeev Shankarlal	CA	Nashik
5	Mr. Maher Sachin Prabhudas	CA	Mumbai
6	Mr. Katira Mitesh Vinod	CA	Mumbai

Student Membership

1	Mr. Tharwani Manish	CA Final	Shahpura
2	Mr. Ashwin Kashinath	CA Final	Mumbai

II. Brief Report on 87th Annual General Meeting:

At the 87th Annual General Meeting was held on Thursday, 4th July, 2014 the following business was transacted:

i) The Annual Report for the year 2013-14was approved & adopted.

ii) The Accounts for the year ended 31st March, 2014 were adopted.

iii) Mr. J. L. Thakkar, Chartered Accountant, was appointed as Auditor for the year 2014-15 and will hold office upto the next AGM.

iv) Results of the elections for the year 2014-15 were declared as follows :

- Mr. Paras Savla was elected as President
- The following thirteen members were elected to the Managing Council

1. Mr Ajay Singh
2. Mr. Ashok Sharma
3. Mr. Avinash Lalwani
4. Mr. Haresh Chheda
5. Mr. Hitesh Shah
6. Mr. Hinesh Doshi
7. Mr. Ketan Vajani
8. Mr. Manish Gadia
9. Mr. Naresh Ajwani
10. Mr. Parag Ved
11. Mr. Pranav Kapadia
12. Mr. Reepal Tralshawala
13. Mr. Vijay Bhatt

The Dastur Essay Competition

The winners of the 3rd Dastur Essay Competition were felicitated by presenting Trophy and Certificates by President Shri Yatin Desai, and Past Presidents S/Shri Narayan Varma, Kishor Vanjara, Keshav Bhujle and Manoj Shah.

The New Team for 2014-15

i) In the First Managing Council Meeting held on Friday, 4th July, 2014, the following members were elected as Office Bearers:

	Name	*Designation*
1.	Mr. Avinash Lalwani	Vice President
2.	Mr. Hinesh Doshi	Jt Hon Secretary
3.	Mr. Ajay Singh	Jt Hon Secretary
4.	Mr. Hitesh Shah	Hon.Treasurer

ii) The following eight members were Co-opted to the Managing Council for the year 2014-2015:

1.	Mr. K. Gopal	4.	Mr. Manoj Shah	7.	Mr. Vipul Choksi
2.	Mr. Keshav Bhujle	5.	Mr. Parimal Parikh	8.	Mr. Vipul Joshi
3.	Mr. Kishor Vanjara	6.	Mr. Sanjeev lalan		

iii) Editor & Editorial Board of the Chamber's Journal:

Mr. V. H. Patil was appointed as Editor in Chief and Shri K. Gopal was appointed as Editor of "The Chamber's Journal". Mr. Reepal Tralshawala was appointed as an Asst Editor.

Editorial Board Members:

1.	Shri Keshav Bhujle	3.	Shri Pradip Kapasi	5.	Shri Subhash Shetty
2.	Shri Kishor Vanjara	4.	Shri S. N. Inamdar		

iv) Committees

The following Committees were formed and their Chairman, Co- Chairman and Vice Chairman were appointed:

	Committee	*Chairmen*
1.	Allied Laws	Mr. Vijay Bhatt
2.	Corporate Members	Mr. Vipul Choksi
3.	Direct Taxes	Mr. Ketan Vajani
4.	Indirect Taxes	Mr. Pranav Kapadia
5.	International Taxation	Mr. Naresh Ajwani
6	International Technology	Mr. Manoj Shah
7.	Journal	Mr. Sanjeev Lalan
8.	Law & Representative	Mr. Vipul Joshi
9.	Membership & EOP	Mr. Parimal Parikh
10.	Research & Publication	Mr. Haresh Chheda
11.	Residential Refresher Course & Public Relation	Mr. Parag Ved
12.	Student	Mr. Manish Gadia
13.	Study Circle & Study Group	Mr. Ashok Sharma

Delhi Chapter:

The following members were appointed as Chairman and Office Bearers of Delhi Chapter:

1.	Mr C.S.Mathur	Chairman
2.	Mr V.P.Verma	Advisor
3.	Mr R.P.Garg	Vice Chairman
4.	Mr G.S.Ahuja	Hon Secretary
5.	Mr Suhit Agarwal	Hon Secretary
6.	Mr Vijay Gupta	Hon Treasurer

v) Release of Publications:

1) Shri Narayan Varma, Past President, released the publication on "Limited Liability Partnership – Law & rocedures".
2) Shri Y.P.Trivedi, Past President released the publication on " Transfer Pricing – An Industry & Technical Perspective".

III.	**Forthcoming Programmes**		
	Forthcoming programmes of the Chamber are as follows:		
Sr. No.	Programme Name / Committee / Venue	Day / Subjects	Speakers / Chairman
1.	**Direct Taxes Committee** **HALF DAY SEMINAR ON DIRECT TAX PROVISIONS OF FINANCE (NO.2) BILL-2014** **(Jointly with WIRC of ICAI)** **Venue: M.C Ghia Hall, Ram Part Row, Fort, Mumbai- 400 001**	**19th July, 2014**	Chairman: Mr Keshav Bhujle, Advocate Speakers: CA Chetan Karia CA Gautam Nayak
2	**Indirect Taxes Committee:**		
A)	**WORKSHOP ON FINANCE BILL, 2014 (INDIRECT TAXES PROVISIONS)** **(Jointly with WIRC of ICAI)** **Venue: M.C Ghia Hall, Ram Part Row, Fort, Mumbai – 400 001**	**19th July, 2014**	Speakers: CA A.R.Krishnan Mr. Vipin Jain, Advocate
3.	**International Taxation Committee**		
	Advanced Fema Conference	6th September, 2014	To be announced
4.	**Information Technology Committee**		
	Venue: M.C Ghia Hall, Ram Part Row, For, Mumbai- 400 001	**5th August, 2014** InfoTech Update Series Workshop (Audit Features in Tally)	CA Ashwin Dedhia

IV. Renewal of Membership and Subscription – 2014-15

The renewal fees for Annual Membership, Subscription of The Chamber's Journal, Study Group and Study Circles meeting and Other Subscription for the financial year 2014-15 was due for payment on 1st April, 2014. Pl renew you membership to avoid uninterrupted service of the Chambers Journal. For details of the fees, please refer to ctc website www.ctconline.org.

V. Forthcoming Journal by Journal Committee:

The Chamber's Journal for the month of August, 2014 will cover topic on "Issues in Tax Audit".

INTERNATIONAL TAXATION COMMITTEE- 2013-14

8th Residential Conference on International Taxation, 2014 held on 19th June, 2014 to 22nd June, 2014 at the Hotel Novotel, Hyderabad Convention Centre, Hyderabad

CA Yatin K. Desai, President (2013-14) welcoming the Chief Guest and delegates. Seen from L to R : CA Rajesh L. Shah, Convenor, CA Hinesh R. Doshi Hon. Jt. Secretary, Swami Purna Bodh Ananda, Devendra Mehta, Co-ordinator, CA Rutvik Sanghvi, Convenor

Swami Purna Bodh Ananda inaugurating the conference by lighting the lamp. Seen from L to R: CA Rajesh L. Shah, Convenor, CA Hinesh R. Doshi, Hon. Jt. Secretary, Devendra Mehta, Co-ordinator and CA Yatin K. Desai, President (2013-14).

Swami Purna Bodh Ananda addressing the delegates. Seen from L to R : CA Yatin K. Desai, President (2013-14), Devendra Mehta, Co-ordinator and CA Rutvik Sanghvi, Co-ordinator.

CA Paresh P. Shah, Chairman welcoming the Brain Trustees. Seen from L to R: CA Yatin K. Desai, President (2013-14), CA Jayesh Sanghvi, Faculty, CA K. C. Devdas, Faculty, CA Nitesh Joshi, Advocate and Devendra Mehta, Co-ordinator.

Faculties

CA H. Padamchand Khincha

CA Shefali Goradia

CA Anup P. Shah

Shri Arvind Datar, Sr. Advocate

Dr. Anita Sumanth, Advocate

CA Vijay Iyer

INTERNATIONAL TAXATION COMMITTEE- 2013-14

CA K. C. Devdas, Chairman of the session replying the queries at the Brain Trust. Seen from L to R : CA Paresh P. Shah, Chairman, CA Yatin K. Desai, President (2013-14), CA Jayesh Sanghvi, Trustee, Nitesh Joshi, Advocate, Trustee and Devendra Mehta, Co-ordinator.

Group photo of delegates

CORPORATE MEMBERS COMMITTEE – 2013-14
ALLIED LAWS COMMITTEE – 2013-14

Study Course on the Companies Act, 2013 held on 12th, 13th, 24th, 27th & 28th June, 2014 and 2nd July, 2014 at Churchgate.

CA Yatin K. Desai, President (2013-14) welcoming the delegates. Seen from L to R : CA Vipul Choksi, Chairman, Corporate Members Committee 2013-14, CS Janak Pandya, Faculty, CA Ashok L. Sharma, Chairman, Allied Laws Committee – 2013-14.

CA Vipul K. Choksi, Chairman (2013-14) welcoming the faculties. Seen from L to R : CA Yatin K. Desai, President (2013-14), CS Janak Pandya, Faculty and CA Ashok L. Sharma, Chairman, Allied Laws Committee (2013-14).

CORPORATE MEMBERS COMMITTEE – 2013-14
ALLIED LAWS COMMITTEE – 2013-14

CA Ashok L. Sharma, Chairman, Allied Laws Committee (2013-14). welcoming the faculties. Seen from L to R : CA Vipul K. Choksi, Chairman (2013-14), CA Yatin K. Desai, President (2013-14) and CS Janak Pandya, Faculty.

Faculties

CS Janak Pandya

CA Sanjeev Shah

CS Mahavir Lunawat

CS Rishikesh Vyas

CS Savithri Parekh

Mr. S. D. Israni, Advocate & Solicitor

Mr. Sanjay Buch, Advocate & Solicitor

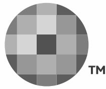
CA Himanshu Kishnadwala

CA Rakesh Agarwal, Vice President, Reliance Industries Ltd.

CA P. R. Ramesh

CA Hasmukh Dedhia

Section of Delegates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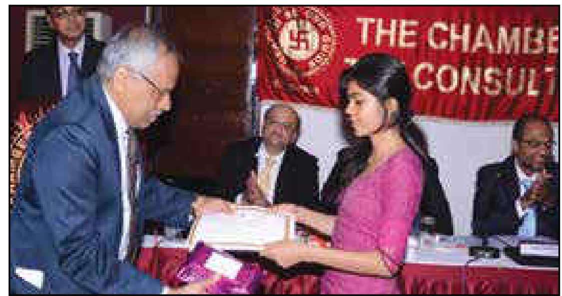
Releasing publications at 87th Annual General Meeting held on 4-7-2014

Shri Narayan Varma, Past President, releasing the publication "Limited Liability Partnership – Law & Procedures". Seen in the photo Shri Jayant Gokhale, Chairman, Research & Publications Committee

Shri Y.P. Trivedi, Past President releasing the publication "Transfer Pricing – An Industry & Technical Perspective". Seen from L to R: S/Shri Hinesh Doshi, Jt. Hon. Secretary, Hitesh Shah, Hon. Treasurer, Yatin Desai, President, Paras Savla, Vice President, Devendra Mehta, Natwar Thakrar, Karishma Phatarphekar, Committee Members, Paresh Shah, Chairman, International Taxation Committee, Natwar Thakrar and D.S. Sharma, Committee Members

WINNERS OF 3RD DASTUR ESSAY COMPETITION-2014

The winners of 3rd Dastur Essay Competition were felicitated by presenting a trophy, cash prize and certificates by President Shri Yatin Desai and Past Presidents S/Shri Kishor Vanjara, Narayan Varma, Keshav Bhujle, and Manoj Shah



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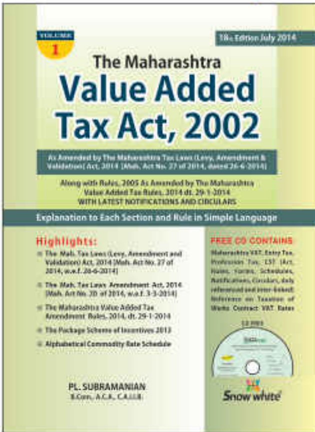

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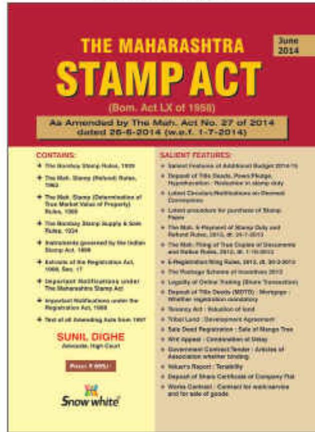

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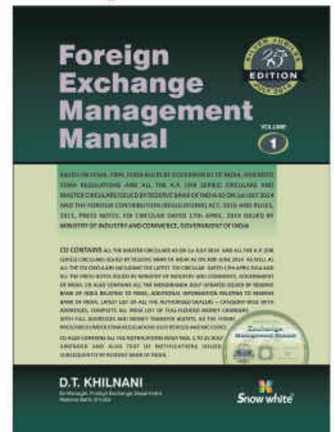

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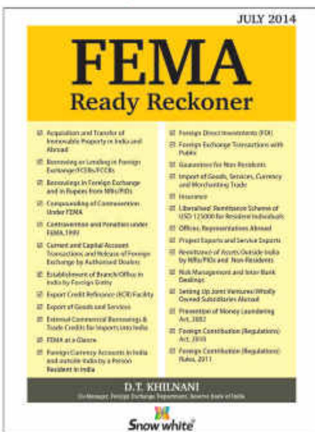

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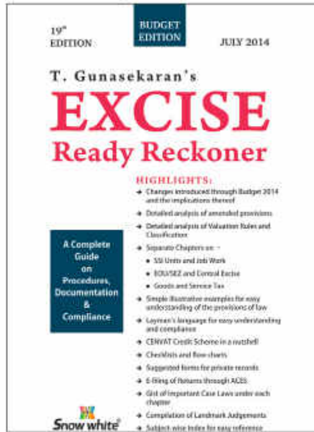

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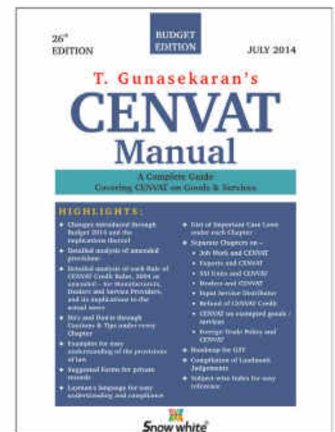

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