A Monthly Journal of

The Chamber of Tax Consultants

Estd 1926

Price ₹ 100/- per copy

The Chamber's Journal

Your Monthly Companion on Tax & Allied Subjects

February - 2015 Vol . III | No. 5

IMPORTANT SUPREME COURT DECISIONS

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3rd Residential Refresher Course on Service Tax held on 23rd to 25th January, 2015 at Fountainhead Leadership Centre, Bamansure, Post Kihim, Alibaug, Maharashtra.

Dignitaries during the inaugural lamp lighting at 3rd Residential Refresher Course on Service Tax. Seen from L to R : CA Akhil Kedia, Convenor, CA Aalok Mehta, Vice Chairman, CA Ashit Shah, Member, CA Paras K. Savla, President, CA Pranav Kapadia, Chairman, CA Rajiv Luthia, Member and CA Manish Gadia, Chairman, Student's Committee.

CA Paras K. Savla, President, welcoming the delegates. Seen from L to R: CA Aalok Mehta, Vice Chairman, CA Pranav Kapadia, Chairman and CA Akhil Kedia, Convenor.

Faculties

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CA Sivrajan K.

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Shri Vipin Jain, Advocate

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Editorial

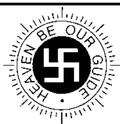
Friends, the Special Story of this issue of Chamber's Journal is on some important decisions of the Supreme Court. The Apex Court has handed out many important decisions in the recent past. We had covered some of them in our August, 2014 issue of Chamber's Journal. But were not able to cover all of them. Hence, we are bringing out this issue of Chamber's Journal which covers some more important decisions of the Apex court. Here it may not be out of place to discuss Hon'ble Supreme Court's order dated 1-12-2014 in the case ***SLP (C) .... CC/9191/2014 CIT vs. M/s. Larsen and Turbo Ltd.*** The Apex Court after hearing the learned Attorney General has set aside the paragraph 7 and 8 of the Hon'ble Bombay High Court decision dated 10-7-2014 in which the Hon'ble high Court imposed costs on the department for filing frivolous appeals ***(CIT vs. M/s. Larsen and Turbo Ltd. ITA 424, 425 & 483 of 2012).***

The Hon'ble Bombay High Court in paragraph 5 of its Order dated 10-7-2014 observed that "we are surprised if not shocked that such appeals are being brought before us and precious judicial time is being wasted that too by the Revenue. The least and minimum that is expected of the Revenue officers is to accept and abide by the Tribunal's Findings in such matters and when they are based on settled principles of law. If they are not deviating from such principles and are not perverse and consistent with the material on record, then we do not find justification for filing of such appeals. We have found that merely expressing displeasure orally is not serving any purpose." In the light of these observations in para 5 and 6 of the order, costs in paras 7 and 8 were imposed on the Department. The Hon'ble Supreme Court has passed the order dated 1-12-2014 on the prayer of the learned Attorney General that cost should not have been imposed. The Hon'ble Supreme Court has granted prayer as a benevolent gesture. But here one fundamental question arises with respect to the stand of the Government and its policy. The stand taken by the Government in the Court is not in line with its Stated policy of curbing unwarranted litigation.

It is difficult to avoid mention of election results of Delhi State Assembly. It seems the citizens of this great democracy have put the new Government at Centre on notice. The results of the Delhi elections is a clear writing on the wall that the people of this large Democracy are in no mood to wait for even a new Government to bring about policy changes – changes need to be definite and also quick. It also signals the coming of age of the Democracy. I hope the Government at the Centre comprehends the maturity and the expectations of the populace and avoids short-term populist policies and at the same time, works towards quickening the process of bringing about changes in the business environment in the upcoming budget which is being awaited by all eagerly.

I thank all the authors of this issue of Chamber's Journal for their contribution.

K. Gopal
Editor



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From the President

Dear Members,

Month of February is eagerly awaited by tax professionals and also by other citizens. During the month, Government lays the budget before Parliament. Budget identifies future expenditure and means to garner revenues. It also contains a road map to various policies. The first budget was presented during pre-independence times by James Wilson on April 7, 1860 to the British Crown. The word budget is derived from old French word 'bougette', which means 'a leather bag'. The History of UK Parliament blog states that as the Oxford English Dictionary points out, the phrase 'to open one's budget' was being used in the sixteenth century to mean that someone was revealing something which was secret, perhaps even dubious. It meant something like bringing out a box of tricks. The phrase seems to have been first applied to a statement of government revenue and expenditure during the Excise Crisis in 1733 in England. The Chancellor of the Exchequer, in presenting his annual statement, was said 'to open the budget'. Later, in the late 19th century the use of the term was extended from governmental to other finances.

Modi Government is set to deliver its first full-fledged budget on the last Saturday of this month. Government face a conundrum, as we are confronted with regulatory, economic, and environmental issues. Common Man would be expecting decisive action on various points raised during eloquent election speeches viz. reduction in graft, business friendly environment, increase in employment opportunities etc. In the budget, policy announcements are also expected in support of 'Make in India' campaign. Easing of the oil prices, auction of coal blocks and spectrum sale, lower inflation would provide greater opportunity to the Government. With the recent debacle in Delhi elections, views are being expressed that results are reflection of Modi government's non-performance. Further, myth that there is no option other than BJP also seems to be broken. Delhi election outcome cannot be viewed as a referendum on the performance of Narendra Modi Government at the Centre. However one would agree poll outcome would keep Government on toes for delivery of election promises.

Government is laying emphasis on ease of doing business. They also claim that various steps have been initiated regarding this. Recently the Central Board of Direct Taxes has issued draft Income Computation and Disclosure Standards (ICDS) under Income-tax Act, 1961. In case these Standards are notified business houses will have to maintain another set of records to compute their income in accordance with these Standards. ICDS will unsettle various principles settled by the Apex Court over many years. On going through these Standards one would also find flaws in language at various places. Preamble to the Standards states that in case of conflict

between the Income-tax Act and ICDS, provisions of the Act shall prevail. Still at times, ICDS try to define some concepts differently, where similar concepts are already being defined under the Act or lays principles which are contrary to the provisions of the Act. The issue worth debating, is whether proposed ICDS are not against the principle of ease of doing business?

This is assessment season. In case any of our members are faced with the issue of graft, they may refer the issue to the CTC, who in turn may take it up before the Director General, Vigilance. Alternatively members may take it directly to him. At Chamber whenever any matter has been referred to Director General Vigilance, Western Region, Mumbai, having charge over the States of Maharashtra, Gujarat, Rajasthan, Madhya Pradesh and Chhattisgarh, we always had a pleasant experience.

During last month I, along with the team at the Chamber had opportunity to represent before Parliamentary Standing Committee on Finance on the issues surrounding Ponzi Schemes. At Chamber we had identified areas where law needs to be strengthened, educative steps to be initiated etc., so that citizens may not lose money in Ponzi and fraudulent schemes. The Chamber was also invited to identify problem areas in litigation concerning taxpayers. In this regard the Chamber has identified a few issues and submitted its representation. In the ensuing week the Chamber is being invited to discuss the identified problem areas in litigation.

The Chamber has organised its first Indoor sports tournament. It had an enthusiastic support from the members. Third RRC on Service tax was recently concluded. At this RRC participants came from various parts of the country. All the participants appreciated all the papers. Recently concluded Intensive Study Course on Interpretation of Statutes was very much appreciated by the participants.

The Chamber has organised Third Dastur's Essay Competition for the students pursuing accountancy, company secretary and law curricula. All the members are requested to encourage their students for participation. The Chamber has also organised lecture meeting on Impact of Budget on Capital Markets. All members may take benefit of this program.

I would like to sign off for this month by reproducing American politician Melissa Bean's quote "Taxpayers should not be coerced into giving up their privacy rights just to file their taxes".

Paras Savla
President

Chairman's Communication

Dear Esteemed Readers,

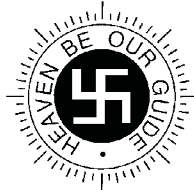
Expectations are running high that the Union Budget will be one for the record books with big bang reforms on the cards. The usual expectations range from favourable tax rates, more reliefs and deductions to focusing on long term savings in order to encourage investments with raising of deduction limits to increase disposable income and spending power. Of course, our expectations should be tempered by reality and while everyone cannot be pleased we would hope for at the least a strong pro-reform budget.

Our Journal is justly renowned for the research and insight which contributors share in our 'Special Story'. The subject under discussion this month is 'Important Supreme Court Decisions – 2013-14'. 10 very important decisions have been discussed this time and I am sure readers will have a lot to take away from this story. In fact, the authors have made these decisions read like a ready reckoner by presenting them in a concise and straight forward manner.

I would like to thank Shri C. N. Vaze, Shri Jagdish Panjabi, Shri Sameer Dalal, Shri Nikhil Patankar, Shri Vipul Joshi, Smt. Usha Kadam, Shri S. N. Inamdar, Shri Nimesh Chothani, Smt. Natasha Mangat and Shri Paras S. Savla for their sincere efforts in ensuring that these Supreme Court decisions reach our readers in a simple and easily digestible format. I also like to thank the editor, Shri K. Gopal, for the design of this issues special story.

I am sure that all of us professionals are concluding their commitments in the fastest possible manner in order to make time and gear up to scrutinise the forthcoming Union Budget. Let us ensure that we leave no stone unturned in our quest to provide the best services to our clients by evaluating the Budget to our clients' advantage.

CA. Sanjeev Lalan
Chairman – Journal Committee



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

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

CA C. N. Vaze

Charitable or religious trust - Denial of exemption – Sec. 13(1)(b)

CIT vs. Dawoodi Bohra Jamat 364 ITR 31 (SC)

Introduction

Section 13 enacts a complete bar to the availability of exemption under Section 11 in respect of various incomes enumerated therein. Section 11 does not apply when the provisions of Section 13 are attracted. Section 13(1)(b) provides that where a trust/institution is established with a charitable purpose for the benefit of any particular religious community or caste, the said trust/institution shall not be eligible for exemption u/s. 11 or s. 12.

The Supreme Court has made a very interesting observation as to what is charitable activity and what is a religious activity. The larger principle which arises out of this, is if a particular act of charity is offered to public at large and is not restricted to a particular community, then the same would qualify as charitable activity irrespective of the fact that the objects take their origin from religious principles.

The Supreme Court, in this decision has also dealt with what is a question of fact and question of law.

Facts

The assessee trust was a registered public trust. It applied for registration u/s. 12A r.w.s.12AA of the Income-tax Act, 1961. The Commissioner denied registration on the ground that the assessee trust was a charitable trust the objects of which are confined to a particular religious community. The trust would thus attract the provisions of section 13(1)(b). Aggrieved by this, the assessee appealed before the Tribunal. The Tribunal held that the trust was a public religious trust and the provisions of section 13(1)(b) would be applicable only in case of charitable trusts. The Tribunal therefore, held that the assessee was entitled to claim registration under sections 12A and 12AA.

Aggrieved by the same, the Revenue appealed to the High Court. The High Court held that the decision rendered by the Tribunal was based purely on facts and therefore, it declined to interfere with the finding of facts made by the Tribunal. Secondly, it held that provisions of section 13(1)(b) would not be applicable to the assessee trust since the assessee trust is a public religious trust.

The Revenue thus appealed to the Supreme Court:

Before the Supreme Court : Reasons and decision

The Supreme Court held that

1. Determination of nature of trust as wholly religious or wholly charitable or both charitable and religious under the Act is not a question of fact. It is a question which requires examination of legal effects of the proven facts and documents, that is, the legal implication of the objects of the trust as contained in the trust deed.

2. The main objects of the trust were as follows:

   a. To arrange for nyaz and majlis (lunch and dinner) on religious occasions of the birth anniversary and Urs Mubarak of Awliya-e-Quiram (SA) and Saints of the Dawoodji Bohra community.

   b. To arrange for lunch and dinner on religious occasions and auspicious days of the Dawoodi Bohra community.

   c. For the betterment of the Dawoodi Bohra community to give and take Qardan Hasana according to Farma of Qurane Majid.

   d. To arrange for religious education and to establish Madrasa and such organization.

   e. To assist/help to the needy people for religious activities.

   f. To carry out all religious activities according to Shariat and direction of Shariat-e-Mohammediyah for the prosperity of the Dawoodi Bohra community."

3. The above-mentioned objects of the trust are not wholly for religious purpose but for both charitable and religious purpose. It becomes necessary to understand the objects of trust with reference to the terms 'charitable purpose' and 'religious purpose'.

4. No doubt the objects (c) and (f) are completely religious in nature. As for other objects, though they reflect the intent of the trust as observance of the tenets of Islam, they do not restrict the activities of the trust to religious obligations only and for the benefit of the members of the community.

5. The objects (a) and (b) provide for offering food on certain auspicious occasions of Dawoodi Bohra Community. This activity of providing food is not limited only to members of the community but extends to general public at large. Hence, these activities qualify as charitable purpose which would entail general public utility.

6. Further, establishment of Madrassa to impart religious education to the masses would qualify as educational activity and hence would be a charitable activity. The Madrassa as a Mohammedan institution of teaching does not confine instruction to only dissipation of religious teachings but also contributes to the holistic education of an individual. Therefore, it cannot be said that object (d) would embody a restrictive purpose of religious activities only.

7. Based on the above discussion, the Supreme Court concluded that the objects of the trust are partly religious and partly charitable in nature.

8. From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. But that does not mean that if a trust

is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b). What is intended to be excluded from being eligible for exemption under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste.

9. In the present case, the objects of the trust are based on religious tenets under Quran according to religious faith of Islam. The objects do not channel the benefits to any community if not the Dawoodi Bohra Community and thus, would not fall under the provisions of Section 13(1)(b) of the Act.

Conclusion

The provisions of section 13(1)(b) would be attracted only when the trust is established for a particular community. Where the objects of the trust cater to masses at large, the said objects would be charitable in nature even though the trust is established to further the religious principle.

Charitable or religious trust - Exemption of income from property – Application of income

CIT vs. Krishi Utpadan Mandi Samiti 348 ITR 566 (SC)

Introduction

Section 11(1)(a) of the Income Tax Act, 1961 (the Act') states that while computing total income of the trust, income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property, then such said income shall not be included in total income.

The Supreme Court in this case has laid an important principle that statutory transfer of money collected by a trust (registered u/s 12AA) to another statutory entity (registered u/s 12AA) which is statutorily authorized to utilize the said amount so transferred for charitable purposes, is to be treated as assessee trust's application of income for the purpose of Section 11(1)(a).

Facts

The assessee, Krishi Utpadan Mandi Samiti and Mandi Parishad were created under a statute called Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 ('the Mandi Act') whose objects fell under section 2(15) of the Act.

Under the Mandi Act, the assessee collected mandi shulk (fees) as well as development cess. The assessee had to mandatorily send 50% of the mandi shulk and the entire development cess to the Mandi Parishad under sub-sections (5) and (6) of section 19 of the Mandi Act.

It was not disputed that the money was sent by the assessee to Mandi Parishad under the statutory duty. Also the amount so transferred could not be returned back to the assessee. The said transferred amount was ultimately applied for charitable purpose i.e. for development of market yards, for improving management and for ensuring better deal to the agricultural producers.

According to the AO such transfer by the assessee to Mandi Parishad (who ultimately applied for charitable purpose) could not be regarded as utilisation of the income of the assessee.

Before the High Court

The High Court made following observation-

The agricultural producers were not able to get the reasonable amount for their agricultural

produce. The main reason was the chaotic state of affairs in agricultural produce markets. The Mandi Act was enacted to set it right and to see that the agricultural producers got their dues.

The Mandi Act envisaged market areas in the State and set up Samitis (like assessee) to govern it. The assessee was a body established and incorporated under section 12 of the Mandi Act. The Mandi Act also envisaged establishment of the Mandi Parishad (State Agricultural Produce Market Board) and among other powers and functions of the board, one was to supervise and control the Samitis.

Under the Mandi Act, the Mandi Parishad had overriding title and the assessee had to mandatorily send 50% of the mandi shulk and the entire development cess to the Mandi Parishad under sub-sections (5) and (6) of section 19 of the Mandi Act. The Mandi Parishad ultimately utilised it for the charitable purpose.

The High Court held that the amount thus sent by the assessee to Mandi Parishad is utilisation and application of the money received by the assessee and the assessee was entitled to claim exemption/allowances of the same under section 11(1)(a).

Before the Supreme Court : Reasons and decision

Aggrieved the revenue filed appeal before Supreme Court

The Supreme Court upheld the judgment of High Court on the basis of following observations –

i) There was no dispute in relation to the assessee's registration under section 12AA of the Act and that the objects of the trust were covered by the definition of charitable purpose u/s 2(15) of the Act.

ii) The statutory scheme of the Mandi Act, under which the assessee and Mandi Parishad were created, was also formed for charitable purposes i.e. its objects fall within section 2(15) of the Act.

iii) The Mandi Parishad, to whom the amount was statutorily transferred by the assessee, ultimately utilised it for the charitable purpose.

iv) Thus keeping in mind the statutory scheme of the Mandi Act, whose object fell under section 2(15) of the Act, there was no doubt that the assessee satisfied the conditions of section 11(1)(a) of the Act and the income derived by the assessee from its property has been applied for charitable purposes which includes advancement of an object of general public utility.

v) As per the AO, the assessee was not entitled to benefits u/s. 12(1) of the Act as there was no voluntary contribution by the assessee to Mandi Parishad because the assessee was statutorily obliged to contribute to the fund. The question of "control" may be relevant in the context of Section 11(1)(d) or under Section 12(1). However, in the present case, the question framed deals with application of income under Section 11(1)(a). Hence, the Supreme Court held that the AO had erred in invoking Section 12(1).

vi) Section 11(1) deals with four items of "income" from property held for charitable purposes. These four items of income are distinct and separate items of income. Section 11(1)(d) refers to income in the form of voluntary contributions made with a specific direction that it shall form part of the corpus of the trust or institution whereas section 12(1) refers to non-corpus voluntary contribution and having regard to the facts of the case, Supreme Court held that neither Section 11(1)(d) nor Section 12(1) of the Act is attracted. Consequently the decision of High Court was upheld.

Conclusion

The contribution made by the charitable institution registered u/s. 12A of the Act to another institution can be considered as application of income of the assessee u/s 11(1)(a) if the institution to whom the amount is contributed is also formed for charitable purposes i.e. its objects also fall within the ambit of section 2(15) of the Act.

Charitable or religious trust - Denial of exemption - Donation by post dated cheque

DIT (Exemption) vs. Raunaq Education Foundation 350 ITR 420 (SC)

Introduction

Section 13 of the Income-tax Act, 1961 ('the Act'), specifies the circumstances under which the benefits under section 11 would not be available to an organization. Section 13 has been enacted as an exception to section 11, thereby, the benefits which are otherwise available under sections 11 and 12, will not be available under the circumstances stated in section 13.

Section 13(2) of the Act lists down instances wherein the income or property of the trust will be deemed to have been used or applied for the benefit of a person referred to in sub-section (3). Certain clauses read as follows:

> "Clause (b) - if any land, building or other property of the trust is made available for the use of any person referred to in sub-section (3) without charging adequate rent or other compensation;
>
> Clause (h) - if any funds of the trust are invested for any period during the previous year, in any concern in which any person referred to in sub-section (3) has a substantial interest."

Facts

The assessee, a trust had received by way of donation, two cheques during the relevant assessment year 2002-03 from M/s Apollo Tyres Ltd. One of the cheques was post dated 22nd April, 2002. The assessee trust gave receipt for the same in March 2002. The AO held that as many of the trustees of assessee trust were related to directors of M/s Apollo Tyres Ltd., in order to give undue benefit of deduction u/s 80G of the Act, the cheque had been accepted before 31st March, 2002 although the cheque was dated 22nd April, 2002. The AO held that the provisions of section 13(2)(b) and 13(2)(h) were attracted and thus the assessee trust was not eligible to claim exemption u/ss. 11 and 12 of the Act. The trust was assessed as AOP.

This was reversed by the Tribunal. It was held that the said amount of donation was shown as donation receivable in balance sheet of the assessee trust as on 31-3-2002 and also it was clearly stated in its records that the donation was receivable in future. Also M/s Apollo Tyres Ltd. did not avail benefit of deduction u/s 80G for the financial year 2001-02.

Before the High Court

The revenue aggrieved by the order of the Tribunal, appealed to the High Court. According to the Revenue, the cheque amount fell foul of sections 13(2)(b), (d) and (h) of the Act.

The High Court relying on the order of Tribunal held that –

i) It was only a post-dated cheque and it cannot be said to be an amount which was made available for the use of the drawer of the cheque and, therefore, the provisions of section 13(2)(b) of the Act do not apply.

ii) Similarly, no service of the assessee trust was available to the drawer of cheque and, therefore, the provisions of section 13(2)(d) also did not apply.

iii) With regard to section 13(2)(h) of the Act, the revenue argued that the amount can be said to be an investment made by the assessee trust with the drawer of the cheque for which the assessee trust did not receive any compensation. The High Court held that this was too broad a proposition to be accepted. If this is accepted, then any post-dated cheque will amount to an investment.

Thus, the High Court held that the Tribunal did not err either on facts or in law in rejecting the contention of the Revenue and hence no substantial question of law arose.

Before the Supreme Court : Reasons and decision

The Supreme noted certain undisputed facts

i). There is no dispute to the fact that donation was shown as donation receivable in balance sheet of the assessee trust as on 31-3-2002 and also it was clearly stated in its records that the donation was receivable in future.

ii) Upon a perusal of the assessment order of M/s. Apollo Tyres Ltd., for the assessment year 2002-03, it was clearly revealed that the cheque dated 22nd April, 2002, was not taken into account for giving benefit under section 80G of the Act as the said amount was paid in April 2002, when the cheque was honoured. Thus, M/s Apollo Tyres Ltd. did not avail benefit of deduction u/s 80G for the financial year 2001-02.

iii) Though the cheque dt. 22.4.2002 was received in March 2002; the cheque was honoured in April 2002 when it was presented before the collecting bank.

iv) As the cheque had been honoured and the amount was paid to the assessee trust, the date of payment of cheque should be treated as the date on which the cheque was given. Had the cheque been dishonoured, things would have been different but as the cheque had been duly honoured, as laid down by Supreme Court in the case of *CIT vs. Ogale Glass Works Ltd. [1954] 25 ITR 529* it will have to be presumed that the amount was paid on the date on which the cheque was given to the assessee trust and, therefore, it cannot be said that any undue favour was done by the respondent-assessee to M/s. Apollo Tyres Ltd.

v) The Hon'ble Supreme Court in the case of *CIT vs. Ogale Glass Works Ltd. [1954] 25 ITR 529* had held that "...When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand".

vi) Considering the facts and above decision, it was held that there was no irregularity committed on part of the assessee trust and there was no violation of sections 13(2)(b) and 13(2)(h) of the Act.

vii) The fact that trustees of the assessee trust and directors of M/s Apollo Tyres Ltd. were related was also irrelevant.

Conclusion

When a payment is made by cheque, then the 'date of payment' is the 'date of the cheque'. The date of payment of cheque should be treated as the date on which the cheque was given if the cheque is honoured.

CA Jagdish T. Punjabi

Stock Valuation: Whether adjustments can be made to the popular system of stock valuation viz. lower of cost or net realisable value having regard to the special character of assets, nature of business, appropriate allowances, etc. – Yes, says SC in *CIT vs. Bannari Amman Sugars Ltd. (2012-TIOL-87-SC-IT)*. One cannot have a stock valuation which converts a capital receipt into revenue income.

In arriving at the profits of the financial year for which profit & loss account is prepared, stock valuation is a very important aspect. An improper valuation could not only result in the profit & loss account revealing a distorted position of the profits/ losses for the period under consideration but could also result in rejection of books of accounts by the Assessing Officer. The most popular and accepted method of stock valuation is lower of cost or net realizable value. An interesting question arose as to whether an adjustment could be made to this popular system of stock valuation having regard to the special facts.

Method of accounting - Valuation of closing stock

CIT vs. Bannari Amman Sugars Ltd. (2012-TIOL-87-SC-IT)

The assessee company was in the business of manufacture and sale of sugar. By virtue of the provisions of the Essential Commodities Act, 1955 and the Sugar Control Order read with the notification issued thereunder, a sugar manufacturer was required to sell 40% of his sugar production at notified levy price (levy price) to the Public Distribution System. Levy price was lower than the cost.

Since the levy price was lower than the cost, setting up of new sugar manufacturing units was not viable and also existing units were becoming unviable and uneconomical. Therefore, an incentive scheme was evolved with an objective to provide an inducement to persons to set up new sugar factories or to expand the existing ones. Under the incentive scheme 40% of the total sugar production (incentive sugar) was permitted to be sold at market price. However, the excess realization over the levy price was to be utilized only for repayment of loans taken from the banks/ financial institutions for establishing new unit(s). The sugar mills were directed to file certificate of chartered accountant regarding utilization of excess realization towards repayment of loans. It was only upon filing of such certificate that the Directorate of Sugar issued further release orders.

The assessee, while valuating its closing stock of incentive sugar as on 31-3-1997 had valued it at levy price and not at cost. The Department contended that the stock of incentive sugar ought

to have been valued at cost (since the assessee was permitted to realize the market price).

Aggrieved by the decision of the High Court, the revenue preferred an appeal to the Supreme Court. The question which arose for determination of the Supreme Court was "Whether on the facts and in the circumstances of the case, ITAT was right in holding that closing stock of incentive sugar has to be valued at levy price and not at cost price?"

The Court observed that profits of the business could only be ascertained by comparison of assets and liabilities of the business at the opening and closing of the accounting year. The methods that an assessee adopts for closing stock valuation is an integral part of accounting, within the meaning of s. 145. There are different method of valuation of closing stock. The popular system is cost or market value, whichever is lower. However, adjustments may have to be made in the principle having regard to the special character of assets, the nature of the business, the appropriate allowances permitted, etc. to arrive at the taxable profits.

The Supreme Court while deciding the case noted that in the case of *CIT vs. Ponni Sugars and Chemicals Ltd. (206 ITR 392)(SC)* examined this very incentive scheme and held that the excess realization was a capital receipt not chargeable to tax.

The Court held that if the closing stock of incentive sugar was to be valued at any figure, above the levy price, the direct consequence of such a valuation would have been that the excess amount over the levy price would be reflected as part of business income which would run counter to the judgment of this Court in Ponni Sugars and Chemicals Ltd. (supra). We must keep in mind that the stock valuation of incentive sugar has a direct impact of the manufacturer's revenue or business profits. If we were to accept the case of the Department that the excess amount realized by the manufacturer over the levy price was a revenue receipt taxable under the Act then the very purpose of Incentive Scheme formulated by Sampat Committee would have been defeated. One cannot have a stock valuation which converts a capital receipt into revenue income.

Thus, though the net realizable value was greater than the cost, the Court looking at the purpose of the incentive scheme and the fact that the excess realization over the levy price was to be used for repayment of bank loans, etc. held that upholding the revenue's contention would convert a capital receipt into revenue income. The principle laid down by this decision would be useful in many cases.

Method of accounting - Valuation of stock - Excise duty

Valuation of closing stock at net of excise duty upheld by the Apex Court in *ACIT vs. Torrent Cables Ltd. (2012-TIOL-106-SC-IT)* following the earlier decision in the case of *CIT vs. Shri Ram Honda Power Equipment Ltd. (2012-TIOL-88-SC-IT).*

In the case of Torrent Cables Ltd., the assessee valued closing stock at net of excise duty. Excise duty paid at the time of removal of stock was accounted at the time of removal. For assessment year 1995-96 the department preferred an appeal to the Apex Court. The Apex Court following its earlier decision in the case of Shri Ram Honda Power Equipment Ltd. (supra) dismissed the appeal filed by the Department. In the case of Shri Ram Honda Power Equipment Ltd., the Court noted that the accounts had a note of the auditor which mentioned that the liability for excise duty on finished goods was accounted at the time of clearance of the goods from the factory. No provision was made for goods lying in stock in the factory at the end of the year. However, the auditor's note also mentioned that non-provision of excise duty did not have any impact on the profit of the year. Having noted the said note of the auditor in the accounts the appeal filed by the Department was dismissed.

Author's Note: The ratio of the above decision may not be applicable with effect from AY 1999-2000 in view of the insertion of s. 145A.

Sameer Dalal, *Advocate*

Deduction – Manufacture – Sec. 80-IB

CIT vs. Vinbors & Co. [(2012) 349 ITR 697 (SC)]

A.Y's: 2003-04 & 2004-05

Introduction

Section 80-IB of the Income-tax Act, 1961 ('the Act') provides for deduction where an assessee engaged in the manufacture or production of an article or thing, not being an article or thing as specified in the list in the 11th Schedule or operates one or more cold storage plant or plants in any part of India.

Thus, for claiming deduction under section 80-IB of the Act, manufacturing process under taken by the assessee should result in a different commodity. The question before the Apex Court in the present Special Leave Petition was whether, blending and bottling of Indian Made Foreign Liquor *('IMFL')* would amount to '***manufacture***' for the purpose of claiming deduction under section 80-IB of the Act.

Facts of the case

The assessee was small scale industry recognized as such by the Director of Industries, Pondicherry. The assessee set up a second unit to manufacture and bottle IMFL at Pondicherry. In the return for the assessment years 2003-04 and 2004-05, it claimed deduction under section 80-IB of the Act in respect of the profits and gains derived from the second unit.

The Assessing Officer ('A.O.') rejected the plea on the issue that the process carried on by the assessee for its product does not constitute '***manufacture***' within the meaning of section 80-IB of the Act. He further held that setting up of the second unit was only an expansion or reconstruction of the existing unit. Aggrieved by the order of the A.O. the Assessee preferred an appeal before the CIT(A).

Before the CIT(A) the Assessee submitted that the process undertaken by it result in a totally different marketable commodity as the process undertaken consisted of purchasing rectified spirit, adding demineralized water, other ingredients like caramel, sugar, etc., as per blending formulations, filtration, carrying on blend inspection, bottling the same and the finished products was packed and sold. The CIT(A) held that there was no manufacture or production of any new article or thing as the alcohol which was the input remained as alcohol as, the assessee merely reduced the strength of alcohol. Accordingly, CIT(A)

rejected the assessee's claim for deduction under section 80-IB of the Act.

The Tribunal following the decision in the case of, ***CIT vs. Rampur Distillery & Chemical Co. Ltd.- [(2005) 277 ITR 416 (All)]*** held that that assessee was entitled to deduction under section 80-IB of the Act. The Tribunal further held that what was purchased by the assessee was not a potable one and but, for the blending, the commodity could not have become a saleable commodity. Consequently, the raw materials, even though are not manufactured by the assessee, yet there is nexus of the process by blending to make it a saleable commodity totally different from that of the original obtained. Aggrieved by the order, of the Tribunal the Revenue filed an appeal before the Madras High Court.

Before the High Court:

On appeal the High Court dismissing the appeal at the admission stage held that section 80-IB of the Act provides that deduction, which is available only where the assessee is engaged in the manufacture or production of an article or thing, not being an article or thing as specified in the list of the 11th Schedule or operates one or more cold storage plants in any part of India. Further, the proviso to clause (iii) of sub-section (2) of section 80-IB of the Act shows that the condition with reference to the list of the 11th Schedule does not apply to a small scale undertaking or an undertaking referred to in sub-section (4). As the assessee was a small scale industry, reference to the 11th Schedule for the purpose of consideration of the claim under section 80-IB of the Act did not arise

As regard the issue as to whether the assessee was engaged in the manufacturing or producing of an article or thing by the act of blending, it was seen that the assessee did not just add water before selling the final product. Apart from water, the assessee had to add several items to make it fit for human consumption. Accordingly, the High Court followed the decision in the case of ***Dy. CST (Law), Board of Revenue (Taxes) vs. Pio Food Packers [(1980) 46 STC 63 (SC)]***, wherein it was held that 'the test for determination of whether manufacture can be said to have taken place is whether the commodity which is subject to the process of manufacture can no longer be regarded as the original commodity, but it is recognized in the trade as a new and distinct commodity'. Noting the above observation of the Apex Court the High Court held that what was purchased by the assessee was not a potable product and but after blending, the commodity would become a saleable commodity. By undertaking blending process the original product became a totally different from the original product. Therefore, the assessee was entitled to the relief under section 80-IB of the Act, being small scale industry engaged in the production of IMFL from rectified spirit as the end product was totally a commercially a different commodity than the major input, that is rectified spirit, which was not fit for human consumption. The changes made to the original product by the assessee had resulted in as different commodity, which was recognized in the trade.

Before the Supreme Court

Dismissing the Special Leave Petition filed by the Revenue, the Apex Court held that there was no infirmity in the impugned judgment of the High Court wherein the High Court concluded that blending and bottling of IMFL would amount to '***manufacture***' for purpose of claiming deduction under section 80-IB of the Act.

Conclusion

The Apex Court in the present case once again reiterated what was held by it in various earlier decisions that if the change made in the article results in a new and different article then it would amount to a manufacturing activity. Further the Apex Court also affirmed

the finding of the High Court that even if the part of the process is done by the assessee and the other part is under the control and the supervision of other parties, yet, it would be a manufacturing process.

Bad debts - commercial test and business exigency test

Kerala State Industrial Dev. Corpn. Ltd. vs. CIT – [(2012) 349 ITR 365 (SC)]

A.Y.: 1988 – 89

Introduction

Prior to 1.4.1989, the law, as it then stood, was that even in cases which the assessee makes only a provision in its accounts for bad debts and even though the amount is not actually written off by debiting the Profit and Loss account of the assessee and crediting the amount to the account of the debtor, the assessee was still entitled to deduction under Section 36(1)(vii) of Income- tax Act, 1961 ('the Act'). Thus, for claiming deduction for bad debt under Section 36(1) (vii) of the Act, two conditions were required to be satisfied at the relevant time, namely:

(a) bad debt must be established to have become bad in that year; and

(b) bad debt should have been written off in the books of account of that year.

Facts of the case

The assessee was a State Public Sector Undertaking. It had advanced credit facilities to one Vanchinad Leathers Limited ('VLL'), a joint sector company promoted by the assessee for processing hides and skins. VLL was set up in the year 1974 and it started commercial production in the year 1977. In the year 1980 due to poor performance it was closed. Thereafter, it was again re-opened in 1982, however, again it closed down in 1983. The Company had huge liabilities. In February, 1988, VLL moved an application for declaring it as a sick Company under the Board for Industrial and Financial Reconstruction ('the BIFR'). The BIFR ***vide*** it order in the year 1988, declared VLL as a sick Company. As VLL was declared a sick Company, recovery proceedings were not adopted by the assessee against VLL. However, the assessee in the Accounting Year ending 31st March, 1988, relevant to assessment year 1988-89 claimed that advances made by it to VLL as bad debt under section 36(1) (vii) of the Act.

On appeal the Tribunal held that as recovery proceedings were not instituted by the assessee, the assessee had failed to establish that debt had become bad in the accounting year as such the Tribunal disallowed the deduction for bad debt.

Before the High Court

In appeal, the High Court proceeded on the basis that the second condition under Section 36 (2) (i) (b) of the Act which is identical to Section 36(1) (vii) of the Act, that is, bad debt should have been written off in the books of account of that year was not satisfied and consequently, the High Court disallowed the deduction for bad debt. The High Court while upholding the order of the Tribunal did not examine the merits so far as the first condition is concerned that is it must be established that debts has become bad during the year.

Before the Supreme Court

Allowing the assessee's appeal the Apex Court held that:

The assessee had satisfied both the conditions for claiming deduction for bad debt under section 36(1) (vii) read with section 36(2)(i)(b) of the Act. The Apex Court noted that none of

the below mentioned facts were considered by the Tribunal and the High Court:

(i) the assessee is a State Public Sector Undertaking;

(ii) the assessee was in the business of promoting industrial development in the State of Kerala and in the course of its business, it had promoted VLL;

(iii) VLL was a joint sector company. It was a Public/Private partnership;

(iv) in February, 1988, BIFR had declared that VLL has become a sick company and it was wound up later on.

Noting the above facts and applying the commercial test and business exigency test, the Apex Court opined that both the conditions under section 36(1)(vii) read with section 36(2)(i)(b) of the Act are satisfied. As such, the assessee's claim for deduction of bad debt under Section 36(1) (vii) read with Section 36(2)(i)(b) of the Act was allowable.

Conclusion

The allowance under section 36 (1) (vii) prior to its amendment from 1.4.1989 was confined to debts and loans which have become irrecoverable in the accounting year. In some cases it was held that so long as there was any ray of hope left to recover a debt, however, dim it may be, and so long as a debt is in the process of realization it cannot be said that it has become irrecoverable. Grave injustice use to arise if such rigid principle were applied. As against this some Courts had taken a view that deduction under section 36 (1) (vii) of the Act should be allowed in the year in which the assessee fairly, reasonably and in a ***bona fide*** manner writes off a debt as bad. In other words, while deciding whether a debt is recoverable or not, one has to look at the problem from the point of view of a prudent businessman. The Apex court in the present applying the latter commercial and business exigency test held, that both the conditions laid down in the under section 36(1)(vii) read with Section 36(2)(i)(b) of the Act as prevailing during the relevant time were satisfied as such the assessee's claim was allowable. Following the Apex Court decision recently the Allahabad High Court in the case of, ***CIT vs. U.P. Rajkiya Nirman Nigam Ltd. – [(2013) 36 taxmann.com 96 (All)]*** held that where accounts of assessee were open and subject to correction by auditors, bad debts could be written off even after closure of accounting period, as there is neither any condition nor any provision under section 36(1)(vii) of the Act, that writing off of bad debt should be done in relevant previous year, that is, before end of financial year.

Bad debts - provisions of sections 36(1)(vii) and 36(1)(viia) are distinct and independent items of deduction and operate in their respective fields

Catholic Syrian Bank Ltd. vs. CIT – [(2012) 343 ITR 270 (SC)]

A.Y.: 2002-03

Facts of the case

The Assessee bank was having a provision of ` 15,01,29,990 for bad and doubtful debts under section 36(1)(viia) of Income-tax Act, 1961 ('the Act'). The Assessee also claimed an amount of ` 12,65,95,770 as deduction on account of bad debts under section 36 (1)(vii) of the Act.

During the assessment proceedings the assessee argued, that the deduction allowable under Section 36(1)(vii) of the Act is independent of deduction under Section 36(1) (viia) of the Act. The Assessing Officer ('A.O.') held that the Assessee having a provision of ` 15,01,29,990/- for bad and doubtful debts under section 36(1)(viia) of the Act, it could

not claim the amount of ` 12,65,95,770/- as deduction on account of bad debts because the bad debts did not exceed the credit balance in the provision for bad and doubtful debts account and also, the requirements of clause (v) of Sub-section (2) of Section 36 of the Act were not satisfied. Accordingly, the assessee's claim for deduction of bad debts written off from the account books was disallowed by the A.O.

On appeal before the CIT(A), the CIT(A), relying upon the judgment of a Division Bench of the Jurisdictional High Court in the case of, ***South Indian Bank Ltd. vs. CIT - [(2003) 262 ITR 579 (Ker.)]*** held that the claim of the Assessee was fully supported by the said decision and since the entire bad debts written off by the bank under Section 36(1)(vii) of the Act were pertaining to urban branches only and not to the provision made for rural branches under Section 36(1)(viia) of the Act, it was entitled to the deduction of the full claimed amount of ` 12,65,95,770/-.

On further appeal to the Tribunal at the instance of the Revenue, the Tribunal following the decision of the jurisdictional High Court in the case of ***South Indian Bank Ltd. (supra),*** dismissed the appeal of the Revenue.

The Revenue authorities filed an appeal before the High Court under section 260A of the Act against the order of the Tribunal.

Before the High Court

The Division Bench of the High Court of Kerala, was of the view that the judgment of that Court in the case of ***South Indian Bank Ltd. (supra)*** needs to be reconsidered. Accordingly, the Bench directed the matter to be placed before a Full Bench of the High Court.

The Full Bench of the Court held that that the distinction drawn by the Division Bench in ***South Indian Bank Ltd. case (supra)*** between the bad debts written off in respect of advances made by rural branches and bad debts pertaining to advances made by other branches does not exist and is not visualized under proviso to section 36(1) (vii) of the Act, therefore, the decision in the case of South Indian Bank Ltd. case (Supra) did not lay down the correct interpretation of the provisions of the Act. Thus, when the assesse has claimed and have been allowed deduction of provision in terms of clause (viia) of the Act, then, when they claim deduction of bad debt written off in the previous year, by virtue of the proviso to section 36(1)(vii) of the Act, they are entitled to claim deduction of such bad debt only to the extent it exceeds the provision created and allowed as deduction under clause (viia) of the Act. Accordingly, the Full Bench allowed the appeal of the Revenue.

The assessee aggrieved by the decision of the Full Bench filed an appeal before the Apex Court.

Before the Supreme Court

Before the Apex Court following questions of law were raised by the assessee:

(i) ***Whether the Full Bench of the High Court** has grossly erred in reversing the finding of **the earlier Division Bench that on a correct interpretation of the Proviso to clause (vii) of Section 36(1) and clause (v) to Section 36(2) is only to deny the deduction to the extent of bad debts written off in the books with respect to which provision was made under clause (viia) of the Income-tax Act?***

(ii) ***Whether the Full Bench was correct in** reversing the findings of the earlier Division **Bench that if the bad debt written off relate to debt other than for which the provision is made under clause (viia), such debts will fall squarely within the main part of clause (vii) which is entitled to be deduction and in respect of that part of the debt with reference to which a provision is made under clause (viia), the proviso will operate to limit the deduction to the extent of the difference***

between that part of debt written off in the previous year and the credit balance in the provision for bad and doubtful debts account made under clause (viia)?

Apart from the merits of the case the assessee contended that similar claims of bad debts had been decided in favour of the assessee for earlier years, by Special Bench of the Tribunal, which had not been challenged by the Department, as such, the issue had attained finality and could not be disturbed in the subsequent years, including in the present year. Negating the contentions the Apex Court held that merely because the orders of the Special Bench of the Tribunal were not challenged in appeal by the Department itself, this would not take away the right of the Revenue to question the correctness of the orders of assessment, particularly when a question of law is involved.

On merits of the claim the Apex Court held that provisions of sections 36(1)(vii) and 36(1)(viia) of the Act are separate items of deduction. These provisions are independent provisions and, therefore, cannot be intermingled or read into each other. The provisions of section 36(1)(vii) of the Act would come into play while granting of deduction, subject to the limitation contained in section 36(2). In other words, any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year, is the deduction which the assessee would be entitled to get, provided he satisfies the requirements of section 36(2) of the Act.

Section 36 (viia) of the Act was introduced in order to promote rural banking and assist the scheduled commercial banks in making adequate provision from their current profits to provide for risks in relation to their rural advances. The Central Board of Direct Taxes ('CBDT') also issued a circular while new section 36 (1) (viia) of the Act was introduced wherein it was clarified the scheduled commercial banks would continue to get the benefit of the write off of the irrecoverable debts under section 36(1)(vii) in addition to the benefit of deduction of the provision for bad and doubtful debts under section 36(1)(viia).

Further, as regards the contention of the Revenue that the assessee gets double deduction the Apex Court held that proviso to section 36 (1)(vii) of the Act, limits the deduction on account of the actual write off of bad debts to excess of the amount written off over the amount of the provision which had already been allowed under clause (viia). The proviso, limits its application to the case of a bank to which clause (viia) applies, which applies only to rural advances as such, there would be double deduction available to the Assessee.

The Apex Court also reiterated and explained the importance and role of Circulars issued by the CBDT in exercise of the power vested in it under Section 119 of the Act, while interpreting the provisions of the Act. The Court held that Circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provisions. The Court further held that these Circulars have the force of law and are binding on the Income-tax authorities, though they cannot be enforced adversely against the assessee. A Circular may not override or detract from the provisions of the Act but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. The Apex Court also observed that so long as the Circular is in force, it aids the uniform and proper administration and application of the provisions of the Act and normally, these Circulars should not be ignored.

Conclusion

By this decision the Apex Court concluded that if amount of bad debts actually written off in

accounts of bank represents only debts arising out of urban advances, allowance thereof in assessment is not affected, controlled or limited in any way by proviso to clause 36(1)(vii) of the Act.

Recently, *Gujarat High Court in the case of, CIT vs. UTI Bank Ltd. - [(2013) 256 CTR 76 (Guj)]* held that the deduction on the account of provision for bad and doubtful debts is distinct and independent of the provisions of section 36(1)(vii) of the Act relating to allowance of the bad debts. The Court negated the contention of the Revenue that the banks covered by clause (viia) were not entitled to deduction under section 36(1)(vii) applying the ratio of the Apex Court in the case of Catholic Syrian Bank Ltd. The Court held that proviso to section 36(1)(vii) of the Act would ensure that there would be no double benefit of deduction in such case.

Bad debts - in case of scheduled bank, deduction under section 36(1)(vii) is allowable independently and irrespective of provision for bad and doubtful debts created by it in relation to advances made by its rural branches

Deputy Commissioner of Income Tax vs. Karnataka Bank Ltd. – [(2012) 349 ITR 705 (SC)]

A.Y.'s: 1993-94 and 1994-95

Facts of the case

The assessee, a scheduled bank, claimed deduction of a sum as bad debts actually written off under section 36 (1) (vii) of Income-tax Act, 1961 ('the Act'). It had also claimed provision for bad and doubtful debts under section 36(1)(viia) of the Act. Its claim for deduction of bad debts, actually written off was disallowed by the Assessing Officer.

On appeal, the CIT (A) upheld the disallowance. On further appeal, the Tribunal allowed the assessee's claim holding that deduction under section 36(1)(vii) of the Act was allowable independently and irrespective of provisions for bad and doubtful debts created by the assessee in relation to the advances made by its rural branches, subject to the limitation that an amount should not be deducted twice under section 36(1)(vii) and 36(1) (viia) of the Act simultaneously.

Before the High Court

The High Court following the decision of, the Kerala High Court in *South Indian Bank Ltd. vs. CIT [(2003) 262 ITR 579 (Ker.)]* allowed the assessee's claim of bad debts in principle. However due to lack of evidence, as to whether the amounts was pertaining to rural debt or urban debt, remanded the matter to the Tribunal to ascertain the aforesaid fact keeping in mind the ratio of the decision of Kerala High Court.

Aggrieved the Revenue carried the matter to the Apex Court.

Before the Supreme Court

The Apex Court following its own decision in the case of *Catholic Syrian Bank Ltd. vs. CIT - [(2012) 343 ITR 270 (SC)]* dismissed the Revenue's appeal.

CA Nikhil Patankar

Business income - Cash assistance - Assessment year 2002-03 - DEPB is a 'cash assistance' receivable by assessee and is covered under clause (iiib) of section 28

Topman Exports vs. CIT, Mumbai, 342 ITR 49 (SC) [2012]

Introduction

It is true that export incentives are provided to the exporters for promoting export sale and support them in competitive international market, but it is always matter of controversy between the revenue authorities and tax payers when it comes to the taxation of such export incentives. The taxation of profit on sale of DEPB is one of them. During the year 2010-12, the Hon'ble Supreme Court was flooded with Special Leave Petitions (SLPs) under Article 136 of the Constitution against the Judgment and Order of the Hon'ble Bombay High Court holding that the entire amount received by an assessee on sale of Duty Entitlement Pass Book ("DEPB") represents profit u/s 28(iiid) of the Income-tax Act, 1961 ("Act") for the computation of deduction u/s 80HHC of the Act.

Facts of the case

The assessee is a manufacturer and exporter of fabrics and garments. During the previous year relevant to the assessment year 2002-03, the assessee sold the DEPB and DFRC (Duty Free Replenishment Certificate) which had accrued to the assessee on export of its products. The assessee filed a return for the assessment year 2002-03 claiming a deduction of ` 83,69,303/- under Section 80HHC of the Act. The Assessing Officer held that if the profit on transfer of the export incentives was deducted from the profits of the assessee, the figure would be a loss and there will be no positive income of the assessee from its export business and the assessee will not be entitled to any deduction under Section 80HHC of the Act as has been held by this Court in ***IPCA Laboratories Ltd. vs. Deputy CIT***[1].

Aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and

1. IPCA Laboratories Ltd. v. Deputy C.I.T. (2004) 266 ITR 521 (SC)

contended that the profits on the transfer of DEPB and DFRC were not the sale proceeds of DEPB and DFRC amounting to ` 2,06,84,841/- and ` 1,65,616/- respectively, but the difference between the sale value and face value of DEPB and DFRC amounting to ` 14,35,097/- and ` 19,902/- respectively and if these figures of profits on transfer of DEPB and DFRC are taken, the income of assessee would be positive and the assessee would be entitled to the deduction under Section 80HHC of the Act. The Commissioner of Income Tax (Appeals) rejected this contention of the assessee and held that the assessee had received an amount of ` 2,06,84,841/- on sale of DEPB and an amount of ` 1,65,612/- on sale of DFRC and the costs of acquisition of the DEPB and DFRC are to be taken as nil and hence the entire sale proceeds of DEPB and DFRC realized by the assessee are to be treated as profits on transfer of DEPB and DFRC for working out the deduction under section 80HHC of the Act and directed the Assessing Officer to work out the deduction under Section 80HHC of the Act accordingly.

Aggrieved, the assessee filed an appeal before the Income Tax Appellate Tribunal (for short "the Tribunal"). A Special Bench of the Tribunal heard the appeal and held that there was a direct relation between the entitlement under the DEPB Scheme and the custom duty component in the cost of imports used in the manufacture of the export product. The Tribunal further held that DEPB accrues to the exporter soon after export is made and application is filed for DEPB and DEPB is a "cash assistance" receivable by the assessee and is covered under clause (iiib) of Section 28 of the Act, whereas profit on the transfer of DEPB takes place on a subsequent date when the DEPB is sold by the assessee and is covered under clause (iiid) of Section 28 of the Act. The Tribunal compared the language of Section 28(iiib) of the Act in which the expression "cash assistance" is used, with the language of Sections 28(iiia), (iiid) and (iiie) of the Act in which the expression "profit" is used and held that the words "profit on transfer" in Sections 28 (iiid) and (iiie) of the Act would not represent the entire sale value of DEPB but the sale value of DEPB less the face value of the DEPB. With these reasons, the Tribunal set aside the orders of the Assessing Officer and the Commissioner of Income Tax (Appeals) and directed the Assessing Officer to compute the deduction under Section 80HHC of the Act accordingly.

Before the High Court

Against the judgment and orders of the Tribunal, the Commissioner of Income Tax, Mumbai filed appeal under Section 260A of the Act before the High Court. The substantial question of law before the High Court was:

(a) Whether the Tribunal is justified in holding that the entire amount received on the sale of the Duty Entitlement Passbook does not represent profits chargeable under Section 28(iiid) of the Income-Tax Act, 1961 and that the face value of the Duty Entitlement Passbook shall be deducted from the sale proceeds?

(b) Whether the Tribunal is justified in holding that the face value of the Duty Entitlement Passbook is chargeable to tax under Section 28(iiib) at the time of accrual of income i.e. when the application for Duty Entitlement Passbook is filed with the competent authority pursuant to the exports made and that the profits on the sale of Duty Entitlement Passbook representing the excess of the sale proceeds over the face value is liable to be considered under Section 28(iiid) at the time of sale?

On the first question of law formulated under (a), the High Court held that the Tribunal was not justified in holding that the entire amount received on the sale of the DEPB does not represent profits chargeable under Section 28(iiid) of the Act and in holding that the face

value of the DEPB shall be deducted from the sale proceeds of the DEPB. On the second question of law formulated under (b), the High Court in its judgment did not agree with the Tribunal that the face value of DEPB is chargeable to tax as income of the assessee under Section 28(iiib) of the Act and instead held that the entirety of sale consideration for transfer of DEPB would fall within the purview of Section 28(iiid) of the Act.

Before the Supreme Court: Reasons and Decision

On the special leave petition filed by the assessee, setting aside the order of High Court, the Supreme Court held that:

(i) DEPB is a kind of assistance given by the Government of India to an exporter to pay customs duty on its imports and it is receivable once exports are made and an application is made by the exporter for DEPB. Hence there is no doubt that DEPB is "cash assistance" receivable by a person against exports under the scheme of the Government of India and falls under clause (iiib) of Section 28 and is chargeable to income tax under the head "Profits and Gains. As DEPB has direct nexus with the cost of imports for manufacturing an export product, any amount realized by the assessee over and above the DEPB on transfer of the DEPB would represent profit on the transfer of DEPB. The face value of the DEPB will fall under clause (iiib) of Section 28 of the Act, the difference between the sale value and the face value of the DEPB will fall under clause (iiid) of Section 28 of the Act and the High Court was not right in taking the view in the impugned judgment that the entire sale proceeds of the DEPB realized on transfer of the DEPB and not just the difference between the sale value and the face value of the DEPB represent profit on transfer of the DEPB.

(ii) The High Court has taken the view that when the import licence is sold the entire amount is treated as profits of business under clause (iiia) of Section 28 of the Act. The High Court has visualized a situation where the cost of acquiring the import licence is nil. However, the cost of acquiring DEPB is not nil because the person acquires it by paying customs duty on the import content of the export product and the DEPB which accrues to an assessee against exports has a cost element in it. Accordingly, when DEPB is sold by an assessee, his profit on transfer of DEPB would be the sale value of the DEPB less the face value of DEPB which represents the cost of the DEPB.

(iii) The High Court held that under the DEPB scheme, DEPB is given at a percentage of the FOB value of the exports so as to neutralize the incidence of customs duty on the import content of the export products, but the exporter may not himself utilize the DEPB for paying customs duty but may transfer it to someone else and therefore the entire sum received on transfer of DEPB would be covered under clause (iiid) of Section 28. The High Court has failed to appreciate that DEPB represents part of the cost incurred by a person for manufacture of the export product and hence even where the DEPB is not utilized by the exporter but is transferred to another person, the DEPB continues to remain as a cost to the exporter. When, therefore, DEPB is transferred by a person, the entire sum received by him on such transfer does not become his profits. It is only the amount that he receives in excess of the DEPB which represents his profits on transfer of the DEPB.

(iv) The "cash assistance" received or receivable by any person against exports such as the DEPB and "profit on transfer

of the DEPB" are treated as two separate items of income under clauses (iiib) and (iiid) of Section 28. If accrual of DEPB and profit on transfer of DEPB are treated as two separate items of income chargeable to tax under clauses (iiib) and (iiid) of Section 28 of the Act, then DEPB will be chargeable as income under clause (iiib) of Section 28 in the year in which the person applies for DEPB credit against the exports and the profit on transfer of the DEPB by that person will be chargeable as income under clause (iiid) of Section 28 in his hands in the year in which he makes the transfer. Accordingly, if in the same previous year the DEPB accrues to a person and he also earns profit on transfer of the DEPB, the DEPB will be business profits under clause (iiib) and the difference between the sale value and the DEPB (face value) would be the profits on the transfer of DEPB under clause (iiid) for the same assessment year. Where, however, the DEPB accrues to a person in one previous year and the transfer of DEPB takes place in a subsequent previous year, then the DEPB will be chargeable as income of the person for the first assessment year chargeable under clause (iiib) of Section 28 and the difference between the DEPB credit and the sale value of the DEPB credit would be income in his hands for the subsequent assessment year chargeable under clause (iiid) of Section 28. The interpretation suggested by us, therefore, does not lead to double taxation of the same income, which the legislature must be presumed to have avoided.

(v) Sub-section (1) of Section 80HHC quoted above makes it clear that an assessee engaged in the business of export out of India of any goods or merchandise to which this Section applies shall be allowed, in computing his total income, a deduction to the extent of profits referred to in sub-section (1B), derived by him from the export of such goods or merchandise. Sub-section (1B) of Section 80HHC gives the percentages of deduction of the profits allowable for the different assessment years from the assessment years 2001-2002 to 2004-2005. Sub-section (3)(a) of Section 80HHC provides that where the export out of India is of goods or merchandise manufactured or processed by the assessee, the profits derived from such exports shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. In ***Commissioner of Income-Tax vs. K. Ravindranathan Nair***[2], the formula in sub-section (3)(a) of Section 80HHC was stated by this Court to be as follows:

$$\text{Profits derived} = \frac{\text{Profits of the business x Export Turnover from exports}}{\text{Total Turnover}}$$

Explanation (baa) under Section 80HHC states that "profits of the business" in the aforesaid formula means the profits of the business as computed under the head "Profits and Gains of Business or Profession" as reduced by:

(1) ninety per cent of any sum referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of similar nature including any such receipts and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situated outside India.

2. *Commissioner of Income-Tax vs. K. Ravindranathan Nair (2007) 295 ITR 228 (SC)*

Thus, where the ninety per cent of the face value of the DEPB does not get excluded from "profits of the business" under explanation (baa) and only ninety per cent of the difference between the face value of the DEPB and the sale value of the DEPB gets excluded from "profits of the business", the assessee gets a bigger figure of "profits of the business" and this is possible when the DEPB accrues to the assessee in one previous year and transfer of the DEPB takes place in the subsequent previous year. The result in such case is that a higher figure of "profits of the business" becomes the multiplier in the aforesaid formula under sub-section (3)(a) of Section 80HHC for arriving at the figure of profits derived from exports.

(vi) The profits derived from exports to be worked out as per the aforesaid formula under sub-section (3)(a) of Section 80HHC, the additions as mentioned in first, second, third and fourth proviso under sub-section (3) are made to profits derived from exports. Under the first proviso, ninety per cent of the sum referred to in clauses (iiia), (iiib) and (iiic) of Section 28 are added in the same proportion as export turnover bears to the total turnover of the business carried on by the assessee.

In this first proviso, there is no addition of any sum referred to in clause (iiid) or clause (iiie). Hence, profit on transfer of DEPB or DFRC are not to be added under the first proviso. Where therefore in the previous year no DEPB or DFRC accrues to the assessee, he would not be entitled to the benefit of the first proviso to sub-section (3) of Section 80HHC because he would not have any sum referred to in clause (iiib) of Section 28 of the Act.

The second proviso to sub-section (3) of Section 80HHC states that in case of an assessee having export turnover not exceeding ` 10 crores during the previous year, after giving effect to the first proviso, the export profits are to be increased further by the amount which bears to ninety per cent of any sum referred to in clauses (iiid) and (iiie) of Section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee.

The third proviso to sub-section (3) states that in case of an assessee having export turnover exceeding ` 10 crores, similar addition of ninety per cent of the sums referred to in clause (iiid) of Section 28 only if the assessee has the necessary and sufficient evidence to prove that

(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and

(b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme.

(vii) Hence to summarize, where the export turnover of an assessee exceeds Rs.10 crore, he does not get the benefit of addition of ninety per cent of export incentive under clause (iiid) of Section 28 to his export profits, but he gets a higher figure of profits of the business, which ultimately results in computation of a bigger export profit. It is a well-settled principle of statutory interpretation of a taxing statute that a subject will be liable to tax and will be entitled to exemption from tax according to the strict language of the taxing statute and if as per the words used in explanation (baa) to Section 80HHC read with the words used in clauses (iiid) and (iiie) of Section 28, the assessee was entitled to a deduction under

Section 80HHC on export profits, the benefit of such deduction cannot be denied to the assessee.

Conclusion

On the background of controversies over the taxation of export incentives, it is an important ruling by the Hon'ble Supreme Court in order to resolve the pending matters. The key points from this judgment are:

- Objective of DEPB scheme is to neutralize the incidence of customs duty on the import content of the export products. Hence, it has direct nexus with the cost of the imports made by an exporter for manufacturing the export products.

- Face value of DEPB would be classified as "cash assistance" and shall be taxable as business income under clause (iiib) of section 28 of the Act and only the "Profit" component in the consideration received on transfer of DEPB would be taxable under clause (iiid) of section 28 of the Act.

- The Court further held that DEPB represents part of the cost incurred by a person for manufacture of the export product and hence even where the DEPB is not utilized by the exporter but is transferred to another person, the DEPB continues to remain as a cost to the exporter.

- The Court further held that where the export turnover of an assessee exceeds ` 10crores, he does not get the benefit of addition of ninety per cent of export incentive under clause (iiid) of Section 28 to his export profits, but he gets a higher figure of profits of the business, which ultimately results in computation of a bigger export profit.

Deductions – Exports – Section 80 HHC – Expression "included any such profits

ACG Associated Capsules P. Ltd vs. CIT Central-IV, Mumbai

Introduction

The legal chaos is created when there is situation where citizens similarly governed by the central statue have rights in certain part of the country and others do not have such rights in other parts of the country. This frustrating situation is stemmed from the identical central law being interpreted, applied and administered in different and inconsistent manner in different parts of India as a result of conflicting judgments of the concerned High Courts.

In this case, there are contrary views of the Hon'ble Bombay High Court and Hon'ble Delhi High Court while interpreting provisions of Section 80HHC of the Income-tax Act, 1961 ("the Act").

Facts of the case

For the assessment year 2003-04, the assessee filed a return of income claiming a deduction of ` 34,44,24,827/- under Section 80HHC of the Act. The Assessing Officer passed the assessment order deducting ninety per cent of the gross interest and gross rent received from the profits of business while computing the deduction under Section 80HHC and accordingly restricted the deduction under Section 80HHC to ` 2,36,25,053/-. The assessee filed an appeal against the assessment order before the Commissioner of Income-tax (Appeals), who confirmed the order of the Assessing Officer excluding ninety per cent of the gross interest and gross rent received by the assessee while computing the profits of the business for the purposes of Section 80HHC and also directed

Assessing Officer to work out the deduction under Section 80HHC on the basis that the amount received on sale of DEPB and DFRC are to be treated as profits on transfer of DEPB and DFRC for working out the deduction under section 80HHC of the Act and the costs of acquisition of the DEPB and DFRC are to be taken as nil.

Aggrieved, the assessee filed an appeal before the Income Tax Appellate Tribunal ("the Tribunal"). The Tribunal held that the words "profit on transfer" in Sections 28 (iiid) and (iiie) of the Act would not represent the entire sale value of DEPB but the sale value of DEPB less the face value of the DEPB. The Tribunal further held, relying on the decision of the Delhi High Court in ***Commissioner of Income-Tax vs. Shri Ram Honda Power Equip***[3], that netting of the interest could be allowed if the assessee is able to prove the nexus between the interest expenditure and interest income and remanded the matter to the file of the Assessing Officer. The Tribunal also remanded the issue of netting of the rent to the Assessing Officer with the direction to find out whether the assessee has paid the rent on the same flats against which rent has been received from the staff and if such rent was paid then such rent is to be reduced from the rental income for the purpose of exclusion of business income for computing the deduction under Section 80HHC.

Before the High Court

Against the order of the Tribunal, the Revenue filed an appeal before the High Court. The substantial question of law before the High Court was:

(a) Whether the Tribunal is justified in holding that the entire amount received on the sale of the Duty Entitlement Passbook does not represent profits chargeable under Section 28(iiid) of the Income-tax Act, 1961 and that the face value of the Duty Entitlement Passbook shall be deducted from the sale proceeds?

(b) Whether the Tribunal is justified in holding that while determining the profits of the business as defined in Explanation (baa) to Section 80HHC, the receipts towards interest and rent are shall be the net receipts after netting off the expenditure towards interest and rent income, if there is a nexus between such expenditure and the income earned?

On the first question of law, the High Court held that the entire amount received on the sale of the DEPB does represent profits chargeable under Section 28(iiid) of the Act and that the face value of the DEPB shall be taken as nil. On the second question of law, the High Court has directed that on remand the Assessing Officer will decide the issue in accordance with the judgment of the High Court in ***Commissioner of Income-Tax vs. Asian Star Co. Ltd.***[4] in which it has been held that while determining the profits of the business as defined in Explanation (baa) to Section 80HHC, ninety per cent of the gross receipts towards interest and not ninety per cent of the net receipts towards interest on fixed deposits in banks received by the assessee would be excluded for the purpose of working out the deduction under Section 80HHC of the Act.

Before the Supreme Court: Reasons and decision

On the appeal filed by the assessee, setting aside the order of the High Court, the Supreme Court has held that:

(i) The first question of law has already been decided by the Supreme Court in a separate judgment in ***M/s Topman Exports vs. Commissioner of Income Tax, Mumbai***[5]. It

3. Commissioner of Income-Tax vs. Shri Ram Honda Power Equip [(2007) 289 ITR 475 (Delhi)]

4. *Commissioner of Income-tax vs. Asian Star Co. Ltd. [(2010) 326 ITR 56 (Bom)]*

5. *M/s Topman Exports vs. Commissioner of Income Tax, Bombay 342 ITR 49 (SC) [2012]*

was held that DEPB is "cash assistance" receivable by a person against exports under the scheme of the Government of India and falls under clause (iiib) of Section 28 and is chargeable to income tax under the head "Profits and Gains. As DEPB has direct nexus with the cost of imports for manufacturing an export product, any amount realized by the assessee over and above the DEPB on transfer of the DEPB would represent profit on the transfer of DEPB. The face value of the DEPB will fall under clause (iiib) of Section 28 of the Act, the difference between the sale value and the face value of the DEPB will fall under clause (iiid) of Section 28 of the Act and the High Court was not right in taking the view in the impugned judgment that the entire sale proceeds of the DEPB realized on transfer of the DEPB and not just the difference between the sale value and the face value of the DEPB represent profit on transfer of the DEPB.

(ii) Explanation (baa) to the section 80 HHC of the Act states that "profits of the business" means the profits of the business as computed under the head "Profits and Gains of Business or Profession" as reduced by the receipts of the nature mentioned in clauses (1) and (2) of the Explanation (baa). Thus, profits of the business of an assessee will have to be first computed under the head "Profits and Gains of Business or Profession" in accordance with provisions of Sections 28 to 44D of the Act. In the computation of such profits of business, all receipts of income which are chargeable as profits and gains of business under Section 28 of the Act will have to be included. Similarly, in computation of such profits of business, different expenses which are allowable under Sections 30 to 44D have to be allowed as expenses. After including such receipts of income and after deducting such expenses, the total of the net receipts are profits of the business of the assessee computed under the head "Profits and Gains of Business or Profession" from which deductions are to be made under clauses (1) and (2) of Explanation (baa).

(iii) Under clause (1) of Explanation (baa), ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in any such profits are to be deducted from the profits of the business as computed under the head "Profits and Gains of Business or Profession". The expression "included any such profits" in clause (1) of the Explanation (baa) would mean only such receipts by way of brokerage, commission, interest, rent, charges or any other receipt which are included in the profits of the business as computed under the head "Profits and Gains of Business or Profession". Therefore, if any quantum of the receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is allowed as expenses under Sections 30 to 44D of the Act and is not included in the profits of business as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of receipts cannot be reduced under clause (1) of Explanation (baa) from the profits of the business. In other words, only ninety per cent of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining "profits of the business" of the assessee under Explanation (baa) to Section 80HHC.

(iv) For the interpretation of the Explanation (baa) to section 80HHC, the Supreme Court relied on the ratio decidendi derived from the judgment of the Constitution Bench of this Court in ***Distributors (Baroda) P. Ltd. vs. Union of India and Others***[6]. It was held that Court must construe Section 80M on its own language and arrive at its true interpretation according to the plain natural meaning of the words used by the legislature. Section 80M of the Act provided for deduction in respect of certain inter-corporate dividends and it provided in sub-section (1) of Section 80M that "where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, there shall, in accordance with and subject to the provisions of this Section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends an amount equal to" a certain percentage of the income mentioned in this Section. The Constitution Bench held that Section 80M must be referable not only to the category of income included in the gross total income but also to the quantum of the income so included.

Similarly, Explanation (baa) has to be construed on its own language and as per the plain natural meaning of the words used in Explanation (baa), the words "receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits" will not only refer to the nature of receipts but also the quantum of receipts included in the profits of the business as computed under the head "Profits and Gains of Business or Profession" referred to in the first part of the Explanation (baa). Accordingly, if any quantum of any receipt of the nature mentioned in clause (1) of Explanation (baa) has not been included in the profits of business of an assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt cannot be deducted under Explanation (baa) to Section 80HHC.

(v) The similar view Delhi High Court for interpretation of explanation (baa) to the Section 80HHC of the Act can be found in the judgment of ***Commissioner of Income-Tax vs. Shri Ram Honda Power Equip (supra)*** and the Tribunal in the present case has followed the judgment of the Delhi High Court. But, the High Court set aside the order of Tribunal and passed the order relying on the judgment in case of ***Commissioner of Income-Tax vs. Asian Star Co. Ltd.*** However, the case which the High Court referred to is weighted on the reasons that rent, commission, interest and brokerage do not possess any nexus with export turnover and, therefore, the inclusion of such items in the profits of the business would result in a distortion of the figure of export profits. The High Court has relied on a decision of Supreme Court in ***Commissioner of Income-Tax vs. K. Ravindranathan Nair***[7]. However, the issue which was raised before Supreme Court was entirely different from the issue raised in this case. The issue in that case was whether processing charges received by the assessee were part of the business turnover and accordingly the income arising therefrom should have been included in the profits and gains of business of the assessee and ninety per cent of this income also would have to be deducted under Explanation (baa) under Section 80HHC of the Act. It was

6. ***Distributors (Baroda) P. Ltd. vs. Union of India and Others [(1985) 155 ITR 120]***
7. ***Commissioner of Income-Tax vs. K. Ravindranathan Nair [(2007) 295 ITR 228 (SC)]***

held that the processing charges should be included in the gross total income and hence in terms of Explanation (baa), ninety per cent of the gross total income arising from processing charges had to be deducted under Explanation (baa) to arrive at the profits of the business. However, in this case, the issue is whether ninety per cent deduction is to be made from the gross or net income of any of the receipts mentioned in clause (1) of the Explanation (baa). Therefore, the High Court while taking a different view than the Tribunal relied on the judgment of the Supreme Court based on unrelated issue.

(vi) The Bombay High Court has also relied on the Memorandum explaining the clauses of the Finance Bill, 1991 contained in the circular dated 19-12-1991 of the Central Board of Direct Taxes to come to the conclusion that the Parliament intended to exclude items which were unrelated to the export turnover from the computation of deduction and while excluding such items which are unrelated to export for the purpose of Section 80HHC, Parliament has taken due note of the fact that the exporter assessee would have incurred such expenditure in earning the profits and to avoid a distorted figure of export profits, ninety per cent of the receipts like brokerage, commission, interest, rent, charges are sought to be excluded from the profits of the business. However, the Supreme Court has held that it was not necessary to refer to the explanatory Memorandum when the language of Explanation (baa) to Section 80HHC was clear that only ninety per cent of receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits computed under the head profits and gains of business of an assessee could be deducted under clause (1) of Explanation (baa) and not ninety per cent of the quantum of any of the aforesaid receipts which are allowed as expenses and therefore not included in the profits of business of the assessee.

(vii) Hence it was concluded that if the rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax under Section 28 of the Act, and if any quantum of the rent or interest of the assessee is allowable as an expense in accordance with Sections 30 to 44D of the Act and is not to be included in the profits of the business of the assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt of rent or interest will not be deducted under clause (1) of Explanation (baa) to Section 80HHC. In other words, ninety per cent of not the gross rent or gross interest but only the net interest or net rent, which has been included in the profits of business of the assessee as computed under the head "Profits and Gains of Business or Profession", is to be deducted under clause (1) of Explanation (baa) to Section 80HHC for determining the profits of the business.

Conclusion

It is the important judgment of the Hon'ble Supreme Court for resolving the contrary views of the Hon'ble Delhi High Court and Hon'ble Bombay High Court. The key points from the judgment are:

- The view taken in the judgment of ***Topman Exports vs. CIT, Mumbai,*** the entire amount received on the sale of the Duty Entitlement Passbook does not represent profits chargeable under Section 28(iiid) of the Income-tax Act, 1961
- Explanation (baa) to the section 80 HHC of the Act states that "profits of the business" means the profits computed under the head "Profits and Gains of Business or

Profession" in accordance with provisions of Section 28 to 44D of the Act.

- As all receipts of income which are chargeable as profits and gains of business under Section 28 of the Act will have to be included. Similarly, in computation of such profits of business, different expenses which are allowable under Sections 30 to 44D have to be allowed as expenses.
- Only ninety per cent of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining "profits of the business" of the assessee under Explanation (baa) to Section 80HHC.

Minimum Alternate Tax - Assessment year 2000-01- Deduction claimed under section 80HHE

CIT vs. Bhari Information Technology Systems (P.) Ltd.

Introduction

The cause of the dispute cropped up in because of difference of opinion reflected in interpreting certain modifications brought in the Sections 115JA and 115JB of the Income-tax Act, 1961 ("the Act"). In the earlier provisions, Section 115J, the computation of deduction had to be made in the manner prescribed in Section 80HHC. It was a simple overall statement. In Section 115JA, the law elaborated little further and stated that the computation shall be made under Clauses (a), (b) or (c) of Sub-section (3) or Sub-section (3A) of Section 80HHC with a further, liability of restriction under Sub-sections (4) or (4A) and under sub-section 3 of Section 80HHE. This has led Revenue to argue that even though deduction under Section 80HHC/ 80HHE is retained in Section 115JA, the rules of computation and the basis of the computation have been changed and the computation has to be made with reference to the regular profit worked out under the normal provisions of the Act.

Facts of the Case

Assessee filed its return of income for assessment year 2000-01. Assessee claimed deduction under Section 80HHE to the extent of ` 1,56,33,719/- against net profit as per profit and loss account amounting to ` 3,07,84,105/- to arrive at the book profit of ` 1,51,50,386/- under Section 115JA of the Income-tax Act, 1961. This claim for deduction made by the assessee was rejected by the A.O. saying that since in normal computation there is no profit after carry-forward loss, deduction under Section 80HHE to the extent of ` 1,56,33,719/- for computing book profit under Section 115JA was not admissible According to the A.O. since in the present case in normal computation no net profit was left after the brought-forward losses of the earlier years got adjusted against the current year's profit, the assessee was not entitled to deduction under Section 80HHE to the extent of ` 1,56,33,719/-. In Appeal, the CIT (A) upheld the order of the A.O. The assessee went in appeal, against the order of the CIT(A), before the Tribunal which, following the judgment of the Special Bench of the Tribunal in the case of ***Deputy Commissioner of Income Tax, Range 8(3) vs. Syncome Formulations (I) Limited***[8], took the view that the MAT scheme which includes Section 115JA did not take away the benefits given under Section 80HHE. The said judgment of the Special Bench was with regard to computation of deduction under Section 80HHC which, like Section 80HHE, falls under Chapter VI-A of the Income Tax Act, 1961. The Tribunal concluded that deduction claimed by the assessee under Section 80HHE has to be worked out on the basis of adjusted book profit under Section 115JA and not on the basis of the

8. *Deputy Commissioner of Income Tax, Range 8(3) vs. Syncome Formulations (I) Limited (2007) 106 ITD 193*

profits computed under regular provisions of law applicable to computation of profits and gains of business.

The judgment of the Tribunal has been upheld by the High Court. Aggrieved by this, the CIT, Chennai filed the Special Leave Petition before the Hon'ble Supreme Court.

Before the Supreme Court: Reasons and Decision

The Supreme Court also upheld the view taken by the Tribunal. The Supreme Court has observed that the judgment of the Special Bench of the Tribunal in Syncome Formulations (supra) squarely applies to the present case. In the case of Syncome Formulations (supra), it was observed as under:

(i) The concept of book profit is the product of MAT, introduced in Section 115J, similar to the concept of Alternate Minimum Tax under the United States Federal Laws. The intention was to tax zero-tax companies on the basis of book profit so that those companies which declare dividend out of their book profit and which do not pay taxes on the basis of the reliefs claimed by them, begins to pay some amount of tax to the Government. This is on the principle of ability to pay tax which is based on the principle of equity. When it was initially introduced in Section 115J, it was a steel-frame that the tax shall be payable on the book profit subject to certain adjustments of additions and deductions. No further deductions were available from the said adjusted book profit. It was the ultimate amount on which the company has to pay taxes. But later on, the legislature itself thought it fit to protect the concessions given to exporters etc. so that the exporters are not compelled to pay tax under MAT. Therefore, even the steel-frame of Section 115J was amended by the legislature by providing exemption to export profits. The legislature itself has thus declared that the adjusted book profit worked out under MAT scheme need not be the ultimate amount on which an assessee has to pay tax but deductions are still available in respect of export incentives etc.

(ii) Once the law itself has declared that the adjusted book profit is amenable for further deductions on specified grounds, in a case where Section 80HHC is operational, it becomes very clear that the computation for the deduction under Section 80HHC needs to be worked out on the basis of the very same adjusted book profit. The above proposition is manifest in the fact that the deduction under Section 80HHC has been provided in Sections 115J, 115JA and 115JB themselves instead of making a reference in Section 80HHC itself. It is made so because the nexus between the deduction under Section 80HHC and the profit in a MAT regime is between the deduction and the adjusted book profit.

(iii) It is the incompatibility reflected in the scheme of deduction under Section 80HHC in the MAT regime is inherent by the nature of the legislation itself. The law itself has provided that in spite of the liability to pay tax under MAT scheme, the exporter is entitled to claim deduction under Section 80HHC. The legislature itself has diluted the rigours of the law on the subject. When the law itself has made the MAT regime so flexible, there is no ground to argue that the assessee should not get the benefit of deduction under Section 80HHC on the basis of the adjusted book profit. If the assessee is getting any such advantage, it is the inherent consequence of the provisions of law.

(iv) The deduction under Section 80HHC in a MAT scheme is from the taxable income, which is otherwise the adjusted book profit. If no deduction is available to an

assessee, the gross total income itself is the taxable income of the assessee. MAT scheme does not provide for deductions. Therefore, the interpretation is that the adjusted book profit of a company itself is the gross total income of that assessee company. The deduction under Section 80HHC is in that way given out of gross total income in a case falling under MAT. This in turn means that Section 80HHC should be computed on the adjusted book profit. Sees. 115J, 115JA and 115JB come into operation, as the regular profits have been substituted by the book profit. Once the substitution is over, there is no way to go back to the normal computation process of statutory profit, which has already been overwhelmed by Sections 115J, 115JA and 115JB. This reconciles the alleged incompatibility pointed out by the Revenue that the deduction available to an assessee under Chapter VI-A is subject to Section 80AB. Therefore, we find that the deduction under Section 80HHC in a case of MAT assessment is to be worked out on the basis of the adjusted book profit and not on the basis of the profit computed under the regular provisions of law applicable to the computation of profits and gains of business or profession.

Conclusion

The incompatibility because of wording of law is resolved to some extent by this judgment. The Supreme Court has upheld the view taken by the Special Bench of Tribunal in case of Syncome Formulations (supra). The key points are:

- Once the law itself declares that the adjusted book profit is amenable for further deductions on specified grounds, in a case where Section 80HHC (80HHE in the present case) is operational, it becomes clear that computation for the deduction under those sections needs to be worked out on the basis of the adjusted book profit.
- The legislature itself has thus declared that the adjusted book profit worked out under MAT scheme need not be the ultimate amount on which an assessee has to pay tax but deductions are still available in respect of export incentives etc.

Deduction – turnover Exporter – Computation of deduction

CIT – VII, New Delhi vs. Punjab Stainless Steel Industries

Introduction

For encourage export for the purpose of earning foreign exchange, Section 80 HHC has been enacted in the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). By virtue of the provisions of the said section, subject to certain conditions, the exporter gets certain deduction from the income, which is derived from the profits from export of goods, while computing taxable income. For the purpose of calculating the deduction, according to the provisions of Section 80HHC of the Act, one has to take into account the profits from the business of the assessee, export turnover and total turnover. The deduction, subject to several other conditions, incorporated in the Section, is determined as percentage to the Profits of the Business that Export Turnover has with that of Total Turnover.

Facts of the case

The assessee is a manufacturer and exporter of stainless steel utensils. In the process of manufacturing stainless steel utensils, some portion of the steel, which cannot be used or reused for manufacturing utensils, remains unused, which is treated as scrap and the respondent assessee disposes of the said scrap in the local market and the income arising from the said sale is also reflected in the profit and loss account. The respondent-assessee not only sells utensils in the local market but also exports the utensils. For the purpose of availing deduction

under Section 80HHC of the Act for the relevant Assessment Year, the assessee was not including the sale proceeds of scrap in the total turnover but was showing the same separately in the Profit and Loss Account. According to the Revenue, the sale proceeds from the scrap should have been included in the 'total turnover' as the respondent-assessee was also selling scrap and that was also part of the sale proceeds.

The assessee had objected to the aforestated suggestion of the Revenue because inclusion of the sale proceeds of scrap into the total turnover would reduce the amount deductible under the provisions of Section 80HHC of the Act. The assesse filed an appeal before the High Court.

The High Court approved the accounting method followed by the respondent assessee affirming that the sale proceeds of the scrap should not be included in the total turnover for the purpose of computing the benefit under section 80HHC of the Act. The crux of the matter is that if the total turnover increases, the advantage which the assessee would get under Section 80HHC would decrease because the amount deductible substantially depends upon the ratio between the export turnover and total turnover. If the export turnover is higher comparatively the amount deductible under Section 80HHC would be more; or in other words, if compared to total turnover, export turnover is less, the amount deductible from the income under Section 80HHC would be reduced.

Before the Supreme Court: Reasons and Decision

The Revenue filed the appeal against the order of High Court, while dismissing the appeal, the Supreme Court held that:

(i) To ascertain whether the turnover would also include sale proceeds from scrap, one has to know the meaning of the term 'turnover'. The term 'turnover' has neither been defined in the Act nor has been explained by any of the CBDT circulars. In the aforestated circumstances, one has to look at the meaning of the term 'turnover' in ordinary accounting or commercial parlance. Normally, the term 'turnover' would show the sale effected by a business unit. It may happen that in the course of the business, in addition to the normal sales, the business unit may also sell some other things. the question is whether sale proceeds of such scrap can be included in the term 'sales' when it is to be reflected in the Profit and Loss Account.

(ii) In ordinary accounting parlance, as approved by all accountants and auditors, the term 'sales', when reflected in the Profit and Loss Account, would indicate sale proceeds from sale of the articles or things in which the business unit is dealing. When some other things like old furniture or a capital asset, in which the business unit is not dealing are sold, the sale proceeds therefrom would not be included in 'sales' but it would be shown separately. In simple words, the word "turnover" would mean only the amount of sale proceeds received in respect of the goods in which an assessee is dealing in.

(iii) So far as the scrap is concerned, the sale proceeds from the scrap may either be shown separately in the Profit and Loss Account or may be deducted from the amount spent by the manufacturing unit on the raw material, which is steel in the case of the respondent-assessee, as the respondent-assessee is using stainless steel as raw material, from which utensils are manufactured. The raw material, which is not capable of being used for manufacturing utensils will have to be either sold as scrap or might have to be re-cycled in the form of sheets of stainless steel, if the manufacturing unit is also having its re-rolling plant. If it is not having such a plant, the manufacturer would dispose of the scrap of steel to someone who would re-cycle the said scrap into steel so that the said steel can

be re-used. When such scrap is sold, in our opinion, the sale proceeds of the scrap cannot be included in the term 'turnover' for the reason that the respondent-unit is engaged primarily in the manufacturing and selling of steel utensils and not scrap of steel. Therefore, the proceeds of such scrap would not be included in "sales" in the Profit and Loss Account of the respondent-assessee.

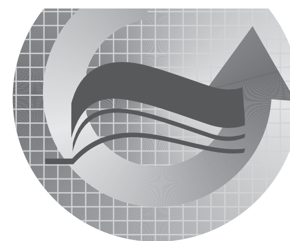
(iv) For ascertaining the meaning of word "turnover", the Supreme Court has relied on the "Guidance Note on Tax Audit Under Section 44AB of the Income Tax Act" published by The Institute of Chartered Accountants of India (hereinafter referred to as the 'ICAI'). Para 5 of the said note clearly denotes that in normal accounting parlance the word "turnover" would mean "total sales" as explained hereinabove. The said sales would definitely not include the scrap material which is either to be deducted from the cost of raw material or is to be shown separately under a different head. Hence the Court has accepted the meaning of the term "turnover" as set out in the Guidance Note issued by ICAI. The Court further stated that if all accountants, auditors, businessmen, manufacturers etc. are normally interpreting the term "turnover" as sale proceeds of the commodity in which the business unit is dealing, there is no reason for the Court to take a different view than the view normally taken by the persons who are concerned with the said term.

(v) The intention behind enactment of Section 80HHC of the Act was to encourage export so as to earn more foreign exchange. For the said purpose the Government wanted to encourage businessmen, traders and manufacturers to increase the export so as to bring more foreign exchange in our country. If the purpose is to bring more foreign exchange and to encourage export, the legislature would surely like to give more benefit to persons who are making an effort to help our nation in the process of bringing more foreign exchange. If a trader or a manufacturer is trying his best to increase his exports, even at the cost of his business in a local market, the Government would also like to encourage such person. Once the Government decides to give some benefit to someone who is helping the nation in bringing foreign exchange, the Revenue should also make all possible efforts to encourage such traders or manufacturers by giving such business units more benefits as contemplated under the provisions of law. Hence by taking the practical view of the situation Court ruled that the views expressed by High Court are in conformity with the normal accounting practice followed by the traders.

Conclusion

There have been disputes over the accounting treatment for the term "turnover" when it comes to calculating the benefits purported by the provisions of Taxing Law. By upholding the views of High Court, the Supreme Court accomplished the finality for the interpretation of term "turnover" and accounting treatment thereof. The key points are:

- The word "turnover" would mean only the amount of sale proceeds received in respect of the goods in which an assessee is dealing in.
- The Court shall take similar view if all accountants, auditors, businessmen, manufacturers etc. are normally interpreting the term "turnover" as sale proceeds of the commodity in which the business unit is dealing.
- The intention behind enactment of Section 80HHC of the Act is also to be taken into consideration while computing the benefits to be advanced to the assessee.



Vipul B. Joshi, *Advocate*

Income - Sec. 4 – Mutual concern - Conditions for Mutuality.

1. Bangalore Club vs. CIT – [(2013) 350 ITR 509 (SC)]

[A.Y. 1989-1990, 1990-1991, 1993-1994 to 1999-2000]

Facts, as emerge out of the decision

A. Background

– The assessee is a club registered under the Societies Registration Act. It has several members. Four of its members – corporate members – are Vijaya Bank, Canara Bank, State Bank of Mysore and State Bank of India.

– It appears that almost the entire surplus of the assessee club was placed with these four banks as fixed deposits. These four banks, who are out and out commercial banks, procure the funds from the assessee club at a lower rate of interest and use this money in course of their business of banking, including lending to their clients at a higher interest.

– During the material period, the income of the assessee was mainly on account of interest on such fixed deposits. It also earned some surplus amount received as contribution or price for some of the facilities availed by its members before such surplus was deposited with the banks. The assessee also earned interest from fixed deposits kept with non-member banks.

B. Assessement

– The assessee claimed its entire income as exempt on the principle of mutuality, except for the interest income earned on the fixed deposits with non-member banks.

– The A.O. denied the claim of exemption vis-a-vis the interest earned on the fixed deposits kept with the four member banks, on the ground of lack of identity between the contributors and the participants.

C. Appellate Proceeding

– The CIT (A) reversed the action of the A.O. and held that the activity of keeping the liquid asset, that is, cash, in the custody of members for safe custody cannot be tainted with commerciality to come within the purview of business income. On appeal by the Department, the Tribunal also confirmed the action of the CIT(A) and held that the activities of the club with such corporate members and vice-versa are clearly activities of mutual consent and interest. In further appeal preferred by the Department, the Hon'ble High Court, however, reversed the order of CIT(A) and Tribunal and held that the principle of "no man can trade himself" is not available in respect

of a nationalised bank holding fixed deposits on behalf of its customers. It held that, in the instant case, what has been done by the club is nothing but what would have been done by a customer of a bank. Therefore, as the relationship was one of a banker and a customer, there arose no principle of mutuality.

D. Supreme Court

– The assessee preferred Special Leave Petition before the Supreme Court against the order of the High Court.

(i) ARGUMENTS OF THE ASSESSEE

(a) There is complete identity between the contributors to the funds of the assessee and the recipients from the funds.

(b) There is no commercial motive involved in the dealings of the assessee with its members and the interest earned by the assessee from the surplus funds invested in fixed deposits with the four member banks are used for the benefit of the members alike. As such, such interest income merged with the common fund of the club.

(ii) ARGUMENTS OF THE DEPARTMENT

(a) The fundamental principle of doctrine of mutuality is a complete identity between the contributors and the participants, which is missing in this case.

(b) The surplus funds of the assessee were placed at the disposal of the corporate members, viz., the banks, with the sole motive to earn interest, which brings in the commerciality element.

(c) The transaction was nothing but what could have been done by a customer of the bank.

(iii) RULING OF THE SUPREME COURT

The Supreme Court analysed the legal precedents concerning the principle of mutuality as well as various authorities and commentaries. It laid down three principle conditions for application of the principle of mutuality.

(a) There must be complete identity between the contributors and the participants. This means identity as a class, so that at any given moment of time the persons who are contributing are identical with the persons entitled to participate; it does not matter that the class may be diminished by persons going out of the scheme or increased by others coming in. At the same time, that does not mean that each member should contribute to the common fund or that each member should participate in the surplus or get back from the surplus precisely what he has paid. The test of mutuality does not require that the contributors to the common fund should willy-nilly distribute the surplus amongst themselves: it is enough if they have a right of disposal over the surplus and in exercise of that right, they may agree that on winding up, the surplus will be transferred to a similar association or used for some charitable objects. This also means that sooner or later, the whole of the association's receipts must go back to the members as a class, though not precisely in the proportions in which they have contributed to them and the association does not in any true sense make any profit out of their contributions.

(b) The second condition demands that the actions of the participants and the contributors must be in furtherance of the mandate of the association. In the case of a club, it would be necessary to show that steps are taken in furtherance of activities that benefit the club and, in turn, its members. The mandate of the club is a question of fact and can be determined from the memorandum or articles of association, rules of membership, rules of the organization, etc. However, the mandate must not be construed myopically. While in some situations, the benefits may be evident directly in the short-run, in others, they may be accruable to an organization indirectly, in the long-run. Space must be made for both such forms of interaction between the organization and its members.

(c) The third condition is that there must be no scope of profiteering by the contributors from the fund made by them, which could only be expended or returned to themselves. If the people were to do the thing for themselves, there would be no profit, and the fact that they incorporate a legal entity to do it for them makes no difference, there is still no profit. This is not because the entity of the company is to be disregarded, it is because there is no profit, the money being simply collected from those people and handed back to them, not in the character of shareholders, but in the character of those who have paid it. However, at what point mutuality ends and commerciality begins is a difficult question of fact.

Applying the above legal position to the facts of the present case, the court found as follows:

(a) RE: IDENTITY

The arrangement lacked a complete identity between the contributors and the participants. Till the stage of generation of surplus funds, the set-up resembled that of a mutuality; the flow of money, to and fro, was maintained within the closed circuit formed by the banks and the club, and to that extent, nobody who was not privy to this mutuality, benefited from the arrangement. However, as soon as these funds were placed in fixed deposits with banks, the closed flow of funds between the banks and the club suffered from deflections due to exposure to commercial banking operations. During the course of their banking business, the member banks used such deposits to advance loans to their clients. Hence, in the present case, with the funds of the mutuality, member banks engaged in commercial operations with third parties outside of the mutuality, rupturing the 'privity of mutuality', and consequently, violating the one-to-one identity between the contributors and participants as mandated by the first condition. Thus, the first condition for the claim of mutuality is not satisfied.

(b) RE: THE EXCESS / SURPLUS MUST BE USED FOR FURTHERANCE OF THE MANDATE OF THE ASSOCIATION

This second condition demands that to claim an exemption from tax on

the principle of mutuality, treatment of the excess funds must be in furtherance of the object of the club, which was not the case here. In the instant case, the surplus funds were not used for any specific service, infrastructure, maintenance or for any other direct benefit for the members of the club. These were taken out of mutuality when the member banks placed the same at the disposal of third parties, thus, initiating an independent contract between the bank and the clients of the bank, a third party, not privy to the mutuality. This contract lacked the degree of proximity between the club and its member, which may in a distant and indirect way benefit the club. Nonetheless, it cannot be categorized as an activity of the club in pursuit of its objectives. It needs little emphasis that the second condition postulates a direct step with direct benefits to the functioning of the club.

(c) RE: ABSENCE OF PROFITEERING

This principle requires that the funds must be returned to the contributors as well as expended solely on the contributors. True, that in the present case, the funds do return to the club. However, before that, they are expended on non – members i.e. the clients of the bank. Banks generate revenue by paying a lower rate of interest to club-assessee, that makes deposits with them, and then loan out the deposited amounts at a higher rate of interest to third parties. This loaning out of funds of the club by banks to outsiders for commercial reasons, snaps the link of mutuality and thus, breaches the third condition. There is nothing on record which shows that the banks made separate and special provisions for the funds that came from the club, or that they did not loan them out. Therefore, clearly, the club did not give, or get, the treatment a club gets from its members; the interaction between them clearly reflected one between a bank and its client.

E. Conclusion

– The Court held that the principle of mutuality did not apply to the interest earned by the assessee from the fixed deposits placed with its corporate members – banks – and dismissed the SLP with cost. The main reliance was placed on the earlier Supreme Court decision in the case of ***CIT vs. Kumbakonam Mutual Benefit Fund Ltd. – [(1964) 53 ITR 241 (SC)].***

Income – Sec. 4 – Association of Person

2. CIT vs. Govindbhai Mamaiya – [(2014) 367 ITR 498 (SC)]

[A.Y. 1987-1988 to 1999-2000]

Facts, as emerge out of the decision:

A. Background

– The assessees are three brothers. Their father died leaving certain land to the three brothers and two other persons who relinquished their rights in favour of the three brothers. A part of this bequeathed land was acquired by the State Government and compensation was paid for it. On appeal, the compensation amount was enhanced and additional compensation along with interest was awarded.

B. Assessment

– The assessees filed their return of income for each assessment years claiming the status of 'individual'. Two questions arose for consideration before the Assessing Officer. One was as to whether these three brothers could file separate returns claiming the status of the 'individual' or they were to be treated as 'Association of Persons' (AOP). Second question was regarding taxability of the interest on enhanced compensation, whether such interest which was received in a particular year was to be assessed in the year of receipt or it could be spread over the period of time.

– The Assessing Officer passed the assessment order by treating their status as that of an AOP. The Assessing Officer also refused to spread the interest income over the years and treated it as taxable in the year of receipt.

C. Appellate Proceeding

– The CIT(A) confirmed the actions of the A.O. The Tribunal held that the status of the assessees was to be taken as individual and not as AOP. It also held that the interest received on additional compensation was to be taxed on accrual basis.

– The High Court declined to interfere in the Tribunal's Order, by holding that no substantial question of law arose for admission of the appeal. The Department preferred Special Leave Petition before the Supreme Court.

D. Supreme Court

(i) RE: THE STATUS OF ASSESSMENT

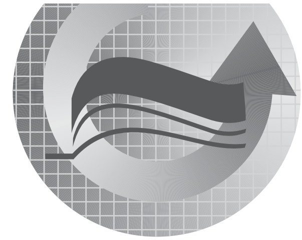
- Following the case of ***Meera and Co. vs. CIT – [(1997) 224 ITR 635 (SC)]***, the Apex Court held that no AOP came into existence. For this, the Court observed that the property in question came to the assessees by inheritance from the father, by operation of law. Furthermore, even the income which is earned in the form of interest is not because of any business venture of the three assessees but it is the result of the act of the Government in compulsorily acquiring the said land.

(ii) RE: YEAR OF TAXABILITY OF INTEREST INCOME

- For this, the Court simply relied upon its earlier decision in the case of ***CIT vs. Ghanshyam (HUF) – [(2009) 315 ITR 1 (SC)]*** and held that the interest earned by the assessee on the excess amount of computation, over and above what is awarded by the collector, u/s. 28 is nothing but accretion to the value of the land acquired and hence it is a part of the enhanced compensation / consideration and, consequently, forms part of enhanced compensation u/s. 45 (5)(b) of the Act.
- However, the interest awarded u/s. 34 of the Land Acquisition Act, which depends on undue delay in making an award, does not become part of the enhanced compensation u/s. 45(5)(b) of the Act and, accordingly, would continue to be governed by the law relating to assessment of such interest on accrual basis.

E. Remark

– As far as the second aspect regarding the taxation of interest is concerned, as per the amendment to section 145A made by the Finance (No. 2) Act, 2009, with effect from 1.4.2010, such interest is deemed to be the income in the year in which it is received.



CA Usha Kadam

Section 8 of the Right to Information Act, 2005 - Information not to be disclosed - Income-tax return

Girish Ramchandra Deshpande vs. Central Information Commissioner 351 ITR 472 (SC)

Introduction

Section 8(1) of the Right to Information Act (RTI) gives exemption from the disclosure of information to any citizen in certain circumstances. Clause (j) of section 8(1) of the RTI act provides that there shall be no obligation to give any citizen an information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Facts

Mr. Girish Deshpande, the petitioner had submitted an application on 27-8-2008 before the Regional Provident Fund Commissioner (Ministry of Labour, Government of India) calling for various details relating to third respondent i.e. Mr. A. B. Lute, who was employed as an Enforcement Officer in Sub-Regional Office, Akola. As many as 15 queries were made to which the Regional Provident Fund Commissioner, Nagpur gave the following reply on 15-9-2008:

> "As to Point No.1: Copy of appointment order of Shri A.B. Lute, is in 3 pages. You have sought the details of salary in respect of Shri A.B. Lute, which relates to personal information the disclosures of which has no relationship to any public activity or interest, it would cause unwarranted invasion of the privacy of individual hence denied as per the RTI provision under Section 8(1)(j) of the Act.
>
> As to Point No.2: Copy of order of granting Enforcement Officer Promotion to Shri A.B. Lute, is in 3 Number. Details of salary to the post along with statutory and other deductions of Mr. Lute is denied to provide as per RTI provisions under Section 8(1)(j) for the reasons mentioned above.
>
> As to Point NO.3: All the transfer orders of Shri A.B. Lute, are in 13 Numbers. Salary details is rejected as per the provision under Section 8(1)(j) for the reason mentioned above.

As to Point No.4: The copies of memo, show cause notice, censure issued to Mr. Lute, are not being provided on the ground that it would cause unwarranted invasion of the privacy of the individual and has no relationship to any public activity or interest. Please see RTI provision under Section 8(1)(j).

As to Point No.5: Copy of EPF (Staff & Conditions) Rules 1962 is in 60 pages.

As to Point No.6: Copy of return of assets and liabilities in respect of Mr. Lute cannot be provided as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1. As to Point No.7: Details of investment and other related details are rejected as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.

As to Point No.8: Copy of report of item wise and value wise details of gifts accepted by Mr. Lute, is rejected as per the provisions of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.

As to Point No.9: Copy of details of movable, immovable properties of Mr. Lute, the request to provide the same is rejected as per the RTI Provisions under Section 8(1)(j).

As to Point No.10: Mr. Lute is not claiming for TA/DA for attending the criminal case pending at JMFC, Akola.

As to Point No.11: Copy of Notification is in 2 numbers.

As to Point No.12: Copy of certified true copy of charge sheet issued to Mr. Lute - The matter pertains with head Office, Mumbai. Your application is being forwarded to Head Office, Mumbai as per Section 6(3) of the RTI Act, 2005.

As to Point No.13: Certified True copy of complete enquiry proceedings initiated against Mr. Lute - It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest. Please see RTI provisions under Section 8(1)(j).

As to Point No.14: It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide.

As to Point No.15: Certified true copy of second show cause notice - It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide."

Aggrieved by the said order, the petitioner approached the Central Information Commission (CIC). The CIC directed to disclose only the posting details and to provide copies of the posting orders. The CIC held that the other queries did not qualify for disclosure due to the provisions of section 8(1)(j) of the RTI Act.

Aggrieved by the said order, the petitioner filed a writ petition No.4221 of 2009 and the court dismissed the same *vide* order dated 16-2-2010. The matter was taken up by way of Letters Patent Appeal No. 358 of 2011 and the same was dismissed *vide* order dated 21-12-2011. Against the said order the special leave petition was filed before the Supreme Court.

Before the Supreme Court : Reasons and Decision

(i) The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. The disclosure of such information would cause unwarranted invasion of privacy of that individual.

(ii) If the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

(iii) The Court held that the details disclosed by a person in his income tax returns are "personal information" which stands exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

(iv) The Court further held that the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act as there was no *bona fide* public interest.

(v) The petitioner has not made a *bona fide* public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

Conclusion

Information denied are similar to information given in the Income Tax return and Commission in ***Appeal No.CIC/AT/A/2008/000628 (Milap Choraria vs. Central Board of Direct Taxes)*** also decided that Income Tax returns are personal information and exempt under Section 8(1)(j) of the RTI Act, 2005. Kindly note that various High Courts had decided that Income Tax return of certain persons are Public Information like charitable organisations, Government institution etc.

Information/detail of Politician/Government servant is on different footing than the private individual. Supreme Court of India and Government are making information public related to Politician / Government servant in the Public interest to curb corruption and increase accountability.

It should be obvious that if a citizen have a right to know about the assets of those who want to be Public servants (stand for elections) then their right to get information about those who are Public servants can not be lesser.

The Supreme Court of India had published assets detail of all its Judges on its website. Similarly assets detail of Class 1 officers are given on the Website of Central Government.

When quoting section 8(1)(j) the Court has not mentioned the important proviso to this section which stipulates, "Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person." The Supreme Court did not mention this is its judgement when quoting this section and has not considered it. If this proviso was quoted the Court would have had to record that in its opinion the said information would be denied to parliament. Hence the decision in this case may be ***per incuriam*** and there does not appear to any

'ratio decidendi'. Hence this judgment cannot be a precedent. Unfortunately, it has resulted in most information about public officials being denied and consequently the arbitrary favours to public servants and their corruption has been obscured from the eyes of the public.

Interest on Refund of TDS – Sec. 244 A

Union of India vs. Tata Chemicals Ltd. 363 ITR 658

Introduction

Under Chapter XVII - B of the Income-tax Act, 1961 (the ITA), the assessees are required to deduct tax at source (TDS) on different payments as per the specified rates. The credit of TDS is available to deductee. However, it may happen that the deductors may deduct excess TDS or as the payment of TDS are made online it may happen that the deductors have excess paid the TDS. In such cases the deductors are entitled to receive refund of such TDS by following the prescribed procedure.

Circular No. 790, dated April 20, 2000 was issued for the purposes of granting refund to deductors who deducted and deposited TDS on payments made to non-resident parties and, subsequently, the contract was cancelled and no income accrued to the non-resident. In respect of interest on refunded amount the circular provides as under:

"6. Refund to the person making payment under section 195 is being allowed as income does not accrue to the non-resident. The amount paid into the Government account in such cases, is no longer 'tax'. In view of this, no interest under section 244A is admissible on refunds to be granted in accordance with this Circular or on the refunds already granted in accordance with Circular No. 769."

As per this circular no interest u/s 244A was to be granted on refunds to the deductor of TDS arising due to excess deduction/payment of TDS.

Facts

The company ('the assessee') was engaged in the business of manufacture of nitrogenous fertilizer. It commissioned a plant and for this purpose it sought assistance from HaldorTopsoe, a company based in Denmark. The Danish company raised an invoice for service charges for services of technicians and reimbursements. The assessee applied for certificate under section 195(2) of the ITA before the AO for determination of percentage of TDS to be deducted. The AO directed the assessee to deduct TDS at 20%. The same was deposited with the Government. The company filed an appeal before the CIT(A) against the order under section 195(2). The CIT(A) held that no TDS was to be deducted on amount of reimbursement of expenses and directed to refund the tax deducted and deposited on account of reimbursement.

The assessee claimed refund of TDS along with interest under section 244A(1). The AO while granting refund declined to grant interest on the ground that refund of TDS arose from CBDT's Circular Nos. 769 and 790 and not under any statutory provisions.

Since the Assessing Officer had declined to grant the interest on the amount so refunded the assessee filed an appeal before the CIT(A) who also held that no interest could be granted under section 244A, since the refund did not arise from any order passed under the ITA but from Circular Nos. 769 and 790 which specifically provided that no interest under section 244A was payable to deductor.

The assessee filed an appeal before the ITAT. The ITAT held that tax was paid by the

assessee pursuant to order under section 195(2) of the ITA and refund was granted under section 240. Therefore, provisions of section 244A(1)(b) were attracted and, hence, the company was entitled to refund.

The department filed an appeal before the High Court which refused to accept the appeal. Accordingly, the department filed an appeal before the Supreme Court.

Dismissing the appeal, the Court held as follows:

(i) The provisions of law are to be interpreted as per their natural and ordinary sense and according to their grammatical meaning, unless such interpretation leads to absurdity or unless the interpretation is contrary to the object of law.The language of section 244A is clear and unambiguous. It clearly provides for cases in which interest on refund is to be granted as specified in clauses (a) and (b) of sub-section (1). Clause (a) provides for interest in case where refund arises out of tax paid under section 115WJ (fringe benefit tax), section 206C (TCS), tax paid as advance tax and TDS. Clause (b) provides for refund in 'any other case' which is not covered by clause (a). Section 244A grants substantive right of refund to an assessee. The section is not procedural.

(ii) 'Tax refund' is the refund of taxes when the tax liability is less than tax paid. In the present facts the amount paid by the deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When it was refunded it had to carry interest.

(iii) Interest is the compensation for use and retention of money collected by the department illegally. When the collection is illegal, the department is under an obligation to refund such amount with interest as they have used and enjoyed the money detained.

(iv) When the department itself had understood that the intent behind the introduction of section 244A was that an assessee was entitled to interest on amount refunded, there was no reason to restrict the same to the assessee without extending the similar benefit to a deductor who had deducted TDS and deposited the same with the Government. In the present case since the tax paid by the deductor was more and department was refunding the excess amount to it, interest was required to be paid on such refund. Refund due and payable to assessee was debt owed and payable by the revenue. In the absence of an express statutory provision for payment of interest on refund of excess amount of TDS, the revenue could not shrug off its apparent obligation to reimburse the deductors lawful monies with the accrued interest for the period of undue retention of such monies.

(v) On the issue of date from which the interest was to be computed, the Court held that the particular case did not fall in clause (a) of section 244A(1), as the refund was neither on account of advance tax/TDS/TCS and, accordingly, interest could not be computed from April 1 of the assessment year. Further, as the case did not fall in clause (b) also, as the payment of the amount was not made pursuant to demand notice under section 156. Accordingly, as the opening words in section 244A(1) clause (b)

referred specifically to 'any other case', the company was entitled to receive interest from date of payment of tax. The Court directed the department to refund the amount with interest to be computed from date of payment of tax.

Conclusion

Circular No. 7/2007, dated October 23,2007 was issued in supersession of Circular No. 790 mentioned above. Circular No. 7/2007, dated October 23, 2007 which also provided for refund of TDS to deductors on payments made to non-residents. The said circular also provided that no interest under section 244A was to be granted on the amounts refunded to deductors.

The refund of TDS to deductors on payments made to residents (cases of TDS under sections 192 to 194LA) for the periods prior to March 31, 2010 was covered by Circular No. 2/2011, dated April 27, 2011. The said circular does not provide whether or not the deductors would be entitled to interest under section 244A on the amounts refunded.

Form 26B is required to be filed by the deductors for claiming refund of sum paid under chapter XVII – B of the Income tax Act. The said form requires the deductor to furnish the information about the amount of refund being claimed in addition to other specified details. But the form does not allow the assessee to provide a computation of claim of interest under section 244A.

In view of the observation of the Supreme Court that the deductors are entitled to interest under section 244A on the refund of TDS (since the money has been received and used by the Government and is in the nature of tax refund), they may make a claim of interest under section 244A before the department to be entitled to receive the same. As per the observations of the Supreme Court the interest on refund would be computed from the date of payment of TDS.

Any tax deducted is considered as advance tax in the hands of an assessee. Hence while computing interest u/s 234 of the Income tax Act for non payment or short payment of advance tax, TDS amount is first reduced from the total tax liability and then on the balance considering the amount of advance tax paid the interest is computed. Also when the assessee/deductee claims refund of the excess TDS deducted then the tax liability, he is entitiled for the interest on the said refund. If the same amount i.e. TDS excess deducted is claimed as refund by the deductor then also it should be considered as a tax refund and interest thereon should be granted.

Deduction - Sec. 80 I A - Manufacturing

CIT vs. Yashasvi Yarn Ltd 350 ITR 208

Introduction

Deduction under section 80HH, 80I and 80IA etc can be claimed by the assessee if it is carrying out a manufacturing activity. Thus, the issue arose in a number of cases as to which activity can be considered as "manufacture". Initially the word manufacture was not defined in the Income tax Act. The definition of "manufacture" was incorporated by the Finance (No. 2) Act, 2009. The section 2(29BA) of the Income tax Act defines the word "manufacture". The same is reproduced as under:

"manufacture", with its grammatical variations, means a change in a non-living physical object or article or thing,—

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;

Facts

Partially Oriented Yarn (POY) was not fit for being used in the manufacture of a fabric. Thus, POY was to be converted into texturized yarn which in turn was used for the manufacture of fabric. Thus, the question arose whether twisting or texturizing of POY amounts to 'manufacture' in terms of section 80-IA of the Income-tax Act?

Before the Supreme Court : Reasons and decision

(i) The Supreme Court relied on the decision of *CIT vs. Emptee Poly-Yarn (P.) Ltd.(2010) 188 Taxman 188.*

(ii) POY is a semi-finished yarn not capable of being put in warp or weft. POY cannot be used directly to manufacture fabric. According to the experts, crimps, bulkiness, etc., are introduced by a process called as thermo-mechanical process into POY which converts POY into a texturised yarn. If one examines this thermo- mechanical process in details, it becomes clear that texturising and twisting of yarn constitutes 'manufacture' in the context of conversion of POY into texturised yarn.

(iii) The thermo-mechanical process also ought to be about a structural change in the yarn itself, which is one of the important tests to be seen while judging whether the process is manufacture or not. The structure, the character, the use and the name of product are the ***indicia*** to be taken into account while deciding the question whether the process is a manufacture or not.

(iv) However, it cannot be said that texturising or twisting ***per se*** in every matter amounts to manufacture. It is the thermo-mechanical process embedded in twisting and texturising when applied to a partially oriented yarn which makes the process as a manufacture.

Conclusion

There should be a raw material or input which gets converted into a final product. By the execution of the process a new marketable product should come into existence. The process of bottling LPC gas into cylinder was considered as manufacturing activity in the recent decision of Mumbai High Court in ***CIT vs. Hindustan Petroleum Corporation Ltd. 221 Taxman 185 (2014).*** Similarly conversion of marble blocks by sawing them into slabs and tiles and polishing were considered as 'manufacture or production of article or thing' under section 80-IA by the Supreme Court in *ITO vs. Arihant Tiles & Marbles (P.) Ltd. 186 Taxman 439 (2010).* Thus, to decide if a particular activity is a manufacture, one needs to examine the process applicable to the product and the end result. Thus whether a process amounts to manufacture would depend on the facts and circumstances of each case.

S. N. Inamdar, *Advocate*

Constitutional Validity – NTT Act, 2005

Madras Bar Association vs. Union of India 368 ITR 42 (S)/(2014)

A five-member Constitution Bench of the Supreme Court of India delivered a judgment reporting in 368 ITR page 42 (SC) on 25th September, 2014 dealing with the Constitutional validity of the National Tax Tribunal Act, 2005. The judgment runs into more than 250 pages and considers more than 190 cases.

The basic question posed by the Supreme Court was whether it violates the 'basic structure' of the Constitution of India? In this context, it considered two questions.

1. Whether the National Tax Tribunal Act, 2005, is ***ultra vires*** the powers of the parliament to legislate?

2. Even if it is within its power, whether the provisions of the Act, violate the basic structure of the Constitution mainly on the ground that it ousts the jurisdiction of the High Court's power of 'judicial review' or to decide substantial question of law?

The provisions of the Constitution of India conferring power on the Parliament to set up Tribunals and decide its powers and functions may be first noticed.

Art-50 – mandates that the State shall take steps to separate the judiciary from the executive in the public services of the State.

Art. 246- says that

(1) Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (Union List)

(2) Notwithstanding anything in cl.(3) Parliament and subject to clause (1), the Legislature of any State also have power to make laws with respect to any of the matters enumerated in List III in Seventh Schedule (Concurrent List)

(3) ……………………..

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a state), notwithstanding that such matter is a matter enumerated in the State List.

The Article was pressed into service to contend that Parliament had unqualified and absolute jurisdiction, power and authority to enact laws in respect of matters enumerated in Lists I & III of the Constitution.

Art. 323B Tribunal for other matters –

(1) The appropriate Legislature may be law, provide for the adjudication or trial by

Tribunals of any disputes, complaints or offences with respect to all or any of the matters specified in cl.(2) with respect to which it has power to make laws.

(2) The matters referred to in clause (1) are the following namely.

(a) levy, assessment, collection and enforcement of any tax, [items (b) to (j), not being relevant to the present purposes are not reproduced here]

(3) A law made under clause (1) may-

(a) provide for the establishment of a hierarchy of Tribunals.

(b) specify the jurisdiction power (including the power to punish for contempt) and authority which may be exercised by each of the said Tribunals.

(c) provide for the procedure (including provision as to limitation and rules of evidence) to be followed by the said Tribunals.

(d) exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 with respect to all or any of the matters following within the jurisdiction said Tribunals.

Oxford Dictionary defines a 'Tribunal' as a Board appointed to adjudicate in same matter, court of justice seat or bench for judges. Thus a Tribunal is not a short-cut to justice and it remains a court of justice.

The Supreme Court drew heavily upon the Privy Council judgment in the case of ***Hinds vs. The Queen / Director of Public Prosecutions vs. Jackson (1976)***

1A11E.R.353, traced the judicial history of Tribunals with reference to Westminster model of the Constitution and various reports of Commissions and held as under:

By virtue of convention pertaining to Constitution styled on the Westminster model, in every new Constitution which makes separate provisions for the Legislature, the Executive and the Judiciary, it is acknowledged that the basic principle of "separation of powers" would apply. The power of discharging judicial functions which was exercised by members of the higher judiciary at the time when the Constitution came into force should ordinarily remain with the court which exercised the jurisdiction at the time of promulgation of the new Constitution. But while the judicial power can be allowed to be exercised by an analogous or similar court or Tribunal, it will have to be ensured that the appointment and security of tenure of judges of that court, would be the same as of the court sought to be substituted. A breach of this Constitutional convention cannot be excused by good intention (by which the legislative power had been exercised to enact a given law).

Parliament is competent to amend the Constitution and substitute in place of High Court, another alternative institutional mechanism (court or Tribunal). Appellate power vested in the High Court under different statutory previsions can definitely be transferred from the High Court to other court or Tribunal, subject to the satisfaction of the norms declared by the Supreme Court. The Jurisdiction transferred by (Sic:to) the National Tax Tribunal Act, 2005 was with regard to specified subject under tax related statutes. That would be permissible. The power of judicial review vested in the High Court under Art. 226 and 227 of the Constitution has remained intact. The National Tax Tribunal would be deemed to be discharging a Supplementary role, rather than a substitutional role.

Thus on the first question the Supreme Court held that the Parliament had legislative power to set-up NTT and the 2005 Act, does not violate the "basic structure" of the Constitution for that reason.

While vesting jurisdiction in an alternative court or Tribunal, it is imperative for the Legislature

to ensure that redress should be available with the same convenience and expediency as prior to the introduction of the newly created court or Tribunal.

However, S.C held that the mandate incorporated in s.5(2) of the 2005 Act to the effect that sittings of NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficacious and thus be unacceptable in law and hence s.5(2) is in clear breach of the law declared by the Court.

It is felt that the Supreme Court also should have held that even if different Benches of NTT were formed all over India, it will also not serve the purpose of a unified Tribunal, if there are conflicting views expressed by different Benches. It would confound the confusion.

The Supreme Court noted that the Central Govt. would be a stake holder in each and every appeal before the NTT (as in the case of ITAT). Therefore vesting the power of determining the jurisdiction and the postings of Members of NTT with the Central Govt. would undermine the independence and fairness of Chairperson and the members of NTT. Therefore S.C. held that sub-sections (2)(3)(4) and (5) of S.5 of the NTT Act, 2005 are unconstitutional.

It may be added that the defect is not curable even if the above administrative powers were entrusted to an Independent Panel appointed by the Central Govt.

Further, the NTT will be required to determine "substantial question of law" and

an individual, howsoever, well versed in accounts, would not be able to discharge such functions. Even technical members who may not even possess the qualification of law and may have no experience at all in the practice of law, would not be able to deal with and decide the substantial question of law "for which alone NTT has been constituted". Thus it held that appointment of Accountant Member and Technical Member to the NTT would be in clear violation of the Constitutional convention recognized by courts the world over. S.6(2)(b) of the 2005 Act, therefore, is unconstitutional.

For more or less the same reasons, the Supreme Court also held that s. 5, 6, 7, 8 and 13 of the NTT Act are illegal and unconstitutional.

Justice R. F Nariman delivered a separate but concurring judgment.

He stated that it is emphatically the province of the Superior judiciary to decide substantial questions of law, not only for the case at hand, but also in order to guide subordinate courts and Tribunals in future. Indeed, one of the objects for enacting the NTT Act, is that the NTT can lay down the law for the whole country which then would bind all other authorities and Tribunal's. This is a direct encroachment on the High Court's Power under Art. 227 to decide substantial questions of law which would bind all tribunals. High Court and Supreme alone can decide the substantial question of law and this power cannot be vested in any other body as a core Constitutional value would be impaired thereby. The NTT is unconstitutional being the ultimate encroachment on the exclusive domain of the Superior Courts of record in India.

Conclusion

It remains to be seen how the Central Govt. reacts to this judgment. Even if parliament will be able to remove some of the defects and lacuna pointed out by the Supreme Court, it seems difficult that the core issue of encroachment on the exclusive powers of the High Court can be rectified easily. It is only to be hoped that the NTT which created an unnecessary flutter amongst the Tax professional and tax payer is given a decent burial. It was an ill. Conceived premature and weak belong and no legislative Oxygen or surgery may be attempted to revive or replace it. Let it rest in peace.
Amen !

Nimesh Chothani, *Advocate*

Interest on retained assets u/s 132 B

Chironjilal Sharma (HUF) vs. Union of India (2013) 360 ITR 237 (SC)

Introduction

Section 132B deals with the application of assets seized under section 132 or requisitioned under section 132A. The assets retained under sub-section (5) of section 132 shall be appropriated towards the existing tax liability or liability determined on regular assessment, reassessment referred to in section 132B(1)(i). The tax liability includes the interest and penalties under the Act. The assets consist of money shall be applied towards the tax liability and for any further liability; the tax recovery officer may sell such assets in the manner laid down in the Third Schedule. Any assets or proceeds thereof which remain after the liabilities are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

The section 132B(4)(a) provides that the Central Government shall pay simple interest on any money retained or any money received on proceeds of sale of such assets which exceeds the aggregate amount of tax liability determined under section 132B(i) of the Act. Such interest shall run from the date immediately following the expiry of six months from the date of order under sections 132(5) to the date of regular assessment or reassessment referred to in section 132B(1)(i).

Facts

In the present case there was search conducted at the house of the appellant on 31-1-1990. A cash amount of ` 2,35,000 found and recovered from the appellant. The Assessing Officer passed an order under section 132(5) on 31-5-1990, calculated the tax liability and the cash seized in the search was appropriated. However, the order of Assessing Officer was finally set aside by the Hon'ble Tribunal on 20-2-2004 and consequently the appellant has been refunded the amount ` 2,35,000 along with interest from 4-3-1994 as the last of the regular assessment done until amount refunded. The assessee claims interest under section 132B(4)(b) of the Act from 1-12-1990 (the order under Section 132(5) of the Act having been passed on 31-5-1990, six months expired on 30-11-1990), which the department denied the same on the ground that the refund of excess amount governed by section 240 of the Act and section 132B(4)(b) of the Act has no application.

Decision

Section 132B(4)(b) of the Act clearly shows that where the aggregate of the amounts retained under section 132 of the Act exceeds the amount required to meet the liability under section 132B(1)(i), the department liable to pay simple interest at 15% on the expiry of six months from the date of the order under section 132(5) of the Act to the date of the assessment or re-assessment or the last of such assessment or reassessment, as the case may be. The tax liability on the date of regular assessment done by the Assessing Officer was higher than the cash seized under section 132 of the Act and cash seized appropriated towards the tax liability. But the fact that the order of the Assessing Officer was over-turned by the Tribunal finally on 4-1-2004. As a matter of fact the interest post-assessment period i.e. from 4-3-1994 until refund was granted already paid to the assessee. The department denied the same on the ground that the refund of excess amount governed by section 240 of the Act and section 132B(4)(b) of the Act has no application. The Supreme Court of India held that the section 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and Section 240 or for that matter 244(A). The section 132B(4)(b) deals with the matter with pre-assessment period in the matter of search and seizure and the later (section 240 or for that matter 244(A)) deals with post assessment period as per the order in appeal. The assessee is entitled for interest for the period from 1-12-1990 to 4-3-1994.

Conclusion

Where there is provision for any interest to the assessee under specific provision of the Act that should not be merged with any other provision where both the provisions are for the separate purpose. Section 132(5) omitted w.e.f. 1-6-2002 and section 132B substituted with the new provisions. Under new provisions the assessee is entitled for simple interest at the rate of one-half per cent for every month or part of a month. The period of interest shall run from the date immediately following expiry of the period of 120 days from the date on which the last of the authorisation for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A of the Act.

Constitutional Validity of Section 276 CC

Sasi Enterprises vs. ACIT (2014) 361 ITR 163 (SC)

Introduction

The Supreme Court of India, in above decision declared that filing of the Income tax return is a statutory obligation and non-filing is an action liable to prosecution. Section 276CC provides that if any person fails to furnish the return of income which he is required to furnish under sections 139(1) or 142(1) or 148 or 153A then he shall be liable to prosecuted.

It is provided that in following situation, the person shall not be liable to prosecution:

(i) If any person fails to furnish the above return but if the same is furnished before the expiry of assessment years, or

(ii) The tax payable on total income on regular assessment, after deducting the advance tax paid and tax deducted at source (TDS) does not exceed ` 3,000.

In criminal law, it is viewed as one of the necessary elements of crimes. The standard common law test of criminal liability is usually expressed in the Latin phrase, '***actus non facitreum nisi mens sit rea***' which means that the act is not culpable unless the mind is guilty. As a general rule, criminal liability does not attach to a person who merely acted with the absence of mental fault. Thus, onus is always on the prosecution to prove ***mens rea*** on the part of the accused to charge him with any offence.

According to section 278E, it provides for statutory presumption of existence of culpable mental state on the part of accused. The constitutional validity of the said section was challenged before the Hon'ble Madras High Court ***(Selvi J. Jayalaitha vs. Union of India (169 Taxman 408)).*** The case of the petitioners was that the expression 'wilfully' occurring in section 276CC indicates the ***mens rea*** element and this being the basis for the prosecution, the prosecution was bound to prove the existence of ***mens rea*** on the part of the accused beyond a reasonable doubt; however, by introduction of section 278E, which has given rise to a presumption as to the culpable mental state of the accused, the entire basis of accusatorial jurisprudence, as accepted and recognised in India, has been shifted. It was held that now assessee requires to prove that there were circumstances which prevented him from filing return beyond reasonable doubts.

Facts

M/s. Sasi Enterprises, the partnership firm, with J. Jayalalitha and N. Sasikala as partners, did the business through two units, namely, M/s. Fax Universal and M/s. J. S. Plan Printers, which, ***inter alia***, included the business in running all kinds of motor cars, dealing in vehicles and goods, etc. The firm, did not file any returns for the assessment years 1991-92 and 1992-93. J. Jayalalitha and N. Sasikala filed their individual returns for the assessment years 1991-92 and 1992-93, though belatedly on 20th November, 1994, and 23rd February, 1994, respectively. In those returns it was mentioned that the accounts of the firm had not been finalised and no returns of the firm had been filed. J. Jayalalitha and N. Sasikala did not file returns for the assessment year 1993-94. Even the returns were not filed within the time prescribed against notices issued under sections 142(1) and 148. The assessments were completed as best judgment assessment under section 144. The appeals were pending before the Hon'ble Tribunals.

The Assistant Commissioner of Income-tax filed a complaint before the Additional Chief Metropolitan Magistrate (Egmore), Chennai, for the wilful and deliberate failure to file returns and hence committed offences punishable under section 276CC of the Act. These complaints were filed after getting sanction from Jurisdictional Commissioner of Income-tax under section 279(1) of the Act.

The appellant filed two discharge petitions under section 245(2) Cr. P.C., which were dismissed by the Chief Metropolitan Magistrate ***vide*** order dated June, 14, 2006.

The appellant filed preferred appeal against the above order before High Court of Madras which was dismissed by the High Court ***vide*** its common order dated December 2, 2006.

Before the Supreme Court : Reasons and Decision

Issues framed before the Court

(i) Whether an assessee had the liability/duty to file return under section 139(1) of the Act within the due date prescribed therein?

(ii) What is effect of the best judgment assessment under section 144 of the Act and will it nullify the liability of the assessee to file its return under Section 139(1) of the Act?

(iii) Whether non-filing of return under section 139(1) of the Act, as well as non-compliance of the time prescribed under sections 142 or 148 of the Act are grounds for invocation of the provisions of section 276CC of the Act?

(iv) Whether the pendency of the appellate proceedings relating to assessment or non-attaining finality of the assessment proceedings is a bar in initiating prosecution proceedings under section 276CC due to non-filing returns?

(v) What is the scope of section 278E of the Act, and at what stage the presumption can be drawn by the Court?

Decision

The Income-tax Act had stipulated both the penalty under section 271(1)(a) and prosecution under Section 276CC, the former depriving taxes to the exchequer and latter for the offence/ interdiction committed. The Taxation Law (Amendment) Act, 1989, penalty provision under sections 271(1)(a) deleted and compulsory interest under section 234A of the Act introduced. But the legislature has never waived or relaxed its prosecuting provisions under section 276CC of the Act for the infraction or non-furnishing the return of income.

The Constitutional validity of section 276CC, was upheld by the Karnataka High Court in ***Sonarome Chemicals Pvt. Ltd. and Others vs. Union of India and others (2000) 242 ITR 39 (Kar.)*** holding that it violate Articles 14 or 21 of the Constitution. The section punishes the person who "wilfully fails to furnish the return of income in time". The explanation of wilful default, as observed by Wilber Force J. in ***Wellington vs. Reynold (1962) 40 TC 209*** was "some deliberate or intentional failure to do what the tax-payer ought to have done, knowing that to omit to do so was wrong. The assessee bound to file the return under section 139(1) of the Act on or before the due date.

Section 276CC applied to situations where an assessee failed to file return of income as required under section 139 or section 142(1)(i) or section 148 of the Act. The proviso to section 276CC gives some relief to some genuine assessees who either file the returns of income belatedly but within the end of the assessment year or those who paid substantial amounts of their tax dues by advance tax or tax deducted as source as determined by regular assessment from the rigor of the prosecution under section 276CC of the Act. The relief mentioned herein is only available to voluntary filing of return as required under 139(1) and not under section 142(1)(i) or section 148 of the Act.

Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for second part of the offence for determination of the sentence of the offence. The declaration or statement made in the individual return by partners in the individual return by partners that the accounts of firm are not finalised, hence no return has been filed by the firm, did not absolve the firm in filing the 'statutory return' under section 139(1) of the Act. The firm independently required to file the return and merely because there has been a best judgment assessment under section 144 would not nullify the liability of the firm to file the return as per section 139(1) of the Act.

Section 278E deals with the presumption as to culpable mental state. The Court in a prosecution of offence, like section 276CC has to presume the existence of ***mens rea*** and it was for the accused to prove the contrary and that too beyond reasonable doubt. Resultantly, the appellants have to prove the circumstances which prevented them from filing of returns as per section 139(1) or in response to notices under Section 142 and 148 of the Act.

Conclusion

In non-filing of return, the Supreme Court of India reiterated the law of the land on initiations of prosecution proceedings under section 276CC of the Act. The penalty for non-filing of return under Section 139 or Section 142(1)(i) or 148 is very stern. No relaxation of time for furnishing return within prescribe time under Section 142(1)(i) or Section 148 is provided. The prosecution proceeding is simultaneous and there is no need of finality of assessment except for determination of the sentence of the offence.

Natasha Mangat, Advocate

Expenditure - Technical know-how – sec. 35 AB

Drilcos (India) Pvt. Ltd. vs. Commissioner of Income-tax (2012) 348 ITR 382 (SC)

Introduction

Section 37 of the Income-tax Act is a general provision allowing for expenditure (other than those provided for from sections 30 to 36, capital expenditure or personal expenses) expended wholly and exclusively for the purpose of business. For the specific purpose of expenditure on 'know-how', Finance Act, 1985 inserted the special provision of section 35AB to allow deduction, spread over six years, of a lump-sum consideration paid for acquiring know-how for use for the purpose of business. This section was applicable till 31st March, 1998 when capital expenditure on know-how was included as a depreciable asset u/s. 32. The explanation to section 35AB clearly and specifically defines "know-how" to mean any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of mine, oil-well or other sources of natural deposits or the winning of access thereto.

Facts

In the present case relevant assessment year is 1993-94. The assessee manufactures equipment which are used for mining. It entered into "Licence and Technical Assistance" agreement with an American company, which was required to transfer technical know-how to the assessee for consideration of US $2,25,000/- to be paid in three instalments. The first instalment of ` 17,49,889/- was paid on 29th November, 1990. Subsequently, dispute arose between the contracting parties and the know-how was not transferred by the American company. The assessee claimed that as the technical know-how was not received, the amount of ` 17,49,889/- being of the nature of revenue expenditure, was deductible u/s. 37(1). The Assessing Officer and CIT(A) rejected this claim of the assessee but the Tribunal allowed it. The assessee argued that though at the time of payment, it was intended by the parties that the assessee would receive know-how, subsequent events showed that know-how in fact was not made available to the assessee in the manner required, and consequently, no use could be made of the little information that was given. As per the department, after introduction of section 35AB in the Act, when the object for which the expenditure incurred is know-how, the same is governed only by

that section, and deduction is allowable only in accordance therewith and it is not permissible to fall back on section 37.

Before the High Court

The short question of law which was placed before the High Court was whether the amount of ` 17,49,889/- could be claimed by the assessee as a deduction under section 37 of the Income-tax Act, 1961? The High Court relied on its judgment in the case of ***CIT vs. Tamil Nadu Chemical Products Ltd. (2003) 259 ITR 582 (Mad.)***. It was held therein that "irrespective of whether it is capital or revenue expenditure", the expenditure incurred for the purpose of acquiring know-how was required to be treated only in accordance with section 35AB and the deduction that was allowable was one-sixth of the amount paid as lump-sum consideration for acquiring the know-how. "The time with reference to which the assessee's entitlement is to be judged is the previous year in which the payment was made and not the subsequent year in which the assessee's project was either abandoned or the know-how became useless by reason of the non-availability of other inputs required to make the project success."

The High Court held that in this case the assessee was clearly not entitled to have the amount paid by it to its collaborator for acquiring know-how as an item of revenue expenditure allowable as a deduction under section 37. That payment was required to be considered only under section 35AB and the deduction that was allowable in the relevant assessment year was one-sixth of the amount as provided in that section.

Before the Supreme Court

Dismissing the appeal of the assessee, the court held that:

i) If one carefully analyses section 35AB of the Act, it is clear that prior to 1st April, 1985, there was some doubt as to whether such expenditure could fall under section 37 of the Act. To remove that doubt, section 35AB of the Act stood inserted. In sub-section (1) of section 35AB of the Act, there is a concept of amortisation of expenditure.

ii) The fact that the know-how was not actually transferred is not relevant. While interpreting section 35AB of the Act, the court emphasised on the word "for" in section 35AB of the Act, which is a preposition in English grammar. Section 35AB of the Act says that the expenditure should have been incurred for the purposes of the business of the assessee. In the present case, the Technical Assistance Agreement was entered into between the assessee and the American company for acquiring know-how which was, in turn, to be used in the business of the assessee. Hence the conditions of section 35AB were satisfied.

iii) Once section 35AB of the Act comes into play, then section 37 of the Act has no application.

Conclusion

With respect to expenditure on 'know-how' acquired for the purpose of business, between the period 1st April 1985 and 1st April 1998, only section 35AB is applicable. The only precondition to the application of this section is that there must be a lump-sum consideration for acquiring the know-how. The position will remain the same whether the expenditure is revenue or capital in nature – Tamil Nadu Chemical Products Ltd. (Supra.). Once the two requirements of the section i.e. 1) Expenditure on know-how and 2) for the purpose of business are fulfilled, subsequent events will not harm the applicability of the section and amortisation of the expenditure. The Supreme Court has made it ample clear that the fact that the know-how was in fact not transferred or not utilised by the assessee will not take way from the fact that section 35AB is applicable on the transaction at the time it was entered.

Income - contingent deposit

Sundaram Finance Ltd. vs. ACIT (2012) 349 ITR 356 (SC)

Introduction

Deposits collected by the assessee for meeting disputed sales tax liability with the idea to refund the same in the event the sales tax liability does not fall due has been held by the Supreme Court to form part of the business turnover. Hence, it was treated as income of the assessee under section 28 of the Income Tax Act for the reason that the same was not kept in separate interest bearing bank account. Hon'ble Madras High Court had observed in the case of *CIT vs. Southern Explosives (P) Ltd. (2000) 242 ITR 107 (Mad.)* that 'the true character of a receipt must be judged with reference to the reasons for collection and liability for meeting which the collection is made. When the liability is a statutory liability, which the assessee was required to meet and for meeting which it was by the statutes or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt.'

Facts

Assessee is Non-banking Finance Company (NBFC) engaged in the business of hire-purchase financing, equipment leasing and allied activities. Relevant assessment year is 1998-99. The assessee collected a sum of ` 36.47 lakhs as "contingent deposits" from its lease/hire purchase customers with a view to protect itself from disputed sales tax liability. The amounts were collected on ***ad hoc*** basis. The assessee did not offer such sums to tax as income on the ground that such sums were collected as contingent deposits and were refundable depending on the outcome of its pending appeals against the orders passed by the Sales Tax Authorities for Assessment Years 1997-1998 and 2000-01 before High Court and other authorities. According to the assessee the said sum is therefore an imprest with a liability to refund, that the said sum bears the character of "deposit" and hence not taxable in the year of receipt but is taxable only in the year in which the liability to refund the sales tax ceases (in case the assessee fails in the pending sales tax appeals). The Department argued that merely because the sum was collected in the name of deposit, it will not change the character of the receipt. The amount was collected for the purpose of meeting its statutory liability towards payment of sales tax, therefore it would form part of trading receipt and has to be included in its total income.

Before the High Court

The substantial question of law raised by the assessee before the High Court was as to whether the Tribunal was right in treating the amount of ` 36.47 lakhs collected as contingent deposit as income of the appellant. The High Court dismissed the appeal on the ground that the question of law was covered against the assessee by the decision of the same Court in the case of ***CIT vs. Sakthi Finance Ltd. (2007) 291 ITR 83 (Mad.), K.C.P Ltd. vs. CIT (2000) 245 ITR 421 (SC)*** and ***CIT vs. Southern Explosives Co. (supra.)***

Before the Supreme Court

Considering the facts and circumstances of this particular case, the Apex Court observed as follows:

i) It is now a well-settled law that in determining whether a receipt is liable to be taxed, the taxing authority cannot ignore the legal character of the transaction which is the source of the receipt. The taxing authority is bound to determine the true legal character of the transaction;

ii) Further applying the substance over form test, the Court was not satisfied that in the facts and circumstance of this case the deposits were actually contingent. Emphasising on the fact that the sum collected as contingent deposit was not

kept in a separate interest bearing bank account but formed part of the business turnover.

iii) The said amount was collected from customers to meet its liability towards payment of sales tax.

iv) The court distinguished the case of *CIT vs. Bazpur Co-operative Sugar Factory Ltd. (1988) 3 SCC 533* which concerned Loss Equalisation Fund created by co-operative society carrying on business of manufacture and sale of sugar on the principle of mutuality. Such principle does not apply on the present case.

Conclusion

The true character of a collection from customers to meet a statutory liability is a trading receipt. Sales tax is a statutory liability. The Supreme court went one step further by applying the substance over form test to uncovered the intention of the assessee from the fact that the amounts were not kept separately in interest bearing bank accounts and hence formed part of its business turnover. Two independent conditions/circumstances are to be considered in dealing with such deposits and whether they are to be included as income of the assessee 1) when the contingent deposit is for the purpose of meeting a statutory liability; or 2) Evidence demonstrating that the real intent of the assessee is to refund the amounts if and when the contingent liability ceases to exist e.g. amounts are not kept separate from the business income.

Investment Allowance Sec. 32A

Tamil Nadu Minerals Ltd. vs. CIT (2012) 349 ITR 695 (SC)

Introduction

Inserted by the Finance Act 1976, section 32A of the Act provided for deduction of investment allowance with respect of specified expenditure therein on purchase of new ship or aircraft or machinery or plant installed before 31 March, 1990. The ship, aircraft, machinery or plant had to be owned and wholly used for the purposes of the business carried on by the assessee. One of the sectors where this investment allowance is permitted was installation of machinery or plant in a small scale industrial undertaking for the purposes of business of manufacture or production of any article or thing.

Facts

Relevant assessment year is 1988-89. The assessee is engaged in the business of mining granite from quarries and exporting them after cutting, polishing, etc. The assessee has claimed deduction to the extent of profits referred to in sub-section 1B of section 80HHC of the Act for the export of granite for the relevant assessment year and claimed investment allowance u/s. 32A of the Act. In the earlier assessment years, the Assessing Officer allowed the claim of the assessee u/s. 32A which was subsequently reversed by the CIT u/s. 263 and again restored by the Tribunal on appeal. However, on request of the Department, the Tribunal referred the following question of law before the High Court:

"Whether, on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that the assessee is entitled to investment allowance on the activities of the assessee, viz., mining granite from quarries and exporting them after cutting, polishing, etc. which tantamount to manufacture for the purpose of section 32A of the Income-tax Act, 1961?"

The Department relied upon the judgment of the High Court in the cases of *CIT vs. Bishal Enterprise (2001) 247 ITR 484* and *CIT vs. Vijay Granites P. Ltd. (2004) 267 ITR 606* wherein the court observed that cutting and polishing of granite would not amount to production or manufacture of articles and the assessee

is not entitled to investment allowance in respect of machinery used. The assessee argued before the High Court that the assessee had claimed before CIT that apart from extracting granite, the assessee had converted granite into marketable commodity which would amount to manufacture of article and the assessee was entitled to investment allowance. The said claim was not gone-into by the CIT or the Tribunal. The Hon'ble Court held that if the assessee's activities were merely cutting and polishing of granite, it would not amount to manufacture or production of articles and the assessee would not be allowed investment allowance under section 32A of the Act in respect of machinery used. However, if the assessee had done something more, the assessee has to establish the same before the Tribunal. The Court directed the Tribunal to go into the question and determine the nature of activity of the assessee and also decide whether the activity would fall within the scope of section 32A.

Before Supreme Court

The Court held that the issue is squarely covered in favour of the assessee ***vide*** judgment of the Court in the case of ***CIT vs. Sesa Goa reported in (2004) 271 ITR 331 (SC)***, wherein it was held that

i) The definition of "production" has been adopted from the meaning ascribed to the word in the Oxford English Dictionary as meaning "amongst other things that which is produced; a thing that results from any action, process or effort, a product; a product of human activity or effort."

ii) The word 'production' has a wider connotation than the word 'manufacture'. While every manufacture can be characterised as production, every production need not amount to manufacture.

iii) From the wide definition of the work 'production', it has to follow that mining activity for the purpose of production of mineral ores would come within the ambit of the word 'production' since ore is 'a thing', which is the result of human activity or effort. It is therefore not necessary, as was sought to be contended by counsel for the Revenue, that the mined ore must be a commercially new product.

iv) It was correct that the other provisions of the Act, particularly section 33(1)(b)(B) r.w. item No. 3 of the Fifth Schedule to the Act, would show that mining of ore is treated as 'production'. Section 35E also speaks of production in the context of mining activity. The language of these sections is similar to the language of section 32A(2). There is no reason to assume that the word 'production' was used in a different sense in section 32A. Therefore, extraction and processing of iron ore amounts to production within the meaning of the word in section 32A(2)(b)(iii) and consequently, the assessee is entitled to the benefit of Section 32A(1)."

Conclusion

Extracting and processing of ore amounts to "production" within the meaning of section 32A(2)(b)(iii) and consequently, assessee was entitled to investment allowance in respect of machinery used in mining activity. However, the Apex Court left the question open as to the correctness of the High Court in holding that the activity did not amount to 'manufacture'. It is pertinent to state here that the question regarding the definition of manufacture has also been now put to rest with the insertion of a new clause 29BA to section 2 by the Finance (No. 2) Act, 2009 to define the word manufacture.

Paras S. Savla, *Advocate*

Deductions - Profits and gains from hotels or industrial undertakings in backward areas

CIT vs. Bongaigaon Refinery and Petrochemical Ltd. 349 ITR 352 (SC)

Introduction

Sections 80HH and 80-I was introduced with a view to grant deductions to newly established industrial undertakings, on fulfilment of certain conditions. The tax concession was available in case of all categories of taxpayers both corporate and non-corporate. However as per 80HH(5)/80I(7) taxpayers, other than companies and co-operative societies which are statutorily required to get their accounts audited, the concession will not be available unless the accounts of the industrial undertaking or the business of hotel are audited by a chartered accountant and the taxpayer furnishes along with its return the report of such audit in the form to be prescribed in the Income-tax Rules.

Facts

The Assessee was a PSU engaged in refinery, petrochemical and polyester staple fibre business. Three different and separate units were set up by Assessee for production of separate and distinct types of products. Assessing Officer ("AO") while passing order under Section 143(3) of the Act allowed the deduction after examining and being satisfied with the unit-wise profit & loss statement filed by respondent.

Before the Commissioner of Income Tax, ITAT and High Court

Notice u/s 263 was issued by the Commissioner of Income Tax ("CIT") on the basis that AO had allowed excess deduction under sections 80HH and 80-I of the Act. CIT contended that the net profit revealed in the audited Profit & Loss Account was not supported by bifurcation of the profits amongst the said three units and the basis of allocation of profits amongst the three units by BRPL, as shown in the Computation of Income was not explained. Further, when separate accounts for each of the three units are not prepared, the only method which assessee should have adopted to work out their net

profits (unit-wise) had to be on the basis of proportion of turnover of each of the three units. The Assessee argued that all relevant details relating to bifurcation of net profits (unit-wise) was placed before the AO who had examined the material placed and after detailed investigation had passed the order of assessment and, therefore, show cause notice under section 263 was not maintainable. However, order under section 263 was passed denying the benefit of sections 80HH and 80-I as no separate accounts for all three units were maintained. In further appeal, ITAT came to the conclusion that there was no statutory requirement under Section 80HH(5)/80-I(7) to maintain unit-wise accounts. However, ITAT observed that assessee should submit unit-wise audited accounts and claim deduction under section 80HH and 80-I of the Act. Against the said decision assessee went in appeal before the High Court; the impugned judgment of the ITAT was set aside by the High Court.

Before the Supreme Court

The Supreme Court observed that the department had not disputed that whether the respondent can claim deduction under Sections 80HH and 80I of the Act. Dismissing the revenue's appeal, the Court held that:

a. Neither Section 80HH nor Section 80-I statutorily provides to maintain the accounts unit-wise.

b. It was open to maintain the accounts in a consolidated form.

c. However, matter was remitted to the AO to ascertain whether the assessee had correctly calculated its net profits in respect of its petrochemical unit for the purposes of claiming deduction under Sections 80HH and 80-I as respondent has prepared its Financial Statements on Consolidated Basis from which it has worked out unit-wise net profits. If not done, it could be done by the Auditors from the Consolidated Books of Account and the net profit computation (unit-wise) could be placed before the AO who will determine whether such profits is properly worked out and on that basis compute deduction under Section 80HH/80-I.

Conclusion

There is no requirement in said section 80HH(5)/80-I(7) that standalone unit-wise accounts are to be maintained to claim the benefits of the said provision. Consolidated Accounts can also be maintained. However to calculate correct figures, the Supreme Court has granted a leeway, wherein benefit under the said section can be claimed even if unit wise accounts are prepared and certified by the Auditors.

Mistake Apparent from record – sec. 154 – deduction u/s 80 IA is debatable issue.

Dinosaur Steels Ltd. vs. JCIT 349 ITR 360 (SC)

Introduction

Section 154 of the Income Tax Act, 1961 ("the Act") gives the power to Assessing Officer ("AO") to rectify a mistake which is apparent in any order or any intimation passed under the Act.

Facts

The assessee had an industrial undertaking which was engaged in the manufacture of steel products. For the Assessment Year 1997-98, a Return of income was filed disclosing an income of ` 3,31,188. The total income declared by the appellant was ` 34,92,096 on which amount a deduction under Section

80-IA at 30% amounting to ` 10,47,629 was claimed. On the balance of ` 24,44,467 a sum of ` 21,13,280 was adjusted being carry forward losses of earlier assessment years. The Return was processed under section 143(1) of the Act and return of income filed was accepted. Subsequently, AO issued a notice under Section 154 of the Act proposing to rectify the mistake in the intimation passed under section 143(1) of the Act that the claim of deduction under section 80-IA had been allowed inadvertently before setting off the earlier year's losses from the profits and gains of the industrial undertaking. Appellant, however, objected to the proposal of restricting its claim under Section 80-IA by placing reliance on the judgment of the Madhya Pradesh High Court in the case of ***CIT vs. K. N. Oil Industries [1997] 226 ITR 547.*** Further, it was contended by appellant that section 154 was not applicable as there was no patent error in the order passed under Section 143(1) by relying on decision of Supreme Court in the case of ***T.S. Balaram, ITO vs. Volkart Bros. [1971] 82 ITR 50.*** However, AO passed an order under section 154.

Before the Commissioner of Income Tax(Appeals), ITAT and High Court

On appeal, CIT(A) dismissed the appeal by following the judgment of Supreme Court in the case of ***CIT vs. Kotagiri Industrial Co-operative Tea Factory Ltd. [1997] 224 ITR 604.*** On further appeal to ITAT, ITAT confirmed CIT(A)'s order on basis that deduction under section 80-IA can be allowed only after setting off the carry forward losses of the earlier years in accordance with Section 72, by placing reliance on Kotagiri Industrial Co-operative Tea Factory Ltd. (supra). ITAT therefore held that there was a patent mistake in the assessment order passed under section 143(1) and consequently the AO was correct in invoking Section 154 of the Act. On appeal before High Court, order of ITAT was upheld.

Before the Supreme Court:

Allowing the appeal, the Court held that:

a. The provisions of Chapter VIA, particularly which deals with allowability of deductions have been amended at least eleven times.

b. Even section 80-IA was earlier preceded by Sections 80HH and 80-I, which has resulted in plethora of cases and some of the amendments have been enacted even after the judgment of Kotagiri Industrial Co-operative Tea Factory Ltd.

c. It cannot be said that there is an apparent mistake and the said issue involved a moot question of law as appellant had followed the judgment of the Madhya Pradesh High Court in ***K. N. Oil Industries (supra)*** for allowing its claim.

d. Hence, the impugned judgment of the High Court was set aside thereby rendering rectification order passed under section 154 invalid.

Conclusion

Section 154 of the Act provides to rectify any mistake which is apparent on record i.e. mistake may of a fact or of a law. Error should be obvious. If mistake has to be determined from a long drawn process or the question is debatable then mistake cannot be said to apparent on record and thereby, the said mistake cannot be rectified by applying section 154 of the Act.

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HOT SPOT

Concealment Penalty in Agreed Additions

1. Introduction

Law on penalty for concealing the particulars of income or furnishing of inaccurate particulars of income has been subjected to significant change since its inception. The Explanations added to the provision make a drastic change in so far as the burden of proof is concerned. According to the present position with reference to these explanations to the provision, the assessee is deemed to have concealed the particulars of income unless the presumption is rebutted and bonafides are proved by the assessee. During the assessment proceedings, many a times the assessee agrees for certain additions for varied reasons. Such agreements are generally made without thinking about its implications of concealment penalty. It is often the experience that the Assessing Officers invariably initiate concealment penalty for such additions on the ground that the agreements amounts to admission of concealment of income and on the other hand the assessee is guided by the though that there would not be any question of any concealment of income by him since it was a mere settlement. The question of concealment penalty in a typical agreed addition has been a question before Supreme Court in number of cases. As on today we have few decisions of Apex Court including a recent one in case of MAK Data and *prima facie* the views may appear to be confusing if not really conflicting. Knowing the significance of the subject, it is necessary to analyse all the decisions. An endeavour is therefore made in this write up to analyse the concept of 'agreed addition, reconcile the legal position and to find out the final verdict of Supreme Court on the question.

2. Scheme of the Act in the context of concealment penalty

The primary obligation under the Act is laid down in Section 139 which requires every person having taxable income to file the return of income and declare its correct income. This is the only occasion to declare the income. The Income Tax Act does not provide any other occasion or opportunity to declare any income that has remained to be declared under section 139. This is the very basic and important principle under the Act while we study the position of penalty for concealing the particulars of income or furnishing inaccurate particulars of income is concerned. The implications of concealment penalty are therefore to be seen with reference to the original return. The date of default will be the date of filing the original return and hence the law that existed at the time of filing original return will be applicable in the context of concealment penalty as held in following decisions.

Ref Brijmohandas	120 ITR 1 SC
CIT v Omkarsaran & Sons	195 ITR 1 SC
Vakri Chaco v CIT	203 ITR 885 SC

3. Legislative Amendment in Section 271(1)(c)

Taking this primary obligation further, it is necessary to appreciate that the law on penalty has undergone significant change. At the inception, the Act provided that the burden was on the Department to prove beyond doubt that the disputed amount is the income of the assessee and secondly the assessee has consciously concealed the particulars of income or furnished inaccurate particulars of income. Explanation was added to Section 271(1)(c) from 1964 which was amended and substituted by four different Explanations in 1976 that shifted the burden from Department to the assessee. The above change was brought about to obviate the difficulties found in proving the positive element of motive for concealment. By introducing the explanations, the onus was cast upon the assessee to prove that the additions to the income did not arise from fraud or wilful neglect on his part. The explanation thus was laid down the rule of evidence where a presumption was raised against the assessee, which was open for rebuttal by him. Hence, the explanation cast a negative burden on the assessee.

4. Meaning of agreed additions

While we discuss the underlined subject, a clear understanding of the concept 'agreed addition' is necessary. Normally while arguing against the levy of concealment penalty in such situations, various contentions or pleas raised, are worded as "agreement to buy peace or voluntary surrender or settlement with the Department". Each one of these phrases has a very specific meaning and significance and may not be used alternatively without understanding the factual context. The facts therefore are to be essentially analysed and considered thoroughly so as come to the conclusion about the typical "agreed addition" situation. To put the concept in a very narrow or precise bracket, the "agreed addition" is or can be one which but for agreement could not have been made. In other words, there was absolutely no warrant for such addition in terms of material or evidence against the assessee. The concept of detection by the Department is also relevant here. If the enquiry initiated by the Department prompted the assessee to declare the income, it would not be an "agreed addition" in any eventuality as the agreement or settlement or so called voluntary offer was not voluntary in strict sense but was prompted by the enquiry by the Department. In such situation the law of penalty would normally apply and the plea of "agreed addition" may not be available to the assessee. On the contrary, the likelihood of treating the surrender or offer of income after detection or enquiry as admission of concealment on the part of the assessee would be quite high. Broadly describing the situations of agreed additions could be agreement to ***ad hoc*** disallowance of expenditure where the expenditure is properly supported, accepting the additions u/s. 68 of loans in spite of all the relevant evidence available and furnished before the Assessing Officer, accepting a rate of gross profit by estimation considering the peculiarity of business and non-possibility of maintaining the stock records, accepting valuation of property by one report out of other reports obtained etc. and the difference is purely on account of valuation.

5. Rulings of Supreme Court

5.1 Before we articulate any concrete tests, it would be necessary to understand what the Apex Court has said about such cases and how they have looked at the subject. The foremost decision of the Supreme Court in this context is ***CIT vs. Sir Shadilal Sugar & General Mills Ltd. (168 ITR 705 SC).*** In that case of Supreme Court, there was a disallowance of expenses. It was apparently a case of furnishing inaccurate particulars of income if at all penalty was leviable. Further, the Tribunal had given a clear finding that the assessee had a good case to argue that the claims of expenditure were not bogus. In spite having a good case, the assessee decided not to dispute the above additions in quantum, as he wanted to maintain good

relations with the department. It was in this context the Supreme Court said that there could be so many reasons for the assessee for agreeing to additions, but imposition of penalty solely on the basis of assessee's surrender will not be well founded. Surprisingly, this decision was used or understood as a yardstick for all the situations where assessee agreed for any addition without much thinking on the facts. It was perceived as the ultimate law on concealment wherever there was any agreed addition.

5.2 This invited the decision of the Supreme Court in the case of ***K P Madhusudan vs. CIT (251 ITR 99)*** wherein the decision of Supreme Court in the case of Sir Shadilal Sugar and General Mills has been held to be no more applicable after the insertion of Explanations to Section 271(1)(c). In the case of K. P. Madhusudan, the department had found some purchases of demand drafts by the assessee which were unaccounted. When the assessee could not explain them with any evidence, he agreed for the addition and therefore the Supreme Court decided not to follow the decision in the case of Sir Shadilal Sugar and General Mills Ltd. While deviating from its earlier decision in the case of Sir Shadilal Sugar's case, the Supreme Court stated that the decision in Sir Shadilal's case is no more a good law since the Explanation would apply automatically. The decision in Madhusudan case has therefore made it express that these cases would have to be seen with reference to the Explanation to Section 271(1)(c). It is therefore abundantly clear that in view of the Explanation to Section 271(1)(c), the burden of proving that it is a case of "agreed addition" on facts coupled with the bonafides is on the assessee. This decision therefore gives the important test for such cases and requires that it would depend how the assessee has discharged his burden of proving his bonafides. In a given case, it is therefore not sufficient that the assessee agreed without any material but it is further required to urge, prove or substantiate that the agreement was without material and it was ***bona fide***. If the assessee stops after the agreement for addition, the risk of applying of the fiction under Explanation as to deemed concealment would always be there. Of course as stated earlier, over stretching of the ratio of Sir Shadilal's case and weak facts in Madhusudan's case compelled the Supreme Court to explain the law in so many words.

5.3 It may be noted that when the Supreme Court rendered the decision in the case of K. P. Madhusudan, at the same time there was another decision in case of Suresh Chandra Mittal (251 ITR 9) in which the Supreme Court held that the assessee having offered income by filing revised return after search but when there was no detection, just to buy peace and avoid litigation, the penalty was not leviable. If we closely look at the facts, they are quite distinguishable. In Madhusudan's case, the Demand Drafts were found to be unaccounted while in Suresh Chandra Mittals' case, there is no reference to any material found against the assessee and the income is offered voluntarily. There is a finding given in the decision of the Suresh Chandra Mittal that the voluntary offer was ***bona fide***. This finding is very crucial for analyzing the decision. The decision of Suresh Chandra Mittal thus again brings out that the explanation of the assessee will have to be seen. If it is *bona fide*, the penalty is not justified. These two decisions therefore cannot be considered to be conflicting. On the contrary, the principles are consistently laid down that justification of penalty would depend on whether there is material found while the surrender is made and whether the *bona fides* of the surrender/offer are proved.

5.4 Recently the Hon Supreme Court in case of ***Mak Data Pvt. Ltd. vs. CIT*** had an occasion to deal with a situation of voluntary surrender of income. In this case, th AO during the course of assessment proceedings noticed that certain documents comprising of share application forms, bank statements etc. have been impounded in the course of survey proceedings u/s 133A conducted in the case of the assessee's

sister concern. The survey was conducted more than 10 months before the assessee filed its return of income. The AO issued show cause to seek information about share application money. The assessee offered an amount of ` 40.74 lakhs with a view to buy peace and to avoid litigation. Penalty was initiated and levied for concealing the particulars of income. The assessee claimed that the amount was offered without any admission as to concealment and subject to non-initiation of penalty. The Hon'ble Supreme Court held on facts that the surrender of income is not voluntary in the sense that the offer of surrender was made in view of detection made by the AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. Supreme Court observed that the AO had recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings u/s 271 read with s. 274 of the Act; The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to s. 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise.

6. Reconciliation of rulings of Supreme Courts

If we read the above decisions together, we find that there is no conflict as to the principles of penalty. The Supreme Court in no ambiguous terms or words have expressed the implications of statutory provision in the form of Explanation 1 to Section 271(1)(c) and observed that the question of penalty would be dependent on discharge of burden under the said Explanation. The decision of Hon Supreme Court reiterates that mere raising a plea of 'voluntary surrender or buy peace or avoid litigation or amicable settlement' is not sufficient but the assessee is required to discharge his burden of proving the *bona fides.* It can therefore be observed that the law explained by the Supreme Court is consistent. That is why we do not find reference of one another in these decisions. The final decisions of confirmation or cancellation of penalty in each case have been different due to different facts in each case.

7. Principles governing "Agreed Addition": If we put together principles laid down in all the above decisions, the following principles would emerge:

i. Whether there was any material or evidence found by the Assessing Officer or in other words detection by the Assessing Officer? This would be relevant to decide whether the surrender was voluntary or otherwise.

ii. The exact nature and mode in which the offer is made. Eg if the assessee agrees that he has been inflating purchases and surrenders inflated purchases as against surrender of expenditure on ***ad hoc*** basis without any specific reason. The former case indicates an admission of suppression of profits while the later case is just an agreement without any indication of suppression of profits. It means the voluntary offer itself could be suggestive or indicative of concealment or otherwise on the part of the assessee.

iii. After the surrender, the burden is on the assessee to prove that the surrender was *bona fide*. This would be decisive of the levy of penalty in a given case. The assessee therefore has to bring all the evidence or explanation so as to prove its *bona fides*. In absence of such explanation, the fiction would apply under the Explanation to the Section and it would be difficult to argue against the levy of penalty purely on the basis of surrender or offer.

8. Satisfaction by the Assessing Officer

The above legal principles undoubtedly prevail. However, there is an additional concept or principle that has relevance in such situations and that is recording of satisfaction by the learned AO. Section 271(1)(c) itself requires that the Assessing Officer if is satisfied that the assessee has concealed the particulars of income or furnished inaccurate particulars of income may initiate penalty. This pre-requisite is therefore to be complied by the Assessing Officer before the initiation of penalty. In cases where the assessee offers income and the Assessing Officer accepts the same without going into the offer or without application of mind whatsoever by him, it cannot be said that he was satisfied about the concealment by the assessee. A categoric reference to this principle is found by the Supreme Court in the case of MAK Data and it has given a finding that the Assessing Officer has recorded his satisfaction about the concealment. One will have to analyse the facts of a given case minutely and find out whether there is a satisfaction by the Assessing Officer about the concealment on record. IT may happen in a given case that the income is surrendered or offered and it is accepted without any discussion or application of mind by the authorities on the facts. In that situation, one will be in a position to take a plea about the non recording of satisfaction and question the jurisdiction to initiate the penalty. For this purpose, the entire record of the Assessing Officer needs to be considered and not only the Assessment Order. Eg it is possible that the while surrendering the income, the order sheet is detailed explaining the situations and reasons for surrender. In cases where the assessee files revised return declaring additional income and the same is assessed without a whisper about such additional income by the Assessing Officer in the entire proceedings, one should be in a position to contend and raise a challenge about non-recording of satisfaction. After all, the authority levying the penalty must know and define in so many words as to what income is being concealed. However, such legal plea is to be raised with extra caution as any reference to the material found or any discussion by the AO as to the income surrendered may weaken such a plea.

9. Other Decisions

i. ACIT vs. VIP Industries 122 TTJ 289 Mum

In this case the assessee agreed for addition u/s 41(1) in respect of outstanding creditors which were barred by limitation. The Hon'ble ITAT observed that u/s 41(1) amounts are taxed on account of remission or cessation of liability. Only because the limitation period is over, does not mean that the liabilities are ceased, even though they are offered by the assessee. Further the assessee's agreement to addition u/s 41(1) does not lead to automatic inference of concealment of income.

ii. Add CIT vs. Prem Chand Garg Del TM

Voluntary offer of income in order to buy peace and avoid litigation before taking up assessment by the AO ***de hors*** any material with the AO cannot amount to concealment; assessee having surrendered the amount of NRI gift on a general query raised by AO on the condition of not initiating penalty proceedings before assessment was taken up, AO could not have imposed penalty under s. 271(1)(c) when there was no material with the AO to arrive at satisfaction about concealment. In this case the income surrendered was held to be without any provocation and without any material in possession of the Department. It has also been

held that the AO did not record any satisfaction about the concealment.

iii. *CIT v. R Kesavan Nair 187 ITR 276 Ker* Assessee having agreed to addition of income from liquor business which was arrived at by the AO after verifying the seized documents, concealment was established and penalty under s. 271(1)(c) was rightly levied by the AO, imposition of penalty is not dependent upon the consent or otherwise of the assessee or on the basis of agreement or concession.

10. Rebuttal under Explanation 1

The above Rulings of the Supreme Court and the principles laid down require us to know the scope of Explanation and about the rebuttal by the assessee. The Explanation 1 to Section 271(1)(c) reads as-

"Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,-

(A) Such person fails to offer an explanation or offers an explanation which is found to be false by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false, or

(B) Such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is ***bona fide*** and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then the amount added or disallowed in computing the total income of such person as a result thereof shall for the purposes of clause (c) of the sub-section, be deemed to represent the income in respect of which particulars have been concealed.

The above explanation thus has two limbs. First limb covers situation where there is no explanation at all or the explanation is found to be false. The situations covered in this clause are objective and the assessee would be left with little remedy in case of no explanation at all or false explanation. It is therefore important to note that there has to be some explanation about the income surrendered. Mere surrender is not sufficient. Secondly, if the explanation of the assessee is found to be false in view of the evidence to the contrary, the surrender of income would be of no avail and the concealment would get confirmed under the Explanation. The facts therefore would have to be gone into in minute detail before a plea of voluntary surrender is raised.

The Second limb under clause (B) however gives enough scope to the assessee in case he is not able to substantiate the explanation with evidence, if he proves that the explanation is the ***bona fide*** as also disclose all the material facts, the assessee can come out of the clutches of the Explanation. It is therefore important to note that all the material facts are to be disclosed and evidence in support of the *bona fides* is to be brought on record.

11. Conclusion

The above discussion allow us to lead to the conclusion that no penalty u/s 271(1)(c) is leviable for agreed additions provided the concept is understood and applied in the correct perspective. It is surely not the escape route when some action or enquiry is apprehended from the Department. A case of an offer and acceptance ***simpliciter*** of income without any discussion or investigation into the income, may have a convincing argument against the levy of penalty. One may not forget that the Department is very likely to take extreme interpretation of the Recent Supreme Court decision in MAK Data's case and reject every plea based on voluntary surrender. Let us be confident that the judiciary including Tribunals would take the judicious view keeping in view the above principles laid down by the Apex Court and set right the extreme stand of the Department. In that case, even though additions were agreed to avoid litigation, litigation would be inevitable to avoid penalty.

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1] Sec 80IB – development of plots – no construction activity – deduction not available – AY 2008-09

Navratan Techbuild (P) Ltd. vs. CIT (2015) 113 DTR (MP) 404

In the instant case the appellant had only developed plots of land for the purpose of constructing houses on the same. The appellant had carried out all the development activity on the land for it to be recognised as a residential housing site. The appellant had provided all the infrastructure facilities to the plot of land but had not carried out any activity of construction of residential houses. The Hon'ble High Court held that where only development of plots were undertaken and sold, and no construction activity was undertaken during the relevant year, the appellant was not entitle to deduction u/s 80IB of the Income Tax Act, 1961.

2] Sec 37(1) – capital or revenue – expenditure on transmissions line – ownership to lie with state power corporation – revenue expenditure

CIT vs. Dhampur Sugar Mills P. Ltd. 370 ITR 194 (All)

The assessee in the present case was to commence power generation, and was to supply to the state power corporation it only customer. One of the conditions was that the assessee was install power transmissions lines as per the specifications of the state power corporation, and after installation of such power transmission lines, the ownership of the same was to rest with the state power corporation. On appeal to the High Court, the High Court held that the expenses incurred by the assessee on the installation of Transmission lines are expenses for facilitating the efficient conduct of assessee's business, and the same is allowable as revenue expenditure.

3] Sec 69 - Disallowance of pro rata cost on sale of part of plot - proviso to section 69C – Not applicable

CIT vs. Chandulal Sadhuram Khemani [2015] 53 taxmann.com 293 (Bombay)

The assessee effected sale of plots and land amounting to ` 13,02,000 out of stock appearing as opening stock in the previous year relevant to assessment year 1998-99. The assessee claimed deduction of ` 13,00,800 on account of pro rata cost. The AO held that since investments were held as unexplained expenditure to which section 69C was applicable, in terms of proviso thereto no part of the expenditure could be allowed as deduction. On appeal in CIT (A), CIT(A) partly allowed appeal of the assesee. The Tribunal, however, deleted disallowance made by the AO. On revenue's appeal the High Court held that the assessee, admittedly, has not incurred any expenditure in the financial year in question. The plots were acquired admittedly prior to 1-4-1997. It is only the pro rata deduction which was claimed and in the form of

adjustment against this purchase price as the plots were sold. In such circumstances, the primary condition which has to be fulfilled so as to apply section 69C was not at all fulfilled. That did not, therefore, enable the AO to apply this section. Once this factual position was noted, then, the proviso also could not have been invoked. Further the court held that for the purpose of invoking and applying this provision, the condition stipulated therein that the expenditure should be incurred in any financial year and that such expenditure has to be either unexplained or part thereof should be explained or if the expenditure explained, must be found to be wholly unsatisfactory or partly unsatisfactory and that is the requirement to be fulfilled. If that is not satisfied, then the proviso which does nothing but enables the revenue to deem the unexplained expenditure or part thereof to be income and on which no deduction shall be allowed under any head of the income under other provisions of the Act, should be applied. If that was not applicable and could not have been invoked in the given facts and circumstances, then, the view taken by the Tribunal was not perverse or vitiated by any error of law apparent on the face of the record.

4] Sec 45 - Date of allotment of undivided share in land was to be adopted as date of acquisition for computing capital gain instead of date of sale deed

CIT vs. S. R. Jeyashankar [2015] 53 taxmann.com 107 (Madras)

The assessee had entered into an agreement dated 22-2-2005 for purchase of undivided share of land as well as for construction of home by a project promoted by VHPL. Thereafter, the assessee sold the entire unit by a sale deed dated 10-4-2008 and claimed the difference between the cost of acquisition and sale consideration as long term capital gains. The AO however, took a view that the undivided share of land was registered on 4-8-2005 and since the property was purchased in the month of August, 2005 and sold in April, 2008, the capital gains arising from sale would be assessed as short term capital gains only and accordingly, the AO denied benefit of section 2(29A) made addition. On appeal, the CIT(A) allowed the appeal filed by the assessee. On revenue's appeal, the Tribunal upheld the order of the Commissioner (Appeals). On appeal before the High Court In the light of the above said decisions of *Mrs. Madhu Kaul vs. CIT [2014] 363 ITR 54 (P& H)* and Circular No. 471 dated 15-10-1986 , there was no reason why the same principle should not be applied to all transactions based on agreements in respect of capital asset. The Court also held that the CIT(A) as well as the Tribunal following the decision of the Punjab and Haryana High Court that the breach of agreement would only give right to the beneficiary for enforcing the right over the property.

5] Sec 80G - At stage of registration, extent and nature of activities were not required to be examined vis-a-vis 80G(5) of IT Act, deduction

CIT vs. Arvindbhai Maniar Charitable Foundation [2015] 53 taxmann.com 295 (Guj)

The assessee-Trust had made an application, in form No. 10G for approval u/s 80G(5). The main objects of the trust as per the trust deed were educational activities. In order to verify the application, the trust was asked to explain as to how its activities were in accordance with its objects. It was submitted that the main activity of the trust was Arthik Unnati Scheme. On going through the details produced, it was seen that the trust was providing unskilled manpower, specially security personals to some co-operative banks. The trust was asked to provide details of Arthik Unnati Scheme and to explain as to how that activity was a charitable activity. Thereafter, the trust had made written submissions on the issue. Thereafter, after considering the relevant material on record, the application made by the assessee trust seeking approval under section 80G(5), was rejected. Against the said order, the assessee trust had preferred an appeal before the Tribunal which was allowed. On appeal in High Court, the Hon'ble High Court upheld the findings of Tribunal and held that It is well settled position of law that at the time of granting approval under section 80G, what is to be examined is the object of the trust and so far as the aspect of income is concerned, same can be very well examined by the AO at the time of framing assessment. The court further held that the assessee-Trust was refused recognition

only on the ground that it had not spent 85 per cent of the amount towards the objects of the Trust. The Tribunal, while passing the impugned order, relied on a decision of the Punjab & Haryana High Court in *CIT vs. Surya Educational & Charitable Trust [2011] 203 Taxman 53,* wherein, the High Court held that at the stage of registration under section 12AA, the extent and nature of activities are not required to be examined and the same is required to be examined in assessment proceedings. Similar view was taken by that Court in Tax Appeal No. 306 of 2014 and the allied matters. Court held that Tribunal committed no jurisdictional error in issuing direction to grant recognition to the Trust under section 80G (5) of the IT Act.

6] Sec 58(4), 115BB - loss vis-a-vis 115BB, read with section 58(4) of the Income-tax Act

CIT vs. Dr. M.A.M. Ramaswamy [2015] 53 taxmann.com 231 (Madras)

The assessee was a breeder and owner of race horses. For the assessment year 1998-99, the assessee filed return of income The return was processed under Section 143(1)(a) of the Income Tax Act. Thereafter, notice under Section 143(2) of the Act was issued to the assessee. The details furnished by the assessee and objections raised were considered by the AO. On the issue of *"Winnings from Betting"*, the AO noticed that the assessee has shown betting income of ` 31,24,28,980/- and while computing the total income, the assessee has adjusted the losses suffered under the head "business" against the income earned under other heads, including betting income, and after setting off such losses, betting income of ` 28,52,18,347/- was brought to tax by the assessee at the flat rate of 40% as prescribed under Section 115BB of the Act, as against the total betting income of ` 31,24,28,980/-. The AO refused to accept the manner in which betting income was computed by the assessee and held that the total winnings are to be taxed under Section 115BB of the Act and losses cannot be set off against such income. Accordingly, the total winnings from betting were brought to tax at the rate of 40% as envisaged under Section 115BB of the Act. On appeal inj CIT (A), the CIT(A) allowed the appeal and observed that only the net income of betting receipts, namely, after adjustment thereof against the business loss, can be subjected to tax at the rate of 40% as contemplated under Section 115BB of the Act and accordingly, directed the AO to charge tax at the rate of 40% on the net betting receipts. The view was upheld by Tribunal. On further appeal in High Court, High Court reversed the findings of lower authorities and held in favour of revenue by taking a view that on a bare reading of the above circular and the provisions made it clear that Section 115BB of the Act envisaged taxation at the flat rate of 40% on the total amount of winnings from betting etc., and the losses from the same source also cannot be set off against such income. The above view was fortified by the Board Circular No.14 of 2001, dated 12.12.2001 explaining the intent of the legislature in amending Section 115BB of the Act by reducing the rate of tax from 40% to 30% with effect from 1.4.2001, as amended by Finance Act, 2001, dated 1.4.2002. From the above, it was clear that the intent of the legislature, as a measure of rationalization, was to reduce the rate of tax on such winnings from 40% to 30%, with effect from 1.4.2002. Even though the said amendment was not applicable to this case what could be deduced from the same is the fact that the higher rate of tax as applicable to winnings from betting, etc. has been brought down to 30%, on a par with the rate applicable for other incomes as a measure of rationalization. Therefore, the intent of the legislature was to levy tax at the rate of 40% for the relevant assessment year on the winnings from betting, etc. was apparent as otherwise, the very existence of the said provision in the Act would be meaningless. The court also held that the view as propounded by the Tribunal and the CIT(A), as Section 115BB of the Act is a standalone special provision, which makes it clear that income of an assessee, not being income from activity of owning and maintaining race horses, would fall under Section 115BB of the Act. In view of the specific provision contained in Section 115BB of the Act under Chapter XII of the Act, which provides for determination of tax in certain special cases, the special rate of tax is applicable for the entire income of winnings from horse racing and should be subject to tax at the special rate provided therein. It was not the case of the assessee that the income being brought to tax was earned from owning and maintaining the horses. Therefore, the provisions of Section 58(4) of the Act would not come into play.

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REPORTED

1. Book profit – Section 115 JB of the Income tax Act, 1961 – No addition under section 115JB of the Act can be made for amount of disallowance under section 14A of the Act. A.Y.: 2008-09

Everest Kanto Cylinder Ltd. vs. Asst. CIT – [(2015) 113 DTR 108 (Mum.) (Trib.)]

The A.O. computed book profit under section 115 JB of the Act by adding the amount of expense disallowed under section 14A of the Act. On appeal Tribunal held that no addition under section 115JB of the Act can be made for the amount of disallowance under section 14A of the Act.

Note: *Graviss Hospitality Ltd. vs. Dy. CIT – [I.T.A. Nos. 3542 & 4801 / Mum. / 2013; Order dated 21-11-2014; Mumbai Bench]*

Once the disallowance under section 14A of the Act has been made, then the same disallowance shall also form part of the computation while calculating the book profit under section 115JB of the Act.

2. Reassessment – Section 147 of the Income-tax Act, 1961 – Absence of notice under section 143(2) of the Act – Reassessment without complying with the mandatory requirement of issuing the notice under section 143(2) invalid. A.Y.s: 2006-07 and 2007-08

G.N. Mohan Raju vs. ITO – [(2015) 113 DTR 19 (Bengaluru) (Trib.)]

The returns of the appellant for two years were processed under section 143(1) of the Act. Thereafter, notices under section 148 were issued for both the years. The appellant submitted before the A.O. that the original return filed by it for the respective years to be treated as return filed in pursuant to notice issued under section 148 of the Act. Thereafter, without issuing notice under 143(2) of the Act the A.O. completed the reassessment and passed reassessment order.

On appeal Tribunal held that notice under section 143(2) of the Act is mandatory even in reassessment proceedings. Once the assessee requests the A.O. to treat the original return filed as return in response to notice issued under section 148 of the Act, it was obligatory for the A.O. to issue notice under section 143(2) of the Act after the said request was made by the appellant. Non-issue of notice under section 143(2) would render reassessment invalid.

3. S. 40(a)(ia) : Amounts not deductible – Deduction at source –

entire amount paid before the close of the financial year – no disallowance can be made. A.Y.: 2009-10

S.S. Networks vs. ITO – [2015] 53 taxmann.com 534 (Hyderabad – Trib.)

The assessee, a partnership firm is engaged in the business of providing cable network services. For the year under consideration, the assessee filed its return of income on 30-9-2009 declaring total income of ` 2,15,260/-. During the assessment proceedings, the A.O. while examining the Profit & Loss Account of the assessee noticed that the assessee has paid an amount of ` 36.15 lakhs to various pay channels. The A.O., therefore, called for information from the concerned pay channels to furnish the details of the service contract, the amount received from the assessee, mode of payment and whether any tax at source has been deducted by the assessee at the time of making such payments. In response to the said notice one of the parties submitted information in respect of renewals of subscription agreement and the agreement amount, the mode of payment and the amount paid etc. On verification of the information obtained, the A.O. came to the conclusion that as the assessee is having written agreement with the pay channels for a specific period and the amount, the assessee is liable to deduct tax at source under section 194C of the Act on the payments made to the pay channels. As the assessee had not deducted any tax, he made disallowance invoking the provisions of section 40(a)(ia) of the Act. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). Before the learned CIT(A) the assessee raised an alternative plea that as the entire amount was paid within the relevant financial year and nothing remains to be paid, the ratio laid down by the ITAT Visakhapatnam Special Bench in the case of ***Merilyn Shipping & Transport vs. Add. CIT [2012] 136 ITD 23 (Visakhapatnam)*** would apply and no disallowance can be made under section 40(a)(ia). However, the learned CIT(A) upheld the order passed by the A.O. The assessee being aggrieved filed further appeal before the Hon'ble Hyderabad Appellate Tribunal. The appellate Tribunal allowed the appeal of the assessee and deleted the disallowance made under section 40(a)(ia) of the Act relying on the decision of the Special Bench of the Visakhapatnama Appellate Tribunal in the case of Merilyn Shipping & Transport (supra).

Note: The Hon'ble Appellate Tribunal held that ITAT Special bench's decision in the case of Merilyn Shipping & Transports (supra) is binding on lower authorities until and unless the same is reversed by the Hon'ble jurisdictional High Court.

UNREPORTED

4. Expenditure incurred in relation to income not includible in total income – Section 14A of the Income-tax Act, 1961 – Assessing Officer could not straightaway proceed to apply Rule 8D of the Income Tax Rules, 1962 and make disallowance under section 14A without complying with mandatory requirement of section 14A(2) or rule 8D(1). A.Ys.: 2008-09 & 2009-10

Graviss Hospitality Ltd. vs. Dy. CIT – [I.T.A. Nos. 3542 & 4801 / Mum. / 2013; Order dated 21-11-2014; Mumbai Bench]

The assessee company was engaged in the business of hotel and catering. Assessee made investment in the shares and mutual funds on which it earned dividend income. In response to the show cause notice for disallowance under section 14A of the Act, assessee submitted that the investments had been made out of surplus funds which were interest free in the form of reserves and surplus. The A.O. in his assessment order concluded that the assessee had not proved any nexus between the investment and its own funds so as to prove that borrowed

funds had not been utilised for the purpose of making the investment. The CIT(A) directed disallowance with regard to indirect expenses, by taking 0.5 per cent of the average income.

On appeal the Tribunal held that when all the details were made available along with the entire accounts of the assessee, the A.O. has to satisfied himself that having regard to the accounts of the assessee, the claim of the assessee in respect of expenditure debited is not correct and there could have been certain other expenditure which can be said to have been incurred in relation to the earning of exempt income. Thus, before working out the disallowance under rule 8D of the Rules, the A.O. has to first examine the accounts of the assessee and the correctness of the claim and then, if having regard to such accounts and the claim, if he is not satisfied with either the correctness of the claim made by the assessee, then only he can resort to rule 8D of the Rules for computing disallowance under section 14A of the Act.

5. Income from house property – Section 24(b) of the Income-tax Act, 1961 – Deductions – Interest payable to sundry creditors, who supplied material for construction of property, is an allowable deduction. A.Ys.: 2005 -06 & 2007-08

Jyoti Metal & Allied Industries (P.) Ltd. vs. ITO - [I.T.A. Nos.: 1824 & 3473 / Del / 2010; Order dated 31-10-2014; Delhi Bench]

The assessee earned rental income against which it claimed deduction of interest paid to creditors who allegedly supplied material for construction of building. A.O. disallowed the interest paid by the assessee to suppliers.

On appeal Tribunal held that the true nature of relationship has to be considered and restrictive meaning cannot be assigned to the term 'borrowed capital' in section 24(b) of the Act. If there is direct nexus between the interest payment and construction of property, which in the present case was through creditors, because they had supplied material for construction, the said interest would come within the ambit of section 24(b) of the Act and interest paid to sundry creditors, who supplied material for construction of property, was an allowable deduction under section 24(b) of the Act.

6. Income from house property – Section 22 of the Income-tax Act, 1961 –Amount received from cellular companies for renting out of the terrace for installation of mobile antenna – Taxable as income from house property and not as income from other sources. A.Y.: 2009-10

Manpreet Singh vs. ITO – [I.T.A. No. 3976 / Del. / 2013; Order dated 6-1-2015; Delhi Bench]

The assessee received income from various telecom companies, towards renting out of her terrace for installation of mobile antenna. The assessee declared the receipt under the head 'Income from house property'. The A.O. treated the receipt towards installation of antenna as 'Income from other sources'. The CIT(A) confirmed the order of the A.O.

On appeal the Tribunal held that the rent was not for the antenna but for the space for installation of antenna. Therefore, what was relevant was the space which had been rented out and, therefore, as long as the space was part of the building, the rent was required to be treated as 'Income from house property' Thus, assessee had rightly shown the impugned receipts as 'Income from house property'.

7. Reassessment – Section 147 of the Income-tax Act, 1961 – The assessee had deposited cash in excess of ` 10 lakhs in his saving bank account – Assessee had not filed his return of income – The AO reopened the

assessment of assessee – As he had reason to believe that there was an escapement of income of ` 10 lakhs – Held, the AO proceeded on the wrong / fallacious assumption that bank deposits constituted undisclosed income and overlooked fact that the source of deposit need not necessarily be income of the assessee. A.Y.: 2008-09

Bir Bahadur Singh Sijwali vs. ITO - [I.T.A. No.: 3814/Del./2011; Order dated 20-1-2015; Delhi Bench]

The assessee had deposited about ` 10 lakhs in his saving bank account. Assessee had not filed return of income for the year. The AO reopened the assessment of assessee, as he had reason to believe that there was an escapement of income of ` 10 lakhs on part of assessee.

On appeal the Tribunal quashing the reassessment held that while recording the reasons for reopening the assessment, the formation of ***prima facie*** belief that an income has escaped the assessment is necessary. Mere fact that deposits have been made in a bank account do not indicate that the deposits constitute an income which had escaped assessment, there must be at least something which should indicate, even if not establish, the escapement of income from assessment.

8. Deduction – Section 80-IB of the Income-tax Act, 1961 – Profits and gains from Industrial Undertakings other than infrastructure development undertakings – Refund of an amount already paid by assessee and reduced from sale price while computing profit – To be treated as part of business profit under section 41(1)(a) and eligible for deduction under section 80-IB of the Act. A.Ys. 2008-09 & 2009 -10

Dy. CIT vs. Coromandel International Ltd. - [I.T.A. Nos. 1147 & 1157 / Hyd. / 2014; Order dated: 21-11-2014; Hyderabad Bench]

Assessee had set up a pesticides manufacturing unit in Jammu & Kashmir. As part of the incentive, excise duty subsidy was also announced by Excise Department on the goods manufactured at the undertaking situated in specified areas of Jammu & Kashmir. In terms with the exemption notification, assessee claimed refund of excise duty which was granted by the excise authorities. The assessee treated excise duty refunded as its income, and also claimed deduction under section 80-IB of the Act on the said income. The AO disallowed 80-IB deduction on the excise duty refund on the ground that such income was not attributable to profit derived from the eligible business.

On appeal Tribunal held that assessee had paid the excise duty on the goods manufactured and sold and as such, it forms part of the sale price of assessee. Therefore, payment of excise duty was integrally connected with the manufacturing and sale of goods produced by assessee. Therefore, refund was to be treated as part of business profit under section 41(1)(a) of the Act and assessee was eligible for deduction under section 80-IB of the Act on the said refund.

CA Sunil K. Jain

DIRECT TAXES

Statutes, Circulars & Notifications

NOTIFICATIONS

Section 10(46) of the Income-tax Act, 1961 – Exemptions for Notified Body or Authority

For the purpose of section 10(46) of the Income-tax Act, the Central Government notified:

1. The *'North East Centre for Technology Application and Reach'*, a body constituted by the Central Government, in respect of the specified income arising to the said body, on account of (a) grants in aid, (b) interest earned on grants-in-aid and shall be applicable for the assessment years 2013-14 to 2017-18.

2. The *"Kerala State Electricity Regulatory Commission"*, a Commission constituted by the Government of Kerala in respect of the specified income arising to that Commission, on account of (a) amount received in the form of grants and loans from the Government of Kerala, (b) petition fees, (c) licence fees, (d) interest earned from investment and shall be applicable for the assessment years 2013-14 to 2017-18.

3. The *'Tamil Nadu Pollution Control Board'*, a body constituted by the Government of Tamil Nadu, in respect of the specified income arising to the said Board, on account of (a) consent fees, (b) analysis fees or air ambient quality survey fees or noise level survey fees, (c) vehicle emission monitoring test fees, (d) reimbursement of the expense received from Central Pollution Control Board towards National Air Monitoring Programmes, Global Environment Monitoring System and Monitoring of Indian National Aquatic resources and like schemes, (e) authorisation fees, (f) cess re-imbursement and cess appeal fees, (g) fees received for processing by State Environment Impact Assessment Authority, (h) fees collected for training conducted by the Environmental Training Institute of the Board where no profit element is involved and the activity is not commercial in nature, (i) fees received under the Right to Information Act, 2005, (j) public hearing fees, (k) sale of law books where no profit element is involved and the activity is not commercial in nature, (l) interest on loans and advances given to staff of the Board, (m) miscellaneous income such as sale of old or scrap items, tenders fees and other matters relating thereto and (n) interest on deposits and shall be applicable for the assessment years 2014-15 to 2018-19.

4. The *'Karnataka Computerisation of Police Society'*, a body constituted by the

Government of Karnataka, in respect of the specified income arising to that Society, on account of (a) amount received in the form of grants-in-aid from Government of India, (b) interest earned on grants-in aid from Government of India and shall be applicable for assessment years 2014-15 to 2018-19.

5. The *'Bureau of Indian Standards'* set up by the Bureau of Indian Standards Act, 1986 (63 of 1986) in respect of the specified income arising to that Bureau, on account of (a) certification fee, (b) sale of standards, provided there is no profit involved, (c) income from interest and shall be applicable for the assessment years 2012-13 to 2016-17.

6. The *'West Bengal Building and Other Construction Workers Welfare Board'*, a body constituted by the Government of West Bengal in respect of the specified income arising to that body, on account of (a) cess collected under the Building and Other Construction Workers Welfare Cess Act, 1996 (28 of 1996) and the rules thereunder, (b) registration fees and yearly subscription collected from construction workers registered with the Board as beneficiaries, (c) amount received in the form of grants-in-aid and loan from Government, (d) interest income received from investment and shall be applicable for the assessment years 2012-13 to 2016-17.

7. The *'Gujarat State Council for Blood Transfusion'*, a trust constituted by the Government of Gujarat, in respect of the specified income arising to the said trust, on account of (a) grants from Government of Gujarat and the Government of India (b) donations; and (c) income arising or by way of interest and shall be applicable for the financial years 2013-14 to 2017-18.

8. The *'Karnataka Livestock Development Agency'*, a body constituted by the Government of Karnataka, in respect of the specified income arising to the said body, on account of (a) amount received in the form of grants-in-aid from Government of India; and (b) income arising out or derived from interest on grants-in-aid and shall be applicable for financial years 2012-13 to 2016-17.

9. The *"National Council of Science Museums"* an autonomous body under the Ministry of Culture, Government of India, in respect of the following specified income arising to the Council, on account of (a) amount received in the form of grants-in-aid and subsidies from Government of India; (b) fees or subscription by sale of tickets; (c) charges for maintenance recovered for use of auditorium and other public facilities for scientific and educational purposes; and (d) income arising or derived by way of interest received from investment and sh all be applicable for the financial years 2012-13 to 2016-17.

All the notifications above shall be subject to the conditions that the above said bodies shall not engage in any commercial activity, the activities and the nature of specified income remains unchanged throughout the financial year and files return of income in accordance with the provision of section 139(4C)(g) of the said Act.

(Notification Nos. 84/2014; 85/2014; 86/2014; 87/2014; 88/2014 and 89/2014 respectively all dated 23-12-2014 and 6-8-2015 all dated 20-1-2015)

Section 80C(2)(xiv) of the Income-tax Act, 1961 – Deduction in respect of life insurance premium, deferred annuity, contributions to provident fund, subscription to certain equity

shares or debentures etc. – Notified pension scheme

As per section 80C(2)(xiv) of the Income-tax Act, the Central Government specified the "Reliance Retirement Fund" set up by the Reliance Mutual Fund registered under the Securities and Exchange of Board of India as a 'pension fund' for the purposes of the said clause for the assessment year 2015-16 and subsequent assessment years. This notification shall come into force from the date of its publication in the Official Gazette.

(Notification No. 90/2014 dated 23-12-2014)

Section 80-IA, sub-clause (iii) of sub-section (4) of the Income-tax Act, 1961 – Deductions – Profits & gains from industrial undertaking, or enterprises engaged in infrastructural engagement, etc. – Notified undertaking

The Central Government, in exercise of the powers conferred by of section 80-IA(4)(iii) of the Act, notified the undertaking from the date of commencement i.e. 30-3-2009, being developed by M/s Eldeco Sidcul Industrial Park Ltd. as an undertaking for the Industrial Park located at Village Chargalia, Jail Camp, Sitarganj, Udham Singh Nagar, Rudrapur, Uttarakhand, 262 605 for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the said notification.

(Notification No. 2/2015 dated 8-1-2015)

Income-tax (First Amendment) Rules, 2015 – Insertion of Rule 12CA and Forms Nos. 64A and 64B for statement of income distributed by a business trust to be furnished under section 115UA

The Central Board of Direct Taxes made the rules further to amend the Income-tax Rules, 1962 to be called the Income-tax (1st Amendment) Rules, 2015 and shall come into force from the day of their publication in the) Official Gazette. In the Income-tax Rules, 1962, (A) after rule 12C the further rules have been inserted, as "Statement under sub-section (4) of section 115UA. and (B) in the Appendix II, after the Form No. 64, the Forms No. 64A has been inserted, as regards statement of income distributed by a business trust to be furnished under section 115UA of the Income-tax Act, 1961

Notification No. 3/2015 [F. No. 142/10/2014-TPL]/ SO 180(E), dated 19-1-2015

CIRCULARS

Section 143 of the Income-tax Act, 1961 – Assessment – General – Request for Exchange of Information from fields offices of time barring assessment cases

A large number of requests for Exchange of Information (EOI) in time barring assessments/matters are received in FT&TR Division just before the time barring date, and it becomes difficult to process and forward such requests after due scrutiny to the Foreign Competent Authority in time. In many cases the EOI requests are not properly drafted/prepared and modification of these requests by the field officers is required.

Officers/CsIT concerned have now been directed to send all requests for exchange of information getting time barred on 31-3-2015 to FT&TR Division latest by 15th of February 2015. References beyond this date may be sent only in unavoidable circumstances. In this manner, deficiencies, if any, can be removed and modified/correct EOI Performa can be sent to the Foreign Competent Authority in time.

(Letter (F. No. 500/56/2014-FT&TR-IV], dated 6-1-2015)

Section 138 of the Income-tax Act, 1961 – Disclosure of information respecting assessees to specified Officer, Authority or Body performing functions under any other law – Disclosure of information about taxpayers to media

Instances have come to the notice of the CBDT where information pertaining to individual taxpayers has been published in the print media with specific reference to departmental sources. In some cases, even details contained in departmental documents seem to have been shared with the representatives of media. Attention of all the officers and officials of the Department is now drawn to the provisions of section 138 of the Income-tax Act read with notifications issued under that section, which obligates that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his or her possession during the discharge of official duties unless specifically authorised to do so in accordance with the notifications issued under section 138 from time to time.

Provisions contained in section 280 of the Income-tax Act, 1961 provides that if a public servant furnishes any information or produces any record in contravention of the provisions of section 138(2) of the Income-tax Act, 1961, he or she will be punishable with imprisonment which may extend up to six months and shall also be liable to fine.

(Office Memorandum [F. No. DIR. (HQRS.)/CH.(DT)/29/2014], dated 1-1-2015)

Good Governance Day – Instructions on observance of Wednesdays as a public hearing day for hearing public grievances

As a part of Prime Minister's 'Good Governance Day' promise to provide an "open and accountable administration" it has been decided that all field offices of the Income Tax Department will observe 'Public Meeting Day' during 10.00 AM to 1.00 PM every Wednesday to listen to and try to resolve the grievances of the members of the public. Heads of local income tax offices will not fix any official meeting on Wednesdays during the hours prescribed for interaction with the public and will ensure that their staffs including staff at the reception and security personnel, is suitably instructed to allow the members of the public to meet the officers without prior appointment.

A suitable feedback mechanism shall also be put in place by each cadre controlling Principal Chief Commissioner/Director General of Income Tax for offices under his control to record the number of grievances attended to and solved on every 'public meeting day', and to identify the deficiencies with a view to suggesting systemic changes required to avoid recurrence of delays in redressal of grievances. A report in this regard shall henceforth also be incorporated in their Monthly DO letters submitted to the Zonal Members concerned.

(Office Memorandum [F. No.DIR.(HQRS.)/CH.(DT)/29/2013], dated 6-1-2015)

Sukanya Samridhhi Account Rules, 2014 – Rate of interest to be allowed on investments in said scheme during Financial Year 2014-15

Launch of scheme for Girl Child named "Sukanya Samridhhi Account" by Hon'ble Prime Minister – rate of interest reg: In compliance of announcement by Finance Minister in his Budget Speech 2014-15 the Government of India has introduced a new scheme named "Sukanya Samridhhi Account" *vide* Notification No. GSR No. 863(E), dated 2nd December, 2014. It has been decided to

allow 9.1% rate of interest on investments in the scheme during the financial year 2014-15.

(Office Memorandum [F.No. 2/3/2014.NS-II], dated 20-1-2015)

Finance (No. 2) Act, 2014– Explanatory Notes to the provisions of said Act

The Finance (No. 2) Act, 2014 (hereafter referred to as 'the Act') as passed by the Parliament, received the assent of the President on the 6th day of August, 2014 and has been enacted as Act No. 25 of 2014. This circular explains the substance of the provisions of the Act relating to direct taxes.

INSTRUCTIONS

Section 143 of the Income-Tax Act, 1961 – Assessment – General – Clarification as to whether provision of section 143(1d) permits processing of returns having a refund claim, where notice under section 143(2) has been issued

Sub-section (1D) of section 143 of the Income-tax Act provides that where a notice has been issued to a taxpayer under sub-section (2) of section 143 of the Act, it shall not be necessary to process the return in such a case. Some doubts have been expressed, in view of the words "shall not be necessary" used in the said sub-section, as to whether this provision permits processing of returns having a refund claim, where notice under section 143(2) of the Act has been issued. The matter has been examined by the Board. Sub-section (1D) of section 143 of the Act was introduced by the Finance Act, 2012 with effect from 1-7-2012. The purpose of introduction of this sub-section has been stated in the Explanatory Note to the Finance Act as under:

"Under the existing provisions, every return of income is to be processed under sub-section (1) of section 143 and refund, if any; due is to be issued to the taxpayer. Some returns of income are also selected for scrutiny which may lead to raising a demand for taxes although refunds may have been issued earlier at the time of processing. It is therefore proposed to amend the provisions of the Income-tax Act to provide that processing of return will not be necessary in a case where notice under sub-section (2) of section 143 has already been issued for scrutiny of the return." Thus, in cases where an unprocessed return is selected for scrutiny, the legislative intent is to prevent the issue of refund after processing as scrutiny proceedings may result in demand for taxes on finalisation of the assessment subsequently.

Considering the unambiguous language of the relevant provision and the intention of law, the Central Board of Direct Taxes, clarified that the processing of a return cannot be undertaken after notice has been issued under section 143(2) of the Act. It shall, however, be desirable that scrutiny assessments in such cases are completed expeditiously.

(Instruction No. 1/2015 [F. No. 225/319/2014-ITAT.II], dated 13-1-2015)

PRESS RELEASES

Draft of Income Computation and Disclosure Standards (ICDS) for the purpose of notification under section 145(2) of the Income-tax Act, 1961

Sub-section (2) of section 145 provides that the Central Government may notify Income Computation and Disclosure Standards (ICDS) for any class of assessees or for any

class of income. The CBDT had constituted a Committee comprising departmental officers and professionals in December, 2010 to suggest standards for the purposes of notification under section 145(2) of the Act. The Committee submitted its first interim report in August 2011. The Committee submitted its final report along with the draft of standards in August, 2012 which was placed in public domain for comments. On the basis of the suggestions received from the stakeholders and examination of the same by the CBDT, the draft standards submitted by the Committee have been revised. The new draft of 12 Income Computation and Disclosure Standards (ICDS) has been uploaded on the Finance Ministry website (www.finmin.nic.in) and tax Department website (www.incometaxindia.gov.in) for comments from stakeholders and general public.

The comments and suggestions on the draft ICDS to be submitted as per prescribed date and mode.

(CBDT Press release, dated 9-1-2015)

Standard Operating Procedures (SOP) for administering TDS incorporating the re-engineered processes developed by the CPC-TDS – Draft of standard operating procedure for matching the unconsumed challan

TDS is a non-obtrusive but powerful instrument to prevent tax evasion as well as to expand the tax net. TDS also minimises tax avoidance by the taxpayer (income earners), as the payee's transaction(s) are reported to the Department by the third person. With the Centralised Processing Cell for TDS at Vaishali, Ghaziabad, the TDS administration is now driven through technology support. The CPC-TDS provides comprehensive MIS on compliance behaviour of the deductors, defaults details, PAN errors besides helping the deductor or the Department to identity & rectify mistakes. The strategy to augment revenue through TDS ought to be, therefore, a mix of enforcement, capacity building (external and internal) and leveraging of information that is now available with the Department through the CPC-TDS.

With the enablement of all functionalities, available to the TDS Assessing Officer through AO Portal, the Standard Operating Procedure (SOP) specifying the role of Officers, who are associated with TDS administration, becomes necessary. The SOPs have been framed to address the various features in the re-engineered processes in TDS administration. The SOPs have been made on following issues :– i) Matching the unconsumed challan; ii) Top deductors paying less/no tax with respect to previous financial years; iii) Resolvable/Collectible TDS Demand.iv) G-OLTAS reconciliation. v. Corporate connect for TDS compliance.

(Press Release, dated 6-1-2015)

Truth, purity, and unselfishness — wherever these are present, there is no power below or above the sun to crush the possessor thereof. Equipped with these, one individual is able to face the whole universe in opposition.

CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION
Case Law Update

A] HIGH COURT JUDGMENTS

I. Where the assessee company had followed CUP method for computing the ALP in respect of international transaction being provision of IT-enabled health care (medical transcription) services to its parent Company, which was upheld by the Tribunal, High Court refused to interfere with the order of the Tribunal

CIT vs. M/s. CKAR Systems Pvt. Ltd. (I.T.T.A. No. 731 of 2014) (Andhra Pradesh and Telangana High Court) – Assessment Year: 2005-06

Facts

1. The assessee, a wholly owned subsidiary of CBay Systems Ltd. USA, was engaged in providing IT-enabled health care (medical transcription) services to its parent company as well as other overseas customers. For the relevant assessment year, the assessee adopted Comparable Uncontrolled Price method (CUP) to compute Arms Length Price ('ALP') of its transactions with the parent company. The assessee considered a total of 5 comparables; 2 external and 3 internal. The 2 external comparables were independent Indian companies with whom the parent company had entered into agreements for availing medical transcription services. The AE paid USD 0.05 per line of medical transcription to the two independent companies. Further, the assessee had provided medical transcription services to 3 overseas companies and charged similar rate to them.

2. During the assessment proceedings, the Transfer Pricing Officer ('TPO') rejected the external comparables owing to the absence of particulars such as details of revenue generated from the medical transcription work and the total number of lines of transcription done. The TPO also rejected the 3 internal comparables due to the absence of annual reports and other relevant details. The TPO further rejected the CUP method and substituted it with Transaction Net Margin Method ('TNMM'). Accordingly, after considering 6 comparables and allowing working capital adjustment, the TPO proposed an adjustment to the assessee's income based on TNMM. The Assessing Officer (AO) passed the assessment order in conformity with the order passed by the TPO.

3. On appeal, the Learned CIT(A) held that as per the OECD guidelines CUP method was the most direct and reliable method for determining ALP. After examining the materials on records, the Learned CIT(A) was of the view that the assessee provided all the materials to the TPO with regard to the price charged by the internal comparables as well as external comparables.

The CIT(A) finally came to a conclusion that the assessee was right in adopting the CUP method as the most suitable method for determining the ALP of international transactions made by it with its AE.

4. On appeal by the Revenue, the Hon'ble Tribunal held that the comparables adopted by the assessee were uncontrolled parties and could be considered for the purpose of determining the ALP as per CUP method. Accordingly, it upheld the order of the Learned CIT(A).

5. Being aggrieved by the said order, Revenue filed an appeal with the Hon'ble High Court.

Judgment

1. The Hon'ble High Court held that the order of the Hon'ble Tribunal demonstrated that the assessee followed one of the permissible methods of computing the ALP and the same was held to be valid by Tribunal. Accordingly, the Hon'ble High Court saw no reason to interfere with the order of the Hon'ble Tribunal.

II. Interest payment made by the Indian branch of the assessee foreign bank to its head office abroad is allowable as a deduction in computing the profits of the assessee's branch in India and further, no tax is deductible at source from the said payment

The Bank of Tokyo Mitsubishi Ltd. vs. DIT (53 taxmann.com 105) (Calcutta High Court) – Assessment Year: 1995-96

Facts

1. The appellant, a Foreign Bank had a branch in India. During the assessment year under consideration, it claimed the amount of interest paid by the Indian branch to its head office abroad as deduction for computing the profits attributable to its Indian branch. Further, no tax was deducted at source from the said payment u/s. 195 of the Act.

2. During the assessment proceedings, the Assessing Officer (AO) disallowed the said interest payment in computing the profits attributable to the Indian branch.

3. The Hon'ble Tribunal held that the said payment was not an allowable expenditure and without prejudice, even if the same was held to be allowable, tax was not deducted at source under section 195 of the Act and therefore was disallowed u/s. 40(a)(i) of the Act.

4. Being aggrieved, the appellant preferred an appeal before the Hon'ble High Court.

Judgment

The Hon'ble High Court, following the judgment of the Hon'ble Calcutta High Court in case of *ABN Amro Bank NV vs. CIT (343 ITR 81)*, held that the interest payment made by the Indian branch of the Foreign Bank to its head office abroad was an allowable expenditure to compute the profits of the Indian branch and further, no disallowance can be made u/s. 40(a)(i) of the Act in respect of the said payment, since no tax was deductible at source u/s. 195 of the Act.

B) Tribunal Decisions

I) Transfer Pricing – Importance of Functional, Asset and Risk (FAR) Analysis over the business models agreed between the assessee and its AEs – Reliance on United Nations TP Manual and OECD TP Guidelines – Concept of Substance over Form – Deletion of Adjustments made by the TPO – In favour of the assessee.

DCIT vs. ITC Infotech India Ltd. 2015-TII-12-ITAT-KOL-TP – Assessment Years: 2005-06 & 2006-07

Facts

1. The assessee is engaged in the business of Information Technology services. To render such services to the customers, the assessee

avails marketing support services from its AEs, namely ITC Infotech (USA) Inc. (ITC U.S.) and ITC Infotech Limited, U.K. (ITC U.K.).

2. The Transfer Pricing Officer (TPO) proposed an adjustment in relation to payments on account of accounts management charges paid by the assessee to its subsidiaries by altering the revenue sharing model without fully appreciating the functional and risk profile of the assessee and its AEs and global business model followed by them.

3. The assessee and its AEs operate under an integrated 'Global Delivery Model' where the customers on their individual preferences choose to enter into the contract with the assessee directly or its AEs. The functions, responsibilities and the revenue sharing model between the assessee and its AEs are pre-defined and set forth in a Master Service Agreement (MSA) entered between them.

4. The AEs of the assessee perform only marketing activities and undertake administrative functions i.e. accounts management services for which they share 25 % of the total revenue from the customers. This arrangement stands true for both the arrangements i.e.

- Arrangement 1 – when the customer contracts directly with the assessee and the assessee sub-contracts administrative functions to the AEs;
- Arrangement 2 – when the customer contracts with the AEs and the AEs sub-contracts work, which includes customisation of software solution development, IT facilities implementation and professional IT services, to the assessee.

5. The AEs were selected as tested parties for determination of arm's length nature of the international transaction.

6. TPO made adjustments for Assessment Year (A.Y.) 2005-06 and A.Y. 2006-07 in respect of the contracts directly entered into by the assessee with the customers. The assessee had paid accounts management charges to its AEs for availing of marketing and administrative support services at 25% of the revenue from the customers.

Decision

1. The issue before the Tribunal is whether CIT(A) was correct in deleting the addition made by AO on account of transfer pricing adjustments proposed by TPO, wherein CIT(A) held that risk factors involved in transactions carried out on the basis of contracts either by the assessee himself or through subsidiaries are same and no transfer pricing adjustment is to be made.

2. The Tribunal observed that the assessee performed non-administrative i.e. IT services under both the business models and thus entire risks with regard to non-administrative services were being borne by the assessee irrespective of the business model and that the activities/ services in connection with development of the assignment/project would be essentially driven by the assessee in adherence with various commercial and technical qualification parameters.

3. Further, the Tribunal observed that under both the business models, the essential factor for awarding a service contract by the customer would always be technical and commercial expertise and experience of the assessee in handling such projects.

4. Relying on the aforesaid OECD Guidelines and UN TP Manual, the Tribunal observed that the conduct of the assessee and its AEs should be given due cognisance which is same in both the business models.

5. The Tribunal observed that the execution of the agreement directly by the assessee or by the AE would not create any substantial difference in the sharing of functions or risks between the parties and hence, it would not change the functional characteristic of the parties.

6. Thus, based on the above, the Tribunal held that although the business models are

optically different in terms of contracting party but the functional and risk profile of both the assessee and its AEs remain same in both the models, and deleted the adjustment made on payment of accounts management charges

II) India – USA DTAA – Taxability of amount received by non-resident from its Indian franchisees towards reimbursement of international Sales and Marketing Expenses – Whether Royalty/FIS: Held : Yes – In favour of the Tax Department.

Marriott International Inc. vs. Dy. DIT [TS-4-ITAT-2015 (Mum.)] – Assessment Years : 2006-07 to 2009-10

Facts:

1. The assessee, incorporated in and a tax resident of the USA, belonged to the 'Marriott Group', which was engaged in the business of operating hotels worldwide under brands such as 'Marriott' and 'Renaissance'. The Marriot Group also gave licences to other hotels under a franchisee arrangement to enable them to carry out business under these brand names.

2. Marriott Worldwide Corporation (MWC), an affiliate company belonging to the Marriott Group, had entered into a "licence and royalty agreement" with another Group entity (name of entity was not available) that owned the Renaissance and Marriott brands. Under the authority of this agreement, MWC gave permission or a licence to other hotels to use these two brand names upon the payment of royalty on agreed terms. Three Indian companies Juhu Beach Resorts Limited, Chalet Hotels Limited and V. M. Salgaonkar and Brothers Private Limited (hereinafter referred to as the 'Indian Companies') engaged in the business of running hotels, had entered into an agreement with MWC for use of either or both these brand names. MWC had offered the royalty received from the Indian Companies as its income in India, and the same was not disputed.

3. Separately, the assessee had also entered into an International Sales And Marketing Agreement ('ISMA') with the aforementioned Indian companies, under which the assessee had agreed the following:

4. The assessee filed its return of income treating all the receipts by virtue of the above mentioned agreements as taxable. Subsequently, the assessee filed a revised return of income declaring 'nil' income and sought refund of the taxes withheld by the Indian Companies, on the ground that the said expenses were in the nature of reimbursement of expenses, on a cost-to-cost basis (without any mark-up) and hence were not taxable.

5. Aggrieved by the CIT(A)'s decision, the assessee filed an appeal before the Tribunal.

6. The assessee contended that the impugned payments received by the assessee were mere reimbursement of expenses. Though the agreement provided for payment of expenditure/cost in providing international sales and marketing services and for the payment of fees as a percentage of gross revenue, yet the surplus, if any, that was available after incurring the concerned expenses, was either refunded to the hotels or included in the next year's spending. The assessee was allocating the expenses and costs incurred for marketing programmes on an actual basis without adding any mark-up for profit. Accordingly, the assessee did not make any profits out of these amounts. These payments had been made for specific services which were unconnected with the payment of royalty to MWC;

7. The DR submitted that the assessee's Group had bifurcated the royalty amount into different types of receipts only to suit its convenience. The assessee's Group was using the funds so collected in different names only to promote its brand name. Accordingly, the "form"

should be ignored and the "substance" should be looked into;

8. The ISMA and the agreement with MWC were inter-dependent. As such, the interconnected services rendered by two different companies should be considered as ideal in nature. The purpose or intention of the Marriott Group should be taken as the prime factor to decide the issue under consideration;

Decision

The Tribunal held as under:

1. The conditions attached to the permission given by the Government of India for remittance by the Indian Companies specifically provided that the approval would be subject to Indian laws. Therefore, the assessee's contention that "the Government of India had accorded necessary permission to remit the payment on specific head and the tax authorities were not entitled to take a different view", was not correct.

2. The responsibility to maintain the brand value lay with the brand owner. The brand value was maintained by continuous and sustained advertisement/marketing activities. In the instant case, the Marriot and Renaissance brands were owned by one company (whose name and activities were not available on record). The ISMA had been entered into with another company, viz. the assessee. Since the assessee had collected the charges from the hotel carrying out the marketing activities, the Revenue had contended that the charges so collected should also be construed as a part of royalty only.

3. Therefore, the amount received by the assessee company as reimbursement of expenses from the Indian hotels should be considered as royalty, since that amount had been spent on popularising the brand name, which would otherwise be the responsibility of the brand owner.

4. The assessee's claim that it was undertaking the marketing work on a cost-to-cost basis defied logic and prudence. A commercial company would never work without profit. The very fact that it was functioning on a cost-to-cost basis proved that the assessee company was only an extended arm of the Marriott Group owning the brand name. Therefore, this was a clear tax planning by adoption of a "colourable device". Accordingly, the separate legal identity of the assessee got blurred, and the corporate veil had to be lifted. The amount received by the assessee had to be examined from the point of view of the original owner of the brand as the advertisement/ marketing programmes were carried out by the assessee in the name of Marriott and/ or Renaissance brand.

5. Hence, all payments made by the Indian companies to the assessee went to swell the value of the existing brand names referred to above, and therefore had to be taxed as royalty in terms of Article 12 of the India-US tax treaty.

6. The Assessing Officer was directed to follow the Bombay High Court decision in *DIT vs. NGC Networks Asia LLC [2009] 313 ITR 187 (Bombay HC)* and delete the interest under sections of section 234B of the Act.

III) Payment of Commission to Non-Resident for rendering services in procuring export orders outside – Whether any tax is deductible u/s 195 on such payment by the payer – Impact of withdrawal of Circular No. 23 dated 23-7-1969 and Circular No. 786 dt. 7-2-2000 by Circular No. 7 dated 22-10-2009 – Held: No – In favour of the assessee

Welspring Universal vs. JCIT 2015-TII-10-ITAT-Del-Intl. Assessment Year: 2011-12

Facts

1. The assessee is engaged in manufacturing of engineering items.

2. During assessment, the AO observed that a sum was paid by the assessee as a

foreign commission without deduction of tax at source.

3. On explanation, the assessee submitted that such deduction u/s. 195 was not applicable as the non-resident commission agent provided services outside India and, hence, the amount was not chargeable to tax in his hands.

4. The AO accepted such submission of the assessee and chose not to make any disallowance u/s 40(a)(i). However, the CIT invoked its revisional power u/s 263 and held that in view of the amendment to section 195, the assessee was liable to deduct tax at source on such payment of commission to foreign parties. Having not done so, the order passed by the AO was erroneous and prejudicial to the interests of the Revenue. Aggrieved, the assessee had filed the present appeal.

Decision

1. It is relevant to note that Circular No. 23 dt. 23-7-1969 clarified that no part of the income of a foreign agent of Indian exporter arises in India and hence such an agent is not liable to income-tax in India on the commission.

2. Then Circular No. 786 dt. 7-2-2000 further elaborated the consequence of Circular No. 23 by stating that since such commission income of foreign agent is not liable to tax in India, no tax is therefore, deductible at source under section 195 and consequently the export commission payable to a non-resident for services rendered outside India is not disallowable u/s. 40(a)(i).

3. Thereafter, Circular No. 7 dated 22-10-2009 was issued withdrawing, ***inter alia***, the above two circular nos. 23 and 786. The legal position contained in section 5(2) read with section 9, as discussed above about the scope of total income of a non-resident subsisting before the issuance of Circular Nos. 23 and 786 or after the issuance of Circular No. 786 has not undergone any change. It is not as if the export commission income of a foreign agent for soliciting export orders in countries outside India was earlier chargeable to tax, which was exempted by the CBDT through the above circulars and now with the withdrawal of such circulars, the hitherto income not chargeable to tax, has become taxable. The legal position remains the same ***de hors*** any circular inasmuch as such income of a foreign agent is not chargeable to tax in India because it neither arises in India nor is received by him in India nor any deeming provision of receipt or accrual is attracted.

4. It is further relevant to note that the latter Circular simply withdraws the earlier circular, thereby throwing the issue once again open for consideration and does not state that either the export commission income has now become chargeable to tax in the hands of the foreign residents or the provisions of section 195 read with section 40(a)(i) are attracted for the failure of the payer to deduct tax at source on such payments;

5. We hold that the amount of commission income for rendering services in procuring export orders outside India is not chargeable to tax in the hands of the non-resident agent and hence no tax is deductible under section 195 on such payment by the payer. Resultantly, no disallowance is called for u/s. 40(a)(i) of the Act.

6. Adverting to the facts of the instant case, it can be seen that the AO, after considering certain decisions relied by the assessee favouring non-deduction of tax at source in the present circumstances, accepted the assessee's contention. The fact that the decision of the Authority for Advance Ruling, relied by the CIT, favours the Revenue's case, at the maximum, makes the issue about deduction of tax at source from foreign commission, a debatable one. In view of such a cleavage of opinion, this debatable issue goes outside the purview of section 263 in the light of the above referred two Supreme Court judgments. We, therefore, set aside the impugned order.

Nikita Badheka, *Advocate & Notary*

INDIRECT TAXES
VAT Update

Circulars by the Commissioner of Sales tax

A Instructions for Stay in Appeal

Circular 1T of 2015 dated 7-1-15: In this circular the Commissioner has explained and modified the instructions given in trade circular No 15T of 2014, dated 6th August, 2014 regarding Stay in Appeal under CST Act. Para C on page 12 of the Circular is modified. If the Appellant receives some forms after the Assessment Order, the Appellant should produce list in the form enclosed with the circular. At the time of filing of Appeal, the Appellate Authority shall fix the part payment after checking the list .The Commissioner has clarified that the Declarations received upto the date of filing of Appeal only would be considered for the purpose of fixing part payment.

B Extension of time for VAT audit report (Circular 2T of 2015 dt. 14-1-2015)

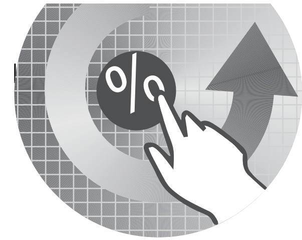
1 Starting with the last but important one is the circular about extension of time for filing of VAT audit report in form 704 for the Financial year 2013-14. The due date for filing the Audit Report U/s. 61 of the MVAT Act is extended to 30-1-2015. After uploading the Audit Report on or before 30-1-2015 the physical copy of the acknowledgement and the statement of submission should be filed before 10-2-2015 as per Trade Circular 21T of 2014 dt. 20-12-2014 discussed hereinbelow. (the serial number of circular is wrongly stated as 14T)

2. Instructions for physical submission of audit report (Cir. 21T 2014 dated 20-12-2014): This circular gives the instructions for physical submission of Audit Report. On or before 10-2-2015 the dealers who have uploaded audit report should submit

a statement of submission of audit Report duly certified with signature, stamp, seal of the dealer with date and

b copy of acknowledgement generated on uploading of Audit Report in F. 704. This copy of acknowledgement should be duly certified with signature, stamp, seal of the dealer and the auditor with date.

[Contd. on page 98]



CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES
Service Tax – Statute Update

1. Central Excise and Service Tax Summons not to be issued to Senior Management Officials in Ordinary Instance

CBEC had already issued instructions *vide* its circular F. No 208/122/89-CX.6 dated 13-10-1989 in respect of issue of summons under Central Excise Act. The instructions were also issued *vide* F. No. 137/39/2007-CX.4 dated 26-2-2007 in respect of summons for Service Tax matters.

CBEC, upon being perturbed by issue of summons u/s. 14 of CE Act, 1944 in routine manner to the top officers of the companies calling for material evidence / documents and recovery of dues, has now issued instruction to the field formations that it is desirable to issue a simple politely worded letter for securing documents relating to investigations and the summons may only be issued as the last resort when it is absolutely required.

It has been further clarified that :-

- "Senior management officials such as CEO, CFO, General Managers of a large company or a PSU should not generally be issued summons at the first instance. They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to loss of revenue."
- Summons by Superintendents should be issued after obtaining prior written permission from an officer not below the rank of Assistant Commissioner with the reasons for issuance of summons to be recorded in writing.
- Where for operational reasons it is not possible to obtain such prior written permission, oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officer according such permission at the earliest opportunity.
- In all cases, where summons are issued, the officer issuing summons should submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who had authorized the issue of summons.

Above instructions streamlining the process of issue of summons could be a great relief to the trade. The field formations have been asked to strictly comply with these instructions and non-observance would be viewed seriously.

(Instruction F. No. 207/07/2014-CX-6 dated 20th January, 2015)

2. Initiatives towards good governance – Every Wednesday (9 am to 1 pm) to be a taxpayers' day to meet top officials without prior appointment to address their grievances expeditiously

As an effort by the Central Government to place great emphasis on reform oriented non-adversarial tax administration, simplification of procedure to reduce interface between tax officials and taxpayers and to achieve excellence in the formulation and implementation of Customs, Central Excise and Service Tax policies and enforcement of cross border controls for the benefit of trade, industry and other stakeholders, it is reiterated that the indirect tax administration considers all taxpayers its the cornerstone of economic independence and prosperity. In order to further simplify and modernize the tax system, expand the tax base and improve compliance in tandem with the Central Government's objective to ensure good governance, it has been decided that one day of the week, viz., Wednesday (9 AM to 1 PM) may be designated as Taxpayers' day wherein Heads of all offices in the field will meet the taxpayers without any prior appointment in order to address their grievances expeditiously.

[Instruction F.No. 296/267/2014-CX.9, dated 7-1-2015]

3. Territorial jurisdiction of the Principal Commissioners of Service Tax, Commissioners of Service Tax, Principal Commissioners of Central Excise and Commissioners of Central Excise

There has been change in territorial jurisdiction of the Principal Commissioners of Service Tax and Central Excise of Mumbai, Delhi and Bangalore. Readers are requested to visit the website cbec.gov.in for details.

[Notification No. 01/2015 –S.T, dated 20-1-2015]

[Contd. from page 96]

In case of Large Tax Payer (LTP) the above documents should be submitted to the LTU Officer. For the dealers who are not LTP, the above documents should be submitted in 704 cell at Vikrikar Bhavan, Mazgaon, for Mumbai dealers. For the dealers located outside Mumbai and who are not Large Tax Payer should submit the above referred documents to the location In charge Officer that is JC VAT (Adm.), DC VAT (Adm.) or AC VAT (Adm.).

If the dealer accepts recommendations of the Auditor, the information about tax and interest paid with the revised return should be submitted by the dealer through online compliances.

C Website Information

i State level service cell meeting is adjourned to 24th February, 2015 at 3 pm in Conference room, 7th floor, Vikrikar Bhavan, Mazgaon.

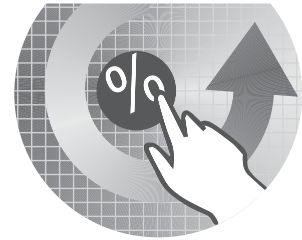
ii CDA non compliant dealers are being sent notices for 11-12, dealers may upload their compliance before receipt of notice.

iii Facility to upload Form 4A for dealers opting for Retailers Composition made available in website.

iv List of non filers of form 704 for all periods made available on website

v E-payment facility made available for profession tax, luxury tax, sugarcane purchase tax now available

vi List of cases covered for CDA-11-12 available on website.



CA Bharat Shemlani

INDIRECT TAXES
Service Tax – Case Law Update

1. Services

Legal Service

1.1 P. C. Joshi vs. UOI 2015 (37) STR 6 (Bom.)

The Hon'ble Bombay High Court in this case upheld validity of provisions of section 65(105) (zzzzm) inserted by FA, 2011 levying service tax on Advocates providing services to business entity.

Banking & Other Financial Service

1.2 Kerala Non Banking Finance Com. vs. UOI 2015 (37) STR 41 (Ker.)

The petitioner in this case pleaded lack of competence for Parliament to introduce Service Tax on hire purchase and leasing transactions under BFS. The Hon'ble High Court held that, hire purchase agreement between the Financier and the Hirer of vehicle does not affect Sales Tax liability, whether it is payable at the point of sale of vehicle from manufacturer or dealer to the Financier or to the Hirer or whether it is payable on delivery by the Financier to the Hirer under the hire purchase agreement. There is no conflict between levy of Sales tax on sale or deemed sale of vehicle and Service Tax is payable on services rendered by Financier under the hire purchase agreement. The Constitutional provisions authorising Sales Tax does not stand in the way of Parliament levying Service Tax on taxable service charges received in respect of hire purchase transactions by Financiers.

1.3 CCE&ST, Chandigarh-II vs. State Bank of Patiala 2015 (37) STR 284 (Tri.-Del.)

The Tribunal in Canara Bank 2012 (28) STR 369 (T) held that since the appellant in that case was an agent of RBI it was entitled to same immunity to taxation as granted to RBI. The Tribunal in present case held that, since an exemption notification must be strictly and narrowly construed, treating a bank authorised by RBI (to transact Government business) as agent of RBI is an interpretation that warrant deeper analysis and possible reconsideration and therefore matter referred for consideration by a Larger Bench.

Mapower Recruitment or Supply Agency Service

1.4 CCE vs. Computer Science Corpn. India P. Ltd. vs. 2015 (37) STR 62 (All.)

In this case, assessee obtained from its group companies directly or by transfer of employees, the services of expatriate employees. They have paid salaries of employees in India, deducted tax and contributed to statutory social security benefits such as provident fund. They were also required to remit contributions, which had to be paid towards social security and other benefits that were payable to the account of employees under laws of foreign jurisdiction. The Tribunal held that, there is no basis whatsoever to hold that such a transaction is a taxable service, involving the recruitment or supply of manpower. The

service which is provided or to be provided must be by a manpower recruitment or supply agency and such service has to be in relation to supply of manpower.

Management, Maintenance or Repair Service

1.5 CC&CE vs. New Hindustan Rubber Works 2015 (37) STR 120 (Tri. - Mumbai)

The assessee in this case claimed benefit of Notification No. 12/2003-ST and paid service tax only on labour charges towards retreading tyres excluding cost of rubber. The department alleged that, they are ineligible to claim benefit of the said notification for failure to indicate value of goods and materials actually sold. The Tribunal observed that, assessee clearing goods under consolidated invoice and uniformly charging 60% towards value of material and 40% towards service. Since there is absence of separate invoice showing actual sale of goods and material and the issue is settled by Tribunal in case of *Ador Fontech Ltd. 2014 (36) STR 146 (Tri.)*, the order allowing benefit of above said notification is liable to be set aside. It is also held that, penalty is not leviable when matter is referred to Third member in other matter on similar issue.

1.6 Samir Rajendra Shah vs. CCE, Kolhapur 2015 (37) STR 154 (Tri. - Mumbai)

The Tribunal in this case held that, security amount refundable is at the time of termination of lease/rent agreement of property, therefore not forming part of service provided and hence service tax is not payable on security deposit.

1.7 CCE, Agra vs. Goverdhan Transformer Udyog Pvt. Ltd. 2015 (37) STR 161 (All.)

The assessee in this case sold transformer oil, HV/LV coil and spare parts, for repair of old and damaged transformers. The High Court held that, where agreement quantifies value of materials separately from value of services rendered, value of materials/goods has to be excluded as that component is not liable to service tax.

Works Contract Service

1.8 Gammon India Ltd. vs. CCEC&ST, Nagpur 2015 (37) STR 225 (Tri.-Mumbai)

The appellant in this case entered into supply contract for supply of goods namely transmission towers and service contract for execution of Tower package/Transmission Line. The department contended that materials get consumed in process of erection and installation and therefore there is no sale of goods. The Tribunal held that a significant percentage of total contract work under the service contract involves material component and thus there is transfer of property in goods involved in execution of service contract. The transaction is covered under WCS. It is further held that, it is not merely the nomenclature and form of contract that should be seen but what is material is the form as well as substance of contract, both have to be examined to come to a conclusion that service contract is a works contract.

Clearing & Forwarding Agent Service

1.9 CCE&C, Aurangabad vs. Hoganas India Ltd. 2015 (37) STR 240 (Tri. - Mumbai)

The Tribunal in this case held that, assessee who is sales representative canvassing orders and pursuing delivery of goods for commission cannot be called as C&F Agent.

Management Consultancy Service

1.10 Tata Autocomp Systems Ltd. vs. CCE, Pune 2015 (37) STR 252 (Tri. - Mumbai.)

The appellant in this case provided administrative support services relating to support services to run business of clients by way of assistance in marketing, obtaining loans from financial institutions, liaisoning with Government agencies for getting various permissions, training of personnel etc. The department sought to tax them Management Consultancy Service. The Tribunal held that, no advice or consultancy regarding running of organisation is provided hence not liable to service tax.

Intellectuel Property Rights Service

1.11 Indiagames Ltd. vs. CST, Mumbai 2015 (37) STR 299(Tri. - Mumbai.)

The appellant in this case entered into an agreement with foreign company by which appellant has been permitted to use property in the name of likeness of legendry martial artist "Bruce Lee" embodied in visual images supplied to them for which appellant has paid consideration to the foreign service provider by way of royalty. The Tribunal held that, property embodied in visual images would come within the definition of copyrights as defined in Copyright Act, 1957 as artistic work, and copyrights were specifically excluded from IPR service during the relevant time hence, question of levy of service tax does not stand scrutiny of law.

Online Information and Database Access or Retrieval Service:

1.12 State Bank of India vs. CST, Mumbai-II 2015 (37) STR 340 (Tri. - Mumbai)

In this case appellant was in contract with Equant Pte. Ltd. for proving Virtual Private Network (VPN) enabling appellant and its branches to retrieve data from data centre maintained abroad. The department alleged that, services provided by company abroad to Indian entity in India is taxable under section 66A. The Tribunal held that, the department's allegation is unclear as service provider and service recipient both located abroad and service rendered and payments made outside India. Foreign office connected to data centres abroad through VPN and accessibility of domestic offices to FO network impossible. Services provided more aptly fall under TelecommunicationService if provider licensed under Indian Telegraph Act. Therefore demand of service tax is set aside.

Packaging Service

1.13 New Era Handling Agency vs. CST, Panaji-Goa 2015 (37) STR 344 (Tri. - Mumbai)

The Tribunal in the present case held that, as per Essential Commodities Act, 1955 read with Fertilizer Control Order, 1985, fertiliser cannot be marketed without packaging in manner specified under said order. Also assessee is not having licence authorising sale of fertiliser in bulk. This packaging of fertiliser is a statutory requirement for sale of fertiliser and if marketing of fertilizer cannot take place without packaging then assessee is a manufacturer and therefore not liable to service tax.

2. Interest/Penalties/Others

2.1 CST, Mumbai vs. Toyo Engineering Corporation Ltd. 2015 (37) STR 238 (Tri. - Mum.)

The assessee in this case made payment of tax on 15-2-2007 by debit in CENVAT credit which were dues on 5-9-2006 and 5-2-2007, without interest. The Tribunal held that, tax can be paid either in cash or by debit in CENVAT credit account or by both. Merely because credit available in books of account, payment of tax to be inferred and liability to pay interest to be computed from due date of payment of tax to actual date of payment.

2.2 CST, Mumbai-I vs. Vodafone India Ltd. 2015 (37) STR 286 (Tri. - Mum.)

The Tribunal in this case held that, service provided to customers of foreign telecom service provider as international inbound roamers, while they are in India is a service provided to foreign telecom service providers for which consideration has been received in CFE, hence covered by export of service. Therefore, assessee is entitled for refund/rebate of service tax paid in respect of such transaction.

2.3 APL (India) Pvt. Ltd. vs. CST, Mumbai 2015 (37) STR 301 (Tri. - Mum.)

The department in this case sought to demand tax on ocean freight, currency adjustment charges, bunkering charges, advance manifest charges collected by the appellant on behalf of shipping lines. The Tribunal held that, most of these charges form part of transaction value in respect of customs matters, hence question of levy of

service tax on custom transaction would not arise at all. Further, if the appellant have collected these charges and remitted the same to shipping lines, the whole amount received and transmitted cannot be said to be consideration for services rendered. What can be levied to service tax is the service rendered by appellant either as a steamer agent or BAS in respect of collection of freight and other charges and only on the consideration received for the services rendered, service tax can be levied.

2.4 Affinity Express India Pvt. Ltd. vs. CCE, Pune-I 2015 (37) STR 321 (Tri. - Mum.)

The Tribunal in this case held that, in case of refund the relevant date for determining period of limitation was the date of export of service or date when invoices were raised.

3. CENVAT Credit

3.1 CCE, Goa vs. Geno Pharmaceuticals Ltd. 2015 (37) STR 136 (Tri. - Mumbai)

The assessee in the case got the goods manufactured on loan licence basis and availed CENVAT credit of service tax paid on services received at factories of loan licensees. The Tribunal held that, credit to be availed only by actual manufacturer and assessee is neither undertaking manufacturing activity nor discharging excise duty liability. The assessee is not entitled to take credit merely because Service Tax invoices in assessee's name and service tax is paid by assessee.

3.2 CCE, Salem vs. V. Thangavel & Sons (P) Ltd. 2015 (37) STR 144 (Tri. - Chennai)

The assessee in this case utilised CENVAT credit availed on inputs received for manufacture of excisable goods towards payment of service tax on BAS. The department objected the same. The Tribunal held that, assessee is a manufacturer of excisable goods and provider of BAS and *prima facie* there is no dispute regarding admissibility of CENVAT credit on inputs. Once, the assessee is being held eligible for availment of credit, same can be utilised either for payment of excise duty or service tax and there is no restriction for utilisation of common input credit on inputs and input services for payment of excise duty or service tax.

3.3 ISMT Ltd. vs. CCE, Aurangabad 2015 (37) STR 148 (Tri. - Mumbai)

The department in this case denied CENVAT credit of service tax paid on construction service for construction of factory building, installation of plant and machinery etc. availed during the period Feb., 2010 to Dec., 2010. The Tribunal held that construction activity supports manufacture both directly and indirectly and services had been rendered and billed prior to 1-4-2011 for which payment has also been made prior to 1-4-2011, hence credit is admissible.

3.4 Jaypee Sidhi Cement Plant vs. CCE, Bhopal 2015 (37) STR 379 (Tri. - Del.)

The Tribunal in this case allowed Cenvat credit of service tax paid on manpower supply service hired for maintaining first-aid facilities for workers as providing first aid facilities to workers is requirement of Factories Act, 1948 and Mines Act, 1952 and therefore qualified as input service.

3.5 Greaves Cotton Ltd. vs. CCE, Chennai-II&IV 2015 (37) STR 395 (Tri. - Chennai)

The Tribunal in this case held that, CENVAT credit of service tax paid on advertisement service cannot be denied merely because the Service tax on the said service was paid by Unit-I for advertisement of product of Unit-II while both are under umbrella of same company.

3.6 Apollo Tyres Ltd. vs . CCE&ST, Vadodara-II 2015 (37) STR 414 (Tri. - Ahmd.)

The Tribunal in this case held that, Rent-a-cab services for transporting officials and guests to and fro from factory premises is related to business and have direct bearing on manufacturing activity irrespective of whether used for employees or guests.

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 issued by RBI and Press Notes issued by DIPP:-

A. Amendments through AP (Dir. Series) Circulars

1. Security for External Commercial Borrowings

RBI has authorised AD Category-I banks to create charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender/security trustee, to secure the ECB to be raised/raised by the borrower, subject to the following conditions:

(i) The underlying ECB is in compliance with the extant ECB guidelines,

(ii) There exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender /security trustee, on immovable assets /movable assets/ financial securities/ issuance of corporate and/or personal guarantee, and

(iii) No objection certificate, wherever necessary, from the existing lenders in India has been obtained.

Upon meeting the aforesaid stipulations, the AD Category-I banks are authorised to permit creation of charge subject to the following:-

(a) Creation of charge on immovable assets- This shall be subject to provisions contained in the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000. In the event of enforcement / invocation of the charge, the immovable asset/property will have to be sold only to a person resident in India and the sale proceeds shall be repatriated to liquidate the outstanding ECB.

(b) Creation of charge on movable assets – In the event of enforcement/invocation of the charge, the claim of the lender will be restricted to the outstanding claim against the ECB. Encumbered movable assets may also be taken out of the country.

(c) Creation of charge over financial securities – Pledge of shares of the

borrowing company held by the promoters as well as in domestic associate companies of the borrower is permitted. Pledge on other financial securities, viz. bonds and debentures, Government Securities, Government Savings Certificates, deposit receipts of securities and units of the Unit Trust of India or of any mutual funds, standing in the name of ECB borrower/promoter, is also permitted. In addition, security interest over all current and future loan assets and all current assets including cash and cash equivalents, including Rupee accounts of the borrower with AD Category-I banks in India, standing in the name of the borrower/promoter, can be used as security for ECB. The Rupee accounts of the borrower/ promoter can also be in the form of escrow arrangement or debt service reserve account. In case of invocation of pledge, transfer of financial securities shall be in accordance with the extant FDI/FII policy including provisions relating to sectoral cap and pricing as applicable.

(d) Issue of Corporate or Personal Guarantee – On the basis of Board Resolution for the issue of corporate guarantee/specific requests from individuals to issue personal guarantee.

(A.P. (DIR Series) Circular No. 55 dated 1st January, 2015)

[Comments: This is a welcome move by RBI towards expanding the options of securities and consolidating provisions related to creation of charge over securities for availing ECB contained under Paragraphs 1 (A)(vii) and 1(B) (vi) of Annex to AP (DIR Series) Circular No. 5 dated August 1, 2005 and AP (DIR Series) Circular No. 1 dated July 11, 2008]

2. Non-resident guarantee for non-fund based facilities entered between two resident entities

RBI has clarified that residents subsidiaries of multinational companies can also hedge their foreign currency exposure through permissible derivative contracts executed with an AD Category–I bank in India on the strength of guarantee of its non-resident group entity.

(A.P. (DIR Series) Circular No. 56 dated 6th January, 2015)

(Comments: The clarification issued by RBI will help Indian subsidiaries of Multinational Companies to hedge their currency risks.)

3. Risk Management and Inter Bank Dealings : Hedging under Past Performance Route – Liberalisation of Documentation Requirements in the OTC market

The RBI has decided that in terms of paragraph 2(g)(ii) – section B of AP (Dir. Series) Circular No. 32 dated December, 28, 2010, importers and exporters, henceforth, shall be required to furnish a quarterly declaration to the same effect as per the format in Annex I of this circular signed by the Chief Financial Officer (CFO) and the Company Secretary (CS). In the absence of a CS, the Chief Executive Officer (CEO) or the Chief Operating Officer (COO) shall co-sign the undertaking along with the CFO.

Further, in terms of paragraph (2)(g)(iv) – Section B, it has been decided that henceforth, AD Category–I banks shall permit aggregate outstanding contracts in excess of 50 per cent of the eligible limit on being satisfied about the genuine requirements of their customers

after examination of a document as per the format in Annex II to this circular, signed by the CFO and CS, containing the following:

- A declaration that all guidelines have been adhered to while utilising this facility; and
- A certificate of import/export turnover of the customer during the past three years.

  (In the absence of a CS, the CEO or the COO shall co-sign the undertaking along with the CFO). However, as part of the annual audit exercise, the Statutory Auditor shall also certify the following:

- The amounts booked with AD Category-I banks under this facility; and
- All guidelines have been adhered to while utilising this facility over the past financial year.

All other operational guidelines, terms and conditions shall remain unchanged.

(A.P. (DIR Series) Circular No. 58 dated 14th January, 2015)

(Comments: This is a welcome rationalisation by RBI which will expedite the compliances by importers and exporters in furnishing quarterly declarations in Annex I & Annex II. However, by providing annual certification from the Statutory Auditor RBI has ensured necessary checks and balances in the system.)

4. Overseas Direct Investments by proprietorship concern/unregistered partnership firm in India – Review

In view of the changes in the definition/classification of the exporters as per the Foreign Trade Policy (FTP), RBI has reviewed the policy framework for Overseas Direct Investments (ODI) by a proprietorship concern/unregistered partnership firm in India under the approval route as follows:

a. The proprietorship concern/unregistered partnership firm in India is classified as 'Status Holder' as per the Foreign Trade Policy;

b. The proprietorship concern/unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the average export realisation of the preceding three years and a consistently high export performance;

c. The AD bank is satisfied that the proprietorship concern/unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated;

d. The proprietorship concern/unregistered partnership firm in India has not come under the adverse notice of any Government agency like the Directorate of Enforcement, Central Bureau of Investigation, Income Tax Department, etc. and does not appear in the exporters' caution list of the Reserve Bank or in the list of defaulters to the banking system in India; and

e. The amount of proposed investment outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern/unregistered partnership firm in India, whichever is lower.

[A.P. (DIR Series) Circular No. 59 dated 22nd January, 2015)/Notification No. FEMA.325/RB-2014 dated November 12, 2014]

(Comments: This is a welcome rationalisation by RBI in line with Foreign Trade Policy)

5. Review of FDI policy – Construction Development

Effective 3rd December, 2014, DIPP amended FDI policy *vide* Press Note 10 (2014 Series) dated December 3, 2014 to allow 100% FDI under automatic route in construction development sector subject to the conditions specified therein.

RBI has now issued relevant notification and circular to bring FEMA regulations in uniformity with FDI Policy.

[A.P. (DIR Series) Circular No. 60 dated 22nd January, 2015)/ Notification No. FEMA.329/2014-RB dated December 8, 2014]

(Comments: This is a welcome move by RBI. Through Notification No. 329, RBI has attempted to bring uniformity between the FDI policy and RBI regulations notified under Annex- B to Notification No. 20 "Transfer or Issue of Security by a Person Resident outside India" dated May 3, 2000)

6. Depository Receipts Scheme

RBI *vide* Notification No. 330 dated 15th December, 2014 has notified new scheme called 'Depository Receipts Scheme, 2014' (DR Scheme, 2014) for investments under ADR/GDR which has been notified by the Central Government with effect from 15th December, 2014. This scheme repeals the extant guidelines for Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 except to the extent relating to foreign currency convertible bonds.

Few salient features of the new scheme are:

a. The securities in which a person resident outside India is allowed to invest under Schedules 1, 2, 2A, 3, 5 and 8 of Notification No. FEMA. 20/2000-RB dated 3rd May 2000 shall be eligible securities for issue of Depository Receipts in terms of DR Scheme, 2014;

b. A person will be eligible to issue or transfer eligible securities to a foreign depository for the purpose of issuance of depository receipts as provided in DR Scheme 2014.

c. The aggregate of eligible securities which may be issued or transferred to foreign depositories, along with eligible securities already held by persons resident outside India, shall not exceed the limit on foreign holding of such eligible securities under the extant FEMA regulations, as amended from time to time.

d. The eligible securities shall not be issued to a foreign depository for the purpose of issuing depository receipts at a price less than the price applicable to a corresponding mode of issue of such securities to domestic investors under FEMA, 1999.

e. It is to be noted that if the issuance of the depository receipts adds to the capital of a company, the issue of shares and utilisation of the proceeds shall have to comply with the relevant conditions laid down in the Regulations framed and directions issued under FEMA, 1999.

f. The domestic custodian shall report the issue/transfer of sponsored/ unsponsored depository receipts as per DR Scheme, 2014 in 'Form DRR' within 30 days of close of the issue/ programme.

[(A.P. (DIR Series) Circular No. 61 dated 22nd January, 2015)/ (Notification No. FEMA.330/2014-RB dated December 15, 2014)]

7. Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India)

Regulations, 2000 – Remittance of salary

Upon review, RBI has allowed the facility for remittance of salary earned in India which is available to an employee of a company under Regulation 7(8) of Notification No. FEMA 10 (as amended from time to time) also to an employee who is deputed to a group company in India. In addition, the term 'company' referred to in the said regulation will include 'Limited Liability Partnership' as defined in the LLP Act, 2008.

(A.P. (DIR Series) Circular No. 62 dated 22nd January, 2015)/ (Notification No. FEMA. 328/2014-RB dated December 3, 2014)

(Comments: This is a welcome relaxation/ clarification by RBI as it will provide much needed clarity and facility to employees who are deputed to group companies/LLPs in India.)

8. Export and import of Indian currency

Regulation 8 of Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, provides that a person may take or send out of India to Nepal or Bhutan and bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in denominations up to ` 100/-.

With a view to mitigating the hardship of individuals visiting from India to Nepal or Bhutan, RBI has allowed individuals to carry to Nepal or Bhutan, currency notes of Reserve Bank of India in denominations above ` 100/-, i.e. currency notes of ` 500/- and/or ` 1000/- denominations, subject to a limit of ` 25,000/-.

[(A.P. (DIR Series) Circular No. 63 dated 22nd January, 2015)/ (Notification No. FEMA. 331/2014-RB dated December 16, 2014)]

(Comments: It is to be noted that the relaxation is provided to persons travelling out of India to Nepal or Bhutan and the same is not available vice versa. The limit of ` 25,000/- is with respect to currency notes having large denomination of ` 500/- and/or ` 1000/-. However, there is no limit placed on the currency notes of smaller denominations)

9. External Commercial Borrowings (ECB) Policy – Simplification of procedure

RBI has delegated following powers to the designated AD Category-I banks for ECBs raised both under the automatic and approval routes (Except FCCBs):

i. Changes/modifications (irrespective of the number of occasions) in the draw-down and repayment schedules of the ECB whether associated with change in the average maturity period or not and/ or with changes (increase/decrease) in the all-in-cost.

ii. Reduction in the amount of ECB (irrespective of the number of occasions) along with any changes in draw-down and repayment schedules, average maturity period and all-in-cost.

iii. Increase in all-in-cost of ECB, irrespective of the number of occasions.

iv. Changes in the name of the lender of ECB after satisfying themselves with the bonafides of the transactions and ensuring that the ECB continues to be in compliance with applicable guidelines.

v. Transfer of the ECB from one company to another on account of reorganisation at the borrower's level in the form of merger/demerger/amalgamation/ acquisition duly as per the applicable laws/rules after satisfying themselves that the company acquiring the ECB is an eligible borrower and ECB continues to be in compliance with applicable guidelines.

The designated AD Category-I bank is required to ensure the following:

i. Revised average maturity period and/or all-in-cost is/are in conformity with the applicable ceilings/guidelines;

ii. The changes are effected during the tenure of the ECB.

iii. If the lender is an overseas branch/ subsidiary of an Indian bank, the changes shall be subject to the applicable prudential norms.

[A.P. (DIR Series) Circular No. 64 dated 23rd January, 2015]

(Comments: It is indeed a welcome step of delegation of powers to Authorised Dealers (ADs). However, in practice it is found that either ADs are shy of taking responsibility or lack knowledge on procedural aspects. RBI should take measures to educate and empower ADs and make them accountable for their actions or inactions in a given case.)

B. The following press notes have been issued by the Department of Industrial Policy and Promotion (DIPP):

1. Mapping of the sector specific FDI Policy in Consolidated FDI Policy, 2014 in terms of National Industrial Classification (NIC) – 2008

The DIPP has undertaken the exercise to map the activities listed in Chapter VI of the Consolidated FDI Policy, 2014 with the NIC 2008 classification in order to provide ease in doing business.

The same is available on the DIPP, Government of India, Ministry of Commerce & Industry website.

Link: http://dipp.nic.in/English/acts_rules/Press_Notes/Mapping_NIC2008_05January2015.pdf

(Press Note No. 1 (2015 Series) dated 5th January, 2015)

2. Review of the policy on Foreign Direct Investment (FDI) in Pharmaceutical Sector – Carve out for medical devices

DIPP through this press note has liberalised certain conditions for FDI in the business of manufacturing of "medical devices" under the Pharmaceuticals sector.

The FDI Policy which is currently applicable generally to the Pharmaceuticals sector provides that only investment in greenfield projects are under the automatic route but FDI in brownfield projects required specific approval from the Foreign Investment Promotion Board ("FIPB"). However, pursuant to this Press Note, FDI up to 100% is permitted for manufacturing of Medical Devices under the automatic route in both greenfield and brownfield companies.

(Press Note No. 2 (2015 Series) dated 6th January, 2015)

(Comments: The term "Pharmaceuticals" was not defined under the FDI Policy. Since the medical devices sector was not separately covered in the policy, certain medical devices which are notified as 'drugs' as per the Drugs and Cosmetic Act, 1940 were being treated as a subset of Pharmaceutical sector. As a result, all the conditions including the conditions relating to 'non-compete clause' applicable to brownfield projects were also being applied to FDI in notified medical devices. This amendment will encourage FDI in manufacturing of medical devices and further boost "Make in India" campaign launched by the Prime Minister)

Ajay Singh & Suchitra Kamble, *Advocates*

BEST OF THE REST

1. Part Performance of Contract: Transfer of Property Act, Sec 54A

S. 54 of the 1882 Act, categorically states that a contract for sale itself does not create any interest in or charge on such property. S.53A of the Act provide protection to a transferee who in part performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. One of the essential conditions to be fulfilled for being entitled to the said protection is, the transferee must in part performance of the contract taken possession of the property or of any part thereof. Therefore, S. 53A of the Act confers a statutory right on the transferee. This provision has been abused in recent years. Taking note of the recent trends, especially under the guise of those agreements of sale containing a recital to the effect possession is delivered to the transferee, the transferors were dispossessed and protection was sought in a Court of law putting forth this statutory right. In those circumstances, the Parliament has stepped in and has amended the Registration Act, 2001. The amended provision S. 1A of S. 17 makes it clear that, if the benefits of S. 53A of the Act is to be available then the contract for sale shall be registered. If not registered then they shall have no effect for the purpose of the said S. 53A. However, this provision is made prospective and it applies to a contract for sale executed on or after the commencement of the Registration and other related Laws (Amendment) Act, 2001. The said amendment came to force on 24.9.2001.

A.N. Nagarajaiah vs. B. Aravind and Ors AIR 2014 Kar 140

2. Interpretation of Statutes – Reading down of Statute – When permissible:

Reading down the provisions of a statute cannot be resorted to when the meaning thereof is plain and unambiguous and the legislative intent is clear. The fundamental principle of the `reading down' doctrine can be summarized as follows.

Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the Courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality.

Classification or categorization need not be the outcome of a mathematical or arithmetical precision in the similarities of the persons included in a class and there may be differences amongst the members included within a particular class. So long as the broad features

of the categorization are identifiable and distinguishable and the categorization made is reasonably connected with the object targeted, Article 14 will not forbid such a course of action.

Dr. Subramanian Swamy & Ors vs. Raju Thr. Member, Juvenile Justice Board & Anr AIR 2014 SC 1649

3. Rule of precedent – And rule of *per incuriam* – Essential to maintain consistency of rulings – Constitution of India Art. 141

The discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be *per incuriam* if any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of Supreme Court. The *per incuriam* rule is strictly and correctly applicable to the *ratio decidendi* and not to *obiter dicta*.

Sundeep Kumar Bafna vs. State of Maharashtra & Anr. AIR 2014 SC 1745

4. Document Gift or relinquishment deed-Determination – Stamp Act, 1899, Art. 55

One of the co-owners can relinquish his share in a co-owned property in favour of one or more of the co-owners. The document executed by him in this regard would continue to be a relinquishment deed irrespective of whether the relinquishment is in favour of one or all the remaining co-owners of the property. There is no basis in law for the proposition that if the relinquishment deed is executed in favour of one of the co-owners, it would be treated as a Gift deed. The law of stamp duty (as applicable in Delhi) treats relinquishment deed and gift deed as separate documents, chargeable with different stamp duties. It is not necessary that in order to qualify as a relinquishment deed the document must purport to relinquish the share of the relinquisher in favour of all the remaining co-owners of the property. Even if the relinquishment is in favour of one of the co-owners it would qualify as a relinquishment deed.

Srichand Badlani vs. Govt. of N.C.T. of Delhi & Ors. AIR 2014 (NOC) 539 Del.

5. Guarantor – Mortgage by deposit of title deeds – Liability of Guarantor – Loan taken from bank – Deposit of title deeds with Bank. S. 128 – Contract Act, Transfer of Property Sec. 58(f).

The original defendant No. 1 has availed a loan of ` 10 lakhs on for the purposes of purchase of a truck with bore-well rig, Machine, screw Compressor, Drilling Rig, etc. The original defendant No. 1 – the borrower hypothecated the said machinery and its accessories with the plaintiff Bank. At the same time, the defendants Nos. 2 to 6 i.e. present respondent Nos. 2 to 6 agreed to stand as continuing guarantors for the original defendant No. 1 in repayment of the loan amount as agreed between the appellant Bank and the defendant No. 1. They agreed to mortgage their respective immovable property. They accordingly delivered their title deeds. Thus, equitable mortgage by depositing the title deed is created by these respondents.

All the defendants attended the Himayatnagar branch of appellant bank and deposited the title deeds of their respective immovable properties, as detailed in the plaint. They had agreed by executing affidavits regarding the confirmation of the mortgage by deposit of title deeds and had further agreed that the revival of the loan,

if any by the borrower i.e. defendant No. 1 shall bind the mortgagor.

Appellant Bank's filed a suit for recovery of an amount of ` 27,76,137/- and for preliminary decree for sale of the mortgaged property for recovery of the said amount was decreed against the borrower – original defendant No. 1, but was dismissed against the guarantors i.e. defendant Nos. 2 to 6. Hence, the appeal was filed against the guarantors.

The Hon'ble Court noted the difference between "the agreement to mortgage" and "mortgage by deposit of title deeds". The mortgage by deposit of title deeds is defined by Section 58(f) of the Transfer of Property Act, 1882. It is undisputed that city of Hyderabad is notified city where the delivery of the title deeds of immovable property can be made with intention to create a security thereon.

It is settled position of law that the mortgage by deposit of title deeds requires no registration. However, if any document is executed, which would show that the mortgagee has under the said document mortgaged the property by deposit of title deeds, then only the registration of the said document is required. However, the contemporaneous document fortifying the "intention to create the security" executing the same is neither an agreement to mortgage nor a mortgage. The deposit of title deeds itself with intention in the mind of the person that the said title deeds are being deposited with intention to create a security thereon is sufficient to culminate the transaction into a mortgage by deposit of title deeds. This mortgage by deposit of title deeds is sometimes called as equitable mortgage, as was prevalent in England. However, the ingredients of the equitable mortgage and the mortgage as defined under section 58(f) of the Transfer of Property Act are not identical.

The documents on record, coupled with the affidavits as admitted by the defendant and positively proved by the relevant witness of the plaintiff would show that the title deeds were deposited with the plaintiff bank, with an intention to create the security thereon.

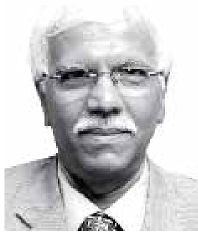
The title deeds of the respective respondents were admittedly put in the custody of the appellant bank at that time. None of the relevant respondents at any time asked for return of those title deeds, nor complained of keeping the same in the custody of the Bank.

The documents on record would show that the respondents No. 2 to 6 had intention to create the security for the repayment of the loan availed by the principal borrower. Therefore, they showed their readiness to deposit the title-deeds by various agreements and affidavits and also by placing all the title verification certificate by the Advocates, etc. and ultimately, they deposited the title-deeds with the appellant Bank at Hyderabad branch.

The above facts are sufficient to hold that the respondent No. 2 to 6 stood as guarantors and created mortgage of their property for repayment of the loan advanced to the principal borrower by depositing their title deeds.

Allahabad Bank vs. M/s. Shivganga Tube Well and Others; AIR 2014 Bombay 100 (Bom.)(HC)

Truth and nonviolence will never be destroyed.



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TAX ARTICLES FOR YOUR REFERENCE

Articles published in Taxman, The Tax Referencer (TTR), Sales Tax Review (S. T. Review), The Bombay Chartered Accountant Journal (BCAJ), The Chamber's Journal (C J), The Chartered Accountant (CAJ), SEBI And Corporate Laws (S & Co Laws), All India Federation of Tax Practitioners Journal (AIFTPJ), Company Case, Times of India and Economic Times for the period December-2014 To January-2015 has been arranged and indexed topic-wise.

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National Pension System – Old age security for millions – Prospects and challenges	Hemant Contractor	C J	III / No. 4	28
Impact of IFRS on the Financial Services Sector	Dolphy D'Souza & Vishal Bansal	C J	III / No. 4	33
Fraud and Indian Financial Services	Mukul Shrivastava & Vikram Babbar	C J	III / No. 4	41
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International Taxation				
Payment for use of intranet facilities provided by non-resident parent company is taxable as royalty	Pawan Prakash	TTR	140	627
Computation of Arm's Length Price and Treatment of Depreciation	Manoj Gupta	TTR	140	352
Income from Providing Electronic Deal Matching Services Through Specialised Equipments is Royalty in Nature	Arundhati Kulshreshtha	TTR	140	259
Profit Split Method – Examining the Split	Hasnain Shroff & Poonam Rao	BCAJ	46-B/Part 4	10

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The "Other Method" – A Flexible Recourse?	Darpan Mehta & Sujay Thakkar	BCAJ	46-B/Part 4	21
Secondment of Employees – Taxability of Reimbursement of Remuneration in the hands of Overseas Entity	Mayur Nayak & Tarunkumar G. Singhal & Anil D. Doshi	BCAJ	46-B/Part 4	61
Assessee selling goods to associated enterprise – Applicability of cost plus method or TNMM for determining arm's length price	Arundhati Kulshreshtha	TTR	141	169
Taxability of payment towards technical know-how and technical service under DTAA between India and Austria	Arundhati Kulshreshtha	TTR	141	75
Indian Penal Code				
Are company directors liable under Indian Penal Code when a commercial contract is breached by the company	K. R. Chandratre	Company Cases	187	111
Interpretation of Statutes				
The doctrine or *Ejusdem Generis/Noscitur a Sociis*	Aswin Acharya & Arpita Acharya	AIFTP Journal	17/ No. 9	15
Information Technology				
Value-Based Pricing Strategies for Enterprise Software	Debadatta Banerjee	CAJ	63 / No. 7	995
Income				
Issue of shares at a discount – Does income accrue	T. C. A. Ramanujam	CTR	272	6
'L'				
Local Body Tax				
Local Body Tax – Crushed Sugarcane Without Juice	Kishor Lulla	STR	61 / No. 9	30
Long Term Capital Gain				
FMPs lucrative despite hike in long term capital gain tax rate	Akhil Chugh	Times of India	16.12.2014	13
Lessee				
Taxability of a lessee – Is ignorance of settled legal position sustainable	Minu Agarwal	CTR	272	1
Loss				
Requirement of Return for Carry Over of Losses	R. S. Kohli	TTR	141	22

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MCA & SEBI				
Clash of Regulations : It's high time when dual control of MCA & SEBI over board's committees should come to an end	T. N. Pandey	S & Co Law	128	9
MVAT Act, 2002				
Suggestions for changes in MVAT Act, 2002	M B Abhyankar	STR	61 / No. 9	38
MAT				
Treatment of amounts carried to reserve and amounts withdrwan from reserve or provision in Computation of MAT	Udai Bhaskar	TTR	140	
'N'				
National Tax Tribunal				
National Tax Tribunal Held Unconstitutional	S. K. Desai	TTR	140	280
'O'				
Other Sources				
Share Premium received by company on issue of shares cannot be taxed as other source income	Subhodh Sharma	TTR	141	231
Difference between issue price and fair value of additional shares allotted to assessee on the basis of shareholding cannot be brought to tax under section 56(2)(vii)	Manoj Gupta	TTR	141	114
'P'				
Public Charitable Institutions				
The IT department needs to take broader view in interpreting provisions of the ITAct concerning public charitable institutions	T. N. Pandey	Taxman	227	1
PSU Investment				
Gain from PSU Investment	Narendra Nathan	Times of India	8.12.2014	16
Property Income				
Taxability of Income from letting out building with or without amenities	S. K. Desai	TTR	141	236

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Role of Tax Professionals				
Make in India – Role of Tax Professionals	R. K. Agrawal	AIFTP Journal	17/ No. 10	9
Revenue / Capital Receipt				
Taxability of a Subvention Receipt	Pradip Kapasi & Gautam Nayak	BCAJ	46-B/Part 3	43
Recovery				
Stock Exchange Dues have priority over tax department's dues	Pawan Prakash	TTR	140	707
Real Estate Development Agreements				
Real Estate Development Agreements – Stage of Transfer and Accrual of consideration	V. P. Gupta	AIFTP Journal	17/ No. 10	12
'S'				
Service Tax				
Service Tax Audit by Departmental officers	Pranav Mehta	STR	61 / No. 9	45
Service Tax implication on redevelopment of Housing Society building	Rajkamal Shah	AIFTP Journal	17/ No. 9	19
Taxability of Works Contract under Service Tax	Rajiv Luthia & Jinal Shah	AIFTP Journal	17/ No. 9	26
Works Contract and Overlapping issue of Service Tax/VAT	S. Venkataramani & Siddeshwar Yelamali	AIFTP Journal	17/ No. 10	20
Sale Price under Sales Tax and Taxable Services under the Service Tax	Deepa K Bapat	AIFTP Journal	17/ No. 10	33
Time Limit for Availing CENVAT Credit	Puloma Dalal & Bakul Mody	BCAJ	46-B/Part 3	49
Constitution Amendment Bill for Introducing Goods and Service Tax	Parind Mehta	BCAJ	46-B/Part 4	29
Controversy : Whether Renting of Vehicle & Hiring of Vehicle Different for Service Tax?	Puloma Dalal & Bakul Mody	BCAJ	46-B/Part 4	69
Service Tax on Charitable and Religious Trusts	Chunauti H. Dholakia	CAJ	63 / No. 7	976

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Service Tax on Road Contracts	Mrinmay Chatterjee	TTR	141	70
Service Tax on Electricity Exchange Service	Satyadev Purohit	TTR	141	20
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Are SEBI's answers to FAQs Binding on SABI and/or Third Parties ?	Jayant M. Thakur	BCAJ	46-B/Part 3	69
SEBI				
Are SEBI's answers to FAQs Binding on SABI and/or Third Parties ?	Jayant M. Thakur	BCAJ	46-B/Part 3	69
"Takeover Code' Framed under SEBI Act and Its applicability in case of passive acquisition of shares/Voting rights	Arundhati Kulshreshtha	TTR	141	62
Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 : A move ahead to harmonise Foreign Portfolio Investment in India	Ashish Patel	Company Cases	187	99
Securities and Exchange Board of India tightens norms on insider trading	S. Balakrishnan	Company Cases	188	9
'T'				
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Discount given to distributor by mobile companies on sale of sim cards – Whether commission	Manoj Gupta	TTR	140	563
Consolidated payment for supply and installation of machinery – Applicability of section	Manoj Gupta	TTR	141	268
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Accumulation of Income under section 11(2) – Procedural aspects	Nisha Bhandari	TTR	140	574
Tax provisions relating to real estate investment trust (REIT) and Infrastructure Investment Trust (INVIT)	Pankaj R. Toprani	ITR	37	1
Is income from Kalyana Mandapam Exigible to Tax in the hands of Charitable Trust?	V. K. Subramani	TTR	141	111

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Transfer Pricing on Issue of Shares – An Assessment	Dinesh Kanabar	C J	III / No. 4	49
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Tax Incentives				
Reverse Robin Hood effect of Govt's Tax Incentives	Dhirendra Kumar	Economic Times	8.12.2014	16
Tax Saving Investment				
Don't rush into Tax-Saving Investment	Partha Sinha	Times of India	23.12.14	25
Choose the right tax-saving option	Neha Pandey Deoras	Times of India	12.1.2015	15
Use NPS for deduction above ` 15 lakh limit	Nitin Vyakaranam	Times of India	23.12.14	25
Among all sec. 80C options, ELSS can give investors best returns	Vidya Bala	Times of India	23.12.14	25
'V'				
VAT				
Sale in Course of Export, Whether within the Purview of the Local Act?	G. G. Goyal & C. B. Thakar	BCAJ	46-B/Part 3	55
Sales vis-à-vis free supply of goods	G. G. Goyal & C. B. Thakar	BCAJ	46-B/Part 4	73
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Wilful Defaulters				
Wilful Defaulters of bank loan – Its perspective of legality	G. S. Dubey	Company Cases	187	126
Wilful defaulters and need for a corporate bankruptcy law in India	Prashant Pranjal	Company Cases	187	77
Wealth Tax				
Provisions Regarding Charge of Wealth Tax	Arundhati Kulshreshtha	TTR	140	296

CA Rajaram Ajgaonkar

ECONOMY AND FINANCE

Volatile World

Volatility has become the order of the day in the world. January started with optimism but within the next few days, the fall of crude prices triggered a sell-off in some of the stock markets including that of the US. There was a steep fall in prices of stocks of energy, commodities and related industries. Suddenly, the world was gripped with an uncertainty resulting in this slide. However, in the second half of January, the crude prices stabilized a bit. Encouraging economic data from the US boosted the spirits of the market. Mr. Mario Draghi of the European Central Bank gave a sentiment changer. He announced a larger than expected quantitative easing, which paved a way for easing of liquidity, not only in Europe, but even in the rest of the world. This gave a hope of reduction of the economic pain in the Euro zone. The news also improved the sentiments in many developing markets, including India and that resulted in a bounce back in stock prices across the world. However, these positive sentiments have started tapering down in the last week of January due to growth concerns; not only in Europe but even in the US and China. As a result, the gains made by the bounce back were trimmed. Many of the major global markets ended the first month of the Calendar year in red.

Of late, the US economy has been instrumental in improving the sentiments in the world markets. The economy has performed better over the last few quarters. However, the growth rate of the US has faltered for the quarter ending 31st December, 2014 and that has raised concerns. This shows that the risk persists and the economy has not taken a sustainable momentum. If proper measures are not taken, the US economy can slip again. The major issue is when will the FED start raising the rate of interest in the US economy? This remains a critical issue, which is keeping the world guessing. If the rate is hiked too early and if it is not done gradually, the current recovery of the US may falter. The FED will have to do a tight rope walk while taking any decision in this regard. The businesses in the US have got used to paying interest at a very low rate. As soon as the interest rates start rising in that economy, their impact will be felt, especially on corporate profits. However, the interest rates cannot be kept low for a very long time. Fixed income investors have been kept high and dry for a last number of years. Their investment should earn reasonable economic value. The interest rate should not be artificially pegged low for a long time. In spite of low interest rates, investment climate continues to remain sluggish in many developed countries of the

world. There is no incentive for lending money for the investors. Even the bankers have low incentive to lend as the spreads are low and they have to take high risks for earning them. Increase in interest rates may exercise pressure on some sections of the economy but it is needed for keeping the desired balance. The interest rate hike will attract capital and investible funds will start flowing into US. The US Dollar has already strengthened over the last few months. The inflow may further strengthen the US Dollar, which can be detrimental to the US exports and so for its economic growth. Therefore, the act of increasing rate by FED is a critical decision, which has an impact not only on the US economy but economies across the world.

Europe is still not able to recover from the slowdown and the risk to the economy keeps on intermittently increasing. The large quantitative easing of 60 billion Euros every month for the next 19 months announced by the European Central Bank has given a psychological stimulus to the economies of the region. Liquidity is likely to increase and so is the investment climate in Europe. Economic activity may start picking up in the Euro zone due to this easing. However, the recent poll results in Greece have created the anxiety. The party voted to power by the people of that country has given great promises to the people of Greece; and it is not going to be easy for them to fulfil the same. They will have to bargain their way with the European Union as they are heavily indebted and if they stick to populist but unreasonable demands; it may create a deadlock situation, which may affect the economic interests of Europe. In an extreme situation, it may result in exit of Greece from the European Union, which will turn out to be harmful for Greece as well as the European Union. The picture will be clearer in the months to come but the uncertainty looms large.

The growth engine of China is slowing down. It is not only causing anxiety in that country but it is causing concern to many other developed as well as developing countries. Economies of many Asian countries and mainly those who are located in the Asia-Pacific region have a heavy dependence on the long growing Chinese economy. The economy expects to grow at just above 7% for 2015, which is one of the slowest growth rates in the recent history of China. The Chinese economy has already become the second largest economy in the world and its growth contributes substantially to the global growth rate. A reduction therein is obviously a cause of concern as the economy was a great savior when the developed world went into a severe recession in 2008. The possibility of the Chinese economy getting the required traction to increase the growth rate is not very bright in the near future and the slowdown in the economy is a cause of concern to the world.

The growth concerns are also getting extended to many crude oil exporting countries as their realization from crude oil exports are going down but there is no corresponding reduction of cost of oil extraction. If the oil prices continue to rule low, these countries will face a number of economic as well as social challenges. Their developmental expenditure will come down in the absence of funds. Even social expenditure may have to be curtailed in light of low revenues. This may result in slowing of these economies and risk of social unrest may increase. The tapering growth rate of these economies is likely to create a challenge for the growth of the world in the months to come.

The developing economies, which are large in size such as Russia, Brazil, South Africa and Indonesia; have also started facing the brunt on account of falling crude oil prices as well as a slowdown of the commodity cycle. These countries are heavily dependent on oil and commodity exports. Their economies may not improve quickly and the uncertainty and pain may continue for quite a few years.

In the current situation of uncertainty and anxiety, the Indian economy is standing out well. The recent developments in India especially after the Parliamentary elections have flashed a number of positive signals to the global investors. They are hearing and even feeling a change in the

economic climate in India over the last few months. This has resulted in an improvement in sentiment. Small doses of reforms are trickling in, adding to the feel good factor. Undoubtedly, the image of India has improved and that may increase the flow of investments in the country. It seems that currently, luck is also in favour of the Indians. The drop in the petroleum prices over the last six months have given a reason to the people of India as well as the Government to rejoice and cheer. Prices of petroleum products have come down easing the inflation in the country. The subsidy burden on account of petroleum products has reduced considerably. The reduction of cost of non flexible petroleum imports has saved substantial foreign exchange and this saving is likely to continue. The foreign exchange outflow on account of import of petroleum products has reduced considerably, which has improved the balance of payments equation of the country and has strengthened the foreign exchange reserves. Reduction of subsidy burden and other measures taken by the Government is expected to reduce the budgetary deficit to the planned level. Considering history, it can be termed as a great achievement and will give flexibility to the Finance Minister while drawing up his next budget. There is an argument that more hype is created in the country as compared to the actual ground realities, but it may not be correct to expect that things will change suddenly. Every medicine takes its own time to show its effect and so is the case of the reforms. The current sentiment in India is very positive and it is likely to remain so unless there is a major global event, which can put pressure on the global economy or create uncertainty to the lives of people.

Though the global stock markets have been subdued in the month of January, the Indian markets have gained momentum. Dow Jones lost about 3% but Sensex gained more than 5% in the month. It is expected by many that the rally in the Indian stock markets will continue in the month of February in anticipation of a positive budget. Though the short-term fundamentals are not appearing very great on the back of lacklustre corporate results for the December quarter for many companies, the stock markets may continue their upward march on the expectation of reforms in the budget as well as increase in liquidity in the global economies on account of European quantitative easing. The continuing fund flow of Foreign Institutional Investors (FIIs) to Indian stock markets is likely to drive the stock prices upwards. In the not so great global economic environment, India is standing out as it is growing well and its growth rate is likely to accelerate. The valuations of Indian stocks are not cheap but they are likely to sustain due to the heavy demand from international investors. Still, it may be advisable for the investors to book some profit before the budget, if stock markets appreciate more than 5% in February.

The long desired reversal of the liquidity cycle was unexpectedly triggered by the RBI by an announcement on 15th January. The interest rates in India have started easing and they are expected to ease further. This development augers well for investment in property markets. Due to high interest rates, property markets have been sluggish but lowering of the interest rates may gradually boost the demand for properties. Though there may not be any immediate rise in property prices, the sentiment seems to have changed for the better. This may be the right time for buying property for personal use. However, time may not be fully ripe for buying property as an investment.

There are a lot of expectations from this budget for obvious reasons. Though a lot of positives are expected, there is a possibility that the expectations may have outrun a bit. Though the stock markets may march up till the budget, there is a possibility that the markets may react after the event. Therefore, the investors who have clocked in substantial gains over the last one year in listed stocks, may book partial long term capital gains. However, those who would like to remain purely long-term players in equity may hold their investments.

CA Hinesh R. Doshi, Ajay Singh, *Advocate*
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th February, 2015 and 8th March, 2015 are being reported as under.

I. Admission of New Members

1) The following new members were admitted in the Managing Council Meeting held on 29th January, 2015.

ASSOCIATE MEMBERSHIP

1	Finesse Graphics & Prints Pvt. Ltd.	Mumbai	

LIFE MEMBERSHIP

1	Mr. Mehrotra Lovi S.	CA	New Delhi
2	Mr. Davaria Mayur Gordhandas	ITP	Thane
3	Mr. Navandar Parth Pravin	CA	Mumbai
4	Mr. Gupta Anuj Y.	CA	Delhi
5	Mr. Gurjar Ruturaj Harivijay	Advocate	Mumbai
6	Mr. Ahemad Furquan Ateeque	CA	Mumbai

ORDINARY MEMBERSHIP

1	Mr. Saxena Sanjay S. (Half Year Oct. 14 - Mar. 15)	CA	Shahjahanpur
2	Mr. Joshi Sagar Jagadish (Half Year Oct. 14 - Mar. 15)	CA	Mumbai
3	Mr. Haraniya Chirag Mohanlal (Half Year Oct. 14 - Mar. 15)	CA	Mumbai
4	Mr. Kaicker Rajiv Rajpal	CA	New Delhi

STUDENTS MEMBERSHIP

1	Mr. Pareek Hemant Shankar	CA Appear	Mumbai
2	Mr. Bhattar Kushagra Deendayal	CA Appear	Mumbai
3	Ms. Shah Krunali Sachin	CA Appear	Mumbai
4	Mr. Bafna Jash Sanjay	CA Appear	Mumbai
5	Mr. Mundra Agash M.	CA Appear	Mumbai
6	Ms. Trivedi Ruchi Mukund	CS Appear	Mumbai
7	Mr. Thakkar Harsh Suman	CS Appear	Mumbai
8	Ms. Unadkat Rimple P.	CA Appear	Mumbai
9	Ms. Prabhu Neha Pradip	CA Appear	Mumbai
10	Ms. Mistry Kavita M.	CA Appear	Mumbai

11	Mr. Pandey Prashant G.	CA Appear	Mumbai
12	Mr. Jain Ashu Sanjeev	B.Com	Mumbai
13	Ms. Gokhru Neha Karan	CA Appear	Mumbai
14	Mr. D'souza Praveen Stany	CA Appear	Mangalore
15	Mr. Shah Akshay Mayur	CA Appear	Mumbai

II. Past Programmes

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	**Allied Laws Committee**		
	Allied Laws Study Circle Meetings Venue: Maheshwari Bhavan Hall, Chira Bazar, Mumbai.	**13th January, 2015** Subject: Opportunities for Professionals in "Alternate Dispute Resolution" (ADR) (Arbitration, Conciliation, Mediation and Negotiation).	CA Bhupendra Shah
		28th January, 2015 Subject: Provisions relating Cheque Bouncing as per section 138 of The Negotiable Instruments Act, 1881 including recent Judgments by the Supreme Court	CA Yogesh Israni, Advocate
2.	**Direct Taxes Committee**		
A.	**Intensive Study Group on Direct Taxes** Venue : CTC Conference Room	**19th January, 2015** Subject : Recent Important Decisions under Direct Tax	CA Ganesh Rajgopalan
B.	**Study Course on Interpretation of Taxing Statutes** Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC.	**30th & 31st January, 2015** **06th & 07th February, 2015**	Shri Ajay Singh, Advocate Shri B. V. Jhaveri, Advocate Shri Hiro Rai, Advocate Shri P. C. Joshi, Advocate CA Pradip Kapasi Shri S. D. Srivastava, CIT DR, ITAT Mumbai CA Vispi Patel
3.	**Indirect Taxes Committee**		
	3rd Residential Refresher course on Service Tax Venue : Fountainhead Leadership Centre, Bamansure, Post Kihim, Alibaug, Maharashtra.	**23rd to 25th January, 2015** Subject : **Paper – I** – Case Studies on Indirect Tax Issues in Real Estate Industry **Paper – II** – Case Studies in Place of	 Mr. K. Vaitheeswaran, Advocate CA Sivrajan K.

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
		Provision and Point of Taxation Rules under Service Tax **Paper – III** – Case Studies under Service Tax (Other than on the above two topics) **Presentation I** – Settlement Commission, Compounding of Offences and Advance Ruling under Service Tax	CA S. S. Gupta Mr. Vipin Jain, Advocate
4.	**International Taxation Committee**		
A.	**FEMA Study Circle Meetings** Venue : CTC Conference Room	**16th January, 2015** Subject : Foreign Investments in India Part – 2	CA Chintan Gandhi and CA Shreyas Shah
		3rd February, 2015 Subject : Intensive Study of FDI continues from previous sessions.	Shri Arvind Rao Shri Pushpak Shah
5.	**Information Technology Committee**		
	Open Doors to Open Source Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC, Churchgate, Mumbai – 400 020.	**15th January, 2015** Subjects : 1. • Myths and truths of software Licensing • Need to a typical CA office vs. possibility • Practical Possibilities for open source options • Hitches in change management 2. • Agonies of licensing • Need and stage assessment for Licensing	1. CA Mitesh Katira 2. Mr. Manoj Kotak, Open Source evangelist
		• Practical Issues on licensing • Case studies on adaptation 3. • Advantages BSS Office • Possibilities of running Tax utilities with Open office • Simplicity of implementation of Open Office.	3. CA Ganesh Arnaal
6.	**Study Circle & Study Group Committee**		
A.	**Study Group Meeting** Venue: Babubhai Chinai Committee Room, IMC.	**27th January, 2015** Subject : Recent Judgments under Direct Taxes	CA Yogesh Thar Shri Nishit Gandhi

Sr. No.	*Programme Name / Committee/ Venue*	*Date / Subjects*	*Chairman / Speakers*
B.	**Study Circle Meeting** Venue : Babubhai Chinai Committee Room, IMC	**02nd February, 2015** Subject : Issues in Wealth Tax	CA Jagdish Panjabi
7.	**Students Committee**		
A.	**Half Day Visit at National Stock Exchange** Venue : National Stock Exchange, BKC, Mumbai	**16th January, 2015** Subject: 1) Introduction to capital market, Introduction to Stock Exchanges, brief introduction of NSE Various products of NSE – IPO, Listing, Secondary Market, Delisting, etc. 2) Trading in various segments – Case segment, Stock Derivative, Index Derivative, and currency derivative Do's & don'ts in market	Officers from NSE
B.	**1st Indoor Sports Tournament** Jointly with RRC & PR Committee and Membership & EOP Committee. Venue : Andheri Sports Complex, Andheri (West), Mumbai – 400 058.	**01st February, 2015**	Badminton Table Tennis Carrom Chess
C.	**Students Study Circle Meeting** Venue : Maheshwari Bhawan, Chira Bazar, Marine Lines, Mumbai.	**05th February, 2015** Subject : E-Filing of TDS Return	CA Manish Dhedia
8.	**Delhi Chapter**		
	Half day Seminar on 'The Companies Act 2013 – Provisions affecting Private Companies and Unlisted Public Companies: Case Study Based Analysis. Venue : India International Centre, Lecture Room I, Annexue Building, Dr. K. K. Birla Lane, Max Mueller Marg, Lodhi Estate, New Delhi - 110003	**17th January 2015** Subject : • Capital/Fund Raising • Deposits • Loans & Advances • Related Party Transactions • Compliances/ Disclosures Regime vis-à-vis Private & Unlisted Public Companies • Privileges/ Exemptions available to Private Companies including impact of proposed MCA exemption notification & Amendment Bill 2014 • Corporate Social Responsibility	Mr. Lalit Kumar Mr. Ranjeet Pandey Mr. Harish Kumar Mr. Sharad Tyagi

III. FUTURE PROGRAMMES

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	*Corporate Members Committee*		
A.	**Lecture Meeting on Impacts of Budget Proposals on Capital Markets** Venue : Jai Hind College, 2nd Floor, Auditorium "A" Road, Churchgate, Mumbai – 400 020.	**2nd March, 2015** Subject: Impact of Budget Proposals on Capital Markets.	*Eminent Speaker*
2.	**Direct Taxes Committee**		
A.	**Half Day Workshop on Charitable Trusts** (Jointly with Bombay Chartered Accountants Society) Venue: Audio Visual Centre, Jai Hind College, "A' Road, Churchgate, Mumbai – 400 020.	**13th February, 2015** Subject : 1) Key Provisions of Maharashtra public Trust Act 2) Taxation of Charitable Trusts 3) Foreign Contributions Regulations Act	CA Vipin Batavia CA Gautam Nayak CA Rajesh Kadakia
B.	**Half Day Seminar on Direct Tax Provisions of Finance Bill, 2015** (Jointly with WIRC of ICAI) Venue : M. C. Ghia Hall, Kala Ghoda, Fort, Mumbai.	**7th March, 2015**	Chairman : CA Kishor Karia Speakers : CA Gautam Nayak & CA Yogesh Thar
C.	**Intensive Study Group on Direct Taxes** (For ISG Members only) Venue : CTC Conference Room	**26th February, 2015** Subject : Recent Important Decisions under Direct Tax	Shri Paras S. Savla, Advocate
3.	**Indirect Taxes Committee**		
A.	**Indirect Tax Study Circle Meeting** (Only for IDT SC Members) Venue : Babubhai Chinai Committee Room, 2nd Floor, IMC.	**10th February, 2015** Subject : Circulars and Notifications issued during 2014-15 under Service Tax Laws	Chairman : CA Naresh Sheth Group Leader : CA Payal Shah
B.	**Half Day Workshop on Finance Bill,. 2015 (Indirect Taxes Provisions)** (Jointly with WIRC of ICAI) Venue : M. C. Ghia Hall, Kala Ghoda, Fort, Mumbai.	**7th March, 2015**	CA A. R. Krishnan Shri Vipin Jain, Advocate

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
4.	**International Taxation Committee**		
A.	**6th International Tax Conference with Focus on Practical Evolving Issues** Venue: Palladium Hotel, Near High Street Phoenix Mall, Lower Parel, Mumbai.	**14th February, 2015** Subjects : 1) Keynote address 2) Recent Developments in Transfer Pricing 3) Taxation in Digital economy in the light of BEPS report and Implications in Indian situation 4) Emerging issues for Inbound and Outbound Structuring of Investments from tax perspective 5) Emerging issues in Royalties and FTS considering BEPS	CA Pinakin Desai CA Vispi Patel CA Rashmin Sanghvi CA Vishal Gada CA Pranav Sayta
B.	**FEMA Study Circle Meeting** (Only for FEMA SC Members) Venue : CTC Conference Room	**24th February, 2015** Subject : External Commercial Borrowings – Part - II	Mr. Arvind Rao Mr. Pushpak Shah
C.	**5th Intensive Study Course on Transfer Pricing (Including Domestic Transfer Pricing) – 24 Session-6 Days** Venue : Hotel West End, New Marine Lines, Opp. Bombay Hospital, Mumbai.	**14th and 20th March, 2015** **10th and 11th April, 2015** **24th and 25th April, 2015** Subjects : 1. Basic of Transfer Pricing 2. Benchmarking 3. Industry Specific Sessions 4. Key Controversy Areas – Recent TP Audit experience 5. Practice Areas 6. Other areas having TP implications 7. Domestic Transfer Pricing 8. The Road Ahead – 9. Attribution issues, experiences, recent rulings and Revenue's perspective	Mr. Ajit Korde (CIT - Pune), Ms. Alpana Saxena, Mr. Ameya Kunte, Mr. Arun Saripalli, Mr. Darpan Mehta, Mr. Dhaivat Anjaria, Mr. Freddy Daruwala, Mr. Hasnain Shroff, Mr. Jiger Saiya, Ms. Karishma Phatarphekar, Ms. Manisha Gupta, Mr. Maulik Doshi, Mr. Milind Kothari,

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
			Mr. Rohan Phatarphekar, Mr. Samir Gandhi, Mr. Sanjay Kapadia, Mr. Sanjay Tolia, Mr. Sudhir Nayak, Ms. Vaishali Mane, Mr. Vishwanath Kane, Mr. Vispi Patel, Mr. Waman Kale
D.	**9th Residential Conference on International Taxation, 2015** Venue : Goa	**18th to 21st June, 2015** **Group Discussion Papers** Deputation of people (Inbound & Outbound) - Tax implications from an employer's perspective Royalty & FTS - Sectoral analysis based on case studies Subject considering Budget of 2015 **Papers for Presentation** BEPS & EOI – Global developments and Government initiatives. Make in India – Direct & Indirect tax issues for non-residents investing in India Tax implications in case of trusts used for estate planning for cross -border assets. **Panel Discussion** Case studies on International Taxation & Transfer Pricing	
5.	**Membership & EOP Committee**		
	3 IN 1 – GEETMALA (Jointly with RRC & PR Committee) Venue : Will be announced in due course.	**18th April, 2015** The details of selection and rehearsal shall be informed in due course.	The members are requested to block the date & time for this unique Musical Programme. Members, their immediate family members & Student-members interested in singing should send their names with contact No. & e-mail ID to the Chamber's office.

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
6.	**Residential Refresher Course & Public Relation Committee**		
	38th Residential Refresher Course Venue : Toshali Sands Resort, Puri, Odisha	**19th to 22nd February, 2015** Subjects : Paper I – Deeming Provisions under the Income Tax Act. Paper II – Issues in Corporate Taxation including LLP Paper III – Case Studies on Direct Tax Paper for Presentation : Domestic Transfer Pricing Brain Trust – Direct Tax	**Paper Writer :** CA Anil Sathe **Paper Writer :** CA Milind Mehta **Paper Writer :** CA A. K. Sabat CA Karishma Phatarphekar **Brains' Trustee:** Mr. Saurabh Soparkar, Sr. Advocate
7.	**Students Committee**		
A.	**Student Study Circle Meeting** Venue : Maheshwari Bhawan, Chira Bazar, Marine Lines, Mumbai.	**5th March, 2015** Subject : Finance Bill	CA Manoj Shah
B.	**The Dastur Essay Competition, 2015**	**Topics – The Dastur Essay Competition, 2015 are –** (a) 10 challenges to be tackled by Prime Minister (b) Judicial Activism (c) Social sites/apps…....……kills or builds relationship?	All Members are requested to encourage their Article Trainees and Law Students to participate in this competition. The e-mail (ctcessay@gmail.com)/ post /courier (CTC office) should reach latest by 28th February, 2015.
8.	**Study Circle & Study Group Committee**		
A.	**Study Group Meeting** (Only for Study Group Members) Venue : A. V. Room, 4th Floor, Jaihind College A Road, Churchgate, Mumbai – 400 020.	**27th February, 2015** Subject : Recent Judgments under Direct Taxes	Shri Vipul B. Joshi, Advocate
B.	**Study Circle Meeting** (Only for Study Circle Members) Venue : Babubhai Chinai Committee Room, IMC.	**23rd February, 2015** Subject : to be finalized	To be finalized

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
9.	**Amita Memorial Lecture Meeting** (Jointly with BCAS)		
	Venue : Jaihind College Auditorium, A Road, Next to Churchgate Station, Mumbai – 400 020.	**13th February, 2015** Subject : Anger – The Enemy within	Brahmakumari Shivani
10	**Felicitation Function of Shri V. H. Patil**		
	Venue : Walchand Hirachand Hall, Indian Merchants' Chamber, Churchgate, Mumbai 400 020.	**16th February, 2015** For Completing 50 magnificent years in the profession	All Members are cordially invited
11.	**Live Screening of Budget 2015**		
	Venue : CTC Conference Room Time: 10.00 am onwards.	**28th February, 2015** The live screening of the Finance Minister's speech and presentation of Budget 2015 has been arranged at CTC office.	You are invited to watch the live screening and exchange notes and options thereon with fellow professionals over a cup of tea/ coffee. As the seats are limited, kindly confirm your attendance by e-mail to Mr. Anand Kadam / Ms. Sneha Sawant at office@ ctconline.org at earliest.
12	**Delhi Chapter of The Chamber of Tax Consultants**		
	(jointly with The Northern Region Chapter of International Fiscal Association – India Branch) **Half Day Seminar on Finance Bill, 2015** Venue : Seminar Hall, 1, 2 & 3, above Multipurpose Hall, Kamladevi Complex, India International Centre, Max Mueller Marg, Lodhi Estate, New Delhi – 110 003.	**4th March, 2015** Subject : Analysis of Direct & Indirect Tax Implications	To be finalised

For further details of the Future Events, kindly visit our website www.ctconline.org.

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ALLIED LAWS COMMITTEE

Study Circle Meeting held on 13th January, 2015 on the subject "Opportunities for Professionals in "Alternate Dispute Resolution" (ADR) (Arbitration, Conciliation, Mediation and Negotiation)"

CA Bhupendra Shah addressing the members

Study Circle Meeting held on 28th January, 2015 on the subject "Provisions relating to cheque bouncing as per section 138 of The Negotiable Instruments Act, 1881 including recent Judgment by the Supreme Court"

Shri Yogesh Israni, Advocate addressing the members

INFORMATION TECHNOLOGY COMMITTEE

Workshop on Open Doors to Open Source held on 15th January, 2015 at Babubhai Chinai Committee Room, IMC

CA Manoj C. Shah, Chairman addressing the delegates. Seen from L to R : CA Mitesh Katira, Faculty, CA Paras K. Savla, President and Mr. Manoj Kotak, Faculty

Faculties

CA Mitesh Katira

Shri Manoj Kotak, Open Source evangelist

CA Ganesh Arnaal

STUDENTS COMMITTEE

Half day visit at National Stock Exchange held on 16th January, 2015 at National Stock Exchange, BKC, Mumbai

CA Avinash Lalwani, Vice President welcoming the students

CA Manish Gadia, Chairman, welcoming the students

NSC Faculties

STUDENTS COMMITTEE

Student Study Circle Meeting held on 5th February, 2015 on the subject "E-Filing of TDS Return" at Maheshwari Bhawan, Chira Bazar, Marine Lines, Mumbai

CA Manish Dhedia addressing the students

INTERNATIONAL TAXATION COMMITTEE

FEMA Study Circle Meeting held on 3rd February, 2015 on the subject "Intensive Study of FDI continues from previous sessions" at CTC Conference Room

Mr. Arvind Rao addressing the members

Mr. Pushpak Shah addressing the members

DIRECT TAXES COMMITTEE

Intensive Study Group on Direct Taxes Meeting held on 19th January, 2015 on the subject "Recent Important Decisions under Direct Tax" at CTC Conference Room

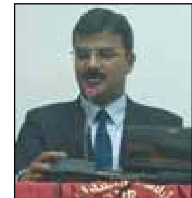
CA Ganesh Rajgoplan addressing the members

DELHI CHAPTER

Seminar on "The Companies Act, 2013 – Provisions affecting Private Companies and Unlisted Public Companies : Case Study Based Analysis" held on 17th February, 2015 at India International Centre, New Delhi

CA C. S. Mathur, Chairman, CTC Delhi Chapter addressing the delegates. Seen from L to R : Shri Harish Kumar, Guest Speaker, Shri Ved Verma, Advisor, CTC Delhi Chapter, Shri R. P. Garg, Vice Chairman, CTC Delhi Chapter and Shri Sharad Tyagi, Guest Speaker

Shri Harish Kumar



Shri Ranjeet Pandya

DIRECT TAXES COMMITTEE

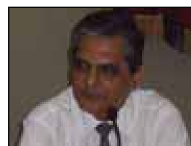
Study Course on Interpretation of Taxing Statutes held on 30th & 31st January and 6th & 7th February, 2015 at Babubhai Chinai Committee Room, IMC

CA Paras K. Savla, President, welcoming the delegates. Seen from L to R : CA Ketan Vajani, Chairman, Shri P. C. Joshi, Faculty, Shri Rahul Hakani, Convenor

CA Ketan Vajani, Chairman, addressing the delegates. Seen from L to R : CA Hitesh Shah, Hon. Treasurer, Shri B. V. Jhaveri, Faculty, CA Avinash Lalwani, Vice President and CA Bhavik Shah, Member.

Faculties

Shri P. C. Joshi, Advocate



Shri Hiro Rai, Advocate

Shri S. D. Srivastava, CIT DR, ITAT Mumbai

Shri Kishu Daswani

Shri Ajay Singh, Advocate

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Study Course on Interpretation of Taxing Statutes held on 30th & 31st January and 6th & 7th February, 2015 at Babubhai Chinai Committee Room, IMC

Faculties

CA Vispi T. Patel

Shri B. V. Jhaveri, Advocate

Shri V. Sridharan, Advocate

CA Pradip Kapasi

Section of delegates

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Group Meeting held on 27th January, 2015 on the subject "Recent Judgments under Direct Taxes" at Babubhai Chinai Committee Room, IMC

CA Yogesh Thar addressing the members

Study Circle Meeting held on 2nd February, 2015 on the subject "Issues in Wealth Tax" at Babubhai Chinai Committee Room, IMC

CA Jagdish Punjabi addressing the members

STUDENTS COMMITTEE / MEMBERSHIP & EOP COMMITTEE / RRC & PR COMMITTEE

1st Indoor Sports Tournament held on 1st February, 2015 at Andheri Sports Complex, Veera Desai Road, Andheri (West), Mumbai – 400 058

Group Photo – 1st Indoor Sports Tournament

Carrom (Doubles) Winner - Mr. Ketan Mamania & Mr. Bhavya Gokhani. Runner up - Ms. Priti Savla & Mr. Manish Gadia.

CA Paras K. Savla, President and CA Vijay Bhatt, Chairman, Allied Laws Committee playing chess.

CA Manish Gadia, Chairman, Students Committee & CA Prit Savla, Vice Chairperson, Allied Laws Committee playing semi final Carrom (Double) and Mr. Rajan Ghadshi, CTC Staff.

Mr. Kishor Vanjara, Past President & CA Ashit Shah, Past Chairman of Indirect Taxes Committee playing Carrom.

STUDENTS COMMITTEE / MEMBERSHIP & EOP COMMITTEE / RRC & PR COMMITTEE

1st Indoor Sports Tournament held on 1st February, 2015 at Andheri Sports Complex, Veera Desai Road, Andheri (West), Mumbai – 400 058

CA Paras K. Savla, President, handing over the memento to Ms. Vanshika Jain, Winner of Women Badminton (Singles).

Mr. Kishor Vanjara, Past President handing over the memento to Ms. Vidhi Vira, Runner up of Women Badminton (Singles).

Mr. Kishor Vanjara, Past President handing over the memento to Mr. Mahesh Chhabria, Winner of Men Badminton (Singles).

CA Manish Gadia, Chairman, Students Committee handing over the memento to Mr. Parthiv M. Chhabria for Winner of Junior Badminton (Singles).

CA Hemant Parab, Vice Chairman, Membership & EOP Committee handing over the memento to Mr. Tarun Jain for Runner up of Junior & Men Badminton (Singles).

CA Vijay Bhatt, Chairman, Allied Laws Committee handing over the memento to Mr. Mahesh Chhabria and Mr. Parthiv M. Chhabria for Winner of Men Badminton (Doubles).

CA Parimal Parikh, Chairman, Membership & EOP Committee handing over the memento to Mr. Dengil Pinto and Mr. Manmohan Sharma for Runner up of Men Badminton (Double).

CA Ashit Shah handing over the memento to Mr. Surjan Chirayu, Winner of Men Table Tennis (Singles).

CA Paras K. Savla, President handing over the memento to Mr. Umesh Agarwal, Runner up of Men Table Tennis (Singles).

CA Avinash Lalwani handing over the memento to Mr. Romani Sachin & Mr. Ramswaroop Verma, Winner of Men Table Tennis (Doubles).

CA Priti Savla, Vice Chairperson, Allied Laws Committee handing over the memento to Mr. Surjan Chirayu and Mr. Ashok Manghnani, Runner up of Men Table Tennis (Doubles).

CA Paras K. Savla, President handing over the memento to Mr. Bhavya Gokhani, Winner of Carrom (Singles).

Mr. Kala Hasti handing over the memento to Mr. Mandar Date, Winner of Chess.

CA Parimal Parikh handing over the memento to Mr. Jignesh P. Shah, Runner up of Chess and Carrom (Singles).

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Printed and Published by Shri. Kishor D. Vanjara on behalf of The Chamber of Tax Consultants, 3 Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020 and Printed at Finesse Graphics & Prints Pvt. Ltd., 309 Parvati Industrial Premises, Sun Mill Compound, Lower Parel (W), Mumbai - 400 013. Tel: 4036 4600 and published at The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020.