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The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

May - 2015 Vol . III | No. 8

INCOME COMPUTATION AND DISCLOSURE STANDARDS

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Full Day Seminar on Non-Banking Finance Companies held on 18th April, 2015 at M. C. Ghia Hall, Fort, Mumbai.

Dignitaries during the seminar. Seen from L to R : CA Vijay Bhatt, Chairman, Allied Laws Committee, Mr. S. M. N. Swamy, General Manager, DNBS, RBI, Faculty, CA Paras K. Savla, President, CA Bhavesh Vora, Faculty, CA Priti Savla, Vice Chairperson, Allied Laws Committee.

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CA Jayant Thakur

CA Kalpesh Mehta

Dignitaries during the seminar. Seen from L to R : CA Ketan Vajani, Chairman, Direct Taxes Committee, CA Avinash Lalwani, Vice President, CA Radhakishan Rawal, Faculty, Mr. Rahul Hakani, Convenor, Direct Taxes Committee.

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ALLIED LAWS COMMITTEE

Allied Laws Study Circle Meetings held on 20th, 22nd April & 7th May, 2015 at Jaihind College.

CA Anand J. Banka addressing the members on the subject "Indian Accounting Standards – Understanding it Conceptually"

Allied Laws Study Circle Meeting held on 29th April, 2015 at IMC.

Ms. Rekha Nayak, Chief Guest, General Manager, Union Bank of India

Mr. Ramakrishana Iyer, Chief Manager & Faculty Member, Bank of India addressing the members on the subject "Bank Finance options & Strategies for MSMEs".

CA K.V.S. Shyamsunder addressing the members on the subject "Role of CA in Bank Finance for MSMEs".

C NTENTS

Vol. III No. 8
May – 2015

Editorial .... *K. Gopal* 5
From the President .... *Paras Savla* 6
Chairman's Communication .... *Sanjeev Lalan* 8

1. **SPECIAL STORY : Income Computation and Disclosure Standards**
   1. Overview of The Income Computation and Disclosure Standards .... *P. N. Shah* 9
   2. Valuation of Inventories: Income Computation and Disclosure Standard II (ICDS II) .... *Sudhir Soni* 14
   3. ICDS III – Relating to Construction Contracts .... *Vishal J. Shah & Kunal Mehta* 18
   4. ICDS IV – Revenue Recognition .... *Sanjeev Pandit* 25
   5. Income Computation and Disclosure Standard V – Tangible Fixed Assets .... *Zubin F. Billimoria & Harsha Rawal* 30
   6. Income Computation and Disclosure Standard VII – Government Grants .... *Zubin F. Billimoria & Pooja Balachander* 35
   7. Securities (ICDS VIII) and Effects of Changes in Foreign Exchange Rates (ICDS VI) .... *Sunil Kothare* 38
   8. Income Computation and Disclosure Standards (ICDS) IX – Borrowing Cost .... *Sanjay Khemani* 44
   9. Income Computation and Disclosure Standard X relating to Provisions, Contingent Liabilities and Contingent Assets .... *Paresh Vakharia* 54

2. **DIRECT TAXES**
   - Supreme Court .... *B. V. Jhaveri* 63
   - Tribunal .... *Jitendra Singh & Sameer Dalal* 66
   - Statutes, Circulars & Notifications .... *Sunil K. Jain* 69

3. **INTERNATIONAL TAXATION**
   - Case Law Update .... *Tarunkumar Singhal & Sunil Moti Lala* 75

4. **INDIRECT TAXES**
   - Service Tax – Statute Update .... *Rajkamal Shah & Naresh Sheth* 85
   - Service Tax – Case Law Update .... *Bharat Shemlani* 90

5. **CORPORATE LAWS**
   - Company Law Update .... *Janak C. Pandya* 96

6. **OTHER LAWS**
   - FEMA Update .... *Mayur Nayak, Natwar Thakrar & Pankaj Bhuta* 99

7 **BEST OF THE REST** .... *Ajay Singh & Suchitra Kamble* 102

8. **ECONOMY & FINANCE** .... *Rajaram Ajgaonkar* 106

9. **THE CHAMBER NEWS** .... *Hinesh R. Doshi & Ajay Singh* 110

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Editorial

Recently, there has been quite a buzz at the advent of New CARO 2015 and the upcoming law of Goods and Services Tax (GST). GST has been passed by the Lok Sabha but will not see the light of the day till a 21-member select committee of the Rajya Sabha submits its report in the first week of the monsoon session, reviving hopes for timely roll-out of GST.

The Finance Bill, 2015 was passed in Lok Sabha on 30th April and has now been approved by Rajya Sabha. Crucial amendments have been made in this bill encompassing the MAT exemption to foreign companies, MAT applicability on notional gain arising on transfer of share of SPV, taxability of subsidies, claim of bad debts without write off in the books, allowability of interest once the asset is put to use and so on.

The talk of the town also centres on the applicability of MAT in case of Foreign Institutional Investors (FIIs) in previous years. To this, the Hon'ble Finance Minister has clarified in the Rajya Sabha that in view of a ruling given by the Authority for Advance Rulings in 2012, it was not possible to provide retrospective exemption for the prior period.

He has also referred the numerous representations received on this issue to a Committee to give its recommendations expeditiously. In the meantime, the CBDT has even issued a directive to put on hold to issue fresh notices for reopening and completing the assessment on this issue unless it is getting time barred.

Amongst all this, 10 Income Computation and Disclosure Standards ('ICDS'), a new avatar of Tax Accounting Standard are finally notified by the CBDT on 31-3-2015 after prolonged discussions and debates over its issue.

The present issue of the Chamber's Journal carries Special Story on ICDS in an exhaustive manner with special insights of the authors. It is beyond doubt that these standards will change the way income will be computed and will materially impact the tax computation from assessment year 2016-17 which is the first year of its implementation.

I thank all the contributors for sparing their valuable time to this issue of the Chamber's Journal.

K. Gopal
Editor

From the President

Dear Members,

Indian Stock Markets has given stupendous returns during last 12 months or so. Benchmark indices had been on the historical highs in recent months. India's rating has been appreciated by the international rating agencies. During 2014, Indian bourses was one of the best performers in world. Recent reports suggest that direct tax collections for F.Y. 2014-15 have been very close to the target despite a huge tide of economic slump. But precipitously benchmarks indices trim by more than 10 per cent. Indian markets becomes amongst the worst performers in 2015. FIIs vexed with the issues of surrounding MAT. Various gloom and doom theories starts floating for such slump. Is it a non-performance of the Government? Or it's a mere short-term profit booking after long bull-run? It is observed that both the Houses of the Parliament have been working for more than their schedule time. Key legislations have been passed by the both Houses of the Parliament. However for couple of legislations, Government is finding difficulties at Upper House. Opposition ruckus continues in Rajya Sabha and Government has to bow to their demand due for the want of majority. But in the process India is losing. Committee has been set to sort issues sounding MAT of FPIs & FIIs. On international fronts too Government has been trying hard. Recently the bill seeks to settle India's 41-year-old border issue with Bangladesh was been passed by Parliament. This bill will help operationalise and ratify the Land Boundary Agreement that provides for exchange of territories between two countries. This shows that Government is not in policy paralysis. Efforts are being made to resolve issues at various fronts. One should not be carried by the short-term trends of capital market.

With the passage of GST Constitutional amendment bill in Lok Sabha, ball is set rolling for the introduction of GST. GST would change indirect tax regime in India. As a professional we all need to unlearn and relearn. On ease of doing business second round of changes in the Companies Act, 2013 are also being proposed to be made.

Month of April 2015 has been very much eventful at the Chamber. Seminars were held on recently modified NBFC guidelines and recently notified Income Computation and Disclosure Standards. Response to both of these seminars has been cheering. During the month the Chamber has also organised two lecture meetings on Implication

u/s 43CA etc. on real estate transaction and proposed bill on Black Money. The Chamber has also organised Cultural and Musical evening programme by the members for its members.

Various mega events have been planned for the month of June, 2015 too. Residential Conference on International Taxes is scheduled at Goa. The Conference has received overwhelming response. Very few seats may be available and request members to enrol themselves to avoid any disappointment. Conference for CFO's has also been planned during the month.

During last week of April, 2015 devastating earthquake shook Nepal. Casualty of life is nearing to 5 digit. Various Indian NGOs has started supporting to the victims. NGOs registered under Income-tax Act are not allowed to apply funds outside India. However Finance Ministry on appreciation of these issues, immediately issued clarification allowing NGOs for application of funds in Nepal after obtaining approval of CBDT. Another important point is that such application would be disposed of by CBDT within 2 days. Quick response by the CBDT would help NGOs reaching victims immediately.

Recent mail from the TRACES states that in case assessees are in default on account of short payment, TDS certificate would not be generated and also cannot be downloaded. This would cause huge difficulties to all taxpayers. Since short payment may be on account of various reasons. Hence the Chamber has sent representation for unrestrictive download of the TDS certificate. Just few days before filing of TDS returns many changes have been incorporated in the returns. This makes tax deductors thwarted. One such change is providing PAN of the person signing TDS returns. This amendment leads undue hardship for non-residents, in the sense that merely for filing TDS returns non-resident signatory would be required to obtain PAN. On this also been representation has been made.

I complement Shri Sanjeev Lalan, Chairman, Journal Committee and Shri K. Gopal, Editor who has planned this issue on Income Computation and Disclosure Standards immediately on its introduction.

I would like to sign off this communication with Robert Orben's thought about vacation *"A vacation is having nothing to do and all day to do it in"*.

Paras Savla
President

Chairman's Communication

Dear Esteemed Readers,

While summer is at peak and some of us have been enjoying vacation, few of us are having hectic time either finalising audits or reading new pieces of legislations that are being passed by the Parliament. The Finance Bill has been cleared by both the Houses of Parliament and we also have Undisclosed Foreign Income and Assets (Imposition of New Tax) Bill, 2015 being passed by the Lok Sabha. The Finance Bill which shall soon become Finance Act on receiving accent of the President, contains 41 amendments to the original proposals and three additional amendments. Surely, this will keep the members busy.

After the presentation of Union Budget by the Finance Minister on 28th February, 2015, CBDT notified the Income Computation and Disclosure Standards on 31st March, 2015. These standards have become effective from 1st day of April, 2015 and accordingly apply for assessment year 2016-17, i.e. from the current financial year itself. Thus, one would have to take all these standards into consideration for computing tax liability, including advance tax liability for current year itself. The said standards have wide ranging impact on determination of tax liability as they cover wide range of areas like inventory valuations, construction contracts, revenue recognition, tangible fixed assets, changes in foreign exchange rates, government grants, securities, borrowing costs and contingent liabilities & contingent assets.

Having regards to the importance of these changes notified and their immediate impact, we at CTC thought it fit to carry a special story covering the changes that each of the standards would have. These standards would also have some impact not only on the tax liability but also on deferred tax provisioning and determination of MAT liability. I am sure the readers shall be benefited by the insights that the learned authors have tried to capture in the various articles contained herein. I am thankful to respected Shri P. N. Shah for giving an overview on the subject of Special Story and also to the other authors viz. S/Shri Sudhir Soni, Vishal J. Shah, Kunal Mehta, Sanjeev Pandit, Zubin F. Billimoria, Sunil Kothare, Sanjay Khemani, Paresh Vakharia, Ms. Harsh Rawal and Pooja Balachander for sharing their knowledge with the readers at a very short notice. I am sure the readers shall be immensely benefited by the analysis of various ICDS by the learned authors.

I would also like to thank the Editor Shri K. Gopal, President Shri Paras K. Savla and Co-Chairman of the Committee Shri C. N. Vaze for design of this Special Story.

Wishing you all a very happy reading.

CA. Sanjeev Lalan
Chairman – Journal Committee

CA P. N. Shah

Overview of The Income Computation and Disclosure Standards

1 Background

1.1 Section 145 of the Income-tax Act (Act) dealing with "Method of Accounting" was amended by the Finance Act, 1995, effective from A.Y. 1997-98. The concept of Tax Accounting Standards was introduced for the first time by this amendment. This section has been amended by the Finance (No.2) Act, 2014, effective from 1-4-2015. By this amendment, the concept of computation of income from Business or Profession and Income from Other Sources are required to be computed in accordance with "Income Computation and Disclosure Standards" (ICDS) notified by the Central Government. In brief, section 145 is divided into three parts as under.

(i) Income under the heads "Income from Business or Profession" and "Income from other sources" shall be computed in accordance with either (a) Cash or (b) Mercantile System of accounting regularly adopted by the assessee.

(ii) The Central Government shall notify ICDS to be followed by the assessee for computation of income from the above two sources.

(iii) The Assessing Officer (A.O.) can make a best judgment assessment under section 144 of the Act by estimating the income if the provisions of Section 145 are not complied with by the assessee.

1.2 On 25-1-1996 the Central Government notified two Accounting Standards viz. (i) Disclosure of Accounting Polices and (ii) Disclosure of Prior Period and Extra-Ordinary items and Changes in Accounting Policies". These standards were required to be followed by the assessee while maintaining its books of account. These two standards were more or less on the same lines as AS-1 and AS-5 issued by the Institute of Chartered Accountants of India (ICAI). Thereafter, for about two decades, no Accounting Standards were notified u/s. 145(2) of the Act.

1.3 In December, 2010, the CBDT Constituted a Committee to harmonise Accounting Standards (AS) issued by ICAI with the provisions of the Act for the purposes of notification under the Act and to suggest amendments to the Act. This committee formulated drafts of 14 Tax Accounting Standards (TAS) and submitted its report in August, 2012. After inviting public comments on drafts of TAS, the CBDT has revised 10 TAS and notified them u/s. 145 (2) on 31-3-2015. These standards are now called "Income Computation and Disclosure Standards" (ICDS). The Notification states

that ICDS are issued u/s. 145(2) of the Act and will have to be followed by the assessees following the Mercantile System of Accounting for the purpose of computing income chargeable to tax under the head "Profits and Gains of Business or Profession" and "Income from other sources". This Notification comes into force with effect from 1-4-2015 i.e. A.Y. 2016-17 (F.Y. 2015-16).

1.4 The ten ICDS notified u/s. 145(2) of the Act and the corresponding AS issued by ICAI and IND-AS as notified under the Companies Act, 2013, are as under:

	Title	ICDS	AS (ICAI)	IND-AS
(i)	Accounting Policies	1	1	8
(ii)	Valuation of Inventories	2	2	2
(iii)	Construction Contracts	3	7	115
(iv)	Revenue Recognition	4	9	115
(v)	Tangible Fixed Assets	5	10	16
(vi)	Effects of changes in Foreign Exchange Rates	6	11	21
(vii)	Government Grants	7	12	20
(viii)	Securities	8	13	32/109
(ix)	Borrowing Costs	9	16	23
(x)	Provisions, Contingent Liabilities and Contingent Assets	10	29	37

It may be noted that the Tax Accounting Standards Committee had recommended four more standards for notification. These four standards deal with (i) Events Occuring After the Balance Sheet Date, (ii) Prior Period Items, (iii) Leases and (iv) Intangible Assets. CBDT has not issued standards on these subjects while issuing the above notification.

In the chapters to follow the important issues dealt with by the Ten ICDS notified by CBDT are discussed.

2. Impact of Changes

2.1 It may be noted that ICDS issued u/s. 145(2) of the Act only provides that income from Business/Profession or Income from other sources should be computed in accordance with ICDS. Therefore, the assessee will have to maintain its accounts in accordance with applicable AS issued by ICAI or IND-AS notified under the Companies Act. If there is any difference between the accounting results and the requirements of applicable ICDS, the assessee will have to make adjustments while computing its taxable income from the above two sources while filing its Return of Income. If this is not done, the A.O. can call upon the assessee to furnish the required information and make the adjustments while computing the taxable income from these two sources. If the required information is not furnished by the assessee the A.O. can make the best judgment assessment u/s. 144 of the Act.

2.2 It may be noted that the amended section 145(3) of the Act provides that if the A.O. is not satisfied about the correctness or completeness of the accounts of the assessee or where the method of accounting as provided in section 145(1), i.e. either cash or Mercantile has not been regularly followed by the assessee or income has not been computed in accordance with the requirements of ICDS, he can make a best judgment assessment.

There is no requirement that the assessee should maintain accounts which comply with ICDS. In view of this, in the case of a company, no adjustment can be made in the computation of Book Profits u/s. 115JB of the Act if the accounts are prepared in accordance with the applicable Accounting Standards and the Provisions of Part II of Schedule VI of the Companies Act, 1956. In other words, ICDS do not apply for computation of Book Profits u/s 115JB of the Act.

2.3 Considering the different provisions of Accounting Standards issued by ICAI, IND – AS notified under the Companies Act, 2013 and ICDS, in the coming years, there will be a lot of confusion in the matter of computation of taxable income. To take a simple example, if an assessee, a construction contractor, was following completion of contract method up to F.Y. 2014-15, it will have to compute income from this contract under ICDS-3 on percentage of completion method as ICDS-3 applies to all construction contracts, whether entered into before 1-4-2015 or thereafter. The assessee, in such a case, is not required to change its method of accounting but it has to make adjustments while computing income from construction contract under ICDS – 3. If any adjustment is made in the computation of income in A.Y. 2016-17, the effect of such adjustment will have to be reversed in the subsequent year. Similar issues will arise with regard to adjustments in the computation of taxable income to comply with applicable ICDS in all cases.

2.4 In the preamble of all the Ten ICDS it is stated that in case of conflict between the provisions of the Income-tax Act and ICDS, the provisions of the Act shall prevail to that extent. To take an example, if a provision for any tax, duty, cess or fee etc. is made and the same is in accordance with any ICDS, deduction will not be allowable unless actual payment is made as provided in section 43B of the Act. Similar will be the position where provisions of section 40(a)(i) or 40 (a)(ia) are applicable.

3 Accounting policies – ICDS-1

This is a disclosure standard. AS-1 notified in 1996 u/s. 145(2) of the Act regarding "Disclosure of Accounting Policies" (AS-1(1996) was on the same lines as AS-1 issued by ICAI. As compared to AS-1 notified u/s. 145(2) in 1996, ICDS-1 is different in respect of some material items. This difference is as under.

3.1 **AS-1(1996) :** It is stated that accounting Policies adopted by an assessee should be such as to represent a true and fair view of the state of affairs of the business or profession in the financial statements prepared and presented on the basis of such accounting policies. For this purpose, the major considerations governing the selection and application of accounting policies should be (a) Prudence, (b) Substance over form and (c) Materiality.

ICDS-1: Para 3 states that accounting policies refer to specific accounting principles and methods of applying these principles adopted by a person. In Para 4 it is stated that accounting policy adopted by a person should be such that they represent true and fair view of the state of affairs and income from business or profession of the assessee. For this purpose, the treatment and presentation of transactions and events shall be governed by their substance and not merely by the Legal form. Further, marked to market loss or an expected loss shall not be recognized unless recognition of such loss is in accordance with any other ICDS. It may be noted that this standard does not recognize the concept of "Prudence" and "Materiality". AS ICDS does not recognize materiality as an accounting policy the A.O. may try to make additions of small items of expenses and try to levy

penalty also on the ground that the same is not disclosed. Further, provision for expected losses as recognized in accounting standards issued by ICAI is not recognized by this standard.

3.2 AS-1 (1996) - Fundamental Accounting Assumptions

This standard recognizes (a) Going concern, (b) Consistency and (c) Accrual as fundamental accounting assumptions. These three terms are defined in the standard. If these assumptions are not followed, disclosure of the same is necessary.

ICDS-1 – The wording in this standard is similar to AS-1(1996) and AS-1(ICAI).

3.3 Changes in Accounting Policies

AS-2(1996) : Provided in Para 9 that a change in an accounting policy shall be made only if the adoption of a different accounting policy is required by statute or if it is considered that such change would result in a more appropriate preparation or presentation of the financial statements by an assessee.

ICDS-1 : Provides that any accounting policy shall not be changed without reasonable cause. What is a reasonable cause is a debatable issue. This particular provision in ICDS will invite litigation even if any such change in the accounting policy does not have material effect on income computation.

3.4 Disclosure of accounting policies

ICDS-1 provides that all significant accounting policies adopted by the assessee shall be disclosed. Any change in an accounting policy which has a material effect has to be disclosed. If such a change is not material in the year of change but it is likely have material effect in a subsequent year it will be necessary to disclose in the year when the change is made. Disclosure of accounting policies or changes therein cannot remedy wrong or inappropriate treatment of the item. This provision is on the same lines as per the provisions of Para 10 of AS-2 (1996).

It may be noted that ICDS does not deal with changes in "Accounting Estimates" as opposed to "Accounting Policies". This concept is recognized in AS-2 (1996) as well as in AS-5(ICAI). In AS-2(1996) it was provided that if a dispute arises whether a change is in accounting policy or accounting estimate the same should be referred to CBDT. There is no similar provision in ICDS-1.

3.5 Transitional Provision

Para 10 of ICDS-1 states that all contracts or transactions existing on 1-4-2015 or entered into on or after that date shall be dealt with in accordance with the provisions of this standard after taking into account the income, expenses or loss recognized in respect of the said contract or transaction for the F.Y. ending on or before 31-3-2015. It is difficult to understand about the significance of such a provision in ICDS-1 which is a disclosure standard.

4. To sum up

4.1 Accounting Standards issued by ICAI apply to all corporate Assessees and non-corporate assessees requiring to obtain tax audit report. IND-AS notified under the Companies Act, 2013, will apply to certain companies as are notified. As compared to this, ICDS notified by the Central Government under Section 145(2) of the Income-tax Act will apply to all assessees having income from Business or profession or Income from other sources if the accounts are maintained on the basis of Mercantile Systems of accounting.

4.2 If any provision in ICDS is in conflict with any provision in the Income-tax Act,

the provisions of the Act apply. Therefore, no adjustment is required to be made in the computation of income under that ICDS, if the Income-tax Act provides otherwise.

4.3 All the Ten ICDS issued by CBDT require certain disclosures to be made. It is not clarified as to where such disclosures should be made. If the disclosures are to be made in the Financial Statements, there will be confusion when accounting standard applicable to the assessee (AS (ICAI) or IND – AS) for preparation and presentation of financial statements requires different type of disclosures. Therefore, CBDT should clarify that such disclosures required under ICDS should be made in Tax Audit Report. For this purpose Form 3CD will have to be amended.

4.4 As stated earlier the ICDS issued by CBDT relate to only computation of Income from Business or Profession and Income from other sources. It is not clarified as to how adjustments to profit or loss as per accounts will be stated as no computation sheet can be enclosed with the return of income. For this purpose the Form of the return of income prescribed by the Rules will have to be suitably modified. All adjustments required to be made by different ICDS will have to be incorporated in this Form. This will mean that the Return Form will get further complicated.

4.5 AS-2(1996) defined "Prior Period Items" to mean material charges or credits which arise in the previous year as a result of errors and omissions in the preparation of the financial statements of one or more previous years. The Tax Accounting Standards (TAS) Committee had recommended a separate standard on Prior Period Items and suggested that in order to provide certainty and reduce litigation, Prior Period expenses should be allowed if the assessee proves that such expenses accrued during the year. In actual practice assessees have to face litigation in respect of prior period expenses. In order to reduce this litigation it is desirable that CBDT issues a clarification that prior period expenses should be allowed in the year in which the liability has arisen by rectification of assessment of earlier years u/s. 154.

4.6 TAS Committee had also suggested that CBDT should issue a standard on "Events After the Balance Sheet Date". It was also suggested that adjustment should be made in the computation of income if such events provide additional evidence to assist estimation of amounts relating to conditions existing of the balance sheet date. This can be illustrated by a case in which a court judgment relating to pending wage dispute is received after the balance sheet date but before finalizing accounts. The effect of this judgment can be given while finalizing the relevant accounts. CBDT has not included this topic in ICDS.

4.7 TAS Committee has also suggested that separate standard on 'Leases' be issued. There is no clarity about taxation of Finance Lease. The standard drafted by TAS Committee had attempted to ensure some uniformity of classification of a lease by the lessor and the lessee. In order to bring uniformity of treatment for artificially low and high rate of interest, TAS provided for adjustment in case of artificially high rate of interest. No ICDS is issued on this topic.

4.8 TAS Committee had also drafted TAS on the subject of "Intangible Assets". This standard was on the same lines as AS-26 issued by ICAI. In many cases questions arise as to whether a particular capital expenditure results in acquision of Intangible asset on which depreciation is allowable under the Income-tax Act. CBDT has not issued ICDS on this topic.

CA. Sudhir Soni

Valuation of Inventories: Income Computation and Disclosure Standard II (ICDS II)

The Accounting Standard on "Valuation of inventories" (AS 2) is amongst the earliest of the standards issued by the Institute of Chartered Accountants of India. Valuation of inventories being an important aspect in determining the profits of an enterprise for a financial period has often been an area of dispute with tax authorities. Income Computation and Disclosure Standard II relating to valuation of inventories (ICDS II) make some important departures from AS 2, which seeks to address some of the matters that have been the subject of litigation. As explained in the notification of ICDS, in the case of conflict between the provisions of Income-tax Act, 1961 ('the Act') and Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent. It would need to be examined whether this principle will extend to judicial pronouncements also.

The important areas of difference between AS 2 and ICDS II are discussed in the following paragraphs:

Scope of the standard

Work-in-progress arising in the ordinary course of business of service providers excluded from the scope of AS 2 is included under ICDS II. However, according to ICDS IV, Revenue from service transactions shall be recognised by the percentage completion method. When revenue is recognised under the proportionate completion method the related cost is charged to the profit and loss account. Accordingly, there may be limited situations where inventory arises on service transactions for example when revenue recognition is postponed or is contingent.

Measurement of inventories

The principal rule for measurement of inventories is identical in AS 2 and ICDS II. Inventories shall be valued at cost, or net realisable value, whichever is lower. However, there is a difference in the definition of cost.

Costs of purchase

7. The costs of purchase consist of the purchase price including duties and taxes ***(other than those subsequently recoverable by the enterprise from the taxing authorities)***, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates, duty drawbacks and other similar items are deducted in determining the costs of purchase.

The above definition of cost of inventories as per AS 2 is modified to the extent that the highlighted portion above is deleted in ICDS II. The issue relating to whether the value of closing stock of the inputs, work-in-progress and finished goods must necessarily include the element for which CENVAT credit is available

has been the matter of considerable litigation. Section 145A was enacted by the Finance (No.2) Act, 1998 and came into force from A.Y. 1999-2000. This section provides that the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be in accordance with the method of accounting regularly employed by the assessee and further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation. It further clarifies that for the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.

As per the requirements of section 44AB, auditors are also required to provide details of deviation, if any, from the method of valuation prescribed under section 145A, and the effect thereof on the profit or loss in Form 3CD. The ICAI in the Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 ('the guidance note') has explained as follows:

"23.23 The adjustments envisaged by section 145A will not have any impact on the trading account of the assessee. In other words both under exclusive method of accounting and inclusive method of accounting, the gross profit in the trading account will remain the same."

The aforementioned view explained in the guidance note is also confirmed by a decision in the ITAT MUMBAI BENCH *'D' Raj Petro Specialities Private Limited vs. Assistant Commissioner of Income-Tax, 10(2), Mumbai [2013] 34 taxmann.com 76 (Mumbai-Trib.).* An extract from that decision is reproduced below:

"The fallacy in the A.O.'s working, as it would appear to us, is that while he includes the incidence of duty on the opening and closing stock of goods, he does not do so *qua* purchases and sales. It is only where the cost is incurred that the same would stand to form part of the operating statement, and qualify for being recognised as a part of cost of goods unsold as at the year-end, i.e., the closing stock by definition. It is this adding of the tax/duty cost to the value of the closing stock without making a corresponding allowance for the same in the trading account that would lead to a distorted picture and a profit figure inconsistent with the actual profit earned/accrued. Section 145A does not purport to yield a notional, but only actual profit, by prescribing inclusion of all cost elements, including tax and duty, where and to the extent attracted/incurred, in the valuation process. This is, thus, akin to an accounting policy, statutorily prescribed, for uniform application by all assessees. The decision in the case of *Chainrup Sampatram vs. CIT [1953] 24 ITR 481 (SC)* continues to be a guide post in the matter, clarifying that the valuation of the closing stock is not a source of profit, but only seeks to neutralize the cost of goods unsold as at the end of the accounting period, so that only the cost of goods actually sold is taken into account in arriving at the profit or loss for the said period by setting it off against their sale value."

Cost of services

As discussed earlier, ICDS II includes services in its scope and has provided a measurement rule for cost of services as follows:

"The costs of services in the case of a service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads."

It may not be possible to ascribe a value to work-in-progress for certain types of service revenues, for example commission income. Identifying overheads attributable to services would also necessarily involve some judgment.

Techniques for the measurement of cost

ICDS II does not specifically recognise standard cost as a technique for measurement of cost. Standard cost is followed by several companies as it provides useful management information through the analysis of variances on yield, purchase rates, overheads and plant utilisation. Standard cost is allowed by AS 2 if the results approximate the actual cost. In principle, the valuation of inventories at standard cost adjusted for variances provides a fair approximation of cost.

Value of opening inventory

ICDS II specifically provides a rule to ensure that there is continuity in valuation and the value of the closing inventory is the value of the opening inventory for the subsequent year. This is important and will ensure that no permanent gain/loss should result from an adjustment to closing inventory valuation.

Difference in valuation of inventory should normally create only a timing difference as the closing inventory for a period would become the opening inventory for the subsequent period. However, this matter has been the subject matter of litigation and forms part of the decision by the apex court in the case of ***CIT vs. British Paints India Ltd. [1991] 188 ITR 44 (SC)***. "The decision by the apex court in British Paints India Ltd is based on two fundamental principles of jurisprudence on tax law, i.e., it is the correct income for the year that is to be brought to tax for that year and, two, each year is an independent and self-contained unit of assessment. It cannot also be said that the said aspect is not integral to the issue arising before and decided by the apex court in that case. Its verdict would thus appear to be clearly in favour of the change being applied uniformly inasmuch as only the same would result in the correct income for that year, i.e., independent of the preceding year." (extract from decision ITA No. 7756/Mum/2010 (A.Y. 2005-06) ***Dy. CIT vs. Daman Ganga Paper Ltd.)***. Accordingly, the rule in ICDS II sets out a principle different than the decision of the Supreme Court in the case of British Paints.

Change of method of valuation of Inventory

The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause. This is similar to the requirement for change in accounting policy as per ICDS I. However, reasonable cause has not been defined. According to AS 5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies a change in an accounting policy should be made only if the adoption of a different accounting policy is required by statute or for compliance with an accounting standard or if it is considered that the change would result in a more appropriate presentation of the financial statements of the enterprise. This may also be used as a guiding principle to determine "reasonable cause" to change a method of valuation of inventory.

Valuation of inventory in case of certain dissolutions

In case of dissolution of a partnership firm or association of person or body of individuals, notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value. This is in line with judicial pronouncements based on the fact that there is no continuity of business in such a case. An extract from the decision of High Court of Delhi in case of ***Madhu Rani Mehra vs. Commissioner of Income-tax [2011] 10 taxmann.com 126 (Delhi)*** is reproduced below:

"Valuation of inventories is subject-matter of AS-2 issued by the ICAI. AS-2 prescribes valuation of inventories at cost or net realisable value whichever is less. Amongst other aspects it mandates that inventories ought not to be

carried in financial statements at values in excess of the value which is expected to be realized from their sale or use. [Para 18]

The Tribunal, in the broad manner, seemed to have applied this principle. But this principle would not apply when what is required to be done is to determine cost at which stock is introduced in the business. In that context referring to the stock introduced by the assessee in the proprietorship concern as opening stock was a little bit of misnomer, in the sense, it tend to connect that stock with the business of the dissolved firm. The moment one referred to it as opening stock (having its origin in the closing stock of erstwhile firm), it conjured up a scenario of continuation of business. Because, if that position obtained then the assessee's stock in the proprietorship concern would have to be valued based on the principle of cost or market value, whichever was lower. The position in the instant case was different. The partnership firm was dissolved. One individual of the erstwhile firm continued to make a living out of a business, which by sheer coincidence happened to be again jewellery business, in which, distributed capital was introduced in the form of stock. The stock on introduction in the business, stood converted into stock-in-trade. The value of that stock would have to be the market value on the date of introduction. [Para 19]

The Tribunal's reasoning that the assessee could not value the stock introduced in the business at market value because that was not the price she paid for it, was flawed and that flaw was apparent if one were to test the reasoning by carrying the given set of facts a little further. Suppose, the assessee on having received her distributed share of stock of jewellery from the dissolved firm had sold it, and thereafter commenced her proprietorship business of jewellery again within short span by buying the jewellery from the market from the proceeds of stock sold on dissolution of the erstwhile firm. In such a situation, the stock of the proprietorship concern would, without doubt, be valued at market value. Therefore, would the principle be any different if, as in the instant case, the assessee wished to use her share of the stock obtained from the dissolved firm in the new business. The situation was not different and, hence, the same principle ought to apply. A business has attributes of physicality as well as form. For continuation of business both have to remain intact, at least in large measure. In the instant case, the erstwhile firm disappeared on its dissolution. The proprietorship business gave birth to new business in a different form. Therefore, the Tribunal's decision to value the stock at cost rather than the market value could not be sustained. [Para 20]."

Transitional provision

ICDS have provided transitional provisions. Interest and other borrowing costs, which do not meet the criteria for recognition of interest as a component of the cost as per para 11 of ICDS II, but included in the cost of the opening inventory as on the 1st day of April, 2015, shall be taken into account for determining cost of such inventory for valuation as on the close of the previous year beginning on or after 1st day of April, 2015 if such inventory continue to remain part of inventory as on the close of the previous year beginning on or after 1st day of April, 2015.

Conclusion

ICDS II provides guiding principles for valuation of inventories. However, as in the case of any valuation, making estimates and judgments is unavoidable. Identifying costs directly attributable to acquisition, allocation of overheads and determining net realisable value are some of the areas where policy choices are required. A careful and well-reasoned selection of inventory valuation policy is important to reduce the risk of litigation.

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ICDS-III relating to Construction Contracts

Background

Construction contracts provide a unique situation in terms of recognising revenue and costs thereof in light of the fact that they are typically entered into for a period running over 3-4 years until completed. The primary objective of ICAI to have a separate standard (AS-7) was to determine mechanism for allocation of contract revenue and contract costs to the accounting period in which some part of the construction activity is performed. In this context, the erstwhile pre-2002 AS-7 (Old) dealing with Construction Contracts permitted two methods for revenue recognition, namely, Percentage of Completion Method (POCM) and Completed Contract Method (CCM). Due to the different alternatives available for accounting purposes, the taxpayers preferred to follow CCM whereas the Tax Authorities contested the same on the ground that taxation was delayed or postponed under the said method. This resulted to litigation in the past [Refer ***Champion Construction Co vs. ITO (5 ITD 495) (Mumbai Tribunal), CIT vs. V. S. Dempo and Co. P. Ltd. (131 CTR 203) (Bombay HC), Abode Construction Ltd. vs. ITO (2 SOT 27) (Mumbai Tribunal)***, etc.].

The ICAI AS-7 has been judicially recognized as acceptable for tax purposes even when it permitted choice between two methods, namely, Percentage of Completion Method (POCM) and Completed Contract Method (CCM). The revised AS-7 (2002) which permits only one method i.e. POCM has been implemented by the construction industry at large and is also accepted by the tax authorities. However, with the underlying objective to reduce accounting alternatives and to address uncertainty and avoid litigation on several specific issues arising therefrom, the CBDT has notified a specific ICDS dealing with Construction Contracts and has adopted large part of AS-7 in the ICDS with certain deviations.

In this article, we have discussed key aspects on ICDS-III dealing with "Construction Contracts" and have highlighted significant challenges involved upon implementation of the same.

Brief introduction on ICDS-III relating to Construction Contracts

The scope of ICDS-III relating to Construction Contracts provides that it would be applicable in determining income for a construction contract of a contractor. The preamble of the ICDS states that in case of a conflict between the provisions of the Income-tax Act, 1961 ('the Act') and the ICDS, the provisions of the Act shall prevail to that extent. In this context, some of the key features as outlined in the said ICDS are stated below:

- Recognition – Contract revenue and contract costs are required to be recognised on POCM basis. The manner of determining the stage of completion for recognition of contract revenue / contract costs is also provided. Once a contract crosses 25% of the completion stage, the profit in respect of such contract is required to be recognized.

- Retention money – Retention money is considered as part of contract revenues and hence, shall be recognized on POCM basis.

- Contract Costs – ICDS also provides as to what constitutes contract costs which even includes allocated borrowing costs. Pre-construction income in the nature of interest, dividend and capital gains is specifically not allowed to be reduced from the cost of construction.

- Treatment of losses – Losses incurred on a contract are allowed only in proportion to the stage of completion. Further, any future or anticipated losses are not considered allowable, unless actually incurred.

- Combination / Segmentation of Contracts – ICDS provides the manner of combining and segmenting the construction contracts in varied situations similar to the current AS-7.

- Transitional Provisions – Transitional provisions are also included which provide that ICDS applies to all existing contracts i.e. contracts commenced on or before March 31, 2015 but not completed by that date. Hence, contract revenue and contract costs associated with such existing contracts are required to be recognised in the year of transition (FY 2015-16) in accordance with the provisions of ICDS.

- Disclosures – Certain disclosures requirements are prescribed in relation to construction contracts being undertaken by the contractor (similar to AS-7).

Points of similarities and diversion with normal AS

Since the ICDS are drafted taking AS-7 as its base, many provisions in the ICDS are similar to that of AS-7. The most important point of similarity between AS-7 and ICDS is that both, apply only to contractors. Another key similarity between AS-7 and ICDS is with respect to recognition of revenue based on only one method i.e. POCM. Accordingly, the use of completed contract method is no longer permitted. As discussed earlier, the revised AS-7 issued by the ICAI in 2002 also allowed revenue recognition on POCM basis only.

Given the above similarities, CBDT has carved out certain deviations and made the following changes to AS-7 in the notified ICDS.

Key deviations from ICAI AS-7

Sr. No.	Relevant Aspect	Position under AS-7	Position under ICDS
1	Retention money	Silent; Recognised only when right to receive such sum established	Recognised on POCM basis
2	Revenue recognition during early stage of contract	No guidance; Most contractors apply POCM from day 1	Revenue to be recognised once contract crosses 25% stage of completion

Sr. No.	Relevant Aspect	Position under AS-7	Position under ICDS
3	Recognition of actual losses	Recognised fully upfront	Allowed on POCM basis
4	Provision for anticipated losses	Recognised fully	Not allowed (unless actually incurred)
5	Pre-construction income (interest, dividend, capital gains)	Reduced from the cost of construction	Not allowed to be reduced from the cost of construction
6	Contract costs relating to future activity	Recognised as asset if it is probable that such costs are recoverable	Recognised as asset irrespective of recovery probability
7	Detailed explanations / illustrations	Detailed explanations / illustrations included to explain the provisions of AS-7	No detailed explanations / illustrations provided

Key issues arising upon implementation of ICDS-III

Applicability

ICDS are applicable to all the taxpayers, following mercantile system of accounting for the purpose of computing their taxable income under the head "Profits and gains of business or profession" or "Income from other sources". There is no minimum threshold or exemption granted in the ICDS.

As a result, ICDS would significantly affect non-company assessees like Partnerships, Limited Liability Partnerships (LLPs), Sole Proprietorships, etc. which have been following completed contract method for tax purposes till date and which had been accepted judicially as well. Further, ICDS even applies to service providers such as architects, project managers, etc. who generally, render services which are directly related to the construction contract. These categories of taxpayers will now be mandatorily required to compute their taxable income on POCM basis.

Although not expressly mentioned in ICDS, it may not apply to real estate developers undertaking construction work on their own account as a commercial venture. For instance, a builder developing housing project on his own and then, selling self-constructed residential or commercial units to the public may not be required to comply with ICDS-III. On the other hand, this ICDS may impact developers selling units on pre-completion sale basis. Incidentally, several (listed) developers have applied the POCM method based on the ICAI Guidance Note on Accounting for Real Estate Transactions (Revised 2012) on the same.

Certain categories of taxpayers who compute their taxable income on presumptive basis i.e. assessees falling within the scope of Section 44AD (small businesses having turnover of less than Rs. 1 crore), Section 44BB (services in connection with exploration of mineral oil), etc. are not required to maintain books of account for tax purposes, unless their profits are claimed to be lower than specified under the Act. Arguably, ICDS ought not to apply to such category of taxpayers opting for the presumptive taxation regime.

Threshold for Revenue Recognition

Practically, many contractor companies have been recognising profits in their books of account from day 1 irrespective of the percentage of

contract completion. Hence, the 25% threshold specified under ICDS in relation to recognition of profits for tax purposes may create differences *vis-à-vis* the accounting treatment followed by such contractors. As a result, there could be a mismatch between the accounting profit and the taxable income which may have MAT implications.

Service Concession Arrangements

As regards service concession arrangements, commonly referred to as Build, Operate and Transfer (BOT) contracts or PPP projects, the CBDT Committee had recommended for notification of separate ICDS to recognise revenues and related costs. However, in absence of any separate ICDS notified in this regard, the applicability of ICDS IV on "Revenue Recognition" to such service concession arrangements will have to be evaluated on a case-to-case basis.

Recognition of Retention Money on POCM basis

Various judicial pronouncements have held that retention money accrues to the contractor only when there is a right to receive such income, which, generally, accrues only at a later point of time upon completion of the attached conditions as per the relevant contract [Refer ***CIT vs. Simplex Concrete Tiles India Pvt. Ltd. (179 ITR 8) (Calcutta HC), CIT vs. East Coast Constructions & Industries Ltd. (283 ITR 297)(Madras HC), CIT vs. Associated Cables Pvt. Ltd. (286 ITR 596)(Bombay HC), CIT vs. P&C Constructions Pvt Ltd (318 ITR 113)(Madras HC)***]. The CBDT Committee had also fairly recognised these judicial pronouncements.

However, with the stated intent to overcome the judicial pronouncements, the ICDS provides for recognition of retention money on POCM basis. In this regard, one may observe that the provisions of ICDS are in conflict with the basic concept of real income theory under the Act based on which, even under mercantile system of accounting, income accrues in the hands of a taxpayer only there is an unconditional right to receive such income. The concept of real income taxation was upheld by the Hon'ble Supreme Court in the case of ***E. D. Sassoon & Co. Ltd. (26 ITR 27) and Godhra Electricity Co. Ltd. vs. CIT (225 ITR 746)***. However, there is no clarity as to whether the binding ratio of the judicial pronouncements interpreting the provisions of the Act would still override provisions of the ICDS. Thus, one may consider evaluating the tax treatment under ICDS with the charging provisions i.e. Sections 4 and 5 of the Act to evaluate satisfaction of the real income taxation test.

Further, since ICDS does not govern accounting aspects, any amount treated as receivable under ICDS (like retention money) may not get reflected as a debt in the books of account on the basis of prudence. In the event that such amount is not reflected in the books of account, the taxpayer will not be able to subsequently write off the same in its books of accounts. As a result, any claim for deduction of non-recovery of such amount may not be allowed since the Act requires that deduction will be allowed only if such sum is written off in the books of account. Incidentally, the Finance Bill, 2015 as passed by the Lok Sabha has proposed to do away with this condition in cases covered under the ICDS and this can impact the conclusion if ultimately enacted.

Provision for anticipated losses

Provision for foreseeable or anticipated losses in construction contracts has been judicially upheld to be allowable for tax purposes so long as such provision is considered to be in accordance with the accounting standard or is justified based on prudence. Such recognition has been upheld by various Courts in the cases of ***CIT vs. Triveni Engineering & Industries Ltd. (336 ITR 374) (Delhi HC), CIT vs. Advance Construction Co. Pvt. Ltd. (275 ITR 30) (Gujarat HC), Jacobs Engineering India Pvt. Ltd. (14 taxman.com 186) (Mumbai Tribunal).***

Especially, in case of fixed price contracts, there could be various unforeseen circumstances such

as non-availability of construction materials like cement, steel which leads to unrealistic rise in prices, loss on account of fire or theft at project site, etc. As a result, the contractor may suffer material losses during the execution of the project.

Absence of a provision to recognise expected losses in ICDS will conflict with the concept of prudence and will override the judicial position as discussed above. The situation still worsens as regards recognition of actual losses under ICDS as the taxpayer is allowed to recognise such actual losses only on POCM basis. This creates a direct conflict with the provisions of Section 28 of the Act which allow losses incurred by the taxpayers while computing their business income.

As a result, the taxpayers will be required to recognise losses on POCM basis for tax purposes whereas, for accounting purposes, the taxpayers will consider entire loss in their books of account.

Pre-construction income in the nature of interest, dividend or capital gains not to be reduced from cost of construction

The CBDT Committee had stated that it is judicially settled that any pre-construction income in the nature of interest, dividends and capital gains shall not be reduced from the cost of construction. Accordingly, ICDS specifically prohibits reducing such income from the cost of construction of the project. As a result, pre-construction income (like interest from advances given to sub-contractors, etc.) could get taxed as income in the year of accrual.

The Committee seems to have based its proposition on the decision of Hon'ble Supreme Court in the case of *Tuticorin Alkali Chemicals and Fertilizers Limited vs. CIT (227 ITR 172)*, wherein the Court has held that interest income earned by the assessee from surplus funds available during the setting up of a factory would be revenue in nature and thus, taxable as income in the year of accrual. However, in its latter decision in the case of *CIT vs. Bokaro Steel Ltd. (236 ITR 315)*, the Court has held that if the assessee receives any amount (for instance, interest income from advances given to contractors or any other incidental income) which is inextricably linked with the process of setting up the plant, then such receipts will go on to reduce the cost of the plant. Hence, it was held that such receipts are capital in nature and cannot be taxed as income.

Incidentally, both the above cases dealt with the taxability of income earned by a project owner during the manufacturing plant construction (set up) stage and not in relation to contractors. Thus, the applicability of the above change in ICDS vis-à-vis the contractors seems limited.

Capitalisation of Borrowing Costs related to construction contracts

The ICDS specifically provides that contract costs shall, *inter alia*, comprise allocated borrowing costs in accordance with ICDS on Borrowing Costs. The issue arises as to whether interest costs pertaining to a construction contract should be separately recognised and claimed as contract cost. At the outset, it is arguable whether a construction contract will be regarded as a "qualifying asset" (since it is not an inventory or an asset of the contractor) as is contemplated in ICDS IX on Borrowings Costs. Further, in this context, attention is also drawn to section 36(1)(iii) of the Act which provide that interest costs can be claimed so long as the borrowed funds are used for business purposes. The proviso to Section 36(1)(iii), inserted *vide* Finance Act, 2003, provides that, for an assessee with an existing business, interest costs should be capitalised only where there is extension of business and not otherwise.

Various judicial pronouncements have consistently taken a view that the interest deduction under section 36(1)(iii) is not dependent on the purpose for which the loan is borrowed i.e. whether the borrowings are for

the purpose of acquiring a capital asset or stock-in-trade or paying debts [Refer *India Cements Ltd. vs. CIT (60 ITR 52) (SC), DCIT vs. Core Health Care Ltd. (215 CTR 1) (SC), Calico Dyeing and Printing Works vs. CIT (34 ITR 265) (Bombay HC), DCIT vs. Thakker Developers (115 TTJ 841) (Pune Tribunal), CIT vs. Lokhandwala Construction Industries Ltd. (260 ITR 579) (Bombay HC)*]. Accordingly, there seems to be a conflict between the provisions of the Act and the ICDS with regard to the tax treatment of borrowing costs incurred in relation to any construction contract. Given the preamble of ICDS, one may take a position that the provisions of the Act prevail and accordingly, borrowings costs pertaining to construction contract should still be allowed as a deduction post ICDS.

Incidentally, the Finance Bill, 2015 as passed by Lok Sabha proposes to remove the distinction in allowability of interest in case of existing business and in case of extension of business by deleting the words "for extension of existing business or profession" from proviso to Section 36(1)(iii). Once enacted, *prima facie*, the proposed amendment does not seem to affect the above conclusion as it deals with the creation of an asset as part of extension of a business and not in relation to construction contracts.

No guidance regarding decrease in contract revenue due to damages, variation, etc.

Para 11 and Para 12 of AS-7 specifically recognises and permits decrease in contract revenues as a result of damages payable by the contractor or on account of downward variation in the scope of work of a contract. Unlike AS-7, ICDS does not specifically state that contract revenues can be reduced due to such reasons and instead, permits recognition of variation to the extent that it is probable that such variation will result in revenue.

Imposition of damages or a downward variation by a customer reduces the contract revenue for the contractor. There can hardly be any dispute regarding reduction of such damages and downward variations from the contract revenues. However, in absence of any specific guidance under ICDS, ambiguity arises as to whether such a downward variation or damages can be decreased from contract revenues as the language of ICDS merely refers to upward variation which results in revenue.

Some other issues

Some principles laid down under the ICDS such as recognition of retention money as part of contract revenues, adjustment for reversal of contract revenues as an expense would create challenges while calculating "turnover" threshold for tax audit purposes.

Further, the disclosure requirements specified in ICDS like methods used to determine the stage of completion of contracts, amount of costs incurred would unnecessarily lead to undue hardship on small and non-corporate taxpayers. In this context, the CBDT Committee had recommended that appropriate modifications need to be undertaken in the return of income as well as tax audit report for ensuring compliance with ICDS.

Transitional Provisions

As ICDS applies to existing contracts as well, no grandfathering is available therein. As a result, the cumulative contract revenue (including retention money) and contract costs associated with the construction contracts respectively are required to be recognised for tax purposes in FY 2015-16 based on the provisions of ICDS. This would have vast consequences for taxpayers (especially, partnership firms, LLPs, etc.) following "completed contract" method in their books of accounts since they will be required to compute taxable income on POCM basis for all contracts in FY 2015-16 (AY 2016-17). Consequently, there could be an early recognition of income in the year of transition depending on the stage of completion of projects.

ICDS vis-à-vis the Ind AS (IFRS) regime

Perhaps, the most significant development would be the announcement on IFRS convergence roadmap and notification of Indian Accounting Standards (Ind AS) which applies to companies in a phased manner from FY 2016-17 onwards.

As regards revenue recognition (including for construction contracts), the Government has notified Ind AS 115 – Revenue from Contracts with Customers (which is largely based on IFRS-15). Interestingly, the major impact of ICDS will be felt by the taxpayers during the Ind AS regime since Ind AS not only applies to contractors but is also applicable to real estate developers. Appendix C to Ind AS 115 is specifically formulated for recognition of revenues in case of Public-to-Private Service Concession Arrangements.

Unlike AS-7 and ICDS III as discussed above, Ind AS 115 provides for revenue recognition for contractors based on completed contract method as well. Under Ind AS 115, accounting on POCM basis is not an obvious outcome and requires careful assessment. The revenue recognition under Ind AS 115 would depend on whether the control in the property under development is transferred over a period of time or at a particular point in time, which would significantly differ between various contracts. As a result, the deviation of following CCM in the books of account and POCM for tax purposes could persist under Ind AS regime.

Hence, the gap between the accounting profit and the taxable income may widen further under the Ind AS regime. In fact, it is relevant to highlight that the CBDT Committee had itself noted in its report that appropriate amendments may be considered for computing taxable income under the Ind AS regime.

MAT impact

ICDS are meant for computation of income under normal provisions of the Act. Thus, ICDS, as such, should not have any impact in computation of Minimum Alternate Tax ('MAT') for corporate taxpayers which will continue to be based on "book profits" determined under the current ICAI-AS or Ind AS, in future.

Given the above, the principles surrounding ICDS could result in accelerated normal tax liability which may be either on account of preponement of income or postponement of losses such as in the following instances:

- Recognition of retention money as income on POCM basis,
- Non-allowability of provision for expected losses, unless actually incurred, etc.

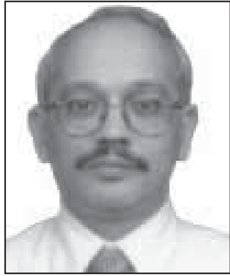
As a result, MAT liability may get triggered during the year in which the income is recognised in the books of account or loss is allowed while computing income under normal provisions of the Act.

As regards MAT computation upon transition to Ind AS regime, the CBDT Committee had recommended that appropriate amendments should be considered. Till date, there is no clarity regarding whether MAT will be based on book profits determined as per the current ICAI-AS or as per Ind AS. This needs a policy response and should be adequately addressed by the Government.

Conclusion

Clearly, amongst the set of taxpayers, the impact under ICDS for taxation of construction contracts seems substantial. These deviations will only increase for companies which are required to adopt the Ind AS (IFRS) regime. One wonders if the changes will address the objectives of certainty and reducing litigation.

Disclaimer: Please note that the above views are personal views of the author.



CA Sanjeev Pandit

ICDS IV - Revenue Recognition

In exercise of the powers granted under section 145(2) of the Income-tax Act, 1961 (the Act), the Government has notified ten Income Computation and Disclosure Standards (ICDS). All the standards are apparently lucid and short. These have been formulated by adapting the According Standards (AS) issued by the Institute of Chartered Accountants of India. The ICDS have, generally, modified the bold portion of the AS and omitted the explanatory paragraphs and examples contained in the AS.

ICDS I relating to Accounting Policies, while dealing with considerations in the selection and change of accounting policies, omits 'prudence' as one of the considerations. This has had its impact on ICDS IV dealing with Revenue Recognition as well as other ICDS.

ICDS IV deals with the bases for recognition of revenue arising in the course of ordinary activities of a person from sale of goods, rendering of services and use by others of the person's resources yielding interest, royalties or dividends (refer para 1(1) of ICDSIV). It excludes from its application revenue recognition of items which are dealt by other ICDS. This exclusion would cover ICDS relating to Construction Contracts.

Accounting Standard 9 – Revenue Recognition (AS 9) corresponds to ICDS IV. A thread which runs through AS 9 is that recognition of revenue is postponed till (i) there is reasonable certainty of ultimate collection of the revenue; and (ii) the revenue can reliably be measured. The criteria of ability to reliably measure the revenue for recognition of revenue is conspicuous by its absence in most circumstances under this ICDS IV. This is a direct impact of omission of 'prudence' as a factor to be taken into consideration while selecting accounting policies. As a result, wherever this ICDS becomes applicable, recognition of revenue cannot be postponed on account of the inability to measure the revenue reliably except in cases where specific provision has been made by ICDS.

We may now consider some of the specific provisions of this ICDS. By and large, this ICDS deals with the timing of the recognition of revenue of transactions which are covered within its scope. It also provides how to quantify the revenue to be recognised in a year from service transactions.

Revenue has been defined to be gross inflow of cash, receivables or other consideration arising in the ordinary course of activities of a person from sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends (refer para 2(1)(a) of ICDS IV). It clarifies that in an agency relationship it is not the gross inflow of cash that is to be considered as revenue but only the

amount of commission will be considered as the revenue of the person.

ICDS IV does not define interest. However, it provides that words and expressions not defined in this ICDS but defined in the Act shall have the meanings assigned to them in that Act. Accordingly, the term interest will have meaning assigned to it under section 2(28) of the Act and interest on securities will take its meaning from the definition contained in section 2(28A) of the Act.

Sale of goods

Paragraph 3 of ICDS IV deals with recognition of revenue from transactions involving sale of goods. It provides that revenue from sale of goods should be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or when significant risks and rewards of ownership have been transferred to the buyer and the seller does not retain effective control of the goods transferred that is usually associated with ownership. It further provides that where the two i.e. the transfer of property in the goods and the transfer of significant risks and rewards of ownership do not coincide, the revenue is to be recognised at the time of transfer of risks and rewards of ownership. This provision is a fallout of the provision contained in ICDS I relating to accounting policies which provides that the treatment and presentation of transactions and events shall be governed by the substance of transaction and not merely the legal form (refer para 4(i) of ICDS I).

In a sense this is a marked departure from reasonably well settled position. By and large, taxation of a transaction has been based on legal form of the transaction unless the transaction involved colourable device, etc. Where the legal form is to be ignored there are specific provisions in the Act. For example, Explanation 4A to section 43 modifying what constitutes 'actual cost' in sale and lease-back transactions or the definition of 'owner of property' in section 27 which includes certain persons who are not legal owners but in substance are. Even the extended definition of transfer contained in section 2(47) of the Act is an example where the statute has made provision to recognise substance over legal form.

In practice, there have not been many instances of disputes in respect of timing of the recognition of revenue from sale of goods. But the specific provision mandating consideration of substance of transaction over its form may actually lead to disputes. One is not sure what would be the impact of such a provision in ICDS.

Presently, there is no ICDS dealing specifically with lease transactions. So the exclusion clause contained in paragraph 1(2) of ICDS IV will not apply to lease transactions. If there is a finance lease under which admittedly risks and rewards in the leased item are transferred without immediate transfer of property in the goods, whether the provisions of ICDS IV read with ICDS I apply? ICDS I mandates that recording of transaction shall be governed by the substance of transaction and not merely the legal form and ICDS IV mandates that where the events of transfer of property in the goods and transfer of risk and rewards do not coincide, the revenue should be recognised when the risks and rewards are transferred. Will such a finance lease be treated as a sale of goods along with lending of financial resources yielding interest? If so, what would be the amount of revenue to be recognised and at what point of time? Will the lessee be entitled to depreciation on the assets taken on lease?

In specific cases can one argue that ignoring the legal form of transaction is in conflict with the provisions of the Act and hence provisions of ICDS shall not prevail?

ICDS IV provides that revenue be recognised when there is reasonable certainty of its ultimate collection. It also provides that in case of a claim for escalation of price or for export incentives where ability to assess the ultimate collection with reasonable certainty is lacking, recognition of revenue is to be postponed (refer paras 4 and 5 of

ICDS IV). It may however be noted that inability to measure reliably the revenue would not be a reason to postpone recognition of the revenue.

While considering gross turnover or sales for purpose of determining whether the assessee is liable for tax audit under section 44AB or while determining the presumptive income under sections like 44AD, gross turnover or sales will have to be computed in accordance with the provisions of this ICDS.

ICDS IV provides that the total amount not recognised as revenue during the previous year due to lack of reasonable certainty of its ultimate collection along with the nature of uncertainty be disclosed (refer para 12(a) of ICDS IV).

Rendering of services

AS 9 provides that revenue from service transactions is usually recognised as the service is performed, either by proportionate completion method or by completed service contract method. ICDS IV, on the other hand, mandates that revenue from service transactions should be recognised by the percentage completion method (refer para 6 of ICDS IV). It does not permit recognising of revenue from service transactions under completed contract method. This is a major deviation in ICDS IV as compared to AS 9.

It may be noted that ICDS III relating to Construction Contracts includes within its scope contracts for rendering services which are directly related to the construction of an asset, such as services of project managers and architects. It also covers contracts for destruction or restoration of assets, and restoration of the environment following demolition of assets.

ICDS IV specifically provides that the requirements of the standard relating to Construction Contracts shall apply ***mutatis mutandis*** to the recognition of revenue and associated expenses of service transactions (refer para 6 of ICDS IV). Considering this, revenue from service transactions will be recognised as under:

a) Revenue and costs associated with a service transaction should be recognised by reference to the stage of completion of the service on the reporting date.

b) Revenue from the service transaction is to be matched with the costs incurred in reaching the stage of completion.

c) Stage of completion will be determined with reference to:

   i. Costs incurred as a proportion to the total estimated costs for rendering the service;

   ii. Survey of the work performed; or

   iii. Completion of the physical proportion of the work.

d) When stage of completion is determined based on the costs incurred, only the costs incurred for the work actually performed are considered. Any cost incurred which relates to activity yet to be carried out and advance payments made to others to carry out the work are excluded.

e) When service contract is in its early stages and outcome of the contract cannot be reliably estimated, revenue is recognised only to the extent of costs incurred. However, early stage cannot extend beyond 25% of the stage of completion.

f) The percentage completion method is applied each year on the basis of current estimates of the total revenue and total costs. Accordingly, when the estimates undergo a change the revised estimates are considered.

AS 9 even under proportionate completion method, in certain circumstances for practical purposes, permits recognition of revenue on a straight line method over the period during which the service is to be provided. Under ICDS IV this will not be permissible.

Under ICDS IV it will not be possible to recognise in one year future estimated or any imminent loss. ICDS I relating to Accounting Policies specifically prohibits recognition of future losses (refer para 4(1)(ii) of ICDS I). Such loss will be recognised only on the basis of percentage of work completed.

Since the requirements of ICDS III relating to Construction Contracts are applicable, it appears that revenue from service transactions may be recognised only when there is reasonable certainty of its ultimate collection.

ICDS IV also provides that transitional provisions of ICDS III relating to Construction Contracts shall apply ***mutatis mutandis*** for service transactions undertaken on or before 31st March, 2015 but not completed by that date (refer para 10 of ICDS IV). Thus, in case of a service contract that has commenced in the financial year 2014-15 or earlier, recognition of revenue will have to be done in accordance with the provisions of ICDS IV (i.e. on percentage completion method). While recognising the revenue and costs for the financial year 2015-16 and subsequent years, revenue, costs and expected loss, if any, recognised in any earlier year shall be taken into account and adjusted to arrive at the revenue to be recognised. This will have a substantial impact if in an earlier year the assessee has recognised future loss and computed the taxable income on that basis.

Following disclosures are to be made in respect of service transactions (refer paras 12(b) to 12(d) of ICDS IV):

a) The amount of revenue recognised during the previous year;

b) The method used for determining the stage of completion of service transactions in progress; and

c) In respect of service transactions in progress at the end of the previous year:

   i. The amount of costs incurred and recognised profits (as reduced by recognised losses) up to the end of the previous year;

   ii. The amount of advances received; and

   iii. The amount of retentions.

All the ICDS apply only to assessees following the mercantile system of accounting for the purposes of computation of income chargeable to income tax. Hence, professionals such as chartered accountants, legal practitioners, architects who predominantly render services will not come within the scope of this ICDS if they are following cash method of accounting. However, companies are mandatorily required to follow mercantile system of accounting under the Companies Act, 2013. Accordingly, companies engaged in the business of rendering services will be covered by the provisions of this ICDS and will have to recognise revenue from rendering of services under the percentage of completion method.

A passing reference may also be made to ICDS II relating to Valuation of Inventories. ICDS II provides for valuation of inventories by service providers by taking into account cost of labour and other personnel directly engaged in providing the service including supervisory personnel and attributable overheads. This provision is absent in AS2 - the corresponding accounting standard issued by the ICAI. In fact, AS 2 specifically excludes work-in-progress of service providers. One also wonders whether there was any need to include 'cost of services' in ICDS II relating to Valuation of Inventories when ICDS IV read with ICDS III exhaustively covers revenue recognition from rendering of services.

Use of resources by others yielding interest, royalties or dividends

ICDS IV provides that interest shall accrue on time basis with respect to the amount outstanding and the rate applicable. It also provides that discount or premium relating to debt securities (such as bonds and debentures) is to be considered as accruing over the period

of maturity of the debt securities (refer para 7 of ICDS IV).

Most individual assessees have income by way of interest on savings bank account, investment in fixed deposits, bonds etc. which is taxable under the head 'Income from Other Sources'. If the assessee is following mercantile system of accounting for computing his income under the head 'Income from Other Sources', provisions of this ICDS will be attracted and interest will have to be computed and offered for tax on time basis. Accordingly, if interest on savings bank account has not been credited for the period up to the end of the previous year, interest for the balance period will have to be calculated and offered for taxation. Similarly, interest on bonds and debentures if it is payable on date other than 31st March of the year, interest for the broken period will have to be accounted for. Similarly, interest for the period up to the date of sale of security will have to be offered for taxation. In such a cases difficulties may arise if the security is sold before receiving the interest since the interest calculated and offered for taxation on time basis will be received by the transferee and not by the assessee who offered such interest for taxation. It may not be possible for him to reduce the consideration received by him by such interest while computing the capital gain. It may, however, be kept in mind that these provisions will apply only if the assessee is following mercantile system of accounting and not cash basis of accounting since the ICDS do not apply to assessees following the cash system of accounting for the purposes of computation of income chargeable to income tax.

ICDS IV provides that royalties shall accrue according to the terms and conditions of the agreement between the parties and are to be recognised on that basis. However, considering the substance of transaction, if there is some other ‘systematic and rational basis’ which is more appropriate then such basis shall be used to recognise royalty as revenue (refer para 8 of ICDS IV).

So far as dividends are concerned, ICDS IV provides that dividends are recognised in accordance with the provisions of the Act (refer para 9 of ICDS IV). Section 8 of the Act makes specific provision for taxation of dividends. According to the provisions of section 8, dividend which is declared by a company is taxed when it is so declared. Sub-clauses (a) to (d) of section 2(22) deem certain distributions by a company to be dividend while sub-clause (e) of section 2(22) deems certain payments by a company as dividend. Such distributions or payments are chargeable to tax when distributed or paid, as the case may be. Interim dividend is deemed to be the income when such dividend is unconditionally made available to the member who is entitled to it.

Conclusion

With ICDS, the difference between the accounting income and taxable income is only going to widen. This will result in some companies coming under MAT since in the year in which expected loss from service transactions is booked in accounts, it will not be allowed for computing the taxable income. On the other hand, when for tax purposes such loss is allowed, the company may have book profit which may become taxable under section 115JB of the Act.

One of the reasons for which the proposal of formulating the standards was mooted was to deal with the situation arising when Ind AS – accounting standards based on IFRS – become mandatory. However, the notified ICDS do not seem to be dealing with that.

The Committee which was constituted for formulating the standards, in its report, at many places mentioned that provisions in the standards are being made to reduce litigation and bring certainty. Will this, in fact, happen. In realty, litigation and cost of compliance will only increase. One wonders – What does the government mean when it says it wants to promote ‘ease of doing business’.

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Income Computation and Disclosure Standard V– Tangible Fixed Assets

Introduction

This Income Computation and Disclosure Standard (ICDS) deals with the treatment of Tangible Fixed Assets as applicable for computation of income chargeable under the head "Profits and Gains of Business or Profession" or "Income from Other Sources" and not for the purpose of maintenance of books of account. The ICDS covers assets being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and not held for sale in the normal course of business.

The transitional provisions state that the actual cost of tangible fixed assets, acquisition or construction of which has commenced on or before the 31st March, 2015 but not completed by the said date, shall be recognized in accordance with the provisions of the ICDS. It also provides that in case there is any actual cost recognized for the said assets for any previous year the same shall be taken into account for recognizing actual cost of the said assets as at 1st April, 2015. Further, it is to be noted that depreciation will continue to be dealt with under the provisions of the Income-tax Act ('Act').

On the other hand, Accounting Standards 6 and 10 (AS) as notified under the Companies (Accounting Standards) Rules, 2006 deals with Depreciation and Accounting for Fixed Assets, respectively. Reference may also have to be made to Accounting Standard 29 for dealing with Provisions for dismantling costs and related accounting matters.

Whilst the general principles under the AS and the ICDS are broadly similar, there are various subtle differences between the two as also the fact that certain aspects are not specifically dealt with in either one of them.

This article attempts to analyse the comparisons as regards the AS together with the impact which the ICDS could have on the computation of taxable income, minimum alternate taxes and deferred taxes, if any.

Comparison with AS

The comparison can be analysed under the following broad heads:

Treatment of machinery spares

In relation to machinery spares, the AS specifies that the same are 'usually' charged to the profit and loss statement as and when consumed. However, in relation to spares which can be used only in connection with an item of fixed asset and whose use is expected to be irregular, the AS specifies that the total cost should be

allocated on a systematic basis over a period not exceeding the useful life of the principal item. Such items are generally referred to as **insurance spares**. ICDS requires machinery spares to be 'mandatorily' charged to revenue as and when consumed unless they are in the nature of insurance spares in which case they are to be capitalized. Accordingly, the treatment under both the ICDS and AS would be similar.

Components of cost

The AS specifies that the cost of an item of fixed asset shall comprise its purchase price, including import duties and other non-refundable taxes or levies and any directly attributable cost of bringing the asset to a working condition for its intended use net off any rebates, trade discounts etc. ICDS also has a similar definition.

Inspection costs

As per the AS, costs of major inspections are generally expensed when incurred. It may be noted that as per Ind AS which would be applicable from the financial year 2015-16, cost of major inspections is added to the carrying amount of property, plant and equipment if recognition criteria are satisfied; also any remaining carrying amount of the cost of previous inspection is derecognized. **Whilst the ICDS is silent on the treatment of inspection cost, it states that any expenditure which increases future benefits from an existing asset beyond its previously assessed performance, the same can be added to asset cost. Since inspection cost does not normally increase future benefits from the asset, it would not be permitted under ICDS to be added to the cost.**

Changes in decommissioning, restoration and similar liabilities

There is no specific guidance under the AS on Fixed Assets and Depreciation on the above. However, as per the IndAS, provisions for decommissioning, restoration and similar liabilities that have previously been recognized as part of the cost of an item of property, plant and equipment are adjusted for changes in the amount or timing of future costs and for changes in market-based discount rates. Also, AS-29 does make a reference to provisions for decommissioning cost of an oil installation to the extent an enterprise is obliged to rectify the damage already caused and its treatment as a provision coupled with a regular evaluation or assessment without specifying whether it should be part of the cost of the fixed assets. Similarly, even though the ICDS on Fixed Assets does not cover this aspect, the same is covered by the ICDS on provisions by mentioning that they should be reviewed at each balance sheet date and adjusted to reflect the current best estimate and if it is no longer probable that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed. However, it is to be noted that ICDS does not provide for any discounting to present value as is required by Ind-AS

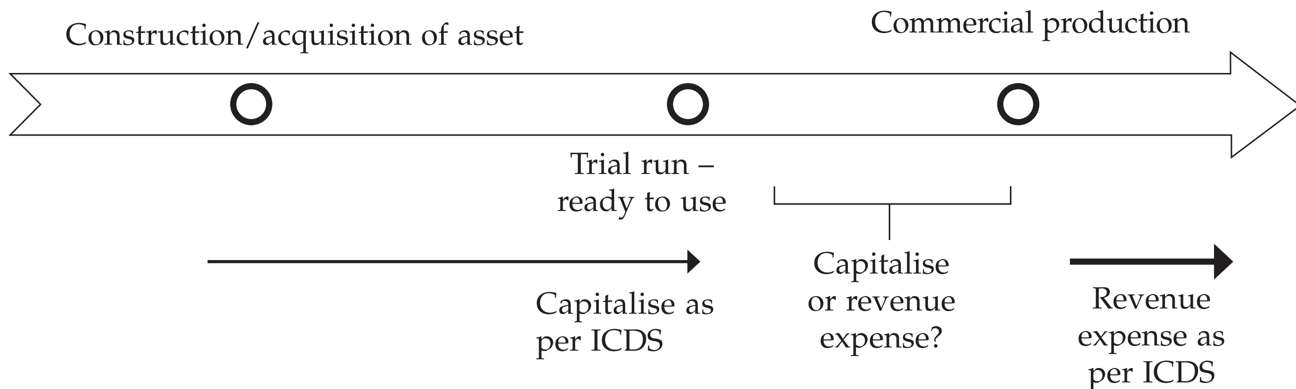
Period of capitalization

In case of capitalization period in respect of fixed assets, the AS specifies that the expenditure incurred on start-up and commissioning of the project, **including the expenditure incurred on test runs and experimental production, is usually capitalized as an indirect element of the construction cost. However, the expenditure incurred after the plant has begun commercial production**, i.e., production intended for sale or captive consumption, is not capitalized and is treated as **revenue expenditure**. ICDS also contains a similar requirement.

However, the AS further explains a scenario where there is an **interval between the readiness of the project to commence its production and the commencement of actual production.** In such a scenario the AS allows expenditure incurred during this period to be either **expensed off or deferred over a period of 3-5 years after the commencement of commercial production.** However, the **ICDS is silent** on

the treatment of expenses incurred during the period **post completion of test runs and pending commencement of commercial production.**

Below is a diagrammatic representation which shows that till trial run, ICDS requires capitalization of expenses and post commercial production, expenses are treated as revenue in nature. However, the treatment of expenses in the intermediate period i.e. post-trial run and pre-commercial production has not been specified.



Self-constructed assets and assets acquired by exchange

In case of self-constructed fixed assets, both AS and ICDS prescribe similar treatments as in the case of acquired assets. Further, any internal profits if included in the cost are required to be eliminated.

In case of assets acquired in exchange of another asset, the AS specifies that the cost is usually determined by reference to the fair market value of the consideration given. However, it also specifies that the fair market value of the asset acquired can be considered if this is more clearly evident. An alternative accounting treatment that is sometimes used for exchange of assets, particularly when the assets exchanged are similar, is to record the asset acquired at the net book value of the asset given up. However, the **ICDS does not give such a choice and specifies that the asset acquired shall be recorded at its own fair value.**

Further, in case of a fixed asset acquired in exchange for shares or other securities in the enterprise, it is usually recorded at its fair market value, or the fair market value of the securities issued, whichever is more clearly evident. ICDS differs similarly in this case as it mandates that fair value of the fixed asset shall be its actual cost.

Cost of improvements and repairs

In the case of improvements and repairs, both the AS and ICDS have prescribed a similar treatment. The cost of any addition or extension to an existing asset which is of a capital nature and which becomes an integral part of the existing asset is usually added to its gross book value. Any addition or extension, which has a separate identity and is capable of being used after the existing asset is disposed of, is accounted for separately.

Revaluation of assets

The AS contains specific guidance in case of revaluation of fixed assets. An increase in net book value arising on revaluation of fixed assets is normally credited directly to owner's interests under the heading of revaluation reserves and is regarded as not available for distribution. A decrease in net book value arising on revaluation

of fixed assets is charged to the profit and loss statement. ICDS however, does not deal with a scenario of revaluation. However, as per the Income-tax Act, 1961('Act'), revaluations are not considered as an adjustment in the cost of the asset. In fact, effects of revaluations are also ignored for computation of book profits for the purpose of Minimum Alternate Tax ('MAT').

Compensation for impairment

There is nothing specifically mentioned in AS regarding the treatment of compensation for impairment and hence by anology the general principles of AS-9 on revenue recognition would imply. Accordingly, such amounts are recognized only when due and there is no significant uncertainty attached to its collection. In practice, the compensation is offset against replaced items of property, plant and equipment. Ind AS requires compensation from third parties for impairment or loss of items of property, plant and equipment to be similarly treated. This aspect is also not specifically dealt with by ICDS. However, as per the Act, such compensation is reduced from the written down value of the block of assets.

Assets held for disposal

The AS has specific guidance in case of assets held for disposal and specifies that they are to be stated at the lower of their net book value and net realizable value and any expected loss is recognized immediately in the profit and loss statement. However, ICDS does not permit writing off the cost of such assets which is also in line with the current position under the Act.

Valuation of assets in special cases

The AS contains specific guidance in case of assets under **hire purchase** and requires them to be recorded at their cash value by the hirer. However, ICDS is silent on the issue.

Practically, however, there is a departmental Circular No. 9 dated 23rd March 1943 on the subject of depreciation which mentions that depreciation should be allowed on the initial value i.e. the amount for which the hire object could be purchased in cash on the date of agreement.

The AS also contains specific guidance on **jointly owned assets** and requires that extent of share in such assets, and the proportion in the original cost, accumulated depreciation and written down value to be stated in the balance sheet. ICDS also contains similar provisions.

In case of assets purchased for a **consolidated price**, the AS provides that the consideration is to be apportioned to the various assets on a fair basis as determined by competent valuers. ICDS also provides similarly but does not give guidance on how a fair basis is to be determined.

Disclosure requirements

In terms of disclosure, ICDS requires additional disclosure as regards date put to use and adjustments as regards tax credit, exchange rate, subsidies etc. AS requires similar disclosure requirements except for 'date put to use'.

Other aspects related to fixed assets not covered by ICDS V

Capitalization of borrowing costs

ICDS-IX on borrowing costs specifies that in case of specific borrowings, the borrowing costs incurred from the time of borrowing till the time the asset is put to use is to be capitalized. In case of general borrowings, there is a specific formula prescribed for capitalization of borrowing costs to the cost of asset. However, it is to be noted that as per section 36(1)(iii) of the Act, *"interest paid in respect of capital borrowed for the purposes of the business"* is allowed as a revenue deduction. The proviso to this section states that *"interest paid, in respect of capital borrowed <u>for acquisition of an asset</u> for <u>extension</u> of existing business or profession..."* will not be allowed as a revenue deduction. Thus, in cases which do not relate to extension of business (i.e. cases not covered by the proviso) and fall under the main clause

of 36(1)(iii), there is a conflict between the said section and ICDS. ICDS states that in case of conflict, the Act shall prevail. Thus, it needs to be seen whether such borrowing costs can be claimed as revenue deduction as per section 36(1)(iii) and not capitalised to the asset as per ICDS.

Effects of foreign exchange differences

Section 43A of the Act states that exchange difference relating to acquisition of a foreign asset is adjusted to the cost of the asset at the time of payment. However, **currently, exchange differences relating to loan taken for purchase of assets from India (local assets) are not adjusted to the cost of asset since section 43A only deals foreign assets**. Further, various **High Courts have held that such exchange difference is capital in nature and not deductible as revenue expenditure** - ***Kerala HC in the case of Cochin*** *Refineries Limited [173 ITR 461], Calcutta HC in the case of Bestobell (India) Limited [117 ITR 789].*

ICDS permits **exchange losses on monetary items to be recognized as expense and gains to be recognized as income.** Loan taken for purchase of asset is a monetary item and thus, on a combined reading of ICDS and section 43A, it needs to be evaluated whether exchange difference relating to overseas borrowings for local assets can be recognised as expense or income.

Impact on current tax position

ICDS specifies that expenditure till and including test run is to be capitalized and expenditure post commercial production is revenue in nature. The Act is silent on the position on expense incurred on trial run. However, there have been various judicial precedents requiring **trial run expense to be capitalised.** Some of the important decisions in this regard are : ***Expenditure incurred on trial runs should be capitalized - Gujarat HC case of*** *Saurashtra Cement [127 ITR 47], Delhi HC case of Food Specialities [136 ITR 203] and Bombay HC case of G T Industries (203 ITR 538).*

Further, another important impact is on the treatment of intermediate expense i.e. expense incurred post trial run and pre commencement in case of a continuing business. ICDS is silent on the treatment of such expenses. However, on a combined reading of the two statements i.e. expenses up to and including test run to be capitalized and expense post commercial production to be treated as revenue expense, an interpretation can be taken that this expense in the intermediate period may also need to be capitalized. Although, there are case laws on trial run, they do not specifically deal with expenditure incurred in the said intervening period. In absence of conflict with the Act, ICDS should prevail. Further, ICDS is also in line with IndAS on this aspect.

Impact on deferred taxes

Deferred taxes may arise with respect to machinery spares in case they are capitalized as per AS and charged to revenue as and when consumed as per ICDS. This would lead to lower profits as per ICDS as compared to the Act.

Also, a deferred tax may arise with respect to costs incurred post trial run and pre commencement of commercial production since as per financials, these costs would be expensed or be an item of deferred expense. However, for tax purposes, as per ICDS, these expenses may not be allowed as a deductible item and may be capitalized to the cost of the asset.

Further, the existing differences between AS and Act as regards depreciation rates and methods will continue and ICDS would not impact the same.

MAT impact

The differences leading to deferred taxes, as discussed above, will also result in differences between book profits and taxable income, thereby having an impact on MAT liability.

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Income Computation and Disclosure Standard VII – Government Grants

Introduction

This Income Computation and Disclosure Standard (ICDS) deals with the treatment of Government grants as applicable for computation of income chargeable under the head "Profits and Gains of Business or Profession" or "Income from Other Sources" and not for the purpose of maintenance of books of account. The ICDS also recognizes that Government grants may also be called as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc. However, it does not deal with Government assistance other than in the form of Government grants; and Government participation in the ownership of the enterprise.

The transitional provisions provide that all the Government grants which meet the recognition criteria as per the ICDS on or after 1st April, 2015 shall be recognized in accordance with this ICDS after taking into account the amount of grants already recognized before 31st March, 2015.

On the other hand, Accounting Standard 12 (AS) as notified under the Companies (Accounting Standards) Rules, 2006 deals with the accounting for Government grants.

Whilst the general principles under the AS and the ICDS are broadly similar there are various subtle differences between the two as also the fact that certain aspects are not specifically dealt with in either one of them.

This article attempts to analyse the comparisons as regards the AS together with the impact which the ICDS could have on the computation of taxable income, minimum alternate taxes and deferred taxes.

Comparison with AS

The comparison can be analysed under the following broad heads:

Grants in the nature of promoters' contribution

The AS specifies that two broad approaches need be followed in the accounting for Government grants – the **capital approach** or the **income approach** depending on the nature of the grant. As per the AS, Government grants in the nature of promoters' contribution i.e. grants given with reference to the total investment in an undertaking or by way of contribution towards its total capital outlay and without any expectation of a repayment, are required to be credited directly to shareholders' funds. Under ICDS, there is no specific mention of grant by way of promoters' contribution. However, the same gets covered by a residuary category which requires

grants to be recognized over the period necessary to match them with the related costs that they are intended to compensate. ***Accordingly, the existing practice of accounting for such Government grants as a part of Capital Reserve may not be permissible anymore for tax purposes.***

It may be noted that as per Ind AS which would be applicable from the financial year 2015-16, Government grants are recognized as income to match them with expenses in respect of the related costs for which they are intended to compensate on a systematic basis and are not to be directly credited to shareholders' interests.

Grants related to revenue

As per the AS, grants related to revenue are recognized in the Profit and Loss statement on a systematic and rational basis over the periods necessary to match them with the related costs. Under ICDS, such grants are not specifically covered. However, it needs to be seen whether such grants get covered by a residuary category under the ICDS which requires grants to be recognized over the periods necessary to match them with the related costs they are intended to compensate.

Grants related to non-depreciable assets

As per the AS, grants relating to non-depreciable assets which do not require fulfilment of any obligations are credited to the Capital Reserve. If such grants require fulfilment of some obligations, they should be credited to income over the period over which the cost of meeting the obligations is charged to income. The treatment as regards non-depreciable assets which require fulfilment of certain obligations remains the same in ICDS. However, under the ICDS, there is no option of credit to capital reserve in case of non-depreciable assets.

Grants related to depreciable assets

As per the AS, grants related to depreciable assets are either treated as deferred income and transferred to the Statement of Profit and Loss in proportion to depreciation, or deducted from the cost of the asset. Under the ICDS, such grants are required to be deducted from the actual cost or written down value of the assets. Even though, deferred income approach is not allowed under ICDS, the same will not result in any additional tax outflow since the net tax effect under both approaches would be the same.

The AS is silent in case of grant which is not for any specific asset, whereas ICDS requires such grants to be apportioned to the various assets with reference to which the grant was received.

It is to be noted that as per the Ind AS, grants related to assets, should be presented in the Balance Sheet only by treating the grant as deferred income.

Grants related to non-monetary assets

The AS requires grants in relation of non-monetary assets, given at a concessional rate to be recorded on the basis of their acquisition cost. In case assets have been acquired free of cost, nominal value should be recorded. The position is same under ICDS as well. However, as per Ind AS non-monetary assets and grants received at a concessional rate are to be accounted for at a fair value.

Grants for compensation of expense / loss

Under AS, Government grants receivable as compensation for expenses or losses incurred or for giving immediate financial support without any further related costs are recognized in the period in which receivable. ICDS also prescribes a similar treatment in respect of such costs.

Refund of grants

In case of refundable grant related to revenue, the AS requires the same to be applied first against any unamortized deferred credit and the remaining amount is to be charged to the profit and loss account. In case of fixed assets,

refundable grants are to be increased in the book value of the asset or reduced from the capital reserve. Under the ICDS, refund of grants related to revenue are treated similar to the AS. In case of refund of grants related to depreciable assets, the same is required to be increased in the actual cost or written down value of the block of assets.

Disclosures

In terms of disclosure requirements, whilst the AS requires only the accounting policy with respect to grants and nature and extent of recognized grants to be disclosed, the ICDS, additionally requires disclosure of the nature and extent of grants not recognized and reasons thereof to be disclosed. This would presumably give the tax authorities a greater chance at probing grants which have not been recognized. ***In this context it is pertinent to note that para 4.2 of the ICDS requires that recognition of Government grants shall not be postponed beyond the date of actual receipt.***

Impact on current tax position

Currently, the Income-tax Act, 1961 ('Act') considers grants related to fixed assets as a deduction from the cost of the asset. In case grants are not directly relatable to a specific asset, the proportionate amount (i.e. specific assets as a percentage of total assets) is employed to determine the related grant which is then reduced from the cost of the asset.

Further, grants related to revenue are taxable under section 28 which covers benefits arising from exercise of business or profession within its ambit.

The Act is however silent in case of grants in the nature of promoters' contribution which are not related to specific fixed assets or revenue. Further, certain grants are given for encouraging specific industries or starting industries in backward areas. The leading judicial precedents on the point are **Supreme Court** decisions in the cases of *Ponni Sugars & Chemicals Ltd. & Ors. [260 ITR 605] and Sahney Steel & Press Works Ltd. [228 ITR 253]*. The general principles which arise therefrom are that the purpose for which the grant is given is of prime importance. Accordingly, grants related to revenue are considered as such and grants related to capital are to be reduced from asset cost or treated as non-taxable capital receipt. However, there is significant contention in the area of grants which are meant as promoters' contribution. The tax payers have traditionally tried to take shelter of various judgments to characterize such grants as capital receipts stating that grants have been given for setting up a business/completing a project.

Even though the current ICDS does not contain anything specific on grants in the nature of promoters' contribution, it has a residuary category where such grants will get covered and will be charged to revenue based on matching cost principle. However, ICDS is subject to the Act and hence, Supreme Court judgments on the issue will need to be matched to the facts of the case and tax positions will need to be taken accordingly.

Impact on deferred taxes

There would not be any significant impact on deferred taxes due to this ICDS.

MAT impact

MAT impact on account of ICDS could arise in a case where grants in the nature of promoters' contribution or relating to non-depreciable assets which do not require fulfilment of any obligations are treated differently for the purpose of financials as per AS i.e. as a capital reserve as compared to treatment as a revenue item as per ICDS. Thus, the taxable income under ICDS will be higher than the tax on book profits as per AS.

CA Sunil Kothare*

Securities (ICDS VIII) and Effects of Changes in Foreign Exchange Rates (ICDS VI)

Introduction

The Income Computation and Disclosure Standards (ICDS) notified under Notification No. 32/ 2015 dated March 31, 2015 provide that the ICDS come into effect from April 1, 2015 and shall 'accordingly' ***(emphasis supplied)*** apply to Assessment Year 2016-17. This seems to be a departure from the general rule that the law applicable to any year is the law in force on the first day of the assessment year. That is not a matter that is discussed in this article. The focus here is on two distinct ICDS viz. ICDS VIII dealing with 'Securities' and ICDS VI relating to Effects of Changes in Foreign Exchange Rates. The ICDS are issued in terms of Section 145(2) of the Income-tax Act, 1961 (the Act) and are limited in application to assessees following the mercantile system of accounting in computing the income under the head 'Income from Business or Profession' or under the head 'Income from Other Sources' (see Preamble to ICDS I relating to Accounting Policies). It goes without saying that the ICDS shall not apply in computing income under the head 'Capital Gains' irrespective of whether such gain is of short-term or long-term nature. This article will touch upon what changes the ICDS bring about between existing accounting standards and or practices, the impact on tax computation and the consequential impact, if any, on financial results reported to users e.g. regulators other than tax authorities, shareholders, creditors, etc.

The ICDS consistently provide that where there is a conflict between the Act and the ICDS, the Act shall prevail. Even without such a provision, the primacy of the statute passed by Parliament i.e. the Act over delegated legislation viz. the ICDS, cannot be denied.

ICDS VIII – Securities

ICDS VIII provides at Para 1 that this ICDS applies to securities held as stock-in-trade. In other words, an investor holding securities as capital assets is not covered by the rigours of ICDS VIII. The common categories of persons holding securities as stock-in-trade include securities traders, securities brokerages trading also on their own account

** The views expressed herein are the personal views of the author and not those of his employer.*

in addition to client trades, banks and other financial institutions, insurance companies, mutual funds. Paras 2(b) and 2(c) of ICDS VIII provide that ICDS VIII will not apply to insurance companies, banks, mutual funds, public financial institutions, and venture capital funds. As venture capital funds are term investors whose investments in venture securities are generally term investments (capital assets), it is, therefore, to be understood that venture capital funds investing own funds in securities for treasury operations i.e. managing surplus liquidity will not be affected by ICDS VIII. Para 2(a) also clarifies that ICDS VIII does not deal with recognition of dividends or interest from securities. These are separately covered under ICDS IV dealing with Revenue Recognition. In addition to the exclusions stated in the ICDS, Foreign Institutional Investors (FIIs) [now called Foreign Portfolio Investors (FPIs) under SEBI Regulations] do not have to comply with ICDS VIII, as the entire investment of FIIs in securities is treated as 'capital asset' under section 2(14) as amended by the Finance (No. 2) Act, 2014 with effect from April 1, 2015 i.e. from Assessment Year 2015-16 and the income of the FII from such securities is treated as 'capital gains'.

Para 3(a) states that the term 'Securities' shall have the meaning as understood under section 2(h) of the Securities Contract (Regulation) Act, 1956 [SCRA] other than 'derivatives' referred to in section 2(h)(ia) of the SCRA. Under the SCRA, the term 'securities' is defined as follows:

> "securities" include— (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate; (ia) derivative; (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes; (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; (id) units or any other such instrument issued to the investors under any mutual fund scheme; (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be; (ii) Government securities; (iia) such other instruments as may be declared by the Central Government to be securities; and (iii) rights or interest in securities.

The Explanation to section 2(h)(id) of the SCRA reads as

> "***Explanation:*** For the removal of doubts, it is hereby declared that "securities" shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938)".

Section 2(ac) of the SCRA defines derivative as:

> "derivative" includes— (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities.

Paras 4 to 8 of ICDS VIII deal with recognition and initial measurement of securities. Under Paras 4 and 5, a security is to be recognised at actual cost including brokerage, fees, tax, duty or cess paid in connection with purchase/acquisition. A trader in shares will, therefore, be entitled to include the securities transaction tax (STT), brokerage but not demat charges in the cost of acquisition. Where securities are acquired in exchange of securities or other assets, the fair value of the other asset is to be treated as cost of acquisition. Para 3(1)(a) defines 'fair value' as the arm's length price that a knowledgeable and willing buyer would pay to a knowledgeable and willing seller. It might be very difficult for any person other than a professional market intermediary to qualify as a 'knowledgeable' buyer/seller. For example, if a securities trader managing his own wealth invests in a convertible security and gets shares against the convertible security is the trader to be treated as a 'knowledgeable' buyer? The answer could easily be in the negative. Fortunately, section 49(2A) comes to the rescue as it addresses this situation and one does not have to determine whether the trader is a 'knowledgeable and willing' buyer of the new security.

Para 8 brings the accounting treatment for coupon (interest) bearing securities in line with Generally Accepted Accounting Principles (GAAP) and recognises the concept of broken period interest i.e. interest relating to a period prior to the acquisition of a debt security must go to reduce the cum-interest cost of acquisition.

Para 9 mandates that year end valuation of securities must be at lower of cost or net realisable value. There is no scope for the assessee to opt for inclusion of the upside above cost of acquisition in a security under the ICDS. Equally, the Revenue cannot force the assessee to recognise such upside over cost. This could become a limiting factor where the assessee has past losses that he needs to set off which may otherwise be getting time barred. Para 10 provides that the comparison of cost of acquisition with net realisable value must be done at category level and not at individual security level. For this purpose, the categories are (a) shares; (b) debt securities; (c) convertible securities; and (d) any other securities. The comparison at category level could sometimes lead to differing accounting versus taxable income resulting in deferred tax assets and liabilities. This is illustrated in the Table below.

Table showing comparison at category level versus individual security level

Category/ Security	Cost (`)	Net realisable value (`)	Lower of cost or NRV at security level under GAAP (`)	Lower of cost or NRV at category level under ICDS (`)
Shares				
A	100	70	70	N.A.
B	300	550	300	N.A.
C	450	450	450	N.A.
D	150	400	150	N.A.
Total for shares	1000	1490	970	1000

Para 12 provides that where at the year end, a security is either not listed or listed but not quoted, the measurement shall be at cost. Thinly traded shares or debt securities which are not traded on the last day of the year may not give a quote for measurement. It appears that the quote of a near date on the basis of a trade may not suffice under the ICDS.

The most important question could be whether mark to market losses in the equity derivative segment can be recognised under the ICDS. ICDS VIII does not apply to derivatives under section 2(h)(ia) of the SCRA. One must take recourse to other ICDS. There are two possibilities viz. that mark to market losses are not allowed to be set-off owing to the provisions of Para 4(ii) of ICDS I relating to Income Accounting Policies or that mark to market is actually the Net Realisable Value of inventory under Para 19 of ICDS II dealing with Valuation of Inventories. I am inclined to go with the latter particularly considering that Para 1(c) of ICDS II excludes from the ambit of ICDS II only shares, debentures and other financial instruments covered under ICDS VIII whereas derivatives are outside the ambit of ICDS VIII. In addition, one may draw support from the provisions of Explanation 1 to section 43(5) dealing with 'speculative transaction' in the context of derivatives. The former approach would result in differences between GAAP earnings and taxable earnings creating deferred tax assets. For non-bank finance companies, such deferred tax assets may push up the capital requirements for meeting with capital adequacy standards.

ICDS VI – Effects of changes in foreign exchange rates

This ICDS broadly deals with three areas viz. (a) transactions in foreign currencies; (b) translating financial statements of foreign operations; and (c) forward exchange contracts.

A. Transactions in foreign currencies

Para 6 of the ICDS provides that in initial recognition, conversion and recognition of exchange differences the provisions of section 43A of the Act and Rule 115 of the Income-tax Rules, 1962 (the Rules) shall prevail over Paras 3, 4 and 5 of ICDS VI. Para 3(1) provides that a foreign currency transaction shall be initially recognised at the rate prevailing on the date of the transaction. This is in line with accepted GAAP practice. Para 3(2) permits the use of an average rate of a week or a month that approximates the actual rate at the date of the transaction. This is unusual and it is expected that an assessee may be better off sticking to the rate on the date of transaction since such rate is easily available and evidenced by remittance documents or other documents collateral to the transaction. This provision is perhaps to address the practice under the Customs Act of notifying foreign rates for a month. Those rates are generally limited to valuation for the purposes of determination of customs duty and are not used in other areas.

Under Para 4(a), monetary transactions are required to be translated at year end at the year end rate e.g. balances in Exchange Earner's Foreign Currency (EEFC) Account would be translated at the year end rate applicable for that currency. Para 2(1)(l) defines 'monetary items to mean money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. It also cites cash, receivables and payables as examples of monetary items. To factor in currency restrictions, volatility, etc.,

Para 4(b) allows recognition at below closing rate where restrictions, etc. are likely to get reduced net realisable value of the monetary item for the assessee. This could apply, for example, if an assessee has receivables in Russian roubles. Para 5(i) allows the recognised exchange difference to be treated as income or expense of the year in which such difference is recognised under ICDS. This is broadly in accordance with GAAP.

Para 4(c) provides that non-monetary transactions shall be converted into reporting currency at the exchange rate used on the date of the transaction. Para 5(ii) requires that the exchange gain or loss should not be treated as taxable gain or loss for the year. Since non-monetary items are defined at Para 2(1)(n) as being assets and liabilities other than monetary items, this approach is broadly in accordance with GAAP. The ICDS cites examples of non-monetary items as fixed assets, inventories and investments in equity shares. One question that may come up frequently is whether import inventories that are on high seas at the year end should be treated as monetary item since there could be an unpaid supplier (say US$ 2 million) who has shipped the goods or should they be treated as non-monetary assets and treated differently. Assume for this purpose, that the on the date of shipment by the supplier, the exchange rate was US $ 1 = ` 62, the year-end rate is US$ 1 = ` 63. In this case, the inventory may be valued at ` 12.4 crores whereas the liability to the supplier will be valued at ` 12.6 crores and the exchange loss of ` 20 lakhs can be treated as a deductible item owing to Paras 4(a) and 5(1) of the ICDS VI.

B. Forward exchange contracts

As this is an important and more widely prevailing challenge, this is discussed here in priority over foreign operations.

Para 11(1) provides that the premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or expense of in the year in which the exchange rates change. Para 11(2) provides that Para 11(1) will apply to contracts not intended for trading or speculation and entered into to establish the amount of reporting currency required or available at the settlement date of the transaction. Para 11(3) provides that Para 11(1) shall not apply to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. A firm commitment does not include assets and liabilities existing at the end of the year. According to Para 11(4), the premium or discount is to be measured as the difference between the exchange rate on the date of inception of the contract and the forward rate specified in the contract.

Let us examine these with specific examples.

A & Co. books a six month forward contract on February 1, 2016 to buy US $ 100,000 on July 1, 2016. On February 1, 2016, the spot rate is US $ 1 = ` 60 but A & Co's bank offers the six month forward contract at US $ 1 = ` 62. The forward exchange premium is ` 200,000 i.e. 100,000 x (` 62-` 60). It may be noted that A&Co will not be paying their bank any amount on February 1, 2016. The ICDS uses the term premium 'arising' but does not appear to factor in that this premium never changes hands either at inception or otherwise but is a market measure of potential movement of the currency over the period of the contract. As per Para 11(1), A & Co. are required to set-off the premium over the six-month period of the contract i.e. for

the two months up to March 31, 2016, A & Co. will recognise ` 66,667 (one-third of ` 200,000) as expense for that year. This seems to be out of alignment with GAAP requirements. As the provisions of the Foreign Exchange Management Act, 1999 (FEMA) do not allow speculation in foreign currency, A & Co. is not hit by the provisions of Para 11(2) provided A & Co. has an import payment that may come up on August 1, 2016.

In the US $ 2 million import case discussed earlier, if the importer books a three month forward exchange contract to pay to his supplier and the forward contract gives him a rate of US $ 1 = ` 63, the importer is covered by Para 11(1), as he satisfies the provisions of Para 11(2) and is not hit by Para 11(3). Accordingly, the importer amortises ` 1 premium per month for each month of the contract. He will also recognise other foreign exchange translation differences as discussed earlier.

C. Foreign operations

The term 'foreign operations' refers to operations outside India e.g. a branch. Para 7 classifies foreign operations into two types viz. integral foreign operations and non-integral foreign operations. Non-integral foreign operations are those which have one or more characteristics of independent operations as a branch e.g. significant degree of autonomy of operations, mainly financed by own operations or local borrowings, sales are in a currency other than Indian rupees, cash flow for day-to-day operations are not dependent on each other, sales prices are determined by local competition in the jurisdiction of operation and such other factors. Para 8 requires integral foreign operations to be translated recognised as if they were part of the assessee's own controlled operations i.e. in accordance with Paras 3 to 6 of the ICDS (discussed earlier). Para 9 requires non-integral foreign operations to be translated as:

(a) Assets and liabilities to be translated at year end closing rate;

(b) Income and expenditure to be translated at the rates on the dates of the transactions; and

(c) All resulting exchange differences to be recognised as income or expense of the year.

This seems to be a very healthy approach given the expanding footprint of Indian business.

Conclusion

The ICDS will open up a new area of intellectual and professional challenge, a requirement for technology upgradation for business systems and room for significant litigation in the tax arena. To the extent that the ICDS are divergent from the GAAP standards, they will give rise to timing differences resulting in deferred tax assets. Such deferred tax assets may not be recognised owing to the 'virtual certainty' standard under GAAP. It could potentially dilute share holder reported earnings, credit cover for loans giving rise to breach of loan terms and creating events of default requiring prepayments. The differences could also create challenges in meeting with capital adequacy standards in certain sectors.

CA. Sanjay Khemani

Income Computation and Disclosure Standards (ICDS) IX – Borrowing Cost

Overview

Section 145(1) of the Income-tax Act, 1961 (IT Act) stipulates that taxable income of an assessee chargeable under the head "Profit and gains of business or profession" or "Income from other sources" is to be computed by following either the cash method or mercantile method of accounting.

Section 145(2) of the IT Act empowers the Central Government to issue Accounting Standards for computation of Income. The Central Government had notified two Accounting Standards viz. (1) Disclosure of Accounting Policies and (2) Disclosure of Prior Period Items and Extraordinary Items and Changes in Accounting Policies.

CBDT, by exercising power vested in it under Section 145(2), ***vide*** its Notification no. 32/2015 dated 31-3-2015, has notified Income Computation and Disclosure Standards (ICDS), which are required to be followed by assessees. The ICDSs has become effective from 1st April, 2015 and accordingly shall apply beginning from Assessment Year 2016-17.

The Institute of Chartered Accountants of India has notified various Accounting Standards (AS), which is applicable to all the enterprises. The Companies (Accounting Standards) Rules, 2006 (AS Rules), which is applicable to companies, has notified, ***inter alia***, Accounting Standard 16 "Borrowing Cost", which continues to be applicable unless a company is required to follow Ind AS 23. The AS 16 notified by ICAI and under the AS Rules are similar.

Companies (Indian Accounting Standards) Rules, 2015, which becomes effective from accounting period beginning from 1st April, 2016 for certain types of companies, has notified Indian Accounting Standard 23 (Ind AS 23), which deals with borrowing cost.

The AS and Ind AS allows alternative accounting treatments, which makes it possible for a tax-payer to choose an alternative accounting policy depending upon the enterprise's business requirement. The governing principles while notifying the ICDS appears to minimise litigations and "Standardising one or more of the alternatives" (to the extent possible), so as to ensure uniformity in accounting for income for tax purposes.

The present article is a concise write-up to provide an overview on the subject, which on its application may give rise to numerous issues and interpretations.

Differences between the AS 16 and ICDS IX and implications, if any, thereof

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
Borrowing costs are interest and other costs incurred by an enterprise in connection with the borrowing of funds. May include:	**Borrowing Costs** are interest and other cost incurred by a person in connection with the borrowing of funds **and include**:	
a. Interest and commitment charges on bank borrowings and other short-term and long-term borrowings;	a. commitment charges on borrowings;	a. Unlikely to have any impact, though there is some change in the wording
b. Amortization of discounts or premiums relating to borrowings;	b. amortized amount of discounts or premiums relating to borrowings;	b. Unlikely to have any impact, though there is some change in the wording
c. Amortization of ancillary costs incurred in connection with the arrangement of borrowings;	c. amortized amount of ancillary costs incurred in connection with arrangement of borrowings;	c. Unlikely to have any impact, though there is some change in the wording
d. Finance charges in respect of assets acquired under finance leases or under other similar arrangements; and	d. Finance charges in respect of assets acquired under finance leases or under other similar arrangements.	d. No change and hence no impact
e. *Exchange differences arising from foreign currency borrowings to the extent that they are regarded as an adjustment to interest costs.*		e. Exclusion of exchange difference from the definition of borrowing cost under ICDS is in line with provisions of section 43A, which requires exchange difference on borrowings made for acquisition of fixed assets from a country outside India to be added to/deducted from the cost of fixed asset. However, section 43A is applicable only in respect of assets acquired from a country outside India and therefore, exchange difference arising from foreign currency borrowings in respect of fixed assets acquired/constructed/produced in India may neither be eligible to be added to the cost of asset nor treated as borrowing cost and accordingly may not be capitalised.

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
		The Para 5(i) ICDS VI "Effects of changes in foreign exchange rates", provides that "In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognised as income or as expense in that previous year". Further, as per para 6 of the ICDS VI, "recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962". Since such exchange loss is not covered under Section 43A, based on provisions of ICDS VI, it is to be seen whether such expenditure can be treated as deductible revenue expenditure. In this connection, the provisions of Section 37(1) assumes importance, which reads as under: *Any expenditure (not being expenditure of the nature described in sections 30 to 36 and* ***not being in the nature of capital expenditure or personal expenses of the assessee)****, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".* Courts in India has held that additional amount paid/loss arising out of fluctuation in foreign exchange rate at the time of repayment of foreign currency loan taken for acquisition of capital assets is treated as capital expenditure. ICDS IX provides that in the case of conflict between the provisions of the IT Act and this ICDS, the provisions of the Act shall prevail to that extent.

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
		The term "capital expenditure" has not been defined in the Act. ICDS VI clearly requires that exchange differences relating to foreign currency loans shall be recognised as income or as expense in that previous year and therefore it is to be tested whether it is possible to argue that exchange difference relating to foreign currency loans taken for acquisition of fixed assets from India is deductible revenue expenditure. Under AS 16 and Ind AS 23, the exchange difference representing difference between the interest on local currency borrowing and foreign currency borrowing is considered as borrowing cost, whereas the ICDS IX does not make any such distinction. Therefore, the exchange difference as per financial accounts and tax accounts shall differ. In both the cases, i.e. (a) fixed assets acquired from outside India; and (b) fixed assets acquired domestically, the provisions of ICDS IX differs with the provisions of both AS 16 as well as Ind AS 23. Such difference in treatment of borrowing cost including exchange difference to the extent represented by borrowing cost as per AS 16 & Ind AS 23, will give rise to difference in taxable income and book income on account of timing of deduction and therefore will have implications on deferred tax.
Qualifying asset is an asset that necessarily takes a substantial period of time to get ready for its intended use or sale. Ordinarily, a period of twelve months is considered as substantial period of time unless a shorter or longer period can be justified on the basis of facts and circumstances of the case.	**Qualifying asset** means: i) land, building, machinery, plant or furniture, being tangible assets; ii) Know-how, patents copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets;	Paras 2(1)(b)(i) and (ii) of ICDS IX, covers assets (except land) on which depreciation is eligible under Section 32 of IT Act. Under ICDS, recognition of borrowing cost in respect of fixed assets would no more relate to a time frame (i.e. substantial period of time to get ready for its intended use).

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
	iii) Inventories that require a period of twelve months or more to bring them to saleable condition.	Thus, fixed assets, which are acquired off the shelf, like books, laptops etc. would also be treated as qualifying assets and accordingly the proportionate borrowing cost thereof needs to be worked out and added to the cost of such asset. This would practically result into maintaining two sets of fixed assets registers i.e. one for financial accounts and another one for tax accounts. In respect of inventories, only those inventories are qualifying assets as per ICDS IX, which takes a minimum period of 12 months to bring them to saleable condition, whereas AS 16 did not stipulate any fixed minimum period for reckoning as qualifying asset. To harmonise IT Act with the provisions of ICDS IX, Section 36(1)(iii) of the IT Act, as approved by the Lok Sabha, has also been amended so as to remove "extension of existing business or profession" from that section.
Borrowing Costs Eligible for Capitalisation: Specific borrowing To the extent that funds are borrowed specifically for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation on that should be determined as the actual borrowing costs incurred on that borrowing during the period **less any income on the temporary investment of those borrowings.**	**Para 5** To the extent the funds are borrowed specifically **for the purpose of** acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.	As per para 10 of AS 16, Borrowing cost eligible for capitalisation is to be reduced by any income on temporary investments of borrowed funds. This proviso has not been included in the ICDS and consequently any income arising from temporary investment made out of borrowed funds would be treated as income as against the present requirement of AS 16 of reducing the same from borrowing cost.

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
		Para 5 of ICDS IX lays stress on purpose of borrowing rather than on utilisation of funds. Therefore it may be interpreted that in cases where funds have been borrowed for the purpose of acquisition etc. of a qualifying assets but has been used (or partly used) for purpose other than acquisition etc. of qualifying asset, the borrowing cost may still have to be capitalised. The provisions of ICDS is in line with the settled judicial precedents that income earned on such temporary investment is considered as income and not as reduction of cost.
Borrowing Costs Eligible for Capitalisation: General borrowing To the extent that funds are borrowed generally and used for the purpose of obtaining a qualifying asset, the amount of borrowing costs eligible for capitalisation should be **determined by applying a capitalisation rate to the expenditure on that asset.** The capitalisation rate should be the **weighted average of the borrowing costs applicable to the borrowings of the enterprise that are outstanding during the period**, other than borrowings made specifically for the purpose of obtaining a qualifying asset. The amount of borrowing costs capitalised during a period should not exceed the amount of borrowing costs incurred during that period.	**Para 6** To the extent the funds are borrowed generally **and utilised for the purposes** of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised **shall be computed with the following formula:** AxB C Where **A** = borrowing costs incurred during the previous year except on borrowings directly **relatable to specific purposes;** **B** = (i) the average of costs of qualifying asset as appearing in the balance sheet on the first day and the last day of the previous year;	The formula given for borrowing cost eligible for capitalisation in case of general borrowing is very different from the method prescribed in AS 16. For the purposes of AS 16, the borrowing costs was relating to the actual period for which the borrowing was outstanding, whereas the ICDS IX considers the borrowing only on the first day and last day of the year. The formula of working out the borrowing cost for capitalisation where funds are borrowed generally, is likely to give rise to huge litigation as has happened in respect of disallowance under section 14A of the IT Act. The formula does not take into actual borrowing at different points of time and therefore is likely to be source of litigation. Example of some of the situations, which may result into litigation is as under:

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
	(ii) in case the qualifying asset does not appear in the balance sheet on the first day or both on the first day and the last day of previous year, half of the cost of qualifying asset; (iii) in case the qualifying asset does not appear in the balance sheet of person on the last day of previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, Other than those qualifying assets which are directly funded out of specific borrowings; or **C** = the average amount of total assets as appearing in the balance sheet on the first day and the last day of the previous year, other than those assets which are directly funded out of specific borrowings.	a. Borrowing cost except for borrowing relatable to specific purposes: For incurring regular capital expenditure, assessee generally uses working capital borrowing account. The specific purpose of working capital borrowing account is to meet working capital requirement arising out of operations and therefore the profits from the operations get deposited in the said account. b. In B(ii), considering half of the cost of the qualifying assets without any consideration of number of days for which is capitalisation is eligible may give rise to practical difficulties and consequential litigation. c. Similarly, in B(iii), considering average of the cost of the qualifying assets without any consideration of number of days for which is capitalisation is eligible may give rise to practical difficulties and consequential litigation. d. Generally the cost of the qualifying asset is more than the corresponding specific borrowing as the borrower is required to contribute minimum margin.

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
		Qualifying assets which are directly funded **out of specific borrowing**, is required to be excluded from B. Out of the borrowing may be construed to mean that cost of the qualifying assets incurred out of specific borrowing and not the total cost of the qualifying asset as entire cost has not been met out of specific borrowing but has been partly met by other sources e.g. equity. e. Similarly in respect of C, out of the specific borrowing may be construed to mean that cost of the asset incurred out of specific borrowing and not the total cost of such asset as entire cost has not been met out of specific borrowing but has been partly met by other source e.g. equity.
Commencement of Capitalisation The capitalisation of borrowing costs as part of the cost of a qualifying asset should commence when **all the following conditions are satisfied:** a) **Expenditure** for the acquisition, construction or production of a qualifying asset **is being incurred;** b) Borrowing costs are being incurred; and c) Activities that are necessary to prepare the asset for its intended use or sale are in progress.	**Para 7** The capitalisation of borrowing costs shall commence: **a)** On the date on which funds were specifically borrowed for acquisition of qualifying asset	AS 16 stipulated principle based approach, whereas the ICDS IX is rule based. Under AS 16, the capitalisation of the borrowing cost was linked to continuing activity of construction/ development of the qualifying assets and in case such activity is interrupted, then the capitalisation was suspended. This was to ensure that cost of the qualifying assets is not unnecessarily inflated due to stoppage/ suspension of the work and consequential elongated construction/ development period, as such elongated construction/

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
Suspension of Capitalisation Capitalisation of borrowing cost should be suspended during extended periods in which active development is interrupted.	 **b)** From the date on which funds were utilised, where funds were borrowed generally.	development period may not necessarily lead to higher economic value of qualifying asset. Contrary to the above principle, the ICDS IX requires continuing capitalisation of the borrowing cost irrespective of the fact whether the construction/ development of qualifying asset is continuing. This may result into inflating the cost of qualifying assets. While Para 7(b) of ICDS IX requires the commencement of capitalisation from the date on which funds are utilised, the Para 6 of ICDS IX, which deals with the amount of borrowing cost to be capitalised, consider the borrowing cost incurred during the previous year. The manner of computation as laid down by Para 6 of ICDS IX makes Para 7(b) redundant as provisions of Para 7(b) cannot be implemented.
Cessation of Capitalisation a) Capitalisation of borrowing costs should cease when **substantially all the activities** necessary to prepare the qualifying asset for its **intended use** or sale **are complete.**	**Para 8** Capitalisation of borrowing costs shall cease: a) In case of qualifying asset referred in Paras 2(1)(b)(i) and (ii), **when such asset is first put to use;** b) In case of qualifying asset referred in Para 2(1)(b)(iii), when substantially all the activities necessary to prepare such inventory for its intended sale are complete.	In normal circumstances, there may not be substantial difference between AS 16 and ICDS IX, though in case of exceptional circumstances, where the asset is ready to use but has not been put to use, borrowing cost shall not be capitalised under AS 16, however, it is required to be capitalised under ICDS IX. No difference.

As per Accounting Standard 16	As per ICDS IX	Implications of change, if any
Above-mentioned principle shall also apply to a construction of a qualifying asset which is completed in parts and a completed part is capable of being used while construction for the other part continues.	**Para 9** Same principle as mentioned above shall apply to the completed part.	Same as above.
	Para 10 All the borrowing costs incurred on or after 1st day of April, 2015 shall be capitalised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard **after taking into account the amount of borrowing costs capitalised, if any, for the same borrowing for any previous year ending on or before 31st day of March, 2015.**	Transitional provision has been carved out to ensure that the borrowing cost capitalised in the past is not required to be recomputed.

Deferred Tax

The different accounting treatment of borrowing costs as well exchange differences shall give rise to deferred tax as these differences may be considered as timing differences capable of reversal in foreseeable future (i.e. over the useful life of qualifying asset). The computation of deferred tax is likely to get further complicated due to such timing differences.

Conclusion

The provisions of ICDS IX has far reaching consequence as far as accounting and taxation is concerned. The accounting and administrative work of the assessee may multiply as the assessee may be required to maintain two sets of fixed asset registers and also to track the borrowing cost. The ICDS IX expects to achieve the objective of consistent and rule based application and therefore make comparison easier. However, application of some of the provisions of ICDS IX may distort the true picture particularly the fixed formula for computation of borrowing cost to be capitalised. This may lead to increased litigation and consequential uncertainly. To achieve the stated goal of achieving tax certainty, the CBDT may suitably clarify on the grey areas.

Paresh Vakharia

Income Computation and Disclosure Standard X relating to Provisions, Contingent Liabilities and Contingent Assets

1.0 Introduction

1.1 Like Income Computation and Disclosure Standard (ICDS) I to IX, this ICDS too shall apply w.e.f. Assessment Year 2016-17 and shall be applicable to the assessees following mercantile system of accounting, for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources", irrespective of type of the assessee or the nature or size of the business etc. The ICDS will not affect the maintenance of books of account.

1.2 Though the text of all ICDS refer to its applicability to a 'person', in this article, the word 'assessee' has been used, more particularly, because the notification under which the ICDS have been notified clearly mentions its applicability to an assessee.

1.3 The ICDS deals with (a) Provisions, (b) Contingent Liabilities and (c) Contingent Assets. In the case of conflict between the provisions of Income-tax Act, 1961 ('the Act') and the ICDS, the Act shall prevail to that extent.

1.4 This ICDS, by very nature, would require application of substantial degree of estimation and hence, likely to throw significant challenges in its application.

1.5 AS 1 'Disclosure of Accounting Policies' notified under the Companies Act refers to the concept of "Prudence" as one the major considerations governing the selection and application of accounting policies. The relevant paragraph 17(a) of AS 1 reads as follows:

> "In view of the uncertainty attached to future events, profits are not anticipated but recognised only when realised though not necessarily in cash. Provision is made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information".

Unfortunately, this fundamental accounting concept which has successfully held the field for the tax jurisprudence over decades has not been recognised in the corresponding ICDS I. Some of the deviations in this ICDS from the corresponding AS 29 reflect the effect of non recognition of prudence concept.

1.6 In AS 29, the paragraphs laying down main principles are followed by discussion paragraphs including illustrations. Also, for conceptual clarity and application of the principles, various illustrations are provided

as an appendix. The ICDS does not contain such discussion paragraphs or illustrations. It seems that the discussion paragraphs of AS 29 that are not affected by deviation of principles in the ICDS, will have persuasive value in the application of the ICDS.

2.0 Scope exclusion

2.1 This ICDS does not deal with provisions, contingent liabilities and contingent assets:

- resulting from financial instruments[1];
- resulting from executory contracts;
- arising in insurance business from contracts with policyholders; and
- covered by another ICDS

2.2 Onerous Contract

In AS 29 as well as ICDS, executory contracts are outside the scope of application of the principles laid down in the respective standards. However, AS 29 carves out an exception in the case of an executory contract which is onerous.

An onerous contract is a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it. Thus, for a contract to qualify as an onerous contract, the unavoidable costs of meeting the obligation under the contract should exceed the economic benefits expected to be received under it. The unavoidable costs under a contract reflect the least net cost of exiting from the contract, which is the lower of the cost of fulfilling it and any compensation or penalties arising from failure to fulfil it.

As per AS 29 if an enterprise has a contract that is onerous, the present obligation under the contract is recognised and measured as a provision. However, the ICDS is silent on the recognition or measurement of provision in respect of such onerous contract.

2.3 This ICDS does not deal with the recognition of revenue which is dealt with by ICDS IV– Revenue Recognition.

2.4 Though, the term 'provision' is also used in the context of items such as depreciation, impairment of assets and doubtful debts which are adjustments to the carrying amounts of assets; they are not addressed in this ICDS.

3.0 Definitions

3.1 **"Provision"** is a liability which can be measured only by using a substantial degree of estimation.

3.2 **"Liability"** is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits.

3.3 **"Obligating event"** is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation.

3.4 **"Contingent liability"** is:

- a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non occurrence of one or more uncertain future events not wholly within the control of the person; or
- a present obligation that arises from past events but is not recognised because:
  - it is not 'reasonably certain'[2] that an outflow of resources embodying economic benefits will be required to settle the obligation; or
  - a reliable estimate of the amount of the obligation cannot be made.

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1. As per AS 29 only the financial instruments that carried at fair value are excluded from the scope.
2. The corresponding AS 29 refers to word 'probable'.

3.5 **"Contingent asset"** is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or non occurrence of one or more uncertain future events not wholly within the control of the person.

3.6 **"Executory contracts"** are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent.

3.7 **"Present obligation"** is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain[3].

Words and expressions used and not defined in this ICDS but defined in the Act shall have the meaning respectively assigned to them in the Act.

The following definitions in AS 29 - are not incorporated in the ICDS:

"Possible obligation" an obligation is a possible obligation if, based on the evidence available, its existence at the balance sheet date is considered not probable.

"A restructuring" is a programme that is planned and controlled by management, and materially changes either:

- the scope of a business undertaken by an enterprise; or
- the manner in which that business is conducted.

PROVISIONS

4.0 Recognition of Provisions

4.1 A provision shall be recognised when

a. the assessee has a present obligation as a result of a past event;

b. it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and

c. a reliable estimate can be made of the amount of the obligation.

For a provision to be recognised, all the above three conditions shall be met.

4.2 So far as the condition (b) is concerned, the ICDS makes significant departure from the corresponding AS-29 [Para 14(b)] under which a provision is recognised when it is "probable" that an outflow of resources embodying economic benefits will be required to settle the obligation. Thus, by substituting the word "probable" used in the AS 29 with the word "reasonably certain", the ICDS has put in place more stringent condition for provision to be recognised for deduction of an expenditure.

The word "reasonably certain" is not defined in the ICDS or in the Act. While the word "probable" would generally mean 'more likely than not'; the threshold in the case of "reasonably certain" would lie between the probable and virtual certainty. In practice, this departure of the threshold is likely to cause difficulties in claiming deduction of an expenditure on the basis of legitimate provision which hitherto was allowable as per judicial interpretations[4].

4.3 Para 8 of the ICDS state that an obligation pursuant to a proposed new law shall be considered for recognition of a provision only after the legislation is enacted. On this aspect the corresponding AS 29 (Para 43) permits recognition of provisions if there is virtual certainty as to enactment of the legislation and the demand arising therefrom.

3. The corresponding AS 29 refers to word 'probable'.

4. The judicial precedents are discussed separately in the article.

5.0 Measurement of provisions

5.1 The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the previous year.

5.2 The amount of a provision shall not be discounted to its present value.

5.3 The above measurement criteria prescribed in ICDS is on the same lines as the corresponding AS 29. However, the explanatory paragraphs provided in the AS 29 do not find place in the ICDS.

5.4 AS 29 (Paras 38 & 39) discusses the relevance of risks and uncertainties in the measurement of the provision – which is not included in the ICDS.

5.5 AS 29 (Paras 41 to 42) discusses that future events that may affect the amount required to settle an obligation should be considered in measurement of a provision where there is sufficient objective evidence that the event will occur. This aspect is not included in the ICDS.

5.6 AS 29 (Paras 44 & 45) mandates that in the measurement of a provision, gains expected from disposal of assets are not to be taken into account, even if the expected disposal is closely linked to the event giving rise to the provision. The ICDS is silent on this aspect.

6.0 Use of Provisions

6.1 As per ICDS Para 19, a provision shall be used only for expenditures for which the provision was originally recognised. This is in line with the corresponding Para 53 of AS 29.

6.2 It implies that if a provision has been originally made in respect of expenditure item 'A' then the adjustment against it should not be made for another expenditure item 'B' so that the impact of any event is not concealed or set off against the other.

7.0 Provision for capital expenditure

7.1 AS 29 in paragraph 8 clarifies that the provision may be with reference to the cost which may be a revenue expenditure or an expenditure that requires capitalisation. Accordingly, AS 29 neither prohibits nor requires capitalisation of the costs recognised when a provision is made.

7.2 The ICDS is silent on this aspect dealt with by AS 29, perhaps for the reason that a provision in relation to capital expenditure would not have a direct impact on expenditures claimed as deduction. However, it may be noted that capitalisation of expenditure, in certain circumstances, may impact the computation of depreciation allowable under the Act. A view is possible that though the ICDS is silent on this aspect, nevertheless, there is no express prohibition either. Hence, if the provision is in line with definition of actual cost under section 43 of the Act, arguably, the benefit of depreciation would be available in respect of the corresponding capital expenditure which is otherwise eligible for the depreciation allowance.

8.0 Provision for restructuring

8.1 AS 29 extensively deals with various aspects of provision in the event of business restructuring. However, the ICDS is silent on the same.

8.2 The Advisory Committee formed by the CBDT for preparation of the ICDS had justified the omission of the above matter on the basis that the Act specifically deals with the situation.

9.0 Reimbursements

9.1 Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when it is **'reasonably certain'** that reimbursement will be received if the person settles the obligation. The amount recognized for the reimbursement shall not exceed the amount of the provision.

9.2 So far as the above matter is concerned, the ICDS makes significant departure from the corresponding AS-29 [Para 46] which reads as:

> "Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when and only when it is **'virtually certain'** that reimbursement will be received if the enterprise settles the obligation".

Thus, by substituting the word "virtually certain" used in the AS 29 with the word "reasonably certain" the ICDS has put in place a lower threshold for recognition of reimbursements and thereby reducing the deduction of quantum of expenditure.

9.3 Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs. It is similar to the corresponding AS 29.

9.4 An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties. It is similar to the corresponding AS 29.

10.0 Review of provisions

10.1 Provisions shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer **'reasonably certain'** that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.

10.2 The corresponding AS 29 uses the word **'probable'** instead of 'reasonably certain'. This change is consequential and corresponds to the differing norms for recognition of the provisions in the respective standards.

11.0 Disclosure in respect of provisions

11.1 In respect of each class of provision the following disclosure shall be made:

- A brief description of the nature of the obligation;
- The carrying amount at the beginning and end of the previous year;
- Additional provisions made during the previous year, including increases to existing provisions;
- Amounts used, that is incurred and charged against the provision, during the previous year;
- Unused amounts reversed during the previous year; and
- The amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.

11.2 The disclosure required in AS 29 (Para 67) as to the expected timing of any outflows of economic benefits arising from the obligations and an indication of uncertainties of those outflows is not covered in the disclosure requirement of the ICDS.

CONTINGENT LIABILITIES

12.0 Recognition of contingent liabilities

12.1 An assessee shall not recognise a contingent liability.

12.2 Generally stated, an obligating event that does not meet with the norms for recognition as provisions would qualify as contingent liability.

12.3 Unlike AS 29, the ICDS does not expressly state that the contingent liabilities shall be reviewed in the successive years and that on a review if it is found that, hitherto what was considered as contingent liability, be recognised as provision on satisfaction of the requisite norms for recognition of provision.

It appears that notwithstanding the lack of specific reference in this regard in the ICDS,

it should not jeopardise the recognition of a provision if the norms for its recognition are met.

13.0 Disclosure of contingent liabilities

13.1 The ICDS does not require any disclosure in respect of contingent liabilities.

13.2 AS 29 prescribes disclosure of each class of contingent liability with brief description of nature and, to the extent practicable, an estimate of financial effect. However, it is provided that no disclosure is required if the possibility of any outflow in settlement is remote.

CONTINGENT ASSETS

14.0 Recognition of contingent assets

14.1 Assessee shall not recognise a contingent asset.

14.2 However, the position has to be reviewed at the end of the each successive financial year and when it becomes **'reasonably certain'** that inflow of economic benefit will arise; the asset and related income are recognised in the previous year in which the change occurs. (Para 11 of the ICDS)

The corresponding AS 29 (Para 32) lays down that the recognition is appropriate only when the realisation of income is **'virtually certain'.**

14.3 The deviation made in the ICDS by substituting reasonable certainty test for the virtual certainty test prescribed in AS 29, the threshold for recognition of contingent income has been lowered. The ICDS thus makes departure from the well accepted accounting principle of prudence which requires that while the anticipated losses should be provided for, the anticipated gain should not be recognised generally.

14.4 Due to the change in the recognition norm, issues are likely to arise for recognition of income by way of compensation against insurance claims or damages claimed in respect of civil or contractual matters arising from business operations.

14.5 Claims of an assessee for incentives (including export incentives) which are governed by the ICDS VII "Government Grants" are not the contingent assets within the scope of this ICDS, for, as mentioned under the scope exclusion paragraph, a matter that is properly within the scope of another ICDS, is excluded from the scope of this ICDS.

15.0 Measurement of assets (upon satisfaction of recognition norm)

15.1 The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising at the end of the previous year. The amount and related income shall not be discounted to its present value.

16.0 Review of assets recognised under this ICDS

16.1 An asset and related income recognised as provided in Para 11 of the ICDS shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer **'reasonably certain'** that an inflow of economic benefits will arise, the asset and related income shall be reversed.

16.2 This aspect of ICDS is in line with the corresponding AS 29 except that the standard refers to the test of virtual certainty instead of the test of reasonable certainty prescribed in the ICDS. Of course, the deviation is in consonance with the corresponding differing recognition norms.

17.0 Disclosure in respect of assets recognised under the ICDS

17.1 In respect of each class of asset and related income recognised in Para 11 of the ICDS, the following disclosure shall be made:

- A brief description of the nature of the asset and related income;

- The carrying amount of asset at the beginning and end of the previous year;
- Additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and
- Amount of asset and related income reversed during the previous year.

17.2 For the sake of clarification, it must be mentioned that since a contingent asset is not recognised under the ICDS, no disclosure has been prescribed in respect of contingent assets as such. The disclosure referred to in above paragraph is in respect of an asset which is recognised on the satisfaction of the prescribed norms of recognition for the asset, and when so recognised, the asset ceases to be a contingent asset. Thus it is a matter of relief that no disclosure is required in respect of a contingent asset.

17.3 AS 29 does not prescribe any disclosure in the financial statements in respect of contingent assets. Para 33 of the AS 29 states that usually it is disclosed in the report of Board of Directors in case of company or the other approving authority in case of any other enterprise, where an inflow of economic inflow is probable.

18.0 Transitional provisions

18.1 All the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April, 2015 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2015.

19.0 Judicial precedents

19.1 Bharat Earth Movers (245 ITR 428) (SC)

The Supreme Court in this case was concerned with provision made by the company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by employees of the company, subject to the ceiling on accumulation as applicable. The court held that the liability is not a contingent liability and allowed the deduction. The court observed:

> ***"The law is settled; if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these** requirements are satisfied the liability is not **a contingent one. The liability is in present though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."***

The court also referred to the following extracts from its judgement in the case of Metal Box Co. of India Ltd. (73 ITR 53):

> ***"(i) For an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted principles of commercial practice and accountancy. It is not as if such deduction is permissible only in case of amounts actually expended or paid;***
>
> ***(ii) Just as receipts, though not actual receipts but accrued due are brought in for income-tax assessment, so also liabilities accrued due would be taken into account while working out** the profits and gains of the business;*
>
> ***(iii) A condition subsequent, the fulfilment of which may result in the reduction or even extinction of the liability, would not have the effect of converting that liability into a contingent liability.***

(iv) A trader computing his taxable profits for a particular year may properly deduct not only the payments actually made to his employees but also the present value of any payments in respect of their services in that year to be made in a subsequent year if it can be satisfactorily estimated".

19.2 Rotark Controls India (P) Ltd. (314 ITR 62) (SC)

The apex court in this case was concerned with the deduction for the provision made in respect of warranties obligations. It is interesting to note that the court adopted the language and principles of AS 29 without specifically referring to the said accounting standard itself.

"10. What is a provision? This is the question which needs to be answered. A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized.

11. Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits.

12. A past event that leads to a present obligation is called as an obligating event. The obligating event is an event that creates an obligation which results in an outflow of resources. It is only those obligations arising from past events existing independently of the future conduct of the business of the enterprise that is recognized as provision. For a liability to qualify for recognition there must be not only present obligation but also the probability of an outflow of resources to settle that obligation. Where there are a number of obligations (e.g. product warranties or similar contracts) the probability that an outflow will be required in settlement, is determined by considering the said obligations as a whole. In this connection, it may be noted that in the case of a manufacture and sale of one single item the provision for warranty could constitute a contingent liability not entitled to deduction under s. 37 of the said Act. However, when there is manufacture and sale of an army of items running into thousands of units of sophisticated goods, the past event of defects being detected in some of such items leads to a present obligation which results in an enterprise having no alternative to settling that obligation. In the present case, the appellant has been manufacturing and selling valve actuators. They are in the business from asst. yr. 1983-84 onwards. Valve actuators are sophisticated goods. Over the years appellant has been manufacturing valve actuators in large numbers. The statistical data indicates that every year some of these manufactured actuators are found to be defective. The statistical data over the years also indicates that being sophisticated item no customer is prepared to buy valve actuator without a warranty. Therefore, warranty became integral part of the sale price of the valve actuator(s). In other words, warranty stood attached to the sale price of the product. These aspects are important. As stated above, obligations arising from past events have to be recognized as provisions. These past events are known as obligating events. In the present case, therefore, warranty provision needs to be recognized because the appellant is an enterprise having a present obligation as a result of past events resulting in an outflow of resources. Lastly, a reliable estimate can be made of the amount of the obligation. In short, all three conditions for recognition of a provision are satisfied in this case."

The apex court has drawn a distinction between a contingent liability which is not allowable as a deduction from a provision where a liability

exists but the extent and timing of outflow of economic resources may need to be estimated. The judgments appear to be neutral as to the test to be applied for a provision to be recognised viz. probable vs. reasonable certainty. In the facts of the case of Bharat Earth Movers (supra), it must be noted that, while the liability was certain, the year of the payment of the liability was an uncertain future date. Thus the court was not required to deal with the probability or otherwise of the obligating event. In the case of Rotark Controls India (P) Ltd (supra) the court has made extensive reference to the accounting standards and has also adopted the language of AS 29. Thus it can be taken that the court was aware and in favour of 'probable test'. Now that the ICDS has replaced the 'probable' test with 'reasonable certainty' test; a fresh round of litigation may arise as to the binding nature of the ratio laid down in the above judgement and thus there seems to be an attempt of the Revenue to upset the settled legal position.

20.0 Impact on Book Profit Tax and Deferred Tax

20.1 Since the ICDS does not require the effects of the deviations from the accounting standards to be incorporated in the books of account or the financial statements, the book profit tax computation would be unaffected.

However, the extent of absorption of MAT credit will be affected due to enhancement or preponement of the tax liability computed under the normal provisions of the Act.

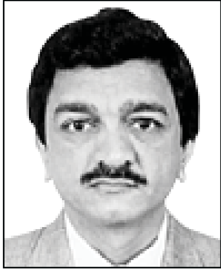
20.2 Due to difference in the point of time for recognition of provisions and assets as per the books of account and computation of taxable income following the ICDS, there would be deferred tax assets arising on account of the provisions recognised in the books of account (on the test of probable) but not so recognised in the computation of income made pursuant to the ICDS (on the test of reasonable certainty). Similarly, an asset and related income may not be recognised in the books of account (due to non-satisfaction of virtual certainty test) but the same may be recognised in the computation of income pursuant to the ICDS (on the satisfaction of the test of reasonable certainty) that may result into deferred tax asset. Of course, it is on the assumption that the differences between the taxable income and book income are of temporary nature that are capable of being reversed in the subsequent year(s).

21.0 Conclusion

21.1 The ICDS has adopted uniform test of 'reasonable certainty' for the recognition of provisions as well as assets as against the corresponding test of 'probable' and 'virtual certainty' adopted in the AS 29. The intention is that in the event of uncertainties, a claim for deduction of expenditure be treated at par with the recognition of income arising from a claim to which uncertainties are attached.

21.2 Since the term 'reasonable certainty' is not defined, there would be differing subjective approach by the taxpayers on one hand and the Revenue on the other, resulting into litigations. There will be an attempt by the Revenue to push a case for early recognition of income while deferring the claim for deduction of expenditure for which provisions have been made. The most likely affected matters would be in respect of liabilities or claims arising from civil or contractual litigations.

21.3 As discussed above, the legal position settled by the Apex Court may once again travel the litigation route.



B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

S. 80HHC: It is a prerequisite that there must be profits from the export business. If the export business has suffered a loss, deduction cannot be allowed from domestic business

JEYAR Consultant & Investment Pvt. Ltd. vs CIT, Madras [CIVIL APPEAL NO. 8912 of 2003, dated 1st April, 2015]

The Supreme Court had to consider two facets of s. 80HHC: (i) whether the view that deduction is permissible under section 80HHC only when there are profits from the exports of the goods or merchandise is correct or it is open to the assessee to club the income from export business as well as domestic business and even if there are losses in the export business but after setting off those losses against the income/profits from the business in India, still there is net-profit of the business, the benefit under section 80HHC will be available? (ii) Whether, while applying the formula, we have to see what would comprise "total turnover"?

Their Lordships of the Supreme Court held as under:

(i) It stands settled, on the co-joint reading of **IPCA** (2004) 12 SCC 742 and **A.M. Moosa** (2007) 9 SCR 831, that where there are losses in the export of one type of goods (for example self-manufactured goods) and profits from the export of other type of goods (for example trading goods) then both are to be clubbed together to arrive at net-profits or losses for the purpose of applying the provisions of section 80HHC of the Act. If the net result was loss from the export business, then the deduction under the aforesaid Act is not permissible. As a fortiori, if there is net profit from the export business, after adjusting the losses from one type of export business from other type of export business, the benefit of the said provision would be granted.

(ii) In the assessee's case, in so far as export business is concerned, there are losses. The assessee's argument relying upon section 80HHC(3)(b) to contend that the profits of the business as a whole i.e. including profits earned from the goods or merchandise within India will also be taken into consideration and that the losses in the export business, but profits of indigenous business outweigh those losses and the net result is that there is profit of the business, then the deduction under section 80HHC should be given is not acceptable. From the scheme of section 80HHC, it is clear that deduction is to be provided under sub-section (1) thereof which is "in respect of profits retained for export business". Therefore, in the first instance, it has to be satisfied that there are profits from the

export business. That is the prerequisite as held in IPCA and A.M. Moosa as well. Sub-section (3) comes into picture only for the purpose of computation of deduction. For such an eventuality, while computing the "total turnover", one may apply the formula stated in clause (b) of sub-section (3) of section 80HHC. However, that would not mean that even if there are losses in the export business but the profits in respect of business carried out within India are more than the export losses, benefit under section 80HHC would still be available. In the present case, since there are losses in the export business, question of providing deduction under section 80HHC does not arise and as a consequence, there is no question of computation of any such deduction in the manner provided under sub-section (3).

S. 80-IB(10): Law on availability of deduction for "housing projects" explained (prior to 1-4-2005)

CIT vs. M/s. Veena Developers [SLP (c) No.22450/2011 arising out of the order of the Bombay High Court dated 28th February, 2011]

Their Lordships disposing of the several SLPs held as under :

"All these special leave petitions are filed by the Revenue/ Department of Income tax against the judgments rendered by various High Courts deciding identical issue which pertains to the deduction under section 80-IB(10) of the Income-tax Act, as applicable prior to 1-4-2005. We may mention at the outset that all the High Courts have taken identical view in all these cases holding that the deduction under the aforesaid provision would be admissible to a "housing project".

"All the assessees had undertaken construction projects which were approved by the municipal authorities/local authorities as housing projects. On that basis, they claimed deduction under Section 80-IB(10) of the Act. This provision as it stood at that time, i.e., prior to 1-4-2005 reads as under: – Section 80-IB(10) [as it stood prior to 1-4-2005]:

"(10) The amount of profits in case of an undertaking developing and building housing projects approved before the 31st day of March, 2005 by a local authority, shall be hundred per cent of the profits derived in any previous year relevant to any assessment year from such housing project if, –

"(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998;

"(b) the project is on the size of a plot of land which has a minimum area of one acre; and

"(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place."

"However, the Income Tax Authorities rejected the claim of deduction on the ground that the projects were not "housing project" inasmuch as some commercial activity was also undertaken in those projects. This contention of the Revenue is not accepted by the Income Tax Appellate Tribunal as well as the High Court in the impugned judgment. The High Court interpreted the expression "housing project" by giving grammatical meaning thereto as housing project is not defined under the Income-tax Act insofar as the aforesaid provision is concerned. Since sub-section (10) of section 80-IB very categorically mentioned that such a project which is undertaken as housing project is approved by a local authority, once the project is approved by the local authority it is to be treated as the housing project. We may also point out

that the High Court had made observations in the context of Development Control Regulations (hereinafter referred to as 'DCRs' in short) under which the local authority sanctions the housing projects and noted that in these DCRs itself, an element of commercial activity is provided but the total project is still treated as housing project. On the basis of this discussion, after modifying some of the directions given by the ITAT, the conclusions which are arrived at by the High Court are as follows: –

"30. In the result, the questions raised in the appeal are answered thus:

"a) Upto 31-3-2005 (subject to fulfilling other conditions), deduction under section 80-IB(10) is allowable to housing projects approved by the local authority having residential units with commercial user to the extent permitted under DC Rules/ Regulations framed by the respective local authority.

"b) In such a case, where the commercial user permitted by the local authority is within the limits prescribed under the DC Rules/Regulations, the deduction under section 80-IB(10) up to 31-3-2005 would be allowable irrespective of the fact that the project is approved as 'housing project' or 'residential plus commercial'.

"c) In the absence of any provisions under the Income Tax Act, the Tribunal was not justified in holding that upto 31-3-2005 deduction under section 80-IB(10) would be allowable to the projects approved by the local authority having residential building with commercial user upto 10% of the total built-up area of the plot.

"d) Since deductions under section 80-IB(10) is on the profits derived from the housing projects approved by the local authority as a whole, the Tribunal was not justified in restricting section 80-IB(10) deduction only to a part of the project. However, in the present case, since the assessee has accepted the decision of the Tribunal in allowing section 80-IB(10) deduction to a part of the project, we do not disturb the findings of the Tribunal in that behalf.

"e) Clause (d) inserted to section 80-IB(10) with effect from 1-4-2005 is prospective and not retrospective and hence cannot be applied for the period prior to 1-4-2005."

"We are in agreement with the aforesaid answers given by the High Court to the various issues. We may only clarify that insofar as answer at para (a) is concerned, it would mean those projects which are approved by the local authorities as housing projects with commercial element therein.

"There was much debate on the answer given in para (b) above. It was argued by Mr. Gurukrishna Kumar, learned senior counsel, that a project which is cleared as "residential plus commercial" project cannot be treated as housing project and therefore, this direction is contrary to the provisions of section 80(I)(B)(10) of the Act. However, reading the direction in its entirety and particularly the first sentence thereof, we find that commercial user which is permitted is in the residential units and that too, as per DCR. Examples given before us by the learned counsel for the assessee was that such commercial user to some extent is permitted to the professionals like Doctors, Chartered Accountants, Advocates, etc., in the DCRs itself.

"Therefore, we clarify that direction (b) is to be read in that context where the project is predominantly housing/residential project but the commercial activity in the residential units is permitted. With the aforesaid clarification, we dispose of all these special leave petitions."

Jitendra Singh & Sameer Dalal
Advocates

DIRECT TAXES
Tribunal

REPORTED

1. Charitable Trust – Section 11 of the Income-tax Act, 1961 – denial of exemption under section 11 as regular classes were not conducted, hence, not an educational institution within the meaning of section 2(15) of the Act – unjustified

ITO vs. Science Olympiad Foundation (2015) 117 DTR (Del.) (Trib.) 291

The assessee foundation was registered under section 12A with the objects of developing the expertise in scope and level of imparting of science education in the medium of Government approved schools. To achieve these objects it developed 'Course Resource Material' for the students who were keen in learning science education. The A.O. denied the benefit of section 11 claimed by observing that the activities carried out by the assessee is neither educational nor charitable in nature as regular classes are not held. On appeal the first Appellate Authority allowed the claim of the assessee holding that the activities of the assessee are directed towards the improvement of educational standard of science students by making available superior course material and methodology for examination in this behalf. The department being aggrieved by the above order preferred an appeal before the Delhi Appellate Tribunal. The Tribunal dismissed the appeal filed by the department and held that holding of regular classes or wholesome educational activities cannot be only criteria to be called educational activities eligible for benefits under section 11.

2. Capital Gains – Section 50C of the Income-tax Act, 1961 – mere report of DVO estimating higher value of property cannot be considered as an evidence of actual full value of consideration received or accruing as a result of transfer of capital asset

ITO vs. Prem Chand Mittal (2015) 56 taxmann.com 52 (Delhi-Trib.)

The assessee had sold his residential properties for ` 25 lakhs, in which he had half share and declared long-term capital gain. The A.O. being dissatisfied with the amount of sale consideration declared by the assessee, deputed an Income-tax Inspector to make a fair estimate of the market value of property, who estimated

the approximate value at ` 1.25 crore. The, A.O. further referred the matter to the DVO, who determined the fair market value of the property at `76,46,300/-. The A.O. considering the valuation determined by the DVO, adopted the sale price at ` 38,23,150/- and recomputed the amount of long-term capital gain. On appeal the first Appellate Authority allowed the appeal of the assessee and directed the A.O. to adopt the sale consideration at ` 12.50 lakhs as declared by the assessee. The department being aggrieved by the above order preferred an appeal before Delhi Appellate Tribunal. The Appellate Tribunal dismissed the appeal filed by the department and held that mere report of DVO estimating higher value of property cannot be considered as an evidence of actual full value of consideration received or accruing as a result of transfer of capital asset. The Appellate Tribunal further held that as per section 50C, where full value of consideration received as a result of transfer of a 'capital asset' is less than stamp value, then, such stamp value is to be substituted with full value of consideration.

UNREPORTED

3. Charitable Trust – Section 12 AA of the Income-tax Act, 1961 – Registration – Cannot be refused to a trust which applies its income for charitable purposes outside India. A.Y.: 2012-13

Critical Art & Media Practices vs. DIT (E) – [I.T.A. No.: 736 / Mum / 2013; Order dated: 11-3-2015; Mumbai Bench]

The application of the Appellant trust was rejected by the DIT(E) observing that objects of the applicant trust were not merely confined to the territories comprising in India but also extended to and encompass the whole world. Thus, according to him any activities carried out by the applicant trust in pursuit of its objects would involve application of funds of the trust outside India which in turn will render it ineligible for exemption under section 11 of the Act.

On appeal the Tribunal held that, section 2(15) of the Act does not require that, for a purpose or activity to be charitable in nature, such an activity should be performed in India only. Thus, if the activities otherwise are charitable and fall in the definition of charitable purposes as defined under section 2(15) of the Act, then such a trust subject to the fulfilment of other conditions, will be entitled to registration and it cannot be denied registration because of the fact that its activities are extended outside India. However, while computing the income as per the provisions of section 11 of the Act, the income which is applied on such activities in India only, will be eligible for exemption.

4. Income from House Property – Section 24(b) of the Income tax Act, 1961 – Deduction – Interest-free loan taken for purchase immovable property repaid from interest-bearing refundable deposits received from tenants is deemed to be 'borrowed capital' and interest paid on such deposits is deductible under section 24(b) of the Act. A.Y.: 2009-10

ITO vs. Structmast Relator (Mumbai) (P.) Ltd. – [I.T.A. No.: 6920 / Mum / 2012; Order dated: 25.03.2015; Mumbai Bench]

The Assessee had computed income from house property after claiming deduction under section 24(b) of the Act for the interest paid on refundable security deposits received by it from its tenants. The assessee had

taken an unsecured loan for the purchase of immovable property. The said loan was interest free and was provided for a very short period. Thereafter, the assessee let out these properties to various tenants and in terms of the agreement assessee received deposits from these tenants. These deposits were interest bearing on which the assessee had to pay interest. These deposits were utilized for the repayment of loan taken. Assessing Officer held that section 24(b) of the Act clearly provides that, interest should be payable on capital borrowed or the capital borrowed must be for the purpose of repayment of old loan and security deposits cannot be termed as capital borrowed for the purpose of repayment old loan.

On appeal Tribunal held that where assessee repaid interest-free loan taken to purchase immovable property from interest-bearing refundable deposits received from tenants, these deposits are deemed to be borrowed capital within the meaning of section 24(b) of the Act and interest on such deposits are deductible under section 24(b) of the Act.

5. Capital Gain – Sections 54 B and 54F of the Income-tax Act, 1961 – Exemption under sections 54B and 54F are not mutually exclusive and independent of each other. A.Y. 2009-10

Koganti Venkata Ramaiah vs. Asstt. CIT - [I.T.A. No.: 133 / Vizag / 2014; Order dated 4-3-2015; Visakhapatnam Bench]

The assessee had sold agricultural land for a consideration and invested part of amount in purchasing agricultural land and claimed exemption under section 54B of the Act. The remaining amount was deposited in capital gain account scheme with Government bank, within the prescribed time limit. Subsequently, the said amount was utilized for purchase of an apartment within a period of two years from the date of sale of original asset and the assessee also claimed exemption under section 54F of the Act.

The Commissioner while revising the assessment opined that as the sale proceedings of agricultural land were invested by the assessee for acquiring the asset other than agricultural land, the exemption claimed under section 54F of the Act was not allowable.

On Appeal Tribunal held that there is no restriction/conditions imposed in section 54 B of the Act to effect that if an assessee claims exemption under section 54B of the Act, he will not be eligible to claim exemption under section 54F of the Act. Similarly, there is no restriction imposed under section 54F that capital gain derived from sale of agricultural land is not eligible for exemption under section 54F. Thus, The assessee will be eligible for exemption under section 54F of the Act for the amount invested in purchase of an apartment even though he has claimed exemption under section 54 B of the Act for part of the amount.

We might not know the key to success, but the key to failure is trying to please everybody.

CA Sunil K. Jain

DIRECT TAXES

Statutes, Circulars & Notifications

NOTIFICATIONS

Section 145 of the Income-tax Act, 1961 - Method of accounting - Income Computation and Disclosure Standard I relating to accounting policies

In exercise of the powers by sub-section (2) of section 145 of the Income-tax Act, 1961 and in supersession of the notification dated 25th January, 1996, the Central Government notified the income computation and disclosure standards as specified in the Annexure to the said notification to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or " Income from other sources". This notification shall come into force with effect from 1st day of April, 2015, and shall accordingly apply to the assessment year 2016-17 and subsequent assessment years.

(Notification No.32/2015 - Dated 31-3-2015)

Income-Tax (Fourth Amendment) Rules, 2015 – Advance Pricing Agreement – Amendment in Rule 10MA

In exercise of the powers of sub-sections (9) and (9A) of section 92cc the Central Board of Direct Taxes made the rules further to amend the Income-tax Rules, 1962, to be called the Income-tax (Fourth Amendment) Rules, 2015, which shall come into force on the date of their publication in the Official Gazette.

Accordingly in rule 10MA, in sub-rule (5), it has been substituted that in a case where an application has been filed on or before the 31st day of March, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 30th day of June, 2015 or the date of entering into the agreement whichever is earlier and provided further that in a case where an agreement has been entered into on or before the 31st day of March, 2015, Form No. 3CEDA along with proof of payment of additional fee may be filed at any time on or before the 30th day of June, 2015 and, notwithstanding anything contained in rule 10Q, the agreement may be revised to provide for rollback provision in the said agreement in accordance with this rule."

(Notification No.33/2015 - Dated 1-4-2015)

PAN/TAN for new Company- Apply in Form INC-7 – No Separate application required

Companies intending incorporation (not yet incorporated) can now apply for Permanent Account Number (PAN) and Tax deduction & collection Account Number (TAN) in Form

No. INC-7 prescribed under the Companies Act, 2013. Further, as proof of date of birth the copy of the following documents if they bear the name, date, month and year of birth of the applicant, can be provided for PAN & TAN application purposes: As proof of date of birth (a) Copy of Certificate of Registration issued by the Registrar of Companies; or (b) corporate identity number allotted by the Registrar under section 7 of the Companies Act, 2013;

It further provided that in case of an applicant, being a company which has not been registered under the Companies Act, 2013, the application for allotment of a tax deduction and collection account number may be made in Form No. INC-7 specified under sub-section (1) of section 7 of the said Act for incorporation of the company.

(Notification No. 38/2015, dated April 10, 2015)

Amendment to Rule 2BB specifying transport allowance exemption u/s 10(14) w.e.f. April 1, 2015; Increases transport allowance exemption to ` 1,600 per month from ` 800; Also, doubles the exemption limit for 'blind or orthopedically handicapped employees' from ` 1,600 per month to ` 200 per month

The CBDT notified amendment to Rule 2BB specifying transport allowance exemption u/s. 10(14) w.e.f. April 1, 2015; It Increased transport allowance exemption to ` 1,600 per month from ` 800; Also, doubled the exemption limit for 'blind or orthopedically handicapped employees' from ` 1,600 per month to ` 200 per month.

(Notification No.39/2015 - dated 13-4-2015)

Income-Tax (Seventh Amendment) Rules, 2015 - Amendment in Rule 12 And Substitution of Forms SAHAJ (ITR-1), ITR-2, SUGAM (ITR-4S) AND ITR-V

The Central Board of Direct Taxes made the rules further to amend the Income-tax Rules, 1962 called the Income-tax (Seventh Amendment) Rules, 2015 deemed to have come into force with effect from the 1st day of April, 2015.

The return of income referred to in sub-rule (1) shall be furnished by a person mentioned in column (ii) of the Table below to whom the conditions specified in column (iii) apply, in the manner specified in column (iv) thereof:-

Table

Sl.	Person	Condition	Manner of furnishing return of income
(i)	(ii)	(iii)	(iv)
1	Individual or Hindu undivided family	(a) Accounts are required to be audited under section 44AB of the Act;	Electronically under digital signature
		(b) Where (a) is not applicable and,-	
		(I) the return is furnished in Form No. ITR-3 or Form No. ITR-4; or	(A) Electronically under digital signature; or

Sl.	Person	Condition	Manner of furnishing return of income
(i)	(ii)	(iii)	(iv)
		(II) the person, being a resident, other than not ordinarily resident within the meaning of sub section (6) of section 6, has, (A) assets (including financial interest in any entity) located outside India; or (B) signing authority in any account located outside India; or (C) income from any source outside India;	(B) Transmitting the data in the return electronically under electronic verification code; or
		(III) any relief, in respect of tax paid outside India, under section 90 or 90A or deduction of tax under section 91 is claimed; or	(C) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.
		(IV) any report of audit referred to in proviso to sub-rule (2) is required to be furnished electronically; or	
		(V) total income assessable under the Act during the previous year of the person (other than the person, being an individual of the age of 80 years or more at any time during the previous year and furnishing the return in Form ITR-1 or ITR-2),- (i) exceeds five lakh rupees; or (ii) any refund is claimed in the return of income.	
		(c) In any other case.	(A) Electronically under digital signature; or (B) Transmitting the data in the return electronically under electronic verification code; or

Sl.	Person	Condition	Manner of furnishing return of income
(i)	(ii)	(iii)	(iv)
			(C) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V; or (D) Paper form.
2	Company	In all cases.	Electronically under digital signature.
3	A person required to furnish the return in Form ITR-7	(a) In case of a political party;	Electronically under digital signature.
		(b) In any other case	(A) Electronically under digital signature; or (B) Transmitting the data in the return electronically under electronic verification code; or (C) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.
4	Firm or limited liability partnership or any person (other than a person mentioned in Sl. 1 to 3 above) who is required to file return in Form ITR-5	(a) Accounts are required to be audited under section 44AB of the Act;	Electronically under digital signature;
		(b) In any other case.	(A) Electronically under digital signature; or (B) Transmitting the data in the return electronically under electronic verification code; or (C) Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.

Accordingly in Appendix-II, for "Forms SAHAJ (ITR-1), ITR-2, SUGAM (ITR-4S) and ITR-V" the "Forms SAHAJ (ITR-1), ITR-2, SUGAM (ITR-4S) and ITR-V" have respectively, been substituted.

(Notification No.41/2015 - Dated 15-4-2015)

CIRCULARS

Section 17B of The Wealth-Tax Act, 1957 - Return of Wealth - Interest For Defaults in Furnishing of - Chargeability of Interest Under Section 17B on Self-Assessment Tax Paid Before Due Date of Filing of Return of net wealth

Interest under section 17B of the Wealth-tax Act is charged in case of default in furnishing of return of net wealth by an assessee. The interest is charged at the specified rate on the amount of tax payable on the net wealth. Since the provisions of section 17B do not provide for reduction of the amount of self-assessment tax from the amount on which interest under section 17B is chargeable, interest is being charged on the amount of self-assessment tax paid by the assessee even before the due date of filing of return of net wealth.

It has now been held by the Hon'ble Supreme Court in the case of *CIT vs. Prannoy Roy 309 ITR 231 (2009)* that the interest under section 234A of the Income-tax Act, 1961 on default in furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the income-tax return for the relevant assessment year. The Central Board of Direct Taxes (the Board) has already issued Circular No.2/2015 dated 10-2-2015 giving effect to the decision of the Hon'ble Supreme Court with regard to the provisions under the Income-tax Act. Maintaining an analogous position with regard to the provisions under the Wealth-tax Act, the Board has decided that no interest under section 17B of the Wealth-tax Act is chargeable on the amount of self-assessment tax paid by the assessee before the due date of filing return of net wealth.

(Circular No.5/2015 - Dated 9-4-2015)

Section 2(42A) of The Income-Tax Act, 1961 - Capital Gains - Short-Term Capital Assets - Capital Gains In Respect of Units of Mutual Funds Under Fixed Maturity Plans on Extension of Their Term

As per the provisions of the Income-tax Act, assets in the nature of shares, listed securities, units of mutual funds and zero coupon bonds qualified as long-term capital assets if held for a period of more than twelve months as against the holding period of more than thirty-six months in case of other assets. In this matter the Securities and Exchange Board of India (SEBI) has informed that Regulation 33(4) of the SEBI (Mutual Funds) Regulations, 1996 allows the rollover of close-ended schemes. Such regulation provides the following:—

"(4) A close ended scheme shall be fully redeemed at the end of the maturity period:

Provided that a close-ended scheme may be allowed to be rolled over if the purpose, period and other terms of the roll over and all other material details of the scheme including the likely composition of assets immediately before the roll over, the net assets and net asset value of the scheme, are disclosed to the unit holders and a copy of the same has been filed with the Board:

Provided further that such roll over will be permitted only in the case of those unit holders who express their consent in writing and the unit holders who do not opt for the roll over or have not given written consent shall be allowed to redeem their holdings in full at net asset value based price."

SEBI has clarified that in case of roll over in accordance with the aforesaid regulation the scheme remains the same and it does not constitute a different scheme.

In the case of mutual funds, the unit of a mutual fund constitutes a capital asset and any sale, exchange or relinquishment of such unit is a 'transfer' under clause (47) of section 2 of the Act. The roll over in accordance with the aforesaid regulation will not amount to transfer as the scheme remains the same. Accordingly, it is hereby clarified that no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The capital gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

(Circular No.6 of 2015 - Dated 9-4-2015)

Section 10(26Bbb) of the Income-Tax Act, 1961 - Corporation Established for welfare and economic upliftment of Ex-Servicemen - Requirement of Tax Deduction at Source in Case of Corporations whose Income is Exempt under section 10(26Bbb) - Exemption thereof

The corporations covered under section 10(26BBB) are statutorily not required to file return of income as per section 139 of the Act. References have been received in the Board requesting for extension of the aforesaid exemption from TDS granted *vide* Circular No.4/2002 to the corporations covered under section 10(26BBB) as well. It has been decided that since the corporations covered under section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e. unconditional exemption of income under section 10 and no statutory liability to file return of income under section 139, any corporation whose income is exempt under section 10 (26BBB) of the Act will also be entitled to the benefit of the said Circular. Hence there would be no requirement for tax deduction at source from the payments made to such corporations since their income is anyway exempt under the Act.

(Circular No.7/2015 - Dated 23-4-2015)

PRESS RELEASE

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Claim of Treaty Benefits by FIIS under Provisions of Double Taxation Avoidance Agreements

The CBDT noted that several Foreign Institutional Investors receiving income from transactions in securities claim such income as exempt from tax under the Income-tax Act, 1961 by availing benefit provided in the Double Taxation Avoidance Agreements ('DTAAs') signed between India and their respective countries of residence. Since the issue involved in such cases is limited, such claims should be decided expeditiously. It has therefore been decided that in all cases of Foreign Institutional Investors seeking treaty benefits under the provisions of respective dates, decision may be taken on such claims within one month from the date such claim is filed.

(Press Release, dated 24-4-2015)

A person who takes a job in order to live - that is, for money - has turned himself into a slave.

CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION

Case Law Update

A] HIGH COURT JUDGMENTS

I. In the absence of any allegation on perversity, no substantial question of law arose from the finding of fact by the Tribunal as to which companies are comparable and which are not.

CIT vs IVY Comptech Limited (ITA No. 707 of 2014) (Andhra Pradesh and Telangana High Court)

Assessment Year: 2005-06

Facts

1. The assessee was engaged in provision of software development services and IT Enabled Services ('ITES') only to its associated enterprise ('AE'). During A.Y. 2005-06, the assessee selected TNMM as the most appropriate method and operating profit/total cost ('OP/TC') as profit level indicator. The assessee selected 45 companies as comparables in software development services segment and computed the average profit margin of the comparables at 9.97%. Since the assessee's margin was 15.08%, it claimed its software development transaction to be at arm's length. Similarly in the ITES segment, the assessee had selected 12 companies as comparables with average profit margin of 12.92% as against assessee's margin of 13.10%. Hence, it was submitted that the price charged by the assessee for its ITES services was within the arm's length range.

2. During transfer pricing proceedings, the TPO accepted 7 of the assessee's comparables for software development services segment and selected 10 new comparables he made an adjustment of ` 1.12 crores. Similarly, in ITES segment, the TPO considered 9 comparable including 5 selected by the assessee and made an adjustment of ` 3.88 crores. Subsequently, the TPO u/s. 154 amended the adjustment amount to ` 1.11 crores and ` 2.82 crores respectively.

3. The Hon'ble ITAT decided on various issues in relation to selection of comparables in respect of software development services and ITES Segment. Following various precedents, it remitted the verification of few comparables to the Assessing officer and rejected few of the comparables selected by the TPO.

4. Aggrieved against the order, Revenue preferred appeal with Hon'ble Andhra Pradesh and Telangana High Court.

Judgment

5. The Hon'ble High Court while dismissing the appeal observed that the Hon'ble ITAT had rendered a fact finding which instances were acceptable or non-acceptable. It thus opined that in the absence of any allegation of perversity,

there was no need to substitute appreciation of fact, and that the ITAT order did not seem to be without any material.

II. Use of TNMM by assessee for benchmarking assessee's transaction of 'Provision of agency and marketing support services' upheld. PSM adopted by TPO rejected. Revenue's observation, that the assessee was inadequately compensated as crucial functions on behalf of AEs was carried out by the assessee was a general one, unsupported by any independent material, and was based on the TPO's belief, rather than objective fact based analysis. Held that assessee was a mere mediator with limited risk and least capital employed.

CIT vs Marubeni India Pvt. Ltd. (ITA No. 94 of 2015) (Delhi High Court)

Assessment Year: 2008-09

Facts

1. The assessee, a wholly owned subsidiary of Marubeni Corporation, Japan ("MCJ") was primarily engaged in agency services on behalf of "MCJ" and other Marubeni group companies. The assessee also liaised between various business departments of Marubeni group companies and their suppliers/customers in India. It was also engaged in trading activities on its own. During A.Y. 2008-09, it selected TNMM as the most appropriate method with PLI of OP/TC. It was submitted that its PLI was 16.87% as against 13.81% of its comparables and therefore claimed its transactions to be at arm's length.

2. During assessment proceedings, TPO observed that the assessee's functions to its AEs were not only confined to providing marketing support services but also in arranging for feasibility studies, industry analysis and project evaluation for potential projects identified by the AEs. It held that the assessee was making sizeable investments in exploring and analyzing the Indian market, developed several unique intangibles which gave advantage to its AEs though the cost incurred for their development and use was not taken into consideration in receiving compensation. The TPO therefore held that the assessee was inadequately compensated by its AEs and the Profit Split Method (PSM) had to be applied for determining the ALP of the international transactions under this segment. TPO held that since the assessee developed and made available its supply chain and human intangibles to its AEs for conducting their business in India and also did majority of crucial and critical functions on their behalf, the assessee was required to be compensated in the total profits on FOB value of the goods transacted by foreign AEs. He relied on the decision of the Hon'ble Delhi Tribunal's ruling in *Li & Fung (India) Pvt. Ltd. vs DCIT*. Accordingly, an adjustment of ` 30.14 crore was made, which was confirmed by DRP.

3. The Hon'ble ITAT while ruling in assessee's favour, observed that as per the supply transactions structure, three types of parties were involved in each transaction, viz., Customer/ Vendor from India, AEs and the assessee acting as a mediator between its AEs and customer/ vendor from India. It held that the risk of the assessee in mediating between its AEs on one hand and suppliers/ purchasers from India on the other, was limited and minimal with least capital employed.

4. The Hon'ble ITAT also dismissed TPO's contentions and held that assessee was engaged in arranging for feasibility studies, industry analysis and project evaluation, but such activities were done for non-AEs, and thus the role of assessee in the extant international transactions was basically confined to acting as a mediator between its AEs and buyers/sellers in India and also supplying marketing information to the AEs. Further, the Hon'ble ITAT rejected Revenue's reliance on Tribunal ruling in Li Fung holding

that it was reversed by the Hon'ble Delhi High Court (361 ITR 85). Aggrieved by this order of Hon'ble Tribunal, Revenue filed further appeal before Hon'ble Delhi High Court.

Judgment

5. The Hon'ble High Court confirmed the order of the Hon'ble ITAT and ruled in assessee's favour. It held that, the revenue could not merely state that significant risks, such as credit, operational, manpower and other risks were borne or that the assessee's business was subjected to fluctuations. It merely mediated between the AEs and customers/vendors in India. Furthermore, it only supplied information to the AEs and mediated between them and Indian enterprises in the transactions arranged independently between them. It thus held that the observation that AE's decisions were taken by assessee, was general and unsupported by independent material. The Hon'ble High Court thus concluded that there was no question of assessee undertaking higher risk or using its highly valued intangibles.

6. Further, the Hon'ble High Court also agreed with Hon'ble ITAT's finding that assessee's risk was limited and minimal with least capital employed, and that the TPO's findings that the assessee performed all the crucial functions on behalf of the AEs was not proved.

7. The Hon'ble High Court upheld the Hon'ble Tribunal's decision of upholding TNMM as the most appropriate method and directing the TPO to make fresh ALP determination of the international transactions of `Provision of Agency and marketing support services'. Accordingly, appeal of the Revenue was dismissed.

III. Arm's length interest rate for loan advanced to foreign subsidiary by Indian company should be computed based on market determined interest rate applicable to currency in which loan has to be repaid. 4% interest rate charged by assessee on loan given to US subsidiary AE was at arm's length

CIT v. Cotton Naturals (I) (P.) Ltd. (55 taxmann.com 523) (Delhi High Court)

Assessment Year: 2007-08

Facts

1. The assessee had incorporated a subsidiary company in United States for undertaking distribution and marketing activities for the products manufactured by it namely rider apparel. It advanced loan to its subsidiary and received interest at the rate of 4 per cent. It applied CUP method and claimed rate of 4 per cent to be comparable with the export packing credit rate obtained from independent banks in India. The assessee also submitted that LIBOR has been accepted in various decisions as the most suitable benchmark for judging the ALP in case of a foreign currency loan and the LIBOR during the relevant period (2.71%) was less than the rates charged by the assessee.

2. The TPO opined that what was to be considered was the prevalent interest that could have been earned by advancing a loan to an unrelated party in India with the same financial health as that of the taxpayer's subsidiary. The TPO further noted that while deciding the interest rate that may be charged on receivables from AE's, LIBOR rate for calculating interest was not proper and instead of US rate, Indian rate was to be adopted. Finally, the TPO held that interest rate at 14 per cent to be fair and reasonable.

3. This was reduced to 12.20% by the DRP by adopting the Prime Lending Rate fixed by the Reserve Bank of India.

4. On appeal by the assessee, the Hon'ble Tribunal held that the assessee had an arrangement with a bank for loan for less than 4% and since, the assessee charged 4%, TPO's adjustment was deleted. The Hon'ble Tribunal, relying on the decision in the case of Siva Industries and Holding, Tech Mahindra, Tata

Autocomp Systems, etc., also held LIBOR to be the most suitable benchmark for judging the ALP of a foreign currency loan.

Judgment

5. On appeal, the Hon'ble Delhi High Court held that Transfer pricing determination was not primarily undertaken to re-write the character and nature of the transaction, though this was permissible under certain exceptions. Chapter X and Transfer Pricing rules did not permit the Revenue authorities to step into the shoes of the assessee and decide whether or not a transaction should have been entered. It was for the assessee to take commercial decisions and decide how to conduct and carry on its business. It was not uncommon for manufacturers cum exporters to enter into distribution and marketing agreements with third parties or incorporate subsidiaries in different countries for undertaking marketing and distribution of the products. For this, the Hon'ble High Court relied on the decision in the case of ***CIT vs. EKL Appliances Limited (2012) 345 ITR 241 (Delhi).***

6. The assessee's act of incorporating a subsidiary in United States was done with the intention to expand and promote exports in the said country and was a legitimate business decision. The transaction of lending of money by the assessee to the subsidiary, should not be seen in isolation, but also for the purpose of maximizing returns, propelling growth and expanding market presence.

7. Transfer pricing was a mechanism to undo an attempt to shift profits and correct any under or over payment in a controlled transaction by ascertaining the fair market price. The first step in this exercise was to ascertain the international transaction, which in the present case was payment of interest on the money lent. The next step was to ascertain the functions performed under the international transaction by the respective AEs. Thereafter, the comparables have to be selected by undertaking a comparability analysis.

8. Rules 10B and 10C of the Income Tax Rules, 1962 indicate factors that ought to be taken into account for selection of the comparables, which necessarily includes the contractual terms of the transaction and how the risks, benefits and responsibilities are to be divided. The conditions prevailing in the market in which the respective parties to the transactions operate, including the geographical location and the size of the markets, the laws and Government orders in force, costs of labour and capital in the markets, overall economic development and level of competition, are all material and relevant aspects. If the aforesaid aspects were to be considered, it would be delusive not to accept and agree that as per the prevalent practice, subsidiary AEs are often incorporated to carry on distribution and marking function. This is not an unusual but common. Once this was accepted, then we cannot accept the reasoning given by the TPO that the transfer pricing adjustment could restructure the transaction to reflect maximum return that a party could have earned and this would be the yardstick or the benchmark for determining the interest payable by the subsidiary AE. This was not what Chapter X of the Act and Rules mandate and stipulate. The aforesaid provisions neither curtail the commercial freedom, nor do they bar or prohibit a legitimate transaction. They permit Transfer Pricing adjustment so as to bring to tax what would have been paid for the transaction in the same or similar comparable circumstances by an independent third party.

9. The comparison, therefore, has to be with comparables and not with what options or choices which were available to the assessed for earning income or maximizing returns. The Hon'ble High Court held that CUP being the Most Appropriate method was not disputed by the Revenue.

10. Further, the Hon'ble High Court did not agree with the finding recorded by the TPO that the comparable test to be applied was to ascertain what interest would have been earned by the assessee by advancing a loan to an unrelated party in India with a similar financial health as the taxpayer's subsidiary and held that the loan

to the subsidiary AE was not granted in India and was not to be repaid in Indian Rupee. The rate adopted of 14% by the TPO was therefore, not a comparable transaction.

11. While answering the question whether the interest rate prevailing in India should be applied, for the lender was an Indian company / assessee, or the lending rate prevalent in the United States should be applied, it held that a commonsensical and pragmatic reasoning ought to be applied. Thus it held that that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid and not on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates payable on currency specific loans / deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest. It further held that the PLR rate would not be applicable and should not be applied for determining the interest rate. PLR rates were not applicable to loans to be re-paid in foreign currency.

12. The Hon'ble High Court upheld order of the Hon'ble Tribunal and dismissed the Revenue's appeal.

IV. When no approval was received from the RBI, income with regard to fees for technical services payable to the foreign entities could not be said to have accrued to the foreign entity. Further, as per the DTAA with Germany, Singapore and U.K., U.S.A., fees for technical services could be taxed only in the year in which the same was paid.

DIT(IT) vs. Booz Allen and Hamilton (India) Ltd. & Co. Kg.USA (ITA Nos. 1332, 1380, 1381, 1383, 1384, 1398, 1478 of 2013) (Bombay High Court)

Assessment Year: 1998-99

Facts

1. Assessee, a foreign partnership firm established in Germany, had a branch office in India through which it rendered management and technical consultancy services. In connection with its projects in India, it availed services from various group entities, which was held to be fees for technical services. Further, the AO treated the Branch as agent of the foreign entities u/s 163 and assessed the above payments as fees for technical services as income of the foreign entities.

2. On Appeal, the learned CIT(A), rejected the contentions of the appellant company that since no approval was given by RBI, income could not accrue in the hands of the foreign entity and held that since an entry had been made in its books and also claimed deduction in P&L account of the Branch, income had accrued to the foreign entities. Further, learned CIT(A) also rejected the argument of the appellant company that since the amount was not paid to the foreign entities, the same could not be taxed by holding that word "paid" used in the relevant Article of the treaties dealing with "fees for technical services" was not used to denote actual payment of the same but the same was used in the sense of incurring a liability.

3. On appeal, the Hon'ble ITAT allowed the appeal of the Hon'ble ITAT, relying on the decisions of Hon'ble Bombay High Court in case of *CIT vs. Kirloskar Tractor Ltd. (231 ITR 849), CIT vs. John Fowler (India) Ltd. (239 ITR 312)* and in case of *Dorr-Oliver (India) Ltd. vs. CIT (234 ITR 723)* held that accrual of income takes place only on obtaining the necessary approval of RBI. Further, relying on the judgment of Hon'ble Bombay High Court in case of *DIT (International Taxation) vs. Siemens Aktiengesellschaft (I.T. Appeal No. 124 of 2010 dated 22nd Oct., 2012)*, it also held that amount could be taxed only on when the said amount was paid.

4. Aggrieved by the order, Revenue preferred appeal with the Hon'ble Bombay High Court.

Judgment

5. The Hon'ble High Court dismissed the appeal of the Revenue as the Revenue was not able to bring out any judgment contrary judgment to the judgment of the same court on which the Hon'ble ITAT had relied upon.

B] TRIBUNAL JUDGMENTS

V. Royalty – Section 9(1)(vi) and Article 12 of Model OECD Convention - Outright purchase of technical know-how could not be taxed as royalty and, therefore, provisions of section 195 were not applicable – In favour of the assessee

ITO vs Heubach Colour (P.) Ltd [2015] 54 taxmann.com 377 (Ahmedabad - Trib.)

Assessment Year : 2007-08

Facts

1. The assessee-company was in business of manufacturing and sale of colour pigments and fine chemicals. It acquired Avecia Business from 'CL', a non-resident company and paid certain sum to 'CL' claimed to be for the intangibles assets, trademarks and goodwill transferred to the assessee company.

2. The Assessing Officer held that payment was covered by section 9(1)(vi) and, therefore, assessee was required to deduct tax treating the payment as royalty.

3. On appeal, the Commissioner (Appeals) granted relief to assessee holding that purchase of technical knowhow could not be held as royalty and provision of section 195 was not applicable.

Decision

4. On appeal, the Tribunal held in favour of the assessee, relying on various decisions cited before it and held that finding of Commissioner (Appeals) could not be interfered with who has held that purchase of technical knowhow cannot be taxed as royalty and provisions of section 195 are not applicable.

Cases referred

i) Asia Satellite Telecommunications Co. Ltd. vs. DIT [2011] 332 ITR 340/197 Taxman 263/9 taxmann.com 168 (Delhi)

ii) CIT vs. Davy Ashmore India Ltd. [1991] 190 ITR 626 (Cal.)

iii) GE India Technology Centre (P.) Ltd. vs. CIT [2010] 327 ITR 456/193 Taxman 234/7 taxmann.com 18 (SC) and

iv) Deepak Fertilizers & Petrochemicals Corpn. Ltd. vs. DDIT (International Taxation) [2014] 63 SOT 111 (URO)/43 taxmann.com 132 (Pune)

VI. Payment of Insurance Survey Fees to Non-Resident Surveyors – Whether payment constitutes FTS u/s 9(1)(vii) – Application of Concept of "Make Available" – Held: Payments were not taxable as FTS – In favour of the Assessee

DDIT vs Bajaj Allianz General Insurance Co. Ltd. [2015] 55 taxmann.com 305 (Pune - Trib.)

Assessment Years : 2005-06 to 2009-10

Facts

1. The assessee was a joint venture between 'B' Limited, India and Allianz AG, Germany. The assessee was engaged in the business of general insurance and in terms thereof for the year under consideration it was engaged in Fire, Marine, Motor and Miscellaneous insurance businesses.

2. To settle overseas claims arising out of such policies, assessee appointed non-resident surveyors to assess the damages, so that the assessee could decide the amount to be compensated to the insured under such insurance contracts. Such surveys were carried out entirely outside India by the non-resident surveyors and

the assessee paid fee for their services, by direct remittances into their overseas bank accounts.

3. The Assessing Officer opined that the survey fee paid to the non-residence surveyors was taxable under section 9(1)(vii) since the services provided by the surveyors were covered within the meaning of 'fees for technical services'. The Assessing Officer also held the survey fee paid to non-resident surveyors as taxable under the respective Double Taxation Avoidance Agreements (DTAAs) which contained Articles for 'Fee for Technical Services (FTS)/Fee for included Services (FIS)'.

4. The Commissioner (Appeals) held that payment in question did not constitute either FTS or FIS in terms of the respective DTAAs and therefore, the assessee was not required to deduct tax at source. Further, the Commissioner (Appeals) also considered the application of Article relating to business profits of the relevant DTAAs and concluded that in view of the undisputed facts that the non-resident surveyors did not have any Permanent Establishment (PE) in India the payments made by the assessee to such parties were not taxable in India.

Decision

On appeal, the Tribunal held in favour of the assessee, as follows:

5. In the appellate proceedings, assessee submitted that in the assessee's own case for assessment year 2006-07, the Tribunal has considered the aspect of taxability of survey fees paid to surveyors of DTAAs countries with 'make available' clause and also payments to persons of non-DTAAs countries. The Tribunal had considered this aspect in the context of the disallowance made by the Assessing Officer by invoking section 40(a)(ia) on the ground that the requisite TDS was not deducted by the assessee on payments of survey fees to the non-resident surveyors.

6. The Tribunal considered the rival stands and came to conclude that the payments made to the non-resident surveyors of countries with DTAAs having 'make available' clause were not taxable as the non-resident surveyor did not make any technical know-how, etc. available to the assessee company. In coming to such conclusion, the Tribunal also referred to similar findings of the Dispute Resolution Panel (DRP) in assessee's own case for assessment year 2008-09.

7. Therefore, so far as the payments made to non-resident surveyors of countries with DTAAs having 'make available' clause in the Article on 'Fees for technical services', the Tribunal deleted the disallowance under section 40(a)(ia). Ostensibly, for the reason that there was no requirement to deduct tax at source on such payments. In so far as the present grounds of appeal for assessment year 2005-06 are concerned, the same relate to the payments made to surveyors in UK, Netherland, Singapore which are countries with whom there are DTAAs and their Article on 'Fees for technical services' have a 'make available' clause.

8. Therefore, in view of the decision of the Tribunal in the assessee's own case for assessment year 2006-07 and also the decision of the DRP in the assessee's own case for assessment year 2008-09, there is no error in the part of the Commissioner (Appeals) in allowing the relief to the assessee

9. For other assessment years, countries involved with whom DTAAs having specific 'make available' clause exists are United States of America, Canada, Australia and Portugal, and the dispute in such cases is covered by the aforesaid decision. Similarly, for the assessment years 2006-07, 2007-08, 2008-09 and 2009-10 payments also relate to Spain, Belgium, Israel countries with whom DTAAs contain an MFN clause, which results in applicability of the 'make available' condition. In relation to these countries also the DRP in the assessee's own case for assessment year 2008-09 has held that the same are not liable to be taxed in India as the non-resident surveyor has not made any

technical know-how etc. available to the assessee company. Thus, assessee was not required to deduct tax at source u/s 195 on such payment also.

10. For the aforesaid reason, which have not been controverted by the revenue, even on account of payments to make surveyors residing in such countries, the Commissioner (Appeals) made no mistake in holding that there was no justification for treating the assessee liable for deduction tax at source under section 195.

VII. Section 206AA vis-a-vis section 90(2) of the Act - Whether when TDS has been deducted on the strength of the beneficial provisions of the DTAAs, the provisions of section 206AA can be invoked by the Assessing Officer to insist on the tax deduction @ 20%, having regard to the overriding nature of the provisions of section 90(2) – Held: No; in favour of the assessee.

DDIT vs Serum Institute of India Ltd (2015-TII-50-ITAT-PUNE-INTL)

Assessment Year: 2011-12

Facts

1. The assessee is an Indian company. It was engaged in the business of manufacture and sale of vaccines, and it was a major exporter of the vaccines.

2. It had made payments to non-residents on account of interest, royalty and fee for technical services (FTS). The aforesaid payments were subject to withholding tax u/s. 195. The assessee deducted TDS on such payment in accordance with the tax rates provided in DTAAs with the respective countries. The tax rate so provided in the DTAAs was lower than the rate prescribed under the Act and therefore in terms of the provisions of section 90(2), the tax was deducted at source by applying the beneficial rate prescribed under the relevant DTAAs.

3. It was noted by the Revenue that on account of payment of royalty and fee for technical services in case of some of the non-residents, the recipients did not have PANs. As a consequence, Revenue treated such payments, as cases of 'short deduction' of tax in terms of the provisions of section 206AA. On the strength of section 206AA, Revenue treated payments to those non-residents who did not furnish the PAN as cases of 'short deduction' being difference between 20% and the actual tax rate on which tax was deducted in terms of the relevant DTAAs. As a consequence, demands were raised on the assessee for the short deduction of tax and also for interest u/s. 201(1A).

4. On appeal before CIT(A), assessee contended that the provisions of section 206AA were not applicable to payments made to non-residents. In support, assessee pointed out that provisions of section 139A(8) r.w. rule 114C(1) of the Income Tax Rules, 1962 prescribe that non-residents were not required to apply for PAN. According to the assessee, section 206AA prescribed that the recipient shall furnish PAN and such furnishing would be possible only where the recipient was required to obtain PAN under the relevant provisions. Thus, where the non-residents were not obliged to obtain a PAN, the requirement of furnishing the same in terms of section 206AA does not arise.

5. It was also pointed out that the tax rate applicable in terms of section 206AA cannot prevail over the tax rate prescribed in the relevant DTAAs, as the rates prescribed in the DTAAs were beneficial.

6. The CIT(A) did not agree with the assessee on the point that the non-residents recipient were not required to obtain PAN. So however, with respect to the second plea of the assessee, CIT(A) concurred with the assessee and held that section 206AA would override other provisions of the Act but not the provisions of section 90(2). Therefore, according to CIT(A), where the DTAAs provide for a tax rate lower than that prescribed in 206AA, the provisions of DTAAs shall prevail

and the provisions of section 206AA would not be applicable. Therefore, CIT(A) deleted the tax demand raised by the Revenue relatable to the difference between 20% and the actual tax rate provided by the DTAAs.

Decision

On appeal, the Tribunal held in favour of the assessee as under:

7. So far as the applicability of the scope/ rate of taxation with respect to the impugned payments make to the non-residents is concerned, no fault can be found with the rate of taxation invoked by the assessee based on the DTAAs, which prescribed for a beneficial rate of taxation. However, the case of the Revenue is that the tax deduction at source was required to be made at 20% in the absence of furnishing of PAN by the recipient non-residents, having regard to section 206AA.

8. In our considered opinion, it would be quite incorrect to say that though the charging section 4 and section 5 dealing with ascertainment of total income are subordinate to the principle enshrined in section 90(2) but the provisions of Chapter XVII-B governing tax deduction at source are not subordinate to section 90(2).

9. Section 206AA which is the centre of controversy before us is not a charging section but is a part of a procedural provisions dealing with collection and deduction of tax at source. The provisions of section 195 which casts a duty on the assessee to deduct TDS on payments to a non-resident cannot be looked upon as a charging provision.

10. In fact, in the context of section 195 also, SC in the case of ***CIT vs. Eli Lily & Co., 2009-TII-01-SC-INTL*** observed that the provisions of tax withholding i.e. section 195 would apply only to sums which are otherwise chargeable to tax under the Act. The SC in the case of ***GE India Technology Centre Pvt. Ltd. vs. CIT, 2010-TII-07-SC-INTL*** held that the provisions of DTAAs along with the sections 4, 5, 9, 90 & 91 are relevant while applying the provisions of tax deduction at source.

11. Therefore, in view of the aforesaid schematic interpretation of the Act, section 206AA cannot be understood to override the charging sections 4 and 5.

12. Thus, where section 90(2) of the Act provides that DTAAs override domestic law in cases where the provisions of DTAAs are more beneficial to the assessee and the same also overrides the charging sections 4 and 5 of the Act which, in turn, override the DTAAs provisions especially section 206AA of the Act which is the controversy before us.

13. Therefore, in our view, where the tax has been deducted on the strength of the beneficial provisions of section DTAAs, the provisions of section 206AA of the Act cannot be invoked by the Assessing Officer to insist on the tax deduction @ 20%, having regard to the overriding nature of the provisions of section 90(2). The CIT(A), in our view, correctly inferred that section 206AA does not override the provisions of section 90(2) and that in the impugned cases of payments made to non-residents, assessee correctly applied the rate of tax prescribed under the DTAAs and not as per section 206AA of the Act because the provisions of the DTAAs was more beneficial.

14. Thus, we hereby affirm the ultimate conclusion of the CIT(A) in deleting the tax demand relatable to difference between 20% and the actual tax rate on which tax was deducted by the assessee in terms of the relevant DTAAs. As a consequence, Revenue fails in its appeals. Resultantly, the captioned appeals of the Revenue are dismissed, as above.

VIII. India-Morocco DTAA – Payment of Legal Consultancy Fees for initiating and or prosecuting anti-counterfeiting proceedings – Applicability of Article 14: Independent Personnel Services" vs Applicability of Article 12 – Held:

Article 14 r/w Article 4 is applicable and that the payment was not taxable in the absence of Fixed Base in India – In Favour of the assessee

Kirloskar Proprietary Ltd. vs DCIT [2015] 54 taxmann.com 344 (Pune - Trib.)

Assessment Year : 2008-09

Facts

1. The assessee-company was engaged in the business of licensing, protection and defence of trademark.

2. The assessee paid a certain sum to Saba, a trademark and patent agent, on account of legal consultancy fees for initiating and prosecuting an anti-counterfeiting proceedings before the Tribunal of Commerce at Rabat (Morocco).

3. The Assessing Officer sought the explanation of the assessee why the said payment should not be disallowed under section 40(a)(i).

4. The assessee submitted that as per the provisions of section 195, for deducting the tax at source, it is necessary that the income has to accrue and arise in India but in the instant case there was no accrual of income and thus, the assessee was not bound to deduct tax at source from said payment.

5. The Assessing Officer concluded that though the services were rendered outside India, but since services were used in India, income of non-resident was taxable in India. The Assessing Officer also referred to Article 12 of DTAA between India and Morocco which was in respect of royalty and fees for technical services and its treatment in the contracting State and finally made the disallowance by invoking the provisions of section 40(a)(i) read with section 195.

Decision

On appeal, the Tribunal held in favour of the assessee as follows:

6. As per the evidence on record it is clear that Saba was involved in filing the lawsuit in the Tribunal of Commerce at Rabat (Morocco) claiming that Nice Moteurs be ordered to cancel their infringing trademark "KARLOS*CAR", and to discontinue any misuse. As per the documentary evidence in the nature of the communication and the bills/invoices placed, it was to be held that the nature of services rendered by the Saba for which the assessee has paid is towards rendering the legal services.

7. As regards the issue about the applicability of Article 12 or 14 towards said services, the assessee submitted that as per the DTAA between India and Morocco, there is a specific reference in Article 14 in respect of the personal services which includes the services of lawyers.

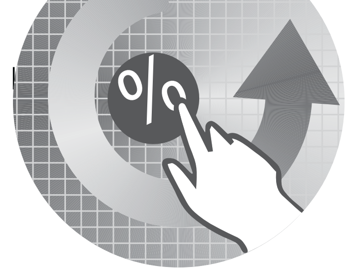
8. The definition of Article 4 of the said treaty is wide enough to cover any person who is liable to tax by reason of his domicile, residence, place of management etc. Article 4(3) provides in respect of a person other than an individual and condition is that income will be taxable where a place of effective management is situated. Certainly there is no ambiguity in respect of the term 'resident' as used in Article 14 that it is not necessary that the independent personal services are confined to the individual only.

9. Admittedly, in the present case Saba was not having any fixed base in India, condition of Article 14 was not fulfilled and Saba which was a resident of Morocco cannot be taxed in India in respect of fees paid by the assessee-company for initiating and prosecuting the legal proceedings in the Morocco.

Cases referred

i) ***Cedrick Jordan Da Silva vs. ITO (Intl. Taxation) [2014] 62 SOT 239/[2013] 40 taxmann.com 477 (Panaji)***

ii) ***IMP Power Ltd. vs. ITO [2006] 9 SOT 156 (Mum.)***



CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES
Service Tax – Statute Update

Service Tax & CENVAT Credit amendments in the Finance Bill 2015 as passed by the Parliament

1. Amendments to Service tax provisions relating to penalties

(The changes are given in bold in the "amended Finance Bill 2015")

Original Finance Bill, 2015	Amended Finance Bill, 2015
S. 76 Penalty for failure to pay service tax	**S.76 Penalty for failure to pay service tax**
76(1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax:	76. (1) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten percent of the amount of such service tax:
Provided that where such service tax and interest is paid within a period of thirty days of	Provided that where service tax and interest is paid within a period of thirty days of-
(i) the date of service of notice under sub-section (1) of section 73, no penalty shall be payable;	(i) the date of service of notice under sub-section (1) section 73, no penalty shall be payable **and proceedings in respect of such service tax and interest shall be deemed to have been concluded;**

Original Finance Bill, 2015	Amended Finance Bill, 2015
(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period	(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the penalty imposed in that order, only if such reduced penalty is also paid within such period.
(2) Where the Commissioner (Appeals), the Appellate Tribunal or, the court, as the case may be, modifies the service tax determined under sub-section (2) of section 73, then, the amount of penalty payable thereon, shall also stand modified accordingly, and the benefit of reduced penalty under the proviso to sub-section (1) shall be available if such service tax, interest and reduced penalty so payable, is paid within a period of thirty days from the date of receipt of the order by which such modification is made	(2) **Where the amount of penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the Court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the reduced penalty is payable under clause (ii) of the proviso to sub-section (1) in relation to such increased amount of penalty shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the Court, as the case may be.**
S.78. Penalty for failure to pay service tax for reasons of fraud, etc.	**S.78. Penalty for failure to pay service tax reasons of fraud, etc.**
78(1) Where any service tax has not been levied or paid, or has been short-levied or short paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent of the amount of such service tax:	78(1) Where any service tax has not been levied or paid, or has been short-levied or short paid, or erroneously refunded, by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax:
Provided that where such service tax and interest is paid within a period of thirty days of -	**Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 up to the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent of the service tax so determined.** Provided that where service tax and interest is paid within a period of thirty days of -

Original Finance Bill, 2015	Amended Finance Bill, 2015
(i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent of such service tax;	(i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent of such service tax **and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;**
(ii) the date of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent of the service tax so determined:	(ii) the date of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined:
Provided further that the benefit of reduced penalty under the first proviso shall be available only if the amount of such reduced penalty is also paid within such period.	Provided further that the benefit of reduced penalty under the second proviso shall be available only if the amount of such reduced penalty is also paid within such period. **Explanation.— For the purposes of this sub-section, "specified records" means records including computerized data as are required to be maintained by an assessee in accordance with any law for the time being in force or where there is no such requirement, the invoices recorded by the assessee in the books of account shall be considered as the specified records.**
(2) Where the Commissioner (Appeals), the Appellate Tribunal or the Court, as the case may be, modifies the service tax determined under sub-section (2) of section 73, then, the amount of penalty payable thereon, shall also stand modified accordingly, and the benefit of reduced penalty under the first proviso to sub-section (1) shall be available if such service tax, interest and reduced penalty so payable, is paid within a period of thirty days from the date of receipt of the order by which such modification is made.	(2) Where the Commissioner (Appeals), the Appellate Tribunal or the court, as the case may be, modifies the amount of service tax determined under sub-section (2) to section 73, then, the amount of penalty payable under sub-section (1) and the interest payable thereon under section 75 shall stand modified accordingly, and after taking into account the amount of service tax so modified, the person who is liable to pay such amount of service tax, shall also be liable to pay the amount of penalty and interest so modified.
	(3) Where the amount of service tax or penalty is increased by the Commissioner (Appeals), the Appellate Tribunal or the Court, as the case may be, over and above the amount as determined under sub-section (2) of section 73, the time within which the interest and the reduced penalty is payable under clause (ii) of the second proviso to sub-section (1) in

Original Finance Bill, 2015	Amended Finance Bill, 2015
	relation to such increased amount of service tax shall be counted from the date of the order of the Commissioner (Appeals), the Appellate Tribunal or the Court, as the case may be.
Transitory Provision - S. 78B(1) Where, in any case, —	Transitory Provision – S.78B(1) Where, in any case, —
(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or (b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,	(a) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and no notice has been served under sub-section (1) of section 73 or under the proviso thereto, before the date on which the Finance Bill, 2015 receives the assent of the President; or (b) service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded and a notice has been served under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73, before the date on which the Finance Bill, 2015 receives the assent of the President,
then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable.	then, in respect of such cases, the provisions of section 76 or section 78, as the case may be, as amended by the Finance Act, 2015 shall be applicable.
(2) Notwithstanding anything contained in sub-section (1), in respect of cases falling under the provisions of sub-section (4A) of section 73 as was in force prior to the date of coming into force of the Finance Act, 2015, where no notice under the proviso to sub-section (1) of section 73 has been served on any person or, where so served, no order has been passed under sub-section (2) of section 73, before such date the penalty leviable shall not exceed fifty percent of the service tax.	2) In cases where show cause notice has been issued under sub-section (1) of section 73 or under the proviso thereto, but no order has been passed under sub-section (2) of section 73 before the date on which the Finance Bill, 2015 receives the assent of the President, **the period of thirty days for the purpose of closure of proceedings on the payment of service tax and interest under clause (i) of the proviso to sub-section (1) of section 76 or on the payment of service tax, interest and penalty under clause (i) of the second proviso to sub-section (1) of section 78, shall be counted from the date on which the Finance Bill, 2015 receives the assent of the President.**

Author's note - Important changes to be noted

1. The proceedings in respect of such service tax, interest and penalty **shall be deemed to be completed** in case of both the provisions if the penalty is paid, a) for penalty u/s. 76, if the penalty of 10% is paid within 30 days from the date of service of notice [S73(1)]; b) for penalty u/s. 78, if the penalty of 15% is paid within 30 days from the date of service to the notice [S73(1)] or 25% within 30 days from

the date of receipt of the order of CEO [S73(2)], as the case may be.

2. In case of penalty u/s. 76 the provision as regards to modification of an order in any Appellate proceedings has been now restricted to increase in amount of penalty and the benefit of modification by way of reduction in penalty amount is taken away.

3. In the transitory provisions u/s. 78B the show cause notice is issued but no order has been passed before the date of enactment of the Finance Bill, 2015, the benefit of reduced penalty u/s. 76 and S. 78 can be availed by the assessee by paying the same within 30 days from the date of enactment of the Finance Bill, 2015.

Note:

Readers must note that these amendments to the Finance Bill, 2015 are introduced and passed by the Parliament. The Finance Bill, 2015 with above amendments shall come into force from the date of receipt of assent of the President.

2. Utilization of Education Cess and Secondary & Higher Secondary Education Cess by manufacturer of final products upon withdrawal of these Cess on inputs and capital goods from 1-3-2015

Rule 3(7)(b) of the CENVAT Credit Rules, 2004 is amended to allow utilization of following credits by manufacturer for discharging basic excise duty liability:

(a) Education Cess and Secondary & Higher Education Cess on inputs or capital goods **received in** the factory of manufacturer on or after the 1st March, 2015;

(b) Balance 50% Education Cess and Secondary & Higher Education Cess on capital goods **received in** the factory of manufacturer in the financial year 2014-15; and

(c) Education Cess and Secondary & Higher Education Cess on input services **received by** the manufacturer on or after the 1st March, 2015.

[Notification No.12/2015-Central Excise (N.T.), dated 30-4-2015]

Author's note

It may be noted that this Notification only addresses the issue of utilization of CENVAT credit of Education Cess and Secondary & Higher Secondary Education Cess when such Cess is levied up to 28-2-2015 but the inputs, inputs service and capital goods is received in the premises of the manufacturer after 1st March, 2015.

3. Further Exemptions for specified insurance services

Mega Exemption Notification No. 25/2012 - ST dated 20th June 2012 has been further amended to exempt services in respect of following policies:

(a) Pradhan Mantri Suraksha Bima Yojana

(b) Pradhan Mantri Jeevan Jyoti Bima Yojana

(c) Pradhan Mantri Jan Dhan Yojana

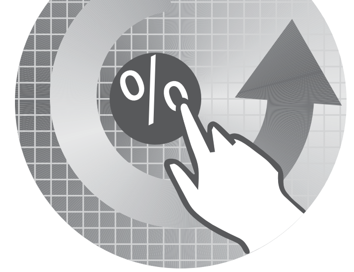
(d) Atal Pension Yojana

[Notification No. 12/2015-ST, dated 30-4-2015]

4. Clarification on applicability of revised rate of service tax

CBEC has clarified that revised rate of service tax will be applicable from date to be notified by the Central Government after the enactment of the Finance Bill, 2015. It is also clarified that till the time revised rate comes into effect, the 'Education Cess' and 'Secondary and Higher Education Cess' will continue to be levied in Service Tax." It is further clarified that effective rate of service tax on services by restaurants, eating joints or mess, etc. will remain same till revised service tax rate come into force from date to be notified after enactment.

(Circular 183/02/2015–ST dated 10-4-2015)



CA Bharat Shemlani

INDIRECT TAXES

Service Tax – Case Law Update

1. Services

Rent-a-cab Scheme Service

1.1 CC&CE, Meerut-I vs. R. S. Travels 2015 (38) STR 3 (Uttarakhand)

The High Court in this case held that, when there is only a contract to hire and there is no renting of cab, there is no question of being assessed in respect of services rendered in connection with rent-a-cab as there is no renting at all.

Works Contract Service

1.2 Ahluwalia Contracts (India) Ltd. vs. CST, New Delhi 2015 (38) STR 38 (Tri-Del.)

The Tribunal in this case held as under;

- Value of free supplies by service recipient to service provider is not required to be included in gross amount charged for the purpose of claiming abatement benefit under Notification Nos. 15/2004-ST, 18/2005-ST and 1/2006-ST.
- Re-classification of service is not legally barred if it is more specifically covered under new or newly carved out service and if the services rendered, more specifically get covered under definition of WCS w.e.f. 1-6-2007, then it is classifiable thereunder.
- Construction of flats for Delhi Development Authority, who allotted such flats to individuals and not meant for themselves or for its employees is taxable service.
- Hospitals constructed for charitable organizations do not make hospitals ***per se*** non-commercial as charitable organizations are not prevented from carrying out commercial activity and charge patients for medical services.

1.3 Larsen & Toubro Ltd. vs. CST, Delhi 2015 (38) STR 266 (Tri.-LB)

The Larger Bench in this case held that, service element in composite (works) contract involving transfer of property in goods and rendition of service, where such services are classifiable under Commercial or Industrial Construction, Construction of Complex or Erection, Commissioning or Installation are subject to levy of service tax even prior to 1-6-2007, when Works Contract service was notified.

Technical Inspection and Certification Service

1.4 Antony Garages Pvt. Ltd. vs. CCE, Raigad 2015 (38) STR 49 (Tri-Mumbai)

The appellant in this case engaged in washing, preparing vehicle for display, PDI w/o, O/C, PDI with O/C, PT, waxing, rewaxing, removing

& redoing PT refurbishing etc. by job workers as per data sheets given by principal manufacturer which also includes defects and rectificatory actions under various heads namely leakages, electrical, mechanicals etc. The department sought to tax them under Technical Inspection and Certification Service. The Tribunal held that, if revenue's contention is accepted then every motor garage will become a technical inspection and certification agency. Definition of technical inspection cannot be read to mean that any checks on functionality, safety, however it refers to certain standard laid down in some statute or some guidelines such as standards in Motor Vehicles Act, Food Safety Standard etc.

It is further held that, open land given to principal manufacturer to park vehicles received from various locations for general checking and inspection by appellant is not liable to Storage and Warehousing Service as management and safe-keeping of vehicles is responsibility of principal manufacturer and even payments for security, telephone expenses and diesel incurred by principal manufacturer only.

Outdoor Caterer Service

1.5 Masoji Caterers vs. CCE, Raipur-I 2015 (38) STR 69 (Tri.-Del.)

The appellant in this case, provided canteen service in the premises of service recipient. The Tribunal held that, since appellant is providing snacks and foods, therefore liable to pay service tax under Outdoor Caterer Service. Further, they were under *bona fide* belief that they were not liable to pay service tax, hence set aside the penalty.

Renting of Immovable Property Service

1.6 Vidarbha Cricket Association vs. CCE, Nagpur 2015 (38) STR 99 (Tri.-Mumbai)

The Tribunal in majority order held as under:

- Payments collected towards lease and rent from various shop owners situated in stadium is liable to service tax under Renting of Immovable Property Service.
- Stadium rented out temporarily for conduct of social, official or business function is liable to service tax under Mandap Keeper Service.
- Consideration received for staging the match, exclusive rights to use the advertising sites to sell and exhibit advertising of any kind is liable to service tax under sale of space or time for advertisement.
- Membership fees received for running a club for promoting cricket is not charitable in nature and therefore liable to service tax under Club or Association Service.
- Conducting and telecast of cricket tournament is not in relation to any business or commerce and hence TV rights subsidy, BCCI tournament receipts, infrastructure subsidy etc. is not liable to service tax under BSS.

Business Auxiliary Service

1.7 Hindustan Petroleum Corporation Ltd. vs. CCE, Mumbai 2015 (38) STR 131(Tri.-Mumbai)

The appellant in this case entered into an agreement with manufacturers of hoses, LPG stove etc. for marketing, business promotion, availing HPCL's distribution network, providing support by HPCL, co-branding etc. for enhancing customer base in respect of said goods. The appellant contended that, they merely endorse safety requirements under various regulations and not liable to service tax. The Tribunal observed that, the appellant not only promoted sale of goods of manufacturer by making available their marketing/distributor network but also added their brand value to products which attract customers to buy the said products. Therefore it is held that, the appellant

has provided BAS to various manufacturers. The Tribunal also upheld invocation of extended period of limitation in view of facts of the case.

1.8 C. J. Shah & Co. vs. CCE, Rajkot 2015 (38) STR 152(Tri.-Ahmd.)

The department in this case raised demand on debit notes towards expenses incurred for Banking, L/C charges etc. The Tribunal held that, merely because price split and debit notes raised, transaction not to be converted into service and therefore not liable to service tax. It is further held that, DGCEI has concluded the case after verifying the documents hence extended period of limitation cannot be invoked in the preset case.

Commercial Training or Coaching Service

1.9 Balaji Society vs. CCE, Pune-III 2015 (38) STR 139 (Tri.-Mumbai)

The appellant in this case provided courses in Information Technology, Marketing, Personnel Management, HRD etc. The Tribunal held that since the Institute is not affiliated to any University or approved by any Statutory Authority or under any other law, hence liable to service tax under CTC service. It is further held that, courses conducted by the appellant cannot be qualified as vocational courses entitled for benefit of exemption under Notification No. 9/2003-ST and 24/2004-ST.

Storage and Warehousing Service

1.10 Inox Air Products Ltd. vs. CCE, Raigad 2015 (38) STR 179(Tri.-Mumbai)

The appellant manufacturer and seller of liquid oxygen, nitrogen etc. provided storage tanks to customers for storing the goods. The Tribunal held that, the appellant has no control on gas in storage tank and whole responsibility was of buyer only. It is held that, as appellant was not responsible for security of goods hence, they are not liable to service tax under category of Storage and Warehousing Service.

Also refer to *Inox Air Products Ltd. vs. CCE, Nagpur 2015 (38) STR 191 (Tri.-Mumbai)*

Commercial or Industrial Construction Service

1.11 Afcons Infrastructure Ltd. vs. CCE, Mumbai-II 2015 (38) STR 194 (Tri.-Mumbai)

The appellant in this case provided construction services to metro railways. The Tribunal held that, there is no distinction between monorail or metro rail or any other kind of rail or between Government railway and non-Government railway. The expression 'railways' used in Notification No. 12/2012-ST has to be given its widest meaning to include all types of railways and railway lines.

Management Consultancy Service

1.12 Konkan Synthetic Fibres vs. CCE, Raigad 2015 (38) STR 403 (Tri.-Mumbai)

The appellant in this case entered into an agreement for providing general support service, operation service, personnel service and secretarial service and also operational and personal facilities. The Tribunal held that very nomenclature of Management Consultancy Service indicates that it has nothing to do with provisions of facilities such as water, effluent treatment etc. the expenditure of which is all reimbursed to the appellant hence demand is required to be set aside.

Club or Association Service

1.13 Matunga Gymkhana vs. CST, Mumbai 2015 (38) STR 407 (Tri.-Mumbai)

The appellant in this case run a club for their members where activities relating to yoga, sports etc. carried out. The Tribunal held that, relying on decision in Ranchi Club Ltd., on application of principle of mutuality services provided to members do not fall within the ambit of Club or Association Service.

In case of other appellants, who where co-operative housing societies, collecting charges from members/shareholders for managing and maintaining land and building belonging to the society, it is held that they are also not liable under Club or Association Service.

2. Interest/Penalties/Others

2.1 Agrawal Construction vs. CCE&ST, Nagpur 2015 (38) STR 16 (Bom.)

The High Court in this case held that the appellate authority i.e. Commissioner of Appeals does not have authority to condone the delay in filing of appeal beyond the period prescribed under the relevant section.

2.2 Barclays Technology Central India (P) Ltd. vs. CCE, Pune-III 2015 (38) STR 35 (Tri-Mumbai)

The Tribunal in this case held that, section 26(i)(e) of SEZ Act, 2005 provides exemption to all services imported into SEZ to carry on authorised operations in SEZ. Section 51 gives overriding effect over other Acts and Notification No. 15/2009-ST cannot nullify overriding provisions of section 51. Service provider if pays service tax on services provided to an SEZ unit, recipient is bound to get refund unless assessment at end of service provider is re-opened and refund given to service provider.

2.3 Sankhla Udyog vs. CCE&ST, Jaipur 2015 (38) STR 62 (Tri.-Del.)

The adjudicating authority in this case stated that there was interpretation of law involved and he extended the benefit of section 80 of FA, 1994 but confirmed the demand for extended period. The Tribunal held that, the ingredients required for invoking extended period not present and there is not word in entire adjudication order as to how extended period is invocable. Hence demand for longer period of limitation is required to be set aside.

2.4 CKP Mandal vs. CST, Mumbai-II 2015 (38) STR 73 (Tri.-Mumbai)

The appellant in this case paid service tax on persuasion by Department without receipt of assessment order/adjudication order, however made request for refund within 3 months from the date of payment of duty. The Tribunal held that, there was no demand made under law by a demand or order and tax collected was not payable at all hence appellant entitled to refund along with interest.

2.5 CCE&ST, Bhavnagar vs. HK Dave Ltd. 2015 (38) STR 77 (Tri.-Ahmd.)

The assessee in this case claimed refund of amount paid during investigation after winning the appeal before CESTAT on merits. The Tribunal observed that, the action of assessee by contesting issue on merits itself constitutes a case of deemed protest and therefore no time limit as provided in section 11B is applicable. The amount paid is to be treated as deposit and not payment of duty.

2.6 CST, Chennai vs. Lawson Travel & Tours (I) Pvt. Ltd. 2015 (38) STR 227 (Mad.)

The assessee in this case could not pay service tax on time due to financial crisis because of criminal breach of trust committed by their sub-agent however, paid service tax voluntarily at the time of investigation prior to issuance of show cause notice. The High Court held that there is reasonable cause under section 80 for non-imposition of penalty.

2.7 CCE, Lucknow vs. Mahendra Engineering Ltd. 2015 (38) STR 233 (All.)

The High Court in this case held that, deduction for cost of material such as transformer oil etc. replaced for repair of transformer under Notification No. 12/2003-ST is admissible.

Aslo refer to *Samtech Industries vs. CCE, Kanpur 2015 (38) STR 240 (Tri.-Del.)*

3. CENVAT Credit

3.1 Palmtech Institutions India Pvt. Ltd. vs. CCE&ST, Jaipur 2015 (38) STR 54 (Tri-Del.)

The appellant in this case availed CENVAT credit on outdoor catering and mandap keeper services used for providing commercial training and coaching service. The Tribunal observed that, there is nothing on record to show whether any expenses were recovered by appellant from students and the appellant has not collected any money from students as basically it was felicitation-cum-promotional event. It is held that, input service credit has been rightly availed by appellant.

3.2 Inox Air Products Ltd. vs. CCE, Raigad 2015 (38) STR 79 (Tri.-Mumbai)

The department in this case denied credit availed on invoices which were either in the name of Head Office or in the name of assessee's other unit at Thane. The Tribunal observed that, appellant have nine units where same product is manufactured and there is no doubt about nexus of input and output service. It is held that, service provided by CHA has to be in the name of Head Office, where clearance of goods through Customs will be centralized and hence credit is allowable.

3.3 CCCE&ST Goa vs. Ratio Pharma India P. Ltd. 2015 (38) STR 83 (Tri.-Mumbai)

The Tribunal in this case referred following question to Larger Bench:

- What is relevant date for deciding limitation period of one year under clause 6 of Appendix to Notification No. 5/2006-CE(NT) read with Rule 5 of CCR, 2004?

- Whether it is (i) date of export of service; or (ii) date of export invoice; or (iii) date of receipt of foreign exchange, part or full or advance; or (iv) date when service has been exported and foreign exchange has been received.

3.4 Liugong Indian Pvt. Ltd. vs. CCE & ST Indore 2015(38) STR 96 (Tri.-Del.)

The Tribunal in this case held that, services used for setting up of factory to be treated as input service eligible for CENVAT credit prior to amendment of Rule 2(l) of CCR, 2004 omitting the words 'setting up' from the ambit of input service w.e.f. 1-4-2011.

3.5 Hindustan Coca Cola Beverages Pvt. Ltd. vs. CCE, Nashik 2015 (38) STR 129 (Tri-Mumbai)

The department in this case denied credit of service tax paid on outdoor catering services contending that said services are primarily used for personal use or consumption of employees and therefore excluded from the definition of input service. The Tribunal held that, cost of outdoor catering service used in relation to business activities form part of cost of final product and hence admittedly borne by appellant and not employees and therefore CENVAT credit is not deniable.

3.6 Tata Management Training Centre vs. CCE, Pune-III 2015 (38) STR 157 (Tri.-Mumbai)

The appellant engaged in providing training or coaching service, management consultancy service and convention service, claimed CENVAT credit of service tax paid on brokers' services for purchase/lease of flats or residential accommodation for faculties. The Tribunal held that expenses incurred related to output service of providing training and it cannot be provided without faculty being available hence, credit is allowed.

3.7 Willis Processing Services (I) Pvt. Ltd. vs. CCE, Mumbai-II 2015 (38) STR 169 (Tri.-Mumbai)

The Tribunal in this case allowed CENVAT credit of service tax paid on club house services availed for holding meeting with foreign delegates and event management services availed for training of employees as they are pertaining to business

of export service and consequently allowed the refund of the same.

3.8 Novozymes South Asia Pvt. Ltd. vs. CCE, Bangalore 2015 (38) STR 204 (Tri.-Bang.)

The appellant in this case availed CENVAT credit against bill raised by commission agent. The Tribunal observed that, as per agreement said commission agent procuring orders, soliciting customers and promoting products of assessee which are sales promotion activity hence, to be treated as input service.

3.9 Gammon India Ltd. vs. CCE&ST, Vadodara 2015 (38) STR 211 (Tri.-Ahmd.)

The appellant in this case claimed CENVAT credit on an earlier date on the basis of Cenvatable documents for which no credit was taken by appellant when CENVAT credit register was verified by visiting audit officers. The Tribunal held that, appellant cannot take credit in the CENVAT account on a date earlier than the visit of audit officers and if any credit is missed out then same can be taken only after following prescribed procedure and not on any date as per appellant choice by modifying records at will. The penalties levied under sections 76 & 78 set aside by invoking provisions under section 80.

3.10 Rathi Daga vs. CCE, Nashik 2015 (38) STR 213 (Tri.-Mumbai)

The appellant in this case claimed CENVAT credit on all services used for providing taxable and exempted services without maintaining separate accounts. The department contended that, appellant is liable to pay 8%/6% of value of exempted service as they have not followed the provisions of Rule 6(3)/(3A). The Tribunal observed that, proportionate amount of ` 927/- attributable to exempt service has been paid by the appellant before issue of SCN and held that it would be too harsh to enforce payment of ` 24,194/- being 8%/6% of value of exempt service because of non-payment of ` 927/- on time as per the provision of Rule 6(3)(3A). It is further held that, no assessee would intentionally evade payment of ` 927/- hence demand is not justified.

3.11 Rathi Daga vs. CCE, Nashik 2015 (38) STR 213 (Tri.-Mumbai)

The Tribunal in this case allowed CENVAT credit of service paid on construction service rendered for fabrication/erection and labour charges for construction of temporary storage shed for cement, steel and other construction material and also for cutting of shrubs, vegetation etc as the said services qualifies as input service.

3.12 CST, Mumbai-II vs. J. P. Morgan Services India Pvt. Ltd. 2015 (38) STR 410 (Tri.-Mumbai)

The Tribunal in this case held as under;

- All input services used for modernization, renovation or repair to office premises are input services.
- Advertising for manpower recruitment is also input service.
- Service of supply of food whose expenditure is made by employees is not input service.
- There is no restriction in availing CENVAT credit before registration is granted.

3.13 Mawana Sugars Ltd. vs. CCE&ST, LTU, Delhi 2015 (38) STR 410 (Tri.-Mumbai)

The Tribunal in this case held that, manpower supply services used for cleaning of the yard within sugar mill, weighment of sugarcane and its unloading at factory and care area survey and educating farmers etc. are input services and has to be treated as having nexus with manufacturing business of appellant.

Janak C. Pandya, *Company Secretary*

CORPORATE LAWS
Company Law Update

Case Law #1

[2015] 189 Comp Case 515 (CLB)

[Before the Company Law Board – New Delhi Bench]

ARG Auto Components P. Ltd vs. Atlas Pet Plas Industries Ltd.

Section 111A of the Companies Act gives jurisdiction to the CLB for rectification of register of members only in case of transfer or transmission of shares, whereas section 111 which applies to a private company, does not mention that rectification is restricted to only transfer or transmission of shares.

Brief facts

This petition was filed under section 111 read with sections 402 and 403 of the Companies Act, 1956 for the rectification of the Register of Members.

The petition provides the following facts.

1. Petitioner had entered into an agreement with the respondent company for purchase of industrial plot owned by the respondent company.
2. Petitioner had paid an earnest money of ` 25 lakhs to the respondent company.
3. The above payment of earnest money has been mentioned in the agreement.
4. Due to some disputes, petitioner had filed the civil petition against the respondent.
5. At the time of initiating the process under the Companies Act, petitioner observed from the records of the MCA that record shows the petitioner as shareholder holding 2,00,000 equity shares for ` 20 lakhs.
6. Petitioner claimed that it had never agreed to become a member/share holder of the respondent company.
7. Petitioner claims that for saving itself from civil suit for earnest money, respondent company has shown the issuance of shares against the earnest money.

Due to the above reason, the petitioner prays for the following.

1. To set aside the allotment of shares; and
2. To rectify the register of members by deleting the name of the petitioner as member as same has been wrongly shown entered into.

In reply, respondent company has denied all allegations as false; however, it did not

submit any documents as to how the petitioner became a member of the company.

On hearing, the respondent counsel did not make any submission and informed the bench that no instruction has been received from the company.

Judgments and reasoning

CLB has rejected the petition on a legal ground that CLB has no jurisdiction under section 111A to go beyond the transfer and transmission of share. CLB has no power to say that allotment is valid or invalid.

CLB has observed that petitioner has mentioned wrong section for relief as the respondent company is a public limited company, instead of section 111, section 111A applies to it. CLB further noted that mentioning wrong provision of law is not fatal to the case.

Upon perusal of the provisions of section 111A, CLB has observed that the allegation of the petitioner is related to illegally allotment of shares and therefore sought for the rectification of register. CLB further observed that section 111A is related to rectification of register on account of transfer of shares and not on illegal allotment of shares. It also observed that while section 111(4) provides for rectification of register but does not provide that same is only on account of transfer of shares, whereas heading of section 111A is only for rectification due to transfer of shares.

Case Law# 2

[2015] 189 Comp Case 488 (T & AP)
[In the Telangana And Andhra Pradesh High Court]
Goutham Enterprises vs. ICATCH Communications India Ltd.

As per provisions of section 290 of the Companies Act, 1956, a director is always entitled to represent the company and such acts are recognized as legal and valid. Further, an order of winding up of a company is discretionary and is not automatic. The court will consider the share holder and creditor wishes and give greater weight to the views of the creditor.

Brief facts

This company petition has been filed for the winding up of the respondent company. As per petition, the respondent is a public limited company. On behalf of the respondent company, petitioner has undertaken the execution of works under different works order and on different dates. Petitioner has completed one of the works on behalf of the respondent company. However, even after the completion of work, responded did not pay to the petitioner. Petitioner had sent a statutory notice to the respondent for the payment of dues with interest. As, respondent did not pay after receipt of notice, this petition has been filed. The court has sent notice to the respondent company but did not receive any response. Due to this, after due completion of all processes, Court has ordered for winding up of the respondent company and directed the petitioner to advertise the said winding up in newspaper.

At this stage, respondent has filed this petition for set aside the exparte order for winding up order and permit to file counteraffidavit. As allowed by the court, on respective filings and counter filings by both the parties, the following issue arises.

1. Due to lack of proper authorization, whether the counteraffidavit filed by the one of the directors of the respondent company and evidence thereof are liable to eschewed?

2. Whether non-payment of debt by respondent is *bona fide* and that if not, is respondent is liable for wound up?

Judgments and reasoning

Court has rejected the both the contentions of the petitioner and dismissed the petition for winding up of the respondent company.

With regards to question on validity of authorization, from petitioner side, relying on the judgment of the Supreme Court in ***State Bank of Travancore vs. Kingston Computers (I) Pvt. Ltd., [2011] 163 Comp Cas 37 (SC); [2011] 2 Comp LJ 473(SC)*** submitted that for filing counter affidavit or evidence by body corporate, person filing the same must have authorization. In this case, Supreme Court has observed that firstly, there is no evidence that the person who has signed the verification affidavit is a director of the company. Further, authority granted by the CEO in such favour of such person is also not valid in absence of resolution of the board authorizing the CEO to deleting the power to CEO to authorize any other person to sign affidavit. The court has also analysis the Rule 21 of the court rules to requirement of authorization for filing petition or pleadings or evidence by a company. As per said rule, a director, secretary or other principal officer of a body corporate shall file an affidavit verifying such petition. In certain case, court may allow other duly authorized person to make and file petition. However, such restriction has not been provided in case of filing pleadings and adducing evidence on behalf of the respondent. Court has further observed that said counteraffidavit has been filed by the one of the director and thus satisfied the requirement of rule 21. Court has also observed that as per provisions of section 290 of the Companies Act, 1956, a director is always entitled to represent the company and such acts are recognized as legal and valid.

On question of winding up order, the following observation is made.

a. Under sections 433 and 439 of the Act, court is not meant to exercise power for recovery of money.

b. Company court will not force a debtor to pay a *bona fide* disputed debt, but if it is convinced that same is not bona fide, then it can order winding up.

c. Court has also looked in the judgments in the case of ***Madhusudan Gordhandas and Co. vs. Madhu Woollen Industries P. Ltd. [1971] 3 SCC 632, Amalgamated Commercial Traders P. Ltd vs. A.C.K. Krishnaswami [1965] 35 Comp Cas 456 (SC); Vijay Industries vs. NATL Technologies Ltd. [2009] 147 Comp Cas 490 (SC)*** etc.

d. A petition presented for winding up but more for exert pressure to pay the ***bona fide*** disputed debt is liable to be dismissed.

e. Solvency is not a stand -alone ground and it is relevant to test whether denial of debt is bona fide.

f. Dispute on amount of debt and not on liability, then court can order winding up.

g. For winding up, court will consider the wishes of the share holder and creditors and attach greater weight to the views of the creditors.

Court after reviewing all evidences from both the sides and come to the conclusion that there is a serious dispute as to the quality of work executed by the petitioner and amount payable. Court also observed that respondent is seriously challenging the claim and even file a suit for damages. Thus,. Court has rejected the petition for winding up of the respondent company.

CA Mayur Nayak, CA Natwar Thakrar &
CA Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Notifications and Circulars issued by RBI and Press Notes by DIPP:-

1. Export of Goods and Services – Project Exports

With a view to further liberalize the provisions and as the Working Group structure has been dismantled, RBI has withdrawn the limit of USD 20 million for Buyer's credit which may be extended to foreign buyers in connection with export of goods on deferred payment terms and turnkey projects from India.

Memorandum of Instructions on Project and Service Exports (PEM) has also been revised accordingly.

(A.P. (DIR Series) Circular No. 93 dated 1st April, 2015)

The above change in line with the policy of ease of doing business in India and may result in a much needed increase in exports of goods on deferred payment terms and export of turnkey projects by providing higher Buyer's credit to foreign buyers.)

2. Foreign Direct Investment (FDI) in India – Review of FDI policy – Sector specific conditions – Insurance sector

Upon review of the extant FDI policy for Insurance sector has been further liberalized as follows:-

a) Foreign Capital in Insurance Company is restricted to 49% of the paid-up equity capital.

b) FDI up to 26% will be allowed under Automatic route. FDI beyond 26% but up to 49% shall be under Government Route.

c) Foreign investment in the sector is subject to compliance of the provisions of the Insurance Act, 1938 and the condition that companies bringing in FDI shall obtain necessary license from the Insurance Regulatory & Development Authority of India for undertaking insurance activities.

d) An Indian Insurance Company shall ensure that the ownership remains with the resident Indian Entities.

e) Foreign portfolio investment in an Indian insurance company shall be governed by the provisions of Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) Regulations, 2000 and provisions of the Securities Exchange Board of India (Foreign Portfolio Investors) Regulations.

f) Any increase of foreign investment of an Indian insurance company shall be in accordance with the pricing guidelines specified by Reserve Bank of India under the Foreign Exchange Management Act, 1999.

g) Terms 'Control', 'Equity Share Capital', 'Foreign Direct Investment' (FDI), 'Foreign Investors', 'Foreign Portfolio Investment', 'Indian Insurance Company', 'Indian Company', 'Indian Control of an Indian Insurance Company', 'Indian Ownership', 'Non-resident Entity', 'Public Financial Institution', 'Resident Indian Citizen', 'Total Foreign Investment' will have the same meaning as provided in Notification No. G.S.R. 115 (E), dated 19th February, 2015.

(A.P. (DIR Series) Circular No. 94 dated 8th April, 2015/ Notification No. 340 dated March 3, 2015/DIPP Press Note 3 (2015 Series) dated March 2, 2015.)

(Comments: As per recent newspaper reports, this amendment is shall bring huge foreign capital inflows and capable of taking insurance sector to the next level. Increased foreign capital investment, including investment by portfolio investors may also encourage listing by some of the insurance companies on local stock exchanges via IPOs.

Insurance sector is a capital-intensive industry and requiring them to make huge provisions for future claims. With the enhanced limit of FDI in India, such capital base will improve, thereby attracting various insurance companies from around the world. The legislative assurance and stability to the foreign capital will help in expanding the insurance coverage in the country and also bring to India the international best practices in the Insurance Industry.

However, a negative to the above amendment to the FDI Policy is that the FDI ceiling of 49% includes direct as well as indirect foreign investment. It does not exempts indirect foreign holdings is the case with banks. This will exclude parent firms which are non-banking finance companies. Eg. HDFC Ltd. which is NBFC has 80% foreign shareholding while Standard Life already holds 26% in HDFC Life, resulting in a direct and indirect foreign shareholding of around 83%. This was not deemed to be a violation of Department of Industrial Policy and Promotion (DIPP), mainly as the strategic investor held only 26%. However, under the new policy, this could be construed as violation. Therefore a clarification from RBI is necessary in this regard.)

3. Foreign Direct Investment (FDI) – Reporting under FDI Scheme on the e-Biz platform

RBI has informed that the financial aspects for using the Virtual Private Network (VPN) accounts obtained from National Informatics Centre (NIC) for accessing the eBiz portal have now been finalized in consultation with Government of India, Department of Industrial Policy and Promotion (DIPP) and NIC. The details are as follows:

a) The VPN account will be in the name of the individual users and will have the same lifetime as of the Digital Signing (Class 2) certificates (which is for a maximum period of two years) issued by Institute for Development and Research in Banking Technology (IDRBT), Hyderabad.

b) AD Category-I banks will be required to credit (through NEFT/RTGS) the payment in advance for the VPN accounts (@ ` 9,654/- per account for a block of two years) directly to National Informatics Centre Services Inc's (NICSI) bank account as under:

   a. Name of Bank: ICICI Bank

   b. Branch: ICICI Bank CMS

   c. Account No.: NICSIPPCDL141571

   d. IFSC Code: ICIC0000104

   After making the payment, the AD bank may fill up the details in the 'Payment Reference Form' and forward the same to vpnrbi-dipp@gov.in.

c) AD banks are required to maintain appropriate records pertaining to the number of connections, amounts remitted to NICSI, etc. Reconciliation issues, if any, may be resolved by writing to NICSI at the above-mentioned email address.

(A.P. (DIR Series) Circular No. 95 dated 17th April, 2015)

(Comments:* Vide *A.P. (DIR Series) Circular No.77 dated February 12, 2015 the RBI enabled reporting of Advanced Remittance Form and FCGPR Form under the FDI scheme on the e-Biz platform of the Government of India. RBI has now announced financial aspects of using VPN.)

4. Merchanting Trade to Nepal and Bhutan

Since Nepal and Bhutan are landlocked countries there is a facility of transit trade whereby the goods are imported from third countries by Nepal and Bhutan through India under the cover of Customs Transit Declarations in terms of the Government of India Treaty of Transit with these two countries.

In consultation with Government of India, RBI has clarified that goods consigned to the importers of Nepal and Bhutan from third countries under merchanting trade from India would qualify as traffic-in-transit, if the goods are otherwise compliant with the provisions of the India-Nepal Treaty of Transit and Indo-Bhutan Treaty of Transit respectively.

(A.P. (DIR Series) Circular No. 97 dated 30th April, 2015)

(Comments: For a trade to be classified as merchanting trade, the goods acquired should not enter the Domestic Tariff Area and the goods should not undergo any transformation. Nepal and Bhutan are landlocked countries and therefore export to these countries becomes difficult unless goods are passed through India. The RBI has therefore provided an excellent clarification that the goods that pass through India which are consigned to importers of Nepal and Bhutan under merchanting trade from third countries shall qualify as traffic-in-transit under Merchanting Trade if all other conditions are complied with.)

The following press notes have been issued by the Department of Industrial Policy and Promotion (DIPP):

5. Policy on foreign investment in the Pension Sector – Addition of paragraph 6.2.17.9 to 'Consolidated FDI Policy Circular of 2014'

Pursuant to this Press Note, FDI up to 49% is permitted in the Pension sector. The FDI up to 26% is permitted under the automatic route and FDI beyond 26% and up to 49% is allowed under approval route subject to certain conditions.

(Press Note No. 4 (2015 Series) dated 24th April, 2015)

(Comments: Section 24 of the Pension Fund Regulatory and Development Authority (PFRDA) Act provides that the foreign investment limit in the pension sector will be linked with the ceiling in the insurance sector, which has gone up to 49% from 26%. Thus permitting FDI in pension sector would open up great opportunities for foreign pension funds in India. Owing to India's large population, new pension schemes would be welcome in the market thereby attracting large foreign investments.)

6. Streamlining the procedure for grant of Industrial Licences

The initial validity of Industrial Licence for Defence Sector, as per Press Note 5 (2014 Series) and Press Note 9 (2014 Series), is presently three years, extendable up to seven years.

In partial modification of the above-mentioned Press Notes, the initial validity of Industrial License for Defence Sector is being revised to seven years, further extendable up to three years for existing as well as future Licences. This is being done as a measure to further promote ease of doing business, in view of the long gestation period of Defence Contracts to mature.

(Press Note No. 5 (2015 Series) dated 27th April, 2015)

(Comments: Defence Contracts usually have a long execution period and therefore this is a welcome change to boost Make in India programme of the Government.)

Ajay Singh & Suchitra Kamble, *Advocates*

BEST OF THE REST

1. Taking possession of secured assets – Assistance of Chief Metropolitan Magistrate (CMM) in respect of application filed by secured creditor – Order directing taking over possession held proper : Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(4), 14, 17

The scheme for enforcement of security interest is contemplated under provisions of section 14 of Act, 2002. Sub-section (2) of section 13 of the Act, 2002, provides for affording an opportunity to the borrower to make good the default, by making repayment of secured debt within 60 days from the date of notice, failing which the secured creditor is justified to take action under sub-section (4) of section 13. Section 13(3-A) of the Act further provides an opportunity to the borrower to make a representation raising any objection pursuant to the notice under sub-section (2) to put forward its case for settlement of dues to the secured creditor. If the borrower fails to take steps under sub-section (4) of Section 13 of the Act. Under sub-section (4), several measures are followed to recover the secured debt. While exercising power to recover the secured debt by taking possession of the secured assets of the borrower, including the right to transfer by way of lease or sale for realising the secured asset, the secured creditor is entitled to make an application to the Chief Metropolitan Magistrate or District Magistrate, as the case may be, to seek assistance for taking possession of the secured asset.

The question before the High Court was whether the petitioner can question the order passed by the Chief Metropolitan Magistrate in exercise of power under section 14 of the Act. Any measure taken under section 13 (4) of the Act, is appealable to the Debt Recovery Tribunal under Section 17 of the Act. The Hon'ble Court observed that the Petitioners have not taken any steps to question the measure taken by the secured creditor under section 13(4) of the Act, which led to the filing of application under section 14 of the Act, before the CMM. The CMM directed taking over of possession. The learned CMM, in fact, does not adjudicate any dispute, but renders assistance to ensure that the power of the secured creditor take over possession as one of the measures to recover the debt u/s. 13(4) of the Act, 2002. Any measure taken by the Secured creditor under section 13(4) which led to filing of the application under section 14 of the Act is subject to the statutory appeal under Section 17 of the Act.

The Court further observed that the petitioners were at liberty to take recourse to statutory appeal under section 17 against any measure, as referred to under sub-section (4) of Section 13 taken by the secured creditor. Thus the court declined to interfere with the order of CMM.

M/s. Kanderi Fruitpack Pvt. Ltd. & Ors. vs. The Authorised Officer/Assistant General Manager, Bank of Baroda, Chennai & Ors. AIR 2015 MADRAS 50.

2. Cancellation of Registration – Locus standi – Cancellation of registration on application by any other person is not permissible: Trade Union Act, 1926, S. 10

The appellant was the Union President of the Trade Union when the application for the Registration of it was submitted. Due to internal clashes, he was expelled from the Trade Union. There were some disputes between the Trade Union and another Union namely, Bhartiya Kamgar Sena ("BKS" for short) pending before the Industrial Court. The Appellant claimed that he was an active member in the Labour movement and an interested party and therefore, filed an application Under Section 10 of the Trade Unions Act, 1926. Seeking cancellation of the Certificate of Registration of the Trade Union on the ground that the same was obtained by fraud, mistake or misrepresentation.

The ground taken for cancellation of the registration of the Trade Union was non-filing of the necessary documents as per the Rules and Regulations and obtained Registration Certificate by mistake and fraud which was accepted by the Additional Registrar of the Trade Unions. The Additional Registrar of Trade Unions by his order dated 12-2-2008 cancelled the registration of the Trade Union.

The Hon'ble Court observed that as per section 10 of the Act, the Certificate of Registration of a Trade Union may by withdrawn or cancelled by the Registrar of Trade Union either on application of a Trade Union either on application of a Trade Union inviting the attention of the Registrar of Trade Unions or the Registrar may ***suo motu*** take congnizance under the said section. There is no mention in the said provision about cancellation of Registration of Trade Union on application by any other person. The said section permits the Authority to cancel the registration of the trade union if, it is obtained by fraud or mistake, but does not permit the Authority to cancel the certificate of registration if, it is obtained by fraud or mistake, but does not permit the Authority to cancel the certificate of registration if, the same is granted by mistake due to incorrect assessment or non-application of mind or mechanical act on the part of the Authority.

The Court further observed that even if it is accepted that the mistake is on the part of the Trade Union and in the opinion of the Registrar of Trade Unions in exercise of his powers under section 10 of the Act cancels the Certificate of Registration of the Trade Union, then it must be preceded by an enquiry, followed by show-cause notice, disclosing grounds for initiating action so that the same can be answered by the notice Union effectively. In the present case on hand, although it was necessary for the Trade Union to comply with and provide all the necessary details under the above said provisions that were relevant at the time of registration, the Registrar either by mistake or due to incorrect assessment or non-application of mind may have issued a Certificate of Registration to the Trade Union. This official act by the Registrar of Trade Union cannot be nullified by him under section 10 of the Act, but can only be rectified by the appellant authority or writ court. The High Court has rightly held that the word "any" could mean that the object the Trade Union was to operate in all types of industries in Pune District. The necessity of specifying or disclosing the nature of industry/ industries in which the Trade Union intends to operate and functions came only when the section 2 of the Amendment Act, 2001 was inserted in the Trade Unions Act, 1926, whereas the Trade Union was registered in the year 1986. The requirement of workmen engaged in an establishment or industry with which it is connected to be members of the Trade Union came only after section 4 was amended and the provisos were incorporated which came into force w.e.f. 9-1-2002, which is much after the registration of the Trade Union. On facts and circumstances, the Trade Union has neither suppressed nor supplied any information by fraud or mistake in order to obtain the Certificate of Registration. Therefore, discrepancy in providing details in the prescribed Form 'A' being a product of the Amendment Act cannot invalidate or is not a valid ground to cancel

the Certificate of Registration of the Trade Union. The appeal was dismissed.

R. G. D'Souza v. Poona Employees Union and another AIR 2015 Supreme Court 954

3. Domestic relationship – Married woman in relationship with man outside marriage – Relationship cannot be termed as 'domestic relationship' – Such woman cannot seek protection under Act : Protection of Women from Domestic Violence Act, 2005, Ss. 2(f), 12

Section 2(f) of the Act, 2005 does not require that a woman should be a wife and it is enough that she is living with a man in relationship, which is similar to that of a marriage. But there is a rider to it. She should be unmarried and be otherwise qualified to marry. In the instant case respondent is a married woman, whose marriage with her husband is still subsisting and this being the position, her relationship with another man outside marriage cannot be termed as domestic relationship under section 2(f) of the Act, 2005.

Therefore, the Nagpur Bench of the Bombay High Court held that the complaint filed under the provisions of the Protection of Women from Domestic Violence Act, 2005 for granting interim maintenance to the Respondent is completely out of the purview of the Act, 2005 and therefore, she cannot seek protection under Act and if the proceedings are allowed to be continued, it would be nothing but abuse of the process of law.

Narayan Jangluji Thool & Others vs. Mala Chandan Wani AIR 2015 Bombay 36

4. Frustration of contract – Suit for possession – Owner entitled to get back possession. Contract Act, 1872, S. 56

Respondent was the owner of the suit premises. The respondent wanted to develop the property as the building was in dilapidated condition. The respondent was residing along with her family members. There were various occupants in which one of the occupants was Indian Institute of Material Management. Director of the Appellant was a tenant of the Respondent and promoter by occupation. Both the Appellant and Respondent entered into a formal agreement for development wherein they agreed that the Appellant Director would develop the property and the parties would share the built up area equally. The parties also agreed, any money spent for detaining vacant possession would be advanced by the developer to be repaid by the landlord at the time of handing over possession of their proportionate area. As and by way of interim arrangement, the developer would also assist the landlord to find an alternative accommodation at a reasonable rent to be paid by the developer and adjusted against "final settlement". Despite such agreement being entered into, the appellant did not construct the building and the agreement got frustrated. The agreement got frustrated as IIMM did not vacate the premises as a result, the parties could not proceed further. The respondent terminated the contract and filed suit asking for possession of the flat in question. The Trial Judge decreed the suit in favour of the respondent.

The High Court held that the moment the agreement got frustrated the parties must get their status back. If any money is paid by the appellant to the respondent that must be refunded along with interest. Similarly the owner was also entitled to the possession back. The appellant would strenuously claim tenancy independent of the agreement. The Appellant came in possession in view of the clause related to part performance of the contract for development and the payment of rent and maintenance charges was in the nature of compensation as the owner would be out of possession. The court held that once the agreement got frustrated the owner must get back possession.

Air Construction Consultants Private Ltd. vs. Smt. Reena Das AIR 2015 Calcutta 9

5. Eviction – Right of transferee landlord – Transfer of interest of landlord in favour of any other person

is not prohibited - Eviction petition, at instance of transferee landlord, maintainable. Transfer of Property Act, 1882, S. 109

The respondent-landlord filed petition before the Rent Tribunal, Bikaner, *inter alia*, on the grounds of material alteration, default in payment of rent, *bona fide* and reasonable necessity and denial of title. The Rent Tribunal after hearing the parties came to the conclusion that the relationship of landlord and tenant exists between the parties and consequently, passed the judgment for eviction and the recovery certificate was issued. The Appellate Rent Tribunal dismissed the appeal filed by the petitioner.

It was contended by learned counsel for the petitioner that both the Tribunals below fell in error in coming to the conclusion that the landlord tenant relationship existed between the parties. It was submitted that the transfer of the suit property, in favour of the respondent, could not have taken place looking to the nature of property and, as such, no right accrued to the respondent to seek eviction of the petitioner from the suit premises.

The main plank of the petitioner has been that the petitioner-tenant did not attorn to the respondent as landlord and, therefore, the proceedings at his instance were not maintainable; the petitioner has not disputed that he was tenant in the premises. He also did not dispute as regards his landlord. The very fact that the suit premises has been transferred by the landlord to the respondent, the relationship of the landlord and tenant between the petitioner and transferee having been admitted, it is not open for the petitioner to question the right of the transferee to transfer the suit property to the respondent landlord.

The Hon'ble Court observed that section 109 of the Act related to attornment provides that on account of transfer of ownership of the premises to the respondent by the previous lessor, the respondent becomes the lessor and becomes entitled to receive the rent in terms of the lease by operation of section 109 of the Transfer of Property Act. No attornment of tenancy is necessary in law as the above Section creates a statutory attornment and the Section does not insist that the transfer of the lessor's right can take effect only if the tenant attorns as attornment by tenant is unnecessary to confer validity to the transfer of lessor's right. However, the Section protects payment of rent by the tenant to the transferor without notice of the transfer. The transfer of ownership of the premises to the respondent by the previous lessor results in statutory attornment by the tenant in favour of the lessor's transferee and consequently jural relationship of landlord and tenant, the said right of transferee under Section 109 is not curtailed or modified by the T.P. Act.

Reference was made to a Supreme Court decision in case of Mahendra Raghunath Das (AIR 1997 SC 2437) wherein it was held that a transferee of a landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord could take effect only if the tenant attorns to him. Attornment by tenant is not necessary to confer validity of the transfer of the landlord.

The Hon'ble Court referring to the definition of "landlord" in Sec. 2(c) of the Rajasthan Rent Control Act, 2001 further observed that the expression entitled to receive the rent in the aforesaid definition signify that the transfer of interest of the landlord in favour of any other person is not prohibited, as a transferee of the lessor is entitled to collect rent in terms of the lease as of right and becomes a landlord under Section 2(c) of the Act. Tenant cannot dispute the right of the transferee landlord to maintain an eviction petition under the Act or to claim rent. Hence, in the case of a valid transfer of premises by the lessor by way of sale, as the transferee would be entitled to receive the rent of the premises, he would fall within the definition of landlord.

Consequently the order of Tribunal below was upheld and petition was dismissed.

Laxmi Narayan vs. Ram Kishan & Ors. AIR 2015 Rajasthan 46.

CA Rajaram Ajgaonkar

ECONOMY AND FINANCE

Back to caution

The month of April turned out to be positive for a majority of the global economies. The fear of an interest rate hike in the USA persisted but since no clarity about its timing emerged, the global markets sustained their tempo. The US economy did better but it did not do as good as expected and some growth concerns have cropped up in the month thereby delaying the date of a likely interest rate hike by the FED. The risk of a rate hike not only looms large on the US businesses but it also weighs heavy on the trade and commerce across the world. The multinational companies may get more affected by it. As per the current expectations, the rate hike in the US may not materialize till the last quarter of 2015 and that may give some kind of a breather to the world economy.

The climb down of Iran on nuclear issues was a major positive for the world politics as well as economics. Iran is a large supplier of crude oil and it has a substantial underfed consumer demand. As Iran is falling in line, it can open a number of opportunities in the region and can increase global trade. Induction of supply of oil from Iran will keep the crude oil prices in check. Low crude prices can help controlling costs of supplies across economies due to reduction in energy costs. It can aid enhancement of trade and thereby increase prosperity in the world. Taming of Iran will also diffuse tensions in the Middle East and support economic growth, not only of the region but across the world.

The cooling down of the situation in Yemen has also led to a positive effect on the economies of the Middle East. The crude oil prices have steadily climbed up over the last few months and that can have a positive impact on the economies of the region. Due to loss of some militant leaders in the recent months, there is a possibility of slowing down of militancy in Iraq and Syria. Peace in the region can make a change in the global energy equation and better the economic development.

The performance of US economy is steady but there are some apprehensions of cooling of the economy. It has suddenly become a cause of concern with the policy makers of the country. Of late, the US economy has been doing well and that has positively impacted Europe and many other countries exporting goods and services to that country. As of now, there is no cause for alarm but the US policy makers are determined to address every concern, as and when it emerges, proactively. This approach can keep the US economy in good shape in the years to come and that can also help the global economies to remain on the path of growth.

Europe has developed positive economic sentiments over the last few months. The European economy is likely to continue to grow,

though at a slow pace. The positive developments in the Middle East can benefit the European economies and that can be a major catalyst for growth in Europe. A new concern emerging is the slowing of growth in UK. The economy of the country had started performing better but a sudden dip has been noticed in the recent months. The risk of Greece is currently being managed but the troubles for that country are yet not over. Greece has made the Euro Zone vulnerable and the situation may not improve substantially for one more year to come. Fortunately, the sentiments are positive and that may support expansion of businesses in the Euro Zone.

The cooling of China continues and it may continue further. The Chinese stock market is in good shape but the exuberance may not sustain long and the slowing economy can take its toll on the businesses and their valuations. The Chinese model of growth, which was sustained over a long period, is showing signs of exhaustion and the economy may continue to slow down due to demographic reasons resulting in high cost of wages. The Chinese Government may not be able to mend it easily. Things can get tougher for the country in the days to come but still the economy will continue to grow at a higher rate than the economies of major developed countries.

A couple of months back, the Indian economy was looking healthier. However, a sudden change in the climatic conditions in many parts of the country has negatively affected the agricultural sector of the economy. The rabi agricultural production this season is likely to be below normal due to untimely rains and hailstorms. This can negatively affect the growth of agricultural products in the country. The prediction of the oncoming monsoon is also not very encouraging and the rainfall is predicted to be below normal in the Indian subcontinent. This can create a problem not only for agriculture but can create a shortage of drinking water and grass. India boasts of one fourth of the cattle population of the world. In the recent years, it has given a great fillip to the dairy production. Inadequate supply of grass can reduce the milk production, which is one of the major sources of nutrition for the Indian population. The ban imposed by some states on slaughter may also increase the pressure on supply of fodder for the cattle, which can adversely affect the milk production. The possibility of below normal rains can also make the farmers shift to coarse grains, which have more tenacity to withstand adverse climate but it may result in lower returns to them. This shift can reduce the production of primary food grains such as rice, wheat and maize in the country. Rural India depends substantially on the agricultural income. If its income falls, it may result in reduction in consumption of certain necessities and many low end consumer goods. Low consumer sentiment can reduce the demand of many manufactured products including white goods, thereby causing sluggishness in the economy. Below average Monsoon can have large ramifications on the Indian economy and it is a cause of concern not only to the trade and industry but also to the Government. Based on the current estimates, the Indian economy may not post robust growth for the current year as was initially expected. This can affect the investment climate in the country and reduce the inflow of foreign investment.

The Indian stock markets have probably smelt the uncertainty in the month of March itself. The stock markets retreated from the peak levels achieved immediately after the budget during the month of March and ended the month with net fall. April started with a better note and in the initial weeks, the markets partially regained the loss in the indices; but the positivity was short lived. The Foreign Institutional Investors (FIIs) sold aggressively on the emergence of risks and the stock markets tanked. They retreated to the levels which were there in December 2014. The fall made India one of the worst performing markets globally in the first four calendar months of 2015. The corporate results trickling in were also below expectations. There was a sudden feeling that the performance of the economy as well as the corporate results will disappoint in the near future. Certain tax claims on foreign investors also

created unhappiness amongst the FIIs. But for one single deal, FIIs withdrew substantial funds from Indian stock markets in April 2015. The change in the global scenario, lowered expectation of growth in the Indian economy due to uncertainty of monsoon and risk of certain legislations as well as bureaucratic behaviour, made the FIIs net sellers in the Indian stock markets. Though they sold stocks, the total quantity of sale was quite minuscule as compared to the total holdings of FIIs in the Indian stocks. Still that sale caused a major impact on the stock markets. From their peaks in March, they have dropped down about 10 per cent by the end of April. This has caused a lot of heart burn to the Indian retail investors, who had recently started reentering the stock markets. The drop in the stock prices also exposes the risk of dependency of Indian stock markets on foreign funds and it demonstrates that a change in stand of FIIs can be a great cause of concern, not only to Indian stock markets but also the Indian currency and economy.

Over the last few years, substantial inflow of foreign portfolio investment in the stock markets has helped the Indian Rupee to maintain its level against the US Dollar. However, if FII fund inflow dries up even for a short period, it can be a big blow to the growth of the economy for the current year. FIIs are not necessarily long term committed investors as regards their portfolio investments. Though not all the monies coming from the FIIs are hot money but the primary purpose for which they enter into any country is to earn profits at the earliest and thereby increasing their stake holders' value. They do not patronize economy of a country due to love, affection or patriotism. Their entry or exit is fully driven by commercial considerations. Therefore, if an economy slips or even the expectations about it slip, it can be a big deterrent for FIIs investments. In extreme cases, exodus of large funds cannot be ruled out. Not too many economies have resilience to withstand such an out flow, if it ever happens. It can damage the economy of that country within a short period and the Government may not be able to control the damage. Though India does not run such a risk as of now, the risk cannot be ruled out by any country. In the event such a risk starts emerging, the investors need to reposition themselves.

The Reserve Bank of India (RBI) has not budged to the pressure from the Government as well as the public and it has continued the Dear Money Policy to keep inflation in control. Due to the sudden reaction in stock markets, the investment preference has shifted again a bit towards debt. The bonds yields have hardened a bit, increasing the return to the investors. Though certain NBFCs and corporate borrowers have reduced the rate of interest on the deposits, the process of fall of interest rates seems to have slowed down.. The speed of fall of bond yields may be slower than expected and can continue to remain so for some more months to come. Till then, the debt market may remain strong but the bonds may not appreciate much.

Indian currency seems to be getting into risky levels. Due to the weakness of the Indian economy, slower pace of reform process than expected and a possible rate hike by the FED in the US, the Rupee can weaken further by 2% to 4% till the end of the current calendar year. The hardening petroleum prices can weaken the currency further. Suddenly the volatility of the currency is likely to increase in the months to come. The Indian Government or the RBI may have limited ability to correct the situation, as it will be more of a result of global events.

Equity investors in India may remain cautious in the short-term, as worse is yet to come. The reversal of trend is possible but there may be a lull before the reversal. Suddenly, the short-term trend has become subdued but the medium-to long-term trend is still looking quite positive. Nevertheless, the risks have increased but the rewards have not increased commensurately. Investors need to exercise caution in the near term. Equity investment may turn out to be rewarding over the medium term but its short-term prospects are uncertain.

NOTICE OF ELECTION

To
The Members,
The Chamber of Tax Consultants,
Mumbai

The election of the President and thirteen Members of the Managing Council for the ensuing year 2015-16 shall take place on **Friday, June 12th, 2015 at the Office of The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai–400 020.**

Nominations in the prescribed form should be filed so as to reach the office of the CTC not later than **6 p.m. on Tuesday, June 2nd, 2015.** The nomination forms shall be available at the CTC office from **Tuesday, May 19th, 2015.**

FOR AND ON BEHALF OF THE MANAGING COUNCIL

Sd/- Sd/-

HINESH R. DOSHI/AJAY R. SINGH

Hon. Jt. Secretaries

Place: Mumbai

Dated: 30th April, 2015

Office: 3, Rewa Chambers, 31, New Marine Lines, Mumbai-400 020

Notes:

1. Ordinary and Life Members are **only** eligible to vote at the election.
2. A Member who has completed at least **two full years** as a member shall be entitled to contest the election for Managing Council or to propose or second a candidate for the election. Each member can propose not more than **three** candidates.
3. Members whose membership subscription is in arrears shall not be entitled to contest the election or to propose or second any candidate for the election or to vote at the election.
4. Withdrawal of nomination for the elections can be made by the candidate on or before 6.00 p.m. on **Friday, June 5th, 2015.**
5. If elections are required to be held, the names of the valid candidates shall be intimated through the website of the Chamber as well as through the Notice Board at the Chamber's office. The Members are requested to check through these mediums.
6. If elections are not required to be held, due to any reason whatsoever, the same shall be intimated through the website of the Chamber as well as through the Notice Board at the Chamber's office. The Members are requested to check through these mediums.
7. The voting, if required, will commence at 11.00 a.m. and shall end at 5.00 p.m.

CA Hinesh R. Doshi, Ajay Singh, *Advocate*
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th April, 2015 and 8th May, 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 30th April, 2015.

LIFE MEMBERSHIP

1	Mr. Shah Vishal Hemendra (Tr. from Ord. to Life)	CA	Mumbai
2	Mr. Jani Priyahas Anant	Advocate	Mumbai
3	Mr. Tyagi Pramod Kumar	B.com	Gurgaon
4	Mr. Shokhanda Dharampal	B.com	Gurgaon
5	Mr. Poddar Pratik Banwari	CA	Mumbai
6	Mr. Katarieya Rajendra Gulabchand	CA	Pune
7	Mr. Pardasani Manoj Kumar	CA	Gurgaon
8	Mr. Shrimal Naman Narendra	CA	Jaipur
9	Mr. Bhatt Dushyant Kishor	CA	Mumbai
10	Mr. Sonpal Jaideep Prafulchandra	Advocate	Mumbai
11	Mr. Doshi Bimal Jethalal	CA	Mumbai
12	Mr. Maheshwari Bhoopendra P. (Tr. from Ord. to Life)	CA	Thane
13	Mr. Sangoi Shreyas Dhirendra	CA	Mumbai
14	Mr. Maru Kiran Lalji	CA	Mumbai
15	Mr. Burad Sanjay Sumatilal	CA	Nashik
16	Mr. Bhimsaria Mayank Umesh Kumar	CA	Mumbai
17	Mrs. Shah Vandana Gavra	CA	Navi Mumbai
18	Mr. Bhuta Harsh Shailesh	CA	Mumbai
19	Mr. Vajani Ketan L. (Tr. from Ord. to Life)	CA	Mumbai
20	Mr. Limaye Niteenchandra Laxman	CA	Pune

ORDINARY MEMBERSHIP

1	Mr. Somaiya Vipul Maganbhai	CA	Mumbai
2	Mr. Mehta Nihar Atul	CA	Mumbai
3	Ms. Jambuwala Zeel Piyush	CA	Ahmedabad
4	Mr. Shah Harshil Nimish	CA	Ahmedabad
5	Ms. Tanna Khushboo Satish	CA	Mumbai
6	Mrs. Thakkar Vibha Vishal	CA	Mumbai
7	Mr. Kedia Subhash Shree	CA	Mumbai
8	Mr. Mistry Kaushal Promod Kumar	CA	Mumbai
9	Mr. Sahu Pradipta Kumar	Advocate	Bhubaneswar
10	Mr. Dangarwala Meet Saurin	CA	Mumbai
11	Mr. Kapadia Vasim Mohammed	ITP	Mumbai
12	Mr. Lahot Vishal Kantiswaroop	CA	Mumbai
13	Ms. Kothari Dipti Mulji	CA	Mumbai
14	Mr. Nayak Chhabindranath Laxmish	B.com	Mumbai
15	Mr. Damania Ashwin Prabhudas	CA	Mumbai
16	Mr. Nahar Jitendra Khubchand	CA	Mumbai
17	Mr. Ved Ashit Mansinh	B.com	Mumbai
18	Mr. Amate Sanket Sanjay	Advocate	Pune
19	Mr. Shah Manish Sobhagchand	CA	Mumbai
20	Mr. Patel Vikrant Ashok	ITP	Mumbai
21	Mr. Kapadia Harsh Madhusudan	CA	Mumbai
22	Mr. Senthil Kumar S.	CA	Bangalore
23	Mr. Dangarwala Meet Saurin	CA	Mumbai
24	Mr. Sonigara Kevalchand Mithalal	CA	Pune
25	Mr. Shah Deep Anil	CA	Mumbai
26	Mr. Talreja Kunal Prakash	CA	Mumbai
27	Mr. Upadhyaya Rakesh Purshottamdas	CA	Mumbai
28	Ms. Sidhwa Rukhsar Pirojshah	CA	Mumbai
29	Ms. Bhatt Aditi Chetan	Advocate	Mumbai
30	Mr. Dave Ruchit Bhagav	Advocate	Mumbai
31	Mr. Sarda Amitkumar Ramanlal	CA	Nashik
32	Mr. Rawat Jitendra Singh Balwant Singh	B.com	Mumbai
33	Mr. Shah Nemin Sidharth	CA	Mumbai
34	Mrs. Parekh Prachi Naysar	CA	Mumbai
35	Mr. Chhabra Vimal Kumar	CA	New Delhi
36	Mr. Nawale Vinayak Kashinath	CA	Mumbai
37	Ms. Doshi Bijal Rajesh	CA	Mumbai
38	Mr. Jaju Manish Motilal	CA	Mumbai
39	Mr. Thakkar Sanjaykumar Amrutlal	Advocate	Mumbai
40	Mr. Ketkar Narendra Sharadchandra	CA	Mumbai

ASSOCIATE MEMBERSHIP

1 Future Retail Limited Mumbai

II. Past Programmes

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	**Allied Laws Committee**		
	Allied Laws Study Circle Meetings Venue: A. V. Room, Jaihind College	**20th & 22nd April, 2015 and 7th May 2015** Subject : Indian Accounting Standards. -Understanding it Conceptually	CA Anand J. Banka
2.	**Direct Taxes Committee**		
A.	**Direct Taxes Update Series Lecture** Venue : IMC	**17th April, 2015** Subject : Differences in Transaction value and Stamp Duty Value of Immovable Properties - Some Issues Under IT Act (Covering Sections 43CA, 50C, 56(2)(vii)	Shri Vipul Joshi, Advocate
B.	**Seminar on Non Banking Finance Companies (Jointly with Allied Laws Committee)** Venue : M. C. Ghia Hall, Mumbai	**18th April, 2015** Subjects :	
		1. NBFC Regulatory Outlook	Shri. S. M. N. Swamy, GM, DNBS, RBI
		2. Compliances Pertaining to Non-Deposit accepting NBFCs and important aspects of Deposit accepting NBFCs.	CA Bhavesh Vora
		3. Regulations pertaining to Core Investment Companies (CICs)	CA Jayant Thakur
		4. NBFC- Auditors' Responsibility	CA Kalpesh Mehta
		5. Taxation of NBFCs-Issues	CA Radhakishan Rawal
C.	**Seminar on Income Computation Disclosure Standards** Venue: Mysore Association, Matunga	**18th April, 2015**	Key Note Address: CA Kishor Karia Faculties: CA Nihar Jambusaria CA Sunil Kothare CA Yogesh Thar CA Paresh Vakharia

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
D.	**Intensive Study Group: (Direct Taxes)** Venue: CTC Conference Room	**23rd April, 2015**	CA Nimesh Chothani
3.	**Indirect Taxes Committee**		
A.	**Workshop on MVAT Act, Service Tax & Allied Laws** (Jointly with AIFTP (WZ), BCAS, MCTC, STPAM & WIRC of ICAI Venue : STPAM Library	**18th April, 2015** Subjects : Issues in Input Tax Credit w.r.t. Rule 53 & 54 under MVAT Act	CA Kiran Garkar
		23rd April, 2015 Subject: Issues in Taxation of Builders and Developers Under MVAT Act	Mr. Deepak Bapat, Advocate
		Issues in Taxation of Builders and Developers under Service Tax Act	CA Manish Gadia
		25th April, 2015 Issues in Works Contract Transactions under MVAT and CST Acts	CA Mayur Parekh
		Issues in Works Contract Services, Erection & Commissioning Services etc	CA Vikram Mehta
		2nd May, 2015	
		Issues in Taxation of Intangible Goods & Leasing Transactions under MVAT and CST Acts	Ms. Nikita Badheka, Advocate
		Issues in Taxation of Intangible Goods & Leasing Transactions under Service Tax Act	CA Bharat Shemlani
B.	**Indirect Tax Study Circle Meeting** Venue: IMC	**10th April, 2015** Subject: Determination of CENVAT Credit Under Rule 6 (3)	Chairman: CA Sunil Gabhawalla Group Leader : CA Mandar Telang
4.	**International Taxation Committee**		
A.	**Advanced Topics of 5th Intensive Study Course on Transfer Pricing**	**10th and 11th April, 2015** **24th and 25th April, 2015** Subjects : 1. Industry Focused Sessions	CA Karishma Phatarphekar

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
		2. Key Controversy Areas – Recent TP Audit experience	CA Waman Kale Mr. Freddy Daruwala, Advocate CA Samir Gandhi
		3. Practice Areas	CA Maulik Doshi
		4. Other Areas having TP implications	CA Arun Saripalli CA Sudhir Nayak CA Milind Kothari CA Dr. Hasnain Shroff
		5. Domestic Transfer Pricing	Ms. Alpana Saxena
		6. The Road Ahead –	CA Manisha Gupta
		7. Attribution issues, experiences, recent rulings and Revenue's perspective	CA Manisha Jain Ms. Malathi Sridharan, DIT (TP)-I Shri Suhas Kulkarni, TPO, Pune CA Sanjay Tolia
		8. Closing Session	Moderator : CA Vispi Patel Panellists: Shri Ajit Korde, CIT (A), Pune Shri Ajit Kumar Jain CA Rohan Phatarphekar
B.	**Lecture Meeting on Attack on Black Money** (Jointly with Indian Merchant Chamber) Venue : IMC	**28th April, 2015** Subject : Attack on Black Money	Chairman: CA T. P. Ostwal Speaker: Mr. Sanjay Sanghvi, Advocate
C.	**Intensive Study Group on International Taxation** Venue : CTC Conference Room	**22nd April, 2015 & 5th May 2015** Subject: Discussion on The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015	CA Ramesh Iyar Mr. Deven Shah
5.	**Membership & EOP Committee**		
A.	**The CTC Musical Evening** (Jointly with RRC & PR Committee) Venue : Ramwadi, Matunga Station (CR)	**18th April, 2015**	

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
B.	**Self Awareness Series**	**13th April, 2015** Subject: Secularism in our Scriptures and other religious texts	Dr. Naresh Ved
6.	**Study Circle & Study Group Committee**		
A.	**Study Circle Meeting** Venue : 20 Down Town, Churchgate	**16th April, 2015** Subject : Appellate Proceedings- 1st Appeal & 2nd Appeal	Shri Ajay Singh, Advocate
B.	**Study Group Meeting** Venue: IMC	**9th April, 2015** Subject: Recent Judgments under Direct Taxes	Shri Keshav Bhujle, Advocate
C.	**Study Circle on International Taxation** Venue: IMC	**27th April, 2015** Subject: Attribution of Profits of PE.	Mr. Abhay Sharma

III. FUTURE PROGRAMMES

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
1.	**Allied Laws Committee**		
	Allied Laws Study Circle Meeting (Only for ALC SC Members) Venue : IMC	**7th May, 2015** Subject : Indian Accounting Standard (IND AS) – understanding it conceptually- Part-III	CA Anand J. Banka
2.	**Corporate Members Committee**		
	Study Course on Valuation Venue : Babubhai Chinai Hall, IMC, Churchgate, Mumbai	**5th & 12th June, 2015** **6th & 13th June, 2015** Subjects : 1. Keynote Address 2. Overview of Valuation Methods and Other Important Points 3. Case Study on Valuation 4. Valuation of Intangibles	Speakers: CA Parag Ved CA Ravishu Shah CA Pinkesh Billimoria CA Niraj Sanghvi (TCS)

Sr. No.	Programme Name / Committee/Venue	Date / Subjects	Chairman / Speakers
		5. (i) Engagement Letter, Management Representation Letter and Valuation Reports (ii) Important Judicial Decisions Concerning Valuation	CA Tejas Marfatia
		6. Technical Valuations	CA Anup Shah
		7. Valuation Issues in International M & A	Eminent Faculty
		8. Valedictory Address	Eminent Faculty
3.	**Indirect Taxes Committee**		
A.	**Workshop on MVAT Act, Service Tax & Allied Laws** (Jointly with AIFTP (WZ), BCAS, MCTC, STPAM & WIRC of ICAI)	**9th May, 2015 to 11th July, 2015** Issues in Branch Transfers, Sales in Transit and High Seas Sales under CST Act.	CA Rajat Talati
		Issues in Interest, Penalties and Show Cause Notices under MVAT and CST Acts.	Mr. Ashwin Acharya, Advocate
		Issues in Interest, Penalties and Show Cause Notices under Service Tax.	CA Jayesh Gogri
		Issues in Definition of Services, Exempt & Declared Services.	CA Sunil Gabhawalla
		Issues in Valuation of Services, Abatement & Reverse Charge Mechanism	CA Ashit Shah
		Issues in Refunds, Audits, Assessments under MVAT and CST Acts.	Mr. C. B. Thakar, Advocate
		Issues in CENVAT Credit Rules under Service Tax	CA Naresh Sheth
		Constitutional amendments & Overview of GST Act	Eminent Speaker
		Inter-State Transactions under GST	Eminent Speaker
		Issues in Place of Provision of Service Rules, 2012	CA Girish Raman
		Issues in Point of Taxation Rules, 2011.	CA Rajiv Luthia

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
B.	**Indirect Tax Study Circle Meeting** (Only for IDT SC Members) Venue: Babubhai Chinai Committee Room, 2nd Floor, IMC, Churchgate.	**15th June, 2015** Subject: Recent Amendments under MVAT, PT & Entry Tax.	Chairman : Mr. Dhaval Talati, Tax Practitioner Group Leader: Mr. Dinesh Tambde, Advocate
C.	**GST Study Group Meeting** (Only for GST SG Members) A. V. Room, Jai Hind College, Churchgate	**23rd June, 2015** Subject: Overview of GST	CA Heetesh Veera
4.	**International Taxation Committee**		
A.	**9th Residential Conference on International Taxation, 2015** Venue : Radisson Blu Resort, Goa	**18th to 21st June, 2015** Group Discussion Papers	
		• Royal & FTS – Case Studies Analysis of different sectors	CA Himanshu Parekh
		• Deputation of personnel – Tax issues from an employer's perspective (including PE risks)	CA Paresh Parekh
		• Inbound and Outbound Investment structuring – impact of specific anti-avoidance rules including Indirect Transfer and Place of Effective Management Provisions.	CA H. Padamchand Khincha
		Papers for Presentation	
		• BEPS and Exchange of Information – Global Developments & Government Initiatives	Mr. Akhilesh Ranjan, Joint Secretary (FT & TR-I) Mr. Rahul Navin, Director (FT & TR-III)
		• Tax Implications in case of trusts used for estate protection of cross – border assets	**Chairman** – CA Dilip Thakkar **Paper Writer** – CA Bijal Ajinkya
		• Multi dimensional tax issues (Direct & Indirect Taxes) in respect of cross – border Transactions	Mr. V. Sridharan, Senior Advocate

Sr. No.	*Programme Name / Committee/Venue*	*Date / Subjects*	*Chairman / Speakers*
		Undisclosed foreign income and assets – Proposed legislation and Assessment experience **Panel Discussion** • Case studies on International Taxation & Transfer Pricing	**CA Dilip J. Thakkar** **Panellists** **Chairman** – CA T. P. Ostwal **Panellists** – CA Anish Thacker & CA Sanjay Tolia
B.	**Transfer Pricing Study Circle Meeting**	**April to June, 2015** Subject : Proposed to be discussed: • Transfer Pricing experience in latest assessment year. • Marketing Intangibles in India – Where do we stand in anticipation of the Delhi High Court Verdict. • Intra-group services and management fees – India approach vis-à-vis global TP best practices. • OECD project on BEPS – An India TP Perspective	Kindly visit Chamber's Website for further details www.ctconline.org

For Further details of the future events, kindly visit our website www.ctconline.org.

OBITUARY

We deeply mourn the sad demise of Hon'ble Judicial Member of ITAT, Mumbai Shri Vivek Varma, who left for heavenly abode on 12-5-2015.

He was also our core committee member at CTC, Delhi Chapter before joining ITAT. He was one of the finest Members of the ITAT.

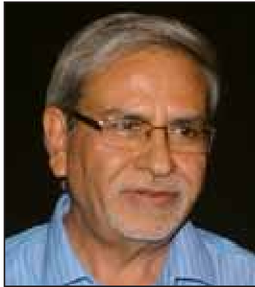
We pray the almighty to rest his soul in eternal peace and grant fortitude to the bereaved family to bear the irreparable loss.

DIRECT TAXES COMMITTEE

Full Day Seminar on Income Computation & Disclosure Standards held on 25th April, 2015 at Mysore Association Auditorium, Matunga.

Dignitaries during the lecture meeting. Seen from L to R : CA Ketan Vajani, Chairman, CA Kishor Karia, Faculty, CA Paras K. Savla, President, Mr. Rahul Hakani, Convenor.

Faculties



CA Kishor Karia delivering Key Note address.

CA Sunil Kothare

CA Nihar Jambusaria

CA Yogesh Thar

CA Paresh Vakharia

CA Mahendra Sanghvi, Past President welcoming the faculty. Seen from L to R : S/Shri Nimesh Chothani, Member, CA Yogesh Thar, Faculty, CA Sidharth Karani, Member.

Section of delegates

Intensive Study Group on Direct Taxes Meeting held on 23rd April, 2015 on the subject "Recent Important Decisions under Direct Tax" at CTC office.

CA Nimesh Chothani addressing the members.

INDIRECT TAXES COMMITTEE

Indirect Taxes Study Circle Meeting held on 10th April, 2015 on the subject "Determination of CENVAT Credit under Rule 6(3)" at IMC.

CA Sunil Gabhawalla chairing the session.

CA Mandar Telang addressing the members.

MEMBERSHIP & EOP COMMITTEE

Self Awareness Series held on 13th April, 2015 on the subject "Secularism in Scriptures and other religious texts" at CTC office.

Dr. Naresh Ved, PhD in Philosophy addressing the members.

INTERNATIONAL TAXATION COMMITTEE

Lecture Meeting on Attack on Black Money jointly with Indian Merchants' Chamber held on 28th April, 2015 at Walchand Hirachand Hall, IMC.

Dignitaries during the lecture meeting. Seen from L to R : CA Paras K. Savla, President, CTC, CA T. P. Ostwal, Chairman of the session, Mr. Prabodh Thakker, President, IMC, Mr. Sanjay Sanghvi, Advocate, Faculty, CA Naresh Ajwani, Chairman, International Taxation Committee, CTC.

CA T. P. Ostwal chairing the session.

Mr. Sanjay Sanghvi, Advocate addressing the members.

Section of members

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Group Meeting held on 9th April, 2015 on the subject "Recent Judgments under Direct Taxes" at IMC.

Mr. Keshav Bhujle, Advocate addressing the members.

Study Circle Meeting held on 16th April, 2015 on the subject "Appellate Proceedings – 1st Appeal & 2nd Appeal" at 20 Down Town, Churchgate.

Mr. Ajay Singh, Advocate addressing the members.

Study Circle on International Taxation Meeting held on 27th April, 2015 on the subject "Attribution of Profits of PE" at IMC.

Mr. Abhay Sharma addressing the members.

INTERNATIONAL TAXATION COMMITTEE

5th Intensive Study Course on Transfer Pricing held on 10th, 11th, 24th & 25th April, 2015 at West End Hotel.

Faculties

CA Waman Kale

CA Arun Saripalli

CA Samir Gandhi

CA Milin Thakore

CA Parag Gor

Ms. Malathi Sridharan

CA Maulik Doshi

CA Manisha Gupta

CA Shuchi Ray

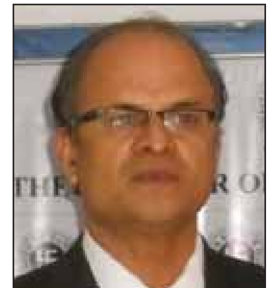
CA Rohan Phatarphekar

Mr. Freddy Daruwala, Advocate

CA Gaurav Shah

CA Bhavesh Dedhia

Ms. Alpana Saksena



CA Sudhir Nayak

CA Anuradha Rathod

CA Karishma Phatarphekar

CA Keval Doshi

CA Milind Kothari

CA Vispi T. Patel

Mr. Ajit Korde, CIT (A), Pune.

Mr. Ajit Kumar Jain

Mr. Suhas Kulkarni, TPO, Pune

CTC STARS GEETMALA held on 18th April, 2015 at Ramwadi, Matunga

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Sathya Hegde, Partner at BC Shetty Co. says,

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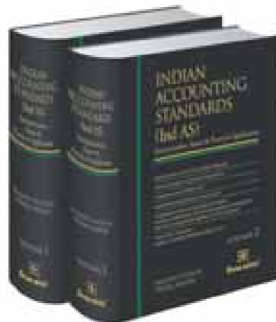

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