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The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

September- 2015

Vol . III | No. 12

STAMP DUTY & REGISTRATION



- Direct Taxes
- Other Laws
- International Taxation

Other Contents

- Indirect Taxes
- The Chamber News

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RESEARCH & PUBLICATIONS COMMITTEE

Release function of publication on The Black Money held on 20th August, 2015 at Dahanukar Hall, Fort, Mumbai.



Dr. K. Shivaram, Past President, releasing the publication "The Black Money". Seen from L to R : CA Hitesh R. Shah, Vice President, CA Avinash Lalwani, President and Mr. Rahul Hakani, Chairman & Mr. Paras S. Savla, Vice Chairman of Research & Publications Committee.

Dr. K. Shivaram, Past President addressing the members about the publication. Seen from L to R : CA Hitesh R. Shah, Vice President, CA Avinash Lalwani, President and Mr. Rahul Hakani, Chairman & Mr. Paras S. Savla, Vice Chairman of Research & Publications Committee.



INTERNATIONAL TAXATION COMMITTEE

Seminar on Black Money Law and Voluntary Compliance Window held on 20th August, 2015 at Dahanukar Hall, Fort, Mumbai.



CA Naresh Ajwani, Chairman welcoming the delegates. Seen from L to R : CA Nihar Jambusaria, Speaker, CA Hinesh Doshi, Hon. Treasurer and CA T. K. Singhal.

CA Nihar Jambusaria addressing the delegates. Seen from L to R : CA Naresh Ajwani, Chairman, CA Hinesh Doshi, Hon. Treasurer and CA T. K. Singhal.



CA T. P. Ostwal addressing the delegates. Seen from L to R: CA Nilesh Kapadia, CA Ashok Sharma, CA Mayur Nayak and CA Ganesh Rajgopalan.



Section of delegates

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Editorial

In the month of September, the tax professionals have to burn their midnight oil to complete the audit and upload the tax returns. This year the extension of due date for filing returns in the case of non-tax audit assesseees to August 31 has added fuel to the fire. Now, professionals find that there is hardly any time left for attending to the tax audit cases which are time consuming and put lot of pressure on a Chartered Accountant as he has to compile lot of data and then certify the accounts diligently. The Central Board of Direct Taxes through its Press release has rejected the request for extension of due date. The reasons given to do so show that the conclusion has been drawn unilaterally without having any dialogue with stakeholders. The decision taken by the CBDT, if not arbitrary, is without considering the ground realities.

We at Chamber of Tax Consultants along with other professional organisations should proactively represent before the appropriate authorities to reconsider this decision in the light of the following:

- In case of SME, tax professionals have to get involved in compiling exhaustive details required for tax audit. Large amount of time has been taken in preparation and filing of returns, till September 7, 2015, which otherwise gets over by July 31, 2015.
- The tax and accounting field has become dynamic and challenging. The changes to be considered for 2015 are far reaching like, new forms of return requiring compilation of lot of additional information. This information is not readily available in the database of tax professionals' office.
- Practical difficulties of obtaining digital signature based on signature verification by bank etc. though trivial in nature, adds to the already mounting pressure on tax professionals.

While time is the essence when it comes to payment of taxes, one needs to consider that quality and correctness suffers in haste. Therefore, extension of due date of tax audit till 31st October, 2015 is a fair demand. The Government may consider an extension in the due date as it had done in the year 2014. Finance Act, 2014 has been assented during the month of June, 2014. Post passage of Finance Act, CBDT could have notified new forms within six months and if not at least before commencement of the Assessment Year. On the contrary they could notify only after four months after commencement of Assessment Year. It may not be out of place to bring to the notice of the Government that so called 'minor changes' took four months for it to notify all the forms. When the Government was sensitive about the extension of time in the case of non-tax audit returns, the professionals expecting a judicious indulgence of extension of due date to October 31, 2015 in tax audit cases is justified.

Special Story of the Chamber's Journal's September 2015 issue is on Stamp Duty. I thank CA Anup Shah for helping the Journal Committee in designing and bringing out this issue. I thank all the contributors to this issue for sparing their valuable time for the Chamber's Journal.

K. GOPAL
Editor



From the President

Dear Readers,

The current issue carries the theme of “Stamp Duty and Registration”. It includes Stamp Law – An Overview and Basics of Stamp Duty, Stamp Duty on Instruments relating to Immovable Property, Partnership Firm, Business Restructuring Transactions, Personal Transactions, Cross Border transactions, Concept of True Market Value under the Stamp Law, Adjudications, Appeals and Revision under Stamp Law – Procedure for Challenge and Registration. I must compliment CA Anup Shah for creating a synopsis so that we can provide excellent coverage on the subject. I am sure that it will be used as reference material by our members for a very long time.

During the period gone by, Chairmen of the various committees organised many successful Seminars, Lecture meetings, Football Tournament, Study Circle Meetings and ISG. I can proudly say that each event of the Chamber received very good response from delegates, members and participants. Entire month of August was full of activities. For the first time, Membership Committee of the Chamber under Chairmanship of CA Hemant Parab had organised a Seminar at Solapur. It was organised successfully with the support of CA Sunil Agarwal, Chairman of the Solapur Branch and CA Girish Shah, Committee Member, MPR Committee.. After a gap of 14 years, the Chamber had organised a half day Workshop at Ulhasnagar with 6 other local associations i.e. Thane Branch of WIRC, Ulhasnagar, Kalyan, Dombivali, Bhiwandi CA Study Circle and Ulhasnagar Tax Practitioners Association. The Chamber has got a very good visibility amongst the members located from Thane to Ulhasnagar.

The Research and Publication Committee has released a Book on “The Black Money Law”. It consists of 295 FAQs. I must appreciate Chairman Mr. Rahul Hakani, Advocate and his team for coming out with the publication in a short period of 25 days. It is a solo publication of the Chamber and the response towards the sale of this book is very good.

International Taxation Committee under the Chairmanship of CA Naresh Ajwani organised a half day Seminar on “Black Money Law and Voluntary Compliance Window”. The Speaker dealt with the subject in depth and first time special session in Q and A format was held at this Seminar. My heartiest congratulations to Chairman and his team for organising successful Seminar.

A Lecture meeting on “Provision of accounts and Audit under New Companies Act” was organised by the Corporate Members Committee jointly with the Allied Law Committee and JB Nagar Study Circle. The response for the same was very good. In the future, the Chamber will try to organise more and more meetings in the suburban area to increase visibility.

| FROM THE PRESIDENT |

The Seminar on “Audit under Various Acts” was organised by four committees Corporate, Allied, Direct and Indirect. It went very well in spite of Janmashtami festival falling on the same day. It was attended by delegates from Nagpur and Nashik. It was also attended by many people from the corporate world. I must congratulate all the Chairmen : CA Paras Savla, CA Kamal Dhanuka, CA Ketan Vajani and CA Rajiv Luthia for organising the Seminar needed by corporate, middle and small size entrepreneurs and CA firms. I must thank Mr. Sagar Nagre, Secretary MACCIA and Taxman for helping the Chamber to send announcements by E-mail to all Members of the Maharashtra Chamber of Commerce, Industry and Agriculture.

My sincere appreciation to all chairman for regularly organising Study Circle Meeting, Study Group ISG, etc.

As promised by me on the AGM day, we have asked for suggestions on Pre-Budget Memorandum from all the members. The September month Newsletter includes Law and Representation column for asking suggestions from Members for Pre-memorandum of Budget. On 31-8-2015 afternoon, we received complaints from Members about slow response from efilng.incometaxindia.gov.in website. Friends immediately, our Chairman Mr. Vipul Joshi, Advocate and CA Mahendra Sanghvi sent representation mail at 5:30 p.m. to CBDT on the slow working of the site. Committee had also sent a representation on scrutiny of cases during the year ending March 2015.

We are again proposing to organise “TAXCON 2015” a joint seminar of 5 associations namely The Chamber of Tax Consultants, All India Federation of Tax Practitioners (WZ), Western India Regional Council of the Institute of Chartered Accountants of India, Bombay Chartered Accountants' Society and The Sales Tax Practitioners Association of Maharashtra. In the month of November, 2015, I must thank CA Sunil Patodia, CA Raman Jokhakar, Mr. Vipul Joshi, Advocate and Mr Vijay Sachiv, Advocate for giving consent for organising TAXCON 2015..I am pleased to announce that the TAXCON will be organised after a gap of a decade. Now, we are all coming together for organising most awaited Conference, “TAXCON 2015”.

September will be full of activities. I know our professional brothers will be extremely busy in filing returns till 7-9-2015 and in filing of Tax Audits and complying various returns under Company Law Act as 30-9-2015 is due date for the same. The changes brought by CBDT are very important to meet the compliances of Act, however notifying of new forms and releasing of utility for filing E return is very late. How a professional is expected to complete his/her work on time when notification of forms and utility itself was released very late.

Much awaited RRC dates of Indirect and Direct Tax are already announced. October's Newsletter will carry the details.

In the coming months, the Chamber will again buzz with activities as many events are planned. I would request you to keep a close watch on the Newsletter, website and e-mail to enrol for some of the important and novel programmes.

Government decides not to make MAT demand on FIIs. This means ` 602 crore demand notices sent to 66 FIIs/FPIs will now be on hold. The Government will soon issue a directive

to its officials not to pursue MAT demand on foreign institutional investors (FIIs) or Foreign Portfolio Investors (FPIs) for the period before April 1 ??? for Pending legislative changes, the Finance Ministry said in statement given out on 1-8-2015.

CBDT has issued guidelines for compounding of offences under Income-tax Act, 1961/Wealth Tax Act, 1957 in cases of persons holding undisclosed foreign bank accounts/assets. The Board on 4-9-2015 issued directions to all field formations including Principal Chief Commissioners, Chief Commissioners and Principal DGs Income Tax and DGs IT to compound cases where assesseees have co-operated fully or partially and paid taxes. The CBDT clarified that the matter was examined in consultation with the Special Investigation Team (SIT) on black money.

India and the USA have concluded the agreement on Foreign Account Tax Compliance Act (FATCA). Soon India and USA will start sharing information on automatic basis from 30th September, 2015. India has already enacted the rules for implementation of FATCA. The signing of FATCA follows the Indian Government's decision to join Multilateral Competent Authority Agreement on 3rd June, 2015. Both these steps are expected to curb offshore tax evasion. The Chamber welcomes the steps.

GST bill has not been passed. Is it the cussedness of the States and why are they being cussed? One reason could be that, the GST will replace all other indirect taxes. Even if the GST is calibrated so as to give the same revenue as the sum of all those taxes, it will bring more revenue to some States and less to others. The Finance Minister has promised to take care of that and to reimburse the difference to the losing States out of Central Revenue for some years. But he cannot do so forever without making a mockery of the reform. GST will deprive States of most of their power of taxation. The practice in "good" countries is to make few and infrequent changes in tax rates. The objective should be to forget tax changes and to learn to manage within the revenue. And that is what the States should also learn to do, if they are interested in good governance and in attracting investment from other States and countries. Still one thought that is rising in my mind is "After independence of 68 years can States be integrated to implement of GST".

China has been a major contributor to economic growth and low global inflation for more than two decades. Chinese shares plummeted on Monday 24-8-2015, wiping out the year's gains and leading to a slump across Asian equities as Beijing's latest market intervention failed to restore confidence, with concern mounting about the stalling economy. In India, Monday 24-8-2015 morning blues took on a different colour as domestic equity markets too crashed in line with the performance of global markets. The BSE Sensex was down by more than 1,625 points. India's economy growth expectation was 7.4%. In contrast to expectations, Indian GDP growth for April to June is 7%, which is well below expectations and slower than that of the preceding three months period, putting a dent in the Government optimism about a strong recovery and adding pressure on the Banks to cut rates. Recently, to give a boost the economy, private and nationalised banks have cut the base rate. When as on 8-9-21015, the rupee dropped 66.83, weakest since September 2013. Sensex slumped to below 25K i.e. 24,894; it's lowest in close to 15 months.

For the Readers benefit, I want to share an extract written by Stephen R. Covey:-

"I want it now" "People want things and want them now. I want money. I want a nice, big house, a nice car, the biggest and best entertainment centre. I want it all and I deserve it"

Though today's "credit card" society makes it easy to "get now and pay later," economic realities eventually set in and we are reminded sometimes painfully that our purchases cannot outstrip our ongoing ability to produce. Pretending otherwise is unsustainable. The demands of interests are unrelenting and unforgiving. Even working hard is not enough. With the dizzying rate of change in technology and increasing competition driven by the globalisation of markets and technology, we must not only be educated. We must constantly be re-educated and reinvent ourselves. We must develop our minds and continually sharpen and invest in the development of our competencies to avoid becoming obsolete. At work, the bosses drive results, and for good reason. Competition is fierce; survival is at stake. The need to produce today is today's reality and represents the demands of capital, but the real mantra of success is sustainability and growth. You may be able to meet your quarterly numbers, but the real question is, "Are you making the necessary investment that will sustain and increase that success one, five and ten years from now"? Our culture and Dalal Street scream for results today. But the principle of balancing the need, to meet today's demands with the need to invest in the capabilities that will produce tomorrow's success is unavoidable. The same is true of your health, your marriage, your family, your family relationships, and your community needs.

To build any team six things should be avoided:-

- (1) Ego
- (2) Groupism
- (3) Favouritism
- (4) Politics
- (5) Non-acceptance of changes
- (6) Delay in decisions.

Team needs regular support of each member to reach new heights and for achieving goals of the Organisation. If members will not support the Team at par, the dream to reach on top, will never be fulfilled. To overcome this, Team members should spread love and fellowship among members that will bring each Team member nearer and nearer. In the changing scenario, members should accept the changes instantly. The delay or non-acceptance of creativity will give lower or zero growth rate to team.

During the month of September, so many festivals will be celebrated by our society. All have their own importance in everybody's life. My best wishes to all of you for the upcoming festivals.

With personal regards

Avinash Lalwani
President



Chairman's Communication

Dear Readers,

This is the busiest time of the year for tax professionals. The due date for filing Tax Audit Report and Income Tax Return for the A. Y. 2015-16 is approaching and the Income Tax Department is busy in sending reminders in the form of E-mails and SMSs to tax payers to file Return in time. New functionality of Electronic Verification Code (EVC) of the Income Tax Return has been introduced as an facility and alternative for the submission of Income Tax Return Form ITR-V to CPC, Bengaluru.

The Special Story for this month centres on Stamp Duty and Registration. The levy of stamp duty is a State subject and thus the rates of stamp duty vary from State to State. The Centre levies stamp duty on specified instruments and also fixes the rates for these instruments. The Bombay Stamp Act, 1958 came into force on 16th February, 1959 and is applicable in the State of Maharashtra. For the State of Maharashtra, stamp duty is the second largest source of revenue after Sales Tax. The Bombay Stamp Act levies stamp duty on documents/instruments by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. The stamp duty is payable on instrument and not on the transactions. Stamp duty is a kind of tax, just like sales/income tax etc. and justifiably its basic purpose is to raise revenue for the Government. Thus, like any other tax, stamp duty must be paid in full and on time to the Government, with delays attracting penalties

Stamp duty is a very important factor when structuring transaction especially with many of the states in india imposing high stamp duty on documents to shore up their revenues. A document which is inadequately stamped is not admissible as evidence, and shall not be received in evidence or act upon, registered or authenticated by any public officer or any person having by law or consent of any parties' authority to receive evidence.

It is therefore very important that stamp duty implications be examined upfront while structuring a transaction rather than just before execution, as the latter approach often leads to delay and many a times has led to payment of excess duty when it was not required. There are various issues arises concerning stamp duty as regard applicability, categorisation, valuation, rate, computation, manner of payment of duty, refund, consequence of non-compliance etc. Attempt is made to address some of the important issues on the subject. I am sure the readers shall benefit from the exposition by the authors of the articles. I am thankful to Shri Anup Shah for designing this Special Story and our immediate Past President Shri Paras Savla for co-ordinating with the authors. I also thank all the authors for their valuable contributions well within the time frame.

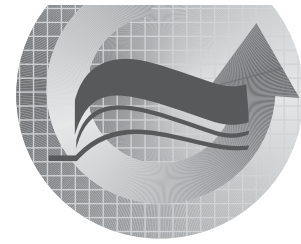
I am sure it will be challenging task for every professional brother to complete all his Tax Audit assignments/Tax Returns in the month of September as was busy in filing returns of non-business class assessee up to the last day of August, 2015. I wish all our members all the very best for timely completion of Audit assignments.

CA. HARESH KENIA

Chairman – Journal Committee



CA Anup P. Shah



Stamp Act – A Curtain Raiser

1. Introduction

1.1 Stamp duty is a significant cost which must be reckoned with while entering into an immovable property transaction. Stamp duty is also the second most important source of revenue for the Maharashtra Government after Value Added Tax. In the year 2013-14, the Maharashtra Government earned a revenue of around ₹ 20,000 crore from stamp duty. Maharashtra has the infamous distinction of covering the maximum number of instruments under the ambit of the stamp duty net.

1.2 In recent years, stamp duty has garnered a lot of negative publicity since it is linked with and impacts several other Acts. Sections 50C and 43CA of the Income-tax Act, 1961; buyer's taxation in case of inadequate consideration under section 56(2)(vii); fungible FSI premium payable to the Municipal Corporation of Mumbai; composition scheme for developers under the Maharashtra Value Added Tax Act; property tax under the capital value system, etc., are all linked with the values on which stamp duty is payable. Hence, it becomes very important to understand the stamp law.

1.3 The stamp duty rates vary across India and on immovable property instruments it ranges from 3% to 13%. A very telling comment was made by Dr. Manmohan Singh (when he was the Prime Minister) in 2011. He stated that in order to check the flow of black money into the real estate sector stamp duty needs to be reduced. He felt that stamp duties in the country are a big obstacle to cleaning

the mess with regard to transactions in real estate. Words of wisdom indeed from our former Prime Minister. Unfortunately, these have fallen on deaf ears!

1.4 Let us look at an overview of Stamp Duty in India.

2. Which Act applies?

2.1 Stamp Act is a revenue statute since it raises taxes for the Government. In *Hindustan Steel Ltd. vs. Dalip Construction Company, 1969 SCR (3) 796*, the Supreme Court held that the Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments; it is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue.

However, interestingly it is both the subject of the Central and the State Governments. This dichotomy exists because of a provision in the Constitution of India. Often a question arises, which Act applies – the Indian Stamp Act, 1899 or the Maharashtra Stamp Act, 1958?

2.2 Article 246 of the Constitution divides the law making powers between the Centre and the State. Power to make laws in respect of all items enumerated in List I in the Seventh Schedule to the Constitution vest exclusively with the Parliament (known as the Union List) while for those items enumerated in List II vest with the State Government (known as the State List).

However, items enumerated in List III represent the Concurrent List for which the Parliament as well as the State Government can enact laws. Laws pertaining to Stamp Duty are found in all three Lists in the Seventh Schedule:

- (a) The Union List – rates of stamp duty in respect of nine specific instruments can only be fixed by the Parliament. These are, bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts. Thus, across India, the rates on these nine instruments are governed by the Schedule I to the Indian Stamp Act, 1899.
- (b) The State List – rates of stamp duty in respect of documents other than those specified in the Union List. Thus, each State Government has power to frame rates for all instruments other than the nine instruments specified above.
- (c) The Concurrent List – The Constitution gives powers to both the Centre and the State to frame laws relating to Stamp Duty. Accordingly, the Centre has framed the Indian Stamp Act, 1899 while some States have framed their own Stamp Acts. These States are Maharashtra, Gujarat, Rajasthan, Karnataka, Kerala, Jammu and Kashmir and Uttar Pradesh. Thus, in Maharashtra, we have the Maharashtra Stamp Act, 1958.

3. What is the Charge of Duty?

3.1 Stamp Duty is leviable on every instrument (not a transaction) mentioned in Schedule I to the Maharashtra Stamp Act, 1958 at rates mentioned in that Schedule – *LIC vs. Dinannath Mahade Tembhekar AIR 1976 Bom. 395*. However, for the nine instruments provided in the Union List, the rates are mentioned in the Schedule to the Indian Stamp Act, 1899. An Instrument as defined under the Maharashtra Stamp Act to include every document by which any right or liability is created, transferred, limited, extended, extinguished or recorded. However, it does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of

share, debenture, proxy and receipt. This is because these nine instruments are within the purview of the Indian Stamp Act, 1899. All instruments chargeable with duty and executed in Maharashtra should be stamped before or at the time of execution or immediately thereafter or on the next working day following the date of execution.

A copy of an instrument whether by way of a fax or otherwise of the original instrument shall also be charged with full duty in cases where the original has not been stamped. However, if the original has been duly stamped, then the Maharashtra Stamp Act provides that a duplicate or a counterpart will be stamped with a maximum duty of ` 100/-.

3.2 One of the biggest myths surrounding stamp duty is that it is levied on a transaction. It is only levied on an instrument and that too provided the Schedule mentions rates for it. If there is no instrument then there is no duty is the golden rule one must always keep in mind. An English decision in the case of *The Commissioner of Inland Revenue vs. G. Anous & Co. (1891) Vol. XXIII Queen's Bench Division 579* has held that the thing, which is made liable to stamp duty is the "instrument". It is the "instrument" whereby any property upon the sale thereof is legally or equitably transferred and the taxation is confined only to the instrument whereby the property is transferred. If a contract of purchase or sale or a conveyance by way of purchase and sale, can be, or is, carried out without an instrument, the case would not fall within the section and no tax can be imposed. Taxation is confined to the instrument by which the property is transferred legally and equitably transferred. This decision was cited by the Supreme Court in the case of *Hindustan Lever Ltd vs. State of Maharashtra, (2004) 9 SCC 438*.

Movable property can be transferred by mere delivery and possession. Hence, if no instrument is executed for the transfer of movables, there would not be any liability to stamp duty. However, if for any reason, an agreement is executed which effects the transfer of the movable property, then it would be treated as a conveyance and would attract stamp duty @ 3% under the Maharashtra Stamp Act, 1958. In the case of immovable property there

is no choice but to execute a written instrument which is attested and registered if the value of the property exceeds ` 100/-. Hence, instruments for immovable property transactions would attract duty at rates specified in the Schedule. For instance, a conveyance of immovable property would attract stamp duty @ 3-5% under the Maharashtra Stamp Act, 1958, depending upon the location of the property.

3.3 Stamp duty under the Act may be levied on any one the following three basis :

- The Fair Market Value of the property;
- The Consideration mentioned in the instrument; or
- The area of the property involved.

The instruments where stamp duty is levied on the basis of the Fair Market Value are as follows:

- Conveyance
- Lease Deed
- Gift deed
- Transfer of lease
- Development Rights Agreement
- Power of Attorney granted for consideration and authorising to sell an immovable property
- Power of Attorney which is for development rights
- Trust deed
- Partition deed
- Release deed
- Partnership deed – if the capital contribution is brought in by way of property
- Dissolution/retirement deed - if a partner who did not bring in a property takes it on dissolution / retirement
- Settlement deed
- Instrument of Exchange of property

The above instruments are subject to duty on the basis of consideration recorded in the instrument or market value of property whichever is higher. The term “market value” is defined to mean the higher of :

- The price which the property covered by the instrument would have fetched if sold in an open market on the date of execution of the instrument; or
- The consideration as stated in the instrument.

For ascertaining the market value in Maharashtra, the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 empowers the Joint Director of Town Planning and Valuation to prepare an Annual Statement of Average Rates of market value for different types of immovable properties situated in every tahsil, municipal corporation or local body area. This dreaded Statement is popularly known as the Ready Reckoner.

3.4 Hence, the Ready Reckoner is applicable for the valuation of immovable properties in case of certain instruments. The term ‘immovable property’ is defined to include land, benefits to arise out of land and things attached to earth or permanently fastened to anything attached to the earth. It is extremely essential to ascertain whether or not the property in question is an immovable property. The Supreme Court’s decisions in *Duncan’s Industries Limited vs. State of U. P. (2000) 1 SCC 633*; *Triveni Engineering & Indus. Ltd., 2000 (120) ELT 273 (SC)* and *Sirpur Paper Mills (1998) 1 SCC 400* would be useful in this respect.

4. Back to Basics

4.1 Some of the basic principles of stamp law are as follows:

- (a) An instrument is to be read as it is worded or drafted and nothing more and nothing less – *T.G. Thimmiah Chetty vs. District Registrar, AIR 1986 AP 14.*
- (b) The stamp papers must be in the name of one of the parties to the transaction. They cannot be in the name of the Chartered Accountant or Lawyer of the parties.
- (c) There is nothing wrong/illegal if efforts have been made to reduce stamp duty – *Balkrishna Bihari Lal vs. Board, AIR 1970 MP 74 (FB).*

- (d) Who bears and pays the stamp duty is a matter of agreement between the parties. In the absence of any such agreement, the Act provides that in the case of a Conveyance, duty is to be paid by a buyer and by the lessee in case of a lease. In cases of Bonds, Release, Settlement, it is to be paid by the person making or drawing the instrument. In case of exchange, it is to be paid by the parties in equal shares and in case of partition, by the parties in proportion to their respective shares. In all other cases, it is to be paid by the person executing the instrument.
- (e) The Court must look at the document itself as it stands and it is not permissible to show, by evidence, any collateral circumstances. The nature of the document can be determined only from the language it employs and the purpose which it is intended to serve. Although it is permissible to look behind the form and at the substance of the transaction, this can be done only by construing the instrument itself and not by taking into consideration any collateral or other evidence *de hors* the instrument. The question must be decided essentially with reference to the contents of the instrument and to the intention of the parties which is gathered from the contents – *Chandrakant vs. Kartickcharam (1903) 5 Bom. L. R. 103; Balkrishna Bihari Lal vs. Board, AIR 1970 MP 74 (FB)*.
- (f) Valuation of properties must be made only on the basis of the deeds presented and no fishing exploration is to be made as to what other articles/items were sought to be conveyed without there being any specific mentioning of the same in the documents – *Bajaj Hindustan Ltd. vs. State of Rajasthan, AIR 1997 Raj. 262*.
- (g) The validity of a stamp paper under the Maharashtra Stamp Act is only six months from the date of its issuance. However, this principle does not apply under other States unless such an express provision is found in the Stamp Act prevailing in that State – *Thiruvengada Pillai vs. Navaneethammal, AIR 2008 SC 1541*.
- (h) Just because a document which must be stamped has not been stamped, it does not become invalid or void *ab initio*. The only consequence of not paying stamp duty is that the instrument cannot be admitted as evidence in a Court. However, as between the parties it operates immediately and the rights and duties emerge from the document itself – *Doraiswami Reddiar vs. Venkatakrishna Reddiar, AIR 1969 Mad. 84*.
- (i) While the taxing prowess of the Maharashtra Stamp Act is widely known, the exemptions and concessions which the Act provides are not widely known. The Act provides some significant concessions from stamp duty. For instance, instruments executed by units for operating in an IT Park / Bio-tech park are offered significant stamp duty concessions. Similarly, the State has reduced the stamp duty payable on instruments executed for obtaining housing loans to Nil in case the loan amount does not exceed ₹ 1 lakh and to 0.25% for all other cases. Thus, it is important to carefully study the Notifications issued by the Government in this respect.

5. Multiple Instruments / Cross Border Instruments

5.1 If an instrument covers several instruments / matters then the duty would be the aggregate of the duties chargeable on each separate instrument. For instance, if one instrument makes a conveyance of both movable and immovable property, then the duty levied would be the total of the duty on movable property and duty on immovable property. This may happen in the case of a slump sale of an undertaking for which a conveyance is made even for the movable property. The Supreme Court in *Member, Board of Revenue vs. A. P Benthall, 1956 AIR 35* has held that this provision applies only when the instrument comprises more than one transaction, and it is immaterial for this purpose whether those transactions are of the same category or of different categories.

5.2 However, if one instrument falls within several descriptions in Schedule I to the Stamp

Act, then the duty charged would be the highest of the duties. For instance, in *Board of Revenue, Madras CCRA vs. Narasimhan*, AIR 1961 Mad. 504, it was held that portions of a composite document may be construed as a deed of dissolution of a partnership while portions may be construed as a deed of release. Accordingly, it was to be charged with the highest stamp duty which applied to a deed of dissolution of partnership.

5.3 Any instrument executed out of Maharashtra may be stamped within 3 months after it has been first received in the State else it would be deemed to be an unstamped document.

5.4 Where any instrument executed out of Maharashtra but relates to any property situate in or anything to be done in Maharashtra and if such instrument is brought into Maharashtra then it is liable to be stamped with rates specified under the Maharashtra Stamp Act. However, the duty already paid in any other State would be allowed as a credit. These provisions are similar to double tax credit provisions found in Double Tax Avoidance Agreements and are found in all State Stamp Acts as well by amendments by different States in the Indian Stamp Act, 1899. It should be noted that the ambit of this provision even extends to a copy of any such instrument brought into Maharashtra. Thus, even photocopies of instruments would become exigible to be stamped under this provision.

For instance, an agreement for sale is executed by a Delhi-based company with a Gujarat-based company for a property situate at Mumbai. The moment the agreement or even a copy enters Maharashtra, it is liable to be stamped with rates specified in the Maharashtra Stamp Act. However, till such time as neither the original instrument nor the copy enters the State, no duty is payable under this Act.

In *M/s. Win-N-Quiz Company Limited vs. The Authorised Officer, Bank of Baroda*, 2011 (5) Bom. CR 69 it was held that where an instrument is executed outside Maharashtra and is subsequently received in Maharashtra, the amount of duty chargeable on the instrument is to be the duty

chargeable under Schedule I on a document of like description executed in Maharashtra less the amount of duty, if any, already paid under any other law in force in India. In such an event, if an instrument has already been stamped with duty under any other law in force in India, that duty would be duly given credit for, in making the computation.

6. Understamped Document

6.1 Under the Maharashtra Stamp Act, any instrument which is inadequately/not stamped, then it shall be inadmissible in evidence for any purpose, e.g., in a Civil Court. Such instruments can be admissible in evidence on payment of the requisite amount of duty and a penalty @ 2% per month on the deficient amount of duty calculated from the date of execution. However, the maximum penalty cannot exceed four times the amount of duty involved (the maximum penalty used to be twice the duty involved but it was doubled by the 2015 Amendment Act).

6.2 Further, any public officer can impound such improperly stamped instruments if it comes to his notice. Such impounded instruments must be sent to the Collector who would then determine the amount of duty and penalty, if any, payable on the same.

6.3 A person can be punished with rigorous imprisonment for up to 6 months (not less than 1 month) and with fine up to ` 5,000, if it is proved that the instrument was undervalued or short payment of duty was made with intention to evade duty.

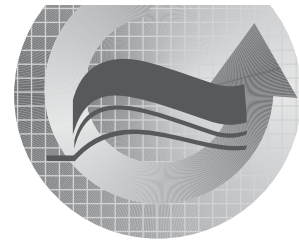
7. Conclusion

Stamp Law is all-pervasive, dynamic and fast changing. If one does not keep abreast with the latest developments under this very important legislation then one would run the risk of having an inadequately stamped document which would not be admissible as evidence and a high penalty for setting right the deficiency. Always remember that "Too Stamp or Not to Stamp is Always the Question!".





Gyanendra Kumar, *Advocate*



Stamp Duty on Instruments relating to Immovable Property

The term 'Property' includes not only money and other tangible things of value, but also any intangible right considered as a source or element of income or wealth. The expression 'property' also includes the right to enjoy and to dispose of certain things as one pleases, provided it is not used in a manner prohibited by law. Thus property means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

What is Immovable Property?

The Transfer of Property Act, 1882 ('TPA') defines the term 'immovable property' as follows:

'immovable property' does not include standing timber, growing crops, or grass;

While the TPA gives a definition by exclusion, Section 3(26) of the General Clauses Act, 1897 provides for an inclusive definition of the term, which is defined to include (a) land; and (b) benefits arising out of land and things attached to the earth; or permanently fastened to anything *attached to the earth*.

The term 'attached to the earth' also finds its definition in the TPA and includes walls and buildings imbedded in the earth and anything which is imbedded in the earth for its permanent beneficial enjoyment. Thus, any transfer of such

structures in addition to transfer of the land is liable to be stamped as a conveyance. This position was affirmed by the Hon'ble Supreme Court in the case *Duncan Industries Limited vs. State of U.P. and Ors AIR 2000 SC 355*. where the Court treated the permanently embedded machineries of a fertiliser plant to be a part of the immovable property and held that the value of the plant and machinery should also be taken into consideration for ascertaining the stamp duty.

In this paper, we shall analyse the manner in which immovable property, or rights therein, can be transferred, whether permanently or temporarily, by execution of different kinds of instruments with specific focus on the stamp duty applicable in the State of Maharashtra on such instruments related to immovable property and will highlight the various factors that need to be taken into consideration while determining the stamp duty applicable on such instruments.

Any immovable property can be sold, mortgaged or transferred by execution of one of the following documents.

A. Conveyance

Conveyance is an instrument by which a property is absolutely transferred from one person to another along with all rights, title and interest on such property. Section 2(10) of the Indian Stamp Act, 1899 ('Act') defines conveyance as follows:

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“Conveyance” includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.

1985, the definition of the term ‘conveyance’ was amended to also include a transfer of property pursuant to:

- (i) A decree or final order of any Civil Court; and
- (ii) An order of the High Court under section 394 of the Companies Act, 1956 and an order passed by the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 in relation to amalgamation or reconstruction of companies.

The definition is an ‘inclusive’ definition and not an exhaustive one. Any instrument executed for transfer of a property between two living persons and not falling under any other specific entry in the Schedule to the Act will come within the ambit of the definition of conveyance. Additionally, by an amendment to the Maharashtra Stamp Act, 1958 (**‘MSA’**) in

The stamp duty payable on a conveyance is summarised in the table below:

Conveyance relating to immovable property <i>[Article 25(b) of Schedule I of the MSA]</i>	If situated within the limits of any Municipal Corporation or any Cantonment area annexed to it, or any urban area, not falling within the limits of Mumbai Metropolitan Region Development Authority (‘MMRDA’) or any Influence Area (as defined below).	5% of the true market value of the property (‘MVP’).
	If situated within the limits of MMRDA.	4% of the true MVP.
	If situated within any of the influence areas as per the annual statement of rates published under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 (‘Influence Areas’).	4% of the true MVP.
	If situated within the limits of any Gram Panchayat or any other area, not falling under the limits of MMRDA or any of the Influence Areas.	3% of the true MVP.
Purchase of a unit in a project by a person from a developer Note: Any assignment by a purchaser to another person within one year of purchase from the developer is exempted from payment of stamp duty.		Same duty as conveyance (as stated above) on the MVP.

The term market value connotes the higher of (a) the ready reckoner rate of the property; and (b) the value of the property stated in the conveyance/sale deed.

An order of the High Court under section 394 of the Companies Act, 1956 and an order passed by the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949 in relation to amalgamation or reconstruction of companies <i>[Article 25(da) of Schedule I of the MSA]</i>	10% of the market value of the shares issued or allotted and the amount of consideration paid. Provided the duty payable shall not exceed the higher of: (a) 5% of the true market value of the property situated in Maharashtra; and (b) 5% of the market value of the shares issued or allotted and the amount of consideration paid. <i>Note: In case of a reconstruction or demerger, the percentage mentioned in (b) above has been prescribed at 0.7%.</i>
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In addition to sale/conveyance deed executed between two persons for transfer of a property, an immovable property may also be transferred as part of a larger transaction.

1. Creation of Trust for immovable property

A trust, defined under section 3 of the Indian Trusts Act, 1882 ('ITA'), is the obligation arising out of a confidence reposed by a person for the benefit of certain identified person(s). In terms of the ITA, (a) trustee is the person in whom the confidence is reposed; (b) the person for whose benefit the confidence is reposed is called the 'beneficiary'; (c) the subject matter of the trust is referred to as the trust-property; and (d) the 'beneficial interest' or 'interest' of the beneficiary is his right against the trustee as the owner of the trust-property.

The position of the trustee vis-à-vis the trust property has been explained by the Hon'ble Supreme Court in *W.O. Holdsworth vs. State of Uttar Pradesh AIR 1957 SC 887* in the following manner:

"These definitions emphasise that the trustee is the owner of the trust property and the beneficiary only has a right against the trustee as owner of the trust property. The trustee is thus the legal owner of the trust property and the property vests in him as such. He no doubt holds the trust property for the benefit of the beneficiaries but he does not hold it on their behalf. The expressions "for the benefit of" and "on behalf of" are not synonymous with each other. They convey different meanings."

Under the MSA, an instrument for creation of trust for an immovable property is chargeable to duty as follows:

Creation of trust for immovable property [Article 61A(a) of Schedule I of the MSA]	Where the trust is made for a religious or charitable purpose.	2% of the market value of the property settled. In any other case Same duty as conveyance on the market value of the property settled.
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2. Transfer of shares of a company where immovable properties are the only assets

Indirect control of an immovable property can get transferred in case of change in ownership of a company owning property. However, since the company continues to be the owner of the property and there is no transfer. Such transaction will not qualify to be a 'conveyance' and is charged to stamp duty at the following rates:

Transfer of shares in a company or other body corporate [Article 62 (a) of Schedule I of the Act]	0.25% of the value of the shares.
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Stamp duty is calculated on the 'value' (not 'face value') of the shares. The term "value" means "market value" as can be seen from the case, *Commissioner of Gift Tax, Bombay vs. Smt. Kusumben D. Mahadevia (1980) 2 SCC 238* where the Supreme Court observed that for public limited company listed on the stock exchange, the price prevailing on the valuation date would represent the value of the shares. But where the shares of a company are not quoted on the stock exchange the proper method of valuation to be adopted would be the profit-earning method. The Supreme Court in *Dr. Mrs. Renuka Datla vs. Solvay Pharmaceutical B.V. and Ors. (2004) 1 SCC 149*, has upheld the valuation made by the valuer on three methods, viz., (1) Asset based (2) Earning based (3) Market based.

3. Transfer of properties through change in ownership interest in entities

In Maharashtra, properties are also conveyed as a right attached to a share in the ownership of an entity (viz., a company or a society). This structure is commonly adopted in case of

projects/ complexes where, each member being a shareholder of the entity is entitled to the attached immovable property in the form of a unit of the project.

For transfer of the unit, the unit holder executes a deed for transfer of (a) the share; and (b) the unit attached to the share in terms of which the entire interest in the unit and its possession is transferred to the purchaser, along with the share of the entity.

Since this document transfers the right of the unit holder in the immovable property to the purchaser, it qualifies to be a conveyance for the

purposes of the Act and, thus, is chargeable to stamp duty as a conveyance.

4. Release Deeds

A release deed is a document by which a person renounces/relinquishes his title over a property in favour of another. As distinct from a conveyance, a release is the renunciation of a right by a person of his share in a property to the other persons already having a right in the said property. The MSA provides for the stamp duty rates in relation to a release in the following manner:

Release Deed <i>[Article 52 of Schedule I of the MSA]</i>	If executed for renunciation of right in an ancestral property in favour of brother, sister, father, mother, spouse or the legal heirs of any of the aforesaid relatives.	INR 200
	In any other case	Same duty as conveyance (as stated above) on the market value or the interest renounced.

5. Exchange

An 'exchange deed' is a document wherein two separate property owners mutually agree to transfer the ownership rights over their respective properties to each other this is recognised in terms of section 118 of the TPA.

Exchange Deed <i>[Article 32 of Schedule I of the MSA]</i>	Same duty as conveyance on the market value of the property of the greatest value.
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6. Agreement to Sell

An agreement to sell records the terms agreed between the parties based on which the sale of the property is to be executed at a future date. This document precedes execution of a sale deed between the parties. Agreements to sell where possession is handed over and where possession is not handed over are subject to differential rates of stamp duty.

Agreement to sell	With possession <i>[Explanation I to Article 25 of Schedule I of the MSA]</i>	Same duty as conveyance (as stated above). <i>Note: An adjustment of the duty paid is provided for at the time of conveyance.</i>
	Without possession <i>[Article 5(h)A(iv) of Schedule I of the MSA]</i>	0.1% of the value of the property if the value does not exceed INR 10 lakhs; and 0.2% of the value of the property in any other case.

B. Lease

The TPA, *vide* section 105, provides that a lease of immovable property is a transfer of a right to enjoy such property for a limited period or in perpetuity. Such transfer of the right is made for a consideration to be paid periodically or on specified occasions to the lessor by the lessee. The MSA expands this definition to include any writing on an application for a lease intended to signify that the application is granted and also a decree or final order of any Civil Court in respect of a lease. Title over the property is not transferred by way of a lease. Only lawful possession and interest in the property, coupled with an exclusive right to enjoy the same, is transferred.

The instrument through which transfer of such right is created is called 'Lease Deed' or a 'Lease Agreement', which is an instrument chargeable with stamp duty.

There are substantial variations in stamp duty based on the period of the lease (including any provision for renewal therein).

Stamp duty applicable in Maharashtra on leases having different tenures and terms.

	Nature of Lease	Stamp Duty
Lease <i>[Article 36 of Schedule I of the MSA]</i>	Up to five years.	Same duty as conveyance (as stated above) on 10% of the MVP.
	Above five years and up to ten years.	Same duty as conveyance on 25% of the MVP.
	Above ten years and up to twenty-nine years.	Same duty as conveyance on 50% of the MVP.
	Above twenty-nine years, or in perpetuity, or where it does not purport to be for a specific period.	Same duty as conveyance on 90% of the MVP.

(i) Transfer of Lease

There are occasions where the lease is transferred or assigned to a third party. Article 60 of Schedule 1 of the MSA anticipates that such transfer can be by way of assignment or by way of decree or final order passed by any civil court or any revenue officer. The stamp duty payable on such transfer is the same duty as lease calculated on the remaining period of lease. Additionally, a lessee may also, if so permitted by the contract, sub-lease the premises.

Under the MSA while both 'transfer of lease' and 'sub-lease' are chargeable under different articles of Schedule 1, the duty payable is the same and they are chargeable with the same duty as lease for the remaining period of the lease.

(ii) Surrender of Lease

Surrender of lease is the giving up of the lessee's interest in a property in favour of the person who holds the reversionary right over the property. This can be done through execution of a surrender agreement.

Surrender of Lease <i>[Article 58 of Schedule I of the MSA]</i>	Without any consideration	INR 200
	With consideration	Same duty as conveyance (as stated above).

C. Leave and Licence

Another tool by which the right to use an immovable property is given is 'leave and licence'. A licence is defined under section 52 of the Indian Easements Act, 1882, which states that where one person grants to another, a right to do something in or upon the immovable property of the grantor, which would, in the absence of such a right, be unlawful, and where such right does not amount to an easement or an interest in property, the right is called a licence.

While both lease and leave and licence are primarily in the nature of right to use a property, there is a clear difference between the two. The Supreme Court, in *Associated Hotels of India vs. R.N. Kapoor AIR 1959 SC 1262* has distinguished the two and held that one factor for distinguishing a lease from a license is that if the document creates an interest in the

property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence. In *Mangal Amusement Park (P) Ltd. vs. State of Madhya Pradesh AIR 2012 SC 3325*, the Supreme Court held that lease is not a mere contract but envisages and transfers an interest in the demised property by creating a right in favour of lessee in rem. Licence only makes an action lawful which, without it, would be unlawful but does not transfer any interest in favour of licensee in respect of the property.

The MSA provides for a different (and lower) stamp duty on a leave and licence compared to lease. However, where the leave and licence is seen as granting a right which is not just temporary but of a longer-term, the MSA imposes the same duty as a lease on document.

Stamp duty applicable on leave and licence agreement in Maharashtra:

Leave and Licence Agreement <i>[Article 36A of Schedule I of the MSA]</i>	For a term not exceeding sixty months with or without renewal clause.	0.25% of the total sum of: a) Licence fee or rent payable; b) Non-refundable amount, premium or any other money advanced; and c) Interest at the rate of 10% per annum on the amount advanced.
	For a period exceeding sixty months with or without renewal clause.	Same duty as lease for the same period.

D. Development Rights Agreement

This is an arrangement between a land owner and a developer where the land owner contributes the land and the developer undertakes the development responsibility. Once the property is developed, the land owner is generally allotted some units in the constructed property by the developer as consideration for providing the land for construction.

These agreements are more in the nature of executory contracts wherein one derives right over the subject-matter of the contract through the performance of the contract (The rights of the developer and the land owner in respect of the constructed buildings comes up at a later point of time and is not in existence when the agreement is being executed).

The market practice in development agreements is that the land owner executes a power of attorney ('PoA') in favour of the developer empowering the developer to act on behalf of the land owner for defined aspects. The PoA is intended to protect the developer in instances where the land

owner refuses to execute the required documents when the construction of the property is complete.

The MSA treats the development agreement and the PoA as interconnected documents. Hence the rate of stamp duty payable on one is dependent on the stamp duty paid on the other, in the following manner:

Development Rights Agreement	If the duty paid on the accompanying POA is INR 100.	Same duty as conveyance (as stated above) on the MVP.
<i>[Article 5 (g-a) of Schedule I of the MSA]</i>	If the duty paid on the accompanying PoA is same as conveyance.	INR 100
PoA in relation to a Development Rights Agreement	If the duty paid on the development rights agreement is INR 100.	Same duty as conveyance on the MVP.
<i>[Article 48(g) read with Article 5 (g-a) of Schedule I of the MSA]</i>	If the duty paid on the accompanying development rights agreement is same as conveyance.	INR 100

Conclusion

Payment of stamp duty forms an important aspect of any transaction involving a property in order to protect the rights of the parties for which the document may be required to be presented before a court of law or other authority. In addition, given the fact that in immovable properties presentation of the instrument to a governmental authority is often mandatory (either for registration or for mutation), inadequate or non-stamping of an instrument should not even be within the consideration of the parties.

Therefore, while making a commercial decision regarding immovable property, the need to evaluate the stamp duty impact cannot be overemphasised. An evaluation in advance could allow the parties to look at options in structuring the transaction in a manner which minimises the impact of stamp duty within the scheme of the Act and the MSA. It is useful to note that the MSA would be classified as a fiscal statute and, therefore, the courts would not interfere with a structuring of a transaction in a manner which minimises the stamp duty impact so long as the structure is within the fold of the language of the enactment.

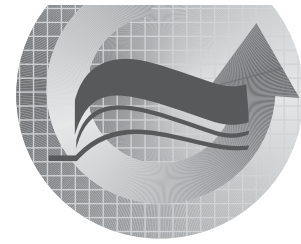


No need for looking behind. FORWARD! We want infinite energy, infinite zeal, infinite courage, and infinite patience, then only will great things achieved.

— *Swami Vivekananda*



K. K. Ramani, *Advocate*



Stamp Duty on instrument pertaining to Partnership Firms

Article 246 of Constitution of India read with List 1 (Union), List 2 (State) List 3 (Concurrent) of the Seventh Schedule lays down respective areas of legislation within the competence of Central and State Governments. Entry 91 of Union List, 63 of State List and 44 of Concurrent List provide for power to legislate in respect of stamp duty. The Indian Stamp Act, 1899 therefore has taken within its fold areas of bills of exchange, bills of lading, debentures, letters of credit, policy of insurance, promissory notes, proxy, receipts and transfers of shares, debentures etc., which fall within Entry 91 of the Union List. As the Central Government has exclusive jurisdiction in these areas, the State Governments being not competent to legislate on these areas, the Maharashtra Government in Maharashtra Stamps Act, 1958 has specifically excluded these areas from the ambit of instruments subject to levy under the Act. Section 2(l) of Maharashtra Stamp Act, 1958 define instrument as under :

“instrument” includes every document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt”

2. The Act in Section 74 further clarifies that nothing in the Act shall apply to rates

of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurances, transfer of shares, debenture, proxies and receipts. All documents, except these mentioned in Section 74 of Maharashtra Stamp Act, 1958, by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded are therefore, subject to stamp duty in Maharashtra under the Maharashtra Stamp Act, 1958.

3. Partnerships in India, governed by the Indian Partnership Act, 1932, arise as a result of contract between persons agreeing to share the profits of a business carried on by all or any of them acting for all. The contract, when expressed and in writing, is witnessed by the Deed of Partnership laying down the rights, duties and liabilities of partners and is an instrument within the meaning of the term in Maharashtra Stamp Act, 1958. The same is the case when the partnership is dissolved or any partner retires when the rights get extinguished Article 47 of Schedule I of the Act specifies the instruments concerning formation and dissolution of partnerships under different circumstances and the computation of stamp duty thereon.

Limited Liability Partnership

4. A new form of partnership was introduced in India by the enactment of Limited Liability Partnership Act, 2008 which while retaining

the basic characteristics of partnership as a relation between persons agreeing to share profits of business carried on by all or any of them acting for all, gave it a corporate business form with benefits of limited liability. The form of organisation gave the partnership a separate legal entity and combined within it the concept of limited liability of a corporate and the flexibility of partnership where mutual rights and duties are to be determined as per the agreement between the partners.

5. The Limited Liability Partnership, being basically a partnership, operates as per the terms of Limited Liability Partnership Agreement which means any written agreement between the LLP and its partners and between the partners *inter se* determining the mutual rights and duties of the partners and their rights and duties in relation to the LLP. The LLP Agreement in case of LLP is the Deed of Partnership.

6. The definition of the firm as per Sec. 2(23) of Income-tax Act, 1961 includes within it Limited Liability Partnership as defined in the Limited Liability Partnership Act, 2008. Absence of a consequential provision in the Maharashtra Stamp Act, 1958 putting it at par with partnership firm for purposes of stamp duty was, therefore, a

matter of controversy which has been set at rest by amendment made in the Act by the Maharashtra Stamp (Amendment) Act, 2015 w.e.f. 24th April, 2015 whereby Article 47 of Schedule-I has been amended to cover instrument of any partnership, Limited Liability Partnership and Joint Venture to run a business, earn profits and to share profits, whether in cash or in kind, in the same category and treating them alike for purposes of stamp duty, both at the time of entering into agreement on formation and dissolution or retirement of partners. What, therefore, applies to partnership firms, applies to Limited Liability Partnerships as well as any Joint Venture established to run a business and share profits thereof.

Stamp Duty on partnership documents

7. Under the Maharashtra Stamp Act, 1958 Schedule-I of the Act specifies the instruments which are subject to stamp duty and lays down the manner of determining the amount of duty. Article 47 of the Schedule specifies the instruments pertaining to partnerships including Limited Liability Partnerships and Joint Ventures to run the business established for sharing the profits earned therefrom. The Article as it stands after the amendment introduced by the Amendment Act of 2015 runs as ---

<i>“47. PARTNERSHIP—</i>	
<i>(1) Instrument of any partnership inclusive of, Limited Liability Partnership and Joint Venture to run a business, earn profits and to share profits, whether in cash or in kind -</i>	
<i>(a) Where there is no share of contribution in partnership, or where such share contribution brought in by way of cash does not exceeds ` 50,000.</i>	<i>Five hundred rupees.</i>
<i>(b) Where such share contribution brought in by way of cash is in excess of ` 50,000.</i>	<i>One per cent of the amount of share contribution subject to maximum of rupees fifteen thousand.</i>
<i>(c) Where such share contribution is brought in by way of property, excluding cash.</i>	<i>The same duty as is leviable on a Conveyance under clauses (a), (b) or (c), as the case may be, of Article 25, on the market value of such property.</i>
<i>(2) Dissolution of partnership or retirement of partner inclusive of, Limited Liability Partnership and Joint Venture to run a business, earn profits and to share profits, whether in cash or in kind -</i>	

<i>(a) Where on dissolution of the partnership or on retirement of a partner any property is taken as his share by a partner other than a partner who brought in that property as his share of contribution in the partnership.</i>	<i>The same duty as is leviable on a Conveyance under clause (a), (b) or (c), as the case may be, of Article 25, on the market value of such property, subject to a minimum of rupees one hundred.</i>
<i>(b) In any other case</i>	<i>Five hundred rupees.”</i>

The Article specifies the instrument of partnership/LLP/Joint Venture, referred to as 'Partnership Deed' and the instrument executed on dissolution of such entities or retirement of any partner/member therefrom.

Instrument of Partnership/LLP/Joint Venture

8. The exigibility of stamp duty on Partnership Deed or LLP Agreement or instrument of Joint Venture is dependent upon the contribution of capital by the partners/members, and the firm thereof. It implies that in case such entities are formed without any capital contribution nominal stamp duty of ` 500/- shall be payable.

9. In case the capital contribution is by way of cash and such contribution in the

aggregate does not exceed ` 50,000/- the duty is ` 500/-. On such contribution exceeding ` 50,000/- the duty is determined at one per cent of such amount subject to the maximum amount of ` 15,000/-. Prior to amendment i.e. in respect of instruments executed before 24th April, 2015, the duty on instruments where aggregate contribution exceeded ` 50,000/- was determined at ` 500/- for every ` 50,000/- or part thereof subject to maximum duty of ` 5,000/- only.

10. Where capital is contributed by way of property other than cash the contribution is treated as conveyance of the property from the contributing partner to the firm and duty is determined in the same manner as for conveyance laid down in clauses (a), (b) or (c) of Article 25 which runs as –

<i>“25 – Conveyance</i>	
<i>(not being a transfer charged or exempted under Article 59)</i>	
<i>– On the true market value of the property which is the subject-matter of the Conveyance –</i>	
<i>(a) If relating to movable property –</i>	<i>3 per cent of the market value of the property</i>
<i>(b) if relating to immovable property situated –</i>	
<i>(i) Within the limits of any Municipal Corporation or any Cantonment area annexed to it or any urban area not mentioned in sub-clause (ii)</i>	<i>5 per cent of the market value of the property.</i>
<i>(ii) Within the limits of any Municipal Council or Nagar Panchayat or Cantonment area annexed to it, or any rural area within the limits of the Mumbai Metropolitan Region Development Authority, or the Influence Areas as per the annual statement of rates published under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.</i>	<i>4 per cent of the market value of the property.</i>
<i>(iii) Within the limits of any Grampanchayat area or any such area not mentioned in sub-clause (ii).</i>	<i>3 per cent of the market value of the property.</i>
<i>(c) if relating to both movable and immovable property.</i>	<i>The same duty as is payable under clauses (a) and (b)</i>

11. Conveyance under the Act is an instrument by which property, whether movable or immovable or any estate or interest in any property is transferred to, or vested in, any other person, *inter vivos*, and which is not otherwise specifically provided for by Schedule-I. The provision levying duty based on contribution of capital by way of property is based on the legal position that even though a firm being a compendious name of all the partners is not a person distinct from its partners, when a partner contributes his personal property to a firm, the partner loses his individual ownership and the property becomes the collective property of partners held by the firm and the act of contribution becomes conveyance to the firm.

12. The capital contribution may be partly in cash and partly in the form of property. In such cases, the Act provides for determination of duty payable for each separately as per the relevant rule and take the total of the two as duty payable.

Dissolution/Retirement Deed

13. The situations envisaged in the event of dissolution of firm and other specified entities or the retirement of partner / member therein are –

- i) When any partner in the event of dissolution or the retiring partner gets back in settlement of account the property which was contributed by him as capital;
- ii) When he gets any other property either purchased by the firm or contributed by any other partner.

It may be necessary to mention that on settlement of account by payment of cash stamp duty of ` 500/- irrespective of amount is payable as no transfer of any property or conveyance is involved.

14. Where a partner of a firm on dissolution or a retiring partner is given the property which was not contributed by him as capital

it has the effect of conveyance from the firm to the outgoing partner and accordingly duty is payable as provided in clauses (a), (b) and (c) of Article 25 of Schedule-I. The duty payable is, however, subject to the minimum amount of ` 100/-. In case the property given to him is the same property which was contributed by him as his share of capital, it is considered as mere restoration of property hitherto held collectively by firm in which case the duty payable is the amount of ` 500/- irrespective of its market value.

15. The provision of levy of stamp duty in the event of dissolution / retirement is in consonance within the provision in Income-tax Act. The issue as to whether there is a transfer of property on dissolution or retirement has been controversial. The law that dissolution also does not give rise to tax liability was well settled by the decisions of the Supreme Court in *CIT vs. Dewas Cine Corporation (1968) 68 ITR 240 (SC)*, in *CIT vs. Bankey Lal Vaidya (1971) 79 ITR 594 (SC)* and also in *Malabar Fisheries Co. vs. CIT (1979) 120 ITR 49(SC)*. Section 47(ii) also, as it existed prior to its deletion by the Finance Act, 1987 w.e.f. A.Y.1988-89 provided that any distribution of capital assets on the dissolution of a firm, body of individuals or association of persons is not to be regarded a transfer and nothing contained in Section 45 will apply to such distribution. The controversy was however, set at rest by the introduction of Sec.45(4) deeming a transfer of asset of the firm to the partners or the retiring partners / members in the event of distribution of capital assets on the dissolution of a firm or AOP or a co-operative Society or otherwise for purposes of taxable capital gains. Bombay High Court in *CIT vs. A. N. Naik* considered the import of the words 'or otherwise' and held the provision to be applicable not only in respect of distribution of assets on dissolution but retirement of any partner also.

16. There may be cases where a single instrument takes within it more than one matter which are subject to payment of stamp duty

under the Act. A common instrument may be executed whereby one partner / member retires and another is inducted as partner. Duty in such case may be payable as determined on contribution of capital by the incoming partner and property given to outgoing partner. There may be cases where the outgoing partner by a single instrument is given a property of the firm or a part thereof and is also given authority to represent the firm for completing necessary transfer facilities as required under the relevant law. The single instrument will need to be subjected to stamp duty on instrument of retirement under Article 47 as well as on Power of Attorney under Article 48. Section 5 of the Maharashtra Stamp Act, 1958 provides that any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matter, would be chargeable under the Act. As a result duty will be computed both under Articles 47 and 48 and the aggregate of the two will be chargeable.

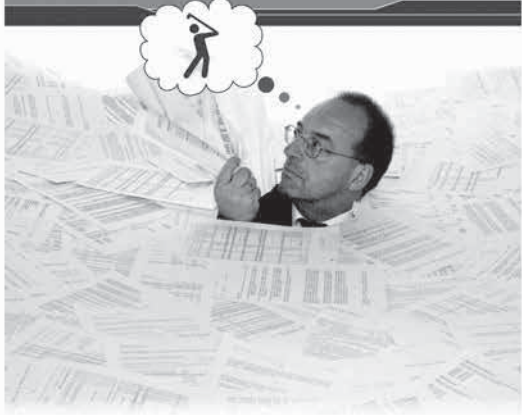
17. There may also be cases where the instrument may be construed differently although pertaining to only the intended matter. In such cases Section 6 of the Act lays down that where an instrument is so framed as to come within two or more of the descriptions in Schedule-I, it shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties.

Applicability on deed of AOP

18. With the amendment made by the Maharashtra Stamp (Amendment) Act, 2015, whereby the applicability of Article 47 is extended to Limited Liability Partnerships as well as Joint Ventures set up with the purpose of running a business and sharing profits thereof, the uncertainty about the applicability of the Act to deeds of AOP is removed. Such instruments are subject to stamp duty in the same manner as deeds of partnership on formation, retirement and dissolution.



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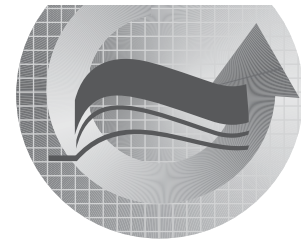
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Stamp Duty on instrument pertaining to Business Restructuring Transactions

One of the vital consideration in any business restructuring transaction is the stamp duty implications associated with it. Many corporations and other business entities especially those involved in regular business restructuring and M&A activities are becoming more cognisant of the need to understand the stamp duty outlays associated with various restructuring and transaction structures. It is imperative for such entities to be aware of the consequent stamp duty expenditure associated with any proposed restructuring activities as such expenses will have to be factored into the overall budget and transaction expenses. It is therefore key to understand the stamp duty implications at the outset while determining the transaction structure and seek professional advice where necessary. An attempt is made hereunder to broadly cover stamp duty implications on some of the common business restructuring and M&A activities.

Under the Constitution of India, the power to levy stamp duty has been divided between the Union and the State. The Central Government has the power to levy stamp duty on the instruments falling under Entry 91 of Union List (List I of Seventh Schedule to Constitution) and the State Government has the power to levy stamp duty on instruments falling under Entry 63 of State List (List II of Seventh Schedule to Constitution). A stamped document obtains evidentiary value and are admitted as evidence

in Courts. While a few States like Maharashtra, Karnataka have separate stamp duty enactments, the remaining States have adopted the Indian Stamp Act, 1899 with specific State amendments to certain provisions and entries.

Mergers and demergers

The concept of mergers and demergers and related provisions for their sanction and implementation can be found under Section 232 read with Section 230 of the Companies Act, 2013. The said provisions are however yet to be notified and the corresponding Section 394 read with Section 391 of the Companies Act, 1956 continues to be in force for the time being. The terms 'merger' and 'demerger' have not been specifically defined under the Companies Act, 2013 or the Companies Act, 1956. Merger as a concept is generally understood to be a High Court sanctioned restructuring activity, arising pursuant to a scheme of arrangement between a company and its members, under which the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are transferred to another existing company or to a new company. In case of a demerger, it is usually the property and liabilities of one or more divisions/undertakings of an existing company that is transferred to another existing or new company. Court sanctioned mergers and demergers albeit

time consuming are preferred by companies as they have consequent tax benefits provided they meet prescribed conditions under the Income-tax Act, 1961. Besides the tax objective, there could be other favourable outcomes in case of Court approved mergers and demergers such as ease of procuring Governmental sanctions for transfer/assignment of licences, approvals etc. to the resulting entity.

Having said that, the question of stamp duty implications on such mergers and demergers are subject matter of scrutiny for each case depending on the nature of properties being transferred as well as the State in which they are located. Historically, transfer of properties through Court sanctioned scheme of amalgamation were thought to be transfers by operation of law. However, that general view is long gone consequent to specific entries under certain State stamp enactments as well as various judicial pronouncements.

The object of the Indian Stamp Act, 1899 (Stamp Act) is primarily to raise revenue for the State by taxing instruments.¹ Section 3 of the Stamp Act provides for the 'instruments' that are chargeable with stamp duty and *inter alia* includes every instrument mentioned under Schedule I to the Act with duty of the amount indicated in that schedule. The term 'instrument' has been defined under Section 2(14) of the Stamp Act and includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished, or recorded. It should be borne in mind that the said definition is an inclusive definition and not an exhaustive one. Article 23 of Schedule I to the Stamp Act provides for stamp duties applicable on conveyance. The term 'conveyance' is defined under Section 2(10) of the Stamp Act to include a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not

otherwise specifically provided for by Schedule I. So it is clear that an instrument by which any property, whether movable or immovable is transferred inter vivos and not provided for under a different category under Schedule I will be treated as conveyance and subject to stamp duty accordingly. The question that arises in the case of mergers and demergers is whether transfer of property involved as a part of such schemes would be considered as having been transferred inter vivos under an instrument. Thus, the stamp duty implications on Court approved mergers and demergers would primarily depend on whether the High Court order sanctioning the scheme is an 'instrument' within the meaning of the Stamp Act. The Indian Stamp Act, 1899 *per se* does not have any specific entry or inclusion to cover orders of High Court sanctioning such schemes nor does it specifically exclude them. Given this, there have been several judicial interpretations as well as State amendments attempting to clarify the position.

In certain States, such as Maharashtra, Karnataka, Rajasthan, Madhya Pradesh, Andhra Pradesh etc. specific inclusions to cover orders of High Court sanctioning schemes as instruments of conveyance have been made, either under Stamp law enactment as available in a few States or by introducing relevant State amendments to the Indian Stamp Act. Consequently in all such States, the position presently is to have the merger/demerger order stamped accordingly. In other States, the practice varies based on prevailing judicial precedents.

The notable judgments which merit consideration in this regard are the Hon'ble Supreme Court's decision in the matter of *Hindustan Lever Limited vs. State of Maharashtra*², and that of the Hon'ble Bombay High Court's decision in *Li Taka Pharmaceuticals Limited vs. State of Maharashtra*³, in both of which the Courts concluded that an order sanctioning a

1. Observed as under *K. Manavala Naicker vs. K.R. Gopal Krishnaiah*, AIR 1969 AP 417

2. (2004) 9 SCC 438

3. AIR 1997 Bom 7

scheme of amalgamation is as an instrument of conveyance. It must however be noted that the said judgements were rendered in the context of the Bombay Stamp Act, which had a specific entry including an order sanctioning a scheme of amalgamation within the meaning of conveyance.

The Division Bench of the Hon'ble Calcutta High Court however in the matter of *Madhu Intra Limited and Others vs. Registrar of Companies*⁴ while considering whether an order sanctioning a scheme of amalgamation was covered by the definition word 'conveyance' under the Indian Stamp Act in the absence on a specific entry as applicable to the State of West Bengal decided that transfer of assets and liabilities pursuant to a scheme of amalgamation sanctioned is by operation of law and hence is not a 'conveyance'. The Court appeared to distinguish the decision from the decisions of the Supreme Court and High Court in the context of them being decided on the basis of specific entries available under the Bombay Stamp Act.

The Hon'ble High Court of Delhi in the matter of *Delhi Towers Limited vs. G.N.T.C of Delhi*⁵ disagreed with the view of the Calcutta High Court in *Madhu Intra case* and held that for the purposes of imposition of stamp duty, it would immaterial as to whether the conveyance was by operation of law, statutory operation, or by virtue of a private contract between parties. Exemption has to be by specific statutory provision. It further held that the order approving the scheme for amalgamation passed by the Court in exercise of jurisdiction Section 394(2) which has the impact of transferring of all assets and liabilities including the property of the transferor company to the transferee company would be therefore exigible to stamp duty under the Stamp Act. Thus, the Hon'ble Delhi High Court's position appears to be that

even in the absence of specific entry in the Stamp Act, an order sanctioning a scheme of amalgamation is exigible to stamp duty.

In a more recent case, the Single Judge of the Calcutta High Court in the matter of *Emami Biotech Ltd. vs. State of West Bengal*⁶ held that an order sanctioning a scheme of amalgamation or demerger under Section 394 of the Companies Act, answers to the description of the words 'instrument' and 'conveyance' within the meaning of the Stamp Act applicable to the State of West Bengal and is, accordingly, exigible to stamp duty. It is worthy to note the observations of the Single Judge while rendering the judgment. The Single Judge referred to the matter of *Gemini Silk Ltd.*⁷ wherein the Court dealt with the argument by observing that schemes of amalgamation or demerger were nothing more than agreements between consenting parties that depended on the volition of the parties and persons connected with them and there was nothing involuntary about them. It was observed in that judgment that a transfer by operation of law would be where the parties to the transaction had no role to play and the transaction could have been completed without any of the parties seeking the court's imprimatur or doing any overt act like carrying a petition to court. The judgment rendered in *Gemini Silk Ltd* case was carried in appeal and set aside in the *Madhu Intra* case. The Single Judge observed that prior to the judgment being delivered in *Madhu Intra* case, the Supreme Court had spoken on the issue in *Hindustan Lever* case. The Single Judge was of the view that though the primary issue before the Supreme Court in that matter was as to whether stamp duty would be payable upon an order sanctioning a scheme of amalgamation by the Bombay High Court being regarded as an instrument chargeable under the amended provision of the Stamp Act in that State, the Supreme Court opined in the

4. (2006) 130 Com Cas 530 (Cal)

5. [2010] 159 Comp Cas 129 (Delhi)

6. [2012] 174 Com Cas 492 (Cal)

7. [2002] 114 Comp Cas 92

clearest terms that the transfer of any property upon the sanction of a scheme of amalgamation or demerger had all the trappings of a sale. The Single Judge also pointed out that in the matter of *Ruby Sales and Services (P) Ltd. vs. State of Maharashtra*⁸ the Supreme Court considered the Bombay Stamp Act prior to the 1985 amendment thereto and concluded that a consent decree was exigible to stamp duty even before the amendment.

The Hon'ble Madras High Court in the case of *TTK & Co. vs. Joint Sub-Registrar*⁹ had taken cognisance of the Calcutta High Court's view taken in the Madhu Intra case while holding that a transfer of property pursuant to an order of the BIFR passed under the Sick Industrial Companies (Special Provisions) Act, 1985 is not susceptible to stamp duty. However, in the matter of *Automac (Madras) Pvt. Ltd case*,¹⁰ the Madras High Court had expressed a *prima facie* view that the decision of the Supreme Court in relation to the Bombay Stamp Act would apply to amalgamations sanctioned by this Hon'ble Court however found that it was premature at the time of sanctioning a scheme of arrangement to hold as to whether the order would be exigible to stamp duty, but observed that nothing in the order should be construed as exempting the concerned company from the liability to pay stamp duty, if applicable.

It may therefore be concluded that there is certain degree of uncertainty on the position and practice in India relating to stamping of amalgamation orders at present. It may also be noted that the rate of duty may vary between States. Therefore, planning business transaction structures involving mergers/demerges require adequate consideration from the perspective of situs of the concerned companies, its properties

as well as the nature of properties involved.

Questions have also come up on numerous occasions whether there is any stamp duty applicable on consequent increase of authorised share capital of the transferee company due to transfer of the transferor's company's capital upon amalgamation. There have been some contentions on this issue as well. The recent Division Bench decision of Hon'ble Karnataka High Court in the matter of *Mphasis Ltd. case*¹¹ read with the original Single Judge decision¹² against which appeal was made and placing reliance on the Hon'ble Madras High Court's decision in the matter of *Regional Director vs. Cavin Plastics and Chemicals Private Limited*¹³ appears to suggest that that no additional stamp duty is payable on increase in authorised share capital of the transferee company arising out of transfer of share capital of the transferor company upon merger.

Share Purchase Agreements

Share Purchase Agreements, commonly referred to as SPAs are agreements pursuant to which shares or other securities of a company are agreed to be purchased between willing buyer(s) and seller(s) on terms and conditions contained thereunder. SPA is not a necessity or precursor under any law for concluding purchase of shares. Where the shares are in physical form, it is the share transfer deed as prescribed under the Companies Act, 2013 that needs to be duly completed and submitted to the concerned company who's shares are being transferred to effect the transfer. In the case of shares being in dematerialised form, the transfer of shares is effected pursuant to DP instructions. It is however an accepted practice to enter into SPAs recording the terms and conditions

8. (1994) 1 SCC 531

9. [2008] 144 Comp Cas 708 (Mad.)

10. (2010) 2 MLJ 553

1.1 OSA No. 26 of 2007 decided on 26th November 2009

12. 2008 141 Comp Cas 558 (Kar)

13. (2008) 141 Comp Cas 476 (Mad)

of the proposed purchase of shares leaving no ambiguity therein as well as determining the consequent rights and obligations of the parties. SPAs are also executed to avail enforcement of performance.

Article 62 of Schedule I to the Stamp Act provides for the stamp duty payable in connection with transfer of shares and debentures. The stamp duty payable on transfer of shares under this Article is made on the prescribed share transfer deed and the rate is computed on the value of shares, i.e normally on the sale value entered under the transfer deed. In case the shares are in dematerialised form, no stamp duty is payable under this Article. Shares, although movable property as stated under Section 44 of the Companies Act, 2013, transfer of the same will not fall under Article 23 of the Schedule dealing with conveyance as Article 23 specifically excludes stamping of transfer charged or exempted under Article 62.

Besides this, one would have to take note of Article 5 of Schedule I to the Stamp Act dealing with agreement or memorandum of an agreement. The State specific stamp acts as well as State amendments to the Indian Stamp Act have generally made a specific entry for stamping agreements or memorandum of an agreement if relating to purchase or sale of shares, scrips, stocks, bonds, debentures, debenture stock or any other marketable security of a like nature in or of any incorporated company or other body corporate. The question that often comes up is whether Article 5, sub-clause (c) in most cases, dealing with the aforesaid entry is applicable only for sale or purchase of marketable shares or other marketable securities or applies to all shares and other securities. The entry has to be read in context of the concluding portion which states 'or any other marketable security of a like nature' and the principles of ejusdem generis should be applied in interpretation. The intent therefore appears to be to cover marketable securities, those

specifically provided and others not provided but of a like nature.

The term 'marketable security' is defined under Section 2(16-A) of the Stamp Act to mean a security of such description as to be capable of being sold in any stock market in India or in the United Kingdom. The Bombay High Court in *Mysore Fruit Products vs. The Custodian*¹⁴ observed that the term 'capable of being listed' as appearing under the definition of marketable security would include securities which are not just listed but also securities of public companies which are capable of being listed on a recognised stock exchange. The Court in light of the same squarely held that shares of public companies which are not listed on the Stock Exchange are also 'marketable securities'.

The position and practice relating to stamping of SPAs would therefore differ based on whether the shares in question are that of a private or public company. In the case of sale or purchase of shares relating to that of a private limited companies, the said agreement is usually stamped under the entry 'agreements not otherwise provided' under Article 5, having a lower stamp duty implication. Whereas with respect to sale of or purchase of shares relating to that of public limited companies, whether listed or unlisted, on the basis that such shares are construed as marketable securities, the agreement is stamped under the specific entry (c) of Article 5, the rate of duty being different in different States.

Slump Sale Agreements

The concept of 'slump sale' is defined under section 2(42C) of the Income-tax Act, 1961 to mean the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale. A slump sale therefore contemplates transfer of a business undertaking as a whole on a going concern basis and without involving transfer of assets

14. (2005) 107 Bom LR 955

or liabilities in an itemised or isolated manner. Slump sale could involve transfer of both immovable and movable property.

With respect to immovable properties, a separate conveyance deed would have to be executed and registered and the appropriate stamp duty and registration charges paid. It is vital to ensure that the immovable property is not transferred under the slump sale agreement but rather in pursuance of the same and conveyed subsequently through a separate sale deed. The slump sale agreement would have to be stamped under Article 5 of the Schedule I under the entry 'agreements otherwise not provided for' or any specific entry made for such agreements in any State Stamp Acts. The question may come up as to what constitutes 'immovable property'. This has been subject matter of various precedents. It may be worthy to note Supreme Court's observation in *Duncan Industries Ltd vs. State of U.P.*¹⁵ wherein it noted that a fertiliser plant, sold as part of slump sale along with land and buildings is an immovable property as it was always intended that the plant remains permanently affixed to the land and building being transferred. The Court indicated that the question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent.

With respect to movable properties in the case of a slump sale, it is possible for their possession to be handed over where the movable property is capable of transfer by delivery. The parties could deliver possession pursuant to a delivery note evidencing the delivery of their physical possession. However, any transfer of such movable property made under an instrument will be exigible to stamp duty under Article 23.

LLP Conversion

The Limited Liability Partnership Act, 2008 provides for conversion of firms, private companies and unlisted public companies into LLPs under Section 55, 56 and 57 respectively. A firm may convert into a LLP in accordance with the provision of Chapter 10 and Second Schedule, a private company may convert into a LLP in accordance with the provision of Chapter 10 and Third Schedule and an unlisted public company may convert into a LLP in accordance with the provision of Chapter 10 and Fourth Schedule to the said Act.

Section 58 of the LLP Act provides for registration and effect of conversion. Sub-section (4) of Section 58 provides that notwithstanding anything contained in any other law for the time being in force, on and from the date of registration specified in the certificate of registration issued under the Second, Third or Fourth Schedule, as the case may be, (a) there shall be a limited liability partnership by the name specified in the certificate of registration registered under this Act; (b) all tangible (movable or immovable) and intangible property vested in the firm or the company, as the case may be, all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and (c) the firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

From a perusal of the relevant schedules we note that if any property, to which the aforesaid underlined portion applies¹⁶ is registered with any authority, the LLP shall, as soon as practicable after the date of registration as LLP, take all necessary steps as required by the relevant

15. AIR 2000 SC 355

16. As reproduced accordingly under relevant paragraphs of first, second and third schedules.

authority to notify the authority if the conversion, and of the particulars of the LLP in such medium and form as the authority may determine.

The LLP Act contemplates transfer and vesting of properties without any further assurance, act or deed upon conversion. This appears to confer automatic transfer and vesting of properties in the LLP by operation of law and notwithstanding anything contained in any other law for time being in force. This therefore would involve no separate instrument of transfer, conveyance or assignment. The question of stamp duty should therefore ideally not arise in such cases. Since the law and practice relating to LLPs is still evolving, precedence could be taken in the context of Part IX conversions, as covered below.

The Ministry of Corporate Affairs has with respect to the question on stamp duty upon conversion from other business structures and if there was stamp duty exemption in case of conversion, clarified through an FAQ that since stamp duty is the subject reserved for the States, the LLP Act does not contain any provision for treatment of stamp duty issues and that the stamp duty payable will depend upon the relevant Stamp Act prescribed by the State Government/ Union Territory. This clarification has certainly caused anxiety amongst various stakeholders.

Part IX Conversion (now Part I Chapter XXI registration)

The Companies Act, 2013 under Part I of Chapter XXI provides for companies authorised to register under the said Act. Section 366(1), Part I of the said Act states that for the purposes of this Part, the word 'company' includes any partnership firm, limited liability partnerships, co-operative society, society or any other business entity formed under any other law for the time being in force which applies for registration under that Part. This Part I corresponds to the erstwhile Part IX provisions under the Companies Act, 1956.

Section 368, Part I of the 2013 Act provides that all property, movable and immovable (including

actionable claim), belonging to or vested in a company at the date of its registration in pursuant to this Part [i.e Part I], shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. This is quite similar to the provisions relating to vesting of properties upon conversion of a firm or company into an LLP as under the LLP Act, albeit the LLP Act emphasises that such transfer and vesting will be without any further assurance, act or deed.

The Hon'ble High Court of Andhra Pradesh in the matter of Vali Pattabhirama Rao v. Sri Ramanuja Ginning & Rice Factory (P.) Ltd.¹⁷ held that if the constitution of the partnership firm is changed into that of a company by registering it under Part IX of the present Act [i.e. 1956 Act], there shall be statutory vesting of title of all the property of the previous firm in the newly incorporated company without any need for a separate conveyance. The Court observed that a similar view was taken in Ramasundari Ray v. Syamendra Lal Ray.¹⁸

The transfer and vesting of properties upon conversion to a company under and as per the Companies Act is therefore without the need for any further acts of transfer or conveyance. If that is the case, there would be no separate instrument of transfer or conveyance relating to the properties being transferred and consequently no stamp duty involved.

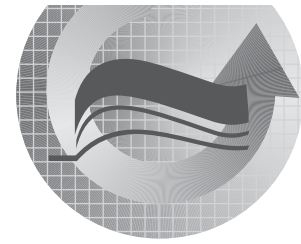
Conclusion

In each of the cases whether it be schemes of merger/demerger, share purchase agreements, slump sale agreements, conversion of business entities, there appear to be contentious issues relating to stamp duty implications and in some instances varied judicial precedents, interpretations and practices. In light of this, it is important that companies and business entities compute potential stamp duty outlays and make considered decisions while planning business restructuring and M&A transactions.



17. [1986] 60 Comp. Cas. 568 (DB) (AP)

18. [1947] 2 Cal 1



Ankoosh Mehta, Hiral Motta & Deepika Bhargava, *Advocates*

Concept of true market value under the Stamp Law – Reckoner rates whether constitutional

Abstract: While it is in the interest of parties to any transaction that the instrument therein is duly stamped and registered, the amount of stamp duty payable and the manner in which the same is determined has multiple implications. Aside from the obvious monetary significance, valuation of the immovable property is carried out for the purposes of calculating capital gains tax and reliance for this purpose is placed on the value adopted or assessed for stamp duty.¹ Hence, the question whether strict adherence to the guideline value published in the ready reckoner is mandated for determination of stamp duty becomes important.

What is a Ready Reckoner?

Every year, the Government of Maharashtra (the “**State Government**”) issues the guideline market values of immovable properties, i.e., land, residential, commercial and industrial, for different regions in the state. The State Government, through the Chief Controlling Revenue Authority is empowered under Rule 4 of the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995, (the “**Rules**”) to issue the Annual Statement of Rates of immovable properties situated within the state. The rates are published every year on the 1st day of January, taking into account the average rates of lands and buildings prepared and submitted by the Joint Director of Town Planning and Valuation, Maharashtra State. Similarly, in other states also market rates for immovable properties are published by the respective governments under rules attendant to their respective stamp acts.

The annual statement is colloquially known as a “Ready Reckoner” in Maharashtra, as “circle rate” in Delhi and as “guideline value” or “circle rate” in some states in Southern India. It is also referred to as the “Basic Value Register” in Andhra Pradesh. Nomenclature notwithstanding, all of the above refer to the annual statement published by the respective state governments. For the purposes of this article, the term “**Guideline Value**” will be used to avoid multiplicity of terms.

Purpose of Guideline Value

Guideline Value is prepared by the state governments for the purpose of instantly evaluating the market value of immovable property by the registering authority, and is normally the first point of reference for determination of “market value” for the purposes of calculating the stamp duty payable on instruments recording immovable property transactions.

Concept of “Market Value”

Sub-section (na) of Section 2 of the Maharashtra Stamp Act, 1958 (the “**Stamp Act**”) defines “**market value**” as follows:

“Market value” in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher.”

1. See Section 50C read with Section 48 of the Income-tax Act, 1961.

Determination of “true market value”

As mentioned above, the Guideline Value is an indication of the prevailing rates of immovable properties in an area. Collectors in all states (irrespective of whether these states have adopted the Indian Stamp Act, 1899 or enacted state-specific stamp acts) are empowered to conduct inquiries and hearings and rely on evidence produced before them by the parties to ascertain the “true market value” of the property and the stamp duty payable on the transaction instrument.²

A party to an instrument may approach the Collector for adjudication of stamp duty payable on it under the provisions of Section 31 of the Stamp Act. On payment of the duty determined by the Collector, the instrument is certified to state the full duty (specifying the relevant article of Schedule-I and the amount) is paid. This decision of the Collector can be revised within a period of 6 years from the date of issue of the certificate of the Collector.³ Conversely, under Section 32A of the Stamp Act, if the registering authority before whom an instrument is presented for registration, has reasons to believe that the property has been undervalued, can refer the instrument to the Collector for determining the true market value of the property. Any party aggrieved by any order determining the market value of the property under Sections 31 and 32A or any order for penalty under Section 32A may file an appeal against such order in accordance with the procedure laid down in Sections 32B of the Stamp Act.

Procedure to be followed for determining true market value

The District Collector is vested with the powers to determine the true market value upon following due procedure in the Rules framed under Section 69 of the Stamp Act, which contemplate quasi-judicial inquiry by the District Collector under Section 32A. Under Rule 4 of the Rules, the District Collector may also take recourse to local enquiries and other evidence placed before her by persons in

whose favour the instrument under consideration is executed in order to determine the True Market Value of the subject-matter property.

When a party to an instrument approaches the District Collector for adjudication of stamp duty payable on such an instrument under the provisions of Section 31 of the Stamp Act, the District Collector shall examine the document and other such evidence required for the purpose of determination of the stamp duty with which the instrument is chargeable. The District Collector is empowered to endorse the instrument in terms of her opinion under Section 32 of the Stamp Act.

Judicial History

The courts have, time and again, been called upon to determine whether the Guideline Value published by various state governments is an accurate reflection of the market rates. Several decisions of various High Courts and the Supreme Court have considered the question that is significant for the purposes of this article: how to determine the “true market value” of an immovable property for the purpose of determining the proper stamp duty payable on an instrument and whether blanket application of the Guideline Values in this regard is advisable. This discussion would benefit from a brief perusal of judicial pronouncements in this area.

The Guideline Value was challenged in many states and the Courts generally have been of the consistent view that the Guideline Value should be treated as a guideline or a point of reference and not as the last word on the subject of market value. For instance, in *R. Sai Bharathi v. J. Jayalalitha and Ors.*⁴ the Hon'ble Supreme Court, while considering the weightage to be given to Guideline Values, observed that “*The guideline value is a rate fixed by authorities under the Indian Stamp Act (as amended by T. N. Act 24 of 1967) for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an*

2. In the case of Maharashtra, Rule 6 of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 lays down the procedure to be followed by the District Collector for determining true market value of the property.

3. Section 53-A of the Maharashtra Stamp Act, 1958.

4. (2004) 2 SCC 9.

area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value". The Hon'ble Court further cautioned against "undue emphasis on the guideline value without reference to the setting in which it is to be viewed" as it will obscure the issue for consideration. In *Coimbatore District Real Estate Promoters' Association v. The State of Tamil Nadu*⁵, the Hon'ble Madras High Court held that the guideline value register entries (in the context of Tamil Nadu) are not conclusive or binding on the registering authority or on the Collector to whom the instrument is referred for valuation under Section 47A of the Indian Stamp Act, 1899.⁶ It was furthermore held that the entries in the Guideline Values not being enforceable, the registering authority could not insist on the payment of the difference in stamp duty payable based on the Guideline Values but has to refer the instrument to the Collector for adjudication.

The Hon'ble Andhra Pradesh High Court in *Sagar Cements Ltd., Mattampalle v. The State of Andhra Pradesh* was seized with the question whether an instrument is liable for higher stamp duty on the basis of valuation maintained in Basic Valuation Register (the "BVR"), Guideline Value as known in the state of Andhra Pradesh). The Hon'ble Court held that since the government has unilaterally fixed the valuation of the lands, the Basic Value Register had no statutory foundation and therefore it did not bind the parties.

The Hon'ble Supreme Court in *Jawajee Nagnatham v. Revenue Divisional Office, Adilabad and Others*,⁷ relying upon *Sagar Cements*, while examining the question whether BVR can be used to determine the market value of acquired lands held, inter alia, that the BVR prepared and maintained for the purpose of collecting stamp duty has no statutory base.

The Hon'ble Bombay High Court in *Prasadnagar Co-operative Housing Society Ltd. v. State of Maharashtra*⁸ held that Guideline Values should be treated by the registering authority/Collector as a guideline.

The facts giving rise to the decision in *Prasadnagar* are as follows. The petitioner society had 122 members and had allotted one plot to each member. Sale deeds in favour of 64 members were executed; however, on account of increase in market value and stamp duty (as a result of amendment⁹ to the ready reckoner) sale deeds in favour of the remaining members could not be executed because the Registering Officer/Collector were directed by the State Government/revenue authorities to rely on the ready reckoner for determination of the market value of the property and the adequacy of the stamp duty payable on the instrument irrespective of the value or consideration that may have been passed or represented in the instrument. The petitioner society prayed for the ready reckoner and the amendment thereto to be quashed and set aside on two significant grounds. Firstly, on the ground that the ready reckoner is illegal and violative of Articles 14, 15 and 300A of the Constitution of India as well as the provisions of Stamp Act and also amounts to an encroachment on the rights of the parties to freely alienate and transfer the property. The second ground was in the form of a contention that strict adherence to the Guideline Values would have the effect of encroaching upon the powers of the Collector to determine true market value under the Stamp Act.

The Hon'ble High Court arrived at the conclusion that the registering authority/Collector should treat the ready reckoner sheerly as guidelines and as a declaration of "prima facie" market value of the property and directed the Respondent government authorities to clarify the same by necessary amendments viz. reliance by the registering authority/Collector on the ready reckoner while

5. (2003) 2 MLJ 806.

6. Section 47A (instrument of conveyance, etc. undervalued how to be dealt with) essentially empowers the Registering Officer to refer an instrument to the Collector for determination of the market value of the property if the Registering Officer has reason to believe that the market value has not been truly set forth in the instrument.


7. (1994) 4 SCC 595.

8. 2005 (2) MhLj 310.

9. The Ready Reckoner issued had undergone change by letter issued by the respondent state government on 24th July, 1989, in relation to the norms of assessment of market value in relation to some of the properties.

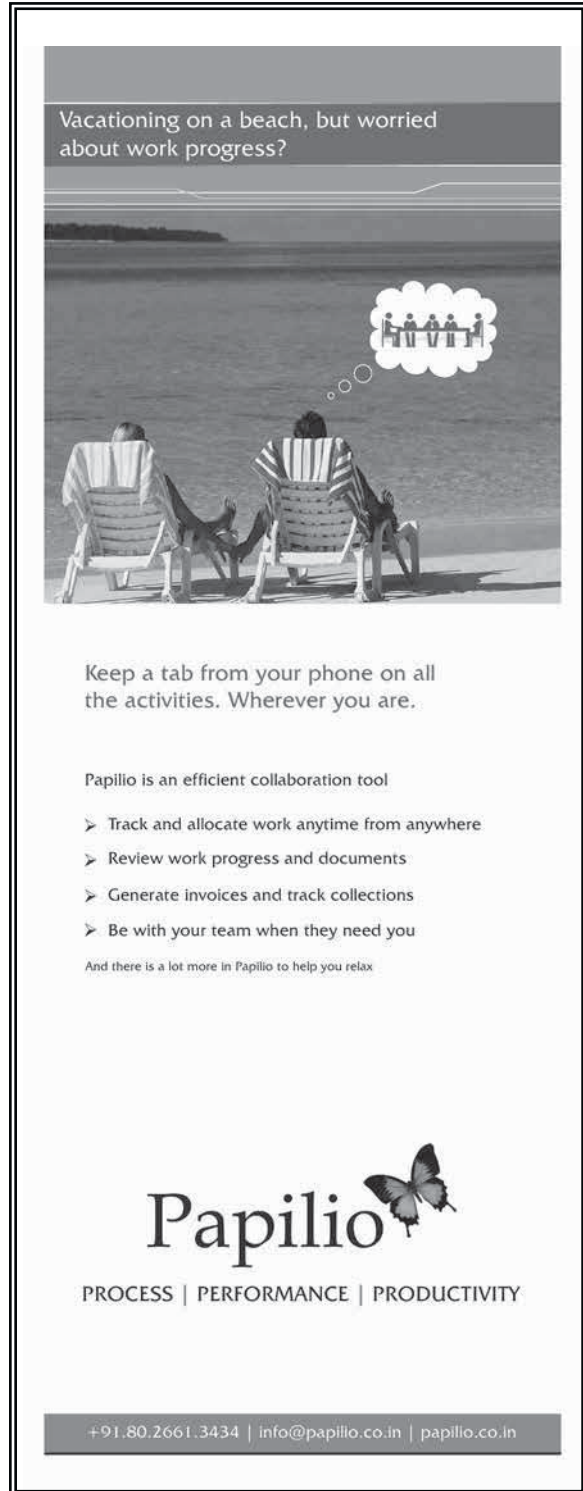
determining adequacy of stamp duty is subject to the powers of the Collector under Sections 31 and 32 of the Stamp Act, 1958. *Prasadnagar* was followed in various other decisions of the Bombay High Court.¹⁰ The principles that may be distilled from a catena of decisions¹¹ are: the Guideline Value is only intended as indicative of market rates and any directions given by the state government/revenue authorities to the registering authority/Collector to treat it as the fixed market value of the property amounts to an encroachment upon the inherent powers, being quasi-judicial, vested in them for determining market value. The registering authority/Collector should not treat the Guideline Value as “true market value” of a property but should instead satisfy themselves on the genuineness of the consideration/market value of the property by exercising the statutory powers vested in them for this purpose.

Are Ready Reckoner Rates Constitutional?

As noted above, in *Prasadnagar*, the Petitioner Society had challenged the applicability of ready reckoner for determining the market value as being illegal and violative of rights enshrined in Articles 14, 15 and 300A of the Constitution of India, 1950, however, the issue was not dealt with by the Hon’ble Bombay High Court. Instead the Court observed that as “*ready reckoner would now have the value of prima facie declaration of market value and nothing more*” and as it had directed the State Government and revenue/registering authorities to clarify this position, it was not necessary to quash the ready reckoner. In several other instances, the Guideline Values were challenged *inter alia* on the ground of being violative of Article 14 of the Constitution; however, there have been no pronouncements on the part of the High Courts or the Hon’ble Supreme Court on this particular aspect. In the absence of any decision to the effect, the question whether the Guideline Values are unconstitutional is yet to be tested. 

10. See *CR Retail Malls (India) Limited v. Chief Controlling Revenue Authority*, [2015 (3) BomCR 329] and *Ashok Bansilal Mutha v. State of Maharashtra* [2012 (6) BomCR 118].

11. See *Ramesh Chand Bansal v. District Magistrate/Collector* (1999 5 SCC 62), *Government of Tamil Nadu v. Park View Enterprises*, (2001 1 SCC 742), and *State of Punjab v. Mohabir Singh* (1996 1 SCC 609).




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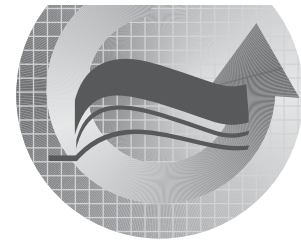
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Stamp Duty on instruments pertaining to personal transactions

Introduction

Levy of stamp duty in Maharashtra on different types of instruments is governed by the Maharashtra Stamp Act, 1958 (the “Act”).¹ The Act stipulates that a document which is inadequately stamped is inadmissible in evidence for any purpose by any person having by law or consent of any parties’ authority to receive evidence, cannot be acted upon, registered or authenticated by any public officer, unless the duty is paid.² Thus, payment of proper stamp duty bestows legality on documents.

This article discusses stamp duty payable on documents which are executed as a part of estate planning or in order to record inter se family arrangements, whether acrimonious or peaceful, such as family settlements, partitions, gifts etc. As these transactions are between related parties, the Government does not treat them as “commercial transactions”, unless consideration is being paid, and the Act provides concession/exemption on the stamp duty to be paid on the documents recording these transactions. On account of this, the parties have the liberty to structure the transactions in a duty efficient manner while also ensuring that the documents are not open to challenge by anyone (the parties

themselves or stamp/other authorities) on account of their being under stamped. As a word of caution, the structure to be adopted should also be tested from the income tax perspective to ensure that it is a tax efficient structure. The documents - their key characteristics and the stamp duty implication - which are being discussed in this article are as follows:

- (a) Family Settlement;
- (b) Will;
- (c) Partition Deed;
- (d) Release Deed;
- (e) Gift Deed;
- (f) Power of Attorney; and
- (g) Nomination.

I. Family Settlement

Before discussing the intricacies of a family settlement, it is pertinent to discuss the term ‘family’. The Hon’ble Supreme Court in *Ram Charan vs. Girja Nandini*³ has observed that the word ‘family’ is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of

1. This article has only dealt with provisions pertaining to stamp duty under The Maharashtra Stamp Act, 1958.

2. Section 34 of the Act.

3. *Ram Charan vs. Girja Nandini* 1965 SCR (3) 841.

succession or having a claim to a share in the property in dispute. It may be understood in proper reasonableness that if the dispute which is settled is one between near relations then the settlement of such a dispute can be considered as a family arrangement.

A family settlement is entered into for achieving a superior purpose, viz., accomplishing tranquillity and accord in the family. The intention of the settlement is to shield the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the family members.

Stamp duty

Stamping of the family settlement agreement depends solely on the manner in which the document is structured. Family settlement can be arrived at orally. If the agreement is merely a recordal of the settlement arrived at between the family members and the modality to be followed for settling the dispute such as separation/partition of properties, release of interest by one member in favour of the other etc., then the agreement will attract only nominal duty and need to be compulsorily registered under the Registration Act, 1908. However, if the agreement itself is the operative document by which an interest in immovable property is created, extinguished or released then it will attract duty depending upon the nature of the transaction and will have to be compulsorily registered.

II. Will

A will means *“the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death”*.⁴ In *Uma Devi Nambiar vs. T. C. Sidhan*, the Supreme

Court explained the meaning that will is a translation of the Latin word “Voluntas”, which was a term used in the text of Roman law to express the intention of the testator.⁵ It is of significance that the abstract term has come to mean that document in which the intention of the testator is contained. Thus, a will states the manner in which property (movable as well as immovable) belonging to an individual should be distributed on his/her death by the executor appointed thereunder. Also, a will can be written in any language and no technical words are necessary to be used while drafting a will.⁶

Stamp Duty

Wills and codicils are not required to be stamped under the Act. The registration of a will is optional under the Registration Act, 1908.

III. Partition Deed

Under Hindu Law, a joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters.⁷ The joint and undivided family is the normal condition of Hindu society. An undivided Hindu family (“HUF”) is ordinarily joint not only in estate, but also in food and worship.⁸ A Hindu coparcenary is a much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property⁹ (these being the three generations next to the holder in unbroken descent).

In Mitakshara law, no individual member of the HUF has a fixed share in the property, whilst it remains undivided i.e. no individual can predict his/her share in the joint property. By partition, the shares of the coparceners in the joint property are defined and the separating members thenceforth hold their

4. Section 2(h) of Indian Succession Act, 1925.
5. *Uma Devi Nambiar vs. T. C. Sidhan* (2004) 2 SCC 321.
6. *Din Tarini vs. Krishna Gopal*, (1909) ILR 36 Cal 149.
7. *Commissioner of Income Tax vs. Luxminarayan*, (1935) 59 Bom 618.
8. *Sri Raghunada vs. Brozoa Kishor*, (1876) 1 Mad 69.
9. *Surjit Lal Chhaabda vs. CIT, Bombay*, AIR 1976 SC 109.

respective shares as their separate property. A partition may either be complete or partial in respect of the property or in respect of the persons making it. A partition may be effected either by agreement, institution of a suit or arbitration. In *Atrabnessa Bibi vs. Safatullah Min*, it was held by the Calcutta High Court that a partition of HUF is not actually a transfer of property, but is analogous to an exchange. It signifies the surrender of a portion of a joint right in exchange for a similar right from the co-sharer.¹⁰

Stamp Duty

Partition can be arrived at orally and a recordal of an oral family settlement dividing or partitioning the property is not required to be stamped. However, the document by which partition is carried out will have to be stamped in accordance with Article 46 of Schedule-I of the Act.

IV. Release

A release deed is entered into when one of the joint/co-owners of a property desires to release/relinquish his/her interest/share in the property in favour of the other joint/co-owners, with or without consideration.

Stamp Duty

Irrespective of whether consideration changes hands or not, a release deed attracts same duty as a conveyance deed and is required to be registered under the Registration Act, 1908. However, if a co-parcener in a HUF desires to release his/her share in an ancestral property in favour of certain *specified relations*¹¹, without taking any consideration for such release, then only a nominal duty will be required to be paid on the deed.

V. Gift

Gift is a voluntary transfer of certain existing movable/ immovable property by the owner (donor) in favour of a third party (donee). The important ingredients of a gift deed are that it has to be in writing in case of immovable property, should be given without taking any consideration and should be accepted by or on behalf of the donee during the lifetime of the donor while he/she is still capable of giving the gift. If the donee dies before acceptance, the gift is void.¹²

Stamp Duty

Stamp duty on a gift deed depends upon (a) the relationship of the donor and the donee and (b) the nature of immovable property being gifted (whether agricultural or non-agricultural, residential or commercial). Article 34 of Schedule-I of the Act lays down the stamp duty payable on a gift deed. With the introduction of The Maharashtra Stamp (Amendment) Act, 2015, stamp duty payable on gift deed entered into between lineal ascendant or descendant has been substantially reduced.

VI. Power of Attorney

Often it happens that a person is unable to carry out administrative actions in respect of his/her business/property on account of various reasons and would want to appoint a third party to step into his/her shoes. A power of attorney includes any instrument empowering a specified person to act for and in the name of the person executing it.¹³ It means a formal instrument, with which one person empowers another to represent the donor, or act in his/her stead, for certain purposes. The donor of the power is called the principal or constituent;

10. *Atrabnessa Bibi vs. Safatullah Min*, (1915) ILR 43 Cal 504.

11. In favour of brother or sister (children of renouncer's parents) or son or daughter or son of predeceased son or daughter of predeceased son or father or mother or spouse of the renouncer or the legal heirs of the above relations.

12. Section 122 of Transfer of Property Act, 1882.

13. Section 1A of the Power of Attorney Act, 1882.

the donee is called an attorney. The latter is not entitled to exercise his/her powers for his/her own benefit.¹⁴

A power of attorney could be general or specific in nature. For example, if the principal is a non-resident Indian and is desirous that his/her father should be able to operate his/her bank accounts, appoint agents, file income-tax returns, deal with securities, maintain properties, then the power of attorney granted by him/her in favour of his/her father would be general in nature i.e. the subject matter is general. Whereas, if instead the principal is desirous of selling some property owned by him/her and empower someone only for that limited purpose, then the power of attorney granted by him/her would be specific with reference to the act as well as the property.

Stamp Duty

Article 48 of Schedule-I of the Act governs the stamp duty payable on various kinds of power of attorneys. A general power of attorney is required to be nominally stamped. However, a specific power of attorney whereby the donee is permitted to transfer the principal's immovable property will attract stamp duty depending upon (a) the relationship of the principal and the donee and (b) whether consideration has been paid for grant of the power. Further, such power in Maharashtra is required to be compulsorily registered under the Registration Act, 1908. It is pertinent to note that, if a power of attorney is executed outside India for carrying out actions in India, necessary duty will have to be paid once it is received in India.¹⁵

Irrespective of the stamp duty paid on a power of attorney, it is not an instrument of transfer

in regard to any right, title or interest in an immovable property.¹⁶

VII. Nomination

Also, as a part of estate planning, nominations are made by a person in respect of his/her insurance policies and bank accounts/properties in co-operative housing societies. Nomination is an act by which an individual designates the person(s) who will receive the benefit on his/her death. However, nominee does not acquire any beneficial interest in the property and is merely a "caretaker" or a "trustee" and is legally bound to transfer the monies/properties as per the provisions of the will of the deceased or to the legal heirs as per the applicable laws of succession i.e. by virtue of nomination.

Stamp Duty

Nominations do not attract stamp duty under the Act.

Conclusion

Contrary to the general belief, not all inter family transactions enjoy the benefit of concessional stamp duty. Further, due to the widespread practice of resorting to oral partition/family settlements in order to save stamp duty on the recordal thereof, these documents are looked upon with greater degree of scrutiny by the stamping/registration authorities. In order to ensure that the creation/extinguishment of interests in immovable property is properly effected, it is imperative that the transaction is recorded and the correct duty is paid on the document, followed by registration, if required. This will go a long way in crystallising the rights of parties in immovable properties and avoid possible dispute/litigation.

14. Osborn's Concise Law Dictionary.

15. Malaysian Airlines Systems BHD vs. M/s. Stic Travels (P) Ltd., (2001) 1SCC 451.

16. Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Anr., AIR 2012 SCC 206.

ANNEXURE - I

Article	Instrument	Description	Stamp Duty (`)¹⁷
34	Gift Deed	If immovable property is gifted to any third party	5% of the market value of the property ¹⁸ which is the subject matter of the Gift
		If immovable property is gifted to a family member being the husband, wife, brother or sister of the donor or any lineal ascendant or descendant of the donor	2% of the market value
		If residential and agricultural property is gifted to husband, wife, son, daughter, grandson and grand-daughter of the donor	Rupees two hundred
46	Partition Deed		2% of the amount or the market value of the separated share or shares of the property Note: The largest share remaining after the property is partitioned shall deemed to be that from which the other shares are separated
		Instrument of partition containing an agreement to divide property in severalty is executed and partition is executed in pursuance of such agreement	The duty payable shall be reduced by the amount of duty paid on the first instrument but shall not be less than rupees five
		Partition of agricultural land	Rupees one hundred
		Final order effecting a partition passed by any Revenue Authority or Civil Court or an award by an arbitrator directing a partition, is stamped with the stamp required for an instrument of partition, and an instrument of partition in pursuance of such order or award is subsequently executed	The duty payable on such instrument shall not exceed rupees ten

17. In the State of Maharashtra, Rates of Stamp duty has changed vide The Maharashtra Stamp (Amendment) Act 2015 (Mah. Act No. 20 of 2015) w.e.f. 24-4-2015

18. 5% in case of the property within the limits of any Municipal Corporations;
4% in case of the property within the limits of Municipal Council or Nagar Panchayat or any rural area within the limits of the Mumbai Metropolitan Region Development Authority;
3% in case of the property within the limits of any Gram Panchayat area or any such are not mentioned in clause (b) above.

48	Power of Attorney	General power of attorney	Rupees five hundred for each person authorised
		When executed for the sole purpose of procuring the registration of one or more documents in relation to single transaction or for admitting execution of one or more such documents	Rupees five hundred
		When given for consideration and authorising to sell an immovable property	Higher of (i) 5% of the market value ¹⁹ or (ii) consideration
		When authorising to sell or transfer immovable property without consideration or without showing any consideration as the case may be – (a) If given to father, mother, brother, sister, wife, husband, daughter, [son, grandson, grand-daughter or father, mother, brother or sister of the spouse] (b) In any other case	Rupees five hundred Higher of (i) 5% of the market value ²⁰ or (ii) consideration
52	Release	If the release deed of an ancestral property or part thereof is executed by or in favour of brother or sister (children of renouncer's parents) or son or daughter or son/daughter of predeceased son or father or mother or spouse of the renouncer or the legal heirs of the above relations, without consideration in any form	Rupees two hundred
		In any other case	Higher of (i) 5% of the market value ²¹ or (ii) consideration



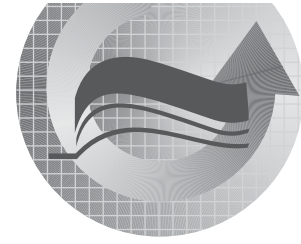
19. Ibid at footnote 17.

20. Id.

21. Id



Vinod Sampat, *Advocate*



Stamp Duty & Appeal under the Maharashtra Stamp Act

A demon by the name market value has been introduced in section 2(m) of the Maharashtra Stamp Act on 4-5-1980. The authorities have defined the market value of the property as the agreement value or the market value whichever is higher. Prior to 4-7-1980 i.e., in the absence of concept of 'market value' even if a flat was purchased for ` 1/- the stamp authorities were helpless couldn't challenge the same and had to register the document.

With the passage of time stamp authorities have started recovering more and more amount as stamp duty. The definition of the term conveyance is so expanded that many transactions/transfers are within the ambit of the term conveyance. A few decades ago the revenue from stamp duty was just 68 crores. Now in 2015 the revenue collected till 5-9-2015 is 11,253.29 crores and the number of documents registered in Maharashtra are 16,02,413. The targeted revenue is about 18,000 crores for the stamp duty department. It would be of interest to note that the staff is just of 2,000 persons. Stamp duty is the second highest source of revenue for the State of Maharashtra.

The formalities with regards to adjudication of documents for assessment of Stamp Duty are as under.

Sr. No.	Regarding	Compliances
1.	Adjudication of stamp duty	To decide the Stamp Duty on a particular document as per Maharashtra Stamp Act (MSA), on written application by a party submitted along with the concerned document, and to convey the decision accordingly
2.	Documents that have to be submitted.	Application for Adjudication in the given format. (website www.igrmaharashtra.gov.in in 'Forms' under 'Downloads' column) Application with Court Fee Stamp of ` 5/- Original document and a copy. (Note you can get the document adjudicated even if it is unsigned) Affidavit stating that the contents mentioned therein are true and correct. Affidavit need not be on stamp paper.
3.	Fees payable	Adjudication Fee payable as per Article 31 of MSA is ` 100/-
4.	Mode of Payment for Duty	Cash
5.	Time within which adjudication formalities have to be completed	45 days subject to submission of information.

Sr. No.	Regarding	Compliances
6.	Help can be obtained from	Office of Collector of Stamps in Mumbai Office of Joint District Registrar (JDR) and Collector of Stamps in rest of Maharashtra On the website of the Department
7.	Order to be passed by collector	Section 31 of Maharashtra Stamp Act read with Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995

Now even if you have paid the stamp duty in the year in which you have purchased the property but you go for registration at a later date you are bound to pay the stamp duty as on the date of registration of the document implying that you have to put your hand deeper into your pocket. The judgment delivered by the Bombay High Court in the case of *Prasun Developers vs. State of Maharashtra Citation 2015 (3)ALL MR* has upheld the stand of the department.

It is a known fact that duty payers are not happy with the present system of registration. Exorbitant amount is collected towards scanning charges when all it takes is about ` 5/- to scan one page. To begin with the legitimate depreciation is at times not given. At the time of sale of a flat it is not necessary to obtain a letter from the co-operative society mentioning the built up area, number of floors, year of construction. This too is invariably insisted by the authorities.

One also fails to understand the logic of the authorities to levy stamp duty on built up area. In fact built up area can vary from builder to builder and project to project of the same builder. Any architect will vouch for the fact that built up area cannot be generalised. However revenue authorities have an untold law of adding 20% area to the carpet area to arrive at the built up area. Stamp duty is levied taking into consideration the ready reckoner prepared every year by the authorities. The authorities will never even dream of purchasing

the property at the rate mentioned in the ready reckoner. There are ample instances where the rates as mentioned in the ready reckoner are much higher than the prevailing rate of the property. It is very difficult to prepare the rates taking the base rate of say September 2015 and presuming the same will be the market value of the property till December 2016. Unfortunately factors like spot payment are not taken into consideration which plays a vital role in mercantile transaction. Contempt Petition was also filed against the revenue officials by the DRT for not accepting the value of the property. In an usual situation that had arisen a few decades ago I have been given to understand that the stamp duty department had not accepted the valuation of the property sold by the income tax department in public auction.

It is pertinent to note that the Government has given an undertaking that they will not use the Ready Reckoner. The said order of the Aurangabad Bench of the Bombay High Court in Contempt Petition No. 28 of 1993 in Writ Petition No. 550 of 1990 in the case of *Ashok Bansilal Mutha & Others vs. State of Maharashtra & Others States* that is reproduced hereunder. "In view of the statement made by Shri P. B. Varale, Learned Assistant Government Pleader appearing for respondents 1 & 2, that the Government will not use Ready Reckoner for calculating stamp duty, no further orders are necessary in this Contempt Petition.

The motive of the authorities to generalise the circle rates is good. However some discretion

has to be given. It is common knowledge that the rates as mentioned in Ready Reckoner are treated as Sacrosanct by the Joint Sub- Registrars. While arriving at the market value a number of factors have to be considered like (i) land is freehold or leasehold, (ii) negative covenants e.g. Flat can be sold to members of particular community e.g. at Parsi Colony flats can only be sold to Parsis, (iii) Flat is facing main road or market, (iv) Any estate agent or builder will vouch for the fact that price is linked to

the capacity of the purchaser if a person is purchasing one bed room hall kitchen flat and another is purchasing four bedroom hall kitchen flat then there will be vast difference in the per sq. ft. rate.

Now let us consider if the parties are not satisfied with the valuation as arrived at by the authorities. What are the options available to the duty payer? The alternatives available to the parties are as under.

To which authority and under which section can an appeal be filed against the order of Collector of Stamps?	a) If decision of valuation is not accepted – Appeal under section 32 of Maharashtra Stamp Act to Additional Controller of Stamps in Mumbai and to Deputy Inspector General of Registration for rest of Maharashtra b) If classification of document/calculation of Stamp Duty is not accepted – Appeal under section 53 of Maharashtra Stamp Act to Inspector-General of Registration and Chief Controlling Revenue Authority c) Valuation and classification of document/Stamp Duty calculation both are not accepted – Appeal to Chief Controlling Revenue Authority and Inspector-General of Registration.
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Till a few years ago when professionals were going for registration they were not even writing the section under which they were filing the appeal as the order issued by the stamp authorities did not specify the section under which the order was being passed.

I may add that normally the States follow the Centre. However as far as capital gains tax as per Income Tax laws are concerned the basis of the property valuation is the valuation as arrived at by the State under the Stamp Acts of the relevant state. This is one of the reasons why nowadays estate agents, purchasers and sellers are inquisitive and want to know the stamp duty liability.

Legally speaking the authorities cannot refuse registration on the ground that the parties have not paid the proper stamp duty but the software of the registration department is so designed that unless proper stamp duty is paid document is not accepted for registration. The authorities are bound to accept the document when presented to them. Tomorrow if one of the parties die then there would be difficulties as regards completion of the transaction but very sadly department is

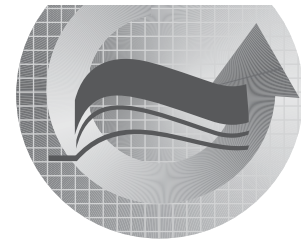
more concerned with its own convenience rather than the difficulties faced by the payers. This view has also been confirmed in the judgment delivered by the Bombay High Court Writ Petition No. 1966 of 2012 in the case of *Deep Apartment CHS Ltd., vs. State of Maharashtra* as decided by Justice Mrs. Roshan Dalvi.

One good thing that is seen these days is the registered document is received immediately. Earlier for decades the registered documents was not being received. Now one may find the details of the earlier transaction of the property online which increases the comfort level of the parties. All said and done when parties are executing a transaction they are more keen to finish the transaction and with a view to buy peace the dictates of the revenue authorities is accepted. In our puranas the king was advised to collect taxes from the subject like a bee which collects honey from the flower without effecting the fragrance of the flower but at times the taxes are being collected reminding the parties of the sting of the bee particularly when the stamp duty has to be paid with 400% penalty if the document is executed long time ago.





CA Jagdish T. Punjabi



Implications of Stamp Duty Valuation under Income-tax Act, 1961

Introduction

In separate articles, learned Authors have explained the overview of the provisions of the Bombay Stamp Act and also the quantum of levy on various instruments. On instruments like conveyance, development agreement, lease, etc., stamp duty is levied at a certain percentage (which percentage is mentioned in Schedule I) of the true market value of the property. The manner of determination of true market value for the purposes of levy of stamp duty is not the subject matter of this article. The true market value, so determined, could be more or less than the consideration agreed upon by the parties to the transaction. The subject matter of this article is the consequences under the Income-tax Act, 1961 ("the Act") of the true market value being more than the consideration agreed upon by the parties to the transaction in cases of transfer / receipt of land or building or both.

It is primarily sections 43CA, 50C and 56(2)(vii) (b) of the Act which make a direct reference to the value of the asset as determined by the stamp valuation authorities. Of course, there are other sections in the Act which make a reference to the 'value' / 'fair market value' e.g. sections 2(24)(iv), 28(iv), 45(4), etc. **A major part of the discussion, in this article, is around the three sections which make a direct reference to the value adopted or assessed or assessable by any authority of a State Government ("stamp**

valuation authority") of the asset, being land or buildings or both, as determined by the stamp valuation authorities. The term "assessable" is defined in Explanation 2 which is placed below sub-section (2) of section 50C of the Act.

The Government believes that in real estate transactions the consideration reported is lower than the actual consideration which changes hands between the transferor and transferee. To curb this practice, these provisions have been enacted. In the event of the consideration received or accruing as a result of the transfer of land or building or both being lower than the value thereof as adopted or assessed or assessable by the stamp valuation authorities for the payment of stamp duty in respect of such transfer ("stamp duty value"), it is the stamp duty value which is considered for the purpose of computing the income.

The provisions do have a mechanism whereby the assessee can claim before the Assessing Officer ("AO") that the stamp duty value is greater than the fair market value of land or building or both ("the asset") on the date of the transfer. Upon such a claim being made, the AO has to refer the valuation of the asset to the Valuation Officer ("VO"). In the event that the value determined by the VO is lower than the stamp duty value of the asset, the value determined by the VO will need to be adopted

by the AO. However, if the value determined by the VO is greater than the stamp duty value of the asset then the AO will disregard the valuation as done by the VO and adopt the stamp duty value of the asset.

We shall now briefly deal with the provisions of sections 43CA, 50C and 56(2)(vii)(b) of the Act. We shall deal with these sections in the order in which they were introduced in the Act viz. 50C, 56(2)(vii)(b) and 43CA.

Section 50C

The provisions of section 50C apply to all assessees irrespective of their legal status and their residential status. The section applies while computing capital gains arising on transfer of land or buildings or both. The section applies only to transfer of land or buildings or both held as capital assets and not to those held as stock-in-trade. [*CIT vs. Thiruvengadam Investments (P) Ltd.* [2010] 320 ITR 345 (Mad.)]

The purpose of introduction of S. 50C (as explained by the Madras High Court in the case of *K. R. Palanisamy vs. UOI*, 306 ITR 61 (Mad.)) is to curb the menace of black money component in real estate transactions and consequent evasion of tax.

The Madras High Court in the case of *K.R. Palanisamy vs. UOI 180 Taxmann 253 (Mad.) (HC)* and the Bombay High Court in the case of *Bhatia Nagar Premises Co-op. Hsg. Society Ltd. vs. UOI (Bom. HC)*(Writ Petition No. 1305 of 2009. Order dated 15-3-2010. Coram: F. I. Rebello & A. A. Sayed, JJ.) have held that the provisions of S. 50C are constitutionally valid.

The section applies w.e.f. Assessment Year 2003-04. Section is triggered if the following conditions are satisfied cumulatively –

- a) There is a transfer of
- b) A capital asset
- c) Being land or building or both

- d) Consideration received or accruing as a result thereof is less than the value adopted or assessed or assessable by the stamp valuation authorities.

Upon the abovementioned conditions being satisfied, the value adopted or assessed or assessable by the stamp valuation authorities shall for the purposes of S. 48 be deemed to be full value of consideration.

If sale consideration as stated in the transfer document is accepted by the stamp valuation authorities, the provisions of S. 50C do not apply and the AO cannot refer such a case to the VO. In such case, the AO is duty bound to accept the sale consideration – [*Punjab Poly Jute Corpn. vs. ACIT 120 ITD 233 (Asr.)*]

Provisions of S. 50C are mandatory. The AO does not have an option not to apply provisions of S. 50C. The word `shall' used in S. 50C(1) cannot be understood as `may'. – [Shri Jitendra Mohan Saxena (ITA No. 705/Luc/05 decided on 27-7-2007) *Mohd. Shoib vs. DCIT* [2010] 127 TTI 459 (Luck.)(Trib.)]

An order of the AO accepting sale consideration declared by the assessee when the same is less than the stamp duty valuation could entitle the CIT to invoke the provisions of S. 263 of the Act. – [*A. K. G. Consultants (P.) Ltd vs. ITO 17 SOT 592 (Lucknow)*]

In case the value adopted or assessed or assessable by the stamp valuation authority has not been disputed in any appeal or revision and also no reference has been made before any other authority, court or the High Court, the assessee may, make a claim that the fair market value of the asset on the date of transfer was lower than the stamp duty value of the asset as on date of transfer. In case a claim is made by the assessee, the AO is bound to make a reference to the VO. The claim may even be made in the course of assessment proceedings by writing a letter to the AO. However, if no claim is made by the assessee the AO may not

be bound to make a reference to the VO. **An interesting question could arise as to whether the fact that in the return of income the stamp duty value of the asset transferred is stated and the assessee has in spite of that computed capital gains by adopting the consideration as per document of transfer to be full value of consideration, can this act of the assessee be regarded as a claim made.** The CIT(A) can also direct the AO or can directly make a reference to the VO. In case, AO, on the directions of the CIT(A), refers the valuation of the asset to VO then the CIT(A) would not be justified in deciding the appeal without waiting for the report of the VO.

In the event that the fair market value of the asset determined by the VO is greater than the stamp duty value then the AO has to disregard the valuation of the VO and has to compute capital gains with reference to stamp duty value of the asset transferred. If, however, the value determined by the VO is lower than the stamp duty value of the asset transferred then the AO is bound to compute capital gains with reference to the value determined by the VO. The report of the VO is binding on the AO. He does not have an option to disregard the report of the VO.

The provisions of section 50C would not apply to transactions which do not constitute transfer e.g. transfer of assets under the family arrangement. They would also not apply when the subject matter of transfer is leasehold rights or tenancy rights. The applicability of the provisions of section 50C to transfer of development rights is debatable issue. The Mumbai Bench of ITAT has in the case of *Chiranjeev Lal Khanna vs. ITO [2012] 66 DTR 260 (Mum.)(Trib.)* has held that the provisions of section 50C are applicable to transfer of development rights. However, in the case of *Shakti Insulated Wires Pvt. Ltd. vs. ITO [(Mum) (URO) (ITA No. 3710/Mum/07, Assessment Year 2003-04; Mumbai E-1 Bench, order dated 27-4-2009)]* it has been held that the provisions of section 50C are not applicable to land development rights.

There are various other issues which arise in day-to-day practice such as are the provisions of s. 50C applicable when an asset constituting part of block of assets is transferred or when a partner introduces land or building into partnership firm as his capital contribution, etc. In view of the fact that this issue of the journal is primarily on stamp duty and also with a view to not make this article too long, other issues are not being dealt with.

Section 56(2)(vii)(b)

Unlike section 50C which applies to the seller of the capital asset being land or buildings or both (IP), section 56(2)(vii)(b) applies to an individual or HUF who receives land or buildings or both as a capital asset either without consideration and the stamp duty value of which is more than ₹ 50,000 or for a consideration which is less than the stamp duty value of the IP and the difference between the stamp duty value of the IP and the consideration is more than ₹ 50,000. The section applies to residents as well as non-residents. The applicability of the provisions of this section to non-residents will be subject to the provisions of section 5 dealing with scope of total income.

Conditions to be satisfied for the section to apply

1. The assessee is an individual or a Hindu Undivided Family;
2. The assessee receives from any person or persons any immovable property. For this purpose immovable property is land or buildings or both (for brevity sake hereafter referred to as IP).
3. The immovable property so received is capital asset of the assessee.
4. The assessee receives the immovable property either –
 - a) Without consideration and the stamp duty value of such property exceeds ₹ 50,000; or

- b) For a consideration which is less than the stamp duty value of such property and the difference between the stamp duty value and the consideration exceeds ₹ 50,000;
- 5. The IP is not received from the relative as defined in Explanation (e) to the section.
- 6. The IP is not received from a person or in any of the situations mentioned in second proviso to section.

- vi) The consideration or part thereof has been paid on or before the date of the agreement;
 - vii) Such payment is by a mode other than cash.
- then,

The stamp duty value on the date of the agreement may be taken for the purposes of S. 56(2)(vii)(b)(ii).

Consequences if the above conditions are satisfied

Situation	Amount taxable under IFOS
In case immovable property is received by an assessee –	
Without consideration	The stamp duty value of such property
For a consideration which is less than its stamp duty value	Difference between the stamp duty value and consideration

- ii) For computing capital gains arising on transfer of such property, the cost of acquisition shall be deemed to be the value which has been taken into account for the purposes of S. 56(2)(vii) {Section 49(4)}.

Exceptions

- 1 In case–
 - i) The assessee has entered into an agreement;
 - ii) The agreement is dated;
 - iii) The agreement is for transfer of immovable property;
 - iv) The agreement is entered into before the date of registration;
 - v) The agreement fixes consideration;

2 The assessee can claim that the stamp duty value of the immovable property is more than the fair market value of the property, in that case the AO will be duty bound to refer the valuation of the IP to the Valuation Officer.

The taxable event is receipt of immovable property, by an individual or HUF, without consideration or for a consideration which is less than its stamp duty value. Immovable property is defined to mean capital asset being land or building or both. The meaning of ‘receives’ must be construed having regard to the following:

- i) The receipt is to be treated as income;
- ii) The receipt must be of immovable property as specified;
- iii) The receipt must be without consideration or for a consideration which is less than its stamp duty value;
- iv) The receipt must be from any person(s) (which implies that the person divests his ownership - legal/beneficial - and control in favour of recipient).

Receipt would mean receipt with a right to deal with the immovable property as an owner. Therefore, mere receipt without any rights to deal with the property as an owner may not attract the charge under this section e.g. Gratuitous user or licence of the property.

In case of an immovable property booked at the time of construction a question would arise as to what is the point of time one can say that the

immovable property is received by the assessee – is it the date of agreement which is relevant or is it the date of registration of the agreement or is it the date when the local authority grants occupancy certificate to the property or is it the date when the assessee receives possession of the immovable property. Answer to this question will determine the year in which the charge is attracted under this section. The Explanatory Memorandum seems to suggest that it is the date of registration which is the date of receipt. However, one will have to consider whether if on the date of registration the property is still under construction, can it still be contended that the IP is received by the assessee merely because the agreement is registered.

Section 49(1) provides that where a capital asset is received by the assessee in any of the modes stated therein the cost to the previous owner shall be deemed to be its cost of acquisition. When an assessee who is an individual receives immovable property without consideration from a person who is not a relative of the assessee, the stamp duty value of the immovable property so received will be charged to tax u/s. 56(2)(vii) (b). It may so happen that the cost of acquisition of the property to the donor may be more than its stamp duty value on the date of its receipt by the assessee. In such a case, for the purposes of computing capital gains on transfer of this property by the assessee an issue would arise as to whether the cost of acquisition should be as per provisions of S. 49(1) or S. 49(4). To illustrate, in a case where assessee has on 13th October, 2014 received an immovable property without consideration from a person other than a relative and the stamp duty value of the property so received was ` 10,00,000 but the cost of acquisition of this property to the previous owner is ` 12,00,000. For computing capital gains arising on transfer of this property in assessment year 2015-16, the cost of acquisition will be deemed to be ` 10,00,000. This is so because since there are two provisions dealing with the same situation one needs to consider whether the assessee has an option to disregard

the provisions of S. 49(4) and exercise the option to apply S. 49(1) or will it be contended that 49(4) is a specific provision whereas S. 49(1) is a general provision therefore, the specific will prevail over general. It appears that the specific provision will prevail over the general one. Section 49(1) is a general provision dealing with all assets acquired in modes mentioned therein but S. 49(4) is a specific provision dealing with a particular class of assets whose value has been charged to tax under clause (vii) of sub-section (2) of section 56.

An interesting question arises as to whether a gift received of flat under construction would be covered by sub-clause (b) of clause (vii) of sub-section (2) of section 56. If yes, whether the charge will be in the year of gift by way of registered deed or in the year in which the assessee receives the possession of immovable property. Also, will the amount chargeable be the stamp duty value of the property on the date of receipt of gift i.e. the date of registration of gift deed or will it be stamp duty value on the date on which possession is received?

The provisions of S. 56(2)(vii)(b)(ii) dealing with receipt of IP for a consideration less than its stamp duty value have been introduced by the Finance Act, 2013 w.e.f. 1-4-2014. While the provision is not retrospective a question will arise as to whether it is retroactive e.g. In case the property is received (i.e. registration / possession of the property is received by the assessee) for a consideration which is less than its stamp duty value after the section was introduced i.e. in the year 2014-15 but the agreement for its transfer was entered into 3 years earlier i.e. in the year 2011-12 when the section was not applicable and the stamp duty value of the property was more than the consideration, will the provisions apply in such a situation. A strong argument against retroactivity would be that the provisions were originally enacted to be effective from 1-10-2009 but later the Finance Act, 2010 deleted the same with retrospective effect from 1-10-2009

thereby giving an impression that the difference between stamp duty value and consideration is not intended to be charged. Now, the very same transaction cannot be sought to be covered under this clause. A better view appears to be that the section is prospective and would apply to transactions entered into after the clause has come into force.

A question could arise as to whether letter of allotment is an agreement for transfer and therefore for the purpose of computing the difference between stamp duty value and consideration the stamp duty value of the property on the date of letter of allotment be considered and not the stamp duty value on the date of receipt of property. A letter of allotment which is dated and is for transfer of specific immovable property and is accepted by the assessee and which fixes the consideration for transfer of immovable property would be regarded as an agreement for transfer for the purposes of proviso to S. 56(2)(vii)(b)(ii) provided the consideration or part thereof has been paid on or before the date of letter of allotment. However, if such a letter of allotment is not specific in terms of the immovable property to be transferred / allotted but only mentions area without identifying the immovable property it may be difficult to contend that such a letter of allotment constitutes an 'agreement for transfer'.

While the provisions of sections 50C and 43CA would not apply to Union Territories, the provisions of section 56(2)(vii)(b) would apply to Union Territories as well. This is because Explanation to section 56(2)(vii) defines the term 'stamp duty value' to mean the value adopted or assessed or assessable by any authority of the Central Government or a State Government In sections 50C and 43CA reference of Central Government is not there.

Section 43CA

This section has been introduced by the Finance Act, 2013 w.e.f. 1-4-2014. This section was introduced since it was felt that provisions of

section 50C apply only to transfer of capital assets being land or buildings or both ("the asset"). But if land or buildings or both were held otherwise than as capital assets i.e. they were held as stock-in-trade then there was no provision analogous to the provisions of section 50C to consider for taxation the difference between the stamp duty value of the asset transferred and the consideration received or accruing on its transfer. This section applies to all assessees irrespective of the legal status and residential status. The provisions of this section apply while computing income chargeable to tax under the head 'Profits and Gains of Business or Profession'. The following conditions are required to be satisfied for the section to be attracted –

- 1 There is an assessee;
- 2 The assessee transfers an asset (other than capital asset);
- 3 The asset transferred is land or buildings or both;
- 4 The consideration received or accruing as a result of the transfer is less than the value adopted or assessed or assessable by any authority of the State Government for the purpose of payment of stamp duty in respect of such transfer

Upon satisfaction of the above-mentioned conditions, for the purposes of computing profits and gains from transfer of such asset, the stamp duty value shall be deemed to be full value of consideration received or accruing as a result of such transfer.

Exceptions

- i) Where there is an agreement;
- ii) The agreement fixes the value of consideration for transfer of the asset;
- iii) The date of agreement and the date of registration of such transfer are not the same;
- iv) The assessee has on or before the date of the agreement for transfer received the

consideration or part thereof by any mode other than cash.

then, the stamp duty value as on the date of such agreement is to be considered instead of the stamp duty value on the date of registration of such transfer.

Of course, the assessee can make a claim that the fair market value of the asset is less than the stamp duty value thereof. Upon such a claim being made the AO shall refer the valuation of the asset to the Valuation Officer.

Since the provisions of s. 43CA apply to an asset other than a capital asset, the definition of the term 'transfer' as given in section 2(47) of the Act shall not be relevant. Instead, the term 'transfer' will be required to be understood as legal transfer. However, since the provisions of section 43CA apply while computing income under the head 'Profits and gains of business or profession', it is possible to contend that the term 'transfer' will have to be interpreted having regard to the method of accounting regularly employed. It is quite possible that the assessee may be recognising the income when the risks and rewards are transferred and not when the legal title is transferred. In such a case, a question would arise as to whether the provisions of section 43CA would apply in the year of transfer or in the year in which the profits are recognised. Again, in the case of an assessee following percentage completion method question could arise as to whether the provisions of the section would apply in each of the years where the profits are computed or in the year when the project is complete.

Under the head 'Profits and gains of business or profession' what is computed and charged to tax is the profits of the business carried on by the assessee whereas the provisions of section 43CA state that they apply for the purposes of computing profits and gains from transfer of such asset. Profits and gains on transfer of asset are not computed under the head 'Profits and gains of Business or Profession'. Also,

upon the conditions being satisfied section 43CA deems the stamp duty value to be full value of consideration received or accruing as a result of the transfer. The term 'full value of consideration' is relevant while computing income under the head 'Capital Gains' and not 'Business Income'.

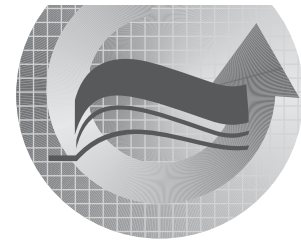
Various questions arise in connection with interpretation of the provisions of this section such as are the provisions of this section applicable to transfer of rights in land or building, would the provisions apply when an assessee enters into a development agreement in respect of land held by him as stock-in-trade, is a flat in a building covered; is building under construction covered by the terms 'land or building or both'? The decisions rendered in the context of section 50C may provide useful guidance.

While the above-mentioned three provisions were introduced with an objective of taxing the difference between the real consideration and the consideration which was stated in the document of transfer, the pendulum has since swung on the other side. The reality now is that in many cases it is seen that the stamp duty value of the asset transferred far exceeds the real consideration which the owner gets resulting in the owner being taxed on amount which he has never received. Effectively, the rate of taxation has increased. Also, the provisions of section 50C are causing difficulty in interpretation of sections 54, 54EC, etc. The assessee with a view to take roll over benefits is now expected to invest more than what he has received on transfer of the asset. The minimum that the authorities should consider is that they should fix a reasonable margin that the provisions will apply only if the difference between the stamp duty value and the consideration is more than 15% or some such reasonable percentage. The stamp duty valuations are not sacrosanct. Various buildings in the same locality irrespective of the amenities/open spaces have broadly the same value. This is grossly unfair.





Dhaval B. Talati, *Tax Consultant*



Composition Scheme in respect of Builders and Developers u/s. 42(3A) of the MVAT Act

Till the decision of K Raheja Development Corporation 2005 (141 STC 298) (SC), there was no tax payable under the VAT Laws on sale of flats, dwellings or buildings or premises. Immediately after pronouncement of above referred decision of Supreme court, Government of Maharashtra accordingly amended definition of "sale" u/s 2(24) of the Maharashtra Value Added Tax Act, 2002 (hereinafter referred as MVAT Act) w.e.f. 20th June 2006, whereby the tax net is widened to include the activity of construction of flats, dwellings or buildings or premises as deemed sale

Rule 58(1)

Due to the amendment to the definition of "sale" u/s. 2(24) of the MVAT Act, builders and developers were required to get themselves registered under the MVAT Act and pay the tax. However, computation of the VAT liability was a big challenge. There has been no much clarity on various issues and computation of tax liability following rule 58(1) of Maharashtra Value Added Tax Rules, 2005 (hereinafter referred as MVAT Rules) has been virtually impossible which may be accepted by the assessing authorities. Of course this has to be with some calculated assumptions.

Composition Scheme u/s. 42(3)

The State Government also came out with composition scheme u/s. 42(3) of MVAT Act w.e.f. 20th June 2006. This scheme is available to builders and developers. The rate prescribed @5% of the contract value is very high and for this reason even

this composition scheme was not acceptable to the concerned dealers.

Need for another Composition Scheme

In view of such situation, litigation started from the affected dealers by way of writ petitions one after another. Since the State Government wanted to implement the levy of tax on builders and developers, they came out with 1% composition scheme by inserting section 42(3A) w.e.f. 1st April 2010 [Notification No. VAT-1510/CR-65/Taxation-1 dt. 9th July 2010] with the hope that said scheme is easy to implement with least of litigation.

In the present article I first deal with the basic scheme and later on, I have touched upon the issues involved there in the scheme and my views on same. Apparently, the scheme looks attractive but if you look at the issues discussed by me in my article you will agree that several issues are not yet addressed by Government even though the representations were made before the appropriate authorities time and again.

1% composition scheme

Maharashtra Government has provided for the Composition Scheme under Section 42(3A) of the MVAT Act, which came into effect from 1st April 2010.

Section 42(3A) is reproduced as under:

"..The State Government may, by notification published in the Official Gazette, –

- (a) Provide a scheme of composition for the registered dealers who undertake the construction of flats, dwellings or buildings or premises and transfer them in pursuance of an agreement along with the land or interest underlying the land;
 - (b) Prescribe the rate of tax by way of composition, in lieu of the amount of tax payable on the transfer of goods (whether as goods or in some other form), in the execution of such works contracts by such registered dealer under this Act..”
7. Concessional interstate purchases against declaration in Form C are not allowed if composition is opted.
 8. Such developers cannot issue Form 409 to the sub-contractor (who is awarded contract with material and labour). Thus the sub-contractor would charge applicable VAT.
 9. Once the method of computation of tax liability in respect of the contract is opted, the same cannot be changed.

It is to be noted however, that VAT is payable on projects which are under construction and any flat/apartment sold after issuance of Occupation Certificate (OC) is not to be taxed as it sale of immovable property.

The Scheme

A Notification dated 9th July 2010 is issued u/s. 42(3A) of the MVAT Act. For sack of brevity the same is referred herein as ‘1% Scheme’.

The salient features of the composition scheme u/s. 42(3A) introduced are as follows:

1. The Scheme is available only to the registered dealer.
2. Composition amount payable is @1% of the aggregate amount specified in the agreement or the value specified for stamp duty in respect of agreement, whichever is higher.
3. All the agreements which are registered on or after 1st April 2010 are covered by this scheme.
4. Composition amount is to be paid by making E-payment and include such turnover of ‘sales’ in the sales tax returns.
5. No set off in respect of the purchases is allowed and
6. Dealer cannot issue tax invoice.

In addition, following are some more conditions laid down under the notification:

Issues to be considered

1. *How is the scheme to be interpreted? Is it per project, per building or per agreement?*

The scheme is to be interpreted per agreement and each agreement is to be considered separately while applying this scheme. As stated above, only agreements registered after 1st April 2010 are eligible for the said 1% scheme.

2. *Is it mandatory for developers to opt for the scheme?*

No, it is open for the developers to opt for the scheme. However, once the method is chosen for a particular contract it cannot be changed. It may be noted that the dealer is allowed to opt for the 1% scheme for few flats in a project and for the rest it may opt for other methods to discharge the tax liability.

3. *Generally developers are URD, will they need to get themselves registered?*

Yes, the scheme specifically states that it is available only to Registered Dealers. Thus, Developers will need to get themselves registered before availing the benefit of this notification. In view of the litigative history of the taxation in respect of the builders and developers, an application for ‘administrative relief’ is entertained by the Office of the Jt. Commissioner of Sales Tax, who; following the internal guidelines in this respect; allows the application to make the registration effective from an earlier date. If this allowed, the registration is made

effective from an anterior date, making a builder eligible to claim the benefit of this composition scheme.

4. *If part payments are received prior to 1st April 2010. However, the agreement is registered after 1st April 2010, will the scheme still apply to such a dealer?*

Yes, the notification does not mention specifically when the payment must be received. It merely lays down the condition that it must be registered on or after 1.04.2010. The FAQ (Question No. 26) issued by the department dated 28th August 2012 addresses this issue.

5. *The scheme specifically states that purchases against Form 'C' cannot be made. However, if prior to the Notification the developer had made purchases against Form 'C', will it be needed to be withdrawn?*

Yes, the developer will have to withdraw the Form 'C' issued on those purchases where property in goods is passed and where dealer has opted for 1% composition scheme and will have to pay tax at the full rate applicable under the Central Sales Tax Act, 1956 (hereinafter referred as CST Act). However in my view, under the given circumstances penalty under the CST Act is not payable.

6. *In past, Forms 406 and 409 would have been issued to the sub-contractor. Would it be required to withdraw it?*

Yes, 409 will have to be withdrawn and sub-contractor will charge full amount of tax. However, no set-off can be availed by dealer in respect of taxes paid.

7. *The scheme provides that the dealer opting for the scheme cannot issue Form 409 to the sub-contractor. Thus the sub-contractor would charge the applicable VAT. Is it not contrary to the ratio laid down by the Supreme Court in case of Larsen & Toubro Ltd. 2013 (65 VST 1) (SC)? Would it not amount to unjust enrichment to the Government?*

Please note that the scheme of composition is optional i.e. a scheme to pay an amount in lieu of tax. It is not a levy of tax. Thus, the ratio of the Hon'ble Supreme Court may not be applicable. However, the issue is to be tested in the court of law.

8. *If dealer has paid tax u/s 42(3) of MVAT Act for period up to 31st March 2010. Can he now opt for composition u/s. 42(3A) of the MVAT Act for agreements entered into after 1st April 2010?*

Dealer will not be eligible to opt for composition scheme of 1%, however there is no specific provision in section 42(3) of MVAT Act or in the rule 58 of the MVAT rules imposing restriction of not entitling to change the method of computation of tax liability in respect of contract for which he has opted for the 1% composition scheme

9. *At the time of booking flat, booking letter is given. Is composition amount payable on such receipts?*

No. Composition amount under this 1% scheme is payable after the agreement is entered into and registered. Thus nothing is payable under the 1% on such receipt of the booking amount till an agreement is entered into and is registered.

10. *On cancellation of booking – can the VAT collected @1% be refunded and claimed as goods return? Will period of 6 months apply? Will the fresh agreement entered in to after 1st April 2010 for the same flat eligible under the scheme?*

It is not treated as "goods return" and hence period of six month will not apply. This is simply cancellation and not return of goods. Therefore 1% refund can be claimed if 1% composition tax paid in Government Treasury. Said claim cannot be claimed and equated as "goods return". However the fresh agreement entered in after 1st April 2010 for the same flat, same flat will eligible for 1% composition scheme if dealer opts for same.

11. *How is the 'investor' transaction treated?*

A case where dealer has opted for option of composition scheme of 1% for investor's flat etc., in such case till agreement is entered and which is registered, no VAT is payable.

12. *Scheme do not provide for set off. Is set off available on construction machineries, centring material, expenses (purchases) debited to Profit & Loss A/c etc. where the property never gets transferred? Purchases prior to the effective date of Registration certificate?*

Set-off is not available as the restriction is put in the notification about purchases and "purchases" includes all purchases including capital assets, expenses.

13. *Can purchases against Form 'C' made for construction equipment, machinery etc.?*

The notification states that purchases against Form 'C' cannot be made with respect to goods the property of which gets transferred in execution of works contract. Transfer of property does not take place with respect to capital goods and thus purchases related to capital goods can be made against Form 'C' subject to restrictions as provided section 8 of the CST Act.

14. *Can such a dealer receive goods as stock transfer against Form 'F'?*

The scheme is silent about such receipt of goods i.e. receipt by way of stock transfer from outside the State of Maharashtra. Therefore, goods can be received by way of stock transfer from branch outside the State of Maharashtra.

15. *Can the sub-contractor issue Form 'C' for inter-State purchases?*

Yes, sub-contractor can issue Form C for inter-State purchase subject to restriction as provided in section 8(3) of the CST Act.

16. *Will Entry Tax be payable on materials, say tiles, used in the execution of Works Contract?*

Yes, Entry Tax is payable under a different enactment namely, "The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002" which has been amended w.e.f. 1st April 2008 and hence is payable by the developer.

The developer opting for the 1% Composition scheme is not allowed to claim set off and hence, the Entry tax paid by him will not be allowed as set off.

There is a second school of thought where it is assumed that goods consumed in the course of works contract is treated as resale as per the definition of The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002 and thus, no entry tax is payable on the same.

17. *What amount will be considered as agreement price or contract price for the purpose of the scheme?*

The amount at which the agreement is registered including amount received with respect to parking spaces and legal charges (to the extent not reimbursed) but does not include advance maintenance charges.

This aggregate amount is to be compared with the Stamp Duty valuation and 1% Tax is to be paid on whichever is higher.

18. *Presuming the contract value is higher than the stamp duty value, on what amount will the stamp duty be payable? Will it be payable on Contract Value + Parking Charges + Legal Charges (to the extent not reimbursed) or only the contract value?*

Yes, VAT is payable on the contract value including parking charges received & the legal charges paid.

I thank Shri Haresh Kenia, Chairman of the Journal Committee to allow me express my view by way of an article in journal on the captioned subject. I have expressed my views, however, readers may have their own version on the views expressed. I request them to forward their views through the Association to my knowledge.





Tejas Kirti Doshi, *Advocate*



Section 11 : Procedures

1. Modes of payment for Stamp Duty (including e-payments) & Procedures of Payments

1.1 Modes of Payment of Stamp Duty

Stamp Duty is tax levied on a Document. In general, there are three modes of payment for Stamp Duty on instruments/documents. Even though the law provides for different methods for payment of duty, the choice of method will be determined only from a practical perspective. However, now, in certain locations and certain prospective, the mode of payment of Stamp Duty is restricted to limited options. A brief introduction and its usages are given under:

(A) Paper Based Methods:

Payment of Stamp Duty by means of papers bearing impressed stamps or Instruments executed on printed non-judicial Stamp Paper is the traditional method of payment. Either the Non-Judicial Stamps are required to affix on Instruments or the Instrument is to be written or printed on such Stamp Paper(s). Alternatively, a blank stamp paper(s) can be affixed to the instrument and signed by the executants or one of the executants with an endorsement indicating that such stamp paper is attached to the sheet on which the instrument is written and forms an integral part of the instrument.

The benefit of using Stamp Paper is that being the traditional method of stamping documents,

people are generally familiar with the process of obtaining Stamp Papers from licensed vendors but on other hand, it has several disadvantages like duplicate/illegal stamp papers/stamps (for e.g. Telgi Scams) as well as many a times the Stamp Papers are not available in larger denominations.

(B) Franking

Payment of Stamp Duty through franking is largely accepted and convenient mode for laymen. However, at present, it is restricted for non-registerable instruments only. For franking, the instrument is to be printed on plain paper before the parties execute the instrument and it is taken to an authorized bank/agency where franking can be done/permitted. Franking is generally done by submitting an application form. In franking, **Non-Adhesive Stamp(s) are affixed**/printed on the paper through authorised franking machine indicating the value of the Stamp Duty.

The benefit of availing franking as a mode of payment of Stamp Duty is that it is quick (in case of payment by cash/demand draft) but on the other hand, has a minor drawback that it can be done only before execution of the instrument and it may involve a nominal franking charge. We must understand that there are no uniform rules for these authorised banks/post offices and the rules may vary from state to state and sometimes even from one bank to another, within a state.

Franking is usually done during the limited working hours of the Banks and Post Offices and now-a-days is largely used for payment of Stamp Duty on non-registerable instruments.

(C) E-stamping

E-stamping is online way of paying Stamp Duty. It is compulsory mode of payment of Stamp Duty for registerable instruments in Maharashtra. Claiming to be leak proof mode of payment of Stamp Duty from Government's perspective, it gives comfort to the stamp duty payers with relation to the payment, security and multiplicity of the e-stamps. Provisions are made available that the stamp duty payer (having net banking facility) can pay stamp duty from home/ office by adopting several steps and simple instructions which are widely available online.

One of the biggest benefits of e-stamping is that the e-stamps can be availed relatively quickly (in case of payment by cash/demand draft) and that it is a relatively secure method (every e-certificate has its own unique identification number and can be verified for its authenticity). Another benefit is that e-stamping can be done even after the instrument has been executed, unlike franking. And on contrary, some e-stamps like E-SBTR if misplaced, a duplicate copy of the same cannot be issued and there is no scope of error and omission in the e-stamps that means one cannot modify/rectify the content mentioned in the E-Stamps and one may directly have to go for the refund of the E-Stamps purchased.

In conclusion, the choice of method of paying stamp duty is largely dependent on the state in which the Stamp Duty is to be paid and the amount of such Stamp Duty. For payment of a smaller amount of duty and for non-registerable document, it may be more convenient to purchase Stamp Papers of a small denomination or go with the Franking. However, for a larger amount of Stamp Duty and for registerable document, it may be preferable to opt for e-stamping.

1.2 Procedure of Payment of Stamp Duty

(A) Paper Based Methods

A Stamp Duty payer can pay the Stamp Duty in case of Stamp Paper by filling a form indicating the information related to the parties such as name and address of Stamp Purchaser, Reason for Stamp Duty with information where it is submitted or used and it shall be acknowledged by the signature of the Stamp Duty payer with date.

Stamp Papers can be made available on that day or after one day. Mode of payment of Stamp Duty in such cases is generally through Cash.

(B) Franking

A Stamp Duty payer can pay the Stamp Duty through franking by filling a simple form (details to be mentioned in triplicate) indicating the information related to Party such as name and address of Stamp Purchaser, Description of Instrument on which Stamp Duty is paid, name and address of Other Party and amount of Franking (Stamp Duty) with bank charges.

Franking can be done immediately on same day. Mode of payment of Stamp Duty in such cases is through cash/demand draft and in rare case, through cheque.

(C) E-Stamping

E-stamping can be done through GRAS and through several authorised banks. Every method has its own procedure to follow which is as under:

Type-1: Payment of Stamp Duty & Registration Fees through GRAS - Online Mode: Option 1 'E-Payment' and Option 2 'Payment Across Bank Counter'

Step 1: Same for Option 1 & Option 2.

- ✓ Visit GRAS website <https://gras.mahakosh.gov.in/echallan/#>

Step 2: Same for Option 1 & Option 2.

- ✓ Click 'Pay without Registration' (Register yourself if you are a regular user).

| **SPECIAL STORY** | **Stamp Duty & Registration** |

- ✓ Select Dept. name as 'Inspector General of Registration'.
 - ✓ Select payment type as 'Non-Judicial Stamps'.
 - ✓ Select applicable 'District'.
 - ✓ Select applicable 'Office Name' where you want to visit. (Receipt can be used anywhere in concurrent jurisdiction).
 - ✓ Select applicable Scheme Name.
 - ✓ Select applicable 'Period (Year)' as current financial year.
 - ✓ Select 'One Time/Adhoc' in next selection box.
 - ✓ Select applicable 'Article Code'.
 - ✓ Enter Payment amount in 'Amount'.
 - ✓ Enter party details, one from each side. For more people, simply write +2, +3, etc. along with first name.
 - ✓ Enter details of property in transaction.
- Step 3: Select Option 1 'E-Payment' or Option 2 'Payment Across Bank Counter'.
- ✓ Select 'Bank' through which payment would be done.
- Step 4: Challan would be generated in MTR Form Number 6.
- ✓ Verify the details of Challan.
- For Option 1 'E-Payment'*
- ✓ If details are correct, click on 'Proceed for Payment', otherwise click cancel and re-enter details.
 - ✓ Note the GRN displayed on screen and then click 'OK'
 - ✓ Selected bank's website will open.
 - ✓ Enter login ID and password of bank.
 - ✓ Confirm Payment.
 - ✓ Final e-Challan would be generated.
 - ✓ Print and sign it.

For Option 2 'Payment Across Bank Counter'

- ✓ If details are correct, click on 'Proceed for Payment', otherwise click cancel and re-enter details.
- ✓ Note the GRN displayed on screen and then click 'OK'.
- ✓ Visit selected Bank with printed e-challan within 7 days and make payment.
- ✓ Final e-challan would be issued by the Bank.
- ✓ Get it and sign it.

Note: Attach e-challan to the document.

Type-2: Payment of Stamp Duty & Registration Fees through Bank - Online Mode: Option 1 'Simple Receipt' Option 2 'e-SBTR:

- Step 1: Visit Bank website (e.g. <https://etax.idbibank.co.in/IGR>).
- ✓ Select mode of payment as 'Online'.
 - ✓ Select type of receipt as Option 1 'Simple Receipt' or Option 2 'e-SBTR'.
 - ✓ Read instructions mentioned carefully and accept the same by ticking checkbox & pressing the button submit.
- Step 2: Fill Simple Receipt Payment Input form.
- ✓ Submit Form.
 - ✓ If all the details entered are valid, user will be asked to confirm and proceed
- Step 3: Select one of the applicable internet banking account - Corporate Net-banking or Retail Net-banking.
- ✓ Confirm Payment.
- Step 4: *For Option 1 'Simple Receipt'*
- ✓ Simple Receipt will be generated.
 - ✓ Print it.

For Option 2 'e-SBTR

- ✓ Challan to get e-SBTR will be generated. Print it.
- ✓ Visit the already selected branch with above print and Identity proof.
- ✓ Get e-SBTR printed and signed by Bank officer.

Note: Attach Simple Receipt/E-SBTR to the first page of original document.

Type-3: Payment of Stamp Duty & Registration Fees through Bank - Across the Bank Counter Mode: Option 1 'Simple Receipt' Option 2 'e-SBTR':

Step 1: Visit Bank website (e.g. <https://etax.idbibank.co.in/IGR>)

- ✓ Select mode of payment as 'Across the Bank Counter'.
- ✓ Select type of receipt as Option 1 'Simple Receipt' or Option 2 'e-SBTR'.
- ✓ Select convenient Branch of Bank.
- ✓ Select Type of Instrument for payment as 'Demand Draft' or 'Cheque' or 'Cash' or 'NEFT'.
- ✓ Enter payment amount in field 'Instrument amount'.
- ✓ Enter payment instrument number (e.g. cheque, DD number).
- ✓ Enter instrument date.
- ✓ Enter payment instrument issuing Bank's name.
- ✓ Enter issuing Branch Name.
- ✓ Read instructions mentioned carefully and accept the same by ticking checkbox & pressing the submit button.

Step 2: Fill Simple Receipt/e-SBTR Payment Input form.

- ✓ Submit Form.
- ✓ If all the details entered are valid, user will be asked to confirm and proceed.
- ✓ Press confirm button.

Step 3: Simple Receipt/Challan to get e-SBTR would be generated. Print it.

- ✓ Visit selected bank with printed Simple Receipt/Challan to get e-SBTR within 7 days and make payment.
- ✓ For Simple Receipt: Get it and sign it.
- ✓ For e-SBTR: Visit the already selected branch with above print and Identity proof and get e-SBTR printed and signed by Bank officer.

Note: Attach Simple Receipt/E-SBTR to the first page of original document.

1.3 Frequently Asked Questions (FAQs) on Online Payment of Stamp Duty

Ques: What is Government Reference Number (GRN) and what is its relevance?

Ans: Government Reference Number (GRN) is generated on the Challan to uniquely identify the payment to be made by the user. GRN should be quoted for any further enquiry. Therefore, you must ensure that 18 digit GRN generated is properly noted and saved. A separate Bank CIN (Challan Identification Number) is generated as an acknowledgement for payment made online.

Ques: Who can pay Stamp Duty online?

Ans: Any Stamp Duty Payer can pay Stamp Duty online. Stamp Duty Payer with Net Banking Facility can pay using "Online" mode of payment and Stamp Duty Payer without Net Banking Facility can pay using "Across the Bank Counter" mode of payment.

Ques: How can a person use the "Across the Bank Counter" mode of payment?

Ans: The duty payer can generate a web token online or offline by furnishing all the details of the transaction in the Input Form and submit the web token at the designated branch. The transaction will be

processed after the funds get credited to Bank's account.

Ques: How to make the funds arrangement in case of "Across the Counter" payment mode?

Ans: Either with a Demand Draft/Cheque payable locally or cash.

- a) In case of DD/Cheque, the transaction can be done only after clearance of the DD/Chq.
- b) Alternatively, the duty payer can remit the requisite amount by way of NEFT from his bank to the designated account at the selected branch of IDBI and generate web token and visit the selected branch for submission of web token. Any amount can be remitted through NEFT mode.

Ques: What is the designated account for remittance through NEFT?

Ans: The message with details of designated account number, IFSC code etc. will be flashed once the duty payer selects the branch and type of instrument, as NEFT. Note down the details and then remit the funds from your bank through NEFT.

Ques: What is Simple Receipt and e-SBTR?

Ans: These are types of receipts (challan) issued as proof of payment of Stamp Duty which are to be attached to the relevant documents.

Ques: What is difference between Simple Receipt and e-SBTR?

- a) Simple Receipt is printed on a normal A4 size paper.
- b) e-SBTR is printed on a prescribed stationery paper supplied by Indian Security Press with in-built security features. E-SBTR looks like Non-Judicial Stamp Paper.

Ques: When to select Simple Receipt and when e-SBTR?

Ans: a) Simple Receipt is valid for those documents which are required to be registered. (Normally all the documents relating to Immovable Property) for Simple receipt, minimum amount should ` 300/- for Across the Counter mode of payment and ` 1/- for online mode of payment.

b) E-SBTR is valid for both registrable and optionally registrable documents where the stamp duty amount is minimum ` 5000/- or above.

Ques: Which office name should be selected?

Ans: The duty payer should select the District first and then select the concerned Sub Registrar Office (SRO) under the jurisdiction. The duty payer must confirm and select the correct District and SRO.

Ques: What address for the Property details should be given?

Ans: It must be the address of the property for which the stamp duty is being paid.

Ques: What if I have made payment of Stamp Duty with some wrong details? Can modification be done by the Bank in Simple Receipt or e-SBTR?

Ans: No. Once payment is made and Government Receipt Number (GRN) is generated no modifications are possible thereafter.

Ques: Can consolidated amount for multiple stamp duty payment transactions be remitted?

Ans: No. For each transaction separate remittance is necessary. Consolidated remittance for multiple transactions is not allowed.

Ques: Whom should a Stamp Duty Payer contact in case if anyone encountered any problem while making payment through Internet?

Ans: Stamp Duty Payer has to contact the Virtual Treasury Officer at 022-22040564 or 022-22040570 during Office hours or mail

them at vto@mahakosh.in. However if any problem encountered at bank site, person should contact his bank for assistance.

Ques: Whom should a Stamp Duty Payer contact if the challan containing the GRN is not displayed on completion of the transaction and if one want duplicate challan?

Ans: A Stamp Duty Payer can get the challan online by inserting the other details such as CIN, amount etc., and/or can also contact Bank and get the duplicate challan. Please note that there will be no duplicate e-SBTR issued by the Bank. You can also

get the same challan copy on government website in your profile history, if you are a registered user.

Ques: What a Stamp Duty Payer should do if he misplaces any challan?

Ans: GRAS (Government Receipt Accounting System) provides facility for re-generation of electronic challan only to 'Registered Users' of the site. Check the <http://echallan.maharashtra.gov.in/log-in/ChallanHistory>. One may also contact the Virtual Treasury Officer.

1.4 Details of Bank for online payment of Stamp Duty

BANKS AVAILABLE IN GRAS (Government Receipt Accounting System)					
Sr. No.	Bank Name	Internet Banking	Debit Card	Bank Counter Payment	e-SBTR
1	IDBI Bank	Yes	No	Yes	Yes
2	Punjab National Bank	Yes	No	Yes	Yes
3	State Bank of India	Yes	Yes	Yes	No
4	State Bank of Hyderabad	Yes	No	Yes	No
5	State Bank of Patiala	Yes	No	No	No
6	Andhra Bank	Yes	No	Yes	No
7	Bank of Baroda	Yes	No	No	No
8	Bank of India	Yes	No	No	No
9	Bank of Maharashtra	Yes	No	Yes	Yes
10	Canara Bank	Yes	No	No	Yes
11	Central Bank of India	Yes	No	No	No
12	Corporation Bank	Yes	No	No	No
13	Dena Bank	Yes	No	No	No
14	Indian Bank	Yes	No	No	No
15	Indian Overseas Bank	Yes	No	No	No
16	Union Bank of India	Yes	No	No	No
17	Vijaya Bank	Yes	No	No	No
18	Syndicate Bank	Yes	No	No	No

URL for e-SBTR:

IDBI Bank: <https://etax.idbibank.co.in/IGR/>

Punjab National Bank: <https://gateway.netpnbn.com/mahastamp/home.html>

Bank of Maharashtra: <https://www.mahaconnect.in/eSBTRExternal>

Canara Bank: <https://epayment.canarabank.in/MHestamp/epayhome.aspx>

Bank of India: <https://starconnectcbs.bankofindia.com/BankAwayRetail/sgonHttpHandler.aspx?Action.SBTR.Pmt.CORE.BOI.Proceed=Y>

2. Provisions relating to interests and penalties for offences, impounding of instruments

2.1 Impounding of Instruments

- The Collector of Stamps, if he has reason to believe that all or any of the instruments specified in Schedule-I, of the Maharashtra Stamp Act have not been charged or incorrectly charged, he may himself or through his authorised officer enter upon the premises and inspect such instruments and take such notes and extracts as he may deem necessary and if necessary he may seize and impound such instruments under Section 33 of the Maharashtra Stamp Act. Even after registration, section 33A applies to all documents which are already registered. Such impounded document is required to be forwarded to the collector of stamps for recovery of deficit Stamp Duty along with penalty. In addition, the parties can also be prosecuted under section 42 of the Bombay Stamp Act.
- The Collector of Stamps is further authorised not only to collect deficit Stamp Duty but Penalty as well, which will be at a uniform rate of 2% per month on deficient portion of the Stamp Duty.

- As per proviso to Section 39(1)(b) of the Maharashtra Stamp Act, the amount of penalty shall not be exceeding four times* of the deficient portion of the Stamp Duty.

- ***Note:** The Amount of Penalty for impounding of Instrument was 10 times of deficient portion of the Stamp Duty till 30-4-2001, and two times deficient portion of the Stamp Duty till 23-4-2015.

2.2 Provisions relating to Interest and Penalties

- There are no provisions for interest payable on the Stamp Duty, but however penalty shall be applicable on the delayed payment of the Stamp Duty which is calculated at the rate of 2% per month subject to maximum of 400% of deficient amount of Stamp Duty.
- Non-disclosure of true facts and circumstances in the instrument can be treated as evasion of Stamp Duty and consequently the penal provisions are attracted. There are numerous penalty provisions. However, some of such penalties leviable are in brief are as under:-

Sr. No.	Section with Offence	Penalty
1	Section 59 of Maharashtra Stamp Act: Penalty for executing etc., instrument not duly stamped	Rigorous imprisonment for 1 month to six months with fine up to ` 5,000/- per each offence.
2	Section 60 of Maharashtra Stamp Act: Penalty for making false declaration on clearance list	Rigorous imprisonment for 1 month to six months with fine upto ` 5,000/- per each offence.
3	Section 61 of Maharashtra Stamp Act: Penalty for failure to cancel adhesive stamps	Fine up to ` 100/-
4	Section 62 of Maharashtra Stamp Act: Penalty for omission to comply with provisions of section 28	Fine up to ` 5,000/-
5	Section 63 of Maharashtra Stamp Act: Penalty for breach of rule relating to sale of stamps and for unauthorised sale	Rigorous imprisonment for 1 month to six months with fine up to ` 5,000/-.
6	Section 63A of Maharashtra Stamp Act: Non remittance of stamp duty within prescribed time.	Rigorous imprisonment for 1 month to six months with fine up to ` 5,000/-.

- Chief Controlling Revenue Authority can refund the excess paid penalty under Section 44 of Maharashtra Stamp Act.

3. Refund of Stamp Duty (Implications of cancellation of documents executed on stamp, and calculation of stamps pre adjudication):

- Refund can be claimed when the instruments gets spoiled, rendered unfit for the purpose for which it was

purchased and also for other reasons as mentioned in Section 47 of the Maharashtra Stamp Act. The application for refund must be submitted within six months from the date of purchase of stamps to the Joint District Registrar and Collector of Stamps of the concerned district. However, in some special cases like when the transaction is impossible to complete due to some legal hitch, the refund can be claimed within 2 years of purchase of stamps. Stamp Duty is generally refunded after deducting 10% of the total amount of Duty Paid.

- **As per law, one can get refund of stamp duty on following types of documents**

	Types of Documents	Time limit to claim refund
I.	Spoiled Paper, Blank Documents unexecuted or executed documents afterwards found unfit due to some reason	Within 6 months from date of stamp paper purchased or franked
II.	The documents which are executed and registered but due to some reason physical possession of the property have not been handed over by the seller to the purchaser or in some unavoidable circumstances transactions could not be completed	Refund of duty can be claimed within 2 years from the date of stamp paper purchased or franked
III.	Where such agreement is cancelled by registered cancellation deed on the ground of dispute regarding the premises concerned, inadequate finance, financial dispute or terms of agreed consideration or afterwards found to be illegal construction or suppression of any other material fact	In such case the refund application may be made within two years

- **Jurisdiction:** This application for refund is to be made at Jurisdiction Collector of Stamps office from where the stamp is purchased. The Original Stamp Duty paid instrument is required to be submitted with refund application. Checklist of refund proposal be maintained at respective stamp office to be verified and complied in respect of cases relating to claim of refund.
- **Validity of Stamps after 6 months:** As per the provisions of Section 52-B, the stamps which are purchased and not used within six months shall be rendered invalid

thereafter. The stamps purchased and not used for intended purpose are entitled for refund after deduction of certain charges, if lodged for refund within six months from the date of purchase and on fulfilling the conditions stipulated in Chapter V of the Maharashtra Stamp Act.

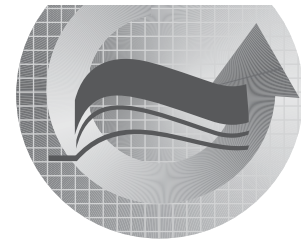
- **Refund of Stamp duty in case if the Stamp Paper is unused or mutilated:** Refund can be claimed under Section 47 of The Maharashtra Stamp Act 1958. However such claim can be made to the Collector of Stamps within a period of 6 months from the date of purchase of Stamps.

- **Ground for refund of Stamp Duty paid?**
 - ✓ Paid excess stamp duty or penalty.
 - ✓ Un-used Stamp Papers or spoiled Stamp Papers.
 - ✓ Cancellation of document where judicial stamp paper is required but non judicial used or vice a versa.
 - ✓ As per court order Stamp Duty refund.
 - ✓ If the Stamp Duty has been deducted two times on the same document.
 - ✓ Paid online Stamp Duty to different departments or different head.
 - ✓ Cancellation of the agreement with the builder or vendor.
- **Documents required**
 - ✓ Application Letter
 - ✓ Online Application Receipt
 - ✓ Original instrument with one Xerox copy.
 - ✓ Original Receipt of purchased stamps
 - ✓ Bank Confirmation for the Stamps.
 - ✓ If the Stamp Duty is paid through "FRANKING" (i) Hyper Terminal report, (ii) Ink cartage (True copy) & (iii) Certificate of stamp vendor on his letter head.
 - ✓ If the Stamp Duty is paid through "GRAS CHALLAN", (i) Success report, (ii) Copy of e-challans.
 - ✓ If the Stamp Duty is paid through "E-Stamp", (i) True copy of page of computer register, (ii) If document is Unregistered – Reports of Collector of Stamps about locking of e-Stamps, & (iii) If document is registered – Report of Sub-Registrar about locking of e-stamps.
- **Procedure to be followed for refund**
 - ✓ Reconciliation Certificate of Treasury or Success Report
 - ✓ Affidavit in prescribed format.
 - ✓ Jawab (Reason for Refund)
 - ✓ Certificate of Collector of stamps for genuine of stamps
 - ✓ If stamps are purchased on behalf of the any party, then No objection Certificate of the Stamp Purchaser(s). (Optional)
 - ✓ If there are more purchasers in the Instrument and one purchaser applied for the refund, No Objection Certificate of the remaining purchasers. (Optional)
 - ✓ Power of Attorney, if any person other than purchaser of stamp applied for the refund. (Optional)
- **Website for Online Application for Refund of Stamp Duty**
 - ✓ <https://appl1igr.maharashtra.gov.in/refund/RegisterRefund.aspx?query=1>.





Sanjay Buch, *Advocate & Solicitor*



Stamp Duty Implication under Cross Border Transactions

Possession is the physical transfer of the property, which though is considered as nine points in law out of ten, is not sufficient. You also need to have legal ownership. Without proper legal documents of title, no property can be sold, leased, mortgaged, charged or gifted. At the time of registration, parties to the document will be called to pay proper stamp duty in order to perfect title to the property, being the subject-matter of the document/instrument. Stamp duty is a State subject and all the States in India are empowered by the Constitution to frame their own laws for imposing tax in the nature of stamp duty on “instruments”, and not on “transactions”. Besides being payable on documents conveying or transferring immovable property, stamp duty is also payable on all such documents or instruments that have the effect of transferring right, title or interest to or in the property. Like all Central Acts, Indian Stamp Act, 1862 (the “ISA”) is the mother law pursuant to which various States have framed their own stamp laws applicable to the state. The State of Maharashtra has been the pioneer state in developing its stamp duty law being the Maharashtra Stamp Act, 1958 (the “MSA”).

What is stamp duty?

It is a tax, similar to income tax, collected by the Government on the “instrument” and not on a “transaction”. Section 3 of the ISA is the charging section. Stamp Duty must be paid in

full and on time. If there is a delay in payment of stamp duty, it attracts penalty. A stamp duty paid instrument / document is considered as a proper and legal instrument / document having evidentiary value and is admitted as evidence in courts. Document not properly stamped, is not admitted as evidence by any court.

When is the stamp duty payable?

Stamp Duty is payable before execution of the document or on the day of execution of document or on the next working day of executing such a document. Execution of the document means putting signature on the instrument by the persons, who are parties to the document.

What is the penalty charge?

Any delay in duty payment will pull in 2% per month to the maximum of 200% of the deficit amount of stamp duty. Stamp papers are to be purchased in the name of either of the parties, i.e., seller or buyer involved in the agreement, failing which will invalidate the stamp paper. It is said to be valid for six months from the date of purchase, only if the duty is paid on time.

Who is liable to pay?

In the absence of any agreement to the contrary, the purchaser/transferee has to pay stamp duty or in case of exchange of properties, both parties have to bear stamp duty equally.

What is an instrument?

Section 2(14) of the ISA defines an Instrument as, “*Instrument means any document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded*”. It is payable on instruments and not on any particular transaction. Stamp duty should be charged on the basis of the contents of the instrument only. If any information, essential for working out stamp duty is missing in the instrument, Adjudication Officer can call for it. Information such as the area of the flat, number of the floors and year of construction must be mentioned in the agreement for quicker response.

Thus, though stamp duty is leviable on the instrument and not on the transaction, it is the substance of the transaction that determines the stamp duty.¹ The substance of the document must be taken into account. The mere fact that a person chooses to give a certain title to a document by no means makes it that document.² In determining whether a document comes within the description of a document upon which a stamp is imposed by the Stamp Act, we must look at the entire document and see whether it squarely falls within the description.³

What is the Process for Adjudication?

Section 31 of the BSA provides for the adjudication of proper Stamp Duty. The applicant under this section has to submit an instrument executed or unexecuted and previously stamped or not for the purpose of opinion to the collector of stamps and for this purpose, the applicant has to pay a fee of ` 100/-. On receipt of the application of adjudication and the instrument, the Collector has to form his opinion as regards its chargeability and then express his opinion to the applicant. Section 32(4) of the BSA provides

that when the instrument is brought to the Collector for adjudication within one month from the date of its execution, the person is liable to pay stamp duty within 60 days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If the applicant fails to pay the said stamp duty within the stipulated period of 60 days, the person is liable to pay a penalty at the rate of two per cent per month or part thereof, from the date of execution of such instrument.

It is therefore necessary to pay stamp duty within 60 days from the date of the demand notice served by the collector to avoid levy of penalty. In view of the penal provision in section 32(4) of the Act, the applicant should take care to submit the unexecuted document for adjudication under section 31 of the BSA. In case of unexecuted instrument the collector has no power to levy penalty and if the applicant does not agree with the determination of Stamp Duty, he can withdraw his document from adjudication.

What is the mode of payment – E stamping?

As per Notifications Number GSR 642(E) and SO 2276(E) dated 7-9-2009 and SO 3314(E) dated 31-12-2009 issued by the Ministry of Corporate Affairs, with effect from 1st April, 2010, stamp duty on documents under the Companies Act, 1956 shall have to be paid only through electronic mode for the States which have agreed for e-stamping. However, it is interesting to note that the Maharashtra Government has brought into effect Maharashtra E-Registration and E-Filing Rules, 2013 which enable a person to register a document and pay stamp duty online.

The ISA is the mother Act dealing with the stamp duty throughout India, whereas the

1. Shiv Kumar Saxena and Ors. vs. Manishchand Sinha and Anr, 2004(4) MPHT 47, Madhya Pradesh High Court.

2. The Madras Refineries Ltd. vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras, AIR(1997) SC 500

3. Brojender Coomar vs. Bromomoye Chowdhurani, (1879) ILR 4 Cal 885

MSA, is the State Legislative Act which restricts itself to the stamp duty payable in the State of Maharashtra. For the sake of convenience, I have particularly dealt with the State of Maharashtra and the relevant provisions of the MSA. The rate may differ from State to State, however the general principles remain the same barring a few exceptions.

Proposition No. 1: Stamp Duty implication on an agreement between two NRIs who signs the Agreement outside India for transfer of immovable property in India.

An Agreement executed outside India by two NRIs regarding an immovable property situated within the State of Maharashtra, will be governed by section 3(b) of the MSA, which states that, *“Subject to the provisions of this Act and the exemptions contained in Schedule I, every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State, shall be chargeable with duty of the amount as indicated in Schedule I”*. So the agreement entered into by the two NRI's outside India, will attract stamp duty when that instrument is brought into the State of Maharashtra (including within or from Outside India).

Section 2(1) of the MSA, lays down the definition of an 'Instrument' as follows: *“Instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt”* Also an explanation is added for the term “document” which includes any ‘electronic record’ as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000. Section 2(1) (t) of the Information Technology Act, 2000 defines "Electronic Record" to mean data, record

or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Also Section 18(1) of the MSA lays down that, *“Every instrument chargeable with duty executed only out of this State may be stamped within 3 months after it has been first received in the State”* Hence, when the concerned agreement, so signed by the two NRIs outside India, pertaining to an immovable property situated in India, is first received in the State of Maharashtra, such agreement should be stamped within the first three months from the date on which it was first received. Delay in paying of the stamp duty will invite penalties which were stated earlier. However, with the Amendment in MSA on 24th April, 2015, the penalty for delay in paying the requisite stamp duty will be ` 400 per day.

Article 25(b) in Schedule I of the MSA provides the rate of stamp duty payable with respect to conveyance of an immovable property, with regards the location of that property:

- In case the property is situated within the limits of the Municipal Corporation or any Cantonment area annexed to it, the stamp duty payable is 5% of the market value of the property.
- In case the property is situated within the limits of any Municipal Council or Nagar Panchayat or Cantonment are annexed to it, or any rural area within the limits of the Mumbai Metropolitan Region Development Authority, the stamp duty payable is 4% of the market value of the property.
- And in case, the property is situated within the limits of any Gram Panchayat area or any such area not mentioned in the above clause, the stamp duty payable is 3% of the market value of the property.

In so far as registration of the Agreement to sell or the sale deed/conveyance executed outside

India by two NRI's regarding an immovable property situated in India is concerned, the same will require compulsory registration under section 17 of the Registration Act. If parties are unable to remain present at the time of registration, they may grant a power of attorney to a person in India for admitting execution on behalf of NRIs. The Power of Attorney will have to be executed in terms of the sections 32 and 33 of the Registration Act. In this case since the NRIs are outside India, such a power of attorney for presenting the document for registration will be required to be executed before a Public Notary or Indian Consulate/Embassy. This compliance will be necessary for perfecting the title of the purchaser of immovable property.

Proposition No. 2: Stamp Duty implication on an agreement between two Indian residents who sign the Agreement in India for an Immovable property outside India.

An Agreement entered into by two Indian residents regarding an immovable property outside India comes under the purview of the definition of 'Instrument' as per Section 2(1) of the MSA. Hence, the required stamp duty must be paid accordingly.

Section 34 of the MSA, states that *"No instrument chargeable with duty, shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person unless such instrument is duly stamped"*. This clearly enunciates that, an instrument/document which is not stamped or is insufficiently stamped cannot be admitted as evidence in a court of law and also that instrument/document is not enforceable.

Section 3(a) of the MSA states that *"Subject to the provisions of this Act and the exemptions contained in Schedule I, every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the State on*

or after the date of commencement of this Act, shall be chargeable with duty of the amount indicated in Schedule I".

In this case thus, Article 5(h)(A) in Schedule I of the MSA is applicable, the stamp duty payable will be on the following basis:

- Specific performance by any person or a group of persons where the value of contract exceed ` 1,00,000 and the amount does not exceed ten lakhs, the stamp duty payable is two rupees and fifty paise for every ` 1,000 and in any other case, five rupees for every rupees thousand.
- In case of creation of any obligation, right or interest and having monetary value, but not covered under any other article, if the amount agreed does not exceed rupees ten lakhs, then stamp duty payable is one rupee for every rupees 1,000 and in any other case, two rupees for every ` 1,000.

In so far as registration of such an agreement of property is concerned, the same will not require compulsory registration under the Registration Act, however the same will be governed by laws of the country in which such immovable property is getting transferred.

Proposition No. 3: Stamp duty implication on the invocation of a pledge agreement, if a loan is advanced by a foreign lender to an NRI promoter outside India, based on the pledge of the NRI's shareholding in Indian company. Implication, if such pledge agreement is required to be invoked and such document is brought in India to be produced in a court.

Section 34 of the MSA states the enforceability criteria of a document in a court of law. It states that, that *"No instrument chargeable with duty, shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person unless such instrument is duly stamped"*. Hence, if the parties

intend to invoke the pledge agreement and produce such a document in an Indian Court, it needs to be duly stamped to be admitted to be received as evidence or to be acted upon.

Now, according to Section 44 of the Companies Act, 2013, the NRIs shareholding in an Indian company is deemed to be a "movable property". Article 6(2) of Schedule I to the MSA lays down that, "*The pawn, pledge or hypothecation of movable property, where such pawn, pledge or hypothecation has been made by way of security for their repayment of money advanced or to be advanced by way of loan or an existing or future debt: a) If the amount secured by such deed does not exceed five lakhs, then stamp duty payable is one rupee for every rupees thousand and b) in any other case, the stamp duty payable is two rupees for every rupees thousand*". Therefore, if the pledge agreement is required to be invoked and produced in a court or to be part of lender's security, it needs to be duly stamped in accordance with Article 6(2) of MSA.

In so far as registration of a Pledge Agreement of moveable property is concerned, the same will not require compulsory registration under the Registration Act as it does not relate to immoveable property.

Proposition No. 4: NRI gifts shares of a foreign company to his son, who is resident in India and such document is required to be brought to India.

Gift of shares is in a way creating an interest having monetary value. Article 34 of Schedule I of the MSA, states the amount of stamp duty payable on Gifts (other than a settlement, will or transfer). The stamp duty payable for gift of shares is the same as that of stamp duty payable for conveyance of movable property, that is, ₹ 15 for every ₹ 500 or part thereof (approx. 3%). In case of a gift to the spouse, brother, sister, lineal ascendants or descendants, the stamp duty payable would be ₹ 10 for every Rs. 500 or part thereof (approx. 2%) of market value.

Provided further that, if the residential and agricultural property is gifted to husband, wife, son, daughter, grandson, grand-daughter, wife of deceased son, the amount of duty chargeable shall be rupees two hundred.";

Therefore, according to the fair valuation of the shares which are gifted, the share certificate must be adequately stamped under Article 34 of Schedule I of the MSA.

In so far as registration of gift of moveable property such as shares is concerned, the same will not require compulsory registration under the Registration Act as it does not relate to immoveable property. Execution of the same before a Notary Public shall be sufficient.

Proposition No. 5: Trust settled outside India by non-resident settlor. Trust has a non-resident trustee. An Indian resident beneficiary receives distribution from such trust and he is required to produce such trust deed before the Income Tax office in India.

The Indian resident beneficiary is required to produce the trust deed before the Income Tax office in India. For this purpose, the Indian resident beneficiary needs to make sure that the trust deed is adequately stamped prior to submitting it before the Income Tax office.

Article 61 of the MSA, deals with Trusts and states that "*Declaration of or concerning any property when made by any writing not being a Will: a) where the disposition of property, where the trust is made for a religious or charitable purpose, stamp duty payable is ten rupees for every rupees five hundred and b) in any other case, stamp duty payable is the same as is leviable on a conveyance under clause (a), (b) or (c) of Article 25*" This Article provides the amount of stamp duty payable with respect to a trust deed. Therefore, the Indian resident beneficiary should pay proper and adequate stamp duty with regards

the trust deed according to the criteria laid down in Article 61 mentioned above.

Section 34 of the MSA states that if an instrument is not duly stamped, it cannot be admitted as evidence in a court of law and nor it can be enforced. The below mentioned section follows, in case the instrument is not duly stamped:

Section 33(1) of the MSA, lays down that *“every person having by law consent of the parties or authority to receive evidence, and every person in charge of a public office, except an officer of police (or any other officer empowered by law to investigate offences under any law for the time being in force) before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same”*. Therefore, going by this section, the trust deed should be properly stamped prior to being produced before the Income Tax Office, otherwise it is liable to be impounded.

In so far as registration of Trust Deed of moveable property is concerned, the same will not require compulsory registration under the Registration Act as it does not relate to immovable property. Execution of the same before a Notary Public shall be sufficient. However, if the Trust has Immoveable Property as its corpus, the Trust Deed will be required to be registered through the Trustees. Again since it is executed outside India, laws relating registration of the foreign country will apply.

Proposition No. 6: A Dubai Bank has given a loan to Dubai Subsidiary of Indian Holding Company. The loan is given on the basis of corporate guarantee of the Indian Holding Company. Implication if the guarantee agreement is executed in India or outside India. The guarantee has to be invoked as the subsidiary is not able to repay the loan. Implication of the guarantee document has to be brought into India.

If the guarantee agreement is to be invoked in India, which is executed out of the State of Maharashtra, then Section 18(1) of the MSA will regulate the same. Section 18(1) of the MSA states that, *“Every instrument chargeable with duty executed only out of this State may be stamped within 3 months after it has been first received in the State”*. Therefore, when the guarantee which to be invoked, has to be brought into India, must be stamped within 3 months, from the date from which it is first received in the State of Maharashtra.

If the guarantee agreement which is to be invoked, is executed within Maharashtra, then Section 3(a) of the MSA states that, *“Subject to the provisions of this Act and the exemptions contained in Schedule I, every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act, shall be chargeable with duty of the amount indicated in Schedule I”*. So, the guarantee which needs to be invoked must be stamped properly with respect to the amount directed in Schedule I of the MSA. The relevant Article is given below:

Article 5(h)(A)(iv) in Schedule I states the amount of stamp duty payable on *“creation of any obligation, right or interest and having monetary value, but not covered under any other article, if the amount agreed does not exceed rupees ten lakhs, then stamp duty payable is one rupee for every ` 1,000 and in any other case, two rupees for every ` 1,000”*. A guarantee document lies within the ambit of the above-mentioned definition. So, by paying stamp duty as directed in Article 5(h)(A)(iv) the invocation of the guarantee can be successfully carried out in India.

Proposition No. 7: Indian Company is a promoter of a U.S. company and subscriber to the Memorandum of Association. After the company is formed in U.S., one signed copy of the Memorandum of Association and share certificates are sent to the Indian promoter company.

The situs of the shares of the US company rests in the US and does not shift to India. According to the Supreme Court Judgment in 'Vodafone International Holdings B.V vs. Union of India' (2012), the apex court had reiterated the principle that the situs of the shares would be where the company is incorporated and where its shares can be transferred.

In the present case, as the situs of the shares is situated in US, no stamp duty would be leviable on such share certificates which are sent to the Indian promoter company.

Proposition No. 8: Instrument is kept on the server outside India but, from India such document/Instrument is accessed (e.g.; in case of global merger agreements and share purchase agreements are executed outside India);

Charging Section 3(b) of the MSA, states that, *"Subject to the provisions of this Act and the exemptions contained in Schedule I, every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this state and is received in this State, shall be chargeable with duty of the amount as indicated in Schedule I"*.

Section 2(1) of the MSA, lays down the definition of an 'Instrument' as follows: *"Instrument includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded, but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of share, debenture, proxy and receipt"* Also an explanation is added for the term "document" which

includes any 'electronic record' as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000. Section 2(1) (t) of the Information Technology Act, 2000 defines "Electronic Record" to mean data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Receipt of instrument in India means - Original instrument / Photocopy / Email attaching the PDF or word format but signed/ executed "Instrument" is received in terms of section 3 read with section 2(l) of the MSA. Section 2(1) (t) of the Information Technology Act, 2000 defines "Electronic Record" to mean data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Only if the aforesaid highlighted pre-conditions are satisfied then the instrument received in the State shall be chargeable to stamp duty and not otherwise.

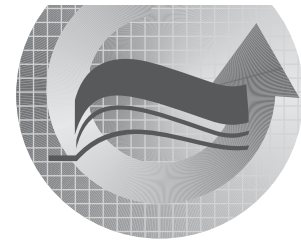
Conclusion

To reiterate, whatever may be the transaction, irrespective of the same, if a document or an "Instrument" (includes any 'electronic record') is brought into existence between two parties and is received in the form of an agreement or a contract having an effect of creating, transferring, limiting, extending, extinguishing or recording any right or liability, the same will be required to be assessed and adjudicated for ascertaining the quantum of proper stamp duty payable on the same. Once the correct stamp duty and the basis of charge under the Schedule is determined the stamp duty will have to be paid within the time prescribed.





CA Ramesh Prabhu



Registration of Documents

1. About registration of Documents and Applicability of Registration Act, 1908

Registration of various documents are done under Indian Registration Act, 1908 ("the Act"). The purpose of this Act is to consolidate the enactments relating to the Registration of documents. It extends to the whole of India, except the State of Jammu and Kashmir. The State Government may exclude any District or tracts country from its operation. It shall come into force on the first day of January 1909. In order to have the public notice of the documents executed between the parties regarding movable or immovable property is registered under the Indian Registration Act, 1908. Registration of document means nothing but is notation / recording of facts and contents of documents in the records of registration office as per the Act and the Rules made thereunder.

2. Meaning and Purpose of Registration of Documents

The term registration is not defined under the Act. Registration is the process by which the records of such document is preserved and through observing certain procedure which can be made available to the general public by Registrar. Therefore the registration is notice to the general public. Registered document becomes public document, such document can be inspected and certified true copy of the same

can be obtained by anybody on payment of necessary fees and by observing the prescribed procedure.

As a matter of evidence in any court of law on the dispute related to the execution of documents or transaction, the registered document prevails over unregistered document. For example, registered non-testamentary document relating to movable or immovable property shall prevail over any oral agreement or declaration. However, pursuant to any oral agreement or declaration, if under such law delivery and possession of property given is considered as valid transfer, then such oral agreement or declaration will prevail over subsequent registered document. For example mortgage deposit of title deed will prevail over subsequently registered mortgage deed. Registration is function/process of recording the contents of such document in Government record, its preservation and also notice of such fact to the general public. Similarly for movable property, the delivery and the possession of the movable property prevails over the subsequent registration of any documents to transfer the right in the property.

3. Scheme of Indian Registration Act, 1908

It is a Central Act with the implementation being done through the State Government. It has been divided into 15 parts consisting of 93

sections covering different aspects of compulsory registration, optional registration, documents to be maintained, the authorities to supervise and control the registration process, legal implications etc. Section 1 provides for name and applicability of the Act. Section 2 has provided the definition of lease, movable and immovable property, endorsement, representative etc. Section 3 of the Act provides for establishment of Inspector-General of Registration (IGR) to be appointed by the State Government for the territories subject to such Government and other officers as it deems fit. In this article, the important provisions of the Act and certain practical procedural aspects have been covered.

4. Establishment of IGR office in Maharashtra and e-portal of IGR Maharashtra

In Maharashtra we have Inspector General of Registration and Chief Revenue Authority, Maharashtra at Pune who have complete administrative control over the different registration offices and the Controller of Stamps across Maharashtra. The office is situated at New Administrative Building, Opp: Council Hall, Pune.

Sections 4 to 14 of the Act, provides for set up of jurisdiction of Registrar, Sub-Registrar, District, sub-district and their respective jurisdictions etc. to be specified by the State Government by issuing the official order and delegation of powers.

The same is given in the website of www.igrmaharashtra.gov.in and the link of the same is as under:

http://igrmaharashtra.gov.in/SB_ORGANISATION/ORGANISATION_Structure.aspx

Administrative Structure of Registration and Stamp Department of Government of Maharashtra

- The Registration and Stamp Department is a Department under the Revenue

Department of Government of Maharashtra and is under the control of the Minister (Revenue).

- At Mantralaya level, the Secretary (Relief and Rehabilitation) is the Secretary of the Department.
- The Inspector General of Registration and Controller of Stamps, Maharashtra State (IGR) is the Head of this Department and his office is located at Pune. IGR is the chief of the machinery for registration of documents in the State. Similarly, as per Stamp Act, he is the Chief Controlling Revenue Authority.
- In the Head office, to assist IGR, there are posts of Superintendent of Stamps (HQ), Deputy Inspector General of Registration (HQ), Deputy Inspector General of Registration (Computerisation) and Deputy Director of Accounts. These officers are assisted by Desk Officers.

At Field level, the structure of the Department is as follows

1. There are 507 offices of Sub-Registrars in the entire State for registration of documents. In the rural areas, generally there is one office for each taluka.
2. To monitor the offices of Sub-Registrars, there are 34 offices of Joint District Registrars at District level.
3. There are 8 Regional Divisions of the Department in the State at Mumbai, Pune, Thane, Nashik, Aurangabad, Nagpur, Amravati and Latur and they are under the control of Deputy Inspector General of Registration.
4. The Collectors of Stamps of Mumbai City and Mumbai Suburban Districts are under the control of Additional Controller of Stamps, Mumbai.
5. The Sub-Registrars of District Headquarters in the State perform the

functions of special marriages registration. However, there are independent offices of Marriage Officers for the 3 districts Mumbai City, Mumbai Suburban and Pune.

6. There are 7 offices of Deputy Director/ Assistant Director, Town Planning (Valuation) for preparing Annual Statement of Rates and they are under the control of Joint Director, Town Planning (Valuation) at State level.
7. Government Photo Registration Office in Pune functions to preserve the records of documents photographed in the past.

Offices of the Sub-Registrar across Maharashtra is given in the below link of IGR website:

Online Services as SARATHI.

(Stamp And Registration Assistance Through Helpline Information)

- | | | | |
|---------------------|------------------|-------------------------|------------------|
| ➤ e-Search | ➤ e-ASR | ➤ PDE for Registration | ➤ e-Payment |
| ➤ e-Step In | ➤ e-Registration | ➤ e-Filing | ➤ PDE for Filing |
| ➤ Stamp Duty Refund | ➤ Adjudication | ➤ Marriage Registration | ➤ Appeal Cases |

SARATHI Helpline ☎ 8888007777

On all days (including holidays) between 7 AM and 9 PM

6. Benefits of search of the documents at the Registrar office and e-search

Whether citizen is buying a property or bank is giving a loan and taking the property on mortgage, A history transaction search report on that property is an essential pre-requisite. Before e-Search, in manual mode, obtaining a search report was tedious, time consuming and costly. Citizen has to visit Sub-Registrar Office, make a written request and has to pay prescribed fee for such report by challan. Then, citizen has to physically search all previous registered documents related to that property. In view of the above problems faced by citizens, department launched e-Search portal for online search of property transactions. Using e-Search application, anyone can

- (i) Search transactions Property Details wise
- (ii) Search transactions Document Number wise and
- (iii) Download scanned copy of documents.

Summary of Benefits of e-Search enjoyed by citizen

- Property wise or Document wise search

http://igrmaharashtra.gov.in/SB_ORGANISATION/ORGANISATION_Offices.aspx

Section 15 provides for the seal to be affixed on the documents registered by the sub-registrar.

Sections 16 and 16-A provides for keeping the records of the documents in hardcopy and electronic mode.

5. Online Services provided by IGR Maharashtra and also other States in similar lines

Online Services are provided through IGR Maharashtra website and the link for on line service is as under:

- Search available 24 * 7 hrs
- Search online from anywhere
- No need to visit multiple offices

People can make use of this instant real-time search facility (on e-Search) to prevent frauds of multiple transactions though they might be happening in a short period of time. It is advised that people should check e-Search at the moment in which they are executing/registering the document. e-Search has already benefited more than 6.7 lakh citizens since 1st February, 2013. e-Search has become so popular that at any moment, around 70-100 people are online on the portal.

Currently data of property transactions from 2002 are uploaded for most of the offices. Also documents previously registered are available for download for select areas like Mumbai, Thane, Pune, Nashik, etc. Department has also initiated the process of digitising all the past documents.

Citizen Charter in Marathi and English is also available on the IGR website on the following link:

http://igrmaharashtra.gov.in/SB_CITIZENAREA/citizenArea_CC_pdf.aspx

7. Documents requiring compulsory Registration under section 17

Section 17 of the Act, provides that the following documents are required to be registered from the Act has come into force.

- (a) Instruments of gift of immovable property;
- (b) Other non-testamentary instruments which purport or operate, create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) Leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; (After the enactment of Maharashtra Rent Control Act, 1999 as per section 55, even the leave and licence of any period, even less than 12 months require compulsory registration.)

(e) Non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this subsection any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rent reserved by which do not exceed fifty rupees.

*(f) Agreement relating to the Deposit of title deeds, where such deposit has been made by way of security for the repayment of a loan or an existing or future debts; (*Maharashtra State amendment w.e.f. 1-4-2013.)

(g) Sale certificate issued by any competent officer or authority under any recovery Act ;

(h) Irrevocable Power of Attorney relating to transfer of immovable property in

any way, executed on or after the commencement of the Registration (Maharashtra Amendment) Act, 2010.

- (i) And as per section 17(IA), the documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of property Act, 1882 shall be registered, if they have been executed on or after the commencement of the Registration and other related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.
- (j) As per section 17(3), authorities to adopt a son, executed after the first day of January 1872 and not conferred by a will shall be registered.

8. Where compulsory registration is not applicable

As per section 17(2), nothing in clauses (b) and (c) of sub-section (1) 17 (regarding the compulsory registration of documents) applies to :

- (i) Any composition – deed; or
- (ii) Any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consists in whole or in part of immovable property; or
- (iii) Any debenture issued by any such Company, and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property, or any interest therein to trustees upon trust for the benefit of the holders of such debentures;

or

- (iv) Any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) Any document “any document other than the documents specified in sub-section (1A)” not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) Any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding ; or
- (vii) Any grant of immovable property by the State Government; or
- (viii) Any instrument of partition made by a Revenue Officer; or
- (ix) Any order granting a loan or Instrument of collateral security granted under the Land Improvement Act, 1871, (XXV of 1871) or the Land Improvement Loans Act, 1883 (XIX of 1883); or
- (x) Any order granting a loan under the Agriculturists Loan Act, 1884 (XII of 1884) or under the Bombay Non-Agriculturists Loans Act, 1928, or instrument for securing the repayment of a loan made under either of those Acts; or
- (xa) Any order made under the Charitable Endowments Act, 1890 (VI of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting such Treasurer of any property; or

- (xi) Any endorsement on a mortgage – deed acknowledging the payment of the whole or any part of the mortgage – money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) Any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue officer.

[*Explanation:-* A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest – money or of the whole or any part of the purchase money.]

9. Documents of which registration is optional as mentioned in section 18

As per section 18, it is the optional for the parties to register or not to register the following documents.

- (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees; to or in immovable property;
- (b) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (c) Leases of immovable property for any term not exceeding one year, and leases exempted under section 17;
- (cc) Instruments transferring or assigning any decree or order of a Court or any award

when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees to or in immovable property;

- (d) Instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (e) Wills;
- (ee) Notice of pending suits or proceedings referred to in section 52 of the Transfer of Property Act, 1882 (1V of 1882) and;
- (f) All other documents not required by section 17 to be registered.

10. Necessity for Registration & effects of non-registration

1. Certain registered documents relating to land and immovable property to take effect, and property against unregistered documents (u/s. 50).
2. Non-registered document will put the title of the owners over such property in jeopardy and lead to litigations. Registered document has evidential value in court of law. Registration preserves title and interest of purchase in such property.
3. Failure to register the document which is required to register under other legislations or law then in such case all consequences under that law would apply. These are the consequences to be faced by such person under that relevant law. For example, trustees of Mutual Fund Trust should apply for registration, failure to which SEBI Regulation will apply.
4. The Registered document is the notice to the public at large as regard to such and in respect of particular property, which is subject matter of registration. Registration is a process

by which contents of agreement and such fact is recorded in the Government records maintained by the Registrar.

5. The payment of stamp duty and registration of documents in respect of flat, gala, shop, office etc. immovable property in co-operative society is advisable. The two circulars issued by the Commissioner of Co-operation and Registrar of Co-operative Society, gives direction for registration of such property and transfer of shares.

1. Circular dated February 18, 1994.

2. Circular dated July 8, 1996.

6. As per amendment effected on 25-9-2001 under the Indian Registration Act, 1908.

Registration is made compulsory in respect of certain immovable properties including transfer of flat in registered co-operative housing society.

7. In recent times, many properties purchased are financed by borrowing through various financiers. Housing loan is financed by banks, financial institutions, etc. Sometimes, such financier insists to have earlier chain of documents duly registered before disbursement of loan. For such types of finances in respect of property, registration is precondition of finance before disbursement of loan. Registration is normally done only after payment of proper stamp duty as regards to those documents. Registered documents serves as a proof of payment of proper stamp duty.

8. With effect from 1-4-2003, under section 50C of Income-tax Act, 1961, the market value calculated for the purpose of stamp duty is accepted by Income Tax Department as base for valuation of property for capital gain computation purpose.

9. The Registrar or Sub-Registrar while registering any agreement for purchase or sale of an immovable property having reckoner value or agreement value adopted is ` 30 lakhs and more, are required to file annual information return (AIR) u/s. 285 BA of Income-tax Act,

1961. The AIR provides tool for checking of such transaction of immovable property of ` 30 lakhs and above.

10. As per the amendment dated 24-9-2001 in Indian Registration Act, 1908 which specified that section 53A of Transfer of Property Act, document executed even in part performance of the contract requires compulsory registration.

11. W.e.f. 1-6-2013, Union Budget proposed to deduct 1% TDS on purchase of any immovable property having agreement value above ` 50 lakhs.

11. Place and the persons who can present the Documents

(A) Place for registering the documents depends upon situation of such subject matter of property (section 28)

The documents requiring compulsory registration or optional registration shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document related is situated. It is advisable to put detail schedule of property in agreement to determine the correct value of property.

(B) There are certain specified persons who can present documents for registration

For example, beneficiary, representative, power of attorney holder, assignee, (section 32). person with bodily informality, in jail, etc. specially exempted person not required to attend Registrar's office for registration however, on proper persuasion, registrar can visit to such person place of availability and register the same documents.

12. Procedure on admission & denial of execution (Sections 35 & 36)

A. Admission of execution & registration

All the persons/parties executing the document should appear personally to sign, put thumb impression before the Registering Officer, or

if appearing by a representative, assignee or agent legal heirs then such person should admit execution by remaining present.

B. Language of Documents

U/s. 19, if any document is duly presented for registration should not be in a language which the registering officer does not understand, and which is not commonly used in the district, the Registering Officer shall refuse to register the document unless it be accompanied by a true translation into a language commonly used in the district and also accompanied by a true copy of such document. In Mumbai, document written in Marathi, English, Gujarathi & Hindi languages are normally accepted. If it is in other language then with original document the translated certified copy in Marathi, English or Hindi is to be attached for registration.

C. Denial of Execution & Registration

If any such person appears to the Registering Officer to be a minor, an idiot or a lunatic, or if any such person by whom the document purports to be executed or is dead and his representative or assignee denies its execution, the registering officer shall refuse to register the document as to the person so denying, appearing or dead:

If any person admitting the execution of a document refuses to endorse the same, the Registering Officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

D. Order of Refusal

The Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situated within his sub-district shall, make an order of refusal and endorse the word "registration refused" on the document and, on application made by any person executing or claiming under the document shall, without payment and unnecessary delay give him a copy of the reasons so recorded.

E. Appeal to Registrar against the order of Sub-Registrar referring registration on ground other than denial of execution u/s. 72

U/s. 72, an appeal within 30 days of such order can be made against an order of Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate.

F. Suit in case of order of refusal by registrar (u/s. 77)

Where the Registrar refuses to order the document to be registered, any person claiming such document as his representative, assignee or agent may, within thirty days after the making of the order of refusal, institute case in the Civil Court within the local limits of whose original jurisdiction is situate for the office in which the document is sought to be registered. Registrar can refuse registration if any one or more requirements for registration not complied with.

G. Effects of non-registration of documents required to be registered (u/s. 49)

- (a) Any document requiring compulsory registration u/s. 17 or by any provision of the Transfer of Property Act, 1882, if not registered, no document shall affect any immovable property comprised therein, or
- (b) Confer any power to adopt, or
- (c) Be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

13. Procedure to register documents when a person who has executed the document who is due to illness or hospitalisation is unable to visit Registrar's office

In such circumstance on perusing the matter to Registering authority, by collecting visit fees the

Sub-Registrar has to visit such place or hospital and complete the registration formalities. One has to comply with the procedure and requirement for registration of immovable property including flat, shops, commercial premises, etc. as discussed hereinafter.

14. Procedure of registration in State of Maharashtra

The process of registration highlighted below mainly involves the following steps and submissions of required documents/papers and payment of registration fees to the Registrar Office:-

- (1) The party has to first pay the proper stamp duty as per the stamp duty reckoner on blank agreement or on next day of execution of agreement or on same day of execution. The agreement should be typed/printed on one side in black ink on 60 GSM paper. It is better to pay the proper stamp duty on or before its execution.
- (2) SMS has to be sent to the respective office by stamp duty collector for payment of S.D. to execute the agreement, Sub-Registrar require to put photographs, signature and left hand thumb impressions of all concerned parties to execution.
- (3) To visit www.igrmaharashtra.gov.in for public data entry and enter your data in e-sarita public data entry module. Book your token (by phone or through internet).
- (4) Visit any Sub-Registrars office of that Taluka (according to village) who will determine registration fees payable and issue the challan/confirms to accept the pay slip. Confirm agreement and its attachments with head clerk/person in charge who will pre-check the documents and is satisfied with requirement.
- (5) Pay the registration fees by through net banking by Challan/pay slip of bank. It is better to pre-check at concerned Registrar office the exact procedure and registration fees payable. Registration fees are to be paid on value of such property rounded off nearest to rupees in thousands.

(6) In case of document of property having value above ` 5,00,000/- proof of Permanent Account No. (PAN) of all the parties to the documents is mandatory. If the party does not have PAN, then to file Form No. 60 along with documents to the Sub-Registrar.

(7) Two witnesses with their photos and identification proof should remain present for identification of parties to the agreement for which two witnesses have to put their photos, signatures and thumb impression before registering authority. Such witnesses should not be necessarily same who has signed as witnesses in the agreement.

The property card of land/plot on which the property being registered is situated may be called to produce in certain case. Property card is required to be produced at the time of registration. CTS No./survey No. as appears on the property card provides help to determine true market value of property. Stamp Duty are to be paid an property value nearest to and rounded off to ` 500.

(8) For payment of registration fees by Government challan or pay-order or bank draft of bank is to be produced. Computer charges/scanning charges, etc. based on number of pages in documents are to be paid at ` 20/- per page for scanning fees in cash at the time of registration of document. Sometime Registrar calls information from collection of the proper stamp duty is paid on such adjudicated document.

(9) To complete filling up of input Registration form in Marathi as prescribed by the stamp duty department or Registrar or Sub-Registrar. The input registration form and necessary documents are required to be submitted at token window in advance i.e., at least before half an hour of registration. Generally, Registrar Office does check such submissions. Adjudicated document will help in faster registration.

(10) In respect of old building to avail the benefit of depreciation on market value then the attachment of following proofs will help to avail depreciation on age of building.

(1) Municipal tax assessment bill (2) Completion Certificate (3) Occupation Certificate (4) Telephone bill (5) Electricity bill (6) Society letter (7) IOD/CC etc.

(11) For proof of authorised structures, the following documents are required:

- (a) If the building is completed before March 25, 1991 the property assessment municipality bill is required to be attached.
- (b) If the building is constructed/completed on or after March 25, 1991 in addition to above proof out of following is to be attached :
 - i. IOD/CC (Commencement Certificate) of building OR
 - ii. Building Completion Certificate OR
 - iii. Building Occupation Certificates (OC)

It is advisable that one has to pre-check such requirements and entire procedure with respective Sub-Registrar office, so there cannot be any inconvenience at the time of registration.

(12) Any proof of determination of market value will help to facilitate the calculation of true market value

The detailed letter from society showing the age of building, year of construction, built-up area of flat, flat no. and floor on which flat is located, details of lift facility available if any, number of floors of building, types of construction C.T.S. No. survey No, CS no. & Village/Division, etc. may help to justify the calculation of proper market value of such property. For proper valuation, please refer government valuation factors of respective year.

(13) With effect from 1-5-2001, the deficit stamp duty is payable with penalty @ 2% per month or part of the month, but maximum penalty not exceeding four times (effective from 24-4-2015) of

such deficit amount is required to be paid before registration and proof of such payment of stamp duty and penalty is to be attached at the time of registration of document.

(14) Computerised photographs of parties executing the document and witness are also generally taken digitally by the Registrar's office. The left thumb impression of all the parties including witness to the document is also taken digitally. Through computer generated programming, the thumb impression and photographs are automatically generated and printed on separate paper which has photos of both the parties and witness to be further signed by all the executors before Joint Registrar/ Sub-Registrar or Joint Sub-Registrar. Such witness has to produce his identity proof. From 1-1-2002, affixing photographs and thumb impression by web camera finger prints scanner are made compulsory for registration of document as regard to property.

Registrations of documents are computerised with effect from 1-2-2002. Before final registration, typed papers/sheets describing name of the seller, buyer and address of property, etc. is generally given to party for final checking just before registration, for checking as regard to correctness of data comprised thereon. In view of above, it is advisable to check such data sheet by party as regard to correctness of typed contents thereon. At last the Sub-Registrar will sign & put page No., total page & number block on each page of such agreement.

(15) Sometimes, the documents executed are allow to be registered by power of attorney holder for and on behalf of buyer or seller or builder. In such case copy of duly executed power of attorney is to be attached with the agreement which is also to be registered with photo, thumb impression and sign. Generally all the parties are supposed to go together for registration; however they can go at different point of time but maximum time limit within four months of execution of such document.

Registrar also asks to submit declaration (Ghosana Patra) in prescribed format that power of attorney its sum, substance and contents are in force, valid and subsist on the day of registration. In case of corporate body, trust, firm proper resolution of Board/Managing Committee/Office bearer as the case may be & such person photos, should be authorised by proper resolution, seal and sign.

Pre-check the registration procedure at joint Sub-Register office which now remain open from 7 am to 9 pm in shifts.

(16) The complete documents along with all above-mentioned details are then scanned by Registrar office and preserved as a permanent record at Registrar's office. Receipt for Registration fees & scanning charges is issued by Registrar which should be preserved with agreement. The party has to submit the copy of pay order/demand draft/R.B.I. Challan for registration fees. The Registrar generally by way of pay slip collects registration fees, computer and other charges at ₹ 20 per page of document are paid by cash towards scanning for which he acknowledges by issuing receipt. The pay order for should be in the name of respective area's Joint Sub-Registrar or the Sub-Registrar authorised by the department. Registrar also calls original stamp duty paid receipts, challan, stamped document, franking receipt stamp vendors bills e-payment receipt.

(17) The original agreement after due registration are returned to party by Registrar against sign on delivery of document by register to party and also on production of the original registration fees paid receipt on which Registrar office put stamp as delivered. Registration formalities are completed, after which the documents are returned to party within approximately one hour of completion of registration formalities. If loan is taken then authority letter to collect original documents is taken by banks/financial institution in such circumstances parties are advised to take index II as well as certified true copies of document from registration office.

(18) Particularly, for transfer of land, No Objection Certificate (NOC) under Urban Land Ceiling Act, (if applicable) irrespective of its area in Mumbai.

(19) No Objection Certificate (NOC) from Charity Commissioner, Government or Semi-Government body, if such land or property land is held by trust/statutory authority as the case may be. Nowadays registration process is computerised and simplified.

(20) Now the builder or developer have to put the approved plan and schedule of property in the agreement and also to write the area i.e., measurement of flat/shops etc. in agreement. Further the agreement cannot be executed by the builder/developer before approval of plan by competent authority. Builders have to put all necessary details, carpet/ built-up area, etc. in agreement.

15. The time limit for registration of the document

The document is required to be registered within 4 months time from the date of its execution. If the same is not registered within 4 months time from the date of execution, it can still be registered within further period of 4 months from the expiry of first 4 months, on payment of penalty for late presenting the document for registration which can be imposed by the Registrar up to 10 times of registration fees.

Now for delay registration of late beyond 8 months, IGR Pune has issued circular that such person hereto pay stamp duty at prevailing current market rate of stamp duty as per reckoner which is very harsh. If the vendor dies after signing the document but before registration of such document, in such case it is difficult to complete the formality of registration within 4 months of statutory time limit or during the additional time limit of 4 months. In cases of death of vendor the legal heirs of deceased has to comply with the registration formalities.

16. The date from which the registration for leave and licence and tenancy agreement made compulsory

W.e.f. 31-3-2000, Registration of leave and licence is made compulsory. Even the tenancy agreement of the Maharashtra Rent Control Act, has got to be compulsorily registered. Such agreement also must be in writing. Delay in registration may compel to pay stamp duty at current market rate. Now registration fees is payable at 1% of higher of market or agreement value of property subject to maximum fees of ₹ 30,000/-.

17. If one of the signatories is not willing to attend the office of the Sub-Registrar for completing the registration formalities

If one or more of the signatories is not willing to complete the registration formalities then an application has to be made to the Sub-Registrar of Assurances under section 36 of the Indian Registration Act, 1908. Thereafter the Sub-Registrar of Assurances will issue summons and after giving an opportunity to the person who has not remained present can proceed with the registration formalities.

He shall make a noting in the document stating registration refused with regards to the party who has not remained present and can also deliver the document to the party who has applied for registration.

18. Through e-search in IGR Maharashtra website, one can avail the facility of e-search of registered documents which are registered from January 2002 onwards.

19. Registration of Agreement OR filling of Notice of intimation in case of mortgage by way of Deposit of title deed

Some of the provisions of the (Indian) Registration Act, 1908 ("Act") have been recently amended by Government of Maharashtra and

are effective from 1st April, 2013, through Registration (Maharashtra Amendment) Act, 2010.

The key amendments are relating to certain age old practice i.e. (i) Registration of Equitable Mortgage (Mortgage by Deposit of Title Deeds) (ii) Registration of sale certificates issued by competent officer and (iii) Registration of certain Irrevocable Powers of Attorney. The amendment also takes its first steps towards electronic registration. The amendments have widened the scope of section 17 of the Act. Suitable modifications have been incorporated in the Act providing for presentation of agreement relating to deposit of title deeds by electronic means including the regulation procedure for presentation of such agreement, appearance for admission, endorsements and such other process. The amendment further introduces corresponding new sections 89A, 89B, 89C and 89D in the Act providing the procedures and time for registration of the aforesaid documents and effects of defaults thereof.

ANALYSES AND OBSERVATION

1) Mortgage by deposit of title deeds created on or after 1st April, 2013

- a. If, an agreement is signed between the mortgagor (borrower) and mortgagee (lender), it must be compulsorily registered within 4 months from the date of its signing.
- b. If no agreement is signed, the mortgagor (borrower) has to file a notice of intimation detailing mortgaged property, details of borrower, lender, amount received under mortgage, rate of interest, list of documents deposited, to the registering officer (having jurisdiction over the immovable property) within 30 days from depositing the title deeds with the mortgagee (lender) and thereby mortgaging the property.
- c. If the mortgagor (borrower) fails to file the notice within 30 days and subsequently enters into any transaction in relation to

the mortgaged property, such transaction will be void and the third party will be entitled to refund of the amount paid, plus 12% (twelve per cent) interest from the date of payment as compensation. The amount recoverable by the lender will be a charge on the mortgaged property.

- d. Further failure to file the notice with the registering officer within the prescribed time will render the borrower liable for fine and imprisonment for a minimum of 1 year, extending to 3 years.
- e. As a result of these amendments, equitable mortgage shall be a public document, thus curbing multiple loans on the same property. It would also deter the sale off the mortgaged property to innocent third party. The State is thus taking all steps to protect the interest of all parties and prevent frauds in relation to immovable property.

2) Sale Certificate issued by any Competent Office or Authority

- a. In event of (i) any decree or order effecting an immovable property or (ii) any order of attachment of immovable property (interim or otherwise), or (ii) releasing any immovable property from any such attachment, the Court passing such decree/order is required to send a copy of such a decree/order along with a memorandum describing attached/affected/released property, to the registering officer (having jurisdiction over the immovable property).
- b. This would mean that all ad-interim and interim orders of any of the competent courts with respect to any immovable property would also be required to be registered. This procedure along with filing of lis-pendence will ensure that innocent third party purchasers and interest of the litigants are protected.
- c. Similarly, any officer issuing a certificate of sale or a written demand before the

attachment of the immovable property of a defaulter under the provisions of any law relating to Revenue Recovery, shall send a copy of such certificate of sale or written demand together with the memorandum describing the property, to the registering officer (having jurisdiction over the immovable property).

- d. As the responsibility to forward an order and register is on the court passing the decree/order and/or on the officer issuing sale certificate/written demand, there is no time limit prescribed for the same, nor is any penalty prescribed for non-filing.
- e. This is done with a view to further strengthen the recovery proceedings initiated under appropriate court of law. Hence no property, immovable or movable, for which a sale certificate has been issued, any of the competent court or office including, can be dealt with by the property owner to evade payment of dues as decreed by the competent court.

3) Irrevocable Power of Attorney

- a. In case of Irrevocable Power of Attorney, relating to transfer of immovable property in any way after 1st April, 2013 is required to be compulsorily registered. However, the Sub-Registrars of Assurances, Mumbai ("Sub-Registrar"), even prior to the amendment, only accepted the duly registered powers of attorney when it was relating to transfer of immovable property. This amendment now only makes it a law to do so.
- b. It is interesting to observe that amendment specifies the term "Irrevocable" Power of Attorney. So it would mean a revocable power of attorney, even if it is relating to transfer of immovable property, may not be compulsorily registrable under section 17 of the Act. However whether the same analogy has been drawn by Sub-Registrars is yet to be known.

4) Electronic Filing Systems and procedures

- a. The amendment also takes a step forward in e-filing procedure. The amendment provides for amendment in clause 69(1) enhancing the power of Inspector General to make rules with respect to electronic, in addition to the regular registration system. This move is to facilitate to the citizens and banks, the Department of Registration and Stamps is going to launch an online application called the “e-Registration Module” for online Registration of said agreements, soon. Both the parties can complete all the registration formalities from the branch of the bank i.e. without coming to the Office of the Sub-Registrar.
- b. It will be available on the Department’s website www.igrmaharashtra.gov.in, using which, the notice of intimation can be prepared and submitted online i.e. without coming to the Office of the Sub-Registrar. The Maharashtra e-Registration and e-Filing Rules 2013 are prescribed for these purposes under section 69 of the Act.

20. There is bill pending to Amend the Registration Act, 1908 called

THE REGISTRATION (AMENDMENT) BILL, 2013 A BILL further to amend the Registration Act, 1908.

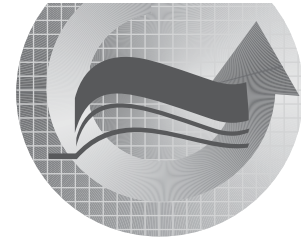
Salient features the key amendments proposed are:

- At present Book 4, i.e. the ‘Miscellaneous Register’ – which contains details of all registered documents (except Wills) – is not open for access by the general public. This Book 4 is proposed to be made open to inspection by the public to ensure greater transparency.
- Currently, in the Act, only the documents relating to the adoption of a son are required to be registered. To ensure gender equity documents relating to the

adoption of daughters will be added to the clause.

- Registration will now be allowed anywhere in a given State or Union Territory. This is being done keeping in mind the convenience of the people, transparency and also to help promote the electronic registration of documents.
- As the computerisation of land records is making rapid strides across the country, it is desirable that the electronic registration of the documents is facilitated as it will ensure greater transparency also. The Act is proposed to be amended accordingly.
- Documents such as Power of Attorneys, Developers/Promoters Agreements and any other Agreements relating to the sale or development of immovable property now need to be mandatorily registered. This is being done with an intention to minimise cases of document forgery.
- At present the Sub-Registrar’s Office has no power to refuse registration of documents. This allows unauthorised individuals to get false registrations done. Accordingly a new section 18A is proposed to be inserted to provide for prohibition of registration of certain types of properties (such as those belonging to charitable institutions and the Government).
- Section 28 of the Registration Act, 1908 provides that if any person has immovable properties in more than one State, then he can register documents relating to their transfer in any of these States. Unscrupulous elements have abused this provision and they have registered their properties in the States with the lower registration fee and stamp duty. This causes a loss to the State where the property is actually situated. This section is proposed to be omitted.





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J. K. Mittal, *Advocate*

HOT SPOT SERVICE TAX: "Analysis & Implication of recent Supreme Court judgment in case of Larsen & Toubro"*

1. Introduction

As per Article 265 of the Constitution of India "No tax shall be levied or collected except by authority of law". Service Tax dispute have been different nature and because of the long drawn litigation, assessee many a times started paying service tax even though under the law no service tax had been payable. In this process, the Government collects thousands of crores illegally from taxpayers and citizen pockets as there is no procedure to end such kind of litigations at early stage. Thus, in the litigations, the Government is most beneficiary because even if they lose the case, by the time, illegally able to collect thousands of crores. The present matter, which covers by judgment of Supreme Court in case of Larsen & Toubro delivered on 20-8-2015, which basically overruling the G. D. Builders judgment of Delhi High Court delivered on 13-11-2013, is also beam on the dispute, which is classical example of collection of illegal money by the Government, when there was no authority of law.

2. Provisions introduced by the Parliament to Levy of Service Tax

In India Service Tax had been levied in piecemeal approach since year 1994. In the year, 1997, service tax was levied on the 'consulting engineer service' under sub-clause

(g) of clause (105) of section 65. Similarly, in the year 2003, service tax was levied on 'erection, commissioning and installation service' under sub-clause (zzd) of clause (105) of section 65 and 'technical testing and analysis' under sub-clause (zzh) of clause (105) of section 65. In the year 2004, service tax was levied on 'commercial construction service' under sub-clause (zzq) of clause (105) of section 65. In the year 2005, service tax was levied on 'construction of complex service' under sub-clause (zzzh) of clause (105) of section 65. In respect of erection, commissioning and installation service, though tax was levied on 1-7-2003, but subsequently on 21-8-2003, by issuing an exemption Notification, exemption of 67% from value of taxable service was granted, which was stated to be on the gross amount inclusive of materials. Similarly, exemption of 67% from the value of taxable service was granted from commercial construction services as well as for construction of complex services by issuing two separate exemption notifications, whereas later on all these exemption Notifications were merged into one i.e. Notification No. 1/2006-ST. In the year 2010, another amendment was made by inserting an explanation under sub-clauses (zzq) & (zzzh) of clause (105) of section 65 for commercial construction service as well as construction of complex services and thereby

* **"Editor's Note:** This article deals with the statutory provisions as on the statute book prior to 1-6-2007. The Apex Court's decision may not have any impact on the current provisions."

sale of building to prospective buyer, unless the entire consideration is obtained after the completion certificate, is also made taxable but exemption was granted 75% from value under the aforesaid Notification No. 1/2006-ST.

3. Initiation of Dispute by the Service Tax Department on Composite Contract

The Service Tax Department initially raised the dispute that in a project, if there is some element of consulting engineering services, it will be taxable even though it was a composite contract and there was no mechanism was prescribed to compute said service in a composite contract. However, in respect of erection, commissioning and installation service, commercial construction services and construction of complex services, the Service Tax Department stand was that since exemption of 67% have been given, therefore, service tax is essentially levied only on service portion of a composite contract. Therefore, on the basis of these exemption notifications, levy of service tax on composite contract was justified by the Department under the aforesaid provisions by saying that said exemption only in respect of material portion, whereas the exemptions was granted under section 93 of the Finance Act, 1994, which only could be granted from the value of taxable service and not for material portion, which is not even a taxable service at all. Moreover, in case of finishing services, said exemption was not made applicable at all, and in other words, service tax on finishing services was collected on the entire value including on material portion. In number of cases even to allow such exemption, it was directed that value of any materials supplied by the contractee should be added otherwise such exemption of 67% were also denied, and thereby service tax was demanded on the entire value of contract including value of materials at the full rate. All such litigations on the fact of it were unnecessary by the Department as demand of service tax on the materials used in a contract by no means was justified at all.

4. Levy of service tax on the service portion of the composite contract/ works contract

The Parliament under sub-clause (zzzza) of clause (105) of section 65 of the Finance Act, 1994 by the amendment made by the Finance Act, 2007, which was made applicable with effect from 1-6-2007, levied service tax on the service portion involved in the composite contract/ works contract and provisions were made under rules to compute value of taxable service under composite contract or to pay tax under composition scheme rules.

5. Larsen & Toubro considered the G.D. Builders judgment

In the aforesaid judgment Larsen & Toubro, delivered by the Supreme Court on 20-8-2015, the G.D. Builders judgment delivered on 13-11-2013 by the Delhi High Court was mainly assailed. Therefore, it would be necessary to understand the issues involved under the G.D. Builders and the contention raised before the Hon'ble High Court. In fact the said judgment of Larsen & Toubro, revolve around G. D. Builders judgment only.

6. Issues and finding in G.D. Builders judgment

While in the said judgment of G.D. Builders, the contention of the petitioner, which are recorded in the para 2 of said Judgment, *inter alia* was that the aforesaid provisions 65(105) (zzd), (zzq) and (zzzh) apply only to service contracts and not to composite or works contract, therefore, exemption under notification to the extent of 67% to set off value of the goods involved in execution of composite contract is contrary to the charging provision and a nullity, as it amounts to enlarging and widening of charging section and would have the effect of including or imposing service tax even on goods or material used in a composite/works contract. It is well settled that a notification cannot expand or enlarge the charging section or even amend the

statutory provisions or the main enactment. It was contended that there is a conflict between sections 65(105)(zzzza), (zzq) and (zzzh) and what is covered by section 65(105)(zzzza) cannot be covered by sections 65(105)(zzq) and (zzzh). The two sets of provisions cannot co-exist. Subsequent legislation shows that the earlier legislation will not cover composite or works contract. Therefore, it was contended that under the aforesaid provisions only pure service contract was taxable and not the composite contract and therefore, 67% exemption under the aforesaid Notification is *ultra vires* to the Act and hence said Notifications are illegal and *ultra vires* to the Act. However, the Delhi High Court rejected these contentions and it was held that the service tax is leviable on the service portion and held that in the aforesaid provisions 65(105) (zzd), (zzq) and (zzzh), service tax is leviable on service portion of the composite contract and even if rules are not framed for computation of tax, tax is valid and leviable.

7. Finding in Larsen & Toubro judgment – No mechanism to compute value on which tax is payable make levy fatal

In respect of Delhi High Court finding in G. D. Builders judgment that service tax is leviable on service portion of the composite contract and even if rules are not framed for computation of tax, tax is valid and leviable, in the aforesaid judgment Larsen & Toubro, delivered by the Supreme Court, it was held that “We are afraid that the Delhi High Court completely misread the judgment in Mahim Patram’s case” and further in para 34 held that “The Delhi High Court judgment unfortunately misread the aforesaid judgment of this Court to arrive at the conclusion that it was an authority for the proposition that a tax is leviable even if no rules are framed for assessment of such tax, which is wholly incorrect. The extracted passage from Mahim Patram’s case only referred to rules not being framed under the Central Act and not to

rules not being framed at all. The conclusion therefore in paragraph 36(2) of the Delhi High Court judgment is wholly incorrect.” While Supreme Court in the said judgment held that “The aforesaid finding is in fact contrary to a long line of decisions which have held that where there is no machinery for assessment, the law being vague, it would be open to the assessing authority to arbitrarily assess to tax the subject.” While before the Delhi High Court, as recorded in para 2 of said judgment, it was specifically urged that “Vagueness or uncertainty makes a levy invalid and illegal”. Therefore, the conclusion of this Supreme Court judgment is that in case there is any ambiguity about the measurement or the value on which tax is payable for computing tax liability, in such vagueness, there is no tax in the law and levy will be fatal to its validity.

8. Five taxable services covers under sections 65(105)(g), (zzd), (zzh), (zzq) and (zzzh) covers service contracts simpliciter without any other element in them – thus, judgment of G. D. Builders overruled

The core crux is recorded in para 24 of the aforesaid judgment Larsen & Toubro, which is as under:

“24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging section 65(105) would refer only to service contracts *simpliciter* and not to composite works contracts. This is clear from the very language of section 65(105) which defines “taxable service” as “any service provided”. All the services referred to in the said sub-clauses are service contracts *simpliciter* without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by

the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts *simpliciter* and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract." While the Delhi High Court in G. D. Builders judgment rejected the contentions that the aforesaid provisions are applicable to service contract only and not to the composite contract/works contract and it was held that the aforesaid provisions 65(105) (zzd), (zzq) and (zzzh), service tax is leviable on service portion of the composite contract. Therefore, now, Supreme Court has held that in the aforesaid provisions 65(105) (zzd), (zzq) and (zzzh) applies only to service contracts *simpliciter* and not to composite works contracts, hence bifurcation of service elements do not arise at all. Thus, judgment of G. D. Builders overruled.

9. Finding in Larsen & Toubro judgment – Section 67 only speaks gross amount for value of taxable service and not of composite contract/works contract – finding in G. D. Builders judgment held to be incorrect

In respect of Delhi High Court finding in para 31 of G. D. Builders judgment that service tax is leviable on service portion of the composite contract under the aforesaid provisions and service element should be bifurcated and ascertained and then taxed, while Delhi High Court held that "The contention that there was/is no valid levy or the charging section is not applicable to composite contracts under clauses (zzq) and (zzzh) of Section 65(105) stands rejected." But, in the aforesaid judgment Larsen & Toubro, delivered by the Supreme

Court, it is held that "We are afraid that there are several errors in this paragraph." And held that "Further, the finding that section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts."

10. Finding in Larsen & Toubro judgment – Exemption Notification granting exemption 67%/75% are irrelevant

In the aforesaid judgment Larsen & Toubro, delivered by the Supreme Court, finally held that "whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise". Therefore, in respect of erection, commissioning and installation service, commercial construction services and construction of complex services, merely because exemption of 67% have been given, service tax cannot be regarded as valid levy, as under those provisions service tax has been found to be non-existent on composite contract/works contract but service tax only applicable on service contract *simpliciter* and section 67 covers value of only service contract. Therefore, on the basis of these exemption notifications, levy of service tax cannot be justified under the aforesaid provisions by saying that said exemption only in respect of material portion. The exemptions under section 93 of the Finance Act, 1994 could be granted from the value of taxable service and not for material portion, which is not even a taxable service at all.

11. Misreading of judgment of Larsen & Toubro judgment by many

It has come to the notice that views have been aired that in the aforesaid judgment it was held that no service tax is levied prior to 1-6-2007 on the composite contract, which is completely appears to be misreading of the judgment. As such the Supreme Court has held that the five taxable services referred to in the charging section 65(105) under sub-clauses – (g), (zzd), (zzh), (zzq) and (zzzh), only service contracts *simpliciter* are covered and not to composite works contracts. Therefore, if the Department has demanded service tax under any of these clauses on the composite contract, either by giving 67%/75% exemption or otherwise by segregating value of goods that will not be sustainable, this is irrespective of the period, which may be for the period prior to 1-6-2007 or after 1-6-2007, because the Supreme Court has held that service tax found to be non-existent under any of the above sub-clauses on composite contract/works contract and not held that under these sub-clauses service tax would be leviable on or after 1-6-2007. Therefore, it would be incorrect to say that in the aforesaid judgment it was held that no service tax is levied prior to 1-6-2007 on the composite contract, as this give impression that service tax will be leviable under the aforesaid sub-clauses on or after 1-6-2007, which is completely appears to be misreading of the judgment.

12. Misreading of law by the Ministry of Finance leading to long drawn litigations

It was surprising that the Ministry of Finance all through want to justify the levy of service tax on composite contract itself whereas it is constitutionally not permissible to levy service tax on composite contract or on the value of goods involved in execution of works contract. Therefore, to say that since in respect of erection, commissioning and installation service, construction services and construction of complex services, exemption of 67% have

been given, therefore, service tax is essentially levied only on service portion of a composite contract was absolutely illegal stand taken by the Government. In fact, by saying so, the Ministry of Finance has made it clear that under those very provisions tax is levied on the composite contract/works contract *per se* and exemption has been granted for the value of goods used in execution of such works contract. Therefore, on the basis of these exemption notifications, levy of service tax was justified by the Ministry of Finance under the aforesaid provisions by saying that said exemption only in respect of material portion and service tax is levied only on service portion. When at first place, service tax itself cannot be levied on the works contract *per se* then question of exemption for value of goods cannot arise at all. Moreover, the exemptions was granted under section 93 of the Finance Act, 1994, which only could be granted from the value of taxable service and not for material portion, which is not even a taxable service at all. Therefore, the Ministry of Finance has totally misread the law, which lead to long drawn litigations, as the time of settling such litigations is not fixed, therefore, assessee and the taxpayers have to suffer for wrong of them. Thankfully, now the Supreme Court set rest such contraversory by judgment in Larsen & Toubro. Rightly said – better late than never.

13. Conclusions and untold benefits of the Supreme Court judgment

The aforesaid judgment delivered by the Supreme Court has wider implications and will definitely give relief to all those who struck into the litigations initiated by the Department. The judgment, if seen in right perspective, have upset the collection of service tax on various services and also upset the various judgments of High Courts and Tribunal. Therefore, conclusions and untold benefits of the Supreme Court judgment are summarised as under:

- (1) The five taxable services referred to in the charging sections 65(105) (g), (zzd),

(zzh), (zzq) and (zzzh), viz. consulting engineering service, technical testing services, erection, commissioning or installation services, commercial construction services and residential complex services, would refer only to service contracts *simpliciter* and not to composite works contracts. Therefore, when there is composite contract/works contract, service tax cannot be levied and collected under the aforesaid provisions at all irrespective the period of dispute.

- (2) Section 67 regarding the value of taxable service also refer to taxation of service contract *simpliciter* and not composite contract.
- (3) Since the levy of service tax itself has been found to be non-existent under 65(105) (zzd), (zzq) and (zzzh), no question of any exemption would arise, therefore, notifications regarding 67%/75% exemption will have to be disregarded.
- (4) Service Tax will also not be leviable on both sale of building, residential or commercial to a prospective buyer under the aforesaid provisions, as such contracts are essential a specie of works contract which are not covered under the aforesaid provisions at all under 65(105) (zzq) and (zzzh). Therefore, the levy will not be valid merely because 75% exemption has been granted for sale of building to prospective buyers.
- (5) Service tax will not be leviable on finishing contract of composite nature, under 65(105) (zzq) and (zzzh).
- (6) Since these notifications regarding 67%/75% exemption are irrelevant,

therefore, question of adding of free supply material to claim said exemption will not arise and these cases, which are still pending in the Supreme Court and will be decided accordingly on the basis of this judgment.

- (7) In view of the aforesaid judgment, Service Tax under repair and maintenance service on composite contract or photography service etc., can also meet the same fate if stand is taken in court, as these are also essential a composite contract or specie of works contract therefore, service tax cannot be levied under those entries enacted under the Finance Act, 1994. The Supreme Court in *State of Karnataka vs. Pro Lab 2015 (321) ELT 366 (SC)* has rejected the plea that processing and developing of photographs essentially a service and held that it is works contract and State is empowered to levy sales tax on the material used even in these contracts, even though dominant intention of the contract is the rendering of a service.
- (8) In view of the aforesaid judgment, the levy on declared service under section 66E(b) of the Finance Act, 1994 is questionable but in real sense is illegal.

Editorial Note: *The author of this article is the service tax expert. G. D. Builders case was argued by him before Delhi High Court. The author of this article also argued before the Hon'ble Supreme Court in Larsen & Toubro(supra), wherein is now all the contentions, which were rejected by the Hon'ble High Court, have been accepted by the Supreme Court. The author of this article has been taking this stand for overs last 10 years which is now being upheld by the Supreme Court.*



Take courage and work on. Patience and steady work— this is the only way.

— Swami Vivekananda



Anand Chandrashekar Dusane

10 challenges to be tackled by the Prime Minister

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“The role of righteous rulers is fivefold, say the wise: To punish the wicked, to honour the noble, to enrich the treasury by rightful means, to dispense justice without partiality, and to protect the country at any cost.” India! The land of Diversity, Secularism and Integrity! India – the largest democracy in the world is going through a lot of changes and turmoil, both from within and due to external forces. As a country, it is unbeatable in its diversity – cultural, religious, social, and economical as well as political. It is quite impossible to imagine a huge, growing and diverse economy like India without any problems and challenges.

It is rightly said by Sir Theodore Roosevelt that, “The Government is us; we are the Government – you and I.” But in a nation with nearly 1.27 billion people (as of January, 2015), it is a tough job to consider opinions of all. So we, the people, elect a Government – representatives of the people, who shall, for us, manage the country. The Prime Minister of India leads the executive branch of the Government of India. His Excellency is responsible for overall functioning of the nation. There are several problems, challenges and difficulties to overcome by way of tremendous hard work, strict implementation

of policies, alertness, foresight and strong political willpower. The Prime Minister of India, as a regulator of the nation faces tonne problems as His Excellency tries to move the country over the path to development. It might be virtually impossible to even cover all the problems. Just like an auditor samples the list, on a test-check basis, let us focus upon those challenges which need immediate attention.

Here we will focus on the 10 major challenges to be tackled by the Prime Minister:

1. Economic Revival and Employment Generation
2. Improving Centre – State Relationship
3. Fostering Good Ties Abroad
4. Social and Legal Reforms
5. National Integration and encouraging Social Harmony
6. Empowerment of the Women
7. Education to All and Trainings for development of skilled labour
8. Poverty, Hunger and Sanitation
9. Naxal Violence
10. Kashmir Issue and International Boundary Dispute

1. Economic Revival and Employment Generation

The biggest challenge that the PM or the Government as a whole shall face will be to revive an economy that is stuck in its worst economic slowdown since the 1980s due to various issues such as persistently high inflation, rise in sub-prime loans of the banks, etc. The new Government will immediately need to take a decision on reduction in subsidy spending, which is threatening a budget blow-out and a credit ratings downgrade. Inflation has been growing at a high rate. So, to allow people to cope up the rise in prices, Government introduces subsidies. Also, due to increased subsidies for LPG Gas, Kerosene, subsidies on fertilisers and grains and food products under Public Distribution System, major chunk of Government revenue gets washed away. Challenge here is to recognise that the **subsidies should be only on items of basic needs and be only given to the needy and poor**. Those with power misuse these subsidies for their own good and the basic purpose of helping the poor stands defeated.

Post liberalisation in 1990s, subsequent Indian Governments focused extensively on Services sector – IT and BPO services. Service sector only generated employment for skilled workforce whereas low skilled workers were completely sidelined. Every year millions of people are added to existing pool of workforce and majority is either unskilled or low skilled workers. Service sector can employ only skilled workers or those trained in the particular fields. There was no place for these low skilled workers post liberalisation. Therefore over dependence on Service Sector is responsible for ill state of an Indian-Economy and unemployment.

Going into the basics, India is an agricultural economy. Agriculture is the backbone of Indian economy. A country like India, where a huge chunk of population is unskilled, agricultural sector only can provide the labour

with employment. Also, agriculture and allied activities have been contributing to the GDP and exports. So, **proper focus on development of agriculture might be the first step in revival of economy**. The age old mechanical techniques should be replaced by new technologies of threshing, cutting, sowing, etc. This must not be understood as using machines and technology shall reduce requirement of labour. Instead, with the use of new techs and similar, the farmers may have up to 3 rounds of crop a year, leading to more income. Not just income, the quality of products increases due to proper application of fertilisers, pesticides, supply of water, etc. For this purpose, the PMO must direct the Government to open more and more **agriculture help lines** and such that will actually be useful to the farmers. The helpline assistants may be graduates from agricultural schools. There also has to be an **increase and improvement in warehouses and cold storage facilities, reservoirs for goods produced**. Nearly 20% of the stored grains are lost due to ineffective cold storage and reservoir facilities.

Manufacturing industry development will be of utmost importance. Import of manufactured goods is way more costly than import of services. India has been doing good in service sector but needs infrastructure facilities to set up service industry. Manufacturing in India accounts for around 16 per cent of GDP, a level that has remained largely stagnant in the last two decades and is relatively low when compared to the 20 per cent plus share in countries like Brazil, China, Indonesia, Korea and Malaysia.¹

The supply chain delays and uncertainty are major constraints to manufacturing sector growth and competitiveness. State taxes and inter-State check-points, tasked primarily with carrying out compliance procedures for the diverse sales and entry tax requirements of different States, combined with other delays, keep trucks from moving during 60 per cent

1. Wikipedia

of the entire transit time. High variability and unpredictability in shipments add to total logistics costs in the form of higher-than-optimal buffer stocks and lost sales, pushing logistics costs in India to 2-3 times the international benchmarks.

According to World Bank (Press Release of October, 2014) estimates, simply **halving the delays due to road blocks, tolls and other stoppages** could cut transport time by some 20-30 per cent and other logistics costs by an even higher 30-40 per cent. This alone can go a long way in boosting the competitiveness of India's key manufacturing sectors by 3 to 4 per cent of net sales, thereby helping India return to a high growth path and thus enabling large scale job creation.

Proper infrastructure, supply chain, storage and transport, monitoring of sub-prime loans, corporate affairs, boosting the manufacturing sector and prioritising agriculture shall eventually lead to increased GDP and Per capita Income. The word 'Corporate' is very relevant to economy. A small fall of any corporate disrupts public sentiments leading to loss of trust in the economy. Therefore, effective monitoring of corporates by the Comptroller & Auditor General of India is needed to ensure proper utilisation of public money. A well regulated economy can easily absorb shocks and remain stable.

But with manufacturing industries growing and industrialisation taking place, proper care must be taken for **pollution control** by way of proper disposal of industrial waste, developing efficient waste treatment plants, etc. Many industries let their chemical and other wastes in rivers and other water bodies which has been leading to contamination of rivers and degradation of the environment. Necessary steps should be taken to ensure the protection of rivers and the ecosystem as a whole. The Government must issue directives and policies that bind the industries with Social Responsibilities towards the people and the **environmental protection** as well.

Also, the importance of **tourism as an instrument for economic development** and employment generation, mostly in the rural areas, is growing day by day. Expenditure on tourism leads to a chain of related transactions like supply of goods and services from these related sectors. The consumption demand from tourists also includes more employment and generates a multiplier effect on the economy. Thus, the expansion of the tourism sector can lead to large scale employment generation and poverty alleviation. The economic benefits flow into the economy in terms increased national and State revenues, business receipts, employment, wages and salary income to guides and allied service providers, that can contribute towards overall socio-economic improvement and accelerated growth in the economy. So to **earn foreign currency and economic prosperity importance be given to developing tourism and increasing hospitality** factor of the country – keeping the public areas clean, increasing tourist accommodation facilities, improving safety standards, etc.

2. Improving Centre – State Relationship

India is a 'Union of States'. **Balanced regional growth** is of utmost importance. A major reason for imbalances in development is the Centre-State relationship. A State that is favoured by the Centre enjoys majority of the benefits, schemes and similar. This favouritism or bias may be due to various factors like the ruling parties, dominant language or religion of the State, etc. The National Government should aim at developing the nation as whole and not just few States that are in good books of the Centre.

Now, from the view point of the Central Government, the States should be co-operative enough to assist the Government in decision making and allowing proper implementation of policies. We have seen situations wherein brilliant schemes and plans were put forth by the Centre but however, the same were put down

due to opposition by the States – sometimes for irrational reasons like mere bad ties with the Central Government. It has to be understood that the Centre and State need to be in symbiosis with each other. Development of the States without help from Centre and vice versa is not possible. The Prime Minister being the head of the Government of the nation should ensure cordial relations between the States and the Centre. One cannot expect the two to perform independently and still excel. Social harmony leads to progress. A Government that enjoys support from the States can take decisions in a better manner and such decisions shall be free from any bias. Likewise the Central regulators must understand that the States shall confide in them only if they perform for overall development of the country.

3. Fostering Good Ties Abroad

It was said a few years ago that if the human race is wiped out in the next 50 years it will not be because of disease or an asteroid hitting the earth, but because of foreign policies and international relations. In a world where thousands of nuclear weapons exist and more countries are trying to acquire them, where suicide terrorist strikes come without warning and thousands die each day from poverty caused by the way the international system operates, we need to know about and understand international relations.

As our world becomes smaller and smaller through communication technology, rapid air transportation and a complex international economy, the value of peaceful and co-operative relationships between nations is increasingly important. All nations depend on trade, and all nations have to interact with others on occasion. Foreign relations are based on this international communication.

Poor foreign relations can lead to horrific consequences like World War I. Many experts

believe that better relations between Germany, France and England could have prevented one of the most destructive wars the world has ever seen. **India's relation with US, Japan, China, Russia, Europe and SAARC are of prime importance.** China and India are two of the world's oldest civilisations. Relations between contemporary China and India have been characterised by border disputes. The continuing border dispute between the two countries and China's rapid growth in military power create anxieties about the future relationship. Converting threats into opportunity shall be a task for the Indian Government. The development of economic co-operation is the main pillar of India-China relations. The volume of India-China trade increased from US\$100 million in 1988, to US \$ 73.9 billion in 2011.² China has become India's biggest trading partner. Cultural exchange and co-operation is the important driving force for promoting the development and deepening of relations between the two countries. The challenge that remains is that the people of China and India lack a comprehensive and rational understanding of each other. Accepting the fact that cohesive development is the only way out, the Government should work towards increasing tolerance towards China. However, tolerance should only relate to respect and not weakness. Strengthening foreign ties with the largest neighbour is important. **Strengthening foreign ties shall result in better development opportunities.**

With relations strengthening with Japan, the Japanese Government has started to show their interest in Indian economy. FDI inflow and the shift shall be welcome news for India's new Government. India needs foreign players to come and do business in India and that is the reason why allowing FDI in infrastructure development, military grade equipments is essential. Not only is the country starved of foreign investment, but it relies on inflows of

² <http://www.futuredirections.org.au/>

cash from abroad to offset a persistent current account deficit. **All that India needs to do is focus on making its business environment friendlier. The Investors are looking for clarity in policies of the Government and improvement in ease of doing business.**

"There is a huge potential to increase the fund flows from Japan and the investments can get a major fillip in the wake of Prime Minister's promise to improve ease of doing business and fast-track the clearances." – Chanda Kochhar, Managing Director and CEO of ICICI Bank³.

Russia has been a strategic partner of India in developing India's military might. Most of the weapons, arms, ammunitions, helicopters and other air force needs are supplied to us by Russia. With relations growing stronger between India and Russia, the speed of India's movement towards being military super power shall surely increase. Joint Military Operations like INDRA between India and Russia have always led to better tactics being learnt by the Indian soldiers in face of war like situations.

India and Russia have signed an agreement for strengthening the Indian-Russian co-operation in the peaceful use of nuclear power. It contains plans to build over 20 nuclear power units in India⁴ and joint extraction of natural uranium, production of nuclear fuel and waste elimination. This will lay the foundation for mutual co-operation in the nuclear sector.

The United States is one of India's largest direct investors. From 1991 to 2004, the stock of FDI inflow has increased from US \$11.3 million to \$ 344.4 million, and totalling \$4.13 billion. This is a compound rate increase of 57.5 per cent annually.⁵ America has made notable foreign investments in the Asian country's power generation, telecommunications sector, especially with India and thereby helped survival and

revival of Indian economy. Also, combat operations trainings and similar are provided to Indian army by the US.

India can get a lot of technological knowhow from US, Russia and Japan and other SAARC nations and other neighbouring countries. **Self reliance in arms production is the need of future.**

4. Social and Legal Reforms

India is a land of awesome values and high spiritual and cultural heritage. This is evident from Macaulay's address to British Parliament on 2nd February, 1835⁶, that said:

"... that I do not think we would ever conquer this country, unless we break the very backbone of this nation, which is her spiritual and cultural heritage..."

The British could not dominate India without invading its education system and culture which evidently supports the very fact that India's educational system was far ahead of others. We the people of India should start our work towards exploring the ocean of knowledge hidden in our ancient literature. The Government should play an important role in educating the people about Indian History, literature and ancient culture, etc.

There is no phase in education process as important as **development of scientific attitude**. We have had a rapid scientific development but not scientific attitude development. Through scientific education, scientific thinking will penetrate the societies and communities to get rid from age old traditional superstitions and beliefs that hamper growth.

Social reforms are in order as we progress towards a better life. On one hand we have parents who spent enormously on their children

3 Economic Times Article dated 1-9-2015 - India can get billions of dollars in FDI from Japan: Chanda Kochhar

4 The Indian Express Article dated 23-3-2015 - India, Russia ink new nuclear-deal.

5 Wikipedia

6 <http://koenraadst.bharatvani.org/articles/hinduism/macaulay.html>

and on other we have children who toil for 14-16 hours a day in cottonseed production, mining, zari and embroidery industry. India is sadly the home to the largest number of children labourers from 11.28 million in 1991 to 12.59 million in 2001.⁷ Poverty, lack of social security are the main causes of child labour in India. Also the increasing gap between the rich and the poor and unequal distribution of wealth among the people has led to child labour. Various Acts and regulations like the Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000, The protection of Children from Sexual Offences Act, 2012 have been passed by the Government. Honour Killing, Dowry and child marriage are yet among those which are curtailed by laws that are ill-regulated.

An Act made but not properly and strictly implemented is as good as nothing done. Implementation is difficult but **“If you want roses, you will have to bear with the thorns too.”**

A lot of Acts, Laws and Regulations and Orders are passed in India every week. But what is the use if those are not well implemented. In India, we have over an estimated 3,000 Central laws which are redundant, repetitive, obsolete and unfit for Modern India and bleed money unnecessarily from a cash-strapped Government. The Salt Cess, 1953 imposes a charge of 14 paise (1/7th of a rupee) on every 40 kilograms of salt produced in India. The tax generated \$ 690,000 in 2012-13 – and cost \$4.5 million to administer.⁸ **So rather than having 1,000 laws and living in a maze of confusion why not just scrap the unwanted ones and live with only 10 laws that are well regulated and implemented.** The PM led Government has already been working over to write off those laws which curtail freedom, equality or justice and hinders growth – social as well as economic and those laws made by

the British just to play solid their Divide and Rule policy. And yes that's a good idea because Articles 14 and 15 of the Constitution of India guarantees every citizen of the country with Equality, Justice and Freedom. We should learn to better respect the Constitution of India.

Social Reforms should be followed by Legal Reforms. In a nation with a tremendous population and astronomical number of cases pending before the courts, it is very important that justice be done but be done in time. **'Justice delayed is Justice denied'. Speedy trials are of utmost importance.** Like income tax returns filing and Scrutiny by the ITO are time barred over and above a certain period of time, similar should with the judiciary system in India. Every case before the court should be opened, cleared, shut within a stipulated time period. Like we have an Ombudsman in Insurance Sector or Income Tax, similar should be for Judicial system. **The Judges of Courts should be made accountable for delayed justice** – be it District court, High Court or even Supreme Court. We have seen cases wherein the justice was imparted 20 years after the death of the person who went court to seek justice. Many cases lodged 20 to 30 years are pending as backlog before the courts.⁹

Judicial activism has been playing a major role in maintaining the balance of justice. Judicial activism shall refer to the judiciary using own thought process, personal views and opinions to bless the poor with justice at door step. Judicial activism has turned the judges and judiciary into trustees of the society. As per social laws, a person who has been injured in road accidents shall be treated only after a Police FIR has been filed because even the person who admits the injured to the hospital or even the doctor is insecure about he being tortured and troubled by the judicial system and police as well. So many people even avoid helping people who plead for help on the roads in an accident and the doctor refuse to treat them

7 <http://www.childlineindia.org.in/>

8 <http://www.bloombergvview.com/articles/2014-10-10/india-s-most-laughable-laws>

9 <http://www.legalserviceindia.com/article/l317-Justice-Delayed-is-Justice-Denied.html>

before they have the police known about it. This in turn led to deaths of many who could be saved if the doctors started the treatment in time. To get away from this stone heart situation, a path was paved in a significant judgment by the Supreme Court has held that¹⁰ "it is a paramount obligation of every member of medical profession (private or Government) to give medical aid to every injured citizen brought for treatment immediately without waiting for procedural formalities to be completed in order to avoid negligent death." This shows the responsibility of the officials towards the citizens. This sense should be inculcated by the Government in the people. Court decisions should be based on laws but such that no one misuses the law but in a way such that laws are interpreted in the correct sense to provide the needy with justice and stop the exploitation of loopholes in the law. **The Government headed by the Prime Minister should work in this direction to set up quasi-judicial machinery for speedy dismissal of legal cases and majorly those involving corruption like the 2G Scam, Coalgate Scam, etc.** Justice being the soul of civilisation, this set up should be under the direct governance and control of the PMO.

We the citizens of India pay taxes to the Government. The income of the Government by way of taxes was around 8.89 Lakh crore rupees in 2011-12.¹¹ So we give to the Government this much and what do we get in return? Roads, infrastructure and development or fat pocketed politicians and officials? The Government should be accountable to the public for majority of the expenses from the income collected from public as it is not feasible to provide details about every penny spent. This shall also help to **curb corruption** at its roots. The Government must always remember that:

"Gross National Happiness is more important than Gross National Product."

- King Jigme Singye Wang Chuck

¹⁰ Rulings of The Hon' ble Supreme Court - Parmanand Katara vs. Union of India [AIR1989SC2039]

¹¹ Revenue Budget – 2013-14 - <http://www.indiabudget.nic.in/ub2013-14/rec/tr.pdf>

5. National Integration and encouraging Social Harmony

The biggest democracy in the world is also the home to many religions and the most important part of it is that all these religions live together in harmony. **Religious tolerance refers to respecting the religion, the worship and the faith of all human beings.**

Gandhiji said: "I came to the conclusion long ago that all religions were true and also that all had some error in them. Whilst I hold by my own, I should hold others as dear as Hinduism. So we can only pray, if we are Hindus, not that a Christian should become Hindu. But our innermost prayer should be a Hindu should be a better Hindu, a Muslim a better Muslim, a Christian a better Christian." **The need of the moment is not one religion, but mutual respect and tolerance of the devotees of the different religions.** Social peace is disturbed when people seek to impose their values, beliefs, and cultures on others. Since people have different religions and cultures with clashing ethical views, securing social peace becomes difficult. If a culture tries to initiate force on others then it would in turn upset social harmony. Social harmony leads to progress. Religious tolerance and social harmony go hand in hand and create a state of well-being. **Social harmony can be strengthened by protecting the rights of the minority community, abiding by the constitution and penalising all those who harm the harmony.**

6. Empowerment of the Women

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures to prevent discrimination. Women Empowerment has been on the pinnacle of debates and discussions

in the media since long. Other instances of violence against women have an astonishing and grim variety to it – with acid throwing, domestic violence stemming out of dowry, rape, harassment and an assortment of others. *A total of 2,44,270 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2012 as compared to 2,28,650 in the year 2011 recording an increase of 6.4% during the year 2012.*¹² The historical background of Indian society reveals that in Vedic times a woman was given a high status. It is an old saying, “Gods reside there, where woman is worshipped.” She was known as “Ardhangini” – one half of husband's body. At the time of marriage, she as a bride was entitled to procure certain solemn vows from the bridegroom before the ritual fire. No religious ceremony by the husband could bear fruit without her participation. And this woman is now looked upon as mere sex object? Empowerment of women involves not only training women to fight against offenders or how to use pepper spray, but in a wider sense it is about changing the mindset of the people who treat women inferior. At same positions, men are paid more than women for the same job. This is discrimination. Not just crime against women, female foeticide has been going on at an alarming rate. People must be educated about the ill effects of female foeticide. Morals need to be inculcated among all the people – not just the ignorant ones but also the educated ones. Bringing about changes in the demand for sex determination is a long process and has to be tackled through women's education and empowerment. Some of the steps towards providing women with secured future shall include right to property and land rights.

Women should be educated because it is knowledge that possesses the power to take them out of the darkness in the form of ignorance. It is rightly said – *“If a boy learns, he learns for his own self, but if a girl learns, she applies it for the benefit of the family.”* While India's

progress in this front has been brave, there are quite a few corners that it needs to cut before it can be called as being truly revolutionary in its quest for understanding what women empowerment actually is.

To truly understand women empowerment, there needs to be a sea-change in the mind-set of the people in the country. Not just the women themselves, but the men have to wake up to a world that is moving towards equality and equity. It is better that this is embraced earlier than later, for our own good. **Laws should be made for protection of the women. However, care should be taken that laws shall be for the protection of women and not such that trouble the innocent.** Government has a major role in women empowerment. Not just the Governments, we the responsible citizens of India need to take active participation in women education and safety.

7. Education to All and Trainings for development of skilled labour

“Education is the most powerful weapon which you can use to change the world.”

– Nelson Mandela

Just as a face is the mirror to the heart of a person, level of education reflects the status of a nation. Education helps the people to expand their vision and outlook, provokes the spirit of healthy competition and a desire to advance for the achievements and thereby materialises the capability to fight the greatest hazards to the progress of the nation – ignorance, injustice, corruption, violence, disparity and communalism.

Today we are self sufficient in food production and the position of balance of payments is satisfactory. But the social face of India is not satisfactory. In the major segment of social face i.e. education in India, we have not performed up to the mark and have thus adversely affected

¹² <http://www.womenempowermentinindia.com/>

the social performance. Hence to reap the real fruits of growth and achievements of the country the issue of education has to be dealt with. Education provides them required knowledge, technique, skill and information and enables them to know their rights and duties towards their family, their society and towards their motherland at large.

“There is a need to develop a good education model, so that students can participate in the economic development of India. In today's world, students should be taught to implement and manage the knowledge and the information they get every day.” – Kalam¹³ **Thus education must not be just theoretical but practical and vocational to help the people to be a part of skilled work force. Training Centres for developing skill sets must be given importance.** However, with a country with enormous population, it is indeed difficult to provide facilities for education like school infrastructure and teachers. Schools need to be developed in rural areas. The children in rural areas, the backward category students and students with weak financial background should be provided with allowances and subsidies to take care of their educational and health need. The challenge here is to **provide adequate research facilities and environment conducive to research** and to educate the children in such a way that on completion of their education, rather than being ready to be hired they should be competent enough to start with their own industries or businesses.

8. Poverty, Hunger and Sanitation

India, the largest democracy of 1.25 billion people, is also the biggest centre of poverty in the world – it is both widespread and intense. Today India has officially **363 million** (or **29.5 per cent**) people under the poverty line, as against 407 million in 2004-05.¹⁴ Poverty is not just absence of income but poverty is

presence of helplessness, powerlessness and voicelessness. The new perspective sees poverty as a human condition that reflects failures in many aspects of human life – related to nourishment, employment, shelter, health, education, social and political participation, etc. The British policies during the colonial rule were not in favour of the local economy. Traditional handicrafts declined and not much of the modern industries could develop during that period. This is considered to be a major reason for poverty in India at the time of independence. Inequality of income is another major reason of poverty in India. In spite of land reform initiatives, a major portion of land is in the hands of a selected few and a large portion of farmers are landless.

So to provide employment to the landless farmers or other unskilled labourers, a programme called NREGA was started in 2005. Under this programme, one member of each rural household shall be given 100 days employment in a year. Since unemployment is interconnected with poverty, raising employment opportunities in India is a surefire solution to poverty. Specific focus should be on the agricultural industry since the majority of people of the country depend on agriculture for a living. The quality of equipments and seeds needs to be enhanced for higher harvest. There should be opportunities for earning for the people who are generally engaged in cultivation activities in the rural areas at those times when the cultivation activities are not in progress. **Cottage industry and ancillary industry like threading, furniture manufacturing, matchstick making, spinning, and rope making can make a significant contribution to eradicate joblessness and poverty.** In order to eliminate poverty from India, it is also important that we try our best to raise the awareness about the sociopolitical situation among the common people of the country. The population should be aware about

¹³ The Times of India Article dated 23-9-2013 - Education essential to make India superpower: Kalam

¹⁴ <https://socialissuesindia.wordpress.com/>

the various advantages of the poverty alleviation programs and their importance. PMO and the Government should take active measures in countering and trying to **break the vicious circle of poverty by not just providing the poor with food and money by way of giving subsidies but by providing them with a source of income i.e job opportunities.**

Food security and the right to food are the two major political and social issues in India today. A democratic Government cannot afford to ignore the public outcry. There is a proverb that "a hungry man is an angry man". It would be useful to recall Mahatma Gandhi's statement – **"There are people in the world so hungry, that God cannot appear to them except in the form of bread."**¹⁵ The National Food Security Bill provides a chance to launch a frontal attack on endemic hunger and to realise the Mahatma's wish that **the "God of bread" should be present in every household.**

Sanitation problems have been in existence for quite a long time in India since Independence. That will be 150 years since the birth of Mohandas Gandhi, who said good sanitation was more important than independence. The costs are high. Public safety is one underrated problem, as young women have to leave their rural homes after dark. A broader matter is public health. Open defecation is disastrous when practised by groups in close contact with each other. Hundreds of thousands of them die from preventable conditions each year, especially in the north, which has most of the open defecation. The mere availability of Government-built latrines will not end open defecation for decades yet. What is needed instead are public campaigns, in schools and in the media, to explain the health and economic benefits of using toilets and of better hygiene. Such campaigns not only mean Government-built latrines have a better chance of being used. They would also encourage households to build one for themselves.

¹⁵ The Statesman article dated 25-3-2015 – Hungry India.

¹⁶ <https://socialissuesindia.wordpress.com/about/>

9. Naxal Violence

Indian Government is solely responsible if the left wing extremists (Naxal movement) are now recognised as the biggest internal security threat for the country. The tribal regions, usually far and remote were left ignored and these areas never felt the presence of protective governance machinery since 1947. Why? The British left these areas isolated by labelling them "excluded" from governance for their own convenience. The rulers after 1947 never bothered to take care of their fellow countrymen living in isolated conditions in remote hills and forests. The vacuum was filled by left-wing extremists – they exploited the isolation of the tribals by State officials and money lenders to strengthen their cadre. Their aim is to destroy the Indian State and replace it with a communist State following the Maoist ideology. Through all these decades the Indian Government kept pretending that it was mere law-and-order problem. Over the years, they carved out a vast territory covering 92,000 sq. km. area, called "Red Corridor" by the media. It has grown dramatically in last two decades along the East Coast right from Nepal to Tamil Nadu. In the early 1990s the number of districts affected by varying degrees of Maoist violence stood at just 15 in four States. This rose to 55 districts in nine States by the end of 2003 and to 156 districts in 13 States in 2004. Maoists are currently believed to be operating in around 200 districts (of a total of 604 districts in the country) in 17 States.¹⁶ The worst affected States are Jharkhand, Bihar, Chhattisgarh, and Odisha. The poverty and backwardness of people in these forest covered areas has provided a fertile ground for the growth of Naxals/Maoists who have been gaining strength at every neglect of these people on the part of the Governments.

But if the Government is sincere about tribal welfare, it should **strengthen implementation of the PESA Act of 1996** [Panchayat (Extension to Scheduled Areas) Act, 1996]. The Act extends the Panchayat Raj system to the Fifth Schedule

areas and allows the tribal communities grass-root democracy by activating the Gram Sabhas (village assemblies). The Act empowers the Gram Sabhas to take authority over local natural resources also. If the Act is honestly implemented, it will also render the Maoists baseless by allowing the rule of the law that protects the tribals. Once the tribal people get connected to the Panchayat system, they will have platforms to raise their issues and develop themselves.

10. Kashmir Issue and International Boundary Dispute

When the British left after 190 years of plunder of the country, the political scene was that of chaos – there were over 550 small and big Rajas and Nawabs having their own tiny empires inside India which were later absorbed in democratic India. However, a few tactical mistakes left Kashmir as a disputed issue between India and Pakistan. After the shameful defeat and division of the country in 1971, Pakistani leadership has made cessation of Kashmir from India by proxy war through its home grown *Jehad* factories, an unspoken long-term goal. It is an impractical goal given the military might and global status of India. The special status through Article 370 appears a major road block in today's changed political realities. This Article has prevented private investment in the Kashmir Valley and hampered its economic growth as well as integration into the mainstream society.

Also, there have been continuous border disputes with China, Taiwan, Pakistan, Sri Lanka, etc. The major disputes include the Aksai-Chin, located (6,900 m) above sea level, this is a desolate, largely uninhabited area. India claims the area as a part of the Ladakh District of the State of Jammu and Kashmir. Both sides in the dispute have agreed to respect the Line of Actual Control. Arunachal Pradesh too is claimed by

the People's Republic of China. Pakistan has been claiming the Siachen Glacier, Saltoro and nearing all of Jammu & Kashmir¹⁷. **Protecting the motherland from external forces is at the pinnacle of importance. Sealing the border shall be the first step towards it.** Soldiers, the army have to be provided with modern arms and ammunitions. Staying at 6900 m above sea level in the snow clad regions to protect the nation is a display of sheer patriotism. But when thought about it, the salary that the soldiers receive is pennies when compared to the degree of heroism they show. Also, the Government should be accountable to families of the army personnel who lose their lives in illegal immigrants firing because of the careless attitude of the Government.

Deployment of army forces at the borders, **supplying the army with the best of the weapons and support from the Government in terms of securing lives of army man's family by way of free education to their children, insurance and pension to the family of the deceased soldiers.** The Government should encourage the youth to participate in the acts of courage by being a part of the Indian Army. It till date remains a challenge to create and develop armed forces so strong that enemy need not even dare to look towards the sovereignty, integrity and peace of India.

Problems are not hurdles; they are opportunities – opportunities to prove the supremacy. Each problem, be it social, economic, global when looked at with the right attitude and willingness to solve it, turns into a challenge!

The PM should be a man of Action because he is the one person who has the authority, capacity, capability and power to convert problems and adversities into opportunities. Systematic plans, sustained efforts and then it would be '*Saare Jaha Se Accha Hindustan Hamara.*' in true sense of the words. Accept the challenges so that we can feel the exhilaration of victory.

¹⁷ Wikipedia

Success shall lie not in tackling all the problems, but in the inner satisfaction derived from the fact that best efforts were made in solving those. So keeping in mind the **saying by Gandhiji that "Satisfaction lies in the effort, not in the attainment; full effort is full victory."**

And rather than just blaming the Government and passing on responsibilities and duties, being

the responsible citizens of the country, let us join hands towards developing and creating a better India. **And soon, 'India will become a light house to show the world, the right path of peace and prosperity.'**

Ultimately it is the ruler that decides the destiny of a nation – "jēpee keheum³ekelej Ceced~"

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B.V. Jhaveri, *Advocate*



DIRECT TAXES Supreme Court

S.234B : Interest is automatic if conditions are met. Form I.T.N.S. 150 is a part of the assessment order and it is sufficient if the levy of interest is stated there

CIT, Delhi vs. Bhagat Construction Co. Pvt. Ltd. Civil Appeal Nos. 1169 & 1198 of 2006 – 6th August 2015

In the present case it was the admitted position that the assessment order did not contain any direction for the payment of interest. The ITAT and the Delhi High Court held that since no direction had actually been given in the assessment order for payment of interest, the case was covered by the decision of the Supreme Court in *Commissioner of Income Tax & Ors. vs. Ranchi Club Ltd. [(2001) 247 ITR 209]* which merely dismissed the appeal affirming the High Court judgment reported in *Ranchi Club Ltd. vs. Commissioner of Income Tax [(1996) 217 ITR 72]*. The Department claimed before the Supreme Court that in view of the decision in *Kalyankumar Ray vs. Commissioner of Income Tax, West Bengal-IV, Calcutta [1992 Supp. (2) SCC 424]* interest under section 234B of the Income-tax Act is part of Form I.T.N.S. 150 which is not only signed by the Assessing Officer but it is really part of the assessment order itself.

Allowing the appeal of the Revenue the Supreme Court held that it will be seen that under the

provisions of section 234B of the Act, the moment an assessee who is liable to pay advance tax has failed to pay such tax or where the advance tax paid by such an assessee is less than 90 per cent of the assessed tax, the assessee becomes liable to pay simple interest at the rate of one per cent for every month or part of the month. The levy of such interest is automatic when the conditions of section 234B of the Act are met. The facts of the present case are squarely covered by the decision contained in Kalyankumar Ray's case. The Form I.T.N.S. 150 which contains the working of interest u/s. 234B of the Act, must be treated as part of the assessment order in the wider sense in which the expression has to be understood in the context of section 143 of the Act, which is referred to in Explanation 1 to section 234B of the Act. Hence the Supreme Court set aside the judgment of the High Court and allowed the appeal of the Revenue.

S.260A : High Courts, being Courts of Record under Article 215, have the inherent power of review. There is nothing in s. 260A(7) to restrict the applicability of the provisions of the CPC to s. 260A appeals

CIT, Guwahati-I vs. M/s. Meghalaya Steels Ltd., Civil Appeal No. 10495 of 2013 Order dated – 5th August, 2015

In an appeal under s. 260A, the Guwahati High Court passed an order (332 ITR 91) in which it held that transport subsidies and other incentives were not eligible for relief u/s. 80-IB of the Income-tax Act, 1961. The assessee filed a review petition (358 ITR 551) in which it contended that the High Court had gone on to answer the questions without first framing substantial questions of law. The High Court allowed the review petition and recalled the judgment. Thereafter, it passed a judgment (*CIT vs. Meghalaya Steels Ltd. [2013] 356 ITR 235*) in which it held that the said transport subsidies and other incentives were eligible for relief u/s. 80-IB. The Department argued before the Supreme Court that under section 260A(7) of the Act, only those provisions of the Civil Procedure Code could be looked into for the purposes of section 260A as were relevant to the disposal of appeals, and since the review provision contained in the Code of Civil Procedure is not so referred to, the High Court would have no jurisdiction under section 260A of the Act to review its judgment. Dismissing the appeal, the Supreme Court held that High Courts being Courts of Record under Article 215 of the Constitution of India, the power of review would in fact be inherent in them. This was so decided in a slightly different context while dealing with the power of review of writ petitions filed under Article 226 by a judgment reported in *AIR 1963 SC 1909 5 (Shivdeo Singh & Ors. vs. State of Punjab and Ors.)*. It is also clear that on a cursory reading of section 260A(7) of the Act, the said section does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) of the Act only states that all the provisions that would apply *qua* appeals in the Code of Civil Procedure would apply to appeals under section 260A of the Act. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.

S.54G : Does not require that the machinery etc. has to be acquired in the same A.Y. in which the transfer takes place. It is sufficient if the capital gain is "utilised" towards purchase of P&M by giving advances to suppliers. Section 24 of the General Clauses Act applies also to 'omissions' along with 'repeals' and saves rights given by subordinate legislation

M/s. Fibre Boards (P) Ltd. vs. CIT [Civil Appeal Nos. 5525-5526 of 2005, dated 10th August, 2015]

The assessee, a private limited company, had an industrial unit at Majiwada, Thane, which was a notified urban area. With a view to shift its industrial undertaking from an urban area to a non-urban area at Kurukumbh Village, Pune District, Maharashtra, it sold its land, building and plant and machinery situated at Majiwada, Thane to Shree Vardhman Trust for a consideration of ` 1,20,00,000/-, and after deducting an amount of ` 11,62,956/-, had earned a capital gain of ` 1,08,33,044/-. Since it intended to shift its industrial undertaking from an urban area to a non-urban area, out of the capital gain so earned, the appellant paid by way of advances various amounts to different persons for purchase of land, plant and machinery, construction of factory building etc. Such advances amounted to ` 1,11,42,973/- in the year 1991-92. The appellant claimed exemption under section 54G of the Income-tax Act on the entire capital gain earned from the sale proceeds of its erstwhile industrial undertaking situate in Thane as the advances made were more than the capital gain made by it. The AO & CIT(A) rejected the claim however the Tribunal upheld it. The High Court reversed the Tribunal order and held that as the notification declaring Thane to be an urban area stood repealed with the repeal of the section [Section 280ZA] under which it was made, the appellant did not satisfy the basic conditions necessary to attract section 54G, namely that a transfer had to

be made from an urban area to a non-urban area. Further, the expression “purchase” in section 54G cannot be equated with the expression “towards purchase” and, therefore, admittedly as land, plant and machinery had not been purchased in the assessment year in question, the exemption contained in section 54G had to be denied. Reversing the decision of the High Court, the Supreme Court held:

(i) On a conjoint reading of the Budget Speech, notes on clauses and memorandum explaining the Finance Bill of 1987, it becomes clear that the idea of omitting section 280ZA and introducing on the same date section 54G was to do away with the tax credit certificate scheme together with the prior approval required by the Board and to substitute the repealed provision with the new scheme contained in section 54G. It is true that section 280Y(d) was only omitted by the Finance Act, 1990 and was not omitted together with section 280ZA. However, we agree with learned counsel for the appellant that this would make no material difference in as much as section 280Y(d) is a definition section defining “urban area” for the purpose of section 280ZA only and for no other purpose. It is clear that once section 280ZA is omitted from the statute book, section 280Y(d) having no independent existence would for all practical purposes also be “dead”. Quite apart from this, section 54G(1) by its explanation introduces the very definition contained in section 280Y(d) in the same terms. Obviously, both provisions are not expected to be applied simultaneously and it is clear that the explanation to section 54G(1) repeals by implication section 280Y(d).

(ii) On omission of section 280ZA and its re-enactment with modification in section 54G, section 24 of the General Clauses Act would apply, and the notification of 1967, declaring Thane to be an urban area, would be continued under and for the purposes of section 54A.

(iii) A reading of section 54G makes it clear that the assessee is given a window of three

years after the date on which transfer has taken place to “purchase” new machinery or plant or “acquire” building or land. We find that the High Court has completely missed the window of three years given to the assessee to purchase or acquire machinery and building or land. This is why the expression used in section 54G(2) is “which is not utilised by him for all or any of the purposes aforesaid....”. It is clear that for the assessment year in question all that is required for the assessee to avail of the exemption contained in the section is to “utilise” the amount of capital gains for purchase and acquisition of new machinery or plant and building or land. It is undisputed that the entire amount claimed in the assessment year in question has been so “utilised” for purchase and/or acquisition of new machinery or plant and land or building.

(iv) The aforesaid construction by the High Court of section 54G would render nugatory a vital part of the said section so far as the assessee is concerned. Under sub-section (1), the assessee is given a period of three years after the date on which the transfer takes place to purchase new machinery or plant and acquire building or land or construct building for the purpose of his business in the said area. If the High Court is right, the assessee has to purchase and/or acquire machinery, plant, land and building within the same assessment year in which the transfer takes place. Further, the High Court has missed the key words “not utilised” in sub-section (2) which would show that it is enough that the capital gain made by the assessee should only be “utilised” by him in the assessment year in question for all or any of the purposes aforesaid, that is towards purchase and acquisition of plant and machinery, and land and building. Advances paid for the purpose of purchase and/or acquisition of the aforesaid assets would certainly amount to utilisation by the assessee of the capital gains made by him for the purpose of purchasing and/or acquiring the aforesaid assets.





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DIRECT TAXES High Court

REPORTED

1. Sections 36(2); 28; 260A – Disallowance of Bad Debts – Validity – A.Y. 2004-05

CIT vs. Pudumjee Pulp & Paper Mills LTD. (2015) 93 CCH 0176 Mum. HC

Assessee was mainly engaged in the business of manufacture and sale of paper. During the relevant A.Y., assessee claimed deduction on account of bad debts of ₹ 34.82 lakhs, being the debts written off out of an inter-corporate deposit given to one 'G' company. AO disallowed the claim for bad debts on the ground that the condition of section 36(1)(vi) read with section 36(2)(i) were not satisfied. On appeal, CIT(A) allowed claim for deduction of ₹ 34.82 lakhs holding that such amount, sought to be disallowed as bad debts, was the balance of the inter-corporate deposit and interest accrued thereon; and that the amount of ₹ 42.55 lakhs of interest received on the inter-corporate deposit was offered to tax. On further appeal in Tribunal, the Tribunal upheld the finding of CIT(A) holding that the interest income on the deposit had been offered to tax in earlier A.Y.'s and thus the claim for deduction was allowable. Tribunal also held that the assessee was engaged in money lending business and thus deduction u/s. 36(1)(vii) read with s 36(2)(i) was allowable. On Revenue's appeal in High

Court. The Hon'ble court dismissed revenue's appeal and held that the issue was covered in favour of the assessee by the decision of present Court in *CIT vs. Shreyas S. Morakhia* wherein it was held that debt comprises not only the brokerage which was offered to tax but also principal value of shares which was not received. Therefore, even if a part of debt was offered to tax, section 36(2)(i) stands satisfied. The test under the first part of section 36(2)(i) was that where the debt or a part thereof had been taken into account for computing the profits for earlier A/Y, it would satisfy a claim to deduction u/s. 36(1)(vii) read with section 36(2)(i). Amount of ₹ 34.82 lakhs constituted partly the principal amount of the inter-corporate deposits and partly the interest which was unpaid on the principal debt. Assessee was thus entitled to deduction on bad debts in view of first part of s 36(2)(i) of IT Act.

2. Sections 194C; 194J – Deduction of TDS whether u/s. 194C or u/s. 194J of IT Act – AY 2005-06

Commissioner of Income Tax vs. Delhi Transco Ltd. (2015) 93 CCH 0173 Del HC

Respondent DTL entered into Bulk Power Transmission Agreement ('BPTA') with the Power Grid Corporation India Ltd (PGCIL). Pursuant to survey carried out in the business

premises of DTL u/s. 133-A it was noticed that DTL had deducted TDS at 2 per cent u/s. 194C on the wheeling charges paid to PGCIL. AO held that DTL was not only using the transmission system set up of PGCIL but also availing of other services from PGCIL such as maintaining the delivery voltage, economic transmission, minimum loss of electricity in transmission of regular and uninterrupted supply etc., which are technical services. AO held that wheeling charges paid by DTL were fees for technical services liable for TDS u/s. 194J. AO treated DTL as a defaulter and passed an order u/ss. 201(1)/201(1A). CIT(A) had confirmed the order of AO. Tribunal had held that the “wheeling charges” paid by the assessee, in the facts of this case, was deductible as it did not amount to “fees for technical services” within the meaning of section 194J. On revenues appeal in High Court, the court dismissed revenue's appeal and held that by virtue of the BPTA agreement between DTL and PGCIL there was transportation of the electricity from PGCIL to DTL, through the equipment and network required statutorily to be maintained by PGCIL through its technical personnel using technical expertise. This, however, did not result in PGCIL providing technical services to DTL. Therefore the wheeling charges paid by DTL to PGCIL for such transportation of electricity cannot be characterised as fee for technical service. Once it was accepted that all what PGCIL does was to transmit the electricity to DTL through the network without any human intervention, it cannot be characterised as a provision of technical services and sought to be brought within the fold of section 194J. Thus, conclusion of the ITAT was not erroneous relying on the Bombay High Court decision in the case of Maharashtra State Electricity.

3. Sections 142(1); 143(2); 260A – Capitalisation of custom duty – justified to be claimed in which A.Y. – A.Y. 2009-10

Commissioner of Income Tax vs. Noida Medicare Centre Ltd. (2015) 93 CCH 0189 Del. HC

Sections 142(1), 143(2), 260A, Asst. Year 2009-10

The Respondent-Assessee was a hospital and diagnostic centre. It earned income under the head 'Business and Profession'. The assessee imported hospital equipments valued at ` 2,75,11,988 during the years 1988-89 and 1992-93, without payment of custom duty, on the basis of a customs duty exemption certificate ('CDEC') issued by the Director General of Health Services ('DGHS'). The equipment thus imported was capitalised by the assessee on the actual value of the equipment paid by it. Depreciation was being claimed on the said equipment from year to year at the prescribed rate as per the Act. Subsequently, the DGHS noted that the assessee had failed to fulfil the essential condition stipulated in the relevant notification of the Customs Department dated 1st March 1968 for retaining CDECs for import of hospital equipments. Accordingly, the CDEC granted to the assessee stood withdrawn. Upon such withdrawal, the Customs authorities raised a demand of ` 3,78,66,864 as custom duty on the assessee for the import of equipment in the aforementioned years. Later, by an order dated 28th October, 2004, the Commissioner of Customs (CC) reduced the duty to ` 1,10,04,795 along with fine of ` 10,000 and ` 5,000. The appeals filed by the Respondent-Assessee against the order of the CC were dismissed by the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT'). The Special Leave Petition ('SLP') preferred thereafter by the assessee was dismissed on 25th February, 2008 by the Supreme Court. Thereafter during October, November and December 2008, the assessee remitted the entire customs duty of ` 1,10,04,795 together with interest of ` 9,52,161. The assessee filed its return of income for the AY 2009-10 on 29th September, 2009 *inter alia* declaring a total income of ` 65,16,324. In the fixed schedule in the balance sheet the assessee included 'new' plant and machinery worth ` 1,10,04,795 and claimed 100% depreciation

on it. The case was selected for scrutiny and notices were issued under sections 143(2) and 142(1) of the Act. By way of explanation, the assessee stated that even though the customs duty was paid during the previous year relevant to the AY 2009-10, the liability to pay the customs duty related back to the accounting periods 1989-90 and 1992-93 when the equipment was actually imported. Thus there was an increase in the cost of the imported machinery to the extent of customs duty paid during the year. The assessee accordingly claimed depreciation on the enhanced cost of machinery from year to year basis since the date of actual import. Since the written down value ('WDV') had become negligible, the whole amount of depreciation was written off in the AY 2009-10 on the customs duty paid during the year. The AO rejected the above explanation. The AO held that since the levy of customs duty was penal in nature it was not allowable expenditure in terms of the Explanation to section 37 of the Act. The entire amount of customs duty was therefore added back to the assessee's returned income. Alternatively, the AO held that since the assessee had paid the customs duty in the financial year 2008-09, it had to be capitalised relevant to the AY 2009-10. Depreciation of 15% could be allowed in the current year which would result in an addition of ₹ 93,54,076, i.e., after deducting 15% of the customs duty amount. However, ultimately the AO added back the entire amount of customs duty to the returned income. In the appeal preferred by the assessee, the CIT(A) held that the enhanced cost of equipment would be taken into consideration from the A.Y. 2005-06 when the CC passed an order dated 29th October, 2004 requiring the assessee to remit the customs duty of ₹ 1,10,04,795. The AO was directed to rework and allow the depreciation on that basis. Aggrieved by an order of the CIT(A), the Revenue preferred an appeal before the ITAT and the assessee preferred a cross-objection. In the impugned order dated 31st January, 2014 the ITAT held that CIT(A) was right in holding

that the obligation to pay customs duty and interest arose for the first time on 28th October 2004, relevant to the AY 2005-06 and therefore, the enhanced cost of the equipment should be taken into consideration from A.Y. 2005-06 onwards. The depreciation had to be allowed accordingly. The WDV had to be reworked for the relevant AY 2009-10. The Revenue's appeals as well as cross-objections of the assessee on this aspect were rejected. In the present appeal, by an order dated 11th November, 2014 the Court required the Revenue to file calculations of the WDV and the depreciation as claimed and allowed. It was also noted that section 37 (1) of the Act would not apply if the payment of customs duty had to be treated as a capital expenditure. On further revenue's appeal in High court wherein the question of law was whether which A.Y., can the assessee capitalise the customs duty levied on import of hospital equipment and claim depreciation? Dismissing Revenue's appeal, High Court held that in the instant case, the AO erred in disallowing the capitalisation of the additional customs duty in the manner claimed by the assessee and adding the entire customs duty paid in the relevant A.Y. to the income of the assessee. The impugned order of the ITAT affirming the decision of the CIT(A) that the enhanced cost of equipment should be taken into consideration from AY 2005-06 onwards and that the WDV should be reworked for the AY in question does not call for interference.

4. Section 54 – Profit on sale of residential house property – Invest in house property – Amount invested but possession not given within time – Exemption u/s. 54 – A.Y. 2006-07
Commissioner of Income Tax vs .Kuldeep Singh (2014) 270 CTR 0561 (Del.)

Assessee sold residential property *vide* sale deed dated 3rd June, 2005 and claimed exemption u/s. 54 on ground that amount had been invested in purchase of a new residential

property by virtue of flat buyers agreement entered by assessee with builder dated 9th February, 2006. AO observed that ownership in new property would be conferred on date of issuance of occupation certificate; expected date of completion was 36 months from date of the agreement dated 9th February, 2006 i.e. 8th February, 2009. Thus assessee was not entitled to benefit of section 54 as he had not purchased new property within a period of one year before sale of first property on 3rd June, 2005 or within two years from date on which transfer took place and assessee had not constructed residential house within three years from 3rd June, 2005. That legal ownership of property never vested in assessee and purchase was not completed within two years which was period stipulated and specified in section 54. AO computed long term capital gain, after granting benefit of indexation on cost of acquisition and cost of improvement. CIT(A) and Tribunal allowed assessee's claim. On revenue's appeal in High Court the court held that the, basic purpose behind section 54 is to ensure that assessee is not taxed on the capital gains, if he replaces his house with another house and spends money earned on the capital gains within the stipulated period. Word "purchase" in section 54 can be given both restrictive and wider meaning. A restrictive meaning would mean transactions by which legal title is finally transferred, like execution of the sale deed or any other document of title. Word 'Purchase' can also refer to payment of consideration or part consideration along with transfer of possession under section 53A of the Transfer of Property Act, 1882. Word 'purchase' as used in sub-section (2) of section 54 indicates that said word is not restricted or confined to registered sale deed or even possession but has a wider connotation. Proviso supports aforesaid interpretation and stipulates that amount deposited but not utilised wholly or partly for purchase or construction of new asset within specified period will be charged to tax under

section 45 in previous year in which the period of three years from date of transfer of original asset expired. Period of three years is stipulated as this is longer period specified in the sub-section (1) to section 54. It is only balance amount which is not utilised which was to be brought and charged to tax. Thus entire amount of sale consideration or the capital gains is not to be brought to tax, but the unspent amount/figure is taxed. Thus assessee was entitled to claim exemption u/s. 54 in respect of amount invested for purchase of property under flat buyers agreement dated 9th February, 2006, even when legal title in property was not passed or transferred to assessee within a period of two years from date of sale of the first property on 3rd June, 2005.

5. Section 10B – 100% export oriented business – Part of manufacture outsourced but under direct supervision of assessee – Deduction allowable

MKU (ARMOURS) P. Ltd. vs. CIT [2015] 376 ITR 514 (All)

The assessee is 100% export unit engaged in the manufacture of ballistic helmet and jackets. The assessee procured the raw material and sent to the job workers with due permission of excise department, and the same was returned to assessee, where the same was assembled and finished. The AO disallowed the same, as the some of the work was outsourced. The CIT(A) allowed the claim of the assessee which was reversed by the ITAT. On appeal to the High Court, it was held that a new product had come out at the final stage, it was not a case of changing the label or cover of the product. Only part of the process was outsourced which was under the direct control and supervision of the assessee, the assessee was entitled to deduction u/s.10B.





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DIRECT TAXES Tribunal

REPORTED

1. Appeal (Tribunal) – Section 253(1) (a) of the Income-tax Act, 1961 – Order passed by the Commissioner of Income tax (Appeals) rejecting the stay petition of the assessee is an order under section 250 of the Act – Appealable before the Tribunal under clause (a) of sub-section 253 of the Act. A.Ys.: 2011-12 to 2013-14

Employees' Provident Fund Organisation vs. Addl. CIT (2015) 122 DTR 476 (Del.) (Trib.)

The Assessing Officer (TDS) passed an order under section 201(1) of the Act treating the assessee as an assessee in default for not deducting the tax at source on certain payments made by it. Aggrieved by the order, an appeal was filed before the CIT(A), pending disposal of the appeal, the assessee moved stay applications before the CIT(A) praying for stay of the demand arising out of the order passed by the A.O. under section 201 (1) of the Act. The CIT(A) disposed of the stay application directing the assessee to file the stay petition before the A.O. Aggrieved by this order of the CIT(A) the assessee filed appeal before the Tribunal for all the years praying, for stay of demand.

Entertaining the appeals filed before it under section 253(1)(a) of the Act against the order of

the CIT(A) rejecting the stay petition, the Tribunal held that as it is well settled that the First Appellate Authority has power to grant stay and in exercise of this power, CIT(A) has passed the impugned order. The order rejecting the stay application passed by the CIT(A) was passed under the provisions of Section 250 of the Act, as there is no other provision of the Act under which he can pass the order. Thus, when an order is passed by the CIT(A) under section 250 of the Act, appeal from such order is maintainable under clause (a) of sub-section (1) of section 253 of the Act before the Tribunal.

2. Capital gains – Exemption under Section 54F of the Income-tax Act, 1961 – Acquisition of rights by assessee in flat giving assessee dominion, possession and control over said property with transferable rights – Identical to that of an owner of property – Entitled for exemption under section 54F. A.Y.: 2005-06

Archana Parasrampuriah vs. ITO [2015] 68 SOT 550 (Mumbai - Trib.)

The assessee during the relevant assessment year earned long term capital gains on sale of shares. The assessee also purchased residential flat in the impugned assessment year and claimed exemption

under section 54F of the Act. The Assessing Officer disallowed the claim made by the assessee under section 54F of the Act by observing that the assessee has acquired "transferable tenancy rights" and not the "ownership" of the flat. On appeal the First Appellate Authority upheld the Action of the Assessing Officer.

The assessee being aggrieved by the order passed by the Learned CIT(A) carried the matter further in appeal before the Hon'ble Mumbai Appellate Tribunal. The Appellate Tribunal allowed the claim of the assessee by observing that where rights of assessee in flat were not mere tenancy rights but were substantial rights giving assessee dominion, possession and control over said property with transferable rights, which were almost identical to that of an owner of property, assessee was entitled for exemption under section 54F of the Act.

UNREPORTED

3. Capital gains – Section 54B of the Income-tax Act, 1961 – If it is established that land owned by assessee has been used for agricultural purpose – Assessee entitled for exemption under section 54B on sale of land – Even if assessee is not a cultivator himself

Assessee is entitled to benefit of exemption under section 54B of the Act with regard to 'on money' declared in course of search.

Shree Bhagwanbhai Revabhai Prajapati vs. Asstt. CIT - [I.T.(SS) A. Nos. 377 / Ahd / 2014 & 24 / Ahd / 2015; Order dated: 24-6-2015; Ahmedabad Tribunal]

The assessee was engaged in business of construction of Housing Projects. During relevant assessment year, assessee sold various agricultural lands owned by it and claimed exemption under section 54B of the Act. The Assessing Officer disallowed the claim of assessee on the ground that assessee was not the cultivator of the agricultural land.

On appeal the Tribunal held that the words used in section 54B of the Act are "was being used for agricultural purpose", which means use of the

land. In the instant case, even though the assessee was not himself cultivating the land but was getting it cultivated in his supervision thus, the land remained agricultural land and the assessee would be entitled to claim exemption under section 54B of the Act on the sale of the same.

Further, while computing capital gain, exemption under section 54B of the Act was claimed by the assessee against unaccounted additional sale receipts declared in form of 'on money' during search. The assessee claimed that after making disclosure under section 132(4) of the Act, money so received became part of his sale consideration and was eligible for claim under section 54B of the Act.

The Tribunal relying upon the decision of Hon'ble Gujarat High Court in the case of, *CIT vs. Suman Paper & Boards Ltd. - [(2009) 221 CTR (Guj.) 781]* and Hon'ble Bombay High Court in the case of, *CIT vs. Sheth Developers (P.) Ltd. - [(2010) 254 CTR (Bom.) 127]* held that assessee is entitled for getting benefit of exemption under section 54B with regard to 'on money'.

4. Search and seizure - Section 132 of the Income-tax Act, 1961 – Search warrant – Bank account of assessee cannot be a person in whose name search can be initiated or such warrant can be issued – If a search is initiated in name of bank account, provision of section 153A will become ineffective as the Assessing Officer will not be able to issue notice to bank account of assessee

Assessment in case of search – Section 153A of the Income-tax Act, 1961 – Total income shall be determined in respect of assessment years for which original assessments have already been completed on date of search by restricting additions only to those which flow from incriminating material found during course of search. A.Y.: 2005-06 & 2006-07

Asstt. CIT vs. Budhiya Marketing (P.) Ltd. - [I.T.A. Nos. 1538 to 1540, 1545 & 1546 / Kol / 2011; Order dated: 10-7-2015; Kolkata Tribunal]

A search warrant was issued in the name of bank account maintained by assessee with a bank.

Before the Tribunal the assessee challenged the legality of proceedings under section 132(1) of the Act and seizure of bank accounts, as there was no search warrant and/or Panchnama in the name of the assessee company.

The Tribunal noted that Panchnama drawn in the course of search clearly indicated that the search was not with respect to the assessee company, but in respect of the bank account of the assessee company. Based on the above facts the Tribunal held that a bank account cannot be a person in whose name the search can be initiated or such warrant can be issued. The Tribunal further held that even if a search is initiated in the name of the bank account, the provision of section 153A of the Act will become ineffective because the Assessing Officer, will not be able to issue notice to the bank account of the assessee, as the bank account cannot be a person as defined in section 2(31) of the Act and therefore, cannot be an assessee.

As regards the addition made while passing assessment order under section 143(3) read with section 153A of the Act the Tribunal noted that the additions made on account of share capital and share premium were already shown in the regular return filed by the assessee and for which the regular assessment has already been completed and no incriminating material was found in course of search in respect of share capital and share premium. Accordingly, the Tribunal held that where an assessment order has already been passed for a year or years within the relevant six assessment years, then the total income of the assessee should be determined in respect of assessment years for which original assessments have already been completed on the date of search by restricting additions only to those which flow from incriminating material found during the course of search. Thus, if no incriminating material is found in respect of such completed assessment, then the total income in the proceedings under section 153A shall be computed by considering the originally determined income.

5. Tax Deduction at Source – Section 194-I of the Income-tax Act, 1961 – Payment made by assessee to joint

venture partner for using its premises and infrastructure for joint venture business would not be considered as rent making assessee liable to deduct tax

Tax Deduction at Source – Section 194 C of the Income-tax Act, 1961 – Payment of annual maintenance charges – TDS to be deducted under section 194C and not under section 194J. A.Ys.: 2007-08 to 2009-10

Facets Polishing Works (P.) Ltd. vs. ITO – [I.T.A. Nos. 674 to 676, 856 & 857 / Ahd / 2011; Order dated: 25-6-2015; Ahmedabad Tribunal]

Assessee made certain payment to its joint venture partner, for using its premises and infrastructure for the purpose of joint venture business along with assessee. The Assessing Officer held that payments made by the assessee were in the nature of rent and, therefore, the assessee was liable to deduct the tax under section 194-I of the Act. The CIT(A) held that there was no liability to deduct tax source on the payment made to joint venture partner who derived income from joint venture along with the assessee.

On appeal at the instance of Revenue, the Tribunal noted that the jurisdictional High Court while deciding the taxability of rental income in the hands of joint venture partner held that the amount received by the joint venture partner from the assessee was not rental income as, it had not rented out property but, had allowed use thereof for the purpose of joint venture business. Thus, The Tribunal based on the finding arrived as above held that the payment made by the assessee to joint venture partner cannot be said to be rent, so as to make the assessee liable for deduction under section 194-I of the Act.

Payment of annual maintenance charges for maintenance of various types of machines already installed cannot be characterised as professional or technical fee to attract provisions of section 194J of the Act. On such payment tax is required to be deducted under section 194C of the Act.





CA Sunil K. Jain



DIRECT TAXES Statutes, Circulars & Notifications

NOTIFICATIONS

Substitution of new return Forms ITR-3, ITR-4, ITR-5, ITR-6 and ITR-7

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961 (43 of 1961), the CBDT made the rules further to amend the Income-tax Rules, 1962, to be known as Income-tax (Tenth Amendment) Rules, 2015 which shall be deemed to have come into force with effect from the 1st day of April, 2015. In the Income-tax Rules, 1962, in Appendix-II, for FORM ITR-3, FORM ITR-4, FORM ITR-5, FORM ITR-6 and FORM ITR-7, have been substituted by the forms mentioned in the notice.

(Notification No. 61/2015 dated 29-7-2015)

Income-tax (Eleventh Amendment) Rules, 2015 – Insertion of Rules 114F, 114G, 114H and Form 61B

In exercise of the powers conferred by section 285BA read along with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Government with respect to registration of persons, due diligence and maintenance of information, and the Board for matters relating to statement of reportable accounts, made rules further to amend the Income-tax

Rules, 1962, to be called the Income-tax (11th Amendment) Rules, 2015 which shall come into force on the date of their publication in the Official Gazette. In the Income-tax Rules, 1962, after rule 114E, the rules 114F, 114G and 114H have been inserted which are mentioned in the said notification.

Rule 114F provides definition of "financial account", "financial asset", "financial institution", "non-participating financial institution", "non-reporting financial institution", "reportable account", "reporting financial institution", "reportable person", "specified U.S. Person", "U.S. Person", "U.S. reportable account", "U.S. source withholdable payment", "withholding foreign partnership", and "withholding foreign trust". Rule 114G provides the information to be maintained and reported by a reporting financial institution in respect of each reportable account. Rule 114H provides about the due diligence requirement.

(Notification No. 62/2015 dated 7-8-2015)

Section 90 of the Income-tax Act, 1961 – Double Taxation Agreement – Agreement for Exchange of Information with regard to taxes with foreign countries – San Marino

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government directed that all provisions of the agreement between the Government of the Republic of India and the Government of the Republic of San Marino on the exchange of information with respect to taxes signed at Rome, on the 19th day of December, 2013; as mentioned in the said notification, shall have effect in the Union of India from the 29th day of August, 2014.

(Notification No. 63/2015 dated 12-8-2015)

Section 10(46) of the Income-tax Act, 1961 – Exemptions – Statutory Body/Authority/Board/Commission – Notified Body or Authority

As per clause (46) of section 10 of the Income-tax Act, 1961 the Central Government notified:

"Karnataka State Rural Livelihood Promotion Society", a body constituted by the Government of Karnataka in respect of the specified income arising due to, (a) amount received in the form of grants from the Government of India; (b) amount received in the form of grants from the Government of Karnataka; and (c) Interest earned on bank deposits for the financial years 2013-14 to 2017-18.

"Telangana State Electricity Regulatory Commission", a Commission constituted by the Government of Telangana in respect of the specified income arising due to (a) all fees received by the Commission under the Electricity Act, 2003 (36 of 2003); (b) grant and loans received from the Government of Telangana; and (c) interest earned on the amount deposited in the banks

"Kerala Abkari Workers Welfare Fund Board", established by the Government of Kerala, in respect of the specified income arising

due to (a) amount received as contribution from employers and employees; and (c) interest earned on deposits in the banks for the financial years 2014-15 to 2018-19.

"Kerala Shops and Commercial Establishments Workers' Welfare Fund Board", a Board established under the Kerala Shops and Commercial Establishments Workers' Welfare Fund Act, 2006 (Act 24 of 2006) in respect of the specified income arising due to (a) amount received in the Fund as established under section 3 of Kerala Shops and Commercial Establishments Workers' Welfare Fund Act, 2006; and (b) amount of interest income earned on bank deposits for the financial years 2015-16 to 2017-18.

Provided the notification shall be effective subject to the conditions that these institutions (a) do not engage in any commercial activity; (b) their activities and the nature of the specified income remain unchanged throughout the financial years; and (c) they file return of income in accordance with the provisions of section 139(4C)(g) of the Income-tax Act, 1961.

(Notification No. 64/2015, 65/2015, 67/2015 and 68/2015 all dated 13-8-2015 respectively)

Section 10(6C) of the Income-tax Act, 1961 – Exemption – Foreign company, income arising to, by way of fees for technical services – Notified foreign companies

In exercise of powers conferred by section 10(6C) of the Income-tax Act, 1961, the Central Government specified that any income arising to M/s Rosoboronexport, the Federal State Unitary Enterprise, by way of royalty or fees for technical services received in conformity with the agreement entered between Government of the Republic of India and the Government of the Russian

Federation, to an extent of ` 103.50 crore shall not be included in computing the total income of said company under the said Act.

(Notification No. 66/2015 dated 13-8-2015)

Section 118 of the Income-tax Act, 1961 – Income-tax Authorities – Control of – Notified subordinate officer – Amendment in Notification No. SO 359(E), dated 30-3-1988

In exercise of the powers conferred by section 118 of the Income-tax Act, 1961, the CBDT made the further amendments to the Notification of the Government of India, Ministry of Finance (Department of Revenue), (Central Board of Direct Taxes), number S.O. 359(E), dated the 30th March, 1988 published in the Gazette of India (Extraordinary), Part II, section 3, sub-section (ii) with effect from the date of its publication in the Official Gazette. (i) for clause (a), the following clause shall be substituted, "(a) Principal Directors General, Principal Chief Commissioners, Directors General of Income-tax (Investigation), Chief Commissioners of Income-tax (Central), Director General of Income-tax (I and CI) and Chief Commissioner of Income-tax (Exemptions) shall be subordinate to the Central Board of Direct Taxes;"; (ii) after clause (a), the following clause shall be inserted, "(aa) Directors General or Chief Commissioners shall be subordinate to the Principal Director Generals or Principal Chief Commissioners within whose jurisdiction they perform their functions;".

(Notification No. 69/2015 dated 17-8-2015)

Income-tax (Twelfth Amendment) Rules, 2015 – Insertion of Rule 126 – Computation of period of stay in India in certain cases

In exercise of the powers conferred by Explanation 2 to section 6(1) read with section 295 of the Income-tax Act, 1961, the CBDT made Income-tax (Twelfth Amendment) Rules, 2015 to come into force from 1st April, 2015. In the Income-tax Rules, 1962, in Part XV, after rule 125, the following is to be inserted: "126. Computation of period of stay in India in certain cases.— (1) For the purposes of clause (1) of section 6, in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period computed in accordance with sub-rule (2). (2) The period referred to in sub-rule (1) shall be the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage."

(Notification No. 70/2015 dated 17-8-2015)

Section 32, read with section 32AD, of the Income-tax Act, 1961 – Depreciation – Notified backward areas in specified districts of State of Bihar under first proviso to section 32(1)(ia) and section 32AD(1)

In exercise of the powers conferred by section 52 and section 32AD of the Income-tax Act, the Central Government notified the Patna, Nalanda, Bhojpur, Rohtas, Kaimur, Gaya, Jehanabad, Aurangabad, Nawada, Vaishali, Sheohar, Samastipur, Darbhanga, Madhubani, Purnea, Katihar, Araria, Jamui, Lakhisarai, Supaul, Muzaffarpur districts of the State of Bihar as backward areas under the first proviso to clause (ia) of sub-section (1) of section 32 and sub-section (1) of section 32AD.

(Notification No. 71/2015 dated 17-8-2015)

Section 10(22B) of the Income-tax Act, 1961 – Exemptions – News Agencies

In exercise of the section 10(22B) of the Income-tax Act, 1961 the Central Government of India declared the Press Trust of India, New Delhi as a new agency set-up in India solely for collection and distribution of news, for the purpose of the said clause for three assessment years 2016-17 to 2018-19. The notification is subject to the condition that the news agency applies its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members.

(Notification No. 72/2015 dated 24-8-2015)

Section 120 of the Income-tax Act, 1961, read along with section 6 of Black Money (Undisclosed Foreign Income and Assets) and the Imposition of Tax Act, 2015

In exercise of the section 120 of the Income-tax Act, 1961 read along with section 6 of Black Money (Undisclosed Foreign Income and Assets) and the Imposition of Tax Act, 2015 the CBDT directed the Additional Commissioners of Income Tax or the Joint Commissioners of Income Tax, as the case may be, shall exercise the powers and perform the functions of the Assessing Officer under the Black Money (Undisclosed Foreign Income and Assets) and the Imposition of Tax Act, 2015, in respect of the territorial areas or persons or class of persons or incomes or classes of incomes or cases or class of cases, in respect of which such Additional Commissioners of Income Tax or the Joint Commissioners of Income Tax have been authorised by the Principal Chief Commissioners of Income Tax or the

Chief Commissioners of Income Tax or the Director General of Income Tax or the Principal Commissioners of Income Tax or the Commissioners of Income Tax in pursuance to the section 120(1) or 120(2) of the Income-tax Act, 1961.

(Notification No. 73/2015 dated 24-8-2015)

CIRCULARS

Section 14 of the Wealth-tax Act, 1957 – Return of Wealth – Clarification on Extension of due date of filing return of Wealth for A.Y. 2015-16

Central Board of Direct Taxes *vide* order under section 119 of the Income-tax Act F.No.225/154/ 2015/ITA-II dated 10-6-2015 extended the 'due date' for filing Return of Income for assessment year 2015-16 in respect of assessee falling under clause (c) of Explanation 2 to sub-section (1) of section 139 of the Income-tax Act from 31-7-2015 to 31-8-2015. In view of the same, the 'due date' for filing Return of wealth by such assessee for assessment year 2015-16 also stands extended from 31st July, 2015 to 31st August, 2015.

(Letter [F. No. 328/08/2015-WT], dated 27-7-2015)

Section 154 of the Income-tax Act, 1961 – Rectification of mistake – Apparent from records – List of pending rectifications under section 154 in demand cases as on 22-7-2015

Board issued directions to the field formations to rectify the cases within time limit as specified in the citizen charter to reduce infructuous demands existing on the System. The directions are aimed at achieving twin objectives of redressal of assessee's grievances by timely disposal of

Rectification Application as well as reduction of infructuous demand existing on the System. The Region Assessment-year wise statistics of pending Rectification u/s. 154 initiated on AST where demand exists as on 22-7-2015, has been extracted from the System.

(Letter F. No. DGIT(S)/DIT(S)-3/AST/pending rectifications/92/2015-16/135-7408, dated 10-8-2015)

Section 10(23C)(vi) of the Income-tax Act, 1961 – Exemptions – University or other educational institutions –Notified university or other educational institution – Clarification on certain issues related to grant of approval and claim of exemption under section 10(23C)(vi)

Section 10(23C)(vi) of the Income-tax Act, 1961 ('Act') prescribes that income of any university or other educational institutions, existing solely for educational purposes and not for purposes of profit, shall be exempt from tax if such entities are approved by the prescribed authorities. Such approval is not required in cases of university or educational institutions wholly or substantially financed by the Government [sub-clause (iiiab)] or if their aggregate annual receipts do not exceed ` 1 crore [sub-clause (iiiad) r.w. rule 2BC]. Representations have been received seeking clarification on certain issues related to operation of section 10(23C)(vi). CBDT provided clarification on certain issues related to operation of section 10(23C) (vi).

(Circular No. 14/2015 [F.No. 197/38/2015-ITA-I], dated 17-8-2015)

PRESS RELEASES

Standard Operating Procedure (SOP) –Part III for making application for claim of tax exemption under section 11(1)(c) of the Income-tax Act, 1961 in respect of remittance of money/relief articles by Indian NGOS/charitable organisations for earthquake hit people in Nepal

In view of suggestions received from National Disaster Management Authority (NDMA) Government of India added after Sr. No. (15) In the Annexure 1 to SOP dated 8-7-2015,"Amounts and sources of Foreign Contributions received by the entity with year wise breakup of their intended applications outside India." The revised Annexure I to earlier SOP dated 8-7-2015 is as mentioned in the press release.

(Press Release, dated 27-7-2015)

Pay Income-tax dues in advance at RBI or at authorized bank branches

The Reserve Bank of India appealed to income tax assesseees to remit their income tax dues sufficiently in advance of the due date. It also stated that assesseees can use alternate channels like select branches of agency banks or the facility of online payment of taxes offered by these banks. These will obviate the inconvenience involved in standing in long queues at the Reserve Bank offices. Twenty-nine agency banks are authorised to accept payments of Income Tax dues which are as mentioned in the given press release.

(Press Release, dated 12-8-2015)





CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*



INTERNATIONAL TAXATION Case Law Update

A. AUTHORITY FOR ADVANCE RULINGS

1. Difference between copyright and copyrighted products – ‘illusory’. Use of the words non-exclusive and non-transferrable does not take away the software from the definition of copyright

Skillsoft Ireland Limited – (2015) 123 DTR (AAR) 17

Facts

1. The applicant, a private limited company incorporated in Ireland is engaged in the business of providing on-demand e-learning offerings, online information resources, flexible learning technologies and performance support solutions. Its products consist of two components – course content and software by way of which the course is delivered to the end customer. It entered into a reseller agreement with Skillsoft Software Services India Private Limited (Skillsoft India) wherein, Skillsoft India buys products from the applicant on a principal-to-principal basis and sells the same to Indian end customers in its own name. It provides the end users the access by which they could access the products.

2. Accordingly, the applicant raised three questions before the AAR:

- a. Whether the payments received by it would be characterised as Fees for technical services under Article 12(3)(b) of the Double Tax Avoidance Agreement between India and Ireland (‘DTAA’).
 - b. Whether the payment would constitute royalty under Article 12(3)(a) of the DTAA.
 - c. Whether a Permanent Establishment is created for the applicant in India under the provisions of Article 5 of the DTAA.
 - d. Whether the payments received by it would be subject to withholding in case the abovementioned questions are answered in the negative.
3. The Revenue contended that the payment received by the applicant would be classified as royalty under the DTAA. The applicant contended that its products were akin to books i.e. copyrighted articles and that no copyright was transferred by way of the above stated transactions. In doing so, the applicant placed heavy reliance on the decision in the case of *FactSet Research Systems Inc – (2009) 25 DTR 146* and contended that the decision was binding on the AAR. It further contended that its products could be considered as Information Technology Enabled Services in light of the Safe Harbour Rules and therefore could not be classified as a copyright.

Judgment

1. The AAR held that the products provided by the applicant were computer programmes and computer data which would fall within the ambit of the term literary work contained in Article 12(3)(a) of the DTAA. It held that the contention of the applicant that the said products were ITES was incorrect as the definition contained in the Safe Harbour Rules would be applicable only in cases of transfer pricing wherein the Safe Harbour Rules had been availed which is not the case of the applicant.

2. With regard to the contention of the applicant stating that its product was a copyrighted article and not a copyright and therefore did not involve granting of any right in the copyright, the AAR applied the ratio laid down in the case of *Citrix Systems Asia Pacific Pvt. Ltd. [343 ITR 1 (AAR)]* wherein it was held that the distinction between copyrighted article and copyright was illusory as a copyrighted article was nothing but an article incorporating the copyright of the owner and when it was permitted or licensed to be used, the permission involved a right of / to use the copyright embedded therein.

3. In relation to the argument of the applicant that there was no provision of right to use the copyright to the end user, the AAR relying on the decision of *Citrix Systems Asia Pacific Pvt Ltd. (supra)* and *CIT vs. Synopsis International Old Ltd. – (212 Taxman 454)(Kar.)* held that the mere use of the words non-exclusive and non-transferrable does not take away the software from the definition of copyright and that even if there was no transfer of exclusive rights in the copyright the right to use the confidential information embedded in the software in terms of the licence implies that there is a transfer of certain rights of the owner. Further in relation to the definition of royalty under the DTAA, it was held that there need not be a transfer of any rights in respect of the copyright as even the use of copyright is covered therein. Therefore it was held that the amount received by the applicant amounts to royalty under the DTAA.

2. Services concerning review and general guidance on operations cannot be classified as technical or consultancy services – Further since the services did not result in making available any technology – amount received is not chargeable to tax under the India-UK Double Taxation Avoidance Agreement
Measurement Technology Limited – (2015) 123 DTR (AAR) 34

Facts

1. Measurement Technology Ltd. ('the applicant') was incorporated in the UK as a wholly owned subsidiary of MTL Instruments Group Ltd. UK and engaged in the development and supply of intrinsic safety explosion protection devices, field bus and Industrial networks, lightning and surge protection and gas analysis equipment. It entered into two service agreements with MTL Instruments Pvt. Ltd. ('MTL India') which was engaged in the business of manufacturing industrial control equipment used for process control in hazardous environments. One agreement was for the provision of services via an employee by means of telephone calls, emails, occasional visits for review of operations of MTL India and providing general guidance. The second agreement was for providing procurement services for the reduction of cost and avoiding duplication of procurement efforts within the Group through a procurement team which travelled to different countries to determine the best prices available to the group.

2. The question before the AAR was whether the amount received by the applicant on account of the two service agreements were taxable in India under the DTAA between India and UK and if so at what rate.

3. The applicant contended that the review services provided by the employee constituted managerial services which was excluded from the amended definition of fees for technical

services contained in Article 13 of the DTAA and that in any event Article 13 of the DTAA provides for the make available criteria which was not met in the present case. Similarly, the services provided as per the second agreement did not meet the criteria of make available. As regards the existence or permanent establishment, the applicant submitted that it did not have a fixed place of business and therefore no fixed place PE and neither did it constitute a service PE as its employees were present in India for a period of less than 30 days in the past 12 months as stipulated in Article 5(2)(k) of the DTAA. It further contended that the payment could not constitute royalty as no intellectual property was created.

Judgment

1. On examination of the agreements, the AAR held that the services provided by both agreements were managerial in nature. The services provided *vide* the first agreement were routine managerial activities and could not be classified as technical or consultancy and there was no technical knowledge made available *vide* such services. In relation to the procurement services it held that these services could never be classified as technical or consultancy in nature and definitely did not make available any technical knowledge.

2. As regards royalty, the AAR held that the argument raised by the Revenue was far fetched as the services were general and routine in nature and did not create any intellectual property.

3. Accordingly, it was held that the payments received by the applicant were not taxable as either fees for technical services or royalty under the DTAA.

B. HIGH COURT JUDGMENTS

3) Subsidies received by the assessee under the obligation to incur specific expenditures could not be treated as

income unless applied for the specific purpose.

Commissioner of Income Tax vs. Canon India Pvt. Ltd. – (2015) 93 CCH 0172 Del HC – AYs. 2006-07, 2007-08 & 2008-09

Facts

1. The assessee was a wholly owned subsidiary of M/s. Canon Singapore Pvt. Ltd. incorporated in 1996. It was engaged in the purchase and sale of Canon products, software development, export of software and provision of software related services to its Group concerns. For the year under consideration, it filed its transfer pricing report disclosing the international transactions undertaken. The assessee had also received a subsidy from its Associated Enterprise ('AE') specifically for the purpose of meeting specific advertisement and sales promotion expenses and was obliged to use the subsidy for these specific purposes exclusively. Pursuant to the transfer pricing proceedings, the Transfer Pricing Officer ('TPO') found that the reported international transactions were at arm's length price. However, the TPO was of the view that the assessee incurred advertisement, marketing and promotional expenses in excess of the expenditure incurred by other comparable companies and therefore concluded that it amounted to building / promoting the brand 'Canon' and made a transfer pricing adjustment on this account.

2. Aggrieved by the order of the TPO / Draft Assessment Order, the assessee filed objections before the Dispute Resolution Panel ('DRP') which upheld the ALP addition made. In addition to the ALP addition, the AO also added the unutilized subsidy received by the assessee to its total income on the ground that notwithstanding the fact that the said subsidy was not utilised, it was the property of the assessee and treated it as its income.

3. Against the order of the Assessing Officer incorporating the directions of the DRP, the assessee preferred an appeal before the Tribunal

wherein both the issues were considered. With regards to the adjustment made on account of ALP, the ITAT held that subsidies, trade discounts in volume rebate, cash discount and commission were to be excluded from the scope of ALP expenditure. With regards to the unutilised subsidy, the ITAT held that the unspent subsidy was not the income of the assessee but was held in trust by it, to be spent for the specific purposes for which it had received it.

4. The Revenue filed appeals before the Honourable High Court against the order of the ITAT. The Revenue contended that the issues relating to exclusion of subsidy from ALP expenditure and the determination of character of unutilised subsidy were to be considered.

Judgment

1. The Honourable High Court, held that since the subsidies were received by the assessee against the specific obligation to incur expenditure on specific activities, it would be impermissible for the assessee to appropriate and reflect the amount of unutilised subsidy as its income. The assessee could credit the Profit and Loss account with the quantum of subsidy only if the corresponding expenditure was also debited to the Profit and Loss account. It held that the accounting treatment adopted by the assessee by reflecting the subsidy as a current liability was correct and in line with the matching concept which was the substrata principle for computing income during a relevant period and therefore it would be incorrect to recognise the subsidies received for incurring specific expenditure as income without accounting for the corresponding expenditure.

2. With regards to the exclusion of subsidies from the AMP expenditure, the High Court followed the approach adopted by it in the decision of *Sony Ericsson Mobile Communications India Pvt Ltd – (2015) 374 ITR 118 (Delhi)* since the said question was inextricably linked with the manner in which arm's length price of the transaction was determined and accordingly referred the matter back to the lower authorities.

4. Call Centres not functionally comparable with KPO service provider. Super normal profits indicating functional dissimilarity would require further analysis

Rampgreen Solutions India Pvt. Ltd. vs. Commissioner of Income-tax (Delhi High Court) – [2015] 60 taxmann.com 355 (Delhi) – AY 2008-09

Facts

1. The assessee, a wholly owned subsidiary of Customer, USA, was engaged in providing voice-based customer care to its AE's clients falling under the category of Call Center Services in the ITES sector for which it was remunerated on a cost plus basis. To justify the arm's length price of the international transaction, the assessee adopted the Transactional Net Margin Method which was accepted by the TPO. The operating margin of the assessee was 14.83 per cent and the operating margin of the comparable companies was 15.74 per cent which was within the acceptable range as provided in second proviso to section 92C of the Income-tax Act, 1961 ('the Act'). However the TPO rejected the benchmarking conducted by the assessee and proceeded to determine his own comparable companies selecting 8 companies in total aggregating to a operating margin of 28.96 per cent, including Vishal Information Technology Ltd ('Vishal') and Eclerx Services Ltd ('Eclerx'). The assessee was of the view that Vishal and Eclerx could not be considered as comparable as they were engaged in providing KPO services which was functionally not comparable to the Call Centre services it provided.

2. Aggrieved by the order of the TPO, the assessee filed objections before the DRP which accepted certain contentions raised by the assessee but upheld the inclusion of Vishal and Eclerx in spite of functional dissimilarities.

3. Subsequently, the assessee preferred an appeal before the ITAT, wherein it was held that both Vishal and Eclerx were engaged in providing ITes and once it fell within

that category then no sub-classification was permissible. The ITAT held that KPO is a term given to the branch of BPO services where apart from processing of data, knowledge is also applied and therefore upheld the inclusion of the comparable companies.

4. Pursuant to the order of the ITAT, the assessee preferred an appeal before the Honourable High Court for the exclusion of Vishal and Eclerx

Judgment

1. The Honourable High Court noted the nature of services provided by Voice Call Centres was low end in nature and akin to customer support and processing of routine data and that KPO services involved a higher level of skill and knowledge such as analytical services, market research, legal research, and engineering and design services. It also noted that both Voice Call Centers and KPO service providers would be employing IT based delivery systems but the characteristics of services, functional aspects, business environment risks and quality of human resource employed would be materially different.

2. The Honourable High Court emphasised the importance of functional analysis in determining the level of comparability and the fact that adjustments should be made for any material differences between comparables. Accordingly, it held that the view adopted by the ITAT was contrary to the rationale of determining ALP using comparables and held that treating the entities to be comparable only for the reason that they use Information Technology for delivery of their services would be erroneous as the characteristics of services provided by Vishal and Eclerx were dissimilar to the services provided by the assessee.

3. The Honourable High Court also noted the observations made in the decision of the Special Bench of the ITAT in the case of Maersk Global Centers India Pvt Ltd. 147 ITD 83 (Mum.) (SB), expressing its reservation on the view taken by the Special Bench on the issue of

comparability of BPOs and KPOs. It however upheld the findings given therein in relation to the exclusion of Vishal and Eclerx on account of different business model and nature of services performed, respectively.

4. It was further held that one cannot seek to exclude comparable companies mainly on the ground that they earned supernormal profits. However it was clarified that in cases the supernormal profits indicated functional dissimilarity it would be necessary to undertake further analysis to eliminate the possibility of high profits resulting on account of any material dissimilarity between the tested party and the chosen comparable.

5. Additionally, the Court addressed another vital point of conflict in relation to the standard of comparability in the TNMM method. It negated the view of the ITAT and DRP which stated that broad functionality is sufficient and it was not necessary to make further effort to find a comparable entity providing services of similar characteristics as the tested entity.

Tribunal decisions

5. India-USA DTAA – Application of the Concept of “Make Available” – Marketing and other support services – Whether taxable as FIS where the “make available” test is not satisfied – Held : No; where dependent agent PE is remunerated at arm’s length, whether no further amount is taxable – Held : Yes – In favour of the assessee

ABB INC vs. DDIT – 2015-TII-117-ITAT-BANG-INTL – Assessment Year: 2009-10

Facts

i) The assessee is a company incorporated, and fiscally domiciled, in the USA. The assessee was engaged, *inter alia*, in providing business development, market services and other support services to its two associated enterprises (AEs) in India.

- ii) The assessee, claimed that the sum was not liable to tax in India under Article 12(4)(b) of the India-USA Double Taxation Avoidance Agreement (tax treaty), since the said services did not make available any technical knowledge, experience, skill, etc. to the AEs
- iii) The Tax Officer (TO) held that a person without the technical knowledge could not provide such services. Having held so, the TO concluded that the assessee was providing technical services to its AEs and it was also making available technical knowledge to its AEs, i.e., the service recipients. Accordingly, the TO held that the fees earned pursuant to rendering of services by the assessee were taxable as FIS under the India-USA tax treaty.
- iv) The DRP confirmed the TO's stand. Further, the DRP also alleged that one of the AEs of the assessee was acting as its agent for the purchase and sale of the products of the assessee. Accordingly, it was alleged that the assessee had a dependent agent PE in India through the presence of the Indian AE, and the profits attributable to the operations in India were to be brought to tax in India.
- iii) With respect to taxability of a consideration under the India-USA tax treaty, the decisive factor was not the rendering of training services per se, but the fact that the training services were of such a nature that it resulted in a transfer of technology. The consideration could not be brought to tax under Article 12(4)(b) of the India-USA tax treaty as the services did not enable the recipient to utilise the knowledge or know-how on his own in future without the aid of the service provider.
- iv) Even if a PE existed, and the assessee carried on business through it, under Article 7(1) of the India-USA tax treaty, the assessee's profits could be taxed in the source jurisdiction – but only so much as attributable to that PE. This also included attribution of profit to sales of goods or business activities carried on in the other state which was of the same or similar kind as those effected through the PE. On facts, even if the PE existed, it was constituted on account of the trading transactions only. Therefore, no part of the earnings from the rendering of services to the AE could be related to the nature of the PE's activities and thus be brought to tax in India.

Decision

The Tribunal held in favour of the assessee as follows :

- i) A condition precedent for invoking the 'make available' test in Article 12(4)(b) of the India-USA tax treaty was that the services should have enabled the person acquiring the services to apply the technology contained therein. The Karnataka High Court's decision in *CIT vs. De Beers India Minerals Private Limited [2012] 346 ITR 467 (Karnataka)* approving this school of thought, was relied upon.
- ii) Unless there was a transfer of technology involved in the technical services extended by the assessee, the 'make available' test was not satisfied.
- v) Since the Indian AE, which was treated as the assessee's dependent agent PE, had been paid an arm's length remuneration, nothing further could be brought to tax, in view of the settled legal position as per the case of *SET Satellite (Singapore) Pte Limited vs. DDIT [2008] 307 ITR 205 (Bombay)*. The said judgment had relied on the principle laid down by the Supreme Court in the *DIT vs. Morgan Stanley & Co. Inc. [2007] 292 ITR 416 (SC)*.
- vi) Even if there was a dependent agent PE based on facts, it would have no taxable profits in the hands of the assessee in absence of a finding that the PE had been paid less than arm's length remuneration.

Accordingly, existence of the PE, being academic, need not be examined.

6. Transfer Pricing – Indian Subsidiary of a Japanese Sogo Shosha – Issues

i) Use of Berry Ratio as permissible Profit Level Indicator (PLI);

ii) Recharacterisation of Assessee's Service Activity as a Trading Activity; and

iii) Attribution of additional returns on account of location Savings – Held : In favour of the assessee on all issues.

Marubeni Itochu Steel India Pvt. Ltd vs. DCIT Assessment Year: 2010-11 – 2015-TII-313-ITAT-DEL-TP

Facts

- i) The business of the assessee, an Indian subsidiary of a Japanese general trading company (Sogo Shosha) companies are general trading companies, which deal in diverse range of products, linking the buyers and sellers and performing the role of trade intermediaries) dealing in steel, comprised of:
 - (a) Provision of support services – entailing the assessee rendering facilitation and liaising services to its group companies for purchase/sale of goods from/into India; and
 - (b) Trading – purchase of steel products (on the basis of confirmed orders) from group companies for re-sale in India.
- ii) In the transfer pricing (TP) documentation maintained by the assessee, the assessee selected and applied the transactional net margin method (TNMM) as the most appropriate method using operating

profit/value added expenses (OP/VAE) and OP/Sales as the PLI in respect of the provision of support services and the trading segment respectively.

- iii) During the TP assessment, the international transactions pertaining to the trading segment were accepted to be at arm's length. However, in case of provision of support services segment, the TPO re-characterised the service activity as a trading activity, included the value of the goods on which the assessee had earned service income in the cost base, applied OP/total operating costs as the PLI, and re-computed the arm's length price for the said segment, thereby making a TP adjustment.
- iv) The TPO made the TP adjustments as follows:
 - a) Rule 10B(1)(e)(i) did not prescribe the use of value added costs/value added expenses as a cost base for computing the net profit margins, and accordingly the assessee's claim for use of Berry ratio was not acceptable, being contrary to Rule 10B(1)(e) of the Income-tax Rules, 1962 (the Rules).
 - b) The commission business of the assessee was equivalent to the trading business.
 - c) The existing cost plus model of the assessee did not compensate the assessee for the unique intangibles developed by the assessee, like supply chain management and human assets intangibles.
 - d) The compensation model did not remunerate the assessee for location savings.
- v) Aggrieved by the TPO's order, the assessee filed its objections with Dispute Resolution Panel (DRP). The DRP issued directions, in principle, upholding the TPO's order, but directing the TPO to include correct

Free on Board (FOB) value of goods for the purpose of computing adjustment for the international transactions. Aggrieved by the DRP's directions, the assessee preferred an appeal before the Tribunal.

Decision

The Tribunal held in favour of the assessee as follows :

(A) Permissibility of the Berry ratio

- i) The Tribunal, placing reliance on the ruling of the same bench in the case of *Mitsubishi Corporation India Pvt. Ltd. vs. DCIT (2014-TII-215-ITAT-DEL-TP)* upheld the use of 'Berry ratio' as a PLI.
- ii) In the case of Mitsubishi, the Tribunal had made the following observations:
 - a) With respect to the contention of the revenue that use of 'Berry ratio' was not permitted under Rule 10B(1) (e)(i) of the Rules, the Tribunal ruled that the PLI computation methodology set out in the said Rule was illustrative and not exhaustive and it ended with the phrase, 'or having regard to any other relevant base'. In a situation like the assessee's, where the significant functions and risks pertaining to inventories were not undertaken, the cost of inventory became irrelevant, and only the value added expenses needed to be considered in the cost base for computing the PLI.
 - b) With respect to the contention of the revenue that the differences in cost classifications precluded the application of the Berry ratio, the Tribunal rejected the TPO's contention by relying upon the co-ordinate bench ruling made in the case of *GAP International Sourcing India Private Limited vs. ACIT [20*

ITR (Trib.) 779], further adding that the TPO had not brought forward any specific issues as regards cost classifications which could hamper the appropriateness of selecting the Berry Ratio as the PLI.

- c) With respect to the revenue's contention that the assessee had high levels of current assets, the Tribunal, while agreeing with the principle that the 'Berry ratio' could only be used in a situation where the current assets were not significant, ruled that in the assessee's case, the TPO had not been able to demonstrate that the assessee had significant current assets.

(B) Re-characterisation of services activity to trading activity

- i) The Tribunal, relying on the Delhi High Court (HC) (the jurisdictional HC) ruling in the case of *Li & Fung India Private Limited vs. CIT [2014] 361 ITR 85 (Delhi)* and of the same bench of the Tribunal in the Mitsubishi case ITA No. 5042/Del/11, rejected the re-characterisation of the assessee's services activity to that of a trading activity.
- ii) The Delhi HC, in the case of *Li & Fung India Private Limited vs. CIT [2014] 361 ITR 85 (Delhi)*, had held the following:
 - a) Under the Indian TP regulations, for application of the TNMM, the net margin realised from international transactions had to be calculated only with reference to the cost incurred by the assessee, and not that incurred by any other related or third party.
 - b) Rule 10B(1)(e) of the Rules did not enable consideration or imputation of cost incurred by third parties or unrelated enterprises to compute

the assessee's net profit margin for application of the TNMM.

- c) It was not open to the revenue authorities to reconstruct the assessee's financial statements by including the cost of products incurred by the associated enterprise (AE), in respect of which services are rendered, in its reconstructed financial statements, and then computing hypothetical trading profit.

(C) Re : Existence of intangibles in the nature of supply chain and human assets

- i) The Tribunal, relying upon the same bench's ruling in case of Mitsubishi ITA No. 5042/Del/11, rejected the TPO's contentions that the assessee owned supply chain management intangibles and human assets by observing that the use of intangibles could not be inferred or assumed. Rather, the same needed to be demonstrated on the basis of cogent materials. In the instant case, the TPO could not substantiate that the assessee's activity had resulted in development or use of unique intangibles which had an impact on determination of the arm's length price.
- ii) In the Mitsubishi ITA No. 5042/Del/11, the same bench of the Tribunal had held that:
 - a) Any comparable involved in a similar activity would essentially use similar intangibles, and accordingly, an adjustment could not be made in case of routine intangibles.
 - b) While a trained workforce was, indeed, an intangible asset, the same was a routine intangible inasmuch as anyone pursuing a business activity would develop a trained

workforce for carrying out the activity.

- c) For an intangible to have an impact on determination of the arm's length price, not only should the intangible exist, but it should also be a unique intangible which provided an edge to the business in which the same was used.

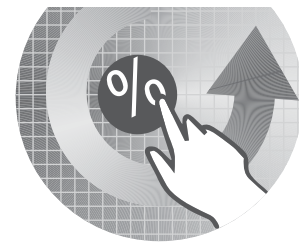
(D) Re : Location savings

- i) On this issue too, the Tribunal relied on the Mitsubishi and concurred with its view that the adjustment pertaining to locational savings was unwarranted.
- ii) In Mitsubishi India, the same bench of the Tribunal, while agreeing to the four steps process advocated under the OECD report titled 'Guidance on Transfer Pricing Aspects of Intangibles', observed that:
 - a) The TPO had neither followed the same, nor had he demonstrated any concrete findings as regards existence of any location savings.
 - b) In a Sogo Shosha companies are general trading companies, which deal in diverse range of products, linking the buyers and sellers and performing the role of trade intermediaries business model, where the service provider only acted as a facilitator, there may, in fact, be no location savings for the service provider. In case of procurement of goods, location savings, even if any, would arise to the AEs actually buying the goods, and not to the assessee assisting such buying by way of acting as an intermediary. Further, these savings may be eventually derived by the ultimate customer.





CA Janak Vaghani



INDIRECT TAXES VAT Update

1. Trade Circulars

a) No. 12T of 2015, dated 14-8-2015 Computerised Desk Audit (CDA) for the period 2012-13

The Commissioner of Sales Tax has issued above circular to explain procedure for online compliance to Computerised Desk Audit for the period 2012-13. The gist of the above trade circular is as under:-

- i) The department has selected the cases for comprehensive assessment for the year 2012-13. The list of cases selected for comprehensive assessment is displayed on the website. The facility of CDA is not available to those cases. It is also not available to LTU dealers, PSI dealers, dealers who claimed refund and dealers whose case is pending for investigation.
- ii) CDA findings have been generated on 11 parameters out of which 9 relates to disallowances of set off due to mismatch of J-1/J-2, claim of set off from RCC dealers or non genuine dealers or non filers of returns etc. and other two relates to asked to pay by the VAT auditor in VAT audit report in Form 704 under VAT and CST Act.
- iii) The CDA compliance system is available on the website which consists of CDA findings in Form 604A with Annexure showing details of parameters for which it is issued, Web compliance form in which dealer can accept or reject the parameter wise liability and utility for calculation of interest u/s. 30(2).
- iv) If, the dealer has already paid the liability then he has to mention details of payment of liability in web compliance form and submit it online.
- v) The dealer can accept liability against all or any one or more of parameters but cannot accept partial liability against any parameter.
- vi) The dealer has to fill details of the payment of tax with applicable interest including interest u/s. 30(4) and revised return details in web compliance form and submit it online.
- vii) No need to visit the department.
- viii) The department will inform closure of CDA cases in which full compliances is received with payment of tax with applicable interest in Form 605.
- ix) Without any payment of applicable interest, the CDA compliance will not be accepted. The physical submission of the CDA compliance will not be accepted.
- x) The dealer is at liberty to disagree with the CDA. However, all the cases where parameters have not been accepted will be taken up either for issue based audit or full comprehensive assessment in that case in addition to tax and interest penalty u/s. 29(3) shall also be payable.

**b) No. 13T of 2015, dated 14-8-2015
Processing of Registration Applications
submitted along with scanned documents**

The Commissioner of Sales Tax has issued above circular to inform new office procedure for grant of new registration under the MVAT, CST and PT Acts. The important information/instructions contained in above circular are stated here under:-

- i) The Registration Officer shall access the applications and documents uploaded, through the link "View Scanned Documents" and will verify it.
- ii) If PAN is found to be related to suspicious dealers declared by the department then the Registration Officer shall visit the place of business of the dealer and verify the documents. If the documents are found to be incomplete or verification fails then the Registration Officer shall immediately communicate to the dealer through e-mail that his application is not accepted being incomplete and incorrect. Similar procedure shall be followed if the applicant deals in risky commodities as declared by the department from time to time. However, it was clarified that the department is yet to declare the risky commodity.
- iii) In case of correct and complete application the Registration Officer shall generate the TIN within a day of allocation of the application to him and shall communicate it on the e-mail address provided in the application by the dealer.
- iv) The application will be rejected in case of incomplete or illegible documents and will be communicated through e-mail. However, considering growing demand and to save time and effort of repeated up loading, the work of development facility to replace the documents or add documents is in progress which will be intimated to the trade at appropriate time.

- v) The application will not be rejected only on the ground that registered agreement is not uploaded for proof of place of business or residence. Even non registered agreement will be accepted for proof of place of business or residence.
- vi) Likewise the application will not be rejected when the copy of challan for the payment of fees and deposit is not uploaded. The Registration Officer shall accept the proof of bank receipt or statement uploaded for proof of payment of fees and deposit.
- vii) TIN certificates will be dispatched by speed post to the registered address of the dealer.
- viii) The Officer or inspector of New Registration Follow Up Branch shall visit the place of business of the dealer and shall verify the documents submitted with application and obtain signature of the applicant on Application form and Annexure B.
- ix) In case where, the place of business or the identity of the applicant or details of bank account are not confirmed and/or the applicant is not available for signature on the required documents, the officer concerned shall follow due process of the law for cancellation of registration certificate.
- x) The instructions as above do not apply to the processing applications for enrolment (PTEC) under the Profession Tax Act.

Website Update

i) List of Reference Applications decided by Tribunal

The list of reference applications decided by Tribunal and received by the legal branch during the period from 1-4-2015 to 15-8-2015 is displayed under "What's New".

ii) CDA Compliance Demo Video

The CDA compliance demo video is made available on the site.





CA Rajkamal Shah & CA Naresh Sheth



INDIRECT TAXES

Service Tax – Statute Update

Clarification regarding the provisions of sections 73, 76 and 78 of the Finance Act, 1994 and section 11AC of the Central Excise Act, 1944 after amendments made *vide* Finance Act, 2015

1. Cases involving the extended period of limitation

- If an assessee pays the service tax/Central Excise duty, interest and penalty equal to 15% of the tax/duty, assessee can make a written request for waiver of show cause notice ('SCN').
- In case the assessee makes a written request for the waiver of a SCN, the 30 days period (referred under Clause (i) of the second proviso to section 78(1) of the Finance Act, 1994) can be computed from the date of receipt of such a letter by the department.
- There is no bar on the assessee making payment of tax/duty, interest and reduced penalty of 15% even before the date of receipt of such a letter by the department.

2. Cases not involving fraud, collusion, suppression of facts, etc.

- If the assessee pays the tax along with the interest (on the basis of own ascertainment or on departments ascertainment), no penalty is payable and no SCN to be

served under section 73(1) of the Act in respect of amount so paid.

- If the tax and interest thereon is paid within 30 days of the issue of SCN, no penalty shall be payable and the proceedings shall be deemed to be concluded.

3. Competent Authority to conclude the proceedings

- The conclusion of the proceedings may be approved by an officer equal in rank to the officer who is competent to adjudicate such cases.

The cases can be closed by officers of DGCEI/Executive Commissionerate/Audit Commissionerate, as the case may be.

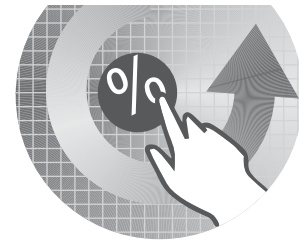
- If multiple issues involving different monetary values arise from the same proceedings, then the sum total involved in all the issues arising from the same proceedings should be considered for conclusion of proceedings.
- The conclusion of proceedings should invariably be intimated to assessee in writing.
- Adjudication order need not be issued and also review of conclusion proceedings need not be undertaken.

[F. No. 137/46/215 – ST dated 18-8-2015]





CA Bharat Shemlani



INDIRECT TAXES

Service Tax – Case Law Update

1. Services

Renting of Immovable Property Service

1.1 *Satya Developers Pvt. Ltd. vs. Pearey Lal Bhawan Association 2015 (39) STR 429 (Del.)*

After introduction of Renting of immovable property service, new lease deed entered between lessor and the lessee, wherein it is provided that, lessee shall take responsibility to pay all taxes and demands imposed on the lease. Suit filed by the landlord (lessor) decreed by the Single Judge holding that the lessee is liable to bear the liability of service tax. On appeal, it is held that, a contract between the parties on the subject can prescribe as to who would ultimately bear the burden of service tax imposed and since as per lease deed in the present case, lessee is liable for payment of all taxes and service tax being an indirect tax the service tax liability shall be on the lessee.

1.2 *New Okhla Industrial Development Authorities vs. CCEC&ST, Noida 2015 (39) STR 443 (Tri.-Del.)*

As per section 65(105)(zzzz) of FA, 1994 service provided in relation to renting of immovable property for use in the course of or in furtherance of business or commerce is a taxable service. Thus the ambit of taxable service is neither restricted to short term lease nor are leases identified or classified in terms of their

duration. Long term leases, thus, cannot be said to be outside the purview of taxable service of renting of immovable property. Further, there is no statutory guidance for classification of leases into long term and short term.

Supply of Tangible goods Service

1.3 *Bhima SSL Ltd. vs. CCE&ST, Pune-III 2015 (39) STR 440 (Tri.-Mumbai)*

The appellant in this case supplied bullock-cart without bullocks, possession and control over the cart did not lie with the service provider. The Tribunal held that, mere activity of renting of bullock-cart does not come within the purview of 'supply of tangible goods'.

Erection, Commissioning and Installation Service

1.4 *Plus Tech Engineering (P) Ltd. vs. CCE, Surat 2015 (39) STR 454 (Tri.-Ahmd.)*

The Tribunal in this case held that, activity of fabrication of structure at site for clients, amount to manufacture. Since the activity amounts to manufacture, the same is not leviable to service tax.

Port Service

1.5 *CCE, Bhavnagar vs. Gujarat Maritime Board (GMB), Jafrabad 2015 (39) STR 529 (SC)*

The assessee (GMB) statutory body enacted under GMB Act, 1981 has granted licence for

construction and use of jetty and the licensee has to maintain jetty in good condition, provide all services at/around jetty including dredging, navigation, water supply etc. The licensee was entitled to rebate @ 80% on wharfage charges levied by GMB. The Supreme Court held that, during currency of agreement, it was not GMB, but licensee has to keep jetty in good condition capable of enabling vessels to berth alongside it to load and unload goods. Hence, GMB has not render any service to licensee and there was no liability to service tax under Port Service. The rebate granted to licensee was neither lease rent nor licence fees as separate licence fees was payable under agreement.

Online Information and Data Base Access or Retrieval Service

1.6 *Photo-library India P. Ltd. vs. CST, Mumbai 2015 (39) STR 637 (Tri.-Mumbai)*

The appellant in this case storing data on website and charging and recovering fees for allowing downloading of data and claimed that it is covered under Copyright Act, 1957. The Tribunal held that, large collection of photographs may be copyrightable but access to said photographs and retrieval thereof by client on consideration is liable to service tax under Online Information and Data Base Access or Retrieval Service.

2. Interest/Penalties/Others

2.1 *Multi Engg. & Scientific Corp. vs. Bihar State Electricity Board 2015 (39) STR 414 (Pat.)*

The High Court in this case held that, liability to pay service tax is upon service provider and he has right to collect said tax from service recipient. There is no provision for recovery or reimbursement of any service tax by service provider from service recipient. Provisions of Section 64A of Sale of Goods

Act, 1930 confined to payment of tax in respect of any taxable event in relation to goods and not with regard to services.

2.2 *Sturdy Industries Limited vs. UOI 2015 (39) STR 422 (P&H.)*

In this case it is held that, even High Court under writ jurisdiction cannot condone delay beyond condonable period of limitation in case of filing appeal to Commissioner (Appeal).

2.3 *CCCE&ST, Guntur vs. Narayana Coaching Centre 2015 (39) STR 433 (AP)*

The High Court in this case held that, when there is a finding of fact that no show cause notice has been issued to the assessee then proceedings in connection therewith is a nullity and the adjudication thereon is also nonest.

2.4 *Textron India Pvt. Ltd. vs. CST, Bangalore 2015 (39) STR 468 (Tri.-Bang.)*

The department in this case rejected claim of rebate for absence of nexus between input services and exported output service. The Tribunal held that, while considering rebate claim for output service, nexus issue cannot be raised. There is no clear proposition or proposal for denial of CENVAT credit used for payment of service tax on output service in SCN and hence rejection of claim is not sustainable on this ground.

2.5 *Raasi Refractories Ltd. vs. CCEC&ST, Hyderabad-III 2015 (39) STR 472 (Tri.-Bang.)*

The Tribunal in this case held that, the total amount of service tax mentioned is more than ` 5.00 lakhs and therefore. AC/DC could not have adjudicated SCN in view of provisions of section 83A of FA, 1994 read with Notification No. 30/2005-ST. It is also held that, even penalty proposed in annexure to SCN is more

than impugned amount, therefore entire proceedings become invalid.

2.6 *Embitel Technologies (India) Pvt. Ltd. vs. CST, Bangalore 2015 (39) STR 612 (Tri.-Bang.)*

The department in this case denied refund under Notification No. 5/2006-CE(NT) on the ground that, export of service carried out from unregistered premises and relied on paragraph 3 of said Notification. The Tribunal held that, there is no prohibition in law for making export from unregistered premises and once admissible CENVAT credit accumulates and rule provides for refund, such refund cannot be rejected.

2.7 *Capgemini India P. Ltd. vs. CST, Mumbai 2015 (39) STR 641 (Tri.-Mumbai)*

The department in this case rejected refund under Rule 5 of CCR, 2004 on the ground of inability to ascertain exact classification of service on the basis of invoices. The Tribunal held that, the findings recorded by First Appellate Authority are improper for following reasons (i) Once assessee registered for provision of export of service under category of BAS and ITSS, Revenue cannot dispute export of service covered within meaning of ESR, 2005; (ii) Assessee registered with HTPI and STPI for export of service; (iii) Department ought to come to correct classification in case of any doubt and (iv) Information indicated on invoice was sufficient to come to conclusion that invoice in respect of export of software to sister/parent concern. The appellant has received consideration in CFE and refund on identical facts granted for earlier periods, hence there can be no impediment to hold against assessee and reject refund claim.

2.8 *Zydus Technologies Ltd. vs. CST, Ahmedabad 2015 (39) STR 657 (Tri.-Ahmd.)*

The department in this case rejected refund claimed by SEZ Developer under Notification No. 9/2009-ST of service tax paid on services used prior to commercial production in SEZ. The Tribunal held that, Notification No. 9/2009-ST cannot disentitle immunity enjoyed under sections 7 and 25 of SEZ Act, 2005. Hence, appellant is entitled to refund for services wholly consumed within SEZ in authorised operations.

2.9 *Cararo Technologies India P. Ltd. vs. CCE, Pune-III 2015 (39) STR 673 (Tri.-Mumbai)*

The department in this case rejected refund claim on the ground that address mentioned in invoice is not registered office and business premises and unutilised, accumulated CENVAT credit refund amount is exceeding the amount of CENVAT credit in ST-3 returns. The Tribunal held that, address where professional bills addressed is address of a group company, which is subsequently recognised as registered office by Revenue. Further, business is a continuous activity and therefore CENVAT credit cannot be restricted to amount of CENVAT credit availed during the period as per service tax return.

2.10 *Enervision Services P. Ltd. vs. CCE&ST, Hyderabad-II 2015 (39) STR 681 (Tri.-Bang.)*

The appellant in this case claimed rebate of service tax paid on commission received under BAS, which was rejected holding that, output service not exported as benefit of service tax received by buyers in India. The Tribunal held that, services provided were procurement of order and forwarding same to principal situated abroad, who was free to accept or reject the order. Hence, service was rendered to person situated abroad and was export of service.

2.11 *Ionnor Solutions Pvt. Ltd. vs. CCE&ST, Chandigarh-I 2015 (39) STR 698 (Tri.-Del.)*

The department in this case rejected refund claimed under Notification No. 5/2006-CE(NT) on the ground that credit was not pertaining to quarter during which exports undertaken and refund claim filed. The Tribunal held that, claim is not in violation of Notification and as per CBEC Circular No. 120/1/2010-ST dated 19-1-2010 refund claim for a particular quarter need not be in respect of input service consumed in that quarter. Further, appellant is not having any domestic sales and hence entitled to refund claimed.

3. CENVAT Credit

3.1 CCE, Rohtak vs. Haryana Sheet Glass Ltd. 2015 (39) STR 392 (P&H)

The Tribunal in this case allowed CENVAT credit of service tax paid on GTA service for outward transportation of freight paid for delivery up to buyers premises as the ownership and property of goods transferred at customer's doorstep.

3.2 CCE, Bangalore-II vs. Tata Steel Ltd. 2015 (39) STR 402 (Kar.)

The Tribunal in this case allowed CENVAT credit of service tax paid on canteen services to employees as the same is statutory obligation imposed under factories Act, 1948 and becomes condition of service as far as the employees are concerned.

3.3 Leroy Somer India Pvt. Ltd. vs. CCE, Noida 2015 (39) STR 466 (Tri.-Del.)

The department in this case denied CENVAT credit of service tax paid on repair and maintenance services of alternators sold during period of warranty. The Tribunal held that, during warranty period assessee is duty bound to provide free services to buyers of alternators and it is condition of sale. Therefore the same are covered under definition of Input Service as activity relating business.

3.4 Rucha Engineers P. Ltd. vs. CCE, Aurangabad 2015 (39) STR 518 (Tri.-Mumbai)

The department in this case denied CENVAT credit of service tax paid by Goods Transporter Agency instead of appellant under RCM. The Tribunal held that, it is immaterial who has paid service tax and any payment towards duty or service tax entitled for input credit/input service credit.

3.5 CST, Chennai vs. Verizon Data Services India P. Ltd. 2015 (39) STR 522 (Tri.-Chennai)

The department in this case denied credit for utilisation prior to obtaining registration and there was delay in obtaining registration and filing of refund claim was post registration. The Tribunal held that, there is no provision in CCR, 2004 restricting availment only for services received after date of registration. The essential criteria in Rule 9(2) of CCR, 2004 that services ought to have been received, accounted and used in providing taxable service. There is no reason to take different view from judgment in *Portal Wireless Solution Pvt. Ltd 2012 (27) STR 134 (Kar.)*.

It is further held that, there is no reason to deny CENVAT credit of service tax paid on renting of cafeteria, maintenance of air-conditioner, service of gym instructor as same are used for providing taxable output service.

3.6 CCE, Bangalore vs. PNB Metlife India Insurance Co. Ltd. 2015 (39) STR 561 (Kar.)

The department in this case denied CENVAT credit of service tax paid on reinsurance service availed from overseas insurance companies. The High Court held that, process of issuance of an insurance policy by insurer and subsequent procurement of reinsurance policy from another company is an integral part of total process. If entire service tax

collected by insurer while selling insurance policies has to be deposited without being given credit of tax which is paid by it while procuring a policy of reinsurance, same would be against ethos of CENVAT Credit policy as same would amount to double taxation, which is not permissible in law.

3.7 CCE, Bangalore-I vs. Interplex Electronics India Pvt. Ltd. 2015 (39) STR 578 (Kar.)

The High Court in this case allowed CENVAT credit of service tax paid on Rent-a-Cab service for transportation of employees from home to factory and back to home and on outdoor catering service for providing food to their employees.

3.8 Gujarat Tea Depot Co. vs. CST, Ahmedabad 2015 (39) STR 629 (Tri.-Ahmd.)

The appellant in this case provided IPR service and claimed CENVAT credit on packaging of tea on own account and contended that avilment of services of packer is in order to protect brand name/trade name. The Tribunal *inter alia* held that, there is no provision in Trade Marks Act, 1999 or any rules mentioned under which it is obligatory on part of assessee to compulsory use trade mark himself. Packaging services are not availed directly for protecting trade mark/brand name but to be considered to have been utilised for making of tea bags. Therefore, credit is not admissible.

3.9 India Vision Satellite Communications Ltd. vs. CCEC&ST, Cochin 2015 (39) STR 684 (Tri.-Bang.)

The Tribunal in this case, held that service recipient is not responsible for examining the correctness of service tax paid by service provider and they are entitled to claim the credit service tax charged by the Service provider.

3.10 CST, Bangalore vs. Yodlee Infotech (P) Ltd. 2015 (39) STR 695 (Tri.-Bang.)

The Tribunal in this case held that, terrace area and parking area cannot be excluded while calculating admissible credit in respect of renting of immovable property service. Further, credit of service tax paid on various services has been allowed as there was nexus between input service and output service and in view of retrospective amendment to Notification No. 5/2006-CE(NT) in 2010 removing words "used in" by words "used for" which removed distinction between provisions of CCR, 2004 which provide for use of input service for providing output service.



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OTHER LAWS FEMA Update

In this article, we have discussed the recent amendment to FEMA through Notifications and Circulars issued by RBI:-

Foreign Direct Investment – Reporting under FDI Scheme on the e-Biz platform

With a view to promoting the ease of reporting of transactions under foreign direct investment, RBI, under the aegis of the e-Biz project of the Government of India has now enabled online filing of the Foreign Currency Transfer of Shares (FCTRS) returns for reporting transfer of shares, convertible debentures, partly paid shares and warrants from a person resident in India to a person resident outside India or vice versa.

The reporting platform enables the customer to login into the e-Biz portal, download the reporting form (FCTRS), complete and then upload the same onto the portal using their digitally signed certificates. The AD Banks will be required to download the completed forms, verify the contents from the available documents and if necessary, call for additional information from the customer and then upload the same for RBI to process and allot the Unique Identification Number (UIN).

Online filing of Form FCTRS is to be made operational on the e-Biz platform from August 24, 2015.

(A.P. (DIR Series) Circular No. 9 dated 21st August, 2015)

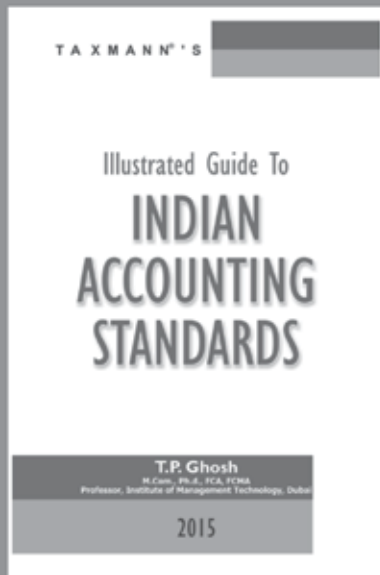
{Vide A.P. (DIR Series) Circular No. 77 dated 12th February, 2015, RBI had enabled online filing of Form ARF and FCGPR via the e-Biz platform.

Currently, the online reporting on the e-Biz platform is an additional facility to the Indian residents to undertake their FCTRS, FCGPR & ARF reporting and the manual system of reporting will continue till further notice.

The AD Banks are required to access the e-Biz portal [which is hosted on the National Informatics Centre (NIC) servers] using a Virtual Private Network (VPN) Account obtained from NIC. Procedural and financial aspects of obtaining/using the VPN accounts by the AD Banks are provided by RBI vide A.P. (DIR Series) Circular No. 95 dated April 17, 2015. A detailed user manual has been annexed to the said Circular.

Enabling e-filing of these forms is a good move forward as it will save both time and cost. This platform will ensure real time submission of forms with the RBI and do away with the delay caused (sometimes) by AD Banks in accepting the forms from the Indian parties for onward submission of the same to RBI. It is positive step towards ease of doing business in India.}





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BEST OF THE REST

1. Professional activity carried on in residential premises by lawyer – Levy of property tax – Activity of such kind cannot be termed as professional establishment and premises cannot be termed as business building within purview of Bye-law 9(b) – Levy of property tax on such premises – Not proper. [Delhi Municipal Corporation Act of 1957, Ss. 481, 2(3), 116A(f)]

The Hon. High Court was considering an issue that whether user of portion of house for consultation work by lawyer and study by his son can be termed as professional establishment and premises can be termed as business building and levy of property tax on such premises was permissible or not .

Bye-law 9(b) of Delhi Municipal Corporation (Property taxes) Bye-laws (2004), in the context of professionals only refers to 'professional establishment'. It does not refer to the expression 'professional activity' which has been defined and permitted by the MPD 2021 in a residential premise.

The Hon'ble Delhi High Court in this case observed that there is a fundamental distinction between a professional establishment and professional activity and therefore, MPD 2021 and Bye-law 9(b) advisedly use different expressions.

The distinction between 'professional activity, and 'professional establishment' can be illustrated by the following example. A 'professional's office would be a 'professional establishment' when the usage of the office space is in excess of the conditions

stipulated in Clause 15.8 of the MPD 2021 or if the said office is situated in a building designated as commercial or business in the MPD 2021 and Zonal Plan. In the opinion of this Court, a premise would not become business premise just because a lawyer read his office file or did some official work at his residence.

'Professional activity' as defined and permitted by the MPD 2021 has not been diluted or subject to tax by Bye-law 9(b). After all, the intent of the authorities could not have been to take back the concession given by the MPD 2021 in Clause 15.8 in the form of permissible activity by levying property tax! Moreover, by a deeming fiction in a subordinate legislation (i.e. a bye-law), the Executive cannot act contrary to the parent statute or to another statute namely, the Master Plan in the sense that an excluded activity cannot be included. Consequently, a building where no business is transacted cannot be included by a deemed fiction in a bye-law especially when professional activity within certain parameters is permitted by MPD 2021.

Moreover, as the building in the present instance is owned by a single entity, having no separate access it has to be classified for property tax purposes for only one usage. Splitting of uses, as in the present case is contrary to section 115A of DMC Act, 1957.

Thus, the High Court held that use of portion of house for consultation work by lawyer and study by his son cannot be termed as professional establishment and premises cannot be termed as

business building and levy of property tax on such premises is illegal.

B. N. Magon vs. South Delhi Municipal Corporation. AIR 2015(NOC) 875 (Delhi) 325

2. Interpretation of Statutes – Provisions starting up with non obstante clause – Proviso added to main provision would not dilute the express bar provided in main provision

The Hon'ble High Court of J&K observed that proviso to a particular provision of a statute only embraces the field which is covered by the main provision and it carves out an exception to the main provision to which it has been enacted as a proviso, and to no other.

The S. 142 of Constitution of Jammu and Kashmir itself starts with a *non obstante* clause, proviso added to clause (b) of S. 142, thereby would relate only to what is contained in clause (b). Therefore, the proviso in question would not affect the bar contemplated by the *non obstante* clause with which S. 142 opens, that no election shall be called in question except by election petition. Proviso to S. 142 would not have the effect of diluting the express bar contained in the provision and give the petitioner a right or cause to approach this Court in its extraordinary writ jurisdiction. Object to adding the proviso to clause (b) of S. 142 of the State Constitution, was only to exclude the bar contained therein against making a law by the Legislature to provide an appellate forum by it for a person whose nomination paper has been rejected.

However it does not exclude or lift the bar against calling in question the 'election' except by an election petition.

Mohamad Anwar Khan vs. State of J&K & Others. AIR 2015 (NOC) 869 (J & K) 323

3. Term 'legal representatives' – Married sons/daughters also can maintain claim petition before Tribunal. [Motor Vehicles Act of 1988), Ss. 166,140; Employee's Compensation Act (8 of 1923), S. 2(1)(d)]

The issue before the Hon. Court was whether the term "legal representative" mentioned in section 166 of the Motor Vehicles Act should be restricted

to term "dependents" and excluding married daughters/sisters/brother therefrom.

The Hon'ble Madras High Court has observed that 'Legal Representative' ordinarily includes heirs as well as persons, who represent the estate of the deceased person or a person, on whom, the estate devolves on the death of an individual. Right to claim for compensation by any or all legal representatives under Section 166 of the Motor Vehicles Act is a legal right. It is an assertable right enforceable before the Courts in its wider sense and therefore, a legal right has to be understood, as any advantage or benefit conferred upon a person by a rule of law, it is held that the definition of " legal representatives" cannot be restricted to exclude married daughters/sisters, from making any claim under Section 166 of the Act and consequently, restrict their claim, only under Section 140 of the Act, which has been engrafted in the statute, with a specific object of compensating all the legal representatives, whether there is negligence, on the part of the deceased or not. It is a "No Fault Liability" clause.

The Hon'ble Madras High Court has further observed that exclusion of a married daughter/sister/brother from the claim petition, altogether would be opposed to the object of the Act and it would be amounting to adding words to the legislation, which the court is not supposed to do. Thus, merely because a married daughter/sister is living with her husband, in a separate house, that by itself would not disentitle her from claiming compensation, as a legal representative, to represent, the estate of the deceased.

If a married daughter/sister/brother has to be excluded from the expression, "legal representative", employed in section 166 of Motor Vehicles Act then it would virtually amounting to substituting the words " legal representative " with "dependants", used in section 2(1)(d) of the Workmen's Compensation Act.

Thus it could not be said that the married sons and daughters are not entitled to maintain a claim, under sec 166 of the Motor Vehicles Act and seek for appropriate compensation .

M/s. United India Insurance Company Ltd., Udumalpet vs. A. Kaliammal and Others. AIR 2015 (NOC) 844 (Mad.) 315

4. Condonation of delay – Sufficient cause – Delay of 318 days in filing first appeal – Conduct of applicant did not indicate inaction, negligence or mala fides – Delay Condoned [Limitation Act 1963, Sec 5; CPC 1908, S.96]

In the present case Applicant/Defendant was not represented by advocate before trial court. This resulted in ex parte decree against him. Defendant delayed filing of appeal by 318 days.

The Hon'ble High Court observed that there was a cause of action to file the First Appeal more particularly when applicant could not get a chance to defend. Trial Court has without application of mind observed that it has considered the submission of both sides. Also the advocate for the applicant had resigned himself from the litigation.

Though there may be some negligence on the part of the applicant, such negligence on the part of the applicant does not fit into the category of "gross negligence" or "lack of *bona fides*" or "unreasonableness" or "fraud, misrepresentation or interpolation". There was *bona fide* belief on the part of the applicant that concerned advocate was representing them before the court.

The explanation furnished for delay of 318 days constitutes a sufficient cause and therefore, deserves to be accepted and further, in such matters explanation of day to day delay is not material.

Comed Chemicals Ltd. vs. USV Ltd. and Another. AIR 2015(NOC) 838(Guj.)313

5. Redevelopment of old buildings by society – Termination of agreement due to breaches committed by plaintiff developer, proper – No case made by developer of readiness and willingness to perform its obligations under Development agreement – Third party purchasers cannot enforce their claim against society or new developer: Maharashtra Regional and Town Planning Act (37 of 1966), S. 158; Development Control Regulations for Greater Mumbai (1991), Regn. 33(5)

In the present case society entered into redevelopment agreement with the developer (plaintiff). The redevelopment envisages construction of the society's building to accommodate its members and also construction of buildings of flats/premises to be sold to outsiders. The agreement authorizes or entitles the developers to construct such building of flats /premises to be sold to outsider. Such authority or entitlement is to the developer's account and in their own right, and as an independent contractor. As the developer committed breach of development agreement the agreement was terminated by society. Later on society entered into contract with another developer.

The Hon'ble High Court observed that Plaintiff was seeking specific performance of agreement but the facts and material in hand showed that plaintiff *prima facie* committed breach of development agreement. Meetings of society were convened after adequate notices of business to be transacted at meetings were given. Also, managing committee had requisite authority to convene the meetings. Society entered into development agreement with another developer after duly passing resolutions of its general body in duly convened Special General Body Meetings.

It was held that since there was no case made by developer of readiness and willingness to perform its obligations under Development agreement termination of agreement by society is proper. Developer was not entitled to specific performance of development agreement.

The Court further observed that the third party purchasers cannot claim specific performance of their respective agreements for sale except through previous developer. They stand or fall by previous developer. If previous developer fails to perform their obligations, the purchasers cannot but suffer the consequences. In other words, the purchasers rights are subject to previous developers rights and not higher than those.

Vaidehi Akash Housing Pvt. Ltd. vs. New D. N. Nagar Co-op Housing Society Union Ltd., and Others. AIR 2015 (NOC) 772 (Bom.) 289.





CA Rajaram Ajgaonkar



ECONOMY AND FINANCE

STRESS IN CHINA

The month of August proved negative for the global economies. The biggest factor causing stress was the Chinese economic slowdown and a rout in its stock markets. The fall that began in the month of June escalated further in August and the Chinese stock markets lost more than ten per cent in market capitalisation in that single month. Probably, there was a bubble created in the Chinese stock markets on account of excessive speculation, which was fuelled further by easy availability of credit to the investors. Further, there were distinct signs of the Chinese economy slowing down, which caused alarm bells to ring across the world. Over the last few years, Chinese businesses have created huge production capacities for a large number of products and mainly commodity based products, keeping an eye on the export markets. These capacities were created due to foreign exchange reserves accumulated by large export surplus generated by the country over the last couple of decades. During the last few years, China has tried to systematically make inroads in the value-added manufacturing sector and emerged as the biggest supplier of products to many developed countries. Initially, manufacturing shifted to China on the back of cheap labour available in that country. The export surplus was used by China for creating massive infrastructure and capacities. To secure raw material over a long-term, China made specific

efforts to support not only the nearby countries but far off economies of many countries in Africa, who had abundant natural resources, which could assure raw material supply to Chinese manufacturing. These countries were aggressively funded and relevant infrastructure was created to export the commodities produced therein to China. The slowing Chinese economy is causing a lot of concern to these economies which supply raw material to that country and if the slowdown is not controlled, more pain can be caused to a large number of such countries.

Many developing and underdeveloped countries are dependent on China as a large scale buyer of their produce. China is also a source of cheap supplies of products to the world. Over the last two decades, the Chinese economy has become a major link between the developed and developing countries. Slow down in that economy is sure to create a flutter in the world. The countries supplying raw materials will suffer due to reduced demand and resultant fall of their exports, which can cause further fall in realisation from the produce. It may result in economic slowdown in those countries. Slow demand from the developed world indicates that all is not well for the global economies and the growth engines of the world are somewhere faltering, causing possibilities of further uncertainty and pain. Therefore, the turbulence in the Chinese economy has large scale

global repercussions and so is becoming a matter of concern to economies and consequently, to the stock exchanges across the world.

To make matters worse, China devalued its currency by more than 3.5% per cent in the month of August. This move was intended to make Chinese exports cheaper for rest of the world. However, the devaluation has created obvious ripples in the currency markets and by design or by operating economic forces, most of the currencies have depreciated against the US Dollar within the next few days, thereby nullifying the advantage of devaluation, which China wanted to gain from. Consequently, the move has created uncertainty in the minds of many economies as well as investors. A further devaluation of currency by China is a possibility and the negative effect of the same can be felt by many currencies and countries creating a negative impact on the economic outlook of the world. It can result in a currency war due to devaluations, which is unhealthy and harmful for world economic growth.

The pain in the stock markets of China has not remained restricted to that country and it has fast spread to the stock markets across the world. During the month, the Chinese markets have faced extreme volatility; and swings in the stock prices were huge. The authorities of the country have made efforts to rein in the rout by interventions from time to time but the efforts have not yielded the required results so far. Further, it has sent out wrong signals to global investors with regards to the sustainability of the pull backs experienced in the stock prices from time to time. The uncertainty has increased enormously and investors are feeling hesitant to invest and commit. Such a situation is detrimental to economic growth of any country as well as the world at large.

Though a lot of pain has been experienced by investors in China over the last three months, the risk in the economy has not tapered. The concerns emerging are fully valid and a slowdown may be creeping in China, which can engulf a lot of other economies as well. The reasons of the Chinese woes are deep rooted and corrective actions may

not produce quick results. More turbulent times may still be in store for China and many countries dependent on the Chinese economy.

The commodity cycle has already slowed down. Falling Chinese consumption can further reduce demand. The exports of many countries can decline and their currencies may feel the pinch. It may result in a slowdown or even recession causing social and political unrest. The commodity suppliers had a good decade on the back of growing demand. The times have changed and a glut in the commodities and resultant fall in prices has forced many economies to change their policies to be able to withstand the emerging economic storm, the proportion of which is unpredictable at this stage.

Fortunately, the US economy is on the right track. Employment in that country is increasing and economic growth is on track, subject to a few hiccups. Though there are talks that the economy has not developed the required traction as yet to sustain the desired growth rate, the data is indicating that there is an improvement. Over the last number of years, the US economy is boosted by quantitative easing and low interest rates. Time has probably come for the US to start raising the interest rates. The decision of starting the interest rate hike is an important event, not only for the US but even for the rest of the world as the economic equations will start changing from that day. The likely date of such a decision can be as close as the FED meeting on 17th September or any time before the end of the calendar year. While taking the decision, the US cannot ignore the events in China, which can affect not only most of the economies of the world but can also impact the US. Therefore, the FED needs to take a calibrated decision about the rate hike. The current concern of many developing countries is increased interest rates in the U.S. can start exodus of funds to that country from the emerging markets. At the same time, by delaying the rate hike, signals of weakness in the US economy can get flashed, which can be detrimental to sentiments.

The expectations from the Indian economy were quite high since the new Government had come

in power. The slowdown in China can create an opportunity for the Indian manufacturing sector on which the new Government is very keen. However, the lack of reforms is holding back the speed of growth of the nation. The GST is being long awaited without any clear progress. Passing of land bill in appropriate form is extremely essential to be able to garner large tracts of suitable land to set up the factories and infrastructure for make in India to progress. In the recent times, the legislations have gone harsher, which are detrimental to many entrepreneurs taking risks. Albeit the laws are made for reining the siphoning of money and avoidance of tax by the businesses, the stringent provisions have created risk for entrepreneurs and mainly for the directors and officers of corporate entities. For India to take advantage of a slowdown in China the Government needs to take steps of reforms immediately and they need to be supported even by the opposition parties. If India misses the bus, the country may not get a similar opportunity for many decades to come.

As the numbers indicate, the Indian economy has slowed down a bit in the first quarter of the financial year 2015-16. Considering the economic turmoil in the globe, the chances of improvement in the balance three quarters are not looking bright. If China takes some drastic steps to fight back its slowing growth and especially export oriented growth, Indian exports and consequently the balance of payment may suffer. The uncertainties are serious and India has no control over many of the global events. The expectation of a better growth rate for the current fiscal year has tapered off. A lowering of interest rates may trigger some positive sentiments but meaningful impact can probably be seen only in the next financial year. As of now, the indicators are such that India may achieve 7% growth rate for the current fiscal year but achieving the last year's growth rate can be a struggle. Government is optimistic but their expectation seems to be a bit ambitious, especially in the light of inadequate monsoon in the Indian subcontinent. This year, India may struggle to achieve growth in agricultural production, which

may hamper the overall growth rate. Lower agricultural output can mainly impact the rural economy, thereby hampering rural consumption, which can affect the manufacturing as well as the service segments in the economy. There is a possibility that the investible funds coming from foreign sources may slow down on a net basis after an interest rate hike by the FED. The recent sell-off by the Foreign Institutional Investors (FIIs) may affect not only the inbound investments in the country but also the exchange rate of the Rupee with the US Dollar. Based on macro economic parameters and comparison of the state of affairs of other developed countries with India, the investment advisors are more optimistic about 2016-17 as compared to 2015-16. The situation is not vulnerable for India as is for many economies in the world. A major solace is that the Indian economy seems to be much healthy and stable than those of many other countries and its growth rate is sustainable over the medium to long-term period due to its demography, domestic consumption and stable political climate.

The stock markets in India, like in most other parts of the world, have tanked in the month of August and the fall continues even in the month of September. The markets fell by 6.5% during the month and they are down by more than 15% from their peak in the month of January. Such volatility means that there is a chance for the investor to gain as well as to lose big and therefore a correct choice of investments and wise allocation of funds becomes critical. Considering the overall outlook of the global and Indian economy, the Indian stock markets are likely to remain subdued in the month of September. Even traditionally it is a comparatively weak month for the Indian stock markets. Therefore caution is essential for equity investments. If the markets retreat further from their current levels by about 5%; and if Sensex reaches the level of 24000 and Nifty buckles to 7300, investors may start accumulating stocks of well managed companies. The exporters of goods or services are likely to fare better. Investors may also take a look at public sector undertakings, which have good dividend paying track records.



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Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th August, 2015 to 8th September, 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 18th August, 2015.

LIFE MEMBERSHIP

1	Ms. Wala Neha Hareesh	B. Com	Mumbai
2	Mr. Shah Chetan Rameshchandra (Tr. Ord. to Life)	CA	Navi Mumbai
3	Mr. Arolkar Abhay Jasant	CA	Mumbai
4	Mr. Gupta Chandrahas A.	CA	Mumbai
5	Mr. Bapat Deepak Krishnaji	Advocate	Mumbai
6	Mr. Marda Sanjay Ranglal	CA	Solapur
7	Mr. Risbud Shridhar Hemant	CA	Solapur
8	Mr. Varde Vishwas Jaywant (Tr. Ord. to Life)	Advocate	Mumbai
9	Mr. Jhunjhunwala Sumit Bijay	CA	Mumbai

ORDINARY MEMBERSHIP

1	Mr. Furia Mitul Kiran	CA	Mumbai
2	Mr. Dedhia Harsh Hasasmukh	CA	Mumbai
3	Mr. Talati Dhaval Bhasker	ITP	Mumbai
4	Mr. Paranjape Prasad Vasudeo	Advocate	Mumbai
5	Mr. Sharma Anil	CA	Mumbai
6	Mr. Dedhia Manish Shantilal	CA	Mumbai
7	Mr. Bhagat Nilesh Bhola	CA	Mumbai
8	Mr. Dave Lalit Kumar Ghisulal	CA	Mumbai
9	Mr. Dave Lilashankar Shisulal	CA	Mumbai
10	Mr. Malpathak Shantanu Dinesh	CA	Mumbai
11	Mr. Somvanshi Nishikant Devidas	ITP	Mumbai
12	Mr. Doshi Deepak Rameshchandra	CA	Mumbai
13	Mr. Dalal Vridhi Pankaj	CA	Mumbai
14	Ms. Shrivastav Pramila Rajendra	Advocate	New Delhi
15	Mr. Kenia Jignesh Vasant	CA	Mumbai

16	Ms. Maru Priyaka Jethalal	Advocate	Mumbai
17	Mr. Bankar Uttam Dattu	CA	Solapur
18	Mr. Joshi Ankit Anil	CA	Mumbai
19	Mr. Patel Jitendra Dhanji	CA	Mumbai
20	Mr. Mehta Parag Girish	CA	Mumbai
21	Mr. Gandhi Shashil Nandkumar	CA	Akluj
22	Mr. Shah Rishikesh Arvind	CA	Solapur
23	Mr. Patil Mallinath Kalyanappa	Advocate	Solapur
24	Mr. Ingale Sunil Govind	CA	Solapur
25	Mr. Shah Bhahubali Arvind	CA	Solapur
26	Mr. Shah Uday Kundanlal	B. Com	Mumbai
27	Mr. Kapat Haren Sahadeb	Advocate	Mumbai
28	Mr. Bhattad Radhesham Nathmal	CA	Solapur
29	Mr. Madgundi Ashok Dattatray	CA	Solapur

STUDENT MEMBERSHIP

1	Mr. Sharma Ankush Sanjiv	Student	Chennai
2	Ms. Budh Anvi P.	Student	Mumbai
3	Ms. Joshi Hiral Janakkumar	Student	Mumbai
4	Ms. Chopra Ragini Ashok	Student	Mumbai
5	Ms. Shah Shivani Nilesh	Student	Mumbai

ASSOCIATE MEMBERSHIP

1	Subhkam Ventures (I) P. Ltd.	B. Com	Mumbai
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II. Past Programmes

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
1.	ALLIED LAWS COMMITTEE		
A.	Lecture Meeting on Provisions of Accounts and Audit under New Companies Act (Jointly with Corporate Members Committee, CTC & JB Nagar Study Circle of WIRC, Andheri East)	12th August, 2015 Subject : 1. Auditor's Reporting Requirement as per New Companies Act as well Standard of Auditing.	CA Himanshu Kishnadwala
	Venue: All India Local Self Govt. Institute Mayor Hall, Juhu Lane, Andheri.	2. Provisions of Accounts & Audit Under New Companies Act.	CA Nilesh Vikamsey
B.	Allied Laws Study Circle Meeting Venue: Kilachand Conference Room, IMC	13th August, 2015 Subject : Importance of Drafting Wills	Mr. P. A. Jani, Solicitor

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
C.	Full Day Seminar on “Audit under various Laws” Jointly with Corporate Members, Direct Taxes and Indirect Taxes Committee Venue: Terrace Room, West End Hotel, Mumbai	5th September, 2015 Subject : 1) Implications of News Companies Act on Financial Statements 2) Commonly observed non compliances in Accounting Standard 3) Issues in Tax Audit 4) Audit under Indirect Tax	CA Jayesh Gandhi CA Sanjeev Maheshwari CA Mahendra Sanghvi CA Sunil Gabhawalla
2.	DIRECT TAXES COMMITTEE		
	Intensive Study Group (Direct Tax) Meeting Venue : CTC Conference Room	19th August, 2015 Subject: Recent Important Decisions under Direct Taxes	CA Dharan Gandhi
3.	INDIRECT TAXES COMMITTEE		
A.	Indirect Taxes Study Circle Meeting Venue: 2nd Floor, Babubhai Chinai Committee Room, IMC	11th August, 2015 Subject : Issues in Service Tax Refund	Chairman : CA Naresh Sheth Group Leader : CA Keval Shah
B.	GST Study Group Meeting Venue : Audio Visual Centre, 4th Floor, Jaihind College, Churchgate	20th August, 2015 Subject : Inter-State supply of goods and services	Group Leader : Mr. Rohit Jain, Partner, ELP
C.	Indirect Taxes Study Circle Meeting Venue: Banquet Hall, Dadar Club, Near Yogi Sabhagruha, Dadar (East), Mumbai	7th September, 2015 Subject : Issues in CENVAT Credit	Chairman : Mr. Gajendra Jain, Advocate Group Leader : CA Vinod Awtani
4.	INTERNATIONAL TAXATION COMMITTEE		
A.	Seminar on Black Money Law and Voluntary Compliance Window Venue : Dahanukar Hall, Maharashtra Chamber of Commerce, Industry & Agriculture, Oricon House, 6th Flr, 12, K. Dubash Marg, Fort, Mumbai.	20th August, 2015 Subject : (1) Key issues under Black Money Law and Voluntary Declaration Window (2) Special session in Q and A format	(1) CA Nihar Jambusaria (2) CA T. P. Ostwal (Interview by CA Nilesh Kapadia and CA Mayur Nayak)

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
B.	Intensive Study Group on International Taxation Meeting Venue : CTC Conference Room	1st September, 2015 Subject : Black Money Law – Rules and FAQs	CA Ramesh Iyer
C.	FEMA Study Circle Meeting Venue : CTC Conference Room	3rd September, 2015 Subject: Foreign Exchange Regulations in relation to Overseas Investments by Indian Residents	CA Ronak Gangar CA Kartik Badiani
5.	MEMBERSHIP & PUBLIC RELATIONS COMMITTEE		
A.	NRI Taxation & Amendments in CARO 2015 (Jointly with Solapur Branch of WIRC of ICAI) Venue : Kamla Hall, Hotel Tripursundary, Sath Rasta, Gandhi Nagar, Solapur	16th August, 2015 Subject : (1) Basic Concepts of NRI & Resident but not ordinarily resident under IT Act, FEMA Act, RBI Act & treatment of various income, various types of accounts that can be kept & their treatment including certificates to be issued if any. (2) Amendments in CARO 2015, Depreciation (Sch. II) with examples & Audit report drafting & consideration to be given with respect to S.143 of Companies Act & Privileges relating to Private Companies. (3) Unfold of GST. (4) Representation before Service Tax Authorities & also appearing for Scrutiny.	CA Manoj Shah CA Abhay Arolkar CA Dhiraj Baldota CA Manish Gadia
B.	Lecture Meeting at Ulhasnagar Jointly with Thane Branch of WIRC of ICAI, Ulhasnagar, Bhiwandi, Kalyan & Dombivli CPE Study Circles	6th September, 2015 Subject : 1) Recent Direct Tax issues under Doubtful purchases vis-a-vis investigation under MVAT Act	Mr. Ajay Singh, Advocate

Sr. No.	Programme Name / Committee/Venue	Dates / Subjects	Chairman / Speakers
	with Ulhasnagar Tax Consultants Association (Seven Associates) Venue : Mansukhani Institute of Management, CHM Campus, Near Railway Station, Ulhasnagar – 421 003.	2) Important issues under Tax Audit	CA Jagdish Punjabi
6.	STUDY CIRCLE & STUDY GROUP COMMITTEE		
A.	Study Group Meeting Venue : Babubhai Chinai Committee Room, IMC	8th September, 2015 Subject : Recent Judgments under Direct Taxes	CA Kishor B. Karia

III. Future Programmes

Sr. No.	Programme Name / Committee/Venue	Day & Date	
1.	ALLIED LAWS COMMITTEE		
A.	Allied Laws Study Circle Meetings (Only for ALC SC Members) Venue: 2nd Flr, Kilachand Hall, IMC, Mumbai. (For Both Meetings)	9th September, 2015 Subject : Provisions of RTI	Chairman: CA Narayan Varma, Past President Group Leader Mr. Bhaskar Prabhu, Convenor, Mahiti Adhikar Manch
B.		15th October, 2015 Subject : Opportunity to Professional in Insurance Sector	Mr. G.L.N. Sharma Managing Director, Hannover Re Consulting Services
C.	Full Day Seminar on Charitable Trusts Jointly with Bombay Chartered Accountants Society	7th November, 2015 Subject : 1) a. Keynote Address b. Presentation on Important Procedural Aspects for Trustees and Professionals. c. Guest of Honour d. Way Forward to Charities	Charity Commissioner (MH)* Dy. Charity Commissioner / Asst. Charity Commissioner* Commissioner of Income Tax (Exemption)* Prominent Senior Faculty

Sr. No.	Programme Name / Committee/Venue	Day & Date	
		2) Important Provisions of Maharashtra Public Trusts Act, 1950 and Drafting of Trust Deed 3) Formation of Trust under MPT Act, Society Reg. Act and under Companies Act. Drafting of MOA & Rules and Regulations 4) Issues on Registration with IT Dep u/ss. 12A / 80G and approval u/s. 10(23C)including recent amendment's 5) Taxation on Charitable Trusts 6) Foreign Contribution Regulation Act & CSR Provisions	CA Vipin Batavia CA Paras Savla Eminent Faculty CA Rajesh Kadakia Mr. Shailesh Haribhakti (*) Subject to final confirmation.
2.	CORPORATE MEMBERS COMMITTEE		
	Seminar on Internal Financial Controls – Views of an Expert Panel of Designers, Implementers and Reviewers of IFC Venue : M. C. Ghia Hall, K. Dubhash Marg, Kala Ghoda, Fort, Mumbai.	9th October, 2015 Subject : 1) Keynote Address 2) Panel Discussion including an Open Forum	Eminent Speaker Panellists : CA Mahesh Tahiliyani, Group CFO, Shapoorji Pallonji & Co. Ltd. CA Nahesh Pinge, Chief Internal Auditor at Tata Motors Limited CA Sai Ram, Partner Deloitte Panel Moderator : CA Ashutosh Pednekar
3.	DIRECT TAXES COMMITTEE		
	Intensive Study Group (Direct Tax) Meeting (For ISG DT Members only) Venue : CTC Conference Room	12th October, 2015 Subject : Recent Important Decisions under Direct Taxes	Eminent Faculty

Sr. No.	Programme Name / Committee/Venue	Day & Date	
4.	DELHI CHAPTER		
A.	<p>Half day Seminar on 'Black Money Law & Voluntary Compliance Window' and 'Recent developments & issues under Income tax for builders/developers/ land owners / flat purchaser / sellers</p> <p>Venue : India International Centre, Lecture Room I, Annexe Building, Dr. K.K. Birla Lane, Max Mueller Marg, Lodhi Estate, New Delhi – 110 003</p>	<p>12th September 2015</p> <p>Subject :</p> <p>1) Black Money Act & Voluntary Compliance Window</p> <p>2) Taxation of Builders and Developers; Issues under Income tax from the perspective of land owner / flat purchaser / seller (including sections 43CA, 50C, 194-IA, 56(2), 54, 54F etc.)</p>	<p>Dr. Girish Ahuja</p> <p>Dr. Ravi Gupta</p> <p>Panel Discussion/ Question Answer format</p> <p>Dr. Girish Ahuja</p> <p>Dr. Ravi Gupta</p> <p>Mr. R. P. Garg</p> <p>Mr. C. S. Mathur</p>
B.	<p>Full Day Seminar on 'Case Studies on Secondment and Expatriate – Taxation & Regulatory Issues from both Employer's and Employee's Perspective'</p> <p>Venue : India International Centre, Lecture Room I, Annexe Building, Dr. K. K. Birla Lane, Max Mueller Marg, Lodhi Estate, New Delhi – 110 003.</p>	<p>10th October, 2015</p> <p>Subject:</p> <ul style="list-style-type: none"> • Secondment of employees – Typical secondment arrangement • Expatriate – Residential Status, Critical tax Issues • Tax issues from an employer's perspective (including PE risks) • Expatriate – Social Securities, Provident Fund, and Regulatory aspects • Black Money Law implications on Expatriates 	<p>The seminar will be addressed by eminent Faculties</p>
5.	INDIRECT TAXES COMMITTEE		
A.	<p>Indirect Taxes Study Circle Meetings</p> <p>(Only for IDT SC Members)</p> <p>Venue: 2nd Floor, Babubhai Chinai Committee Room, IMC.</p>	<p>13th October, 2015</p> <p>Subject : Service Tax Investigations, Audit & Scrutiny</p>	<p>Chairman : CA Rajiv Luthia</p> <p>Speaker : CA Shrikant Shenoy</p>

Sr. No.	Programme Name / Committee/Venue	Day & Date	
B.	(For Both Meetings)	24th November, 2015 Subject : VAT Issues in Works Contract and Interstate Works Contract.	Chairman : Ms. Sujata Rangnekar, Advocate Group Leader : CA Kiran Garkar
C.	Seminar on Applicability of VAT and Service Tax on IPR and IPR Related Transactions (VIZ., Trademark, Copyrights, Franchise, etc.) Venue : Terrace Hall, West End Hotel, New Marine Lines, Mumbai.	28th November, 2015 Subject : 1) Study of Applicability of Service Tax VAT on IPR and IPR related transaction. 2) Brains Trust Session	CA Parind Mehta & CA Divyesh Lapsiwala Trustees : Mr. V. Sridharan, Senior Advocate & Mr. C. B. Thakkar, Advocate
D.	4th Residential Refresher Course on Service Tax Venue : Aamby Valley	29th January, 2016 to 31st January, 2016	All other details of the papers, the eminent speakers and its related price will be announced shortly
6.	INTERNATIONAL TAXATION COMMITTEE		
A.	Half Day Seminar on TDS under Section 195 on Payment to Non-Residents Venue : Dahanukar Hall, Maharashtra Chamber of Commerce, Industry & Agriculture Oricon House, 6th Flr, 12, K. Dubhash Marg, Fort, Mumbai.	12th September, 2015 Subject : 1. Issues under Section 195 with reference to amendments in Section 195(6) 2. Panel discussion on practical case studies and issues	CA Sushil Lakhani Chairman : CA Kishor Karia Panellists : CA Gautam Nayak and CA Vishal Gada
B.	Transfer Pricing Study Circle Meeting (For TP SC Members only) Venue : 2nd Floor, Kilachand Hall, IMC.	16th September, 2015 Subject : Recent Case Laws on Transfer Pricing and Impact of BEPS Transfer Pricing Action points for Indian Companies	CA Karishma Phatarphekar
7.	MEMBERSHIP & PUBLIC RELATIONS COMMITTEE		
A.	Self Awareness Series (Only for SAS Members) Venue : CTC Conference Room, 3 Rewa Chamber, Ground Floor, 31, New Marine Lines, Mumbai 400 020.	11th September, 2015 Subject : Effective Communication & Personality Development	Mr. Rohan Mehta

Sr. No.	Programme Name / Committee/Venue	Day & Date	
B.	Self Awareness Series (Only for SAS Members) Venue : CTC Conference Room, 3 Rewa Chamber, Ground Floor, 31, New Marine Lines, Mumbai 400 020.	14th October, 2015 Subject : Experience Stress free life through Yoga and Meditation	Mr. Peter D'Souza
C.	Half Day Seminar at VAPI Jointly with VAPI Branch of WIRC of ICAI Venue : Vapi Branch of WIRC of ICAI, Vapi	12th September, 2015 Subject : 1) Important Issues under Tax Audit 2) Recent Amendments and issues in TDS u/s. 195 including CA certificate F.No. 15CB	CA Paresch Vakharia CA Natwar Thakrar
D.	Free Eye Check up for Members, their Family Members and Staff Members Venue : CTC Conference Room	7th October, 2015 Session : Lawrence & Mayo's Precision – Eye Test Camp	Mr. Agnelo Rodrigues
E.	Half Day Seminar at Jalgaon Jointly with Jalgaon Branch of WIRC of ICAI & Jalgaon District Tax Practitioners Association	10th October, 2015 Subject : 1) Important Issues in Business deduction under Sections 29 to 44 DD 2) Set off & Carry Forward of Losses 3) Brains' Trust Session	Mr. Rahul Hakani, Advocate CA Ashok Sharma Trustees: CA Ashok Sharma, Mr. Rahul Hakani, Advocate
8.	STUDENT & IT CONNECT COMMITTEE		
A.	Lecture Meeting on E-Filing under Tax Audit and Tally as Audit Tool Venue : Dadar Club, Ground Floor, Banquet, Lane 3, Lokmanya Tilak Colony, Dadar (E), Mumbai	10th September, 2015 Subject : 1) E-filing under Tax Audit 2) Tally as Audit Tool	CA Avinash Ravani CA Ashwin Dedhia

Sr. No.	Programme Name / Committee/Venue	Day & Date	
B.	Multiply Your Network with Social Media' Venue : 2nd Floor, Kilachand Hall, IMC.	8th October, 2015 Subject : 1) To get the basics right about Face Book, Twitter and LinkedIn and to clear the air over prevalent myths about the social networks. 2) To deep dive on LinkedIn as powerful tool for professionals	Mr. Sameer Lodha, Digital Strategy & Mft. Consultant Mr. Manoj Kotak, BDM, Image online Pvt. Ltd.
9.	RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE		
	39th Residential Refresher Course Venue: Mercure Lavasa and Lavasa International Convention Centre, Lavasa. (www.mercurelavasa.com, www.licc.in)	19th February, 2016 to 21st February, 2016	All other details of the papers, the eminent speakers and its related price will be announced
10.	STUDY CIRCLE & STUDY GROUP COMMITTEE		
A.	Study Circle Meeting (Only for SC Members) Venue : Babubhai Chinai Committee Room, IMC	11th September, 2015 Subject : Black Money Law with Special Reference to Voluntary Compliance Window	CA Praful Poladia
B.	Study Group Meeting (Only for SG Members) Venue : Babubhai Chinai Committee Room, IMC.	21st October, 2015 Subject : Recent Judgments under Direct Taxes	CA Sanjay R. Parikh
11.	PUBLICATION FOR SALE		
A.	Transfer Pricing	₹ 1,250/-	Edition 2014
B.	Study Material of 9th Residential Conference on International Taxation held at Goa	₹ 600/-	Edition 2015
For further details of the future events, kindly visit our website www.ctconline.org .			

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Access it any time, anywhere and in any device

INTERNATIONAL TAXATION COMMITTEE	INDIRECT TAXES COMMITTEE
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Intensive Study Group on International Taxation Meeting on the subject "Black Money Law - Rules and FAQs" held on 3rd September, 2015 at CTC office.

Indirect Tax Study Circle Meeting on the subject "Issues in CENVAT Credit" held on 7th September, 2015 at Babubhai Chinai Committee Room, IMC.



CA Ramesh Iyer
addressing the members.



Mr. Gajendra Jain,
Advocate
chairing the members



CA Vinod Awtani
addressing the members.

INDIRECT TAXES COMMITTEE

Indirect Tax Study Circle Meeting on the subject "Issues in Service Tax Refund" held on 11th August, 2015 at Babubhai Chinai Committee Room, IMC.

GST Study Group Meeting on the subject "Inter-State Supply of Goods and Services" held on 20th August, 2015 at Audio Visual Centre.



CA Naresh Sheth
chairing the session.



CA Keval Shah
addressing the members.



Mr. Rohit Jain
addressing the members.

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Group Meeting on the subject "Recent Judgments under Direct Taxes" held on 8th September, 2015 at IMC.

ALLIED LAWS COMMITTEE

Allied Laws Study Circle Meeting on the subject "Importance of Drafting Wills" held on 13th August, 2015 at Kilachand Conference Room, IMC.

DIRECT TAXES COMMITTEE

Intensive Study Group on Direct Taxes Meeting on the subject "Recent Important Decisions under Direct Taxes" held on 19th August, 2015 at CTC office.



CA Kishor B. Karia
addressing the members.



Mr. P. A. Jani, Solicitor
addressing the members.



CA Dharan Gandhi
addressing the members.

DIRECT TAXES COMMITTEE

Two Days Seminar on Real Estate Development jointly with All India Federation of Tax Practitioners (WZ) and The Sales Tax Practitioners' Association of Maharashtra held on 7th & 8th August, 2015 at West End Hotel.



CA Avinash B. Lalwani, President, CTC inaugurating the seminar by lighting the lamp. Seen from L to R : S/Shri J. D. Nankani, President, AIFTP, Vijay Sachiv, President, STPAM and Vipul B. Joshi, Chairman, AIFTP (WZ).



CA Avinash B. Lalwani, President, CTC welcoming the delegates. Seen from L to R : S/Shri Ketan Vajani, Chairman, Direct Taxes Committee, CTC, J. D. Nankani, President, AIFTP, Parimal Shroff, Speaker, Vijay Sachiv, President, STPAM, Vipul B. Joshi, Chairman, AIFTP (WZ).

Faculties



Mr. Parimal Shroff
Solicitor



Mr. Manoj Dahisariya
Architect



Mr. P. A. Jani
Solicitor



Mr. Pravin Veera
Solicitor



Mr. Pradip Kapadia
Solicitor



CA
Yogendra Kabra



Mr. Mahesh Shah
Solicitor



Mr. Vinayak Patkar,
Advocate



Mr. Bharat Raichandani,
Advocate



CA
Pradip Kapasi



CA
Jagdish Punjabi



Section of delegates

CORPORATE MEMBERS & ALLIED LAWS COMMITTEE

Lecture Meeting on Provisions of Accounts and Audit under New Companies Act jointly with J. B. Nagar Study Circle of WIRC, Andheri held on 12th August, 2015 at Andheri.



Dignitaries on the dais. Seen from L to R : CA Kamal Dhanuka, Chairman, Allied Laws Committee, CTC, CA Yatin Desai, Past President, CTC, CA Nilesh Vikamsey, Speaker, CA Avinash Lalwani, President, CTC, CA Himanshu Kishnadwala, Speaker, CA Paras K. Savla, Chairman, Corporate Members Committee, CTC and Pinki Kedia, Convenor, J.B. Nagar Study Circle of WIRC.



CA Himanshu Kishnadwala addressing the members.



CA Nilesh Vikamsey addressing the members.

MEMBERSHIP & PUBLIC RELATIONS COMMITTEE

Lecture Meeting at Ulhasnagar jointly with Thane Branch of WIRC of ICAI, Ulhasnagar, Bhiwandi, Kalyan & Dombivli CPE Study Circle with Ulhasnagar Tax Consultants Association (Seven Associates) held on 6th September, 2015 at Ulhasnagar.



CA Avinash Lalwani, President of CTC, welcoming the members. Seen from L to R: CA Parag Prabhudesai, Convenor of Dombivli CPE Study Circle, CA Surendra Sureka Convenor of Bhiwandi CPE Study Circle, CA Kailash Bhatia, Secretary of Ulhasnagar Tax Consultants, CA Hari Dudani, Convenor of Ulhasnagar CPE Study Circle, CA Hemant Parab, Chairman of Membership & PR Committee of CTC.



CA Hemant Parab, Chairman of Membership & PR Committee of CTC addressing the members. Seen from L to R: CA Parag Prabhudesai, Convenor of Dombivli CPE Study Circle, CA Surendra Sureka Convenor of Bhiwandi CPE Study Circle, CA Kailash Bhatia, Secretary of Ulhasnagar Tax Consultants, CA Avinash Lalwani, President of CTC, CA Hari Dudani, Convenor of Ulhasnagar CPE Study Circle, CA Madhav Khisti, Chairman WICASA Committee of Thane Branch of ICAI.



Mr. Ajay Singh, Advocate addressing the members.



CA Jagdish Punjabi addressing the members.

STUDY CIRCLE & STUDY GROUP COMMITTEE

Lecture Meeting held on 4th August, 2015 at Jaihind College.



CA Ammeet Patel addressing the members. Seen from L to R: CA Dilip Sanghvi, Vice Chairman, CA Ashok Sharma, Chairman, CA Avinash Lalwani, President, Shri Kishor Vanjara, Past President, CA Dinesh Shah, Convenor.



Section of delegates.

**ALLIED LAWS COMMITTEE / CORPORATE MEMBERS COMMITTEE /
DIRECT TAXES COMMITTEE / INDIRECT TAXES COMMITTEE**

Full Day Seminar on "Audit under Various Laws" held on 5th September, 2015 at West End Hotel, Mumbai.



CA Avinash B. Lalwani, President welcoming the delegates. Seen from L to R: CA Paras K. Savla, Chairman, CA Jayesh Gandhi, Speaker, CA Neha Gada, Convenor.

Speakers

CA Jayesh Gandhi addressing the delegates. Seen from L to R: CA Paras K. Savla, Chairman, Corporate Members Committee, CA Avinash Lalwani, President and CA Neha Gada, Convenor, Corporate Members Committee.



CA Sanjeev Maheshwari addressing the delegates. Seen from L to R : S/Shri Anil Sharma, Convenor, Allied Laws Committee, CA Ashok Manghnani, Hon. Jt. Secretary, CA Kamal Dhanuka, Chairman, Allied Laws Committee and Manish Dedhia, Convenor, Allied Laws Committee.

CA Mahendra Sanghvi addressing the delegates. Seen from L to R : CA Hemant Parab, Convenor, Membership & Public Relations Committee, CA Ketan Vajani, Chairman, Direct Taxes Committee, CA Rahul Sarda, Convenor, Direct Taxes Committee.



CA Sunil Gabhawalla addressing the delegates. Seen from L to R : CA Vikram Mehta, Vice Chairman, Indirect Taxes Committee, CA Shailesh Bandi, Chairman, RRC & SD Committee.

**STUDENT & IT CONNECT COMMITTEE /
MEMBERSHIP & PUBLIC RELATIONS COMMITTEE**

2nd Football Cup held on 8th August, 2015 at Indian Football School, Cooperage Football Ground - Mini Ground Colaba.



Shri Y. P. Trivedi, past president addressing the players. Seen from L to R: CA Vipin Batavia, CA Parimal Parikh & CA A. K. Merchant



Winner Team – CNK Associates LLP



1st Runner Up Team – BDO India LLP



2nd Runner Up Team – CTC-Membership & PR Committee



Players Playing Football



Golden Boot – Mr. Denis Mundorf



Golden Gloves - Mr. Preetesh Shethy



Golden Ball - Mr. Harsh Sarvaiya



Perfect Kick – Ms. Divya Lalwani



Perfect Kick – Ms. Purna Parab



Perfect Kick - Ms. Shilpa Thakar

TEAM CHAMBER 2015-16

CORPORATE MEMBERS COMMITTEE



Sitting from L to R : S/Shri Sujal Shah, Advisor, Surendra Nayak, Avinash Lalwani, President, Paras K. Savla, Chairman, Hasmukh Dedhia, Vice Chairman, Neha Gada, Convenor, Bhavesh Vora, Vipul Choksi.

Standing from L to R : S/Shri Vitang Shah, Convenor, Amrit Porwal, Ajay Agashe, Champak Dedhia, Jignesh Kenia, Kiran Nisar, Niraj Sanghvi, Ashutosh Pednekar, Mitesh Majithia

(Not in the Picture: S/Shri Hitesh Shah, Hinesh Doshi, N. C. Hegde, Anand Bathiya, Anup Shah, Apurva Shah, Atul Bheda, Jayesh Gandhi, Nilesh Vikamsey, Rajen Gada, Rishikesh Vyas, Sunil Goyal, Nitin Gutka & Sanjay Buch)

LAW & REPRESENTATION COMMITTEE



Sitting from L to R : S/Shri Krish Desai, Vice Chairman, Nikita Badheka, Vipul B. Joshi, Chairman, Avinash Lalwani, President, Mahendra Sanghvi, Co-Chairman, V. R. Ghelani & R. K. Sinha.

Standing from L to R : Mehul Modi, Amrit Porwal, Convenor, Shabana Mulla, Nishtha Pandya, Convenor, Devendra Jain, Convenor, Ajit Rohira, Paras K. Savla, Haresh Kenia.

(Not in the Picture: S/Shri Hitesh R. Shah, V. P. Verma, Y. P. Trivedi, Ajay Singh, Pradeep Shah, Jayant Gokhale, N. C. Hegde, Apurva Shah, Atul Suraiya, Chirag Sheth, D. S. Sharma, Dinesh Tambde, Jagdish Punjabi, Kiran Shah, Mayur Shah, Natwar Thakrar, Paresh Shah, Rajen Gada, Shailesh Sheth, Manoj Purohit, Shilpa Sharma, Shruti Shah, Sunil Ramani)



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“ CCH iFirm Practice Management Tool has clearly given us greater visibility, more control and helped us in increasing our productivity by 25% within the first six months. It has not only enabled us to remove human error in our processes but also integrated the workflow resulting in a 12% improvement in meeting deadlines and a drop of nearly 20% in losses occurring due to delays. ”

Viral Chotai, Consulting Director, Radisson Consulting Pvt. Ltd., Mumbai.

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