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The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

December - 2016 Vol . V | No. 3

DEMONETISATION - LEGAL & TAX IMPLICATIONS

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Full Day Seminar on Alternative Fund Raising Options for Corporates jointly with BCAS held on 25th November, 2016 at IMC

CA Hitesh R. Shah, President, CTC delivering opening speech. Seen from L to R: CA Bhavesh Vora, Chairman, Corporate Members Committee, CTC, Manish Gunwani, Faculty, CA Kanu Chokshi, Chairman, Corporate & Allied Laws Committee, BCAS and CA Apurva Shah, Vice Chairman, Corporate Members Committee, CTC

CA Bhavesh Vora, Chairman, Corporate Members Committee, CTC, delivering welcome address. Seen from L to R: CA Hitesh R. Shah, President, CTC, Manish Gunwani, Faculty, CA Kanu Chokshi, Chairman, Corporate & Allied Laws Committee, BCAS and CA Apurva Shah, Vice Chairman, Corporate Members Committee, CTC.

Mr. Manish Gunwani delivering Keynote address. Seen from L to R: CA Bhavesh Vora, Chairman, Corporate Members Committee, CTC, CA Hitesh R. Shah, President, CTC, CA Kanu Chokshi, Chairman, Corporate & Allied Laws Committee, BCAS and CA Apurva Shah, Vice Chairman, Corporate Members Committee, CTC

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The Chamber's Journal

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Editorial

Liu Yiming, a well-known Tao Philosopher, who lived between 1734 and 1821 in China, had observed

"Climbing from lowliness to the heights, penetrating from the shallows to the depths, gradually applying effort in an orderly manner, not counting the months and years, not losing heart, eventually one will reach fulfilment. It is most important not to waste time vacillating, and not to give up halfway, as this will only leave you with unhappiness. If you start out diligently but end up slacking off, or indulge in idle imagination and hope thereby to keep essence and life whole and accomplish that which is rare in the world, you have no chance."

This is meant for those who believe that we as society and Nation are capable of transforming ourselves. Apart from the above I don't want to comment anything about this month's Special Story. Eminent professionals have personally obliged me by accepting the request to contribute to the Chamber's Journal's December issue on a very short notice. I am grateful to them.

Before parting 2016 has taken away Fidel Castro one of the dominant personalities of the Cold War era. He is remembered as a polarising world figure. His sympathisers considered him as a champion of socialism and anti-imperialism whose revolutionary regime advanced economic and social justice while securing Cuba's independence from American Imperialism. His detractors held him responsible for various under his dictatorial rule human right abuses and responsible for the exodus of a large number of Cubans. May his soul rest in peace.

The world of music lost a very melodious voice in the passing of Padma Vibhushan Dr. M. Bala Muralikrishna. He was born on 8th July, 1930. He was child prodigy, he gave full-fledged concert of Carnatic classical music at the age of 8. He has won many laurels at national and international level. For me his Jugalbandis with Kishori Amonkar and Pt. Bhimsen Joshi are unforgettable. May his soul rest in peace.

Chief Minister of Tamil Nadu J. Jayalalithaa breathed her last on 5th December, 2016 after 75 days of hospitalisation. Born on 24th February, 1948, she entered Tamil films in the year 1961 giving up her dream to become a doctor or lawyer. She made her own space in the country's political sphere. A fiercely independent individual who has her head on her shoulders. She showed male dominated world that she is "Amma" to supporters as well as adversaries. May her soul rest in peace.

I thank all the contributors to this issue of Chamber's Journal. We shall meet in next year.

K. GOPAL
Editor

From the President

Dear Members,

This month's Chamber's Journal finds place in your hands when the year 2016 is slipping into history. Year 2016 remained as the year of Government actions!! Announcement of GST, Income Disclosure Scheme, Dispute Resolution Scheme and lastly 440 volt shock with the Demonetisation of ` 500 and ` 1,000 notes with the intention to develop strong and resilient economy. Demonetisation has become a hot topic in the country post 8th November 2016 and will remain at least for sometime. Demonetisation is a punitive measure and has signalled the Prime Minister's resolve to combat black money. However the punitive measures have limitations and even authoritarian regimes using draconian methods have been unable to fully stamp out black markets. Hence in order to combine punitive measures with incentive to disclose unaccounted income, nearly three weeks after Hon'ble Prime Minister Narendra Modi announced junking high denomination 500 and 1,000 rupee notes, Parliament has approved The **Taxation Laws (Second Amendment) Bill, 2016** which provides a window to black money holders to declare their income.

Those who choose to declare their ill-gotten wealth under the **Pradhan Mantri Garib Kalyan Yojana 2016, will have to pay tax including surcharge and penalty @50% of the undisclosed income. Further, the declarants have to deposit 25% of the undisclosed income in a scheme** to be notified by the Government in consultation with the Reserve Bank of India (RBI).

The money from the scheme would be used for projects in irrigation, housing, toilets, infrastructure, primary education, primary health and livelihood so that there is justice and equality, said the Statement of Objects and Reasons of the Bill.

For those who continue to hold onto undisclosed cash and are caught, existing provisions of the Income-tax law have been amended to provide for a flat 60% tax plus a surcharge of 25% of tax (15%). So total incidence of tax will be 75% with no expense, deductions or set-off allowed. Also, the Assessing Officer can levy an additional 10% penalty, taking the total tax incidence to 85%.

The current provisions for penalty in cases of search and seizure are proposed to be amended to provide for a penalty of 30% of income if it is admitted, returns filed and taxes paid. In all other cases, 60% will be the penalty.

One has to wait till the amendments are finally enacted, scheme is announced and rules are prescribed to understand the nuances and its implications.

There is an apprehension that entire high value of demonetised currency might be received back and even in that case gains would go to Government in the form of higher tax revenues, widening tax base and reducing fiscal deficit.

Demonetisation alone will not be sufficient to curb the black money. Government requires to initiate other measures such as identify Benami properties or declaring of gold in the return of income of an individual etc.

Government drive to move towards cashless economy comes at an opportune time to unleash liquidity issue arising due to Demonetisation. In India maximum transactions witness currency changing hands, Government wants people to switch **to paperless digital payments**. To be true cash replacement **system ought to have no equipment requirement beyond phone, zero transaction cost for small transactions and system must be interoperable with any kind of authorised wallet or app. Transactions cost for larger amounts should be an absolute amount in paise and should not be charged in percentage terms**. The Government has introduced slew of incentives to boost the use of digital payments mostly in the nature of discounts, waiver in transactions cost and service tax in case of small amount of transactions. This aim seems to be five-fold – place severe disincentives for spread of counterfeit currency, tighten the noose around blatant corruption, promote financial literacy, bring discipline and accountability to the largely disorganised financial system and promote transparency.

As per Article 51-A of the Constitution it is the fundamental duty of every citizen *inter alia* to respect the national anthem. The Hon'ble Supreme Court recently passed an order that every person has to stand up when the national anthem is played to prove his patriotism. It's certainly a judgment with good intention. The assumption that making people stand when national anthem is played will instill a sense of 'constitutional' patriotism may turn out to be fallacious. It must also be remembered that any person who intentionally prevents the singing of the national anthem or causes disturbances to any assembly engaged in such singing can be punished under the **Prevention of Insults to National Honour Act, 1971.** No one can object to this statutory provision. However patriotism is a feeling and cannot be enforced by law. Do we really require judgment to

prove our patriotism? One needs to consider whether by just standing up we prove our patriotism or there are other things we do by which our patriotism can be demonstrated.

Recently Hon'ble Delhi High Court passed an order wherein it held that where the house is self-acquired by the parents, son whether married or unmarried, has no legal right to live in that house and he can live in that house only at the mercy of his parents up to the time the parents allow.

Even Hon'ble Supreme Court has held that the parents have every right to deny the share to the negligent children who simply do not take care of them in old age when they need their help the most, but are virtually left in the lurch, removing any misgiving about the claim of a share in the joint family property. The judgment is being seen as “innovative” by legal experts, especially in the context of the accepted principle of succession in the joint Hindu family property that makes every member entitled of his or her share as per the family tree. The principle so far established in several judgments of the courts was that the parents can give their self-acquired property to any one but cannot “bequeath” their share in joint family property in a Will contrary to the legitimate hereditary share of each person in the family tree.

J. Jayalalitha, **iconic and enigmatic** Tamil Nadu leader and Chief Minister passed away on 5-12-2016. She remained in power for nearly 14 years over four terms making her one of the world’s longest serving female leaders. Her life history portrays main personality traits such as strong determination, remarkable resilience, ruthlessly efficient in getting things done.

The Chamber had organised a **public meeting on 7-12-2016 at KC College on Demonetisation – Tax and Legal issues** which was addressed by Senior Advocates Dr. K. Shivaram and Mr. V. Sridharan, CA Pradip Kapasi and Dr. Dilip Sheth covering Direct Taxes, Indirect Taxes, PMLA, FEMA and Benami Properties Act. The programme was moderated by CA Jayant Gokhale. **The programme received an overwhelming response and about 700 people attended and despite bigger venue many people could not be accommodated.** My apologies to all those who could not be accommodated at the event. **It was a super quality programme and was in sync with Chamber's theme adopted for 90th year ‘Gyanam Param Balam’ i.e. knowledge is Supreme Power.** I also thank the **Janmabhoomi and Vypar Gujarati Newspapers** for becoming **media partners** for this event and also thank **Keynote Corporate Services Ltd. for sponsoring this event.**

The Chamber had organised in the month of November several programmes viz. workshop on ‘GST Model Laws’ incorporating latest changes by IDT Committee, workshop on ‘IND-AS’ (which is presently going on) by Allied Law Committee, Chamber’s Delhi Chapter programme ‘Demystifying critical aspects of Supply, Place of Supply and Input Tax Credit under Model GST Law with Case Studies’ and Corporate Committee programme jointly

organised with BCAS on 'Alternative Fund Raising Options For Corporates' received an overwhelming response. Many corporates, non-members and people from outstation participated in the programmes. From the above it is seen that the **Chamber continues to organise innovative and quality programmes.**

Further as we all know in India almost 78% of the transactions are done in cash and hence demonetisation move has thrown up an opportunity towards less cash economy. The Government has introduced several incentives for use of e-payments. To bolster the initiative of the Government on e-monetisation **the Chamber has organised another public meeting on 21-12-2016 from Demonetisation to e-monetisation to create awareness amongst the use of such facilities,** benefits available and how secure such transactions are.

The Chamber has also planned **webinar series on GST** for the benefit of all the members as well as Public and first such lecture will be starting on 12-12-2016.

Dear Readers, please keep on giving your suggestions for various programmes organised by the Chamber, so we can channelise the same through appropriate committees.

This month theme for the Journal is Demonetisation – Legal and Tax Implications which covers several legal issues emanating therefrom such as whether can one transact in specified currency after 8-11-2016, whether specified currency is legal tender, etc. I am sure this issue will be of immense help to the members and people at large. **I thank Editor Gopal, Journal Committee Chairman Vipulbhai and Vice-Chairman Bhadresh Doshi** for designing this issue.

Before I end, I take this opportunity to wish all the members Merry Christmas and a very happy and eventful ensuing year 2017 with a hope that the upcoming year turns out to be a fulfilling year for all.

HITESH R. SHAH
President

Chairman's Communication

Dear Readers,

The Reserve Bank of India surprised everyone by keeping interest rates unchanged amid widespread expectation that they would be slashed to support growth. RBI has also lowered its growth forecast for the year attributing it to the slow growth registered in the second quarter. RBI has also acknowledged that demonetisation would temporarily disrupt economic activity.

A month has passed since demonetisation intended to eliminate black money, counterfeit notes and corruption was announced. This initiative of the Government was lauded by many and hailed as master stroke when it was announced but the way things have unfolded in last one month, it appears that the Government was not sufficiently prepared to handle the volume of deposit, exchange notes, supply new notes and many related problems. More than ` 75,000 crores have been laundered through Jan Dhan accounts. Does the Government have machinery to identify the persons who have laundered the money? There are many such related and controversial issues which are being debated and discussed at all levels. It is estimated that 90% of all transactions take place in cash in our economy whereas about 86% of cash has already gone in the Banking System. Thus, there is far too much uncertainty about the economic outcome of the demonetisation drive. In the short run, the demonetisation exercise. GDP may fall by one percentage point or ` 1.5 lakh crore. Let us hope that demonetisation gives positive results for overall growth of the economy in the long run and achieves the intent with which it is done.

After demonetisation there were different views emerging about taxability of cash deposited in ones bank account and penal consequences. There were also announcements by the Government about no questions asked for deposits up to ` 2,50,000/-. This resulted in lot of uncertanties about tax and penalty consequences on cash deposited in bank accounts. All these have been put to rest after the introduction of Taxation Law (Second Amendment) Bill, 2016 which is already passed by the Lok Sabha.

Considering the importance of the subject of demonetisation, we have planned a Special Story on this subject. I would like to thank Editor Shri K. Gopal, Shri Rahul Hakani, CA Paras K. Savla and CA Sanjay Parikh for their valuable inputs in making the design of this issue. I thank and compliment all the authors for agreeing to write articles at such a short notice and sparing their valuable time and sharing their knowledge despite their busy schedule.

VIPUL K. CHOKSI
Chairman – Journal Committee

CA Milin Mehta

Demonetisation – World Pre and Post 8-11-2016

8th November, 2016 will be remembered for a very long time in India. Time only will tell whether it would be remembered with reverence or as a day of monumental mistake. However, it would be worth considering the magnitude of the impact of the demonetisation.

The following statistics of the Reserve Bank of India would be very relevant to consider:

- Total currency in circulation as on 28th October, 2016 INR 17.77 trillion (or in Indian Words INR 17.77 lakh Crore) out of the total reserve money of INR 22.40 trillion;
- In 1978 (the last demonetisation in India) there was INR 55.00 crore notes of INR 1,000 (i.e., about 5.50 lakh notes). This represented about 0.5% of the total currency in circulation) In 2016 total currency in circulation is as under:
    - o INR 7.85 lakh crore in INR 500 Notes; and
    - o INR 6.26 lakh crore in INR 1000 Notes [as per 31st March, 2016 data of RBI]
    - o This totals up to about 2000 crore plus bank notes which will be returned to the RBI (not necessarily replaced) having value of approximately INR 15 lakh crore and 86% of the total currency.

It is worthwhile to note that India's currency to GDP ratio is approximately 10.6 % and is the highest in BRICS countries. This makes carrying out transactions in cash much easier due to sheer availability thereof. Cashless transactions in India are merely 2%, as compared to 10 % in China, 45 % in USA and as high as more than 55% in countries like Canada, Netherlands, France, Belgium, Singapore, etc.

It would also be important to note that the share of INR 500 – 1,000 notes in circulation grew rapidly during the last few years. This ratio was only 26.2% of the total currency in 2000-01 and it rose to 79% by 2010-11 and in 2016 we had the said ratio to be 86%. In India, since 1970-71 till 2010-11, the growth of currency in circulation was more than the growth of GDP. However, the trend reversed after that and therefore the currency to GDP Ratio, which was about 13% in 2010-11 reduced to 10.6% presently.

It is in this context that we need to view the entire process of demonetisation.

Before we go into the legal aspects of the demonetisation and the mundane topic of the tax amendments, we should pause and spend

some time in introspection and think about what lies ahead. How is it going to affect us? Not economically but the way in which we live our day-to-day life. The way in which the persons around us live their life.

As we move towards the end of the 50 days' turbulent journey, it becomes nearly certain that the dividend on account of some high denomination notes not being surrendered may be very small. It also appears that with very high rates of the taxes proposed in the normal route and Pradhan Mantri Garib Kalyan Yojna, 2016 (PMGKY) may not encourage many persons to come forward and declare voluntarily. The process of catching the defaulters is difficult and arduous. Therefore the only purpose which the demonetisation may serve is to bring all the money lying idle into the banking system. Actually the story will unfold post 30th Dec,2016.

The demonetisation in itself is merely an enabler and not a solution. Therefore, what is more important is what next. I therefore wish to ponder for a while on way forward, before moving to the other topics.

I. Way Forward

The first impact of the demonetisation is sucking out the entire cash liquidity in the market. In place of approximately INR 17.44 lakh crore of cash in the market, on 9th it dropped down to only INR 2.44 lakh crore and has risen to INR 7.4 lakh Crores by December 5. It appears difficult to believe that the Government has any intentions of letting the currency level go back to INR 17 lakh crore or nearby.

It is expected that going forward the Government will continue to put restrictions on the cash withdrawals. This could be either by extending the cash withdrawal limits beyond 30th December, 2016 or by way of making it clear that all cases of cash withdrawal beyond a certain amount would be investigated. It may not be out of place to mention that it is not very uncommon for many countries to have such investigations. India will therefore discourage the high cash withdrawals.

Further, the floating currency in the economy has already been sucked out and therefore we may move from INR 17 lakh crore plus currency in the market (excluding the fake currencies), to sub INR 10 lakh crore or thereabout and then gradually further reduce it.

An important question which will arise is that how we as professionals and our families as ordinary citizens help in this activity. No one has to tell the professionals that e-payments or routing the transactions through banking channels will boost the economy manifold and the revenues of the Government will go up manifolds.

Considering that it will be very difficult to have large cash for carrying out transactions, we need to ready ourselves and also make efforts to make people around us to meet the challenges likely to be faced. It is therefore essential that we need to do the following:

A. Start making more and more usage of electronic payment mechanism or use banking channels for making payments. This would be easier in urban areas as most of the establishments accept e-payments. It would take sometime to make rural India ready for this but it will certainly happen.

B. Start calibrating and modifying the transaction pattern of our clients for enabling them to meet with the challenges (like problem faced by transporters can be mitigated if they adopt to the debit cards, pre-paid cards, petro cards, RFID enabled toll payments, etc. for their on-road fleet).

C. Educate small vendors (vegetable, milk, newspaper vendors, hair cutting saloons and beauticians, etc.) to receive the payments electronically. If we spend some time with them, believe me they will not

only be able to do the transactions but would find it much more convenient as compared to doing the business with currency.

D. The younger generation should go beyond the urban boundaries and use their efforts to educate and spread the usage of the electronic payment systems as much as possible.

E. Encourage more and more people to follow A, B. C and D above.

The country is in a euphoria. We have a charismatic leader (many may disagree) and he has the ability of creating a hype. This hype can be channelised for yielding the long term dividends for all of us. It is therefore essential that for a moment shake our despondency of the past and rise to the occasion for working towards rebuilding the nation. It is not for the Government, it not for our country, it is not for anyone else, but it is for us and our future generations.

Now having dealt with what next, we need to also review what is already done and the impact is likely to have from a legal perspective.

II. Constitutional validity of the withdrawal of the Legal Tender (demonetisation)

Sections 22–29 of the Reserve Bank of India Act, 1934 deal with the provisions relating to the issue of currency notes and section 26 (2) of the said Act deals specifically with the demonetisation. It gives exclusive powers to the Central Government (on recommendation of the Central Board of the Reserve Bank of India) to declare that notes of any denomination shall cease to be legal tender, save at such office or agency of the Bank and to such extent as may be specified in the notification. Accordingly, an Official Gazette Notification No. 2652 dated 8th November, 2016 issued by the Central Government on the recommendation of the Central Board of Reserve Bank of India clearly has the legal sanctity.

In some quarters doubt is expressed about the competence of the Government to regulate the withdrawal or exchange of currencies. The above referred notification also clearly specifies the manner in which the exchange, deposit and the record keeping, etc. will be kept pursuant to the demonetisation. The issue has been raised from the angle of Right to Property as enshrined in Indian Constitution. It may not be out of place to mention that the 42nd Amendment to the Constitution of India inserted words 'Socialist Secular' into the preamble and the by way 44th Amendment to the Constitution the right to property granted under Article 31 was taken away on the ground that the state may acquire land etc in public interest to achieve the above mentioned objects. However, it is wrong to say that the demonetisation is a violation of right to property. The value in the note remains intact, however, the manner of holding only changes. The right to hold currency is not a fundamental right. Bank Nnotes are only a manner of holding the property, and accordingly, the money can be held in cash (which is a promise by the Reserve Bank of India to pay) or be held by deposit in the Bank or Government denominated bonds.

III. Validity of Taxation Laws (Second Amendment) Bill, 2016

On announcement of the demonetisation, there has been a mad rush for converting the money which was held illegitimately into some other asset. While the debate about the deposit of the said money (including undisclosed under the tax laws) in the banks without having explainable source of income arose, most of the experts expressed the view that the existing provisions of Section 270 A of the Act were inadequate to penalise where undisclosed money is deposited in bank account and thereafter duly disclosed in the return of income for A.Y. 2017-18 under the provisions of Section 68 or 69 of the Act. Thus,

it would have attracted tax of only 31% to 34% (being regular tax).

It certainly appears that it was a faux pas for the Central Government. They ought to have been ready with the amendment of law. However, they were quick enough to give public statement that there would be penal action on the persons who misuse by wrongly depositing without explaining the sources.

Government laid before the Parliament the Taxation Laws (Second Amendment) Bill, 2016 on 26th November, 2016 as a Money Bill and is on its way of becoming an Act. The Bill has provisions which are retroactive and accordingly, though applies only to A.Y. 2017-18 and therefore prospective in its operation, it applies to income which has accrued or earned on or before not only 26th November, 2016 but also before 8th November, 2016. To that extent the provisions are retro-active. The Bill introduced amendment to section 115 BBE of the Act to provide for 60% tax on the income declared / assessed under the deeming fiction of Section 69 to 69D and with further amendment to the Finance Act, 2016, also introduced a surcharge of 25% on such income. Accordingly, the tax on the such income is proposed to be increased from 30.9% (in non-surcharge cases) to 77.25% with effect from A.Y. 2017-18. Further amendment is also proposed by inserting Section 271 AAC of the Act, providing for penalty of 10% of tax payable, if the Assessee has not declared such income and paid taxes thereon, but the Assessing Officer adds the same to the total income. Accordingly, if the Assessee voluntarily declares such income then it would attract tax of 77.25%, else the tax, together with penalty, would be 84.98%.

The amendments relating to Sections 158 BBE and 271AAC are made specifically keeping in mind the unexplained deposits in the bank accounts post demonetisation. However, the impact of the same is not restricted to such deposits and it may extend to even other additions of cash credits or unexplained investments made by the AO in A.Y. 2017-18 or subsequent years.

IV. Amendment to Section 271AAB

Section 271AAB which primarily deals with the penalty in search cases for the specified assessment years and applies to cases where the search is conducted on or after the date on which the Taxation Laws (Second Amendment) Act, 2016 receives assent of the President. Hitherto, the penalty was at a concessional rate of only 10% of the undisclosed income detected as a result of search if the Assessee discloses the said income during the course of search in a statement recorded U/s. 132 (4) including manner of earning it, substantiates the manner of earning such income and also includes it in the return of income filed for the specified years and pays necessary taxes thereon. Further, if the Assessee fails to declare during the course of search or fails to substantiate the manner of earning but so long as the said undisclosed income so detected is disclosed in the return of income filed pursuant to Section 153 A and necessary taxes are paid, then also there was penalty of only 20% of such undisclosed income. In cases which were not eligible as per above, attracted penalty of 60% of the undisclosed income.

By virtue of the proposed amendment, it is proposed that in search cases the minimum penalty will be 30% of the undisclosed income detected as a result of search, even where the assessee discloses the same during the course of search in a statement recorded U/s. 132 (4) and also substantiates the manner of earning it and pays necessary taxes after including such income in the return. In case, if the Assessee fails to satisfy any of the above conditions, then it is proposed that it would attract penalty of 60% of the undisclosed income.

These amendments very appropriately neutralises the advantageous position in which the persons who are searched were placed under the existing provisions.

V. Pradhan Mantri Garib Kalyan Yojana, 2016 (PMGKY)

Without commenting on the correctness or otherwise of PMGKY, it would be appropriate for me to state that the effective cost of the declaration under the Scheme is still less than the cost incurred by persons under the compliance window given under the Black Money (Undisclosed Foreign Income and Foreign Assets) and Payment of Taxes Act, 2015 ("the Black Money Act"), which provided for 60% tax.

Under PMGKY, there are three components. Tax of 30 %, Surcharge in the form of Pradhan Mantri Garib Kalyan Cess of 33% of tax (i.e. 9.9% of the income) and penalty of 10% of the undisclosed income, effectively totaling to 49.9%. In addition to the same, 25% of the undisclosed income is required to be deposited U/s. 199 F of the Finance Act, 2016 under the Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 and such deposit will be for a period of 4 years without interest. If the interest loss on 25% is taken into consideration, then effective tax (together with penalties and cess) will be approximately 58% of the undisclosed income.

In my view those persons who have missed so many opportunities of coming out clean, this is not a bad option. It appears that there is no restriction on borrowing against the deposit placed under the Scheme.

I need to only mention about the scheme and the present volume contains a full article on this subject.

VI. Matter of National Pride

Without mincing any words, I wish to say that the Indian Common Men have conducted themselves in the post demonetisation scenario in such a manner that our heads are now held high and we can have a national pride about the manner in which we faced the challenges of demonetisation. It is without doubt that such a major step would have disruptions in the economy and day-to-day functioning. As we could see in several forums, people were inconvenienced but were prepared to face it without a grumble. This shows quality of our people. However, it is important that despite the difficulties faced by all, we all whole heartedly supported it and that shows how much we all desire to have a corruption, black money and terror free society.

However, it is sad to note that some persons have been able to find ways to get out without the intended damage. This does happen in most such steps. Hope that the post demonetisation intensive investigation actually targets the real culprits and general public are not inconvenienced.

It is the time for our testing. It is the time, where we as professionals, have to rise beyond our normal duties and ensure that we become real partners in the nation building. No Government with whatever strength, determination or planning can bring about the change which our country needs today without whole hearted and active support from its people. It is not only the change of the way in which we do transactions, but it has to result into change in the mindset.

In a country which is as vibrant and big as India, if we can smoothly pass through such a major change without a dent, speaks volume of our capacity. It has to be carried forward with firm resolve that we will make it a success. This is a leap for a long journey. This is not a solution in itself but a hope for moving towards a much sought solution.

I am known to be an incorrigible optimist. I am extremely happy to be so and invite others to be so.


V. Sridharan, *Senior Advocate*
Chandni Patel, *Associate*,
Lakshmikumaran & Sridharan Attorneys

Demonetisation – Practical issues, Legal Questions

Demonetisation has raised many legal questions that require one's attention. Two questions that this article seeks to answer are – firstly, about the legality of a trader / person accepting high denomination notes that have ceased to be legal tender, and secondly, the consequences for those who have been unable to exchange the high denomination notes by the cut-off date[1]. Let us delve into some concepts first, and then proceed to the discussion on the above questions. It is to be noted that the following analysis does not take into account the applicability of tax and other laws which might have a bearing on the issue.

I. Tender and payment

Tender is understood, in contract, as an act of attempted performance and a unilateral act of one of the parties to the contract. As per *Chitty on Contracts*[2], a tender of money by the debtor to the creditor does not discharge the debt but holds a good defence against the latter's claim for interest on the debt. This is in contrast to payment, which is a bilateral act requiring consent of both the parties to the contract[3]. A tender of sum of money by a debtor and its acceptance by the creditor constitutes payment, thereby discharging the debtor from the debt and other obligations.

The definition of money depends on the context in which it is used. While it serves a purely abstract function as a unit of account, it is also as a store of value and a medium of exchange[4]. The definition assigned to money, thus, are different in the economic and legal sense with the former being wider approach. In legal sense, money is understood as being a chattel issued by the authority of the law and denominated with reference to a unit of account which is meant to serve as universal means of exchange in the State of issue[5].

II. Characteristics of physical money

Examining the characteristics of physical money, it must be noted that the value of money is the sum or unit of account that is denominated on it rather than the intrinsic value as paper or metal. It is a fully negotiable instrument and therefore, the person receiving the money in good faith

1 As notified, the cut-off date is 30-12-2016

2 Chitty on Contracts, Vol 1, 31st Ed. pp. 1599-1600

3 Refer Goode on Commercial Law, 4th Ed., p. 485 for the difference between payment and tender

4 Ibid.

5 Mann, Legal Aspect of Money, 5th Ed 1992, p. 8

obtains a good title over it, irrespective of the history of the previous holder. It is fully fungible which allows one to exchange any unit of money with any other unit or combination of unit of the same denominated value. The natural consequence of this statement is that money being not a 'good' in itself is never bought or sold as a commodity. It is utilised, however, as a medium of exchange for buying or selling other commodities.

III. What is 'legal tender'?

Money usually takes the colour of legal tender. Legal tender is understood to mean anything that has the ability to discharge debt, or is a valid medium of payment recognised or backed by law. A legal tender can also be used interchangeably with bank note or currency note.

The common law requires that a person shall always make a tender in the current coin or currency i.e. the currency recognised in law as a medium of exchange[6]. However, there is nothing stopping parties to a contract from digressing from the requirement of common law. Therefore, while in absence of any specific terms governing the payment mechanism in a contract, one is bound to offer legal tender there is nothing in law stopping the party from accepting payment in the form of non-legal tender. As the Delhi High Court quotes *Scheldon's Practice and Law of Banking 10th Ed.*, "unless accepted unconditionally, any payment except in legal tender, is a conditional payment".[7]

IV. Bank note is neither a negotiable instrument, nor is covered by contract law

Bank note indeed is a negotiable instrument, being a promise to pay the bearer the sum or unit of account in which it is denominated. However, Section 4 of the Negotiable Instruments Act, 1881, ('the NI Act') excludes bank notes and currency notes from the definition of promissory notes, and hence the ambit of the NI Act.

Next question is whether bank notes will be governed by contract law. There is no offer or acceptance in bank notes. This is so held by Justice Lokur in his concurrent judgment, as he spoke for the Bombay High Court, in the case of *J. M. D'Souza vs. The Reserve Bank of India — AIR 1946 Bom 510*. The High Court held that as soon as a bank note is issued, it becomes a legal tender and must be accepted by the public as such. Therefore, bank notes are entirely a creation of statute, thereby giving entirely governed by the law creating them.

V. Relevant provisions of the RBI Act

Section 26(1) of the RBI Act gives bank notes issued by RBI the character of legal tender. Further, Section 26(2) of the Act empowers the Central Government, on the recommendation of the Central Board of the RBI, to declare a bank note to be not legal tender, by way of a notification. Such declaration of notes ceasing to be legal tender could be subjected to certain conditions. It is under this section, that the Central Government has notified the current demonetisation scheme[8].

Another relevant provision in the RBI Act is Section 39 which imposes statutory obligation on the RBI to exchange notes and coins. Sub-Section (1) provides that the RBI shall, on demand, exchange notes presented to it, for rupee-coins and *vice-versa*. Further, sub-section (2) provides that when presented with a bank note, the RBI shall exchange it for notes or coins of a lower denomination.

As an illustration – if a person goes to RBI today with a 2000-rupee note, and asks for 2000 one-rupee coins, it is obligatory on the part of RBI

6 Chitty on Contracts, Vol 1, 31st Ed. P 1601

7 Sher Singh Gupta vs. Prem Chand — AIR 1980 Del 305

8 Notification S.O. 3407 (E) dated 8-11-2016

to tender such change. The RBI cannot refuse to do so. It is an express statutory obligation cast on the bank by the RBI Act, which cannot be abrogated save through another legislation.

VI. Legislations in 1946 and 1978 regarding demonetisation

India has witnessed demonetisation drives earlier also. In 1946, demonetisation was carried out by way of an ordinance[9]. In 1978, a statute[10] provided for the demonetisation. Provisions of both these legislations were largely similar, and hence we shall refer to the 1978 Act representatively. Section 3 of such Act declared certain high denomination notes as ceasing to be legal tender. Section 4 prohibits anyone from transferring or receiving such notes. Sections 6 and 7 then laid down a mechanism for declaring the demonetised notes and exchanging them. Section 10 provided for a punishment for the contravention of any provision of the Act.

VII. Legality of accepting old notes as consideration for goods or services

A person who buys goods or receives services from a seller, contracts a debt to the extent of the consideration involved. Unless the contract provides for a specific medium of payment, the buyer may tender bank notes in discharge of such debt. The concept of 'legal tender', as discussed above, steps in here. The seller cannot refuse from accepting bank notes which are legal tender. If he so refuses, the buyer would stand discharged from his obligation to complete the contract, and the seller would have little remedy under the contract law. However, nothing prevents the seller from accepting anything other than legal tender and issue a valid discharge of the debt.

Further, there is nothing in the current notification that prohibits dealing in the demonetised notes, unlike earlier legislations. For example, section 4, read with section 10 of the 1978 Act provided for a punishment which could span up to three years to anyone who transferred or received the then demonetized notes. Such a prohibition or punishment is conspicuously absent from the current notification.

Therefore, the answer to our query would be – there is no violation of any law committed by a person who accepts the demonetised notes as consideration for goods sold or services rendered by him.

VIII. Should the RBI exchange old notes even after the cut-off date?

As seen earlier, Section 39 of the RBI Act casts a statutory obligation on the RBI to exchange notes and coins. This obligation could be taken away through some legislative measure. For example, the earlier legislations precluded the operation of the RBI Act entirely with respect to exchange. This was done through a non-obstante clause[11].

This abrogation of RBI's duty to exchange has been dealt with at length by the High Courts at Delhi and Bombay. The Delhi High Court, in *Bimladevi*[12] held that a holder of demonetised notes cannot demand for an exchange of such notes from the RBI u/s. 39 of the RBI Act, except in the manner laid down in the 1978 Act, in the following words:

> *"It is true that notwithstanding the enactment of ss. 3 and 4 of the Demonetisation Act, a holder of high denomination bank notes could have insisted upon the Reserve Bank exchanging the said high denomination*

9 Ordinance III of 1946, titled High Denomination Bank Notes (Demonetisation) Ordinance, 1946

10 The High Denomination Bank Notes (Demonetisation) Act, 1978

11 Section 6 of the 1946 Ordinance, and Sections 7 and 8 of the 1978 Act

12 Bimladevi & Ors. vs. Union of India 1983 (4) DRJ 236 (Delhi)

notes for other currency notes as provided by s.39(2). This provision, however, unfortunately for the petitioners, stands overridden by s. 7 of the Demonetisation Act. The said section has been enacted "notwithstanding anything to the contrary" contained in the RBI Act. Section 7 provides for the manner and the time in which the high denomination notes can be exchanged. The provisions of ss. 7 and 8 are clearly in conflict with and contrary to s. 39(2), and the effect of the same is that after January 16, 1978, no exchange can be effected under s. 39(2) and the high denomination notes could be exchanged only in accordance with the provisions of ss. 7 and 8 of the Demonetisation Act."

In the context of the 1946 Ordinance, the Bombay High Court held similarly[13]. Both these cases dealt with petitioners who were not banks. In case of banks, however, the earlier legislations did not override the RBI Act[14]. The Calcutta High Court, in the case of a bank[15], distinguished between the exchange mechanism provided with respect to banks and non-banks, laying emphasis on the non-obstante clause. The court said that the obligation under Section 39 of the RBI Act doesn't stand abrogated due to the absence of the non-obstante clause in the provision[16] laying down exchange mechanism for banks and Government treasuries. A bank, thus, could demand exchange such notes from the RBI.

A reference here may be made to the Apex Court's decision in *Jayantilal's*[17] case, wherein the constitutionality of the 1978 Act was challenged. This decision does not affect the legal principles discussed above, as laid down by the High Courts.

In view of the foregoing discussion, let us answer the second query. The current notification has been issued under Section 26(2) of the RBI Act. Such section does not override Section 39, through a non-obstante clause or otherwise. The notification also does not contain anything to preclude the operation of Section 39. Thus, Section 39 would be applicable even beyond the cut-off date. Any person should be able to demand an exchange of the old demonetised notes from the RBI.

IX. Conclusion

A detailed analysis of various provisions of the laws applicable, and contrasting from the earlier demonetisation legislations, our queries stand answered as follows. There is **no violation of law** by a person on accepting payment in currency notes that have ceased to be legal tender. Further, in the absence of a non-obstante clause in the current notification unlike the 1978 Act and 1946 Ordinance, Section 39 of the RBI Act would be applicable, and one can go to the RBI well after the cut-off date to exchange the old notes – **RBI would be obliged** to honor such exchange.

13 J M D'Souza v. RBI AIR 1946 Bom 510

14 Section 6 of the 1978 Act, for example, simply provided for a mechanism for exchange of notes from the RBI, in case banks were in possession of such notes. It did not contain a non-obstante clause precluding the RBI Act.

15 The Dominion of India vs. Manindra Land and Building Corporation Ltd. AIR 1954 Cal 174

16 Sections 5 & 6, The High Denomination Bank Notes (Demonetisation) Act, 1978 and Section 5 of The High Denomination Bank Notes (Demonetisation) Ordinance, 1946

17 Jayantilal Ratanchand Shah vs. RBI AIR 1997 SC 370

CA Dhinal Shah

Demonetisation – A Perspective

I. Introduction

The Hon'ble Prime Minister of India, Shri Narendra Modi made an announcement at 8.00 pm on 8th November, 2016 to demonetise the high denomination bank notes of ` 500 and ` 1,000 issued by RBI. The objective was to curb financing of terrorism through the proceeds of fake Indian currency notes and the use of such funds for subversive activities such as espionage, smuggling of arms, drugs and other contraband into India and for eliminating black money which casts a long shadow of parallel economy on Indian real economy.

Government through Reserve Bank of India has taken steps to minimise the inconvenience to the public for replacement of old currency with new currency till the close of business hours on 30th December, 2016.

This being widely regarded as one of the best steps taken by an Indian Prime Minister in the short past to root out the black money. This step affects the nation in many ways, but we find some very significant effects / impacts of this scheme in India.

On the 8th of November the victory of Donald Trump in the US Presidential Elections combined with this move by the PM of India led to the BSE Sensex opening with a massive loss of around 1,300 points. The BSE did stabilise in the coming days, but some economic experts do believe that this move may lead to a fall in the Oct. – Dec. quarter GDP. They also believe that if the Government doesn't do something to ease the liquidity situation, it may lead to a loss for the export oriented sectors.

The households will surely suffer a lot because of the shortage of liquid cash since 86% of the transactions by the households are done in cash. This will in turn affect the small businesses such as utility stores and all of those places which don't accept the old denomination of the currency.

II. Background

i. Earlier Demonetisation

The first demonetisation in India was in 1946 (prior to independence) on 12th January, 1946. The second demonetisation was on 16th January, 1978 through the ordinance. In both the situations, the demonetisation was mainly due to large scale accumulation of undisclosed income by black marketers. As compared to 1946 and 1978 demonetisation, the present demonetisation has certain distinctive features as under.

1. The objective of the earlier demonetisation was intended to tackle only undisclosed income, whereas the present

demonetisation is intended to tackle to counterfeit and fake currencies (which is used to finance subversive activities) in addition to tackling black money.

2. 1978 Act specifically prevented any person from transferring or receiving demonetised notes post the cut-off date. Similar provision is absent in the current notification.

3. Earlier demonetisation was carried out through promulgation of ordinances whereas the present demonetisation is through a notification.

4. Due to fall in inherent value of ` 500 / ` 1,000 in view of inflation, the impact of present demonetisation is being felt by the large sections of the society.

ii. Generation of Black Money

Generation of Black Money and its stashing abroad in tax havens and offshore financial centres have dominated the discussion and debate in the public fora during last few years. The Hon'ble Parliament, Hon'ble Supreme Court and public at large have expressed concern on this issue. Black Money means money which have been generated through illegitimate activities not permissible under the law or the wealth generated and accumulated by failing to pay the dues to the public exchequer in one form or the other.

There are no reliable estimate of Black Money generation or accumulation, neither is there an accurate well accepted methodology for making such estimation. Attempts have been made in the past to quantify the black money and broadly speaking either a Kaldor's approach (quantifying non salary income above the exemption limit of Income-tax) or The Edgar L. Feige method (transaction income on the basis of current deposit ratio) have been followed.

The Direct Tax inquiry committee (Wanchoo Committee) followed the approach adopted by Kaldor and accordingly the Black Money was estimated to be ` 700 crore for the financial year 1961-62 and ` 1,800 crore for Financial year 1968-69. Dr. D. K. Rangnekar estimated (as compared to Wanchoo Committee estimate) ` 1,150 crore for financial year 1961-62 and ` 2,833 crore for financial year 1968-69. In the opinion of noted economist Mr. O. P. Chopra the unaccounted income had increased from the 6.5% of the Gross National Product (GNP) in Financial Year 1960-61 to 11.4% of GNP in Financial Year 1976-77. As per NIPFP estimate, the estimated black money during F.Y. 1983-84 was approximately 19% to 21% of GDP. It is estimated that now this ratio has increased to approximately 23% to 26% compared to Asia wide average of 28% to 30%, to an Africa / Latin America wide average of 41% to 44% of respective GDP. According to this study the average size of shadow economy in 96 developing countries is 38.7%, with India below average.

III. Estimates of Black Money Stashed Abroad

As per Swiss Banking Association Report in 2006, bank deposits in the territory of Switzerland by Indian Nationals was estimated to be US$ 1,456 billion. In 2010 the total liability of the Swiss bank towards Indians were 1.945 billion Swiss Francs (approx. ` 9,295 crores).

IV. Factors leading to Generation of Black Money

As per the White Paper on Black Money published by Ministry of Finance in May, 2012 the following factors have been estimated leading to Generation of Black Money.

1. Manipulations of Accounts

2. Out of Book Transactions

3. Parallel Books of Account

4. Manipulations of Sales / Receipts / Expenses / Purchases / Capital expenses

5. Under Reporting of Production, Closing Stock, etc.

6. Manipulations by way of International Transactions through Associated Enterprises.

V. Some Vulnerable Sections leading to Generation of Black Money

1. Land and Real Estate Transactions
2. Bullion and Jewellery Transactions
3. Financial Market Transactions
4. Public procurements
5. Non Profit Sector
6. External Trade and Transfer pricing (it is estimated that developing countries may be losing US$ 1,600 billion of tax revenues a year, primarily through Transfer Pricing strategies)
7. Trade based Money Laundering
8. Tax Havens
9. Offshore Financial Centres
10. Investment through innovative derivative instruments (e.g. participatory notes)

VI. Tax measures as a part of ongoing crusade against Black Money

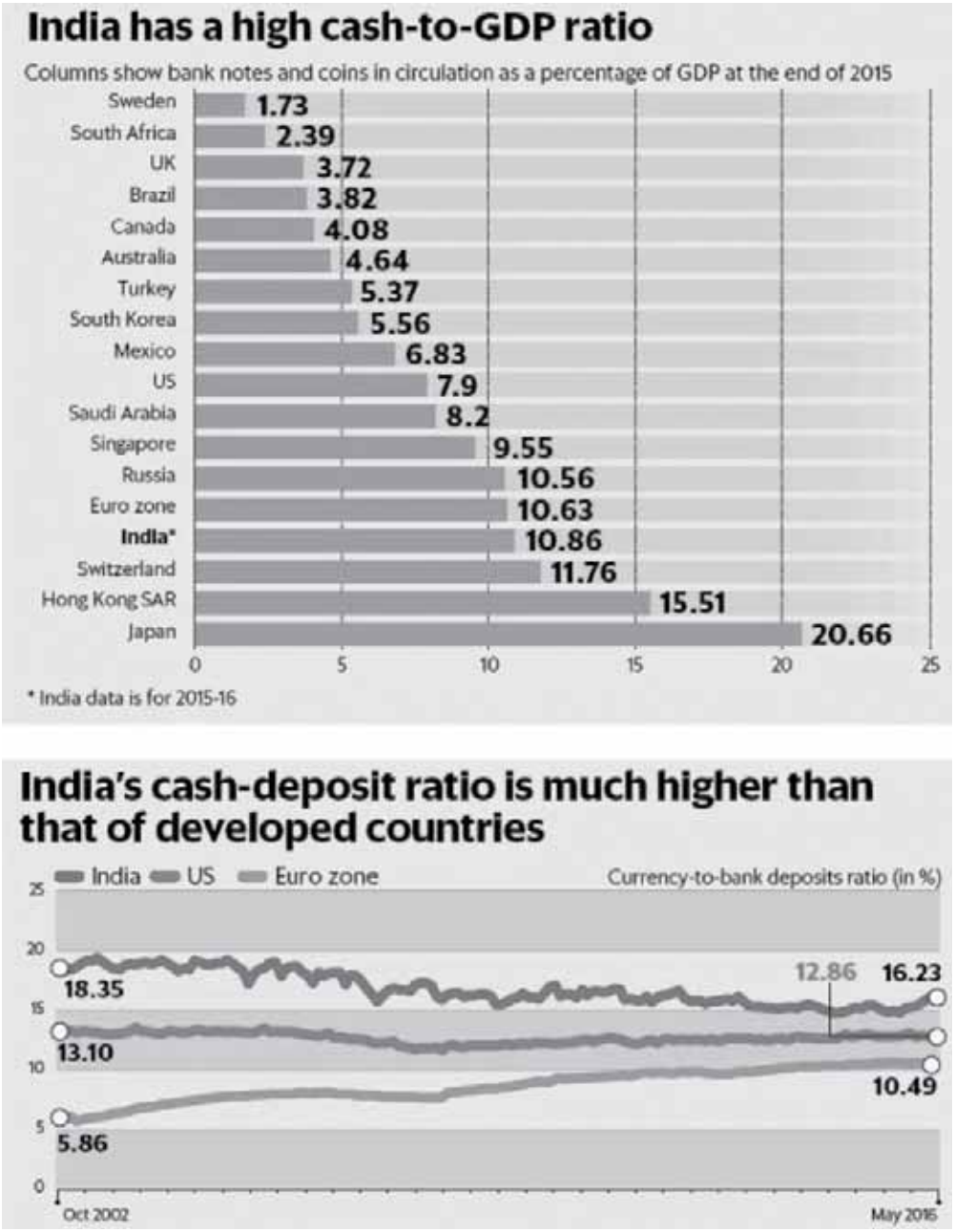
Since past couple of years, the GOI has taken various steps to tackle the menace of black money circulating in the economy and / or stashed outside India. Some of the tax measures include the following:

- Introducing the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 to tax unaccounted foreign assets / income, which also offered a limited window period to voluntarily declare such assets / income.
- Introducing enhanced disclosure requirements of assets and liabilities in income tax return forms.
- Imposing extensive requirement to quote Permanent Account Number (PAN) in several financial transactions such as purchase of jewellery, etc.
- Introducing the Income Declaration Scheme – 2016 to provide a final opportunity to taxpayers to declare unaccounted domestic assets / income. This scheme recently closed on 30th September, 2016.
- Taking proactive measures to collect and exchange information within India and with countries outside India.
- Amending the Benami Transactions (Prohibition) Act, 1988 to effectively deal with benami property, including confiscation thereof (effective from 1st November, 2016).

The demonetisation of specified notes is in furtherance of such measures. The Prime Minister has stated that the demonetisation is not the final step against Black Money. In future, the GOI is expected to take action against concealed assets like immovable property held in benami names, bullion, jewellery, etc.

VII. Cash Economy & its impact

The Indian economy's heavy dependence on cash is likely to impact on public at large due to present demonetisation. India's cash to GDP ratio is substantially high compared to other countries. Similarly, India's cash deposit ratio is much higher than developed countries.



Source: Pradhan Mantri Jan Dhan Yojna Website

In fact, with the increase in banking facilities, this ratio should reduce.

The total number of Bank Notes in circulation rose by 40% between 2011 and 2016, the number of notes of ` 500 denomination was 76% and for ` 1,000 denomination was 109% during this period. It is estimated that out of total cash circulation of ` 14 lakh crore in the economy about 86% is of ` 500 / ` 1,000 notes.

VIII. Impact of this measures on economy

While sectors with linkages to the unorganised economy are likely to be affected, technology and financial services are expected to gain in the medium to long term. On a sectoral basis, the commodities and agricultural sector, including the market for consumer durables and non-durables is expected to feel the heat. In the short to medium-term, large denomination purchases will likely be made via electronic purchases rather than through brick and mortar outlets. This will impact the retail sector adversely.

The real estate sector is likely to see a significant negative impact in the medium-to long-term, particularly in the repurchase market. There are expectations of a revaluation of current real estate transactions across the board representing possible losses to players in the sector. The luxury goods market is also likely to get affected as this move represents an erosion of real wealth to a large number of people. Areas of sub-sectoral impact will be felt in luxury cars, SUVs, gems, jewellery, gold and high-end branded products.

On the positive side, there is likely to be a reset of spending patterns as this move represents indirectly a significant push towards a cashless economy. Businesses in the fin-tech sector, including payment banks, mobile wallets, electronic transfer providers, etc., are expected to see gains.

We are likely to see some decline in inflationary pressures as demand along with household inflation expectations are likely to go down. This would make the RBI more comfortable on managing inflation in the future increasing the possibility of rate cuts.

The key segments of the economy where cash transactions play a vital role are real estate / construction, gold and the informal sectors. The role of cash transactions in case of real estate and gold is mostly dubious, however in case of the informal sectors it is the lifeline.

For example, small and marginal farmers in the fruits and vegetable category typically require off-loading of their produce in the local mandi in cash and could see an immediate impact. A sudden demonetisation will adversely impact this segment of the economy and it will witness immediate contraction, though the impact will diminish over time.

A large amount of cash in circulation will be brought within the purview of the formal banking system by way of deposits. This is structurally a positive for banks as part of this cash gets deposited as current account and savings account (CASA) deposits, reducing banks dependence on higher cost borrowing. Deposit deployment remains a challenge in the short to medium term due to the current tepid demand for credit, thus pushing deposit rates lower.

IX. Conclusion

It is estimated that the present demonetisation will impact the B2C business more and there will be some slowdown in the economy, particularly certain sectors of the business in next 6 months to one year. Real estate prices have started falling down. The introduction of GST from the next year and plough back of certain black money into the real economy (as per RBI report it is estimated that approx. ` 5.21 lakh crore of old ` 500 / ` 1,000 notes have been deposited in the banks in 10 days) will have long term positive impact on the GDP. It is also felt that the people have started feeling a fear due to Government action in last 2 years and certain potential future actions to curb the black money. This will certainly have more positive impact on the economy.

We all, as citizens of this country should support the Government in their efforts to improve the culture and the practices (including mindset) of the people. In particular, the Professionals like us must demonstrate & support such measures by maintaining highest standards of ethical behaviour (both in theory and practice).

CA Bhadresh Doshi

Amendments to Income-tax Act, 1961 & Finance Act, 2016

Introduction

Though people were in shock from 8th November, 2016, I was in real shock on 29th November, 2016 when I saw the Taxation Laws (Second Amendment) Bill, 2016 was getting passed in the Lok Sabha without any debate or discussion. Though it was admitted to be a Bill of vital public importance, no discussion was allowed on it in view of urgency involved. For about twenty days, the Government did not realise that the law of our country is not capable of addressing the problem black money which was particularly arising on account of unprecedented step taken to withdraw high-value currency notes. When it realised, they felt that it was too late and moved hurriedly in making the law compatible with what they intended. Taking it easy, I believe that the efforts of the current Government against the black money are definitely laudable.

In this article, I am attempting to present in-depth analysis of this Bill. The Bill proposes to amend few selected provisions of the Income-tax Act with a view to plug loopholes to ensure that defaulting assessees are subjected to tax at a higher rate and stringent penalty provisions. The Bill also proposes a new Scheme similar to the erstwhile Income Declaration Scheme, 2016 (referred as 'IDS' in this article) but in a new avatar. It allows declaration of undisclosed income but only in a restricted form. The declarant is required to pay 49.9% of the amount of undisclosed income declared and further place 25% of it as interest-free deposit with the Government. The Scheme is discussed first and then the amendments to the Income-tax Act.

Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016

The Finance Act, 2016 is proposed to be amended to insert Chapter IX-A incorporating Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016 (referred as 'the Scheme' in this article). The objective of this Scheme can be gathered from Statement of Objects and Reasons which is reproduced below:

> *"In the wake of declaring specified bank notes as not legal tender, there have been representations and suggestions from experts that instead of allowing people to find illegal ways of converting their black money into black again, the Government should give them an opportunity to pay taxes with heavy penalty and allow them to come clean so that not only the Government gets additional revenue for undertaking activities for the welfare of the poor but also the remaining part of the declared income legitimately comes into the formal economy. Thus, money coming from additional revenue as a result of the decision to ban ` 1,000 and ` 500 notes can be utilised for welfare schemes for the poor."*

Scope of Declaration

Section 199C(1) permits declaration of undisclosed income which is chargeable to tax under the Income-tax Act for A.Y. 2017-18 or any earlier assessment year. Though the Section does not use the term 'undisclosed income', it has been referred in the title of the Section. The circumstances in which any income can be considered as 'undisclosed income' have not been specified in the Scheme. However, the income which has neither been included in the return by the assessee nor been assessed in his hands so far can be considered as 'undisclosed income'. If the concerned income, though not disclosed by the assessee, has already been assessed under any proceedings under the Act, then making of a declaration of such income under the Scheme would not save the assessee from the resultant consequences which may arise on account of such assessment. The income on which tax has been fully paid cannot be considered as 'undisclosed income' although it has remained to be included in the return filed or no return has been filed at all by the assessee.

The declaration can be made only in respect of such undisclosed income which is in the form of cash or deposit in an account maintained with a specified entity (referred as 'eligible account' for the purpose of this article). The 'specified entity', for this purpose, means the Reserve Bank of India, any banking company or co-operative bank, head post office or sub-post office and any other notified entity. The deposits made with credit societies or patpedhis etc. may not eligible for declaration unless they are notified for this purpose. The eligible account should be of the same person who is declaring the undisclosed income deposited in such account.

Though the objective of the Scheme is to deter illegal ways of converting specified bank notes into black money again, the declaration under the Scheme is not restricted only to specified bank notes. The declaration may be made in respect of cash in any form i.e. currency notes withdrawn, old currency notes which are still valid or even new currency notes. Even in respect of deposit made in the eligible account and declared under the Scheme, it is not necessary that it should comprise of specified bank notes deposited during the period from 10th November, 2016 to 30th December, 2016. The deposit made from any source can be declared under the Scheme if it represents the undisclosed income.

Whether cash or deposit in the eligible account should be available with the declarant at present?

Section 199C(1) does not expressly provide that the declarant should be holding the cash declared by him under the Scheme on the date on which the Scheme comes into force or on the date of making the declaration. It would also be unfair to provide for such a condition since the declarant might have utilised his undisclosed income available with him in the form of specified bank notes for making payments which were otherwise permitted for a limited period like payment for medical treatment in a Government hospital, payment for purchasing rail/air tickets, payment of VAT etc. Otherwise, such expenditure might get taxed u/s. 69C as unexplained and that too at a substantially higher rate if the declaration is not allowed to be made in this regard. Thus, undoubtedly, the declaration under the Scheme may be made in respect of cash or deposit in an eligible account though it is not available with the declarant as on the date on which the Scheme comes into force or on the date of making the declaration.

But then, it leads to an interesting question as to whether the declaration can be made in respect of any undisclosed income which was held in the form of cash at any time in past or deposited in the eligible account at any time in past but not available in the same form with the declarant at present or whether the cash or deposit in the eligible account declared under the Scheme should at least be available with the declarant as on 8th November, 2016. It is a little tricky issue and may turn out to be a point for hot discussion in days to come in the absence of any clarity in the Scheme.

The Statement of Objects and Reasons categorically specifies that this Scheme has been proposed in

the wake of declaring specified bank notes as not legal tender and to allow an opportunity to the black money hoarders to come clean by paying tax with heavy penalty instead of allowing them to find illegal ways of converting their black money into black again. Thus, ideally, this Scheme should have provided for the declaration of black money represented by such specified bank notes held on the date from which they ceased to be legal tender.

However, the provisions of the Scheme do not provide so. Instead, the Scheme even permits declaration of undisclosed income in the form of cash other than specified bank notes. The scope of declaration which can be made under the Scheme is not made limited to the objective with which the Scheme has been proposed. Therefore, one of the contentions which may be made is that the provisions of this Scheme are required to be interpreted independent of the withdrawal of specified bank note from being legal tender. The person who might not be affected at all due to such withdrawal is also allowed to make the declaration of his undisclosed income. Accordingly, the person who was holding undisclosed income in the form of cash or deposit in the eligible account at any time in past even prior to 8th November, 2016 should also be allowed to make the declaration under the Scheme irrespective of whether it has been still held in the same form as on 8th November, 2016 or not.

Let us take a simple illustration to understand it. Mr. A has incurred huge amount of expenditure in cash for some function in his family prior to 8th November, 2016. It represents his undisclosed income. Another person, Mr. B, holds his undisclosed income in cash as on 8th November, 2016. If Mr. B is allowed to make a declaration of his undisclosed income under the Scheme, then Mr. A should also be allowed to make the declaration under the Scheme in the absence of any express provisions to the contrary in the Scheme. Merely because Mr. A has utilised the cash available with him prior to 8th November, 2016, how can he be denied the opportunity to come clean by making the declaration under the Scheme? Imposing any restriction on making declaration by a person who does not hold the undisclosed income in the form of cash or deposit in the eligible account as on 8th November, 2016 but held in such form in past may be challenged as no such condition has been expressly provided in the Scheme. Such a challenge would become all the more stronger if Mr. B is allowed to make the declaration of his undisclosed income held in the form of cash but other than specified bank notes and not affected at all by the decision to withdraw specified bank notes with effect from 9th November, 2016.

As a corollary, one may also take a view that the declaration can be made even in a case where the undisclosed income which was generated initially in the form of cash or deposit in the eligible account but thereafter has been utilised to acquire some other asset. By doing so, one would be able to declare his undisclosed asset under the Scheme by just declaring the amount utilised to acquire it so that its source stands explained for the purpose of Act. Under the IDS, Section 183(2) provided that the fair market value of the assets declared as on 1st June, 2016 shall be deemed to be the undisclosed income. Therefore, the declarant was required to pay 45% of the current fair market value of the undisclosed assets declared under the Scheme. However, there is no such provision under the present Scheme deeming current fair market value of the assets declared as undisclosed income. The person declaring the source of any undisclosed assets, if it was in the form of cash or deposit in the eligible account, would be better off as compared to the person who declared such undisclosed assets under the IDS.

Of course, the above proposition is contrary to the whole idea behind the Scheme. It is also against the policy of the current Government i.e. not to come out with any amnesty scheme like VDIS, 1997 allowing the person to declare his undisclosed asset not at its current value but at a value at which it was acquired. Therefore, one should be extra cautious while taking any such view or rather

refrain from taking such extreme view as it may result into inevitable litigation.

The whole issue can also be looked at from another angle. The Government has proposed a scheme which is intended to provide opportunity to come clean but only to a restricted class of people who hoarded black money in the form of cash or deposit in the eligible account. The only option left to the other class of people who are holding black money but in different form is to declare them in their return voluntarily and pay total amount of 77.25% (tax @60% u/s. 115BBE + Surcharge of 25% + Cess of 3%), if they have been considered as ineligible for making declaration under the Scheme. No doubt, they had been given an opportunity to come clean under the IDS which just expired on 30th September, 2016. But, the same opportunity was given to the class of people who have been given a second opportunity under the new Scheme. It, results into discrimination between the people who hoarded black money but in different forms. One class of people has to face higher tax burden as compared to the other class of people. Further, they are also deprived of several immunities which are granted to the persons considered to be eligible for making declaration under the Scheme.

No deduction of expenditure or allowance and no set-off of loss

Section 199C(2) provides that no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which declaration is made. Similar provision was also there under the IDS. Therefore, the amount required to be declared under the Scheme is the gross amount of income without claiming any deduction against it.

Tax, Surcharge, Penalty and Deposit

The total amount payable on the amount of undisclosed income declared under the Scheme is as follows:

Type of levy	%
Tax	30% of undisclosed income
Pradhan Mantri Garib Kalyan Cess	33% of tax i.e. 9.9% of undisclosed income
Penalty	10% of undisclosed income
Total	49.90% of undisclosed income

Therefore, the declarant is required to pay 49.90% of the amount of undisclosed income declared under the Scheme. Further, he needs to deposit 25% of the undisclosed income declared in the *Pradhan Mantri Garib Kalyan* Deposit Scheme, 2016. Interestingly, Section 199F(1) provides that the amount 'not less than' 25% shall be deposited hoping that somebody may deposit even more than 25% voluntarily!

This deposit is on an interest-free basis and refundable only after four years from the date of deposit. This Deposit Scheme shall be notified by the Central Government in consultation with the Reserve Bank of India. The Statement of Objects and Reasons mention that the funds mobilised through this Deposit Scheme is proposed to be utilised for the programmes of irrigation, housing, toilets, infrastructure, primary education, primary health, livelihood, etc. Section 199F(2) also provides that the deposit made shall also fulfil such other conditions as may be specified in the *Pradhan Mantri Garib Kalyan* Deposit Scheme, 2016. Since the Scheme has not yet been notified, other conditions which are required to be satisfied are not known.

The declarant is required to pay tax, surcharge and penalty as well as is required to deposit in the Deposit Scheme as mentioned above before filing of declaration. He needs to submit proof of payment and proof of amount deposited in the Deposit Scheme along with the declaration. The amount of tax, surcharge and penalty paid shall not be refunded to the declarant.

Declaration may be considered as void

The declaration shall be void and shall be deemed never to have been made in the following circumstances:

1. A declaration has been made by misrepresentation or suppression of facts.
2. A declaration has been made without payment of tax, surcharge or penalty.
3. A declaration has been made without depositing the required amount in the Deposit Scheme.

Non-applicability of Scheme in certain cases

Section 199-O provides for cases in which the provisions of the Scheme are not applicable. Thus, no declaration can be made under the Scheme in these specified cases. The basic purpose behind not permitting declaration in certain cases is that the Scheme should not facilitate those persons who are engaged in such activities which are criminal or harmful to society such as smuggling, terrorism, drugs, corruption etc.

The cases in which declaration is not allowed be made under the Scheme are in relation to the followings –

1. A person in respect of whom an order of detention has been made under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (the COFEPOSA). However, if the order of detention has been revoked or set aside, as mentioned in Section 199-O, then such a person is thereafter entitled to make the declaration.
2. Prosecution for any offence punishable under the following –
    a. Chapter IX (offences by or relating to public servants) or Chapter XVII (offences against property) of the Indian Penal Code,
    b. Narcotics Drugs and Psychotropic Substances Act, 1985,
    c. Unlawful Activities (Prevention) Act, 1967,
    d. Prevention of Corruption Act, 1988
    e. Prohibition of Benami Property Transactions Act, 1988
    f. Prevention of Money-Laundering Act, 2002
3. A person who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992.
4. Any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Amount declared not includible in the total income under the Income-tax Act

Section 199-I provides that the amount of undisclosed income declared in accordance with the provisions of this Scheme shall not be included in the total income of the declarant for any assessment year under the Income-tax Act. Thus, the undisclosed income which has been declared under the Scheme is no longer taxable under the provisions of the Income-tax Act.

The income which was chargeable to tax in the hands of a person other than the declarant can still be included in the total income of that other person even though the same has already been declared under the Scheme. Therefore, the income should be declared only by that person who is chargeable to tax in respect of such income and not by any other person. If the undisclosed income declared under the Scheme is found to be chargeable to tax in the hands of a person other than the declarant then all the consequential proceedings under the Income-tax Act for levy of tax, interest and penalty may be initiated against the former.

Declaration vis-à-vis pending proceeding

Unlike IDS, this Scheme does not provide for any restriction on making declaration where the

assessment proceeding is pending before the Assessing Officer or search / survey has already been conducted. Thus, the declaration can be made irrespective of the pendency of any proceeding under the Income-tax Act against the declarant. Upon making the declaration; the declared amount is not includible in his total income thereafter while completing the pending proceeding.

The assessees may take the advantage of this Scheme where the assessment proceeding is yet pending but only in respect of income in the form of cash or deposit in the eligible account. For instance, the Assessing Officer has noticed the undisclosed bank account of the assessee and he is in the process of making an assessment of income arising out of it. The assessee may make the declaration in respect of deposits made in such account under the Scheme in which case the total liability arising under the Scheme may be lower than the total of tax, interest and penalty which may otherwise become payable by him under the Act. Similarly, declaration can be made of the bogus loans which are credited to the eligible account. However, it may be noted that no deduction can be claimed in respect of any expenditure or allowance against the income declared under the Scheme.

The declaration can also be made even after the search or survey has already been conducted and the undisclosed income has already been detected by the Department. Even the cash seized u/s. 132 (prior to 8th November, 2016 or afterwards) which represents the undisclosed income of the assessee can be declared under the Scheme. It may be beneficial to the assessee to opt for declaration under the Scheme, more particularly, where the rate of penalty on such undisclosed income found is much higher under the normal provisions of the Act.

Section 199J provides that the declarant shall not be entitled, in respect of undisclosed income declared or any amount of tax and surcharge paid thereon, to re-open any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act, or claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment. Therefore, the declaration cannot be made in respect of the income already assessed by the Assessing Officer with a view to claim benefit of the declaration in the pending appellate proceeding.

Immunity

Section 199L provides that nothing contained in the declaration shall be admissible in evidence against the declarant for the purpose of any proceeding under any Act but other than the Acts mentioned in Section 199-O as discussed above. This is notwithstanding anything contained in any other law.

The erstwhile IDS had provided a similar immunity but only in respect of penalty or prosecution proceedings under the Income-tax Act and the Wealth-tax Act. The present Scheme provides immunity from all the Acts but excluding those referred to in Section 199-O. Further, the erstwhile IDS had provided a specific immunity from the Prohibition of Benami Property Transactions Act, 1988 subject to the fulfilment of certain conditions which is not available under the present Scheme.

The declaration made under the present Scheme cannot be considered as evidence to charge any of indirect taxes as applicable to the declarant on the amount declared under the Scheme. Even it cannot be used against the declarant for the purpose of any proceedings under the Companies Act or Foreign Exchange Management Act or such other similar Acts.

Procedure

The declaration is required to be made within a period which will be notified for this purpose. The Rules will be notified prescribing the form of declaration. The declaration is required to be made in such a prescribed form by a person competent to verify the return of income u/s. 140 of the Act. Perhaps, the CBDT may also come out with a different challan for making the payment of tax, surcharge and penalty.

Incongruity between two provisions of the Finance Act, 2016:

The present Scheme has been made part of the Finance Act, 2016 by inserting a new Chapter IXA in it. Section 199C(1) provides that undisclosed income may be declared under the Scheme provided it is chargeable to tax under the Income-tax Act for A.Y. 2017-18 or any earlier assessment year.

The Finance Act, 2016 also contains the provisions regarding the erstwhile IDS. Section 197 of that Scheme provides as under:

Removal of doubts

197. For the removal of doubts, it is hereby declared that —

(a) …..

(b) …..

(c) *Where any income has accrued, arisen or received or any asset has been acquired out of such income prior to commencement of this Scheme, and no declaration in respect of such income is made under this Scheme, —*

(i) *Such income shall be deemed to have accrued, arisen or received, as the case may be; or*

(ii) *The value of the asset acquired out of such income shall be deemed to have been acquired or made,*

in the year in which a notice under section 142, sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act is issued by the Assessing Officer, and the provisions of the Income-tax Act shall apply accordingly.

The IDS commenced with effect from 1st June, 2016. By virtue of this provision, the undisclosed income, which has accrued prior to 1st June, 2016 but not declared under it, shall be deemed to have accrued in the year in which the notice of assessment under Sections 142 / 143(2) / 148 / 153A / 153C is issued. This position has been further clarified by CBDT in clarifications in the form of FAQ issued *vide* Circular No. 24 dated 27th June, 2016 [Question No.4] and Circular No. 27 dated 14th July, 2016 [Question No.2]. A view was also expressed therein that the above provision being part of the Finance Act, 2016, which is a later law in time, shall prevail over the relevant provisions of the Income-tax Act.

If this view of CBDT is accepted on the face of it, without questioning its validity, then the declaration of undisclosed income under the present Scheme can be made only if it is chargeable to tax for A.Y. 2017-18 or earlier assessment year not only in accordance with the provisions of the Income-tax Act but also in accordance with the provisions of Section 197(c) of the Finance Act, 2016. Any undisclosed income accrued, arisen or received prior to 1st June, 2016 may not be eligible for declaration under the Scheme unless a notice as referred to in Section 197(c) of the Finance Act, 2016 has been issued in that regard.

For instance, a search takes place in the month of December, 2016 in which the undisclosed income in the form of deposits made in the eligible account during various years is detected. The Assessing Officer is required to issue notice under Section 153A for past six assessment years i.e. A.Y. 2011-12 to A.Y. 2016-17. If such notice is issued in the month of April, 2017 then the aggregate of undisclosed income found during the course of search pertaining to all the assessment years up to A.Y. 2016-17 shall be deemed to have accrued in previous year 2017-18 as per Section 197(c). Accordingly, such undisclosed income in the form of deposits in the eligible account becomes chargeable to tax in A.Y. 2018-19. This Scheme permits declaration of undisclosed income only if it is chargeable to tax in A.Y. 2017-18 or any earlier assessment years. Thus, the declaration of such undisclosed income under the present Scheme may not be permissible, if the provisions of Section 197(c) are interpreted so technically.

Howsoever technical or academic this issue may appear to be, I cannot resist myself from pointing out this apparent lacuna in hastily drafted law without reconciling the position taken in the earlier scheme.

Miscellaneous

- Section 186(3) of the IDS specifically debarred any person from making more than one declaration. Unlike IDS, there is no bar on making more than one declaration under this Scheme.

- Section 199N provides that the provisions of Chapter XV relating to liability in special cases, Sections 119, 138 and 189 of the Income-tax Act shall, so far as may be, apply in relation to proceedings under this Scheme as they apply in relation to proceedings under the Income-tax Act. Under the similar provision of IDS, in order to ensure confidentiality of the declaration made, a Notification No. 56/2016 dated 6th July, 2016 was issued to provide that any document or record or information or computerised data as comes into possession of any public servant during the discharge of official duties in respect of a valid declaration shall never be shared with any other person or authority. It is expected that the similar notification may also be issued with regard to the present Scheme.

- In respect of undisclosed income declared in the form of cash available with the declarant, there is no requirement to deposit it in the bank account within a specified time period. However, it would be advisable to deposit it before making the declaration or within a reasonable period thereafter. It would be difficult for the assessee to link the source of cash deposited after a long time with the cash declared under the Scheme and more particularly if such deposit is of new currency notes of ` 500 and ` 2,000.

- The Wealth-tax Act has been abolished with effect from A.Y. 2016-17. However, prior to that, cash in hand in excess of ` 50,000 in case of individuals/HUFs and cash in hand not recorded in the books of account for other assessees was chargeable to the wealth-tax. The IDS had provided for specific exemption from wealth-tax in respect of assets declared. Though there is no such express provision under this Scheme, the cash declared for any assessment year prior to A.Y. 2016-17 cannot be charged to wealth-tax automatically. This is because Section 199L provides that the information given in the declaration shall not be admissible in evidence against the declarant for the purpose of any proceeding under any Act including the Wealth-tax Act. Therefore, the existence of cash as on the valuation date is required to be established independent of the declaration under the Scheme which would be very difficult.

- The undisclosed income in the form of cash deposited in rented bank accounts of others may not be eligible for declaration under the Scheme as it is considered to be an offence punishable under the Prohibition of Benami Property Transactions Act, 1988. Section 199-O does not permit declaration in relation to prosecution for such an offence.

Amendment to Section 115BBE and insertion of new Section 271AAC

Under the Act, certain unexplained amounts are deemed as income under section 68, section 69, section 69A, section 69B, section 69C and section 69D. Prior to A.Y. 2013-14, such income was taxable at the rates as applicable to the assessee. Section 115BBE was inserted in the Act with effect from A.Y. 2013-14 to provide that such income shall be taxed at the rate of 30%. Further, it was also provided that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Act in computing deemed income under the said sections. Section 115BBE was further amended by the Finance Act, 2016 in order to resolve uncertainty on the issue of set-off of losses against such income.

Various experts started opining publicly that the undisclosed income which may get exposed due to deposit of specified bank notes in the bank account may be voluntarily declared by the assessee in his

return to be filed for A.Y. 2017-18 as his income from other sources. Alternatively, such income may be offered under the provisions of Sections 68, 69 etc. and tax may be paid on it @30% as per the provisions of Section 115BBE. By doing so, the penalty leviable u/s. 270A can be avoided as there will not be any under-reporting of income. Section 270A empowers the Assessing Officer to levy penalty if the assessee has under-reported his income i.e. assessed income is more than the returned income. If the undisclosed income represented by cash deposits has been included in the returned income by the assessee himself, then the provisions of Section 270A are not capable of charging penalty on such undisclosed income. Such opinion was discussed publicly in all sorts of social media and also reported in the leading newspapers.

This has acted as whistleblower for the Government and forced it to reconsider the warning which was issued earlier by some of its official spokesperson that penalty of 200% shall be levied u/s. 270A on the amount of cash deposited which is unreasonably disproportionate to the income earned. Having realised that the current provisions of the Act are not capable to levy the penalty if the cash deposited due to demonetisation has been voluntarily offered to tax @30%, the amendments have been proposed in Section 115BBE and new Section 271AAC is proposed to be inserted to levy penalty in certain cases. These amendments proposed are effective from A.Y. 2017-18.

Disclosure of unexplained income by the assessee voluntarily – a permanent disclosure scheme under the Act

When the Assessing Officer finds that the assessee has credited any sum in his books of account or assessee is the owner of certain assets or assessee has incurred any expenditure etc., he can ask the assessee to explain the nature and source of it. Upon the assessee's failure to explain the nature and source to the satisfaction of the Assessing Officer, the relevant income may be charged to tax u/ss. 68, 69 etc. Therefore, it was considered to be only Assessing Officer's prerogative to invoke the provisions of Sections 68, 69 etc. and tax such income from unexplained sources. If the assessee declares his income, he has to explain the source from where it was earned and accordingly offer it under any of the five heads of income.

The provisions of Section 115BBE is proposed to be amended to provide for the rate of tax in respect of income referred to in Section 68, 69 etc. and which is reflected in the return of income furnished by the assessee u/s. 139. Therefore, indirectly, it implies that it is permitted for the assessee to disclose his unexplained income on his own in his return of income. The assessee may claim that he has made investments but the source of such investments is not explainable or the assessee may claim that he has incurred expenditure but the source of such expenditure is not explainable!

It is like a permanent disclosure scheme incorporated in the Act itself. Any undisclosed income can be declared by the assessee at any time by paying tax @60% (which is the rate of tax proposed u/s. 115BBE) plus applicable surcharge, without explaining the source from where such income was earned. The assessee would be able to avoid penalty and prosecution by paying tax at such a higher rate.

In case of recently announced schemes, like IDS or PMGKY, the declaration of undisclosed income was permitted without mentioning the source where it was earned but excluding income earned through corruption, illegal or criminal activities. However, no such distinction has been retained in Section 115BBE. Any type of income from unexplained sources, whether earned through legal or illegal means, is allowed to be offered by the assessee voluntarily and pay tax @60% plus surcharge. Of course, no immunity is granted to the assessee from any other Act the provisions of which have been violated by him while earning the relevant income offered to tax.

The amendment proposed in Section 115BBE is applicable not only to A.Y. 2017-18 but also applicable to subsequent years. Therefore, the

assessee may declare his income from unexplained sources in any year from A.Y. 2017-18 onwards. However, if the Assessing Officer is able to trace the source of the income declared by the assessee which is taxable in different year and not the year in which the assessee has declared the income, then such income can be assessed in that year in which it is found to be chargeable to tax. Merely because the same income has already been offered to tax in other year, the assessee would not be able to escape from the consequences like interest, penalty etc. arising on account of the assessment of that income in the year to which it pertained.

Rate of tax enhanced from 30% to 60%:

The rate at which income referred to in Section 115BBE is taxable is proposed to be enhanced from 30% to 60%. The same rate of 60% shall apply to both –

1. Income from unexplained sources [i.e. taxable u/ss. 68, 69, 69A, 69B, 69C & 69D] but disclosed by the assessee by reflecting it in the return furnished u/s. 139.

2. Income from such unexplained sources and also undisclosed but found by the Assessing Officer.

Thus, the issue raised about the offering of cash deposited due to demonetisation as income voluntarily and paying tax merely at 30% on it without any penal consequences has been addressed. Such income is made taxable at 60% though included in the return voluntarily, if the source of it cannot be explained. It may be noted that if the source of income represented by deposit of specified bank notes can be explained and substantiated, then such income is not taxable at the rate proposed in Section 115BBE. In such case, the income can be computed under the applicable head of income and can be taxed at the normal rates as applicable to the assessee.

Though the proposed increase in rate of tax is justified as it was to plug loophole, empowering the Assessing Officer to levy tax at such a higher rate in any case where the provisions of Sections 68, 69 etc. have been invoked by him is not justified. Certain checks and controls should have been kept instead of giving such an unbridled power to the Assessing Officer. It could have been made subject to the approval of high authority as required in many other cases or certain threshold could have been provided. The most common case where the Assessing Officer can misuse his power and harass the assessees is adding estimated household expenses u/s. 69C as unexplained on account of low withdrawals and taxing it at a higher rate.

In the initial days, immediately after demonetisation, an assurance was given by the Government that cash deposits up to ` 2,50,000 shall not be inquired in the cases of small businessmen, housewives, artisans, labourers etc. Though no official circular was issued in this regard under the Income-tax Act, it was announced by way of public notice in the newspapers. However, no such threshold has been incorporated in the proposed amendment to Section 115BBE. The Assessing Officer may start questioning cash deposits of even below ` 2,50,000 in such cases and may threaten to tax them at such a higher rate.

The amended provision provides for rate of 60% only in two cases; one where such income is reflected in the return furnished u/s. 139 and another where such income is included in the income determined by the Assessing Officer. It does not include a case where such income has neither been included in the return nor been assessed by the Assessing Officer but has been assessed by other authorities like CIT(A) while exercising power of enhancement u/s. 251 or Pr. CIT or CIT while exercising power of revision u/s. 263. Such a case has not been envisaged in the amended provisions of Section 115BBE at all.

Special Surcharge of 25%

The surcharge as applicable otherwise, if the total income exceeds the specified amount, is not applicable on the tax calculated in accordance

with the provisions of Section 115BBE. Instead, surcharge of 25% shall apply on the amount of such tax. The surcharge of 25% is applicable irrespective of the amount of income taxable u/ss. 68, 69, 69A, 69B, 69C & 69D and even irrespective of the amount of total income. Thus, surcharge of 25% shall apply though the total income of the assessee does not exceed ` 1 crore. It brings the effective rate of tax to 77.25% [60% tax + 25% surcharge on tax + 3% cess on total of tax and surcharge].

Special provisions to levy penalty – Section 271AAC

New Section 271AAC is proposed to be inserted which provides for levy of penalty if the income of the assessee includes income referred to in Section 68, section 69, section 69A, section 69B, section 69C and section 69D. The penalty @10% of tax payable u/s. 115BBE may be levied by the Assessing Officer. Since tax includes surcharge and cess, the penalty leviable u/s. 271AAC would be 7.725% i.e. 10% of 77.25%.

No penalty is leviable u/s. 271AAC if the following conditions are satisfied –

(i) The income from unexplained sources [i.e. taxable u/ss. 68, 69, 69A, 69B, 69C & 69D] has been included by the assessee in the return of income furnished u/s. 139

(ii) Tax in accordance with the provisions of Section 115BBE (i.e. @77.25%) has been paid on or before the end of the relevant previous year.

It may be noted that the assessee will not be able to escape this penalty by including such type of income in the return furnished in response to a notice u/s. 148 or 153A.

The penalty u/s. 270A due to under-reporting of income is not leviable in respect of the income on which penalty can be levied u/s. 271AAC. However, where penalty is imposable u/s. 271AAB due to search being conducted u/s. 132; penalty may be levied in accordance with that provision.

The levy of this penalty is subject to the provisions of Section 274 providing for procedure and Section 275 providing limitation period to pass the order.

Position of income from unexplained sources declared but in the return prior to A.Y. 2017-18

The amendments, as discussed above, taxing income from unexplained sources effectively @77.25% are applicable from A.Y. 2017-18. What if such income has been included in the return voluntarily filed by the assessee pertaining to A.Y. 2016-17 or any earlier assessment year? Can the assessee escape by paying 30% (plus applicable surcharge, cess and interest) on such income and claiming it to be source of cash deposited as a result of demonetisation?

The language of the amended provisions of Section 115BBE suggests that it is permissible for the assessee to declare income referred to in Sections 68, 69 etc. on his own by reflecting it in his return of income. However, the wordings of Sections 68, 69 etc. do not support such a view and there are no amendments proposed in these sections. Therefore, the issue about including such income voluntarily by the assessee in his return is not free from doubt. Further, the provisions of Section 271(1)(c) are applicable for levy of penalty in respect of A.Y. 2016-17 or any earlier assessment year. According to this section, penalty is leviable not for concealment of income but for concealment of particulars of income or for furnishing inaccurate particulars of income. Therefore, the assessee needs to reveal the source of income also in order to avoid the penal consequences.

Comparison between offering income under PMGKY and offering income in the return u/s. 115BBE(1)(a)

To conclude, two options as currently available with the assessee of declaring his undisclosed income have been summarised and compared as follows:

Particulars	Including income as taxable u/s. 68, 69 etc. in the return	Declaring income under the Scheme (PMGKY)
Applicability	From A.Y. 2017-18 onwards	For income of A.Y. 2017-18 or earlier assessment year
Total amount payable	77.25%	49.90%
Interest-free deposit for four years	-	25%
Type of income which can be declared	Any type of income which falls u/s. 68, 69, 69A, 69B, 69C, 69D.	
It may be in the form of money, bullion, jewellery or other valuable article or thing.	In the form of cash or deposit in an account maintained with a specified entity	
Disqualification	There are no disqualifications for declaring such income	Disqualification as provided in Section 199-O shall apply.
Time available to make the payment	No specified time limit. But non-payment of tax on or before 31st March of the relevant previous year may result in levy of penalty u/s. 271AAC.	Before filing declaration under the Scheme
Immunity	No immunity from any other Acts	Immunity from all Acts except those specified in Section 199-O.

Amendment to Section 271AAB

Section 271AAB provides for levy of penalty in a case where search has been initiated u/s. 132. This Section applies only to the undisclosed income of the 'specified previous year'. The 'specified previous year' means the previous year in which search was conducted or previous year which has ended before the date of search in respect of which due date of furnishing return of income u/s. 139(1) has not expired before the date of search and return has also not been furnished before the date of search. The rate at which the penalty is leviable u/s. 271AAB is proposed to be amended as follows:

Sr. No.	Type of Case	Present Rate of Penalty	Proposed Rate of Penalty
1	If the assessee admits the undisclosed income in a statement recorded u/s. 132(4) and specifies the manner in which such income has been derived*	10% of undisclosed income	30% of undisclosed income
2	If the assessee does not admit the undisclosed income in a statement recorded u/s. 132(2) but declares it in the return of income furnished for the specified previous year*	20% of undisclosed income	60% of undisclosed income
3	Any other case	60% of undisclosed income	

* In first two cases, the lower rate of penalty is subject to few more conditions for which the relevant provision may be referred.

The enhanced rate of penalty is applicable in respect of search initiated u/s. 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President.

In the first case above, the undisclosed income cannot be taxed at the rate provided in Section 115BBE since the source of it has been explained. It is a case where assessee is required to specify the manner in which such income has been derived and substantiate the same. Therefore, it can no longer be considered as income from unexplained sources and hence taxable at the normal rate applicable to the assessee. In the second and third case above, the undisclosed income may be taxed at the rate provided in Section 115BBE if the assessee is not able to explain the source of it satisfactorily to the Assessing Officer. In such case, the total liability can go up to 137.25% of the undisclosed income [60% tax + 25% surcharge on tax + 3% cess on total of tax and surcharge + 60% penalty] if it pertains to A.Y. 2017-18 or subsequent year.

The levy of penalty u/s. 271AAB is with respect to the undisclosed income. The 'undisclosed income', for this purpose, means any income represented by money or asset found in the course of search u/s. 132 which has not been recorded on or before the date of search in the books of accounts other documents maintained in the normal course. Therefore, penalty cannot be imposed if the cash found or deposited in the bank account has already been recorded in the books of accounts of the assessee as his income though from unexplained sources.

Further, the provisions of Section 271AAB are applicable only if the search is conducted u/s. 132. In case where requisition has been made u/s. 132A since the cash or other assets have already been taken into custody by any officer or authority under any other law for the time being in force, there is no special provision under the Act to levy penalty. The Assessing Officer will have to apply the normal provisions to levy penalty in such cases with regard to the undisclosed income represented by such cash or assets. For instance, cash (in old currency notes or new currency notes) has been taken into custody by the police authorities and thereafter handed over to the income-tax department as per provisions of Section 132A. In such case, the concerned person may include such cash as his income from unexplained sources in his return of income of the current year and offer it to tax @77.25% u/s. 115BBE. No penalty can be imposed upon him in such case. However, in case of a person in whose case search has been conducted u/s. 132 and who is otherwise placed in a similar situation, total liability may reach to 137.25% of the undisclosed income including penalty as explained above.

It may also be noted that even in case of survey u/s. 133A, the undisclosed income detected pertaining to current year may be included in the return of income to be filed voluntarily u/s. 139. No penalty is leviable in such case. If the source of such income is not explainable, then tax @77.25% is required to be paid in accordance with the provisions of Section 115BBE.

Conclusion

It will be an interesting time ahead for tax professionals like us. I believe that this is just the beginning and numerous such steps will be taken by this Government in the direction of curbing black money. I conclude my article hoping that any such law made is effective enough to bring back black money in the economy and does not discourage the honest taxpayers due to the harassment which they might have to face due to unrestricted powers given to the tax officers.

CA Naresh Ajwani

Demonetisation – Issues faced by Non-residents

The Government demonetised Old High Denomination (OHD) Notes (` 500 and 1,000) on 8th November 2016 with immediate effect. The purpose is justifiable for various reasons. However this has some consequences and difficulties for non-residents. Non-residents affected are – NRIs and foreign tourists / visitors. The difficulties under FEMA are discussed below. The Government has formed a panel to look into the difficulties.[1]

1. NRIs having OHD Notes

Many NRIs have OHD notes in India and outside India. What options are available to them to convert OHD notes into new currency or to deposit the same in their bank accounts?

To the extent NRIs have bank accounts in India, they are in a better situation compared to foreign tourists.

1.1 FEMA provisions

NRIs can bring in foreign exchange in India and convert the same in rupees as permitted under the rules. (See para 2.2 for FEMA rules to bringing foreign exchange in India.) They can also send foreign exchange through banking channels to their bank accounts in India. They can withdraw rupees from their Indian bank accounts for their expenses in India. The cash in form of OHD notes can be lying in India.

Persons going abroad can take with them, Indian currency to the extent of ` 25,000 per person per trip.[2] (This facility is not available to citizens of Pakistan and Bangladesh, and travellers coming from and going to Pakistan and Bangladesh. For travel to Nepal and Bhutan, there are separate rules. These are discussed in para 3 below). People take India currency abroad in case they do not have anyone in India or they may not like to keep the currency at home when it is closed. Also when they come to India, they can use it for taxi fare and initial expenses till they withdraw money from their bank. Many NRIs have carried OHD notes when they have gone out of India.

While coming into India, non-residents can bring in up to ` 25,000 in Indian currency.[3] (For travel from Nepal and Bhutan, there are separate rules. These are discussed in para 3 below.)

1.2 NRIs having OHD notes in India

Persons are required to deposit their OHD notes in the bank account. (For NRIs, the facility of

1 In this article, legal language has been avoided. Focus is more on difficulties under FEMA in "most likely" practical situations. Other practical difficulties like banks not having enough cash, ATMs running dry, long queues, etc. are of course not discussed.

2 Reg. 3(2)(a) of FEMA (Export and Import of Currency) Regulations, 2015 - Notification No. 6(R) dated 29-12-2015.

3 Reg. 3(2)(b) of FEMA (Export and Import of Currency) Regulations, 2015 - Notification no. 6(R) dated 29-12-2015.

exchange of notes into new currency is not discussed as it is not very relevant for them.) If one considers the rules closely, permitted credits in the NRO, NRE or FCNR account, do not include currency notes. Credit only through banking channels and that too for specified purposes is permitted.[4]

RBI has issued the first FAQs on 9-11-2016 (which has been periodically updated) stating that OHD notes can be deposited in the NRO account (FAQ 20). FAQ is not the law. However assuming that deposit is permitted in the NRO account, the NRI should be prepared for the following:

- It should be established that funds were acquired legitimately under FEMA. i.e., he had withdrawn from his bank account. NRIs have been keeping currency at homes in case of emergencies / family functions, etc. How much is reasonable, depends on the facts. For example, one will not be able to say that he has been withdrawing ` 1 lakh for past 10 years and now he wants to deposit ` 10 lakhs in the account. This can invite enquiries from the regulator.
- If the amount is large, one will have to establish that it is not the income of the NRI. This is independent of FEMA. Assuming that NRI deposits large amount, Income-tax department would like to know whether it is income or not. The Government has said it will not require banks to report transactions up to ` 2,50,000. This does not mean that an amount of ` 2,50,000 is exempt from tax. One will have to consider the total Indian income of the NRI.

In case the NRI wants to deposit the OHD notes in India, and he is not available in India, he can authorise a person in India to deposit the OHD notes in the bank.

If funds cannot be deposited in the bank by 30-12-2016, there is time available to deposit the same with RBI up to 31-3-2017.

1.3 NRIs having OHD notes abroad

If they have OHD notes abroad, what can they do? They can bring in India up to ` 25,000 in OHD notes. It is not worth to travel to India just for this.

Can he send the money through someone else? No. The NRI cannot send money through someone else.

For such situations, the Government / RBI can come out with some solution. For example:

- They can permit any person coming to India to bring the OHD notes and deposit the same in the NRO account of NRIs up to say ` 1,00,000. If the amount is above that, the NRI may have to establish the same that OHD notes were acquired in a bonafide manner.
- They can allow NRIs to deposit OHD notes in a bank outside India and the amount can be credited to the NRO account in India.
- They can allow NRIs to convert the OHD notes in foreign currency through an Indian bank with a branch in that country.
- The time for NRIs can be extended to one year – say 8-11-2017.

If they cannot get OHD notes converted, then they lose the value. This will not be liked by NRIs. It may create negative image of India.

2. Foreign tourists / visitors

2.1 There could be 2 situations for foreign tourists / visitors who have come to India:

i) Foreign tourists have arrived in India and would have exchanged their foreign currency into OHD notes. They have to spend the money in India.

ii) Foreign tourists would have OHD notes. They want to return back. While returning, they wish to convert the OHD notes into foreign currency.

4 Schedules 1, 2, 3 of FEMA (Deposit) Regulations, 2016 – Notification No. 5(R) dated 1-4-2016.

2.2 FEMA provisions

A foreign tourist can bring with him unlimited amount of foreign exchange while coming to India subject to the condition that he has to file a Currency Declaration Form (CDF) with the Customs authorities if:

i) Foreign currency notes exceed US$ 5,000, or

ii) Foreign exchange in the form of currency notes, bank notes or traveller's cheques together exceeds US$ 10,000, or

iii) He brings in foreign exchange in any other form (e.g., rupee bank draft obtained by him abroad).[5]

Most common transactions are under situations in (i) and (ii) above.

He can take back foreign exchange while returning, which does not exceed the amount brought in (and declaration has been filed if required).[6]

If the person has converted the foreign exchange in OHD notes, what are his options? Under the Demonetisation scheme, the person can:

While in India:

i) Obtain new currency, or

ii) Deposit the OHD notes in a bank account, or

iii) Spend the OHD notes as permitted.

While returning:

iv) Convert OHD notes into foreign currency.

2.3 New currency

Initially the Government permitted exchange of OHD notes into new notes up to ` 4,000/- (without depositing the same in the bank account). Subsequently, the limit was raised to ` 4,500 for a few days. It was brought down to ` 2,000. Now the exchange has been barred completely.

On 9-11-2016, RBI permitted arriving and departing passengers to convert OHD notes into new currency up to ` 5,000 at the airports. (Tourists who arrived by ships did not have this facility.) It also permitted foreign tourists to exchange foreign currency or OHD notes into new notes up to ` 5,000. Proof of purchase of OHD notes was required.

On 11-11-2016, RBI permitted prepaid instruments to be issued to foreign tourists against foreign exchange. The limit was ` 10,000. It was later enhanced to ` 20,000 on 22-11-2016.

On 25-11-2016, RBI has permitted foreign tourists (foreign citizens) to convert foreign exchange into new currency up to ` 5,000 per week. This restriction of ` 5,000 is there up to 15-12-2016. After 15-12-2016, they should be able to convert more foreign exchange into Indian currency – unless the restriction is extended.

While these should help in mitigating the problems, there have been several cases of difficulties in getting the new currency. The demand for new currency has been more than the above limits.

2.4 Bank account

Demonetisation requires a person to open a bank account to deposit OHD notes. (Then new currency can be withdrawn subject to limits.) Foreign tourists do not have a bank account. They can open a NRO bank account. However they require passport copy and proof of residence to be notarised by Indian embassy in the country in which they reside. This will be impossible to obtain.

Secondly, under FEMA, an account can be opened with foreign exchange brought legally into India, or through bank remittance from abroad. He cannot open an account with rupees. Thus an account cannot be opened with OHD notes. (Facilities of opening "Small Bank account" and "Basic Savings Bank Deposit Account" are not discussed as there are several restrictions on operations of the account.)

If a person already has a bank account, then it is possible to deposit the money in the account.

5 Reg. 6 of FEMA (Export and import of currency) Regulations, 2015 – Notification No. 6(R) dated 29-12-2015.

6 Reg. 7(4) of FEMA (Export and import of currency) Regulations, 2015 – Notification No. 6(R) dated 29-12-2015.

This is possible in case of NRIs. (Please see para 1 above).

Thus for a tourist, to obtain new currency for OHD notes has been extremely difficult.

2.5 Spending OHD notes

Tourists could not utilise the OHD notes for paying fees at tourist places like Taj Mahal, etc. However on 9th November 2016 late evening, it was announced that OHD notes could be used for entry tickets to monuments maintained by Archeological sites in India. Use of OHD notes of ` 1,000 notes were barred from being used from 24-11-2016. Use of OHD notes of ` 500 will be permitted up to 15-12-2016.

OHD notes cannot be used for payments for hotels, etc.

Thus use of OHD notes also is difficult.

2.6 Convert OHD notes into foreign currency

RBI had permitted tourists to convert OHD notes into foreign currency up to ` 5,000 while departing. This facility was available up to 11-11-2016. Any excess cannot be converted. This is a clear loss to the foreign tourist.

2.7 Converting new currency into foreign currency

Assuming that the tourist has new currency, he can convert into foreign currency. Foreign tourists (but not NRIs) are permitted to convert new rupees into foreign currency up to ` 50,000 on production of proof o f converting foreign currency into Indian rupees.[7]

2.8 Summary

Consider a tourist who came to India for a long trip. He brought with him US$ 5,000 cash and US$ 20,000 travellers cheques. He filed the Currency Declaration Form on arrival. After entering India, he has converted US$ 10,000 and got OHD of ` 6,50,000. He has spent some amount and is left with ` 5,00,000. Almost the whole of ` 5,00,000 will be a loss to him. Some foreigners will be angry with India and will lose faith in India currency as well as India.

2.9 Payment in foreign currency

Can foreign tourists pay funds in foreign currency to Indian service providers? This is a practical situation. Tourists in groups are taken by tour guides for short trips. Each tourist may end up paying small amounts – say US$ 50 to 100. A tour operator may have several hundred tourists per day all over India. Can they accept foreign currency? (Please note this situation existed before the OHD notes were demonetised. However demonetisation has made this issue important.) Under FEMA, there are several sections and notifications which govern this transaction.

FEMA regulations

FEMA regulations provide for manner of realising foreign exchange, receiving the same, holding the same, and submitting the same to the bank. Different sections and regulations operate as under:

Under **Section 3(c)**, no person can receive any foreign exchange – except through banking channels. This is a blanket ban.

Section 4 prohibits any resident to hold foreign exchange.

Section 8 provides that any Indian resident to whom foreign exchange is due, should take all steps to realise and repatriate the same into India at the earliest.

Section 9 provides exemption / relief from section 4 (prohibition form holding foreign exchange) and 8 (realising and repatriating foreign exchange) as specified.

Under these sections, following notifications have been issued.

FEMA Notification No. 9(R) - (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 – provides that a person who receives foreign exchange must submit the same to the bank within the specified days of

7 Para 6, Section V of Master Directions No. 3 on Money Changing Activities.

acquiring the same. Resident individuals can submit the foreign exchange within 180 days of acquiring foreign exchange.[8] Persons who are not individuals, are required to submit the foreign exchange within 7 days from the date of acquiring the same.[9]

FEMA Notification no. 11(R) - (Possession and Retention of Foreign Currency) Regulations, 2015 – provides that a person can hold foreign exchange up to US$ 2,000 if it has been acquired from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation.

Analysis

If one analyses the FEMA rules, there is no relief from section 3 for a person to receive foreign exchange directly from a foreign tourist. He has to receive it through a bank. There is no notification giving exemption from the same. (In fact the tour guide can accept rupees from foreign tourists out of rupee funds obtained by surrender of foreign exchange to a bank or a money changer.[10] The tour guide should obtain the relevant proof (e.g. a receipt) which shows the acquisition of rupee in a proper manner. However this is the subject of this article.)

However sections 4, 8 and 9 read with the Notifications referred to above, permit a person to receive foreign exchange for lawful obligations. Having received the same, one has to deposit the same in the bank account. The purpose is to permit receipt of foreign exchange. One cannot expect a tourist to pay small amounts by banking channels.

Thus a travel operator or a tour guide can receive foreign exchange from a foreign tourist. If he receives funds above US$ 2,000, the same should be deposited in a bank at the earliest – in any case within the specified time limits.

It will important for the tour guides to collect basic KYC documents from the tourist like passport copy.

3. Nepal and Bhutan

In Nepal and Bhutan, Indian currency is officially an accepted currency. In Zimbabwe also, Indian currency is officially accepted. There are no specific rules for Zimbabwe. There are however specific rules for Nepal and Bhutan. The relevant regulations are discussed below.

A person can take any amount in denominations of ` 100. Up to ` 25,000 can be taken out in denominations of ` 500 and 1,000 also. Any amount of Indian currency can be brought into India in denominations of up to ` 100. No amount can be brought in India above denominations of above ` 100.[11]

There are people in Nepal and Bhutan who have OHD notes. They cannot bring the same into India. What are their options? At present, there do not appear to be any options.

There are many people from Nepal who are working in India. They work as guards, helpers, etc. They do not have bank accounts due to lack of documents. Perhaps they can open "Small Account" where only self-certified photograph and signature / thumb impression is required. There are restrictions on deposits / withdrawals in the account.[12] All these people are due to suffer losses.

Nepalese and Bhutanese Governments have requested the Indian Government to look into this problem. The Government has formed a panel to look into these issues. Ideally these solutions should have been announced on 9th November itself.

4. While the demonetisation has a noble objective, the difficulties to *bona fide* non-residents should be sorted out.

8 Reg. 7 of FEMA (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 – Notification no. 9(R) dated 29-12-2015.

9 Reg. 5(1) of FEMA (Realisation, repatriation and surrender of foreign exchange) Regulations, 2015 – Notification no. 9(R) dated 29-12-2015.

10 Reg. 1(a) of FEMA Notification No. 16 dated 3-5-2000 (Receipt from and payment to, a person resident outside India).

11 Reg. 8 of FEMA (Export and import of currency) Regulations, 2015 – Notification no. 6(R) dated 29-12-2015.

12 RBI circular – DBOD.AML.No. 77 / 14.01.001/2010-11 dated 27-1-2011.

Bharat Raichandani, *Advocate*

Effect of Demonetisation – Indirect Taxes

One fine day, Government of the World's Largest Democracy, coupled with being a fast growing economy, inhabited by about 1/3rd of the human race, comprising of people of varied economic standing, different castes, creed and cultures (nowhere found on the face of earth), is convinced that, part of its blue print for economic development, is to purge the country of black-economy millionaires hoarding piles of illicit cash. What follows, is for everyone to judge. Mind you, we do judge.

This is exactly what happened on 8th November, 2016, when the Hon'ble Prime Minister announced a course of action as radical as described above. He declared that all 500 and 1,000 rupee notes (purportedly totalling to about 86% of the cash in circulation) would no longer be legal tender. Though Indians have until the end of the year to swap their defunct bills, the roll-out of new ones has been bungled. A broad cash crunch and broken supply chains threaten a sharp economic slowdown – albeit one that will abate, at least in part, as the cash squeeze is alleviated.

To my mind, it appears that unlike most economic reforms, through currency, designated to boost investor confidence, the motivation of the Prime Minister seems to be on a different tangent. The primary aim, as I see it, is reasonable enough: the Government hopes to improve the functioning of the economy and boost its tax take by cracking down on the shadow economy. A vast majority of transactions in India take place in cash; many escape book-keepers' notice. Economists reckon that India's black economy accounts for at least 20% of GDP. Such off-the-books activity shields fortunes from taxation and allows corruption to flourish. Past efforts to attract black money into the light—using tax amnesties, for example—have had little effect. In vain and pain of the said failure, the present measure seems to be a more drastic and bold, to say the least, to operate the perennial cancer.

Indians can swap useless bills for useful ones, but with proper accounting paperwork, else invite unwanted attention and tax bills from the Government. Demonetisation also increases use of electronic and bank-based payment systems, which will make record-keeping easier and more common, allowing Government better to track and tax the proceeds.

It worked: rising prices struck a blow against the undeserving rich, and by egging on

others to deposit their money in banks (where it could at least earn interest), the shadow economy shrank. The Government could plough the newly created money into tax breaks and public works schemes.

Critics, in my view, obviously, were horrified. Inflation would affect everyone who held cash, law-abiding or not. Much of the wealth of those enriched by black money would be insulated, because lots of their lucre is held not in cash but in property, gold or jewellery. Such heavy-handed measures could undermine the credibility of important Government institutions. Fear that they might be used again in future could weaken confidence in the currency as a store of value, paving way for some broader institutional failure. Long-run trust in the judgment of the state might be threatened. The plan looked clever on paper; however, seems extraordinarily blunt and risky. Demonetisation will probably make only limited strides in shrinking the black economy while affecting all of the populace, mostly, the poorest of them all.

Further, in much of the Indian economy, and especially outside big cities, where cash transactions are most common and lack of financial infrastructure, the sudden invalidation represents a significant monetary shock. Not all of India's shadow economy, which provides real employment and income, if not real tax revenues, can migrate quickly and easily above board. Whatever cannot easily be shifted represents a potential loss of economic activity, and a drag on broader Indian economic growth. Similarly, if a cash crunch forces small firms without access to credit to shut down, it would founder on complete revival of economic activity.

I, for one, do not agree and subscribe to the view of the critics. Those shouting from roof tops are certainly ones who have been "pained" directly by the said move, else no reason for such vocal backlash.

Now, turning to implication of the said mega move, on indirect taxes, it would be naïve to suggest that it surely does have a major impact. As is well known, indirect taxes are destination based consumption based taxes. Though from a legal stand point, the taxes (excise duty, customs, service tax, VAT) are levied and collected from the manufacturer, importer, service provider, dealer, however, from an economic point of view, the same are indirect taxes inasmuch as the same can be passed on to the ultimate consumer. The consumer must bear the burden of the said taxes. With the current demonetisation, certainly, consumption of goods and services has taken a hit and thereby, directly impacting the collection of indirect taxes.

There is another view being advocated by economists which suggests that parallel economy would not even otherwise have had any impact or bearing on indirect taxes as the sales and purchases were outside books. Ergo, the same would not materially affect, in any impactful manner, the current demonetisation.

To my mind, it is an earnest step in the right direction to bolster the collection of indirect taxes. In indirect tax, Central Excise collections stood at ` 1.53 lakh crore during April-August, up 49 per cent from the year earlier period. Service tax collections were ` 92,696 crore, witnessing an annual increase of 23.2 per cent. Customs duty collections were up 5.7 per cent at ` 90,448 crore. As expected or projected, the GDP will rise by at least 1.5%, because of the twin effect of demonetisation and GST. The tax to GDP ratio too will go up, along with the credit ratio of our country. Fiscal deficit will be seen to be in control, inflation will be low, interest rates will be low, and so there is no

reason why we cannot get into investment grade.

The demonetisation strategy along with GST can be quite counter productive in black money generation. The GST is a Value Added Tax (VAT) is, as projected, believed and promoted to be introduced with effect from April 1, 2017. By virtue of GST, there will be an all inclusive and comprehensive indirect tax levied on all supplies of goods and services. Along with GST, the demonetisation can help in higher amount of tax to GDP ratio.

The Hon'ble Finance Minister believes that tax collection will increase. He said, "In the medium and long-term, direct and indirect tax collections will increase. Lot of currency outside the banking system perforce will have to get into the system."

Not denying the fact that there are two sides to every story. Not even running away from the fact that the above measure would certainly have its downfalls. Not even shirking an inch of inkling that the Government could have executed and implemented this master plan in a far and much better manner. Not even, for a moment, turning a blind eye to the pain and sufferings, which are though momentary, of the "common man". Having said so, even if the so called master stroke achieves none of the above stated objectives and is successful in curbing the menace of terrorism and fake currency, I, personally, would stamp the same as a successful step.

The "Common man" wants change, but does not want to change. The "common man" wants everything, without moving a little finger. This common man, in my humble view, must understand and appreciate, without being influenced by notorious political elements, motivated media reports and misdirected business houses, that this attempt of the Government is intended and targeted for his good and betterment alone.

As Mahatma Gandhi, once said, "*Be the change you want to see in the world*".

Those who work at a thing heart and soul not only achieve success in it but through their absorption in that they also realize the supreme truth – Brahman. Those who work at a thing with their whole heart receive help from God.

— *Swami Vivekananda*

The world is ready to give up its secrets if we only know how to knock, how to give it the necessary blow. The strength and force of the blow come through concentration.

— *Swami Vivekananda*


Jitendra Singh & Neha Paranjpe, *Advocates*

Some Case Laws on Demonetisation

I. Introduction

Black money and corruption is a menace to the Indian economy since time immortal. It has increased too many folds in recent times. Thus, to curb the black money and corruption, the Indian Government led by Shri Narendra D. Modi while addressing to the nation in his speech on 8th November, 2016 announced that the high denomination currency bank notes in value of ` 500/- and ` 1,000/- will no longer be legal tender from midnight of 8th November, 2016.

This is not the first time that the Government has taken such a bold step. Earlier also in the year January, 1946, ` 1,000/- and ` 10,000/- bank notes, which were in circulation, were demonetized, primarily to curb unaccounted money. The higher denomination banknotes in value of ` 1,000/-, ` 5,000/- and ` 10,000/- were reintroduced in the year 1954.

Again in the year January 1978, the Janata Government led by Prime Minister Morarji Desai announced demonetisation of bank notes in value of ` 1,000/-, ` 5,000/- and ` 10,000/-.

II. Constitutional Validity

The constitutional validity of the High Denomination Bank Notes (Demonetisation) Act, 1978 (hereinafter referred to as the 'Demonetisation Act) and the legality of certain orders passed thereunder were challenged before the Hon'ble Supreme Court under Article 32 of the Constitution of India in the case of *Jayantilal Ratanchand Shah vs. Reserve Bank of India & Ors. reported in (1996) 9 SCC 650*. It was contended that the said 1978 Demonetisation Act violated the fundamental rights enshrined in Articles 19(1)(f) and 31 of the Constitution (which have now been repealed), which were available to the assessee at the material time. It was submitted that Section 26 of the RBI Act cast an obligation upon the Bank to make payment of high denomination bank notes whenever tendered and the Central Government guaranteed such payment but on promulgation of the impugned Act those notes ceased to be legal tender, notwithstanding the above provision of the RBI Act, in view of Section 3 thereof; and; resultantly, the Bank and for that matter the Central Government stood discharged of their such obligations. Hon'ble apex court upheld that constitutional validity of the Demonetisation Act, 1978 after considering the preamble of the Act and held that from the above preamble it is manifest that the Act was passed to avoid the grave menace of unaccounted money which had resulted not only in affecting seriously the economy of the country but had also deprived the State Exchequer of vast amounts of its revenue. Considering the evil the above Act sought to remedy it cannot be said that it was not enacted for a public purpose. The petitioners' other contention based on Articles 19(1)(f) and (g) of the Constitution is wholly misconceived for after compulsory acquisition of their property by the impugned Act the petitioners' right thereto stood extinguished and consequently

the question of reasonable restriction to the exercise or enjoyment of a right, which became non est, could not arise. Equally untenable is the petitioners' contention that they were deprived of their right to get compensation for such acquisition, as Sections 7 and 8 of the demonetization Act lay down an elaborate procedure to apply for and obtain an equal value of the high denomination banknotes in the manner prescribed thereunder.

III. When deposits can be treated as income

i. The chargeability of encashment of high denomination notes as income of the relevant assessment year came for consideration before the Hon'ble Patna High Court in the case of *Chunilal Rastogi vs. CIT [1955] 28 ITR 341 (Pat.).* In this case the assessee-HUF was a zamindar having agricultural income from the zamindari, non-agricultural income from that zamindari as well as income from house property and money-lending. After the passing of the High Denomination Bank Notes (Demonetisation) Ordinance, 1946, the assessee encashed 73 high denomination notes of `1,000/- each within the accounting period. During the course of assessment proceedings the ITO asked the assessee to explain the nature and source of the high denomination notes encashed by him. The assessee in reply to the said query stated that out of the above sum of ` 73,000/- a sum of ` 55,000/- was given to his daughter-in-law by her father-in-law on the occasion of his son's marriage and the balance of ` 18,000/- represented the savings of his wife. The ITO in order to verify the genuineness of the claim of the assessee, made a reference to the IAC to make further enquiries. The statement of the son of the father-in-law, recorded under section 37 of the 1922 Act, showed that he did not take any active part in the marriage and that the presents at the time of marriage consisted only of cash of ` 5,000/- and of clothes and ornaments worth ` 8,000/- to ` 10,000/-. The assessee being confronted with the said statement put forward a different claim as regards the source of those notes. However, no satisfactory proof has been given to justify his claim. The ITO, therefore, refused to accept new claim of the assessee. Thus, as the assessee could not disclose the nature and source of those notes, the ITO treated the entire sum of ` 73,000/- as the assessee's undisclosed income. On appeal, the AAC accepted the assessee's claim. He, however, took the view that the assessee, in having the notes encashed in his name, might have been given a share in the profit and he estimated his share of profit at ` 7,500/-. He, therefore, excluded the balance of ` 65,500/- from the assessment. On further appeal to the Appellate Tribunal by the department, the Appellate Tribunal held it is not unlikely that the assessee who was a zamindar and moneylender could have some notes of high denomination with him as part of his savings and estimated such savings at ` 20,000/. The Tribunal, therefore, excluded this sum of ` 20,000/- from the assessment and confirmed the inclusion of the balance of ` 53,000/- in the assessee's total income from secreted sources. The assessee being aggrieved filed an appeal before the Hon'ble Patna High Court. Hon'ble High court upheld the order passed by Appellate Tribunal by observing that it was not unlikely that the assessee who was a zamindar and moneylender could have some notes of high denomination with him as part of his savings and estimated such savings at ` 20,000/-. The Tribunal, therefore, excluded this sum of ` 20,000/- from the assessment and confirmed the inclusion of the balance of ` 53,000/- in the assessee's total income from undisclosed sources.

ii. Similar view has been taken by the Hon'ble Calcutta High Court in the case of *Anil Kumar Singh vs. CIT [1972] 84 ITR 307* wherein it has been held that in case of receipt of money by way of encashment of high denomination notes the burden to prove the source of money and its nature rest solely on assessee.

iii. Hon'ble Patna High Court has also taken a similar view in the case of *M. L. Tewary vs. CIT [1955] 27 ITR 630 (PAT.)* wherein it has been held that onus is on assessee to prove positively source and nature of money received during an accounting year and in absence of any explanation, department is entitled to draw inference that receipt is of an income nature.

IV. Relevance of Books of Account

i. The issue of treating the encashment of high denomination notes reflected in the cash book as income of the relevant assessment year was came for consideration before the Hon'ble Supreme Court in the case of *Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288 (SC).* In this case the assessee was carried on the business in grain as merchants and commission agents. The ITO during the course of the assessment proceedings noticed that the appellant had encashed high denomination notes of the value of ` 2.91 lakhs on 19-1-1946. The ITO asked the assessee to explain the nature and source of the same. The assessee in reply to the same explained that these notes formed part of its cash balances including cash balance in the Almirah account which was an account for moneys withdrawn and kept at home. The Income Tax Officer, however, rejected the assessee's explanation that the high denomination notes formed part of its cash balances and treated the sum of ` 2.91 lakhs as his undisclosed profits from business for the said assessment year. On appeal, the AAC upheld the order of the ITO. The assessee being aggrieved filed an appeal before the Appellate Tribunal. The Tribunal after examined the cash book and taking into consideration all the circumstances which had been adverted to by the ITO held that the appellant might be expected to have possessed as part of its business cash balance of at least ` 1.50 lakhs in the shape of high denomination notes on 12-1-1946, when the Ordinance was promulgated. The nature of the source from which the appellant derived the remaining high denomination notes remained unexplained to its satisfaction. It accordingly ordered that the addition made by the authorities be reduced and to make the necessary consequential adjustment in the income tax assessment. On reference the High Court reversed the order of the Appellate Tribunal. The assessee being aggrieved by the order of the High Court preferred an appeal before the Hon'ble Supreme Court. Hon'ble Supreme Court after considering the facts of the assessee's case reversed the order of the High Court by observing that the books of account of the appellant were not challenged in any other manner except in regard to the interpolations relating to the number of high denomination notes of ` 1,000/- each obviously made by the appellant in the accounts for the assessment year in question. If these were the materials on record which would lead to the inference that the appellant might be expected to have possessed as part of its cash balance at least ` 1,50,000/- in the shape of high denomination notes on 12.01.1946, when the Ordinance was promulgated, was there any material on record which would legitimately lead the Tribunal to come to the conclusion that the nature of the source from which the appellant derived the remaining 141 high denomination notes of ` 1,000/- each remained unexplained to its satisfaction. If the entries in the books of account in regard to the balance in Rokar and the balance in almirah were held to be genuine, logically enough there was no escape from the conclusion that the appellant had offered reasonable explanation as to the source of the 291 high denomination notes of ` 1,000/- each which it encashed on 19-1-1946. It was not open to the Tribunal to accept the genuineness of these books of account and accept the explanation of the appellant in part as to ` 1,50,000/- and reject the same in regard to the sum of ` 1,41,000/-. Consistently enough, the Tribunal ought to have accepted the explanation of the appellant in regard to the whole of the sum of ` 2,91,000/- and held that the appellant had satisfactorily explained the encashment of the 291 high denomination notes of ` 1,000/- each on 19-1-1946.

ii. Similar view has been taken by Hon'ble Supreme Court in the case of *Mehta Parikh & Co. v. CIT [1956] 30 ITR 181 (SC).* The accounts of assessee had been accepted by the Tribunal as genuine. Thus, it was impossible to say that high denomination notes could not be included in the cash balance shown in books.

iii. Hon'ble Bombay High Court in the case of *Narendra G. Goradia vs. CIT [1998] 234 ITR 571 (Bombay)* relying on the decision of Hon'ble apex court in the case of *Lalchand Bhagat Ambica Ram vs. CIT [1959] 37 ITR 288 (SC) and Sreelekha Banerjee vs. CIT [1963] 49 ITR 112 (SC)* held that What

the assessee is required to prove in such cases is the source of money and once he is successful in proving the same, he cannot be put to further proof of acquisition of such amount in the currency notes of particular denomination. If the explanation shows that the receipt is not of income nature, the revenue cannot reject the explanation of the assessee to hold that it is income. Where the business, the state of accounts and dealings of the assessee justify a reasonable inference that he might have for convenience kept the whole or a part of particular sum in high denomination notes, the assessee, prima facie, discharges his initial burden when he proves the cash balance and that it might have been kept in high denomination notes. Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it has in its possession. The department cannot by merely rejecting unreasonably a good explanation convert good proof into no proof.

iv. Hon'ble Patna High Court in the case of *Lakshmi Rice Mills vs. CIT [1974] 97 ITR 258 (Pat.)* held that value of high denomination notes was not assessable as income from undisclosed sources if cash balance shown in accounts of assessee was sufficient to cover high denomination notes and value of high denomination notes formed part of cash balance of the assessee. Hon'ble High Court has further observed that only source of receipt of money has to be disclosed and not the source of receipt of high denomination notes which were legal tenders at the relevant time.

v. Hon'ble Allahabad High Court in the case of *Gur Prasad Hari Das vs. CIT [1963] 47 ITR 634 (All.)* held that it is for the department to show that assessee did not possess the high denomination notes at the relevant time. Similar view has also taken by the Hon'ble Allahabad High Court in the case of *Kanpur Steel Co. Ltd vs. CIT [1957] 32 ITR 56 (All)*

vi. Hon'ble Calcutta High Court in the case of *CIT vs. Associated Transport (P.) Ltd. [1995] 212 ITR 417 (Cal.)* held that where assessee had deposited ` 81,000/- in high denomination notes and Tribunal held that assessee usually had cash of ` 81,000/-, said amount could not be treated as income of assessee from undisclosed sources.

vii. Hon'ble Patna High Court in the case of *Sri Sri Nilkantha Narayan Singh vs. CIT [1951] 20 ITR 8 (Pat.)* held that Tribunal could not make addition of undisclosed income where HDNs encashed by assessee were savings from his personal allowance.

V. Whether penal provisions gets attracted

The question of levy of concealment penalty on the high denomination notes came for consideration before the Hon'ble Karnataka High Court in the case of *CIT vs. Andhra Pradesh Yarn Combines (P.) Ltd. [2006] 282 ITR 490 (Karnataka).* The Hon'ble High Court has held that the expression 'money' has different shades of meaning. In the context of income-tax provisions, it can only be a currency token, bank notes or other circulating medium in general use, which has the representative value. Therefore, the currency notes on the day when they were found to be in possession of the assessee should have had the representative value, namely, it could be tendered as a money, which has intrinsic value. In the instant case, the final Fact-finding authority, namely, the Tribunal, after noticing the ordinance issued by the Central Government, coupled with the fact of the RBI refusing to exchange the high denomination notes when they were tendered for exchange, concluded that on the day, when the assessee was found to be in possession of high denomination notes, they were only scrap of paper and they could not be used as circulating medium in general use as the representative value and, therefore, it could not be said that the assessee was in possession of unexplained money. Therefore, the high denomination notes which were in possession of the assessee could not be said as 'unexplained money', which the assessee had not disclosed in its return of income and, therefore, it would not warrant levy of penalty under section 271(1)(c).

B.V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

S.55(2): In determining the cost of acquisition as on 1-4-1974 (or 1-4-1981), the value declared in the wealth-tax return as well as the comparable sales, even if later in point of time, have to be considered. The High Court should not interfere with findings of fact, unless palpably incorrect

Ashok Prapann Sharma vs. Commissioner of Income Tax & Anr.

[Civil Appeal No. 2314 / 2007, dated 24th November, 2016]

The assessee was subjected to payment of income-tax on capital gains accruing from land acquisition compensation and sale of land. The dispute arose as to how the cost of acquisition is to be worked out for the purposes of deduction of such cost from the receipts so as to arrive at the correct quantum of capital gains exigible to tax under the Income-tax Act, 1961 (for short "the Act"). The Assessing Officer as well as the First Appellate Authority took into account the declaration made in the return filed by the assessee under the Wealth-tax Act (` 2 per square yard) in respect of the very plot of land as the cost of acquisition. Some instances of comparable sales showing higher value at which such transactions were made (` 70/- per square yard) were also laid by the assessee before the Assessing Officer. The same were not accepted on the ground that such sales were subsequent in point of time i.e., 1978-79 whereas under Section 55(2) of the Act the crucial date for determination of the cost of acquisition is 1st April, 1974. The Tribunal took the view that the comparable sales cannot altogether be ignored. Therefore, though the comparable sales were at a higher value of ` 70/- per square yard, the learned Tribunal thought it proper to determine the cost of acquisition at ` 50/- per square yard. The High Court exercising jurisdiction under Section 260A of the Act reversed the said finding. On appeal to the Supreme Court reversing the High Court decision held:

(i) A declaration in the return filed by the assessee under the Wealth-tax Act would certainly be a relevant fact for determination of the cost of acquisition which under Section 55(2) of the Act to be determined by a determination of fair market value. Equally relevant for the purposes of aforesaid determination would be the comparable sales though slightly subsequent in point of time for which appropriate adjustments can be made as had been made by the learned Tribunal (from ` 70/- per square yard to ` 50/- per square yard). Comparable sales, if otherwise genuine and proved,

[Contd... on page 53]


Ashok Patil & Priti Shukla, *Advocates*

DIRECT TAXES
High Court

1. Charitable Trust – Registration u/s. 12A

CIT vs. Garment Exporters Association of Rajasthan (2016) 289 CTR (Raj.) 652

Application was submitted by the assessee for registration u/s.12AA(a)(ii) of the Act. The issue for consideration was whether what should be the effective date for acceptance of the application for registration? The Hon'ble High Court upheld the findings of Tribunal and held that requirement to submit audited accounts along with the application was directory in nature and not mandatory. If filing of the audited accounts was not mandatory, the application submitted by the assessee could not be said to be defective. Registration should have been allowed from the date the application was submitted and not from the date when alleged defects in the application were cured. Tribunal and the Revenue had not pointed out any other defect in the application than for filing of the audited accounts.

2. Business Expenditure – Interest on borrowed capital

Thakural Regal shoes vs. CIT (2016) 143 DTR (P& H) 124

The AO found that the properties of the firm had not been put to use. Therefore disallowed the deduction u/s. 36(1)(iii) of IT Act. Accordingly, the AO disallowed the proportionate interest relating to investment allegedly made in the properties. CIT(A) rejected assessee's contention on proportionate disallowances referring earlier year's Assessment Order. Tribunal confirmed order of CIT(A). On further appeal in High Court, High Court dismissed assessee's appeal and held that proviso does not operate only in cases where the assessee acquires the asset directly. Word 'acquisition" is of wider amplitude than the word "purchase". There was nothing in the plain language of the section or otherwise to hold that the legislature intended excluding all modes of acquisition of an asset other than by the purchase thereof. Mode of acquisition is irrelevant and the proviso would apply so long as the primary intention of the assessee was to acquire the assets for the purpose of its business.

3. Capital Gain – Claim u/s. 54F of IT Act

CIT vs. Gregory Mathias (2016) 243 Taxman55 (Karnataka)

Assessee claimed deduction u/s. 54F of IT Act. Revenue sought to disallow same on the ground that assessee constructed and owned more than one residential house other than new asset. CIT(A) and Tribunal allowed claim of assessee by following proviso to S. 54F of IT Act. On Revenue's appeal in HC, Hon'ble High Court upheld the finding of the Tribunal and held that treatment of income by assessee could not be treated as an act by which assesee had considered seven flats as residential house owned by him. Therefore denial of claim of assessee for deduction u/s. 54F was unassailable.

Whether where property was not shown as capital assets but was shown as stock-in-trade, view taken by Tribunal could not be said to be erroneous.

4. Registration – Section 2(15) r.w.s. 12 A & 13 of IT Act

CIT vs. Bayath Kutchii Dasha Oswal Jain Mahajan Trust (2016) 243 Taxman 60 (Guj.)

Assessee was trust which applied for registration in terms of S. 12 A. CIT(A) disallowed registration applying S. 13(1) (b) as the purpose for conduct of a particular community (Jain Community). Tribunal reversed finding of the CIT(A) and held that CIT could not mix the requirement of registration of a trust with that of granting exemption u/s. 13. On Revenue's appeal in HC, HC dismissed appeal of the Revenue and upheld the finding of the Tribunal and held that whether since apart from objects which were for benefit of a religious community, assessee trust had large number of other objects, which were for benefit of general public. Tribunal was correct in allowing registration to the assessee.

5. Reopening after 4 years – not having new material not forming part of original assessment – not sustainable

Meghmani Energy Ltd. vs. DCIT [2016] 389 ITR 281 (Guj)

The assessee had filed return of income declaring nil income, paid tax on book profit under the provisions of minimum alternate tax. The AO had framed the assessment u/s. 143(3) accepting the return of income. Return reopened after four years on ground that loss due to diminution in value of derivatives amounted to unascertained liability and required to be added back. The objections raised by the assessee were rejected. On writ to the High Court while allowing the writ held that the reason recorded by the established that the AO was referring to material already on record to assert that the claim of expenditure was not in tune with the minimum alternate tax provisions contained u/s. 115JB, the AO did not have any additional evidence or new material which did not form part of the original proceedings and therefore held that such ground cannot be agitated in exercise of power for reassessment, that too beyond the period of four years.

[Contd. from page 51]

cannot be shunted out from the process of consideration of relevant materials. The same had been taken into account by the learned Tribunal which is the last fact finding authority under the Act. Unless such cognisance was palpably incorrect and, therefore, perverse, the High Court should not have interfered with the order of the Tribunal. The order of the High Court overlooks the aforesaid severe limitation on the exercise of jurisdiction under Section 260A of the Act.

(ii) That apart, it appears that there was an on-going process under the Land Acquisition Act, 1894 for determination of compensation for a part of the land belonging to the assessee which was acquired [39 acres (approx.)]. The Reference Court enhanced the compensation to ` 40/- per square yard. The above fact, though subsequent, would not again be altogether irrelevant for the purposes of consideration of the entitlement of the assessee. However, as the determination of the cost of acquisition by the learned Tribunal was on the basis of the comparable sales and not the compensation awarded under the Land Acquisition Act, 1894 (the order awarding higher compensation was subsequent to the order of the learned Tribunal) and the basis adopted was open for the learned Tribunal to consider, we take the view that in the facts of the present case the High Court ought not to have interfered with the order of the learned Tribunal.


Jitendra Singh & Sameer Dalal
Advocates

DIGEST OF CASE LAWS
Tribunal

Reported

1. Expenditure incurred in relation to exemption income – Section 14A of the Income-tax Act, 1961 - Interest paid by assessee firm on its partner's capital cannot be regarded as an expenditure amenable to section 14A of the Act. A.Y.: 2010-11

Quality Industries vs. JCIT [2016] 73 taxmann.com 363 (Pune - Trib.)

The assessee firm is engaged in the business of manufacturing of chemicals. During the year under consideration assessee earned tax free dividend income of ` 24,63,700/- on mutual funds. The Ld. A.O. observed that the investment in mutual funds was made out of interest bearing funds which included interest bearing partner's capital also. Thus, the Ld. A.O. invoked section 14A r.w.r 8D and made disallowance of ` 29,25,362/- by estimating expenditure incurred in relation to dividend income so earned. On appeal, the First Appellate Authority confirmed the order passed by the Ld. A.O. The appellant being aggrieved by the appellate order preferred the appeal before the Hon'ble Appellate Tribunal. The Hon'ble ITAT observed that the interest paid by the firm and claimed as deduction is simultaneously liable to tax in the hands of its respective partners in the same manner. In the same vein, the firm is merely a compendium of its partners and its partners do not have separate legal personalities under the basic law as discussed. The interest paid to partners and simultaneously getting subjected to tax in the hands of its partners is merely in the nature of contra items in the hands of the firms and partners. Consequently interest paid to its partners cannot be treated at par with the other interest payable to outside parties. Thus, in substance, the revenue is not adversely affected at all by the claim of interest on capital employed with the firm by the partnership firm and partners. Thus, capital diverted in the mutual funds to generate alleged tax free income does not lead to any loss in revenue by this action of the assessee. In view of the inherent mutuality, when the partnership firm and its partners are seen holistically and in a combined manner with costs towards interest eliminated in contra, the investment in mutual funds generating tax free income bears the characteristic of and attributable to its own capital where no disallowance under Section 14A r.w.r 8D is warranted.

Unreported

2. Cessation of liability – section 41(1) of the Income-tax Act, 1961 – amount shown as liabilities in the Balance Sheet cannot be deemed as "Cessation of

liability" merely because the same is outstanding for several years – The AO has to establish with evidence that there is a cessation of liability with regard to the outstanding creditors. A.Y. 2008-09

ITO vs. Vikram A. Pradhan [ITA No. 2212/ MUM/2012 order dated 24-8-2016]

The assessee is an individual, engaged in the business of sale of various educational products to schools. The assessee filed his return if income for the impugned assessment year on 23-3-2009 declaring total income of ` 5,53,180/- and the same was accepted under section 143(1). The return was subjected to the scrutiny. The Ld. A.O. during the course of assessment observed that the creditors amounting to ` 33,44,827/- are appearing in the assessee's Balance Sheet as on 31-3-2007 and thus the Ld. A.O. asked the assessee to justify the same. The assessee in reply to the said query submitted that the creditors in the Balance Sheet are old creditors pertaining to the period when he carried out business in Indore and have been carried forward for the last 7-8 years and not paid so far due to certain dispute with the creditors. The assessee also submits that the aforesaid liability is liable to make the payment thereof as and when the disputes are resolved and the amount is crystallized, and thus, there is no cessation of liability. However, the Ld. A.O. without appreciating the facts and circumstances of the case passed the assessment order under section 143(3) of the Act making addition on account of cessation of liability under section 41(1) of the Act amounting to ` 33,44,827/-. On appeal, the Ld. CIT(A) after considering the material on record directed the Ld.A.O. to delete the entire addition made under section 41(1) of the Act. The Revenue being aggrieved by appellate order preferred the appeal before the Hon'ble Appellant Tribunal. The Hon'ble Tribunal held that the Ld.A.O. has failed to cause enquiries to be made with or notices issued to creditors to ascertain from them whether they have remitted the dues from the assessee in their books of account. The fact that the creditors outstanding balances were not written back in the assessee's books of account, but rather stood reflected in the assessee's Balance Sheet as on 31-3-2007 clearly establishes that is no cessation of liability. On the contrary, it is an acknowledgement by the assessee of existing debts it owes to its creditors. We observe that no material has been brought on record by the Assessing Officer to show that there was remission or cessation of liability. Thus, we concur with the finding of the Ld. CIT(A) that the addition of ` 33,44,827/- under section 41(1) of the Act as cessation of liability being unsustainable, is to be deleted. In coming to this finding, we draw support from the decision of the Hon'ble apex Court in the case of *Suguali Sugar Works (P) Ltd. (1999) 236 ITR 518(SC);* the ratio laid down therein being squarely applicable to the case on hand. Consequently, Revenue's ground of appeal is dismissed.

3. Full value of consideration – Section 50C – difference between sale consideration of the property shown by the assessee and the FMV determined by the DVO u/s. 50C(2) is less than 10% – the AO is unjustified in substituting the value determined by the DVO for the sale consideration – unregistered sale agreements prior to 1-10-2009 are not subject to s. 50C as per CBDT Circular No.5/10 dated 3-6-2010. A.Y. 2007-08

M/s. Krishna Enterprises vs. ACIT [ITA No.5402/ Mum/2014 order dated 23-11-2016]

The assessee is engaged in the business of construction. During the impugned assessment year assessee sold 4 flats on 7-8-2006 for the consideration ` 1,96,60,000/-. During the assessment on requiring to submit the sale agreements assessee submitted that it has entered in to the sale agreements, however the same have not been registered. Thus, determination of stamp duty value as per provisions of section 50C is not possible. The Ld. A.O. without appreciating the fact referred the matter to District Valuation Officer (DVO) for determining Fair Market Value (FMV)

and the same is arrived at ` 2,07,51,130/-. The difference FMV and the actual consideration was added by the Ld. A.O. in assessee's income while finalizing the assessment order. On appeal, the Ld. CIT(A) upheld the action of the Ld. A.O. and confirmed addition made in the assessment order. The Appellant being aggrieved by the appellate order preferred the appeal before the Hon'ble Appellant Tribunal. The Hon'ble Tribunal held that the assessee had sold certain flats during the relevant year and also executed sale agreements for the same. The sale agreements were not registered. Thus, it was not possible to determine the stamp duty value as per provisions of Section 50C. However, the AO referred the matter to the DVO, who valued the four flats at ` 2,07,51,130/- against declared sale consideration of ` 1,96,60,000/- by the assessee. Thus, there was a difference of `10,91,130/- which amounts to approximately 5.5% of the actual sale consideration. The Hon'ble Tribunal also relies on the Circular No.5/2010 dated 3-6-2010 324 ITR 319 where it is clearly stated that the scope of the provisions of section 50C do not include transactions which are not registered with stamp duty valuation authority and executed through agreement to sell or power of attorney. This amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to transactions undertaken on or after such date. In the instant case, the transactions were entered during the financial year 2006-07 i.e., 1st April 2006 to 31st March 2007 which is prior to 1-10-2009. Therefore, the Ld. A.O. was not justified in substituting the value determined by the DVO for the sale consideration disclosed by the assessee invoking section 50C of the Act and thus the addition made by the Ld. A.O. on the same ground is directed to be deleted.

4. Section 10 A of the Income-tax Act, 1961 – Deductions – Expenditure claimed by assessee disallowed under section 14A of the Act – As a consequence thereto profits of assessee eligible for deduction under section 10A would increase – Leading to a consequent increase in claim of deduction of assessee under section 10A of the Act

Informed Technologies India Ltd. vs. Dy. CIT – [ITA No.: 6466 & 6467 / M / 2014; Order dated: 21-10-2016; Mumbai Bench]

The assessee company had received exempt income under section 10 of the Act on the investments made by it, but no disallowance under section 14A of the Act was worked out. During the assessment proceedings assessee submitted that pursuant to the disallowance made by the by the Assessing Officer under section 14A of the Act, the consequential enhancement to its claim of deduction under section 10A was required to be made due to the adjustment the net business income remain at ` Nil as declared by it in the return.

The A.O. however, was of the opinion that the disallowance under section 14A of the Act did not fall within the sweep of sections 28 to 44, which regulated the computation of the income under the head 'Business or Profession', therefore the same would not go to increase the business profit eligible for deduction under section 10A of the Act and accordingly, he rejected the claim of the assessee.

Commissioner of (Appeals) confirmed the action of the A.O.

On appeal the Tribunal held that the only source of income was business income derived from a software unit located in Software Technology Park, which was eligible for deduction under section 10A of the Act. When any part of the expenditure claimed by the assessee is disallowed under section 14A of the Act, then as a consequence thereto the profits of the assessee eligible for deduction under section 10A would increase, leading to increase in the claim of deduction of the assessee under 10A of the Act.


CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION
Case Law Update

A. HIGH COURT

1. Where the assessee had advanced a loan in USD to its AE and received interest at LIBOR + 2.47 per cent viz., 7 per cent, the same was to be considered at ALP in light of the decisions of the Tribunals wherein LIBOR + 1.50 / 1.70 per cent were held to be the ALP rate

Pr. CIT UFO Moviez India Ltd – TS-883-HC-2016 (Del.) – TP

Facts

1. The assessee, engaged in the business of digital cinema distribution network, had advanced a loan in USD (equivalent to INR 45.61 crore) to its AE for a term of five years at an interest rate of 7 per cent per annum and adopted the CUP method to justify the ALP of the interest receivable using LIBOR as the benchmark rate. The TPO rejected the assessee's contention and indicated that the ALP rate of interest would be 17.26 per cent, applying the domestic rates and made a consequent upward adjustment. The DRP held that the TPO was incorrect in applying the domestic interest rates and adopted LIBOR + 4 per cent as the ALP i.e. 8.53 per cent per annum.

2. Aggrieved, the assessee filed an appeal before the Tribunal, wherein the Tribunal set aside the DRP's ruling and held that in light of various decisions of the Tribunal wherein the ALP rate was taken at LIBOR + 1.50 per cent / 1.70 per cent, the interest received by the assessee at LIBOR + 2.47 per cent (7 per cent) was to be considered at ALP. If further held that the DRP itself had stated that Indian banks were charging LIBOR + 2.50 per cent and therefore there could not be any reason for holding that the interest on loan advanced by the assessee to its subsidiary was not at ALP.

3. Aggrieved, the Revenue filed an appeal before the Hon'ble High Court.

Judgment

1. The Court held that the question urged before it was not a question of law and noted that the Tribunals findings were a question of fact. Accordingly, the appeal of the Revenue was dismissed.

2. Where the assessee failed to substantiate the ALP of technical fee paid by it to its AE and merely relied on the agreement stating that it was its obligation to make such payment, the matter was to be remitted to the file of the lower authorities for re-adjudication

Magneti Marelli Powertrain India Pvt. Ltd. vs. DCIT – TS-869-HC-2016 (Del.) – TP

Facts

1. The assesse was incorporated in India as a joint venture company of Magneti Marelli Powertrain SPA, Italy, Maruti Suzuki India

Ltd. and Suzuki Motor Corporation, Japan to manufacture and sell Engine Control Units ('ECUs'). It had entered into an agreement with its AE for acquiring technology required for the purpose of manufacturing ECUs for which it made a payment of INR 38.58 crore as technical assistance fee. It had also entered into 5 other international transactions viz., import of raw materials, sub-assemblies and components, payment of royalty, payment of software and purchase of fixed assets, the benchmarking of which was done on an aggregate basis under the TNMM method. The assessee compared its ratio of projected operating profit margin to operating revenue at 18.78 per cent with the mean operating profit margin at 6.65 per cent of comparable companies on the basis of past three year's data.

2. The TPO accepted the other transactions to be at ALP and with respect to the technical assistance fee held that TNMM had to be applied separately for the said international transaction and not collectively and rejected the assessee's entity level approach and adopted the CUP method and determined the ALP of payment of technical assistance fee at Nil. The DRP upheld the adjustment of ` 38.58 crore made by the TPO.

3. Aggrieved, the assessee filed an appeal before the Tribunal. The Tribunal held that the combined benchmarking of transactions by the assessee was not in accordance with law and the mere fact that the overall profit earned by the assessee was more than that of the comparables would not *ipso facto* mean that the international transactions were at ALP. It also held that the assessee was incorrect in using its projected operating profit margin while benchmarking its international transactions and that the use of 3 years data to arrive at the operating margins of the comparable companies was also not warranted. However, the Tribunal held that the TPO's approach in determining ALP under the CUP method for benchmarking the technical fee was incorrect as the TPO failed to compare the price paid with an uncontrolled comparable transaction and simply proceeded to adopt the ALP at Nil. Accordingly, it remitted the matter to the file of the TPO for reconsideration.

4. Accordingly, the assessee filed an appeal before the Hon'ble High Court contending that the separate examination of the technical fee was not warranted and the payment of the said fee was a commercial decision of the assessee which enabled it to obtain access to technology and could not be questioned by the TPO. It further, contended that the TPO was incorrect in applying the CUP method.

Judgment

1. The Court, relying on the decisions of the Delhi HC in EKL Appliances, Sony Ericsson Mobile and Denso India held that the aggregation of various payments and outgoings was permissible under the Act and the rules and that the TPO's rejection of TNMM method applied by the assessee at an entity level was incorrect. It noted that the TPO accepted TNMM as the most appropriate method in respect of all other international transactions but applied the CUP method only for the payment of technical assistance fee. It further held that the adoption of a method as the most appropriate method assured the applicability of one standard to judge an international transaction and that each method was a package in itself and therefore if the assessee's approach was to be disturbed, it would result in the adoption of two or even five methods for the determination of ALP for a single year which would spell chaos.

2. However, the Court noted that the assessee was unable to substantiate the need for payment of technical assistance fee to its foreign AE and the justification provided by the assessee that the technology obtained by it was only due to such payment of the fee was not sufficient. It held that the initial burden to provide that the international transaction was at ALP was always on the assessee. It held that mere obligation to make payment under an agreement could not justify the arm's length price of an international transaction. Accordingly, it upheld the remit directed by the Tribunal.

3. Companies in whose case extraordinary events have occurred during the year cannot be considered as comparable

Ameriprise India Pvt. Ltd. – TS-875-HC-2016 (Del.) – TP

Facts

1. The assessee, Ameriprise India Pvt. Ltd, a wholly owned subsidiary of Ameriprise, US, is engaged in the business of insurance, annuities, asset management and brokerage. During the year under review, the assessee provided Information Technology (IT) enabled services to Ameriprise US.

2. In its TP report, the assessee benchmarked its international transactions using Transactional Net Margin Method (TNMM) with its Operating Profit/ Operating Cost (OP/OC) at 15.66% and considered 11 comparables to demonstrate its transactions at ALP. TPO and thereafter the DRP included certain other comparables thereby making a total of thirteen companies having average margin of 30.56%.

3. In appeal, the Tribunal accepted assessee's contentions and excluded 6 comparables out of which 3 companies viz., Accentia Technologies, iGate Global Consultants Ltd and Infosys BPO were excluded on the ground of extra-ordinary events occurred during the year. It also remitted inclusion of 2 companies.

4. Aggrieved by the exclusion of 3 comparables viz., Accentia Technologies, iGate Global Consultants Ltd. and Infosys BPO, Revenue filed an appeal before Delhi HC.

Judgment

1. The Court held that the Tribunal had excluded the impugned comparables on the ground that certain extraordinary events had occurred during the previous periods which distorted the profitability thereby increasing the margin and held that it's findings could not be characterized as unreasonable. Further, the Court also opined that even if the figures of comparables were to be included, no adjustment would be permissible due to the fact that the margin of variation would be within the limits of the "Safe Harbour Provision" embodied in the Rules framed by the Board in exercise of its power under Section 92CA(3). Accordingly, it held that no question of law arose and dismissed Revenue's appeal.

4. In light of the decision of the High Court in Sony Ericsson Mobile Communications India Pvt. Ltd., wherein the Bright Line Test was disapproved, the Court stayed ` 33.65 crore demand raised by the AO by adopting the Bright Line Test for determining the ALP of AMP expenses

Bacardi India Pvt. Ltd. vs. DCIT – TS-884-HC-2016(Del.)-TP

Facts

1. The TPO had completed the transfer pricing assessment in the case of the assessee and raised a a demand to the tune of over ` 33.65 crores by adopting "Bright Line" Test as favoured in LG Electronics SB ruling.

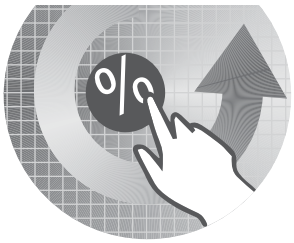
2. Aggrieved, the assessee filed a stay application before the Tribunal wherein the Tribunal directed the assessee to pay a pre-deposit to the extent of 20 per cent of the demand.

3. Therefore, the assessee filed a petition before the Hon'ble High Court and contended that the demand was unenforceable by relying on the decision of the HC in the case of Sony Ericsson Mobile Communications India Private which had disapproved the Bright Line Test. On the other hand, Revenue urged that ITAT's order requiring pre-deposit to the extent of 20% cannot be faulted with.

Judgment

1. The Court noted that the Delhi High Court itself had ruled against the adoption of the Bright Line test for benchmarking AMP transactions and held that in the given circumstances, the assessment and the order to the extent it resulted in substantial additions and the demand in question could not have been enforced pending the assessee's appeal before the Tribunal. Accordingly, it directed the Revenue to keep the demand in abeyance and not take any coercive measures till the final order of the Tribunal.

2. It further stated that nothing in the present order should preclude the contentions of the parties on the merits of the pending appeal and requested the Tribunal to dispose of the pending appeal for the relevant assessment year at its earliest convenience, preferably by the end of December 2016. Accordingly, the Court allowed assessee's writ petition.



CA. Hasmukh Kamdar

INDIRECT TAXES
Central Excise and Customs – Case Law Update

Ad-Manum Packaging Ltd. vs. Commissioner of C. Ex., Indore

[2016 (341) E.L.T. 348 (Tri. – Del. decided on 16-8-2016]

Valuation

The issue involved in this case is regarding the demand of Central Excise duty on the value of scrap retained by the appellant, who is a job worker. The appellant was manufacturing HDPE bags on job work basis for one of their customers and discharging the duty liability based upon the cost of raw materials plus job work charges and the profit margin. As per the understanding between the appellant and their customers, the appellant is entitled to retain the scrap generated during the manufacturing process. The appellant cleared the scrap so retained by them and discharges the duty liability on it.

The Department contended that the value of scrap generated should also be included in value of job worked goods for discharging the duty liability. The appellant's contention was that they have already paid duty on value of scrap at the time of its clearance from their factory. Therefore it will amount to double taxation if the value of scrap is again included in the value of job worked goods for levying the excise duty.

The Hon'ble Tribunal observed that –

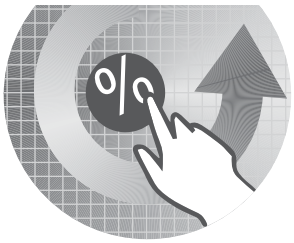
Firstly, the Revenue authorities want to include the value of scrap in the value of the goods job worked, i.e., HDPE bags and demand duty. It is undisputed that appellant has discharged the duty liability on the scrap and again, demanded duty by including the value in job work charges, which will amount to double taxation.

Secondly, an identical issue came up before the Bench of the Tribunal in the case of P. R. Rolling Mills Pvt. Ltd. – 2010 (249) E.L.T. 232 (Tribunal-Bang.) in which case, wherein identical facts were recorded in Para 6, which we reproduce:

''6. We have considered carefully the records of the case. The issue is whether the value of the scrap has to be included in the value of the goods cleared by the appellants to M/s. WIL. The appellant strongly pleaded that the value of scrap cannot be included twice. The main argument was that while estimating the value of the products manufactured by the appellant on job work basis, the value of the entire raw material received has been taken into account. It was also pleaded that the scrap separately has been cleared on payment of duty; hence, there was no need for including the value of the scrap in the assessable value again. It was stated that this would amount to addition of the value of the scrap twice. A decision of this Bench in the case of consolidated Engg. (supra) has also been relied on".

Further relying on the decision in the case of International Auto Ltd. [2005(183) E.L.T. 239 (S.C.)] it was held that adding the value of scrap to the value of the job worked goods is incorrect. This decision of the Tribunal was challenged by the Revenue in civil appeal before the Apex Court and the Apex Court on 6-9-2010 dismissed the appeal on the grounds of delay as well as on merit. This dismissal by the Apex Court is reported at 2010 (260) E.L.T.A 84.

In the facts and circumstances of this case, it was held that the impugned order is unsustainable and is accordingly set aside and the appeal is allowed with consequential relief.



CA Janak Vaghani

INDIRECT TAXES
VAT Update

1. Trade Circular

i) Trade Circular No. 35T of 2016, dated 27-10-2016

Extension of due date for filing of Monthly Returns for the period from April 2016 to October 2016 and Quarterly Returns from April to June 2016 and July to September, 2016 – Exemption from payment of late fees.

The Commissioner of Sales Tax *vide* above circular, in exercise of power conferred under notification No. VAT/1513/CR124/Taxation-1, dated 1st January, 2014, issued under section 20(6) of the MVAT Act, has granted exemption from payment of whole of late fees in respect of monthly Up to October 2016 and quarterly returns for the period from April 2016 to September 2016 provided it is filed before schedule dates as under:

Sr. No.	Period	Start Date	Last Date
1.	Monthly Returns April, 2016 to October, 2016	–	30th November, 2016
2.	Quarterly Returns for April, 2016 to June, 2016	26th November, 2016	10th December, 2016
3.	Quarterly Returns for July, 2016 to September, 2016	2nd January, 2017	21st January, 2017.

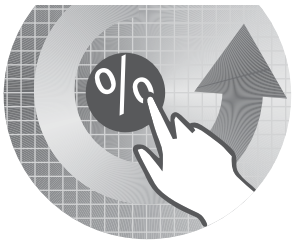
ii) Trade Circular No. 36T of 2016, dated 25-11-2016.
Computerised Desk Audit (CDA) for 2013-14

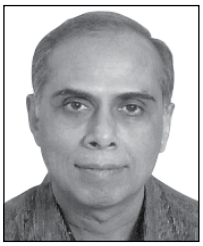
The Commissioner of Sales Tax has issued above circular to inform the trade and industry about CDA report made available on website along with list of cases selected for comprehensive assessment for the period 2013-14. It also lays down the procedure for online submission of compliance by filing revised annual return and payment of tax with applicable interest on or before 26th December, 2016. It is optional to dealers to accept or not to accept. Full compliance related to any audit parameter will result into closure of that parameter.

2. Administrative Order – Change in Procedure of Filing of First Appeals From 1-12-2016

Order dated 28-11-2016 read with Corrigendum dated 30-11-2016.

The Commissioner of sales tax by above administrative order has changed the procedure in filing of appeals under the MVAT and CST Acts. Accordingly from 1st December, 2016 all first appeals shall have to be filed before the respective administrative Deputy Commissioner of Sales Tax or Joint Commissioner of Sales Tax, as the case may be, of the same nodal division of the Assessing Officer who passed the order except orders passed by investigation officer. The appeals will be decided for fixing part payment for grant of stay and then shall be transferred to respective appellate authorities for passing the final orders. The appeal against orders passed by the officer of investigation branch shall continue to be filed before the respective appellate authorities.






CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES
Service Tax – Statute Update

1. Annual Return for Financial Year 2015-16

In view of impending implementation of Goods and Services Tax, CBEC has clarified that assessees are not required to file Combined Annual Return Form for Central Excise and Service Tax for Financial Year 2015-16 which was due to be filed on 30-11-2016.

[Circular No. 1050/38/2016-CX dated 8-11-2016]

2. Place of provision for Online Information and database access or retrieval services

- Notification amends definition of 'online information and database access or retrieval service' ('OIDAR') defined u/r 2(l) of Place of Provision of Service Rules, 2012 ('POPSR') to provide that it shall have meaning assigned to it in Rule 2(1)(ccd) of Service Tax Rules, 1994 which is also amended *vide* Notification No. 48/2016-ST dated 9-11-2016 referred below.
- As per Rule 9(b) of POPSR, place of provision for OIDAR service was location of service provider. This is omitted w.e.f. 1-12-2016.
- Further erstwhile Proviso to Rule 3 is also amended by inserting following words w.e.f. 1-12-2016

  "**Provided** in case of services other than online information and database access or retrieval service, where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service.

Consequently, place of provisions for OIDAR service will be location of service recipient w.e.f. 1-12-2016.

- It has also been clarified that 'telecommunication service' as defined u/r 2(q) of POPSR will exclude OIDAR service w.e.f. 1-12-2016.

[Notification No. 46/2016-ST dated 9-11-2016 and Notification No. 51/2016-ST dated 30-11-2016 – both are effective from 1-12-2016]

3. Amendment in Service Tax Rules, 1994 ('STR') impacting OIDAR service

- W.e.f. 1-12-2016, Term 'non-assessee online recipient' is defined by inserting clause (ccba) in Rule 2(1) of STR to mean:
  - Government;
  - Local Authority; or
  - Governmental authority; or
  - An Individual

Receiving the OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

- W.e.f. 1-12-2016, Term 'online information and database access or retrieval services' is defined under Rule 2(1)(ccd) of STR to mean:

  Services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as:

  – Advertising on the internet
  – Providing Cloud Services
  – Provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet
  – Providing data or information, retrievable or otherwise, to any person, in electronic form through a complete network
  – Online Supplies of digital content (Movies, television shows, music, etc.)
  – Digital data storage; and
  – Online gaming

- Following person will be liable to pay tax in case of OIDAR services provided or agreed to be provided by any person located in a non-taxable territory w.e.f. 1-12-2016:

  – Recipient of OIDAR service under reverse charge where such service is received by any person in taxable territory other than non-assessee online recipient [Rule 2(1)(d)(i)(H)]:

    o Receiver of service will be deemed to be located in taxable territory if any two of the following non-contradictory conditions are satisfied:

      – Location of address presented by service recipient via internet is in taxable territory.
      – Credit card or debit card or smart card or any other card through which service recipient settles the payment is issued in taxable territory.
      – Service recipient's billing address is in taxable territory
      – IP address of the device used by the service recipient is in the taxable territory.
      – Service recipient's bank account through which payment is made is in taxable territory.
      – Country code of SIM card used by service recipient is in taxable territory.

  – Provider of service located in non-taxable territory where such service is received by non-assessee online recipient [Proviso to Rule 2(1)(ii) to STR]:

    o If such service provider has no physical presence in

taxable territory then person representing such service provider in taxable territory will be liable to pay tax.

- o If such service provider has no physical presence or no representative in taxable territory then a person to be appointed in taxable territory for payment of tax.
- o Person receiving such service shall be deemed to non-assessee online recipient if he does not have service tax registration under STR.

– An intermediary located in non-taxable territory (including E-platform, agent, broker or any other person) who arranges or facilitates provision of OIDAR service but does not provide main service (OIDAR) on his own account except when he satisfies following conditions:

- o Invoice / customer bill / receipt issued by such intermediary clearly identifies service in question, supplier in non-taxable territory and registration number of such supplier in taxable territory
- o Such intermediary neither collects or processes payment nor is responsible for any payment between the non-assessee online recipient and supplier of such service
- o Such intermediary does not authorise the delivery
- o General terms and conditions of the supply are not set by intermediary

Where intermediary located in non-taxable territory satisfies above conditions, OIDAR service provider located in non-taxable territory will be person liable to pay tax.

- Provider of OIDAR service located in non-taxable territory to apply for registration in Form ST-1A within 30 days from 1-12-2016 or from the date when such provider has commenced supply of taxable service in taxable territory. Registration shall be deemed to be granted in Form St-2A from the date of receipt of application.
- Provider of OIDAR to issue invoice containing details as may be prescribed.
- Provider of OIDAR service to file half yearly returns in Form ST-3C.

[Notification No. 48/2016-ST dated 9-11-2016]

4. Amendment in Mega Exemption Notification No. 25/2012 – ST dated 20-6-2012

Exemption under Entry 34(a) of Mega Exemption Notification for services received from service provider located in non-taxable territory by Government, local authority, Governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession is amended to provide that such exemption will not be applicable to OIDAR services w.e.f. 1-12-2016.

[Notification No. 47/2016-ST dated 6-9-2016]

5. Amendment in Notification No. 30/2012 – ST dated 20-6-2012

Said notification is amended to provide that reverse charge mechanism will not apply w.e.f. 1-12-2016 to cases where service provider is located in non-taxable territory and service recipient is 'non-assessee online recipient' as defined under Rule 2(1)(ccba).

[Notification No. 49/2016-ST dated 9-11-2016]

6. LTU – Bengaluru is provided exclusive jurisdiction in respect of OIDAR services provided or agreed to be provided by a person located in non-taxable territory and received by non-assessee online recipient.

[Notification No. 50/2016-ST dated 9-11-2016]

7. Clarification regarding amendments relating to OIDAR service

- In case of B2B (Business to Business) cross-border OIDAR service i.e. where service provider is in non-taxable territory and service recipient (business entity) is located in taxable territory, Business entity will be liable to pay service tax under reverse charge w.e.f. 1-12-2016.
- In case of B2C (Business to Customer) cross-border OIDAR service i.e. where service provider in non-taxable territory and service recipient (Government, local authority, Governmental authority and individual) is located in taxable territory, service provider in non-taxable territory will be liable to pay tax under forward charge w.e.f. 1-12-2016.
- **Following type of services will be covered under OIDAR services:**
  - Services where the provision of digital content is entirely automatic. For example, a consumer clicks on 'buy now' button on website and content downloads onto consumer device or consumer receives an automated e-mail containing the content.
  - Services where the provision of digital content is essentially automatic, and the small amount of manual process involved doesn't change the nature of the supply of OIDAR service.
- **Indicative list of OIDAR service**
  - Website supply, webhosting, distance maintenance of programmes and equipment
    - Website hosting and webpage hosting;
    - Automated, online and distance maintenance of programmes;
    - Remote systems administration;
    - Online data warehousing where specific data is stored and retrieved electronically;
    - Online supply of on demand disc space
  - Supply of software and updating thereof
    - Accessing or downloading software (including procurement/accountancy programmes and antivirus software) plus updates;
    - Software to block banner adverts showing, otherwise known as Bannerblockers;
    - Download drivers, such as software that interfaces computers with peripheral equipment (such as printers);
    - Online automated installation of filters on websites;
    - Online automated installation of firewalls
  - Supply of images, text and information and making available of databases:
    - Accessing or downloading desktop themes;

- Accessing or downloading photographic or pictorial images or screensavers;
- The digitised content of books and other electronic publications;
- Subscription to online newspapers and journals;
- Weblogs and website statistics;
- Online news, traffic information and weather reports;
- Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular such data as continually updated stock market data, in real time);
- The provision of advertising space including banner ads on a website/web page;
- Use of search engines and Internet directories.

– Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events:

- Accessing or downloading of music on to computers and mobile phones;
- Accessing or downloading of jingles, excerpts, ringtones, or other sounds;
- Accessing or downloading of films;
- Downloading of games on to computers and mobile phones;
- Accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another

– Supply of distance teaching:

- Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;
- Workbooks completed by pupils online and marked automatically, without human intervention.

• **Indicative list of non-OIDAR services**

– Supply of goods where order and processing is done automatically

– Supplies of physical books, newsletters, newspapers or journals

– Services of lawyers and financial consultants who advise clients through e-mail

– Booking services or tickets to entertainment events, hotel accommodation or car hire

– Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network

– Offline physical repair services of computer equipment

– Advertising services in newspapers, on posters and on television

Examples of services whether or not OIDAR services

Services	Whether Provision of service mediated by information technology over the internet or an electronic network	Whether it is Automated and impossible to ensure in the absence of information technology	OIDAR Service
Pdf document manually e-mailed by provider	Yes	No	No
Pdf document automatically e-mailed by provider's system	Yes	Yes	Yes
Pdf document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of prerecorded videos and downloadable pdfs	Yes	Yes	Yes
Online course consisting of prerecorded videos and downloadable pdfs plus support from a live tutor	Yes	No	No
Individually commissioned content sent in digital form e.g., photographs, reports, medical results	Yes	No	No

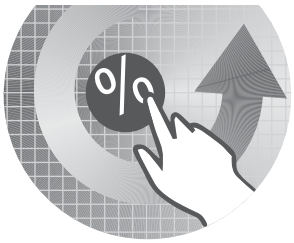
- If the service Provider in non-taxable territory crossed the threshold limit of ` 10 lakhs in the previous financial year i.e., 2015-16 for provision of any taxable service in India then the service tax liability would arise after crossing the threshold.
- The service Provider shall compute the value of taxable services on the basis of rate of exchange on the date when point of taxation arises in terms of Point of Taxation Rules, 2011.
- The Foreign supplier will not be eligible for input tax credit.

[Circular No. 202/12/2016-ST dated 9-11-2016]

It is the duty of every person to contribute in the development and progress of India.

— Swami Vivekananda

CA. Bharat Shemlani



INDIRECT TAXES
Service Tax – Case Law Update

1. Services

Renting of Immovable Property Service

1.1 Hobbs Brewers India Pvt. Ltd. vs. UOI 2016 (45) ST 60 (Tripura)

The High Court in this case held that, premium for lease transfer is consideration received for renting services and therefore liable to service tax. The premium is like charging one time rent and then rebate given for yearly rent to be paid hence, premium is also consideration for lease, irrespective of fact that it was capital investment.

Transportation of Gas through pipeline Service

1.2 Grasim Industries Ltd. vs. CCE, Indore 2016 (45) ST 65 (Tri. – Del.)

The appellant in this case transported gas through pipeline on FOR destination basis. The cost of transportation included in value for excise duty payment and said pipeline is laid and owned by the appellant. The Tribunal held that, since sale and delivery of Gas is at recipient end and its transport done by appellant in their own account through their own pipeline, it cannot be said that the appellant is service provider and buyer of Gas is service recipient. Further, the charges on this account are already included for purpose of excise duty payment and no service having been provided, service tax is not leviable.

Technical Testing & Analysis Services

1.3 Shrikant S. Endait vs. CCE, Nashik 2016 (45) ST 69 (Tri. – Mumbai)

The appellant in this case provided services of testing of seafood, factory audit with regard to quality compliance and result analysis of said food. The Tribunal held that, these activities covered under TTAS and exemption available having provided for seafood, which is a kind of animal therefore the impugned order classifying said activities under Technical Inspection and Certification Service is liable to be set aside.

Photography Service

1.4 Instrumentation Ltd. vs. CCE&ST, Lucknow 2016 (45) ST 182 (Tri. – All.)

The Tribunal in this case held that, issuance of Elector's Photo Identity Cards is sovereign activity carried out under contract from the State/Union Government is not liable to service tax.

Works Contract Service

1.5 RRB Energy Ltd. vs. CST, Chennai 2016 (45) ST 187 (Tri. – Chennai)

The Tribunal in this case relying on the Supreme Court decision in *L&T Ltd. 2015 (39) STR 913 (SC)* held that, prior to 1-6-2007 composite indivisible works contracts are not liable to service tax. It is further held that, infrastructure

charges paid to TNEB and incurred by the appellant directly as well as reimbursed to them is not in relation to any services provided by the appellant to its client and therefore not liable to service tax.

Business Auxiliary Service

1.6 Vinayak Industries vs. CCE & ST, Jaipur-I 2016 (45) ST 191 (Tri. – Del.)

The Tribunal in this case observed that, process of chilling milk making it marketable and in terms of Chapter Note 6 of Chapter 4 of CET, same amounts to manufacture hence, service tax is not leviable on such process. The principle of '*Noscitur a Sociis*' is applicable only when language of status is ambiguous and instant case the language in chapter note is clear enough to include 'any other treatment to render product marketable' which would include process of chilling of milk also. The department contention of confining scope of 'any other treatment' to 'labelling/re-labelling or packing/re-packing' on basis of aforesaid principle is not proper.

Transportation of passengers by Air Service

1.7 American Airlines vs. CST, Delhi 2016 (45) ST 226 (Tri. – Del.)

The Tribunal in this case relying on earlier decision in Lufthansa German Airlines and Continental Airlines held that, passenger service fee and airport charges are not includible in gross value of services.

Financing Service

1.8 Spandana Spoorthy Financial Ltd. vs. CCE & ST, Hyderabad-IV 2016 (45) ST 265 (Tri. – Hyd.)

The appellant in this case availed CENVAT credit wrongly prior to obtaining registration and also utilised for same for discharge of service tax liability on partly basis before issuance of SCN. The Tribunal held that, there is no legal bar for availing CENVAT credit based on credit documents prior to obtaining registration. If and when service tax demanded for taxable services during particular period, a corresponding right shall accrued to assessee to avail CENVAT credit on cenvatable documents evidencing inputs, capital goods or input services received during such period.

Manpower Recruitment or Supply Agency Service

1.9 PTL Enterprises Ltd. vs. CCEC & ST, Kochi 2016 (45) ST 265 (Tri. – Hyd.)

In this case, the appellant a sick company under BIFR recovered reimbursement of 'personnel cost' from lessee, as per Lease Agreement. The Tribunal observed that, continuous engagement of works at appellant's factory formed part of takeover scheme under BIFR and also as per long-term settlements/supplementary agreements for continuous joint operations. It is held that, reimbursement of actual expenses on 'personal cost' would not amount to manpower recruitment or supply agency service.

2. Interest/Penalties/Others

2.1 Bharat Sanchar Nigam Ltd. vs. CCE & ST, Guwahati 2016 (45) STR 3 (Gau.)

The Commissioner (A) in this case dismissed appeal merely because verification of appeal has not been done properly. The High Court held that, opportunity to remove defect should have been granted to assessee to remove defect, therefore the impugned order is liable to be aside.

2.2 Principal CST vs. R. R. Global Enterprises Pvt. Ltd. 2016 (45) STR 5 (AP)

The High Court in this case held that, condition in Notification 41/2007-ST, introduced by Notification No. 03/2008-ST that details of exporters invoice relating to export of goods should be mentioned in lorry receipt and corresponding shipping bill is matter of evidence. Its object is to ensure that what had reached port was actual consignment of exporter and there was no duplication of claim and

checks and balance on processing of exemption application. The said condition could not be waived of as mere procedure and availability of exemption depend upon its fulfilment and its relaxation would remove life breadth of exemption.

2.3 Principal CST, Delhi-I vs. T. T. Ltd. 2016 (45) STR 25 (Del.)

The High Court in this case observed that, the base Notification Nos. are 40/2007-ST and 41/2007-ST and list of services for which refund claim could be made augmented in 2008 by 3 separate notifications each of which were expressly prospective and only specific services relatable to export were included. The High Court held that, terms of notification ruled out that they were clarificatory, hence assessee's plea that subsequent notification apply from date when base notification came into force has been rejected.

2.4 USV Ltd. vs. CST, Mumbai-II 2016 (45) STR 83 (Tri. – Mumbai)

The Tribunal in this case held that, amount deposited during investigation becomes pre-deposit on subsequent dropping of demand. The date of payment of tax of such amount deposited cannot be taken as relevant date for limitation purpose.

2.5 Thyssenkrupp Electrical Steel India Pvt. Ltd. vs. CCE&C, Nashik 2016 (45) STR 99 (Tri. – Mumbai)

The appellant in this case deposited entire amount of disputed tax under GTA Service and Management & Business Consultant Service from CENVAT credit and also paid interest prior to issuance of SCN. The said payments also reflected in return also. The Tribunal held that, in terms of provisions of section 73(3) of FA, 1994, SCN is not required to be issued in such cases.

2.6 Schwing Stetter (India) Pvt. Ltd. vs. CCE, LTU, Chennai 2016 (45) STR 101 (Tri. – Chennai)

The appellant in this case adjusted excess service tax paid in the month of May against July liability without intimating the department. The Tribunal held that, adjustment of tax having been declared in ST-3 returns, intimation of such adjustment stands made to department. Further, excess amount paid could not be deviated and permitted to be retained by Government merely for procedural lapses by appellant.

2.7 Persistent System Ltd. vs. Principal CST, Pune 2016 (45) STR 177 (Tri. – Mumbai)

The Tribunal in this case held that, since service tax payable by appellant under RCM is available as credit to them and entire situation result into revenue neutral, hence no *mala fide* intention is attributable in alleged delay in payment of service tax and therefore extended period of limitation is not invocable.

2.8 Nikon India Pvt. Ltd. vs. CCE, Gurugram-II 2016 (45) STR 271 (Tri. – Chan.)

The Tribunal in this case held that, since appellant claimed refund of amount paid which was not liable to paid as per Service Tax provisions, Section 11B of CEA, 1944 providing for limitation is not applicable as held in *Gulshan Chemical Ltd. 2016 (45) STR 106 (Tri. – Del.).*

3. CENVAT Credit

3.1 CCE, Belapur vs. Apar Industries Ltd. 2016 (45) STR 71 (Tri. – Mumbai)

The Tribunal in this case held as under

- In view of CBEC Circular No. 999/6/2015-CX dated 28-2-2015 clarifying that place of removal in case of export of goods is Port/ICD/CFS, the CHA service availed by appellant is input service and credit of service tax paid thereon is admissible.

- CENVAT credit of service tax paid on outdoor catering service proportionate to expenditure borne by the appellant is admissible.

3.2 Murugappa Morgan Thermal Ceramics Ltd. vs. CCE, Chennai–III 2016 (45) STR 74 (Tri. – Chennai)

The Tribunal in this case held as under:

- CENVAT credit of service tax paid on group health insurance scheme premium for employees is admissible as when employees fall sick, it is necessary to provide them with proper treatment to prevent loss of man hours and disruption of manufacturing lines.
- Group health insurance premium for family of employees having no direct nexus with manufacturing activity, hence ineligible for credit as input service.
- The dispute being about interpretation of the provisions of law, there is no *mala fide* intention on the part of the appellant hence, penalty is not imposable.

3.3 Pangea 3 Legal Database Systems Pvt. Ltd. vs. CCE & ST, Noida 2016 (45) STR 76 (Tri. – All.)

In this case appellant claimed refund of accumulated credit on account of export of services. The department sought to reject the same on ground that input services received at unregistered branch office though subsequently included in centralisation registration. The Tribunal held that, undisputedly appellant in legal occupation of branch office from where output service rendered and exported and in view of grant of subsequent centralised registration including that of branch office, CENVAT credit admissible.

3.4 Maharashtra Seamless Ltd. vs. CCE, Raigad 2016 (45) STR 81 (Tri. – Mumbai)

The Tribunal in this case held that, hotel and conference services availed by the appellant for sales of generated scrap and attending marketing conferences, covered under sale promotion in definition of input services.

3.5 Asahi India Glass Ltd. vs. CCE, Gurugram II 2016 (45) STR 85 (Tri. – Chan.)

The Tribunal in this case held that, as per agreement goods i.e. glass / glass items required to be delivered at buyers premises, expenses incurred on hiring contractor for shifting and unloading of goods at such premises are covered under input service and therefore credit is admissible.

3.6 Star Drugs & Research Labs Ltd. vs. CCE & ST, Chennai-III 2016 (45) STR 88 (Tri. – Chennai)

The department in this case sought to deny CENVAT credit of service tax paid on services used outside factory premises as bills were issued in the name of Corporate office, LAB (R&D) and marketing office. The Tribunal held that definition of input service does not require that credit can be taken only if services are received in factory premises. Since the genuineness of transaction and duty paying document not being in doubt CENVAT credit is admissible. CENVAT rules being beneficial piece of legislation enacted for removing cascading effect and denial of credit sighting procedural irregularities is unsustainable.

3.7 Mahindra & Mahindra Ltd. vs. CCE, Hyderabad-I 2016 (45) STR 92 (Tri. – Hyd.)

The Tribunal in this case allowed CENVAT credit on services of Expansion of capacity of Effluent Treatment Plant and Flooring work done inside the factory done within the factory fall within work of 'modernisation, renovation and repair works'. Credit of services used for fabrication of pipelines and laying foundation of tank / cooling tower is disallowed. Penalty for wrong availment of credit set aside as issue being an interpretational one.

3.8 Birla Corporation Ltd. vs. CCE & ST, Lucknow 2016 (45) STR 103 (Tri. – All.)

The Tribunal in this case held that where removal is for sale on FOR destination basis, with risk borne by manufacturer till delivery to customers premises and when composite value of sale includes value of freight from factory to customers premises, 'place of removal' would be the customers premises. This position is also clarified by CBEC Circular No. 97/8/2007-ST dated 23-8-2007. Further it is held that, amendment in definition on input service on 1-4-2008, replacing words 'from place of removal' to 'up to place of removal' makes no difference to FOR destination sales as 'place of removal' gets extended to buyers premises.

3.9 Cargil India P. Ltd vs. CCEC & ST, Bengaluru 2016 (45) STR 124 (Tri. – Bang.)

The Tribunal in this case held that, Debit Notes and e-payment challans are valid documents for claiming CENVAT credit on input services as per rule 9(1)(e) of CCR, 2004 which specifies that CENVAT credit can be availed on challan evidencing payment of service tax by service recipient as person liable to pay service tax.

3.10 CCE vs. Ambalal Sarabhai Enterprises Ltd. 2016 (45) STR 174 (Guj.)

The High Court in this case allowed CENVAT credit of service tax paid on courier services used for transportation of finished goods from and input into factory as the issue in respect of GTA services for such transportation has already been held in favour of assessee in precedent case in view of term "from place of removal" used in definition of input services.

3.11 Orient Paper Mills vs. CCE & ST Raipur 2016 (45) STR 178 (Tri. – Del.)

The Tribunal in this case observed that, the appellant is manufacturer of paper and requires lot of water as input hence CENVAT credit of service tax paid on repair and maintenance service and erection and commissioning services used for laying pipeline outside factory to procure water is admissible.

3.12 Shree Cement Ltd. vs. CCE&ST, Jaipur-I 2016 (45) STR 204 (Tri. – Del.)

The department in this case denied CENVAT credit on consultancy services used for Solar Power Plant for captive use on ground that the proposed setting up of plant is at far away location and the electricity so generated could be sold outside. The Tribunal held that, since project is intended for generating electricity for use by appellant, location of plant is not relevant, hence CENVAT credit is admissible.

3.13 KLA Tencor Software India Pvt. Ltd. vs. CST, Chennai-III 2016 (45) STR 242 (Tri. – Chennai)

The Tribunal in this case held as under:

- Registration with department is not a pre-requisite for claiming the refund and refund of unutilised credit accumulated prior to registration not to be denied.
- Maintenance and Repair, Consulting, Courier, CHA, Professional, Insurance, Visa transaction, Rent-a-Cab, freight are services relating to business and covered within the definition of input services prior to 1-4-2011.

3.14 Reliance Gas Transportation Infrastructure Ltd. vs. 2016 (45) STR 286 (Tri. – Mumbai)

The appellant claimed CENVAT credit of service tax paid on services rendered by pipeline laying contractors rendering transportation of gas through pipeline. The Tribunal held that, the said service having direct nexus with output service of transportation of gas and the concept of movability or immovability is irrelevant for determining eligibility to input service credit.

Kaushik M. Jhaveri, *Company Secretary*

Digitalisation – Ease Business
SPICE – Simplified Proforma for Incorporating Company Electronically
An Initiative by Ministry of Corporate Affairs

Ministry of Corporate Affairs has taken another bold initiative in Government Process re-engineering on the occasion of Gandhi Jayanti i.e., October 2, 2016. Revised integrated incorporation form for companies notified *vide* the Companies (Incorporation) Fourth Amendment Rules, 2016 dated 1st October 2016 viz., "Simplified Proforma for Incorporating Companies Electronically (SPICE)" along with electronic MoA (SPICE MoA) and electronic AoA (SPICE AoA) have been made available in order to provide speedy incorporation of Companies, which are in line with international best practices and a step towards the development of Digital India. SPICe or Form INC-32 can help to incorporate a company with a single application for:

- Reservation of name
- Incorporation of a new company, and/or
- Application for allotment of DIN

The Integrated Form INC-29 has been replaced with SPICe Form INC-32. Form INC-29 was completely removed from the MCA portal with effect from 1st November, 2016. The recently introduced SPICe Form INC-32 had plucked selective drawbacks of Form INC-29. It will help the stakeholders to fast track incorporation of a company in India promoting Digital India and ease of business.

This simplified & integrated process for incorporation of a company is done through

- Form No. INC-32,
- E-Memorandum of Association in Form No. INC-33 and
- E-Articles of Association in Form No. INC-34.

So, now there are 2 ways to incorporate a company:

- INC-7, DIR-12 & INC-22
- INC-32 (formerly INC-29), INC-33 & INC-34

Purpose of the e-Form

Form INC-32 can help to incorporate a company quickly in India by integrating many of the steps into a single process. It has been introduced to do away with filing of various forms. The e-Form-32 is a highly dynamic form and it has following added benefits:

1. Application for allotment of DIN for the directors who do not hold a valid DIN
2. Application for the Company's PAN, TAN and ESIC registration

Key Highlights of e-form INC-32

- INC-32 can be filed even after an application made for availability of name in Form INC-1 which was not available in e-Form INC-29.
- MOA and AOA are provided differently in e-Form INC-33 and e-Form INC-34. In E-Form INC-33, promoters have to mention the objects of the company and in E-Form INC-34, pre-drafted clauses of AOA are provided which dispenses the requirement of physical subscription sheet.
- In Form INC-34 the subscribers/ promoters needs to select the applicable table for their company and on selection, the relevant clauses will appear. It also facilitates the subscriber/promoter to modify/add the articles
- The subscribers and witness of MOA & AOA will be required to affix their digital signature on e-MOA (Form INC-33) and e-AOA (Form INC-34).
- Information under Form INC-32 is more descriptive than Form INC-29. It not only fulfils the purpose of 5 forms at one time but also facilitates e-filing of MOA and AOA.
- The MCA has provided the procedure for the conversion of a company limited by guarantee into a company limited by share.
- Date of affixation of digital signature date will be the date of signing MOA & AOA.

Requirement of Share Capital

Minimum authorised and subscribed share capital required for;

- o One Person Company (OPC) is Rupee one or
- o a Private Company having share capital is Rupees two and
- o A Public Company is Rupees seven.

(Note: At least one kind of share capital (Equity/ Preference) should be greater than zero in number of shares as well as amount of shares.)

Type of Companies that can be incorporated using SPICe form INC-32

Using SPICe Form INC-32, the following types of companies can be incorporated in India:

- Part I Company
- Producer Company (only if 2 agricultural corporations are promoters, if there are minimum 10 promoters as applicable for individuals, then normal incorporation process has to be followed).
- Section 8 Company (was not available in INC-29). It can be filed only after obtaining approval/ License from concerned Registrar of companies for incorporation Section 8.
- New Company – Public or Private or OPC

DECLARATION BY PROFESSIONAL

The digital signature of a professional (Chartered Accountant/Company Secretary/ Cost Accountant/ Advocate) is required to file Form INC-32. The professional must declare that all information presented in the form is correct and enter his/her membership number and certificate number.

Documents required for SPICe Form INC-32

The following documents must be filed with SPICe Form INC-32 for incorporation of company:

- Memorandum of Association – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN

- Articles of Association – Applicable and mandatory only in case of Section 8 company or company with foreign subscribers not having DIN
- Affidavit and declaration by first subscriber(s) and director(s) – Mandatory in all cases
- Proof of office address
- Copies of utility bills that are not older than two months
- Copy of approval in case the proposed name contains any word(s) or expression(s) which requires approval from Central Government
- If the proposed name is based on a registered trademark or is subject matter of an application pending for registration under the Trade Marks Act, then it is mandatory to attach the trademark registration certificate or trademark application copy
- NOC from the sole proprietor / partners / other associates / existing company
- Proof of identity and residential address of the subscribers
- Proof of identity and residential address of directors

Advantages

- No need to reserve companies name prior to incorporation. But it is advisable to file INC-1 first as only one name can be proposed in this form also (same as INC-29).
- E-MOA & E-AOA.
- In form INC-34, select the table applicable to you i.e. which table of AOA is applicable on you and the relevant clauses will appear on the screen. The same can be altered or marked "Not Applicable".
- Initiative towards Digital India.

Limitations of SPICE System

- The limitation in SPICE system is that the maximum number of subscribers can be seven only. In case of more subscribers, normal incorporation procedure has to be followed.
- Only one name of the company can be proposed.
- It is expensive as DSC of all subscribers and witness is needed.
- Obtaining of DIN is available only to 3 Directors who do not hold valid DIN.
- Practical difficulty for forming Section 8 Company with regard to eMOA and eAOA.
- Practical difficulty for incorporation of company by foreign subscribers with regard to Notary / Apostilisation subject to Hague Convention.

Conclusion

SPICe Form INC-32 is surely an improvised version of e-Form-29 wherein many good changes have been made to accommodate the interest of the stakeholders by reducing the timelines, however due to certain limitations it might not be feasible when compared to earlier procedure.

We can only hope that the regulators might address the inherent limitations that are being observed in the current procedure for incorporation through SPICe Form INC-32 (like; limited number of subscribers, affixing of DSC of subscribers, etc.) and make the necessary changes in the time to come so that stakeholders might be more benefited.

Introduction of the SPICe forms is a good initiative by Ministry of Corporate Affairs towards ease of business and achieving India's digitalisation goals.

Janak C. Pandya, *Company Secretary*

CORPORATE LAWS
Company Law Update

Case Law No. 1

[2016] 199 Comp Cas 205(SC)

[In the Supreme Court of India]

Tin Plate Dealers Association P. Ltd and Others vs. Satish Chandra Sanwalka and Others

The provisions of the Memorandum of Association when registered is binding on the company as well as its members. The Articles of Association constitute a contract between the shareholders and the company as well as between the individual shareholders. Any action referable to the articles and contrary thereto would be *ultra vires*.

Brief case

Two applications were filed against the common judgment and order of the High Court of Calcutta dismissing the appeal against the order of the CLB. The CLB order was issued u/ss. 397 and 398 of the Companies Act, 1956 ("Act") for oppression and mismanagement. The facts are as under:

1. The appellant, "Gupta Group", the original promoters were holding certain partly paid up ordinary shares as well as certain fully paid-up ordinary and preference shares of the company.
2. The partly paid-up ordinary shares held by the Gupta brothers were forfeited due to non-payment of call money.
3. The above shares were then re-issued to Sanwalka Group at a premium.
4. As per Gupta Group, the said shares were actually held on behalf of them.
5. Sanwalka Group claimed that without notice, Gupta Group had increased the authorised share capital and also issued bonus shares for every equity and preference shares held.
6. The bonus shares were to be allotted against revaluation of the industrial plot at New Delhi, which is the only asset of the company. This was not contemplated in the Articles of Association of the company.
7. No bonus shares were allotted to Sanwalka Group.
8. The company had further issued equity shares as well as preference shares to the members of the Gupta Group.
9. No shares were issued to Sanwalka Group which in effect was to reduce the holding of Sanwalka Group in the company.
10. The company had also removed two directors belonging to the Sanwalka Group and replaced them with two directors from the Gupta Group.
11. The shares held by the Sanwalka Group were allegedly forfeited.

12. The industrial plot was leased out to sister concern of the Gupta Group which was prejudicial to the interest of the company and its shareholders.

From the Gupta Group, the following submissions were made before the CLB:

1. The company petition made by the Sanwalka Group is not maintainable as they do not hold any shares.

2. Sanwalka Group is holding shares as beneficiaries on behalf of the original shareholders i.e., Gupta brothers.

3. Sanwalka Group failed to pay the call money along with interest even after the call was made.

4. Gupta Group provided the relevant provisions of the Act on issuance of bonus shares from reserve created out of revaluation reserve.

5. The proportionate bonus shares were offered to the Sanwalka Group subject to payment of dues against the partly paid up shares.

6. Additional shares were issued for infusing into the company.

7. Leasing of land to sister concern was carried out as there was requirement of funds for construction on the said land to pre-empt forfeiture of the lease of said land itself.

The CLB passed the following order:

1. The objection raised by the Gupta Group on maintainability of petition was dismissed.

2. Sanwalka Group were holding shares in their own right, independent of any right of the Gupta brothers, whose right was extinguished upon forfeiture of shares.

3. Proper procedure under Section 53 of the Act was not followed for non-payment of call etc. The notice to the Sanwalka Group for payment of call did not contemplate the forfeiture of shares.

4. Issue of bonus shares were contrary to the provisions of Article 96 of Table A.

5. On further issue, though the contention of the Gupta Group was accepted, but it was observed that proportionate shares should have been allotted to the Sanwalka Group as well.

6. The leasing of land to sister concern should be decided by the shareholders based on the revised shareholding as per order.

Aggrieved by the above CLB order, the Gupta Group moved the Calcutta High Court under Section 10F of the Act. The Calcutta High Court dismissed the applications of the Gupta Group and hence this application was filed in the Supreme Court.

The questions before the Supreme Court were on legality of following corporate actions:

1. Whether petition filed by the Sanwalka Group before the CLB was maintainable?

2. Issue of bonus shares.

3. Issue of additional shares.

4. Removal of two board members belonging to the Sanwalka Group and induction of the members of the Gupta Group.

5. Lease agreement for industrial plot with company's sister concern and

6. Issuance of equity shares in lieu of preference shares.

Judgment and reasoning

The Supreme Court dismissed the appeal of the Gupta Group and the appeal filed by the Sanwalka Group was disposed of. The observation on the aforesaid various issues are as follows:

a. The petition filed by the Sanwalka Group is maintainable. The court has looked at the share certificates, process followed for making call notice, provisions of Section 53 of the Act and provisions of articles and conclude that proper process was not followed for forfeiture of shares.

b. On issue of bonus shares, the Court invalidated the same. The court pursued the provisions of Section 205(3) of the Act on the issue of bonus shares. Relying on the decision in *Bhagwati Developers vs. Peerless General Finance and Investment Co. [2005] 6 SCC 718; [2005] 128 Comp Cas 968 (SC)*, the Court observed that the Articles of Association specifically permitted the issue of bonus shares out of revaluation reserve, which was not the case here as the articles does not contain any such provisions. The court further observed that when the articles do not provide any such power, the Board cannot exercise such power on the basis that the Act allows the same. Reliance was placed on the court judgment in *[2005] 11 SCC 73; [2005] 124 Comp Cas 685, 705 *SC)*. It was observed that as per Section 36 of the Act, the provisions of the Memorandum of Association, when registered, is binding on the company as well as its members. The Articles of Association constitute a contract between the shareholders and the company as well as between the individual shareholders. Any action referable to the articles and contrary thereto would be *ultra vires*.

c. On further issue of additional shares, the court had concurrence with the CLB and High Court orders.

d. On the issue of equity shares in lieu of preference shares, the court went ahead to strike down such issue and observed that the process followed and the fact that it was to be allotted to the Gupta Group which was in control and various of its decisions were of self-serving in nature and detrimental to the interest of the company.

e. On leasing of the industrial plot, the court observed that the same can be decided in extraordinary general meeting as directed by the CLB.



CA Mayur Nayak, CA Natwar Thakrar &
CA Pankaj Bhuta

OTHER LAWS
FEMA Update

In this article, we have discussed recent amendments to FEMA through Circulars issued by RBI:-

1. Issuance of Rupee denominated bonds overseas by Indian banks

With a view to developing the market of Rupee Denominated Bonds overseas, as also providing an additional avenue for Indian banks to raise capital / long term funds, Indian banks are now allowed to issue rupee denominated bonds within the limit set for foreign investment in corporate bonds (INR 2,44,323 crore at present) as follows:

i. Perpetual Debt Instruments (PDI) qualifying for inclusion as Additional Tier 1 capital and debt capital instruments qualifying for inclusion as Tier 2 capital, by way of Rupee Denominated Bonds overseas; and

ii. Long term Rupee Denominated Bonds overseas for financing infrastructure and affordable housing.

Provisions contained in earlier Circulars and Master Direction No.5 dated January 1, 2016 on External Commercial Borrowings accordingly stand modified for the limited purpose of treating Indian banks as eligible borrowers under this route. The instruments (PDI and debt capital instruments) and long terms bonds, as mentioned in paragraph 2 above, issued by Indian banks by way of Rupee Denominated Bonds overseas should, however, conform to the provisions contained in the Master Circular DBR.No.BP.BC.1/21.06.201/2015-16 dated July 01, 2015 on 'Basel III Capital Regulations' and Circular DBOD.BP.BC.No. 25/08.12.014/2014-15 dated July 15, 2014 on 'Guidelines on Issue of Long Term Bonds by Banks – Financing of Infrastructure and Affordable Housing' issued by the Reserve Bank and as amended from time to time. Further, underwriting by overseas branches/subsidiaries of Indian banks for such issuances will not be allowed.

[A.P. (DIR Series) Circular No. 14 dated 3rd November, 2016]

(Comments: Until now rupee denominated bonds, popularly called masala bonds, could only be issued by companies and NBFCs. Allowing banks to issue such bonds will help banks to augment long term Tier-1 and Tier 2 capital through issuance of such bonds without exposure to currency risks. It will also offer long term investment opportunities for NRIs/ PIOs offering better returns as compared to NRI deposits.)

2. External Commercial Borrowings (ECB) – Clarifications on hedging

To bring uniformity in hedging practices in the market so as to effectively address currency risk

at a systemic level, the RBI has issued following clarifications:

i. Coverage: Wherever hedging has been mandated by the RBI, the ECB borrower will be required to cover principal as well as coupon through financial hedges. The financial hedge for all exposures on account of ECB should start from the time of each such exposure (i.e., the day liability is created in the books of the borrower).

ii. Tenor and rollover: A minimum tenor of one year of financial hedge would be required with periodic rollover duly ensuring that the exposure on account of ECB is not unhedged at any point during the currency of ECB.

iii. Natural Hedge: Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows /revenues in matching currency, net of all other projected outflows. For this purpose, an ECB may be considered naturally hedged if the offsetting exposure has the maturity/cash flow within the same accounting year. Any other arrangements/ structures, where revenues are indexed to foreign currency will not be considered as natural hedge.

[A.P. (DIR Series) Circular No. 15 dated 7th November, 2016]

(Comment: This is a welcome move by RBI to bring uniform policy in hedging of currency risks and provide clear guidelines for coverage, tenure & rollover and natural hedge so as to effectively address currency risk at a systematic level. Currently, each borrower was following its own practice for hedging which has now been standardised.)

3. Withdrawal of legal tender character of the existing and any older series banknotes in the denominations of ` 500 and ` 1000

RBI has invited attention of ADs to Paras 1(g) and (h) of the GOI Notification dated November 8, 2016, providing that the specified bank notes shall continue to be legal tender until November 11, 2016 *inter alia* to the extent of transactions specified below:

(i) At international airports, for arriving and departing passengers, who possess specified bank notes, the value of which does not exceed five thousand rupees to exchange them for notes which are legal tender; and

(ii) For foreign tourists to exchange foreign currency or specified bank notes, the value of which does not exceed five thousand rupees, to exchange them for notes which are legal tender.

[A.P. (DIR Series) Circular No. 16 dated 9th November, 2016]

4. Issue of pre-paid Instruments to foreign tourists

In order to avoid inconvenience to foreign tourists, Authorized Persons are allowed to issue pre-paid instruments to them in exchange of foreign exchange tendered. Passport may be treated as a valid document for issuance of the said instruments.

[A.P. (DIR Series) Circular No. 17 dated 9th November, 2016]

(Comment: This is a welcome move by RBI. This measure will provide much relief to foreign tourists at a time of currency shortage in view of demonetisation of ` 1,000 and ` 500 notes.)

5. Foreign Exchange Management (Insurance) Regulations, 2015

In view of reissue of the Foreign Exchange Management (Insurance) Regulations, 2015 notified *vide* Notification No. FEMA. 12(R)/2015-RB dated December 29, 2015, the RBI has also suitably modified the Memorandum of Foreign Exchange Management Regulations relating

to General / Health Insurance (GIM) and Life Insurance (LIM) in India. They have been annexed at Annex I and Annex II to the Circular.

[A.P. (DIR Series) Circular No. 18 [(1)/12(R)] dated 17th November, 2016]

6. Investment by Foreign Portfolio Investors (FPI) in corporate debt securities

As announced in the Union Budget 2016-17, RBI has expanded the investment basket of eligible instruments for investment by FPIs under the corporate bond route to include the following:

i. Unlisted corporate debt securities in the form of non-convertible debentures / bonds issued by public or private companies subject to minimum residual maturity of three years and end use-restriction on investment in real estate business, capital market and purchase of land. The expression 'Real Estate Business' shall have the same meaning as assigned to it in Notification No.FEMA.362 dated February 15, 2016.

ii. Securitised debt instruments as under:

   i. Any certificate or instrument issued by a special purpose vehicle (SPV) set up for securitisation of asset / s where banks, FIs or NBFCs are originators; and / or

   ii. Any certificate or instrument issued and listed in terms of the SEBI Regulations on Public Offer and Listing of Securitised Debt Instruments, 2008

Investment by FPIs in the unlisted corporate debt securities and securitised debt instruments shall not exceed ` 35,000 crore within the extant investment limits prescribed for corporate bond from time-to-time which currently is ` 2,44,323 crore. Further, investment by FPIs in securitised debt instruments shall not be subject to the minimum 3-year residual maturity requirement.

[RBI Notification No. 374 dated 24-10-2016/ A.P. (DIR Series) Circular No. 19 dated 17th November, 2016]

(Comment: This is a welcome dynamic move by RBI. This will open doors for FPIs to subscribe unlisted bonds issued by the corporates. Indian corporates will be able to tap cheap foreign funds without hassels of listing their bonds.)

7. Exchange facility to Foreign citizen

Foreign citizens holding foreign passports can exchange for Indian currency notes up to a limit of ` 5,000 / - per week till 15th December, 2016. To avail such facility, foreign citizen shall have to submit the declaration that this facility has not been availed of during the week.

[A.P. (DIR Series) Circular No. 20 dated 25th November, 2016]

(Comment: This is a welcome move by RBI. This measure will provide relief to foreign citizens who are allowed to exchange demonetised currency notes of ` 1000 & ` 500.)

8. FAQs Issuance of Rupee Denominated Bonds Overseas

RBI update on FAQs as on November 18, 2016 now contains new and detailed FAQs on issuance of Rupee Denominated Bonds. Refer https: / / www.rbi.org.in / scripts / FS_FAQs. aspx?fn=5

9. Corrigendum

RBI has issued corrigendum on November 25, 2016 on FEMA Notification No. 362 dated February 15, 2016.

10. Amendment to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Sixteenth Amendment) Regulations, 2016

RBI has notified amendments in Pension Sector under the FEMA (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 in Schedule 1, in Annex B, as follows:

<table>
<tr><th>Existing</th><th colspan="3">Amendment</th></tr>
<tr><td rowspan="2">F.10 49% Automatic upto 26%; Government route beyond 26% and upto 49%.</td><td>F.10</td><td>Pension: 49%</td><td>Automatic Route</td></tr>
<tr><td>F.10.1</td><td colspan="2">a) Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.

b) Foreign investment in Pension Funds will be subject to the condition that entities bringing in foreign investments as equity shares or preference shares or convertible debentures or warrants as per Section 24 of the PFRDA Act, 2013 shall obtain necessary registration from the PFRDA and comply with other requirements as per the PFRDA Act, 2013 and Rules and Regulations framed under it for so participating in Pension Fund Management activities in India.

c) An Indian pension fund shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by the Government of India / PFRDA as per the rules/regulation issued by them from time to time. The meaning of ownership and control would be as defined in Regulation 14 of the Principal Regulations.</td></tr>
</table>

[Notification No. 379 dated 4th November, 2016]

(Comment: RBI has notified the modified policy for Pension Sector. RBI policy is at variance with the Consolidated FDI Policy Notified vide Circular of 2016 dated June 7, 2016 Para No. 5.2.23. RBI does not recognize ownership and control by foreign investors and also does not provide for FIPB/ Approval route as provided in the consolidated FDI policy.)

There is no limit to the power of the human mind. The more concentrated it is, the more power is brought to bear on one point.

— *Swami Vivekananda*


Ajay Singh, *Advocate* & CA Namrata Bhandarkar

BEST OF THE REST

1. Suspension of licence – Ground of transportation of goods exceeding permissible weight – Offence of transportation of goods exceeding permissible limit is compoundable – Benefit of compounding extended to owner as well as driver of vehicle – Suspension of license of driver even after compounding of offence, illegal – Motor Vehicles Act Ss. 19,194,200

The petitioner is a driver by profession having valid driving licence up to 23-4-2018. The petitioner was working as a driver of a vehicle belonging to one V Madhav Reddy. On 29-4-2016 while he was proceeding with a load of sand, the same was seized *vide* vehicle check report No.1753092 alleging that said vehicle was found plying with an overload of 7770 Kgs of sand. On the said ground, the RTA issued the impugned proceeding suspending driving licence for 3 months which is the subject-matter of the writ petition filed. The ground of the petitioner is that once the offence is compounded by paying compounding fees, the question of suspending driving license for the same offence does not arise and hence the authorities erred in suspending driving licence. The counter claim against the petitioner was that both the owner of the vehicle and driver are liable to be punished under section 194 of the Act, since the compounding fee is collected from the owner of the vehicle in lieu of prosecution being registered against him, the driver cannot be escaped from the liability.

The Hon'ble Hyderabad High Court observed that Section 200 of the Act, 1988 makes it clear that if an offence is compounded under sub-section (1), the offender, if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence. Meaning thereby that he has been exonerated of the charge levelled against him. It was also noted that compounding of offence is not mandatory. It is conditional upon the willingness of the accused to have the offences compounded. In fact, the Division Bench of this Court in Satyanarayana Rao's case (1989 2 Law Summary 87 DB) held that when once an offence is compounded under Section 200, then the cancellation of permit or any other action or proceedings in respect of the same offence becomes invalid , in *P. Ratnakar Rao vs. Government of A.P. (1996) 5 SCC 359*, the Apex Court held that in the event of the petitioners willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated.

The court further observed the judgment of the Apex Court in *Rajasekaran vs. Union of India (AIR 2014 SC (Suppl) 681)* and the guidelines given by the State Government does not deal with a situation where the offence alleged to have been committed by the driver or the owner of the vehicle resulted in a compromise. It is true that the judgment of the Apex Court in Rajasekaran case and also the road safety recommendations made by the Apex Court need to be strictly followed. Having allowed compounding the offence after collecting necessary fees, which fact is

not disputed by the Government Pleader for Transport, the question is whether the owner or the driver are still liable for any prosecution. Though the Government Pleader for Home (TG), tried to convince the Court by urging that as the owner has paid the compounding fee, he alone can be exonerated and not the driver who was found driving the vehicle, at the time of its interception, but a reading of Sections 194 or 200 of the Act of 1988 does not indicate the same. On the other hand, Section 194 categorically states that whoever drives or causes or allows to drive the vehicle, shall be liable for punishment. Therefore, a harmonious reading of Section 194 and 200 of the Act, 1988 makes it clear that the benefit under Section 200 of the Motor Vehicles Act has to be extended not only to the owner who allows the vehicle to be driven, but also to the person who drives the vehicle. Having regard to the judgments referred to above and a plain reading of Section 200 of the Act, 1988 makes it clear that once an offence is compounded under sub-section (1) of Section 200, no further proceedings shall continue in respect of such offence. When stringent punishment and strict interpretation of the guidelines are required to be made, the authorities ought not to have invited or entertained an application for compounding the offence, knowing that offences of this nature would fall within the recommendations of the Hon'ble Supreme Court Committee on road safety.

Having regard to the above, the Court was of the view that suspension of licence for a period of three months, even after compounding the offence under Section 200 of the Act 1988, is illegal and the same is liable to be set aside. Accordingly, the Writ Petition was allowed.

NarsimhaVadlakonda vs. State of Telengana AIR 2016 Hyderabad 197

2. Suit for specific performance – Plea of fabrication of documents – Agreement of sale – Signatures and thumb impressions of persons not allegedly the owners of suit property affixed on agreement – Suit property being joint family property and there being no division among coparceners, vendors trying to venture to alienate part of suit property without consent of other owners was not proper – Grant of decree of specific performance, not proper. Specific Relief Act

The first defendant is the mother, defendant Nos. 3 to 5 are her sons and second defendant is her daughter-in-law i.e., wife of the deceased son Ramalingam. The Plaintiffs case in brief is that the defendants are the owners of the premises bearing No. SRT 344 admeasuring 170 sq. yards in Hyderabad and out of the said property, they offered to sell a portion admeasuring 42 sq. yards consisting of one Mulgi and one room and the plaintiff agreed to purchase the said property for ` 2,15,000/- and the defendants executed an Agreement of Sale dt. 2-8-1997 in favour of plaintiff and received an advance of ` 5,000/- as part payment of sale consideration. Subsequently, the defendants periodically received ` 22,000/- from the plaintiff and issued receipts. The plaintiffs came to know that the defendants were making efforts to sell the suit property to some 3rd parties. Finally, on 10-5-1999 they pursued the matter, the defendants bluntly refused to execute a sale deed. The plaintiff averred that she was ready and willing to perform her part of contract. With these averments, she filed the suit. The defendants filed common Written Statement denying the plaint allegations.

a) Their primary contention was that the alleged sale agreement dt. 2-8-1997 is a fabricated document as the said agreement was allegedly executed by D.4 and his wife alone, but the signatures of other defendants were present in the document. D.4 and his wife are not the exclusive owners of the suit property.

b) It is further averred that though the defendants are owners of the premises bearing No. SRT 344 admeasuring 170 sq. yards but they are not the absolute owners since the same was originally allotted to the husband of the first defendant namely K. Yellaiah by the Commissioner of Labour, Government of Andhra Pradesh on 8.6.1989. Subsequently, possession was handed over to K. Yellaiah and since then all the defendants were staying in the suit premises. K. Yellaiah paid entire installments to the Commissioner of Labour, but the Sale Deed was not executed in his favour inspite

of his request. Subsequently, K. Yellaiah died on 7-5-1995. Thereafter also, the defendants requested the Commissioner to execute the Sale Deed in favour of defendants, but the Sale Deed was not executed in favour of the defendants. As the Sale Deed was not executed in favour of defendants, the question of their executing Agreement of Sale in favour of plaintiff does not arise.

c) It was further contended due to personal needs and financial difficulties, D.4 approached the plaintiffs and requested to lend him ` 5,000/- as loan. While paying ` 5,000/- to D.4 on 2-8-1997, the plaintiff and her husband obtained signatures of D.4 and his wife on two blank non judicial stamp papers worth ` 50/- each and on several other blank papers affixed with revenue stamps on them. The plaintiffs demanded D.4 to obtain signatures of other defendants on non judicial stamp papers and also on plain papers as surety. Out of innocence and acute necessity for money, D.4 insisted other defendants to sign on papers and they obliged him. D.4 could not repay the loan amount of ` 5,000/- and requested time for repayment. The plaintiffs fabricated the Agreement of Sale. The defendants never agreed to sell the suit house to the plaintiff.

The Hon'ble High Court of Hyderabad observed that there is no demur on the legal point that mere admission of signatures of the executants will not relieve the burden of other party to establish the contents of the document and consent of the executants for such contents. It is in this context, the evidence placed by the plaintiff has to be scrutinized to know how far the plaintiff could discharge her burden. The first argument of the defendants is that the document were fabricated after obtaining their signatures on blank papers. This argument had no force because PWs.1 and 2 clearly deposed that all the defendants were present and executed the document . Their evidence could not be shattered. It was noted that if really the documents were fabricated, the plaintiff would have mentioned entire 170 sq. yards in the document and payment of entire sale consideration or substantial part thereof but that was not the case here. Further, if D4 borrowed only ` 5,000/- and blank documents were obtained by plaintiff, there was no reason for him to receive the subsequent amounts. Therefore, the theory put-forth by the defendants that documents were fabricated can be discarded. Secondly, they have not adduced any reason as to why these documents Xerox copies of blank stamp papers and blank signed papers were not produced by them before the trial Court to establish their defence plea. Thirdly, it is not explained how the defendants got Xerox copies of blank stamp papers and blank signed papers.

The suit property is a joint family property devolved upon the defendants through K.Yellaiah, the husband of first defendant. Hence, D3, D4, D5 and husband of D2 and late Yellaiah were coparceners and no division took place among them. Further, though the plot was allotted to Yellaiah by Commissioner of Labour, Government of Andhra Pradesh on 8-6-1989, the same was not registered in his favour or in favour of defendants after his demise. So, the defendants have only possessory title in respect of suit property. In this backdrop, D4 and his wife should not have ventured to alienate a part of suit property without the consent of other defendants. Added to it, in the course of road widening, about 60 sq. yards of site was already lost by the defendants. So, the remaining extent would be roughly 100 to 110 sq. yards. Out of which if 42 sq. yards is to be sold to the plaintiff, it will be difficult for the defendants to make a living in the remaining portion as submitted by the counsel for appellants/defendants. Merely because the plaintiff is ready and willing to perform her part of contract, that itself is not sufficient to grant equitable relief particularly when she failed to establish that the defendants are full-fledged owners of the property and that the other defendants have consented for the transaction and further, allowing specific performance cause undue hardship to the defendants. Hence, the plaintiff is not entitled to specific performance but having regard to the circumstances of the case, she deserves refund of advance money from D4. The appeal was allowed in this regard.

Smt. K Bhudamma and others vs. Smt. Vidyadevi and others. AIR 2016 Hyderabad 200

3. Appealable order – Proceedings for recovery of unpaid dues – Recovery Officer conducting auction sale and

directing auction purchaser to deposit amount– Order passed by Recovery Officer has substantial potential to adversely affect defaulter/borrower – Same is appealable under S.30 of the Act – Concurrent remedy also available to him under R.61 of Second Schedule to Income Tax Act - Recovery of Debts due to banks and Financial Institutions Act Ss. 30, 29, 28 & Income Tax Act Sch. II, R.61

The petitioners are borrowers. Having taken loan from the respondent No. 1 Dena Bank, they failed to repay the same. Dena Bank therefore filed Original Application No. 319 of 1998 before he Debt Recovery Tribunal, Ahmedabad ('DRT') for recovery of such unpaid dues with interest. In such Original Application the DRT passed a decree for a sum of ` 56,39,015. The Recovery Officer thereupon initiated recovery proceedings against the petitioners. One of the properties of the petitioner, namely, land bearing block No. 278-paiki admeasuring 3631 sq.mtrs., along with factory building thereon came to be attached by the Recovery Officer on 9.9.2003. The Recovery Officer thereafter put the property to auction. Earlier auction attempts having failed, a fresh attempt was made in September, 2009. On 22-9-2009, namely, one Shri Gopalkrishnan Dahyabhai Patel, the respondent No. 2 herein had submitted his bid for an amount of ` 21 lakh against the reserved price of ` 21 lakh. He had also attached the demand draft for a sum of ` 5.25 lakh. He was persuaded to raise his bid to ` 21.05 lakh. In view of such developments the Recovery Officer passed an order on 22-9-2009.

The said order dated 22-9-2009 was challenged by the petitioners before the DRT, Ahmedabad, by filing appeal under Section 30 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 ('RDDB Act'). The petitioners raised three contentions before DRT in such appeal, (1) that the proclamation notice for auction was affixed on 2-9-2009 and the auction was conducted on 22-9-2009 which was less than 30 days of statutory period provided under the rules; (2) that the valuation report was not served on the petitioners and the property was sold on the basis of stale valuation report; (3) that the life of an attachment order would be three years. The attachment which was effected on 9-9-2003 therefore would not survive beyond a period of three years. The said auction of the property therefore could not have been effected on the basis of such attachment order. The respondents i.e. the Dena Bank and the sole auction participant opposed the appeal on the ground of maintainability. It was argued that the Recovery Officer had not carried out any adjudication of rival disputes, such order was therefore not appealable under Section 30 of the RDDB Act.

The DRT, Ahmedabad by an order dated 29-3-2010 dismissed the appeal of the petitioners. It was held that the issues sought to be raised before the Tribunal were not raised before the Recovery Officer. In the opinion of the Tribunal unless such matters were adjudicated before the Recovery Officer by filing objections and were adjudicated by the Recovery Officer, the parties cannot straightaway come to the Tribunal by filing appeal under Section 30 of the RDDB Act.

The Hon'ble Gujarat High Court observed that the scope of appeal under Section 30 of the RDDB Act against an order passed by the Recovery Officer is sufficiently wide and would take within its sweep, any order that the Recovery Officer may pass which would have a bearing on the rights of the appellant before the Tribunal. It is true that the law recognizes certain orders, which are not appealable. Nevertheless where an order that the Recovery Officer may pass has a substantial potential to adversely affect a party or injure his rights, it would certainly be one which would be appealable under Section 30 of the RDDB Act. Yet another aspect which immediately springs from the record is that Section 25 of the RDDB Act permits the Recovery Officer three modes of recoveries including attachment and sale of movable and immovable property of the defaulter . Publication and proclamation of the conducting auction which would include obtaining valuation and fixing upset price, some of the important stages of sale by auction of any movable or immovable property. If the defaulter has fundamental objection to any of these aspects which would go to the root of the matter his right to question the very auction on such basis would certainly arise when the Recovery Officer proceeds on such defective foundation. For all these reasons, Court was of the

opinion that the DRAT committed serious error in holding that the petitioners' appeal under Section 30 of the Act was not maintainable. Undoubtedly the order passed by the Recovery Officer on 22-9-2009 has vital bearing on the rights of the petitioners. As long as the order that Recovery Officer may pass in exercise of powers under Sections 25 to 28 of the RDDB Act and which acts prejudicially or is injurious to a person, such person would be a person aggrieved. An appeal at the hands of such person would be maintainable under Section 30 of the Act.

Ritesh Oil Mills P Ltd and another vs. Dena Bank and others. AIR 2016 Gujarat 158

4. Consumer Protection – Booking of flat with the builder – Delay on the part of the builder to take approval from concerned authorities – Cancellation of booking of flat with builder – housing activity is a 'service' and is covered under the Consumer Protection Act, 1986

The appellant booked a 350 sq. ft. flat in 'Dev City Bhiwadi (Rajasthan)', with the respondent builder under the Weaker Section Plan by paying Registration Amount of ` 25,000/- on 6-9-2007 after filing an application form provided by the respondent. The terms and conditions contained in the form provided that the respondent/OP will return the principle amount paid by the applicant along with simple interest @ 9% per annum in case it failed to provide possession of the booked flat within 3 years from the date of registration. The appellant further certain instalments amounting to ` 72000/-. The appellant had alleged that when he visited the site of the respondent on 1-7-2010 the construction was in its initial stage and there was no hope that the project would be completed even in the next 3-4 years. On enquiries it was revealed to the appellant that the approval for the project from the concerned authorities had also not been obtained. In such circumstances, the appellant decided to withdraw from the project and not to pay further instalments. Thereafter, the appellant vide its letter dated 2-8-2010 opted for cancellation of booking and requested for refund of his money. He duly submitted all the original documents to the respondent on 2-8-2010 but respondent did not refund the amount of the complainant. Aggrieved by the conduct of the respondent builder, the appellant filed a complaint before the Ld. District Forum alleging unfair trade practice and deficiency in service on the part of the respondent and prayed for refund of amount of ` 72,000/- along with interest @ 18%, compensation of ` 50,000/- and ` 20,000/- as litigation costs. Respondent filed the written statement alleging that the case of the appellant was revolving around the contract between the respondent/complainant and was exclusively triable by a civil court and appellant is not a 'consumer' within the meaning of the Consumer Protection Act. It was alleged that under the scheme in question the time for delivery of possession of the plot was 3 years and it was a premature case, though it was admitted that the appellant filled cancellation application on 2-8-2010. It was also denied that respondent promised to refund the amount.

The Districts forum dismissed the appeal stating that the complainant had only applied for allotment of the plot and he was only a prospective investor only and the allotment has not been made in favour of the complainant till the date on which he filed a requisition for the cancellation of the Registration and the refund of the amount deposited by him till that date and as such the complainant is not a "consumer" within the meaning Sect 2(1)(d) of the Consumer Protection Act, 1986 and the case does not fall within the ambit of the said Act"

The question before the State Commission was whether complainant of the present complaint a "Consumer" within the meaning of the Consumer Protection Act.

The Hon'ble State Commission of Delhi Observed that the the Ld. District Forum dismissed the complaint of the appellant relying on the law laid down by the Hon'ble National Commission in Punjab Urban Planning & Development Authority vs. Krishan Pal Chander is that the filing of the application for allotment of a flat/plot grants the proposed allottee only a right to be considered for allotment. He becomes a 'consumer' under the Consumer Protection Act only after he is allotted a flat/plot. In the view of the State Commission precedent will be applied only in a situation when a person applies to a public

development authority for consideration of his name for draw of lots to be held for allotment of flat/plot. Whereas when a person books a flat/plot with the private builder like in a present case he becomes a 'consumer'. When complainant books a flat/plot with a private builder there is no question of draw of lots for allotment of flat/plot. Subsequently, after booking of the flat the appellant paid several installments at the insurance of the respondent that he will provide the flat to the appellant complete in all respects. Therefore, in the present case where private builder is involved is completely distinguishable from the case relied upon by the District Forum. The order of the Ld. District Forum failed to appreciate that merely the appellant was not issued an allotment letter does not mean that he is not a 'consumer' within the provisions of Consumer Protection Act. A person who pays the consideration amount in relation to purchase of something he becomes a 'consumer'. Ld. District Forum failed to rely upon the law laid down in Lucknow Development Authority vs. M.K. Gupta , AIR 1994 Supreme Court 787 which was relied by the appellant/complainant in its written arguments in which it is held that if housing construction or building activity is carried out by a private or statutory body, the same is within the meaning of Clause (o) of Section 2 of the Act. In the light of aforesaid discussion it becomes clear that housing activity is a 'service' and is covered under the Consumer Protection Act. Ld. District Forum committed error in dismissing the complaint on this ground. The impugned order is liable to be set aside and to be remanded back to decide on merits.

Shri Dinesh Chandra v ArunDev Builders Ltd. [State Commission of Delhi FA Appeal no 551/2013 dt 11-11-2016]

5. Medical Negligence – Wrong blood transfused caused imbalance of the function of the Kidney and liver and ultimately resulted in renal failure – compensation with cost of litigation granted : Consumer Protection Act, 1986

This Complaint is lodged alleging that there was gross medical negligence to determine the correct ABO group of blood of the Patient Madhuwala Choudhary due to incompatible blood transfusion resulting in renal failure and death of the wife of the Complainant with prayer against the opponents to hold them jointly and severally responsible on account of deficiency in service and negligence . Madhuwala Chaudhary, aged 55years +, wife of the Complainant was admitted in the Tata Memorial Hospital . Dr.Decruz to whom she was referred, made over her case to OP no.4 Dr.R.C.Mistry in Thoracic unit of the Hospital. Blood group of Patient was examined on 8-4-2005 as B negative. Patient was operated on 5-7-2005. Surgery was performed under OP no. 4 . 1400 ml. blood of B negative group was transfused inside body of the Patient during the period between 5-7-2005 to 12-7-2005. Discharge summary was issued on 26-7-2005. Patient could not return to her native place as she was suffering from the breathing problem and loose motions. Medical treatment continued till 8-8-2005. On 29-8-2005 the Patient along with her family members proceeded to her Home Town. The condition of the Patient was not improving but deteriorating in her Home town. On 21-9-2005 the Patient was brought in precarious condition. OP no. 5 had called the Patient to the transfusion department with original case file. OP no.5 had tore the earlier report showing the blood group of the Patient as B negative and substituted it with ABO report as B positive dated 20-9-2005. Complainant had collected the torn report and joined the pieces together. Patient was given the large doses of blood of group B positive between the period of 20-9-2005 to 28-9-2005 in ICU Ward. Patient died on 29-9-2005 . Cause of death was mentioned as due to Renal Failure. Thus the Patient had died as a result of the incompatible blood transfused in her body due to medical negligence. Complainant had spent more than ` 10, 00,000/- for medical bills etc

The Hon. Commission observed that it is duty of the consultant/surgeon transfusing the blood to check the label of the bottle on which every details of the group , dates , name of patient etc is mentioned and to monitor the patient. When the blood transfusion of the wrong blood is given, it causes a serious reaction. In case of the acute reaction the Blood transfusion has to be stopped and emergency medical treatment has to be given. If patient remains hospitalized Patient must be monitored during the process of blood transfusion, because if left unattended the negligence may result in to death by renal failure.

[Contd... on page 89]

CA Ninad Karpe

The Lighter Side

BLACK or WHITE

The first time I heard about the concept of Black or White was through a song. Strange as it may sound, that was the title of a song sung by the legendary Michael Jackson (RIP), which was released in 1991. This song was a huge success then and like so many other people of my age, this song enthralled me as well.

Circa December 2016: If I am caught humming this song, I know I will be in deep trouble. May be I should do a remix of this song and re-master the words to "White is Right".

8th December 2016 is a red-letter day (or should we call it a "white-letter" day) in India's economic history. What followed thereafter was simply amazing…

WhatsApp was flooded with mixed reactions. One of them mentioned that properties facing ATMs would fetch a premium. If that is indeed so, I may have to relocate, as the value of my property has suddenly gone down. However, more importantly, I now love a different sound. Being a true lover of rock music, I had never imagined that I would love the sound of anything else. Yet today, I love the sound of notes whirring as they come out of my ATM machine – because these notes are rare and precious!

Ultimately, "white is right" is good for the Indian economy. But while we get there, many of us would have aged just waiting for the "white" moment!

[Contd. from page 88]

Wrong method of the blood transfusion can also lead to gangrene and amputation of the limb. In such case therefore no expert opinion is required as what would be consequences of negligence per se. Contaminated or substandard blood transfusion can result in to infection of serious deceases like hepatitis, Aids etc virus. The Doctor attending must inform the patient or his spouse about the infection. Proper diagnosis is necessary. Failure to go for necessary investigation obviously leads to improper medical treatment and amounts to medical negligence. Abundant caution is necessary to clear the doubts. Standard practice has to be followed. It is duty of the Surgeon to explain as to what happened within four walls of the Operation Theater. Careless post operative treatment resulting in serious infection may amount to medical negligence. Proper diagnosis needs examining the clinical findings and timely advice as to necessary investigations to clear doubts if any. The wrong blood transfused caused imbalance of the function of the Kidney and liver and ultimately resulted in renal failure mentioned as cause of death for Patient Madhuwala in this case. No special evidence is required to prove that incompatible blood transfusion inside the body of Patient is hazardous.

As regard compensation it was held that reasonable sum considering the imponderables that the Patient who was Housewife would not have lived longer healthy useful life of 70 + years as normally contemplated. It is case of 55+ years aged patients who admittedly suffered from Cancer. Compensation in the sum of Rupees Five lakhs with cost of litigation in the sum of ` 20,000/- was awarded with interest at the rate of 9% per annum from the date of the complaint till realization.

Mr.Barun Prasad Choudhary Through Mr. Rajesh Kumar Choudhary vs. Tata Memorial Hospital [State Consumer Disputes Redressal Commission, Maharashtra, Consumer Complaint No.CC/05/147 dt 27th October, 2016]


CA Hinesh R. Doshi, CA Haresh P. Kenia
Hon. Jt. Secretaries

The Chamber News

Important events and happenings that took place between 8th November, 2016 to 8th December, 2016 are being reported as under:

I. Admission of New Members

1) The following new members were admitted in the Managing Council Meeting held on 29th November, 2016.

Life Membership

1	Mr. Sreenivas C. S. C. V. Sivayya Setty	CA	Bengaluru
2	Mr. Singh Hukam Vijay Pal	CA	Delhi
3	Mr. Patel Ramesh Mohanbhai	CA	Gujarat
4	Mr. Singhania Binay Kumar Sri Shyam Sunder	CA	Kolkata
5	Mr. Mehendale Shailesh Anant	CA	Mumbai

Ordinary Membership

1	Mr. Atal Mahavir Anil	CA	Yavatmal
2	Mr. Gurav Tushar Vilas (Half Yearly Membership)	CA	Mumbai
3	Mr. Madhani Tarak Bhikhalal (Half Yearly Membership)	CA	Thane
4	Mr. Sanchania Harsh Mahendra	CA	Mumbai
5	Mr. Pandya Atul Labhshankar (Half Yearly Membership)	ITP	Mumbai
6	Mr. Modi Jaydeep Navin (Half Yearly Membership)	CA	Mumbai
7	Mr. Jain Virendra Babulal (Half Yearly Membership)	CA	Mumbai
8	Mr. Naniwadekar Chandrashekhar Hanamant (Half Yearly Membership)	CA	Pune
9	Mr. Mehta Kishor Kankaraj (Half Yearly Membership)	CA	Mumbai
10	Mr. Malekar Shraddha Shrikant (Half Yearly Membership)	CA	Mumbai
11	Mr. Sogani Rohan Sh. Pradeep (Half Yearly Membership)	CA	Jaipur
12	Mr. Shah Deepak Kamlesh (Half Yearly Membership)	CA	Mumbai

13	Mrs. Panigrahy Rasmita Purna Chandra (Half Yearly Membership)	CA	Thane
14	Mr. Poojary Ravindra Govinda (Half Yearly Membership)	Advocate	Mumbai
15	Mr. Bafna Pulkit Bharatkumar (Half Yearly Membership)	CA	Mumbai
16	Mr. Shah Jaynam Bharat (Half Yearly Membership)	CA	Mumbai
17	Mr. Suvarna Kiran Annaya (Half Yearly Membership)	CA	Mumbai
18	Ms. Gupta Sonia Kapil	CA	New Delhi
19	Mr. Falke Jayant Tukaram	CA	Thane
20	Mr. Thanvi Vishal Jaiprakash (Half Yearly Membership)	CA	Mumbai
21	Mr. Vejani Chirag Harshadrai (Half Yearly Membership)	CA	Mumbai
22	Mr. Jadia Hemant Ghanshyamlal (Half Yearly Membership)	CA	Mumbai
23	Mr. Sharma Prabhakar V. (Half Yearly Membership)	CA	Mumbai
24	Ms. Gadhia Arpita Tushar (Half Yearly Membership)	CA	Mumbai
25	Mr. Patel Parth Prakashkumar (Half Yearly Membership)	CA	Mumbai
26	Mr. Goyal Rahul H. (Half Yearly Membership)	CA	Mumbai
27	Mr. Desai Ameya Abhas (Half Yearly Membership)	CA	Mumbai
28	Ms. Joshi Khushbu Haren (Half Yearly Membership)	CA	Mumbai
29	Mr. Gandhi Vaibhav Rajesh (Half Yearly Membership)	CA	Mumbai
30	Ms. Gohel Rinkle M. (Half Yearly Membership)	CA	Mumbai
31	Mr. Desai Yagnesh Mohanlal (Half Yearly Membership)	CA	Mumbai

Student Membership

1	Ms. Jain Setu Bipin	ICAI Student	Mumbai
2	Mr. Doshi Jimit Amit	CA Student	Mumbai
3	Mr. Ishan Umesh Dhokia	IPCE	Mumbai

Associate Membership

1	M/S. Novel Exiccon Pvt. Ltd.	Indore
2	M/S. B. F. Pavri & Co.	Mumbai
3	M/S. Natvarlal Vepari & Co.	Mumbai

II. Past Programmes

1. ALLIED LAWS COMMITTEE

A) Public Meeting **"Demonetisation – Tax & Legal Issues"** was held on 7th December, 2016 at K. C. College Auditorium. The meeting was inaugurated by Panellist Dr. K. Shivaram, Sr. Advocate, Mr. V. Sridharan, Senior Advocates, CA Pradip Kapasi & Dr. Dilip K. Sheth. All the panellist dealt with the queries arising under various legislations : viz; Income-tax Act, FEMA, PMLA, Prohibition of BENAMI Property transaction Act, Service Tax etc. followed

by Questions & Answers under panel discussion. The panel discussion was moderated by CA Jayant Gokhale. The meeting was attended by highest number of member's i. e. more than 700 members. Live webcast of the meeting was done for the benefit of outstation members.

B) The **Certificate Training Course in Ind-AS (40 Hrs.) (With Knowledge Assessment)** jointly with **Corporate Members Committee** was held on 12th, 19th, 26th November, 2016 & 3rd December, 2016 at Babubhai Chinai Hall, IMC.

2. CORPORATE MEMBERS COMMITTEE

The Full Day Seminar on **"Alternative Fund Raising options for Corporates"** was held on 25th November, 2016 at Walchand Hirachand Hall, IMC.

3. DELHI CHAPTER

The Full Day Seminar on "Demystifying Critical Aspects of Supply, Place of Supply and Input Tax Credit under Model GST Law with Case Studies" was held on 3rd December, 2016 at New Delhi.

4. INDIRECT TAXES COMMITTEE

The **"Orientation Course on GST Model Law"** was held on 15th, 16th, 17th and 18th November, 2016 at Jaihind College.

5. LAW & REPRESENTATION COMMITTEE

A) Representation on **Clarification on Demonetisation of ` 500/- and ` 1000/-** notes was submitted to CBDT Chairman Shri Sushil Chandra, Revenue Secretary Dr. Hasmukh Adhia and Finance Minister on 15th November, 2016

B) Representation on **"Certain issues Demonetisation & Income-tax Act Amendment - Requested to clarify"** was submitted to CBDT Chairman Shri Sushil Chandra and Revenue Secretary Dr. Hasmukh Adhia on 2nd December, 2016

(For Details and Study Material of the Past Programme, kindly visit www.ctconline.org)

III. Future Programmes

(For details of the future programmes, kindly visit www.ctconline.org or refer The CTC News of December, 2016)

1. ALLIED LAWS COMMITTEE

The **Certificate Training Course in Ind-AS (40 HRS.) (With Knowledge Assessment)** jointly with **Corporate Members Committee** continued sessions will be held on 10th and 17th December, 2016 at Babubhai Chinai Hall, IMC.

2. CORPORATE MEMBERS COMMITTEE

A) The **3Cs of CSR – Culture, Challenges and Compliances** will be held on 16th December, 2016 at Babubhai Chinai Hall, IMC.

B) The **Seminar on Corporate Restructuring – Value Creation or Survival** will be held on 20th & 21st January, 2017 at Walchand Hirachand Hall, IMC.

3. DIRECT TAXES COMMITTEE

A) The **Full Day Seminar on Surveys under Income – Tax & TDS Surveys** will be held on 7th January, 2017 at M. C. Ghia Hall.

B) The **Half Day Workshop on Direct Tax Provisions of Finance Bill – 2017** jointly with WIRC of ICAI will be held on 11th February, 2017 at Walchand Hirachand Hall, IMC.

4. INDIRECT TAXES COMMITTEE

A) The **Half Day Workshop on Indirect Tax Provisions of Finance Bill, 2017** jointly with WIRC of ICAI will be held on 11th February, 2017 at Walchand Hirachand Hall, IMC.

B) The **5th Residential Refresher Course on Service Tax** will be held from 26th to 28th January, 2017 at Bogmallo Beach Resort, Goa.

C) **WEBINAR** – Login for Live Session on the subject "Levy, Supply Exemption and Composition under the Revised Model GST Law" by CA Sunil Gabhawala will be held on 12th December, 2016.

5. INTERNATIONAL TAXATION COMMITTEE

The **Workshop on Taxation of Foreign Remittances** will be held on 13th, 20th & 21st January, 2017 at Dahanukar Hall, Fort.

6. JOURNAL COMMITTEE

We are glad to announce launch of monthly CTC Journal in electronic E-Pub, at the hands of Hon'ble Shri Justice R. V. Easwar, former Judge of Delhi High Court, on 7th October, 2016 at IMC Chamber of Commerce and Industry. Now readers can download the same from the website of the Chamber and can read on their IPAD, Mobile or any electronic gadgets at their convenience.

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6. RESIDENTIAL REFRESHER COURSE & SKILL DEVELOPMENT COMMITTEE

The **40th Residential Refresher Course** will be held from 16th to 19th February, 2017 at The Golden Palms Hotel and SPA Resort, Bengaluru.

DIRECT TAXES COMMITTEE

Intensive Study Group on Direct Taxes Meeting on "Recent Important Decisions under Direct Taxes" held on 14th November, 2016 at CTC Office

CA Sanjay Chokshi addressing the members.

INTERNATIONAL TAXATION COMMITTEE

Intensive Study Group on International Taxation jointly with Study Circle on International Taxation Meeting on the subject "Software Taxation in India – Recent decisions" held on 22nd November, 2016 at SNDT Committee Room

CA Ganesh Rajgopalan addressing the members.

DELHI CHAPTER

Full Day Seminar on "Demystifying critical aspects of supply, place of supply and Input Tax Credit under Model GST Law with Case Studies" held on 3rd December, 2016 at India Habitat Centre, New Delhi

CA Suhit J. Aggarwal, Co-Chairman, Delhi Chapter delivering welcome address. Seen from L to R : S/Shri Kapil Sharma, Faculty, N. Mathivanan, Faculty, CA Prakash Sinha, Member, Delhi Chapter and CA Vijay Gupta, Hon. Jt. Secretary, Delhi Chapter

Faculties

Mr. N. Mathivanan

Mr. Kapil Sharma

Mr. Shivam Mehta

ALLIED LAWS COMMITTEE

A Public Meeting on Demonetisation – Tax & Legal Issues held on 7th December, 2016 at K. C. College, Auditorium.

Dignitaries at the Inaugural session. Seen from L to R: Ms. Niyati Mankad, Convenor, S/Shri CA A. S. Merchant, Past President, Dr. Dilip Sheth, Panellist, V. Sridharan, Senior Advocate, Panellist, CA Hitesh R. Shah, President, CA Pradip Kapasi, Panellist,, Dr. K. Shivaram, Senior Advocate, Panellist, CA Heneel Patel, Vice Chairman, Rahul Hakani, Chairman, CA Jayant Gokhale, Panel Moderator and Nihar Mankad, Member.

CA Hitesh R. Shah, President, CTC delivering opening speech.

Mr. Rahul Hakani, Chairman delivering welcome address.

Panellists

Dr. K. Shivaram, Senior Advocate

Mr. V. Sridharan, Senior Advocate

Panel Moderator

CA Jayant Gokhale

CA Pradip Kapasi

Dr. Dilip Sheth

ALLIED LAWS COMMITTEE

A Public Meeting on Demonetisation – Tax & Legal Issues held on 7th December, 2016 at K. C. College, Auditorium.

CA Jayant Gokhale, Panel Moderator raising the queries to the Panellist. Seen from L to R : S/Shri V. Sridharan, Senior Advocate & Dr. Dilip Sheth, Panellists, CA Hitesh R. Shah, President, Rahul Hakani, Chairman, Dr. K. Shivaram, Senior Advocate and CA Pradip Kapasi, Panellists, CA Tanmay Phadke and Nihar Mankad, Members.

CA Hitesh R. Shah, President offering Memento to Mr. Kundan Vyas, CEO – Janmabhoomi Group of News Papers, Media Partner.

CA Hitesh R. Shah, President offering Memento to Mr. Madhu Prasad, Chairman of Keynote Corporate Service Ltd.

Section of Members.

INDIRECT TAXES COMMITTEE

Orientation Course on GST Model Law held on 15th, 16th, 17th and 18th November, 2016 at Jaihind College.

CA Hitesh R. Shah, President delivering opening speech. Seen from L to R: CA Sumit Jhunjhunwala, Convenor, CA Sunil Gabhawalla, Faculty and CA Vikram Mehta, Chairman.

CA Vikram Mehta, Chairman delivering welcome address. Seen from L to R: CA Sumit Jhunjhunwala, Convenor, CA Hitesh R. Shah, President and CA Sunil Gabhawalla, Faculty

Dignitaries at the Inaugural session. Seen from L to R: S/Shri CA Sumit Jhunjhunwala, Convenor, CA Ketan Vajani, Chairman, Direct Tax Committee, CA Ajay Singh, Vice President, CA Hitesh R. Shah, President, CA Vikram Mehta, Chairman, CA Sunil Gabhawalla, Faculty and CA Parimal Parikh, Chairman, Student & IT Connect Committee.

Faculties

CA Sunil Gabhawalla

CA Manish Gadia

CA A. R. Krishnan

CA S. S. Gupta

CA Bharat Shemlani

CA Ashit Shah

Mr. Bharat Raichandani, Advocate

CA Parind Mehta

Section of Delegates

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