No. MCS/149/2016-18
R.N.I. No. MAHENG/2012/47041
Total Pages: 132

A Monthly Journal of
The Chamber of Tax Consultants

Price ₹ 100/- per copy

The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

January - 2017 Vol . V | No. 4

ANALYSIS OF SIGNIFICANT PROVISIONS UNDER MODEL GST LAW (PART – I)

Other Contents

Direct Taxes
Other Laws
International Taxation
Indirect Taxes
The Chamber News
Best of the Rest
Corporate Laws
Economy & Finance

Log on to the Chamber's revamped website

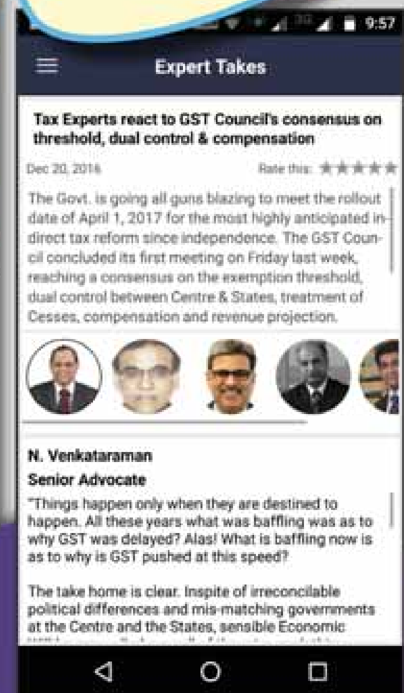
www.ctconline.org

Online Payment for Programmes can be done through Website

One Team One Mission

Your World of GST at one click - GSTsutra App is here

Download and Register to enjoy UNLIMITED FREE ACCESS Till March 31, 2017



A must have for - Tax Practitioners, CFOs, Corporate Tax Heads, Revenue Officers and all stakeholders who shall be impacted by GST.

A One Stop Shop for all news, views and incisive analysis related to this path-breaking tax reform.

The Android version of the GSTsutra App is currently available on the Google Playstore - just search for GSTsutra. Existing subscribers of Taxsutra's Indirect Taxes portal need not register and can login with their current login id & password.

Others can enjoy free access to our GSTsutra App till March 31, 2017 by registering themselves after downloading the App. Download Now!!!

For further details about Taxsutra Suite of portals contact - sales@taxsutra.com
www.taxsutra.com / www.tp.taxsutra.com
www.idt.taxsutra.com / www.orange.taxsutra.com
www.lawstreetindia.com / www.greentick.taxsutra.com
www.indiainternationaltax.com

CONTENTS

Vol. V No. 4
January – 2017

Editorial .... *K. Gopal* 3
From the President .... *Hitesh R. Shah* 4
Chairman's Communication .... *Vipul Choksi* 10

1. **SPECIAL STORY : Analysis of Significant Provisions under Model GST Law (Part-I)**
   1. Goods and Services Tax vis-a-vis Constitution Amendment ...... *P. C. Joshi* 11
   2. Levy of Tax – CGST and SGST .... *Mandar Telang* 15
   3. Persons liable to Tax under Model GST .... *C. B. Thakar* 26
   4. Valuation Provisions under Model GST Law .... *Naresh K. Sheth* 34
   5. Time of Supply of Goods and Services under Model GST Law ... *Rajkamal Shah* 39
   6. ITC Mechanism & Refund Provisions .... *Rajat B. Talati* 41
   7. Treatment of Job work in GST regime .... *Jayraj S. Sheth & Drashti N. Sejpal* 51
   8. Model GST Law – Transition Aspects .... *Amitab Khemka* 60
   9. Where to Tax ? .... *Bharat Raichandani* 68
2. **DIRECT TAXES**
   - Supreme Court .... *B. V. Jhaveri* 75
   - High Court .... *Ashok Patil & Priti Shukla* 80
   - Tribunal .... *Jitendra Singh & Sameer Dalal* 82
3. **INTERNATIONAL TAXATION**
   - Case Law Update .... *Tarunkumar Singhal & Sunil Moti Lala* 85
4. **INDIRECT TAXES**
   - Central Excise and Customs – Case Law Update .... *Hasmukh Kamdar* 95
   - VAT Update .... *Janak Vaghani* 97
   - Service Tax – Statute Update .... *Rajkamal Shah & Naresh Sheth* 98
   - Service Tax – Case Law Update .... *Bharat Shemlani* 99
5. **CORPORATE LAWS**
   - Company Law Update .... *Janak C. Pandya* 102
6. **OTHER LAWS**
   - FEMA .... *Mayur Nayak, Natwar Thakrar & Pankaj Bhuta* 104
7. **BEST OF THE REST** .... *Ajay Singh & Namrata Bhandarkar* 106
8. **TAX ARTICLES FOR YOUR REFERENCE** .... *Kishor Vanjara* 113
9. **THE CHAMBER NEWS** .... *Hinesh R. Doshi & Haresh P. Kenia* 123

The Chamber of Tax Consultants
3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020
Phone : 2200 1787 / 2209 0423 • Fax : 2200 2455
E-Mail: office@ctconline.org • Website : http://www.ctconline.org.

The Chamber's Journal

Editor & Editorial Board 2016-17

Editorial Board

Chairman
V. H. Patil

Editor
K. Gopal

Asst. Editors
Heetesh Veera
Manoj Shah
Paras K. Savla
Yatin Vyavaharkar

Members
A. S. Merchant
Keshav Bhujle
Kishor Vanjara
Pradip Kapasi
Vipul Joshi

Chairman
Vipul Choksi

Ex-Officio
Hitesh R. Shah
Ajay R. Singh

Journal Committee 2016-17

Chairman
Vipul Choksi

Vice Chairman
Bhadresh Doshi

Ex officio
Hitesh R. Shah • Ajay R. Singh

Convenors
Bhavik Shah • Mandar Telang • Toral Shah

Past President
Vipin Batavia

Office Bearer
Haresh Kenia

Managing Council Member
Ashok Sharma

Members
Anish Thacker
Atul Bheda
Bakul Mody
C. N. Vaze
Chintan Gandhi
Dharan Gandhi
Dhaval Talati
Harsh Kapadia
Janak Pandya
Janak Vaghani
Jayant Gokhale
Kalpesh Katira
Keertiga Sharma
Kush Vora
Lakshit Desai
Mitesh Kotecha
Nikita Badheka
Pankaj Majethia
Paresh Vakharia
R. K. Sinha
Rajkamal Shah
Rakesh Upadhaya
Sanjeev Lalan
Vinodkumar Jain

Managing Council 2016-17

President
Hitesh R. Shah

Vice President
Ajay R. Singh

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

Hon. Treasurer
Parag S Ved

Imm. Past President
Avinash B Lalwani

Members
Amit Purohit
Ashok L. Sharma
Bhavesh R Vora
Hemant R. Parab
Keshav B. Bhujle
Ketan L. Vajani
Kishor Vanjara
Mahendra Sanghvi
Paras S Savla
Paresh P Shah
Parimal B. Parikh
Rahul K. Hakani
Shailesh M. Bandi
Sujal Shah
Vikram Mehta
Vipul B. Joshi
Vipul Choksi

K. Gopal – **Editor**

DISCLAIMER

Opinions, views, statements, results, replies, etc., published in the Journal are of the respective authors/contributors. Neither The Chamber of Tax Consultants nor the authors/contributors are responsible in any way whatsoever for any personal or professional liability arising out of the same.

Non-receipt of the Review must be notified within one month from the date of publication, which is 12th of every month.

No part of this publication may be reproduced or transmitted in any form or by any means without the permission in writing from The Chamber of Tax Consultants.

***READER'S SUGGESTIONS AND VIEWS**: We invite the suggestions and views from readers for improvement of The Chamber's Journal. Kindly send your suggestions on office@ctconline.org.*

ADVERTISEMENT RATES

Per Insertion

Fourth Cover Page (Colour)	`	15,000
Second & Third Cover Page (Colour)	`	13,500
Ordinary Full Page (B&W)	`	7,500
Ordinary Half Page (B&W)	`	3,500
Ordinary Quarter Page (B&W)	`	1,750

(Special discount on bulk inside colour pages)

DISCOUNT
25% for 12 insertions
15% for 6 insertions
5% for 3 insertions

Full advertisement charges should be paid in advance.

MEMBERSHIP FEES & JOURNAL SUBSCRIPTION (REVISED FEES AND SUBSCRIPTION FROM 2017-18)

Sr. No.	Membership Type		Fees	Service Tax 15%	Total
1.	Life Membership	`	12000	1800	13800
	Additional Optional subscription charges for Annual Journal		1000	0	1000
					` 14800
2.	Ordinary Members				
	Entrance Fees	`	500	75	575
	Annual Membership Fees, including subscription for Journal		2200	330	2530
					` 3105
3.	Associate Membership				
	Entrance Fees	`	1000	150	1150
	Membership Fees including Subscription for Journal		5000	750	5750
					` 6900
4.	Student Membership				
	Entrance Fees	`	250	38	288
	Journal Subscription		700	0	700
					` 988
5.	Non-members				
	Journal Subscription	`	2000	0	` 2000

Editorial

Wish you all a very happy, peaceful and prosperous New Year. In a mainstream journal, the Editor-in-chief of that journal referred to Pico Iyer to say that our lives are shaped by unexpectedness. I would like to clear the air of helplessness and put it as we do carve our lives with our expectation and excitement. The cloud of uncertainty over the date from which Goods & Services Tax (GST) comes into operation is not yet over. The GST Council could not generate consensus with respect to bifurcation of the administrative powers nor the assessments to be carried out under GST between Union and the States. The coastal States have come up with a proposal to have taxable jurisdiction in territorial waters up to 12 nautical miles from coastline. Some States have revised their claim for compensation from ` 55,000 crores fixed earlier to ` 90,000 crores citing demonetisation has slowed down the economy. However, substantial portion of model GST laws which were placed in public domain on 26-11-2016 have been approved by the GST Council from time to time. The passage of these laws in the budget session will decide the fate of GST in India. However, experts believe that, owing to Constitutional limitations, the Government will not permit the delay in implementation of GST in India beyond September, 2017. Emily Dickinson has beautifully explained the pain of uncertainty in these lines

If you were coming in the Fall
I'd brush the Summer by
With half a smile, and half a sperm
As housewives do, a ply

If I could see you in a year,
I'd wind the months in balls –
And put them each in separate drawers,
For fear the numbers fuse –

If only centuries, delayed,
I'd count them on my hand,
Subtracting, till my fingers dropped
Into Van Dieman's land

If certain, when this life was out –
That your's and mine, should be –
I'd toss it yonder, like a rind,
And take eternity –

But, now, uncertain of the length
Of this, that is between,
It goads me, like the Goblin Bee
That will not state – it's sting.*

The GST has taken a long long time to become reality. Any further delay would goad us like the Gobline Bee sting. IT system is the backbone of GST. The incorporation of "Matching concept" in the GST is a unique feature of Indian GST. Due to matching concept, it's believed that there will be greater transparency in tax administration and transaction accounting. This will therefore be a tool in the hands of Government to keep an eye on cases involving tax evasion and creation of parallel economy. With the help of IT system, the Government will be able to ensure the collection of revenue in the treasury before granting the set-off of such tax amount to the recipient of supply. However, the success of matching concept wholly depends upon effectiveness of IT system and ability of the assessee to avoid errors at the time of keying in transaction information into the system for any technical glitches or human errors may adversely affect the entire process. As professionals, we strongly feel that in cases involving mismatch due to non-payment of tax by the supplier, the concept of denial of input tax credit in the hands of the receiver is not correct. The administrators should go after the supplier and recover the taxes. Certain limitations in Input Tax Credit system, say for instance, time limit in rectifying errors of mismatch, no Input Tax Credit in cases where supplier admits payment of tax during assessment or investigation, the manner in which negative list items (i.e., inward supplies in respect of which Input Tax Credit is not available) are incorporated in the law, limitations in cross utilisation of Input Tax Credit etc., will defeat the basic idea behind introduction of GST i.e., elimination of cascading effect of taxes.

I thank all the contributors to this issue of Chamber's Journal for taking out time for the Journal. Special thanks to Mandar Telang and Kush Vora for taking out their valuable time to help the Chamber of Tax Consultants in coming out with this issue of the Chamber's Journal.

*Thomas H. Johnson, ea., The poems of Emily Dickinson, (Harvard : Belknap, 1970), II, 392-393.

K. GOPAL
Editor

From the President

Dear Members.

WISH YOU A HAPPY AND PROSPEROUS NEW YEAR 2017

Cheers to new year and another chance for us to get it right. New year is not mere change of digits on calendar. The human brain is neurologically programmed to get rid of old. The ensuing year fills the heart with aspirations, desires, dreams and happy tidings. Our optimism remains alive with the arrival of new year. As new year begins, we make bright and shiny new year resolutions every year. We do it imagining that this year would be different and seek to make our lives and lives of our beloved ones little bit better. New is the year, New are the hopes, New is the Resolution and New are the Spirits.

Hon'ble Prime Minister Narendra Modi **announced bounties on New Year's eve** by way of numerous relief and welfare measures such as 4% reduction in interest rate on housing loan up to ` 9 lakh and 3% reduction up to loan amount of ` 12 lakhs, 8% assured rate of interest on fixed deposit to senior citizens, large volume of credit to small and medium enterprise, loan write offs to farmers, promise of ` 6,000 in the bank account of every pregnant woman so as to create more prosperous future for poor, employment for youth and marginalised people. **It is expected that many more will flow in the ensuing budget.** The PM hand outs will test fiscal discipline depending on tax collection in cash starved economy.

Legal challenge and regulatory compliance will prove to be one of the biggest challenges for India Inc in the year 2017. Regulatory compliance will increase with slew of legislations including GST, Insolvency Code and Benami Amendment Act are likely to come into force or have already come into force. Further the new Indian Accounting Standards, IND AS changed the way the companies report their financial performance to investors, and **Income Computing and Disclosure Standards (ICDS)** will change how financial performance is to be reported to the tax authorities. The Real Estate (Regulations and Development) Act requires higher transparency and increased penalties for delays and defaults and improvement in accounting of developer.

Recently **the Hon'ble Supreme Court has passed landmark judgment widening the scope of Section 123(3) of the Representation of the Peoples Act (RPA)** which

now prohibits the seeking of votes in the name of religion, caste, race, community or language by a candidate, his agent or anyone with his consent is well-intentioned. This has tremendous implications on the practice of electoral politics. **At the same time, it produces competing judicial visions of democracy in India.**

The order, which was passed by a Seven Judge Constitution Bench through a four to three majority, also ruled that a candidate could be disqualified if an appeal was made by any religious leader to vote for the candidate with the latter's consent. In this context, it's imperative to note the dissenting judgment delivered by three judges which states that despite the existence of the imperfect Section 123(3) of RPA for more than five decades, elections have been held successfully in India with routine changes of Government. And such imperfections can't be attended to by judicial redrafting of legislative provision.

Another Supreme Court's damning judgment on the Board of Control for Cricket in India where the BCCI president and secretary were shown the door and a majority of office-bearers were no longer eligible to stay in their posts when BCCI refused to back down. For a cricket fan or sports lover, there is much to cheer about the Court ruling.

The larger impact of the Court ruling goes beyond cricket. The Court has made BCCI swallow the medicine that sports fans might have been yearning for, but there is a danger in tarring all cricket and sports administrators with the same brush. We might be faced with a situation where, in historian Mukul Kesavan's words, cronyism would be replaced by a "creeping nationalisation of Indian cricket."

M. S. Dhoni's sudden decision to quit One Day International (ODI) and T20 captaincy has stumped all. The fearlessness with which he approached battles made him a natural leader and great leader. Dhoni was a frighteningly consistent strokeplayer of immense explosive power, capable of finishing off impossible chases, and an instinctive leader whose gambles on the field of play nearly always paid off.

It was a right approach by Dhoni to handover the mantle to the best in the team. Only Great leaders can think like this. It is necessary to pass on the baton to the next best guy or generation if one has to built an institution.

I have completed six months of my Presidentship on 3rd January 2017. It is a unique experience to be at the helm of the organisation like this. It is more of a leadership aspect than anything else. It requires great vision and broader outlook. I have tried to focus on what I narrated in my first President speech on 4-7-2016 viz. to deliver quality programmes, to make more representation, digital transformations, increasing bonding amongst the members and core team members, bringing qualitative changes in Journal, taping new ideas and better Governance and transparency. There are still many areas pending and many challenges ahead but I am sure, with the help of Office Bearers, Core Team members and Senior Past Presidents we will be able to overcome the same. The Chamber has done several milestone programmes this year, to name few, Workshop on GST, IND AS, Public meeting on 90th year Celebration and Demonetisation – Tax and Legal issues.

The Chamber had organised a **public meeting on 21-12-2016 at IMC on topic "From Demonetisation to E-monetisation". This public meeting was kept** to bolster the initiative of the Government towards e-payments and create awareness amongst the people for the use of such facilities, benefits available and how secure are such transactions. People from HDFC Bank, Oxigen Wallet and Unified Payment Interface addressed the gathering followed with panel discussion. **The programme received a thumping response and approx. 300 people attended.**

Chamber had organised three webinars on GST series and one on Direct Tax in the month of December 2016. **Webinar series started by Chamber received an overwhelming response from all over India** and people from places like **Ahmedabad, Bilaspur, Bhavnagar, Bengaluru, Bihar, Delhi, Kolhapur, Kutch, Latur, Solapur, Malegaon, Noida, Nashik, Porbandar, Palanpur,** etc participated. The Chamber had also organised full day programme on **"Surveys covering amendments to Income tax Act due to Demonetisation"** on 7-1-2017 which also received a very good response. Many non-members including people from Chennai, Pune, Bhavnagar, Baroda, Ajmer, Indore, Akola and New Delhi participated in Programme. I am extremely happy to note that Chamber is able to reach to members situated at distant places in pursuing its object of disseminating knowledge.

January and February 2017 are months full of Chambers activities. Chamber has planned **Study Circle on IND AS, a new initiative** considering request received from participants during IND-AS workshop. The Chamber has planned three days workshop on Taxation of Foreign remittances, two days seminar on Corporate Restructuring – Value Creation or Survival and RRC on Indirect Taxes having GST flavour in the month of January 2017.

This months theme for the Journal is **"ANALYSIS OF SIGNIFICANT PROVISIONS UNDER MODEL GST LAW (Part–I)**. This issue deals with Goods and Services Tax vis-a-vis Constitutional Amendment , Levy of Tax – CGST and SGST, Valuation Provisions under Model GST Law, Time of Supply of Goods and Services under Model GST Law. This issue is important and will be of immense help to the readers since it is coming out at a time where Government is making all efforts to implement GST at the earliest.

I would like to end with the quote of Dr. A. P. J. Abdul Kalam.

"We all are borne with divine fire in us.
Our efforts should be to give wings to this fire and
fill the world with glow of its goodness."

HITESH R. SHAH
President

Chairman's Communication

Dear Readers,

Wishing you and your family a very HAPPY New Year 2017 !

As we usher in the new year, let us hope that the new year brings in much needed impetus to the economy and it will be good for the well-being of the people at large of our country. There are many challenges (some of which are the after effects of demonetisation) which our country is facing and addressing these challenges is indeed a daunting task. Some of these are:

1) Confidence of foreign investors appears to have been shaken. Foreign Portfolio Investment (FPI), till October 2016 was positive, which trend has reversed dramatically post demonetisation and FPI was negative at ` 22,709 cr. Positive concrete steps demonstrating country's resolve to foster FPI is called for.
2) Index of Industrial Production (IIP) which is an indicator of health of the manufacturing sector has been declining from the level of April, 2016.
3) Credit growth is a measure of economic activity. Year-on-year credit growth has been very low and in the micro and small industry segment there is a negative credit growth.
4) The Gross NPA level has increased significantly in last one year. It is a double whammy for the banking sector. Banks are unable to recover bad loans and at the same time there is little demand for fresh credit.
5) There is a general decline in exports.
6) Reduction in the GDP growth is predicted by rating agencies as well as RBI and NITI Aayog.

Let us hope that the Government succeeds in addressing the above and many other challenges and succeeds in turning around the economy in 2017.

Despite all efforts, roll out of GST Law, the biggest indirect tax reform of Independent India, with effect from 1st April, 2017 is ruled out as there is no headway on the contentious issue of division of its administration. However the Government will have to implement the GST Law before September 2017. As per the latest news, there is a possibility of GST Law getting implemented from June 2017. We have been planning an issue on GST for quite some time. Due to uncertainty, however, on the roll out of GST, we had to defer the issue. With Model GST Law, now in place, we thought it appropriate to come out with special issue on GST-Part 1 which covers the important aspects of Model GST Law.

I thank my colleagues Mandar Telang, Nikita Badheka, Janak Vaghani, Kushal Vora and others for making the design and putting in lot of efforts for this issue. I thank and compliment all the authors for agreeing to write articles and sparing their valuable time and sharing their knowledge despite their busy schedule. GST-Part 1 was planned for the month of November, 2016. However after all the articles were received, revised GST Model law was notified on 26th November and therefore all the authors had to revise their write-ups. The committee cannot thank them enough for their selfless service to the profession!

Wishing you and your family a Happy Makar Sankranti ! Til Gul ghya ani Goad Goad Bola !!

VIPUL K. CHOKSI
Chairman – Journal Committee

P. C. Joshi, *Advocate*

Goods and Services Tax *vis-à-vis* Constitution Amendment

On 26th January, 1950 we gave unto ourselves written Constitution drafted by the Constituent Assembly appointed for the purpose after gaining the freedom from the British Rulers. With the adoption of the Constitution the then prevailing Indian Independence Act, 1947 and the Government of India Act, 1935 were repealed (Article 395).

2. Our Constitution being a written one is the fountain source of all laws that may be framed both by the Parliament as well as the State Legislatures. It is a solemn document to be followed in letter and spirit by all the citizens of the country. Keeping that in mind I feel that our Constitution have not received the solemnity and importance it deserves at the hands of politicians having the majority during a specific period. As against only 27 amendments carried out in the Constitution of United State of America in force right from 25th Sept, 1789, the Indian rulers have proved their ingenuity by amending the Constitution on more than 100 times, the latest being the Constitution (One Hundred and First Amendment) Act, 2016. That Act have heralded the new era of the Indirect Tax reforms leading to drastic changes in the jurisdiction as well as the power of Parliament as well as the State Legislatures. The earlier major tax reform was initiated way back in 1991 under the leadership of the late Prime Minister Shri P. V. Narasimha Rao. The open market so targeted could be complete only on proper implementation of the 101st Amendment to the Constitution under the leadership of the present Prime Minister having the same determination and dedication. Incidentally the name of both the Prime Ministers began with the alphabet N.

3. Prior to the 101st Amendment, the taxation power was divided into two between the Parliament and State Legislature as specified in the unamended Lists I, II, and III popularly known as 'Union List', State List and Concurrent list appended to Schedule VII of the Constitution. The amendments under consideration were carried out with the wholesome object of enabling the entrepreneurs to do business in India with ease and hassle free environment in the country, ultimately leading to one nation, one tax and one market.

4. To keep the record straight the Constitution (One Hundred Twenty Second Amendment) Bill, 2014 was introduced in the Lok Sabha on 19th December, 2014 and passed on 6th May, 2015. Thereafter when the Bill was transmitted to the upper

house i.e. Rajya Sabha, it was referred to its Select Committee which submitted its report on 22nd July, 2015. Thereafter continuous blockages by the political oppositions especially from one party (which had in fact introduced the very same Bill in 2011 when they were in power) did not allow further quick progress. Ultimately, finding it to be isolated that Party also later on agreed to support the Bill with certain reservations and the Bill was passed by Rajya Sabha on 3rd August, 2016.

5. After the Bill was passed by both the Houses, the same was required to be adopted by more than 50% of the State Legislatures. Majority of the States soon thereafter convened special session for the purpose. On compliance of that requirement by sixteen States, the Bill was placed before the President of India who gave his assent on 8th Sept., 2016. The Bill thus was converted to an Act as the 101st Constitution Amendment Act, 2016. On 10th Sept., 2016 a notification was issued by the Central Government appointing 12th Sept., 2016 to be the date on which the provision of section 12 of the said Act was brought into force. Section 12, under Article 279A, enable the President to constitute a council 'Goods and Services Tax Council'. Accordingly the Council was constituted on the very same day i.e. 12th Sept., 2016.

6. On 13th Sept., 2016, the Union Cabinet also acted swiftly and created a Secretariat for the GST Council with one Additional Secretary and four Commissioners of Secretarial level, though the notification about the Constitution of the GST Council by the President was issued only on 16th Sept., 2016.

7. The Central Government, being very optimistic about the enforcement of the Goods and Services Tax Laws from 1st April, 2017, issued yet another notification on 16th Sept., 2016 bringing into force all other sections of the Constitution 101st Amendment Act, 2016. With that notification, the entire Act came into force from 16th Sept., 2016.

8. On 17th Sept., 2016 it was announced by Shri. Hasmukh Adhia that the GST Network would be functional from January, 2017 so that the entire GST Law can be implemented from 1st April, 2017, through out the nation without any roadblock.

9. Some of the salient features of the new law can be considered on the basis of the model GST Law circulated earlier on the basis of aforesaid Constitution Amendment Act. The authenticated text of the law have still not been made available to public, the real stakeholders to be affected by the proposed change over of the Indirect Tax System.

10. In 2004, when I was invited by the Law Society of England and Wales to address on the European VAT, I had the privilege of studying the law of Europe. Though known as VAT, the levy was all inclusive covering the supply of both goods as well as services. In my view we also should have followed the suit by implementing the similar law instead of having transformation of various Sales Tax Laws to the Value Added Tax Systems covering supply of only goods with a separate enactment of levying tax on services. Possibly such a step could not have been taken in the absence of the present Constitution Amendment Act.

11. By now the readers must be aware about all the amendments carried out to the Constitution however some of them would be referred to hereunder wherever required.

12. In nutshell the proposed GST will subsume the following taxes:

A. Levies by Centre

a. Central Excise Duty

b. Duties of Excise (Medicinal and Toilet Preparations)

c. Additional Duties of Excise (Goods of Special Importance)

d. Additional Duties of Excise (Textiles and Textile Products)

e. Additional Duties of Customs (commonly known as CVD)

f. Special Additional Duty of Customs (SAD)

g. Service Tax

h. Cesses and Surcharges

B. Levies by States

a. State VAT

b. Central Sales Tax

c. Luxury Tax

d. Entry Tax (Other than those in lieu of octroi)

e. Entertainment Tax (not levied by the local bodies)

f. Taxes on advertisements

g. Taxes on lotteries, betting and gambling

h. State cesses and surcharges insofar as they relate to supply of goods or services.

13. The present scenario as far as Indirect Taxes are concerned, is that though our nation is one, we have practically 29 countries within its territory while European Union consist of several independent nations but each of them act as one nation as far as VAT is concerned. Between two independent E.U. nations no barriers are to be crossed nor any stoppage for the trucks similar to India where at each of the border check post, we witness millions of trucks awaiting clearance for several hours, leading to avoidable harassment and malpractice. The enactment of Goods and Services Tax would bring in a new era with no barrier of any nature, leading to creation of one national market for goods as well as services.

14. The Scheme under the Act is destination based levy. In other words the tax would be payable in the State in which the goods and/ or services are finally consumed. The Act would also provide for removing cascading effect on the cost of material or service to the ultimate beneficiary / consumer. That would be achieved by allowing input tax credit from the output tax payable by any intermediary supplier of goods or services. Going by our past experience, the matching of the information from seller at one point and purchaser miles away, will delay the adjustment of ITC beyond a reasonable time.

15. Unlike other countries we will have, our own dual system of GST i.e. State GST (SGST) and Central GST (CGST). All transactions of supply within the State, would be liable for both CGST and SGST while the transactions of interstate nature would be liable to IGST. In order to attain the ultimate goal of having one nation, one tax and one market, Articles 301 to 304 have advisedly been not amended; with the result, the interstate transaction of supply of goods/ services will be free from all restrictions of any nature.

16. While the list of exemptions, the standard rates of tax and the revenue neutral rate would be decided by the Council very shortly, the main problem which I foresee is the framing of SGST by all individual States. As per the provisions of Article 279A, the Council will have to decide practically on all aspects of the new levy but, the decision thereat would be only recommendatory and not mandatory. Therefore even after the decision of the Council in a hypothetical case, a State like Tamil Nadu, may not fall in line with other States and may continue to have its own law either under the present VAT Law or a new law not necessarily similar to the model GST Law. Such a scenario would adversely affect the very object with which the new enactment would be introduced.

17. As mentioned above, the Central Government have enforced all the provisions of the 101st Constitution Amendment Act w.e.f. 16th Sept., 2016 therefore a moot question about the legality or otherwise of the levy of indirect taxes from that day onwards is open to uncertainty and of grave doubts. It may be added herein that similar question was raised but on 17th Sept., 2016 the Revenue Secretary Shri Hasmukh Adhia dispelled those doubts by referring to the residuary power of the Parliament under Entry 97 of the Union List. I have my own doubts about such a reliance because from 16th Sept., 2016 the subsumed Central as well as local levies have been taken out of the statute book; with the result, the levy can no more be valid for the reason that under Article 265 no tax can be levied or collected without an authority of law. Such an impact would be more serious affecting the levies under the respective State enactments under the existing VAT System. After the amendment of the Constitution under consideration, Entry 54 which enable the State legislature to levy tax on sale or purchase of goods, have been substituted to be applicable only to the sale of petroleum products specified therein. Similar would be the position in the case of deemed sale transactions covered by Article 366(29A) introduced w.e.f. 2nd February, 1983. That definition of 'deemed sale' have been retained though in the original Bill introduced in 2011 it was proposed to delete the entire definition under the said Article.

18. The definition of the term 'supply' under section 2(92) read with section 3 of the Model GST Law, include all forms of supply of goods as well as services including as sale, transfer, barter exchange etc. The model law also provide the Central or the State Govt., to issue notifications as recommended by the Council mentioning therein the transactions which are to be treated as supply of goods and not that of service, supply of service and not that of goods as well as transactions which will not be treated either as supply of goods or supply of services. We only await for the recommendations of the Council before arriving at a final decision on the effective day-to-day working of the new law.

Conclusion

The other topics on GST would be contributed by my younger brothers and sisters I leave those subjects for their purpose.

CA Mandar Telang

Levy of Tax – CGST and SGST

The insertion of Articles 246A and 269A by 101st Constitutional Amendment Act, 2016 paved the way of GST in India. Goods and Services Tax, as the name suggests, is a tax on "goods" and "services". The activity/transaction with respect to goods or services that will trigger the levy of GST would be "supply". Therefore, GST will be attracted on supply of goods / services. Unlike under the present tax regime, where we have basket of multiple indirect taxes (such as excise duty, VAT, CST, service tax, octroi etc.), which are required to be paid to, and administered by, Central or as the case may be, State Government / authorities under various laws at different points of time; GST presupposes a single and uniform levy with respect to goods and services. Although, there will be a single levy namely goods and service tax, having regard to the federal structure of the country, the levy will be collected by Central as well as by the State authorities, at the same time. GST in India, therefore presupposes a dual levy structure for the same tax, a levy of Central GST ("CGST" for short) under the Central Act and State GST ("SGST" for short) under the State Act, where the supply takes place within one single State. Where however, the entire transaction is not within a single State (i.e. interstate supplies or supplies in the course of import into the territory of India or export from India or deemed exports), only the Centre would have a power to levy and collect GST. This levy is known as Integrated GST ("IGST" for short). To facilitate a seamless flow of tax credits between the Centre and the States, cross utilisation of CGST & IGST and SGST & IGST are permitted. However, SGST of one State cannot be utilised for payment of SGST of the other State or for payment of CGST and vice versa.

CGST will be collected by the Central Government and shall, subject to some adjustments, form part of consolidated fund of India. SGST will be collected by the State Government of the State within which the supply takes place and shall, subject to some adjustments, form part of consolidated fund of the said State. IGST, on the other hand, shall be levied and collected by Central Government, and shall, subject to some adjustments, be apportioned between the Union and the States in the prescribed manner. The adjustments are suggested to facilitate quick settlement of revenues (so far as they relate to the cross utilisation of tax credits) between the Centre and the States.

The constitutional framework behind GST has already been explained in the preceding article. This article focuses on the **nature of levy and the subject matter** of GST. The model GST law which was placed in public domain on

26-11-2016 is considered as a base document for the purpose of this article. Accordingly this article will discuss the concepts of supply, goods, services and the charging sections under model CGST/SGST and IGST Acts.

Levy – Charging section

The model CGST/SGST Acts contemplates two types of levy namely, a normal levy u/s. 8 and a composition levy u/s. 9. The IGST Act however, have no provisions for composition levy. Section 5 of the IGST Act, therefore provides for normal levy only. The provisions governing levy are divided into following broad constituents:

- Name of the tax
- Aspect of tax
- Subject matter of tax
- Measure of tax
- Tax rate
- Person responsible for paying tax

The provisions concerning the timing of levy are not integrated in the charging provisions, however the same are provided in Sections 12 to 14 of the Model CGST/SGST Acts. Some of the aforesaid constituents are discussed below.

Aspect of tax

The levy under the CGST/SGST Acts is on all *"intra-state supply"* of goods and services. Section 2(57) of CGST/SGST Acts defines "intra-state supply of goods" to mean supply of goods in the course of intra-state trade or commerce in terms of Section 4(1) of IGST Act. Section 2(58) of CGST/SGST Act defines "intra-state supply of services" to mean supply of services in the course of intra-state trade or commerce in terms of Section 4(2) of IGST Act. Thus, what constitutes an intra-state trade or commerce is contained in Section 4, of the IGST Act.

The levy under IGST Act, is on all supply of goods/services made in the course of inter-state trade or commerce. Readers may note that the expression used here is not "interstate supply", and consequently there is no need for any definition of "interstate supply" in the IGST Act. What constitutes an interstate trade or c ommerce is contained in sections 3, of the IGST Act.

The sum and substance of above discussion is that, in both the cases, i.e. intra-state supply and interstate supply, the levy contemplates that such supply should be **in the course of trade or commerce.** The question, then arise as to can it be said that, when the supply is ordinarily not in the course of trade or commerce, levy of GST is not attracted on the same?

Before answering the said question, let's first have a cursory look at the provisions of sections 3 and 4 of the IGST Act. Broadly, two factors namely (i) the location of the supplier and (ii) the place of supply will determine whether the supply is intra-state or interstate. If both are in the same State, then it will be intra-state supply. If both are in different States, then it will be an interstate supply. Supply, in the course of import into territory of India, shall be deemed to be an inter-state supply. Similarly supply of goods / services when the supplier is located in India and the place of supply is outside India (i.e. exports), shall be deemed to be an interstate supply. Besides, import and exports, supply of goods/service to or by a SEZ developer or a SEZ unit, shall also be deemed to be an inter-state supply.

Thus, although Sections 3 and 4 of the IGST Act, contain the principles for determining whether supply of goods/services is in the course of interstate trade or commerce or not, the focus is more on the situs of supply (i.e. intra-state or interstate) than its character (business or non-business). Hence in order to answer the above question, one may have to take recourse to Section 3 of the CGST/SGST Acts (which contains the "meaning and scope of supply") to examine if non-business transactions are also ordinarily covered within the meaning and scope

of the term 'supply' used in Sections 3 and 4 of the IGST Act or not.

Supply – Meaning and scope

The word "supply" is defined in Section 2(95) of the Act to derive its meaning from Section 3 of the CGST/SGST Acts. Section 3 contains the meaning as well as scope of the term "supply" for the purposes of levy of GST. Therefore, it not only defines what is regarded as supply but also specifies what shall not be regarded as supply. Section 2(49) defines "goods", whereas Section 2(92) defines "services". In spite of that, Section 3 contains provision concerning whether supply can be said to be supply of 'goods' or that of 'services'. Further, it contains provision for determining what should be the scope of supply for the purposes of determining tax rates in case of transaction involving a 'mixed supply' or 'composite supply'. Various activities and transactions contained in Section 3 are discussed below.

Supply made for a consideration and in the course or furtherance of business – Section 3(1)(a) of CGST/SGST Acts

"Supply" ordinarily includes all forms of supply of goods and services such as sale, transfer, barter, exchange, licence, rental, lease or disposal, made or agreed to be made for a consideration, by a person, in the course or furtherance of business. In the context of transactions involving goods, it means alienation (temporary or otherwise) of goods by one person and possession/custody thereof by another person. In the context of service, it means carrying out an activity by one person and enjoyment of deliverables of such activities by other person. The various forms of supplies mentioned above are only illustrative in nature.

It appears that, unless, otherwise provided in Section 3 of CGST/SGST Acts, the elements like, (i) minimum two persons (ii) a contractual obligation (iii) consideration (iv) transaction in the course or furtherance of business, are *sine qua non* for any supply to attract levy of GST. Therefore, for a transaction to attract GST, there has to be contract for 'supply' between 'two distinct persons', consensus-ad-idem as to the 'identity of goods or services' and 'consideration' identified with the supply. In addition to it the transaction should be in the course or furtherance of business or commerce. This fourth condition is to be examined *qua* the person making the supply. Hence, even if the person receiving a supply is not a business entity (B to C supplies), such supplies would still attract GST.

A single contractual transaction may have more than one forms of supplies. For example, when a trader hand over the goods to transporter for the purpose of transportation to his customer, two supplies are involved between trader and transporter namely (i) supply of goods from trader to transporter which is in the nature of bailment and (ii) supply of transportation service by transporter to trader, of such goods. However, as regards the said contract between trader and transporter, parties are ad-idem as 'transportation service' (being the identity/description of supply) and the consideration is also charged for transportation service only. The bailment of goods by the trader to transporter for the purpose of transport is only incidental to or consequence of or condition of supply of transportation service and the contract does not postulate any consideration against such form of supply. Therefore, when trader hand over the goods to transporter for the purposes of delivery to his customer, the bailment of goods by trader to transporter would not be regarded as supply for the purpose of GST.

Now, when we consider the contract between trader and his customer, there can be again two forms of supply between the trader and his customer. Firstly, a contract for supply of goods and secondly a contract for transport of goods to his doorstep. In such case, the contract between trader and his customer is for sale of goods, but the sale is complete only

when goods are delivered to the customer at his doorstep. In other words, when both these supplies are completed, sale of goods takes place. In the context of VAT/CST, the courts have held in the past that, value of all activities undertaken by a seller before the sale of goods is complete in terms of contract between the seller and purchaser, and charged to the purchaser, is to be included in the sale price of the goods. (The same principle is now covered in Section 15(2)(c) of CGST/SGST Acts). However, there was equal possibility for service tax authorities, to say that, since the amount is charged for transportation activity which is a service, the said activity constitutes a "service" in terms of power of Central Government to levy service tax on service element. It was then for the authorities to determine whether the transaction between seller and purchaser is 'mere' transfer of title in goods or not. The issue was therefore prone to litigation. However, in GST regime, an attempt has been made to simplify the tax treatment pertaining to such transactions in two ways. Firstly, section 3(5) has clarified what rate of tax is to be applied in case of transactions involving 'composite supply' or 'mixed supply'. Secondly, section 3(2) also enumerates certain transactions in Schedule II (involving both supply of goods as well as supply of service), to determine whether such transactions shall be regarded as supply of goods or supply of services for the purpose of deciding its tax treatment in GST. Section 15(2)(c) also addresses to this situation.

'Composite supply' or 'mixed supply' – Section 3(5) of CGST/SGST Acts

As per section 2(27) of the CGST/SGST Act, "composite supply" means a supply made by a taxable person to a recipient comprising of two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is principal supply. Illustration: Where goods are packed and transported with insurance, the supply of goods, packing material, transport and insurance is a composite supply and supply of goods is a principal supply. As per section 2(78) "principal supply" means the supply of goods or services, which constitutes pre-dominant element of composite supply and to which other supply forming part of that composite supply is ancillary and does not constitute, for the recipient an aim in itself, but means for better enjoyment of the principal supply.

As per section 2(66) of the CGST/SGST Acts, 'mixed supply' means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for single price where such supply does not constitute composite supply. Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price, is mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply, if these items can be supplied separately.

"Composite supply" and "mixed supply" are mutually exclusive concepts. When various supplies (involving supply of different types of goods or services) are made for a single price, it's necessary to first see, if such supplies are 'naturally bundled' and supplied in conjunction with each other in the ordinary course of business. If yes, then it would be a case of composite supply. Every composite supply pre-supposes an existence of principal supply and accordingly, a composite supply shall be deemed to be a supply of that principal supply. The term 'naturally bundled' would not necessarily mean that the different supplies are provided at a single price. It may include cases where different supplies are provided as a package in a single contract. Whether there is separate pricing for separate elements or not would not affect the conclusion. In that case, the real economic purpose, i.e. intention of the parties

is relevant. For example: In a contract involving supply of software and customisation thereof, if the intention of the parties was to acquire a customised software, and the basic software without such customisation is of no use to the customer, then such contract can be said to be a naturally bundled contract. Where a transaction comprises a bundle of features and acts, then, whether it constitutes one single supply, or, two or more supplies should be determined taking into account the facts and circumstances of the case. There may be a single supply where some element(s) constitute the 'principal' supply, while others are 'ancillary'. In particular, a service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied. Further, if two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split, then only, all those elements would constitute a "single supply" for the levy of tax. Besides, duration, extent and cost involved in different types of supplies are also indicative of the fact as to what is the predominant supply in a bundle of supplies. It may also be noted that, merely because availment of a service is a pre-condition for availment of other services, entire bundle of service cannot be classified as first-mentioned service. Thus, where hospital allows health care services to patients and incidentally provides food and telephone services to patient's attendants, it cannot be said that, charges for such food/telephone services are also in the nature of health care services.

A contract involving multiple supplies and which is not a composite supply is regarded as mixed supply, if such multiple supplies are provided for a single price. However, if it is not provided for ***a single price***, then irrespective of the fact that the supplies are made under a single contract, it would not be considered as a mixed supply but separate supplies. A mixed supply shall be deemed to be a supply of that particular supply which attracts higher rate of tax.

Supply that may be treated as supply of goods or as the case may be supply of services. – Sections 3(2) & 3(4) of CGST/SGST Acts

In some cases involving composite supply of goods as well as services, it may be difficult to identify whether the principal supply is a supply of goods or supply of services, for in such cases both the elements may be equally predominant. In such cases, legislature by deeming fiction has decided whether such supplies shall be treated as 'supply of goods' or 'supply of services'. Such cases are enumerated in Schedule II of the CGST/SGST Acts. The list can be expanded by Central/State Government in future, by notification in Official Gazette. The supply contained in Schedule II are discussed later in the article.

Supply which is neither regarded as supply of goods or supply of services. – Section 3(3) of CGST/SGST Acts

Section 3(3) creates a deeming fiction which are neither regarded as supply of goods nor supply of services. Such supplies are enlisted in Schedules III and IV of the CGST/SGST Acts and are those activities on which levy under GST is not attracted. Such activities are explained below:

<u>List of activities or transactions specified in Schedule III</u>

1. Services by an employee to the employer in the course of or in relation to his employment. (However, it may be noted that service provided by employer to employee may be treated as supply of services. In this regard, it may be noted that, as per section 2(84) persons shall be deemed to be 'related persons' if they are employer and employee.)

2. Services by any Court or Tribunal established under any law for the time being in force.

3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

   (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

   (c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services by a foreign diplomatic mission located in India.

5. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

<u>List of activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. (Schedule IV)</u>

It may be noted that services by Department of posts, services of life insurance and agency services, services in relation to an aircraft and vessel, services of transportation of goods or passengers provided by Government or local authority would attract GST. However, various statutory functions provided by Government or local authority or Governmental authority will not be regarded as supply of goods/service and hence would not attract service tax. To name few, issuance of passport, VISA, driving licence, birth certificate or death certificate, services provided by Government towards diplomatic or consular activities, citizenship, maintenance of public order, health care, education would not attract GST. The entire list is not discussed herewith, but readers may go through Schedule IV which is self-explanatory.

Deemed supply: Import of service by a non-business person – Section 3(1)(b) of CGST/SGST Acts

Although, the four factors i.e., two persons, contractual relationship and consensus ad idem as to identity and nature of goods/services, consideration and supply in the course or furtherance of business are ordinarily required for a supply to attract GST, the law has made certain exceptions to it. If services are imported for consideration, then such supply of service will attract GST, irrespective of whether such services are in the course of business or commerce or not. In other words, all imported B to C supply of services would attract IGST. The term "import of service" is defined in section 2(11) of the IGST Act to mean the supply of service, where the supplier of service is located outside India, the recipient of service is located in India and the place of supply of service is in India. The legislation intention of levying tax on imported service is to protect indigenous or domestic service industry. It would be interesting to see who would be liable to pay GST in respect of such supplies; a customer in India who is not a business dealer and hence may not have registration, a supplier who may be located outside India (there may be difficulty in extending extra-territorial jurisdiction) or some other person. **Except in this case, in all other forms, supply in the course of or in furtherance of business would constitute a mandatory condition to attract GST.** This is also clear from the fact that section 2(72) recognises only supplies made in the course or furtherance of business or commerce, as "outward supply".

Deemed supply: Supply without consideration – Section 3(1)(c) of CGST/SGST Acts

Following supplies specified in Schedule 1 shall be deemed to be supply for the purpose of levy of GST, even if it is made or agreed to be made without consideration.

1. **Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.** – In this case, business assets which are transferred or disposed of permanently without consideration would be assigned a taxable value in terms of section 15 of the CGST/SGST Acts for the purpose of levy of GST. Perhaps, section 15(5) of the Model GST Law, may contain provisions for valuation of free supply, for in the absence of valuation, levy shall fail. Further the term "business asset" is not defined in the Act. Stock of traded-goods may also be regarded as business assets. Hence, if a trader purchased goods for consideration and availed input tax credit against the same and then transferred certain goods therefrom to his customer free of cost, then such free supply may attract GST. However, this entry may not cover the case of a manufacturer, supplying manufactured goods free of cost to his customers. This is because, although he may have availed tax credit on various raw materials used for the purpose of manufacturing the goods, it cannot be said that, he has taken input tax credit on the very goods ("such goods") transferred by him to his customer free of cost.

2. **Supply of goods or services between related persons, when made in the course or furtherance of business** – the term related person is defined in section 2(84) of the Act. Provisions of section 15(1) are applicable only when supplier and receiver are unrelated. In case of related party transaction, value may be determined in terms of valuation rules u/s. 15(4).

3. **Importation of services by a taxable person from related persons or from any of his establishments outside India in the course or furtherance of business.** In such case, liability to pay GST shall in most probabilities be on taxable person in India.

4. **Supply of goods or services between distinct persons as specified in section 10 when made in the course or furtherance of business (Taxation of intra-state branch transfers)** – As per section 10 (2) a person who has obtained or is required to obtain more than one registration, whether in one state or more than one state, shall in respect of each such registration be treated as distinct person. Further, establishment of person who has obtained or is required to obtain registration in a state and any of his establishments in another State, shall be regarded as establishment of different persons. A corollary of this is that, if there are more than one establishments of a person in a Single state, then unless such person has obtained separate registration qua such establishments, they cannot be regarded as distinct persons or establishment of distinct persons. Hence, inter-branch supply of goods or services will be liable to GST, only of the branches are located in different States or they are registered in the same state but holding different registration.

5. **Supply of goods between agent and principal:** Section 2(5) of the CGST/SGST Acts defines agent to mean a person, including a factor, broker, commission agent, arhatia, del-credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on business of supply or receipt of goods or services on behalf of another, whether disclosed or not. As per section 2(76), "principal" means a person on whose

behalf an agent carries on the business of supply or receipt of goods/services. The deemed supply without consideration is applicable only for transaction involving supply of goods between agent and principal and not for supply of services. Where an agent undertakes to supply goods on behalf of principal, supply of goods by principal to his agent would be deemed to be a supply. Similarly, where the agent undertakes to receive goods on behalf of the principal, supply of goods by agent to his principal without consideration shall be deemed to be a deemed supply. Para 3 of Schedule I, does not refer to agency services performed by agent for his principal for which he may charge his consideration. It also does not refer to reimbursement of purchase price paid by principal to agent or sale price collected by agent from the customer and remitted to his principal. The scope of Para 3 of Schedule I is only restricted to supplies which are in the nature of bailment of goods for which no consideration is paid or payable by agent to principal or vice versa.

Subject matter of taxation: "Goods & Services"

GST is levied on goods & services. Hence, where "supply" constitutes aspect of the taxation, goods and services becomes subject matter of taxation. The definition of "goods" and "services" is contained in section 2(49) and section 2(92) of the Act as under:

- "Goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
- "service" means anything other than goods

  Explanation 1 – Services include transaction in money but does not include money and securities

  Explanation 2 – Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

From the aforesaid definition, following points are clear.

1. "Goods" and "services" are mutually exclusive
2. "Money" and "securities" are neither included in 'goods' nor in 'services'
3. 'Actionable claim' is treated as goods.
4. 'Transaction in money' is treated as service. It shall include only an activity relating to:
   a. The use of money or
   b. Its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination

   for which a separate consideration is charged. The scope of "transaction in money" is same as the one contained in Explanation 2(i) of Section 65B(44) of the Finance Act, 1994 (Service Tax Act).
5. Both the definitions neither specifically include "immovable property" nor specifically excludes the same. It may be said that the definition of "goods" includes "things attached to land" only in certain specific cases. However, the scope of "service" is wide enough to cover everything other than goods. Hence,

it is surprising as to why "immovable property" is not specifically excluded from the definition of service.

Besides, as mentioned above, in Model GST, certain activities are deemed to be treated as 'goods' or as the case may be 'services'. List of such activities is given in Schedule II. Broadly Schedule II contains following transactions and activities.

1. A transaction of transfer of title in goods (where property in goods passes either at the time of supply or at future date) is regarded as supply of goods.

2. All the following services are regarded as supply of services:

   a. A transaction of transfer of goods or special property in goods without transfer of title thereof.

   b. Any lease, tenancy, easement, licence to occupy land or any lease or letting out building including commercial, industrial or residential. [It appears that intention is not to levy tax on transaction of transfer of title in immovable property. Hence acquisition of right in immovable property for capital payment may still not attract GST.]

   c. Any treatment or process which is being applied to another person's good.

   d. The activities which are currently included in declared service list u/s. 66E of the Service tax law are regarded as services. Therefore, under GST works contract would be regarded as "service". Similarly, supply of food or any other article for human consumption or drink (other than alcoholic liquor for human consumption) would be treated as supply of service. The exception of alcoholic liquor on human consumption is on account of the fact, that it's not covered under GST regime.

Para 4 of Schedule III deals with Transfer of Business Assets. The activities covered in Para 4(a) is already covered under clause 1(a), whereas, activities covered in Para 4(b) are covered under clause 1(b). Further Para 4(c) does not contain any deeming fiction as to whether such transaction be regarded as supply of goods or supply of services. It reads as under:

> *"Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him* ***shall be deemed to be supplied by him in the course or furtherance of his business*** *immediately before he ceases to be a taxable person, unless—*
>
> *(i) the business is transferred as a going concern to another person; or*
>
> *(ii) the business is carried on by a personal representative who is deemed to be a taxable person"*

It therefore appears that, Para 4(c) travels beyond the mandate of Schedule II.

Measure of taxation

The GST shall be paid on all taxable supplies with reference to their value. The value for the purpose of levy of GST shall be determined in the accordance with provisions of section 15 of the CGST Act. The legal provisions dealing with valuation are discussed separately in this Story.

Tax rates

As per Section 8(1) of the CGST/SGST Acts, the maximum tax rate under CGST /SGST Act would be 14% (i.e. 28% CGST + SGST). Similarly, as per Section 5(1) of the IGST Act, the maximum rate of IGST would be 28%. Under, Article 279A(4), GST Council is required to make recommendation on the rates including floor rates with band of goods and service tax. GST

Council in its meeting dated 3rd November, 2016, has approved five main tax rates viz. Nil rate, 5%, 12%, 18% & 28%. The band of goods are services is yet to be decided.

It may also be noted that, in addition to above, levy of GST compensation cess is also contemplated under GST on such supplies of goods and services, including imports of goods and services, and those supplies on which tax is payable on reverse charge basis under section 7(3) of the CGST Act, which may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years, w.e.f. the date from which the CGST Act is brought into force. Such cess however not leviable on supplies made by a taxable person permitted to opt for composition levy u/s. 9 of the CGST Act.

Composition Scheme u/s. 9 of the CGST Act

Section 9(1) of the CGST/SGST Act permit certain categories of registered taxable person to pay tax under composition scheme instead of paying the tax under normal levy, if certain conditions are fulfilled. Salient features of composition levy are as under:

- Scheme is applicable, only if, the aggregate turnover in the preceding financial year did not exceed ` 50 lakhs.
- If the aggregate turnover in a financial year in which he avails composition scheme, exceeds ` 50 lakhs, then the said registered dealer shall be mandatorily required to pay tax under normal levy.

  "aggregate turnover" is defined in section 2(6) to cover aggregate value of all taxable supplies, exempt supplies, export of goods / services and inter-state supplies of a person having the same PAN, to be computed on all India basis and excludes CGST/SGST or as the case may be IGST. As per Explanation to section 2(6), "aggregate turnover" does not include the value of inward supplies on which tax is payable by a person on reverse charge basis and other inward supplies.
- Composition levy is not applicable to cases, where tax is required to be paid under Reverse Charge Basis.
- The maximum composition rate in case of manufacturer is 5% (2.5% CGST +2.5% SGST) and in other cases, it is 2% (1% CGST + 1% SGST) of the turnover of state during the year. Composition levy is not permitted under IGST Act.
- Composition levy is not permitted to following persons
  - o Person who is engaged in supply of services
  - o Person who makes any supply of goods which are not leviable to tax.
  - o Person who makes inter-state outward supply of goods. (Therefore composition scheme is otherwise available to a person making inter-state purchases.)
  - o Person who makes supply of goods through an electronic commerce operator who is required to collect tax at source under section 56.
  - o Person who is a manufacturer of such goods as may be notified on the recommendation of the Council.
- Once a person opts for composition levy, all the registered taxable persons having the same PAN as held by the said taxable person, shall also be required to opt of composition levy.
- A taxable person paying composition tax is neither entitled to avail Input Tax Credit

nor is entitled to pass on Input Tax Credit to his purchasers.

Collection of tax: Who is liable to pay tax?

As per section 8(2) of the CGST/SGST Acts and as per Section 5(1) of the IGST Act, GST shall be paid by every taxable person. Central/ State Government may, on recommendation of Council, by notification, specify categories of supply of goods and/or services the tax on which is payable under reverse charge basis by recipient of such goods/services. Further, in case of specific categories of services which are supplied through e-commerce operator, tax shall be paid by such e-commerce operator for such services supplied through it and consequently persons actually making such supply of service (through e-commerce operator) would not liable to pay any tax. If the e-commerce operator does not have physical presence in the taxable territory, then any person representing such electronic commerce operator for any purpose on the taxable territory shall be liable to pay tax. In the absence of such representative, such e-commerce operator would be required to appoint a person in the taxable territory for the purpose of paying taxes and such persons shall be liable to pay tax. The purpose of this section is to cover services provided through aggregator model. This provision does not cover supply of goods through e-commerce operator, but is applicable only to certain specified services. Similar provisions are contained in section 5 of the IGST Act. Except for these cases, in all other cases, tax shall be payable by the supplier.

It may be noted that, IGST on goods imported into India shall be collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, on the value determined under Customs Tariff Act. For the purpose of levy of IGST, an establishment of a person in India and any of his establishments outside India or establishment of a person in a State and any of his other establishments outside the State shall be treated as establishments of distinct persons. For this purpose, a person carrying out business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory. These provisions are similar to Explanation 3(b) and Explanation 4 of the Service Tax Act.

Conclusion

As discussed above, the levy of GST ordinarily covers the supply which takes place in the course of trade or commerce or in the course of or in furtherance of business or commerce. There shall be uniform rates for taxation of goods and services across the country as the rates of taxes as well as band of goods and services will have an approval of GST council, before the same is incorporated in legislations of various States and Central Government. GST aims at pooling of sovereignty and a unified market and is governed by destination based consumption tax. Hence the law certainly has a potential for sustainable economic development in the country and therefore implementation of GST regime in India will a welcome step.

Thinking is the capital, Enterprise is the way, Hard Work is the solution.

— Dr. A. P. J. Abdul Kalam

C. B. Thakar, *Advocate*

Persons liable to Tax under Model GST

Introduction

Under Fiscal statutes like levy of Sales Tax or Service Tax, the identification of person, who will be liable to pay tax, is one of the essential requirements for validity of such statute. The said principle will equally apply under Goods and Services Tax (GST) Law also.

As we are aware, as on today, GST law has not come into force nor the final provisions are in our hands. This article is prepared with reference to November, 2016 version of Model GST Law (MGL) available in public domain.

An effort is made here to analyse the provisions identifying persons liable to tax under GST Law.

Persons liable to tax

Unless the person is covered by the scope of person liable to tax i.e., unless person is taxable person, such person cannot be made liable for payment of tax. In other words, if a person can prove that he is not covered within the scope of "Taxable person" he cannot be made liable to pay tax. Identifying the person within scope of person liable to tax is one of essential parts of charging provision.

Under current VAT regime such persons are known or called as 'dealers'. In GST era they will be referred to as "Taxable Person". In other words, they are person liable to tax.

Relevant Provisions

Section 2(98) of MGL defines 'taxable person' as under:

"2(98) "Taxable person'' shall have the meaning as assigned to it in section 10"

Sections 8(1) and 8(2) reproduced below create charge on taxable person.

"8. Levy and Collection of Central/State Goods and Services Tax

(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services on the value determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding fourteen per cent, on the recommendation of the Council and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act."

Section 8(2) provides that tax shall be paid by every taxable person.

Taxable person

Section 10 of MGL is as under:

"10. Taxable Person

(1) Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act.

(2) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(3) An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act."

The scope of this section is wide. Schedule V is relating to person liable to be registered. The said section is very elaborate about coverage of persons liable to be registered. The said Schedule V is as under:

PERSONS LIABLE TO BE REGISTERED

1. Every supplier shall be liable to be registered under this Act in the State from where he takes a taxable supply of goods and/or services if his aggregate turn over in a financial year exceeds twenty lakh rupees:

   PROVIDED that where such person makes taxable supplies of goods and/or services from any of the States specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

   (Other than Special Category States)

2. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees:

   (Special Category States)

   Explanation 1 – The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

   Explanation 2 – The supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the "principal" referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

3. The following persons shall not be liable to registration –

   (a) Any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under this Act;

   (b) An agriculturist, for the purpose of agriculture.

4. Subject to the provisions of paragraph 1, every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.

5. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be

liable to be registered with effect from the date of such transfer or succession.

6. Notwithstanding anything contained in paragraphs 1 and 3 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

7. Notwithstanding anything contained in paragraphs 1 and 3 above, the following categories of persons shall be required to be registered under this Act:

   (i) Persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1;

   (ii) Casual taxable persons, irrespective of the threshold specified under paragraph 1;

   (iii) Persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1;

   (iv) Persons who are required to pay tax under sub-section (4) of section 8, irrespective of the threshold specified under paragraph 1;

   (v) Non-resident taxable persons, irrespective of the threshold specified under paragraph 1;

   (vi) Persons who are required to deduct tax under section 46, whether or not separately registered under this Act;

   (vii) Persons who are required to collect tax under 56, whether or not separately registered under the Act;

   (viii) Persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;

   (ix) Input service distributor, whether or not separately registered under the Act;

   (x) Persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8, through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in paragraph 1;

   (xi) Every electronic commerce operator, irrespective of the threshold specified in paragraph 1;

   (xii) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and

   (xiii) Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

Important aspects

1. The branches/divisions/establishments situated in same State or more than one State, for which there is separate registration, will be considered to be separate taxable person.

2. The person will be liable for registration if aggregate of supply exceeds given limits i.e. ` 10 lakh for special category states and ` 20 lakh for other states. The

aggregate turnover is to be considered on all India basis. Effect is that if the turnover of person exceeds in one State, say Maharashtra ` 20 lakh, then even if he does business of nominal amount, say ` 50,000, in any other State, he will be liable for registration in such State. This is contrary to position under VAT. Under VAT the person becomes liable in each State on exceeding turnover limit of respective State. The above position will increase registration liability for taxable person under GST. Even the casual small transactions will require registration in State, where supply is made.

3. The concept of 'business' will be required to be given effect. Supplier is defined in section 2(94) to mean the person supplying goods/services. The definition of 'supply' in section 2(95) requires to ascertain meaning of supply from section 3. Section 3 in turn defines the word 'supply' in very broad manner as under:

"3. Meaning and scope of supply

(1) Supply includes —

(a) All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

(b) Importation of services, for a consideration whether or not in the course or furtherance of business, and…."

Thus the given events for supply like sale etc. should take place in course or furtherance of business. The term 'business' is defined in section 2(17) as under:

"(17) "Business" includes –

(a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) Any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) Any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) Supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

(f) Admission, for a consideration, of persons to any premises; and

(g) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) Services provided by a race club by way of totalisator or a licence to book maker in such club;

Explanation.– Any activity or transaction undertaken by the Central Government, a State

Government or any local authority in which they are engaged as public authorities shall be deemed to be business."

The definition is inclusive. It covers wide range of activities and events and to determine whether person is taxable person or not the first issue will be to see whether such person is covered under the above meaning of business or not. If covered the next step will be to see turnover limits.

4. Charitable Trust

Though scope of term business is wide it appears that the charitable trusts will not be covered under above definition. Reference can be made to Supreme Court judgment in case of *Commissioner of Sales Tax vs. Sai Publication (126 STC 288) (SC)* wherein, in relation to BST Act, Supreme Court held that if any activity of 'sale' is carried out for achieving the charitable object of trust, it will not be business and no liability under Sales Tax Law can arise.

Under present MVAT Act, the situation is different, as charitable trusts are specifically included by deeming provision.

However, under GST, it appears that the position as applicable under BST Act will apply. A proposal can certainly be advanced that charitable trust, carrying activity for achieving object of trust, will not be covered by definition of 'business' and hence not liable as taxable person. However, it should be seen that such activity is directly linked for achieving charitable object. If the activity is done to generate income and such income is intended to be used for charitable purpose, then such activity will remain liable to tax.

5. Aggregator / e-commerce

The persons engaged in electronic commerce are covered by taxable person category without any turnover limit. This is clear from clause (xi) in Chapter V. Electronic e-Commerce operator is defined in section 2(42) as under:

"2 (42) 'Electronic commerce operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;"

Thus, wide range of persons dealing in e-commerce are covered as taxable person and such persons will be covered irrespective of turnover i.e. from very first transaction.

6. Service Recipient

The service recipients are not liable to tax as they do not supply any services. However, under reverse charge mechanism they will be required to pay tax on receipt of services. Section 8(4) of MGL provides as under:

"8. Levy and Collection of Central / State Goods and Services Tax.

(3) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods and/ or services."

Thus the persons liable to discharge tax under reverse charge will be deemed to be taxable person and will be liable without turnover limit i.e., from very first reverse charge transaction.

7. Agriculturist

This category is specifically excluded from taxable person. As per paragraph 2(b) in Schedule V the person who is

agriculturist will not be liable for the purpose of agriculture. The agriculturist will be out only to the extent of its agriculture purpose. For other activities it will be liable. For example, an agriculturist selling its own produce will not be liable but if it has other activity, say providing machines on rent, it will be liable.

The relevant terms defined in section 2(7) & 2(8) are as under:

"(7) "Agriculture" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

Explanation.– For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 (XVI of 1927) applies.

(8) "Agriculturist" means a person who cultivates land personally, for the purpose of agriculture;"

Thus non-agriculture activities of agriculturist are outside scope of above definition.

8. Government

The Local authority and Government are specifically included in definition of person *vide* definition of person in section 2(73). Similarly corporation established by any Central, State or Provisional Act or Government Company as per Companies Act are also included. Therefore, if such persons are doing business activity, they will be taxable person.

9. Casual Traders

In Schedule V, casual traders are covered by mandatory registration. In other words, these dealers will have to get registration irrespective of turnover limits.

'Casual Trader Person' is defined in section 2(20) as under:

"(20) "Casual trader person" means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;"

The main thrust for identifying casual trader person is that he has no fixed place of business in taxable territory. However, such person is also required to be in business. Any stray transaction without business purpose by any person cannot be liable. For example, an employee of company is in Gujarat on vacation tour and purchases some garments for personal use and on next day sells it, as not required by him. Such activity will not bring any liability on him under above category.

But if such person on tour is a dealer in garment in its own State and purchases goods in Gujarat and sells it, he will be considered to be casual taxable person in Gujarat.

Holding exhibitions in different States will be covered by this clause. Though, provision may be with view to plug evasion, it will invite frequent registration and cancellation for such traders. Even a small amount of supply will bring liability for registration as casual trader.

10. Broker/Agent/Intermediaries

In India, one of the trade practice in which large number of business community is involved, is this category of broker/agent/intermediaries. For sake of reference such persons are referred to as intermediaries in this article.

Intermediaries play important role in trade/business. They are the persons bringing supplier / recipient parties together, thus avoiding required efforts on part of principals.

The term 'agent' is also defined in section 2(5) as under:

"(5) "agent" means a person, including a factor, broker, commission agent, arhatia, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services on behalf of another, whether disclosed or not;"

There can be two types of intermediaries. One category is purely broker. They will bring supplier/recipient together. However, the actual transaction will be done by the respective parties.

The broker will get its service charges for bringing them together from respective parties.

For example, a supplier wants to sell its diamonds and other person wants to purchase. The broker may bring the parties together by introducing them to each other. The parties will thereafter carry out the actual transaction on their own. The broker may get its service charges from both or from either, as per terms of his engagement.

In such case the broker is person not liable to tax on given transaction between the parties.

However, he may be liable to the extent of service charges receivable by him. Such person will be taxable person and will be liable to register upon exceeding turnover.

The other example can be of an agent where goods are stocked for principal. The agent will actually supply goods to customer and complete transaction of 'sale'. Hence here the agent is liable to tax to same extent as principal and there is joint and several liabilities as per section 128 of MGL.

This is the category which is covered by definition of agent.

Such category of intermediaries will be taxable person which will be liable for registration without turnover limit.

11. Association of Persons (AOP)/Clubs

There is long drawn controversy about liability of club when it makes supply to its members. Transactions with non members will be undisputedly liable. However, the question arises in relation to transactions with members as there is possibility of application of principle of mutuality. However, in general it can be said that the club will be distinct entity and will be liable for transaction and will be required to obtain registration as normal taxable person.

AOP is normally formed on principle of partnership firm. It will be liable for registration as per turnover limits.

12. Director sitting fees

The question can arise whether director getting sitting fees can be considered as taxable person.

Under Schedule III, there is list of activities which will be considered to be not supply. Activities like directors of body established by Central Government/

State Government or Local Authority are covered by this non-supply category.

However, the directors in Private Sector are not so excluded.

Therefore, directors in Private Sector, may be of Public Limited or Private Limited, will be liable as taxable person and will be liable to tax on exceeding the turnover limits.

13. Employees

In Schedule III, which lists non-supply activities, clause (1) reads as under:

"Activities or transactions which shall be treated neither as a supply of goods nor a goods nor a supply of services.

1. Services by an employee to the employer in the course of or in relation to his employment…."

Thus, employees are specifically excluded from taxable person and will not be liable to tax in respect of employment activity.

14. Renting Activity

The activity of renting will fall within the category of supply under Section 3 which defines supply. Section 3 specifically includes event of renting as supply transaction.

Therefore, the person involved in renting activity like giving machinery/ furniture on rental basis, will be covered by category of taxable person.

15. Individuals not carrying on business

There may be numerous transactions carried on by individuals in their day to day life. Question arises as to whether such individuals can be covered as taxable person.

The simple example is of selling raddi by householder.

Such individuals cannot be considered to be taxable person. Such selling activity cannot be said to be in course or furtherance of business.

However the nature of activity is required to be considered carefully. The definition of business is *vide* as reproduced above.

The distinction between business and non business activity is very thin. Therefore, a conscious decision is required to be taken about nature of activity and accordingly the inclusion or non-inclusion in taxable person should be decided.

In Schedule V there is mention of persons who will be liable for registration without turnover limits. Some are specifically discussed above. The others in the Schedule but not discussed here, will also be taxable persons and will be liable for registration without any turnover limit. Therefore, one should carefully go through the said Schedule.

Conclusion

GST will be new Legislation with new concepts. Sometime precedents of current VAT era will be useful whereas at times there will be totally new interpretations. As professional, one will be required to take a stand. The above discussion is only indicative and I feel it will be useful for initiating thought process.

Failure will never overtake me if my definition to succeed is strong enough.

— *Dr. A. P. J. Abdul Kalam*

CA Naresh K. Sheth

Valuation Provisions under Model GST Law

I. Preamble

Goods and Services Tax ('GST') is a transaction tax. Tax is payable on the value of the supply of goods and/or services. It is a settled jurisprudence that failure or non-existence of computation mechanism leads to failure of tax levy. Valuation provisions, therefore, are pre-requisite in any tax law especially for transaction tax.

Government has put the first Model GST law ('MGL') in public domain on 14th June 2016. The draft GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016 were released along with Model GST law. These were the only Rules which were made public along with Model GST law. Said Rules and concepts were borrowed from and were similar to section 14 of the Customs Act, 1962 and Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Said provisions and Rules were complicated and not tax payer friendly. Lots of representations were made in this regard and thankfully Government responded positively by removing the proposed Valuation Rules in revised Model GST Law ('RMGL') which was released on 26th November 2016.

RMGL overrides MGL. It may please be noted that RMGL is in a draft form. RMGL indicates that Valuation Rules will be prescribed at a later date. This article deals with the provisions contained in RMGL. As this article is based on the draft law, it needs to be revised and revisited on enactment of GST Act and promulgation of the Valuation Rules.

II. Relevant legal provisions under revised model GST law

Section 8 of CGST / SGST Act and section 5 of IGST Act are charging provisions.

The relevant extract of section 8(1) of CGST / SGST Acts is as under:

*"There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services **on the value determined under section 15** and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding fourteen per cent, on the recommendation of the Council and collected in such manner as may be prescribed."*

The relevant extract of section 5(1) of IGST Act is as under:

*"There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce **on the value determined under section 15 of CGST Act, 2016** and at such rates as may be notified by the Central Government in*

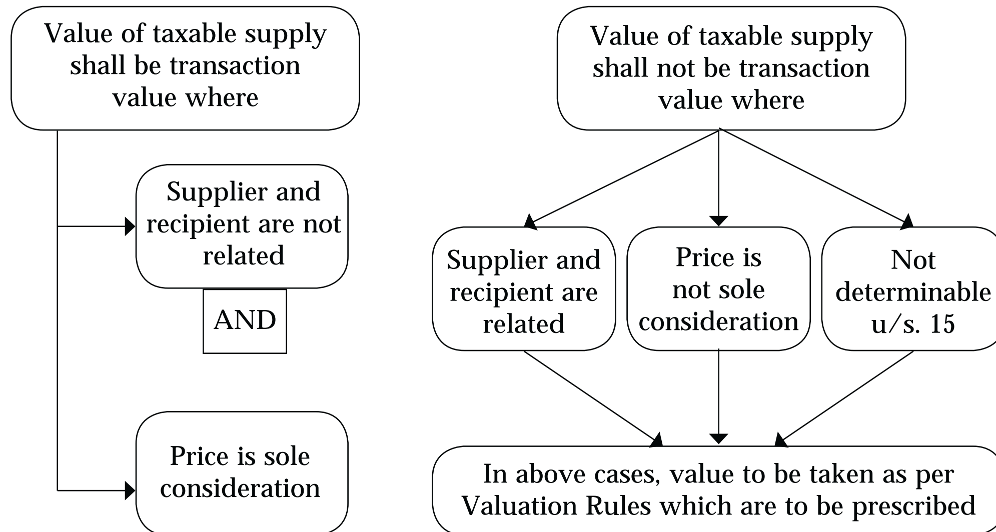
this behalf, but not exceeding twenty eight per cent, on the recommendation of Council and collected in such manner as may be prescribed and shall be paid by every taxable person in accordance with the provisions of this Act.

PROVIDED that the Integrated Goods and Services Tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) *at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962),* ***on a value as determined under the first mentioned Act.****"*

Above referred charging provisions refer to the value u/s. 15 of CGST / SGST Acts. Section 15 is the prime provision which needs to be analysed in great detail to understand the valuation in respect of supply of goods and/or services.

III. Analysis of Valuation Provisions

Broad Scheme of valuation under GST legislation can be depicted pictorially as under:



Section 15 of CGST / SGST Acts deals with value of taxable supply.

Meaning and relevance of transaction value

Section 15(1) of CGST/ SGST Acts provides that the value of supply of goods and/or services shall be the transaction value in cases where supplier and recipient are not related and price is sole consideration.

The transaction value usually means the price actually paid or payable for the supply and includes certain items specified in section 15(2) of RMGL.

Related persons

Transaction value of supply may not be accepted where transaction is between related persons. It is, therefore, very important to understand the meaning of term 'related persons'.

The term 'related person' is defined u/s. 2(84) of the CGST/SGST Acts. The term 'related persons' can be summarised as under:

Section	Related person	Remarks
2(84)(a)	Persons are officers or directors of one another's businesses	Term "Officers", "Directors" are not defined for this purpose in RMGL.
2(84)(b)	Persons are legally recognized partners in business	It is not clear whether they should be partners on the date of transaction or in any part of the year.
2(84)(c)	Persons are employer and employee	
2(84)(d)	Any person directly or indirectly owns, controls or holds twenty five per cent or more of the outstanding voting stock or shares of both of them	It is not clear whether the prescribed holding should be on the date of transaction or anytime during the year.
2(84)(e)	One of them directly or indirectly controls the other	The term 'Control' is very wide and vague, if not defined, there could be varied interpretations of these clauses.
2(84)(f)	Both of them are directly or indirectly controlled by a third person	
2(84)(g)	Together they directly or indirectly control a third person	
2(84)(h)	Persons are members of the same family	The term 'Family' is not defined in RMGL. This may lead to ambiguity and litigation.

The term "person" also includes legal persons [explanation I to section 2(84)].

Sole agent, sole distributor or sole concessionaire, howsoever described, of the other person, shall be deemed to be related to such person [explanation II to section 2(84)].

It is very clear from above referred provisions that any transaction with employees, sole agent, sole distributor or sole concessionaire will always be regarded as transaction with related party. Transaction value may not be accepted as value of the taxable supply in all such cases.

The definition of related persons is very wide and one has to take cognizance of above referred table to conclude whether party with whom he is dealing is a related party or not?

Question arises as to onus lies on whom to prove that transaction is done with related parties or otherwise. GST legislation is based on self-assessment scheme and hence reasonable view would be that onus lies on the assessee in this regard.

Attention is drawn to the decision of Hon'ble Supreme Court in the case of *East African Traders vs. CC [2000 (115) E.L.T 613 (SC)]* wherein it was held that "Custom authorities can pierce the veil of the respondent company to determine whether or not buyer or seller are related persons"

Price is not the sole consideration

Term 'consideration' is defined u/s 2(28) of RMGL to mean 'any payment made or to be made in money or otherwise in respect of, in response to or for the inducement of, the supply of goods or services……'. This clearly means that price for goods and/or service should include consideration received otherwise than in monetary term. Even consideration received in kind should be treated or included as price for the supply.

Transaction value may not be taken as value of taxable supply where price is not a sole consideration.

In case, where there is understatement of the price, the transaction value may not be taken as value of supply.

Inclusions in the Transaction Value

The transaction value means the price actually paid or payable for the supply and following inclusions specified in section 15(2) are as under:

a) Any taxes, duties, cesses, fees and charges levied under any statute, other than GST Act and GST (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient:

- CGST, SGST and IGST charged and recovered by supplier from recipient is not to be included in value of supply.
- Other taxes, duties, fees, cesses etc. separately charged by supplier to recipient is to be included in the value of services and same would be liable to GST.
- Example – Property tax charged by commercial property owner to the tenants. The property tax is not subsumed in GST. Hence, same would be included in the value of taxable supply (rent) and will be liable to GST.

b) Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services:

- Example – Supplier has quoted the price inclusive of freight and the freight is paid by the recipient. In such a case, the freight needs to be included in the value of supply and same would be liable to GST.

c) Incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services:

- Example – All expenses such as packing, commission, loading, unloading, transportation, cartage, etc. charged by supplier would partake the character of value of supply and would be liable to GST.

d) Interest or late fee or penalty for delayed payment of any consideration for any supply.

e) Subsidies directly linked to the price (excluding subsidies provided by the Central and State Governments) would be included in the value of supply of the supplier who receives such subsidy:

- Subsidy provided by central and state governments is not includible in the value of supply.
- Subsidy received from local authorities, governmental authorities, NGO's and any person / authority other than Central or State Governments would be includible in the value of supply liable to GST.

Exclusions from Transaction Value

The transaction value means the price actually paid or payable for the supply and excludes certain pre-supply and post-supply discount as specified in section 15(3). Such exclusions are summarised as under:

Pre-supply discount u/s. 15(3)(a)	Post-supply discount u/s. 15(3)(b)
• Where such discount is given before or at the time of supply; and • Same is duly recorded in invoice issued for such supply	• Where such discount is established as per agreement entered into at or before time of supply; and • Same is known at or before time of supply; and • Same is specifically linked to relevant invoices; and • Where input tax credit has been reversed by the recipient of supply as is attributable to discount on the basis of document issued by the supplier.

The reduction of post-supply discount is subject to a condition that recipient of discount has reversed the input tax credit ('ITC') attributable to such post-supply discount. This is an unfair condition as it will put onus on supplier to prove that recipient has reversed the ITC.

Valuation of Import of Goods

Basic Custom Duty is not subsumed in GST. However, countervailing duty (CVD) and Special Additional Duty (SAD) are subsumed in GST. Importer will be liable to discharge IGST on import of goods. IGST on goods imported into India will be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962. The value for IGST levy would be the value assessed under Customs Tariff Act, 1975 for levy of basic custom duty.

Cases where Value to be determined as per Rules

The valuation rules will be prescribed for determining value of the supply where value cannot be determined u/s. 15(1) of RMGL. Central or State Government, on recommendation of GST Council, may notify the Rules for valuation of prescribed supplies.

IV. Conclusion

Valuation of goods and services had its fair share of litigation under the existing Excise, Service Tax, Customs and VAT laws. GST is expected to be a major game changing indirect tax reform in the history of the nation. It is aimed at promoting 'Ease of doing business'. The industry and trade expect to have simple, unambiguous and fair valuation provisions and rules under GST regime. The valuation is a matter of perception. It is said that beauty lies in the eyes of the beholder. Similarly one can say that valuation lies in the eyes of the stakeholder. Valuation is always a subjective and litigation prone issue.

Lets hope that the Rule making authority comes out with fair and simple Rules which meet with the expectations of the trade and business and will not be breeding ground for never ending litigations.

> The key to my motivation has always been to look at how far I had still to go rather than how far I had come."
>
> *— Dr. A. P. J. Abdul Kalam*

CA Rajkamal Shah

Time of Supply of Goods and Services under Model GST Law

Under revised Model GST law, the provisions relating to time of supply of goods and services are contained in S.12 & 13 of Central/State Goods and Services Tax Act, 2016. Time of supply determines the timing of liability to pay CGST and SGST.

The provisions of time of supply of goods are divided on the following lines:

- Time of supply of goods and services
- Supplies in respect of which tax is payable in reverse charge basis
- Supply by way of vouchers
- Other than above cases

In most cases, the time of supply of goods and services are to be determined on similar basis. However, wherever there is a difference, the same is dealt with accordingly in this article.

A. Time of supply of goods / services shall be earlier of the following dates

i. The date of issue of invoice covering the supply or the last date when the supplier is required to issue such invoice.

ii. The date on which the supplier receives the payment with respect to the supply. The date of receipt of payment by supplier shall be the date on which the payment is entered in his books of account or the payment is credited to his bank account, whichever is earlier.

In case the supplier of taxable goods and/or services receives excess amount up to ` 1,000/- of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall be the date of issue of such invoice at the option of the said supplier.

B. Supplies in respect of which tax is payable in reverse charge basis, earlier of following dates

i. The date of receipt of goods (in case of supply of goods)

ii. The date on which the payment is made (i.e. the date on which the payment is entered in his books of account of the recipient or the date on which the payment is debited to his bank account, whichever is earlier)

iii. In case of goods, on expiry of 30 days from the date of issue of invoice by the supplier; however, in case of services, the period shall be of 60 days from the date of issue of invoice by the supplier.

Where it is not possible to determine the time of supply on above basis, the time of supply shall be the date of entry in the books of account of the recipient of supply.

In case of supply of service by associated enterprises where the supplier of service is located outside India, the time of supply shall be the date of entry

in the books of account of the recipient of supply or the date of payment, whichever is earlier.

C. In case of supply of vouchers (or by whatever name called, by a supplier) the time of supply shall be, the date of issue of voucher in case the supply is identifiable at that point, or the date of redemption of voucher in all other cases.

D. In case it is not possible to determine the time of supply under above provisions

i. Where a periodical return has to be filed, be the date on which such return is to be filed, or,

ii. In any other case, be the date on which the CGST/SGST is paid.

E. For the purpose of time of supply, it is important to find out the provisions relating to issue a tax invoice. These provisions are contained in S.28 and discussed below:

i. A registered taxable person supplying taxable goods is required to issue a tax invoice before or at the time of removal of goods for supply to the recipient where the supply involves movement of goods, or delivery of goods or making available thereof to the recipient (in any other case). However, in case of supply of services, a registered taxable person supplying taxable services is required to issue a tax invoice before or after the provision of service but within the period to be prescribed in this behalf.

   On recommendation of the GST Council, the Central or a State Government may issue by notification, specifying the categories of goods and/or supplies in respect of which the tax invoice shall be required to be issued within such time.

ii. In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

iii. In case of continuous supply of services, where services are provided under contract basis:

   a) Where the due date is ascertainable from the contract, the invoice shall be issued before or after the payment is liable to be made by the recipient. However, the period of issue of invoice shall be prescribed whether or not any payment have been received by the supplier of service.

   b) Where the due date is not ascertainable, the invoice shall be issued before or after each such time when the supplier of service receives the payment but within the period to be prescribed in this behalf.

   c) Where the payment is linked to the completion of an event, the invoice shall be issued before or after the time of completion of that event but within the period to be prescribed in this behalf.

   For the purpose of continuous supply of goods and/or services, the Central or a State Government on recommendation of the GST Council, may issue by notification, specifying the supply of goods or services that shall be treated as continuous supply of goods or services.

F. In a case where supply of services ceases under a contract before completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply effected before such cessation.

G. In case of goods being sent or taken on approval or sale or return or similar terms, the invoice shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

The above provision shall apply for the payment of IGST *mutas mutandis* as the time of supply shall be the same for movement of goods inter-state or intra-state.

CA Rajat B. Talati

ITC Mechanism & Refund Provisions

Input Tax Credit (ITC) is the very core provision to achieve the objective of doing away with the cascading effect of tax desired under the GST legislation, thus seemless transfer of credit between taxable persons and/or between business verticals or recipient taxable person is very important. The Revised Model GST Law has provided for the scheme of allowance of ITC and its passage to the trade partners in the distributing channel; ultimately resulting into burden of tax passed on the consumer. Accordingly, the scheme attempts to ensure that there is no tax element which burden the input cost of goods and services. The intermediary partners in the distribution channel act as 'pass-through' entity to carry the tax burden to the next taxable person and finally resting the burden of tax only on the consumer.

I discuss hereunder, some salient features of the ITC scheme and some of the issues that need to be addressed thereunder:

Input tax – In the course of or furtherance of business

The tax paid on inputs is eligible for the ITC. Section 2(54) defines the term 'input' & 2(57) defines the term 'input tax'. Input tax means tax [IGST/CGST/SGST] charged on any supply of goods and/or services to a taxable person which are used or intended to be used by a supplier for making an outward supply ***'in the course of or furtherance of business'***. The input tax also includes tax payable under the reverse charge method as per section 7(3).

Therefore, it is important to understand the scope of the term 'used or intended to be used' and 'in the course or furtherance of business'. The term 'business' is defined in section 2(17). This is an inclusive definition and includes any transaction in connection with or incidental or ancillary to any trade, commerce, manufacture, profession, vocation etc. Thus, if the intended input [goods or services] is used or is intended for use i.e. acquired / purchased / availed with the intention to use the same for business purposes at a future date will also be eligible. The term 'in the course of business or in furtherance of business' is wide term and covers any inputs which are required to carry out the business, for the purposes of business. At the same time or development / furtherance of business is also included. Accordingly, inputs in the nature of expenses on staff welfare, advertising, repairs and maintenance, marketing etc., are also covered in the term 'furtherance of business' or 'in the course of business'.

In view of wide definition of input tax and the same term is being used in section 16(1), input tax paid on raw material, packing material, consumable stores, finished & semi-

finished goods, repairs and maintenance, staff welfare, labour charges paid and all other business expenses are eligible for claim of ITC. The definition of 'goods' does not include 'intangible'. However, intangibles are included in definition of 'services'. Therefore, amount paid for intangibles like software, franchisee fees, copyrights, import licence etc. would also be eligible. It may be noted that Rules are not yet out and it is likely that tax paid on software, copyright [other than for further supply] may be put in the list of negative items. The present model law does not provide for such restriction in the Act.

The way the definition of goods and services is provided, immovable properties may get bracketed as services and may get eligible for ITC subject to section 17(4)(c) & (d) – discussed later herein under.

Eligibility and conditions for taking input tax credit

Section 16 of chapter V is dedicated to Input tax credit; eligibility, documentation, conditions, apportionment, special circumstances, etc., and also entails when the ITC could be claimed. Such credit of ITC is made in the electronic credit ledger of such a taxable person/claimant.

Documents / conditions for availing ITC

An eligible / claimant person shall meet the following conditions for claiming / availing the ITC.

a. He should **possess a tax invoice or debit note** issued by a registered supplier to him or such other tax paying documents as may be prescribed. Such other tax paying document could be the proof of payment of tax by reverse tax mechanism.

b. He has **received the goods and/or services**. This is very critical and important condition. In case of goods the receipt of goods will also include goods delivered by the supplier to another person on the direction of the claimant person, before or during the movement of goods. Where the goods are received in lots, the claimant person is entitled to take the credit on receipt of the last lot or instalments of such goods.

   However, in case of supply of services if the recipient [one who claims the ITC] fails to pay to the suppliers of services, the amount towards the value of supply of services as also the tax thereon within the period of 3 months of the date of issue of invoices by such suppliers, the ITC already availed by the recipient will be added as his output tax liability along with interest thereon. For this purposes, Rule may be prescribed to provide the manner in which such output tax liability is to be paid / worked out.

c. The **tax which is claimed as ITC is actually paid to the account of the Government** in respect of said supply. Thus, ITC is available only to the extent of amount of tax corresponding to the supply received in the Government Treasury. This provision is similar to section 48(5) of the Maharashtra VAT Act. This section 48(5) has been subjected to lot of litigation and BHC in case of Mahalaxmi Cotton has interpreted the provision to say that if the Revenue is in the position to prove on the record that the tax is not realised in the Government Treasury, ITC cannot be allowed. Under the GST regime, network being put in place; the system would auto match the supply *vis-à-vis* the recipient's claim of ITC and auto-reverse the ITC. Thus, it would be important for the claimant person to ensure that the tax is realised in the Government Treasury. However, since the Return uploaded without payment or short payment would not be considered as a valid Return, the ITC in the hands of all the recipients of such a defaulting

supplier would be disallowed. However, when such a defaulting dealer makes goods the short payments / makes the payments; the ITC so disallowed would get auto-credited. Since the Rules are not out and there is limited understanding of the returns and its functioning, one is not able to judge as to when and how the ITC would be auto-credited in case where the defaulter supplier makes good the shortfall of tax at a later date.

d. Such person has **furnished return u/s. 34**. Thus, to avail to ITC, it is imperative that the periodical returns are filed by the claimant person.

Partial Credit and denial of credit

As a basic scheme of GST, ITC is allowable on input supplies wherein tax invoice is received. However, in certain cases, a partial credit or no credit is allowed. These are cases where the Revenue does not earn the output tax and/ or as a matter of policy ITC is denied. These circumstances are provided in section 17 and are discussed hereunder:

1. **Business use or otherwise:** Where the goods and /or services are partly used for the purposes of business and partly for other purposes; the ITC is restricted to the amount of input tax credit which is attributable for the purpose of business.

   It is therefore warranted that wherever the input tax can be directly assigned / attributed to the purpose of business; such ITC may be directly worked out. However, in a case where it is difficult to ascertain / attribute input tax which is utilised for business, a method of ratio proportion may be adopted. The practise of calculating ITC on the basis of ratio proportion has been accepted under the present VAT as also Service Tax laws. This may be acceptable under the GST Law unless Rules made under GST; may provide otherwise.

2. **Taxable and Exempt supplies:** Where the goods and/or services are used partly for effecting taxable supplies [including zero rated supplies] and partly for exempt supplies, the credit shall be restricted to the input tax as is attributable to the taxable supplies [including zero rated supplies]. It may be noted that the exempt supplies for the purposes of this sub-section shall include supply on which the recipient is liable to pay tax on Reverse Charge basis [RCM].

   The observation in respect of pro rata calculation of ITC discussed hereinabove is also applicable in this case. Further, it would be interesting to find cases where the supplies made by taxable person and the recipient is called upon to discharge tax under reverse charge basis and the supplier is called upon to work out exempt supplies for the purposes of allowance of ITC.

   Section 2(111) defines the term **'zero rated supply'** to mean supply of any goods and/or services in terms of section 16 of the IGST Act [revised model law appears to have typo error as it mentions section 15]. Section 16 of IGST Act defines 'zero rated supply to mean taxable goods and / or services namely;

   a. Export of goods and/ or services; **or**

   b. Supply of goods and /or services to a SEZ developers or an SEZ unit

   Therefore, while calculating the *pro rata* allowance of ITC; exports and supply to a SEZ developers or a SEZ unit will be considered as 'taxable supplies' notwithstanding that such supply may be an exempt supply.

3. In case of **banking company or a financial institution** including an NBFC, which is engaged in suppling services by way of accepting deposit, extending loans and advances shall have the **option to either**

(a) Work out liability based on provisions of section 17(2) i.e., to say claim ITC based on taxable supplies vis-a vis exempt supplies

or

(b) Avail ITC every month at an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month.

The option exercised shall not be withdrawn during the remaining part of financial year.

This option given to a banking or financial institutions is possibly to ease the computation of ITC on month on month basis. However, it would be case for study of facts to ascertain as to whether in the hands of such claimant person whether option 1 or option 2 is beneficial. Having said that; it would be important to note that the option once opted, will have to be continued till the end of the financial year.

No ITC

4. ITC shall **not be available** in respect of the following:

a. Motor vehicle and other conveyances except when they are used

i. For making following taxable supplies

(A) Further supply of such vehicles or conveyances; or

(B) Transportation of passenger or

(C) Imparting, trading on driving, flying, navigating such vehicles or conveyances

ii. For transportation of goods

This sub-section provides that unless the motor vehicle or conveyances are further supplied [traded, used for transportation of passenger or goods or is used for imparting training on driving etc.], the ITC is not available. Accordingly, goods vehicles and vehicles which are used for specific purposes as discussed would also be eligible for claim of ITC.

b. **Inward supplies used for personal/ employees in certain cases**

i. Food and beverages, outdoor catering, beauty treatment, health services, cosmetics, and plastic surgery is not eligible for ITC except where such inward supply of a particular category is utilised by the claimant person for making outward taxable supply of the same category. That is to say, if these services are for self-consumption by the taxable person and/or employees, the ITC is not allowable. E.g., Input tax paid on food and beverages served to the employees in office would not be allowable as ITC.

ii. Membership of health, club and fitness centre would also not available for ITC.

iii. Rent-a-cab, life insurance, health insurance except it is an obligation for an employer to provide to its employee under any law.

Thus, input tax paid on providing on rent-a-cab, life insurance or health insurance for the employees, will not be available as ITC unless the Government has notified such services as an obligation for an employer to provide to its employee under any law. E.g. Accident, Workmen's' Compensation Policy taken for the benefit of workers of the factory would be eligible for claim of ITC provided such a policy is taken out by the employer as per the provisions of/obligation under statutory enactment e.g., Factories Act.

iv. Travel benefits extended to employees on vacation such leave or home travel concessions is denied the ITC. Thus, daily commute to office / factory provided by the employer will be eligible to claim ITC.

c. ITC shall not be available in respect of **works contract services** when it is an inward supply for **construction of immovable property other than plant and machinery**. However, if such input service is for further supply of works contract service than the ITC is allowable. Thus, in case of sub-contract awarded by a principal contractor, the ITC is allowable in the hands of the principal contractor. Hence, in the hands of other than the outward supplier of works contract services; the inward supply of immovable property will not be allowed ITC.

d. Goods or services received by a taxable person for **construction of immovable property on its own account other than plant and machinery**, ITC is not allowable. Accordingly, inward supplies of goods and services for construction of office or factory building by a taxable person on his own account; ITC is not allowable even when such office or factory is used in the course or furtherance of business.

Explanations 1 & 2 are added to this clause. The explanations state that the word 'construction' would include reconstruction, renovation, addition or alteration, repairs, to the extent of capitalisation to the said immovable properties. Therefore, a question would arise in respect of repairs which are debited to profit and loss account and not capitalised. A plain reading of the explanation 1 would lead us to conclusion that ITC in such cases is allowable. Further, the term 'construction' means to bring in existence. Therefore, repairs not bringing enduring benefits would not mean bringing into existence new but would mean mending and therefore would qualify for ITC.

Explanation 2 provides that the term 'plant and machinery' means apparatus, equipment, machinery, pipelines, telecommunication towers, fixed to earth by foundation or structural support that are used for making outward supply. This also include such foundation and structural support but exclude land, building or any other civil structure. In view of this definition, the plant and machinery which is installed or pipelines or telecommunication tower which are erected and fixed to earth by foundation or

structural support would also be included as 'plant and machinery'. Therefore, cement and steel which is used for creating RCC platform for installation of plant and machinery would qualify for ITC. Surely, cement and still used for construction of factory building would not be allowed ITC.

e. Goods and/ or services on which tax is paid to the supplier under **composition scheme** is not eligible for ITC. Accordingly, a small supplier who has opted for composition scheme would stand to lose business because inward supplier form such a composition person is not eligible for ITC in the hands of taxable person and hence, would avoid purchasing from such a composition vendor.

f. Input tax paid on goods and or services used for **personal consumption** Is not eligible for ITC.

g. Input tax credit on goods lost, stolen, destroyed, written of or disposed by way of **gift or free sample** is also not eligible for ITC.

Therefore, ITC corresponding to goods which are lost, stolen, or destroyed or is written off is not eligible for ITC. The clause also provides that goods which are disposed of by way of free sample or gift is also not eligible for ITC. One will have to closely examine availability of ITC in respect of goods which are distributed under **promotional scheme**. E.g., for every 1000 qty. supplied 50 qty. is supplied free. This 50 qty. could be supplied under zero value invoice or could be despatched under the challan as scheme supplies. It is pertinent to note that the sale in such a case is of 1050 quantities at a price of thousand. It is part of the offer made by the supplier based on which the recipient buyer acted upon it and hence this become part of binding terms of the contract, for the performance of which; action can be initiated. Thus, in such circumstances, it is not that 50 quantities is distributed free but 1050 qty. are sold. Accordingly, there cannot be disallowance of ITC in respect of these 50 qty.

Natural losses

Often a query is raised as to whether ITC is available to the extent of normal /natural losses which is caused due to handling, process, evaporation or other uses of inputs. A doubt is arisen because section 17(4)(g) provides that ITC is not available to the extent of goods lost, stolen, destroyed, written off. To my mind, the natural losses of these nature are part of the manufacturing, handling or process losses and they need to be distinguished from goods lost or destroyed by say fire, accidental loss etc. It appears the intention is to disallow ITC where it is not resulting into output tax liability. However, the natural losses of the types discussed herein are the losses normally occurs and they are factored in the pricing of the output. These losses are inevitable in the manufacture / handling of goods and ITC should not/can't be reduced on this account.

h. Input tax credit shall not be available in respect of any tax paid in terms of section 67 [tax not paid / ITC wrongly availed for reason of fraud

or wilful misstatement], section 89 [tax paid on detention, seizure of goods and conveyances in transit] or u/s. 90 [confiscation of goods and or conveyances].

5. The State or Central Government may by notification prescribe the manner in which the ITC may be attributed in case of taxable viz a viz exempt supplies and business vs. non-business utilisation.

Utilisation of credit

Sec 16 of the Revised Model GST provides for the manner of taking ITC. The method and chronology of utilising said credit, which is available in the electronic ledger of the claimant dealer, is prescribed under section 44 of the MGST. The method and chronology is explained via an infographic below.

IGST Output Liability	• ONLY IN BELOW ORDER • 1. IGST then • 2. CGST then • 3. SGST
CGST Output Liability	• ONLY IN BELOW ORDER • 1. CGST then • 2. IGST • SGST – NOT ALLOWED
SGST Output Liability	• ONLY IN BELOW ORDER • 1. SGST then • 2. IGST • CGST – NOT ALLOWED

As per section 44(5), such credit on account of IGST is to be first utilised against the payment of IGST and the remaining balance against the payment CGST & SGST, in that order. Further, the ITC on account of CGST is first to be adjusted towards payment of CGST and amount remaining against payment of IGST. On the same lines, ITC credit on account of SGST is to be first utilised against payment of SGST and the remaining towards payment of IGST. Thus, CGST or as the case may be, SGST cannot be utilised towards the payment of SGST or as the case may be CGST.

ITC in special circumstances – Section 18

1. **ITC – registration:** If a person applies within 30 days from the day on which he is liable to get registered and is granted such registration, is entitled to claim ITC in respect of inputs held in stock and input contained in semi-finished or finished goods held in stock on the day immediately preceding the date of registration. This is subject to rules that may be prescribed in this respect. Mention of ITC in respect of purchases of capital goods is not made. Hence, ITC is not available on capital goods which is purchased prior to the effective date of Registration Certificate. Moreover, ITC in respect of input services is also not available prior to the effective date of the Registration.

2. Similarly, the person who applies for **voluntary registration** u/s. 23(3) is eligible to claim ITC in respect of inputs held in stock and input contained in semi-finished or finished goods held in stock on the day immediately proceedings the date of Registration. This is subject to Rules that may be prescribed in this respect. As discussed herein above, there is no mention of ITC in respect of purchases of capital goods made. Hence, ITC is not available on capital goods which is purchased prior to the effective date of Registration Certificate. Moreover, ITC in respect of input services is also not available prior to the effective date of the Registration.

3. Where registered taxable person **ceases to** exercise his option to pay tax as **composition person** [as per section 9], he will be entitled to claim credit of input tax in respect of inputs held in stock and input contained in semi-finished or finished goods held in stock and **also on capital goods** on the day immediately proceeding the date of Registration. However, the ITC

on capital goods shall be reduced by such percentage point as may be prescribed in this behalf. This is subject to Rules that may be prescribed in this respect.

4. **Exempt supply to taxable supply:** Where an exempt supply of goods and services by a registered taxable person become a taxable supply, he shall be entitled to take credit of input tax credit in respect of inputs held in stock and input contained in semi-finished or finished goods held in stock and also on capital goods on the day immediately proceedings the date of registration. However, the ITC on **capital goods exclusively used for such exempt supply** shall be reduced by such percentage point as may be prescribed in this behalf. This is subject to Rules that may be prescribed in this respect.

5. **Invoice not older than one year:** In case of 1 to 4 categories as above, the ITC will be available only in respect of tax invoices which are not older than 1 year from the date of issue of tax invoices relating to such supplies.

6. **Change in Constitution:** in case of change in the constitution of the registered taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of business, the said registered taxable person shall be allowed to transfer ITC that remains unutilised in its books of account to such sold, merged, demerged, amalgamated, leased or transferred business. For this purposes Rule may be prescribed. It is also provided that in case of transfer of business there need to be specific provision of transfer of liability as well. This possibly means sale of business as a 'going concern', sales / transfer / part-transfer of business as a 'going concern' with all assets and liabilities.

7. **Switch-over to composition/exemption u/s. 11 :** In a case where a taxable person who has availed ITC chooses to switch to composition scheme or where the goods and or services supplied by him became exempt absolutely u/s 11, he will **require to pay** an amount in the electronic cash or credit ledger of the input tax credit in respect of inputs held in stock and in goods contained in semi-finished and finished goods held in stock and in capital goods at reduced percentage points [as may be prescribed] on the day immediately preceding to the date on of the switch-over or exemption.

   After the payment of such amount, the balance of input tax credit, if any, lying in the electronic credit ledger shall **lapse**. The amount payable on this account shall be calculated in the manner as may be prescribed.

   Section 11 allows the Central or the State Govt., on the recommendation of the GST Council to exempt generally or subject to such conditions goods and /or services of any specified description in the public interest.

8. In case of **supply of capital goods or plant and machinery on which ITC is taken**, the registered taxable person **can pay either** an amount equal to ITC taken on capital goods or plant and machinery as reduced by the percentage points; as may be prescribed in this respect **or** tax on the transaction value of such capital goods or plant & machinery u/s. 15(1); **whichever is higher.**

   On sale of capital goods or plant and machinery, output taxes is payable on transaction value u/s. 15(1). In a case where ITC is already claimed or taken on such purchases of capital goods or plant and machinery at an earlier date, **either** such ITC reduced by percentage will have to be paid back **or** tax on the transaction value or output tax payable whichever is higher. E.g. if on purchase of plant and machinery ITC is taken at ` 10,000 at an earlier date is now sold and the output tax payable thereon it say, at ` 3,500/- on

transaction value. Here, ITC is to be paid back is ` 10,000 Less percentage deduction say 70% i.e., ` 3,000/-. This ` 3,000/- ITC to be paid back will have to be compared with tax payable on sales of plant and machinery say ` 3,500/- and whichever higher; ` 3,500/- in this case, will have to be paid. This provision is similar to the current CENVAT Credit Rule 3(5A)(a).

As discussed hereinabove, a registered taxable person can claim / entitle to take credit of input tax charged on supply of goods or services to him which are used or intended to be used in the course or furtherance of his business.

ITC – Input sent for job work

Section 55 lays down special procedure for removal of goods for job work. **Supply of inputs/Capital goods** by principal to job worker do not attract GST when such inputs are brought back, after completion of job work or otherwise, within a period of 1 year/3years of their being sent out. [Detailed provisions of taxability or otherwise of input and capital goods sent to job works is not discussed here].

The input tax credit in respect of inputs sent to a job worker for job work is allowed in the hands of the "principal". Section 20(2) further provides that the "principal" is entitled to ITC on inputs even if inputs are directly sent to a job worker for job work. Thus, a vendor of the principal may directly despatch the goods to the place of job worker for the purposes of job work and still the principal can claim ITC for such inputs.

However, in a case when the goods sent for job work are not received back within a period of one year, it shall be deemed that inputs had been supplied by their principal to the job worker. This proviso [20(3)], do not cast any further doubts or disallowance of ITC in the hands of the principal.

Moreover, the input tax credit in respect of capital goods sent to job worker for job work will be allowed in the hands of principal subject to Rules that may be prescribed.

The term capital goods do not include moulds and dies, jigs and fixtures, or tools as per section 55. Accordingly, the condition of return of capital goods back to the principal within a period of 3 years from the job worker is not applicable in case of moulds and dies, jigs and fixtures, or tools.

ISD – Input Service Distributor – Distribution of credit

Section 2(54) defines "Input Service Distributor" to mean an office of supply of goods and/ or services which receives tax invoices towards **receipts of input services** and issues a prescribed document for the **purposes of distributing the credit** of CGST/SGST and/ or IGST **paid on said services** to a supplier of other taxable goods and services having same PAN as that of the distributor. Simply put, an organisation having the same PAN but offices in different States can obtain ISD registration and transfer/distribute GST paid on inward supply of services to another branch having the common PAN.

Section 21(1) provides the manner in which such distribution can be effected by an ISD. It states that the ISD can distribute credit of CGST as CGST or SGST as SGST or IGST as IGST. The ISD needs to issue a prescribed document containing the amount of ITC being distributed.

The following conditions are to be met by ISD for distribution of the credit.

a. Issue prescribed documents containing the prescribed particulars.

b. The credit distributed shall not exceed the amount of credit available for distribution.

c. If input tax paid on input services is attributable to a recipient, then it shall be distributed only to that recipient. Accordingly, if input services are meant for / consumed by a particular recipient then in that case, such credit shall be distributed only to that recipient.

d. However, in a case where input services are attributable to more than one recipients, then the input credit shall be distributed on *pro rata* basis of the turnover in a state of such recipient during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable. Thus, if an input service is attributable to more than one recipients, it needs to be distributed amongst them on *pro rata* basis.

e. If the credit on input services is attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be on pro rata basis.

If the ISD distributes credit in contravention of section 21 resulting in excess distribution of credit, such excess credit so distributed shall be recovered from such recipient along with interest.

CSR – Corporate Social Responsibility

CST activities are undertaken by the corporates as an obligation under the provisions of Company's Act 2013.

As a part of CSR initiative; company undertakes various projects involving e.g., distribution of medical aid, food for needy, medical facilities, conducting health, safety related awareness programmes, construction of toilet blocks in rural India etc. This expenditure is debited in the books of account as CSR expenditure. The provisions under the Company's Act provide that the activities undertaken as part of CSR can not be related to the business of the company is operational. E.g. a pharmaceutical company cannot distribute free medicine manufactured by them and promote the brand in the process and claim as CSR activity.

In the above background, the issue to be examined as to whether CSR expenditure can be termed as 'in the course of or in the furtherance of business'? Since the activities are mandated under the statute [Company's Act], a corporate is obliged to carry out the same otherwise it may be subjected to penal provisions under the said statute. Therefore, in my view it can be stated that expenditure on CSR is in the nature of expenses 'in the course of business'. Admittedly, this expenditure is not for 'furtherance of business'. Therefore, in my view ITC is available on the input tax paid on the inward supply of goods and services subject to other provisions of section 17.

Goods return/deficiency in services

The issuance of debit note or credit note will be used for accounting of the return of goods or deficient services. If the supplier issues a credit note in respect of goods return by the recipient such credit note will result into reduction in the output tax of the supplier and at the same time reduction of the ITC available in the hands of the recipient. Similarly, credit note in respect of deficiency in services when acknowledged will also work in the similar fashion.

A useful reference can also be made to Section 178 -Transition provisions. Referring to the credit note issued by the supplier, it states that the supplier will be allowed reduction in his tax liability only if the recipient of the Credit Note has reduced his ITC. This gives a hint that the system may allow the credit while filing the return but would auto- reverse it in a case where the recipient has not reduced his claim of ITC.

In this article, provisions relating to transition to GST is not covered as the same is discussed separately by another author.

The Revised Model Law has been issued after considering various representations made by trade, industry and professional bodies including CTC. Provisions in respect of ITC has brought in welcome clarity in majority of cases. It is expected that the second revised draft may be put in public domain in some days. We hope the final law and the rules bring the necessary clarity in computation and manner of allowance of ITC.

CA Jayraj S. Sheth & CA Drashti N. Sejpal[1]

Treatment of Job work in GST regime[2]

Background

1. Various businesses, especially, manufacturers and brand owners outsource their non-core activities like fabrication, processing, special treatment, testing etc. of goods to specialists. For a charge of their labour and material, if any supplied, these specialists carry out such activities. Such arrangements are referred to as 'job work' and the specialists are known as 'job workers'.

There are special provisions in the current Excise, Service Tax, VAT laws and CENVAT Rules to levy and deal with appropriate duties / taxes on goods and services involved in such job work arrangements.

2. Under Model GST Law (MGL) too, there are specific provisions, including in particular, the following, dealing with job work and input tax credit relating thereto, and this article analyses these provisions[3]:

Sr. No.	Topic / Matter	Sections of Model GST Law
1	Definitions:	
	a) Job work and job worker	a) 2(61)
	b) Principal – in the context of job work	b) 55(1)
	c) Capital goods	c) 2(19)
	d) Inputs	d) 2(52)

1. Both the writers work with TLC Legal, Mumbai
2. Based on Model GST and IGST Laws released in public domain by GST Council Secretariat on 25th November 2016
3. All sections referred to in this Article are from MGL, unless otherwise specified

Sr. No.	Topic / Matter	Sections of Model GST Law
2	Inputs / capital goods sent for job work and:	
	• Received back by principal; or • Supplied directly from job worker's premises within one year / three years of sending to job worker	• 55(1)(a) • 55(1)(b) Read with 20(1), 20(2), 20(4) and 20(5)
3	Inputs sent for job work and:	
	• Not received back by principal; or • Not supplied directly from job worker's premises within one year of sending to job worker	55(3) Read with 20(2) and 20(3)
4	Capital goods (other than moulds and dies, jigs and fixtures, or tools) sent for job work and: • Not received back by principal; or • Not supplied directly from job worker's premises within three years of sending to job worker	55(4) Read with 20(5), 20(6) and 20(7)
5	Waste and scrap generated during job work	55(5)
6	Principal's responsibility for accountability of goods sent for job work	55(2)

Meanings of relevant terms

3. "Job work" is defined[4] in MGL to mean undertaking any *treatment or process* by a person on *goods belonging to another* registered taxable person and further it is provided that the expression "job worker" shall be construed accordingly. Such another registered taxable person is referred to in Section 55 (which specifically deals with treatment of job work arrangements) as 'principal'. It is pertinent to note that such 'principal' is different from the 'principal' referred to elsewhere in MGL and defined in Section 2(76), in the context of an agent.

Where the arrangement between two persons is on principal to principal basis, i.e. the treatment or process is carried out by one person on his own goods and not on goods *belonging to another person*, such arrangement will not be regarded as job work. An example of such an arrangement would be contract or loan licensing manufacturing in pharmaceutical or any other regulated industry.

Provisions in MGL concerning job work would apply to any treatment or process on goods belonging to another person, whether or not it amounts to manufacture – e.g. goods sent for testing, repairing, reconditioning, etc.

4. MGL deals with three types of goods that may be involved in job work arrangements:

a. Inputs

4. Section 2(61) of MGL

b. Specified capital goods like moulds and dies, jigs and fixtures, or tools

c. Other capital goods

In practice, job work involves at least two movements – one, concerning receipt of goods at job worker's premises and the other, concerning despatch of such goods (or goods made from the goods received by job worker) from job worker's premises.

Goods can be received at job worker's premises from one of the following three persons:

a. Principal

b. Other job worker

c. Any other third party

Further, goods can be despatched from job worker's premises for one of the following five purposes:

a. Bringing back to any place of the principal

b. Sending directly to other job worker within India

c. Sending directly to any other third party within India

d. Exporting directly to other job worker outside India

e. Exporting directly to any other third party outside India

5. GST is to be levied on 'supply'[5] of goods and/or services. The term 'supply' is defined in an inclusive manner and its ordinary meaning is 'to make available something to someone'. However, all transactions listed in the definition of 'supply' would constitute a taxable supply only if they are made for a consideration, except those specified in Schedule I of MGL, which would constitute supply even if they are made without consideration. None of the movements listed in Para 4 above are covered within the specified list of transactions appearing in Section 3 or in Schedule I.

However, one cannot deny the fact that several of these movements (e.g. principal sending goods to job worker and job worker sending them back to principal after completing job work) though done without consideration, do result in principal / job worker making available the goods to the other person and therefore, in one view of the matter, such movements could be regarded as 'supply' within its ordinary meaning.

To enable job work movements without payment of GST (i.e. without their becoming 'taxable supplies'), Section 55 of Chapter XIII of MGL prescribes a special procedure to be followed by a principal / job worker. Further, Section 20 deals with input tax credit mechanism for such transactions by laying down conditions to be satisfied by principal for taking input tax credit, failing which, the principal will be liable to pay GST (with interest) on goods sent for job work.

6. The term 'inputs' is very widely defined in Section 2(52) to mean "any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business". Thus, it appears that even where a principal sends / arranges to send **partially processed goods** to a job worker, such goods will also qualify as 'inputs' and all the provisions of MGL will apply to them.

In cases where inputs are not brought back within one year resulting in the initial sending of goods by principal to job worker to be deemed a supply, a question arises as to how the principal would pay GST thereon with interest (See S. No. D in table above). Drawing an analogy from the provisions of Rule 4(5)(a)(iii) of CENVAT Credit Rules, 2004, it appears that in GST, the principal would be required to reverse the input tax

5. Section 3 of MGL

credit equal to its GST liability and appropriate provision in this regard would be made in GST Input Tax Credit Rules.

Implications under GST

7. For ease in understanding and quick reference, various transactions involved in job work and their GST implications for the principal and the job worker are summarized in *Annexure 1* to this Article.

8. Section 17 of the Model IGST Law states that the provisions relating to specified matters shall apply to levy of IGST, as they apply in relation to levy of CGST under the Model CGST Law. These specified matters include job work. Hence, all the implications listed in Annexure 1 would also be relevant when job work involves interstate movement of goods.

Posers

9. A close reading of MGL indicates some obvious infirmities in MGL, inasmuch as there is lack of clarity with regard to GST implications for following specific situations that may exist in practice:

a) On plain reading of the definition, sending inputs and capital goods without payment of tax will result in supply of 'exempt' or 'non-taxable' supplies and if no exclusion is provided from the definition of supply itself, principal may be asked to reverse Input Tax Credit as per Section 17(2).

b) Section 55(1)(a) (reproduced below) provides for 'bringing back inputs and / or capital goods' (other than moulds and dies, jigs and fixtures, or tools) within one/ three years **'of their being sent out'**, for principal to be able to send the inputs/ capital goods to job worker without payment of GST:

   "(1) bring back inputs, after completion of job-work or otherwise, and/or capital goods, other than moulds, and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;"

   (emphasis supplied)

   In a situation where, the goods brought back within one year are different from the goods initially sent to the job worker (e.g. principal initially sends granules to job worker and brings back articles made therefrom), a question arises as to whether the principal will still be regarded as having brought back the 'inputs' to qualify for the benefit of Section 55(1)(a). This is for the reason that in one view of the matter, the expression 'of their being sent out' can be interpreted to relate only to the 'inputs' initially sent (i.e. granules) out and not to the 'inputs' subsequently brought back (i.e. articles made from granules) – as per the definition of 'inputs', both granules as well as articles made therefrom will qualify as inputs.

   Rule 4(5)(a) of CENVAT Credit Rules, 2004, deals with such a situation and there appear to be no confusion in this regard, as the rule clearly states "*...the inputs or the* ***products produced therefrom*** *are received back ...*". Thus, to avoid any disputes in future, there is a need for dealing with this aspect in MGL, either by way of an Explanation or by appropriately amending the Section 55(1)(a).

c) In some cases, entire quantity of inputs sent to job worker may not be received back by the principal due to normal loss (like evaporation or other process loss) during processing / treatment of such inputs by the job worker. MGL does not deal with such situations and it appears that inputs so lost may be regarded as 'inputs not received back' by the principal – in which event, the principal may be liable to pay GST with interest on such lost inputs.

d) Section 55(1) provides that inputs / capital goods should be received back by the principal within a period of one / three years of their being sent out. In cases where goods are sent from one job worker to another and so on, it appears that such time limit should be reckoned from the date of principal sending out the goods to the first job worker. To avoid any disputes in this regard, it would be prudent if appropriate Explanation to this effect is inserted in Section 55 of the final MGL or the same is provided in GST Input Tax Credit Rules.

e) As per the proviso to Section 55(1)(b), a principal engaged in supply of goods notified by Commissioner is permitted to supply the goods processed / treated by the job worker, directly from the place of business of the job worker without declaring the place of business of the job worker as the principal's additional place of business. It is not clear as to whether a principal who sends goods of a particular type (say, A) directly from the job worker's premises and is also engaged in the supply of goods of another type (say, B -, which are notified by the Commissioner) is also intended to be so permitted – or the intention is to grant such facility only in a case where the goods directly sent by the principal from the job worker's premises are also notified by the Commissioner.

f) Further, in the above scenario, to ensure that there is no conflict between this proviso and Para 1 of Schedule V of MGL (which requires every supplier to register in the State from where he makes a taxable supply of goods and / or services if his aggregate turnover in a financial year exceeds the prescribed limits), such principal will be required to be notified under Section 23(13) as being exempt from declaring the job worker's premises as the principal's additional place of business.

g) While, as stated in Para 8 above, all the provisions of Model IGST Law will apply to job work involving inter-state movement of goods, it is not clear as to how a principal situated in say, State A, allowed to send goods to a job worker situated in say, State B, without payment of GST, will utilise the input tax credit accumulated in State A, when the processed / treated goods are not brought back by the principal, but they are directly supplied from the job worker's premises within the permissible period of one / three years.

Transitional situations

10. MGL envisages following two types of transitional situations:

a) Situation 1 – *Inputs* are removed/ despatched from principal's factory/place of business and are sent to a job worker 'as such' or after being 'partially processed', prior to Appointed Day (AD - i.e. day of implementation of GST), for further processing, testing, repair, reconditioning or any other purpose but are returned on or after the AD to the such factory/place of business (Section 175);

b) Situation 2 – *Semi-finished goods* are removed/despatched from principal's factory/place of business and are sent for carrying out certain manufacturing processes prior to the AD but are returned on or after AD (Section 176).

Sr. No.	Scenario	GST implication
1	Situation 1	a) *No GST* payable if the *inputs* are *returned within six months* from AD – extension not exceeding two months may be granted by the competent authority on sufficient cause being shown

Sr. No.	Scenario	GST implication
		b) If the inputs ***are not returned*** within six months (or extended period), input tax credit taken on such inputs will be recovered as arrears of tax under CGST (if sent on job work under the earlier Central Laws) or as SGST (if sent on job work under the earlier State Laws) and such GST recovered will not be eligible for Input Tax Credit.
2	Situation 2	a) No GST payable if the *semi-finished goods* are returned within ***six months*** from AD - extension not exceeding two months may be granted by the competent authority on sufficient cause being shown b) No GST payable if the semi-finished goods are ***transferred within six months*** from AD (or extended period) in accordance with the provisions of earlier law to the premises of any Registered Taxable Person for supply therefrom. c) If the semi-finished goods are ***not returned*** within six months (or extended period), input tax credit taken on such inputs is to be recovered as arrears of tax under CGST (if sent on job work under the earlier Central Laws) or as SGST (if sent on job work under the earlier State Laws) and such GST recovered will not be eligible for Input Tax Credit.

However, these sections shall apply only if both the manufacturer/ person dispatching the inputs /semi-finished goods and the job worker, declare the details of the inputs/semi-finished goods held in stock by the job worker on behalf of the first person on the AD, in such form and manner and within such time as may be prescribed.

A preliminary analysis of the transitional provisions in MGL indicates that MGL does not deal with the following other possible situations in practice:

a. Treatment of inputs received post Appointed Day, which were sent for job work not from the factory/place of business of the principal, but were sent directly from the premises of a third party on behalf of the principal

b. To allow, post AD, sending directly from the job worker's premises, final products made from the inputs sent to the job worker prior to AD, if the permission for the same was already taken under earlier laws.

Concluding remarks

While MGL has well recognised several peculiarities involved in job work and has accordingly dealt with them through special provisions in MGL for smooth and easy conduct of business by principals and job workers, there is a need to remove several ambiguities and also deal with several other peculiarities, as pointed out above. It would be a great relief to trade and industry, if the final GST Laws remove these ambiguities and provide for such other peculiarities appropriately.

Annexure 1

GST implications for Principal and Job worker for various transactions / scenarios

(Refer Para 7 of Article titled 'Treatment of Job work in GST regime'[1])

Sr. No.	Nature of movement of goods/ scenario	GST payable	ITC available to principal / job worker	Compliances	Relevant Sections of MGL
A)	Principal intending to get job work done from a job worker			*By Principal:* Obtain GST registration in relevant State *By Job worker:* Job work charges are in consideration of 'supply of service' and if the threshold limit is crossed, job worker to obtain registration	Section 23 & Schedule V(1) Schedule II(3)(a), Section 23 & Schedule V(1)
B)	Principal sends to job worker: • Inputs/capital goods; • From premises of principal; **or** • Directly from the premises of a third party (without their being first brought to the principal's place of business)	No	Yes – to principal – on inputs / capital goods sent to job worker	*By Principal:* a) Send an intimation *(Manner of sending intimation and Authority to be intimated, likely to be prescribed in GST Rules)* b) Comply with other conditions, as may be prescribed in GST Rules c) Where goods are directly sent to the job worker (by a third party), maintain records for date of receipt of goods by job worker, for claiming Input Tax Credit (ITC) within prescribed time limit	55(1), 16, 20(1), 20(2), 20(4) & 20(5)

1. Authored by CA Jayraj S. Sheth and CA Drashti N. Sejpal

Sr. No.	Nature of movement of goods/ scenario	GST payable	ITC available to principal / job worker	Compliances	Relevant Sections of MGL
C)	Principal ***brings back*** inputs / capital goods[2]: • To any place of business of the principal; • Within one year (for inputs) / three years (for capital goods); • Of their being sent out from principal's place of business - if sent by the principal; or • Of their being received by the job worker - if sent directly from a third party	No	N.A.	By Principal: a) Same as those in B) above b) Also maintain records to show that the inputs / capital goods (other than moulds and dies, jigs and fixtures, or tools) are brought back within the prescribed time limit of one / three years.	55(1)(a)
D)	Principal ***supplies*** such inputs / capital goods directly from the place of business of the job worker: • within one year (for inputs) / three years (for capital goods); • of their being sent out; • of their being received by the job worker - if sent directly from a third party	• Yes – by principal – when supplied within India • Option to principal to pay or not to pay – when goods are exported	N.A.	By Principal: a) Declare job worker's premises as additional place of business in the registration of Principal, except where: – Job worker is registered; or – Principal is engaged in supply of goods notified by the Commissioner b) Invoice should be made by the Principal on such direct supply of goods, even if made by a Registered Job worker and applicable GST to be paid.	55(1)(b) & Explanation 2 to Schedule V (1)

2. Other than moulds and dies, jigs and fixtures, or tools

Sr. No.	Nature of movement of goods/ scenario	GST payable	ITC available to principal / job worker	Compliances	Relevant Sections of MGL
E)	Principal ***does not receive back*** the inputs / capital goods[3] into any place of business of the principal ***nor does he supply*** them directly from the place of business of the job worker: • Within one year (for inputs) / three years (for capital goods); • Of their being sent out • Of their being received by the job worker - if sent directly from a third party	Yes (with interest) – by the principal – by deeming that the initial sending of goods to the job worker was a 'supply' from principal to job worker, on the day when they were sent out.	N.A.	**By Principal:** To make necessary entries for payment of GST through input tax credit (i.e. reversal of credit), as the GST Rules may prescribe.	55(3), 55(4), 20(3), 20(6)
F)	Principal ***does not*** ever: • ***Receive back*** moulds and dies, jigs and fixtures, or tools into any place of business of the principal; or • ***Supply*** them directly from the place of business of the job worker	No	N.A.		55(4), 20(7)
G)	Waste and scrap is generated during the job work and it is supplied: • By the principal; **or** • By the job worker, directly from his place of business	Yes a) By the job worker – if he is registered; b) By the principal – if the job worker is not registered	N.A.	By Principal / Job worker: Invoice should be made by the principal / job worker making the supply of such waste & scrap and applicable GST should be paid.	55(5)

3. Other than moulds and dies, jigs and fixtures, or tools

CA. Amitabh Khemka

Model GST Law – Transition Aspects

With Goods and Services Tax ('GST') being imminent in India now, there are several aspects that the stakeholders are required to consider to manage the transition, including the timelines, from the current indirect tax regime to new GST regime. Some of these aspects are:

Sr. No.	Transition aspects	Tax authorities	Taxpayer	Consumer
1	Business related changes		✔	
2	GST impact	✔	✔	✔
3	Tax administration	✔		
4	GST Trainings	✔	✔	
5	GST Awareness	✔		✔
6	Anti-profiteering measures	✔	✔	✔
7	Legal provisions for transition	✔	✔	
8	Repeal and saving provisions	✔	✔	
9	Transition for duties / taxes not to be subsumed into GST	✔	✔	
10	Existing legal proceedings	✔	✔	

This article aims to discuss in brief the aspects listed from Sr. 6 to Sr. 9 above.

1. Anti-profiteering measures

Introduction of GST will affect prices, which consumers will pay for goods and services. It is observed generally that introduction of GST has led to inflation. In India, GST would abolish the cascading effect prevalent in current indirect tax structure. To proactively protect consumers, anti-profiteering measures would be introduced to ensure that the benefits are passed-on and the price exploitation does not occur. The benefits arising from GST should be passed-on to ultimate consumers. The businesses should not profiteer (to profiteer is to make an unreasonably large/high profit).

Australia, on introduction of GST, established a prices oversight regime under its Trade Practices Act to ensure that there was no price exploitation. Under this regime the Australian Competition and Consumer Commission had specific responsibilities to oversight pricing responses to the introduction of GST during the transition period (three year period from July 1999 to June 2002). In Malaysia, the Price Control Anti-Profiteering Act, 2011 was made applicable to GST regime, on introduction of GST from April 1, 2015. The anti-profiteering measure is made applicable in Malaysia from January 2015 to December 2016. It is interesting that in Malaysia the period for this purpose was made applicable three months before the introduction of GST.

In India, the Model GST Law, released in November 2016 by GST Council Secretariat, suggests that an Authority would examine, whether the changes in GST has resulted in commensurate reduction in the price of the goods or services being supplied. Where the Authority finds that the price charged has not been reduced, the Authority exercising its functions and powers could impose penalty, as may be prescribed. Clause 163 of the Model GST Law specifies the following reasons for examination of reduction in the price:

- input tax credits availed by any registered taxable person or
- reduction in the price on account of any reduction in the tax rate

Further, the as per Clause 169 of the Model GST Law, a taxable person would be entitled to take credit of duties and taxes of inputs held in stock where the person passes on the benefit of the credit by way of reduced prices to the recipient.

Incidentally, only two reasons have been attributed in Model GST Law towards anti-profiteering measure; whereas there could be many other reasons, including supply chain and logistics related efficiencies, additional margins/profits directly arising from implementation of GST, etc. The businesses would be required to adequately validate the reasons for the differential amount of prices / profits under the current regime and under new regime.

2. Transition aspects requiring clarity

Under the Model GST Law various scenarios have been considered in the explicit legal provisions aiding the transition; same are discussed in Para 3. However there are certain scenarios which appear to have been not considered in the Model GST Law, which requires clarity:

- On introduction of GST, the (State) General Sales Tax/Value Added Tax laws and the Central Excise laws shall apply only in respect of goods included in the Entry 84 and Entry 54 of the Union List and the State List respectively, of the Schedule VII to the Constitution of India. These goods are – petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption. Clarity is required on transition of these goods into the existing / new indirect tax regime, *inter alia*, including the following:
  - Applicability of concerned laws, including for inter-State movement and the rate of tax
  - Applicability of credit mechanism to such goods
  - Treatment of CENVAT credit / VAT credit (including proportionate attribution) on (i) stock of such goods held on introduction of GST; (ii) unavailed CENVAT credit / VAT credit on capital goods
  - Applicability of countervailing duty on import of such goods
- Generally, the explicit legal provisions are aiding transition in respect of Central excise, service tax, State-VAT and entry

tax. However, such provisions do not appear to be aiding scenarios in respect of entertainment tax, luxury tax, etc. Currently, there is no 'point of taxation' specified in respect of an admission to an entertainment event. Say, if a cinema ticket is issued and payment is received before introduction of GST and entertainment tax is also discharged before introduction of GST for an event to be held after introduction of GST, it appears that GST is not payable on such event.

Where entertainment tax is deposited in advance for an event to be held after introduction of GST and ticket are to be issued before / after introduction of GST, then GST seems to be payable; clarity is also required on adjustment of the entertainment tax deposited. Clarity would also be required on applicability of GST on sponsorship of such events, where entertainment tax is paid, as applicable in some of the States.

- A taxpayer will not be allowed to take input tax credit under GST regime of the duties / taxes paid on goods / services under current laws of which credit is not allowed under the current law. For example, a service provider will not be able to take input tax credit of State-VAT paid on goods held in stock on introduction of GST. Similarly, a trader in goods will not be able to take input tax credit of Central Excise duty paid on goods held in stock on introduction of GST.

  Distributors/retailers of telecom recharge coupon vouchers will not be able to take credit of service tax paid by the telecom operator on maximum retail price of the voucher. It may be apt to exempt levy of GST on such vouchers held in stock by distributors/retailers on introduction of GST.

  One is not contemplating – input tax credit on goods held in stock on introduction of GST by a tax payer paying entertainment tax/ luxury tax under current laws. Nor it is contemplated to have input tax credit of entertainment tax paid under current law on sponsorship of an event to be held after introduction of GST.

- Unavailed CENVAT credit in respect of service tax paid on assignment of the right to use any natural resource (which is allowed evenly over a period of three years currently), which is not carried forward in the concerned returns furnished under the current laws.

- Unavailed CENVAT credit / input tax credit in respect of works contract, including on goods held in stock on introduction of GST, which is not carried forward in the concerned returns furnished under the current laws.

- Adjustment of balance of General Sales Tax paid in advance (availing exemption from entry tax) in Jammu & Kashmir; which is currently allowed to be adjusted against General Sales Tax on specified services.

- Transition of any existing tax incentive scheme under current indirect tax regime to GST regime, including payment of GST and reimbursement, thereafter, of such GST paid.

3. Legal provisions for transition in Model GST Law

The transition would take effect on the date (appointed day) on which the GST regime is introduced. The current laws for which the transition would apply is yet to be specified in the definition of "earlier law", in Clause 2(39) of the Model GST Law. Clause 165 to Clause 197 of the Model GST Law and Clause 21 of IGST Law consider various scenarios in the explicit

provisions aiding the transition. Some of them are discussed herein:

3.1 Applicability of tax

- GST is payable on supply of goods and/or services on or after introduction of GST under a long-term construction / works contract entered into before introduction of GST.
- GST is not payable on progressive or periodic supply of goods and/or services on or after introduction of GST where the consideration, full or part, for the said supply has been received before introduction of GST and the duty or tax payable thereon has already been paid under the current law.
- Tax in respect of taxable services / goods shall be payable under current law to the extent the point of taxation in respect of such taxable services / goods arise before introduction of GST. GST is payable on that portion of the supply of goods / services where the point of taxation does not arise before introduction of GST.
- GST is payable on import / interstate supply of goods / services made after introduction of GST, even if the invoice relating to such supply or payment has been received or made before the introduction of GST; however, GST is not payable on such import / inter-State supply where tax on such import/interstate supply is paid in full under the current law. In respect of import of services, if tax is paid in part under current law, then GST would be payable on balance amount of such import / inter-State supply.

3.2 Input tax credit

- A registered taxable person, who is not permitted for composition levy, is allowed to take input tax credit of amount of:
  - CENVAT credit, State-VAT and Entry Tax, which is carried forward in the concerned returns furnished under the current laws; if such amount is admissible as input tax credit under GST regime
  - Unavailed CENVAT credit / input tax credit in respect of capital goods, which is not carried forward in concerned returns furnished under the current laws; if such amount is admissible as input tax credit under the current laws as well as under GST regime.

  Capital goods, for the unavailed CENVAT credit, means the goods as defined under Rule 2(a) of CENVAT Credit Rules, 2004.
- A registered taxable person having centralised registration under current Central indirect tax law is allowed to take input tax credit of amount of CENVAT credit which is carried forward in return furnished under the current law, if such amount is admissible as input tax credit under GST regime. The return, original or revised, is required to be filed within three months of the date of introduction of GST. Such credit is allowed to be transferred to any of the registered taxable persons (in a different State) having the same PAN for which the centralised registration is obtained under current law.
- A registered taxable person, who is
  - Not liable to be registered under the current Central indirect tax law
  - Engaged in the manufacture of exempted goods
  - Engaged in provision of exempted services
  - Providing works contract service and availing benefit of Notification

No. 26/2012-ST, dated June 20, 2012 for service tax

- Composition taxpayer under the current law - paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable (but not permitted for composition levy under GST regime)
- A first stage dealer
- A second stage dealer
- A registered importer

shall be entitled to take credit of eligible specified duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. The credit would be allowed if (i) supplier of services is not eligible for any abatement under GST regime (ii) the benefit of such credit is passed-on by way of reduced prices to the recipient; (iii) such amount is admissible as input tax credit under GST regime; (iv) the invoice and/or other prescribed documents evidencing payment of duty / tax, basis which credit is taken should have been issued not earlier than 12 months immediately preceding the date of introduction of GST. However, where a registered taxable person, other than a manufacturer or a supplier of services, is not in possession of an invoice and/or other prescribed documents, then he will be allowed to take input tax credit at the rate and in the manner prescribed.

- A registered taxable person, who is
  - Not liable to be registered under the current State indirect tax law
  - Engaged in the sale of exempted goods
  - Composition taxpayer under the current law – paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable (but not permitted for composition levy under GST regime)

  and is be liable to tax under GST regime, shall be entitled to take credit of State-VAT and Entry Tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock. The credit would be allowed if (i) the benefit of such credit is passed-on by way of reduced prices to the recipient; (ii) such amount is admissible as input tax credit under current law as well as GST regime; (iii) the invoice and/or other prescribed documents evidencing payment of duty / tax basis which credit is taken should have been issued not earlier than 12 months immediately preceding the date of introduction of GST.

- A registered taxable person shall be entitled to take input tax credit of eligible duties and taxes, State-VAT, Entry Tax, as applicable, in respect inputs or input services received on or after date of introduction of GST, but the duty or tax in respect of which has been paid before such date. In such cases, the invoice or any other duty/tax paying document basis which credit is to be taken should be recorded in the books of account of such registered taxable person within 30 days from date of introduction of GST.

- Where any goods, including capital goods, belonging to the principal are lying at the premises of the agent who is a registered taxable person under GST regime, the agent shall be entitled to take input tax credit of the State-tax paid on such goods. The principal should not have availed input tax credit or reversed such credit in respect of such goods. The invoice basis which credit is taken by the agent should have been issued not earlier than

12 months immediately preceding the date of introduction of GST.

- Input tax credit on account of any services received prior to introduction of GST by an Input Service Distributor shall be eligible for distribution as input tax credit under GST regime. The invoice, in this regards, may be received on or after introduction of GST.
- Any amount of input tax credit of State tax in respect of branch transfers reversed prior to introduction of GST shall not be admissible as input tax credit under GST regime.
- In respect of input services, where CENVAT credit of service tax was availed under the current law and has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed under GST regime provided payment of the consideration for that supply of services has been made within a period of three months from introduction of GST.
- Litigation proceeding (appeal, revision, review or reference) initiated before / on/ after the introduction of GST relating to a claim for CENVAT credit / State-VAT credit / credit of Entry Tax under the current law, shall be disposed of in accordance with the provisions of current law. Any amount of credit held to be admissible shall be refunded in cash to the claimant and not be admissible as input tax credit under GST regime, except where the balance of the said amount has been carried forward under GST regime. Any amount of credit held to be recoverable shall be recovered as an arrear of tax and the amount so recovered shall not be admissible as input tax credit under GST regime.

3.3 Goods removed for certain processes

GST is not payable on following goods, if the same are returned to the principal within six months of introduction of GST:

- Inputs, removed to a job worker for further processing, testing, repair, reconditioning or any other purpose
- Semi-finished goods, removed to any other premises for certain manufacturing processes
- Finished goods, removed to any other premises for carrying out tests or any other process not amounting to manufacture

If such inputs / goods are not returned so, input tax credit taken on such inputs / goods shall be liable to be recovered by tax authorities. The principal is allowed to transfer the said semi-finished / finished goods, within six months of introduction of GST, to the premises of any registered taxable person for supplying therefrom on payment of GST in India or without payment of GST for exports.

3.4 Return of exempted / dutiable / taxable goods

GST is not payable on exempted / dutiable / taxable goods which were removed / sold, not earlier than six months prior to introduction of GST, and returned to any place of business within six months after introduction of GST. GST is also not payable on goods sent on approval basis, not earlier than six months prior to introduction of GST, and returned to the sender within six months after introduction of GST. If goods are not returned so, GST would be payable by the person (registered under GST law) returning the goods. GST would be payable by the person who has sent the goods on approval basis, if such goods are liable for GST and are not returned within a period of six months from introduction of GST.

3.5 Refund claims

- Any refund claim filed before / after the introduction of GST of any amount of CENVAT credit / duty / tax / input tax credit or interest paid before introduction of GST, including in respect of goods / services exported before / after introduction of GST, shall be disposed in accordance with the provisions of current law. Any amount eventually held to be admissible shall be refunded in cash to the claimant, except where the amount is carried forward in the return from the current law to GST regime. CENVAT credit shall get lapsed where any refund of CENVAT credit is rejected.

- Any refund claim filed after the introduction of GST of any tax deposited after introduction of GST in respect of services not provided, shall be disposed in accordance with the provisions of current law.

3.6 Assessment or legal proceedings

- Any assessment or adjudication proceedings instituted under the current law before / on / after introduction of GST, any amount of tax, interest, fine or penalty becomes recoverable shall be recovered as an arrear of tax under GST laws and the amount so recovered shall not be admissible as input tax credit under GST regime. Where such amount becomes refundable to the taxable person, the same shall be refunded in cash under current laws.

- Litigation proceeding (appeal, revision, review or reference) initiated before / on / after the introduction of GST relating to any output duty or tax liability under the current law, shall be disposed of in accordance with the provisions of current law. Any amount held to be admissible to the claimant shall be refunded in cash and not be admissible as input tax credit under GST regime. Any amount held to be recoverable shall be recovered as an arrear of tax and the amount so recovered shall not be admissible as input tax credit under GST regime.

3.7 Revision of returns furnished under current law

Where any return furnished under current law is revised after introduction of GST and due to such revision any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, same shall be recovered as an arrear of tax under GST laws and the amount so recovered shall not be admissible as input tax credit under GST regime. Where any such amount is found refundable or any amount of CENVAT credit is found to be admissible to the taxable person, the same shall be refunded in cash under current laws. A registered taxable person issuing the said invoice / credit note will be allowed to reduce his GST liability, only if the recipient of the invoice / credit note reduces his input tax credit corresponding to such reduction of GST liability.

3.8 Price revision

Where the price of any goods / services is revised upwards or downwards on / after introduction of GST, the registered taxable person who had removed / sold / provided such goods / services may issue to the recipient a supplementary invoice / debit note or credit note within 30 days of the price revision. Such supplementary invoice / debit note or credit note shall be deemed to be made towards an outward supply under GST laws.

3.9 Tax withholding

Where tax is withheld at source under current law in respect of any sale of goods and invoice was also issued by the supplier before introduction of GST, then no tax is required to be withheld at source under GST laws, even if the payment is made to the supplier on / after introduction of GST.

4. Repeal and savings

The enactments in respect of which taxes are to be subsumed into GST would be repealed. On introduction of GST, the (State) General Sales Tax / Value Added Tax laws and the Central Excise laws shall apply only in respect of specified goods. Such repeal / restrictions will not –

(a) Revive anything not in force or existing at the time at which the repeal / restriction takes effect; or

(b) Affect the previous operation of the repealed / unrestricted Acts or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed / unrestricted Acts; or

(d) Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed / unrestricted Acts; or

(e) Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, adjudication and other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been enacted / so restricted.

(f) Affect any proceeding including that relating to an appeal, revision, review or reference, instituted before introduction of GST under the current laws and such proceeding shall be continued under the current laws if GST had not come into force and the said current laws had not been repealed.

5. Transition time

We in India are, generally, quick and comfortable to undertake things in shortest possible time, whether it is readiness for Commonwealth Games or for GST. Similar, was the situation of timelines when State-VAT was introduced in 2005. This is in contrast to the global practices, say, implementation of VAT Package in United Kingdom, wherein the changes to be introduced in 2015 were announced and intimated in 2010 itself. Timelines for transition aspects discussed / not discussed in this article would vary from industry to industry / business to business.

Transition into GST is the first of the efforts, including for strategy, structuring and statutory compliances, to be undertaken by businesses. Planning for such transition and its proper implementation will not only allow businesses to arrest disruption and/or damages, but also enable it to be operationally ready and be compliant for GST.

> The reality of your own nature should determine your speed. If you become restless, speed up. If you become tense and high-strung, slow down.
>
> — *Dr. A. P. J. Abdul Kalam*

Bharat Raichandani, *Advocate*

Where to Tax?

"…..If you are allowed to tax a dog it must be within the territorial limits of your taxable jurisdiction. You cannot tax it if it is born elsewhere and remains there simply because its mother was with you at some point of time during the period of gestation. Equally, after birth, you cannot tax it simply because its tail is cut off (as is often done in the case of certain breeds) and sent back to the fond owner, who lives in your jurisdiction, in a bottle of spirits, or clippings of its hair. There is a nexus of sorts in both cases but the fallacy lies in thinking that the entity is with you just because a part that is quite different from the whole was once there. So with a sale of a motor car started and concluded wholly and exclusively in New York or London or Timbuctoo. You cannot tax that sale just because the vendor lives in Chennai, even if the motor car is brought there and even assuming there is no bar on international sales, for the simple reason that what you are entitled to tax is the sale, and neither the owner nor the car, therefore unless the sale is situate in your territory, there is no real nexus….." said Justice Vivian Bose, in an albeit dissenting view, in TISCO's[1] case, however, the same truly sets the mood for this piece.

The point that I am trying to make is that to determine the situs of supply is not a child's play, but is certainly one marred by controversies and onerous. We must understand that it is an element on which many divergent views are possible but what is clear to me is that a supply cannot have more than one situs. It is not a mystical entity that can be one in many and many in one at one and the same time, here, there and everywhere all at once nor is it a puckish elf that pops up now here, now there and next everywhere. Supply of goods and services is a very mundane business transaction of the earth. A mundane business concept cannot be given an ethereal omnipresent quality that enables a horde of hungry hawks to swoop down and devour it simultaneously all over the land. It can have only one existence and one situs. Opinions may, obviously, stand apart on where that is and how it is to be determined, but it is the bounden duty of the Legislature to do so. The tool used for achieving the desired result is a convenient fiction of deeming and, in my view, necessarily so.

"Goods", it is a given, are relatively and comparatively easier to trace and track. Goods being tangible can be touched, felt, stored, transported and consumed at a later point of time. Amusingly and importantly, goods can be confiscated. However, on the other hand, "services" being intangible in nature, pose a host of horrors. 'Service'[2] as the act of doing

1. The Tata Iron & Steel Co. Limited vs. The State of Bihar 1958 AIR 452 (SC)
2. Black's Law Dictionary (Seventh Edition)

something useful for a person or company for a fee. An intangible commodity in the form of human effort, such as labour, skill or advice. "Service"[3] can be distinguished from products because they are intangible, inseparable from the production process, variable, and perishable. Services are intangible because they can often not be seen, tasted, felt, heard, or smelled before they are purchased. Services are inseparable from their production because they are typically produced and consumed simultaneously. Finally, services are perishable because they cannot be stored. Hence, the need for providing for artificial rules determining the place of supply of service.

Goods and Services Tax (GST) is likely to be introduced, in our country, in the next financial year, not later than 16th September, 2017. Touted as the grandest tax reform since independence, the Model IGST Law, circulated in November, 2016, provides for the principles for determining place of supply of goods and services.

The basic principle on which most VAT laws, including the impending GST rests, is that it is a 'destination based consumption tax'[4]. Similar view has been re-iterated by the Supreme Court in the case of All India Federation of Tax Practitioners'[5] case. Simply put, it would be levied in the State in which the goods and services are consumed/used. Effective use and enjoyment takes place where a recipient actually consumes services irrespective of the contractual arrangements, payments or beneficial interest. There are instances of international practice of treating such transactions as liable to tax. For example, in New Zealand, services performed under a contract to a non-resident who is outside New Zealand, but provided to a third party who is in New Zealand, are liable for tax. An example given there, which is a common one, is that where a non resident tour operator purchases accommodation from New Zealand hotels and incorporates them into travel packages for tours of New Zealand, which are sold to non-resident tourists. The supply of accommodation under the contracts between the New Zealand hotels and the non-resident tour operator is liable to GST. Similarly, parents outside the country get their children admitted to a university in New Zealand. Such supplies are not treated as exports and are liable to GST. However, in this article, we may refer to the use and enjoyment rules in UK, which, though, apply to telecommunications services; broadcasting services; electronically supplied services (for business customers); hired goods; and hired means of transport but the EC directives allows the member states to extend this rule to other supply of services also.

Section 3 of the IGST Act lays down the broad criteria to determine which supply of goods and services is in the course of interstate trade or commerce. It provides that, subject to provisions of section 7, the supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are different states. Section 4 thereof provides for supplies of goods and services in the course of intra-State trade or commerce. It provides that where the location of the supplier and the place of supply are in the same state, it shall be an intra-state supply.

Similarly, section 3(2) provides that, subject to section 9, the supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are different States. Section 4(2) thereof provides that where the location of the supplier and the place of supply are in the same state, it shall be an intra-state supply.

Thus, it becomes essential to understand the terms "location of the supplier" and "place of supply". The location of the supplier of the goods is not defined. Section 9 of the Central

3. Encyclopaedia Britannica
4. International VAT Guidelines published by OECD in April, 2014
5. All India Federation of Tax Practitioners vs.. Union of India [2007] 10 STT 166

Sales Tax Act, 1956 provides that tax has to be deposited with the State from where the movement of the goods commences. Hence, the proposed section seems to be in stark contrast with the same. However, Section 2(18) defines the term "location of the supplier of services". It means: (a) where a supply is made from a place of business for which registration has been obtained, the location of such place of business; (b) where a supply is made from a place other than a place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment; (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and (d) in absence of such places, the location of the usual place of residence of the supplier. Section 2(22) defines the term "place of business" in an inclusive manner. It is well settled that use of the term "includes" in a definition clause is expansive[6]. Hence, the list stated thereafter is merely illustrative and not exhaustive.

With this background, let us look at Section 7 (Place of supply of goods) and Section 9 (Place of supply of services).

Place of Supply of Goods

Section 7 applies to transactions within India. In other words, section 7 would not come into operation for importation of goods into India or exportation of goods out of India. Thus, Section 7 would spread its wings for supply of goods within India. The place of taxation is determined by where the goods are supplied. This not only depends on the nature of the goods supplied, but also on how the supply is made.

(i) Where a supply involves movement of goods, place of supply shall be the location of the goods at the time at which movement of goods terminated or delivery to the recipient. Simply put, location of the delivery of the goods.

(ii) Where a supply does not involve movement of goods, place of supply shall be the location of such goods at the time of the delivery to the receiver.

(iii) Where the goods are assembled or installed at site, place of supply shall be the place of such installation or assembly.

(iv) Where goods are supplied on board of a conveyance (like on vessel, aircraft, train or motor vehicle), place of supply shall be the location at which such goods are taken on board.

Where place of supply cannot be determined in terms of above, then it shall be determined in accordance with the law made by Central Government on the recommendation of the Council. Broadly, the said provision mirrors the provisions of European Union (EU) VAT (Articles 31 to 37 of the EU VAT Directive) for determining the place of taxation.

"Bill to – Ship to" transactions

Section 7(3) provides that where the goods are delivered by the supplier to a recipient or any other person, on the direction of the third person, whether acting as an agent or otherwise, before or during the movement of the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person. On perusal of this provision, it can be seen that the supply can be intra-state, but the tax trigger i.e. place of supply would be the location of the third person who gives instructions for delivery of the goods. In other words, a person could supply goods intra-state (which ideally should attract CGST + SGST), however, if the "third person" who gives instructions for such supply is located outside the particular state, then, regardless of the actual

6. Regional Director vs. High Land coffee works 1991 (3) SCC 617

movement of goods, the location of such person would be deemed to be the place of supply, thereby inviting the eye of IGST. As a logical corollary, if the 'third person', is located in the same state as the supplier but issues instructions for delivery of the goods on inter-State basis, then, regardless of the actual movement of goods, his location would be deemed to be the place of supply and result in applicability of CGST + SGST.

Another angle to be considered here is what would be the nature of the second leg of the transaction, i.e. between the 'third person' and the ultimate customer who receives the goods. Whether a transaction triggers IGST or CGST+SGST is based on whether the supply is interstate or intra-state. Insofar as the 'bill to - ship to' model is concerned, there is a single transaction involving movement of goods from the supplier to the consumer/customer. This being the case, it needs to be seen as to who the transactions between the 'third person' and the ultimate consumer/customer would be treated. A direct fallout would be the eligibility of input credit corresponding to the above transaction, which is opaque.

Place of supply of services

Section 8 deals with the provisions to determine the place of supply in case of services. This section, to a great extent, in my view, is a continuation of the Place of Provision of Service Rules, 2012. Here, two important definitions are "location of the supplier of services" (already discussed above) and "location of the recipient of services".

Before going ahead to discuss the provisions of this section, we must have the understanding of "Location of Service Provider" and "Location of Service Receiver".

Section 2(17) provides that "location of the recipient of services" means (a) where a supply ID received at a place of business where registration has been obtained, the location of such place of business; E.g: XYZ Ltd. received service at its office located at Gurugram and also get same office registered under GST law. In this case Location of Business Establishment is Gurugram; (b) where a supply is received at a place other than place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment; E.g. XYZ Ltd. also received service at its office located at Rohtak (for this office registration is not taken). In this case Location of Fixed Establishment is Rohtak. (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and (d) in absence of such places ((a) to (c) above), the location of the usual place of residence of the person. Fixed establishment has been defined under section 2(8).

Section 9 applies to transactions within India. In other words, section 9 would not come into operation for importation of services into India or export of services out of India. Thus, Section 9, again, would spread its wings for supply of services within India.

The general rule or the omnibus rule states that the place of supply of services shall be the location of the service receiver, where a service is provided to a registered person. In other words, business to business transaction (B2B). Where the service is provided to an unregistered person then place of supply shall be the location of service receiver, if address on records is available, otherwise the location of service provider.

Special provisions have been carved out for specific situations or specific supplies. Broadly, they are thus:

I. Service related to immovable property such as architects, interior decorators, etc, the place of supply is the location where such immovable property is located or

intended to be located. Similarly, services by way of lodging or accommodation in a hotel etc or services by way of accommodation in any immovable property for organising any marriage or social functions etc would also be the location of the immovable property. In Heger Rudi GmBbh[7] case, the European Court of Justice held that the supply of Austrian River Fishing rights by a German company is taxable in Austria.

II. The place of supply of restaurant and catering services and services in relation to training, performance appraisal, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery shall be the location where the services are actually performed.

III. The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located. In Jugen Dudda's [8] case, the European Court of Justice held that supply of sound engineering services includes supply of equipment would be artistic and entertainment activity and hence, would be taxable in the country where the event was held, though a single payment was made by the organiser.

IV. The place of supply of services in relation to training and performance appraisal to a registered person shall be the location of such person and in case of a unregistered person would be the place where it is performed.

V. The place of supply of services provided by way of: (a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or (b) services ancillary to organisation of any of the above events or services, or assigning of sponsorship of any of the above events, to a registered person, shall be the location of such person; else, the place where the event is held

VI. The place of supply of services by way of transportation of goods, including by mail or courier to a registered person, shall be the location of such service receiver; else, shall be the location at which such goods are handed over for their transportation.

VII. The place of supply of passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

VIII. The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

IX. The place of supply of telecommunication services including data transfer, broadcasting, cable and DTH services be the place where it is installed, however, in case of mobile connections for telecommunication, the address of the recipient of the services on record of the supplier.

X. The place of supply of banking and other financial services including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services. Where the

7. Heger Rudi GmbH C-166/05 dated 7th September, 2006

8. Jurgen Dudda C-327/94 dated 26th September, 1996

service is not linked to the account of the recipient of services, the place of supply shall be location of the supplier of services.

XI. The place of supply of insurance service shall be when the supply is made to a registered person, the location of such person, else, the location of the recipient of the services on records of the supplier of services.

XII. The place of supply of advertisement services to the Central or State Government or a statutory body or local authority shall be as located in each of the States and the value shall be apportioned.

Thus, from the above, it appears that the place of taxation is determined by where the services are supplied. This depends not only on the nature of the service supplied but also on the status of the customer receiving the service. A distinction has been made between a taxable person acting as such (a business acting in its business capacity) and a non-taxable person (a private individual who is the final consumer). Broadly, the above provisions mirror the provisions of European Union (EU) VAT (Articles 44 to 59c of the EU VAT Directive) for determining the place of taxation effective from 2010.

Treatment of Branch Transfers/ Consignment Transfers/ In-Transit Sale

Under the proposed GST regime, the consignment sales and branch transfers, across States will be subject to treatment in the same manner as if it was an inter-State transaction in the nature of sales between two independent traders. Therein, inter-State sale will be charged to IGST which will be equal to SGST+CGST. Inter-State buyer will be eligible to take full credit of IGST. To tax consignment sales and branch transfers, an artificial definition of 'supply' has been provided for in section 3. In fact, the said definition has the widest possible amplitude. This seems to be in line with the basic principle of tax to travel to the destination State.

In the present taxation regime, States do not have power to tax intra-state stock transfers due to definite meaning assigned to words 'sale of goods' which is judicially recognised through various judgments including celebrated Gannon Dunkerly case[9] Earlier, even inter-State stock transfers were not taxable. The Law Commission of India in its 61st Report made certain recommendations and noticed that the provisions of then existing Central Sales Tax Act were insufficient to tax the consignment transfers from branch to another, as it was beyond the concept of sale. This was resulting in scope of avoidance of tax by practice of inter-State consignment transfers from one State to a branch or agent in another State or vice versa. The Law Commission recommended that the definition of 'sale' in the Central Sales Tax Act, after carrying out the requisite Constitutional Amendment be amended. The Union of India, in part, accepted the recommendations but instead of amending the definition of sales in Central Sales Tax Act, inserted a new Entry in the Union List in the shape of Entry 92B and also inserted a new sub-clause (4) after sub-clause (g) in Article 269(1) of the Constitution. The Parliament also amended clause (3) of Article 269. The effect of the aforesaid amendments is that the field of taxation on the consignment/ dispatch of goods in the course of inter-State trade or commerce expressly came within the purview of the legislative competence of the Parliament. Section 6A was inserted in Central Sales Tax Act, 1956 by The Central Sales Tax (Amendment) Act, 1972. Under the scheme of this section, there is rebuttable presumption

9. State of Madras vs. Gannon Dunkerley and Co 2002-TIOL-493-SC-CT-LB

that every inter-State movement of goods is sale from originating State to destination State. The presumption is rebuttable by originating State dealer by obtaining a form called 'Form F' from the destination State dealer. This presumption is there even if the movement of goods is pursuant to a contract of job work or even pursuant to inter-State purchase return.[10]

GST delink distribution and logistics decisions from taxation?

It is widely believed, or at least propagated so, that GST Law will delink distribution and logistics decisions from taxation as every inter-State movement of goods will be taxed in originating State with 100 per cent tax credit in destination State.

As stated above, the fabric of the Indian GST Law appears to be coloured with VAT law in European Union (EU). Under EU VAT scheme, if an entrepreneur transfers specific goods from one member State to another member State, the entrepreneur is considered to have made a deemed supply to himself, followed by a deemed acquisition by himself. The supply is subject to zero per cent VAT in originating State, whereas the deemed acquisition is subject to local VAT in the country of arrival. If the entrepreneur moving goods either uses the goods or intends to use them for taxable supplies, VAT due on the deemed acquisition can be simultaneously deducted from VAT due on taxable supplies. This is done on the VAT return. In India, this model is already in vogue in some States [viz. Gujarat, Karnataka, Kerala, Tamil Nadu and Uttar Pradesh] for levy of purchase tax. In these States, on purchase from VAT unregistered dealer, the purchasing dealer becomes liable to tax with facility of tax credit. With this process, chain of Set-off which is broken due to entry of unregistered dealer is rebuilt. Both, in EU stock transfer tax model and Indian States purchase tax model, there is no blockage of funds and thus, transaction remains cash flow neutral.

Per contra, under proposed GST scheme, if stock transfers are made liable to tax in originating State, businesses may land in a situation of cash flow issues. The supplier will have to pay in cash (or through accumulated credit) in the month/quarter of dispatch. Though equal amount will be available as credit in the arrived State, money will come into circulation only when goods are sold in the arrived State. In many of the seasonal industries, where production continues on a regular basis but sale may materialise in specific periods (fertilizer, woollen clothes etc.), if the goods are warehoused in a State other than the State of manufacture, funds may be blocked for a considerably longer duration. Even in industries where production and sale is evenly distributed throughout the year, certain level of inventory needs to be maintained in different States. Thus, funds would continue to remain unavailable to that extent. This will summate to backpack cost of inventory. To avoid such a situation, the supplier will be tempted to maximise warehousing in the state of manufacture itself.

All, in all, to conclude, it is possible to have a perfect law, when none of us are perfect. In my view, time and tide would border the proposed draft law to propriety.

10. Ambica Steel Limited 2009 24 VST 356 (SC)

B. V. Jhaveri, *Advocate*

DIRECT TAXES
Supreme Court

S. 10A/ 10B: The deduction of the profits and gains of the business of an eligible undertaking has to be made independently and before giving effect to the provisions for set off and carry forward contained in s. 70, 72 and 74. The deductions u/s. 10A/10B are prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income

CIT. & Anr. vs M/s. Yokogawa India Ltd.

[CIVIL APPEAL No. 8498 of 2013, dated 16th December, 2016]

The Supreme Court had to consider the following questions arising from the judgement of the Karnataka High Court in Yokogawa India Ltd 341 ITR 385 (Kar.):

(i) Whether Section 10A of the Act is beyond the purview of the computation mechanism of total income as defined under the Act. Consequently, is the income of a Section 10A unit required to be excluded before arriving at the gross total income of the assessee?

(ii) Whether the phrase "total income" in Section 10A of the Act is akin and pari materia with the said expression as appearing in Section 2(45) of the Act?

(iii) Whether even after the amendment made with effect from 1-4-2001, Section 10A of the Act continues to remain an exemption section and not a deduction section?

(iv) Whether losses of other section 10A units or non 10A units can be set off against the profits of 10A units before deductions under Section 10A are effected?

(v) Whether brought forward business losses and unabsorbed depreciation of 10A units or non 10A units can be set off against the profits of another 10A units of the assessee.

The Supreme Court held as under:

(i) We have considered the submissions advanced and the provisions of Section 10A as it stood prior to the amendment made by Finance Act, 2000 with effect from 1-4-2001. The amended Section 10A thereafter and also the amendment made by Finance Act, 2003 with retrospective effect from 1-4-2001.

(ii) The retention of Section 10A in Chapter III of the Act after the amendment made by the Finance Act, 2000 would be merely suggestive and not determinative of what

is provided by the Section as amended, in contrast to what was provided by the unamended Section. The true and correct purport and effect of the amended Section will have to be construed from the language used and not merely from the fact that it has been retained in Chapter III. The introduction of the word 'deduction' in Section 10A by the amendment, in the absence of any contrary material, and in view of the scope of the deductions contemplated by Section 10A as already discussed, it has to be understood that the Section embodies a clear enunciation of the legislative decision to alter its nature from one providing for exemption to one providing for deductions.

(iii) The difference between the two expressions 'exemption' and 'deduction', though broadly may appear to be the same i.e., immunity from taxation, the practical effect of it in the light of the specific provisions contained in different parts of the Act would be wholly different.

(iv) Sub-section 4 of Section 10A which provides for *pro rata* exemption, necessarily involving deduction of the profits arising out of domestic sales, is one instance of deduction provided by the amendment. Profits of an eligible unit pertaining to domestic sales would have to enter into the computation under the head "profits and gains from business" in Chapter IV and denied the benefit of deduction. The provisions of Sub-section (6) of Section 10A, as amended by the Finance Act of 2003, granting the benefit of adjustment of losses and unabsorbed depreciation etc., commencing from the year 2001-02 on completion of the period of tax holiday also virtually works as a deduction which has to be worked out at a future point of time, namely, after the expiry of period of tax holiday. The absence of any reference to deduction under Section 10A in Chapter VI of the Act can be understand by acknowledging that any such reference or mention would have been a repetition of what has already been provided in Section 10A. The provisions of Sections 80HHC and 80HHE of the Act providing for somewhat similar deductions would be wholly irrelevant and redundant if deductions under Section 10A were to be made at the stage of operation of Chapter VI of the Act. The retention of the said provisions of the Act i.e., Sections 80HHC and 80HHE, despite the amendment of Section 10A, in our view, indicates that some additional benefits to eligible Section 10A units, not contemplated by Sections 80HHC and 80HHE, was intended by the legislature. Such a benefit can only be understood by a legislative mandate to understand that the stages for working out the deductions under Sections 10A and 80HHC and 80HHE are substantially different. This is the next aspect of the case which we would now like to turn to.

(v) From a reading of the relevant provisions of Section 10A it is more than clear to us that the deductions contemplated therein is *qua* the eligible undertaking of an assessee standing on its own and without reference to the other eligible or non-eligible units or undertakings of the assessee. The benefit of deduction is given by the Act to the individual undertaking and resultantly flows to the assessee. This is also more than clear from the contemporaneous Circular No. 794 dated 9-8-2000 which states in paragraph 15.6 that:

"The export turnover and the total turnover for the purposes of sections 10A and 10B shall be of the undertaking located in specified zones or 100% Export Oriented Undertakings, as the case may be, and this shall not have any material

relationship with the other business of the assessee outside these zones or units for the purposes of this provision."

(vi) If the specific provisions of the Act provide [first proviso to Sections 10A(1), 10A(1A) and 10A(4)] that the unit that is contemplated for grant of benefit of deduction is the eligible undertaking and that is also how the contemporaneous Circular of the department (No.794 dated 9-8-2000) understood the situation, it is only logical and natural that the stage of deduction of the profits and gains of the business of an eligible undertaking has to be made independently and, therefore, immediately after the stage of determination of its profits and gains. At that stage the aggregate of the incomes under other heads and the provisions for set-off and carry forward contained in Sections 70, 72 and 74 of the Act would be premature for application. The deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income. The somewhat discordant use of the expression "total income of the assessee" in Section 10A has already been dealt with earlier and in the overall scenario unfolded by the provisions of Section 10A the aforesaid discord can be reconciled by understanding the expression "total income of the assessee" in Section 10A as 'total income of the undertaking'.

(vii) For the aforesaid reasons we answer the appeals and the questions arising therein, as formulated at the outset of this order, by holding that though Section 10A, as amended, is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV of the Act and not at the stage of computation of the total income under Chapter VI. All the appeals shall stand disposed of accordingly.

S.4 : Law laid down in Sahney Steel 228 ITR 253 (SC) and Ponni Sugars 306 ITR 392 (SC) regarding the taxability of subsidies as a revenue receipt does not apply to voluntary subsidies (subvention) paid by a holding company to its loss making subsidiary. The said subsidy is to protect the capital investment of the holding company and is a capital receipt in the hands of the recipient

Siemens Public Communication Networks Pvt. Ltd. vs. CIT

Civil Appeal No.11934 of 2016, dated 7th December, 2016

[Arising out of Special Leave Petition (Civil) No. 6946/2014]

The subvention received by the assessee-company from its parent Company in Germany in a situation where the assessee-company was making losses has been treated to be a revenue receipt by the Assessing Officer. Though the First Appellate Authority and the Income Tax Appellate Tribunal has reversed the said finding, the High Court, by the orders under challenge, has restored the view taken by the Assessing Officer (41 taxmann.com 139, Kar). Following the appeal of the assessee, the Supreme Court held as under:

(i) The question of law that was presented before the High Court, namely, whether subvention was capital or revenue receipt, was sought to be answered by the High Court by making a reference to two decisions of this Court in *Sahney Steel & Press Works Ltd., Hyderabad versus Commissioner of Income Tax, A.P.-I, Hyderabad [(1997) 228 ITR 253]* and

Commissioner of Income Tax, Madras versus Ponni Sugars and Chemicals Limited [(2008) 306 ITR 392 (SC)]. The view expressed by this Court that unless the grant-in-aid received by an assessee is utilised for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt was held by the High Court to be a principle of law applicable to all situations. The aforesaid view tends to overlook the fact that in both Ponni Sugars (supra) and Sahney Steel (supra) the subsidies received were in the nature of grant-in-aid from public funds and not by way of voluntary contribution by the parent Company as in the present cases. The above apart, the voluntary payments made by the parent Company to its loss making Indian company can also be understood to be payments made in order to protect the capital investment of the assessee Company. If that is so, we will have no hesitation to hold that the payments made to the assessee Company by the parent Company for assessment years in question cannot be held to be revenue receipts. We also find such a view in a recent pronouncement in *Commissioner of Income Tax versus Handicrafts and Handlooms Export Corporation of India Ltd [(2014) 49 Taxmann.com 488 (Delhi)]* with which we are in respectful agreement.

(ii) For the aforesaid reasons, we allow the present appeals; set aside the order of the High Court and answer the liability of the assessee for the assessment years in question in the above manner.

S. 10(19A): Though principles of *res judicata* do not apply, the Department should not endlessly pursue matters which have attained finality in earlier years. Principles of interpretation of statutes explained. Interplay between s. 10(19A), section 23 of the Income-tax Act & s. 5(iii) of the Wealth-tax Act explained

Maharao Bhim Singh of Kota, Thr. Maharao Brij Raj Singh, Kota – Appellant(s) vs. Commissioner of Income-tax, Rajasthan-II, Jaipur – Respondent(s)

[Civil Appeal No. 2812 OF 2015, dated 5th December, 2016]

(i) No reliance could be placed on Section 5(iii) of the Wealth Tax Act while construing Section 10(19A) of the I.T. Act. It is due to marked difference in the language employed in both sections. In Section 10(19A) of the I.T. Act, the Legislature has used the expression "palace" for considering the grant of exemption to the Ruler whereas on the same subject, the Legislature has used different expression namely "any one building" in Section 5 (iii) of the Wealth Tax Act. We cannot ignore this distinction while interpreting Section 10(19A) which, in our view, is significant.

(ii) If the Legislature intended to spilt the Palace in part(s), alike houses for taxing the subject, it would have said so by employing appropriate language in Section 10(19A) of the I.T. Act. We, however, do not find such language employed in Section 10(19A). Section 23(2) and (3), uses the expression "house or part of a house". Such expression does not find place in Section 10(19A) of the I.T. Act. Likewise, we do not find any such expression in Section 23, specifically dealing with the 24 cases relating to "palace". This significant departure of the words in Section 10(19A) of the I.T. Act and Section 23 also suggest that the Legislature did not intend to tax portion of the "palace" by splitting it in parts.

(iii) It is a settled rule of interpretation that if two Statutes dealing with the same subject use different language then it is

not permissible to apply the language of one statute to other while interpreting such statutes. Similarly, once the assessee is able to fulfil the conditions specified in section for claiming exemption under the Act then provisions dealing with grant of exemption should be construed liberally because the exemptions are for the benefit of the assessee.

(iv) The question involved in this case had also arisen in previous assessment years' (1973-74 till 1977-78) and was decided in appellant's favour when Special Leave Petition(c) No. 3764 of 2007 filed by the Revenue was dismissed by this Court on 25-8-2010 by affirming the order of the Rajasthan High Court referred supra. In such a factual situation where the Revenue consistently lost the matter on the issue then, in our view, there was no reason much less justifiable reason for the Revenue to have pursued the same issue any more in higher courts.

(v) Though principle of *res judicata* does not apply to income-tax proceedings and each assessment year is an independent year in itself, yet, in our view, in the absence of any valid and convincing reason, there was no justification on the part of the Revenue to have pursued the same issue again to higher Courts. There should be a finality attached to the issue once it stands decided by the higher Courts on merits. This principle, in our view, applies to this case on all force against the Revenue [see M/s. Radhasoami Satsang, Saomi Bagh, Agra's case (supra)].

Section 147/148 : A Writ Petition to challenge the issue of a reopening notice u/s. 148 is maintainable as per the law laid down in Calcutta Discount 41 ITR 191 (SC). The law laid down in Chhabil Dass Agarwal 357 ITR 357 (SC) deals with the maintainability of a Writ to challenge the reassessment order and does not apply to a challenge to the reassessment notice

Jeans Knit Private Ltd. Bangalore vs. DCIT

[Civil Appeal No(s). 11189/2016, dated 8th December, 2016]

The High Courts dismissed the writ petitions preferred by the assessee challenging the issuance of notice under Section 148 of the Income-tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. The writ petitions were dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in *Calcutta Discount Limited Company vs. Income Tax Officer, Companies District I, Calcutta & Anr. [(1961) 41 ITR 191 (SC)]*. We, thus, set aside the impugned judgments and remit the cases to the respective High Courts to decide the writ petitions on merits. We may make it clear that this Court has not made any observations on the merits of the cases, i.e., the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to re-open the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments. We are conscious of the fact that the High Court has referred to the Judgment of this Court in *Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal, [(2013) 357 ITR 357 (SC)]*. We find that the principle laid down in the said case does not apply to these cases.

Ashok Patil & Priti Shukla, *Advocates*

DIRECT TAXES
High Court

1. **Business Expenditure – Section 36 – Interest on borrowed Capital**

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

The question of law in HC was whether the Tribunal grossly erred in upholding the order of AO and order of CIT(A), with regard to disallowance of interest u/s. 36(1)(iii) of IT Act which was actual expenditure incurred by the appellant but neither allowed as deduction u/s. 36(1)(iii) of IT Act as business expenditure nor treated as capital expenditure? CIT(A) rejected appellant's appeal relying on the earlier year order of AO. Tribunal upheld the finding of CIT(A). On appeal in HC, HC dismissed asessee's appeal and held that asset purchased by partners using the capital borrowed by firm for business of the firm having not been put to use by the firm in the relevant AY, interest on borrowed capital was not allowable deduction by virtue of proviso to S.36(1)(iii) . 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 legislature intended excluding all modes of the 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 asset for the purpose of its business.

2. **Substantial Question of Law – Section 260A – New Questions of law cannot be raised in an appeal before the High Court for the first time**

CIT vs K. N. Pan Pannirselvam (2016) 243 Taxman 219 (Mad.)

Assessee filed Return of Income from plantscape business and agricultural income. Assessment order was passed u/s. 143(3) and later on was reopened by treating the agricultural income as business income. CIT(A) allowed the income as derived from agricultural land. Tribunal upheld the decision of CIT(A). On appeal in HC, HC dismissed appeal of the Revenue as Revenue contended that assessee did not submit any document with regard to the expenditure incurred towards agricultural operations of nursery. Hon'ble HC held that where revenue had not raised issue of expenditure on income from flowers and petals of nursery during assessment proceedings and even during appeal, it could not be introduced for the first time in appeal u/s. 260A of IT Act.

3. **Professional or misconduct**

Counsil of Institute of Chartered Accountants of India vs. B.K. Dhingra (2016) 243 Taxman 90 (Del.)

A complaint was lodged by bank that Respondent, CA had obtained a term loan from the Bank. Report of disciplinary committee stated that as a CA, respondent was carrying on business directly and claimed that he was merely a director in his professional capacity. HC dismissed appeal of the assessee and held that since finding with reasons given by the council had not been controverted by respondent, he was guilty of professional misconduct and his name was to be removed from membership register of council for a period of three years.

4. Speculative Loss – Section 73 – Purchase and sale of sisiter concern resulted in loss – Section 73 not applicable.

Rajapalayam Mills Ltd. vs. DCIT (2016) 143 DTR (Mad.) 162

Assessee was engaged in business of manufacture and sale of yarn, purchased shares of sister concern by way of financial support, which shares on subsequent sale, resulted in loss. Assessee's assessment was reopened as AO felt that transaction in shares was hit by Explanation to S/73 of IT Act. Assessee contended in response to 148 notice and contended to treat transactions as short term capital loss. CIT(A) allowed appeal and cancelled reassessment. Tribunal reversed finding of the CIT(A) and restored finding of AO. On appeal in HC, HC allowed assessee' appeal and held that transaction was one time activity by way of investment and not settled otherwise than by actual delivery. When the purchase of shares cannot come with definition of business u/s. 2(13), there was no point in contending that the assessee was engaged in the business much less in a speculative business and not covered u/s. 43(5), it could not be brought under Explanation to S.73. When genuineness of transaction was not being disputed by Revenue, it could not be termed as tax avoidance device. Therefore loss was allowable as short term capital loss.

5. Limitation – Section 263 – Revision sought on an item in original assessment order and not reassessment order – Limitation is to be computed from date of original assessment order.

LG Electronics India (P) Ltd. vs. Principal Commissioner of Income Tax (2016) 143 DTR (All) 105

Writ Petition was filed by assessee challenging the notice issued by CIT u/s. 263 of IT Act as assessee contended that the notice was barred by limitation and hence it was not void *ab initio* and without jurisdiction. Allowing the WP, Hon'ble HC held that the reassessment order was not for review or reassessment was not for entire case but only in respect of particular item, i.e., transactions outside India on which no TDS was deducted, hence were disallowable u/s. 40 (a)(i). In other respect, original assessment order was maintained . In the facts and circumstances and considering the fact that impugned notice dt. 8-6-2016 issued by Principal CIT was in reference to some discrepancy in original assessment order dt. 31-10-2011 and not reassessment order dt. 26-3-2015, limitation would run from the date of regular order of assessment and in that view of the matter, impugned notice dt. 8-6-2016 was barred by limitation prescribed u/s. 263(2) of IT Act.

6. Sections 148, 147 – entire accounts relating to construction produced no defect found books not rejected – reference to DVO – assessment cannot be opened on the basis of DVO's report

Kissan Protienns (P) Ltd. vs. CIT (2016) 144 DRT (Guj.) 156

In the instant case the issue related to the accounts of construction had been gone into by the AO at sufficient length before framing the Assessment. The AO without rejecting the books of account had made a reference to the DVO, which was received subsequently. The AO sought to reopen the assessment on the basis of the report. The High Court held that without rejecting the books a reference to DVO could not be made and therefore held that DVO's report cannot be construed as tangible material which would warrant the authority to exercise the powers of reopening of assessment.

7. Penalty – Section 271(1)(c), 40(a)(ia) – disallowance of expenditure for failure to deduct tax at source – penalty not applicable

(2016) 144 DTR (Guj.) 307

In the instant case the assessee had claimed certain expenses, but had failed to deduct tax on such expenditures. The AO levied penalty for filing inaccurate particulars of income. The CIT(A) allowed the appeal of the assessee, but the Tribunal reversed the order of the CIT(A), and confirmed the penalty on the ground of concealment of income. The Hon'ble High Court held that the business expenditure claimed by assessee without making disallowance u/s. 40(a)(ia) for failure to deduct tax at source does not amount to furnishing inaccurate particulars of income attracting penalty u/s. 271(1)(c), and also the Tribunal was not justified in sustaining penalty on the ground of concealment when the AO had levied penalty for furnishing inaccurate particulars of income.

Jitendra Singh & Sameer Dalal
Advocates

DIGEST OF CASE LAWS
Tribunal

Reported

1. Charitable and religious trust – 12AA of the Income-tax Act, 1961 – Institution carrying out charitable or religious activities outside India, eligible for registration under section 12AA of the Act. A.Ys.: 2013-14 & 2014-15

Foundation for Indo-German Studies vs. DIT (Exemption) [2016] 161 ITD 226 (Hyderabad–Trib.)

The assessee trust is formed vide trust deed dated 28-3-2012. The assessee filed an application in Form No. 10A on 15-5-2012 seeking registration under section 12AA of the Act. The assessee in response to the queries raised by learned DIT furnished the details of activities undertaken by assessee-trust. From the details filed by the assessee trust, the learned DIT was observed that the assessee had not carried on any charitable activity as per its objects. Further, he noticed that the trust intended to carry out its activities outside India. The said trust was stated to be irrevocable trust under one clause whereas another clause empowered the trustees to dissolve the trust. There was also no clarity in the trust deed about maximum number of trustees and foreign nationals were made members of the trust. Thus, the learned DIT denied the registration applied by the assessee under section 12AA *vide* order dated 28-8-2014.

On appeal, the Hon'ble Appellate Tribunal held that from the order of the DIT, there is no comment/ objection about the objects of the assessee-trust. Section 12AA prescribes the procedure of registration by the learned DIT. It is only after going through the records and satisfying himself about the objects of the trust and genuineness of its activities, the learned DIT has to pass an order in writing registering the trust or institution. Since there is no comment about the objects of the trust being not charitable in nature, we presume that learned DIT has no objection to the objects of the trust.

The Hon'ble Appellate Tribunal has further held that there is no doubt that the trust is genuinely constituted and is active. So long as the trust has objects which are charitable in nature, it satisfies for registration under section 12AA of the Act, unless there is a finding that the trust is not genuine. Even if the objects are mixed such as charitable and religious objects, still the trust is entitled for registration under section 12AA of the Act.

2. Penalty where search has been initiated – Section 271AAA of the Income-tax Act, 1961 – Assessee admitted undisclosed income during

search – the learned A.O. himself in assessment order substantiated manner in which undisclosed income was derived – Imposition of penalty under section 271AAA was not justified. A.Y.: 2010-11

DCIT vs. Nirmal Kumar Agarwal [2016] 75 taxmann.com 266 (Jaipur – Trib.)

The assessee before the Appellate Tribunal is an individual. The assessee filed his return of income declaring total income of ` 10.16 crores. The assessee's business as well as residential premises were subjected to search and seizure operations on 24-8-2009. During the search operation some incriminating evidence was found and seized. During the course of search the statement of the assessee was recorded under section 132(4) of the Act in which he has admitted the additional income of ` 10,00,35,045/- and also explained the mode and manner by stating that this income has been derived from his business of financing and brokerage. The assessment was finalised determining income at ` 25.40 crores. The learned A.O., thereafter, passed the penalty order under section 271AAA of the Act levying penalty of ` 1.81 crores on undisclosed income declared during the course of search and seizure proceedings. On appeal, the first appellate authority deleted the penalty levied by the learned A.O. The Revenue being aggrieved by the order passed by learned CIT(A) preferred an appeal before the Hon'ble Appellate Tribunal. The Appellate Tribunal was pleased to uphold the order passed by learned CIT(A) by observing that the first requirement of immunity under section 271AAA is that the assessee admits the undisclosed income in a statement recorded under section 132(4) and specifies the manner in which the income has been derived. The assessee in response to the statement recorded under section 132(4) has admitted the undisclosed income and stated that the income was derived from the business of financing and brokerage. Therefore, the first condition is satisfied. Second requirement is to substantiate the manner in which the undisclosed income was derived. The learned CIT(A) has reported that the Assessing Officer himself in the assessment order and also in the penalty order reported that the surrender made by the assessee was on account of undisclosed business of financing and brokerage. Therefore, the second requirement is also met by the statement of the assessee. The third requirement is of law that the assessee pays tax along with interest on the undisclosed income. The revenue has not disputed the payment of tax and interest thereon. Therefore, in view of the above discussion, there is no reason to interfere in the order of the Commissioner (Appeals), same is hereby upheld.

Unreported

3. Capital Gain on transfer of capital asset other than residential house – Section 54F of the Income-tax Act, 1961 – The claim of deduction under section 54F cannot be denied merely because a residential house consists of more than one independent residential unit. A.Y. 2008-09

Munir Moiz Khorakiwala vs. ITO [ITA No. 6495/Mum/2012 order dated 16-11-2016]

The assessee is an individual. During the year under consideration assessee along with other co-owners sold a Shop No. 3, Vasant Villa CHS including two garages on 25-7-2008 for total consideration of ` 1.52 crores. Out of said consideration assessee received his share of ` 57 lakhs being 37.5% share in the property. The assessee on 23-6-2008 purchased two flats bearing Nos. 302 and 402 in Elite Residency and claimed the benefit of deduction under section 54F of the Act. The Ld. A.O. while finalising the assessment under section 143(3) of the Act denied the claim of deduction under section 54F by observing that the assessee purchased two houses and not "a residential house". Hence, assessee is not eligible to claim the benefit of

deduction under section 54F of the Act. On appeal, the First Appellate Authority upheld the order passed by the Ld. A.O. The assessee being aggrieved by the Appellate Order preferred an appeal before the Hon'ble Appellate Tribunal. The Hon'ble Appellate Tribunal was pleased to allow the appeal of the assessee and held that the contention of the revenue that the phrase 'a residential house' would mean one residential house, does not appear to the correct understanding. The expression 'a residential house' should be understood in a sense that building should be residential in nature and 'a' should not be understood to indicate a singular number. The Appellate Tribunal allowed the claim of the assessee relying on the decision of Hon'ble Delhi High Court in the case of ***CIT vs. Gita Duggal [2013] 357 ITR 153 (Del.)*** and decision of Hon'ble Karnataka High Court in the case of ***CIT vs. D. Ananda Basappa [2009] 309 ITR 329.***

4. Concealment of income – Section 271(1)(c) of the Income-tax Act, 1961 – Voluntary disclosure of income in pursuance to the show cause notice during assessment proceedings to buy peace of mind – Penalty no leviable. A.Y. 2008-09

Smt. Karishma M. Panjwani vs. ACIT [ITA No. 5960/Mum/2012 order dated 16-9-2016]

The assessee before the Appellate Tribunal is an individual. The assessee filed her return of income for the impugned assessment year 2008-09 declaring total income at ` 36.50 lakhs. During the course of assessment proceedings the learned A.O. from the AIR information observed that the assessee has made cash deposits in her bank account with M/s. Rupee Co-operative Bank Ltd aggregating to ` 25.02 lakhs. Hence the learned A.O. issued a show cause notice and sought for explanation from the assessee with regard to the sources of deposits. In response thereto, the assessee agreed to offer the cash deposits of ` 25.02 lakhs, cheque deposits of ` 2.83 lakhs and interest of ` 3,402/- all aggregating to ` 27.85 lakhs as her income. Accordingly, the learned A.O. finalised the assessment order and assessed the same as income of the assessee. Thereafter, the learned A.O. levied a penalty of ` 15,00,000/- under section 271(1)(c) of the Act being 169% on the above said addition. On appeal, the learned CIT(A) partly allowed the appeal of the assessee. However, the Ld. CIT(A) sustained the penalty to the extent of ` 8,85,107/- being 100% of the tax sought to be evaded.

The assessee being aggrieved by the above order passed by learned CIT(A) prefeered an appeal before the Hon'ble Mumbai Appellate Tribunal. The Appellate Tribunal was pleased to allow the appeal of the assessee by observing that the assessee has offered income from house property to the tune of ` 36.91 lakhs. The assessee did not put forth a claim for telescoping the deposits with the income declared by her in the current year and in the earlier years and also with the withdrawals made from the bank account. This action of the assessee shows the *bona fides* of the assessee that it was an inadvertent mistake and the offer was made to buy peace from the revenue. It is well settled proposition of law that all receipts shall not constitute income. We notice that the learned CIT(A) has confirmed the penalty only on the reasoning that the offer was not voluntary, but the offer was made only after issuing show cause notice. It is held that the *bona fides* of the assessee cannot be doubted with upon considering the conduct of the assessee. We also notice that the explanation of the assessee has not been found to be false and at the same time, the assessee has furnished all facts relating to the bank account and material to the computation of his income. Thus, we are of the view that under Explanation 1 to sec. 271(1)(c) of the Act, the assessee cannot be deemed to have concealed the particulars of income. In view of the same we set aside the order passed by learned CIT(A) and direct the AO to delete the penalty levied under section 271(1)(c) of the Act.

CA Tarunkumar Singhal & Sunil Moti Lala, *Advocate*

INTERNATIONAL TAXATION
Case Law Update

A. HIGH COURT

1. Where the AO made a reference to the TPO for determination of ALP without passing any speaking order on the objection raised by the assessee, the Court quashed the order of AO and remanded the matter to pass speaking order

Alpha Nipon Innovatives Ltd. [TS-950-HC-2016 (GUJ)-TP]

Facts

1. AO made a reference to the TPO without passing any speaking order on the objection raised by the petitioner-assessee. As per CBDT's instruction No.3/2016 dated 10th March, 2016, AO is required to deal with the objection raised by the petitioner-assessee and is required to pass a speaking order based on the same before making a reference to TPO.

2. The petitioner filed a writ petition and prayed for an appropriate writ, order or direction to quash and set aside/cancel the reference made by the AO to the TPO.

3. The Revenue contended that assessee while responding to notice had admitted that it had entered into specified domestic transaction but it did not file the accountant's report under section 92E and accordingly, AO had rightly made reference to the TPO.

4. The assessee contended it was mistake of CA and he had not entered into specified domestic transaction and that accordingly section 92E was not applicable.

Judgment

1. The Court held that before making a reference to the TPO, the assessee is required to be given an opportunity to show-cause as to why the reference may not be made to the TPO and thereafter a speaking order is required to be passed by the AO while making a reference to the TPO.

2. Accordingly, it quashed and set-aside the reference made by the AO to the TPO and remanded the matter to the AO to pass a speaking order.

3. It further directed that, if on remand, a speaking order was passed and the AO formed an opinion that a reference was to be made to the TPO, the assessee would not take a plea of limitation.

2. Even though the assessee could not demonstrate via documentary evidence that services were rendered by its AE, the Court upheld the Tribunal's

view that service rendition through oral communication was possible

Max India Limited [TS-948-HC-2016 (P&H)-TP]

Facts

1. The assessee was engaged in various activities such as packaging, metallise, pharma, treasury and healthcare divisions.

2. Further, the assessee incurred expenditure towards legal and professional charges paid to associated enterprise under an agreement entered with its AE.

3. The assessee contended that the services were infact rendered and from which the assessee benefited.

4. The AO and CIT(A) disallowed the expenditure on the ground that assessee had not furnished any details to establish that the services were in fact rendered and assessee was unable to establish that the services were actually provided.

5. The Tribunal ruled in favour of assessee, observing that the nature of the services rendered by AE were such that it was difficult to provide evidence of the services having actually been rendered.

6. Aggrieved against the order passed by the Tribunal, the Revenue preferred appeal to the High Court.

Judgment

1. The Court upheld the Tribunal's order and observed that the services such as the nature mentioned in the agreement between assessee and its AE would not necessarily be recorded in writing, since advice, introductions, information can be communicated orally, and that this possibility was enhanced on account of the fact that these were group companies.

3. Notional interest cannot be charged on delayed payment made by associated enterprise if no such interest is charged to third parties for delayed payment

Livingstones [TS-962-HC-2016 (BOM)-TP]

Facts

1. The assessee granted longer period of credit to its associate enterprises on sale of goods as compared to the period of credit granted to non-associated enterprises.

2. The AO contended that assessee should have charged notional interest on delayed collection of consideration on sale of goods to Associated Enterprises to arrive at an arm's length price.

3. The Tribunal had observed that the assessee has not charged any interest from third parties on delayed payments exceeding more than 300 to 400 days from sale of goods and accordingly, it held that if interest is not charged to third parties, adding of notional interest to delayed payments made by associated enterprises is not warranted. Aggrieved against the order passed by the Tribunal, the Revenue preferred appeal to the High Court.

Judgment

The Court upheld the order of the Tribunal deleting TP addition made on account of notional interest on delayed realisation of sale proceeds from its associated enterprises.

4. For making reference to TPO, AO does not require to first come to a definite finding that there is an 'international transaction' and *prima facie* view will suffice

PriceWaterHouse and Lovelock & Lewes [TS-976-HC-2016 (CAL)-TP]

Facts

1. The assessee was a partnership firm of CAs and was managed and controlled by its

partners who were individuals and residents of India and no legal entity or corporation was a partner of the firm. Further, the entire capital had been contributed by its partners and not by any other person or entity.

2. The assessee had entered into an agreement with PricewaterhouseCoopers International Limited (PWCIL) a company incorporated in the UK, to become a member of PwCIL. PwCIL had set standards, principles, strategies & policies applicable to all member firms and would monitor and review their implementation by member firms.

3. PricewaterhouseCoopers Services BV, Netherlands (Services BV) was the central services entity of the PwC Network & operated exclusively for the mutual benefit of all PwC Network member firms.

4. Neither the member firms of the PwC network nor PwCIL nor Services BV nor any other overseas entity held any interest or control in PWH. Further, PWH was not a subsidiary, shareholder or agent of any of the overseas entities and had no profit sharing with any overseas entity. Services BV had not conferred on PWH any right regarding use of any brand name as Services BV itself did not own any brand name.

5. The grant was received from Services BV under the contractual arrangement existing between Services BV and PWH and had been accounted for as sundry income on an accrual basis and has been offered for taxation in computing the total income for the year under consideration as business income.

6. Case of assessee was selected for scrutiny and letter was issued by AO for making reference to the TPO.

7. The assessee filed a writ petition and contended that reference under section 92CA of the IT Act could be made to the TPO only if there was an international transaction and international transaction was defined to mean a transaction between two associated enterprises. The enterprise would be associated enterprise only if the conditions mentioned under section 92A(2) were satisfied. The assessee contended that transfer pricing regulations did not apply to it as it did not have a relationship of being an associated enterprise with any overseas entity and accordingly, the reference to the TPO was without jurisdiction.

8. The Revenue contended that assessee and Services BV were associated enterprises within the meaning of section 92A since as per the agreements, assessee had to utilize the services rendered by / practices envisaged by Services BV in all spheres of its professional activity and that Services BV was to constantly keep a watch over the activities and performance of assessee and was in full control of the assessee *vis-à-vis* finances and management.

Judgment

1. The Court disposed off the writ petition and refused to interfere with AO's reference to TPO in respect of alleged international transactions of the assessee.

2. The Court observed that section 92CA(1) does not require AO to first come to a definite finding that there is an 'international transaction' within the meaning of section 92B before referring the matter to TPO and held that a *prima facie* view would suffice.

5. Where the comparable companies outsourced their major business activities and the assessee did not, the Court held that the companies were not comparable

IHG IT Services (India) Pvt. Ltd. [TS-968-HC-2016 (P&H)-TP]

Facts

1. The Tribunal excluded the comparables on the ground that a substantial part of their business was outsourced which was not so in the case of the assessee.

2. Vishal Technologies Limited had outsourced about 44.81% of its business. Further, the assessee's wages to sales ratio was not comparable to Vishal Information Technologies Limited. In case of Nucleus Netsoft and GIS (India) Limited, an amount of over 40% is outsourced. Aggrieved against the order passed by the Tribunal, the Revenue preferred appeal to the High Court.

Judgment

1. The Court upheld the order of the Tribunal on the ground that substantial part of the business of companies was outsourced whereas assessee had not outsourced its business activity.

6. Where petitioner entered into a Race Promotion Contract by which it granted right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration and trademark was not licensed, it did not amount to royalty under DTAA

Formula One World Championship Ltd. [TS-639-HC-2016 (Del.)]

Facts

1. Formula One World Championship (FOWC) a UK based company entered into a Race Promotion Contract (RPC) by which it granted to Jaypee Sports the right to host, stage and promote Formula One (F1) Grand Prix of India event for a consideration of USD 40 million.

2. An Artworks Licence Agreement contemplated in RPC was also entered into between FOWC and Jaypee the same day permitting the use of certain marks and intellectual property belonging to FOWC for a consideration of USD 1. The agreement was entered into only to grant the right to use trademark and intellectual property and the consideration of USD 1 was paid for that.

3. The question before AAR was whether or not the payment of consideration receivable by FOWC outside India in terms of RPC from Jaypee was or was not royalty as defined in Article 13 of the India-UK DTAA and whether FOWC had PE in India in terms of Article 5 of India-UK DTAA.

4. The AAR held that the amounts paid by the assessee were royalties and that the petitioner did not have a PE since it neither carried on any business activity in India nor did it authorise any person to conclude contracts on its behalf. Aggrieved, both the petitioner and the Revenue filed writ petitions before the High Court.

Judgment

1. The Court observed that in terms of the agreement, i.e. RPC, Jaypee was designated as the promoter or the event host and under the RPC, FOWC clearly had the exclusive right to exploit the commercial rights in the championship and to award Jaypee the right to host, stage and promote F1 Grand Prix events.

2. Further, the amounts payable by Jaypee to FOWC under the RPC were really for the privilege of hosting and staging the championship race and not for the IP rights, which in any event, could be utilised by it only to promote the race and for no other purpose.

3. Jaypee had no IP rights whatsoever independently of the staging and hosting of the event.

4. The ALA also did not confer any additional rights, neither was a licence nor any form of right to use the trademark given to Jaypee by FOWC which resulted in royalty payment within the meaning of Article 13 of the DTAA.

5. The Court held that, payments made to FOWC under the RPC was not 'royalty' either under the Act or the DTAA, they most certainly were not for the use of trademarks or

IP rights, but rather for the grant of the privilege of staging, hosting and promoting the Event at the promoter's racing circuit in Noida (NCR).

6. Further, it held that the petitioner had a fixed place PE in India as the circuit constituted a fixed place of business. Also the petitioner decided the venue and terms of the race to which all participant teams were bound to, which showed that the petitioner carried on business in India and therefore the income received by it was taxable as business income.

B) Tribunal Decisions

7. India-Netherlands DTAA – Sale of ERP Software Licence – Whether taxable as royalty – Held : No; Whether taxable as Business Profits – Held: Yes; in favour of the assessee

Qad Europe B. V. vs. DDIT [TS-673-ITAT-2016 (Mum)] Assessment Years: 1998-99 & 1999-2000

Facts

1. The assessee, Qad Europe B.V. (a non-resident company incorporated in Netherlands) is engaged in the development and sale of Enterprise Resource Planning (ERP) software products and is a 100% subsidiary company of Qad Inc USA.

2. Assessee entered into a multinational software product licence agreement ("master agreement") for sale of licensed product i.e. ERP software either directly or through its subsidiaries to Unilever N.V. (UNV) for a consideration to be received either from UNV or through any of its subsidiaries.

3. In pursuance to the said master agreement, assessee entered into another agreement with Hindustan Lever Ltd (HLL), which is an Indian subsidiary of UNV for the sale of licensed product, i.e., ERP software by the assessee to HLL.

4. In pursuance to the agreement, ERP software was sold by assessee-company to HLL. Income arising from the said transaction was treated as business income by the assessee company, and in absence of any PE in India, the same was not offered to tax in India.

5. However, reassessment proceedings u/s. 148 for AYs 1998-99 and 1999-2000 were initiated on the ground that amount received by the assessee in the form of maintenance of software should be taxed as FTS ("fee for technical service"). In assessment order, AO treated income received by the assessee from sale of software as royalty under IT act. On appeal, CIT(A) upheld AO's order.

Decision

The Tribunal held in favour of the assessee as under:

1. Before ITAT assessee submitted that the transaction of sale of software to Indian customers did not give rise to any kind of right in the copyright. Assessee submitted that the ownership rights were not transferred by assessee. On the contrary Revenue argued that assessee had the right to make adaptation and also to make copies and thus it was transfer of copyright.

2. At the outset, ITAT relied on Bombay HC ruling in Mahyco Mosanto Biotech (India) (P) Ltd. and Coordinate Bench ruling in Reliance Industries Ltd. wherein it was held that in absence of transfer of rights to authorize doing of certain acts as mentioned in sections 2, 13 & 14 of the Copyright Act it cannot be said that there was transfer of copyright.

3. Examining the relevant clauses of the master agreement, ITAT noted that though HLL was permitted to modify source code but it wasn't permitted to modify object code. Further that the agreement granted limited rights to HLL permitting to change source code so as to make the product compatible to the local laws and regulations like service tax etc. The

said change in the source code could not be operational till the object code was modified by the assessee. ITAT thus held that the limited right of modification *qua* the source code granted to HLL cannot be viewed adversely.

4. Further on reading the clauses of master agreement in line with the relevant provisions of Copyright Act, 1957, ITAT noted that the said agreement did not permit the HLL to carry out any alteration or conversion of any nature so as to fall within the definition of 'adaptation' as defined in Copyright Act, 1957. ITAT stated that "The right given to the customer for reproduction was only for the limited purpose so as to make it usable for all the offices of HLL in India and no right was given to HLL for commercial exploitation of the same. It is also noted that the terms of the agreement do not allow or authorise HLL to do any of the acts covered by the definition of 'copyright'."

5. ITAT thus held that the payments made by HLL cannot be construed as payment made towards the 'use' of copyright particularly when the provisions of Act and DTAA are read together with the provisions of the Copyright Act, 1957. ITAT further noted that India Netherlands DTAA does not include software while defining 'Royalty'. ITAT held that "Under these circumstances, we find that it would be difficult to characterize the payment received by the assessee on account of sale of software as payment received on account of 'Royalty'."

6. ITAT further relied on Delhi HC ruling in *Datamine International Ltd [TS-130-ITAT-2016 (Del.)]* wherein it was held that the payment made on account of software shall not fall within the definition of ''Royalty''. ITAT also referred to Article 12(4) of DTAA between India and Netherlands which define royalty. ITAT stated that this definition did not include the word 'computer programme' or 'royalty'. ITAT thus held that "since the definition given in Article 12(4) of the DTAA does not contain any consideration for the use or right to use in 'computer programme' or 'software', the same cannot be imported into it."

7. ITAT clarified that "the perusal of clauses of the master agreement demonstrates that the customer, viz. HLL has paid the consideration for 'use of computer software' and not 'copyright of the computer software'. But, the DTAA treats consideration for the use of copyright of a laboratory or artistic work, etc. as 'Royalty', there can be no question of including consideration for the use of a laboratory or artistic work, etc. within the ambit of 'Royalty' defined in Article 12(4) of the DTAA.

8. ITAT rejected Revenue's contention that provisions of Sec. 9(1)(vi) should be applied, and if these are so applied, then the sale of software shall be covered under Explanation 4 to section 9(1)(vi), and, therefore, the same should be brought to tax as such. ITAT held that "as per the provisions of India-Netherlands DTAA, the amount received by the assessee on account of sale of software would not fall within the definition of 'Royalty' as provided in Article 12(4) of the DTAA. Under these circumstances, it will not be legally permissible for us to refer to the provisions of the Act to decide the taxability of this amount in the hands of the assessee in India."

9. ITAT thus ruled that the amount received by the assessee was in the nature of business profits assessable under Article 7 of India Netherlands DTAA and would not be taxable as 'royalty' under Article 12 of the DTAA.

(Note: Delhi ITAT in Datamine International Ltd. [TS-130-ITAT-2016 (Del.)] had held that Revenue from 'software sale' by assessee (an India branch of a UK company) to Indian customers did not constitute royalty under Article 13 of India-UK DTAA while upholding assessee's action of treating it as 'business receipts'.)

8. Indo-Switzerland DTAA – Whether the protocol to the Treaty allows automatic application of restrictive Portuguese FTS definition – Held: No

Torrent Pharmaceuticals Ltd. vs. ITO [TS-609-ITAT-2016(Ahd.)] Assessment Year: 2008-09

Facts

Assessee, Torrent Pharmaceuticals Ltd. manufactures and markets pharmaceutical products. It remitted certain amounts to Switzerland, Canada and USA without deducting tax at source. AO held that said payments were covered u/s. 9(1)(vi) and (vii) and thereby passed orders u/s. 201 and 201(1A) raising a demand of ` 20.92 lakh. On appeal, CIT(A) rejected assessee's appeal regarding remittances to Switzerland. However, CIT(A) in respect of USA and Canada remittances held that assessee was not required to deduct TDS.

Decision

In appeal, the Tribunal held as under:

1. Before the ITAT assessee submitted that Indo-Swiss DTAA contains a protocol with respect to Articles 10 to 12 thereof which states that India should limit its taxation at source on dividends, interest, royalties or fee for technical services to a rate lower or scope more restricted than the rate or scope more restricted than that provided for in this agreement on the said items of income, then Switzerland and India shall enter into negotiation without undue delay in order to provide similar treatment to Switzerland as in case of the third State. Assessee further submitted that Indo-Portuguese Republic signed DTAA containing 'make available' clause in respect to payments made for technical services. Assessee contended that it was entitled to raise 'make available' plea with regard to technical services that its payee did not part with any technical knowhow which could be used independently on its own. Assessee relied upon Pune ITAT ruling in Sandvik AB [TS-738-ITAT-2014 (PUN)] in this regard.

2. The ITAT took note of assessee's reference to Indo-Portuguese DTAA containing "make available" condition to be applied in case of its Swiss remittances as per Indo-Swiss DTAA protocol on the ground that although such a "make available" condition in respect of technical services is not explicitly contained in latter DTAA, same is deemed to have been applicable by virtue of Indo-Portuguese DTAA protocol.

3. Rejecting assessee's plea, the ITAT clarified that no "make available" articles in respect to FTS is used in Indo-Swiss DTAA or protocol. ITAT held that "The said protocol only postulates that India and Swiss shall enter into negotiation to this effect if former State enters into a DTAA with a member of OECD State either reducing rate of tax or restricting the scope of specified categories of income hereinabove."

4. ITAT distinguished assessee's reliance on Pune ITAT ruling in Sandvik AB, involving similar clause in Indo-Sweden DTAA as the said DTAA contained a protocol to the effect that "in case India and an OECD member State enter into an agreement limiting taxation in case of various categories of income or restricted the rate and scope on the said items of income, similar rate or scope as provided for in that Convention, Agreement or protocol shall apply under Indo-Sweden Agreement."

5. With regards to Revenue's appeal seeking revival of Sec. 201(1)/ 201(1A) demands pertaining to TDS not deducted upon assessee's remittances to USA and Canada, ITAT noted DTAA with these countries contain "make available" stipulation with respect to the services to be involved in corresponding Article 12(4)(b) in both cases. ITAT noted that Revenue had failed to establish that assessee's payees based in Canada or USA had made available their expertise and technical knowhow thereby enabling it to use the same independently without their assistance. ITAT held that "these payees have merely rendered consultancy services without imparting any knowledge. "

(Note: Indo-Swiss tax treaty protocol signed on February 16, 2000 states that "If after the date of

signature this amending protocol, India under any Convention, Agreement or protocol with a third State which is a member of the OECD, restricts the scope in respect of royalties or fees for technical services than the scope for these items of income provided for in Article 12 of this Agreement, then Switzerland and India shall enter into negotiations without undue delay in order to provide the same treatment to Switzerland as that provided to the third State.")

9. Internet bandwidth payments & end-user software licence payments held to be not royalty

Quaolcomm India Private Limited vs. ADIT [TS-605-ITAT-2016 (Hyd.)] Assessment Years: 2006-07 to 2009-10

Facts

1. Assessee, Quaolcomm India Private Limited is a subsidiary of QUALCOMM Inc, San Diego, USA. Qualcomm group is engaged in the design, development, manufacture and marketing of digital wireless telecommunication products and services based on its Code Division Multiple Access (CDMS) technology. Assessee operates through its units in Hyderabad, Bangalore, Mumbai and New Delhi and is engaged in providing the software design, development and testing services to its group companies at a cost plus 15% consideration.

2. In respect of AYs 2006-07 to 2009-10, survey u/s. 133A was conducted to examine the assessee's compliance of TDS provision. It was observed that assessee made several foreign remittances without deducting tax u/s. 195 for use of software licences to various companies in USA, UK, and Germany etc.

3. Assessee contended that payment was made for purchase of the copyrighted article and therefore no tax was deducted at source. AO treated it as use of a copyright being in the nature of royalty under domestic as well as respective DTAAs. AO further observed that software support services were also provided along with those licenses which he treated as FTS. AO thus held assessee as assessee in default in terms of Sec. 201(1) and also levied the interest u/s. 201(1A). On appeal, CIT(A) confirmed AO's order. Aggrieved assessee filed an appeal before Hyderabad ITAT.

Decision

The Tribunal held in favour of the assessee as under:

1. Before ITAT assessee submitted that it had purchased copyrighted software which was used for discharge of its services to its AEs and there was no transfer of ownership or the right to use the copyright to assessee. Assessee thus argued that it was not in the nature of royalty and no TDS was liable to be made. Assessee relied on Delhi HC ruling in M. Tech India P Ltd. [TS-19-HC-2016] wherein based on SC ruling in Tata Consultancy Services [TS-5018-SC-2004-O] it was held that where payments are made to acquire products which are patented or copyrighted, the consideration paid would have to be treated as a payment for purchase of the product, rather than consideration for use of the patents or copyrights.

2. ITAT observed that the software purchased by assessee were end user software licence packages and the remittances were made to companies in various countries, such as USA, UK, Germany, Japan, Singapore etc. ITAT noted that it was end user licence package of which assessee had a right to use. ITAT observed that software was for assisting assessee in rendering its services to its group companies. Thus ITAT observed that said softwares were used as tools by assessee. ITAT opined that by issuing licence to use software it could not be said that assessee was granted a right to utilise the copyright embedded in the software, but it is seen that assessee was granted only a right to use the software product. ITAT accepted assessee's contention and judicial pronouncement relied upon by it.

3. Separately, assessee also filed an appeal in respect if its remittances to Verizon Business Services, USA for 'leased circuit line charges' without deduction of tax at source. AO held such payment for scientific or commercial equipment under clause (iva) of Sec. 9(1)(vi) and within the meaning of royalty. It was argued by assessee that service provided by Verizon to the assessee was only bandwidth services and did not involve any right to use the scientific or commercial equipment.

4. ITAT observed that bandwidth services required certain sophisticated equipment which would be installed at the customers' premises. ITAT noted that internet facility which was to be provided by Verizon USA to its customers across the world required sophisticated and complex equipments, but it could not be stated that the assessee was given an exclusive right to use those equipments for which it was making payments. ITAT opined that the CPE (Customer Premises Equipment) which was provided by Verizon through its partner in India was required to access the network connection. ITAT noted that CPE was not personalised/sophisticated modified equipment for specific and exclusive use of the assessee. ITAT relied upon Delhi HC rulings in Asia Satellite Telecommunications Co. Ltd. [TS-823-HC-2011 (Del.)-O], Estel Communications (P) Ltd. [TS-5325-HC-2008 (Delhi)-O] and Coordinate bench ruling in Infosys Technologies Ltd. [TS-11-ITAT-2011(BANG)-O]. ITAT thus held that the same could not be covered within the meaning of royalty under the Act and thus no TDS provisions were applicable.

(Remarks: Madras HC in case of Verizon Communications Singapore Pte. Ltd. [TS-577-HC-2013 (MAD)] had held that payment for "International Private Lease Circuit" (IPLC) was taxable in India as royalty. However, Delhi HC in case of Asia Satellite Telecommunications Co. Ltd. [TS-823-HC-2011(DEL)-O] had held that transponder payments does not amount to royalty. Also, Delhi HC in case of Estel Communications (P) Ltd. [TS-5325-HC-2008 (DELHI)-O] had held that the use of internet facility may require sophisticated equipments, but that does not mean that technical services were rendered by non-resident to assessee. Further, Bangalore ITAT in case of Infosys Technologies Ltd. [TS-11-ITAT-2011 (BANG)-O] had held that payments for use of bandwidth for downlinking signals in the USA, were neither in the nature of consultancy or managerial services nor for the use of right to use industrial, commercial or scientific equipment and hence not royalty.)

10. Indo-UAE DTAA – UAE company's FTS – Income not taxable in India in the absence of specific Article in DTAA

ABB FZ-LLC vs. ITO [TS-589-ITAT-2016(Bang)]
Assessment Year : 2012-13

Facts

1. Assessee, ABB FZ-LLC is a company incorporated in UAE. In AY 2012-13, assessee entered into service agreement with ABB India Ltd. for rendering certain services on which it did not pay any taxes in India. Assessee contended that Indo-UAE DTAA have no clause on Fees for Technical Services (FTS) and thus more beneficial than the corresponding provisions of Act. AO rejecting assessee's contention, that where DTAA is silent provisions of Act would apply. AO held that since there was no provision in the DTAA then the receipt in question would be FTS as per the provisions of Sec. 9(1)(vii). The DRP upheld AO's view.

Aggrieved assessee filed an appeal before Bangalore ITAT.

Decision

The Tribunal held in favour of the assessee as under:

1. Before ITAT, the assessee submitted that the Indo-UAE DTAA has no provisions for taxation of FTS, thus, the said transaction would

amount to business income and in the absence of PE it would not be taxable in India.

The Assessee referring to Article 22 of the DTAA argued that any item of income falling in the category of other income not specifically dealt with by the other Article would be taxable in the country of recipient or the payee. Thus assessee argued that the income would be taxable in UAE and nowhere else. Assessee also argued that when DTAA between India and UAE did not classify income as FTS then the said income would be considered either business income or other income of the assessee depending upon the facts and circumstances. Assessee further argued that if DTAA did not confer a right to tax a particular income then the provisions of domestic law could not be invoked to tax the said income. Assessee relied upon Coordinate Bench ruling in IBM India Pvt. Ltd. [498/Bang/2013]. Assessee also relied upon Mumbai ITAT ruling in BNP Paribas SA [8693/Mum/1995 & 507/Mum/2000]. Assessee further relied upon Madras HC ruling in Bangkok Glass Industry Co. Ltd. wherein it was held that the provisions of other income in the DTAA which considered only in the case of miscellaneous income when the income is derived by way of regular business activity, the same will fall in the classification of business income.

2. The ITAT observed that there was no dispute around the nature of receipt and that the Indo-UAE DTAA does not contain any provision/Article to tax FTS. The ITAT noted that Article 3(2) provides that if any term is not defined in the DTAA then the meaning as per the law of the State concerning the taxes will be taken for the purpose of application of DTAA. ITAT opined that the need of importing the meaning of the term from the tax statute arises only when a term is provided in the agreement but the meaning of the same has not been defined therein. ITAT opined that provisions of DTAA would prevail over provisions of Act so far as the same is beneficial to assessee.

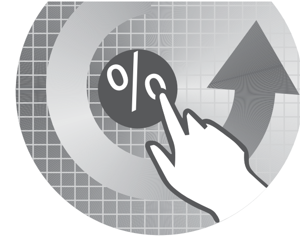
3. The ITAT clarified that income which is classified as royalty or FTS if earned in the normal course of business then would be inherently regarded as business income for the purpose of taxation under the Act as well as tax treaty. The ITAT held that once the DTAA does not recognize any income as FTS or royalty then classification of the said income has to be as per the other provisions of the DTAA.

4. The ITAT stated that income derived by the assessee is from providing services to the Indian counterpart which is a regular business activity and therefore ought to be recognized under the provisions of the DTAA as business income because the DTAA does not contain any provision to recognise or tax any income in the nature of FTS. ITAT opined that absence of the provision in the DTAA is not an omission but is a deliberate mutual agreement between the contracting States not to recognize/classify any income as FTS.

5. ITAT held that "once the income chargeable to tax as per the DTAA are categorized by excluding the FTS then the scope of taxing the said income cannot be expended by importing the said provision from the Income Tax Act when it is excluded under the DTAA". ITAT upheld assessee's reliance on various judicial pronouncements.

6. ITAT thus held that in the absence of the provision in the DTAA to tax FTS the same would be taxed as per the Article 7 of the DTAA applicable for business profit and in the absence of PE in India, the said income is not chargeable to tax in India.

> The best performances are accomplished when you are relaxed and free of doubt.
>
> — *Dr. A. P. J. Abdul Kalam*



CA. Hasmukh Kamdar

INDIRECT TAXES
Central Excise and Customs – Case Law Update

Commissioner of C. Ex. & S.T., Ghaziabad vs. Mahaveer Cylinders Ltd. [2016 (341) E.L.T. 361 (Tri.–All.) decided on 1-9-2016]

Trading Activity
Facts in this case are as follows.

The assessee was a manufacturer of LPG Cylinders and was registered with the Central Excise Department. CENVAT credit was regularly availed by them on inputs used for manufacture of LPG Cylinders. The assessee returned a part of the inputs in the form of H R Coils, S.C. Valves, LPG Cylinders, etc. to the supplier and also to third parties in some cases and reversed the CENVAT credit availed thereon. Department considered such an activity as trading activity and alleged that they became the provider of exempted service as per the explanation to Rule 2(C)(e) of the CENVAT Credit Rules, 2004 and they were required to pay an amount 5%/6% of value of goods traded. They were called upon to show cause as to why amount of ` 12,38,632/- should not be demanded form them.

In reply to the said show cause notice the assessee submitted that they have cleared input as such which have been either returned to same party or the third party, on which they have reversed the CENVAT credit availed. It was also submitted that removing the input as such after reversal of CENVAT Credit, in no circumstances, can be treated as trading activity.

The original authority did not agree with the same and confirmed the demand. The assessee preferred an appeal before Commissioner (Appeals) who *vide* Order-in-Appeal No. 302/2014-15, dated 29-12-2014 set aside the Order-in-Original and allowed appeal filed before him.

Aggrieved by the order passed by the learned Commissioner (Appeals) Revenue filed this appeal before Tribunal with a prayer to set aside order passed by learned Commissioner (Appeals).

The Department relied on the submissions made before lower authorities

On behalf of the assessee it was submitted that they have cleared inputs as such, on which CENVAT credit was taken, by reversal of CENVAT credit. Such action of clearance of inputs as such was treated by Revenue as trading actions. Further Revenue has considered such clearance of inputs as such on reversal of CENVAT credit as exempted service and demanded amount under Rule 6(3) of CENVAT Credit Rules, 2004. This contention

of the assessee is available on the record of the proceedings and Revenue has failed to consider and establish that the same is not tenable in law. Further reliance was placed on the decision of Hon'ble Tribunal in the case of Commissioner of *Central Excise, Ghaziabad vs. M/s. UP Telelinks, [2015 (329) E.L.T.888 (Tribunal)]*, wherein exactly same point was settled by holding that removal of inputs does not amount to trading. Rule 3(5) of CENVAT Credit Rules provide that if inputs are removed as such, the assessee is required to reverse only CENVAT credit availed on such inputs.

On facts it was held that removal of input as such by a manufacturer cannot be treated as trading activity and hence allegation in the show cause notice is not sustainable. The Revenue appeal was rejected with consequential relief.

Ajay Chawala vs. Commissioner of Customs, Delhi – I [2016 (341) EL.T. 358 (Tri. Del.) decided on 20-11-2015]

LUT RENEWAL

Facts in this case are as follows.

The appellant in this case was a manufacture-exporter of steel. In terms of the provisions of the Central Excise Rules, 2002 the appellant has furnished before the Jurisdictional Central Excise Authorities, the Letter of Undertaking (LUT) which was accepted and considered as proper.

However, during the disputed period, the Department confirmed the demand on the appellant on the ground that as prescribed in Chapter 7 of para 3.4 in the C.B.E & C Manual of Supplementary Instructions, the LUT has not been renewed in each year. In the adjudication order, the Central Excise Duty of ` 71,567/- and equal amount of penalty were confirmed against the appellant company and penalty of ` 25,000/- was imposed on the Director of the Company.

In appeal, the Commissioner (Appeals) set aside the duty demand. However, penalties imposed in the adjudication order on the appellants were upheld. Hence, the appellants have preferred these appeals before the Tribunal.

The Hon'ble Tribunal observed that the Central Government *vide* Notification No. 42/2001 C.E. (N.T), dated 26-6-2001 has prescribed the conditions and procedures, which a manufacturer is required to follow for export of goods without payment of Central Excise Duty. In the said notification, it has been specified that the manufacturer-exporter may furnish the Letter of Undertaking in the form specified in Annexure–II in lieu of Bond. Nowhere in said notification, there is any mention that the LUT has to be renewed every year by the manufacturer-exporter.

The C.B.E. & C has issued the supplementary instructions for clarifying the statutory provisions to the trade and industry. Such instructions issued by the Central Government cannot curtail or interpret in a way by which the legislative intent is defeated or are contrary to the Notification.

In view of the fact that there is nospecific mention of renewal of the LUT in the Notification dated 26-6-2001, the Hon'ble Tribunal was of the view that the instructions contained in the Excise Manual of Supplementary Instructions cannot override the provisions of the said notification, therefore, it was considered that penalties confirmed against the appellants are not correct and proper.

The impugned order was set aside and the appeals were allowed in favour of the appellants.

CA Janak Vaghani

INDIRECT TAXES

VAT Update

1) Trade Circular

i) Trade Circular No. 38T of 2016 Grant of Administrative Relief for Dealers Registered after 26-5-2016

The Commissioner of Sales Tax by above trade circular has informed that due to certain technical problems dealers were not able to apply for registration under the MVAT, CST and Luxuries Tax Acts from 4-5-2016. Therefore, registration certificate will be effective from the date of liability or the date on payment of fees or security deposit whichever is later for dealers who applied for registration on or before 31-7-2016 under the MVAT, CST Act or Luxuries Tax Act.

ii) Trade Circular No. 1T of 2017, dated 2-1-2017 Extension of Due Date for Filing of Monthly Returns for the Period up to 31-3-2016-Full/Partial 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 full/partial exemption from payment of whole of late fees in respect of returns up to 31-3-2016 as under:

Sr. No.	Phase	Return Filed during the period	Late fees payable
1.	Phase I	1st January, 2017 to NIL	31st January, 2017
2.	Phase II	1st February, 2017 to 28th February 2017	` 2,000 per return

iii) Trade Circular No. 2T of 2017, dated 6-1-2017 Grant of provisional login ID and passwords for GST Registration

The Commissioner of Sales Tax has issued above circular to inform the trade and industry that the activity of distribution of login ID and passwords for GST enrolment in phase 2 is started and list of existing registered dealers is made available on website of the department under 'What's New' section. These dealers are requested to obtain provisional login ID and passwords by following step-by-step procedures laid down in Trade Circular No. 35T of 2016 dated 12-11-2016.

Those dealers with active registration status and valid PAN and not covered by List 1 or 2 earlier, will be covered in subsequent phase.

Further, list of dealers without valid PAN is made available on website under 'What's New' section. Such dealers are requested to contact their nodal officer with copy of valid PAN and application for amendment correction of PAN. In some cases, dealers who are provided provisional IDs and passwords noticed incorrect PAN, such dealers are requested not to proceed for GST enrolment but to contact their nodal officers for necessary PAN correction first. Such dealers will be included in subsequent phase.

CA Rajkamal Shah & CA Naresh Sheth

INDIRECT TAXES

Service Tax – Statute Update

1. Exemption in respect of services of credit/debit card settlement

Mega Exemption Notification No. 25/2012 – ST dated 20-6-2012 is amended to insert Entry No. 64 granting exemption in respect of Services by an acquiring bank, to any person in relation to settlement of an amount up to ` 2,000/- in a single transaction transacted through credit card, debit card, charge card or other payment card service.

Explanation: For the purpose of this entry, "acquiring bank" means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.

[Notification No. 52/2016-ST dated 8-12-2016]

2. Authentication of Invoices by person located in non-taxable territory providing Online Information and Database Access Retrieval [OIDAR] services to non-assessee recipient in taxable territory

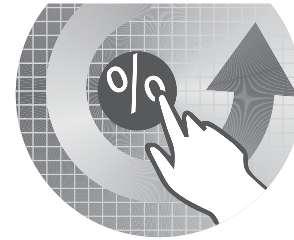
Service Tax Rules, 1994 is amended by inserting proviso in sub-rule (1) of Rule 4C which provides that a person located in non-taxable territory providing OIDAR services to a non-assessee online recipient located in taxable territory may issue online invoices not authenticated by means of digital signature for a period up to 31st January, 2017

[Notification No. 53/2016-ST dated 19-12-2016]

3. Digital mode of payment while making financial transactions – past assessments

Recent initiative of the Government to curb black money in the country encourage people to shift towards digital mode of payment while making financial transactions. By adopting a digital mode of payment, no financial transaction would be undisclosed and consequently an enhanced turnover might get reflected in the books of account. Under the circumstances an apprehension has been raised that increased turnover on account of use of digital means of payment may lead to demand for earlier period. It is hereby clarified that in indirect taxes, past assessments will not be reopened for this reason alone.

[Instruction F.No.137.155.2012-ST, Dated 9-12-2016]



CA. Bharat Shemlani

INDIRECT TAXES
Service Tax – Case Law Update

1. Services

Banking & Other Financial Service

1.1 CCE&ST Chandigarh-II vs. State Bank of Patiala 2016 (45) ST 333 (Tri.-LB)

The Department in this case sought to tax commission received from RBI for collection of taxes and remitting the same to RBI. The Larger Bench held that, scheduled bank was agent of RBI under section 45 of RBI Act, 1934 and it was for collection of various taxes and other activities which could be done only by RBI. Therefore, the scheduled bank is entitled to exemption under Notification No. 22/2006-ST from service tax on services provided to or by RBI. It is further held that, it is more so as under section 65(7) of FA, 1994, assessee includes their agent. Furthermore, the scheduled bank agent of RBI was transacting sovereign Government business which was otherwise not liable to Service Tax.

Construction Service

1.2 Jaiswal Builders & Contractors vs. CCE, Nagpur 2016 (45) ST 440 (Tri.-Mumbai)

The Tribunal in this case after replying of Larger Bench decision in *Bhayana Builders Pvt. Ltd. 2013 (32) STR 49 (Tri.-LB)* held that, value of free supplies do not comprise gross amount charged for allowing abatement under Notification Nos. 15/2004-ST and 1/2006-ST. The "Gross Amount Charged" is much misused term in taxation of services arising from convenient uncoupling from qualifying phrase i.e. for taxable service, thus inclusion of free supplies is not mandated under this term.

Club or Association Service

1.3 Residency Club vs. CCE, Kolhapur, 2016 (45) ST 448 (Tri.-Mumbai)

The Tribunal in this case held that, the taxability of subscription from members is no longer *res integra* as it is stand decided by catena of judgments that it is not taxable.

Also refer to *Principal CST, Delhi-I vs. MIS. Chelmsford Club 2016 (45) STR 512 (Del.)*

Online Information and Database Access or Retrieval Service

1.4 Continental Airlines Inc. vs. CST, New Delhi 2016 (45) ST 449 (Tri.-Del.)

In this case department sought tax receipt of OIDAR Services from foreign CRS/GDS companies under RCM. The Tribunal held that, appellant cannot be held to be recipient of service in view of Tribunal's decision in *British Airways 2014 (36) STR 598 (Tri-Del.).* It is further held that airport taxes collected by airlines on behalf of airport and paid to airport is not includible in value of transportation services for levying service tax. It is also held that, preponement and postponement charges are liable to service tax.

Manpower Recruitment or Supply Agency Service

1.5 Vidarbha Iron & Steel Co. Ltd. vs. CCE, Nagpur 2016 (45) ST 464 (Tri.-Mumbai)

In this case factory was operated by creditor as per compromise formula of High Court and receiving only actual dues and paid same to employees which

are still on his muster roll. The Tribunal held that, there is nothing on record to indicate that appellant functioned as commercial concern engaged in supply of manpower to creditor running the factory. It is settled view that, amounts received as actual salaries cannot be considered as an amount received for rendering impugned services.

1.6 *UTI Asset Management Company Ltd. vs. CST, Mumbai-I 2016 (45) ST 540 (Tri.-Mumbai)*

The appellant in this case received reimbursement of actual salary and wages in respect of deputation of staff to sister unit. The Tribunal held that, deputing staff to their own organisation/sister concern would not fall under Manpower Recruitment and Supply Agency Service.

Business Auxiliary Service

1.7 *Barco Electronics System Pvt. Ltd. vs. CCEX&ST, Noida 2016 (45) ST 532 (Tri.-All.)*

The Tribunal in this case held that, commission agents services provided to foreign company for marketing goods in India are provided from India and used outside India therefore to be treated as export of service. The relevant factor for service to be categorised as Export of Service is the location of service receiver and place of performance. Since the conditions under rule 3 of ESR, 2005 satisfied, service tax is not liable to be paid.

1.8 *In Re : Global Transportation Services Pvt. Ltd. 2016 (45) ST 574 (AAR)*

The question before AAR was whether, freight margin recovered from customer whether covered by intermediary service as defined in rule 2(f) of POPS Rules, 2012 liable to tax in terms of rule 9. The AAR held that, agreement with career for transportation cargo i.e. airline/shipping line on principal to principal basis and not as agent of said airline/shipping line. The assessee is covered by exclusion clause i.e. provide main service –inbound and outbound shipment on own account in term of rule 2(f) and covered under rule 9(c). The place of provision of said service not to be location of service provider. Further, freight margin on export freight is not liable to tax on account of fact of place of provision of service is outside India as provided in rule 10.

2. Interest/Penalties/Others

2.1 *Kalbhor Construction Co. vs. CCE, Pune-I 2016 (45) STR 338 (Tri.-Mumbai)*

The appellant in this case delayed payment of service tax due to financial crunch but filed returns regularly. The Tribunal held that, there is no intent to evade duty, hence section 73(3) is applicable and imposition of extended period and penalty under section 78 is unwarranted.

2.2 *Kalpataru Power Transmission Ltd. vs. CCE&ST, Ahmedabad 2016 (45) STR 454 (Tri.-Ahmd.)*

The appellant in this case claimed refund of tax paid on retention and withheld money under WCS wrongly paid twice, once when bill raised and second time when payment received. The Tribunal observed that, since tax was due only when second payment was made, first payment made not that of service tax as there was no statutory liability to pay. It is held that in view of settled law refund not barred by limitation in such cases and further there being no unjust enrichment in twice paid tax, refund admissible.

2.3 *SPEC India vs. CST, Ahmedabad 2016 (45) STR 472 (Tri.-Ahmd.)*

The Tribunal in this case held that Notification No. 14/2016-CE(NT) only clarifying existing legal position that date on which services are rendered or invoices are raised for same or amounts are realised by service provider is relevant date. Further in *Bechtel India Pvt. Ltd. 2014 (34) STR 437 (T)* it is held that relevant date for refund in the case of export of service is the date of receipt of foreign exchange.

2.4 *Vrinda Engineers Pvt. Ltd. vs. CCE, Kolkata-II & I 2016 (45) STR 519 (Tri.-Kolkata)*

The Tribunal in this case held that, pre-deposit can be made from CENVAT credit account so long as CENVAT credit is permissible for utilisation as per rule 3(4) of CCR, 2004.

3. CENVAT Credit

3.1 Sun Pharmaceuticals Industries Ltd. vs. CCEC&ST, Surat-II 2016 (45) STR 340 (Tri.-Mumbai)

The Tribunal in this case allowed CENVAT credit of service tax paid on painting services used for renovation and repairs of factory.

3.2 Reliance Industries Ltd. vs. CCE&ST, LTU, Mumbai 2016 (45) STR 383 (Tri.-Mumbai)

The Tribunal in this case held that, Club or Association Service, Health & Fitness Service and Outdoor Catering Services are excluded from definition of Input Service only when these services are consumed for personal consumption of employees. In the present case since these services are used in relation to business activity, credit thereon is admissible.

3.3 GTL Infrastructure Ltd. vs. CCE, Mumbai 2016 (45) STR 389 (Tri.-Mumbai)

The Tribunal in this case held that Towers as well as Prefabricated buildings assessed to duty at suppliers end sold to service provider providing BAS to its clients is entitled to claim the credit. It is not open to authority to question dutiability of such goods at recipients end. It is further held that, failure to consider and give findings on legal issues raised and argued on behalf of assessee is error apparent on record and to be rectified.

3.4 Honda Motorcycle & Scooter (I) Pvt. Ltd. vs. CCE, Delhi-III 2016 (45) STR 397 (Tri.-Chan.)

The Tribunal in this case allowed CENVAT credit of service tax paid on following services:

- Construction service, works contract service and architect service for design, construction and structure for marshal conveyor project.
- Event management services availed for promotional activities in race organised by assessee.
- Medical and Life Insurance Service to employees in terms of section 38 of ESI Act.
- Data entry services used for host of activities not related to manufacturing.
- Photography services used for development and improvement of manufactured product.
- Hotel, inns, club or guest house services used for stay of employees when travelling for purpose of sales promotion.

3.5 Patel Air Freight vs. CCEC&ST, Hyderabad-II 2016 (45) STR 404 (Tri.-Hyd.)

The appellant in this case claimed CENVAT credit on the basis of cargo sales report i.e. fortnightly summary of AWB. The department sought to deny the credit claimed on CSR as the same is not Invoice. The Tribunal held that, AWB indicates *inter alia* details like AWB No., ST registration No. name of service provider, name of service recipient, value, nature of service and service tax amount and therefore it is akin Invoice and therefore credit claimed thereon is admissible.

3.6 IBC Ltd. vs. CCCE&ST, Tirupati 2016 (45) STR 414 (Tri.-Hyd.)

The Tribunal in this case held that, there is merit in assessee's contention that as per Board's Circular entitlement to credit higher than tax payable. Further it is held that, supply of tangible goods such as dumpers, tippers etc. needs to be considered as primary requirement for providing output service as such vehicles are in the nature of inputs for purpose of CCR, 2004.

3.7 Bengal Logistics vs. CCE&ST, Raipur 2016 (45) STR 429 (Tri.-Del.)

In this case the service provider's invoice carried address of Kolkata Unit of assessee whereas credit availed by Raipur Unit. The Tribunal held that, in respect of service tax credit, statutory provisions provide that credit is eligible to assessee on receipt of services irrespective of place of receipt. It is only in case of inputs and capital goods that credit has to be taken by factory/unit receiving the same.

3.8 Hindustan Zinc Ltd. vs. CCE&ST, Jaipur-I 2016 (45) STR 571 (Tri.-Del.)

The Tribunal in this case allowed CENVAT credit of service tax paid on maintenance and cleanliness of factory and construction of drain for exit of rain water, as the said activities are relating to business.

Janak C. Pandya, *Company Secretary*

CORPORATE LAWS
Company Law Update

Case Law No. 1
[2016] 199 Comp Cas 541 (NCLT)
[Before the National Company Law Tribunal]
Shri Ganga Sheetgrih P. Ltd. and others.

The provisions of the Indian Evidence Act, 1872 are not applicable for any proceedings before the CLB, however, the general principles of evidence recognised in common law cannot be ignored in the process of decision making.

Brief Facts

The application has been made by the petitioner to reject the report of Central Forensic Science Laboratory, New Delhi ("CFSL") on genuineness of the documents on which, it is alleged that the petitioner has signed or put his thumb impression.

The petitioner has previously filed before the Company Law Board ("CLB") an application under sections 397, 398, 403 and 406 of the Companies Act, 1956 ("Act"). The application was related to oppression and mis-management. The complaint of the petitioner is as follows.

1. With fabricated documents and without his knowledge, he has been removed as a director of the company.
2. Also a resignation letter in his name was presented as if he has resigned.
3. That he has not sold or transferred his shares to second respondent.
4. He has not withdrawn any consideration from bank.

From respondent side, the contention made is as follows.

1. Petitioner had sold its shares to the second respondent.
2. Consideration for sale of shares also was withdrawn by the petitioner from the bank.
3. He has tendered his resignation and same has been accepted by the Board.

Based on the petitioner motion, the CLB has referred the following disputed documents to the CFSL.

1. Original Board Resolution accepting resignation.
2. Original resignation letter.
3. Original receipts for consideration of sale of shares and
4. Original share transfer form.

The CFSL has confirmed that left hand thumb impression is that of the petitioner only. However, on signature, they request for some more specimen signatures of petitioner used during the course of its business.

The petitioner is now challenging the report of CFSL on the following grounds.

1. Bench officer has shown the resignation letter of petitioner instead of signature taken in Court room in the covering letter to CFSL;

2. An abnormal delay in comparison and report;

3. The CFSL has received the thumb impression in an unsealed cover.

Both the parties have presented their respective claims and counter claims. The questions before the NCLT is whether the CFSL report are liable to reject?

Judgment

The NCLT has dismissed the application and the sustainability of the relief claimed.

The following points were considered by the NCLT, though it also noted that the provisions of the Indian Evidence Act, 1872 are not applicable for any proceedings before the CLB.

1. On evidence of the handwriting, the Court has a duty to (a) prove the genuineness of the specimen/handwriting of a person and (b) expert is competent, reliable and dependable. The reference of judgment in the *"State of Maharashtra vs. Sukhdev Singh alias Sukha", AIR, 1992 SC 2100* is considered.

2. General principle of evidence recognised in common law cannot be ignored in the process of decision making.

3. There is a difference between "expert" and a "witness of fact". The expert is not a witness of fact. Reliance is placed on judgment in *Ramesh Chandra Agarwal vs. Regency Hospital Ltd. [2009] 9 SCC 709.*

4. Evidence is only an "opinion" and is advisory in character.

5. To substantiate the evidence, expert has to be subject to the scrutiny of examination and cross-examination.

6. The reliability of report is not required at this stage and same can be done at the final stage, thus no necessity at this time to reject the same.

VALUATION

Of

ASSETS

BRANDS

BUSINESS

Several prominent valuations carried out by us

Please Contact:

Rs. $ £

ANMOL SEKHRI CONSULTANTS P. LTD.
Bandra Arcade, Ground Floor,
Nandi Galli, Opp. Bandra Railway Station,
Bandra (W), Mumbai – 400050.

M: 9892213456 / 9892235678

Web Site : www.valuationsekhri.com
Email : corpassistance@yahoo.co.in
ansekhri@hotmail.com

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. Exchange facility to foreign citizens

Foreign citizens holding foreign passport were allowed to exchange Foreign Currency for Indian currency notes up to a limit of ` 5,000/- per week till 15th December, 2016 *vide* A.P. (DIR Series) Circular No. 20 dated 25th November, 2016. The time limit was further extended and the facility shall continue to be in force till 30th December, 2016

[A.P. (DIR Series) Circular No. 22 dated 16th December, 2016]

2. Purchase and sale of securities other than shares or convertible debentures of an Indian company by a person resident outside India

Presently, eligible investors, viz., SEBI registered Foreign Institutional Investors (FIIs), Qualified Foreign Investors (QFIs), registered Foreign Portfolio Investors (FPIs) and long-term investors registered with SEBI, are allowed to purchase securities indicated in Schedule 5 on repatriation basis and subject to such terms and conditions as may be specified by the SEBI and the Reserve Bank from time-to-time.

With a view to providing flexibility in regard to the manner in which non-convertible debentures/bonds issued by Indian companies can be acquired by FPIs, RBI has allowed them to transact in such instruments either directly or in any manner as per the prevalent/approved market practice.

[A.P. (DIR Series) Circular No. 23 dated 27th December, 2016]

(This amendment, apart from providing flexibility will also result into reduction in transaction cost and enhance marketability of the bond NCDs/Bonds)

3. Amendment to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) (Eighteenth Amendment) Regulations, 2016

RBI has notified amendments in FDI Policy made through Press Notes issued by DIPP in the following Sector/ Activity under the FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 in Schedule 1, in Annex B, in certain sectors as follows:

- Agriculture & Animal Husbandry
- Manufacturing
- Defence

Service Sector:

- Broadcasting & Carriage Service
- Civil Aviation – Airports
- Single Brand Retail Trading (SBRT)
- Pharmaceuticals

Certificate to be furnished by the Prospective investor as well as Prospective Recipient Entity which is newly inserted by the RBI.

[Notification No. 381 dated 7th December, 2016]

(This Notification will reduce mismatch between FDI Policy & Notification No. 20/2000-RB dated 30-5-2000, resulting in reduction of hardship for non-resident investors who otherwise would have been forced to approach FIPB for approval)

4. FAQs External Commercial Borrowing

RBI Update on FAQs as on December 23, 2016 now contains new and detailed FAQs on External Commercial Borrowing. Refer https://www.rbi.org.in/scripts/FS_FAQs.aspx?Id=120&fn=5

RBI has modified question No. 29 twice during the month. The new FAQ is reproduced as follows:-

Question No. 29: *Whether for the purpose of computing ECB liability to equity ratio, only the proposed ECB amount would be taken into account or will it take into account all outstanding ECBs including the proposed one?*

Answer: For the purpose of computing ECB liability to equity ratio, all outstanding ECBs including the proposed one will be taken into account.

5. Laison/ Branch/ Project Offices of foreign entities in India

RBI Update on FAQs as on December 26, 2016 now contains new and detailed FAQs on Laison/ Branch/ Project Offices of foreign entities in India. Refer https://www.rbi.org.in/scripts/FS_FAQs.aspx?Id=100&fn=5

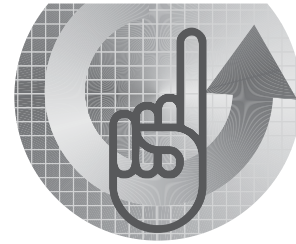
RBI has newly inserted Question No. 22. The new FAQ is reproduced as follows:-

Question No. 29: *Whether a branch office (BO) or project office (PO) can send outward remittances, permissible under FEMA, through any AD Category I bank or it has to be through the designated AD Category I bank only?*

Answer: Wherever the BO or PO is required to remit funds outside India, within the applicable guidelines under FEMA, they may do so not necessarily through the designated AD Category I bank but through any AD Category I bank of its choice subject to obtaining no objection certificate (NOC) from the designated AD Category I bank. The remittances have to be for transactions settling on Cash / Tom / Spot basis only. The remittance has to be through banking channel in either of the two methods:

(1) The designated AD category I bank will transfer equivalent INR amount to the transaction handling bank. The transaction handling bank can remit the amount to the overseas parent office of BO / PO through SWIFT. However, the transaction handling bank will have to ensure KYC compliance and the necessary documentation. It will also be required to share the SWIFT message along with the details like UIN No, beneficiary and remittance details with the designated AD Category I bank.

(2) The designated AD category I bank will transfer equivalent INR amount to the transaction handling bank. The transaction handling bank will then credit the NOSTRO account of the designated AD Category I bank which in turn will remit the amount to the final beneficiary.



Ajay Singh, *Advocate* & CA Namrata Bhandarkar

BEST OF THE REST

1. Right of pre-emption – Joint family property – One only member of undivided family – consent given to the other members of family to sell their portion to strangers then he cannot claim the right of pre-emption against stranger. Partition Act, S.4

The suit property was owned by father of defendant Nos. 1 and 2 by name Shankar. Shankar was succeeded by six sons, widow and daughters. It was ancestral property of Shankar and he died on 9-12-1970. It was the case of plaintiff that prior to purchasing of the property by him, partition has taken place amongst defendant brothers and mother. It is contended that the sisters of defendant Nos.1 and 2 had relinquished their right in the property long back under registered document. Plaintiff has purchased the shares of two brothers of defendant No. 1 and mother of defendant No.1. It was contended in the suit that as plaintiff has now purchased 3/7th portion, he may not be evicted from the suit property and the property of his share i.e., 3/7th needs to be given to his possession. Original defendant No. 1 filed counter claim and contended that he has right of pre-emption as provided under Partition Act, 1893 and Hindu Succession Act, 1956 and he is entitled to purchase the share which is purchased by plaintiff from the members of joint family. The Trial Court decreed the suit of plaintiff to give him 3/7th share. Aggrieved by the order, defendant No.1 filed contested before the Bombay High Court.

The Hon'ble Bombay High Court observed that there is record to show that partition had taken place amongst the brothers of defendant No. 1 and defendant No. 1 was party to the partition and it had taken place prior to 1989. All the sisters had relinquished their right in the property in favour of all the brothers and due to this circumstance, the six brothers and mother were entitled to get 1/7th share each and accordingly, application was made by defendant No. 1 in the year 1990 for entering specific portion of the property in his name. This application was given after the date of sale deed made in favour of plaintiff. The circumstance that plaintiff wanted to enter specific portion of the property in his name indicates that he was not treating entire property as dwelling house and he wanted to get separate portion of the property by dividing the property by metes and bounds. He wanted to use his portion separately. There is record which was created to show that defendant No. 1 had given consent to the transaction made in favour of plaintiff by two brothers of defendant No. 1 and his mother.

The High Court further observed that considering the purpose behind section 4 of the Partition Act, 1893, it can be said that if

a member of the undivided family who is the only person left to claim the right under section 4 of this Act and he had given consent to the other members of family to sell their portion to strangers then he cannot claim the right of pre-emption under section 4 of the Partition Act, 1893 against the stranger. Due to this single circumstance and as the burden was on defendant No.1 to prove that he is entitled to the exercise the right under section 4 of the Partition Act and therefore the High Court held that the Courts below have not committed any error in deciding the matter against defendant No. 1

Nandukumar Shankarrao Rasne vs. Girish Dharamvir Madam and Others AIR 2016 Bombay 267

2. Effect of adoption – Property in question vested in widow and three daughters of deceased would not be disturbed by virtue of subsequent adoption of son by widow

Succession in case of female dying intestate – Her property would be divided among her adopted son and heirs of three daughters, who had predeceased her: Hindu Adoptions and Maintenance Act, S.12.

The case of the plaintiff was that Shri Sharnappa Gaded, son of Late Bheemanna Gaded, was the last holder of the suit properties, died intestate in 1957 and had left behind him his wife Smt. Sharnappa and three daughters namely Smt. Kyadigamma (defendant No. 4), Smt. Nagamma (defendant No. 5) and Smt. Sarojamma (defendant No. 6). On the demise of Shri Sharnappa Gaded in the year 1957, suit properties had devolved upon his wife Smt. Sharnappa and the aforestated three daughters in equal shares and the female heirs became absolute owners of their respective shares. No partition was effected among the four sharers and in the course of time, three daughters died during the life of their mother Smt. Sharnappa, leaving behind their respective undivided share in the suit properties, which devolved upon their respective heirs. Upon death of Smt. Nagamma, her undivided share devolved upon the plaintiff along with his three sisters, being defendant Nos.4, 5 and 6. Likewise, it was contended that undivided 1/4th share of Smt. Kyadigamma in suit properties devolved upon her only daughter named Smt. Channama- defendant No. 2, who is the wife of the present appellant and undivided share of 1/4th of Smt. Sarojamma devolved upon defendant No. 3 and defendant nos. 7 to 9. The plaintiff had further pleaded that he was a member of the undivided family and after death of his grandmother Smt. Sharnappa, difference arose among the family members and therefore, he demanded his legitimate share on 9-12-2004 from the defendants but defendant No.1 refused to give any share to him. It was further contended that defendant No.1, the present appellant, claimed to have been adopted by late Smt. Sharnappa, but, in fact, there was no execution of any adoption deed and requisite ceremony for adoption of defendant No.1 had also not been performed and therefore, defendant No.1 had no right in the property. It was further submitted that defendant No.1 married defendant No. 2, daughter of Smt. Sharnappa and therefore, defendant No.1, the present Appellant, was trying to usurp the entire suit property by denying the share of the plaintiff. On the other hand, it had been submitted on behalf of defendant No.1 that the plaintiff was not in possession of the suit properties along with other defendants as a member of an undivided family. It had been submitted that as late Smt. Sharnappa had no male issue, she had adopted defendant No.1, who had married defendant No.2. It had been further submitted that as defendant No.1 was an adopted son of Smt. Sharnappa, defendant No.1 had performed all religious ceremonies including the rituals of making payment to other defendants and other female members

upon death of Smt. Sharnappa. It had been submitted that Smt. Sharnappa had adopted defendant No.1 by virtue of adoption deed dated 9th February, 1971, which had been duly registered and from the date of adoption, defendant No.1 had started living with his adoptive mother and had also enjoyed the suit property as an owner thereof. The property had also been mutated in the name of defendant No.1 and the said mutation had also been challenged. Alternatively, it was submitted that as defendant No.1 was in possession of the suit property for more than 34 years, he had also become the owner by adverse possession of the suit property.

The Trial Court by a judgment and decree dated 9th February, 2007, in view of the registered adoption deed and upon considering other evidence, came to the conclusion that defendant No.1 was an adopted son of Smt. Sharnappa and held that the adoption of defendant No.1 would not take away right and interest of other members of the family, which they had received prior to the date of adoption by virtue of the provisions of Section 12(c) of the Adoption Act. Thus, the Trial Court decreed the suit and ordered that the plaintiff was entitled to 1/16th share in the suit property as the property of late Shri Sharnappa Gaded had been divided into four parts. One part was inherited by his widow – Smt. Sharnappa and three parts had been inherited by his three daughters, named hereinabove. Smt. Nagamma, being one of the daughters had received 1/4th share and the plaintiff being one of the four children of late Smt. Nagamma, had received 1/4th share of Smt. Nagamma and thus the plaintiff was entitled to 1/16th share in the suit property. Being aggrieved by the judgment the defendant filed appeal before Fast Track Court and plaintiff also filed an appeal contending that in addition to 1/16th share, he was also entitled to further share in 1/4th share of his deceased grandmother. The first Appellate Court dismissed the appeal of Defendant No.1 and decided that the plaintiff was entitled to 5/64th share in the property. Being aggrieved appeal was filed before High Court. The High Court set aside the Appellate Court's order and restored the decree of the Trial Court. Before the Supreme Court the core question was whether the High Court rightly allocated the share of the properties among the family members in accordance with Hindu Succession Act, 1956.

The Supreme Court observed late Shri Sharnappa died intestate in the year 1957 leaving behind him his wife Smt. Sharnappa and three daughters namely Smt. Kydigamma, Smt. Nagamma and Smt. Sarojamma. In the instant case, there was no coparcenary, as late Shri Sharnappa was the sole male member in the family. In the circumstances, upon his death his properties were inherited by his widow and three daughters. At the time when Shri Sharnappa died in 1957, defendant No.1 was not in the picture as he was adopted by Smt. Sharnappa on 9th February, 1971. By virtue of proviso to Section 12 of the Adoption Act, an adopted child cannot divest any person of any estate which vested in him or her before the adoption. Thus, the property of late Shri Sharnappa which, upon his death in 1957, had vested in his widow and three daughters, would not be disturbed by virtue of subsequent adoption of defendant No.1. So far as inheritance of the suit property in favour of the plaintiff is concerned, the first Appellate Court was correct to the effect that the plaintiff would inherit not only property of his mother, Smt. Nagamma along with his three sisters, but he would also have share in the properties of his grandmother, late Smt. Sharnappa. Smt. Sharnappa had also not prepared any Will and as she had died intestate, her property would be divided among her adopted son i.e., defendant No.1 and heirs of her three daughters, who had predeceased Smt. Sharnappa. Smt. Sharnappa was having 1/4th share in the entire property,

which she had inherited from her husband late Shri Sharnappa. One of the daughters being Nagamma, heirs of Nagamma would inherit 1/4th share of property of Smt. Sharnappa and the plaintiff being one of the four heirs of late Smt. Nagamma, would get 1/64th share from the property of his grandmother Smt. Sharnappa.

It was further observed that looking at the provisions of Section 12 of the Adoption Act, it is clear that the property which had been vested in the widow and three daughters of late Shri Sharnappa Gaded in 1957 would not be disturbed because of adoption of defendant No.1 which had taken place on 9th February,1971. Thus, Smt. Sharnappa had become absolute owner of 1/4th share and Smt. Nagamma, the mother of the plaintiff had also become an owner of 1/4th share of the property belonging to late Shri Sharnappa Gaded.

Saheb Reddy vs. Sharnappa and Others AIR 2016 SC 5253

3. Concurrent running of sentences-Accused convicted for offence under S.138 of Negotiable Instruments Act, in respect of two cases arising out of successive transactions in a series between same parties and tried together – Criminal P.C. S.427, Negotiable Instruments Act S.138.

On 31-7-2008 the appellant had visited the residence of the complainant and had requested for a loan of ` 5 lakh to meet his personal needs which he promised to return on 13-11-2009. On this, as the complaint reads, the complainant reminded him that she had already lent a sum of ` 5 lakh to him on 1-5-2008 and that she had no funds to accede to his request for the second installment. However, having regard to the friendly relations, the complainant on the persuasion of the appellant, did advance a further amount of ` 5 lakh to him as loan on that date, by somehow arranging the same. According to the complainant in connection with the loans advanced, the appellant had issued two cheques for ` 5 lakh each and drawn on State Bank of Bikaner and Jaipur, Arnar Colony, New Delhi. Both these cheques when presented at the appropriate time, were dishonoured with the remarks "funds insufficient". Thereafter, the complainant issued legal notices and as the same though served, remained unresponded, complaints were filed.

The Trial Court returned a finding that the signatures on the cheques were not disputed by the appellant and indeed were issued in discharge of legally recoverable debts subsisting against him and acting on the presumption available under Section 139 of the Act convicted him of the offence under Section 138 of the Act. Consequently, he was awarded simple imprisonment for 10 months and fine of ` 6,50,000/- as compensation in both the cases. In case of default of payment of compensation, the appellant was ordered to suffer simple imprisonment of six months in each case. This was by judgments and orders dated 21-1-2014.

Aggrieved the appellant approached the High Court. The appellant preferred two revision petitions before the High Court corresponding to his convictions in the two complaint cases. By separate orders dated 8-2-2016, both these revision petitions were disposed of by maintaining the conviction but moderating the default sentence from simple imprisonment of six months to that of three months. In both the petitions as well, by separate orders dated 22-2-2016, the High Court declined to release the appellant by acting on his plea that he meanwhile had served the substantive as well as default sentence, if construed to have run concurrently. The appellant had urged that as both the complaints filed by the respondents have arisen out of successive transactions in

a series between the same parties and had been tried together on the basis of same set of evidence, the sentences awarded ought to run concurrently, the High Court had failed to appreciate the same. It had been submitted that the appellant is in custody since 25-2-2015 and if the two substantive sentences are construed to run concurrently, he had served not only the substantive sentences but also the sentence in default of fine as on date. It was also submitted that the appellant comes from a poor financial background, as well as is the sole bread earner of the family and that if the two sentences are to run consecutively, he would suffer grave injustice, has been emphasised.

The Supreme Court observed that the materials on record leave no manner of doubt that the complaints filed by the respondents stem from two identical transactions between the same parties whereunder the respondent had advanced loan of ` 5 lakh each to the appellant on two different dates against which the latter had issued cheques to discharge his debt and that the cheques had been dishonoured. The facts pleaded and proved do unassailably demonstrate that the loans advanced had been in the course of a series of transactions between the same parties on same terms and conditions. Significantly in both the cases, following the conviction of the appellant under section 138 of the Act, the same sentences as well have been awarded. There is thus an overwhelming identicalness in the features of both the cases permitting, the two transactions, though undertaken at different points of time, to be deemed as a singular transaction or two segments of one transaction. This deduction understandably is in the singular facts of the case. The Court was of the opinion that the appellant is entitled to the benefit of the discretion contained in Section 427 of the Code.

In arriving at this conclusion, the Apex Court reflected on the nature of the transactions between the parties thereto, the offences involved, the sentences awarded and the period of detention of the appellant as on date. It was thus ordered that the substantive sentences of 10 months simple imprisonment awarded to the appellant in the two complaint cases referred to hereinabove would run concurrently.

Shyam Pal vs. Dayawati Besoya and another AIR 2016 SC 5021

4. Review – Dispute as to transfer of shares by member of one group to member of another group in Company – Company Law Board (CLB) upheld validity of such transfer of shares interfered with entire resolution invalidating other share transfers not challenged before it – It was clearly an error apparent on face of record –Correction made in exercise of review judgment was therefore, proper – Civil P.C. S.114, Constitution of India, Articles. 136, 215

The petitioners could be conveniently described as the 'Abraham Group' and the respondents as the 'Aleyas Group'. Both are branches of the same family. The dispute relates to the shareholding of the two groups in St. Mary's Hotel Private Limited ('the Company'), which in turn owns two hotel properties in the State of Kerala. The Company was incorporated in the year 1996 and with the passage of time while the Abraham Group consisting of T.O. Abraham and Binu Zacharia held 8,00,000 shares, the Aleyas Group consisting of T.O. Aleyas and Bobby Kuriakose held 7,00,000 shares. There was a Resolution of the Board dated 17-4-2002 which is claimed by the Aleyas Group to be pursuant to an earlier decision that all the 5 branches of the family should hold

equal shares in the company. Consequently, there were some transfers made by the said Resolution.

In the said Board meeting dated 17-4-2002 it was also resolved that 2,20,000 shares would be transferred by Bobby Kuriakose to T.O. Abraham. The aforesaid decision alone i.e. transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham along with decisions taken in the Extraordinary General Meeting dated 25-4-2003; Notice of Board Meeting dated 3-6-2003 and Notice of Extraordinary General Meeting dated 3-6-2003 and the decisions taken in the said meetings were challenged. The aforesaid decisions pertain to induction and removal of Directors pursuant to the transfer of shares as per the Resolution dated 17-4-2002.

The Company Law Board while granting the other reliefs sought, disposed of the said company petition filed by the Aleyas Group upholding the validity of transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham. Aggrieved, the Aleyas Group moved the High Court of Kerala by way of an appeal under Section 10F of the Companies Act, 1956.

The High Court, notwithstanding the fact that the challenge before it pertained only to the transfer of 2,20,000 shares, (all other directions of the CLB were in favour of the Aleyas Group) set aside the entire of the Resolution dated 17-4-2002, the effect of which was that the decisions with regard to transfer of shares to members of other branches of the family, which were not questioned before the CLB and were also set aside. This was by judgment dated 31-3-2015 passed in Company Appeal No.4 of 2013. The Aleyas Group filed Review Petition before the High Court seeking review of the order dated 31-3-2015. By the impugned order dated 9-10-2015 passed in the Review Petition (subject matter of challenge in SLP(C) No. 30589 of 2015) the order dated 31-3-2015 was reviewed and interference made by the said order with the entire of the Resolution dated 17-4-2002 was corrected and confined to the issue of transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham alone.

The Hon'ble Supreme Court observed that the exercise of jurisdiction under Section 10F of the Companies Act, 1956 by the High Court to interfere with the order of the CLB cannot be faulted. If the subject matter of the appeal before the High Court was limited to the validity of the transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham, the interference made with the entire of the Resolution dated 17-4-2002 thereby invalidating the other share transfers, not under challenge before the High Court, was clearly an error apparent on the face of the record. The correction made in the exercise of the review jurisdiction was, therefore, justified and will not call for any interference.

St Mary's Hotel Pvt. Ltd. and Others vs. T.O. Aleyas and others AIR 2016 SC 4979

5. Criminal Contempt – Scandalising the Court – Serious and unsubstantiated allegation of corruption and bias against judiciary made by appellants and same published in newspaper – Not only derogatory but also have propensity to lower authority of Court – It cannot be termed as fair criticism

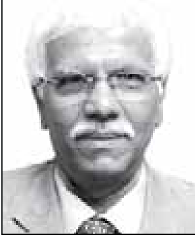
Appellants had filed the Criminal Appeals. The appellants along with Sheopat Singh belong to the Marxist Communist Party. Sheopat Singh died during the pendency of these proceedings. It is relevant to mention that appellants Nos. 2 and 3 are advocates. A prominent trade union activist of Sri Ganganagar District Shri Darshan Koda was murdered on 18-12-2000. Some of the accused were granted anticipatory

bail in February, 2001 by the High Court of Rajasthan. The Appellants addressed a huge gathering of their party workers in front of the Collectorate at Sri Ganganagar on 23-2-2001. While addressing the gathering, the appellants made scandalous statements against the High Court which were published in Lok Sammat newspaper. The Advocate General gave his consent to respondent No.1 for initiation of contempt proceedings. Thereafter, respondent No.1 filed a Contempt Petition in the High Court. It was stated by respondent No. 1 in the contempt petition that baseless allegations of bias and corruption were made by the appellants against the judiciary. He also alleged that the appellants were guilty of a systematic campaign to destroy the public confidence in the judiciary. In view of the disparaging remarks made by the appellants against the judges of the Rajasthan High Court, the High Court held that the statement published in Lok Sammat amounts to criminal contempt. The scathing remarks made by the appellants have a tendency of creating a doubt in the minds of the public about the impartiality, integrity and fairness of the High Court in administering justice. According to the High Court, the scurrilous attack made by the appellants against the judiciary lowers the authority of the Court.

The Hon'ble Supreme Court observed as that the present case, concerned with section 2(c)(i) of the Act which deals with scandalizing or lowering the authority of the Court. It has been held by the Apex Court that judges need not be protected and that they can take care of themselves. It is the right and interest of the public in the due administration of justice that have to be protected. Vilification of judges would lead to the destruction of the system of administration of justice. The statements made by the appellants are not only derogatory but also have the propensity to lower the authority of the Court. Accusing judges of corruption results in denigration of the institution which has an effect of lowering the confidence of the public in the system of administration of justice. A perusal of the allegations made by the appellants cannot be termed as fair criticism on the merits of the case. The appellants indulged in an assault on the integrity of the judges of the High Court by making baseless and unsubstantiated allegations. They are not entitled to seek shelter under Section 5 of the Act.

The Apex Court approved the findings recorded by the High Court that the appellants have transgressed all decency by making serious allegations of corruption and bias against the High Court. The caustic comments made by the appellants cannot, by any stretch of imagination, be termed as fair criticism. The statements made by the appellants, accusing the judiciary of corruption lower the authority of the Court. The Explanation to sub-section 12(1) of the Act provides that an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage, if the accused makes it *bona fide*. The stand taken by the Appellants in the contempt petition and the affidavit filed in this Court does not inspire any confidence that the apology is made *bona fide*. The Court was in agreement with the judgment of the High Court that the appellants are guilty of committing contempt of Court. After considering the peculiar facts and circumstances of the case including the fact that the contemptuous statements were made in 2001, we modify the sentence to only payment of fine of ` 2,000/- each. The Appeal was accordingly dismissed with the said modification.

Het Ram Beniwal and Others vs. Raghuveer Singh and Othes with Bhuramal Swami vs. Raghuveer Singh and Others AIR 2016 SC 4940.



Kishor Vanjara, *Tax Consultant*

TAX ARTICLES FOR YOUR REFERENCE

Articles published in Taxman, Current Tax Report (CTR), The Tax Referencer (TTR), Income Tax Report (ITR), ITR's Tribunal Tax Reports (ITR (Tribunal), Sales Tax Review (S. T. Review), The Bombay Chartered Accountant Journal (BCAJ), The Chamber's Journal (C J), The Chartered Accountant (CAJ), All India Federation of Tax Practitioners Journal (AIFTPJ), Company Case, Times of India and Economic Times for the period October to December 2016 has been arranged and indexed topic-wise.

Topic	Author	Magazine	Volume	Page
'A'				
Assessment/Reassessment				
A Critical Analysis of Amendments to Sections 147 and 149 by the Finance Act, 2012	H. Padamchand Khincha and K. K. Chythanya	Taxman	243	3
Reassessment – An overview	Ajay R. Singh	AIFTPJ	19/No.07	9
Accounting Standards				
Ind AS Implementation to have a significant and lasting Impact on Companies in India	Vijay Mathur & Kavita Gunderia	CAJ	65/No.4	508
Analysis of Ind AS 11, Construction Contracts and Ind AS 18, Revenue as Notified by MCA	Deepa Agarwal and Mahesh Koirala	CAJ	65/No.4	513
An Insight into IFRS 13: Fair Value Measurement	Yogesh Bhutara	CAJ	65/No.4	520
MAT Ind AS Committee Report – MAT Framework for Ind AS Compliant Companies	Amit B. Bahl	CAJ	65/No.4	525
Accounting for Derivatives : The Way Forward	Amit B. Bahl	CAJ	65/No.6	832
Revised Income Computation and Disclosure Standards	S. Ramachandran	CTR	289	1
Accountants Crucial to Political Establishment in Policy making	Rob Whiteman	CAJ	65/No.5	652
Where Machines could replace Accounting Professionals – and where they can't	Paul Thompson	CAJ	65/No.5	654
Adoption of Ind AS 17 Lease Standards and its Implementation Challenges	Rohit Agarwal	CAJ	65/No.5	676

Topic	Author	Magazine	Volume	Page
Deemed Cost Exemption on Fixed assets and Intangibles	Dolphy D'Souza	BCAJ	48-B/Part 3	89
Capital subsidises and Accounting	S. N. Inamdar	BCAJ	48-B/Part 2	12
Accounting and 'BREXIT' – The World's most Complex Divorce	Vijay Maniyar & Mahadevan Krishnan	BCAJ	48-B/Part 2	15
Impact of Ind AS on Demerger Transaction	Dolphy D'Souza	BCAJ	48-B/Part 2	84
Audit				
Quality of Statutory Audit of Financial Statements	Dr. Siddhartha Sankar Saha & Mitrendu Narayan Roy	CAJ	65/No.4	529
Symptoms of Accounting Misstatements in Context of PSU Audit – A Case based Discussion	Jiss Morris	CAJ	65/No.6	838
'B'				
Business Expenditure				
Disallowance of Business Expenditure for non-deduction of tax at Source	Dr. M. Govindarajan	ITR	388	1
Business Income				
Applicability of Setion 28(va)(b) in a Trademark Case	Akhilesh Kumar Shah	TTR	152	132
Burden of Proof				
Burden of Proof on Revenue while Adopting form 26AS as base for Assessment	Akhilesh Kumar Shah	TTR	152	252
Business Deduction				
Allowability of Expenses for obtaining Right to use Spectrum for Telecommunication Services	Dr. Nisha Bhandari	TTR	152	40
Black Money				
Now Reform Political Funding	Baijayant Jay Panda	TOI	11/23/2016	20
Now Generation Black Money won't be easy	M. C. Goverdhana Rangan	TOI	11/9/2016	11
Banking and Finance				
Debt Restructing Schemes: Temporary or Permanent solution to rising NPA's	Abhishek Chokhani	CAJ	65/No.4	559
Bonus Act				
The Payment of Bonus Act, 1965	Ramesh L. Soni	BCAJ	48-B/Part 2	19
Need to examine Important Implications of Payment of Bonus (Amendment) Act, 2015 and case to Review certain Provisions of Act	Mohan Rajan	CAJ	65/No.4	553
'C'				
Condonation of Delay				
Condonation of Delay in filing applications under section 10(23C)-Delays in filing Applications under section 10(23C) of the Income-tax Act, 1961 for exemption cannot be condoned by the Revenue authorities	T. N. Pandey	ITR	388	45

Topic	Author	Magazine	Volume	Page
Corporate				
Enhancing Corporate Governance through Implementation of effective Whistlblower Mechanism	Durgesh Pandey and Dr . K. N. Seth	CAJ	65/No.4	564
Corporate Governance in India	Vikram Advani and Tarun Gupta	CAJ	65/No.6	856
Fraud Investigation Techniques and other Aspects – Part II	Chetan Dalal	BCAJ	48-B/Part 3	15
CBDT				
Misuse of s.119 by the Board – Glaring instance	Minu Agarwal	CTR	289	17
CBDT should reappraise its power to instruct IT authorities	T. N. Pandey	ITR (Tribunal)	51	9
Capital Gains				
Sale of share by partners to a company and the possibility of Overcoming section 45(4) Syndrome	V. K. Subramani	TTR	152	122
Section 50C does not apply to transfer of Leasehold Right in Land	Manoj Gupta	TTR	152	125
Advance received from Holding Company is Capital Assets	Manoj Gupta	TTR	152	45
A case study on exemption on Capital Gains under Section 54F available to a shareholder on liquidation of a company	Jignesh R. Shah	ITR	389	13
Rate of Taxation and Deemed Short Term Capital Gains	Pradip Kapasi & Gautam Nayak	BCAJ	48-B/Part 2	51
Cash Transaction				
Cash Transaction and their Income Tax Consequences	V. K. Subramani	TTR	152	35
Cashbacks				
Non-Disclosure of Cashbacks may earn Taxman's Ire	Pratik Bhakta	ET	11/8/2016	11
Companies				
Companies Deposit Rules – In Pursuit of Harmony	Sandeep Mehra and Amitava Banerjee	CAJ	65/No.5	702
Simplified Proforma for Incorporating Company Electronically – An Initiative by Ministry of Corporate Affairs	Kaushik M. Jhaveri	CJ	V/No.3	73
Cash Credit				
Credits in the Bank accounts cannot be taxed as income by invoking s.68	T. N. Pandey	CTR	290	1
'D'				
Double Tax Avoidance				
Protocol for amendment of India Mauritius Tax Treaty	Nisha Malpani	CTR	289	20
Demonetisation				
SC says no to stay on withdrawal of notes	Samanwaya Rautray	ET	11/16/2016	
Government needs to supplement Demonetisation	Rashesh Shah	ET	11/23/2016	9
Demonetisation will deal a nasty blow to earnings	Shankar Sharma	ET	11/23/2016	11
Far-reaching impact of Demonetisation	Barendrakumar Bhoi	ET	11/23/2016	17

Topic	Author	Magazine	Volume	Page
Jan Dhan accounts with cash surge under IT lens	Piyush Rai	TOI	11/23/2016	15
The Great Indian Chemotherapy	Chetan Bhagat	TOI	11/26/2016	20
Deposited cash & Thought you were safe	Sachin Dave	ET	12/1/2016	6
Bigdata's watching your Bank Deposits	Sachin Dave	ET	12/6/2016	16
Wake up & Smell the Revolution	Dhirendra Kumar	ET	12/12/2016	10
Demonetisation – Case Laws	Neelam C. Jhadhav	AIFTPJ	19/No.8	74
Taxation of High value currency notes demonetised	P. N. Shah	AIFTPJ	19/No.9	11
Demonetisation *vis-s-vis* Relevant Provisions of Income-tax Act, 1961 and Implications of the Taxation Laws (Second Amendment) Bill, 2016 (Bill No.299 of 2016)	I. P. Bansal	AIFTPJ	19/No.9	17
Announcement of Demonetisation of ` 500 and ` 1,000 Bank notes	V. R. Ghelani	AIFTPJ	19/No.9	27
What does it imply with respect to Income-tax and Benami Transactions?	M. M. Bhasin	AIFTPJ	19/No.9	31
Demonetisation – Tax & Legal Issues	V. Sridharan, Dr. K Shivaram, Pradip Kapasi & Dr. Dilip Sheth	AIFTPJ	19/No.9	35
World Pre and Post 8-11-2016	Milin Mehta	CJ	V/No.3	11
Pratical Issues, Legal Questions – A Perspective	V. Sridharan & Chandni Patel	CJ	V/No.3	16
	Dhinal Shah	CJ	V/No.3	20
Amendments to Income-tax Act, 1961 & Finance Act, 2016	Bhadresh Doshi	CJ	V/No.3	25
Issues faced by Non-residents	Naresh Ajwani	CJ	V/No.3	38
Effect of Demonetisation – Indirect Taxes	Bharat Raichandani	CJ	V/No.3	43
Did Demonetisation meet its objective? – The move to Demonetise high-value currency notes as well as conceived measures for eradicating (stocked) black money but lost its sheen because of the failure to visualise the resultant problems and the consequent unpreparedness to meet these	T. N. Pandey	ITR	389	25
Depreciation				
Nature of Amendment restricting Allowance of Depreciation in case of charitable trust	Manoj Gupta	TTR	152	7
Allowability of Depreciation @ 60% on Machines Containing Computer & Computer Software	Akhilesh Kumar Shah	TTR	152	49
Debt Recovery Loans				
Changes in Debt Recovery Loans growth positive	Mr. Umraji	ET	12/6/2016	22

Topic	Author	Magazine	Volume	Page
'E'				
E-filing				
All about e-filing	Gaurav Garg	CAJ	65/No.5	694
Exemption				
Exemption and deduction under ss.12A and 80G of IT Act 1961	Bhagirath Patel	CTR	290	3
Equalisation Levy				
Analysis of Equalisation Levy and some Issues	Rajiv G. Shah	BCAJ	48-B/Part 3	19
'F'				
Finance Professionals				
A Vision for Integrated Thinking and the Role of Finance Professionals	Stathis Gould	CAJ	65/No.6	828
Foreign Insurance Companies				
Taxability of returns from Foreign Insurance Companies	Dr. Neha Pathakji	Taxman	243	1
'G'				
GST				
Services available on Goods and Services Tax Network	Bhuwan Prakash	TTR	152	443
Government asks taxman to identify GST loopholes	Saloni Shukla & Sachin Dave	ET	10/6/2016	16
GSTN finalises 34 Suvindhar Providers	Mugdha Variyar & Surabhi Agarwal	TOI	12/9/2016	13
In Run-up to GST budget to see clean up of Imports Sops	Deepsikha Sikarwar	TOI	12/9/2016	17
GST Model Law Part-I : Concept and Levy	Vinayak Patkar & Ishaan Patkar	AIFTPJ	19/No.7	52
Taxability of free supplies by the Contractee under GST Law	M. Saravana Prabhu	CAJ	65/No.4	534
Model GST Law- Transitional Provisions	Raghav Kumar Bajaj	CAJ	65/No.6	
'H'				
HUF				
The Daughter as Karta of HUF	Ramanujam and Sangeetha	ITR	388	49
'I'				
International Arbitration				
Maha gives shape to International Arbitration hub plan	Krishna Kummar	ET	10/6/2016	21
ICDS				
New Beginning of Accounting Standards under Income-tax	Jinender Jain	Taxman	242	13
New ICDS III relating to Construction Contracts	Satyadev Purohit	TTR	152	136
Revised Income Computation and Disclosure Standards	S. Ramachandran	CTR	289	1
ICDS IV relating to Revenue Recognition	Satyadev Purohit	TTR	152	254
IT Act				
If all goes well, Indian IT Act may enter 21st Century	Surabhi Agarwal	ET	10/6/2016	6

Topic	Author	Magazine	Volume	Page
International Taxation				
International Workers and Social Security Agreements- Growing Significance	Mayur B. Nayak & Anil D. Doshi & Tarankumar G. Singhal	BCAJ	48-B/Part 3	51
Payments to Non-residents Law and Procedure (withholding tax provisions under	Mayur B. Nayak & Anil D. Doshi &	BCAJ	48-B/Part 2	55
section 195 of the act)	Tarankumar G. Singhal			
Permanent establishment and the "Power of disposition " test – Deciphering the contours of the "Power of Disposition" test governing permanent establishment	Ananya Kapoor	ITR	389	19
Income Tax Authority				
Income Tax proceeding of assessee can be Transferors from one Jurisdiction to another only with the Conscious Application of Mind by the Heads of the two Jurisdictions	T. N. Pandey	TTR	152	701
'L'				
Limited Liability Partnership				
Can a Limited Liability Partnership be appointed as a Tax Auditor?	Anjali Agrawal & Bhakti Vaidya	CJ	V/No.1	89
'M'				
MAT				
MAT impact on special reserve created by NBFCs	S. K. Gandhi	Taxman	242	1
'N'				
Nomination				
Nomination in a flat	Dr Anup P. Shah	BCAJ	48-B/Part 2	81
'O'				
OIDAR Services				
New amendment to affect Foreign Transactions	Nimish Goel	GST	121	
'P'				
Property				
Income from Letting out Terrace – Head of Income	Prashant Kumar	TTR	152	247
Penny Stocks				
Tax Gains on Penny stocks under lens	Palak Shah	ET	12/8/2016	11
Penalty				
Penalty for under reporting and misreporting of income- Section 270A – New Penalty Provisions introduced by Finance Act 2016	Rahul Hakani	AIFTPJ	19/No.07	32
Initiation of Penalty under sec. 275-A of Income-tax Act: Only if Proceedings are pending	M. Venkatakrishna	CAJ	65/No.4	549

Topic	Author	Magazine	Volume	Page
Provident Fund Act				
Latest update on Provident Fund Act	Ramesh L. Soni	AIFTPJ	19/No.09	77
'R'				
RTI				
1.75 cr. RTI applications filed since 2005	Nidhi Sharma	ET	10/6/2016	3
Royalty And FTS				
Royalties – General Concept	N. C. Hegde & Sandeep Dasgupta	CJ	V/No.2	11
Royalties – Internet, Satellite and Telecommunication Services & Hiring of scientific equipment – Ship used on time charter and bare boat charter, Software	Sunil Choudhary & Anand Jain	CJ	V/No.2	19
Fees for Technical Services – Act vs. DTAA (including make available, MFN clause)	Mukul Sharma	CJ	V/No.2	27
FTS – Installation, Building site, Construction or Assembly Project	Nanda Shah & Bhupal Rapelli	CJ	V/No.2	34
FTS Exclusions	Geeta Jani & Jaya Hariharan	CJ	V/No.2	42
Taxation of Royalty and FTS Procedural Aspects for Tax Deduction	Rajesh L. Shah	CJ	V/No.2	53
Transfer Pricing – Royalties & FTS	T. Bhanumurthy	CJ	V/No.2	63
Analysis of FTS and Royalties under UN/OECD/US Model of Tax Treaties	Nilesh Kapadia	CJ	V/No.2	74
Export Commission – Whether Fees for Technical Services? Fees for Technical services – Its interpretation under different business transaction and tax ramification	Jayesh Kariya & Manjusha Todankar & Prerana Shet	CJ	V/No.2	81
'S'				
Service Tax				
Anomaly on Transportation Services by Educational Institutions Resolved	Purnendu Sahai	TTR	152	446
Service Tax levy to weigh on upstream co's earnings	Ashitosh Shyam	ET	11/8/2016	12
Analysis & Implication of Mega Cab Judgment	J. K. Mittal	CTC	V/No.1	135
Invoking of writ Jurisdiction against showcause notice Issued under Provisions of Service tax	Dr. M. Govindarajan and Dr. V. Balachandran	CAJ	65/No.4	538
Special Audit under Service Tax Law by Department Officials	Kashish Gupta	CAJ	65/No.5	688
Onus of Liability to pay Service Tax	Puloma D. Dalal & Bakul Mody	BCAJ	48-B/Part 3	59
Service Tax Exemption for Cashless Economy via GST way	Anandaday Mishra	GST	58/Part 8	138

Topic	Author	Magazine	Volume	Page
Securities Laws				
Proposed Amendments to Investor Advisers Regulations – Wide ranging Implications including to Chartered Accountants	Jayant M. Thakur	BCAJ	48-B/part 3	77
Side incentives to Promoters and Management by PE investors- SEBI seeks to address Conundrum`	Jayant M. Thakur	BCAJ	48-B/part 2	77
Salary				
The salaries are being tapped for a whitewash	Salkat Dast	ET	17/11/2016	5
Anomalies in taxation of Salary Income in India	Neeraj Gupta	CAJ	65/No.5	682
Sick Industrial Companies (Special Provisions) Act, 1985				
Scheme of Rehabilitation under Sick Industrial Companies (Special Provisions)Act,1985	Dr. N. Govindarajan	Company cases	199	8
'T'				
Trust				
Deposit of Surplus Funds by Charitable Institutions in Fixed Deposits, whether application of Income	Dr. Nisha Bhandari	TTR	152	129
Rate of Tax Applicable to Capital Gains on Loss of Exemption by a Charitable or Religious Trust	Pradip Kapasi and Gautam Nayak	BCAJ	48-B/Part 3	47
Corpus Donation received by Non-Registered Trust – Whether Exempt	Dr. Nisha Bhandari	TTR	152	698
A Charitable and/or Religious Trust is entitled to carry forward and adjust the excess expenditure in earlier years against the income of subsequent years	S. K. Tyagi	ITR	389	1
TDS				
Impact of section 206AA on the rates of TDS, particularly in respect of payment to Non-Residents	S. K. Tyagi	ITR	388	57
While expanding the coverage of TDS and TCS collections, the Income-Tax Department needs to address the taxpayers problem concerning compliance	T. N. Pandey	ITR	388	68
TDS on Rent vis-à-vis CBDT Circular on Lease Premium – Accounting Clash	Srivatsan Ranganathan	TTR	152	42
Acceptance of Declaration in Form 15-G/H for Non-Deduction of Tax at Source	J. Sadagopan	CAJ	65/No.4	544
Tribunal				
Whether Tribunal can put informal questions during hearing of an appeal?	Gopal Nathani	Taxman	242	7
Powers of Income-tax Appellate Tribunal	Dr. M. Govindarajan	ITR (Tribunal)	51	1
Taxation Laws (Second Amendment) Bill, 2016				
Far Reaching Amendments by Taxation Laws (Second Amendment) Bill, 2016	Manoj Gupta	TTR	152	691

Topic	Author	Magazine	Volume	Page
FAQs on Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016	Pawan Prakash	TTR	152	694
Transfer Pricing				
Section 92 – Applicability of Transfer Pricing Provisions	Vispi T. Patel & Kejal Visharia	CJ	V/No.1	11
The Future of Transfer Pricing	T. P. Ostwal	CJ	V/No.1	20
Associated Enterprise and International Transaction-Deciphering the Evolving Law of Transfer Pricing	Vaishali Mane & Gaurav Jain	CJ	V/No.1	26
Section 92 – Computation of Arm's Length Price – Part I	Sagar Wagh	CJ	V/No.1	36
Developments in Computation of Arm's Length Price – Bane or Boon?	Maulik Doshi & Kamlesh Kaltari	CJ	V/No.1	48
Functional, Comparability and Economic Analysis	Karishma Phatarphekar & Shefali Shah	CJ	V/No.1	55
Transfer Pricing Issues and Controversies	Jiger Saiya & Abhay Kumar	CJ	V/No.1	66
Benchmarking Intra-group Financing Transaction	Keval Doshi & Aparna Iyer	CJ	V/No.1	73
OECD BEPS Guidance on Intangibles	Anushreee Jagnani & Rakesh Alshi	CJ	V/No.1	80
Indian Transfer Pricing Documentation – Significant Changes to Documentation Norms	Bhavesh Dedhia & Anjul Mota	CJ	V/No.1	89
Reference to the Transfer Pricing Officer, Dispute Resolution Panel and Safe Harbour Rules	Anish Thacker & Dharini Minawala	CJ	V/No.1	98
Advance Pricing Agreement and Mutual Agreement Procedure	Alpna Saksena	CJ	V/No.1	107
Transfer Pricing for Specified Domestic Transactions – Insights and Emerging Issues	Darpan Mehta & Gaurav Shah	CJ	V/No.1	116
Penalties under Transfer Pricing Provisions	Manoj C. Shah & Bhadresh Doshi	CJ	V/No.1	126
'V'				
VAT				
Inter-State sale *vis-à-vis* Intra-State Sale	G. G. Goyal & C. B. Thakar	BCAJ	48-B/Part 3	65
'W'				
Works Contract				
Legal Conundrum *vis-à-vis* inter-State Works Contract	Ashutosh Mishra and Prashant Singh	GST	114	
Wealth Tax				
Government should reinstate Wealth Tax in Budget	Narendra Nathan	ET	12/6/2016	9

SUBSCRIBE TODAY

taxmann.com

Indian Acts

More than 300 Acts with 750 Rules and Forms

Covering*

55	Banking/Insurance and Financial Laws
94	Civil Laws
12	Commercial & Mercantile Laws
21	Company/Corporate & SEBI Laws
12	Criminal Laws
8	Environment Laws
7	Foreign Exchange Laws
6	Intellectual Property Laws
37	Labour Laws
23	Personal Laws
55	Tax Laws

[Annual Subscription : ₹ 5100]

* No. of Acts

TO PURCHASE

Call your Bookseller or

Delhi : 011-45562222
Mumbai : 022-25934806/07/09 9322247686, 9619668669
Ahmedabad : 079-26589600/02/03 9714105770-71
Bangalore : 9986950066
Bhopal : 9714105773
Bhubaneswar : 9937071353
Chennai : 8939009948
Cochin : 9324444746
Hyderabad : 9391041461
Jamshedpur : 9304814022
Lucknow : 9792423587
Nagpur : 9372452573
Patna : 9135709633
Pune : 9029504582

Pay Online : www.taxmann.com/bookstore
Post : TAXMANN, 59/32, New Rohtak Road, New Delhi - 110 005 (India),
Email : sales@taxmann.com

ML-214

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

The Chamber News

Wishing all the Members a Very Happy and Prosperous New Year 2017.

Important events and happenings that took place between 8th December, 2016 and 8th January, 2017 are being reported as under:

I. Admission of New Members

1) The following new members were admitted in the Managing Council Meeting held on 5th January, 2017.

Life Membership

1	Mr. Jain Piyush Sanjay	CA	Mumbai
2	Mr. Lodha Prasanna Champalal	CA	Mumbai
3	Mr. Pandey Rupesh Laxmikant	ITP	Thane
4	Ms. Jain Priya Shubhraj Saumya	Advocate	Bhojpur
5	Mr. Parth Anil Sejpal	CA	Mumbai

Ordinary Membership

1	Mr. Garg Krishan Shankarlal	CA	Indore
2	Mr. Parmar Hitesh Kantilal	ITP	Thane
3	Mr. Mehta Vikram Bharat	CA	Mumbai
4	Mr. Khetan Gaurav Sureshkumar (Half Yearly Membership)	CA	Ahmedabad
5	Mr. Jain Nitesh Jayantilal (Half Yearly Membership)	CA	Ahmedabad
6	Mr. Shah Jigar Rakesh (Half Yearly Membership)	CA	Mumbai
7	Mr. Khot Bhushan Pandurang (Half Yearly Membership)	CA	Mumbai
8	Mr. Gandhi Kunal Uday (Half Yearly Membership)	CA	Mumbai
9	Mr. Bhandari Ashok Omkarmal (Half Yearly Membership)	Advocate	Yavatmal
10	Mr. Barot Dilipkumar Bhikhubhai (Half Yearly Membership)	ITP	Palghar
11	Mr. T. Selvaraj S. Thirunavukkarasu	CA	Chennai
12	Ms. Wazalwar Prachi Navneet	Advocate	Mumbai
13	Mr. Wagh Sandeep (Half Yearly Membership)	CA	Mumbai

Associate Membership

1	Keynote Corporate Services Ltd.	Mumbai
2	N. L. Bhatia & Associates	Mumbai

II. Past Programmes

1. ALLIED LAWS COMMITTEE

The last session of the **Certificate Training Course in Ind-AS (40 Hrs.) (With Knowledge Assessment)** jointly with **Corporate Members Committee** was held on 10th & 17th December, 2016 at Babubhai Chinai Hall, IMC. The knowledge assessment was carried out & All the delegates were given the Participation Certificate of the Course.

2. CORPORATE MEMBERS COMMITTEE

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

3. INDIRECT TAXES COMMITTEE

Webinar on GST Model Laws on the following subjects:

- **Levy, Supply Exemption and Composition under Revised Model GST Law** by CA Sunil Gabhawalla was held on 12th December, 2016.
- **Registration, Returns and Payments under the Revised Model GST Law** by CA Ashit Shah was held on 20th December, 2016.
- **Input Tax Credit under Revised Model GST Law** by CA Bharat Shemlani was held on 27th December, 2016.

4. LAW & REPRESENTATION COMMITTEE

Representation on **Issue arising under section 115 TD along with Suggestions** was submitted to Hon'ble R. V. Easwar, Chairman of R. V. Easwar Committee, New Delhi on 27th December, 2016

5. STUDENT & IT CONNECT COMMITTEE

The Public Meeting on **"From Demonetisation to E-Monetisation"** was held on 21st December, 2016 at IMC. Live webcast of the meeting was done for the benefit of outstation members.

(For Details and Study Material of the Past Programmes, 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 January, 2017)

1. ALLIED LAWS COMMITTEE

The new Intensive Study Group on **"Ind-AS"** will commence from January 2017 to March, 2018 for 15th months. The Inaugural meeting will be held on Tuesday, 24th January, 2017 on the subject "(i) Ind-As 110 – Consolidated Financial Statements and (ii) Ind-As 111 – Joint Arrangements" and will be led by CA Hemal Shah.

2. CORPORATE MEMBERS COMMITTEE

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 (Covering Amendments to Income-tax Act due to Demonetisation)** will be held on 7th January, 2017 at M. C. Ghia Hall.

B) The **Webinar on Appeals before CIT (Appeals)** by Shri Rahul Hakani, Advocate will be held on 12th January, 2017.

C) 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.

D) The **Study Course on Interpretation of Taxing Statutes** will be held on 17th, 18th, 24th and 25th March, 2017 at Jai Hind College, Churchgate.

4. INDIRECT TAXES COMMITTEE

A) Webinar on the subject **"Time of Supply under Revised Model GST Law"** by CA Manish Gadia will be held on 10th January, 2017.

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

C) 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.

D) The **Workshop on "GST, MVAT and Service Tax"** jointly with STPAM, AIFTP (WZ), BCAS, MCTC and WIRC of ICAI will held from 21st January, 2017 to 24th March, 2017 at Mazgaon Library, Vikrikar Bhavan, Mumbai.

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. 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.

SUBSCRIBE TODAY

taxmann.com

- An Authentic & Largest Database of Acts, Rules, Circulars, Notifications and Case Laws on
  - Income-tax (1886 onwards)
  - GST
  - Company Law (1913 onwards)
  - Other Corporate Laws
  - International Taxation
  - Accounts & Audit
  - Service tax, Excise Laws, CST All India VAT Laws
  - Indian Acts & Rules
- Integrated Data Base of Case Laws
- Real Time Updation
- Always Updated Acts/Rules
- All About Income-Tax/All About Company Law/All About Tools - To View Everything on a Section in a single Window
- Reply to your Queries
- Articles & Commentaries

TO PURCHASE

Call your Bookseller or

Delhi : 011-45562222
Mumbai : 022-25934806/07/09
9322247686, 9619668669
Ahmedabad : 079-26589600/02/03
9714105770-71
Bangalore : 9986950066

Bhopal : 9714105773
Bhubaneswar : 9937071353
Chennai : 8939009948
Cochin : 9324444746
Hyderabad : 9391041461
Jamshedpur : 9304814022

Lucknow : 9792423987
Nagpur : 9372452573
Patna : 9135709633
Pune : 9029504582

Pay Online : www.taxmann.com/bookstore

Post : TAXMANN, 59/32, New Rohtak Road,
New Delhi - 110 005 (India),
Email : sales@taxmann.com

INDIRECT TAXES COMMITTEE

The GST Webinar on the subject "Levy, Supply Exemption and Composition under the Revised Model GST Law" held on 12th December, 2016 at CTC Office.

CA Sunil Gabhawalla addressing the members.

The GST Webinar on the subject "Registration, Returns, Payments under the Revised Model GST Law" held on 20th December, 2016 at CTC Office.

CA Vikram Mehta, Chairman delivering welcome address.

CA Ashit Shah addressing the members

The GST Webinar on the subject "Input Tax Credit under Revised Model GST Law" held on 27th December, 2016 at CTC Office.

CA Bharat Shemlani addressing the members

Study Circle Meeting on the subject "Issues in Transitional Provisions under Revised Model GST Law" held on 22nd December, 2016 at SNDT Committee Room.

CA Naresh Sheth chairing the session.

CA Sheel Bhanushali addressing the members.

INTERNATIONAL TAXATION COMMITTEE

FEMA Study Circle Meeting on the subject "Recent Changes in FEMA and its Implications (Covering July 2015 to October, 2016) Part – II" held on 9th December, 2016 at CTC Office.

CA Tanvi Vora addressing the members. Also Seen CA Pankaj Bhuta, Chairman of the session.

STUDY CIRCLE & STUDY GROUP COMMITTEE

Study Circle Meeting on the subject "Demonetisation of Notes – Tax & Other Aspects and Taxation Laws (Second Amendment) Bill, 2016" held on 13th December, 2016 at SNDT Committee Room.

CA Anish Thacker addressing the members. Seen from L to R : S/Shri CA Dilip Sanghvi, Vice Chairman, CA Ashok Sharma, Chairman and Ajay R. Singh, Vice-President.

Study Group Meeting on the subject "Recent Judgments under Direct Taxes" held on 15th December, 2016 at SNDT Committee Room.

CA Mahendra Sanghvi addressing the members.

Ms. Shraddha Swarup, Advocate addressing the members.

STUDENT & IT CONNECT COMMITTEE

Public Meeting on "From De-Monetisation to E-Monetisation" held on 21st December, 2016 at IMC

CA Hitesh R. Shah, President delivering opening speech. Seen from L to R : S/Shri CA Dinesh Tejwani, Vice Chairman – IT, CA Parimal Parikh, Chairman, CA Mitesh Katira, Convenor and CA Parag S. Ved, Hon. Treasurer.

Faculties

Mr. Ashwin Nair, Deputy Vice-President, Product Head of IMPS and UPI, HDFC Bank

Mr. Ashutosh Khaitan, Oxygeon

Mr. Anurag Priyadarshi, NPCI

Section of members

The News of the Public Meeting on "From De-Monetisation To E-Monetisation" held on 21st December, 2016 was published alongwith photograph in Janmabhoomi on 24th December, 2016.

ALLIED LAWS COMMITTEE

A Public Meeting on Demonetisation – Tax & Legal Issues held on 8th December, 2016 at K. C. College, Auditorium

The News of the Public Meeting on "Demonetisation : Tax and Legal Issues" held on 7th December, 2016 was published alongwith photograph in Janmabhoomi on 8th December, 2016.

CORPORATE MEMBERS COMMITTEE

The 3Cs of CSR – Culture, Challenges and Compliances held on 16th December, 2016 at IMC.

CA Hitesh R. Shah, President delivering opening speech. Seen from L to R: S/Shri Homi Rustam Khusrokhan, Panellist, Ms. Geetanjali Gaur, Panellist, CA Kamlesh Vikamsey, Moderator, Ms. Vandana Goyal, Panellist and CA Apurva Shah, Vice Chairman.

CA Bhavesh Vora, Chairman delivering welcome address. Seen from L to R: Homi Rustam Khusrokhan, Panellist, Ms. Geetanjali Gaur, Panellist, CA Hitesh R. Shah, President, CA Kamlesh Vikamsey, Moderator and Ms. Vandana Goyal, Panellist.

CA Kamesh Vikamsey, Moderator delivering Keynote address.

PANELIST

Mr. Homi Rustam Khusrokhan

Ms. Geetanjali Gaur

Ms. Vandana Goyal

Section of Delegates

DIRECT TAXES COMMITTEE

Intensive Study Group on Direct Taxes Meeting on the subject "Demonetisation of Currency and Taxation Laws (Second Amendment) 2016" held on 22nd December, 2016 at CTC Office. Live webcast of the meeting was done for the benefit of outstation members.

CA Jagdish Punjabi addressing the members.

MEMBERS & PUBLIC RELATIONS COMMITTEE

Self Awareness Series on the subject "The Power of Silence – a practical session" held on 29th December, 2016 at CTC Office.

Mr. Rajiv Gupta addressing the members.

ALLIED LAWS COMMITTEE AND CORPORATE MEMBERS COMMITTEE

The Certificate Training Course in Ind-AS (40 Hrs.)
held on 12th, 19th, 26th, November and 3rd, 10th and 17th December, 2016 at IMC.

CA Hitesh R. Shah, President delivering opening speech. Seen from L to R: S/Shri CA Heneel Patel, Vice Chairman, Allied Laws Committee, CA Zubin Billimoria, Faculty, Rahul K. Hakani, Chairman, Allied Laws Committee, CA Jamil Khatri, Keynote Speaker, CA Jayesh Gandhi, Faculty, CA Khozema Anajwalla, Faculty and Pravin Veera, Advisor, Allied Laws Committee.

Mr. Rahul Hakani, Chairman, Allied Laws Committee delivering welcome address.

CA Bhavesh Vora Chairman, Corporate Members Committee delivering welcome address.

CA Jamil Khatri inaugurating the course by lighting the lamp. Seen from L to R: S/Shri CA Hitesh R. Shah, President, Rahul Hakani, Chairma and CA Heneel K. Patel, Vice Chairman, Allied Laws Committee.

CA Jamil Khatri delivering Key note address.

Faculties

CA Zubin Billimoria

CA Jayesh Gandhi

CA Khozema Anajwalla

CA Yagnesh Desai

CA Vidhyadhar Kulkarni

Ms. Anagha Thatte

Mr. Hemal Shah

Brain Storming Session

Seen from L to R : S/Shri Rahul Hakani, Chairman and CA Heneel Patel, Vice Chairman, Allied Laws Committee, CA Zubin Billimoria, Trustee, CA Hitesh R. Shah, President, CA Jayesh Gandhi, CA Yagnesh Desai and CA Khozema Anajwalla, Trustees.

Section of Delegates

B L O O M S B U R Y

NEW DELHI • LONDON • OXFORD • NEW YORK • SYDNEY

Bloomsbury India Professional

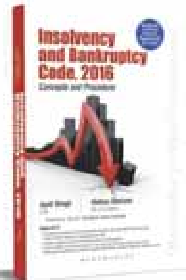
Bloomsbury Publishing India brings out professional books based on Indian law and aims for very high quality content, intended to be the first choice of professionals in accounting, tax, corporate & business law. Our in-house editorial team of qualified professionals add value and ensure quality content, developed by the most respected and senior authors.

A Complete Guide to Interim Financial Reporting with Illustrative statements

CA. Deepa Agarwal

ISBN: 9789386349309
Price: 895Paperback
Pages: 453

Insolvency and Bankruptcy Code, 2016 Concepts and Procedure



Jyoti Singh/Vishnu Shriram

ISBN: 9789386141729
Price: 1,195 Paperback
Pages: 631

A Practical Guide to Depreciation under Companies Act, 2013

CA. (Dr.) Sanjeev Singhal/ CA. R. Sankaraiah

ISBN: 9789386349545
Price: 595 Paperback
Pages: 352

Bloomsburys Desk Referencer for Professionals

Bloomsburys Edited Volume

ISBN: 9788193315019
Price: 1,295Paperback
Pages: 738

Our books are available through the usual professional bookseller channel and through Amazon, Flipkart and Makemydelivery

Other Bestsellers from Bloomsbury

Prachi Manekar Wazalwar: National Company Law Tribunal and National Company Law Appellate Tribunal Second edition, 1,448p; pb Rs. 2,995/-

Milind Kasodekar: Procedures and Compliances: A Practical Approach to the Companies Act, 2013, 1,448p; pb Rs. 2,995/-

Mohan R. Lavi: Ind AS Implementation: Learnings from first time experience, 600p; pb Rs. 1,195/-

Sanjiv Agarwal: A Complete Guide to GST Ready Reckoner in Q&A format, 724p; pb Rs. 1,295/-

Rakesh Garg: Handbook of GST in India: Concept and Procedures, 340p; pb Rs. 695/-

N. Suresh: Income Computation and Disclosure Standards (Second Edition), 895p; pb Rs. 895/-

Deepa Agarwal: The Law & Practice of Financial Reporting Requirements and Auditors Responsibilities under Companies Act, 2013, 1,352p; pb Rs. 2,495/-

Kiron Prabhakar: A Practical Guide to Food Laws and Regulations, 263p; pb Rs. 695/-

K.S. Ravichandran: Offences under Corporate Laws, Compounding, Adjudication, Prosecution and Relief & Remedies, 1,782p; hb Rs. 2,495/-

Sarika Gosain/Rajesh Gosain: Practical Approach to Ind AS Implementation-Illustrations, Summary and Comparisons (2 Volumes), 1,772p; hb Rs. 3,995/-

Book Distributors

- C. Sitaraman & Co., Ph.: 044-28111516 / 28117069 / 28112990 (Chennai)
- Students Book Centre, Ph.: 22-40293600, +91-22-40293606 (Mumbai)
- Book Corporation, Contact: Mr. Deepak Somani: 9830010297 (Kolkata)
- Commercial House, Ph.: (011) 23947862-64, 43502006-07 (New Delhi)
- Krishna Law House, Ph.: 011-23919317, 23969866, (+91 9212268170) (New Delhi)
- Pooja Law House, Ph.: 011-23919317, 23969866 (+91 9212268170) (New Delhi)

Get in touch

anil.kumar@bloomsbury.com
www.bloomsbury.com
+91 9650466577, +91 11 40574954/7
Bloomsbury Publishing India Pvt. Ltd.
DDA Complex, LSC Building No.4,
Second Floor, Pocket C6 & 7, Vasant Kunj,
New Delhi 110070

THE CHAMBER'S JOURNAL
Posted at the Mumbai Patrika Channel
Sorting Office, Mumbai 400 001.
Date of Posting: 16th of Every Month

No. MCS/149/2016-18
R.N.I. No. MAHENG/2012/47041
Date of Publishing 12th of Every Month

NEW YEAR BONANZA

OUR SMALL TOKEN OF GRATITUDE

Direct Tax Online: Direct Tax Online is a brain bank on Direct Tax that is available at your fingertips. It's a one stop destination for tax researchers.

GST Online: GST Online, a comprehensive database of literature related to GST, is a web based research solution designed to solve the enigma called GST.

Direct Tax Online/ GST Online: 1 year:
MRP: ₹ ~~10,000~~/- + Taxes
Offer Price:
₹ 5,500/- + Taxes

Direct Tax Online/ GST Online: 2 years:
MRP: ₹ ~~15,000~~/- + Taxes
Offer Price:
₹ 10,000/- + Taxes

Direct Tax Online + GST Online: 1 year:
MRP: ₹ ~~15,000~~/- + Taxes
Offer Price:
₹ 10,000/- + Taxes

Direct Tax Online + GST Online: 2 years:
MRP: ₹ ~~25,000~~/- + Taxes
Offer Price:
₹ 17,500/- + Taxes

Offer Valid till
31st January... Hurry!

For further information

email us at marketing@cchindia.net
or call us at +91 9810122683, 0124- 4960966/68

Printed and Published by Shri. Kishor D. Vanjara on behalf of The Chamber of Tax Consultants, 3 Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020 and Printed at Finesse Graphics & Prints Pvt. Ltd., 309 Parvati Industrial Premises, Sun Mill Compound, Lower Parel (W), Mumbai - 400 013. Tel: 4036 4600 and published at The Chamber of Tax Consultants, 3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020.