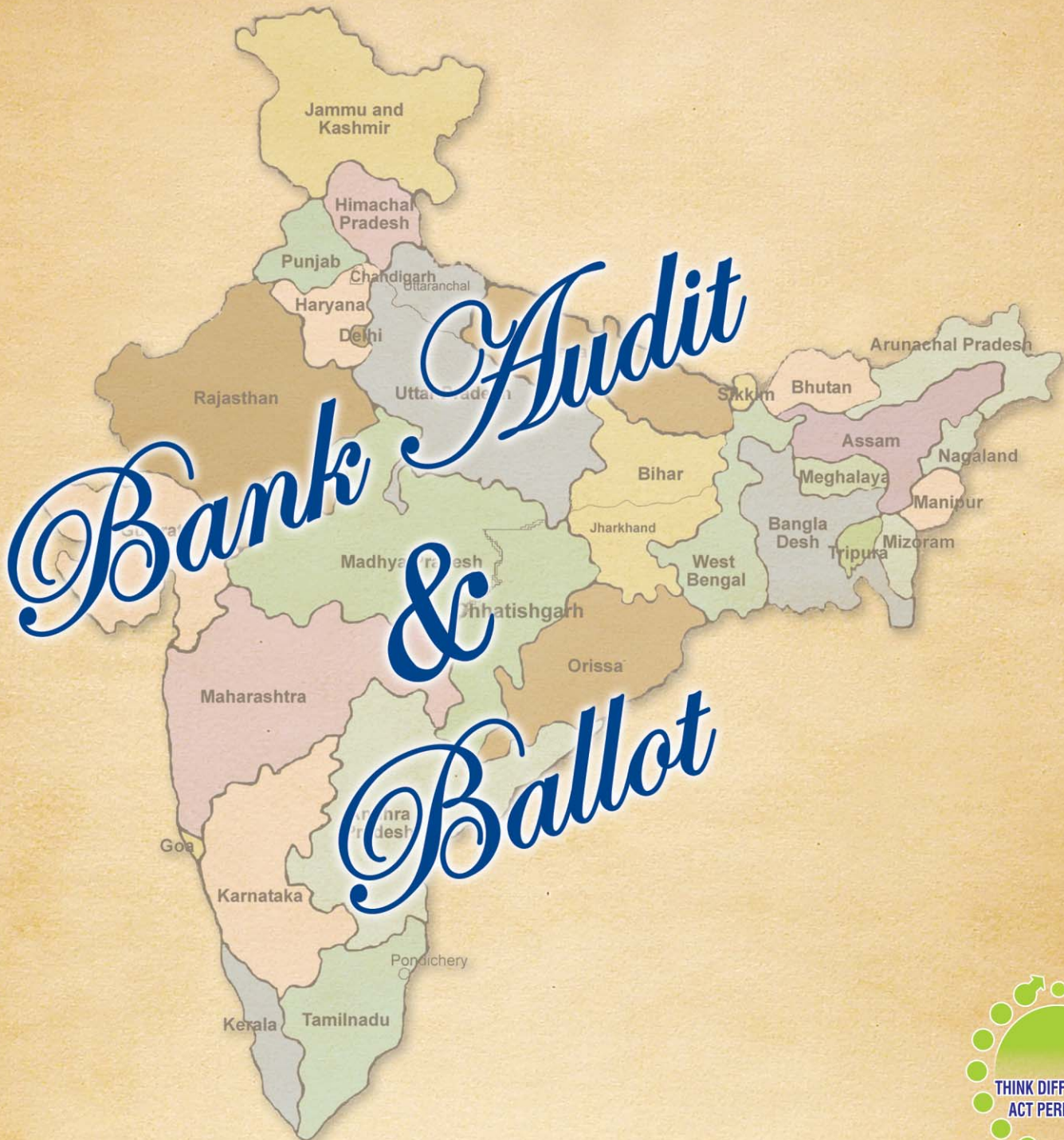


# Bangalore

branch of SIRC  
NEWS LETTER

Vol. XXIV Issue 02 April 2009





# Chairman's Communique

Dear Professional Colleagues,

**Cover Page :** April is the month where professionals in India are busy with Bank Audits. This year people of India are also busy in general elections to Lok Sabha. We Professionals have two responsibilities, one is to effectively conduct the Bank Audit & the other is to vote and elect able leaders to lead this nation. I am Confident our members will execute these responsibilities with precision as they have done in the past.



**Bangalore South – Information Technology Training Centre :** CA. Uttam Prakash Agarwal, president of ICAI inaugurated the ITT South Centre at # 216, 2<sup>nd</sup> Floor, Subbarama Chetty Road, Sanjay Towers, Natkalappa Circle, Basavanagudi, Bangalore – 560 004 on 21<sup>st</sup> March, 2009. I request members and students to make note of this and this centre will help to give training in ITT for Bangalore south students.

**Women's Wing :** Members you shall know that female Chartered Accountants are increasing year after year. In this scenario where female CAs are increasing, we thought to have a Women's Wing at our branch. I request women CAs to come forward and be part of this wing. This wing can conduct programmes exclusively for women Chartered Accountants. I invite women CAs to register with the branch through sending mail to bangalore@icai.org with the subject "Women's Wing".

**Scholarship :** There is a Chinese saying, "Teach Fishing rather than giving a Fish" the morale of this saying is, if you give a fish to an hungry man you can feed him for the day, but if you teach him fishing you can feed him for his life. We at Bangalore branch are planning to help the needy students to complete their CA course and build a career. We humbly request the members to forward the applications of needy students and also generously contribute to this noble cause.

**Intensive Workshops :** In the changing economic scenario, professionals need to update with the latest requirements of the ever changing law. In this context the branch had successfully conducted workshops on International Taxation and Service Tax. We are planning to continue these workshops and request members to take note of this. Apart from this we are also planning to conduct "Intensive workshop on Income Tax".

**Finance for Non Finance Executives (FNFE) :** We also request the members to take note of the weekend course on FNFE to be started during the first week of June and inform the eligible members to attend the course.

**Visit of Dignitaries :** Branch was fortunate to host two dignitaries during the month of march. Our beloved president CA. Uttam Prakash Agarwal and Sri. V. C. Davey, ROC Karnataka visited our branch respectively on 21<sup>st</sup> and 25<sup>th</sup> and addressed our members.

**Study Circle Meeting Series :** We are conducting series of study circle meetings on Tuesdays at branch premises discussing on Standards on Quality Control. The series of meetings will be held over a span of three months covering 12 to 13 sessions. Members are requested to make use of this series starting on 7th April. We are also planning to conduct meetings for Members in Industry on Saturdays as was done in previous year.

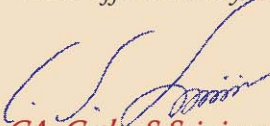
**CPE Requirements :** I request members to enter their membership numbers legibly and also get in touch with our branch in case of any discrepancies about CPE credit within one month from the conclusion of the respective programme.

**Tax Clinic :** We had successfully conducted the first tax clinic on 20<sup>th</sup> March. Members present were very happy about this innovative programme. We request the members to send in your queries well in advance before 10<sup>th</sup> of April in the subjects of Income Tax, Service Tax and VAT and get it clarified during the next tax clinic.

**Greetings from the Committee :** The entire managing committee wishes "Happy Birthday and Happy Anniversary" to all those members and students who were born in the month of April or who got married in the month of April.

**Our News Your Views :** Members please don't hesitate to send in your suggestions for our improvement. Let me pray the almighty to bestow the world of happiness to each one of you. "Wish you a Very Happy and Prosperous Financial Year 2009-10".

Yours affectionately,

  
CA. Cotha S Srinivas  
Chairman



# CALENDAR OF EVENTS - April 2009

## Programmes - A Bird's Eye View

Date/Day	Topic /Speaker	Venue/Time	CPE Credit for the month
02.04.09 Thursday	No Programme has been scheduled due to Bank Audit	---	---
07.04.09 Tuesday	SA 200 (AAS 1), "SA 200A (AAS 2),SA 210 (AAS 26), CA. Pinky Wadhwa	Branch Premises 6.00pm to 8.00pm	2 Hrs.
09.04.09 Thursday	Income Tax Issues in respect of Charitable Institutions & Impact of Service Taxes on Non Business Organisations CA. Tata Krishna and CA. Bhanu Murthy Delegate Fee : Rs. 200/- or Rs. 2,000/-	Vasavi Vidya Nikethan Vani vilas Road 5.00pm to 8.00pm	3 Hrs.
14.04.09 Tuesday	SA 500 (AAS 5),SA 501 (AAS 34), CA. Suresh Kumar D	Branch Premises 6.00pm to 8.00pm	2 Hrs.
16.04.09 Thursday	VAT- Works Contract- Latest Issues CA. Sanjay M. Dhariwal	Branch Premises 6.00pm to 8.00pm	2 Hrs.
17.04.09 Friday	Tax Clinic on Direct and Indirect Taxes	Branch Premises 6.00pm to 8.00pm	---
21.04.09 Tuesday	SA 250, SA 260 SA 299 CA. Rajkumar Kattimani	Branch Premises 6.00pm to 8.00pm	2 Hrs.
23.04.09 Thursday	Analysis of conflicts with applicability of service tax and Telecommunication sectors Mr. D. Venkatesh, Advocate, Bangalore Delegate Fee : Rs. 200/- or Rs. 2,000/-	Vasavi Vidya Nikethan Vani vilas Road 5.00pm to 8.00pm	3 Hrs.
28.04.09 Tuesday	SA 300 ,SA 320,SA 402 CA. G. Lokesh Babu	Branch Premises 6.00pm to 8.00pm	2 Hrs.
30.04.09 Thursday	Stress Management Mr. K. Gururaja, Trainer & Counsellor, Bangalore	Branch Premises 6.00pm to 8.00pm	2 Hrs.
01.05.09 Friday	Concept of Income, Chargeability & Scope CA. H. Padamchand Kincha	Branch Premises 4.00pm to 8.00pm	4 Hrs.
05.05.09 Tuesday	SA 220, SA 230, SA 240 CA. Nagraj Srinivasa	Branch Premises 6.00pm to 8.00pm	2 Hrs.

Note : High Tea for Programmes at Branch Premises at 5.30 pm.  
High Tea for Programmes at Vasavi Vidya Nikethan at 6.15 pm

### Advertisement Tariff for the Branch Newsletter

Colour full page		Inside Black & White	
Outside back	Rs. 20,000/-	Full page	Rs. 10,000/-
Inside front	Rs. 15,000/-	Half page	Rs. 6,000/-
Inside back	Rs. 15,000/-	Quarter page	Rs. 3,000/-

Advt. material should reach us before 22nd of previous month.

The Branch does not accept any responsibility for the views expressed in Articles / Contributions / Advertisements published in this News Letter.

Editor : CA. Cotha S. Srinivas  
Sub Editors : CA. S.N. Ravindranath  
CA. T.R. Venkatesh Babu



## TAX UPDATES February 2009

Chythanya K.K., B.com, FCA, LL.B., Advocate

### INCOME TAX

- |                             |                          |
|-----------------------------|--------------------------|
| a) 309 ITR – Part 1 to 3    | e) 120 TTJ – Part 5 to 8 |
| b) 176 Taxman – Part 1 to 5 | f) 25 CAPJ – Part 3 to 4 |
| c) 177 Taxman – Part 1 to 4 | g) 40-B BCAJ – Part 5    |
| d) 116 ITD – Part 5 to 8    | h) 57 TCA – Part 8       |

Reference	Description
309 ITR 15	<b>CIT vs. K. Thangamani (Madras-HC)</b> In this case, it was held that, refund collected by producing bogus TDS certificates is the income of the assessee taxable under head " income from other sources".
309 ITR 85	<b>CIT vs. Tide Water Marine International Inc. (Uttarakhand-HC)</b> In this case, it was held that, the individual assessee cannot be made liable to pay the interest under section 234B for default on the part of the company who engaged or employed such individual in deducting tax at source.
309 ITR 93	<b>M.V. Amar shetty vs. CCIT (Karnataka-HC)</b> In this case, it was held that, the word "and" is absent after clause (i) of sub-section (2A) to section 220, while the word "and" is inserted after clause (ii) of sub-section (2A) of section 220. Therefore, the two circumstances referred to above are mutually exclusive and it is only when a situation under clause (ii) occurs that, the condition under clause (iii) has to be read and that, the condition at clause (iii) is not applicable to a case falling under clause (i) of sub-section (2A) of section 220. In other words, it was held that all the conditions mentioned in the aforesaid subsection need not be satisfied. Accordingly, the order of the Commissioner in refusing to waive the interest was set aside.
309 ITR (AT) 18	<b>Millenium Infocom Technologies Ltd. vs. ACIT (Delhi-ITAT)</b> In this case, it was held that, expenditure for domain registration and server charges for hosting websites are not in nature of interest or royalties or fee for technical services or other such services chargeable to tax in India. Therefore, the payments made outside India in respect of the above, are not subject to deduction of tax at source under sections 40 (a) (i), 195 (2) of Income-tax Act, 1961 and as per CBDT Circular Nos. 759 dt. 18-11-1997, 767 dt. 22-5-1998, 10 dt. 9-10-2002.
309 ITR 174	<b>Roshanlal S. Jain vs. DCIT (Gujarat-HC)</b> In this case, it was held that, the return filed after due date and tax paid after close of financial year, the levy of interest under Sections 234A and 234B is valid and no credit need be given for taxes paid during the interregnum.The aforesaid decision is no longer good law in the light of the decision of the Delhi High Court in the case of Pranay Roy being affirmed by the Supreme Court in 309 ITR 231.
309 ITR 231	<b>CIT vs. Pranoy Roy and another (SC)</b> In this case, the Supreme Court held that, when the tax had already been paid which was not less than the tax payable on the returned income which was accepted, the question of levy of interest under section 234A does not arise.
309 ITR 194	<b>Coca Cola India Inc. vs. ACIT (Pun.&amp;Har.-HC)</b> In this case, it was held that, the transfer unconstitutionally valid and any notice of reassessment based on such order is valid even if the notice relates to period prior to introduction of transfer pricing provisions. By approving the issue of notice for the period prior to introduction of transfer pricing provisions, the honourable High Court has effectively rendered the above provisions retrospective. Further, the honourable High Court failed to note that the computation of arm's-length price is a legal fiction which possibly cannot be the basis to believe that the income has escaped assessment in the year when transfer pricing provision is not in force at all.
309 ITR (AT) 146	<b>Kopran Pharmaceuticals Limited vs. DCIT (Mumbai-ITAT)</b> In this case, it was held that, the capital gains should be included in book profit for purposes of applying section 115JB of the Income-Tax, Act, 1961 even if such capital gains are not credited to profit and loss account but taken to the capital reserve account.



309 ITR (AT) 181	<b>Escorts Mahle Ltd. vs. DCIT (Delhi-ITAT)</b> In this case, it was held that the provision for leave travel assistance was an ascertained liability but that provisions relating to the earlier years could not be claimed as deductions.
309 ITR (AT) 188	<b>Southern Crates and Containers P. Ltd. vs. ACIT (Cochin-ITAT)</b> In this case, it was held that, it is clear from the language used by the Legislature in section 80-IA (7) that the deduction should be restricted to the profits and gains from any business of the eligible industrial undertaking or an enterprise referred to in section 80-IA (1). The interpretation given by the Commissioner of Income-tax (Appeals) that section 80-IA (7) overrides the entire provisions of the Act is totally misplaced. There is no dispute in this case that the AO himself has denied to carry forward the business loss by invoking section 80 of the Act. There is no justification to restrict the allowable deduction under section 80-I by reducing the profit by setting off the business loss for the assessment year 1995-96. <i>In other words, it was held that if for any reason the loss is not eligible for carryforward, such loss cannot be notionally reduced from the profits of the undertaking for the purpose of section 80 IA (7).</i>
309 ITR (St.) 17	<b>CIT vs. Wipro Infotech Ltd. (SLP (C) No. 406 of 2009) (SC)</b> In this case, the Supreme Court dismissed the Department's SLP against the judgment dated November 20, 2007 of the Karnataka High Court in ITA No. 506 of 2002 whereby the High Court held that the expenditure on foreign travel of spouses of the employees working abroad was incurred wholly and exclusively for the purpose of business and was allowable under section 37 (1) of the Act.
309 ITR (St.) 19	<b>CIT vs. Punjab State Co-operative Bank Ltd. (C.C. No. 17331 of 2008) (SC)</b> In this case, the Supreme Court dismissed the Department's SLP against the judgment dated March 3, 2008 of the Punjab and Haryana High Court in ITA No. 82 of 2007 reported in 300 ITR 24 whereby the High Court held that interest income derived from "nominal members" by the assessee-co-operative society was eligible for deduction under section 80P (2) (a) (i) of the Income-tax Act.
309 ITR (St.) 21	<b>Special Economic Zones (Amendment) Rules, 2009 Notification No. G.S.R. 72(E), dated 3rd February, 2009</b> The following amendments were made to SEZ Rules:-In the principal rules, in rule 10, for the second and third provisos, the following proviso shall be substituted, namely: - <i>"Provided further that exemptions, drawbacks and concessions on the goods and services allowed to a developer or co-developer, as the case may be, shall also be available to the contractors including sub-contractors appointed by such developer or co-developer, and all the documents in such cases shall bear the name of the developer or co-developer along with the contractor or sub-contractor and these shall be filed jointly in the name of the developer or co-developer and the contractor or sub-contractor, as the case may be.</i> <b>It may be noted that in the absence of amendment to the provisions of Income Tax Act in sections 10 AA and 80IAB, it is doubtful that the above benefits will accrue to contractors</b>
309 ITR 240	<b>Dev Kumar Jain vs. ITO (Delhi-HC)</b> In this case, it was held that, there was nothing on record to show that the assessee received consideration for the sale of the property in excess of that which was shown in the agreement to sell. Thus, the actual sale consideration recorded in the agreement to sell and received by the assessee could not be substituted by the value as adopted by the District Valuation Officer under section 55A for the purpose of computing the capital gains chargeable to tax.
309 ITR 272	<b>CIT vs. Varinder Agro Chemicals Ltd. (Punjab &amp; Haryana-HC)</b> In this case, it was held that, the amounts spent on computer software are revenue expenditure.
309 ITR 326	<b>CIT vs. Chamundeshwari Sugar Ltd. (Karnataka-HC)</b> In this case, it was held that, the purport and objects of law relating to depreciation as envisaged under section 32 of the Income-tax Act, 1961, has to be meaningfully interpreted, consistent with the object. When the assessee bona fide installs any machinery and to his misfortune, it becomes defective and non-functional, it cannot be said that it is not put into use for the purpose of business may be the installation might have entailed the loss to him. Nonetheless, such a situation cannot be called as the one where the machinery was not put into use for the purpose of business. Hence, the view taken by the Tribunal in granting depreciation was held to be sound and proper.
309 ITR 329	<b>CIT vs. D. Ananda Basappa (Karnataka-HC)</b> In this case, it was held that, the Section 13 of the General Clauses Act declares that whenever the singular is used for a word, it is permissible to include the plural. The contention of the Revenue is that the phrase "a" residential house would mean one residential house is not the correct understanding. The expression "a" residential house



	<p>should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. In the aforesaid welcome decision, it is now permissible under section 54 to invest the capital gains in more than one house. This decision effectively overrules the special bench decision in the case of Ms. Sushila M. Jhaveri [2007] 292 ITR (AT) 1 (Mumbai) [SB].</p>
<b>176 Taxman (BN) i</b>	<b>CIT vs. Sain Processing &amp; Weaving Mills (P) Ltd. (Delhi-HC)</b> In this case, it was held that, the net profit of a company cannot be determined till all items of income and expenses are taken into account. The use of the expression "net profit" in section 115J makes it clear that depreciation not debited to the P&L account will have to be taken into account while determining "book profit" under section 115J, as long as it forms part of the prescribed accounts.
<b>176 Taxman 1</b>	<b>Alleppey Financial Enterprises vs. CIT (Kerala-HC)</b> Under section 127, transfer of files arises from an Officer with jurisdiction to make assessment to another Officer also with jurisdiction to make assessment. However, when the officer before whom appellant was assessed ceased to have jurisdiction and the assessment has to be made by another officer who has exclusive jurisdiction in the matter, it is only a matter of conveying the file by the officer who was making assessment until search to the officer who has jurisdiction to make assessment after search. In this case, after search ITO at Alleppey who ceased to have jurisdiction to make assessment after search conveyed the file to the officer who really is invested with power to make assessment under Annexure-I notification. It was held that, there is no choice for the department or the appellant to choose between the officers for assessment because there is only one officer who is designated as Assessing Officer to make assessment of search cases from Alleppey District.
<b>176 Taxman 23</b>	<b>CIT vs. Dhir Global Industries (P) Ltd. (Delhi-HC)</b> In this case, it was held that, once explanation for delay in making TDS deposit had been accepted, there was no reason as to why same could not have been used for purposes of delay in issuance of TDS Certificate. Thus the High Court held that the Tribunal was justified in deleting penalty under section 272A of IT Act, 1961.
<b>176 Taxman 178</b>	<b>CIT vs. Capital Tyres Mfg. Unit (Delhi-HC)</b> In this case, assessee had hypothecated its stock with bank for availing overdraft facility. Value of stock given to bank was much higher than value of stock declared in assessee's books of account. AO made an addition on account of such difference. On appeal, Commissioner (Appeals) confirmed addition but held that difference in valuation of closing stock was to be reduced by similar difference in opening stock. The Tribunal upheld order of Commissioner (Appeals). It was held by the High Court that, approach of Tribunal was justified.
<b>176 Taxman 184</b>	<b>CIT vs. Sunil Goyal (Uttarakhand-HC)</b> In this case, it was held that, word 'erroneous' used in section 263 includes expression 'erroneous in law' as well as 'erroneous in fact'. When Commissioner was satisfied that sundry credits were not duly verified, he rightly recorded finding that Assessing Officer had erred in accepting said credits. So far as requirement of 'prejudicial to interest of revenue' was concerned, if amount shown on sundry credits was not found verified and became part of taxable income, interest of revenue was certainly prejudicially affected. On the basis of above reasoning, the High Court upheld the action of the Commissioner under section 263.
<b>176 Taxman 217</b>	<b>CIT vs. Chetak Enterprises (P) Ltd. (Rajasthan-HC)</b> In this case, a partnership firm was converted into a private limited company, i.e., assessee-company, which claimed deduction under section 80-IA. Claim was rejected by AO on ground that work of construction of roads was granted to erstwhile firm and mere fact that firm got itself registered as company, it could not be said that if fulfilled requirements of section 80-IA (4) (i). It was found that, right from day one, while replying to notice inviting tender itself, firm had made it clear that it would be converted into a limited company; that it had requested chief engineer to allow change in constitution and change of name in agreement after conversion of firm into company with existing partners as its directors and such request had been accepted; and that such acceptance formed part of agreement. It was held that, firm stood in shoes of promoter and assessee-company took over its all assets and liabilities statutorily. Therefore, assessee would be entitled to benefit of deduction under section 80-IA (4).
<b>176 Taxman (Magazine) 56</b>	<b>Polyplex Corpn. Ltd. vs. ITO (Delhi-ITAT)</b> In this case, it was held that, expenses incurred for development of website to promote various business activities of assessee and for display of its information, products, etc., were allowable as revenue expenditure.
<b>176 Taxman 252</b>	<b>CIT vs. Smt. Nilofer I. Singh (Delhi-HC)</b> In this case, the assessee sold two properties and disclosed capital gains arising thereon. The AO was of the view that the sale consideration as disclosed by the



	<p>assessee and as appeared in registered sale deed did not reflect the fair market value and, accordingly, he referred the matter to the Valuation Officer. It was held that, the present case involves sales simpliciter where the full value of the considerations are the sale prices of the two properties indicated. For the purposes of computing capital gains in such a case, there is no necessity for computing the fair market value and, therefore, the AO could not have referred the matter to the Valuation Officer.</p>
<b>176 Taxman 458</b>	<p><b>Clifford Chance vs. DCIT (Bombay-HC)</b> In this case, assessee was an international firm of solicitors resident in U.K. It had no fixed base or office in India. During relevant assessment year, it was appointed as English law legal adviser for four projects in India. In its return of income, it showed income attributable to services performed by it in India in respect of said four projects. However, revenue authorities held that entire fees received by assessee, whether work was done in India or outside India, was taxable in India as services were rendered for Indian projects. It was held that, for a non-resident to be taxed in India on income for services, two conditions must be fulfilled simultaneously, i.e., services, which are source of income sought to be taxed in India, must be (i) utilized in India; and (ii) rendered in India. Therefore, assessee would be liable to be taxed in India only for that part of income which was attributable to services rendered by it in India and utilized in India. It is interesting to note that the aforesaid decision has been rendered after considering the newly introduced Explanation to section 9 which was purportedly introduced to nullify the effect of the decision of the Supreme Court in Ishikawajima Harima Heavy Industries reported in 288 ITR 408.</p>
<b>176 Taxman 473</b>	<p><b>Moser Baer India Ltd. Vs. ACIT (Delhi-HC)</b> In this case, it was held that, provisions of sub-section (3) of section 92CA cast an obligation on TPO to afford a personal hearing to assessee before he proceeds to pass an order of determining ALP in terms of said section. Any determination of ALP by TPO, without granting an opportunity of oral/personal hearing to an assessee, can not be sustained by taking recourse to fact that assessee did not demand an oral hearing. It was also held that Show cause notice cannot be issued by TPO just prior to determination of ALP under section 92CA (3). It was further held that such notice should refer to documents or materials available with Assessing Officer, in relation to international transactions in issue.</p>
<b>177 Taxman (Magazine) 28</b>	<p><b>Techtran Polylenses Ltd. vs. ITO (Hyderabad-ITAT)</b> In this case, it was held that, section 10B(8) provides that where the assessee, before the due date for furnishing the return of income under section 139(1), furnishes to the AO a declaration in writing that the provisions of section 10B may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment year. In the instant case, the assessee had not filed declaration as required under section 10B(8) before the stipulated period under section 139(1), but filed it during the course of assessment proceedings. It was held that the aforesaid option is just directory. In the instant case, the assessee had filed a letter before the AO for withdrawing the claim under section 10A/10B during assessment proceedings and before the assessment was completed. Therefore, the rejection of its request by AO, while framing the assessment under section 143 (3), was held not justified.</p>
<b>177 Taxman (BN) ii</b>	<p><b>Cholamandalam MS General Insurance Co. Ltd., In re (AAR – New Delhi)</b> In this case, it was held that, from the mere fact that the Korean Company did provide the service of a technical person and received from the applicant-Indian company a substantial part of the salary payable by the Korean company, it cannot be inferred that the part reimbursement in terms of the secondment agreement represents the fee for technical services within the meaning of Explanation 2 to section 9 (1) (vii) of the Income-tax Act or Article 13.4 of the Indo-Korean Tax Treaty; therefore, no tax is liable to be deducted at source by the applicant in respect of the payments made or to be made to the Korean company under the terms of the secondment agreement.</p>
<b>177 Taxman (BN) iv</b>	<p><b>Growth Techno Projects Ltd. vs. CIT (New Delhi-ITAT)</b> In this case, it was held that, the developer's profit is referable to that part of the development of the project which has been completed. It is not necessary that all the flats should be first sold and then the project can be said to have been completed. It was held that each and every flat or unit is to be treated as an independent project and the profit on that part which has been completed by handing over the possession to the buyer cannot be postponed beyond the date on which the possession was handed over by the developer to the buyer.</p>
<b>177 Taxman (BN) iv</b>	<p><b>DDIT (International Taxation) vs. Technip Offshore Contracting BV (New Delhi-ITAT)</b> In this case, it was held that, merely because the service tax was ultimately payable to the Government that by itself cannot be a reason to say that the amount of service tax collected by the assessee is not includible in the total sum for the purpose of section 44BB.</p>





177 Taxman (BN) v	<b>ACIT vs. Jewellery Solutions International (P) Ltd. (Mumbai-ITAT)</b> In this case, it was held that, for computing the profits and gains of business or profession of a 100% EOU, the income has to be computed in accordance with sections 30 to 43D and thus effect has to be given to section 32 for computation of the profits and gains of the business or profession; consequently, deduction under section 10B is to be allowed under the computation of income from profits and gains of business or profession of a 100% EOU after adjusting the unabsorbed depreciation.
177 Taxman (BN) v	<b>Compagnie Financial Hamon, In re (AAR-New Delhi)</b> In this case, it was held that, legal fees for seeking advice on the modalities of transfer and the drafting of agreement or deed of transfer would undoubtedly qualify for deduction under section 48 (i) of the Income-tax Act. However, it was held that the legal fees for the initial period of dispute are not intrinsically linked with the transfer of shares and therefore it cannot be allowed as deduction.
116 ITD (BN) v	<b>Calictu Islamic Cultural Society vs. ACIT (Mumbai-ITAT)</b> In this case, it was held that, when the legislature has categorically defined the purposes like religious and charitable and if the assessee-society is engaged in mixed activities, which are partly charitable and partly religious, it cannot be said that section 11 (1) (a) does not contemplate such situation.
120 TTJ 577	<b>Kuber Tobacco Products (P) Ltd vs. DCIT (Delhi-ITAT)</b> In this case, it was held that, sec. 292B, deeming service of notice, will also include deemed issue of notice, hence the argument that unless there exists issuance of notice, service thereof cannot be presumed or deemed is not acceptable. It was also held that, s. 292BB cannot be construed to have retrospective operation and it has to be applied prospectively.
120 TTJ 659	<b>Velocient Technologies Ltd. vs. ITO (Delhi-ITAT)</b> In this case, it was held that, amount initially received as loan for setting up business would not become business income chargeable to tax by its being taken to reserve and surplus account by assessee by forfeiture.
120 TTJ 721	<b>ACIT vs. Ashima Syntex Ltd. (Ahmedabad-ITAT)</b> In this case, it was held that, there is nothing in provisions of section 209(1) that advance tax is not payable on the current income if the same is computed under s. 115JA or any other provision of the Act. Expression "current income" on which advance tax is payable under the provision of s. 115JA. In the event the assessee defaults in payment of advance tax on his current income, levy of interest under ss. 234B and 234C is mandatory. Such levy is automatic without any notice to the assessee. Therefore, provisions of s. 234C are attracted under s. 115JA.
120 TTJ 803	<b>DaimlerChrysler India (P) Ltd. vs. DCIT (Pune-ITAT)</b> In this case, it was held that, assessee, a company incorporated in and resident of India whose 81.33 per cent share capital was held by a company domiciled in Germany and the German company having its shares listed on stock exchange in Germany, assessee has to be treated as a 'company in which public are substantially interested' within the meaning of s. 2 (18) so as not to disentitle it from setting off brought forward losses in a contingency covered by s. 79. By application of non-discrimination clause in art. 24 (4) of the Indo-German DTAA, assessee cannot be put on a worse footing than an Indian subsidiary of an Indian company whose shares were listed on any stock exchange in India. For the purposes of applying non-discrimination clause in art. 24 (4), what is to be examined is whether Indian subsidiary of a German company is any worse off vis-à-vis an Indian subsidiary of an Indian company. Such differentiation is on unreasonable grounds, hence hit by art, 24 (4) of the DTAA.
120 TTJ 865	<b>ACIT vs. Bhaumik Colour (P) Ltd. (Mumbai-ITAT)</b> In this case, it was held that, the assessee Company took interest bearing loan of Rs. 9 lacs from company UPPL. Assessee was not a shareholder in UPPL. However, one N trust held 20% shares in assessee company and 10% in UPPL. On this basis, AO assessed the loan amount as deemed dividend in the hands of assessee was not justified. It was held that if a person is a registered shareholder but not the beneficial then the provision of s. 2 (22) (e) will not apply. Similarly if a person is a beneficial shareholder but not a registered shareholder then also the first limb of provisions of s. 2 (22) (e) will not apply. For purposes of s. 2 (22) (e), "such shareholder" occurring in the last limb thereof must be both beneficial and registered shareholder.
120 TTJ 983	<b>ACIT vs. Real Image Tech. (P) Ltd. (Chennai-ITAT)</b> In this case, it was held that, the commercial right comes into existence whenever the assessee makes payment for non-compete fee. Right obtained by way of non-compete fee would be covered by the term "or any other business or commercial rights of similar nature" because after obtaining non-compete right, the assessee can develop and





	run his business without bothering about the competition. Moreover, this right (asset) will evaporate over a period of time of five years in this case because after that the protection of non-competition will not be available to the assessee. This means, this right is subject to wear and tear, hence must be held to be subject to depreciation.
120 TTJ 1127	<b>J.B. Patel &amp; Co., (Co-Owners) vs. DCIT (Ahmedabad-ITAT)</b> It was held that for the purpose of section 22 the rent being charged by the assessee, if so, is only a surrogate measure of the said annual value. The expenditure on certain items, i.e., the salary (including bonus) to the maintenance staff of the facilities as electric motors, lift, cleaning etc., as well as that on the electricity consumed in respect of any common area and the electric motors, is not attributable directly to the house property as such, but to its enjoyment by the tenants/users thereof.
40-B BCAJ 664	<b>Kotak Securities Ltd. vs. ACIT [2008] 24 SOT 440 (Mumbai-ITAT)</b> In this case, it was held that, the transaction fees paid by stockbroker to stock exchanges does not apply to section 194J read with section 40 (a) (ia) of the Income-tax Act, 1961.
40-B BCAJ 669	<b>New Shailaja CHS Ltd. vs. ITO (Mumbai-ITAT)</b> In this case, assessee a cooperative housing society, owned land and building. Upon enactment of Development Control Regulations, 1991 (DCR), the assessee became entitled to additional FSI of around 11,000 sq. ft. which additional FSI was transferred by the assessee for a consideration of Rs. 48,96,225.It was held that, there was no right transferred covered by any of the items mentioned in S. 55 (2) of the Act. The right transferred emanated from amendment to DCR and is not covered by any of the item of S. 55 (2) and does not have any cost of acquisition no capital gain can be charged on transfer of additional FSI.

**KIND ATTENTION  
STUDENTS PURSUING GMCS  
COURSE**

**ANNOUNCEMENT**

**REGISTRATIONS OPEN  
FOR THE COURSE ON  
“GENERAL MANAGEMENT AND  
COMMUNICATION SKILLS”**

**61<sup>ST</sup> & 62<sup>ND</sup> batches**

**Proposed date for the Commencement of the**

**61<sup>st</sup> Batch- 18-6-2009 To 04-07-2009**

**62<sup>nd</sup>Batch- 07-7-2009 To 23-07-2009**

**Course Fee:**

**Rs.4,500/- DD in favour of “Bangalore Branch of  
SIRC of the ICAI” / Cash**

**Duration : 15 days**

**Eligibility:**

1. Would have completed minimum 2 years of article training
2. Would have passed PE-II course/ taken up either one group or both the groups of final exams/qualified CA
3. One passport size photograph

**CA. COTHA S SRINIVAS  
CHAIRMAN**

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Adv.



# Recent judicial pronouncements in Indirect Taxes

NR Badrinath Grad C.W.A., F.C.A., Madhur Harlalka B. Com., F.C.A.

## CENTRAL EXCISE:

1. The Motor Spirit (MS) and High Speed Diesel (HSD) after being blended with small quantity of multifunctional additives (MFAs) are called as "Speed", "Power" "Turbojet". After blending MS and HSD with MFAs, it remain MS and HSD only. This blending activity does not amount to manufacture since it is merely improving quality and mere selling under different brand name could not be said to result in different characteristics and usage. [*Hindustan petroleum corporation Ltd Vs. CCE, Delhi & Rohtak, 2009 (234) E.L.T 648 (Tri. – Del.)*]
2. In central excise law, goods have to be assessed in the form in which they are presented for clearance and cannot be clubbed as a single consignment for the purpose of Rule (2) of General Interpretative Rules. When parts were cleared (not as complete machinery but as individual parts of machinery), the same are to be classified as parts of machinery. [*Bharat Bijlee Limited Vs. CC&CE, Belapur, 2009(234) E.L.T. 652 (Tri.-Mumbai)*]
3. Two contracts were entered into with the State Electricity Board, one for sale of Electricity Meters which was governed by the provisions of the Sale of Goods Act, and the other for undertaking transportation of the goods. The charges for transportation of the goods were not on actual basis. Contractor was bound to transport the goods from the factory gate to the place of the State Electricity Boards at the rates specified in the tender. Prior thereto, the State Electricity Board Authorities were to make inspection of the goods. Section 39 of the Sale of goods Act refers to the legal effect of delivery of the goods to a carrier by the seller. It is provided that where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is prima facie deemed to be a delivery of the goods to the buyer. Admittedly, in the present case after appropriation of the goods to the contract they were delivered to the carrier as per terms of the contract. Therefore, delivery to the carrier has to be taken as delivery to buyer and as such, the freight is not includable in the assessable value for central excise. [*CCE, Noida Vs. M/s Accurate Meters Ltd, 2009-TIOL-31-SC-CX-LB*]
4. In respect of clearance of packing material / containers as such by EOUs, duty is leviable only if cleared without putting them to use or if they are suitable for repeated use. When the impugned goods are damaged and cleared,

prima facie no excise duty is payable on their clearance in view of the terms of the notifications 22/03-CE and 52/03-Cus both dated 31.03.03. Waiver of pre-deposit and stay of recovery of the adjudged dues ordered. [*M/s. Orchid Chemicals & Pharmaceuticals Limited and M/s. Orchid Healthcare Vs. CCE, Chennai, 2009-TIOL-437-CESTAT-MAD*]

## CENVAT CREDIT:

5. The contract was for selling excisable goods and undertaking erection and commissioning of the same at buyer's factory. In turn, the main contractor had entered into sub-contract for erection and installation of the said excisable goods with a nominated agency. The assessable value of excisable goods includes erection and installation services for payment of excise duty. The Tribunal held service tax paid on erection and installation is eligible CENVAT credit since erection and installation is incidental to manufacture and further CENVAT credit rule does not require that service has to be rendered at the factory of manufacture for availment of service tax credit as CENVAT Credit. [*CCE, Vapi Vs. M/s Alidhara Tex tool Engineers Private Limited, 2009-TIOL-370-CESTAT-AHM*]
6. Input services credit on invoices issued by head office which is not registered as input service distributor is eligible as CENVAT credit. The CENVAT credit cannot be denied on procedural ground when there was a bona fide reason for omission. [*CCE, Vapi Vs. M/s Jindal Indal Photo Limited, 2009-TIOL-359-CESTAT-AHM*]
7. The provisions of Rule 3(5) of the CENVAT Credit Rules, 2004 would be applicable only when capital goods are removed as such without being put to use and not when they are removed after having been put to use. Accordingly, when the used capital goods were removed, CENVAT credit need not to reversed/paid. The Tribunal has relied upon *Madura Coats Pvt. Ltd. Vs. CCE, Tirunelveli, 2005-TIOL-891-CESTAT-BANG.* [*CCE, Coimbatore Vs. Balakrishnan & Bro, 2009-TIOL-309-CESTAT-MAD*] & [*CCE, Madurai Vs Rajalakshmi Paper Mills Ltd, 2009-TIOL-325-CESTAT-MAD*]
8. In respect of refund claims with respect to input credits, it is held that refund would be available only for credit attributable to inputs which are consumed in the goods exported and would not be available in respect of unutilized credit attributable to inputs lying in stock and work in progress. [*M/s. Ace Technics VS. CCE, Bangalore, 2009-TIL-281-CESTAT-BANG*]
9. Testing for quality assurance, pasting of labels showing trade





name, generic name, company logo, batch number, date of manufacture and expiry, cap ceiling/lead ceiling of containers and palletisation amounts to manufacture in terms of the Section notes and Chapter notes. CENVAT credit in respect of goods or services used for such activities is admissible. [BASF India Limited Vs. CCE, Vapi, 2009-TIOL-410-CESTAT-AHM]

10. Service tax paid on mobile phones was available to the assessee paying the mobile phone bill. In the absence of any express prohibition of phones should be installed in the factory premises under the CENVAT credit Rules, 2004, the service tax paid on mobile phones was available as CENVAT credit to eligible service providers of output service and manufacturers. Further, the credit of service tax paid for telephone services availed through the staff using mobile phones or landlines at their residences is admissible as input service credit. The Tribunal has followed the decisions of Indian Rayon and Industries Ltd. And Excel Crop Care, Grasim Industries, Keltech Energies Ltd. case and the Brakes India Ltd. [M/s. ITC Limited Vs. CC&CE, Salem. 2009-TIOL-439-CESTAT-MAD]

**SERVICE TAX:**

11. Sale of technical know-how does not amount to rendering of any consulting engineering services. Further, entering into a supplementary agreement for setting up a task for by purchaser, to study and recommend economies possible are also not providing consulting services. In the instant case, the seller took up only manufacturing activity and the remaining activities were taken over by the purchasers of the technical know-how. There is no relationship of

service provider and the receiver between the parties to the transaction in the implementation of supplementary agreement. Therefore, no service tax is leviable. [CCE, Customs Vadodara-I Vs. M/s. Ambalal Sarabhai Enterprises Limited, 2009-TIOL-396-CESTAT-AHM]

12. Service tax on goods transport by road service should be remitted to Government either by the consignor or consignee under Service Tax Rules, 1994. In case, service tax was remitted by transporter itself, it is not open to service tax department demanding service tax from the consignor or consignee. [M/s. Navyug Alloys Private Limited Vs. CC&CE, Vadodara-II, 2009 (13) S.T.R.421]

**VALUE ADDED TAX (VAT):**

13. The activity of providing Broad Band Connectivity to subscribers amounts to 'sale of light energy' taxable under Section 3 of the KVAT Act 2003. It was held that the Government of Karnataka is competent to levy tax on the said sale under the provisions of the Karnataka Value Added Tax Act, 2003 on the entire proceeds collected by it from its subscribers as "lease rentals" despite the appellant company being assessed to service tax on the said activity by the Union Government under the provisions of Finance Act, 1994, treating it as 'service'. In response, the appellant filed a special leave petition in Supreme Court against the above order of the Karnataka High Court. The Supreme Court has directed the appellant to exhaust statutory alternate remedy under the Karnataka Value Added Tax, 2005 before approaching the Supreme Court. [Bharti Airtel Limited Vs. State of Karnataka]



*Congratulations*



CA. Vinay Mruthyunjaya has been Nominated to Committee on Information and Technology of ICAI, New Delhi for the year 2009-10.

Members have the option to pay Rs. 2,000/- Lumpsum for Study Circle Meetings to be held in South. The fees will be for the period from April 2009 to February 2010.

**Important points:**

1. CPE will be given on Attendance basis only and not on payment basis.
2. The payment should be for a particular member and it is not transferable nor refundable.



## Bangalore Branch of ICAI Announces

### An Intensive Weekend Workshop on "International Taxation" (IV Batch)

**2<sup>nd</sup> May 2009 to 08<sup>th</sup> August 2009 (tentative dates of the workshop)**

**Objectives** : The Opening of the Indian Economy has resulted in a spate of Cross – Border Transactions into and out of India by way of direct and Port Folio Investments, Technology Transfers, Collaboration agreements and Joint Ventures.

This has lead to implications in India & various types of the International Transactions. There is an urgent need for the Members in Industry & Practicing CAs as well to understand the implications & limitations of the basic concepts of **International Tax Planning**. Hence this Course has been designed with a view to exposing the CFOs and Tax Managers in the Corporate Sector & Practicing Tax – Professionals to the Concepts of International Tax Planning.

We are happy to inform the members that the response for the 3 batches was overwhelming and the feed-back was very encouraging. Hence, this **Fourth Batch**.

**Faculty Members : Consists of Expert renowned speakers specialized in "International Taxation" from Mumbai, Chennai and Bangalore**

Registration : Limited to 60 seats, Registration will be on first come first serve basis.

**Course Fee : Rs. 15,000/- for Members  
Rs. 18,000/- for Non – Members**

Cheque/DD to be drawn in favour of "**Bangalore Branch of SIRC of ICAI**"

**For Further details contact the Branch on**

**Tel : 30563500 / 512**

**e-mail : bangalore@icai.org**

## ATTENTION: CHARTERED ACCOUNTANCY STUDENTS

Bangalore Branch is happy to introduce Scholarship Scheme to Merit cum Need base Students. Interested Students are hereby requested to forward their Application forms (download form from website [www.icai-bangalore.org](http://www.icai-bangalore.org)) to Bangalore Branch on or before 30.04.2009.

For further details visit : [www.icai-bangalore.org](http://www.icai-bangalore.org)

## Obituary

We deeply mourn the sad demise of CA. N. Ramasubramaniam, M. No. 22244.

We pray the almighty that his soul may rest in peace.





## BANGALORE BRANCH OF ICAI ANNOUNCES

### An Intensive Weekend Workshop on Service Tax (II Batch)

The areas of Professional practice in which our members can contribute their expertise are rapidly changing. With the tremendous growth in the Service sector, the Govt. is increasingly focusing on taxing the Services sector. To widen our areas of practice, it is inevitable to acquire expertise in various emerging areas like Service Tax, Energy Audit and so on. This, in-depth **15-day course on Service Tax** enables the participants to update their knowledge and their services would benefit all concerned.

**23<sup>rd</sup> May 2009 to 29<sup>th</sup> August 2009 (tentative dates of the workshop)**

**Faculty Members :** CAs and other Professionals with ample practical exposure and expertise in the field of Service Tax **from Mumbai, Chennai and Bangalore**

Registration : Limited to 60 seats, Registration will be on first come first serve basis.

**Course Fee : Rs. 12,000/- for Member  
Rs. 15,000/- for Non – Member**

Cheque/DD to be drawn in favour of **"Bangalore Branch of SIRC of ICAI"**

**For Further details contact the Branch on**

**Tel : 30563500 / 512**

**e-mail : bangalore@icai.org**

### Important Dates to remember during the month of April 2009

- 7-Apr-09 - Due Date for Payment of **Tax deducted & Tax collected** for the month of March 2009.
- 10-Apr-09 - Filing of monthly returns of **Central Excise** for the month of March 2009.
- 15-Apr-09 - Filing of **VAT 120** under KVAT laws
  - Due Date for Payment of **Provident Fund** for the month of March 2009.
- 20-Apr-09 - Filing of **VAT 100** under KVAT Laws.
  - Filing of **Professional Tax returns** for the month of **March, 2009.**
- 21-Apr-09 - Due Date for Payment of **Employee State Insurance** for the month of March 2009.
- 25-Apr-09 - Filing of **Service Tax Return** for the Half year ending 31.03.2009.
  - Filing of Monthly returns of **Provident Fund** for the month of March 2009.
- 30-Apr-09 - Filing of Quarterly Statement in **Form 27EQ** for **tax collected** at source for the quarter ended 31st March, 2009.
  - Filing of **Provident Fund** Annual return for the year 2008-09.
  - Due date for payment of **Professional Tax** for the financial year 2009-10.

**NOTE :** Declaration in **Form 15G and 15H** should be filed with the department before 7th day of the next following the month in which the declaration is furnished.



## An appeal to Members

### Weekend Course – “Finance for Non Finance Executives”

Bangalore Branch of SIRC of ICAI under the aegis of Management Development Programmes (MDP) is launching **13<sup>th</sup> Batch of the Course in Finance for Non Finance Executives** by **1<sup>st</sup> Week of June 09**. The above captioned course is meant for the executives those who are not having Commerce background viz, Administrators, Business Consultants, Proprietors, Directors of the Company and other Non Finance personnel.

<b>Course Fee</b>	: Rs. 12,000/-
<b>Duration</b>	: 13 to 15 Weekends (Tentatively First Week of June to Second Week of September 2009)
<b>Day</b>	: Saturdays Only
<b>Time</b>	: 09.00 am to 01.30 pm
<b>Venue</b>	: Bangalore Branch Premises

Cheque/DD to be drawn in favour of **“Bangalore Branch of SIRC of ICAI”**

**For Further details contact the Branch on**  
**Tel : 30563500 / 512 e-mail : bangalore@icai.org**

**Members are requested to pass on this information to their clients enabling them to acquire basic knowledge in Finance.**

### BANGALORE BRANCH OF ICAI ANNOUNCES

#### An Intensive Weekend Workshop on Income Tax

In the changing economic scenario, professionals need to update with the latest requirements of the ever changing law. Income Tax is no exception to this. Income tax law is also undergoing changes very frequently with notifications, circulars and case laws decided by various tribunals, High Courts and Supreme Courts. Considering these developments, we at the branch has planned for an intensive workshop on Income Tax. The workshop is designed under four modules comprising of Computation Module, Assessment Procedure Module, Corss-border Transactions Module and Miscellaneous Module. We request members to make use of this workshop by actively participating.

Registration : Limited to 200 numbers on first cum first serve basis.

**Commencement Date** : 02<sup>nd</sup> May 2009

**Faculty Members** : CAs and other Professionals with ample practical exposure and expertise in the field of Income Tax **from Mumbai, Chennai, Hyderabad and Bangalore**

**Course Fee** : Rs. 7,500/- for all Modules

**Module wise fee Structure and Programme details will be notified in the website**

Cheque/DD to be drawn in favour of **“Bangalore Branch of SIRC of ICAI”**

**For Further details contact the Branch on**  
**Tel : 30563500 / 512 e-mail : bangalore@icai.org**



## National Seminar on Statutory Central Auditors of Public Sector Banks



Inaugurated by CA. Anuj Goyal, Chairman - Professional Development Committee



Mr. Sheshadri Srinivas



Ms. Dimple Bhandia



Mr. Shashish Gupta



CA. H. Anilkumar



CA. Anand Jangid



Audience at the Seminar

## Seminar on Indirect Taxes Implications



Inaugurated by Mr. D.P. Nagendra Kumar



CA. Deepak Kumar Jain



CA. Sampath Raghunathan



CA. Parind Mehta

## 60th Batch of GMCS



Inaugurated by Ms. Sudha Raju



Inauguration

## Bank Audit Seminar for Students



Cross section of student participants

## Speakers at Study Circle Meetings



CA. Mrudula



CA. Vijaya Raja



CA. P.R. Suresh



CA. D.R. Venkatesh



CA. H. Anil Kumar



CA. D.S. Vivek



CA. Simant Prakash



## Diamond Jubilee Seminar on Bank Audit



CA. Uttam Prakash Agarwal, President, ICAI inaugurating the seminar

## President Meets Governor

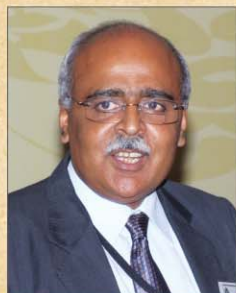


President's cordial meeting with His Excellency Shri Rameshwar Thakur, Governor of Karnataka

## Speakers at Diamond Jubilee Seminar on Bank Audit



CA. V Madhavan



CA. Sathanarayana Murthy



CA. Shyam Ramadhyan



CA. Rajashekara V. Maiya

## Roll of Honour

Bangalore Branch of SIRC of ICAI ROLL OF HONOUR			
CHAIRMAN	PERIOD	CHAIRMAN	PERIOD
CA. P. SAMBAIAH	1962-63	CA. P. NAGAPPAIYA MAIYA	1995-96
CA. A. C. NARAYAN	1963-65	CA. K. RAGHU	1996-97
CA. G. S. GUNDU RAO	1965-67	CA. C. S. GUPTA	1997-98
CA. H. M. GIRIYA	1967-68	CA. VINAY MRUTHYUNJAYA	1998-99
CA. B. V. SUBBARAYAN	1968-69	CA. H. ANIL KUMAR	1999-00
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CA. K. RAHMAN KHAN	1970-71	CA. ASHOK RAGHAVAN	2001-02
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CA. K. P. RAO	1975-77	CA. RAVINDRA RAJ BHANDARI	2003-04
CA. B. V. SUBBARAYAN	1977-78	CA. B. SHIVA MOHAN	2004-05
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CA. M. N. KRISHNA	1980-81	CA. H. GANPATLAL KAWAD	2006-07
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CA. R. VENKATAKRISHNA	1982-83	CA. S. PRABHUDEV ARADHYA	2008-09
CA. A. K. SUBRAMANIAM	1983-84	CA. COTHA S. SRINIVAS	2009-
CA. R. ANANDA	1984-85		
CA. H. NAGINCHAND KHINCHA	1985-86		
CA. N. NITYANANDA	1986-87		
CA. HARISH KUMAR SHETTY	1987-88		
CA. R. SUBRAMANIAN	1988-89		
CA. A. S. VISHNU BHARATH	1989-90		
CA. M. GOUTAM PRAKASH KHARIWAL	1990-91		
CA. S. PRAKASH CHAND	1991-92		
CA. M. R. KRISHNAMURTHY	1992-94		
CA. P. V. NAGARAJA GUPTA	1994-95		



Delegates at Diamond Jubilee Seminar on Bank Audit

## Inauguration of Bangalore South ITT Centre



## Meet the President



CA. Uttam Prakash Agarwal, President, ICAI



Cross Section of the Audience



President with Past & Present Managing Committee Members