

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)



BANGALORE BRANCH OF SIRC NEWSLETTER

Vol XXIV | Issue 07 | September, 2009

CA RAMESHWAR THAKUR
ICAI CENTRE OF EXCELLENCE
(A Global Training and Knowledge Centre)



Welcome to a new era of excellence!



Chairman's Communique

Dear Professional Colleagues,

Cover Page : I am happy to inform you all that, foundation stone was laid by our beloved president CA. Uttam Prakash Agarwal on 15th August, 2005 for CA. Rameshwar Thakur ICAI Centre of Excellence (A Global Training and Knowledge Centre) at Bangalore. It is a pearl and feather to the members and students of entire Karnataka and especially to our Bangalore Branch. I laud the services and efforts put in by our central council member CA. K. Raghu for this project. I am thankful to the policy of ICAI New Delhi, through which we could get a centre of excellence which will benefit the members and students at large to excel in their profession. The function went on well and we also had the occasion to hoist the Indian tricolor by CA. O. R. Panduranga, a senior chartered accountant accompanied by our president CA. Uttam Prakash Agarwal and also the chairman of SIRC CA. M. Devaraja Reddy. The function was graced by the presence of galaxy of past chairmen of Bangalore Branch, past and present central and regional council members from Bangalore apart from our past president CA. B. P. Rao. The managing committee members of Karnataka State Chartered Accountants Association headed by their president CA. M. Marulasiddaiah also graced the occasion. We used the platform and organized cultural programmes in which students participated and also we distributed scholarship to 25 students on need cum merit basis. Let me place on record the support extended by my managing committee members and also the staff of ICAI New Delhi and Bangalore Branch in organizing this programme. All of us are busy in finalising the tax audits in the month of September amidst having the dasara festival. I wish a eventful month ahead and pray goddess Durga that she will give strength and energy to all of us to execute the work timely and efficiently. Keeping the busy schedules we have not organized many programmes during the month ahead.

Campus Interviews : As in the past the Committee for Members in Industry is conducting the Campus Placement Programme for newly qualified Chartered Accountants in the month of September 2009. The Campus Placement Programme at Bangalore will be held between 8th and 11th September 2009. I request members to inform the eligible students to take part in the campus interviews.

Direct Tax Code : As you are aware, the new Direct Tax Code has been introduced and is open for discussion and suggestions. May I request the members to send in their comments / suggestions on Direct Tax Code to our Branch at bangalore@icai.org with subject caption "Direct Tax Code". This will help us to collate the data and send it to our Institute for making suitable representation with Ministry of Finance.

Elections to Central and Regional Councils : Members as you are aware our branch election comes once in three years and this coming December all of us have an opportunity to exercise our franchise and elect members to central and regional councils. As of now, the election is declared to be held on 4th and 5th of December, 2009. On this occasion I would personally like to request each and every member to come and franchise their valuable vote. Also I would like to inform you that we have members from bangalore branch who are planning to contest for both central and regional councils. My humble request to all of you is to give the **Best Possible Preferences** to local candidates so that we can have representation both at central and regional councils. Members from our branch representing the councils will add value to our branch and also to the council. I hope you will take note of this.

Study Circle Series on Service Tax : Members as you are aware we have successfully organised the series of study circle meetings on Auditing Standards and Accounting Standards. Response from the members was very appreciative and this gives us a fillip to organize more such series. In continuation to this, I would like to inform you that we are starting a series of study circle meetings on service tax w.e.f. 06th October, 2009. This meetings will be held on Tuesdays and Thursdays at the institute premises. I request members to attend this series in large numbers and make it a grand success.

E-mail ID's and Mobile Numbers : Members as we use the help of bulk mailing and also SMS facility to inform about the programmes or an emergency events for our members, I would request you to kindly pass on your email id's and mobile numbers to our institute so that we can update our data base. This will help you to know about the activities of our branch. You can mail the details to bangalore@icai.org

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 September or who got married in the month of September.

Yours affectionately,



CA. Cotha S Srinivas
Chairman

PROGRAMMES - A BIRDS EYE VIEW - September 2009

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
01/09/2009 Tuesday	AS-2: Valuation of Inventory AS-12: Accounting for Government Grants CA. R. Kesavadas	Branch Premises 6.00pm to 8.00pm	2 Hrs.
03/09/2009 Thursday	AS-20: Earnings Per Share AS-18: Related Party Disclosures CA. S. Ramanujam	Branch Premises 6.00pm to 8.00pm	2 Hrs.
07/09/2009 Monday	GST - Way forward Preparedness, Issues and Concerns Sri. R. Sekar, Commissioner of Customs, Pune	Hotel Fortune Select JP Cosmos 6.00pm to 8.00pm	2 Hrs.
08/09/2009 Tuesday	AS-14: Accounting for Amalgamations CA. Charan S Gupta	Branch Premises 6.00pm to 8.00pm	2 Hrs.
10/09/2009 Thursday	Recent Changes in Service Tax and Service Tax Returns CA. Srikantha Rao. T Delegate Fee: Rs. 200/-	Sri Bhagawan Mahaveer Jain College Auditorium Next to Bangalore Stock Exchange 5.00pm to 8.00pm	3 Hrs.
12/09/2009 Saturday	Business Valuation CA. Aparna Ram Mohan Delegate Fee: Rs. 250/-	Branch Premises 9.00am to 1.00pm	3 Hrs.
15/09/2009 Tuesday	AS-17: Segment Reporting AS-24: Discontinuing Operations CA. Y. J. Raghunatha Reddy	Branch Premises 6.00pm to 8.00pm	2 Hrs.
17/09/2009 Thursday	Schedule VI of The Companies Act Vs. Accounting Standards – Way Forward CA. S. Krishnaswamy	Branch Premises 6.00pm to 8.00pm	2 Hrs.
06/10/2009 Tuesday	Levy and Clarification under Service Tax-Law & Practical Issues CA. T.R. Rajesh Kumar	Branch Premises 6.00pm to 8.00pm	2 Hrs.
08/10/2009 Thursday	Valuation under Service Tax Law Practical Issues CA. Chidanand Urs	Branch Premises 6.00pm to 8.00pm	2 Hrs.

Note :High Tea for Programmes at Branch Premises at 5.30 pm.

Important Dates to remember during the month of September 2009

- 5-Sep-09 - Payment of Central Excise Duty for the month of August 2009.
- Payment of Service Tax for the month of August 2009. (in case of persons other than individual, proprietor & partnership firms)
- 7-Sep-09 - Payment of TDS deducted & TCS Collected, in the month of August 2009.
- 10-Sep-09 - Filing of monthly returns of Central Excise for the month of August 2009.
- 15-Sep-09 - Payment of Second Installment of **Advance Tax** in case of Companies
- Payment of First Installment of **Advance Tax** in case of Non-corporate assessees
- Filing of VAT 120 under KVAT Laws for the month of August 2009.
- Payment of **Provident Fund** for the month of August 2009.
- 20-Sep-09 - Filing of VAT 100 under KVAT Laws for the month of August 2009.
- Payment of Professional Tax for the month of August, 2009.
- 21-Sep-09 - Payment of **Employee State Insurance** for the month of August 2009.
- 25-Sep-09 - Filing of Monthly returns of Provident Fund for the month of August 2009.
- 30-Sep-09 - Filing of Income tax and FBT return(for Non-Corporate Audit Cases & Corporate asseses) for the A.Y. 2009-10.

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.	

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

**Total Members of Bangalore Branch
as on 31-07-2009 is 7,549.**

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



TAX UPDATES July 2009

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

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

- a) 2009 14 KCTJ 4
- b) 2009 (67) KLJ – Part 7
- c) 2009 VST Vol.23 Part 3 to 7

Reference	Description
[2009] 23 VST 191	State of Tamil Nadu vs. Sun Paper Mill Ltd. (Madras-HC) In this case, Newsprint sold by seller in Tamil Nadu to buyer in Kerala was dispatched to place in Tamil Nadu for conversion into news Magazine and thereafter sent to Kerala. It was held by the Honorable High Court that, Interstate movement of goods was contemplated under contract and no sale thereof in Tamil Nadu was contemplated. Conversion of goods before dispatch was not material and therefore the sale was inter-State sale under section 3(a) of the Central Sales Tax Act.
[2009] 23 VST 410	Commissioner of Trade Tax, Uttaranchal, Dehradun vs. Poltawaski T.P.S. Power Services (Uttarakhand-HC) In this case, dealer had imported the machinery and sold the same to BHEL, Haridwar. No custom duty and other charges were added to the price of the machineries sold by the dealer. It was held by the Honorable High Court that, according to U.P. Trade Tax Act 1948, the definition of 'value of goods' shall mean the purchase price of such goods or the market value of such goods if they have been acquired or obtained otherwise than by way of purchase. Since the items in question were purchased, the value of the goods shall be the purchase price. As per the definition of 'purchase price' under U.P. Trade Tax Act, what has been charged by the seller has to be included in the purchase price and whatever was not charged by the seller and not paid or not payable by the purchaser to the seller does not form part of the purchase price. In the instant case, customs duty and other charges were paid by the purchaser separately. Therefore, the same was not includable for calculating the value of the goods imported by the dealer.
[2009] 23 VST 465	Punjab State vs. Dada Motor Garage (Pun.& Har.-HC) In this case, agreement between scooter manufacturer in Uttar Pradesh and respondent in Punjab whereby space in garage was allocated by the respondent for showroom of manufacturer. Buyer in Punjab applying directly with manufacturer for scooter, allotment was made in buyer's name, with intimation containing chassis and engine number of vehicle. Price charged was Ex-Factory in Uttar Pradesh, although the delivery was made through respondent. The issue before court was whether the aforesaid transaction is Inter-State sale or local sale. It was held by the Honorable High Court that, the aforesaid sales were Inter-State sales, and the Respondent was not "Agent" of manufacturer liable to tax under section 3(a) of the Central Sales Tax Act

INCOME TAX

- a) 314 ITR – Part 1 to 4
- b) 181 Taxman – Part 2 to 4
- c) 119 ITD – Part 1 to 5
- d) 123 TTJ – Part 4 to 5
- e) 27 CAPJ – Part 1 to 2
- f) 41-A BCAJ – Part 4
- g) 58 TCA – Part 1

Reference	Description
[2009] 314 ITR 81	CIT vs. Greenworld Corporation (SC) In this case, the directions were issued by the Commissioner under section 263 of the IT Act, on the basis of that notices under section 148 of the Act were issued. It was held that, the jurisdiction under section 263 can be exercised only when both the following conditions are satisfied (i) the order of the AO should be erroneous, and (ii) it should be prejudicial to the interest of the Revenue. It was held that the Commissioner of Income-tax (Shimla)



	<p>had no jurisdiction to issue directions and notices issued pursuant thereto would be bad in law. In aforesaid case, it was also held that the Commissioner ought not to have interfered with the independence of the assessing officer and any such interference renders the order of the assessing officer bad. However, the honourable Supreme Court exercising its extraordinary powers ordered for the re- opening of the assessment.</p>
[2009] 314 ITR 309	<p>Vijay Ship Breaking Corporation vs. CIT (SC) In this case, it was held that, the assessee was not bound to deduct tax at source once Explanation 2 to section 10 (15)(iv)(c) stood inserted as TDS arises only if the tax is assessable in India. Since tax was not assessable in India, there was no question of TDS being deducted by the assessee. <i>The aforesaid decision is an eye-opener to those who take the view that an application under section 195 (2) is mandatory in respect of all payments to nonresidents without deduction of tax when such payments to nonresidents are not chargeable to tax at all in India.</i></p>
[2009] 314 ITR 314	<p>Nectar Beverages P. Ltd. vs. DCIT (SC) In this case, it was held that, the balancing charge arising from sale of a depreciable asset is neither a loss, nor an expenditure, nor a trading liability, referred to in section 41(1). The aforesaid decision clarifies that section 41 (1) does not apply in respect of depreciable asset.</p>
[2009] 314 ITR (AT) 231	<p>Vibha Agrotech Ltd. vs. ITO (Hyderabad-ITAT) In this case, assessee was engaged in research, production and marketing of hybrid seeds and claimed exemption under section 10 of IT Act as agricultural income. The AO treated the income from sale of foundation seeds as income from business and rejected the claim of exemption. It was held that, the basic seeds were sold by the assessee only as a result of basic operations that had been carried on by it and on expending human skill and labour thereon. It was further held that only after performing operations such as weeding, watering, manuring, etc., the resultant product was grown and made ready for sale in the form of basic seeds. Thus, the basic seeds sold by the assessee were the result of primary as well as subsequent operations involving huge skill and efforts and the income therefrom was agricultural income being entitled to exemption under section 10(1) of IT Act.</p>
[2009] 314 ITR (AT) 266	<p>R. Kalanidhi v. ITO (Chennai-ITAT) In this case, the assessee had previously sold two properties in respect of one of which benefit under section 54 was claimed. During the accounting period relevant to the assessment year under consideration, the property in respect to which exemption had been claimed and allowed was made subject matter of the joint development agreement and power of attorney in favour of the developer, within the period of three years from the date of purchase of the new asset. The AO reopened the assessment, withdrew the exemption and assessed the capital gains. It was held by Tribunal that, the assessee within three years of purchase entering into agreement to develop property executing power of attorney in favour of developer and handing over possession of half share in property, amounted to transfer and therefore exemption originally granted under section 54 was liable to be withdrawn.</p>
[2009] 314 ITR (AT) 301	<p>LG Cable Ltd. vs. DDIT (International Taxation) (Delhi-ITAT) In this case, the assessee company was non-resident, and entered into a contract entailing onshore execution and offshore supply of equipment. Sale of goods under the contract was made to buyer on C.I.F. contract. Goods were ascertained and delivered by ship to buyer and documents handed over to nominated bank. Payment was received against irrevocable letter of credit outside India. In this situation it was held by Tribunal that, in respect of sale of offshore equipment arising outside India, income accrued outside India and income is not attributable to any operations in India and therefore the same is not taxable in India.</p>
[2009] Taxman 181 (BN – iii) Part 3	<p>Ujagar Singh Oberoi vs. ACIT [ITA No. 3062/(Delhi)/07, dt. 29-5-2009] (New Delhi-ITAT) In this case, it was held that, the Indira Vikas Patras are capital asset as per provisions of section 2 (14) of Income-tax Act, 1961; and therefore the tax is leviable on transferable/tradable assets prior to the maturity under the head capital gain tax in the case of the investor.</p>
[2009] Taxman 181 (BN – viii) Part 3	<p>Multiplex Trading & Industrial Co. Ltd. vs. ITO [ITA No. 863 (Delhi) of 2006, dt. 5-6-2009] (New Delhi-ITAT) In this case, it was held that, units of mutual fund cannot be equated with shares of a company; hence, loss on purchase and sale of units of mutual fund cannot be treated as loss from speculation business.</p>



<p>[2009] Taxman 181 (BN – ix) Part 3</p>	<p>FactSet Research Systems Inc., In re [AAR No. 787 of 2008, dt. 30-6-2009] (AAR-New Delhi) In this case, it was held that, the subscription fee received by the American company from the licensee (user of database) does not fall within the scope of clause (v) of Explanation (2) to section 9 (1) as royalty and the same is not taxable in India as royalty; it is liable to be taxed only as business income if at all it is found by the Revenue that an agency PE exists of the American Company.</p>
<p>[2009] 181 Taxman 155</p>	<p>CIT vs. Raj Kumar (Delhi-HC)In this case, it was held that, the word ‘advance’ which appears in the company of the word ‘loan’ could only mean such advance which carries with it an obligation of repayment. Trade advance which are in the nature of money transacted to give effect to a commercial transactions would not fall within the ambit of the provisions of section 2 (22) (e) of the Act dealing with deemed dividend. This interpretation would be in line with the rule of purposive construction, noscitur a sociis, as applied by the Supreme Court in the case of LIC of India v. Retd. LIC Officers Association [2008] 3 SCC 321.</p>
<p>[2009] 119 ITD 21</p>	<p>Aum Chemicals v. ACIT, Palghar (Mum - ITAT)In this case, assessee was a partnership firm, consisting of two partners. Assessee entered into an agreement, whereby business of firm was converted into company, namely, company ‘A’, and all assets and liabilities of firm were transferred to the said company. As per terms of agreement, shares of company ‘A’ were given to partners to extent of credit balances in their capital account. Assessing Officer opined that provisions of section 45 (4) were attracted and, therefore, he having calculated certain amount as ‘short-term capital gain’ added same to assessee’s income. It was held by the Tribunal that, since, in instant case, condition of distribution of capital assets on dissolution of firm was not satisfied, section 45 (4) was not applicable. Even otherwise, Assessing Officer was not correct in computing capital gain on amount of credit balances of partner’s capital accounts because after deducting cost of capital assets which was equal to their book value, calculation of capital gain came to nil.</p>
<p>[2009] 119 ITD 49</p>	<p>ITO vs. Krishnionics Ltd. (Ahmedabad-ITAT)In this case, it was held that, the provisions of section 2 (22) (e) (ii) refers to the words “Substantial part of the Business” and nowhere refers to the words “Substantial Income” which means that to find out as to whether a given case is covered by the provisions of section 2 (22) (e) of the Act or not, income criteria from a particular source is not relevant. However, these provisions take the case out of the scope of section 2(22)(e)(ii) of the Act only if substantial part of the business carried out by the payer company is found to be that of lending of money and therefore, to find out substantial part of the business of the payer-company, one should consider the ‘objects’ and ‘deployment of the funds’ by the payer company because there can be cases where the company might have deployed more funds by way of loans during the course of business of money lending at the fag end of the previous year and may not have earned any interest or earned a small interest, but might have earned more dividend on investment having been made before the declaration of dividend on shares.</p>
<p>[2009] 119 ITD 88</p>	<p>Ashwani Dhinga vs. ADIT (Delhi-ITAT)In this case, Assessee, an agriculturist, got compensation under section 23 of Land Acquisition Act which comprised of three components, namely, compensation [u/s 23(1)], additional amount of compensation [u/s 23(1A)] and solatium [u/s 23(2)]. Subsequently, in case of Union of India v. Birbal [Civil Revision No. 1598 of 1999, dated 17-8-2000], it was held by High Court that interest would also be payable on additional amount determined under section 23(1A). Thus, an amount fell to assessee’s share Rs. 6.53 lakhs was worked out for each year under consideration. Assessee did not show above mentioned interest in returns. Assessing Officer issued notice under section 148 to assessee in response to which he filed returns of income declaring income of Rs. 6,53,760 being taxable income and tax was paid under section 140A. Assessing Officer completed assessment levying interest under sections 234A, 234B and 234C. It was held that, when liability to be assessed at income of Rs. 6.53 lakhs had not been denied by assessee, consequences of same would be that assessee would be liable to file his return of income for that year and all the obligations attached to that income would have also to be complied with. Therefore, interest under sections 234A, 234B and 234C was held as rightly levied.</p>
<p>[2009] 123 TTJ 509</p>	<p>Schefenacker Motherson Ltd. vs. ITO (Delhi-ITAT)In this case, it was held that, for determination of ALP by TNMM, assessee was justified in taking profit level indicator of comparable companies</p>



	as operating cash profits without taking into consideration depreciation. Any receipt or expenditure having no bearing on price or margin of profit could not be taken into consideration. It is nowhere provided that deduction of depreciation is a must. Depreciation, which can have varied basis and is allowed at different rates, is no such an expenditure which must be deducted in all situations. Exclusion of depreciation was justified to eliminate difference in technology used, age of assets used in production, differences in capacity utilization and different depreciation policies adopted by various companies in auto component industry.
[2009] 123 TTJ 543	Kwal Pro Exports vs. ITO (Jodhpur-ITAT) In this case, it was held that, assessee having purchased raw material as well as semi-finished goods and articles and transformed them into artistic and marketable commodity which was completely distinct from the original items in character and use by carrying out the activities of smoothening, shaping, engraving, embossing, fixing metallic parts and accessories, polishing and painting, etc., can be said to have undertaken manufacture or production of articles and therefore, its income is eligible for exemption under s. 10B.
[2009] 123 TTJ 657	ACIT vs. MSS India (P) Ltd. (Pune-ITAT) In this case, the tribunal rejected the contention of the assessee that transfer pricing provisions are not applicable in a case in which assessee is eligible for tax exemption under s. 10A following Aztec Software & Technology Services Ltd. vs. ACIT [2007] 109 TTJ (Bang)(SB) 892 and not following the decision of Bangalore bench in the case of Philips Software Centre (P) Ltd. vs. ACIT (2008) 119 TTJ (Bang).
[2009] 41-A BCAJ 459 and 2009 TIOL 273 ITAT (Del.)	Competent Films Pvt. Ltd. v. ITO (Delhi-ITAT) In this case, the assessee was engaged in the business of running of cinema hall, canteen and food courts. It had entered into MOU with the film distributor. The assessee takes the cinema premises on hire and shares the profit based on certain guidelines agreed upon by them. It was held by the Tribunal that, the agreement is a profit sharing agreement and it was not for service contract. Following the ratio of the decisions of Ahmedabad Bench of ITAT in Sunsel Drive-in-Cinema (P.) Ltd. v. ITO, (2006) 5 SOT 64 (Ahd.) and Mumbai Bench of ITAT in ITO v. Shringar Cinemas (P) Ltd., [2008] 20 SOT 480 (Mum.) it was held that there was no works contract and, therefore, the assessee was not liable to deduct any tax u/ s. 194C of the Act. It was observed by Tribunal that the distributor has only given the right to exhibit the films and the assessee had only rendered the services of exhibiting the films and therefore the question of deduction of tax by the assessee did not arise.
(2009) 41-A BCAJ 459 and 2009 TIOL 328 ITAT (Bang.)	ITO v. Margasoochi Chits Pvt. Ltd. (Bangalore-ITAT) In this case, it was held that, the chit fund agreement is not a money lending contract but a special type of contract. In the scheme of chit fund there is neither any money borrowed nor any debt incurred, the dividends paid by the chit fund to the subscribers of the chit cannot be said to be answering the definition of interest.
[2009] 41-A BCAJ 470	S.D. Pharmacy Pvt. Ltd. v. DCIT (Cochin-ITAT) In this case, it was held that, trade discount allowed to customer does not constitute commission liable for deduction of tax under section 194H.
181 Taxman 9	S.R. Batliboi & Co. (Delhi High Court) In this case, it was held that in terms of section 132 (1) (iib), the Department is not entitled to demand an unrestricted access to and/or right to acquire electronic records present in laptops, that belong to auditor of the assessee and not to the assessee himself, including electronic records pertaining to third parties unconnected with the assessee.

Congratulations



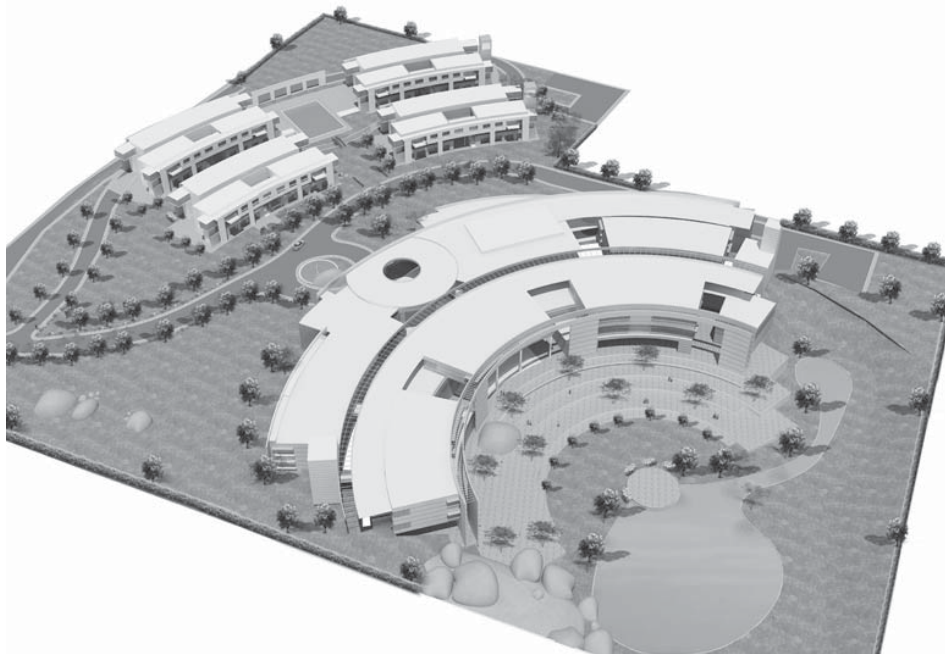
CA. B.P. Rao,
has been appointed
as a member of the
Sub group of Disciplinary
Committee of ICAI.



CA. S. Prakash Chand,
has been Co-opted as a
Member of Accounting Standards
for Local Bodies Committee
for the year 2009-10 of SIRC.



CA RAMESHWAR THAKUR ICAI CENTRE OF EXCELLENCE, BANGALORE



The Centre of Excellence will be a treasury of cutting-edge knowledge facilities, providing world-class training for members and students, enabling projects and research in the diverse fields of taxation, finance, accounting, auditing, financial reporting, IT and IT enabled services. It will serve as an inexhaustible resource for our times, and for all the generations of CAs to come.

We had a dream of excellence...

In the year 2008, the Institute of Chartered Accountants of India felt the need for a Centre of Excellence in Bangalore. Expanding on their dream, they envisioned an Institute that would be a Global Training and Knowledge Centre, empowering both members and students. This proposed Diamond Jubilee Centre of Excellence (CoE) at Bangalore would be the most exciting and prestigious project of the Institute during the years to come.

To facilitate this ambitious endeavour, Former ICAI President CA Ved Jain, along with current President CA Uttam Prakash Agarwal, Central Council Member CA K Raghu and Past President CA B P Rao led a delegation to the former Governor of Karnataka, His Excellency Shri Rameshwar Thakur. They presented a memorandum requesting an allotment of land in or around the city, on which to establish the CoE. The Governor was extremely supportive, and promised to do the needful.

After several interactions and follow-up meetings with the various Government authorities concerned, the Principal Secretary, Revenue Department, Government of Karnataka on 27th May 2008 sanctioned 10 acres of land off the Bangalore-Mangalore Highway, near the BPCL Plant. And the realization of the dream had just begun.

Facilities at the Centre of Excellence

State-of-the-art Institutional Facilities

- One 500-seat Auditorium
- Two 150-seat Auditoriums
- Six IT Labs
- Eight Training Rooms
- Library
- Cafeteria

Comprehensive Residential Facilities

- Students' Hostels
- Members' Hostel
- Faculty Housing
- Dean's Residence

World-class Recreational Facilities

- Swimming Pool
- Clubhouse

Important Milestones

13th March 2008 - Memorandum presented to Shri Rameshwar Thakur, Governor of Karnataka requesting him to allot land for setting up the Centre of Excellence at Bangalore.

27th May 2008 - The Principal Secretary, Revenue Department, Government of Karnataka sanctioned 10 acres of land under the Karnataka Land Grant Rules, 1969 to establish a Centre of Excellence by ICAI.

4th June 2008 - The Deputy Commissioner, Ramanagara District issued a letter to ICAI informing of the allotment of 10 acres of land to the Institute of Chartered Accountants of India.

23rd December 2008 - The DC Ramanagara vide Office Memorandum sanctioned the land to the Institute of Chartered Accountants of India.

2nd March 2009 - Possession of land taken by CA K Raghu, Central Council Member.

A Brief Report on the Foundation Stone Laying Ceremony of the Centre of Excellence Bangalore on Saturday the 15th August 2009 at Bangalore

The Foundation Stone for the Centre of Excellence at Bangalore was laid by CA. Uttam Prakash Agarwal, President, ICAI on 15th August 2009 at a colourful and joyous function held at Survey No. 9, Kalyanapura Village, Soluru Hobli (Off:Bangalore-Mangalore Highway), Bangalore



This Centre of Excellence would be a Global Training and Knowledge Centre and will be a treasury of cutting-edge knowledge facilities, providing world-class training for the members and students. The Centre would serve as an inexhaustible resource for the generations of CAs to come.

CA. Uttam Prakash Agarwal, President, ICAI lighted the traditional lamp and laid the Foundation Stone for the project in the presence of CA. K. Raghu, Central Council Member, ICAI and Convenor, Centre of Excellence-Bangalore, CA. M. Devaraja Reddy, Chairman, SIRC of ICAI, CA. B.P. Rao, Past President, ICAI. The function was witnessed by a galaxy of present members of SIRC, Members of the Managing Committee of Bangalore Branch, Past Central Council Members of ICAI, Past Chairmen of SIRC, Past Chairmen of Bangalore Branch and Past Members of

SIRC, host of distinguished invitees and students.

In his Presidential address, CA. Uttam Prakash Agarwal recalled the background of the concept of the Centre of Excellence which has come up Hyderabad and expressed immense happiness in having one more Centre of Excellence at Bangalore, the IT hub city of India. He also narrated the happy experience during the course of his interaction with His Excellency CA. Rameshwar Thakur who as the then Governor of Karnataka positively responded to the request for allotment of land to the Institute for the creation of Centre of Excellence and it is in the fitness of things the Centre is being named after him in recognition of his contribution to the Institute. He assured the members that the project would be completed in a record time under the dynamic leadership of CA. K. Raghu, Central Council Member and Convenor of the Centre of Excellence at



Bangalore.

CA. K. Raghu, Central Council Member, ICAI and Convenor of Centre of Excellence, Bangalore thanked the President for the support and guidance extended in having the dream project of Centre of Excellence allotted to Bangalore and the confidence reposed in him and assured that he would endeavour to complete the project expeditiously. He also acknowledged the support given by the members of the Bangalore Branch who have been a source of strength and expressed confidence that the world-class technology would be in place in the Centre of Excellence. He thanked all the members and students who have come in large number to grace the occasion. In his address, he thanked His Excellency CA. Rameshwar Thakur and a Past President of the Institute, who as the then Governor of Karnataka who was instrumental in the land being allotted to the Institute. He also narrated the sequence of events which ultimately culminated in the land being allotted and made an overview of the structure of the Centre of Excellence to come up through a presentation.

CA. C.S. Srinivas, Chairman, Bangalore Branch of SIRC warmly welcomed the gathering and CA. T.R.Venkatesh Babu proposed hearty vote of thanks.

The meeting was preceded by a Bhoomi Pooja performed at the site and to commemorate the occasion, saplings were planted by the dignitaries present. CA. Uttam Prakash Agarwal, President, ICAI also unfurled the National Flag on the occasion of the Independence Day and distributed scholarship to the needy students awarded based on merit-cum-need initiated by the Bangalore Branch of SIRC.



Recent judicial pronouncements in Indirect Taxes

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

CENTRAL EXCISE:

EOU and Manufacture:

1. The appellant is an 100% EOU unit and had exported the goods as such without any manufacture and only carrying testing and repacking. The manufacture as defined under the EXIM Policy is much broader than the definition under Central Excise. Even testing, packing, repacking, labeling, re-labeling etc. amount to manufacture as per the definition of manufacture in the EXIM Policy. The percentage of "as such" exports is very negligible compared to the total imports. Therefore, the Tribunal has held that the demand of duty by denying exemption under Notification 52/2003-Cus is not sustainable and also held that there is no justification of holding confiscation of goods under Section 111 (o) of the Customs Act. [*M/s Hewlett Packard India Sales Private Ltd Vs CC, Bangalore 2009-TIOL-1178-CESTAT-BANG*]

EOU - Special Additional Duty:

2. On the question whether Special Additional Duty (SAD) is to be taken for determination of excise duty payable by a 100% EOU availing sales tax exemption, it is observed that SAD is levied to counterbalance sales tax, value added tax or local tax. SAD is leviable under Section 3(5) of Customs Tariff Act, 1975 and therefore shall not be required to be determined in the manner in which Additional Duty of Customs under Section 3(1) is computed. It was held that levy of SAD is not dependent on sales tax payable but is essentially dependent upon whether sales tax leviable. General or area based exemption granted by States cannot affect rate prescribed by Central Government in the notification issued under Section 3(5). SAD is payable if goods cleared in DTA are exempt for sales tax or VAT. SAD is not payable for clearances on which sales tax is paid. [*Moser Baer Vs. CCE, Noida, 2009(240) ELT 25 (Tri LB)*]

SSI exemption:

3. In the instant case, the department had raised a demand and imposed penalty alleging clandestine removal of goods based on the figures / amounts mentioned in balance sheet submitted by the manufacturer to Health Department in response to tenders for supply of medicines. The department had no evidence on record of clandestine manufacture and removal and further, no investigation was conducted by the Revenue regarding procurement of inputs, manufacture and clearance. Therefore, it has been held that the demand and imposition of penalties which is merely based on figures mentioned in the balance sheet submitted to Health department to obtain order in response to tenders is not sustainable. [*Toshika International Ltd. Vs. CCE, Chandigarh, 2009(240) ELT 68 (Tri-Delhi)*]

MRP and Transit Insurance:

4. The appellant is engaged in the manufacture of central glazed tiles, which are assessable to duty of excise based on MRP under Section 4A of Central Excise Act, 1944. The appellant had collected an additional amount as transit insurance and reflected the same as miscellaneous income in the books of account. In this regard, the department has demanded duty on such insurance charges. To this end, the Tribunal has held that so long as the goods are liable to excise duty on MRP less prescribed abatement under section 4A, the department cannot take up investigation as to any amount collected by manufactures towards the goods sold by them. Accordingly, the stand taken by the department in demanding duty on transit insurance is not in accordance with law. The Tribunal while allowing appeal followed Whirlpool India Limited (2007 (220) E.L.T. 273 (Tri-Chennai) and Bharat Coca-Cola Bottling North East Private Limited (2008(227) E.L.T. 402 (Tri.-Kolkata). [*Gujarat Goldcoin Ceramics Limited Vs. CCE, Rajkot*]

Service Tax:

Courier Service and Refund of Service Tax

5. In the present case, the appellant collected service tax on services provided to co-loaders. The appellant learnt that services provided to co loaders are not liable to service tax. This position was also clarified vide Board Circular F.NO. 341/43/96-TRU Dated. 31-10-1996. The appellant has returned the service tax collected earlier by way credit notes and claimed refund of such service tax returned to co-loader. The department denied the said refund of service tax. In this regard, the Tribunal has held that unjust enrichment is not applicable when service tax is paid erroneously and that such amounts are returned to the recipient of service. The refund of service tax is admissible under Section 83 of Finance Act, 1994 read with Section 11B of Central Excise Act, 1944. [*Professional international Couriers Private Limited Vs. CST, Chennai, 2009 (15) S.T.R. 295 (Tri-Chennai)*]

CENVAT Credit:

Exempted goods and CENVAT credit on inputs:

6. In the present case, the appellant is paying duty of excise on goods of pickling and oiling which does not amount to manufacture. Further, it is observed that the department has also accepted the same. In this context, the appellants are also availing CENVAT credit on inputs used in the above processing. The department has disallowed the CENVAT credit availed on inputs on the pretext that the process does not amount to manufacture. In this regard, the Tribunal has held that the department cannot approbate and reprobate when the appellant has paid duty which as



per the department is not payable, yet having accepted the same and also having taken CENVAT credit. Hence, the department cannot refuse availment of CENVAT on inputs. The appellants have prima facie made out a strong case for complete waiver of pre-deposit of duties and interest demanded and penalties imposed thereon. Waiver of pre-deposit granted. [Ajinkya Enterprises Vs CCE, Pune III, 2009-TIOL-1250-CESTAT-MUM]

Excise Duty Refund and Debit/Credit notes:

- The appellant has cleared goods on payment of applicable duty. Subsequent adjustments were made through credit/debit notes. Thereafter, the appellant claimed refund of excise duty paid on differential amount adjusted through credit notes. In this regard, the department has denied refund such excess duty paid on the ground that, the burden of duty has not been passed to buyer, is not proved. On an appeal being preferred, the Tribunal has held that once the goods are supplied, the property in the goods passes to the purchaser and seller becomes entitled to the price. When debit note is issued by the purchaser and corresponding credit note is issued by seller, price of the goods stand reduced to the extent of the amounts adjusted vide the debit note and credit note. When debit notes and credit notes are issued and effected, which are not disputed, it should not be assumed, that burden of excise duty has been passed on to the purchaser. [Andhra Pradesh Paper Mills Ltd, Rajahmundry Vs CCE, Visakhapatnam-II, 2009-TIOL-1297-CESTAT-BANG]

CENVAT Credit on Welding Table:

- Welding table used for the activity of welding which is a process in production is held to be used in relation to manufacture of final product. There cannot be any justification in denying credit even if table is not considered as capital goods in view of its classification under the definition of inputs under Rule 2(k) of CENVAT Credit Rules, 2004. [Switch Gear Control Technics Private Limited. Vs. CCE, Bangalore, 2009 (240) ELT 78 (Tri-Bangalore)]

Service Tax and input Services:

- The appellant pays service tax on erection, commissioning and installation of wind mills for electricity generation away from factory premises and has availed CENVAT credit of such service tax paid. The department has denied the CENVAT credit of service tax paid on the pretext that windmills are away from the factory. In this context, the Tribunal has upheld the same stating that such services cannot be treated as input service under Rule 2(l) of CENVAT Credit Rules, 2004 hence the CENVAT credit is not admissible. [Sayaji Iron & Engg Co Ltd Vs CCE, Vadodara, 2009-TIOL-1253-CESTAT-AHM]

Invoice of Head office:

- In the present case, the appellant has claimed a credit of CENVAT based on an invoice which contains the address of the head office while the goods were used in the factory.

In this regard, it has been held that since there is no dispute about input services received at the factory, the substantive benefit cannot be denied on the procedural grounds. Accordingly, CENVAT Credit cannot be denied for procedural lapses and credit is allowable even if the invoice is raised in the name of Head office in place of factory. [C & CCE, Vapi Vs. DNH Spinners, 2009-TIOL-1216-CESTAT-AHM]

Inputs Removed as Such:

- In the present case, the manufacturer had availed CENVAT credit on inputs received into the factory. Thereafter, when the inputs were removed as such, the manufacturer of final products has reversed an amount equal to the credit availed on such inputs. However, the reversal of such credit was on a subsequent date and the department has demanded interest for the period of delay in reversal of CENVAT credit under Section 11AB of Central Excise Act, 1944. In this regard, the Tribunal has held that Section 11AB provides for recovery for interest in cases of delayed payment of duty and that no provision in the statute enables recovery of interest in cases of delay in reversal / payment of CENVAT credit relating to inputs removed as such. Hence the demand of interest under Section 11AB is not tenable. [CCE, Chennai-IV Vs. SL. Lumax Ltd, 2009 (239) E.L.T. 491 (Tri.-Chennai)]

Adjustment of duty from one head to another:

- It has been held that adjustment of amount paid as Additional Excise Duty (AED) against Basic Excise Duty should be allowed unless otherwise barred by law. Both the duties being administered by the same department but under different statutes, there should not any bar on the appellants from adjustment of duty paid under one head to another head. [ISC Exports Vs. CCE. Kolkata-III, 2009(240) ELT 132 (Tri-Kolkata)]

Foreign Trade Policy:

Relevant date for DEPB date:

- In the instant case, the export goods were brought to the export shed on 05-10-2004. The goods were examined and the "Let export order" was issued on same day by noting the details on the reverse of the shipping bill. However, the computerised shipping bill was processed and issued on 06-10-2004. Insofar as it relates to the DEPB rate, the same was applied and granted as prescribed on 06-10-2004. It is noted that the DEPB rate was lowered on 06-10-2004 and the revenue allowed the DEPB as prevailing on the date of computerized shipping bills i.e. 06-10-2004. In this regard, the Tribunal has held that DEPB rate as prevailing on 05-10-2004 would be applicable and that the same has to be granted. [Commissioner of Customs, ICD, TKD, Delhi-II Vs. Good Luck Steel Tubes Ltd., 2009(240) LT 58 (Tri-Delhi)]

Transfer of goods form EHTP unit to STPI unit:

- The assessee has 2 separate units, viz., EHTP unit and STPI unit and both the units are under the same control. Further, while both units are situated nearby, they have separate



license under Section 58 of Customs Act, 1962 as Private Bonded Warehouse (PBW) and In-bond manufacturing sanction (IBMS) under Section 65 of Customs Act, 1962. During the course of the activities, some of the bonded goods were shifted and transferred from the EHTP unit to STP unit without proper permissions. Thereafter, the department has demanded duty on such improper removals against which an appeal was preferred. In this regard, the Tribunal has held that the levy of duty is not justified in view of Tribunal decision in case of Honeywell Technology Solutions Lab. Pvt. Ltd. [*Commissioner of Customs, Bangalore Vs. Encore Software Ltd., 2009 (240) ELT 233 (Tri-Bangalore)*]

Value Added Tax and Central Sales Tax:

Additional Duties of Excise and Value Added Tax:

15. In the present case, the issue before hon'ble High Court was where the "silk fabrics and sarees made of natural silk", conforming to HSN code 5007, which was taxable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (ADE Act), whether the State Government has legislative competence to levy sales tax on sale of such goods.

The hon'ble High Court held that the power to levy taxes on sale or purchase of goods is conferred upon the States by entry 54 in List II. The ADE Act is enacted by the parliament with reference to entry 84 in List I of the Seventh Schedule to the Constitution. The ADE Act is also not a law made with reference to Article 252 of the Constitution, which article empowers the parliament to make a law in that behalf. The Act in question is also not relatable to any of the articles 249 to 253 which are in the nature of exceptions to the normal rule that parliament can make no law with respect to the entries in List II. If so, it follows that the State Legislatures are not denuded or deprived of their power to make a law with reference to entry 54 in List II. That power remains untouched and unaffected.

All that the parliament has said while enacting the ADE Act is that it will levy additional duties of excise and distribute a part of the proceeds among the States provided that the State does not levy taxes on sale or purchase of the Scheduled commodities. All that happens is that the State will be deprived of its share in the proceeds of additional duties of excise for that financial year. The Parliament could not, and did not, prohibit any State from making any law or levying any tax which a State can levy by virtue of the entries in List II. Whether it should impose sales tax on an item of declared goods is limited by the restriction in Section 15 of the Central Sales Tax Act, 1956 and this would be at the risk of losing a share in the additional excise duty levied in respect of those very items.

In the case of the petitioner, the State also has got a case that goods in question covered under HSN code 5007 are not directly taxable under the ADE Act and that the State has not derived any share from it for the relevant financial

year. In any event, it has been held that the State has legislative competence to the charge sales tax subject to the restrictions in Section 15 of the CST Act. [*Kerala Textile & Garments Dealers Welfare Association and another Vs. State of Kerala and other, (2009) 24 VST 100(Ker)*]

General Exemption:

16. The present issue before the hon'ble High Court is whether inter-State sales are exempted from Central Sales Tax under Section 8(2A) of Central Sales Tax, 1956 when sales are exempted from sales tax only if sales turnover does not exceed Rs. 100 Crores under General Sales Tax Act. In this regard, the Hon'ble High Court held that exemption is available for inter-State sales only if such sales are generally exempt from local sales tax. Further, the explanation provides that sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sale tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stage or otherwise than with reference to the turnover of the goods. It is clear that the explanation specifically mentions about exemption from tax generally. Thus, the exemption relied on by the petitioner could not be held to be an exemption which will have a bearing on the Central Sales Tax Act, 1956 so as to ensure the benefit of an exemption. Consequently, the same is not available in respect of inter-State sales. [*A.S.Mohamad Shareef & Co. and others Vs. State of Tamil Nadu and another, (2009) 24 VST 128 (Mad)*]

Inter-State Sales and Stock Transfer:

17. In the present case, the issue before the Hon'ble high court is that, in case of standard goods whether existence of a purchase order or contract prior to the date of the movement of the goods was required to establish an inter-State sale. In this regard, the Hon'ble High Court has held that, if the periodical estimates of demand, the receipt of the purchase order from the various customers and the manufacture and dispatch of goods were in the nature of a continuous process, it could not be readily inferred that the inter-State movement was occasioned only in by virtue of pre-existing contract with an identified buyer. From the fact that the appellant took into account the overall requirements of prospective buyers (which it naturally was expected to do) before manufacturing and dispatching vehicles, the inference of inextricable link between the movement and the prior contract could not be drawn with anything more. Therefore, the High court has referred the case back to the Tribunal to decide the same based on voluminous documents available relating to each branch and make a factual analysis of various transactions. [*Tata Motors Limited Vs. State of Jharkhand and others, (2009) 24 VST 167 (CSTAA)*]





Service Tax – Series – Part II

Levy, Extent and Collection

CA Rajesh Kumar T R, B Com, LLB, FCA & DISA & CA Chandra Shekar B D, B Com. LLB, FCA, DISA

Levy

As per section 65(95) of Finance Act, 1994, service tax means tax leviable under the provisions of Chapter V of Finance Act 1994. The levy of service tax is invoked by the charging section 66 of the Finance Act, 1994.

According to the charging section the service tax shall be levied at the rate of 12% of the value of taxable services referred in sub-clauses of Sec. 65(105). As per the charging section the activity should be covered under any of the sub-clauses of Sec. 65(105).

The said charging section does not give the nature of service tax. As to the nature of service tax, CBE&C Circular No. 56/5/2003 dated 25-4-2003 says that the service tax is a destination based consumption tax. Further Supreme Court in the case of All India Fedn. of Tax Practitioners vs UOI 2007 (7) STR 0625 (S.C.) also says that service tax is a value added tax on the commercial activity and is destination based consumption tax; it is not a charge on the business or consumer.

Extent and Application

The provisions of Chapter V of the Finance Act, 1994 is applicable to taxable services provided after 1st of July 1994.

It extended to the whole of India except the State of Jammu & Kashmir. The above mentioned Supreme Court decision also says that Service tax is leviable only on services provided within the country.

From this it can be understood that all services provided in the state of Jammu & Kashmir are not covered for the purpose of Service Tax. However a clarification of Delhi Commissionerate has clarified that if the service provider and service receiver are both outside Jammu & Kashmir, though the services are provided within Jammu & Kashmir would be taxable.

Further as per the clarification issued by the Director General of Service Tax vide its letter F. No. V/DGST/03/GEN/INS/01/2004, dated 17-8-2004, since service tax is consumption based destination tax, if the service receiver is in Jammu & Kashmir, it is not taxable and if its service provider is outside Jammu & Kashmir though the service provider is in Jammu & Kashmir, it would be taxable.

Taxable Event in Service Tax

Section 66 is the charging section reads as *'there shall be levied a tax (herein referred to as service tax) at the rate of 10 percent of the value of taxable service as referred to in sub clauses (a), (b), of clause 105 of section 65 and collected as may be prescribed.'* But it is relevant to note that the taxable event is not brought out in the charging section.

The confusion exists as to point of taxable event, since there are two points which are set out the definition, firstly

the event of providing service and secondly the event of agreeing to provide the service. Added to this the service tax is payable on receipt of consideration, which event may be different from the events mentioned above. The confusion as to the taxable event would lead to the problems in determining tax liability at the time of introduction of new category of services or change in tax rates.

However in the Finance Act, 2009 powers are given to formulate rules to determine the date for determination of rate of service tax. It is expected that the new rules would resolve some of the confusions existing as to determination of rate of service tax.

Taxable Service

The essential aspect of levy would be the definition given for taxable services under Section 65(105) of the Finance Act, 1994, as the taxability is on various sub-clauses of the said section 65(105). In the said sub-clauses read with clause 105 of Section 65, each sub-clause defines each type of taxable services. This type is commonly termed as 'category' of 'taxable service.'

The definition set out each sub-clause for each category of services is different from other and is mutually exclusive. e.g. as per section 65(105)(a), any service provided by stock broker to any person in connection with sale or purchase of securities listed on a recognised stock exchange will be 'taxable service'.

Each of the sub-clauses specifies in most of the cases who should be the service provider, who should be the service receiver and what should be the nature of service. So in order to understand the scope of definition of taxable services depending upon the sub-clauses being examined, the meaning assigned therein for each of those elements, i.e. service provider, service receiver or nature of services one has to examine and understand the meanings set out in Chapter V of the Finance Act, 1994. If it is not so available, reference has to be made to Central Excise Act, 1944. Even there it is not available, then reference has to be made to the common parlance than to dictionary meanings and technical meanings.

Service provider & service receiver

Service provider is a person who renders the service and service receiver is the person who takes the services of a service provider. There must be two persons involved in a particular service transaction. It is a generally accepted principle that 'One cannot give service to himself.' This view has been upheld by the courts, in the case of Cawnpore Club Ltd Vs. CIT (1983) 183 ITR 620.

Deemed service:

The definition of taxable service starts with the phrase "taxable service" means any service provided or to be provided, -". That means firstly activity should be service. What



is service is not defined in the Chapter V of the Finance Act, 1994. Therefore one has to understand the meaning of Service in common parlance.

But the definitions given to nature of service, mentioned in the sub-clauses of section 65(105) seems to have gone beyond the normal understanding of the meaning of service. Therefore the question arises whether such type of levy can be sustained.

Present understanding of law is that when a specified activity is considered to be service in the specific definition given in the statute, the same should be considered as service irrespective of the fact that the same is service in common parlance or not. For Ex: Levy of service tax on renting of immovable property as it is still not clear whether the renting can be considered as service.

It would be relevant to note that Supreme Court in case of Tamil Nadu Kalyana Mandapam Assn. vs UOI 2004 (167) ELT 3 (S.C.) has held that Levy of service tax on a particular kind of service could not be struck down on the ground that it does not conform to a common understanding of word "service" so long as it does not transgress any specific restriction contained in the Constitution.

Effective date of levy for each category of service

The Charging section 66, of the Finance Act 1994 was amended each year to add on sub-clauses of Section 65(105) making them taxable. However the said amendment would generally be given effect to by way of issue notification after

the enactment of Finance Act by which the amendment would have been effected. Therefore for each type of category of services there will be different effective date of levy. For Example Finance Act, 2009 introduced service tax on legal consultancy services. Though the Finance Act was enacted on 19th of August 2009, the effective date of levy for that service is given w.e.f. 01.09.2009.

Service provided before levy under service tax net

Levy of service tax is as per the provisions of service, the services provided before the date on which such services were brought under the tax net, would not be subjected to service tax. It may be noted that the even if bills are raised after the service was brought into the tax net or receipt of the payment does not change the nature of transaction and there would not be any liability towards the services rendered prior to date introduction. This is confirmed in the decision by the Ahmadabad High Court in Schott Glass India Pvt Ltd Vs. Commissioner of Central Excise and Customs Vadodara II (2009-TOIL-82-HC-AHM-ST).

Collection of Service Tax

The levy of service tax has to be collected in the manner prescribed viz rules framed in terms of the powers given under chapter V of Finance Act, 1994. Rules sets out different mechanism wherein the Central Government can collect the taxes on taxable services. Presently 13 set of Rules are framed in terms of the powers given under Chapter V of the Finance Act, 1994. □

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Vision and Journey

C.A. H.V.Srinivasa

(Retd. Bank Executive, Author of Banking, Management & spiritual books, Philosopher)

We at times complain situations. We at times blame somebody or something. We are at times cynical. But these attitudes do not help us. Let the road be thorny, what is required is to wear the appropriate shoe. Let the weather be very bad, what is required is to carry the appropriate umbrella or to wear the appropriate dress to cover. Let the whole world be dark, what is required is to carry the lamp. It is to carry the lamp of wisdom.

Almighty God is supposed to have failed in one thing. He has not been able to unite the light and darkness together. Either the light or the darkness, any one has to be there at a time. Here the message is very simple. The moment light comes, the darkness disappears. The moment the knowledge or clarity comes, the ignorance or stupidity is gone. When ignorance is gone, the misery is gone. Then there is happiness. Happiness leads to harmony. Harmony leads to efficiency. Efficiency leads to Productivity. Productivity leads to welfare. Welfare leads to peace. What we really want for social welfare is not mere the individual peace, but the global peace. It is to 'live and let live.' It is not enough to create Super Brains (who are plenty in world). We need Super Minds, equally matching. Management Peers are alright, but in today's context, there is need to create Management Seers, who are the conscience keepers in the management and financial world. Bring light unto yourselves. Be light yourself. Where ever you go there is light and wherever you are there is light.

As professionals, we need to have three traits essentially viz. 1. Openness, 2. Readiness and 3. Happiness. Secrecy should not be encouraged anywhere except in defense of the country. Privacy is essential in household matters. Confidentiality is advocated in dealing with office or business matters. Privacy and Confidentiality are not secrecies. One can have transparency inspite of privacy and confidentiality. Transparency does not mean transparency only in Balance Sheets and financial reports. Transparency is required even in human behaviors and human transactions, if something great has to be achieved. Systems alone do not produce results. Strategies and mutual trust goes the way with systems. As professionals, one should be in readiness always to tackle any kind of situation. One can give what he really has. It is wrong to expect a person to give what he does not have. A man of happiness alone can give happiness.

Every person landing upon the earth undertakes two types of journey viz (1) Horizontal and (2) Vertical. Horizontal journey is to become 'human'. Vertical journey is to become 'divine'.

Journey is equally important to destination. It is the quality of process that makes the product one of distinction.

Horizontal journey starts from Data level. Data when processed becomes Information. Information with applied intelligence becomes Knowledge. The blend of Knowledge and Experience creates Wisdom. Mere wisdom is of no use. Applied Wisdom is of paramount importance. Wisdom plus Ambition is Mission, the ultimate goal or objective. Mission plus Hard work is Fulfillment. We find people at different stations of life viz. Data level, Information level, Knowledge level, Wisdom level, Mission level, Fulfillment level. Halting at a particular station of life is like the criteria of Pond, where the water does not flow and it is stagnant. Such position is stinking, rotting, besides it being a breeding room for germs and diseases. Life should take the dynamic course of river to float and be healthy. Water touches various places with several twists and turns, at times being turbulent and at times serene, to finally merge into the Ocean. Life is really the dynamics of change and flow in terms of exposures, experiences and challenges. It is only the ocean which contains all flow, all waves, all problems and all pains. It is fulfillment.

Achievement is outward. Fulfillment is inward. Achievement seeks somebody's recognition and praise. Fulfillment is like a flower which does not advertise itself of its beauty and splendor but draws people unto it. Towering personality seeks Achievement. Flowering personality seeks Fulfillment. Achievement without fulfillment is to miss the bus in life. Fulfillment without achievement is to reach the divine unnoticed by society. If achievement comes out as by-product in the course of fulfillment, the life is worthy.

Vertical journey is to travel from Instinct to Intelligence and then to Intuition. 'Animal' has to become 'human' and the human has to become 'divine'. Instinct is animal mechanism doing things in a very mechanical way, routine way, clerical way, and it is monotonous. Intelligence is human mechanism symbolic of growth and creativity. Unfortunately, intelligence is not intelligently used by intelligence people, and that is the malady. Instead of it becoming a resource, it becomes a threat. Intelligence is not anybody's monopoly and every one has the right to it. But one has to cross the barriers of intelligence.. It should be a stepping stone and not the stumbling block. Intuition is divine mechanism, where one is able to carry people along with him. It is the science of oneness. It is brotherhood. It is empathy. It is to see beyond four walls. It is vision. If one is able to see what all others can see it is not



vision. If one can see what others can not see, it is vision. Visionaries and Dreamers are different. Visionary is one who can convert constantly the dreams into reality.

In the management parlor is said 'Break the tradition, thy name is creativity. Old has to go if something new has to come. Sita crossed 'Lakshman Rekha' and so Ramayana happened. We have set our own barriers, limitations and mind sets, which we have to cross ourselves. Do not create work. Do creative work.

Bernard Shah has said 'Every body seems to know X Y Z of everything, but no body actually knows A B C of anything. One must always have the base, the fundamentals. According to the author of the article here, A means Achievement, B means Belonging and C means Commitment. Like belonging to a family or the Nation, one must have a sense of belonging to his profession or organization. To become RAM is to have R=Responsibility, A=Accountability, and M= Maturity. To become SITA is to provide Strength (and) Inspiration (for the) Tasks Ahead.

There are six important traits for becoming effective person viz. (1) PRODUCTIVITY- It is to be a good worker first and foremost. (2) CREATIVITY- Before one inks or blinks, one must think. Any action without thinking is reckless. (3) CREDIBILITY- One should be honest and he should be man of integrity. This is paramount for our profession. (4) SENSITIVITY- It is concern for others. It is sense of mutuality. It is responding and sharing, and caring. (5) VISIBILITY- This is very important these days, as any good or tangible work goes unnoticed, if it is not spoken. One must know the art of expressing, communicating, and projecting. Collective glory is more important than mere individual glory. Organization glory is more important than mere self glory. Glory and Glorification are two different aspects. Projection of self is just but the projection of ego. (6) PRACTICALITY- It is Common sense which is uncommon at times. It is to think globally and to act locally. It is to think differently and act perfectly as our Institute of Chartered Accountants wants from us.



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OBITUARY

We deeply regret to inform
SAD DEMISE of **CA G. N. KRISHNASWAMY** (M.No. 018946)
ON 16.07.09
May his soul rest in peace.



Problems - Are They Really So ?

C.A. H.V.Srinivasa

(Retd. Bank Executive, Author of Banking, Management & spiritual books, Philosopher)

Problems are there. It depends upon how we perceive. But there is no problem without a solution. Every genuine problem has solution. If not perfect solution, there can be feasible alternatives. There is no ready made solution, as there is no ready made problem. One has to cross the bridge when it comes. It does not mean that one should not anticipate problem. Before pitching upon any solution, one must be clear as to what the problem really is. When both problem and the solution are known, yet there can be a problem as to who has to lead or who has to bell the cat. Problems have to be localized and the solutions have to be globalized. Quite often, we find the situations otherwise.

We are drowned in variety of problems say, dental, mental, sentimental, departmental, compartmental and so on. People have no patience to find 'what is the fundamental problem'. We do not water the branches. Water the roots, the branches are automatic. When we have to eliminate, we have to cut the roots instead of cutting only the branches. We have to question ourselves whether we treat the 'cause' of the 'effect'. A head ache may be cured for the moment by a ready made medicine, but it manifests again and again. The cause for headache may be something else like diabetes, eye problem, indigestion etc. One has to go into the root cause if a problem is to be eliminated permanently.

When you are small, the problem is big. When the problem is big, you are small. 'Be bigger than the problem'. People have desires. It is not wrong. But desire normally is to get something or to grab something, whether one deserves really what he desires. But Ambition is always greater than desire. Ambition is to become something. Ambition is normally associated with Vision and Hard work. One must earn the position. One must carve a niche for oneself by hard work and dedication. When the Post is big, you are small. When you are big, post is small. 'Be bigger then the Post' as otherwise, you are crushed by its heavy weight, and you tumble. Handling any work or position or situations should be like child's play. You can handle or avert any crisis. You are like a heavy-weight champion. For that you are to be relaxed. You are to be balanced. More and more of weight lifting enhances the muscle power. But we are interested in enhancing the Mental power or Moral power. It is then to lift more and more of challenging problems and situations with ease.

In any given situation, just mere listing of problems would help by itself. Let there be hundreds of problems. By the time we come to the last problem, many earlier problems so listed would automatically get evaporated. It is because either the

problems are imaginary or psychological than being physical or real. More than listing the problems, listing priorities would help as to which are more important, which are less important, and which are unimportant, if a time bound risk eliminating and profit making plan has to be achieved.

Postponing problems does not really solve them. A small problem today, if unattended may turn out to be a giant problem tomorrow. One has to face the devil then and there if it comes to that. It is even better to lose less today than losing more tomorrow. Confrontation of problem is known to be the best way of solving the problems. Dog chases as long as you run. The moment you dare to stop, it retraces its steps.' I can face the tiger (provided the tiger does not face me) is not an attitude of a man of courage. Glorifying the problem does not help.. Togetherness can help tackling any problem The Spirit of sailing together or sinking together can effectively avert even dangerous situations.

Problem sensitivity is important for any leader. One must have the power of smelling the rot. The three monkey approach like (1) Hear no problem (2) See no problem and (3) Speak no problem is not good at all. We have to see, hear and talk about.

In certain given situations, three types of attitudes help us.

- (1) Somebody asks 'how are you'. There is no use crying out with all our problems. Nobody wants our problems. Just say ' No problem. No problem.. Fine'.
- (2) Some incorrigible and inevitable devil goes on bragging irrelevant. Just say 'Is it so?.. I see..'. Here we are neither approving nor disputing. It is just an eloquent silence.
- (3) Somebody has already committed or spoilt unintentionally like spoilt milk. There is no use brooding over it again and again. Just say 'okay.. it is alright'. It is like saying 'forget and forgive'. Instead of jumping out enquiring 'who is responsible' it is to think of how things have happened and how to set it right first.

The centre of happiness is within us. But we normally shift it outside and make it dependent upon people, things, and events. For example, if a colleague in the same organization gets promotion or elevation, we are jealous, but if a friend in an organization other than ours gets the same elevation, we congratulate him without being affected. If a relative builds a house, we feel jealous, but if somebody not related or not connected to us builds a beautifully palace, we rejoice it. I do not have any problem of not having any car or possessing a small car. But the moment the neighbor gets a big and luxurious car, the neighbor's envy crystallizes and the problem



starts with us. The location of the problem is actually outside, but we bring it inside us and become the owner of all problems.

People have Purity (of mind), but do not have clarity. People have Clarity (of thinking), but have no purity. Purity+ Clarity+ Charity+ Serenity= Beauty.

"Life is not a problem to be solved, but a mystery to be enjoyed". No body has ever been able to solve the life mystery.

Knowledge is utilitarian. Knowledge is like going for a buffet. One should draw only that much required for the taste of his tongue and the capacity of stomach. If he takes less, he is starving. If he eats more then there is indigestion. Knowledge is like food to be drawn to the extent required, as otherwise it becomes counter productive. Though one need not stuff himself with unnecessary knowledge, which is nothing but a burden, he has to keep all knowledge sources ready and handy for use at any time. One should be able to access to knowledge whenever required. Knowledge is like a knife which can be used for cutting the fruit, for conducting an operation and also for cutting somebody's throat. An idle money does not earn any return, so also the idle knowledge does not give any return. Knowledge is meant for sharing and using. Reading books is one thing and reading life is another thing. Students have to read books. Professionals have to read life itself, which is an open page, provided one has opened his ears and eyes around.

Knowledge and Relationship goes together. Knowledge is always respected. Relationship is always loved. Person should be a blend of knowledge and relationship. Relationship normally means P.R. which is Public relations (and not private relations). Knowledge is a dividing factor and Love is uniting factor. Knowledge creates growth and Love is the process of sharing the growth. Economic growth and Social justice have to go together. Both knowledge and love should reflect in human behaviors and transactions for the healthy endeavors. Power of love is greater than love of power.

Banyan tree is one which does not allow even a single grass to grow under its shade. But it gives umbrella of protection to all those who seek. It is the way to promote blind loyalties, the chelaships, the sycophancy. Here people are sheltered but they do not grow or develop. They only gain some comfort. Coconut tree does not give umbrella of protection. Any person can climb the tree, pluck the tender coconut, drink it as elixir of life, and go back for creative work life. Here people develop independently and contribute, of course with outside inspiration and encouragement.

AIMS OF LIFE, I call it A=Aesthetic personality, I=Intellectual personality, M=Moral personality, S=Spiritual personality are important to march O=Onward and F=Forward. . Let LIFE be L=Loving, I=Inspiring, F=Fulfilling, and E=Enhancing. Let there be glory to all CAs and the Profession.

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