



Bangalore Branch of SIRC Newsletter

English Monthly

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Inauguration of International Tax Conference, Hotel Le-Meridian, Bangalore



Happy Diwali



- 09.11.2013
Half day Workshop on
VAT Audit



- 11.11.2013 to 16.11.2013
Comprehensive Workshop on
Companies Act 2013

Chairman's Communique . . .

Dear Fellow Member

At the outset on behalf of the Managing committee of the Bangalore branch and on my personal behalf we wish you all a happy, prosperous & safe Diwali.

Updating knowledge is the need of the hour, being up to date in the area of his / her expertise is the hall mark of a true professional.

Mahatma Gandhiji father of our nation's quote referring to knowledge is ever pertinent and more so in the present day context of challenging times of the business environment "Seven Deadly Sins: Wealth without work, pleasure without conscience, science without humanity, knowledge without character, politics without principle, commerce without morality, worship without sacrifice".

At the Bangalore Branch it has been our endeavor to disseminate the knowledge to our professional fraternity on subjects of current professional interest & keeping track of compliance calendar as notified by the union and the state governments.

Extension of due date for furnishing of Tax Audit Reports to 31st October 2013.

The Central Board Of Direct Taxes in exercise of powers conferred under section 119 of the Income Tax Act, 1961 vide its extension order F No.225/117/2013/ITA_II dtd 24th October 2013 has directed that in the cases where the due date of furnishing reports of audit and corresponding Income Tax Return was 30th September 2013 and where the same are furnished electronically on or before 31st October 2013, such reports of audit and returns of income shall be deemed to be furnished with in the due date. This extension without any condition as was notified earlier by CBDT, has enabled the members to heave a sigh of relief as many members had experienced great difficulties in filing of the tax audit reports and the related income tax returns with in the original due date of 30th September 2013 because of technical glitches in the e-filing portal of the Income Tax Department on the last day of filing Income Tax Returns.

October 2013:

Two Day International Tax Conference @ Hotel Le-meridian: This conference received tremendous response from the members, which witnessed participation of members from across the country. Bangalore Branch of ICAI has pioneered by hosting the first of its kind International Tax conference held under the aegis of Committee of International Taxation, ICAI, New Delhi. We had the best of the speakers chosen from across the country. We also had for the first time a moot court which was in fact chaired by Hon'ble Justice Sri N.Kumar, Judge, Karnataka High Court. On behalf of the

managing committee of the Bangalore Branch and all the participants, we whole heartedly thank the Chairman & the Committee on International Taxation, ICAI, New Delhi for giving us the opportunity to host this conference at Bangalore. We are sure the key take away for all the delegates a two days of knowledge update in the arena of international taxation has been achieved.



Domestic Transfer Pricing:

Widening the scope of section 40A(2) transfer pricing regulations to apply to domestic transactions being made applicable from the A.Y 2013-14. The provisions of Transfer pricing are being amended to extend the scope to specified domestic transactions by amending section 92 of the Income Tax Act. Further specified domestic transactions have been defined through a new section 92BA which enumerates the transactions which are aggregate of such transactions entered in to by the Assessee in a year exceed Rs. 5 Crores. As we all know that 30th November 2013 the due date for furnishing transfer pricing certificates in form 3CEB is fast approaching, we have scheduled study circle meeting exclusively covering the provisions of the domestic transfer pricing. The details of the program is elsewhere published In this news letter.

Comprehensive workshop on Companies Act, 2013:

The Companies Act, 2013 received its presidential assent on 29th of August 2013 which marked the beginning of new era in this new, important, and much needed legislation to keep up with the changing dynamics of business in this era of globalization. Apart from 98 sections being notified on 12th of September 2013, we have also witnessed draft rules being released in three tranches to obtain the views from the various stakeholders of the society. As a professional advising the clientele on a regular basis the formats that they need to look at when they start or set up a new venture, it is imperative to understand and appreciate the new legislation so that as a professional we can give an informed and correct opinion to our clientele. In this background we have organized a 24 hour week long workshop dealing with all the nuances of this new Companies Act, 2013. The details of the program is published elsewhere In this news letter.

Best Professional Regards

CA Ravindranath S N
Chairman

CALENDAR OF EVENTS - NOVEMBER 2013 & DECEMBER 2013

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
06.11.2013 Wednesday	Analysis of Sections 50D & 54GB of the Income Tax Act, 1961 CA. Ganapatlal Kawad H.	Branch Premises 06.00pm to 08.00pm	2 hrs
08.11.2013 Friday	Domestic Transfer Pricing CA. B. P. Sachin Kumar	Branch Premises 05.00pm to 07.00pm	2 hrs
09.11.2013 Saturday	Half day Workshop on VAT Audit CA. S. Venkataramani & CA. Sanjay M Dhariwal Fees: Rs.500/-	Branch Premises 09.30am to 1.30pm	4 hrs
11.11.2013 Monday to 16.11.2013 Saturday	Comprehensive Workshop on Companies Act 2013 Co-ordinator: CA. K.G. Acharya Delegate Fee: Rs.2500/- Concluding Session will be followed by Lunch <i>Details at Page 12 & 13</i>	Devraj Urs Bhavan Auditorium, Opp. to Branch 04.00pm to 08.15pm Saturday (09.30am to 01.30pm)	24 hrs
12.11.2013 Tuesday	CPE Teleconference Programme	Branch Premises 11.00am to 01.00pm	2 hrs
20.11.2013 Wednesday	Withdrawal & Revision of Audit Report - When? How? & Its Consequences CA. Sunil Bumralkar	Branch Premises 06.00pm to 08.00pm	2 hrs
21.11.13 Thursday	Intellectual Properties (Copyrights, Trade Marks, Patents etc.,) issues in - VAT & Service Tax - CA. Annapurna Kabra - Income Tax (DTAA etc) - CA. Rohit Jain Venue Address: Jain University Auditorium, 34, 1st Cross, J. C. Road, Bangalore-560027, Adjacent to Bangalore Stock Exchange Fees: Rs. 250/-	Jain University Auditorium, Bangalore-560027 05.30pm to 08.30pm	3 hrs
22.11.2013 Friday	CPE Teleconference Programme	Branch Premises 11.00am to 01.00pm	2 hrs
27.11.13 Wednesday	Issues in Cash Transactions u/s 40A(3) & 40A(3A), 68, 69A, 269SS & 269T of the Income Tax Act, 1961 CA. Prashanth G.S. Impact Seminar	Branch Premises 05.30pm to 08.30pm	3 hrs
28.11.2013 Thursday	CPE Teleconference Programme	Branch Premises 11.00am to 01.00pm	2 hrs
04.12.2013 Wednesday	Goods Transport Services - Provisions & Issues under the Service Tax CA. Roopa Nayak*	Branch Premises 06.00pm to 08.00pm	2 hrs
11.12.2013 Wednesday	Appeals to the Commissioner of Income Tax (Appeals) CA. K.S. Sathish, Mysore	Branch Premises 06.00pm to 08.00pm	2 hrs
18.12.2013 to 24.12.2013	Workshop on Real Estate - From Concept to Practice^s Co-ordinator: CA. Ashok Raghavan		24 hrs

^sDelegate Fee and other Details will be published in our next issue

Note: For all programmes High Tea shall be provided 30 minutes prior to the start of the programme at the respective venue.

Advertisement Tariff for the Branch Newsletter

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Outside back ₹ 30,000/-	Full page ₹ 15,000/-
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Advt. material should reach us before 22nd of previous month.

Editor : **CA. Ravindranath. S.N**
Sub Editor : **CA. Allama Prabhu M.S.**

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TAX UPDATES SEPTEMBER 2013

CA. Chythanya K.K., B.Com, FCA, LL.B., Advocate

VAT, CST, ENTRY TAX, PROFESSIONAL TAX

PARTS DIGESTED:

- a) 63 VST – Part 4 & 5
- b) 64 VST – Part 1 & 2
- c) 18 KCTJ – Part 6
- d) 77 KLJ – Part 9

Reference / Description

2013 (77) KLJ 1 (Kar. – HC) (DB); State of Karnataka v. Cauvery Motors (Private) Ltd. - In the instant case the Honourable Division Bench Karnataka High Court following the decision of the Apex Court in the case of Mohd. Ekram Khan and Sons v. CTT 2004 (57) KLJ 249 (SC), held that sales tax is payable by the Assessee in respect of the spare parts supplied to the customers for replacing of the defective parts during the warranty period.

While holding so the Court observed that in the instant case, customers have purchased the motor vehicles from the manufacturers through the Assessee. The sale price includes the price of warranty. The Assessee has supplied spare parts, replaced defective parts and returned the defective parts to the manufacturer. Along with the defective parts, the Assessee has raised a debit note in the name of the manufacturer. Thereafter the manufacturer has raised a credit note. In other words, the Court held that the manufacturer has paid the Assessee the price of the spare parts, which were replaced. If the said spare parts had been purchased in the open market, both of them have to pay sales tax. Therefore, following the Apex Court's decision the Court held that

the consideration paid by the manufacturer to the Assessee by way of a credit note represents the sale price of the spare parts which are replaced and is liable to tax.

2013 (77) KLJ 6 (Kar. – Tri.) (DB); Dr. Batra's Positive Health Clinic Pvt. Ltd. V. State of Karnataka - In the instant case the Honourable Karnataka Appellate Tribunal by applying the dominant nature test as well as the transaction nature test, held that the dispensing of medicine by the consultant doctors during the course of integrated package treatment cannot be considered as sale for the purpose of CST Act.

The Tribunal also held that the Assessing Authority has not all analysed the nature of activity carried out by the Appellant but has focussed mainly on one single aspect of dispensation of medicine by the doctors/medical experts. There is no finding whatsoever how the transaction could be treated as sale when the transaction involved nearly 98.24% of service factor. In other words the cost of medicines to the total cost was less than 1.76%. Further, the Tribunal held that despite of all these facts being present before the First Appellate Authority and the Assessing Authority, they both failed to appreciate these facts while passing the impugned appeal order and re-assessment orders.

2013 (77) KLJ 170 (Kar. – Tri.) (DB); Raj Enterprises v. State of Karnataka - In the instant case the Honourable Karnataka Appellate Tribunal held that the Officer who was given authorisation by the Joint Commissioner is not competent to

inspect books of accounts and pass reassessment orders.

It further held that the powers to enter business premises of dealer and to demand production of books of accounts and documents relating to his business for inspection vests with the Commissioner and only with the Officer authorised by the Commissioner.

INCOME TAX

PARTS DIGESTED:

- a) 356 ITR – Part 4 & 5
- b) 357 ITR – Part 1 to 3
- c) 217 Taxman – Part 3 & 4
- d) 26 ITR (Trib) – Part 1 to 6
- e) 143 ITD – Part 4 to 9
- f) 144 ITD – Part 1 & 2
- g) 43 CAPJ – Part 5 & 6
- h) 45-A BCAJ – Part 6
- i) 62 TCA – Part 3
- j) 9 International Taxation-Part 3

Reference / Description

[2013] 357 ITR 88 (Kar. – HC); CIT and another v. IBM India Ltd. - In the instant case the Court upheld the order of the Tribunal where the Tribunal dealing with the aspect of warranty liability, held that once the warranty liability was based on scientific calculation, the Assessee was entitled to deduction under Section 37 of the IT Act.

The Court dealing with amount paid towards application of software held that when the software is fitted to a computer system to work, it enhances the efficiency of the operation. It is an aid in manufacturing process rather than the tool itself. Though certain application is an enduring benefit, it does not result into acquisition of any capital asset. It merely enhanced the productivity or efficiency. Therefore the Court held that the same has to be treated as revenue expenditure.

[2013] 357 ITR 153 (Delhi – HC); CIT v. Gita Duggal - In the instant case the Honourable Delhi High Court dealing with respect to Sections 54 and 54F of the IT Act held that the expression used under the aforesaid Sections is a residential house' and not 'a residential unit'. There is nothing in these Sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use.

In other words, the Court held that Sections 54 and 54F of the Act require the Assessee to acquire a 'residential house' and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units, which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the Section should be taken to have been as satisfied.

[2013] 357 ITR 396 (AP – HC); CIT v. Bhooratnam and Co. - In the instant case the Honourable Andhra Pradesh High Court held that where TDS certificates were issued in name of joint venture for executing a works contract, in view of failure of joint venture to file return and claim credit for TDS certificates, said credit could be allowed to assessee in capacity of individual co-joint venture.

The Court further held that the revenue cannot be allowed to retain TDS without credit being available to anybody. If credit of tax is not allowed to the assessee and the joint venture has not filed a return of income then credit of the TDS cannot be taken by anybody. This is not the spirit and intention of law.

[2013] 217 Taxman 152 (Delhi – HC); 35 taxmann.com 140; Institute

of Chartered Accountants of India v. DGIT (Exemptions) - In the instant case the Honourable Delhi High Court held that where dominant objective of ICAI was to regulate profession of Chartered Accountancy in India, it was a charitable institution and conducting coaching classes and campus placements for a fee could not be held as business as per section 2(15).

While holding so, the Court held that:

- (a) The expression 'trade', 'commerce' and 'business' as occurring in the first proviso to Section 2(15) of the IT Act must be read in the context of the intent and purport of Section 2(15) of the IT Act and cannot be interpreted to mean any activity which is carried on in an organised manner.
- (b) The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not.
- (c) The purpose of first proviso to Section 2(15) of the IT Act is to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee.
- (d) In other words, the object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of 'charitable purpose'.

Applying the aforesaid principles to the instant case, the Court held as under:

- (a) The activity of imparting education in the field of accountancy and conducting courses both at pre-qualification as well as post-qualification level are activities in furtherance of the objects for which the Petitioner has been constituted.

(b) Activities of providing coaching classes or undertaking campus placement interviews are in relation to the main object of the Petitioner cannot be held to be trade, business or commerce.

(c) Even though fees are charged by the Petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be regarded as rendering service in relation to any trade, commerce or business as such activities are undertaken by the Petitioner institute in furtherance of its main object.

[2013] 217 Taxman 110 (Delhi – HC)(Mag.); 35 taxmann.com 368; CIT v. Select Holiday Resorts (P.) Ltd. - In the instant case 98% of shares of Assessee Company were held by IIPL and 100 per cent share of IIPL were held by four persons of a family who had the control and management of IIPL as well as Assessee Company. On merger of IIPL into Assessee Company, shareholders of IIPL were allotted to shares of the amalgamated Company. The Assessing Officer disallowed carry forward of losses under Section 79, holding that change in shareholding had taken place.

The Honourable Delhi High Court held that the carry forward losses cannot be denied on the ground of change in shareholding due to merger if the management of Company continues to remain with the same set of people.

[2013] 217 Taxman 229 (Guj. - HC); 36 taxmann.com 230; CIT v. Gujarat State Fertilizers & Chemicals Ltd. - In the instant case the Honourable Gujarat High Court held that where Assessee's own funds were more than the amount invested for earning the



dividend income, and when there was nothing to indicate that borrowed funds were utilized for purpose of investment in shares for earning such dividend, disallowance of 10% of dividend income was not permissible. The Court further held that such amount cannot not be added while computing book profits under Section 115JB.

The Court also held that when the employment of Section 14A is not found correct, there does not arise any question of determining the amount of expenditure in absence of Rule 8D on the basis of reasonable and acceptable method of apportionment.

[2013] 217 Taxman 245 (P&H – HC); 36 taxmann.com 19; CIT v. Vishal Paper Industries - In the instant case the Assessee claimed certain expenses on account of repairs and maintenance as revenue expenditure. However, the same were held as capital in nature by the Assessing Officer.

The Honourable Punjab & Haryana High Court held that increase in life of existing assets beyond their original estimated economic life by repairs and maintenance could not be taken as ground for treating such expense as capital in nature.

The Court further held that where new identifiable items created were capable of being used independently, same when used for repairs and maintenance of assets was allowable as revenue expenditure.

[2013] 217 Taxman 149 (Guj. – HC) (Mag.); 35 taxmann.com 300 (Guj.); Torrent (P.) Ltd. v. CIT - In the instant case eight different companies got amalgamated with the Applicant-Company pursuant to the scheme of amalgamation which was sanctioned by the High Court. One of the amalgamated-company Torrent had

(after the effective date of amalgamation, but before the sanction of scheme), declared and paid out dividend to three shareholder companies which includes Applicant-Company and two other amalgamated companies and had also deposited dividend distribution tax on it. The Applicant-Company filed the return of income and noted that by virtue of amalgamation of different companies, the dividend declared by TPL would cease to bear the character of dividend. It further moved an application before the Assessing Officer claiming refund of the dividend distribution tax already paid.

The Assessing Officer rejected the application of the Applicant-Company on ground that the Applicant-Company failed to point out any provision in the Act under which such refund can be granted. He observed that dividend itself was not revoked at any stage and once dividend has been declared/paid, liability to pay tax as per Section 115-O arose and tax had to be paid.

The Honourable Gujarat High Court held that where there was amalgamation of dividend paying and dividend receiving companies prior to declaration of dividend, such payment would cease to retain character of dividend since no dividend could be paid by company to its ownself.

Further in the instant case the Applicant-Company had filed Application seeking refund of dividend distribution tax and the same was rejected by Assessing Officer merely because application was not in a formal format.

The Court held that merely because application was not filed in a formal format, the same would not change character of application being one seeking refund under the IT Act.

[2013] 26 ITR (Trib) 369 (Chennai); GTP Granites Ltd. v. Asst. CIT - In the instant case the Assessee had purchased granites and the same was exported. The Honourable Chennai Tribunal following the decision of the Honourable Mumbai Tribunal in the case of T. Two International P. Ltd. v. ITO [2010] 3 ITR (Trib.) 353 (Mum.) held that to allow deduction under Section 10A the material consideration is export of eligible goods and not whether those are manufactured or purchased by the assessee. Thus, the Tribunal held that the Assessee is eligible for deduction under Section 10B in respect of granites exported.

[2013] 26 ITR (Trib) 376 (Agra); Dy. CIT v. Nehru Prasutika Asptal Samiti - In the instant case the Honourable Agra Tribunal held that Assessee's maternity hospital could not be treated as treatment of an illness in the Assessee's Hospital as envisaged under Section 10(23C)(iiia) as the maternity hospital would have been facilitating deliveries, which is a natural process.

[2013] 26 ITR (Trib) 203 (Nagpur); Dy. CIT v. Power Grid Corporation of India Ltd. - In the instant case the Assessee's return of income admittedly filed in time was signed by the general manager and chief manager and not by the managing director. The Department held that return to be invalid and levied interest under Section 234A of the Act.

The Court held that the return was merely defective not invalid and the defect was of such a nature that it could have been removed. Therefore, the Court held that the authorities erred in charging interest under Section 234A, where the return was filed well within time.

[2013] 143 ITD 1 (Mum. – Tri.) [SB]; [2013] 33 taxmann.com 200;

Asst. DIT (IT) v. Clifford Chance -

In the instant case Assessee, a firm of solicitors resident in UK, rendered legal consultancy services in connection with different projects in India, some part of which was performed in India. Income attributable to the services so performed in India was offered to tax by the Assessee for assessment year 1998-99 under Independent Personal Services as per Article 15 of the India-UK Treaty, since the aggregate period of its presence in India through partners and employees exceeded 90 days in that years. For other years, Assessee declared 'Nil' income on ground that the aggregate period of its presence in India did not exceed 90 days.

The Assessing Officer held that Article 15 of India-UK Treaty was not applicable to Assessee, being a partnership firm. He held that since Assessee rendered services in India for more than 90 days, it was deemed to have a permanent establishment in India in terms of Article 5 of India-UK DTAA and profit earned by it was chargeable to tax as business profits under Article 7. He also held that entire fees received by Assessee from services rendered in India as well as outside India was chargeable to tax in India, as said services were utilized in relation to projects in India.

The Honourable Mumbai Tribunal held that fees received by Assessee was income accruing from business connection in India under Section 9(1)(i) of the IT Act and Article 15 of the Indo-UK DTAA and not fees for technical service under Section 9(1)(vii) of the IT Act and Article 7 of the Indo-UK DTAA.

Further it held that profits of enterprise arising out of relevant contracts was to be apportioned in ratio of contribution of PE to these

transactions and contribution of enterprise as a whole, and such profits as apportioned to contribution of PE shall be treated for purpose of Article 7(1) of the Indo-UK DTAA as being profits indirectly attributable to PE. Consequently, profits apportioned to contribution of other parts of enterprise to transactions cannot be treated as profits indirectly attributable to PE for the purpose of Article 7(1) of the Indo-UK DTAA so as to bring the same to tax in source country.

[2013] 143 ITD 445 (Kol. – Trib.); 32 taxmann.com 99; ITO v. Right Florists (P.) Ltd. - In the instant case, Assessee used online advertising on search engines, i.e., Google and Yahoo, but did not deduct tax at source on payments made for the same. The Assessing Officer disallowed the payments under Section 40(a)(i) for non-deduction of tax at source holding the amount as taxable in hands of the search engine companies.

The Honourable Kolkata Tribunal held that where assessee made payments to foreign search engine portals for online advertising services, it did not accrue or arise in India due to absence of PE of foreign search engine companies in India.

Further it held that fees for online advertising cannot be considered as fees for technical services for the following reason:

Google, Ireland:

- (a) that the expression 'technical' appearing in Section Explanation 2 to Section 9(1)(vii) and in Article 12(2)(b) is preceded by the word managerial and succeeded by the word consultancy;
- (b) Both the words managerial and consultancy involve human element and both the services are provided by human. Consequently,

applying the rule of noscitur a sociis, the word technical also would have to be construed as involving a human element;

- (c) In the instance case the service which is rendered by Google is generation of certain text on the search engine result page. This is a wholly automated process.
- (d) There is no human touch at all in the services rendered by the search engines, which provide these advertising opportunities.

Yahoo, USA:

- (a) Indo-USA treaty provides for a 'make available' clause which restricts the source of taxation of only such technical services, referred to as 'included services', which make available of technical knowledge etc.;
- (b) The expression 'make available' as examined by various Courts suggests that unless services rendered by the service provider results in transfer of technology and enable the recipient of service to make use of technology knowledge by himself, and without recourse to the service provider, mere rendition of such services cannot be brought to tax as fees for technical service.
- (c) In the instant case, by providing online advertising, there is no transfer of any technology of any kind.

Thus, the Tribunal held that any services rendered without human touch, even if it be a technical service, cannot be regarded as technical service which is covered by Section 9(1)(vii) of the Act and hence held that receipts for online advertisement by the search engine cannot be treated as fees for technical services taxable as income in the hands of Google and Yahoo.



[2013] 35 taxmann.com 415 (Hyd. – Trib.); [2013] 143 ITD (BN – XXXI) Part 6; S. Ranjith Reddy v. Dy. CIT - In the instant case the Honourable Hyderabad Tribunal held that only execution of development agreement of land, without commencement of construction, cannot be held as transfer so as to attract capital gains tax.

[2013] 35 taxmann.com 424 (Delhi – Trib.); [2013] 143 ITD (BN – XXXIII) Part 6; CIT v. Robert Arthur Keltz - In the instant case the Honourable Delhi Tribunal held that as the assessee is an employee of a foreign company, only such

proportion of ESOP perquisite is taxable, which relates to service rendered by such assessee in India.

[2013] 143 ITD 664 (Chennai – Trib.); 34 taxmann.com 267; Asst. CIT v. Masanam Veerakumar - In the instant case the Honourable Chennai Tribunal held that the term ‘relative’ used in Section 56(2)(v) and elaborated in Explanation to that Section clearly shows that mother’s sister’s son does not fall within the definition of relative.

It further held that when the meaning of the term relative is defined in the IT Act itself, deriving meaning of the said word from term ‘lineal ascendant

or lineal descendant’ and bringing the relationship within the purview of the Section to grant benefit is unjustified and bad in law.

[2013] 45-A BCAJ 747 (Mum. – Trib.); [ITA No. 2021/Mum./2011 dated 10.07.2013]; Knight Frank (India) Pvt. Ltd. v. Addl. CIT - In the instant case the Honourable Mumbai Tribunal held that since the assessee is a service provider company, patently the provisions of Section 145A cannot be made applicable because the provision was specifically introduced for the purposes of manufacturing segment of the business.

Announcement

Coaching Classes: IPCC & FINAL for May 2014 Examinations and CPT for June 2014 Examinations

Admissions open for Subjectwise Coaching

In pursuance of our objective to provide fruitful and quality teaching to our students, we are pleased to inform you that CPT/ IPCC and FINAL coaching classes will be commencing at the Bangalore Branch of SIRC of ICAI. The classes will be commencing by last week of November 2013.

Salient features: • Experienced, Expert and Dedicated faculty members • Methodology – Conceptual teaching • Affordable Coaching Fee • The journey of CA with Bangalore Branch is that of progress with innumerable activities of knowledge supported and guided by our senior renowned faculty members – resource persons • During the course, amazing, inspiring and motivational sessions and Orientation classes will be conducted

Hence be proud to be a part of the Branch by enrolling as a student to become a prestigious member of this glorious profession.

Course	Fees	Duration (4 Months)	Timings
CPT	Rs.5,000/-	01 st January 2014 to 15 th April 2014 (Tentative)	05.30pm to 07.30pm (Monday to Friday) & 03.00pm to 07.30pm (Saturday) & 08.00am to 12.30pm (Sunday)
IPCC & FINAL	Rs.12,500/- for Both Groups Rs.9,000/- for Single Group Rs.3,000/- for Single Subject	Last week of Nov 2013 to 15 th March 2014 (Tentative)	06.30am to 09.30am & 06.00pm to 09.00pm & (Monday to Saturday) 08.00am to 05.30pm (Sunday)

Schedule for all the subjects will be announced in due course of time.

Registration Fees Mode of payment: DD should be drawn in favour of “Bangalore Branch of SIRC of ICAI” payable at Bangalore.

For further details please contact: **Tel: 080-30563500 /511 / 512 / 513**

Email: blrregistrations@icai.org / blrprogrammes@icai.org **Website:** www.bangaloreicai.org

RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES

CA. N.R. Badrinath, Grad C.W.A., F.C.A.

CA. Madhur Harlalka, B.Com., F.C.A

VAT/SALES TAX

The Larger Bench (3 member bench) of the Supreme Court has recently in the case of *Larsen and Toubro Ltd Vs State of Karnataka* held that under construction flats fall within the definition of works contract and accordingly liable for VAT. This landmark decision of the Supreme Court decided on September 26, 2013 has conclusively put to rest the fiercely litigated issue of applicability of VAT on under construction flats. The Supreme Court held the following:

- As part of agreement between developer and buyer, when a developer undertakes to construct flat on behalf of the ultimate buyer of the flat and also transfer part of the undivided interest in the land, such an activity comes within the scope of works contract;
- The meaning of the term 'works contract' has to be understood what the Parliament had in mind at the time of 46th Amendment to the Constitution and the said meaning cannot be restricted to a particular type of works contract
- For execution of a works contract, three ingredients are essential viz; (1) There should be a works contract; (2) There should be goods involved in the execution of works contract; (3) There should be transfer of ownership in the goods to a third party
- After the 46th amendment to the Constitution, the dominant nature test fails as far as works contract is concerned and it is immaterial whether the intention is to ultimately sell a flat to the prospective buyer.
- The meaning of the term goods includes goods transferred in the execution of works contract whether as goods or in some other form. The fact that goods become part of immovable property does not preclude the powers of the State Government to tax sale of goods in the execution of works contract.
- In a tripartite agreement between the landowner, developer and buyer, there is nothing wrong in treating the contract as a composite contract involving execution of works contract and also transfer of immovable property
- The argument that a flat has to be sold as flat and not as aggregate of its component parts has been negated by the Constitution Bench of Supreme Court in the case of Builders Association
- Merely because the builder has lien if the monies are not paid does not alter the character of the transaction being a works contract

It is important to mention here that the above decision of the Supreme Court would also have

significant ramifications on the taxability of services involved in the execution of works contract. Hereafter, it would be difficult to challenge the constitutional validity of levy of service tax on Construction and Works contract activities which are treated as 'Declared Services' under the service tax law. This is due to the fact that such contracts would be treated as works contracts for the purpose of VAT laws and would thus also be liable for service tax on the service portion in the works contract.

CENVAT

- The appellants claimed security services availed by them at the job worker's premises and at a guest house maintained by them near the factory, used by their employees on their visits to the factory, as input services. The respondent argued that there was no nexus between these security services availed and the manufacturing activity as these services were not used in the factory premises. The appellants put forth, that the definition of "input services" as per CENVAT Credit Rules of 2004, does not restrict the usage of services to the factory premises. The appellants also claimed that the security services were directly related to their manufacturing activity as the security services at the job worker's premises are guarding the inputs that they had sent and hence were allowed as eligible input credit.

Whereas, for security services pertaining to the guest house which was used by employees visiting the factory, the input credit was disallowed as the guest house was used by both, employees involved in



manufacture and employees involved in business/administration. It was further stated that the guest house could be used by the employees to satisfy their personal needs also and thus was not related to the manufacturing process of the company. **[MRFLtd. Vs Commissioner of C.Ex& S.T (LTU), Chennai, 2013 (31) STR 689 (Tri. – Chennai)]**

SERVICE TAX

- The appellant, through her agent had provided services to various companies for promotion of their products in her capacity as a model. The revenue argued that the services thus provided by the appellant were “Business Auxiliary Services” and that she had failed to discharge her service tax liability for such services provided. The appellant claimed that the service tax liability was discharged through her agent as per the contract but under the head “Advertising Agency Service”. It was held that payment of tax liability under the wrong head does not mean that the tax liability has not been discharged. The appellant had in fact, discharged her tax liability through her agent. The appeal was dismissed in favour of the appellant. **[Katrina R. TurcotteVs Commissioner of Service Tax, Mumbai, 2013(31) S.T.R. 670 (Tri- Ahmd.)]**
- A club is formed out of mutuality of its members and thus, any transaction that the club enters into with its members, is not a transaction between two parties and is hence not taxable. Further it was held that when a club is an incorporated association, transactions entered into by such a club with shareholding members

would not amount to a transaction due to the mutuality of the members and thus could not be subject to levy of Service Tax. The Department submitted that it did not accept the Judgement relied upon and that a Special Leave Petition had been filed before the Apex Court and the Judgement was under challenged. The High Court, in this regard held that merely because the Judgement was not accepted by the Department, the Judgement does not lose its credibility. **[Sports Club of Gujarat Ltd. Vs Union of India, 2013(31) S.T.R. 645 (Guj.)]**

- The applicant was a wholly owned Indian subsidiary company of a holding company outside India, and entered into agreements with the holding company to provide marketing and sales support services. They demonstrated the products of the holding company to customers in India, marketed the products and managed their dealer accounts and projects. The applicant sought an advanced ruling on determining the place of provision of services provided by them to the holding company and whether such provision of services qualified as export of taxable services. The Authority ruled that the place of provision of the service is the location of the recipient of such service and thus the place of provision of services provided by the applicant were outside India. The Authority ruled that the conditions under rule 6A(1) of the Service Tax Rules, 1994 were satisfied and thus these services would qualify as export of services. **[Tandus Flooring India Private Limited, 2013(64) VST 56 (AAR)]**

- The applicant was a wholly owned subsidiary of a holding company outside India. It proposed to obtain non-exclusive rights from the holding company to manufacture & sell/distribute (electronically or through media) various IT and software products such as Fully Packaged Products, Product Key Cards, Windows Anytime Upgrades, Client Access Licenses, Games etc. under a loyalty programme and to pay royalty to the holding company for these rights. The manufacture of the products and the programme membership kits were outsourced by the applicant to third party job-workers situated outside India. The applicant sought ruling whether: the domestic transfer of software on media would be liable to service tax, the royalty paid by the applicant to the holding company be liable to service tax under the negative list based regime & under the reverse charge mechanism and whether charges paid to overseas third party job workers for manufacture of the licensed products be liable to service tax under the reverse charge mechanism.

The Authority, relying on a previous case, ruled that domestic transfer of software on media comes under the scope of manufacture and thus such an activity does not fall under the scope of service tax. It was also ruled by the Authority that supply of Product Key Cards, Windows Anytime Updates & Client Access Licenses are liable to service tax, as held in previous cases and that granting license to run Microsoft Software and supplying of software was a “service” and hence would

attract service tax. The Authority held that all royalty paid to the holding company and any transactions that were a part of the loyalty programme would be liable to be taxed as a service. It was also observed that for manufacture of goods by overseas third-party job workers, the manufacturing activity is included in the negative list and thus is not taxable and where as for the place of provision of service, as per Rule 4 of the Place of Provision of Services Rules, 2012, for service provided in respect of goods that are required to be made physically available to the provider of the service or a person acting on his behalf to provide the service, the place of provision of service shall be the location where the services are performed, i.e. outside India. *[Microsoft Corporation (India) Private Ltd., 2013(64) VST 83 (AAR)]*

- The appellant provided telecom services to in-bound roamers that were registered with foreign telecom network operators but located in India at the time of provision of the services by the appellant. The appellant claimed rebate on the grounds that payment from the foreign network operators was received in convertible foreign exchange and thus the services provided by them should be treated as export of service under the Export of Service Rules, 2005. It was observed that the appellant had entered into an agreement to provide the service with the foreign network operator and not the customer of such a foreign network operator and so the benefit of the service was received by the foreign network operator.

The Tribunal observed that the service provided by the appellant was covered in Category III of Export of Service Rules, 2005. The requirements for Category III services to be an export are that the recipient should be located outside India at the time of provision of such services and an additional condition that the consideration should be received in convertible foreign exchange. The Tribunal held that the appellant satisfied the required conditions and thus the services rendered by the appellant were export services and that the appellant was eligible to claim rebate and right in doing so. *[Vodafone Essar Cellular Ltd. Vs Commissioner of C. Ex., Pune – III, 2013 (31) S.T.R. 738 (Tri.-Mumbai)]* ■

Advt.

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Comprehensive Workshop on Companies Act, 2013

24 hrs
CPE

11th November, 2013 to 16th November, 2013
Venue: **Sri. D.Devaraj Urs Bhavan**
(Opp. to Bangalore Branch of SIRC of ICAI), Bangalore

Delegate Fee:
Rs. 2500/-

Chapter	Proposed Topics / Particulars	Hours	Resource persons						
11 th November 2013 – Monday Evening									
-	Inaugural Address	2	Mr. M.R.Bhat ROC, Karnataka						
-	Key Note Address - Opportunities & Challenges to CA's under Cos. Act, 2013		CA. K. Raghu Vice President – ICAI						
-	Overview of Companies Act 2013 and the Workshop		CA. K.G. Acharya						
14	Inspection, Inquiry & Investigation - Power of ROC to call for information, Search & Seizure, <i>SFIO</i> .	2	Mr. K.G. Raghavan, Advocate						
15	Compromises or Arrangements with members & Creditors and Merger or Amalgamation, Purchase of minority share holding, etc..								
12 th November 2013 – Tuesday Evening									
11,12, 13	Directors & KMP – Appointment, qualifications, Board meetings & its powers – Loans to directors, Related Party Transactions <table><tr><td>Sch IV</td><td>Code of Independent Directors</td></tr><tr><td>Sch V</td><td>Appointment of MD or WTD without CG approval</td></tr><tr><td>Sch VI</td><td>‘Infrastructure’ definition</td></tr></table>	Sch IV	Code of Independent Directors	Sch V	Appointment of MD or WTD without CG approval	Sch VI	‘Infrastructure’ definition	2	Dr. B. Ravi, CS
Sch IV	Code of Independent Directors								
Sch V	Appointment of MD or WTD without CG approval								
Sch VI	‘Infrastructure’ definition								
1, 16, 17	Important Definition such as Pvt Ltd Co., Related party, Relative, Subsidiary Co., Associate Co., Control, Expert, Free Reserves, promoter, etc. <u>New concepts</u> in Cos. Act 2013 like OPC, Small Cos., Dormant Co., Independent directors, Registered valuers, Class Action suit (incl. <i>Prevention of O&M</i>), Secretarial audit u/s 204, etc..	2	CS. J. Sundharesan						
13 th November 2013 – Wednesday Evening									
-	Special Address by Jnanasagara CA. S. Krishnaswamy								
9	Accounts of Cos. [Incl. Financial Statements, Re-opening of a/cs, Revision of Financial Statements, NFRA, CSR & Internal Audit] <table><tr><td>Sch II</td><td>Depreciation</td></tr><tr><td>Sch III</td><td>B/S & P/L format</td></tr><tr><td>Sch VII</td><td>CSR</td></tr></table>	Sch II	Depreciation	Sch III	B/S & P/L format	Sch VII	CSR	4	Panel Discussion CA. B.P. Rao, Past President - ICAI CA. Sunil Bhumralkar CA. Manohar Gupta CA. K.G. Acharya
Sch II	Depreciation								
Sch III	B/S & P/L format								
Sch VII	CSR								

Chapter	Proposed Topics / Particulars	Hours	Resource persons
14th November 2013 – Thursday Evening			
2, 3, 4, 5, 6	Incorporation & Raising of capital (Co. Formation, MoA & AoA, Prospectus, Private Placement, Share Capital, Debentures, Deposits incl. Loans, Regn of Charges) Sch. I (MOA & AOA)	2	CA. Shyam Ramadhyani
21	Cos. authorized to register & Winding up of unregistered Cos.		
22	Cos incorporated outside India &		
26	Nidhis		
18	Removal of names of Cos from ROC	2	CA. S.S. Nagananda,
19	Revival & Rehabilitation of Sick Cos.		Advocate
20	Winding Up – Types, provisions & OL		
24 & 25	ROC Office & Cos. to furnish information or statistics		
27	NCLT & Appellate Tribunal		
28 & 29	Special Courts & Miscellaneous		
15th November 2013 – Friday Evening			
7 & 8	Management & Administration. Dividend [Members, Registers, General Meetings, Annual Return & Dividends]	2	CA. Raviprasad.T CA. Srilakshmi. P
	- Private Limited Companies, One Person Co., Dormant Co. & Small Cos. – Privileges under Cos. Act 2013 Vis-a Vis Cos. Act, 1956. [Dos & Don'ts for such cos. – Changing scenario].	2	CA. Vijay Raja
16th November 2013 – Saturday Morning			
10	Audit & Auditors	4	<u>Panel Discussion</u>
23	Government Cos. <u>Open House Discussion</u>		CA. N.Nityananda Past Central Council Member - ICAI Dr. P.T. Giridharan Secretary, Corporate Laws Committee - ICAI CA. S. Sundersan
		24	

Workshop Co-ordinator: CA. K.G. Acharya

Timings: Monday – Registration at 3.30 pm

Monday to Friday from 4pm to 8.15 pm [High Tea from 6pm to 6.15pm]

Saturday from 9.30 am to 1.45 pm [High Tea from 11.30 am to 11.45am and Lunch after 1.45 pm]

Participant Fee: **Rs. 2500/-** [For members only]

Mode of payment: Cheque / DD should be drawn in favour of “Bangalore Branch of SIRC of ICAI” payable at Bangalore.

CA. Ravindranath. S.N

Chairman

CA. Allama Prabhu M.S.

Secretary

For further details please contact: **Tel: 080-30563500 /511 / 512 / 513**

Email: blrregistrations@icai.org/blrprogrammes@icai.org **Website:** www.bangaloreicai.org

Restricted to 500 members on First Come First served basis.



IMPORTANT DATES TO REMEMBER DURING THE MONTH OF NOVEMBER 2013

5 th November 2013	Payment of Excise Duty for October 2013
	Payment of Service Tax for October 2012 by Corporates
6 th November 2013	E-Payment of Excise duty for October 2013
	E-Payment of Service tax for October 2013 for Corporates
7 th November 2013	Deposit of TDS/TCS Collected during October 2013
	STPI Monthly Returns
10 th November 2013	Monthly Returns for Production and Removal of Goods and CENVAT Credit for October 2013
	Monthly Return of excisable Goods Manufactured & Receipt of Inputs & Capital Goods by Units in EOU, STP, HTP for October 2013
	Monthly Returns of Information relating to Principal Inputs for October 2011 by Manufacturer of Specified Goods who Paid Duty of Rs.1 Crore or More during Financial Year 2012-13 By PLA/CENVAT/Both
15 th November 2013	Payment of EPF Contribution for October 2013
	Return of Employees Qualifying to EPF during October 2013
	Monthly Return (VAT 120) and Payment of VAT/COT for the month of October 2013.
20 th November 2013	Consolidated Statements of Dues and Remittances Under EPF and EDLI for the October 2013
	Monthly Return and Payment of Profession Tax Collected During October 2013
	Monthly Return (VAT 100) and Payment of CST and VAT Collected During October 2013
21 st November 2013	Deposit of ESI Contributions and Collections for October 2013
25 th November 2013	Monthly Returns of Employees Joined & Left the organization during October 2013 under ESI
	Monthly Returns of Employees Joined and left the organization during October 2013 under EPF
During Nov. 2013	Filing of Annual Returns with RoC within 60 days of AGM

REFRESHER COURSE FOR ACCOUNTANTS

Under the aegis of Management Development Programmes (MDP)

Fifth Batch of Refresher Course for Accountants

In the present business scenario, Accountants are involved in a wide range of commercial activities covering functions relating to Accounting, Finance, Costing, Tax laws and Labor laws. The objectives of the Course are to acquaint the participants about the basics of these essential functions which are present in any organization. This is a **Fast Forward Refresher Course** for those who are interested to learn the practical exposure to basic accounting & finance practices and to learn the most important and fundamental tax laws, in order to perform their accounting and finance works more effectively and competently.

For whom: Accountants, Accounts Executives & Accounts Assistants working in a manufacturing, service or trading organization.

Course Contents:

- Accounting • Labor Laws & Business Laws • Income Tax & Wealth Tax
- Central Excise, Service Tax and VAT
- Cost Accounting • Banking

Duration: The Fifth batch of the course will be conducted on the following days:

03rd, 04th, 05th, 10th & 11th December 2013

Timings: 10.00am to 05.30pm

Fees: Rs. 6,000/- per participant,

Cheque/DD should be drawn in favour of “Bangalore Branch of SIRC of ICAI” – payable at Bangalore.

**Registrations Open on
First Come First Served basis.**

Venue: Management Training Centre,
Bangalore Branch of SIRC of The Institute of
Chartered Accountants of India, ‘ICAI BHAWAN’,
16/O, Millers Tank Bed Area, Vasanthnagar,
Bangalore-560052, Telephone: 080-30563500/511/512/513
Email: bangalore@icai.org / blrprogrammes@icai.org
Website: www.bangaloreicai.org

*We request you to pass on this information to accountants: Finance/ Accounts Executives
to avail the benefits of this refresher course.*

CA. Ravindranath. S.N
Chairman

CA. Allama Prabhu M.S.
Secretary

2 Day Wokshop on Enabling Service Tax Practice Level - 2



Inauguration



CA. Annapurna Kabra,
Workshop Co-ordinator



CA. A. Saiprasad,
Workshop Co-ordinator



CA. Deepak Kumar Jain B.



CA. S. Ramasubramanian



CA. Madhukar N. Hiregange



CA. V. Raghuraman



Sri. Dakshina Murthy



Cross Section of Participants

Dasara Pooja at Branch



Interactive Session on Service Tax - Voluntary Compliance Encouragement Scheme - 2013



CA. Vinay Mruthyunjaya,
Past Chairman,
B'lore Br. of SIRC of ICAI



Shri. Suresh Kumar, IRS,
Additional Commissioner
of Service Tax, B'lore



Mr. Mohd. Irfan, IRS,
Deputy Commissioner
of Service Tax, B'lore



Dr. J. Harish, IRS,
Assistant Commissioner
of Service Tax, B'lore



Smt. Priya Buddi, IRS,
Assistant Commissioner
of Service Tax, B'lore



Shri. Srinivas B C, IRS,
Assistant Commissioner
of Service Tax, B'lore



Cross Section of Participants

Interactive Session on Minor Acts & Karasamadhana Scheme 2013



Sri. M. Basavanna,
JCCT - Minor Acts, Bangalore



Sri. Y.C. Shivakumar,
JCCT - DVO 1, Bangalore



CA. S. Venkataramani



Cross Section of Participants

International Tax Conference



CA. K. Raghu,
Vice President, ICAI



CA. Ravindranath S.N.,
Chairman,
B'lore Br. of SIRC of ICAI



CA. Dhinal A. Shah,
Chairman, Committee on
International Taxation, ICAI



CA. Gurunath N. Kanathur,
Co-Opted Member, CITAX



CA. Vijay Iyer,
New Delhi



CA. Pinakin Desai,
Mumbai



CA. Padamchand
Khincha H., Bangalore



CA. Rohit Agarwal,
Tax Head, Vodafone India



CA. Ganesh Murthy
CFO, Mphasis



CA. P. V. Srinivasan,
Tax Head, WIPRO, B'lore



CA. Pranav Sayta



CA. T. P. Ostwal, Mumbai



CA. K. R. Girish,
Bangalore



Hon'ble Justice
N. Kumar,
Karnataka High Court - Chair



CA. Sriram Seshadri



CA. K.K. Chythanya,
Bangalore



Ms. Jhannazeb Akhtar
CIT (Appeal), B'lore



Dr. Parthasarathi Shome



Felicitating
Hon'ble Justice N. Kumar



Felicitating Dr. Parthasarathi Shome



Vice President - ICAI, B'lore Br. Managing Committee Members with Dr. Parthasarathi Shome



Cross Section of Participants

Speakers at Study Circle Meetings



CA. Tata Krishna



CA. Bhanu Murthy J. S.



Sri. Gopinath M. R.



CA. Naveen Khariwal G.



CA. Ashok Raghavan



CA. K. K. Chythanya

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