

**The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)

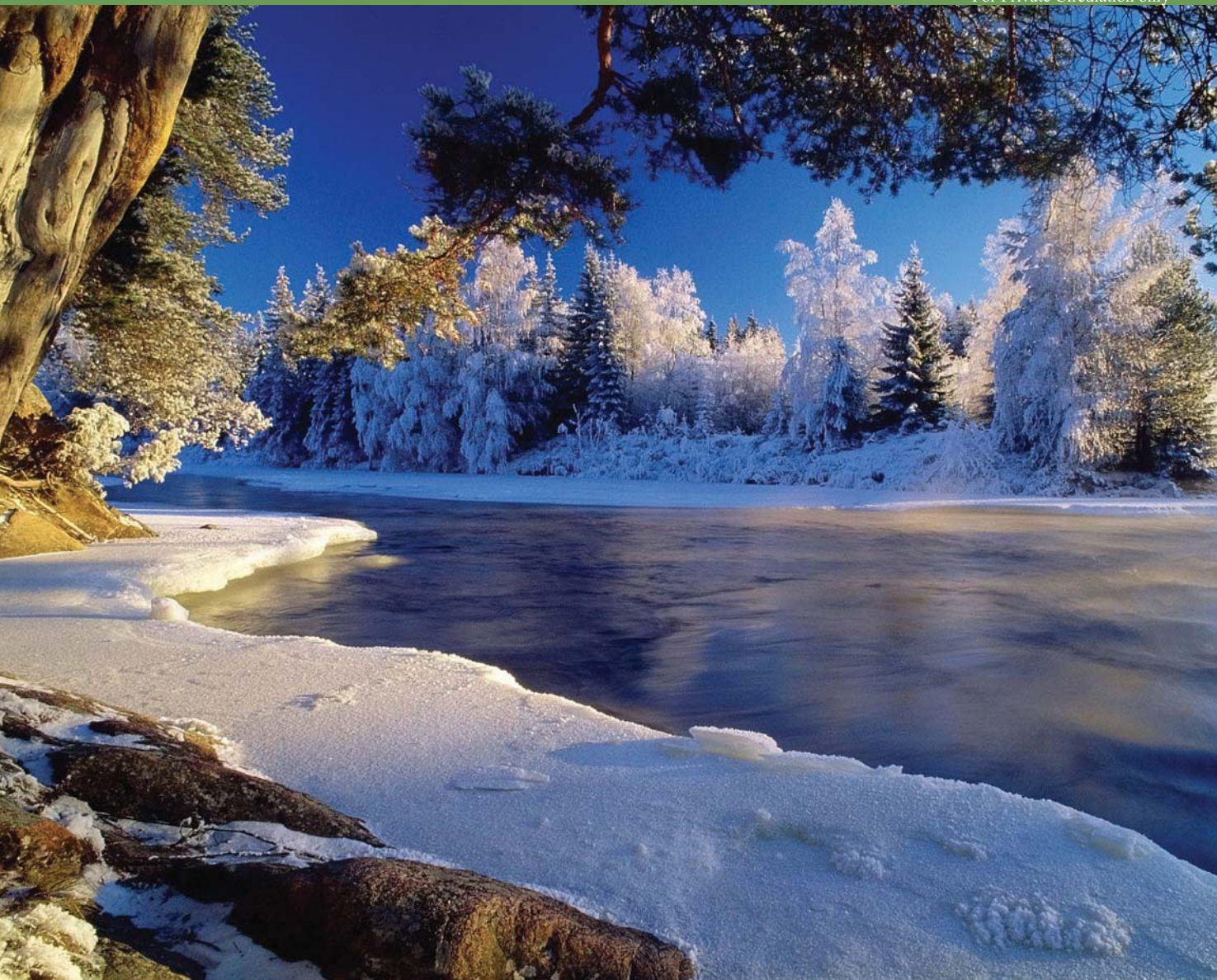


# Bangalore Branch of SIRC Newsletter

*English Monthly*

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- 18.12.2013 to 24.12.2013  
Workshop on Real Estate  
- from Concepts to Practice



- 20.12.2013  
Training Programme for  
Peer Reviewers

CPE - December 2013  
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# Chairman's Communique . . .

## Dear Professional colleague

This is the time of the year we need to review and revisit our resolutions what we had promised ourselves to implement at the beginning of the 2013, we need to move with a greater resolve on unfinished agenda and go about finishing them to their logical end.

December is the month all the Chartered Accountants either in industry or practice will be a hectic month with 31<sup>st</sup> December being the deadline for filing of K-VAT Audit Reports and also for filing declaration and pay taxes as per the Voluntary Compliance Encouragement Scheme under the Service Tax. Professionals in the industry working for various global companies are grappling with the numbers for their financial year ending, December being the month of financial year closure for many such companies.

## November 2013:

**Comprehensive Workshop on Companies Act, 2013 :** This programme saw a huge turn out of members befitting the new Companies Act which has seen the light of the day after missing

many a times. The deliberations in this program was of the highest order where in each & every intricate detail of the new provisions were discussed threadbare. Our compliments to all the speakers for their valuable contribution. Our sincere gratitude and heartfelt thanks to CA K.Gururaj Acharya who took the mantle of the Course Coordinator and very ably navigated the entire programme.



**Half Day Workshop On VAT Audit :** December being the month of VAT audit reporting, this program was well received by members. This program was structured differently to make all the participants involve in the whole learning experience, instead of a monologue it was conducted more on the interactive mode which made the whole experience a more meaningful one.

*(Contd. on next page)*

## Study Circle at HAL, Bangalore



Inauguration of Vimanapura Aircraft Study Circle at HAL, Bangalore

## Concept Based Crash Course for CPT December 2013 Exam



Guest lectures by eminent members of the profession



Cross Section of Participants

## Half day Workshop on VAT Audit



Inauguration



CA. S. Venkataramani



CA. Sanjay M Dhariwal



Cross Section of Participants

## Speakers at Study Circle Meetings



CA. H. Ganpatlal Kawad



CA. B.P. Sachin Kumar



CA. Sunil Bumralkar



CA. Annapurna Kabra



CA. Rohit Jain



CA. Prashanth G. S.

## Chairman's Communique . . .

(Contd. from previous page)

### **Concept based crash course for CPT students at Bangalore Branch:**

Concept-based teaching is another first conducted by Bangalore branch of the Institute of Chartered Accountants of India, where in 50+ students attended this crash course. In the month of November 2013 the branch hosted a 'concept-based crash course' for CPT students over a period of eleven days. The teaching faculty comprised of Chartered Accountants passionate about teaching – who were exclusively trained by the Bangalore Branch under the Faculty Development Programme (FDP). To enable the students to have a first hand experience of the examination, a mock test was conducted a week after the program. This concept-based teaching is one more feather in the cap of the Bangalore branch. On behalf of the managing committee we sincerely thank Mr. Nanu R Mallya for taking the lead to build a team and mentored them through the Faculty Development Programme (FDP).

### **December 2013:**

**Workshop On Real Estate- From Concepts To Practice:** As Indian economy is one of the few buoyant

economies of the world which is on an upward trend, Real Estate Sector plays a pivotal role in fuelling growth of the Economy, with the rapid growth and developments in this sector, the Chartered Accountants have to have an in-depth understanding of the various legal & tax laws which criss crosses the Central and State Government Enactments, while rendering services to their clientele. Hence this comprehensive Workshop on Real Estate – Concepts to Practice is being organized from Wednesday the 18th December to Tuesday the 24th December 2013. The details of the programme is published elsewhere in this news letter.

**Study Circle Series on Companies Act, 2013:** The new Companies Act has started to come in to effect in a phased manner, as we all know so far 98 sections has been notified and the rule making is in the process we at Bangalore branch have planned study circle series on Companies Act on Fridays. The First study circle will be started on 6th December 2013. The details of the programme is published elsewhere in this news letter.

### **Training Programme For Peer Reviewers:**

The main objective of the peer review is ensure that while carrying out the assurance assignments Chartered Accountants comply with the applicable technical, professional and ethical standards including other regulatory requirements and audit documentation to demonstrate the quality of the assurance services. The Peer review is meant for enhancing the quality of the professional work, transparency in technical standards used. This review by the peer reviewer is always begins with the belief that the fellow professional has discharged his/her responsibility in the right earnest. To train the members to become peer reviewers, Training programme for peer reviewers has been organized under the aegis of Peer Review Board Of ICAI. The details of the programme is published elsewhere in this news letter.

Merry Christmas and a Very Happy New Year.

Best Wishes



**CA Ravindranath S N**  
Chairman

## Live TV & ICAI Tube

All the programmes of Bangalore branch are live telecasted. To watch the programme, please visit :

[www.bangaloreicai.org / resources/livetv](http://www.bangaloreicai.org/resources/livetv).

**'ICAI TUBE'** Bangalore branch's initiative of archiving and streaming of programs in the form of videos was well appreciated by the members. All the recorded programs of

Bangalore branch are hosted in the Bangalore branch website, to watch these videos please visit

[www.bangaloreicai.org/resources/icai-tube](http://www.bangaloreicai.org/resources/icai-tube)

for the benefit of the members.

We welcome your suggestion & feedback to serve you better.





## CALENDAR OF EVENTS - DECEMBER 2013 & JANUARY 2014

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
04.12.2013 Wednesday	Goods Transport Services - Provisions & Issues under the Service Tax <b>CA. Sai Prasad</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
06.12.2013 Friday	<i>Study Circle Series on Companies Act 2013 - No.1</i> Companies Act 1956 Vs 2013, Comparative Analysis <b>CA .P.R. Suresh</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
07.12.2013 Saturday	FEMA - Certifications & Recent Updates <b>CA. Vivek Mallya</b>	Branch Premises 10.00am to 12.00noon	<b>2 hrs</b>
11.12.2013 Wednesday	Appeals to the Commissioner of Income Tax (Appeals) <b>CA. K.S. Sathish, Mysore</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
13.12.2013 Friday	<i>Study Circle Series on Companies Act 2013 - No.2</i> Understanding & Analysing the Definitional Sections <b>Sri. J. Sundaresan, Company Secretary</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
18.12.2013 Wednesday to 24.12.2013 Tuesday	<b>Workshop on Real Estate - from Concepts to Practice</b>  <i>Delegate Fee: Rs.2500/-</i> <i>For details refer Page No. 7</i> Saturday (10.00am to 05.30pm)	Sri Devraj Urs Bhavan Auditorium, Opp.to Branch Premises 04.00pm to 08.15pm	<b>26 hrs</b>
20.12.2013 Friday	<b>Training Programme for Peer Reviewers</b> <i>under the aegis of Peer Review Board of ICAI</i> <i>For details refer Page No. 5</i>	Fortune JP Select, Off Cunningham Road, Bangalore-52	<b>6 hrs</b>
27.12.2013 Friday	<i>Study Circle Series on Companies Act 2013 - No.3</i> Impact of the 98 sections notified on 12.09.2013 <b>Sri. M.R. Gopinath, Company Secretary</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
03.01.2014 Friday	<i>Study Circle Series on Companies Act 2013 - No.4</i> Incorporation of Companies <b>CA. P. Manohara Gupta</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
08.01.2014 Wednesday	Emerging trends in Code of ethics <b>CA. P.R. Suresh</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
10.01.2014 Friday	<i>Study Circle Series on Companies Act 2013 - No.5</i> Meeting of Board & its power- <b>Sri. C. Dwarakanath, Company Secretary</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
11.01.2014 Saturday	Workshop on LLP- covering 1.Concepts, Unique & distinguishing features, 2. Incorporation Procedures, 3. Taxation aspects 4. Conversion of Partnership Firms & Companies to LLP's <i>Coordinator: CA. K. Gururaj Acharaya</i>	Branch Premises 10.00am to 6.00pm	<b>6 hrs</b>
15.01.2014 Wednesday	International Taxation - concept of PE <b>CA. Rohit Jain</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>

**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

Colour full page		Inside Black & White	
Outside back	₹ 30,000/-	Full page	₹ 15,000/-
Inside back	₹ 24,000/-	Half page	₹ 8,000/-
		Quarter page	₹ 4,000/-
<b>Advt. material should reach us before 22nd of previous month.</b>			

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

**DISCLAIMER:** The Bangalore Branch of ICAI is not in anyway responsible for the result of any action taken on the basis of the articles and advertisements published in the newsletter. The views and opinions expressed or implied in the Branch Newsletter are those of the authors and do not necessarily reflect that of Bangalore Branch of ICAI.

## CALENDAR OF EVENTS - JANUARY 2014

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
16.01.2014 Thursday	Study Circle Meeting	Jain University Auditorium, B'lore-27 05.30pm to 08.30pm	<b>3 hrs</b>
17.01.2014 Friday	<i>Study Circle Series on Companies Act 2013 - No.6</i> Emerging opportunities arising out of Companies Act 2013; for CAs <b>Dr. P. T. Giridharan, Joint Director, ICAI</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
18.01.2014 Saturday	<b>One Day Seminar on Financial Reporting Review<sup>s</sup></b> <i>under the aegis of Financial Reporting Review Board (FRRB) of ICAI</i>	Branch Premises 10.00am to 6.00pm	<b>6 hrs</b>
22.01.2014 Wednesday	Study Circle Meeting	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
24.01.2014 & 25.01.2014	<b>Two Day Conference on Income Tax<sup>s</sup></b> <i>under the aegis of Direct Tax Committee of ICAI</i>		<b>12 hrs</b>
24.01.2014 Friday	<i>Study Circle Series on Companies Act 2013 - No.7</i> Directors - <b>Sri. J. Sundharesan, Company Secretary</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
26.01.2014 Sunday	Republic Day Celebrations <sup>s</sup>	Branch Premises 09.30am to 11.30am	—
29.01.2014 Wednesday	Recent issues in Service Tax <b>CA. Roopa Nayak</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>
31.01.2014 Friday	<i>Study Circle Series on Companies Act 2013 - No.8</i> Meetings - <b>CA. Ravi Prasad</b>	Branch Premises 06.00pm to 08.00pm	<b>2 hrs</b>

<sup>s</sup>Details will be published in January 2014 News Letter

## ONE DAY TRAINING PROGRAMME FOR PEER REVIEWERS

Organized by Peer Review Board, ICAI  
Hosted by Bangalore Branch of SIRC of ICAI  
on **Friday, 20th December 2013**  
at **Fortune JP Select**, Off Cunningham Road, Bangalore – 560 052  
*Delegate Fee : Rs. 2,000/-*

CPE  
**6 hrs**

TIMINGS	SESSION DETAILS	SPEAKERS
09.30 am	<b>Registration</b>	
10.00 am	<b>Inaugural Session</b> Welcome Address	Chief Guest: <b>CA K Raghu, Vice President, ICAI</b>
10.30 am	Rationale & Significance of Peer Review	<b>CA Bhavani Balasubramanian, Chennai</b>
11.30 am	<b>Session I:</b> Compliance with Framework of Quality Control General & Specific Controls.	<b>CA Bhavani Balasubramanian, Chennai</b>
12.30 pm	<b>Session II:</b> Compliance with Technical Standards	<b>CA Shyam Ramadhyani, Bangalore</b>
02.00 pm	Lunch break	
02.30 pm	<b>Session III:</b> Compliance with Audit Documentation	<b>CA Venugopal C Govind, Kochi</b>
03.45 pm	Tea break	
04.00 pm	<b>Session IV:</b> Quality of Reporting by Peer Reviewers	<b>CA K Viswanath, Bangalore</b>
05.15 pm	Panel Discussion	



## Certificate Course on Concurrent Audit of Banks

The Internal Audit Standards Board of the ICAI is pleased to offer Certificate Course on “Concurrent Audit of Banks” to enable members to understand the intricacies of concurrent audit of banks.

### Course Objectives :

The overall objectives of the course are:

1. To supplement the effort of the banks in carrying out internal check of the transactions and other verifications and compliance with the procedures laid down;
2. To improve the effectiveness of concurrent audit system in banks;
3. To improve quality and coverage of concurrent audit reports.

### Eligibility:

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examination.

### Evaluation:

**Eligibility** : A candidate will have to attend at least 80% of classes failing which; he/ she will not be

**Number of attempts** : There is no limit on the permissible number of attempts for the evaluation tests. A candidate will be allowed to re-appear for the evaluation test only after six months of the previous attempt

### Course Duration:

The total duration of the course is 6 days divided into 24 technical sessions which may be held either on weekends or on three consecutive days as per the requirement of the concerned batch.

**Course Fee: Rs.12,500/-**

### CPE Hours:

CPE credit of 36 Hours will be given to the participants. Course Registration is on First-Come-First Served basis on receipt of duly filled-in and signed application along with course fee.

### Further Details and Assistance:

Chairman, Internal Audit Standards Board

Tel.: 0120-3045995

Email: [iasb.program@icai.in](mailto:iasb.program@icai.in); [arti.bansal@icai.in](mailto:arti.bansal@icai.in)

Secretary, Internal Audit Standards Board

Mob: +91 9310542606, Tel.: 0120-3045995

*For course at Bangalore kindly send your consent to*

[dcobangalore@icai.org](mailto:dcobangalore@icai.org)

We are proposing to hold the following certificate courses of ICAI in the near future.

1. Certificate Course on Indirect Taxes
2. Certificate Course on International Taxation
3. Certificate Course on Forensic Accounting and Fraud Detection

*The details of the course are available on the following Link:*

[http://www.icai.org/new\\_post.html?post\\_id=3581](http://www.icai.org/new_post.html?post_id=3581)

Kindly submit your willingness to  
[dcobangalore@icai.org](mailto:dcobangalore@icai.org) / [Jagadish.ns@icai.in](mailto:Jagadish.ns@icai.in).

The classes are likely to be held in Jan 1<sup>st</sup> or 2<sup>nd</sup> week.  
The batches will be held for minimum of 50 Pax.

## Advt.

# Workshop on “Real Estate – Concepts to Practice”

On 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup> & 24<sup>th</sup> December 2013  
at Sri. Devraj Urs Bhavan Auditorium,  
Opp. Bangalore Branch of ICAI, Vasanthnagar, Bangalore-52



18.12.2013, Wednesday	
04.00pm to 05.00pm	Inauguration: <b>Chief Guest: Sri. M. R. Jaishankar, Chairman, Brigade Group</b>
05.00pm to 06.00pm	Keynote address: Basic Concepts & Principles Governing Transactions related to Immovable Property <b>CA. N. C. S. Raghavan</b>
06.15pm to 08.15pm	Drafting and Documentation of Property Transactions <b>CA. N. C. S. Raghavan</b>
19.12.2013, Thursday	
04.00pm to 06.00pm	Works contract – Ramifications arising out of the judgment in L & T's case <b>CA. S. Venkataramani</b>
06.15pm to 08.15pm	Works Contract – Issues involved and way forward <b>CA. S. Venkataramani</b>
20.12.2013, Friday	
04.00pm to 06.00pm	Levy, declared services, negative list and exemptions – Real Estate <b>CA. Madhukar N. Hiregange</b>
06.15pm to 08.15pm	Point of Taxation Rules, Place of Provisions of Service Rules, Valuation including abatements – Construction <b>Mr. M. S. Nagaraja, Advocate</b>
21.12.2013, Saturday	
10.00am to 11.30am	Revised Guidance Note for Real Estate Transactions – Overview and Practical Issues <b>CA. Adarsh Ranka</b>
11.45am to 01.15pm	Local Laws on Real Estate and Woman's Rights under the Hindu Succession Act <b>Mr. Arvind Raghavan, Advocate</b>
02.00pm to 03.30pm	Non-Resident investment in Real Estate – Regulation and Compliance under FEMA <b>CA. H. Vishnu Moorthi</b>
03.45pm to 05.15pm	Structuring of Investments in Real Estate – Alternate Investment Fund and Real Estate Investment Trusts <b>Mr. Arjun Lal, Advocate</b>
23.12.2013, Monday	
04.00pm to 06.00pm	Income From Letting Out of Properties as an Organised Activity - Income From House Property vs Income From Business <b>CA. Vijay Raja</b>
06.15pm to 08.15pm	Accounting of Real Estate transactions - AS 7 v/s AS 9 - Taxation Perspective <b>CA. Padamchand Khincha H.</b>
24.12.2013, Tuesday	
04.00pm to 06.00pm	Tax Issues relating to Transfer of Immovable Properties <b>CA. Ashok Raghavan</b>
06.15pm to 07.15pm	Tax issues relating to Transfer of Immovable Properties – continued <b>CA. Ashok Raghavan</b>
7.15pm to 8.15pm	Question Hour

Workshop Co-ordinator: **CA. Ashok Raghavan**

Delegate fee for Members : **Rs. 2,500/-**

Cash/cheque in favour of “**Bangalore Branch of SIRC of ICAI**”

For further details please contact:

**Ms. Geetanjali D, Tel: 080-30563500/513, E-mail: blrregistrations@icai.org, www.bangaloreicai.org**



# TAX UPDATES OCTOBER 2013

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

## VAT, CST, ENTRY TAX, PROFESSIONAL TAX

### PARTS DIGESTED:

- a) 64 VST – Part 2 to 5
- b) 18 KCTJ – Part 7
- c) 77 KLJ – Part 10

#### Reference / Description

[2013] 64 VST 379 (Raj. – HC); *Asst. CTO v. Electrolux Kelvinator Ltd.*

In the instant the Honourable Rajasthan High Court held that the optional charges per refrigerator charged separately for proving after-sales service to customers opting for such scheme was not part of sale price.

**2013 (77) KLJ 177 (SC); Larsen & Toubro Ltd. and another v. State of Karnataka and another** - In the instant case the Honourable Supreme Court held that aspects theory though does not allow the State Legislature to trench upon the Union List and tax services by including the cost of such service in the value of goods but that does not detract the State to tax the sale of goods element involved in the execution of works contract in a composite contract like contract for construction of building and sale of flat therein.

While holding so, the Court clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser

can only be made chargeable to tax by the State Government.

*The Constitution bench upholding the view expressed in Raheja case held that even development of property on own land under an agreement for sale to a customer would involve transfer of property involved in execution of works contract. However, the saving grace is that the developer need not pay tax in respect of the work already carried out on the land up to the point of entering into agreement with the customer. This will require that the developer will have to value the land including till date development and exclude the same from the full consideration and offer only balance to sales tax.*

**2013 (77) KLJ 309 (Karn. - HC) (DB); State of Karnataka v. DME Company (India) Pvt. Ltd.** - In the instant case the Honourable Karnataka High Court held that where the Act prescribes minimum and maximum penalty leviable for a specific breach of statutory requirement and once such breach is proved and cause shown thereof is found to be insufficient, the Authority/Tribunal, have no power to impose penalty which is less than minimum prescribed under the Act.

*Thus, the Court held that order of Appellate Tribunal reducing penalty imposed by Check-post Officer which is less than minimum penalty prescribed on ground that breach of statutory provision was venial, was not sustainable in law.*

## INCOME TAX

### PARTS DIGESTED:

- a) 357 ITR – Part 4 to 6
- b) 358 ITR – Part 1
- c) 217 Taxman – Part 5 & 6
- d) 218 Taxman – Part 1 & 2
- e) 27 ITR (Trib) – Part 1 to 2
- f) 144 ITD – Part 3 to 7
- g) 44 CAPJ – Part 1 & 2
- h) 45-B BCAJ – Part 1
- i) 9 International Taxation – Part 4

#### Reference / Description

[2013] 357 ITR 487 (All. – HC); *CIT v. U.P. State Warehousing Corporation* - The Assessee was exempt from tax under Section 10(29) of the Act and the exemption was withdrawn on 01.04.2003. The Assessee files its return of income for the first time for the assessment year 2003-2004. In the return Assessee claimed deduction on account of depreciation. According to the Assessing Officer, depreciation was allowable at the prescribed percentage of the actual cost of the assets in the year of acquisition and of the written down value.

The Honourable Allahabad High Court held that though the income was exempted, it does not bar the Assessee to claim the notional depreciation in its books of account. Even if the income is exempted, the balance-sheet will have to be prepared as per the law for each assessment year as per the principle of accounting. The law for claiming the depreciation is year to year basis, soon after acquiring the assets.

Therefore, the Court directed the Assessing Officer to allow



depreciation as per the schedule from the date of acquisition of the assets on the basis of year to year i.e., by taking notional depreciation for the earlier years, but held that depreciation cannot be more than 100 per cent of the value of the assets.

*With due respect, the aforesaid reasoning is not correct as the question of computation of depreciation when the income is exempted does not arise at all. Further, the honourable High Court failed to take note of Explanation 6 inserted under section 43 (6) with effect from 1 April 2003 providing for deduction of book depreciation in such cases.*

**[2013] 357 ITR 584 (Bom. – HC); CIT v. Carlyle India Advisors (P.) Ltd.** - In the instant case there was one comparable which was common between the Revenue and the Assessee while determining the arm's length price (ALP). However, 8 more comparables were relied upon by the Revenue. On this basis, the Transfer Pricing Officer concluded that the difference was in excess of 5 per cent and therefore did not accept ALP determined by the Assessee.

The Honourable Bombay High Court noticed that 8 more comparables relied upon by the Revenue were not functionally comparable and therefore held that difference between the operating margins of the Assessee as against the operating margin of the comparable companies was within the range of +/- 5 per cent. Thus, the Court held that the amount received by the Assessee was within the statutory limit.

*While holding so, the honourable High Court upheld the principle that*

*the bandwidth + or -5% would be available even when only one arm's length price is determined on the basis of single comparable transaction.*

**[2013] 357 ITR 642 (All. – HC); CIT v. Vector Shipping Services (P.) Ltd.** - In the instant case the Honourable Allahabad High court has held that for disallowing expenses from business and professional on the ground that TDS has not been deducted, the amount should be payable and not which has been paid by the end of the year.

*This is the only High Court decision which has upheld the special bench decision in Merilyn case. The honourable High Court of Gujarat and Calcutta have taken contrary view.*

**[2013] 358 ITR 43 (P&H – HC); CIT v. Mark Auto Industries Ltd.** - In the instant case the Honourable Punjab and Haryana High Court held that in the absence of any requirement of law for making deduction of tax out of the expenditure on technical know-how which was capitalised and where no amount was claimed as revenue expenditure, the depreciation could not be disallowed under Section 40(a)(i) of the Act.

*Natural extension of the aforesaid logic is that even under section 40a(ia), the depreciation cannot be denied on the basis that no tax is deducted in respect of capital expenditure.*

**[2013] 358 ITR 47 (Delhi – HC); CIT v. BSES Yamuna Powers Ltd.** - In the instant case the Honourable Delhi High Court held that computer accessories and peripherals such as printers, scanners and server etc., are entitled to depreciation at the higher

rate of 60% as they form an integral part of the computer system.

**[2013] 358 ITR 91 (Delhi – HC); Institute of Chartered Accountants of India and another v. DGIT (Exemption) and others** - In the instant case the Honourable Delhi High Court dealing in respect of Section 2(15) of the IT Act held that the object behind first proviso to section 2(15) is not to exclude entities which are essentially for charitable purpose which are conducting some activities for a consideration or fee, but to exclude organizations which are carrying on regular business, from scope of charitable purpose.

Therefore, in the instant case the Court held that where dominant objective of Assessee-institute was to regulate profession of Chartered Accountancy in India, conducting extensive educational program, conducting coaching classes and campus placements, for fees, could not be held as business, but only as in aid of its objects.

Further, it held that where functions performed by Assessee institute were the purpose of public welfare and not for any private gain or profit, it could not be said that Assessee was involved in carrying on any business, trade or commerce and therefore, held that the registration under section 10(23C)(vi) could not be denied.

**[2013] 358 ITR 131 (Guj. – HC); CIT (TDS) v. Oil and Natural Gas Corporation (India) Ltd.** - In the instant case the Assessee had incurred conveyance maintenance reimbursement expenditure which it paid on monthly basis along with the salary and the quantum of



such conveyance maintenance reimbursement expenditure was based on the class of the employee. The Assessee paid fringe benefits tax on this expenditure. The Assessing Officer treated this as additional salary in the form of allowance within the meaning of provisions of Section 17(1)(iv) of the IT Act, liable to taxed as salary income and hence treated the Assessee as in default under Section 201(1)/201(1A) for failure to deduct tax at source thereon.

The Honourable Gujarat High Court held that as the Assessee has paid the fringe benefit tax under Section 115WB, no default was considered on the part of the Assessee under Section 201(1) of the Act.

**[2013] 358 ITR 129 (SC); Dy. CIT and others v. Simplex Concrete Piles (India) Ltd.** - In the instant case the Honourable Supreme Court has held that assessment cannot be reopened after the expiry of four years. Further it held the subsequent reversal of the legal position by the judgment of the Supreme Court does not authorise the Department to reopen the assessment, which stood closed on the basis of the law, as it stood at the relevant time.

**[2013] 217 Taxman 367 (All. – HC); 36 taxmann.com 96; CIT v. U.P. Rajkiya Nirman Nigam Ltd.** - In the instant case the Honourable Allahabad High Court held that where books of account are not closed and not signed by Board of Directors and not adopted by shareholders as per Companies Act, it is legally permissible to make adjustments before they are finally adopted.

Further, it held that where accounts of Assessee were open and subject to correction by auditors, bad debts

could be written off even after closure of accounting period, as there is neither any condition nor any provision under Section 36(1)(vii), that writing off of bad debt should be done in relevant previous year, i.e. before end of financial year.

**[2013] 218 Taxman 1 (St.); Protocol amending the Indo-Australia DTAA - Notification: No. GSR 60(E), dated 22-1-1992 as amended by Notification No.74/2013 [F.No.503/1/2009-FTD-II]/SO 2820(E), dated 20-9-2013** - Article 5 of the DTAA is amended by omitting paragraph 3 and substituting as under:

“(3) Notwithstanding the provisions of paragraphs 1 and 2, where an enterprise of a Contracting State:

- (a) furnishes services, including consultancy services, through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within that other State for a period or periods aggregating more than 183 days in any 12 month period;
- (b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources situated in that other State for a period or periods exceeding in the aggregate 90 days in any 12 month period; or
- (c) operates substantial equipment in the other State [including as provided in sub-paragraph (b)] for a period or periods exceeding in the aggregate 183 days in any 12 month period;

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.”

*Thus, an amendment has been made in the aforesaid the Indo Australia Treaty as regards service PE.*

**[2013] 218 Taxman 74 (Karn. – HC); 35 taxmann.com 352 (Karn. – HC); CIT v. ISRO Satellite Centre** - In the instant case the Assessee, a manufacturer of satellite, entered into an agreement with ‘A’, French Company, for placing its satellite in space and several other services. It also entered into agreement with ‘I’, accompany of USA, for tracking its satellites. The Assessing Officer held payments made to ‘A’ and ‘I’ as fees for technical services under Section 9(1)(vii) read with Article 13 of the Indo-French DTAA and Article 12 of the Indo-USA DTAA respectively.

The Honourable Karnataka High Court held that where both American as well as French Company did not make available or transfer any technology to Assessee with respect to launching and tracking of Assessee’s satellites respectively, payments for same could not be taxed as fees for technical services.

The Court further held that favourable clauses in DTAA override provisions of Income Tax Act, in matter of ascertainment of chargeability of income tax and ascertainment of total

income, to the extent of inconsistency with terms of DTAA.

**[2013] 218 Taxman 88 (Karn. - HC); 35 taxmann.com 1 (Karn. - HC); CIT v. Velankani Information Systems (P.) Ltd.** - In the instant case, the Assessee was a real estate developer, providing comprehensive facilities to IT Industry including letting out of specialised buildings and office premises in Software Technology Park (STP) to cater to the special requirements of the IT Industry. The Assessee claimed that income received from letting out of such building as business income. However, the Assessing Officer held that since there were two separate agreements for letting out buildings and for provision of amenities, income arising from letting out of buildings constituted 'income from house property' and income for providing services constituted 'income from other sources'.

The Honourable Karnataka High Court held that where agreements for letting out of building and provision of services were entered into contemporaneously and object was to enjoy entire property as a whole, which was necessary for carrying on business, income could not be separated on basis of separate agreements. Therefore, the Court held that income from letting out was assessable as business income and not as income from house property or income from other sources.

**[2013] 218 Taxman 10 (Raj. - HC)(Mag.); 37 taxmann.com 154 (Raj. - HC); CIT (TDS) v. Rajasthan Urban Infrastructure** - In the instant case Assessee appointed technical and project consultants on open tender

basis. Consultants were charging service tax at prevailing rates on amount of fees payable as per agreement. As per terms of agreement, amount of service tax was to be paid separately and the same was not included in professional or technical service.

The Honourable Rajasthan High Court held that amount of service tax was not subjected to TDS.

*The aforesaid decision makes it clear that while the board circular clarified that no tax is required to deducted on service tax in respect of section 194I, the same position would apply to all other sections also.*

**[2013] 218 Taxman 108 (Mad. - HC); 37 taxmann.com 253 (Mad. - HC); Mascon Technical Services Ltd. v. CIT** - In the instant case Assessee incurred expenditure for issuance of shares to increase its working capital. However, Assessee could not go for public issue due to non-clearance by SEBI. Assessee claimed deduction for such expenditure as revenue expenditure on ground that said expenses did not result in increase in share capital of company on account of reasons beyond its control. The Assessing Officer treated the said expenses as capital in nature.

The Honourable Madras High Court held that merely because Assessee's efforts to issue shares failed, expenditure incurred would not lose its character as capital expenditure for purpose of allowing it as revenue expenditure.

**[2013] 27 ITR (Trib) 44 (Chennai) & [2013] 27 ITR (Trib) 106 (Chennai); Ambika Cotton Mills Ltd.**

**v. Dy. CIT & Sri Velayudhaswamy Spinning Mills P. Ltd. v. Dy. CIT** - In the instant cases the Honourable Chennai Tribunal held that the amount received towards clean development mechanism by realisation of carbon credit was capital receipt.

**[2013] 27 ITR (Trib) 74 (Mumbai); Capgemini India P. Ltd. v. Asst. CIT** - In the instant while dealing in respect of determination of arm's length price, the Mumbai Tribunal has held as under:

- (a) Consolidated results which include profit from different overseas jurisdictions having different geographical and marketing conditions cannot be considered for making comparability analysis;
- (b) For purpose of making proper comparison of margin under TNMM method one time employees stock option plan (ESOP) cost incurred by an Assessee on account of acquisition has to be excluded;
- (c) Comparables cases cannot be rejected only on ground of extremely high profit or loss and in case companies satisfy comparability criteria, and do not involve any abnormal business conditions, same cannot be rejected only on ground of loss or high profit;
- (d) OECD guidelines also provide that loss making uncontrolled transactions should be further investigated and it should be rejected only when loss does not reflect normal business conditions; thus, comparable





could not be rejected on sole basis of loss;

- (e) The concept of economy of scale could not be applied to service oriented companies;
- (f) For the purpose of comparison, turnover would be relevant only for limited purpose to ensure that comparable selected is an established player capable of executing all types of work as that of an Assessee;
- (g) Turnover filter can be applied to select comparables having a minimum turnover and, thereafter, their margins can be compared provided they meet comparability test and there are no other material differences, which impair comparability
- (h) Working capital adjustments are required to be made while dealing with issue of comparability because these do effect profitability of company;
- (i) Arm's length price of international transaction has to be calculated with respect to similar transaction with an unrelated party as per method prescribed and revenue is not required to prove tax avoidance due to transfer of profit to lower tax jurisdiction.

**[2013] 144 ITD 333 (Mum. – Trib.); 35 taxmann.com 400 (Mum. – Trib.); Dy. DIT v. Marriott International Licensing Company BV** - In the instant case the Honourable Mumbai Tribunal held that the term 'royalties' as per Article 12 of Indo-Netherlands DTA could always be a consideration for use or right to use of any defined existing property and not for creation of

defined property. Therefore the Tribunal held that in the instant case since consideration paid by AHL towards international marketing activities was for creation of brand and not for use of such brand, same could not be characterized as royalty. It further held that since AHL made such payments at fixed rate on quarterly basis, actual expenses may be more or less than said fixed rate, such payment payments could not be represented as reimbursement of expenses.

**[2013] 144 ITD 390 (Mum. – Trib.); 36 taxmann.com 543 (Mum. – Trib.); Salil Shah Family (P.) Trust v. Asst. CIT** - In the instant case Assessee was a private family trust which invested its corpus fund in purchase of shares/securities through four Portfolio Management Services (PMS) and had shown capital gain on sale of shares. The Assessing Officer finding enormous volume, frequency and multiplicity of transactions of purchase and sale in shares securities, held that profit on sale of shares would be assessed as business income.

The Honourable Mumbai Tribunal observed that the Agreement with portfolio managers showed that intention of Assessee to appoint those portfolio managers was to invest its corpus fund in shares and securities for wealth creation. All decisions regarding investments, its timings, etc., were made by PMS provider and not by Assessee per se, though resultant gain/loss was on account of Assessee's investment. Considering total number of transactions in a stock exchange, transactions of Assessee were not large. On the basis of the said

facts, the Tribunal held that the transactions had resulted into capital gains and not business income.

**[2013] 144 ITD 455 (Pune – Trib.); 36 taxmann.com 574 (Pune – Trib.); Bharat Forge Ltd. v. Addl. CIT** - In the instant case the Honourable Pune Tribunal dealing in respect of TDS held as under:

- (a) Sitting fees paid to directors do not amount to fees paid for any professional services as per Explanation to Section 194J(1);  
*However, a reference may be made to an amendment carried out to section 194J by Finance Act of 2012 with effect from 1 July 2012 providing for deduction of tax at source even the top remuneration or fees or commission or whatever name called to a director of a company.*
- (b) Payments made by Assessee towards testing and inspection charges could not be construed as payments towards professional service as per provisions of Section 194J and Assessee had rightly deducted tax under Section 194C;
- (c) Where cranes were provided by parties along with driver/operator and all expenses were borne by owners only, provisions of Section 194C were only applicable for such payment and not provisions of Section 194-I;
- (d) Payment towards windmill operation and maintenance attracts provisions of Section 194C;
- (e) Payment towards annual maintenance charges for software maintenance attracts provisions of

Section 194C and not provisions of Section 194J;

- (f) Training and seminar expenses do not fall under definition of professional services and, accordingly, tax to be deducted under Section 194C.

**[2013] 144 ITD 502 (Cochin – Tri.); [2013] 35 taxmann.com 547 (Cochin – Trib.; Geroje Dominic v. Asst. CIT** - In the instant case the question that came up for consideration before the Honourable Cochin Tribunal was whether for purpose of Section 54F, building under construction can be considered as an existing residential house on the date of transfer of the original asset.

The Honourable Cochin Tribunal held that the word ‘constructs’ appearing in clause (iii) of Section 54F(1) denotes completion of construction and for that purpose, date of commencement of construction is irrelevant, even though the date of commencement was before transfer of original asset.

Therefore, the Court held that in the instant case as Assessee had constructed another residential house within three years from the date of transfer of original asset, there was a clear violation of one of the conditions prescribed in proviso to Section 54F(1) and it disentitled the Assessee from claiming deduction under Section 54F in respect of the flat booked.

**[2013] 144 ITD 570 (Mum. – Tri.); [2013] 36 taxmann.com 375 (Mum. – Trib.; McKinsey & Co. (Thailand) Co. Ltd. v. Dy. DIT (International Taxation)** - In the instant case

Assessee-company, a resident of Thailand was a part of ‘M’ group which was rendering strategic consultancy services to their clients, which inter alia, included analysis of performance, developments, strengths and weaknesses of their clients, improving their profitability and productivity and similar other parameters. In order to analyze these parameters, entities in various countries made use of certain data, information and other support provided by Assessee. Receipts for such services rendered by Assessee to its Indian counterpart were claimed as having been performed outside India and since these were rendered in ordinary course of business, same were claimed to be a ‘business receipt’. In absence of Assessee having any Permanent Establishment (PE) in India, it was claimed that no incidence of tax arose in India on said account.

The Assessing Officer treated said amount as ‘Fees for technical services’ and hence, chargeable to tax under Article 12 of DTAA.

The Honourable Mumbai Tribunal held that since Article 12 of DTAA deals only with ‘royalties’ and not ‘fee for included services’, applicability of said article were to be ruled out. Further, it held that in view of the fact that Assessee earned income by rendering services in question in course of its business, income arising from said services would fall under head ‘business profits’ as mentioned in Article 7 of DTAA and since Assessee did not have its PE in India, in terms of article 7 of DTAA, it held that amount in question was not liable to tax in India.

**[2013] 144 ITD 607 (Bang. – Trib.); 36 taxmann.com 200 (Bang. – Trib.); Asst. CIT (TDS) v. SAP Labs India (P.) Ltd.** - In the instant case the Assessee was paying an amount towards medical expenditure as a component of monthly payment to employees. If an employee would submit proof of having incurred expenditure towards medical treatment, sum spent towards medical treatment or Rs. 15,000, whichever is less, was excluded from salary on basis of proviso (v) to section 17(2). If no proof of having incurred the expenditure toward medical treatment was produced, the amount was treated as perquisite and tax under section 192 was deducted accordingly.

The Assessing Officer held that, since Assessee was paying medical reimbursement as a component of the monthly payment to the employee and later claiming that it was not perquisite to the extent of Rs. 15,000, the same had to be considered as salary and not exempt perquisite on the basis that the payment should not precede the actually incurring of the expenses and it should be only by way of reimbursement. Thus, the Assessing Officer held that the Assessee was an Assessee in default for not deducting tax at source under section 201.

The Honourable Bengaluru Tribunal held an employer would not be at fault for not deducting tax at source from medical allowances paid to its employees before incurring of actual medical expenditure; if it had made bona fide estimate of taxable salary of its employees. While holding so the Tribunal held as under:



- (a) It is no doubt true that TDS is to be made at the time of payment of salary and not on the basis of salary accrued. Section 192(3) of the Act permits the employer to increase or reduce the amount of TDS for any excess or deficiency.
- (b) Even assuming the case of the Assessing Officer, that at the time of payment the assessee ought to have deducted tax at source, is sustainable; the assessee on a review of the taxes deducted during the earlier months of the previous year is entitled to give effect to the deductions permissible under proviso (v) to section 17(2) of the Act in the later months of the previous year.
- (c) What has to be seen is the taxes to be deducted on income under the head 'salaries' as on the last date of the previous year.
- (d) The case of the Assessing Officer that medical reimbursement should be paid at the time the expenditure is incurred or after the expenditure is incurred by way of reimbursement and not at an earlier point of time cannot be sustained for that reason that if it is so paid, then, even though the payment would not form part of taxable salary of an employee, the employer has to deduct tax at source treating it as part of salary, which is contrary to the provisions of section 192(3) of the Act.
- (e) The interpretation of the word 'actually paid' is not relevant while ascertaining the quantum of tax that has to be deducted at source under section 192 of the Act.

(f) As far as the assessee is concerned, his obligation is only to make an estimate of the income under the head 'salaries' and such estimate has to be a bona fide estimate.

**2013 (77) KLJ 348 (Tri.)(DB); ITO**

**v. Rinny Eapen** - In the instant case the Honourable Bengaluru Tribunal held that Agricultural land situated beyond radius of eight kilometres from local limits of municipality or cantonment board, does not fall within the definition of Capital Asset.

It further held that distance of eight kilometres should be taken by shortest distance by road not as per straight-line distance on horizontal plane or as crow flies. Where shortest distance by road is 10.6 kilometers, asset cannot be considered as capital asset by reason of fact that distance of crow flies is 7.5 kilometers. Thus, the Tribunal held gain arising on sale of such agricultural land, was not taxable.

*However, the Finance Act 2013 has amended the aforesaid provision to provide for measurement by air.*

Further, in the instant case advance was received under agreement to sell land on condition that vendor to refund advance with interest at 18% on failure to sell. On account of delay in paying interest sale consideration and getting property registered, purchaser paid interest though there was no obligation on him to pay the same under agreement.

The Honourable Tribunal after perusing the agreement held that there is no legal obligation on the part of the purchaser to compensate the seller for any delay or default on the part of

the purchaser in making the payment and if the purchaser willingly and gratuitously made the payment, it is in fact a capital receipt not chargeable to tax.

*It may be noted that the aforesaid payment cannot even be brought to tax under section 56 (2) (vii) as it cannot be said that the same has been issued without consideration.*

**[2013] 9 International Taxation 504 (Mum. – Trib.); [2013] 37 taxmann.com 16 (Mum. – Trib.); Gartner Ireland Ltd. v. Asst. DIT**

**(International Taxation)** - In the instant Assessee, a company incorporated in Ireland, was engaged in business of distributing research products. It sold subscription to Indian subscribers against access subscription fee. Said fee was claimed to be not taxable in India in absence of any permanent establishment in India. The Assessing Officer held the same to be in nature of Royalty as per Article 12 read with Section 9(1)(vi).

The Mumbai Tribunal observed that the Honourable Karnataka High Court in CIT (IT) v. Wipro Ltd. [2011] 203 Taxman 621 (Karn. – HC), the Court held that the similar payment as royalty, who was, one of customers of Assessee.

Thus, in view of the above, the Tribunal held that the sum was rightly treated as royalty.

**[2013] 9 International Taxation 505 (Bang. – Trib.); [2013] 36 taxmann.com 291 (Bang. – Trib.); BIOCON Biopharmaceuticals P. Ltd. v. ITO (International Taxation)**

- In the instant case, an Indian pharmaceutical company entered into

*(Contd. on Page 16)*



# 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

## SERVICE TAX AND CENVAT

- The appellant was an authorized service agent for Honda cars undertaking maintenance/ service of motor cars. The appellant was selling spare parts for motor vehicles during the course of undertaking repairing services and paying VAT on the same. But the sale values were not included in consideration received for repair services. The revenue contended that value of spare parts should be included in the service value and service tax be paid on the full value of consideration received. Accordingly, service tax was demanded on the entire value of spare parts sold as shown in the Balance Sheet. Held that as per master circular dated 23-8-2007, service tax is not leviable on a sale transaction which has been subject to VAT. All transactions involving only sale of spare parts should be excluded for computing service tax. Secondly, even in the case of transaction involving both sale of parts and also rendering of services, the value of parts should be excluded if VAT has been discharged. [Sudarshan Motors Vs Commissioner of Central Excise, Nagpur 2013-TIOL-1669-CESTAT-MUM]

- As per the provisions of Rule 6(3) of the Service Tax Rules, 1994 adjustment can be done in respect of the service which is not provided by the service provider and the amount of service tax has been refunded to the person from whom it was received. In the present case the appellant was giving some volume discounts and other rebates and the service tax paid on such amounts were adjusted against the payment of service tax for subsequent period, which is not permissible. Pre-deposit of Rs. One crore ordered [Jawaharlal Nehru Port Trust Vs Commissioner of Central Excise, Raigad 2013-TIOL-1633-CESTAT-MUM]
- Section 85 of Finance Act, 1994, was amended on 28.05.2012 reducing time limit for filing appeals before the Commissioner (Appeals) from three months to two months. Order was passed by the original authority on March 27, 2012. Petitioner filed appeal after the amendment came into force on 28.05.2012. The Court observed that the respondent proceeded as if the date on which the appeal was preferred should be taken as the crucial date since appeal was preferred after

28.05.2012 when amended provision came into force and rejected the appeal as time barred by applying the amended provision of Section 85. The court held that the materials available on record showed that order was passed by the original authority on 27.03.2012 and that the amendment came into force on 28.05.2012. Therefore the Court held that the petitioner is justified in its contention that the appeal should have been taken up on file in accordance with the regulations in force prior to 28.05.2012 and that the respondent is not justified in rejecting the appeal on the ground of limitation. [Winwind Power Energy Pvt Ltd Vs Commissioner of Central Excise (Appeals) 2013-TIOL-863-HC-MAD-ST]

- Application was made by revenue for stay of order of Commissioner (Appeals) for granting refund claim under Rule 5 of the Cenvat Credit Rules, 2004 on the ground that the input services have been received by the appellant before registration. The Court relying on the case of mPortal India Wireless Solutions (Kar. High Court) held that there is no specific provision in the Cenvat Credit Rules which impose a restriction stating if registration with the department is not made by the assessee, then the benefit of refund cannot be claimed. [Commissioner of Service Tax, Chennai vs M/s Shell India Markets Pvt Ltd 2013-TIOL-1687-CESTAT-MAD]



- The appellant was employing personnel belonging to their German company. Salary of 75% was paid by the group company in Germany and thereafter debit notes were raised on the appellant. Held that Global employees working under the appellant were working as their employees and having employer-employee relationship. There was no supply of manpower service rendered to the appellant by the foreign/holding company. Method of disbursement of salary cannot determine the nature of transaction. Accordingly it was held that such activity cannot be taxable as 'Manpower Supply or Recruitment Agency services'. **[Volkswagen India Pvt Ltd Vs Commissioner of Central Excise 2013-TIOL-1640-CESTAT-MUM]**

***Vs Commissioner of Central Excise 2013-TIOL-1640-CESTAT-MUM]***

- Cenvat Credit was availed on input service credit distributed by the Head Office. Once the availability of credit by the head office has not been disputed, when the same has been distributed after being registered as "Input service Distributor", the same cannot be questioned at the hands of the appellant unit who availed the credit on the basis of the invoices issued by the head office. Prima facie case for waiver of pre-deposit. **[M/s Graphite India Ltd Vs Commissioner of Central Excise, Customs and Service Tax, BBSR-II vs (2013-TIOL-1682-CESTAT-KOL)]**

***CESTAT-KOL)]***

- The appellant was undertaking technical testing and analyzing services from outside India and paying service tax on reverse charge basis. Service tax was distributed by the head office to Daman unit. Notwithstanding the fact that testing was done in respect of a product yet to be manufactured by the appellant and that the product is not manufactured at Daman, it does not disentitle appellant the credit. Pre deposit waived. **[Wockhardt Ltd Vs Commissioner of Central Excise, Customs and Service Tax, Daman 2013-TIOL-1642-CESTAT-MUM]**

## **TAX UPDATES OCTOBER 2013**

*(Contd. from Page 14)*

a joint venture agreement with CIMAB of Cuba for manufacturing drugs for treatment of cancer and formed the assessee joint venture company (JVC). CIMAB was to transfer technology in respect of some products in form of capital contribution equal to 49 per cent of the paid-up capital, balance being invested by the Indian company. Shares were issued to CIMAB after which the assessee JVC filed an application under section 195(2) for non-deduction of tax at source.

The Assessing Officer passed an order under section 195(2) that issue of shares against transfer of technology was in the nature of capital contribution of CIMAB and was not

income, and therefore, tax was not required to be deducted at source. Further, the Assessing Officer held that the issue of shares constituted royalty and it was taxable in India. He, therefore, held the assessee to be in default under section 201(1) for non-deduction of tax at source under section 195.

The Honourable Bengaluru Tribunal held that where there was no transfer of capital asset in form of know-how and joint venture agreement allowed Assessee only right to use know-how, issue of shares for same constituted royalty as per Section 9(1)(vi) of the IT Act. Since tax was required to be deducted at source under Section 195 of on payments to non-residents, even

if it was not in terms of money, tax was required to be deducted on shares issued to CIMBAB. Further, it held that since application for non-deduction of tax at source could be made only under Section 195(3), any such application made under Section 195(2) was not valid.

**[2013] 9 International Taxation 506 (Mum. – Trib.); [2013] 36 taxmann.com 379 (Mum. – Trib.); ITO (TDS) v. Jet Airways (India) Ltd. -** In the instant case the Honourable Mumbai Tribunal held that where certificate under Section 195(3) was issued to bank for receiving payments without deduction of tax at source for specific financial years mentioned therein, it could not be held that it was effective only from date of issuance.

### IMPORTANT DATES TO REMEMBER DURING THE MONTH OF DECEMBER 2013

5 <sup>th</sup> December 2013	Payment of Excise Duty for November 2013
	Payment of Service Tax for November 2013 by Corporates
6 <sup>th</sup> December 2013	E-Payment of Excise duty for November 2013
	E-Payment of Service Tax for November 2013 for Corporates
7 <sup>th</sup> December 2013	Deposit of TDS/TCS Collected during November 2013
	STPI Monthly Returns
10 <sup>th</sup> December 2013	Monthly Returns for Production and Removal of Goods and CENVAT Credit for November 2013
	Monthly Return of excisable Goods Manufactured & Receipt of Inputs & Capital Goods by Units in EOU,STP,HTP for November 2013
	Monthly Returns of Information relating to Principal Inputs for November 2013 by Manufacturer of Specified Goods who Paid Duty of Rs.1 Crore or More during Financial Year 2012-13 By PLA/CENVAT/Both
15 <sup>th</sup> December 2013	Payment of EPF Contribution for November 2013
	Return of Employees Qualifying to EPF during November 2013
	Monthly Return (VAT 120) and Payment of VAT/COT for the month of November 2013.Payment of Third installment of Advance Income Tax by Corporate assessees and Second installment by non-corporate assessees.
20 <sup>th</sup> December 2013	Monthly Return and Payment of Profession Tax Collected During November 2013
	Monthly Return (VAT 100) and Payment of CST and VAT Collected During November 2013
21 <sup>st</sup> December 2013	Deposit of ESI Contributions and Collections for November 2013
25 <sup>th</sup> December 2013	Monthly Returns of Employees Joined & Left the organisation during November 2013 under EPF
	Monthly Returns of Employees Joined & Left the organisation during November 2013 under ESI
31 <sup>st</sup> December 2013	Vat Audit Report for the financial year 2012-2013.

**Advt.**





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## ANNOUNCEMENT

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Course	Fees	Duration (4 Months)	Timings
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<b>IPCC &amp; FINAL</b>	<b>Rs.12,500/-</b> for Both Groups <b>Rs.9,000/-</b> for Single Group <b>Rs.3,000/-</b> for Single Subject	25 <sup>th</sup> Nov 2013 to 15 <sup>th</sup> 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.**

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