



# Bangalore Branch of SIRC Newsletter

English Monthly

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Two Day CPE Conference

*Inana Sangama*

A CONFLUENCE OF KNOWLEDGE



Chief Guest CA. K. Raghu, President, ICAI &  
Guest of Honour Devi Prasad Shetty, Chairman & Founder, Narayana Health  
inaugurated the Conference

- 18.12.2014 to 20.12.2014  
Workshop on **Real Estate**
- 26.12.2014 & 27.12.2014  
Workshop on **Direct Taxes**
- 27.12.2014 & 28.12.2014  
International Conference for  
CA Students

**Prārambh**  
*A Kickstart to Excellence*



**ICAI**  
International  
Conference 2015

"Accountancy Profession:  
Building Global Competitiveness; Accelerating Growth"  
Jan 29 - 31, Bangalore Palace, Bengaluru

CPE - December 2014  
**56**

# Chairman's Communique . . .



## Dear Professional Colleagues,

December being the month of closure of calendar year, it is the time for us to introspect and revisit our agenda to be completed and move with a greater resolve on unfinished agenda and complete the same.

And also December keeps the CAs in practice very busy as it is the deadline for filing KVAT Audit reports.

November also kept us very busy in submission of Income tax and statutory Audit. Whenever we are engrossed into completion of our professional work, within the stipulated time we have to bear in mind the aspect- work life balance.

## The Month that was:

**2<sup>nd</sup> Annual Regional Residential Course (ARRC)** was a remarkable event organised by committee of International Taxation of SIRC of ICAI. We thank CA.P.V.Rajarajeswaran, Chairman SIRC of ICAI and CA. Cotha S Srinivas, Secretary for having supported Bangalore branch to host this Residential Course.

**The National Conference on International Taxation** was very well received by the participants. We thank all the resource persons like Dr.Parthasarathi Shome, Mr. Arvind Datar, and all other eminent speakers for their commitment in conducting this programme. I thank CA Nihar N Jambusaria, Chairman, CITAX, ICAI, and his team for having supported us to hold this important event in Bangalore. Let me place on record the unflinching effort put in by CA Gurunath Kanathur and CA Narendra Jain in conducting this seminar for the benefit of our Members.

**CPE Conference Jnana Sangama** conducted on 15<sup>th</sup> & 16<sup>th</sup> Nov 2014 was a grand success and more than 1005 CAs participated and derived benefit out of this mega event. On behalf of our Branch I sincerely thank CA K Raghu our dynamic young President, ICAI, and CA P.V. Rajarajeswaran Chairman, SIRC of ICAI who joined this programme despite their busy work schedule and graced this momentous occasion with their august presence.

We are also proud and very happy to say, speakers like Dr. Subramanian Swamy, CA Vimal Punmiya, Prof. V.S. Datey and all speakers of the conference, really made it a **Sangama of knowledge**. In fact spiritual session by Shri Vishvesha Tirtha Swamiji, Pejawar Mutt, Udupi was a great value addition and inspiration to all of us. The health session by Dr. Devi Prasad Shetty, Chairman of Narayana Group of Hospitals, was of immense value to all the delegates and on behalf of Bangalore Branch I take this opportunity to appreciate the magnanimity of Dr. Devi Shetty & his team for having launched the Privileged Health Card for all the members. I thank all the great speakers, participants and all others who have put in all efforts to make this programme a memorable one in the history of Bangalore Branch.

**Summit on Networking:** On behalf of Bangalore Branch let me thank CA Anuj Goyal, Chairman of CCBCAF & SMPs of ICAI and Dr. Sambit Kumar Mishra, Secretary of the said committee for having given us an opportunity to conduct the "Summit on Networking" at Bangalore which is very essential to be a successful professional. I thank CA N. Venkatachalam, the co-ordinator of this programme.

Apart from these programs, the **Study Circle Meetings** we conducted during the month of November were also well received by the members.

## The Month ahead - Dec 2014

December month reminds us about the CPE Credit requirements to be completed as per ICAI Guidelines. Hence we have designed many programmes in addition to study circle meetings for the month. Members are requested to attend these programmes and get benefited.

**Two day Workshop on New Regime of Companies Act & Relevant Aspects of KVAT & VAT Audit** is being organised

**A seminar on Real Estate** is being organised on 18<sup>th</sup>, 19<sup>th</sup> & 20<sup>th</sup> December 2014 for benefit of our professional colleagues. We all know that real estate sector plays a pivotal role in the growth of our Economy and many of our Members are having clients who are into Real Estate Business. Hence this seminar will be useful to all the participants.

**A Panel discussion on the Impact of Recent Amendment to Sec 63 of the Karnataka societies Co-operative Act** on CA profession is being organised for the benefit of members involved in co-operative Audit.

**Workshop on Direct Taxes:** A ten hour Workshop on Direct Taxes, is being organised on 26<sup>th</sup> & 27<sup>th</sup> December at the Branch. The topics are aptly chosen and eminent speakers are being invited to present the papers which will be useful for the participants. On behalf of Bangalore Branch let me express my profound gratitude to CA R Ramakrishnan, the Moderator of the programme who has taken keen interest to hold this significant workshop.

As you are aware the **International conference for CA Students -Prarambh** is being organised by BOS, ICAI and hosted by Bangalore Branch & SICASA of Bangalore Branch, all the members are requested to disseminate the information to your articulated trainees and nominate these budding CAs for this mega conference.

**International Conference on Accountancy Profession: Building Global Competitiveness - Accelerating growth** is being organised by the ICAI on 29<sup>th</sup>, 30<sup>th</sup> & 31<sup>st</sup> of Jan 2015 at Bangalore. Members are requested to participate in large numbers for the first ever International Accountants Global meet happening in Bangalore. We CAs being the torch bearers of our profession should consider updating of knowledge as supreme, maintaining high standards of professional service, upholding the quality of our glorious profession.

Let me once again remind the members that we have **to comply the requirement of CPE Credit for the calendar year 2014** and update ourselves in the areas of our practice. I invite my professional friends to attend these forthcoming events and get benefited.

**We wish you a Merry Christmas and a Happy New Year.**

With Best Wishes,

**CA. Babu K Thevar**  
Chairman

## CALENDAR OF EVENTS - DECEMBER 2014

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
02.12.2014 Tuesday	GST - Transition provisions - Discussion on Service Tax & Excise Law, VAT & Entry Tax Law	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
03.12.2014 Wednesday	ESOP Scheme - Accounting and disclosure as per ICAI Guidance Note <b>Ms. N.S. Indumati</b> , Head, Finance & Accounts, TE Connectivity India Pvt.Ltd.	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
05.12.2014 Friday & 06.12.2014 Saturday	<b>Two Day Workshop on New Regime of Companies Act &amp; Relevant aspects of KVAT &amp; VAT Audit</b> Delegate Fees: Early bird ₹ 1,000/- upto 4th Dec 2014, Spot Registration ₹ 1500/- on 5th Dec 2014 Delegate Fee for One day - ₹ 600/- Spot Registration for one day ₹ 750/-	API Bhawan, Millers Tank Bed Area Next to PTI, Near by Bangalore Branch 9:30am to 5:30pm	<b>12 hrs</b>
09.12.2014 Tuesday	GST - Transition provisions - Discussion on Service Tax & Excise Law, VAT & Entry Tax Law	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
10.12.2014 Wednesday	Post search Assessment: Alternative Mechanism for Post search Assessment through Settlement Commission <b>CA R Ramakrishnan</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
17.12.2014 Wednesday	Issues on Assessment procedures Sec 139 to 156 other than search issues <b>CA Naveen Khariwal G</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
18.12.2014 to 20.12.2014 Thursday to Saturday	<b>Workshop on Real Estate</b> Delegate Fees: Members ₹ 2,000/- upto 17th Dec 2014, Spot Registration ₹ 2500/- on 18th Dec 2014, Non Members - ₹ 3000/- <b>CA P.R. Suresh</b> , Co-ordinator <i>Details at Page No.: 5</i>	Branch Premises	<b>16 hrs</b>
23.12.2014 Tuesday	<b>Panel Discussion as :</b> 1) The Impact of recent Amendment to Section 63 of the Karnataka societies co-operative Act on the CA Profession 2) Co-operative Audit Reporting Issues <b>Dr. CA Charanthi Mutt</b> , Hubli*, <b>CA Umesh Bolmol</b> , Belgaum <b>CA. Ravindranath</b> , Sagar, <b>CA H. Shivakumar</b> , Bangalore	Branch Premises 5.00pm to 8.00pm	<b>3 hrs</b>
24.12.2014 Wednesday	Professional opportunities for young members in Co-operative and NPO Sectors <b>Dr. CA N. Suresh</b>	Branch Premises 5:30pm to 8:30pm	<b>3 hrs</b>
26.12.2014 & 27.12.2014 Friday & Saturday	<b>Workshop on Direct Taxes</b> Delegate Fees: ₹ 1200/- upto 24th Dec 2014 & Spot Registration ₹ 1500/- on 26th Dec 2014 <i>Details at Page No.: 6</i>	Branch Premises	<b>10 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	₹ 40,000/-	Full page	₹ 20,000/-
Inside back	₹ 30,000/-	Half page	₹ 10,000/-
		Quarter page	₹ 5,000/-

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

Editor : **CA. Babu K. Thevar**  
Sub Editor : **CA. Pampanna B.E.**

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## CALENDAR OF EVENTS - DECEMBER 2014 & JANUARY 2015

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
27.12.2014 & 28.12.2014 Saturday & Sunday	<b>International Conference for CA Students – PRARAMBH: A Kickstart to Excellence</b> Delegate Fees: ₹ 600/- upto 26th Dec 2014, per Student <i>Details at Page No.: 7</i>	Christ University Auditorium, Hosur Road, Bangalore	---
31.12.2014 Wednesday	Value Addition in Service Tax CENVAT CREDIT <b>CA Madhukar N Hiregange</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
07.01.2015 Wednesday	Internal Audit Vs. New Companies Act <b>CA Dayanivas Sharma</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>



## The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

### CA. K. Raghu, President ICAI elected as IFAC Board Member

ICAI President CA. K. Raghu has joined the league of high-profile world accountancy leaders serving the profession globally with his election to the Board of International Federation of Accountants (IFAC) for a period of 3 years from 7th November, 2014.



**CA. K. Raghu**  
President ICAI

With this India has retained the highly responsible and prestigious position on the Board of IFAC, which is a global accounting body now comprising of 179 members and associates in 130 countries and jurisdictions and representing approximately 2.5 million accountants.

The Board position to CA. K Raghu is a testimony to ICAI's growing stature amongst the global accounting fraternity and the International forums and the role played by ICAI in India's economic momentum.

IFAC's mission is to serve the public interest by: contributing to the development of high-quality standards and guidance; facilitating the adoption and implementation of high-quality standards and guidance; contributing to the development of strong professional accountancy organizations and accounting firms and to high-quality practices by professional accountants, and promoting the value of professional accountants worldwide; and speaking out on public interest issues.

**Members may send mails directly to Chairman of the Bangalore Branch  
regarding their feedbacks & suggestions :**

**[blrchairman@icai.org](mailto:blrchairman@icai.org)**

# Workshop on Real Estate

on 18th, 19th & 20th December 2014

at Bangalore Branch of SIRC of the ICAI, ICAI Bhawan,  
No.16/O, Millers Tank Bed Area, Vasanthnagar Bangalore -560 052

in Association with the Research Committee of SIRC of the ICAI

16 hrs  
CPE

DAY 1 – THURSDAY – 18.12.2014		
Timing of Session	Topics to be discussed	Speakers
4.00pm to 04.30pm	INAUGURAL SESSION	
4.30pm to 4.45pm	TEA BREAK	
4.45pm to 8.00pm	KVAT Implication on Real Estate Transaction with reference to latest Judicial Pronouncements (Including L& T Case) Impact of VAT on Works contract with reference to construction/ developments/ Joint developments/Revenue sharing/Other arrangements , Detailed illustrations of computation of works contract taxes under the Regular Scheme and Composition scheme under different scenarios	CA Sanjay M Dhariwal CA Annapurna Kabra
DAY 2 – FRIDAY – 19.12.2014		
9.30am to 11.30am	Drafting & Conveyancing for Immovable Properties, Points to be considered in drafting sale deed, lease deed, JD Agreement, Construction Agreement etc	Mr. Arvind Raghavan Advocate
11.30am to 11.45am	TEA BREAK	
11.45am to 1.45 pm	Interesting Issues in TDS on Immovable Properties 194IA, 194C, 194J, 194 H, 194I, & 195	CA D.R. Venkatesh
1.45pm to 2.30pm	LUNCH BREAK	
2.30pm to 3.45 pm	Service tax with respect to Real Estate	CA Sai Prasad
3.45pm to 4.00pm	TEA BREAK	
4.00pm to 5.30pm	Service tax with respect to Real Estate	CA Sai Prasad
DAY 3 – SATURDAY – 20.12.2014		
9.30am to 11.00am	Revenue Recognition- Accounting standards for Real estate sector & applicability of AS 7 , AS-9	CA N Nityananda
11.00am to 11.15am	TEA BREAK	
11.15am to 12.30pm	REITS, Funding options, FEMA Regulations for Realty Sector	CA Vinay Lal
12.30pm to 1.30pm	LUNCH BREAK	
1.30pm to 3.30pm	Income tax provisions relating to Immovable properties & JD Capital gains, etc	CA Ashok Raghavan
3.30pm to 3.45pm	TEA BREAK	
3.45pm to 5.30pm	Income Tax provisions relating to Immovable Properties & JD Capital gains, etc	CA Ashok Raghavan

CA Babu K Thevar  
Chairman,  
Bangalore Branch of SIRC of ICAI

CA P R Suresh  
Co - ordinator

CA Pampanna B.E  
Secretary  
Bangalore Branch of SIRC of ICAI

## DELEGATE FEES:

Members: ₹ 2,000/- Upto 17th Dec 2014, Spot Registration: ₹ 2,500/- on 18th Dec 2014, Non Members: ₹ 3000/-

Mode of Payment: Cash / Cheque in favour of “Bangalore Branch of SIRC of ICAI” payable at Bangalore

For further details please contact:

Ms. Geetanjali D., Tel: 080-30563500 / 3513 | Email: blrregistrations@icai.org | Website: www.bangaloreicai.org



# Workshop on Direct Taxes

on 26th & 27th December 2014

at **Bangalore Branch of SIRC of the ICAI**, ICAI Bhawan,  
No.16/O, Millers Tank Bed Area, Vasanthnagar Bangalore -560 052

**10** hrs  
**CPE**

DAY 1 - Friday 26.12.2014		
Timings	Topics	Speakers
4.00pm to 6.00pm I Technical Session	Scope of jurisdiction for reopening assessment and practical issues on search related assessment	<b>CA A Shankar</b> <i>Advocate</i>
06:00pm to 06.15pm	TEA BREAK	
06:15pm to 08:15pm II Technical Session	What is "Transfer" under IT Act	<b>CA N.S. Srinivasan</b>
DAY 2 - Saturday 27.12.2014		
10.00am to 11.45am I Technical Session	Practical and legal issues on Assessment Procedure and Scope and limitation of revisionary jurisdiction u/s 263	<b>Mr. J. Balachander</b> <i>Advocate, Chennai</i>
11:45am to 12.00pm	TEA BREAK	
12.00pm to 1.15pm II Technical Session	Emerging trends in tax evasion including cross border transaction	<b>Mr. R. Ravichandran</b> <i>Director Investigation Income Tax, Bangalore</i>
01.15pm to 02.00pm	LUNCH BREAK	
2.00pm to 4:00pm III Technical Session	Income wholly excluded from taxable income and income as a deduction computing taxable income	<b>CA P.V. Srinivasan</b> <i>CFO Wipro</i>
4:00pm to 04:15pm	TEA BREAK	
4:15pm to 6:15pm IV Technical Session	What is concealment under IT Act consequences related to the concealment and defences available to tax payer	<b>CA Prashanth</b>

**CA Babu K Thevar**  
*Chairman,*  
*Bangalore Branch of SIRC of ICAI*

**CA R Ramakrishnan**  
*Moderator of the programme*

**CA Pampanna B.E**  
*Secretary*  
*Bangalore Branch of SIRC of ICAI*

## DELEGATE FEES:

Early Bird ₹ 1,200/- upto 24th Dec 2014, Spot Registration ₹ 1,500/- on 26th Dec 2014

**Mode of Payment:** Cash / Cheque /DD in favour of "**Bangalore Branch of SIRC of ICAI**" payable at Bangalore

For further details please contact:

**Ms. Geetanjali D.,** Tel: 080-30563500 / 511 / 512 / 513

Email: [blrregistrations@icai.org](mailto:blrregistrations@icai.org) | Website: [www.bangaloreicai.org](http://www.bangaloreicai.org)

# International CA Students Conference at Bangalore

## “PRARAMBH” - A Kickstart to Excellence

Organized by  
Board of Studies, ICAI

Hosted by  
Bangalore Branch of SIRC of ICAI &  
SICASA - Bangalore

On 27<sup>th</sup> & 28<sup>th</sup> December 2014 at Christ University Auditorium, Bangalore.

DAY 1 - 27 <sup>TH</sup> DECEMBER 2014, SATURDAY	
8:45am	REGISTRATION
10:00am	INAUGURAL SESSION <b>Chief Guest</b> <i>An eminent personality*</i> <b>Guest of Honour</b> <b>CA K Raghu</b> , <i>President, ICAI</i> <b>CA Manoj Fadnis</b> , <i>Vice President, ICAI</i>
11.30am	BREAK
11:45am	I Technical Session : <b>Service Tax</b> – <b>CA. Sunil Ghabawaala</b> , <i>Mumbai</i> ✧ Concept of Service, Definition, Inclusions and Exclusions ✧ Place of Provision of Service Rules
1:00pm	LUNCH BREAK
2:15pm	I Special Session : <b>Health Session</b> <b>Dr. Venkataramanaa</b> , <i>Vice-Chairman, BGS Global Hospitals</i>
3:00pm	II Technical Session: <b>Taxation</b> – <b>CA. Girish Ahuja</b> , <i>New Delhi</i> ✧ TDS-Section 194IA- Concept and Issues ✧ Taxation of Capital Gains and Issues Thereunder
4:15pm	BREAK
4:30pm	III Technical Session: <b>Accounting Standards</b> – <b>CA. M.P. Vijay Kumar</b> , <i>Chennai</i> ✧ Revenue based Accounting Standards - AS7 and AS9 ✧ SA700 (Rev) - Modified Audit Opinion - With case studies
6:15pm	CULTURAL PROGRAMMES
8:15pm	DINNER

(\*confirmation awaited)

DAY 2 - 28 <sup>TH</sup> DECEMBER 2014, SUNDAY	
8:15am	II Special Session : <b>Motivational Session</b> - <b>CA. Vinay Mruthyunjaya</b> ✧ <b>Rahul Dravid*</b> ✧ <b>IPCC First Rank Holder</b> ✧ <b>Final First Rank Holder*</b>
10:30am	IV Technical Session: <b>International Taxation</b> – <b>CA. T.P. Ostwal</b> , <i>Kolkata</i> ✧ International Taxation - Residence Principle vs. Source Principle ✧ Meaning of 'International Transaction' with regard to Transfer Pricing
11:45am	BREAK
12:00pm	III Special Session- <b>Interactive Session with BOS</b> <b>CA. Devraja Reddy</b> - <i>Chairman, BOS</i> <b>CA. Prafulla Preme Sukh Chhajed</b> , <i>VC, BOS</i>
1:15pm	LUNCH BREAK
2:30pm	V Technical Session: <b>Companies Act (Debate)</b> – <b>CA. Vijay Raja</b> , <i>Bangalore</i> ✧ Is it better to be a partnership than a Company under the new Companies Act 2013 ✧ To be or not to be - An auditor in the company
3:45pm	BREAK
4:00pm	IV Special Session - <b>Quiz</b>
5:15pm	VALEDICTORY SESSION

<b>CA. M. Devaraja Reddy</b>	Conference Chairman
<b>CA. Prafulla Preme Sukh Chhajed</b>	Conference Co-Chairman
<b>CA. Babu K Thevar</b>	Chairman – B'lore Branch
<b>CA. Shravan Guduthur</b>	Chairman SICASA – B'lore
<b>CA. Allama Prabhu</b>	Conference Co-Ordinator

### GOLDEN OPPORTUNITY TO PARTICIPATE

for Online Registrations & Guidelines for Student Speakers, Visit Our Website: [www.bangaloreicai.org](http://www.bangaloreicai.org)

Phone: 080-30563500 / 513 / 506 Email: [blrregistrations@icai.org](mailto:blrregistrations@icai.org)

Registration fees : ₹ 600/\*- per student, Accommodation (if required) : ₹ 500/- Extra per student

**Hurry Up!!! Registrations avail on First Come First Serve basis.**



# POST SURVEY ASSESSMENT

CA. R. Ramakrishnan, B.Com, LL.B, FCA

Consequence to visit by the Income tax Authorities under the "Powers of the Survey", they will proceed subsequently with Post Survey Assessment.

- ❖ The material and evidences collected during the survey provide a basis for assessment u/s 143(3) read with section 133A and any addition to the income will be based on the evidences collected by the AO during the time of survey and by making further enquiry with reference to the evidence found.
- ❖ It is therefore essential to examine whether the survey u/s 133A(1) and 133A(5) are conducted in accordance with law. If there are no authorization, the proceedings u/s 133A of the Act, shall become void, as without Jurisdiction.
- ❖ The materials in the possession of the Department could be used for determination of income of the person concerned even when proceeding u/s 133A of the Act becomes void.
- ❖ When there is any omission of income in the return filed, before the date of Survey in respect of income, or any such income is omitted in the return of income that may be filed after conclusion of survey, the AO shall add the same, to the income of the concerned assessment year, on the basis of materials available with him.
- ❖ Preliminary statement:- The Income tax Authority shall have to record a preliminary statement at the time of survey immediately

on the commencement of the survey from the person. A format for such a preliminary statement, is published for the Department's use.

- ❖ Final statement- A statement will be recorded by the competent income-tax authority conducting the survey which shall include details regarding:
  - Documentary evidence regarding assessee having kept his stock somewhere else.
  - Documentary evidence regarding assessee keeping someone else's stock in his premises.
  - Identification of defective goods and its valuation.
  - Quantification of purchase returns and sales returns in the year along with documentary evidence.
  - Confirmation of stock valuation method followed by the assessee.
  - Confirmation of assessee not having any objection to the value of stock taken and method of valuation followed by the Department during survey.
  - If the Assessee voluntarily declares certain concealed income, the following declaration is to be made:  
Statement that it is an additional income over and above regular income.  
Assessment year for which it is offered.  
Income- Head under which it is offered.  
Transaction/manner in which such income is earned and the documents on the basis of which such income is offered for tax.

❖ While recording the statement from the Assessee- the following points should be kept in mind by the Income tax authority conducting the survey.

- No promise, threat or inducement should be offered.
- The statement should preferably be recorded in the language known to the deponent. The income tax authority should read over and explain the statement to the deponent if the statement could not be recorded in the language known to the deponent.
- Conjectures and surmises should be avoided in the statement.
- Additional income disclosed by the assessee should be based only on documentary evidence.
- It is settled position of law that any statement obtained under promise, inducement or threat or compulsion has no evidentiary value. Any promise to waive penalty or not to reopen assessments for earlier years are avoidable inducements.
- ❖ Survey Report: Within 48 hours from the conclusion of survey, a survey report u/s 133A(1) shall be prepared by the Income tax Authority giving his significant findings of survey containing details such as
  - List of books/ documents seen with details and places where identification marks have been placed.
  - Details of cash/stock seen, discrepancies, if any, noticed reconciliation or explanation given by the person present.



- Reasons recorded for impounding the books of accounts.
- Clearly stating that order impounding books is properly served on the Assessee.
- Details of other significant transactions noticed.
- Any other relevant matter.

Where the survey is conducted by the officers working with the charge of commissioner of Income-Tax, copies of survey report would be sent to CIT/Director of Income tax (Investigation) and the Range Additional/ Joint commissioner of Income tax.

Where the survey is conducted by the Director of Income tax (Investigation), copies of the survey report will be forwarded by the authority conducting the survey to the jurisdictional commissioner and Range Additional/ Joint commissioner/ Joint commissioner within 48 hours of the conclusion of the survey.

- ❖ Normal discrepancies found during a survey:
  - Incomplete books of accounts.
  - Discrepancy in the assessee's books on the date of survey between the actual cash and stock found, with cash and stock balance shown in the books.
  - Huge declared turnover with no commensurate income for assessment.
  - Large expenses booked on advertisements, commission, etc.,
  - Large expenses debited in profit and loss account. Detailed scrutiny and analysis of profit and loss account and balance sheet may show "odd" or "peculiar features" in assessee's case and quantum involved in each of such cases.

- Suppression in sales or inflation in purchase/expenses.
- Unrecorded investments/ Expenses
- Cash credits/Trade credits.
- Claim of depreciation without the existence of assets.
- Excessive claim of exemption/ deduction made under specified provisions, in computing the income.

#### **CASE LAWS:**

##### **❖ DEPUTY COMMISSIONER OF INCOME TAX vs. PREMSONS MUMBAI 'B' BENCH**

(2010) 37 DTR 0150, (2010) 130 TJJ 0159

The Department is not oblivious of the practice by which the Revenue authorities obtain undue confession from the assessee during search or survey proceedings. Vide CBDT circular dt. 10th March, 2003 it has been made clear by the Board that no attempt should be made to obtain confession as to the undisclosed income and the addition should be made only on the basis of material gathered during the course of search and survey. Going by the verdict of the High Courts and the position reaffirmed by the CBDT through its circular, it becomes abundantly clear that no addition can be made or sustained simply on the basis of statement recorded at the time of survey/search. In order to make an addition on the basis of surrender during search or survey, it is sine qua non that there should be some other material to correlate the undisclosed income with such statement. But insofar as the amount in dispute to the tune of Rs. 28.85 lakhs is concerned, such surrender was specifically made "towards any other discrepancy". There is nothing on record which could

correlate such additional income offered by the assessee during the course of survey with any other discrepancy. There is no basis for sustaining the addition in question.—Paul Mathews & Sons vs. CIT (2003) 181 CTR (Ker) 207 : (2003) 263 ITR 101 (Ker) and CIT vs. S. Khader Khan Son (2008) 214 CTR (Mad) 589 : (2008) 300 ITR 157 (Mad) followed.

##### **❖ COMMISSIONER OF INCOME TAX vs. GUPTA ABHUSHAN (P) LTD.**

HIGH COURT OF DELHI

IT Appeal Nos. 908, 913 & 1079 of 2008

Oct 20, 2008

(2009) 312 ITR 0166

Before action under section 147 can be taken for reopening an assessment, the AO must have reason to believe that income chargeable to tax had escaped assessment. Examining the reasons recorded under s. 148(2) it cannot be accepted that the AO had reasons to believe that income chargeable to tax had escaped assessment in respect of the years in question. The reasons recorded, first of all, indicate that the survey was conducted under s. 133A in the business premises of the assessee on 7th March, 2002, which falls within the financial year 2001-02 relating to the asst. yr. 2002-03. The years in question in the present appeals are asst. yrs. 1999-2000, 2000-01 and 2001-02. It is obvious that the survey was not conducted in the years in question. In the said reasons, it is observed that in the course of the survey discrepancies in the stock were noticed and excess stock to the extent of Rs 5.55 lacs was found. This excess stock is obviously relatable to the date on which the survey was conducted, that



is, on 7th March, 2002. The AO had a mere suspicion that there was a likelihood of there being a discrepancy in the stocks in the earlier years also based on the fact that there was a discrepancy in the stock when the survey was conducted on 7th March, 2002. This is merely a reason to suspect and cannot be the same as a reason to believe which is a necessary precondition for any action under s. 147.—*Indian Oil Corporation vs. ITO* (1986) 58 CTR (SC)83 : (1986) 159 ITR 956 (SC) relied on.

❖ **SONIA MAGU & ORS. vs. COMMISSIONER OF INCOME TAX**

#### **HIGH COURT OF DELHI**

*A.K. Sikri & Valmiki J. Mehta, JJ.*

(2009) 28 DTR 0133, (2009) 227 CTR 0680, (2011) 336 ITR 0227, (2009) 185 TAXMAN 0402

Search and seizure—Block assessment—Computation of undisclosed income—Assessee explained the entire jewellery seized but only with a desire to buy peace and avoid litigation, she had offered 20 per cent of the jewellery i.e., a sum of Rs. 4,59,200—Offer was thus conditional—AO however made addition of entire jewellery ignoring the assessee's offer—CIT(A) having accepted the

assessee's explanation in respect of entire jewellery, was not justified in sustaining addition of 20 per cent—Assessee's offer was a without prejudice offer and was not in the nature of "admission on the basis of which she could be fastened with the liability which otherwise did not exceed"—That apart, once the assessee has given satisfactory explanation regarding the purchase/acquisition of the disputed jewellery, the necessary consequence is that there was no unexplained asset in the hands of the assessee—Consequently, no addition was called for.

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## TAX UPDATES - OCTOBER 2014

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

### VAT, CST, ENTRY TAX, PROFESSIONAL TAX

#### PARTS DIGESTED:

- a) 73 VST – Part 1
- b) 74 VST – Part 3, 4 & 5
- c) 19 KCTJ – Part 7
- d) 80 KLJ – Part 9

#### Reference / Description

**[2014] 74 VST 368 (Mad. - HC): P.R.G. Kamaraj v. Dy. CTO** - In the instant case the Honourable Madras High Court held that since the assessment order was passed on December 28, 2001, much prior to the amended provision came into effect, i.e., July 1, 2002, the limitation of five years cannot be calculated from the date of the final order of assessment based on the amended provision section 16(1)(a).

In other words, the Court held that, since in the instant case the assessment year in question was 1999-2000, five years limitation ended by March 31, 2005 and the pre-revision notice dated 28.06.2006 issued beyond the period of five years was barred by limitation.

**2014 (80) KLJ 65 (Karn. - HC) (DB): State of Karnataka v. Centum Industries Pvt. Ltd.** - In the instant case the Honourable Karnataka High Court Division Bench held that if the dealer does not claim the input tax credit in the relevant tax periods by filing VAT return under Section 35(1) or within six months from the relevant tax period by filing revised VAT return under Section 35(4),

the dealer would not be entitled to benefit conferred on him under Section 10(4) of the Karvat Act.

While holding so the Court held the expression 'in that period' appearing under Section 10(3) of the Karvat Act specifies the period during which input tax and output tax has to be accounted and has to be claimed by the dealer by filing the VAT Return under Section 35(1) of the Karvat Act or by filing revised VAT return under Section 35(4) of the Karvat Act.

**2014 (80) KLJ 77 (Karn. - HC) (DB): State of Karnataka v. Infosys Technologies Ltd.** - In the instant case the Honourable Karnataka High Court Division Bench held that 'work stations' consisting of cubicle with arrangement to place computer and chair in front of it to sit on and operate computer, which is purchased for use in business of developing software for sale cannot be regarded as 'furniture' and hence cannot be regarded as restricted goods under Section 11(a)(2) read with Entry 5 of Fifth Schedule.

The Court held that even if 'work station' is considered as input tax restricted goods, as the same is used for manufacture of other goods for sale, restriction imposed under Section 11(a)(2) of the Karvat Act is not attracted.

The Court further held that the expression 'furniture' used in the Karvat Act means articles of convenience or decoration used for furnishing place of business or office

or dwelling house. Test is not whether 'work stations' are capable of being used as furniture, the test is whether they are ordinarily so used and can be accepted as such according to popular notion of what furniture is called in common parlance.

**2014 (80) KLJ 90 (Karn. - HC) (DB): Intel Technology (India) Pvt. Ltd. v. State of Karnataka** - In the instant case the Honourable Karnataka High Court Division Bench held that the expression 'business' as defined in Section 2(6) of the Karvat covers not only main business but also transactions in connection with or incidental or ancillary to main business. Therefore, the Court held that:

- (a) Obtaining copies of materials downloaded from computer, is incidental to main business, and hence input tax benefit in respect of 'xerox' machine purchased for copying has to be allowed.
- (b) Air-conditioning machinery to keep temperature at required level in place of manufacture and security system installed in premises can also be considered as machinery used in business of manufacture of goods for export for the purpose of extending benefit of input tax credit.

**2014 (80) KLJ 152 (Karn. - HC) (DB): State of Karnataka v. Reddy Structures Pvt. Ltd.** - In the instant case the Honourable Karnataka High Court Division Bench held that merely because iron and steel are cut



into a particular length depending on the requirement and they are bound by wire and converted into a particular shape, the iron and steel do not lose their original characteristic. The Court further held that at no point of time the iron and steel is transformed into new product/goods. There is no value addition to the said steel rods and beams. In fact, steel rods are used only to reinforce the cement concrete. Even after the beams, pillars, roofs are cast, the rod and steel continues to be in the same position in the building or the bridge which is constructed.

Therefore, the Court held the iron and steel as the declared goods and held that by virtue of Section 15 of the CST Act, the State has an authority to impose tax on the same.

Further while dealing with 'steel plates', the Court held that steel plates before the incorporation undergoes the process of manufacture and ceases to be the steel plates. It takes the form of either section or bullet tank. Therefore, the value of the steel plates at the time of acquisition is not the same at the time of incorporation. It is declared goods at the time of acquisition and it ceases to be declared goods at the time of incorporation. Therefore, the Court held that prohibition contained under Section 15 of the CST Act is not attracted and the State Legislature has the power to levy tax in terms of Item 23 of Sixth Schedule, as it is not declared goods as stipulated under Section 14 of the CST Act.

Further, the Court held that sale takes place either by transfer of title or by delivery possession or at the time of incorporation of the goods in the course of execution of any works contract. Therefore, any amount

to be included in the turnover, the condition aforesaid should be satisfied. If none of these events occurs, there is no turnover.

Thus, the Court held that advance amount paid as part of consideration for transfer of property in goods would not become turnover and therefore Explanation added to Rule 3 with the object of levying sales tax on advance receipt runs counter to the aforesaid statutory provisions as well as the constitutional provisions.

## INCOME TAX

### PARTS DIGESTED:

- a) 367 ITR – Part 4 to 6
- b) 224 Taxman – Part 6
- c) 225 Taxman – 3, 4 & 6
- d) 226 Taxman – 1, 3 & 4
- e) 149 ITD – 8 & 9
- f) 150 ITD – 1 & 2
- g) 46-B CAPJ – Part 1
- h) 11 International Taxation – Part 4

#### *Reference / Description*

[2014] 367 ITR 526 (All – HC): *Anand Prakash Agrawal and others v. CIT and others* - In the instant case the Honourable Allahabad High Court held that an amount which has already been included in the regular assessment cannot be reassessed in the block assessment merely because in a post-search enquiry, it came known that the gift cheques was a sham transaction.

[2014] 367 ITR 575 (Guj. – HC): *CIT v. Priyanka Gems* - In the instant case the Honourable Gujarat High Court, while dealing with foreign exchange rate, held that law permits hedging of foreign exchange fluctuation risk to an importer or an exporter. The exporter may, therefore, take steps as found commercially prudent to safeguard himself against drastic

foreign exchange rate fluctuation and in the process may also limit the possibility of gain in case of favourable currency rate trends. The resultant gain in foreign exchange rate would still be due to the export made by the Assessee.

[2014] 225 Taxman 211 (Cal. – HC); 47 taxmann.com 158 (Cal. – HC): *Sunil Kumar Agarwal v. CIT* - In the instant case the Honourable Calcutta High Court held that where according to assessee, agreed consideration as per conveyance deed was highest prevailing market price of property, it would follow that assessee disputed higher valuation made by Stamp valuation authority and in such case, Assessing Officer should have referred matter to a Valuation Officer as contemplated under Section 50C.

[2014] 225 Taxman 165 (Cal. – HC) (Mag.); 44 taxmann.com 170 (Cal. – HC): *CIT v. Shelcon Properties (P) Ltd.* - In the instant case the Honourable Calcutta High Court held that deduction under Section 80-IB(10) can be allowed only when return is filed on or before the due date specified under Section 139(1) of the IT Act.

[2014] 225 Taxman 229 (Cal. – HC) (Mag.); 45 taxmann.com 482 (Cal. – HC): *Amal Kumar Ghosh v. Asst. CIT* - In the instant case the Assessing Officer had issued notice under Section 143(2) of the IT Act beyond the time limit i.e. three months, prescribed under Instruction No. 10/2004 dated 20.09.2004, for selecting the case for scrutiny. The Assessee contended that it was an invalid notice. The Assessing Officer rejected the objections of Assessee and passed assessment order on the Assessee.



Before, the Honourable Calcutta High Court, the revenue contended that instruction is not meant for the purpose of permitting the unscrupulous assessee from evading tax.

The Court held that, the Department, which is a State, cannot be permitted to selectively apply the standards set by itself for its own conduct. If this type of deviation is permitted, the consequences will be that floodgate of corruption will be opened which is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination.

Hence, the Court held that the action of the Department is bound to be struck down under Article 14 of the Constitution of India.

**[2014] 226 Taxman 1 (All. – HC); 46 taxmann.com 32 (All. – HC): Amrit Corp Ltd. v Addl. CIT** - In the instant case the Honourable Allahabad High Court held that Section 45(2) of the IT Act is applicable only when there is a positive act on the part of the owner of the capital asset to transfer the asset by way of conversion into stock-in-trade or treating such capital asset as stock-in-trade of business. In the absence of such positive act on the part of the owner, Section 45(2) does not apply.

Thus, the Court held that where Assessee, a sick unit, having obtained permission from State Government, converted its industrial land into residential plots and sold a part of it during relevant year, it was not a case where land in question had been transferred after converting it into stock-in-trade of business and, therefore, provisions of section 45(2) did not apply to Assessee's case.

**[2014] 226 Taxman 10 (Guj. – HC) (Mag.); 45 taxmann.com 478 (Guj. – HC): CIT v. Indu Nissan Oxo Chemical** - In the instant case the Honourable Gujarat High Court held that where payment made to directors was authorised by CLB and that recipient of payment was taxed at maximum rate, addition could not be made under Section 40A(2) of the IT Act.

**[2014] 226 Taxman 226 (Delhi – HC); 49 taxmann.com 125 (Delhi – HC): DIT v. Copal Research Ltd.** - In the instant case the Honourable Delhi High Court was examining the meaning of indirect transfer as outlined in Explanation 5 to Sec 9(1)(i). The Hon. High Court observed the following recommendations of the Expert Committee i.e. Shome Committee appointed by the Prime Minister in 2012 to report on the retrospective amendment relating to indirect transfer of assets in their draft report:

- (a) Considering the import of the expression 'substantially' as used in Explanation 5 to Section 9(1) (i) of the IT Act.
- (b) Considering the submissions of stakeholders that the expression 'substantially' did not have any fixed meaning and was vague.
- (c) To pin down a definition of the said expression and for that purpose, there was no reason to depart from the Direct Tax Code Bill, 2010 that had been put in the public domain.
- (d) Under DTC, gains from sale of assets situated overseas, which derived more than 50% of their value from assets situated in India, were liable to be taxed in India.

On the aforesaid basis, the Hon. Court adopted a benchmark of 50%

for determining of situs of foreign shares with reference to such shares deriving value from asset based in India.

**[2014] 226 Taxman 252 (Delhi – HC); 49 taxmann.com 267 (Delhi – HC): CIT v. Hotz Industries Ltd.** - In the instant case the Honourable Delhi High Court held that the expression 'therefore, meaning inquiry should be conducted' appearing under Section 263 of the IT Act, does not meet the requirement that the decision of the Assessing Officer should be erroneous. If the Assessing Officer has conducted inquiries and has reached a decision, it cannot be said it was a case of non inquiry. In such cases, Commissioner must reach a finding that the finding of the Assessing Officer was erroneous, not because no inquiries were conducted, but because the final finding was wrong and untenable.

**[2014] 226 Taxman 260 (Bom. – HC); 49 taxmann.com 200 (Bom. – HC): CIT v. Harit Exports Ltd.** - In the instant case Assessee took keyman insurance policy on last day of relevant financial year. Assessing Officer observed that insurance policy cover was extended to next financial year, and hence allowed only proportionate amount of premium claimed by the Assessee.

The Honourable Bombay High Court held that mere fact that the insurance policy cover was extended to next financial year did not mean that premium paid during year under consideration was not an allowable expenditure. The Assessee has incurred expenditure fully in the impugned financial year, therefore, the Court fully allowed the claim of the Assessee.

**[2014] 226 Taxman 94 (Karn. – HC) (Mag.); 42 taxmann.com 256 (Karn.**



- **HC): CIT v. Topline Credits Ltd.** - In the instant case Assessing Officer reopened the assessment on the ground that Assessee did not file its return of Income.

The Honourable Karnataka High Court observed that the Assessee has filed its returns of income, but through inadvertence has filed before the wrong Assessing Officer. Therefore, the Court set aside the order of reassessment.

**[2014] 150 Taxman 97 (Bang. - Trib.); 35 taxmann.com 341 (Bang. - Trib.): Tellabs India (P) Ltd. v. Asst. CIT** - In the instant case

Assessee-company was incorporated in India as a wholly owned subsidiary of Tellabs International Inc. USA (Tellabs US). It was set up as sales and marketing office of Tellabs US and its group companies. Power Grid Corporation of India Ltd. (PGCIL), a Government of India enterprise, had invited tenders for supply, installation and commissioning of telecommunication equipments. Work was to be performed both outside India (manufacture and supply of telecom equipments from Denmark-offshore) and in India (customs clearance in India and installation of equipments - onshore). On 4-6-2001 Tellabs Denmark, which was a subsidiary of Tellabs US and an AE of assessee, provided response to request for tender issued by PGCIL and tender was awarded to it. Thereupon Tellabs Denmark entered into four agreements/contracts with PGCIL. After award of contract to Tellabs Denmark, a corporate restructuring exercise took place in year 2002. Therefore, Tellabs Denmark sought permission of PGCIL to assign a portion of onshore contract to Assessee. PGCIL had consented to assignment of

portion of onshore agreement by Tellabs Denmark to Assessee with a specific condition that assignment would not amount to novation of contract between PGCIL and Tellabs Denmark.

Assessee claimed that transaction of assignment of portion of onshore contract by Tellabs Denmark to it was not an international transaction within meaning of section 92B and, therefore, provisions of section 92 were not attracted to said transaction. It also claimed that said transaction could not be subject matter of determination of ALP.

The Honourable Bengaluru Tribunal held that assignment agreement between Tellabs Denmark and assessee was between two associated enterprises where one of parties to transaction, i.e., Tellabs Denmark was a non-resident and impugned transaction related to provision of services or a transaction which had a bearing on profits, income, losses or assets. Therefore, the Tribunal held that assignment agreement had all ingredients of an international transaction within meaning of section 92B and price paid for such transaction had to pass ALP test under Section 92.

**[2014] 150 Taxman 132 (Bang. - Trib.); 37 taxmann.com 53 (Bang. - Trib.): Asst. CIT v. Infosys BPO** -

In the instant case the Honourable Bengaluru Tribunal held that Assessee-company could not be held to be in default for not deducting tax at source on Leave Travel Concession (LTC) and medical reimbursement paid to employees by treating it as exempt before actual incurring of such expenses, where bills/evidence to substantiate subsequent incurring of expenditure by its employees was maintained by Assessee.

**[2014] 150 Taxman 189 (Hyd. - Trib.); 37 taxmann.com 241 (Hyd. - Trib.): Asst. CIT v. B. Seenaiiah & Co. Projects Ltd.** - In the instant case

the Honourable Hyderabad Tribunal held that all amounts credited to profit and loss account of a company should be considered for purpose of computing book profits under Section 115JB, unless specifically excluded by any of Explanations under said Section.

Thus, the Tribunal held that share of profits from AOP, which may be exempt from taxation in the hands of members by virtue of section 86, cannot be excluded while computing book profits of members of AOP, under any of Explanations under Section 115JB of the IT Act.

**[2014] 46-B BCAJ 30 (Bang. - Trib.);**

**[2014] 49 taxmann.com 275 (Bang. - Trib.): ITO v. Antrax Technologies**

**(P) Ltd.** - In the instant case the Honourable Bengaluru Tribunal held that payments made for import of operations and service manuals relating to equipment being for purchase of copyrighted products, were neither FTS nor royalty and hence withholding of the tax was not required.

While holding so the Honourable Bengaluru Tribunal held that service manuals were books containing guidance and instructions for operation, use and after-sale service of equipment and thus were part of the equipment imported by the taxpayer. However software requires user licence, the manuals were copyrighted products that could be used by any person purchasing the equipment. There is a clear distinction between the copyrighted article and equipment which comes with a copyright or license to use the copyright.



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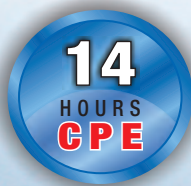
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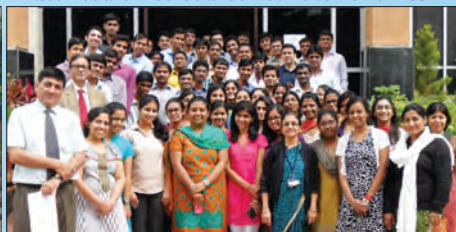
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Telephone : Office : 22262391/2/3/5  
Secretary : 22261379  
Fax : 91-80-22206372  
Fax : 91-80-22256995

POST BOX NO. 5038  
52, RACE COURSE ROAD  
BANGALORE - 560 001

## APPOINTMENT

### Requires **CHIEF ACCOUNTS OFFICER CUM COMPANY SECRETARY**

Chief Accounts Officer Cum Company Secretary is required for Bangalore Turf Club Ltd., a company engaged in the business of Horse Racing. The applicant should be a FCS and FCA. Law Degree will be an additional qualification with 8 – 10 years of relevant working experience.

Salary will commensurate with experience and qualification.

Please apply in confidence within 15 days stating age, qualifications, experience and details of salary drawn and expected, superscribing as 'For the Post of CAO cum SECRETARY' addressed to Mr. C. Srivatsan, Chairman, Sub-Committee (Establishment and Administration), Bangalore Turf Club Ltd., at the above address.

Application may also be forwarded by email to '[csrivatsan1946@gmail.com](mailto:csrivatsan1946@gmail.com)'.

Sd/-

**SECRETARY**

**BANGALORE TURF CLUB LTD.**

Adv.



# RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES



CA. N.R. Badrinath, Grad CWA, FCA & CA. Madhur Harlalka, B.Com., FCA, LLB

## VAT

### 1. *Remittance of tax - error - State tax paid instead of CST - allowed to set-off - not liable to interest for short remittance:*

The issue before the Honourable High Court of Kolkata, is whether the excess payment of State sales tax can be adjusted with the short payment of Central sales tax on account of error in remittance of taxes. Revenue placing reliance on the judgment of Honourable High Court of Mysore in the case of Cotmac Private Limited vs. CTO, Hubli reported in 20 STC 20 contended that such adjustment is not permitted even otherwise both the taxes are credited to Consolidated Fund of the State. Rejecting the contention of the Revenue, Honourable High Court of Kolkata has held that both the taxes are credited to Consolidated Fund and as such short payment of Central sales tax and excess payment of State sales tax will not reduce the gross credit of the Fund. Accordingly, the Petitioner was allowed to set-off the same and the proposal to levy interest on short payment of Central sales tax is set-aside. [*Hindustan Unilever Ltd., vs. DCCT & Others* 2014-TIOL-1781-HC-KOL-VAT]

### 2. *Assessment order passed within the period of limitation but issued after - is held to be not as per the provisions of the Act:*

Honourable High Court has held that the assessment order issued to the assessee after expiry of period of limitation but passed on the date within the period of limitation is not in terms of the Section 42 of the Odisha Value Added Tax Act, 2004. It was so held when the Revenue did not provide any explanation for such inordinate delay. Reliance placed on the judgment of Honourable Supreme Court in the case of State of Andhra Pradesh Vs. M. Ramakishthaiah & Co. reported in 93 STC 406. It was further held that the notice issued to produce the books of accounts giving time lesser than what has been prescribed under Section 42(2) is invalid. Accordingly, it was also held that the proceedings initiated on the basis of such invalid notice was held to be bad in law. [*M/s Delhi Footwear vs. STO, Cuttack* 2014-TIOL-1786-HC-Orissa-VAT]

### 3. *Reassessment made without verification of books was liable to rectification proceedings:*

The re-assessments proceedings were concluded against the Assessee even otherwise the Assessee did not produce books of accounts.

Subsequently, the application filed by the Assessee under Section 69 for rectification of order and agreed to produce books of accounts. However, such application was rejected by way of endorsement. On filing writ petition, Honourable High Court of Karnataka allowed the petition and held that the rectification application should have been accepted to verify books of accounts for the reason that the endorsement was issued without looking into the books of accounts. [*Gold Finch Hotels (P.) Ltd., vs. DCCT, Bangalore* (2014) 49 taxmann.com 475 (Karnataka)]

### 4. *Notice for sale of land was valid as transferor failed to prove that transfer wasn't made to defraud Revenue:*

The registered dealer transferred the land to assessee which was attached by the Commercial Tax Authority in order to recover the arrears from the registered dealer. Subsequently, the Authority issued notice Assessee proposing to recover the arrears of tax due from the registered dealer. On writ petition, Honourable High Court of Andhra Pradesh has held that the action of the Authority putting charged on land owned by Assessee is held to be valid since the registered



dealer who has transferred the land attached did not discharge the initial onus placed on him under Section 27(1) of Andhra Pradesh Value Added Tax Act, 2005 showing that transfer of land was not with intention to defraud Revenue. [*Showtech Stone International (P) Ltd. vs. DCTO-I, Hyderabad (2014) 50 taxmann.com 197 (AP)*]

5. **Defects in memorandum of appeal were rectifiable if appeal was solely rejected due to defects and not on merits:** Honourable High Court of Karnataka allowed the writ petition filed by the Assessee after the Appellate Authority rejected the Appeal on the grounds that the application seeking condonation of delay is not filed along with the appeal. The appeal was allowed even otherwise the Appellate Authority issued the on the Assessee a notice under Rule 149 of Karnataka Value Added Tax Rules, 2005 to rectify the defects. [*Catering Inn vs. State of Karnataka, Bangalore (2014) 50 taxmann.com 228 (Karnataka)*]
6. **Reversal of input tax credit – not required even in case the by-product which is exempted to tax is obtained:** Honourable High Court of Karnataka has held that the Assessee engaged in the manufacture of sunflower oil is entitled to claim full input tax credit of VAT paid on purchase of oiled sunflower cake and used in the manufacture of sunflower oil. The contention of the Revenue that Assessee is entitled to reverse input tax credit to the extent the de-oiled cake is obtained in the course

of extraction is rejected. [*M. K. Agro Tech (P) Ltd., vs. State of Karnataka (2014) 51 taxmann.com 6 (KARNATAKA)*]

#### CENVAT

7. **Closure of factory - refund of unutilised CENVAT credit - not permissible:** The issue before the Tribunal is in relation to the refund of unutilised CENVAT credit upon closure of the factory of the assessee. The Tribunal rejecting the appeal held that the statute provides for refund of unutilised CENVAT credit only in case of export of goods and not for any other reason. [*Phoenix Industries Pvt Ltd., vs. CCE, Raigad 2014-TIOL-1981-CESTAT-MUM*]

8. **CENVAT credit cannot be denied on the grounds that the activity carried on by the vendor does not amount to manufacture:** Revenue denied the CENVAT credit claimed by the Assessee on the grounds that vendor who supplied the goods has collected the duty even otherwise the activity do not amount to manufacture. The Tribunal held that once the supplier of the goods had discharged the duty liability, the recipient can take CENVAT Credit of the duty paid and utilise the same in remittance of duty that arises on manufacture of dutiable final product. [*M/s Cummins Diesel Sales & Service India Ltd., vs. CCE, Pune - III 2014-TIOL-2046-CESTAT-MUM*]

9. **Admissibility of CENVAT credit:** The Tribunal rejecting the appeal has held that services like building lease rent, computer peripherals service, printer hiring

charges, professional charges, management consultancy and professional charges for trade mark, courier charges, finished goods testing charges, export forwarding charges, fumigation charges and transport charges qualify as input services and as such the Assessee is entitled to claim CENVAT credit of service tax paid on such services. [*Commissioner of Customs and Service Tax, Bangalore vs. M/s Bioplus Life Sciences Pvt Ltd., 2014-TIOL-2077-CESTAT-BANG*]

10. **CENVAT credit couldn't be denied merely because original manufacturer of inputs was non-traceable:** The issue before the Honourable High Court is whether the Revenue can invoke extended period of limitation to deny the CENVAT credit claimed by the Assessee on the grounds that original manufacturer is not traceable. Honourable High Court relying on the judgment of Prayagraj Dyeing & Printing Mills (P.) Ltd v. Union of India reported in 38 STT 525 (Guj) has held that where assessee had complied with all procedures of law in availing credit and taken all steps in accordance with law, CENVAT credit cannot be denied merely because original manufacturer of inputs is not traceable. [*Kirtida Silk Mills vs. CCE & C, Surat (2014) 50 taxmann.com 264 (Gujarat)*]

11. **CENVAT credit of service tax paid on GTA – admissible:** Honourable High Court in an issue relating to inadmissibility of the CENVAT credit of service tax paid on goods transport

agency by the Revenue has held that, in case of sale at the place of destination (FOR basis), an Assessee is entitled to claim CENVAT credit of service tax paid for the goods transportation agency service if such amount was paid as integral part of the price of the goods. [*Lafarge India Ltd., vs. CCE, Raipur (2014) 51 taxmann.com 31 (CHATTISGARH)*]

## SERVICE TAX

### 12. *VCES - Assessee not liable to pay penalty if the service tax is remitted along with interest after the due date:*

Assessee availing the benefit of the amnesty scheme, remitted the tax along with interest for the reason that the tax was not paid within due date. The Revenue contention that the Assessee is liable to pay penalty under Section 76 and 77 for delay in remittance of tax is rejected by the Tribunal and accordingly, the Honourable High Court has also upheld the decision of the Tribunal. [*The Commissioner of Service Tax vs. M/s Airtime Enterprises 2014-TIOL-1778-HC-KAR-ST*]

### 13. *Constructed portion exchanged with land owner vide JDA - liable to tax:*

The Adjudicating Authority rejected the appeal filed by the Assessee for non-compliance with the pre-deposit of tax on an issue relating to taxability of the constructed portion handed over to the landowner pursuant to joint development agreement. On appeal before the Tribunal it is held that the Assessee has provided construction services

in relation to constructed portion shared with landowner and as such the order of the Adjudicating Authority to pre-deposit the amount of service tax was held to be reasonable. However, in the interest of justice another opportunity was provided to the Appellant to present their case before the Adjudicating Authority by complying with pre-deposit. [*M/s GSR Hotels & Estates Pvt. Ltd., vs. Commissioner of Central Excise, Customs and Service Tax, Hyderabad 2014-TIOL-2119-CESTAT-BANG*]

### 14. *Amount received from banks for providing space - not liable to tax in the absence of agreement:*

The Assessee a dealer in motor vehicles provided space to the banks in their business premises. The Assessee receives certain amounts from the bank when the vehicles are financed by such banks. The Revenue contended that the amount received as such is liable to service tax under the category business auxiliary services. However, the Tribunal observing that the Revenue with respect to their contention has not provided any evidence by way of any agreement or any guidelines. Accordingly, it is held that such receipts are not liable to tax and as such the impugned order is set-aside. Reliance placed on the decision of the Tribunal in the case of Pagariya Auto Center vs. CCE, Aurangabad reported in 2014-TIOL-141-CESTAT-DEL-LB. [*Jaika Motors Ltd., vs. CCE, Nagpur 2014-TIOL-2033-CESTAT-MUM*]

### 15. *Inputs and input services used in construction of immovable property meant for the purpose of renting - liable to CENVAT credit:*

The Tribunal has held that the assessee engaged in construction of immovable property can claim CENVAT credit of duty paid on inputs and tax paid on input services even otherwise the immovable property was meant for providing on rent. Such CENVAT credit can be utilized against the service tax payable on the renting of immovable property. Reliance placed on the decision of Tribunal in the case of Navratna S.G. Highway Prop. Pvt. Limited vs. Commissioner of Service Tax, Ahmedabad reported in 2012-TIOL-1245-CESTAT-AHM. [*M/s Laxmi Enterprise vs. Commissioner of Central Excise and Service Tax, Vadodara 2014-TIOL-2042-CESTAT-AHM*]

### 16. *Delay in debiting the CENVAT credit in relation to payment of tax - liable to pay interest:*

The Tribunal has held that the interest also needs to be remitted for delay in remittance of service tax is by way of debiting CENVAT credit. The fact that the CENVAT credit is available in the books of accounts on the due date of remittance of service tax does not mean that the tax has been paid. Accordingly, it is held that the Assessee is liable to pay interest from the due date of payment till the date of actual debit in the CENVAT credit. [*CST, Mumbai vs. Toyo Engineering Corporation Ltd., 2014-TIOL-2020-CESTAT-MUM*]





**17. Goods used in repairing of transformer wouldn't be includible in value of services if VAT was paid thereon:**

Honourable High Court has held that in the event the agreement executed with the contractee for repair and maintenance of transformers discloses value of goods and materials separately and when the Assessee has remitted excise duty or VAT on value of such goods, the value of goods is not liable to be included in ascertaining

the taxable services for the purpose of service tax. Reliance was placed on the judgment of Honourable High Court in the case of CC & CE v. Balaji Tripathi Enterprises reported in 44 GST 163. [Commissioner of Customs & Central Excise vs. J. P. Transformers (2014) 50 taxmann.com 31 (Allahabad)]

**CENTRAL EXCISE**

**18. No invocation of extended period as all facts were disclosed in ER-1 and they could have**

**been scrutinized:** Honourable High Court has turned down the proposal of the Revenue to invoke extended period for recovery of tax short paid on the grounds that the Assessee has disclosed all facts in monthly return in ER-1 and as such it cannot be said that Assessee has evaded tax by way of fraud, collusion, misstatement or suppression of facts. [CCE, Noida vs. Accurate Chemicals Industries (2014) 50 taxmann.com 226]

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Organises,

Jointly with **Karnataka State Chartered Accountants Association**

**SPORTS AND TALENT MEET**

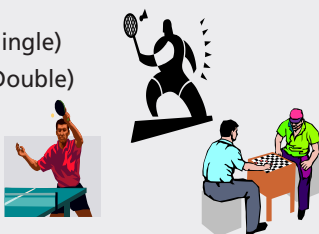
On **21st December 2014, Sunday**

Timings : **9:00 am - 6:00 pm**

Venue: **KGS Club** (opp to MS Bldg) Cubbon park, Bengaluru.

**Events CA'S**

Shuttle Badminton (Single)  
Shuttle Badminton (Double)  
Chess  
Table Tennis (Single)  
Carrom  
Tennis



**Family Members & Children**

Shuttle Badminton (Double)  
Chess, Carrom  
Singing Competition, Musical Chair  
Drawing Competition for Children  
Rangoli/ Flower Decoration  
Instrumental /Dance



**Events Fees:** For CA's : ₹ 100/- For Each Event, Family Members & Children : ₹ 50/- For Each Event

**Registration closes on 15th December 2014.**

**CRICKET LEAGUE**

Date : **14th December, 2014, Sunday**  
Time : **8:00 am – 6:00 pm**  
Venue : **Bangalore University Ground**  
Fees : **₹ 3000/- Per Team**

**Tournament Format**  
8 to 10 Overs per side,  
Tennis Ball  
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**Registration closes on 5th December 2014.**

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**Ms. Geetanjali - 30563500 / 513,**

Email: [blrregistration@icai.org](mailto:blrregistration@icai.org)

**KSCAA office: Tel - 080-22222155, 22274679, Email: [info@kscaa.co.in](mailto:info@kscaa.co.in)**

**CA. Babu K. Thevar**

Chairman, Bangalore Branch

**CA. Raveendra S. Kore**

President, KSCAA, 990246884

**CA. Pampanna B.E**

Secretary, Bangalore Branch  
9986752428

**CA. Raghavendra Puranik**

Secretary, KSCAA  
9632245475

**CA. Raghavendra Shetty**

Chairman, Public Relations  
& Sports Committee KSCAA, 9900214030

# RECENT CASE LAWS IN INTERNATIONAL TAXATION

CA. Rekha.K.R & CA. Rani.N.R

**1. Citation:** *Agence France Presse v. ADIT, Circle 1 (1), International Taxation, New Delhi [2014] 51 taxmann.com 186 (Delhi - Trib.)*

The following questions were posed before the Delhi Tribunal:-

- Whether 'news' per se cannot be copyrighted, whereas a news item or news story would be copyrighted under section 13(1) (a) of Copyright Act?
- Whether 'photographs' as 'artistic works' are copyrighted items?
- Whether where assessee was providing a gamut of service covering three categories, namely, news item, news story, photographs or news without any split, and categories were interlinked, it should be construed as composite service possessing 'modicum of creativity' and copyright subsisted in news reports and photographs distributed/circulated by assessee?
- Whether copyright would qualify as 'royalties' within meaning ascribed under paragraph 3 of Article 13 of DTAA between India and France?

In response to all the above questions, the Delhi Tribunal ruled "Yes". Thus, news items, photographs as artistic items would all qualify under copyrighted items and payments for such items would meet the definition of royalty.

**2. Commissioner of Income-tax, Chennai v. Van Oord ACZ**

**Equipment BV[2014] 51 taxmann.com 356 (Madras High Court)**

The Madras High Court ruled that the sums received by Dutch Company for hiring out dredgers to its Indian AE would not be taxable in India as 'Royalty' as Article 12 of India-Netherlands DTAA does not include such payments within its ambit. The deletion of the sentence "payments for the use of equipments" in clause 4 of Article 12 confirmed the fact that payment for the use of royalty would not meet the definition of royalty.

**3. Kenexa Technologies (P.) Ltd v. Deputy Commissioner of Income-tax, Circle -2(1), Hyderabad[2014] 51 taxmann.com 282 (Hyderabad - Trib.)**

This was a case wherein the Transfer Pricing Study done by the Assessee was rejected by the Transfer Pricing Officer due to a variety of reasons. Additions were made to income which the Assessee contested before the Tribunal. Some key take-aways from the ruling of the Hyderabad Tribunal.

- While computing margin of assessee in its TP study, issue of segmental information has to be considered. The TPO should verify whether assessee had maintained separate books of account which were audited by statutory auditors of Software Development Services and, if so,

TPO should consider audited segmental information and use only AE segment for computing assessee's PLI.

- Foreign exchange loss in case of providing services to AEs is to be considered as operative in nature and hence is to be included in PLI calculation of assessee.
- Where TNMM is applied, appropriate working capital adjustment is required to margins of comparable uncontrolled transactions to generate credible comparable data on transactional net margins.
- Where a company is a software product company and not a software development services company as that of assessee-company, same could not be a comparable company.
- Where bad debts and provision for bad and doubtful debts are part of operating expenses, TPO should re-compute margins of comparable companies by including them for purpose of computing profit and loss of comparable companies

**4. Alcatel-Lucent Francev. Assistant Director of Income-tax [2014] 50 taxmann.com 58 (Delhi - Trib.)**

Alcatel Lucent- based in France- was engaged in business of manufacturing, trading and supplying of equipment and services for GSM cellular radio telephones system. The Delhi Tribunal held that revenue



received by assessee on account of supply of software which was embedded in hardware was not in nature of royalty and therefore, it was to be taxed as business profits in accordance with article 7 of India-France DTAA

5. *Delmas France v. Assistant Director of Income-tax (International Taxation) -1(2)[2014] 51 taxmann.com 357 (Mumbai - Trib.)*

The Mumbai Tribunal ruled that as per Article 5(6) of India-France DTAA, even if agent is wholly or almost wholly dependent on the foreign enterprise he still will not constitute dependent agent PE unless additional condition of the transactions being not at arm's length price is fulfilled. The initial onus is upon the Revenue to show that the transactions are not at arm's length price, thus,

AO was directed to examine whether the transactions between the agent and assessee (i.e., foreign company) were at arm's length price and decide the issue afresh in the light of the provisions of Article 5(6) of India-French DTAA

6. *Toll Global Forwarding India (P.) Ltd v. Deputy Commissioner of Income-tax, Circle -2(1), New Delhi [2014] 51 taxmann.com 342 (Delhi - Trib.)*

Tol Global is a joint venture company engaged in the business of freight transportation, time defined air and ocean transport and freight forwarding. In the transfer pricing report submitted by the assessee, the assessee has adopted the Comparable Uncontrolled Price (CUP) method for determining the arm's length price. In line with global practices followed by the similar

companies in freight forwarding industry, the profits earned, after deducting transportation costs, by the assessee and its AEs or independent third party business associates, in respect of import and export of cargo are shared in a 50:50 ratio. However, the A.O. rejected the said method and proceeded to adopt Transactional Net Margin (TNMM) method. The stand of the TPO was that the CUP method chosen in the transfer pricing report for both imports and exports has not been demonstrated.

The Delhi Tribunal relied on earlier decisions in *ACIT v Agility Logistics Pvt Ltd* (136 ITD 46) and *ACIT v. DHL Danzas Lemuir Pvt Ltd* [TS-752-ITAT-Mum (2012) TP] and upheld the use of the CUP method.

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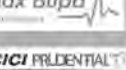
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## Two Day CPE Conference

# *Jnana Sangama*

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### Glimpses of Delegates' Opinion

Dear Babu,

The Bangalore Branch was conducted one of the best conference in my professional life with your supervision at gnana sangama on 15th & 16th Nov 2014.

Topics are very useful in our Practical professional life

Subramanyaswamy speech was very marvellous

Food arrangement was very excellent

I congratulate for grand success the event to CA Babu and Team

**CA. Murali Naidu**

Personally speaking, I look forward the year end CPE conference conducted by Bangalore branch for two reasons. One, to achieve my CPE credit hours and another, to add some knowledge. This time the conference not only helped me to fulfil my objectives, but also granted me darshan of two swamies on same day. Sri Pejavara Swamy and Mr. Subramaniam Swamy, both are outstanding personalities in their respective field. In Jnanajyothi auditorium, members were fed with knowledge inside the hall and with food/fruits outside the hall. Good experience.

**CA. H. Shivakumaar**

Dear Mr. Babu.K

Jnana Sangama was one of the Excellent CPE Conferences that I ever participated. The arrangements were made perfectly and diligently. Overall the event was handled with care and I believe all the Members were highly satisfied on both the days.

I congratulate Babu and team for conducting this delightful conference.

The topics and speakers were aptly chosen as per our professional requirement to enrich our knowledge.

**CA. Ramesh**

Kudos to Sri.Babu.K.Thevar, Chairman of Bangalore Branch of S.I.R.C. of I.C.A.I., for conducting Two days CPE Conference in a excellent manner. It was really a Sangama of knowledge by the deliberation of our eminent speakers on current day topics. CPE conference had a quality deliberation and really it has enriched the knowledge of members both in practice and service. Conference was planned very professional manner, food was excellent, I congratulate you and all team members for organizing wonderful conference.

**CA. S. Prakash Chand**







# International Tour

Organized by Bangalore Branch of SIRC of ICAI

Jointly with

All other Branches of SIRC of ICAI of Karnataka and  
Karnataka State Chartered Accountants Association (R)

## INDONESIA – BALI – MALAYSIA 6 Days / 5 Nights

from 3rd to 9th February 2015

### TENTATIVE DATE OF JOURNEY:

03-02-2015 to 08-02-2015 or

04-02-2015 to 09-02-2015

depend upon the availability of seats as the number of  
passangers travelling together is more.

**Total Tour Cost – Rs.56, 000/-** (All Inclusive)  
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a. Child no bed – 75% of tour cost (5-12 years)

b. Child no bed – 65% of tour cost (2-5 years)

c. Single room supplement – Rs.15,000 extra

**Mode of Payment:** Cheque /DD in favour of  
“Bangalore Branch of SIRC of ICAI” payable at Bangalore.

For online Registration visit: [www.bangaloreicai.org](http://www.bangaloreicai.org)

### VISA REQUIREMENTS:

1. Passport in original having validity of a minimum of 6 months prior to the date of travelling
2. Colour photos 3.5cmX4.5cm with white background, full face & matt finishing, 4 No.s of each passengers

### TOUR COST INCLUSIONS:

1. Return Economy Airfare from Bangalore
2. All Airport Taxes
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4. All transfers by good vehicle
5. English speaking guide
6. 3 Star Hotel stay on twin share basis
7. Buffet Breakfast at hotel coffee shop
8. Fixed menu of Lunch & Dinner at Indian Restaurant
9. Daily 2 Half liter bottles of Mineral water
10. Sightseeing in Bali - Uluwatu Temple, Magical Show of Kecak and Fire Dance, Batubulan village, Tegenunga Waterfall, Batur Volcano, Ubud Palace, Taman Ayun Royal temple, Gobleg Hill, Alas Kedaton monkey forest, Tanah lot sea temple.
11. Sightseeing in Malaysia – Batu Caves, KL Tower, Petronas Twin Tower, Genting Highland and Putrajaya Tour



### TOUR COST EXCLUSIONS:

1. Telephone charges, Pay TV, Tips to Driver & Guide, Mini Bar, Laundry, after meals any kind of beverages and any others not mentioned in the above itinerary. Service Tax 3.09% extra

**Last Date for confirmation  
of Booking :**

**25th December 2014**

Detailed itinerary of the International Tour with hotel details  
will be shared through e-mail.

For more details contact :

**Ms. Geetanjali - 30563500 / 513,**

Email: [blrregistration@icai.org](mailto:blrregistration@icai.org)

**KSCAA office: Tel - 080-2222155, 22274679**

Email: [info@kscaa.co.in](mailto:info@kscaa.co.in)

### Co-ordinators:

**CA. Pampanna B.E**  
Secretary, Bangalore Br.  
9986752428

**CA. Raveendra S. Kore**  
President, KSCAA  
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• Lush greenery with more than 800 trees

• Golf putting area and a host of other amenities  
• Project 70% complete. Model villa ready for viewing

**HEBRON**  
*Enclave*

Ultra-Luxury Villas within the City  
Just Off Old Madras Road

Project 70% complete.

For personalised viewing of Model Villa call

**90191 28000**

[www.hebronproperties.com](http://www.hebronproperties.com)  
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CRISIL 5-Star  
Rated Project



Indian Green Building Council  
Platinum Pre-certified Project



Ultra-Luxury Project  
of the year 2013  
(Bangalore East)



Mobility partners

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\*This CRISIL Real Estate Star Rating is meant for this project only. It is not a credit rating of any financial obligation of the developer. Further, it is not a recommendation to invest / lend in this project or any other project.\*

Project approved by all leading banks  
Project funded by IIFL



Advt.