



Bangalore Branch of SIRC Newsletter

English Monthly

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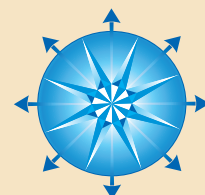
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Inscription on the
Pedestal below
the Big Bull



Heritage of Namma Bengaluru

VICHAKSHANA



CA

The Clear-sighted Professional



Merry Groundnut Fair



Carved Stone
Umbrella

"Government will be what the people make it: it cannot be much in advance of the capacity of the people."



"Electors' private relations with the candidates have often weighed with them more than the candidates' qualifications. A man of character will make himself worthy of any position he is given."

Advt.

Advt.

Dignity in Death



● Dr. Gururaj Karajagi

Chairman,
Academy for Creative Teaching,
Bengaluru

It was probably June or July 1971. I was in Calcutta for about a week. When we landed in Calcutta we were told by the vice-chancellor that it would be risky

for all of us to stay at one place in the University campus as the fear of getting attacked by the Naxalites was very high. We were asked to stay in the residences of different faculty members. I was somehow not very happy at the prospect of being a 'guest' for an unwilling host.

I wondered whether I could use this opportunity of meeting Mother Theresa and if possible to serve as a volunteer in Nirmal Hriday. I reached Nirmal Hriday in the morning. Mother was not there. I waited for sometime and Mother returned after about an hour. I introduced myself and asked her whether I could stay there and work as a volunteer. Since I had told her that I was a student of Chemistry, she asked me to go and work in the pharmacy. She did not ask me anything else. She treated me as if she knew me for ages. I was the fourth one in the room allotted to me.

An incident happened at about 1.30. in the afternoon. The volunteers of Nirmal Hriday brought an old lady on a stretcher. The lady was about 90 years old and was not fully conscious. She had high fevers and was constantly uttering something in her semiconscious state. Mother and other sisters took her in and gave her a bath and medicines. Mother sat besides her pressing her legs and patting her shoulders in a very soothing way. She was also telling something to the old lady, who was certainly looking better. Since, I could not follow Bengali, I asked some one as to what is the old lady saying and what is that the mother was telling her. What I heard was pathetic.

This lady lost her husband when her son was only three years old. She struggled hard to bring up this son. She worked tirelessly in a number of homes as a maid servant. She gave him a decent education. He got a job and was married. Till then the lady's life was joyful. I do not know whether the lady had differences with her son or daughter in law and it is also not clear whether the lady was sent out of the house or she herself walked out of it. But this much was clear that she was not staying with her son.

(Contd. on Page 8)



Jnanasagara CA. S. Krishna Swamy

Clinical Communication

We have in our heritage, checklist templates on classical conversation, dynamic dialogue and effective communication. These instruments have been effectively used to put and push across 'Big Ideas' or messages. The classic conversation between Savitri and Yama- the lord of death continues to be a philosophical touchstone; the dialogue between Lord Krishna and Arjuna in Bhagavat Gita, continues to be a blueprint for an ideal life. A few episodes from the classic epic Ramayana bring out the best of an effective communication. Episode involving Hanuman is the subject of this Article.

A professional CA needs to be highly skilful in conversation (Classical conversation generates values and ideas), engage in dialogues that are powerful (Conveying authoritative answers to queries) and communicate effectively (putting across point of view powerfully without causing hurt, cogent, grammatically precise, no irrelevant expression, pleasant and acceptable.)

"Today, if you are an academic, who has managed to communicate a great idea to the world, you will be rewarded like never before, in terms of speaking engagements, consulting assignments, book royalties, board memberships".

An episode from Ramanaya :-

When Hanuman meets Rama and Lakshmana, sighted by Sugriva who sends the persuasive speaker Hanuman to find out all about them by scrutinizing their appearance, talk, gestures and other similar features that might indicate what they have in mind. If they seem to be friendly and well-disposed win their confidence and enlist their support to fight their enemy Vali. Hanuman at their first face to face meeting addresses Rama in choice words; after hearing Hanuman, Rama gives an assessment of Hanuman's skills as a great communicator.

(Contd. on Page 9)

Chairman's Communique...

Dear Esteemed Member,

Namasthe,

REMOVING THE GST LOGJAM

In an unprecedented gesture, the Central Government has demonstrated its firmness to bring in GST by reaching out to the opposition for arriving at a consensus on the crucial Constitutional Amendments. This is a highly commendable move and shows the serious intent of the Government to rationalise the Indirect Tax Systems in the Country.

Because of the lack of consensus several deadlines have been missed and the historic opportunity of reforming the tax structure is also lost.

The revenue neutral rate of GST has been determined as 17%-18%; this is the rate at which majority of the goods and services would be taxed and consequently neither the Central Government nor the State Governments would lose significantly.

Hopefully, the stalemate will be resolved and the amendments will see the light of the day in the winter session, thereby giving room for the landmark tax regime of the Century- for the Century.

MANDATORY CPE REQUIREMENTS:

To enable the Members to complete the minimum CPE credit hours of structured learning in this calendar year, we have planned for a substantial number of programmes during the month, where we have as many as 12 Events conferring a total CPE Credit of 74 Hours.

The maximum number of events are planned on 17th, 18th and 19th of December 2015, i.e., just before the Christmas holidays. Members are requested to appropriately plan and register in advance and to use this opportunity to enrich their knowledge and incidentally accumulate the CPE Credit Hours. Please refer the Calendar of Events for complete details.

DIGNITARIES INVITED FOR EVENT OF DEC. 2015

I am delighted to inform you that the following esteemed dignitaries would be addressing the Members during December 2015 :

1. **Mr. V.K. Girija Vallabhan, Principal Director of Commercial Audit, CAG, Bengaluru**, is going to inaugurate the One Day Workshop on Internal financial Controls under Companies Act 2013, on 17.12.2015

2. **Mr. M.Jaya Kumar, Honorable Registrar of Companies, Karnataka**, will be inaugurating the Impact Workshop on INC-29 on 17.12.2015.
3. **CA. Upender Gupta, The Commissioner, GST, CBEC**, will be inaugurating the 2 Day Workshop on Real Estate scheduled on 18.12.2015. He has also consented to render his Key Note Address.

I request the Members to avail this opportunity by registering for the event(s) of their choice.

ICAI COUNCIL ELECTIONS :

Democracy may not assure good governance if the voter's turnout is poor. Unfortunately, the voter's turnout in Bengaluru is not so encouraging. Out of 11866 eligible voters, only 3,587 have voted (information as at 6:00 PM, on 05.12.2015, pending just 2 hours of voting left) and the reason for the poor turnout remains unexplained. Probably, e-voting alone may solve this issue.

DIGNITY IN DEATH IS MORE IMPORTANT THAN DIGNITY IN LIFE :

I heartily thank Mr.Gururaja Karajagi for providing the heart touching article, narrating and sharing an incident of his life with Mother Teresa. While reading the Article, I was tongue tight several times and consciously controlled my tears; I express my gratitude for providing this extraordinary masterpiece filled with a divine message.

NEWS TO PONDER :

In an interview to the CBS News, BARACK OBAMA has said : **"It is in our interest to help them (India) develop. Because they're not going to say, okay, we're just going to stay poor ... they're going to want cars and refrigerators and air conditioning, just like we have. It's in our interest to say to them, 'here's technologies that can allow you to leapfrog over the dirty technologies; do it in a cleaner, smarter way'.**

We do that not out of charity; we do it because ... here's one thing you can't do. You can't build a wall to the atmosphere. You can't build a border wall when it comes to carbon emissions or global temperatures or the oceans"

His intention appears to be promising for India, its economy, ecology and environment and by and large for the entire Universe.

With warm regards

Dhanyavada

CA. Allama Prabhu M.S.

Chairman



KYC

Know Your City

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Heritage of Namma Bengaluru - 10

Can We Revive and Rejuvenate River Vrishabhavathi?

As mentioned earlier, before the sale transaction, Khasim Khan had ruled Bengaluru as the Mughal Viceroy for three years(i.e., from 1687AD to 1690AD). In these three years, lot of significant changes took place. Urdu replaced Marathi. Jumma Masjid was constructed. Lands were endowed to Masjid's and Darga's. The importance that was hitherto available only for Temples was extended to Masjid's too. Khasim Khan fortified the Bengaluru fort as well as the army.

All religions, all languages, all people found a respectable place in Bengaluru and the people of Bengaluru lived harmoniously.

Chikka Deva Raja Wodeyar(1673-1704), the 14th successor of the Wodeyar Dynasty of Mysore, was a very affluent king. He was also called "Navakote Narayana", the title referring his rich magnitude of prosperity. The Golden throne* he adorned is said to belonging to Pandavas.

The Mysore Wodeyar acquiring Bengaluru for 3,00,000 was a Sedulous master stroke ! By obtaining a well planned city blessed with good weather throughout the year, good and timely rainfall, fertile soil, ample water bodies for all purposes and already yielding considerable dividends, was a delightful investment. He cultivated friendship with the Mughals; further, he intelligently managed to extend his kingdom in those places that did not contradict the interest of Mughals.

After acquiring Bengaluru, Chikka Deva Raja Wodeyar concentrated on its multifaceted development. He expanded the roads and promoted trading activities. He constructed many Administrative offices and expanded his Military force.

He sent Karinika Linganniah, one of his efficient officer, to Delhi for studying the system of administration, law and order of Aurangzeb and implemented many reforms in his system. Karinika Linganniah was a great diplomat and a persuading orator. His visit to Delhi was fruitful as it further consolidated the friendship and resulted in further promoting the goodwill between the Mughal Emperor and the Mysore King. Pleased with the proceedings narrated by Karinika Linganniah, the Mughal Emperor Aurangzeb further extended his support and also conferred Chikka Deva Raja Wodeyar with the titles "Raja Jagadeva" and "Raja Chikkadevaraja Muhammadshah"

In Bengaluru, a large place was selected for conducting all the civil and revenue administrative activities and to carry out all the affairs of the royal secretariat. This place subsequently became the Attara Khacheri where the Honorable High Court of Karnataka is now situated. He reorganized the entire administration in to 18 Principal departments (Chawadi's) and appointed Revenue Officers, Police and Security Officers and other staff for running the same. One more significant achievement was that of implementing the postal system.

Chikka Raja Wodeyar ruled till 1704. Thereafter, four weak Kings came and ruled, before Hyder Ali made his entry in 1759.

* The Golden Throne was in Hastinapura. Chieftain Kampila Raya(1300-1327) [the feudatory of Hoysala emperor Ballaalaraya – III,] brought this to Penagonda and kept it secretly. In 1336, Vidyananya, the royal preceptor of Vijayanagar Kingdom, caused to deliver it to Harihara – 1 (Hakka). After the massacre at Hampi, the Throne was secretly shifted to Srirangapatna where the feudatory of the Vijayanagara Empire was ruling. In 1610, this grand golden throne was handed over to Raja Wodeyar, who, after ascending the throne, started the Dasara Celebrations.

COVER PAGE INFORMATION:

1. WATER SOURCE—HAVE WE LOST IT FOR EVER ? CAN WE REVIVE AND REJUVENATE ?

ಯಾ ಬಸವೇಶ್ವರನ ಪಾದದಲಿ ವ್ರಿಶಭಾವತಿಯೆನಿ
ಸಿರೊಂಬನಧಿ ಹುಟ್ಟಿ ಪಶ್ಚಮವಾಹಿನಿಯಾಗಿ ನಡೆಯು
ತು | ಶ್ರೀ | ದ.

This inscription found below the HUGE MONOLITH Idol of Nandi (Bull) at Basavanagudi Temple is said to have been made around 1600AD. In the exact words of B.Lewis Rice, as narrated in Epigraphia Carnatica Vol- IX, the text is as given below:

“At the feet of this (God) Basavesvara the river called Vrishabhavati rose, and flowed with its stream to the west.”

The inscription records that the river Vrishabhavati originates from the place and flow towards West.

Where is it now? The much polluted drainage in Mysore Road flowing towards Kengeri !!

Actually, at the backside of the Bull Temple, we can see a small barred door. Till recently, a board stating “Kalyaanige Daari” “Way to the Stepped Tank” was there and now being removed. If we peep through, we can't imagine even a drained tank.



I went in to the other side of the barred door, there also I could hardly see any traces of the Tank.



Have we lost Vrishabhavati forever?

Can we have a River Revival Project and rejuvenate it?

Who will take the lead?

Kempe Gowda I is accredited for having building many huge Water Tanks to cater to all the needs of the inhabitants of Bengaluru- Drinking, Domestic and Irrigation. All the other successors also dutifully followed his concept and Bengaluru was blessed to have maximum number of water bodies.

But now, almost all the water tanks have been encroached and is now replaced by residential layouts, Parks, Playgrounds, Bus Stop etc.

2. CARVED STONE UMBRELLA:

Adjacent to Gavi Gangadhareshwara Temple we have Hari Hara Gudda, a Hillock, which is now converted in to a beautiful park.

Here, we find a very big carved stone umbrella (around 6 feet in diameter), supported on a stone cylindrical structure of one foot diameter and approximately 13 feet high. Said to have been built during Chola Period (nearly 1000 years back), the purpose of its erection remains mysterious.

This stone structure is approximately 50 mts away from the Circular Discs (Surya Pana and Chandra Pana) which are in the Gavi Gangadhareshwara Temple Complex and lies in an elevated place compared to them. Why was this stone Umbrella carved and placed on a strong pedestal? Was there any nexus between the discs and this structure? Is there any astronomical or astrological significance? No one knows the answers.

3. THE MERRY GROUNDNUT FAIR OF BENGALURU

During the last week of Karthik Masa, the peasants who were growing groundnuts in the neighbouring villages used to offer the first groundnut crop to Nandi and consumed as “Prasad” on that day. Now we have a local festival named as “Kadalekayi Parishes” or the Groundnut Fair. In the olden days, 100's of farmers used to come and sell the ground nuts; now we have the traders. The vibrant event is a real feast for the eyes.



Guest Editorial

Dignity in Death

(Contd. from Page 4)

She continued to work in other's houses as long as her health permitted. When she could not work, she started begging. For the last three days she was suffering from high fever. She had fallen unconscious totally exhausted by fever and hunger. Now the volunteers had brought her here. A message was sent to her son so that he can meet and take her home. But he refused to come. The old lady was cursing her son and holding him responsible for her present situation. Mother in her own inimitable style was telling her not to speak ill of her son, "mother is a God for the children. If God curses, will it not become true? Mother should always wish well for the children." She continued pressing her legs.

May be because of the medicine or due to the affectionate attention she received, the lady showed distinct improvement in her health. In the evening she regained consciousness. She was cheerful and was now speaking good about her son. She was nostalgically recollecting those lovely incidents when her son was a small child and played pranks with her. "Yes" she said, "Mother was right. I should not curse my son. Actually he is a very good boy. He is under wrong advice. I am sure, one day he would come and take me home." She smiled. And then she rested. We all thought that she would recover completely.

After midnight, the lady developed complications and her blood pressure started falling. Doctors were called in. In spite of best efforts, the lady died at 2.30 in the morning. Again a message was sent to her son. He declined and told the volunteers that he had nothing to do with her. Probably he was upset that his mother died in a missionaries place and brought bad name to the family. At that time, Mother suddenly turned to me and asked, "Are you a Hindu Brahmin?" I said, "Yes". "Would you do the rituals for this lady?" she asked. I was shell shocked. I come from an orthodox family where going to the crematorium when your parents are alive is unthinkable and performing rituals

there is beyond imagination. I thought for a second. I remembered that I had promised the Mother to be a volunteer. Volunteers have no options. After a few seconds hesitation, I said 'yes'. Early morning I went and performed all the rituals that a son should perform for his mother. May be this lady was my mother in any of my previous births.

Later I asked Mother, "you did so much for this lady but she did not survive. Don't you think that all your efforts are wasted?" Her grayish green eyes met mine. Let me tell you that I have not seen a more wrinkled face than hers and a more beautiful face than hers. She smiled. "No son, nothing is wasted. I knew that her health was delicate.

I wanted her to have dignity in death." I was stunned. I had never heard anything like this. I had only heard about dignity in life. What is this dignity in death? I asked her. Her answer made me dumb. Even after so many years, when I think of her answer, I get thrilled. She said, "Son" and kept her little finger on my chest, which I still feel.

"Son, this little heart of yours beating continuously is the temple of God. It should always be clean. Normally it gets filled up with dirt such as anger, jealousy, hatred, selfishness. When we die and go up to see God, His temple must be clean. Otherwise you cannot see his lovely face. Did you see that the heart of the lady was filled with anger, helplessness, and frustration? What happened to her in the evening? She had cleaned her heart from all those negative feelings and was cheerful and positive. Her temple of God was clean and would certainly be able to go and see God in the eyes and tell Him, **'God, I have come back as clean as you had sent me.'** That, I call as the dignity in death. **If one has the purity of heart in the last minute of his life, he can see God. That is dignity in death"**

I have thought about it several times in my life. I have seen many people who have shown remarkable dignity in life. Some really had dignity, some managed to show dignity, some wore masks and some manipulated dignity. This may be easy. But **to have dignity in death truly demands purity because at that time there is no pretence, no one to please and nothing to gain.** I had learnt a message from the Mother that dignity in death is more important than the dignity in life.

Clinical Communication

(Contd. from Page 4)

1. **Learned** - He knows the nuances of speech, and he is a very learned.
2. **Grammar** - His grammar is perfect. He spoke long without a single grammatical mistake.
3. **Body Language** - Neither in the face nor in the eyes, the forehead, the eyebrows or other features could you detect any flaw that might detract from the beauty of the speech.
4. **Precise** - Neither verbose nor indistinct and obscure
5. **Correct Pitch** - Neither too slow, nor too fast, his speech is delivered in a voice i.e., pitch in the middle region and issues from the chest and the throat.
6. **Captivating Speaker** – His cultivated utterance with the words pronounced distinctly giving each syllable its due weight, neither slurred over nor long drawn out.
7. **Very Soothing** – A ravishing speech that ranges through the three octaves.

Hanuman after Rama befriends Sugriva, is sent as an emissary to Ravana at Srilanka. After locating Sita in Ashokavana, Hanuman is brought before Ravana, a perfectly clinical communication by Hanuman:

1. **Assess the addressee's strength** - Hanuman looking at the mighty Ravana, thought, How handsome! How courageous! How pious looking! How lustrous! You the king of Rakshasas have all the marking of greatness, but alas, your unrighteous conduct (like a virus or radioactive substance entering a healthy body) has neutralised all your strengths, so thinking Hanuman is no more afraid of Ravana and feels comfortable.
2. **Under-estimate the messenger** – Ravana under-estimates Hanuman, instead of directly talking to him, he asks his Chief Minister to query Hanuman. It may be recalled Ravana on his death bed regrets, and tells Rama that he under-estimated Hanuman.
3. **Wholesome Counsel** – Hanuman says












I have a wholesome counsel from Sugriva to I venture to utter which is good for your Welfare.

4. **Knowledge without application** - You know all about Dharma and Artha. You have very great austerities to your credit. One so wise as you should not keep by force another man's wife.
5. **Know another man's strength** - Rama is a powerful king and you can ill afford to offend him.
6. **No Set-Off** - Do not destroy the benefits of your good deeds, bad deeds do not offset the good deeds, they are independently rewarded and punished. The fruits of Dharma are never enjoyed in conjunction with the fruits of Adharma. Dharma is followed only by its own results. Dharma doesn't annul Adharma.
7. **Warning** - The rewards for your good deeds are coming to an end. Your bad days are beginning. Be careful! Therefore stop drawing a noose around your neck, the noose of death that you yourself have placed there.
8. **Strong Message** - As a King, don't allow your country, your friends and family to be destroyed by the powerful Rama. A ruthless focus on Ravana's shortcomings.
9. **Don't shoot the messenger** – Enraged by the words of Hanuman, Ravana asks his Staff to kill Hanuman; his brother wise Vibhishana tells Ravana that Hanuman is a messenger who has conveyed the message of Sugriva and it is improper to kill the messenger. There upon Ravana decides on a punishment and Hanuman's tail is set fire.
10. **Turning disadvantage to Advantage** – Hanuman seeing that his tail is set on fire decides that it should not go waste; with that fire he destroys Lanka spreading the fire across all building.
11. **Anger in haste and repent** – Hanuman when in his anger, burnt Lanka suddenly forgot that Sita was there and the fire may affect her; he repents for his act of anger; he soon finds that Sita is safe.






Hanuman addresses these words in a very soft language, never wanting to hurt him but at the same time, communicating a strong message to act.



CALENDAR OF EVENTS - DECEMBER 2015

Date/Day/ Time	Topic / Speaker	CPE Credit
02.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet KVAT Audit and its Procedures CA. Annapurna D Kabra VENUE: Branch Premises	 2 hrs
09.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Major Compliance Issues under Companies Act 2013 CS. R. Parthasarathy VENUE: Branch Premises	 2 hrs
11.12.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS An update Programme on Companies Act-2013 CA. K. Gururaj Acharya & CA. Ashok Kumar VENUE: Branch Premises	  2 hrs
12.12.2015 Saturday 05.00pm to 08.15pm	Intensive Workshop on International Taxation - 7 Article : 7 - Business Profits CA. K.K. Chythanya VENUE: Branch Premises	 3 hrs <i>No Delegate Fee</i>
12.12.2015 10.00am to 5.30pm	Certificate Course on Concurrent Audit of Banks - 12th & 13th, 19th & 20th, 26th & 27th December 2015 VENUE : Jnanadayini Hall, Professional Excellence Block, Race Course Road, Sub Branch	<i>REGISTRATIONS CLOSED</i> 36 hrs
16.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Ramifications of Amendment to Section 269SS & 269T of the Income Tax Act CA. H. Ganpatlal Kawad VENUE: Branch Premises	 2 hrs
17.12.2015 Thursday 9.45am to 5.45pm	One Day Workshop on Internal Financial Controls (IFC) under Companies Act - 2013 Co-ordinator CA. K. Gururaj Acharya VENUE: Devraj Urs Auditorium, Opp. Bangalore Branch, Vasanth Nagar, Bengaluru-52	<i>Details in Page No. 12</i> 6 hrs
17.12.2015 Thursday 6.15pm to 8.15pm	Workshop on INC-29 Chief Guest: Sri. M. Jayakumar, Hon'ble ROC - Kranataka VENUE: Devraj Urs Auditorium, Opp. Bangalore Branch, Vasanth Nagar, Bengaluru-52	 2 hrs <i>No Delegate Fee</i>
18.12.2015 19.12.2015 Fri. & Sat. 9.45am to 5.15pm	Two Day Workshop on Taxation of Real Estate Transactions Delegate Fees: For Members ₹ 2,000/- & for others - ₹ 11,450/- VENUE: Devraj Urs Auditorium, Opp. Bangalore Branch, Vasanth Nagar, Bengaluru-52	<i>Details in page No. 13</i> 12 hrs
18.12.2015 Friday 6.00pm to 8.00pm	PRACTICE ALERT - DISCUSSIONS FEMA CA. S. Parthasarathy & Mr. L. Bharath VENUE: Devraj Urs Auditorium, Opp.B'lore Br., Vasanth Nagar, Bengaluru-52	  2 hrs
19.12.2015 Saturday 05.30pm to 08.45pm	Intensive Workshop on International Taxation Article 8 - Shipping, Air Transport & Article 9 - Associated Enterprises CA. Vishnu Moorthi H. & CA. Vishnu Bagri VENUE: Devraj Urs Auditorium, Opp.B'lore Br., Vasanth Nagar, Bengaluru-52	  3 hrs <i>No Delegate Fee</i>

CALENDAR OF EVENTS - DECEMBER 2015 & JANUARY 2016

Date/Day/ Time	Topic / Speaker	CPE Credit
23.12.2015 Wednesday 6.00pm to 8.00pm	Study Circle Meet Ind AS 101 - First Time Adoption CA. Rakesh Agarwal VENUE: Branch Premises	 2 hrs
25.12.2015 Friday	Holiday on account of Christmas	—
02.01.2016 Saturday 05.30pm to 08.30pm	Intensive Workshop on International Taxation Article 10 - Dividends VENUE: Branch Premises No Delegate Fee	3 hrs
06.01.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Basics of Income Computation Disclosure Standards (ICDS) CA. Sudheendra B.R. VENUE: Branch Premises	 2 hrs
13.01.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Basics of FEMA CA. Vivek Mallya VENUE: Branch Premises	 2 hrs
16.01.2016 Saturday 05.30pm to 08.30pm	Intensive Workshop on International Taxation Article 11 - Interest VENUE: Branch Premises No Delegate Fee	3 hrs
20.01.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Basics of Domestic Transfer Pricing CA. Prashanth.G.S VENUE: Branch Premises	 2 hrs
27.01.2016 Wednesday 6.00pm to 8.00pm	Study Circle Meet Basics of IFRS CA. Vinti Varma VENUE: Branch Premises	 2 hrs

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EDITOR :
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Workshop on Internal Financial Controls (IFC) under Companies Act - 2013

on **Thursday, 17th December 2015** at 09.45am to 5.45pm
at S. Narayanan Auditorium, Bangalore Branch Premises, Bengaluru

6 hrs
CPE

Timings	Topics	Speakers
09.45am to 10.15am	Inaugural session Chief Guest: Shri V.K Girijavallabhan , IAAS <i>Hon'ble Principal Director of Commercial Audit, CAG, Bangalore</i>	
10.15am to 11.15am	Internal Financial Controls (IFC) - Provisions in the Companies Act, 2013 - Concept, Scope & Applicability - Need for evaluation vis-a-vis Reporting Requirements - Fraud Reporting U/S.143(12) of the Companies Act- 2013.	CA K. Gururaj Acharya <i>Partner, K.G.Acharya & Co.</i> 
11.15am	Tea Break	
11.30am to 12.30pm	Companies Perspective of IFC - Components of Internal Control including Operation Control & Fraud Prevention. - Evaluation of deficiencies in IFC System.	CA Abdul Majeed J Shaikh <i>Partner, Price Waterhouse & Co Chartered Accountants LLP</i> 
12.30 PM to 1.30 PM	Auditors reporting responsibility on IFC - Guidance Note on Audit of "Internal Financial Controls over Financial Reporting (ICFR)" issued by ICAI. - Reporting on ICFR Vis-à-vis SA 700-705-706.	CA V. Balaji <i>Partner, Deloitte</i> 
01.30pm	Lunch Break	
02.30pm to 03.30pm	Evaluating controls in a computerized environment - IT Risks - Evaluation of IT Controls	CA A Rafeq <i>MD, Wincer Infotech Ltd,</i> 
03.30pm	Tea Break	
03.45pm to 04.45pm	Auditors reporting responsibility on IFC - Test of Controls and performing walk through with templates. - ICFR wrt Small & Medium Companies.	CA V. Balaji <i>Partner, Deloitte</i>
04.45pm to 05.45pm	- Audit Risk & Audit Documentation - Peer / Quality review compliance	CA Sunil Bhumralkar <i>Partner, SR Batliboi & Associates LLP</i> 

CA. Allama Prabhu M.S.
Chairman

CA. K. Gururaj Acharya
Co-ordinator

CA. Geetha A.B.
Secretary

DELEGATE FEES: FOR ICAI MEMBERS : ₹ 1,000/-
FOR OTHERS : ₹ 5,725/-

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

For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3500 / 3513**

Email : blrregistrations@icai.org | Website : www.bangaloreicai.org






Two Day Workshop on Taxation of Real Estate Transactions

On 18th & 19th December 2015

Venue: Devraj Urs Auditorium, Opp to Bangalore Branch, Vasanth Nagar

12 hrs
CPE

Day 1: Friday, 18th December 2015

Timings	Topics / Speakers
9.00am	Registration
10:00am	Inaugural Session <i>Key Note Address by</i> Chief Guest: CA Upender Gupta <i>Hon'ble Commissioner-GST, CBEC</i> 
11.15am	Tea Break
11.30am	Foreign Investment in Real Estate (Covering NRI, PIO & FDI) CA. Vivek Mallya 
12.30pm	Analysis of POT & POP Rules, Issues in Exemptions & Abatements under Service Tax CA. Keyur Shah 
1.30pm	Lunch Break
2.30pm	Hindu Law : Inheritance & Succession - Recent important developments (Including analysis of Supreme Court Land Mark Judgement - Prakash and Others Vs. Phulavati and others) Mr. Arvind Raghavan, Advocate 
3.30pm	TeaBreak
3.45pm to 5.15pm	ICDS on Construction Contracts vs. Accounting Standards -Revenue Recognition CA. H. Padamchand Khincha 

CA. Allama Prabhu M.S.
Chairman

CA. Ashok Raghavan
Co-ordinator

CA. Geetha A.B.
Secretary

DELEGATE FEES:

FOR MEMBERS: ₹ 2,000/- (Fee includes background material)








FOR OTHERS : ₹ 11,450/-

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

For Registration, Please contact: **Ms. Geetanjali D.**, Tel: **080 - 3056 3500 / 3513**

Email : blrregistrations@icai.org | Website : www.bangaloreicai.org

Day 2: Saturday, 19th December 2015

Timings	Topics / Speakers
9.45am	Revenue Recognition - Case Studies CA. K. Gururaj Acharya 
11.15am	Tea Break
11.30am	Structuring of Transactions in Real Estate (incl. JD & Rev. Sharing Agreements) CA. Ashok Raghavan 
1.15pm	Lunch Break
2.15pm	GST - Impact on Real Estate sector CA. S. Venkataramani 
3.15pm	Tea Break
3.30pm to 5.00pm	PANEL DISCUSSION : Works Contracts - Implications of VAT & Service Tax PANELISTS: CA. S. Venkataramani CA. T.R. Rajesh Kumar CA. N.R. Badrinath CA. Annapurna D Kabra MODERATOR : CA. S. Ramasubramanian <div>     </div>



DIGEST OF RECENT DECISIONS OF THE SUPREME COURT AND HIGH COURTS ON INCOME TAX

CA. K.S. Satish, Mysore



INCOME FROM HOUSE PROPERTY

In CIT v. Sane & Doshi Enterprises (2015) 377 ITR 165 (Bom) where the assessee-firm utilised the capital contributed by its partners for construction of a commercial complex, the Bombay High Court held that the interest paid by it on the capital contributions of the partners was deductible under section 24(b) as the interest paid on the capital contributions of the partners was related to the commercial complex which was let out.

INCOME

The Kerala High Court in The South Indian Bank Ltd. v. CIT (2015) 279 CTR (Ker) 179 has taken the view that the excess amount found in the course of cash transactions at the branches and in the case of automatic teller machines of the assessee-bank constituted its income.

REVENUE EXPENDITURE

Expenditure of Rs. 6,43,47,284 incurred by the assessee-company for production of television films and commercials constitutes revenue expenditure opined the Bombay High Court in CIT v. Proctor & Gamble Home Products Ltd. (2015) 377 ITR 66 (Bom).

SECTION 40A(3)

The Madras High Court has in CIT v. Amman Steel & Allied Industries (2015) 377 ITR 568 (Mad) expressed the view that where the income of the assessee was arrived at by applying a gross profit rate on the estimated turnover, the Assessing Officer could not scrutinise the amount incurred by the assessee

on purchases for the purposes of disallowance under section 40A(3).

CHAPTER VI-A

In Guttigedarara Credit Co-operative Society Ltd. v. ITO (2015) 377 ITR 464 (Kar) where the assessee, a co-operative society engaged in the business of providing credit facilities to its members, deposited the interest income derived from business and the capital not immediately required to be lent to the members in short-term deposits in banks so as to earn interest, the interest earned by the assessee-society on such deposits in banks is attributable to the profits and gains of the business of providing credit facilities to its members and, therefore, is entitled to deduction under section 80-P(2)(a)(i) held the Karnataka High Court.

ASSESSMENT

Where the notice under section 143(2) was served upon the assessee beyond the period of limitation, that is, beyond the period of twelve months from the end of the month in which the return of income was filed, the assessment order passed under section 143(3) was void ab initio ruled the Gujarat High Court in CIT v. Gujarat Foils Ltd. (2015) 377 ITR 324 (Guj).

REASSESSMENT

The Bombay High Court in Godrej Industries Ltd. v. DCIT & Ors. (2015) 377 ITR 1 (Bom) has taken the view that the validity of a notice for reopening of an assessment has to be tested on

the basis of the reasons recorded at the time of its issue and these reasons cannot later be added to, deleted from or supplemented.

INTEREST UNDER SECTION 234B

Form ITNS 150 has to be treated as part of the assessment order and, therefore, interest levied under section 234B by calculating it therein is valid though there was no direction in the assessment order to levy interest under section 234B ruled the Supreme Court in CIT v. Bhagat Construction Co. (P) Ltd. (2015) 279 CTR (SC) 185.

FEE UNDER SECTION 234E

The Karnataka High Court has in Lakshminirman Bangalore (P) Ltd. & Ors. v. DCIT & Ors. (2015) 279 CTR (Kar) 245 held that section 234E does not suffer from any vices for being declared to be ultra vires of the Constitution of India and that it is intra vires the Constitution of India.

TAX DEDUCTION AT SOURCE

In Japan Airlines Co. Ltd. v. CIT (2015) 377 ITR 372 (SC), the Supreme Court ruled that the landing and parking charges paid by the assessee-company to the Airports Authority of India were not for use of land per se but for various services and facilities provided in connection with aircraft operation at the airport aimed at safe landing and parking of aircraft and safety of passengers, such charges could not be treated as rent and tax was not deductible thereon under section 194-I.

COMPANY LAW UPDATES & AUDITOR'S RESPONSIBILITY REGARDING INTERNAL FINANCIAL CONTROLS (IFC)



CA K. Gururaj Acharya

I. Important Updates - November 2015

1. MCA Updates

1.1 MCA Updates – Last date for Annual filing in **AOC – 4** & **MGT – 7** without additional fee **Further extended to 30th December 2015**.

The last date for filing of **AOC-4** (for Standalone Financial Statements), **AOC-4 (CFS)** (for Consolidated Financial Statements), **AOC-4 XBRL** (for Class Companies^(#)) and **MGT-7** (Annual Return) for **FY 2014-15** without additional fees [wherever additional fee is payable] has been extended to **30th December 2015** (vide **GC No. 15/2015 dated 30/11/2015**)

(#) Companies required to file e-Form AOC-4 XBRL –

- Listed Co's and their Indian Subsidiaries
- Co's with Paid up Capital \geq INR 5 Crore
- Co's with Turnover \geq INR 100 Crore

1.2 Companies (Share Capital and Debentures) Third Amendment Rules, 2015 dtd 06.11.2015

As per Rule 18 (1)(a) of Chapter IV of The Companies (Share Capital and Debentures) Rules 2014, Secured Debentures may be issued by a Company [among other conditions] provided the date of its redemptions does not exceed 10 years from the date of its issue.

The said Rule further provides for the following class of companies eligible to issue secured debentures for a period > 10 years but < 30 Yrs -

- Companies engaged in setting up of infrastructure projects;
- 'Infrastructure Finance Companies' as defined in clause (viia) of sub-direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
- 'Infrastructure Debt Fund Non-Banking Financial companies' as defined in clause of (b) of direction

3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011".

- Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years

[Note: The underlined portion is amended vide the Amendment Rule, 2015 dated 6.11.2015]

1.3 Changes in MGT-7 (Annual Return) [vide Companies (Management & Administration) Third Amendment Rules, 2015 dated 16.11.2015]

Old	New
IV. (iv) Indebtedness including debentures (Outstanding as at the end of financial year)	
Secured Loans excluding deposits	Secured Loans <u>(including interest outstanding / accrued but not due for payment)</u> excluding deposits
Unsecured Loans excluding deposits	Unsecured Loans <u>(including interest outstanding / accrued but not due for payment)</u> excluding deposits
VI. Share holding pattern	
(b) *SHARE HOLDING PATTERN – Public	(b) *SHARE HOLDING PATTERN – Public / <u>Other than promoters</u>
XI. Matters related to certification of compliances and disclosures	
Whether company has made all compliances and disclosures during the year	* Whether the company has made compliances and disclosures <u>in respect of applicable provisions of the Companies Act, 2013</u> during the year

[Note: The underlined portion is amended vide the Amendment Rule, 2015 dated 16.11.2015]



2. ICAI Updates reg. Operating provisions of Companies Act, 2013.

2.1 Technical Work in Progress at ICAI

For the benefit of members, ICAI is considering to finalize the following draft **Guidance Notes w.r.t. Companies Act, 2013** in the forthcoming Council Meetings:

1. Some Important Issues Arising from Schedule II to the Companies Act, 2013.
2. Schedule III to the Companies Act, 2013.

II. Auditor's Responsibility regarding Internal Financial Controls (IFC)

Auditor's report issued U/s. 143(3) for ALL COMPANIES [including small company, OPC, Dormant Company] **inter alia shall state** – Whether co. has adequate IFC system in place & the operating effectiveness of such controls.

Whereas this reporting on IFC was made optional for FY 2014-15, it is mandatory for FY 2015-16.

S. 134(5)(e) dealing with "Director's Responsibility Statement" in Directors' Report has given the meaning of IFC by way of an Explanation as follows:

IFC'S means policies & procedures adopted by the company for ensuring orderly & efficient conduct of its business, including:-

- a. **Adherence to company's policies;**
- b. **Safeguarding of its assets;**
- c. **Prevention & detection of frauds & errors;**
- d. **Accuracy & completeness of accounting records &**
- e. **Timely preparation of reliable financial information.**

ICAI Guidance Note on Audit of "Internal Financial Controls" over Financial Reporting.

AASB of ICAI has brought out the above Guidance Note in September 2015, covering the following aspects:

- a. Scope of reporting on IFC under Companies Act 2013,
- b. Essential components of internal controls,
- c. Technical guidance on audit of IFC,
- d. Implementation guidance on audit of IFC,
- e. Illustrative Engagement Letter,
- f. Illustrative Management Representation Letter,

- g. Illustrative Reports on IFC – both for standalone & CFS.
- h. Illustrative Risks of Material Misstatement, Related Control Objectives & Control Activities,
- i. Text of Standard on Internal Audit (SIA) 5 – Sampling,
- j. Examples of Control Deficiencies.

The gist of the above Guidance Note is summarized below

- a. IFC is a larger concept consisting of the following components:
 - Internal Control Over Financial Reporting (ICFR),
 - Operational Control &
 - Fraud Prevention.

ICFR is defined as "A process designed to provide reasonable assurance regarding reliability of financial reporting & preparation of FS for external purposes in accordance with GAAP".

ICFR is a component of IFC and consists of the following sub components:

- **Maintenance of Financial Records** that in *reasonable detail*, accurately & fairly reflect the transactions & disposal of assets.
- **Authorization of Transactions i.e.** Provide *reasonable assurance* that transactions are recorded in FS only in accordance with GAAP and that Receipts & Payments of the company are being made only with authorizations of management & directors.
- **Safeguarding Assets Of Co i.e.** Provide *reasonable assurance regarding* prevention or timely detection of unauthorized acquisition, use, or disposal of co's assets that could have a material effect on FS.

Setting up of IFC and ensuring the operating efficiency is primarily the responsibility of the Company's management. The Auditor of the Company needs to give his opinion on whether the company has in place the ICFR and such ICFR were operating effectively as at the year end.

The scope for reporting on ICFR is significantly larger and wider than the reporting on internal controls under the CARO. Under CARO, the reporting on internal controls is limited to the adequacy of controls over purchase of inventory & fixed assets and sale of goods & services. As such, CARO does not

require reporting on all controls relating to financial reporting and also does not require reporting on the “adequacy and operating effectiveness” of such controls.

b. Analysis of control components for company As per SA 315

The five components of any internal control as they relate to a financial statement audit are:

- i. Control Environment
- ii. Entity's Risk Assessment
- iii. Control Activities
- iv. Monitoring of controls
- v. Information & Communication

The Controls could be either Process level controls or an entity level control and from the perspective of ICFR, Process level controls are to be looked into. The following chart explains the process of process level controls:

Internal control		
Process	Exercise	
	One Time	Ongoing
Scoping	Detailed scope	Update for changes
Design Assessment	Validate & document design	Seek confirmation on changes
Design Gap Remedy	Corrective action	
Operating effectiveness (OE)	Prepare test strategy & plan	Test controls
Overall assessment & reporting	Reporting approach	Report

c. Audit Report post IFC:

ICFR reporting will be by way of a separate report and the reference in the main report under the heading “Report on legal and other regulatory requirement” would be as follows:

“With respect to the adequacy of the internal financial controls over financial reporting and the operating effectiveness of such controls; refer to our separate Report in “Annexure A”.”

Thus, WEF FY 2015-16, the main Audit report will have 2 annexure i.e. CARO (wherever applicable)

and a Report on the IFC under S.143 (3) (i) of the Companies Act, 2013.

The following additional points need to be noted with respect to the Audit report on IFC:

- i. IFC reporting would be applicable **only for Year-end reports and not for interim financial statements**, such as quarterly or half-yearly financial statements, unless such reporting is required under any other law or regulation.
- ii. IFC reporting by the auditor is **required**, even in the case of **consolidated financial statements**.
- iii. The **auditor should report** if the company has **adequate internal control systems** in place and whether they were operating effectively **as at the balance sheet date**.

Whilst the testing is carried out on the transactions recorded during the year, the reporting is as at the balance sheet date.

So as an example, if the company's revenue recognition was erroneous through the year under audit but was corrected, including for matters relating to internal control that caused the error, as at the balance sheet date, the auditor is not required to report on the errors in revenue recognition during the year.

On the other hand, if the error continued as at the year end – Control failure rectified as at the signing date, the auditor would still be required to report the control failure as at the BS date in his audit report.

Conclusion:

Future audits would be “Control based qualitative” audits rather than “Substantive quantitative” audits. This would require involvement of seniors who are qualified & experienced in audit as the auditor in the new scenario has to **“Hear what is not being said”** to report whether control process is complete & Robust. The year one challenges would also be humongous.

It is imperative for the auditors to start their audit, especially on IFC, right away and much before the BS date and correct any control failures which could enable the company with “Remediation” measures by the BS date to come out with clean IFC report.



DIGEST ON RECENT DECISIONS UNDER COMMERCIAL TAX LAWS

CA Annapurna Kabra



1) *Ciftech Solutions Private Limited Peenya 2nd stage Bengaluru Vs State of Karnataka and Others (2015)(83) Kar.L.J. 270 (HC)*

- The assessee is not required to maintain books of accounts beyond five years under section 40 and by virtue of amended provision the time barred assessments cannot be reopened.
- Sub section (1) and (2) of section 40 came to be substituted and two provisos were introduced where under the period of limitation for assessment or reassessment was enhanced from five years to eight years relating to any tax period up to the period ending 31.3.2007 namely such assessment or reassessment should be made within a period of eight years after the end of the prescribed period.
- Likewise as per second proviso to sub section (1) of section 40, an assessment or reassessment relating to any tax period commencing from 01.4.2007 upto the period ending 31.3.2012 ought to be made within a period of seven years after the end of the prescribed tax period.
- By Act No 54 of 2013 the substitution of first and second proviso to sub section (1) of section 40 of the Act inserted by Act No 17 of 2012 deemed to have been substituted with effect from 01.4.2005.
- The word "substitution" occurring in the amendment Act No 54 of 2013

acquires significance. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision.

- By virtue of such substitution the period of limitation of five years for assessments made under section 38 or reassessment made under section 39 stood enhanced to eight years relating to any tax period upto the period ending 31.3.2007 and for the period commencing from 01.4.2007 to the period ending 31st March 2012 it was enhanced to seven years.
- The petitioner claims that it enables the prescribed Authority to reopen the assessment already concluded and which had attained finality and which could not have been reopened or reassessed in view of the bar of limitation contained in the unamended provision and as such there cannot be retrospective operation of the said provision. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such a conclusion. The law of limitation being a procedural law is retrospective in operation in the sense that it will also apply to proceedings pending at the time of enactment as also to the proceedings commenced thereafter. However where vested right has accrued to another the new provision cannot review or take away accrued vested right

- The Honorable High Court has held that the amendment would authorize making assessment or reassessment before the expiration of eight years from the end of the particular assessment year. Thus it would be immaterial if the period of assessment or reassessment under unamended provision has expired. Therefore the contentions raised by petitioners are not sustainable.

2) *Dream Merchants, Events and Entertainment Groups, Bangalore V State of Karnataka and Another – 2015(83) Kar. L.J.180 (HC) (DB)*

- The appellant/petitioner has been organizing fashion shows in Bangalore for the 'Bangalore Fashion Week'. The Department of Commercial Taxes issued a proposition notice dated 14.08.2013, u/s 6-A(3) of the Karnataka Entertainments Tax Act, 1958 proposing to impose 10% Entertainment Tax on sale of tickets. The appellant filed its reply letter for the above notice on 24.10.2013.
- Thereafter, an order passed on 29.10.2014 and the Entertainment Tax at the rate 10% was levied. Challenging the said order the Appellant filed an appeal before the Joint Commissioner which was dismissed not on merits but on the ground that the appellant has not deposited 50% of the disputed tax.

- Aggrieved by the said order, appellant filed a writ petition which has been dismissed on the ground of alternate remedy of statutory appeal before KAT. Challenging the said order of single judge, the writ appeal has been filed. The petitioner challenged that the proposition notice on the ground that various material on which the Department relied upon, were not provided along with the notice.
 - The petitioner further challenged that the order passed by the AA on the ground that the impugned order of assessment was not a speaking order and though opportunity to show cause was given, but reply by the petitioner was neither discussed nor considered in the order issued by the AA. Hence the same amounts to clear violation of principles of natural justice.
 - A plain reading of the assessment order goes to show that in the order it is acknowledge that the assessee had filed its objections 'which are gone through and found untenable'. Merely stating that the reply is untenable would not be sufficient. What was the reply to the show cause notice and why the same was found to be untenable, has not been stated in the order. Learned counsel for the respondents could not justify the same and has fairly submitted that the assessing officer may be directed to pass a fresh order after considering the reply. The order passed to allow appeal and to quash the order passed by Entertainment Tax officer.
 - The appellant was given liberty to file a further reply to the proposition notice raising all objectives which was raised in the writ petition. The AO shall consider the reply and give opportunity of hearing if necessary and pass a reasoned and speaking order.
- 3) Commissioner of Commercial Taxes, Hyderabad Vs Desai Beedi company 2015(83) Kar. L.J. 245 (SC)**
- The Respondent-assessee is a registered dealer under the Act and under the CST Act. The assessee is engaged in the manufacture of 'beedi' and has its factory and Head Office at Sholapur in the state of Maharashtra and branch office at Sirsilla Road, Kamareddy Town in the state of Andhra Pradesh.
 - The assessee is the branch office of Respondent company. The assessee had purchased 'beedi' leaves for the A.Y. 1989-1990 and 1992-1993 by participating in the auction conducted by the Forest Department, Government of Andhra Pradesh and dispatched the said beedi leaves to the Head Office.
 - Subsequently the branch office of the respondent company claimed an exemption on its turnover for the said assessment years on the ground that the aforesaid transaction is in the nature of inter sate sale and is not exigible to local tax in the state of Andhra Pradesh. The Commercial Tax Officer, Kamareddy, by its order, rejected the claim for exemption and held the sale as single point sale where the assessee is final purchaser within the state and thus taxable in the state of Andhra Pradesh.
 - Aggrieved by the said order, the assessee carried the matter to First Appellate Authority. The FAA set aside the order passed by the Assessing Authority and held that the transactions were interstate sale and liable to tax under the Act
 - The Commissioner of Commercial Taxes issued a show cause notice to the assessee to revise the order passed by the FAA. The assessee contended that after the purchase and delivery of 'beedi' leaves from the seller, the leaves were immediately dispatched to the Head Office at Sholapur as branch transfer and hence the transaction was not liable to tax in the state of Andhra Pradesh.
 - The assessee further contends that the transport of beedi leaves to the Head Office was the primary intention of purchase and the assessee branch merely conducted as the conduit pipe of the head office and therefore transaction must be considered as interstate sale.
 - After considering the aforesaid submissions, the Revisional Authority has observed that the office of assessee at kamareddy is not an agency but a branch office of the respondent company and therefore the transaction effected by the assessee are not agency transactions on behalf of the non-resident principal. Further it is observed that the delivery took place in the State of Andhra Pradesh at the godown of the seller as per the application of the assessee specifying the route of transport and destination to which the goods have to be transported and set aside the order passed by the FAA and restored the order of CTO.
 - Aggrieved by the same, assessee filed an appeal to the High Court. The High Court observed that the goods were purchased for the purpose of transport to the Head Office, the same being implicit in the agreement of the purchase itself that



the goods had to be transported and utilised in the state of Maharashtra, and thus an interstate sale. The High Court held that the respondent was not excisable to tax and set aside the order passed by the Revisional Authority.

- Aggrieved by the aforesaid judgement and order passed by the High court, The Revenue filed an appeal before the Supreme Court.
- The learned Counsel for the Revenue said that the High Court has erred by declaring the transaction as Inter-State sale. The incidence of sale has no nexus with the transportation and movement of goods to another State for utilisation. Since the transaction between Seller and purchaser under the tender issued by the Seller-Forest Department gets concluded at the payment of goods by the purchaser. The subsequent transaction to the destination does not have any association with the sale transaction and therefore, the said sale could not be qualified as the Inter-State sale and does attracts tax.
- The tender schedule, as issued by the seller, also stipulates that the purchaser should remove the stocks from the godowns within 30 days of issue of delivery orders failing which the purchaser has to pay the godown rent other expensed on watch and ward insurance etc., Further the seller shall not be responsible for any deterioration in the quality of beedi leaves during the storage. Based on this stipulations, it is clear that the delivery of the goods is complete at the godown of the seller on payment of the amount of the agreed consideration.
- The event of sale of goods by seller and the movement of goods from

Andhra Pradesh to another state are independent of each other. There is no incident of direct sale between the seller and the head of office. The sales completes when the branch makes payment for purchase. The transport of these goods to Head office located in another state cannot be termed as Inter State sale.

- Therefore the sale or purchase of the “beedi” leaves in the present case do not occasion the movement of the goods outside the State in order to qualify as an Inter-State sale u/s 3(a) of the CST Act and therefore, is not liable to tax under CST Act.
- The appeal is allowed. The judgement and order passed by the High Court is set aside and the order passed by the Revisional Authority is restored.

4) Manyata Promoters Pvt Ltd Vs The State of Karnataka dated 30.9.2015 STRP No 329/2014 and 482-487 of 2014 (HC)

- The Assessee is a private limited company registered under the KVAT Act and is a developer of Special Economic Zone. As a SEZ developer, the assessee is entitled for refund of input tax paid on purchases from the local registered dealers and the contractors.
- The assessee has filed the monthly return and claimed refund of input tax of Rs. 6,17,95,795/-.
- The Assessing Officer, on verification of returns, found that the dealer has claimed input tax credit in a particular tax period related to purchase of some other months. As per section 35(1) of the Act, the dealer shall furnish the return within 20 days or 15 days from the end of the preceeding month. However,

if there is any omission or incorrect statement therein, he can file revised return within a period of six months as provided in section 35(4) of the Act. Since the assessee did not file the revise return within a period of 6 months, rejected the claim for refund of input tax credit and issued an endorsement.

- In response to the above endorsement, the assessee filed an objection to the said proposition notice contending that no where in the KVAT Act it is written that the purchasing dealer has to claim the input tax credit in the same month in which the tax invoice is raised by the selling dealers. There are lots of formalities required to be fulfilled between receipt of the Bill and accounted the same in the books of accounts. After receipt of the bills, measurement, certification about the quantity and quality of the work and fulfilling other formalities takes one or two months. On fulfilling the said formalities, these bills were processed in the accounts section and then finally accepted and accounted in the books of accounts. Hence, it is unavoidable that the bills raised by the suppliers in a particular month are processed only in subsequent month.
- The Assessing Authority, examined the objections filed by the dealer and has disallowed the input tax credit to the extent of Rs. 5,18,64,074/- while granted the refund of input tax credit to the extent of Rs. 84,95,621/-.
- Aggrieved by the same, the assessee preferred an appeal before the First Appellate Authority. The FAA allowed the appeal in part and gave certain relief.

- Aggrieved by the same, again an appeal was filed before the Karnataka Appellate Tribunal.
- As per **Section 20(2) of the KVAT Act** the tax paid on purchase of inputs by the registered dealer who is a developer of Special Economic Zone shall be entitled for refund of such tax or deduction of such tax from output tax payable by such dealer. This is the beneficial legislation made by the Government of India to encourage the people to develop Special Economic Zone. Section 20 is itself a code and not controlled by any other section.
- The Karnataka Appellate Tribunal after examining the provisions of the section 20(2) of the KVAT Act read with the Rule 128(2) & 130A(4) of KVAT Rules, held that the dealer is entitled for the benefit of refund of tax paid on purchase of inputs as a SEZ Developer. Aggrieved by the order of the aforesaid authority, the revenue has preferred the appeal to the High Court.
- The Honorable High Court held that the Tribunal was justified in interfering with the said order and allowing refund of input tax to the assessee to which is legitimately entitled under the Act and accordingly, the appeal is dismissed. Hence, the Appellant is entitled for refund of input tax credit.

Advt.





CIRCULARS ISSUED BY THE BOARD FOR INITIATING PROSECUTION UNDER THE CENTRAL EXCISE LAWS

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



Under the Central Excise law, where any offence under Section 9 of the Central Excise Act, 1944 is committed, prosecution may be launched. In this regard, the CBEC has issued Circular No. 1009/16/2015 dated 23.10.2015 prescribing the following guidelines:

1. Person liable to be prosecuted:

Whoever commits any of the offences specified under Section 9(1) of the Central Excise Act, 1944 and Section 89(1) of the Finance Act, 1994 can be prosecuted.

- a. If the offence under the said Act has been committed by a company then every person who at the time offence was committed was in charge of and was responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly [Section 9AA(1) of the Central Excise Act, 1944].
- b. Where, offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly [Section 9AA(2) of the Central Excise Act, 1944].

- c. For the purpose Section 9AA(1) and Section 9AA(2) Company means body corporate, firm, association of individuals and director in relation to a firm means a partner of the firm [Explanation to Section 9AA].

2. Monetary Limit: Monetary limit for prosecution in case of evasion of excise duty or misuse of CENVAT credit has been revised to Rs.1 crore or more. Hitherto, the limit was Rs. 50 lakhs or more.

3. **Habitual evaders:** The above monetary limit will not be applicable in the case of a company / assessee habitually evading tax / duty or misusing CENVAT Credit facility. A company/assessee would be treated as habitually evading tax/ duty or misusing CENVAT Credit facility, if it has been involved in three or more cases of confirmed demand (at the first appellate level or above) of Central Excise duty or misuse of CENVAT credit involving fraud, suppression of facts etc. in past five years from the date of the decision such that the total duty or tax evaded or total credit misused is equal to or more than Rs. One Crore.

4. **Authority to sanction prosecution:** The criminal complaint for prosecuting a person should be filed after obtaining approval of

Principal Chief / Chief Commissioner of Central Excise or Service Tax (sanctioning authority). If the case is investigated by DGCEI, the complaint should be filed only after obtaining approval of Principal Director General / Director General, CEI (sanctioning authority).

5. Procedure for sanction of prosecution:

- a. Before launching any prosecution, it is necessary that the department should have evidence to prove that the person, company or individual had guilty knowledge of the offence, or had fraudulent intention to commit the offence, or in any manner possessed *mens rea* (guilty mind) which would indicate his guilt. Therefore, it is clarified that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but it should be restricted to only those persons who were in charge of day-to-day operations of the factory and have taken active part in committing the duty/tax evasion or had connived at it.
- b. It is also clarified adequate evidence should be the basis for launching the prosecution and should not be launched in case demand is confirmed on technical grounds or interpretation of law.

In case of demand confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the test of being 'beyond reasonable doubt' for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of duty/tax evaded or CENVAT credit wrongly availed and the nature as well as quality of evidence collected.

- c. It is also clarified that, in terms of the judgment prosecution may even be launched before the adjudication of the case, especially where offence involved is grave, qualitative evidences are available and it is also apprehended that party may delay completion of adjudication proceedings.
- d. The time limit of 15 days from the date of order is given to the adjudication authority to take view of prosecution. The adjudication authority should record reason and forward the same for seeking approval of sanctioning authority. The sanctioning authority may also on its own motion analyse whether the case is fit for prosecution.
- e. DGCEI concerned would prepare an investigation report for the purpose of launching prosecution, within one month of the date of receipt of the decision of the adjudicating authority and would send the same to the DGCEI for taking decision on sanction of prosecution.
- f. Principal Commissioner/ Commissioner or Additional Director General (Adjudication) shall submit a report by 10th of every month to the Principal Chief /Chief Commissioner

or the Principal Director General/ DGCEI, who is the sanctioning authority for prosecution, conveying whether a view on launching prosecution has been taken in respect of adjudication orders issued during the preceding month.

- g. Once the sanction for prosecution has been obtained, criminal complaint in the Court of law should be filed as early as possible by an officer of the jurisdictional Commissionerate authorized by the Commissioner.
- h. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. Where a complaint has not been filed even after a lapse of three months from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Principal Chief/ Chief Commissioner or the Principal Director General or Director General of DGCEI by the Principal Commissioner/ Commissioner in charge of the Commissionerate responsible for filing of the complaint.

6. **Monitoring of Prosecution:** The sanctioning authority should monitor the prosecution at monthly intervals. The prosecution cell of sanctioning authority should maintain a prosecution register.

7. **Appeal against Court order in case of inadequate punishment/ acquittal:** As per the judgment

pronounced, if lighter punishment is let-off than what is envisaged in the Act or has been acquitted despite the evidence being strong, appeal should be considered against such order after seeking approval from the sanctioning authority.

8. **Publication of names of persons convicted:** The provisions relating to publication of names, place of business etc., in terms of the Central Excise Act, 1944 and Finance Act, 1994 should be invoked by making prayer before the Court.

9. **Procedure for withdrawal of prosecution:**

- a. In case any new evidence comes to the notice of the sanctioning authority, it may recommend to the Board (Member of the policy wing concerned) that the sanction for prosecution be withdrawn.
- b. In case the complaint is already filed, the sanctioning authority may file an application through Public Prosecutor requesting the Court to allow withdrawal of the Prosecution in accordance with law.

10. **General:**

- a. The sanction for prosecution already obtained before the issue of this Circular – the procedure in such cases should be followed as prescribed herein.
- b. The option for compounding of offence should be intimated in writing to a person against whom the prosecution is proposed to initiate.
- c. The authorities who are required to inspect the Commissionerates should ensure that the procedure as prescribed herein is being followed scrupulously.



SERVICE TAX CASES

PARTS DIGESTED – VOLUME 40, PARTS 3 & 4

CA. A. Saiprasad



Notifications

Exemption grated to Yoga – Amendment to Mega Exemption Notification

Services by way of charitable activities provided by an entity registered u/s 12AA of Income Tax Act is exempt from services under notification no.25/12 ST dt.20.6.12.

Charitable activity has been defined in a very restrictive manner in para 2(k) of N.No.25/12 ST. Clause (ii) of Para 2(k) has now been amended to include 'yoga'.

Amendment made vide Notification No.20/15 ST dt. 21.10.15

Note: In the opinion of the Author, consideration received for teaching yoga by persons not registered u/s 12AA of IT Act, 1961 would be liable to service tax. The aforesaid exemption would come into effect from 21.10.15.

Utilising EC & SHEC for payment of Service Tax – Fifth Amendment of 2015 to CCR, 04.

CENVAT Credit Rules, 2004 has been amended by inserting 6th, 7th and 8th provisos to Rule 3(7) of CCR, 04.

As per 6th proviso, Credit of EC and SHEC paid on inputs or capital goods received by service provider after 1.6.15 may be utilised to pay service tax.

As per 7th proviso, credit of balance 50% of EC and SHEC paid on capital goods received by service provider in FY 14-15 may be utilised to pay service tax.

As per 8th proviso, credit of EC and SHEC paid on input service, in respect of invoice/ bill/ challan received by service

provider after 1.6.15 may be used for payment of service tax.

Notification No.22/15 CE(NT) dt.29.10.15
Note: EC and SHEC on service tax are not chargeable from 1.6.15. As per existing Rule 3(7) of CCR, 04 EC and SHEC could not have been used to pay service tax. Hence aforesaid amendment allowing utilisation of EC and SHEC to pay service tax.

Similarly EC and SHEC not chargeable on Excise Duty from 1.3.15. As per then Rule 3(7) of CCR, 04 (existing prior to 30.4.15), EC and SHEC could not have been used to pay excise duty. Hence CCR, 04 amended by Notification No.12/15 CE (NT) dt.30.4.15, allowing similar utilisation of EC and SHEC from 1.3.15 for paying Excise Duty.

Aforesaid notifications are silent about utilizing EC and SHEC balances existing as on 1.3.15/ 1.6.15 to pay excise duty/ service tax respectively.

Departmental Clarifications

The offences committed u/s 89 of FA, 94, which are liable for prosecution. The monetary limit for initiating prosecution has been raised to Rs. One Crore. The Circular also provides procedure for launching prosecution, monitoring prosecution, appeal to court in case of inadequate punishment/ acquittal and procedure for withdrawal of prosecution. CBEC Circular No.1009/16/2015-CX dt.23.10.15

Consequent to increase in monetary limit to Rs. One Crore for launching

prosecution, limits for arresting persons in relation to offences specified u/s 89 of FA, 94 has also be raised to Rs. One Crore.

CBEC Circular No. 1010/ 17/ 2015 - CX dt.23.10.15

Case Laws

Whether credit on outward transportation available as credit?

The High Court held that intention of the parties as to the time when property in goods has to pass to buyer is of material consideration. When the assessee's records clearly show that the intention of the parties was that sale would be complete only after goods are delivered by seller at buyer's address, then sale of goods is concluded only after delivery of goods at buyer's address. Hence assessee was entitled to credit on outward transportation even after 1.4.08

Madras Cements Ltd V. Additional Commissioner of Central Excise, 2015 (40) STR 645 (Kar)

Note: Also see Ambuja Cements Ltd V. UOI, 2009 (236) ELT 431 (P&H)

Whether Cenvat Credit can be availed on Telecommunication towers, parts thereof?

The High Court held that credit on telecommunication towers, parts thereof, shelters/ pre-fabricated buildings, purchased by assessee, providing telecommunication services was not available since towers and shelters were immovable property.

Vodafone India Ltd V. CCE, 2015 (40) STR 422 (Bom)

Note: Also see Bharti Airtel Ltd V. Commissioner, 2014 (35) STR 865 (Bom)

Whether providing exemption to artist performing folk/ classical forms and not providing exemption to artists performing in movies is discriminative?

The High Court held that the two categories of artists i.e. film artists and artists performing folk/ classical forms in theater are clearly different, distinguishable and hence cannot be treated at parity. The challenge to exemption notification under article 14 and 229 of the constitution as being discriminatory was set aside.

Siddharth Suryanarayan V. UOI, 2015 (40) STR 436 (Mad)

Whether extended period of limitation can be invoked when demand based on second audit report for the same period?

The Tribunal held that when revenue authorities did not invoke extended period of limitation when records of assessee were audited for the first time, then second audit party performing audit for same period cannot allege misstatement or suppression of facts.

Trans Engineers India Pvt Ltd V. CCE, 2015 (40) STR 490 (T)

Note: Also see MTR Foods Ltd case, 2012 (282) ELT 196 (Kar) and Rajkumar Forge Ltd case, 2010 (262) ELT 196 (Kar)

Whether Meditation and Yoga Classes liable for service tax?

The Tribunal held that service tax is liable to be paid on Meditation and Yoga Classes under Health and Fitness Services. Tribunal also upheld invocation of extended period of limitation on the grounds of non-cooperation with lower authorities and failure to produce documents.

Malabar Hill Citizens Forum V. CCE, 2015 (40) STR 493 (T)

Note: Also see Osho International Foundation case, 2015 (40) STR 537 (T)

Whether input service has to be distributed only by Head Office or can it be distributed by Regional Offices also?

The Tribunal held that input service can be distributed by regional offices also, if provisions of Rule 7 of CCR, 04 (method of distributing input service) are not violated while distributing the credit.

India Cements Ltd V. CCE, 2015 (40) STR 497 (T)

Whether Vastu advice is liable to service tax under Consulting Engineering Service?

The Tribunal held that when revenue failed to discharge obligation/ demonstrate that assessee is a professionally qualified engineer rendering advice relating to any particular branch of engineering then service tax could not be levied under consulting engineer service.

Note: Tax position would change post 1.7.12, due to negative list method of taxation.

Whether interest can be adjusted against refund amount?

Assessee having availed inadmissible credit reversed the same but had not paid interest thereon. Department also failed to issue SCN for demanding interest. Department however adjusted interest against refundsanctioned to assessee. Tribunal held that department having failed to issue SCN within one year for demand of interest, could not have adjusted interest against refund and set aside the order adjusting such interest against refund.

Divi's Laboratories Ltd V. CCE, 2015 (40) STR 743 (T)

Whether Job Work amounting to manufacture is liable to service tax?

The Tribunal held that when process of chemical conversion resulted in manufacture of a new and distinct

product, then such activity falls outside the scope of Business Auxiliary Service and hence service tax is not leviable.

Alkyl Amines Chemicals Ltd V. CCE, 2015 (40) STR 757 (T)

Note: Post 1.7.12, manufacturing activity would still not be liable to service tax being part of negative list u/s 66D.

Whether Credit can be availed on the basis of debit notes on letterheads?

The Tribunal held that law requires evidence to show provision of service, value thereof, identity of service provider and recipient and service tax charged. If Adjudicating Authority is satisfied about existence of aforesaid items and genuineness of debit note, then credit shall be available. Tribunal held that form of invoice is not material but substance thereof shall govern the claim.

DCW Ltd V. CCE, 2015 (40) STR 774 (T)

Whether value of spare parts used while providing free services during warranty period is liable to service tax?

The Tribunal held that value of parts and components while rendering repair service during warranty period is covered under 'sale'. Prima facie service tax is chargeable only on value of services and not on value of sale of goods. Waiver and stay of service tax demanded was granted.

Suraya Bala Autos (P) Ltd V. CCE, 2015 (40) STR 777 (T)

Note: See Imagic Creative Pvt Ltd Case, 2008 (9) STR 337 (SC)

Whether Input Service available on professional Charges paid for Representation work?

The Tribunal held that professional charges paid to different professionals representing cases before Income Tax, ROC, Provident Fund is eligible for credit.

Bank of Tokyo Mitsubishi UFJ Ltd V. CCE, 2015 (40) STR 785 (T)

(Contd. in page 28)



INTERNATIONAL TAXATION

CA Sachin Kumar B.P.



Rampgreen Solutions Pvt Ltd. v CIT, Delhi HC, 2015

Introduction

This case law discusses the scope of functional differences filter while carrying out a comparability study for comparables within the same industry sector. The case law has elaborated how companies engaged in Knowledge Process Outsourcing (KPO) services cannot be used as comparables for conducting a Transfer Pricing study of a company engaged in Business Process Outsourcing (BPO) services, even though both KPO and BPO services fall within the broader definition of Information Technology Enabled Services Sector.

Facts of the case

The assessee is a wholly owned subsidiary of its AE. It is engaged in providing voice based customer care to the AE's clients. The assessee renders call centre services which fall within the broad description of Information Technology Enabled Services (ITES).

For the assessment year under consideration, the Transfer Pricing Officer (TPO) made a substantial addition to the income vide transfer pricing adjustments. One of the reasons for the addition was inclusion of Vishal Information Technology Ltd. and eClerx Services Ltd. as comparables by the TPO.

The assessee contested the inclusion of the aforementioned two companies as comparables on the ground that the same were engaged in Knowledge Process Outsourcing (KPO) services whereas the assessee was engaged in

Business Process Outsourcing (BPO) services. Companies engaged in providing KPO services earn a higher margin in relation to companies engaged in providing BPO services, therefore, KPO service providers and BPO service providers cannot be comparable.

The assessee's grounds for non – inclusion of Vishal Information Technology Ltd. and eClerx Services Ltd. was rejected both at the DRP and ITAT level, holding that both the comparables were engaged in providing ITES, as the assessee also can be characterised as an ITES, the comparables cannot be excluded on the basis of functional differences.

Key Arguments of the Id. Counsel for the Assessee

- KPO could not be included as comparables for the purposes of benchmarking studies. As KPO although ITES, the nature of service was materially different from the services rendered by the Assessee which was a BPO

Key Arguments of the Revenue

- Both eClerx and Vishal are engaged in providing ITES and once a service falls within that category (ITES) then no sub-classification of the segment was permissible
- Also comparability analysis by Transaction Net Margin Method (TNMM) method is less sensitive to certain dissimilarities between the tested party and the comparables
- In **Willis Processing Services (I) (P.) Ltd. v Dy. CIT 30 ITR (Trib) 129 (Mumbai) 2014**, it was held that, no

distinction could be made between KPO and BPO service providers

Decision of the High Court

According to the Tribunal, no differentiation could be made between the entities rendering ITES. The hon'ble Delhi High court did not accept this view as it is contrary to the fundamental rationale of determining ALP. ITES encompasses a wide spectrum of services that use Information Technology based delivery. Such services could include rendering highly technical services by qualified technical personnel, involving advanced skills and knowledge, such as engineering, design and support. While, on the other end of the spectrum ITES would also include voice-based call centres that render routine customer support for their clients. Clearly, characteristics of the service rendered would be dissimilar. Further, both service providers cannot be considered to be functionally similar. Their business environment would be entirely different, the demand and supply for the services would be different, the assets and capital employed would differ, the competence required to operate the two services would be different. Each of the aforesaid factors would have a material bearing on the profitability of the two entities. Treating the said entities to be comparables only for the reason that they use Information Technology for the delivery of their services, was held to be erroneous.

Rule 10B(2)(a) of the Income Tax Rules, 1962 mandates that the comparability of controlled and uncontrolled transactions be judged with reference

to service/product characteristics. This factor cannot be undermined by using a broad classification of ITES which takes within its fold various types of services with completely different content and value. Thus, where the tested party is not a KPO service provider, an entity rendering KPO services cannot be considered as a comparable for the purposes of Transfer Pricing analysis.

Conclusion

This judgement of the High Court elaborates on the use of the functionality filter for excluding comparables where a comparable may fall within a broad industry category but however the comparable maybe higher up the value chain such as KPO service providers in the case law discussed supra in relation to the tested party, the assessee, which was a BPO service provider, where both KPO and BPO functions fell within the broader industry classification of ITES.

Also this case law highlights the significance of functionality filter when transactional profit methods (TNMM) are used to arrive at the Arm's Length Price, where these methods are known to be less sensitive towards differences in characteristic of property or services offered.

The clarity arising from this order will be useful to assesseees in various industries. Just to give an example, in case of the Pharma industry in this country a generic drug manufacturer can exclude a brand name drug manufacturer as a comparable, all other conditions remaining equal, while conducting its Transfer Pricing analysis for arriving at Arm's Length Price.

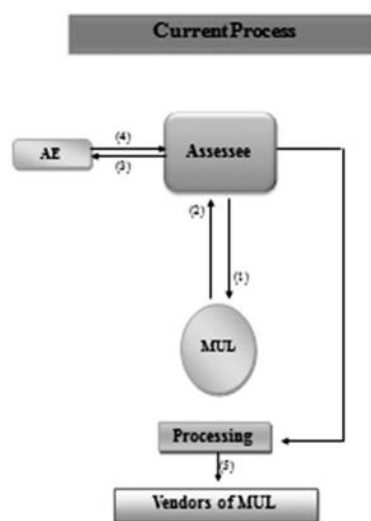
Johnson Matthey India Pvt Ltd. v DCIT, Delhi HC, 2015

Introduction

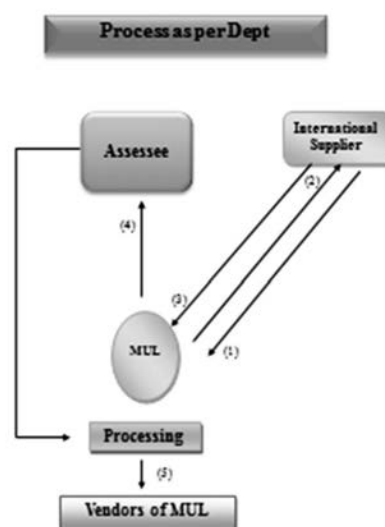
This case law sheds light on the treatment of pass through costs in case of transfer pricing analysis from the perspective of Indian judiciary.

Facts of the case

- The assessee is a manufacturer of Automotive Exhaust Catalyst, which are used to control emission of pollutants by automobiles



- Following diagram indicates the purchase mechanism arrangement between assessee and MUL and also the process which had to be adopted in the view of the revenue to uphold assessee's argument:



- Price Quotation as per prevailing intl. rates
- Approval of price quotation specifying qty.
- Purchase of Raw Material
- Supply of Raw Material
- Supply of FG

- The assessee manufactures catalyst on behalf of Maruti Udyog Limited (MUL) and supplies the same to vendors of MUL
- The manufacturing of Catalyst requires inputs of precious metals such as Platinum, Palladium, etc. as raw materials
- The precious metals (PGM) required as inputs were procured by the assessee from its Associated Enterprise (AE) located in UK
- During scrutiny assessment the TPO made substantial addition by way of transfer pricing adjustment using the PLI Operating Profit/Operating Cost
- The assessee appealed against this adjustment arguing that the PLI to be used is Operating Profit/(Operating Cost – Raw Material Purchase Cost) as raw material purchases were pass through cost, which ground was rejected at the ITAT level therefore this matter is before the High Court

Key Arguments of the Ld. Counsel for the Assessee

The assessee operates on a fixed manufacturing charge per unit model, being a contract manufacturer. The assessee's profit margin was dictated by the negotiations with MUL. The assessee cannot possible earn a profit based on a percentage of the raw material used in manufacturing. The assessee has to procure raw material on the instructions of MUL, at a price dictated by it and from the source selected by MUL. If MUL had bought PGM directly from the AE, there would have been no application of transfer pricing as MUL and AE were unrelated entities. MUL would have purchased PGM at the negotiated prices, as the assessee was



doing presently. Therefore, the price at which assessee purchased PGM from AE are already at arm's length. It was only for **administrative convenience** (emphasis supplied) that MUL has outsourced its function of purchase of raw material to the assessee but still controlled every element of such raw material, i.e. quantity, price, mode of purchase (spot/forward).

Also the assessee does not bear any risk in relation to the cost of raw material. The assessee does not even bear credit risk in relation to the cost of PGM as the credit period given by AE to assessee for PGM was 60/90 days, while the credit period given by the assessee to MUL's vendors was 30 days wherein MUL guaranteed payment to the assessee.

Key Arguments of the Revenue

The purchase of PGM by the assessee from the foreign AE was not a pass through cost transaction since the sale of raw material was not directly made

by AE to MUL but it was a sale first made to the assessee which in turn sold it to vendors of MUL. Also a true pass through cost would have been where the purchasers of the final product viz. the automotive catalysts would themselves purchased the raw materials, handed it over to the assessee as a bailee to utilize it in the manufacture of the products and then purchase the final product by paying to the assessee a price per unit.

Decision of the High Court

The exclusion of pass through costs from the denominator of total costs where the financial ratio of Operating Profit to Total Cost is used is acknowledged in para 2.93 and para 2.94 of the OECD Guidelines. The very purpose of transfer pricing is to benchmark transactions between related parties in order to discover the true price if such entities were unrelated. If MUL had bought the PGM directly from the foreign AE there would have been no application

of transfer pricing since MUL and AE are unrelated parties. MUL would have purchased the PGM just like the assessee did on negotiated prices. There is merit in the contention that the prices at which the assessee purchased PGM from AE were already at arm's length and that it was for administrative convenience that MUL had outsourced this function to assessee. Therefore the addition, directed to be made by the Assessing Officer to the income of the assessee for the AY in question is deleted.

Conclusion

This ruling of the High Court will aid in conducting of transfer pricing analysis, where the tested party is a contract worker and has incurred pass through costs, then if the Profit Level Indicator (PLI) being used for comparison is Operating Profit/Total Cost, pass through costs could be excluded from the denominator of the PLI.

SERVICE TAX CASES

(Contd. from page 25)

Whether supervision of loading and dispatches is liable to service tax under Business Auxiliary Service?

The Tribunal held that supervision of loading and dispatches of goods and arranging of information of goods lifted is neither promotion nor marketing or sale of goods belonging to client. Tribunal further held that it was also not promotion or marketing of service provided by client. The activity was not covered under any limb of BAS and hence not liable to service tax under BAS. *Chaddha Paper Mills Ltd V. CCE, 2015 (40) STR 812 (T)*

Note: Tax position would change post 1.7.12 and be liable to service tax subject to threshold limit of Rs.10 lakhs.

Whether Collection of Octroi on behalf of Municipal Corporation is liable for service tax?

The Tribunal held that assessee was only collecting octroi and remitting the same to Municipal Corporation. The same was not a cash management activity for classifying the service under Banking and Other Financial Services. Tribunal held that cash management involves much more than merely collecting cash. Further the Tribunal noted that assessee was neither a banking company nor a financial institution. The Tribunal interpreted the term 'any person' according to the principle of '*ejusdem generis*' with preceding words. *Mega Enterprises V. CCE, 2015 (40) STR 528 (T)*

Whether Meditation Course liable to service tax?

The Tribunal held that consideration received for providing meditation course is liable to service tax under 'Health and Fitness service' since meditation has been specifically included in the said definition. The Tribunal held that meditation helps in providing physical wellbeing and hence liable to service tax under Health and Fitness Service.

Osho International Foundation V. CCE, 2015 (40) STR 537 (T)

Whether Car parking service available as input service credit?

The Tribunal held that input service on car parking availed by appellant at their head office for parking cars of management is an activity related to business of manufacture and hence available as credit.

Goodyear India Ltd V. CCE, 2015 (40) STR 546 (T)

One Day Seminar on GST



Inauguration



Mr. Nagendra Kumar,
Principal additional
Director General of
Central Excise Intelligence



Mr. Ritvik Pandey,
Chief Commissioner of
Commercial Taxes



Mr. P. Devaraj,
Additional Commissioner
of Service Tax



Members Interaction



Thanking Mr. Nagendra Kumar



Thanking Mr. Ritvik Pandey



Thanking Mr. P. Devaraj



Keynote Speakers with Office Bearers



CA Sanjay Dhariwal



CA T R Rajesh Kumar



CA Deepak Kumar Jain

One Day Workshop on Income Computation & Disclosure Standards - ICDS



Welcoming the Chief Guest
Ms. Nutan Wodeyar



Inauguration



CA K Gururaj Acharya,
Co-ordinator of Workshop



Ms. Nutan Wodeyar,
Principal Chief Commissioner
of Income Tax - 2, Bengaluru



Inaugural Session



CA B.P. Sachin Kumar



CA Shyam Ramadhyani



CA Padamchand Khincha H

Practice Alert - Discussions



CA H. Padamchand Khincha, CA Shivanand Nayak
& CA Sudheendra B.R.



CA Lakshmi G.K.



CA T R Rajesh Kumar



CA. S. Venkataramani &
CA. Annapurna D. Kabra

Intensive Workshop on International Taxation



CA Krishna N



CA P V Srinivasan

Corporate Accountants Meet at Shangri-La Hotel



Welcoming the Chief Guest



Chairman's Address



Inauguration



CA Charanjot Singh Nanda,
Chairman, CMII



Address by
Chief Guest CA K Raghu



Thanking the Chief Guest



Thanking the Chairman of CMII



CA Sanjay Dhariwal



CA K Gururaja Acharya



Cross section of the participants

Certificate Course on Valuation



Inauguration



Cross section of the participants at Jnanadayini Hall, Professional Excellence Block, Race Course Road, Sub Branch

Speakers at Study Circle Meetings



Mr. M.V. Seshachala



Mr. Siddharth Sharma



CA Zaid Razvi



CA N Anand



CA Sunitha Jain



Participants in the Workshop

Practice Support Workshop on Hands on Training on Filing of ROC E-forms

Cricket League



Sports & Talent Meet

Jointly organized with KSCAA

Advt.

Advt.

Advt.