

**The Institute of Chartered Accountants of India**

(Set up by an Act of Parliament)



# Bangalore Branch of SIRC Newsletter

English Monthly

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**ICAI**  
International  
Conference 2015

"Accountancy Profession:  
Building Global Competitiveness; Accelerating Growth"

Chief Guest **CA. Suresh Prabhu**, Hon'ble Union Minister of Railways, Govt. of India,

Guest of Honour **CA. K Rahman Khan**, Member of Parliament (Rajya Sabha), Govt. of India,

**CA. K. Raghu**, President, ICAI & **CA. Manoj Fadnis**, Vice President, ICAI inaugurated the Conference.



07.02.2015

Seminar on

**Goods and Service Tax**



02.03.2015

Public Programme on

**Union Budget Analysis**

CPE - February 2015  
**20**

# Chairman's Communique . . .



Dear Professional Colleagues,  
**Theme of the year 2014-15**



The theme for the year 2014-15 **Vistara** is a Sanskrit word that refers to expansion and development with multiple new

dimensions. This theme was chosen with an objective to cater to the needs of members to develop augment and expand their knowledge and skill sets in multiple dimensions so that they would be able to face the new challenges and take up the opportunities that would arise because of the various changing statues happening in GST, DTC, Rules under the companies act 2013 etc. In the theme logo, members are holding hands around symbolizing an effective professional networking within themselves which will have a synergic effect.

## **Members Activities 2014-15 a bird's eye view**

		No.of Meetings	CPE Hours	No.of Participants
Workshops		7	76	2340
Study circle		62	125	8984
Conference & Seminars		41	194	7992
National Conference & Seminars	23			
Special CPE Conference	2			
Women's CA Conference	1			
CPE Tele Conference	13			
Union Budget Analysis	1			
Clause by Clause	1			
Residential tour to Goa		1	14	
ITT Training		2	4	120
ARRC - Residential International Taxation		1	14	50
Investors Awareness Programme		2	6	153
CA Day		1		175
AGM's 51 <sup>st</sup> & 52 <sup>nd</sup> Conducted on 28 <sup>th</sup> July 2014		2		
Patriotic Programmes		2		250
Convocation		2		2150
RCA		1		60
IFRS		2		55
FNFE		1		60
Industrial visit		4		120

## **The term 2014-15**

With the change of Govt at the Centre and the dynamic Sri. Narendra Modiji at the helm, there has been a new thrust and drive which has inspired and motivated us to **further initiatives of Govt.** In this connection we have



taken up the **Make in India** and the **Swatch Bharath Missions in all seriousness** and gone about implementing it with great fervor.

- As a mark of corporate social responsibility, we conducted blood donation camps during many of the programmes and **4150 units of blood were donated by our members and students..**



- We helped the poor and needy school students

- The Awareness programmes conducted for the benefit of members and public at large – like union budget analysis, Investor Awareness Programme etc were very well received.



- During Republic Day & CA Day celebration, many saplings were planted as a **mark of Go Green Awareness.**

**Reading Room Facilities for students and members** In order to cater to the needs of students and members, we have hired a building in Race Course Road & renovated and





refurbished the same, consisting a reading room, and Coaching halls for GMCS, IPCC & ITT Coaching Classes. I am very happy to say that at present, nearly 800 students can make use of reading room facility at three centres in Bangalore.

**Infrastructure Development:** I would like to inform you that we could improve the infrastructure of our building, especially Canopy, giving face lift to our branch. Availability of **Online registration facility** at the branch is appreciated by the members. Students attending GMCS & Orientation programmes became more punctual by the **Installation of Bio Metric** at the branch



**Formation of study groups in various locations: We conducted study circles in locations like**

**Indiranagar, Bannerghatta Road and Tumkur** for the convenience of members around those

locations. This innovative initiative was greatly appreciated by the members.

Let me place on record our **hearty thanks to the various committees of ICAI and especially our dynamic president CA. K.Raghu and his team for having given us an opportunity to host various National and International landmark events**, enabling Bangalore Branch to be recognised as one of the most dynamic branches by our professional fraternity. We are happy and proud to say that **this is the first time in the history of Bangalore Branch of ICAI, the events of such magnitude were conducted in one year for the benefit of members and students, especially the International Conference for CAs conducted on 29<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> January, 2015 at Bangalore.** The international conference for members provided an opportunity to all the delegates to keep abreast with evolving global trends. In fact, it was a knowledge feast with International celebrities, facilitating to exchange our views and ideas, sustaining the quality of our glorious profession.

**Mentoring Seminar for Young Members :** I would like to reiterate the fact that the Mentoring Seminar for Young Members organised by YMEC, ICAI, and hosted by Bangalore Branch was a remarkable event enabling the delegates to have effective networking to reach out new



horizons in their prospective career growth. Special thanks to **CA Chhajed Prafulla, Chairman of YMEC & CA Chetan Venugopal** the dedicated co-ordinator and the distinguished speakers who made us to feel to conduct the same type of programmes frequently, for the benefit of members, safeguarding the interest of our profession.

### **Bidding farewell:**

It has been a pride and privilege to have occupied the position of the chairman of this august organisation and I have tried to discharge my duties to the best of my ability. History will judge how successful I have been in my endeavour. As I am laying down office as Chairman of Bangalore Branch, I find that it is not the end of my glorious association with Bangalore Branch. I continue to be associated with the ICAI with whatever capacity that I may have with the same or even higher vision & mission. Needless to say that I enjoyed a deep sense of belongingness and commitment which gave me profound rejoice and the sense of total fulfilment in the growth task of the Institute. **I am extremely pleased with our accomplishment which would not have been possible without the unstinted support and co-operation of all my professional colleagues.**

**I am greatly indebted to all my colleagues in the Managing Committee, past chairmen of the Branch, past and present Regional & Central Council Members, SIRC Chairman and Hon'ble President of ICAI CA K. Raghu, KSCAA, Tumkur CAs' Association and CA's Toastmasters Club, for their support and guidance given to me during my tenure to serve our prestigious institute. I place on record my profound gratitude to all the resource persons, students, officers and staff of the Branch and Decentralised Office in discharging my duties to my utmost satisfaction.**

As I am handing over my present position, I rededicate myself to continue serving the institute and extend my best wishes, to the new incumbent. **I whole heartedly wish the incoming Chairman and Members of the Managing Committee all the best in all their future endeavours.**

With Best Wishes,

**CA. Babu K Thevar**  
Chairman



# ICAI INTERNATIONAL CONFERENCE 2015



President, Vice President, Central Council Members along with CA. Suresh Prabhu & CA. Rahman Khan



Dr. Kirit Somaiya, MP,  
Dr. Habil Khorakiwala, Chairman, Wockhardt Group



Release of Souvenir



Sri Sri Ravi Shankar Gururji along with President & B'lore Branch Committee Members



Honouring Sri Sri Ravi Shankar Gururji



Issuing Benevolent Fund Cheque to ICAI by  
Bangalore Branch



Cultural Programme



Cultural Programme



CA. K. Raghu, President along with officers & staff members  
of ICAI, SIRC & B'lore Branch



President with Student Volunteers

## Inauguration of 125<sup>th</sup> Reading Room of ICAI



President CA. K. Raghu addressing the students



President along with Managing Committee Members of  
B'lore Branch



Inauguration of Canopy



Inauguration of Coaching Hall



Inauguration of ITT Lab



President along with Students

TO THE KIND ATTENTION OF MEMBERS

## PRACTICE ALERT - DISCUSSIONS

The Bangalore Branch shall be conducting a **two hours programme** on **each Friday** on a **specific category of Law** (like **Income Tax, VAT, CST, GST, Company Laws, Customs, Central Excise, Service Tax, FEMA, Labour Laws, AS, Reports** etc) relevant for the Members. The event is titled as **PRACTICE ALERT - DISCUSSIONS** and shall be addressed by two expert resource persons.

The event is conceptualized in to the following sub-events

- **VISHAYA - VIVARA**
- **VIMARSHE - VISPURANA**
- **VICHARA MANTHANA**

- **VISHAYA - VIVARA : *Enhancing our existing information with Updates***

This is the first part of the event (for approximately 15-30 minutes), the speakers shall provide the latest updates and alerts including the latest important judgements.

- **VIMARSHE - VISPURANA: *Deliberating for proper understanding of the Updates***

The latest updates provided in the first part of the event are thoroughly discussed to analyse and understand the impact on the current business/professional scenario. (app.30 minutes)

- **VICHARA MANTHANA : *Blending of the optimal Thoughts***

The last part is dedicated for sheer academic interaction – an open house, wherein Members are provided an opportunity to get their doubts clarified right from the experts – not only on the updates but also on any topic relating to the law that shall be discussed on that day. The Branch intends to provide an opportunity for the Members (particularly for the Young members) to get their doubts/ conflicts elucidated from the expert resource persons.

This is an innovative initiative taken by the Branch and the structure of the Module is first of its kind.

We have immense pleasure in announcing that the

### FIRST PRACTICE ALERT-DISCUSSIONS

is going to be addressed by our senior resource person

**CA. K.S. Ravi Shankar** along with **CA. Anand N**

and will be held on **20th Feb 2015, Friday, between 5.30PM to 7.30 PM.**

*Members are requested to attend this event in large numbers and encourage us.*





## CALENDAR OF EVENTS - FEBRUARY, MARCH & APRIL 2015

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
04.02.2015 Wednesday	<b>Study Circle Meet</b> Forex Valuation in SAP as per AS-11 <b>CA Rajeev Kumar</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
07.02.2015 Saturday	<b>Seminar on Goods and Service Tax</b> <i>Delegate Fees: ₹ 200/-</i>	Branch Premises 9.30am to 5.30pm	<b>6 hrs</b>
11.02.2015 Wednesday	<b>Study Circle Meet</b> Depreciation under Companies Act & Valuation <b>CA. R. Satyanarayana Murthy</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
18.02.2015 Wednesday	<b>Study Circle Meet</b> Internal control on Financial Reporting (SOX) <b>CA Pritesh K Shah</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
19.02.2015 Thursday	<b>Study Circle Meet</b> Companies Act 2013 - Revised Format of Audit Report; Related Party Transactions vis-a-vis AS 18 Disclosures <b>CA K Gururaj Acharya</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
20.02.2015 Friday	<b>PRACTICE ALERT - DISCUSSIONS</b> Service Tax - Updates & Discussions <b>CA K.S. Ravi Shankar &amp; CA Anand.N</b>	Branch Premises 5.30pm to 7.30pm	<b>2 hrs</b>
25.02.2015 Wednesday	<b>Study Circle Meet</b> Service Tax Audit - Procedures, Precautions & Issues <b>CA. Roopa Nayak</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
27.02.2015 Friday	<b>PRACTICE ALERT - DISCUSSIONS</b> VAT Updates & Discussions <b>CA Sanjay M Dhariwal &amp; CA Annapurna Kabra</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
02.03.2015 Monday	<b>Public Programme on</b> <b>Union Budget Analysis</b> <i>Moderators :</i> <b>CA. T. V Mohandas Pai &amp; CA. H. Padamchand Khincha</b>	Chowdaiah Hall, Vyalikaval, Near Gayatri Devi Park, B'lore - 3 5:00pm to 8:00pm	<b>3 hrs</b>
04.03.2015 Wednesday	<b>Study Circle Meet</b> Time Management & Work life Balancing <b>CA Nanu R Mallya</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
06.03.2015 Friday	<b>PRACTICE ALERT - DISCUSSIONS</b> FEMA - Updates & Discussions <b>CA Vivek Mallya &amp; Mr. Gautham Gururaj, Advocate</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>
11.03.2015 Wednesday	<b>Study Circle Meet</b> Using Tally ERP for TDS, VAT & Service Tax Compliances <b>Mr. Divakar &amp; Team, SUN IT Solutions, Tally Enterprise Partner</b>	Branch Premises 6:00pm to 8:00pm	<b>2 hrs</b>

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

### Advertisement Tariff for the Branch Newsletter

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Outside back	₹ 40,000/-	Full page	₹ 20,000/-
Inside front	₹ 35,000/-	Half page	₹ 10,000/-
Inside back	₹ 30,000/-	Quarter page	₹ 5,000/-

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

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

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## CALENDAR OF EVENTS - FEBRUARY, MARCH & APRIL 2015

Date/Day	Topic /Speaker	Venue/Time	CPE Credit
13.03.2015 Friday	<b>Clause by Clause Discussion on Union Budget - Direct Taxes</b> CA S Ramasubramanian, CA Padamchand Khincha & CA Chythanyya K.K	J.N. Tata Auditorium	6 hrs
14.03.2015 Saturday	<b>Clause by Clause Discussion on Union Budget - Indirect Taxes</b> CA K.S. Ravi Shankar, CA V Raghuraman & CA N. Anand  <b>Impact of Finance Bill 2015 on GST</b> CA Badrinath & CA Madhur Harlalka <i>Delegate Fees : ₹ 1400/- for both the days, ₹ 1000/- for one day</i>	IISc Campus, Yeshwanthpur, B'lore - 12  10.00am to 5.00pm	6 hrs  <b>Total 12 hrs</b>
18.03.2015 Wednesday	<b>Study Circle Meet</b> Getting a stay in Recovery proceedings, prosecution issues - under the Income Tax Act <b>Sri M.V. Seshachala, Advocate, Bangalore</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
20.03.2015 Friday	<b>Bank Audit Seminar</b> Co-ordinator: CA P.R.Suresh <i>Delegate Fees: ₹ 1400/-</i>	Ambedkar Bhawan, adjacent to B'lore Br., Vasanthnagar, Bangalore -52 10.00am to 5.00pm	6 hrs
25.03.2015 Wednesday	<b>Study Circle Meet</b> New Mandatory Requirements of the Directors Report under the Companies Act 2013 <b>CS M.S. Sivasankaran &amp; CS Mangala Rohith</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
27.03.2015 Friday	<b>PRACTICE ALERT - DISCUSSIONS</b> Income Tax Updates & Discussions <b>CA Padamchand Khincha</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
01.04.2015 Wednesday	<b>Study Circle Meet</b> Conceptual Framework for Financial Reporting & IAS 1, IAS 8 & IAS 10 <b>CA Vinti Varma</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
03.04.2015	<b>GOOD FRIDAY - No Practice Alert &amp; Discussions</b>	-	-
08.04.2015 Wednesday	<b>Study Circle Meet</b> Disclosures in Financial Statements as per Sch.III of the Companies Act 2013 & Exemptions to SME 's <b>Jnanasagara CA S Krishna Swamy</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
10.04.2015	<b>No Practice Alert &amp; Discussions</b>	-	-
15.04.2015 Wednesday	<b>Study Circle Meet</b> Overview of Commercial Taxes <b>CA. Annapurna Kabra</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
17.04.2015 Friday	<b>PRACTICE ALERT - DISCUSSIONS</b> Central Excise & Customs <b>CA. Jatin Christopher &amp; CA. Hanish</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
22.04.2015 Wednesday	<b>Study Circle Meet</b> Service Tax - recent issues <b>CA. A. Sai Prasad</b>	Branch Premises 6:00pm to 8:00pm	2 hrs
24.04.2015 Friday	<b>PRACTICE ALERT - DISCUSSIONS</b> Companies Act 2013	Branch Premises 6:00pm to 8:00pm	2 hrs
29.04.2015 Wednesday	<b>Study Circle Meet</b> 9 Power Sutras for Success <b>CA. Nanu Mallya</b>	Branch Premises 6:00pm to 8:00pm	2 hrs



# IMPORTANCE OF DECLARATION u/s 132(4) BEFORE THE SEARCH IS CONCLUDED

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



It has been a practice on the part of the assessee who has been searched u/s 132 on his own or on the advise of the officers who in general, educate or bring it to the notice of the searched party the existence of provision of section 132(4) i.e., person who can be examined i.e., The authorized officer may, during the course of the search or seizure, **examine on oath any person** who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may **thereafter be used in evidence** in any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.

[Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), **or under this Act.**]

Assessing Officer can levy penalty on the assessee who has concealed particulars of income that is person searched whose undisclosed incomes are brought to taxes and on such income the Assessing Officer can initiate penalty proceedings and levy penalty of a minimum of 100% and maximum of 3 times i.e., 300% of

taxes paid by reason of concealment of income for furnishing inaccurate particulars.

Section 132(4) and Penal section 271(1)© are explained during the course of search and consequently declaration of concealed income are taken based on materials found during the search i.e., other than income filed u/s 139 of the I.T Act 1961 to legally avoid penalty and thereby get waiver of penalties and also immunities from prosecution. An extract of Provisions of Section 271(1)(c) is provided here below:

## Section 271(1)©

1) If the <sup>80</sup>[Assessing] Officer or the <sup>81</sup>[\*\*\*] <sup>82</sup>[Commissioner (Appeals)] <sup>83</sup>[or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(a) <sup>84</sup>[\*\*\*]

(b) has <sup>85</sup>[\*\*\*] failed to comply with a notice <sup>86</sup>[under sub-section (2) of section 115WD or under sub-section (2) of section 115WE or] under sub-section (1) of section 142 or sub-section (2) of section 143 <sup>87</sup>[or fails to comply with a direction issued under sub-section (2A) of section 142], or

(c) **has concealed the particulars of his income or** <sup>88</sup>[\*\*\*] **furnished inaccurate particulars of** <sup>89</sup>[such income, or]<sup>90</sup>

(d) has concealed the particulars of the fringe benefits or furnished inaccurate particulars<sup>90</sup> of such fringe benefits he may direct that such person shall pay by way of penalty, —

(i) <sup>92</sup>[\*\*\*]

[(ii) in the cases referred to in clause (b), <sup>94</sup>[in addition to tax, if any, payable] by him, <sup>95</sup>[a sum of ten thousand rupees] for each such failure;]

[(iii) **in the cases referred to in clause (c)** <sup>97</sup>[or clause (d)], <sup>98</sup>[in addition to tax, if any, payable] by him, a sum which shall not be less than, but which shall not exceed <sup>99</sup>[three times], the amount of tax sought to be evaded by reason of the concealment of particulars of his income <sup>1</sup>[or fringe benefits] or the furnishing of inaccurate particulars of such income <sup>1</sup>[or fringe benefits].[\* \* \*]]”

Explanation 5A.— Where, in the course of a search initiated under section 132 on or **after the 1st day of June, 2007**, the assessee is found to be the owner of—

(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this *Explanation* referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or  
(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year, which has ended before the date of search and,—

(a) where the return of income for such previous year has been



furnished before the said date **but such income has not been declared therein**; or

(b) the **due date for filing the return of income for such previous year has expired but the assessee has not filed the return**, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of subsection (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income

Explanation 5- is applicable in case of search **initiated before 01.06.2007**. It is same as Explanation 5A except that in the course of search, if a statement u/s 132(4) is made by the assessee, and also the manner in which such income has been derived and Taxes are paid together with interest in respect of such income then No Penalty u/s 271(1) (c) can be levied in lieu of Explanation 5.

**W.E.F. 1-4-2012 PENALTY UNDER SECTION 271AAA – In case of search initiated u/s 132 after 1.6.2007 but before 1.7.2012**

- The Assessing officer may, not withstanding anything contained in this Act, direct that the Assessee shall pay by way of penalty, in addition to tax, if any , payable by him, a sum computed at the rate of **10% of the undisclosed income** of the specified previous year.
- Where the assessee in the course of the search admits the undisclosed income in a **statement under 132(4)** and also specifies the manner in which it has been derived , substantiates the same and **pays the tax together with interest**,

in respect of undisclosed income then **No penalty u/s 271AAA can be levied as per Sec 271AAA(2)**

- Disclosure u/s 132(4) should have been done before the conclusion of the Search for the undisclosed income in order to avail waiver of penalty u/s 271AAA for Search initiated after 01.06.2007 but before 01.07.2012.
- Where a Penalty has been levied u/s 271AAA(1) on the assessee, then no penalty under the provisions of clause (c) of subsection (1) of section 271 shall be imposed on the assessee in respect of the undisclosed income or otherwise. However, it should be noted that there should be an undisclosed income within the meaning of Section 271AAA(1).
- Further as the provisions of Law it is very clear that as per Section 271AAA(3), if there is an undisclosed income as per Subsection (1), then section 271(1)© is not applicable and further if a disclosure is made by assessee then 271AAA would not be applicable as per section 271AAA(2), which in effect means, that if disclosure is made penalty u/s 271(1)© or 271AAA would not be applicable.
- Hence it can be inferred that section 271(1)(c) becomes redundant from 1<sup>st</sup> day of June 2007, from which Section 271AAA becomes applicable for the search that has been initiated under section 132 on or after 1<sup>st</sup> day of June 2007 (but before 1<sup>st</sup> day of July 2012.)
- It should be kept in mind that penalty u/s 271(1)© becomes redundant only in the case of search matters i.e., it may still be

applicable in the case of scrutiny assessments/income escaping assessment u/s 147 r.w.s. 148 of the I.T. Act 1961.

- There was a clear loop hole as explained above to plug in the loop hole, section 271AAB was introduced.

For search initiated after 1<sup>st</sup> day of July 2012, section 271AAB becomes applicable and operative.

**W.E.F. 1-4-2012 PENALTY UNDER SECTION 271AAB – In case of search initiated u/s 132 after 1.7.2012**

- The assessing officer may, not withstanding anything contained in any other provision of this Act, direct that, the assessee shall pay by way of penalty in addition to tax, if any, payable by him
- A sum equal to **10% of the undisclosed income** of the specified previous year, if the assessee admits the undisclosed income in a statement u/s 132(4), specifies the manner, substantiates the same and on or before the specified date pay the taxes and furnishes the return of income. (or)
- A sum at the rate of **20% of the undisclosed income** of the specified previous year, if the assessee does not admit it in a statement u/s 132(4) but on or before the specified date declares such income in “Return of Income” of the specified previous year and pays the tax, together with interest i.e., 153A or 153C return of income filed in response to Notice issued u/s 153A or 153C of the I.T. Act 1961.
- A sum not less than 30% but which shall not exceed 90% of the undisclosed income, if it is not covered by the above provisions.



- No penalty u/s 271(1)(c) in respect of undisclosed income, referred to in subsection (1) of this section can be levied. Hence the possibility of levy of penalty u/s 271(1)(c) (Explanation 5A) in the case of search initiated after 01.07.2012 becomes redundant in lieu of Section 271 AAB.
  - Subsection (2) of Section 271AAB specifies that, once penalty is invoked under Section 271AAB, penalty u/s 271(1)(c) read with Explanation 5A of Section 271(1)(c) cannot be levied. And therefore where a search is initiated after 1-7-2012 Section 271(1)(c) becomes a redundant provision whether disclosure is made or not. Further not to forget the SLAB basis of penalty u/s 271AAB which covers all the possibilities of disclosure.
- i.e., 10%, 20% and 30% to 90% depending on the stage on disclosure made by assessee.
- Before 1-6-2007, the assessee being searched can reasonably go scot-free without paying penalties u/s 271(1)(c) either by making disclosure during the time of search u/s 132(4) or filing return of income in response to notices including the undisclosed income paying taxes thereon including interest correctly, cooperating with the assessment proceedings to conclude the assessment by Assessing Officer, penalty being discretionary the officers sparingly levied penalty. However, penalties are levied under this section on those assesses who were contagious and non-cooperative.
  - But now, levy of penalty u/s
- 271AAB being mandatory the Assessing Officer has no option except to levy penalties on the basis of undisclosed income slab rate of 10%, 20%, and 30% to 90% depending on the time of declaration made by the assessee of undisclosed income.
- ***The author would like to come forward with solution in the case of reasonably large assesses or big groups for waiver of penalties and also immunities from prosecution through alternative mechanism in subsequent article.***
- “Purchase of Peace”**
- No one can “Purchase Peace” under income tax laws by making a mere declaration u/sec 132(4) without payment of taxes on the concealed income which would have otherwise ought to have been paid....!!!!!!*** ■

Advt.





## TAX UPDATES - DECEMBER 2014

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

### INCOME TAX

#### PARTS DIGESTED:

- a) 368 ITR – Part 5
- b) 369 ITR – Part 2 to 5
- c) 227 Taxman – Part 2 to 6
- d) 151 ITD – 7 & 8
- e) 46-B CAPJ – Part 3
- f) 11 International Taxation–Part 6

#### Reference / Description

[2014] 369 ITR 209 (Mad. – HC): *CIT v. Ashley Services Ltd.* - In the instant case the Honourable Madras High Court held that a Company cannot be regarded as an investment company or a company engaged in speculation business merely on the basis of the financial results contained in the balance sheet in a particular.

Further the Court held that where from memorandum of articles of association of a company, it was clear that business of assessee was finance and granting of loans and advances, income from share-dealing more than income from investment in some years was not a ground for treating loss as speculation loss.

[2014] 369 ITR 265 (Guj. – HC): *Gaurav v. Shah v. Asst. CIT* - In the instant case the Honourable Gujarat High Court held that the provisions of Section 179 of the IT Act cannot be made applicable in the case of a Director of a Public Limited Company.

[2014] 369 ITR 328 (Delhi – HC): *CIT v. Frick India Ltd.* - In the instant case Assessee acquired tenancy right in a building under lease agreement for a period of 3 years. It continued

to use and occupy said premises even after expiry of lease period without any fresh agreement. Rent paid was accepted by landlord. After 14 years assessee surrendered tenancy right. The Assessing Officer treated the amount as short-term capital gains on the basis that the tenancy after the initial period of three years by way of a written instrument, was month-to-month. Thus, the Assessing Officer was of the view that that tenancy rights were extinguished on the last day of each month and a fresh or new tenancy was created.

On appeal before the Honourable Delhi High Court, the Court held that the expression 'held' under Section 2(42A) of the IT Act is with reference to capital asset and the term 'capital asset' is not confined or restricted to ownership of a property or an asset. Capital assets can consists of rights other than ownership right in an asset, like lease hold rights, allotment rights etc.

Thus, the Court held that consideration received on surrender of tenancy right as long term capital gains.

[2014] 369 ITR 463 (Karn – HC): *CIT and another v. Caritor (India) P. Ltd.* - In the instant case one of the conditions stipulated in the permission granted by the STPI was that the units shall be customs bonded. Assessee commenced production prior to the customs bonding. However, invoices were raised after the customs bonding. The Assessing Officer was of the view

that Assessee would be entitled to the benefit under Section 10A of the IT Act only if production commenced in the customs bonded area and as the Assessee had commenced production before that date, Assessing Officer held that Assessee was not entitled to the benefit.

The Honourable Karnataka High Court held that Customs bonding is not a requirement or a condition precedent for granting exemption under Section 10A of the IT Act.

[2014] 369 ITR 486 (Mad. – HC): *Appadurai Vijayaraghavan v. Jt. CIT (OSD)* - In the instant case the Honourable Madras High Court observed that as per the Webster Dictionary, the meaning of the word 'claim' is given as assert. Therefore, mere assertion by the Assessee as against the adoption of guideline value as per Section 50C(1) of the IT Act by the Assessing Officer is sufficient for the Assessing Officer to refer the matter to the DVO.

[2014] 369 ITR 534 (Ker. – HC): *Travancore Education Society v. CIT* - In the instant case the Honourable Kerala High Court held that the fact that the Assessee-trust received capitation fee for admission of students revealed that the object of the Assessee-trust was not charitable and hence rejected the registration under Section 12AA of the IT Act.

[2014] 369 ITR (St.) 7: *Bank Term Deposit (Amendment) Scheme, 2014, Notification No. S.O. 2906(E) dated 13.11.2014* - The



Central Government vide aforesaid notification has revised the amount to be invested by the Assessee in the term deposit of Schedule Bank from One Lakh Rupees to One hundred and fifty thousand Rupees.

**[2014] 369 ITR 684 (Karn. – HC): CIT and another v. McDowell and Co. Ltd.** - In the instant case, the Honourable Karnataka High Court held that where assessee due to certain scheme made premature payment of deferred sales tax and on such payment entire liability to pay tax stood discharged, Section 41(1) of the IT Act was not applicable.

**[2014] 227 Taxman 85 (Karn. – HC) (Mag.); 46 taxmann.com 166 (Karn. – HC): CIT v. Market Probe India (P.) Ltd.** - In the instant case, the Honourable Karnataka High Court held that data collection charges paid by Assessee were not covered by expression 'professional services' as mentioned in Explanation to Section 194J and hence, Assessee was not required to deduct tax at source.

**[2014] 227 Taxman 87 (Chhattisgarh – HC) (Mag.); 49 taxmann.com 575 (Chhattisgarh – HC): ITO v. Naya Raipur** - In the instant case, Assessee, development authority, acquired land in Raipur and paid consideration to the land owners.

The Assessing Officer issued notices to the Assessee for furnishing information regarding deduction of TDS amount as per the provisions of Section 194LA. The Assessee filed its return denying its liability to deduct TDS as well as applicability of Section 194LA. The Assessing Officer rejected the claim of the Assessee on the ground that property acquired by the Assessee was not an agricultural property. The acquisition was a compulsory acquisition and hence Section 194LA is applicable.

The Honourable Chhattisgarh High Court held that Assessee, a development authority, acquired land under Chhattisgarh Nagar Tatha Gram Nivesh Adhinaiyam, 1973, by agreement. Price was neither fixed by statute nor by principles stated therein, but was agreed by mutual negotiation. Therefore, there was no compulsory acquisition; hence provision of Section 194LA would not be applicable.

**[2014] 227 Taxman (St.) 45: Assessment - Scope of Enquiry in Cases Selected For Scrutiny - Further Steps Towards a Non-Adversarial Tax Regime, Office Memorandum [F.NO.279/MISC/52/2014-(IT)], Dated 07.11.2014** - The CBDT has given directions in respect of the aforesaid subject to the officials of the Income Tax Department. Some of the important directions are as under:

(a) Despite less than one percent cases being selected for scrutiny assessment, this area of work continues to remain in focus where the tax administration is questioned as adversarial. The selection of cases under Computer Assisted Scrutiny Selection has resolved the issue of subjectivity in selection of cases for scrutiny. However, the process of scrutiny involving long and non-specific questionnaires, the nature of additions made and the high-pitched assessments without proper basis continue to attract adverse attention. Instruction No. 6/2009 entrusted a responsibility on each Range Head to ensure improvement in quality of assessments by issuing directions under section 144A of the Act. There is a need to follow the said Instruction in letter and spirit and accordingly, the Range

Heads are required to ensure that frivolous additions or high-pitched assessments without proper basis are not made. The Principal Commissioners of Income-tax/ Commissioners of Income-tax are required to supervise the work of their subordinates to ensure due discharge of these functions.

- (b) Instruction No. 7 of 2014 dated 26-9-2014 clarifies that ordinarily in scrutiny cases selected on the basis of AIR/CIB/26AS information, the scrutiny shall be limited to that information. Wider scrutiny would be possible only with the sanction of Principal Commissioner of Income-tax/ Commissioner of Income-tax in specified cases and under the monitoring of the Range Head. (Such cases form 25-30% of the total scrutiny basket, thus limiting the cases of full scrutiny).
- (c) Threshold limits have been set for appeals to ITAT, High Courts and Supreme Court at Rs. 4 lakhs, Rs. 10 lakhs and Rs. 25 lakhs, respectively. This, however, does not imply that appeals above these amounts have to be necessarily filed. Where the tax effect is above these amounts, the officer concerned is enjoined with the duty to ensure that the same is filed only if it is feasible to so do on merits of the case.

The issue of summons without adequate caution and due application of mind has caused concern to the Board. Supervisory authorities have to ensure that the summons are issued only in deserving cases. Summons should also clarify if the person has been called as a witness or in his own case, and the matter for which he has been called.



# RECENT JUDICIAL PRONOUNCEMENTS IN INDIRECT TAXES



CA. Madhur Harlalka, B.Com., FCA., LL.B & CA. Kuber V Hundekar, B.Com., ACA

## Central Excise

### 1. ***Non-compliance with pre-deposit – Tribunal order dismissing the appeal is restored:***

The order of the Tribunal rejecting the miscellaneous application filed by the Petitioner seeking restoration of appeal dismissed for non-compliance with the pre-deposit of tax is set-aside by the Honourable High Court. The application was rejected by the Tribunal on the grounds that it does not have powers to entertain appeal once order regarding pre-deposit is not complied with. Honourable High Court affirming the view of the Tribunal yet allowed the appeal by considering the reason furnished by the Petitioner stating that the non-compliance with pre-deposit of tax is attributable to the fault of their advocate. [*Shri Shanmugar Service vs. CCE (Appeals), Madurai [2015] 53 taxmann.com 205 (Madras)*]

### 2. ***Tribunal is not entitled to dismiss appeal on the grounds that neither assessee nor its representative were present for personal hearing:***

Honourable Supreme Court has set-aside the judgment of Honourable High Court holding that the Tribunal was right in dismissing the appeal for the reason that neither assessee nor its representative were present on

the date of hearing. Honourable Supreme Court held that Section 35C(1) of the Central Excise Act, 1944 does not give any power to the Tribunal to dismiss the appeal for default or for want of prosecution in case the appellant is not present when the appeal is taken for hearing. The Tribunal ought to have decided the appeal on merits. Reliance also placed on its own judgment in the case of CIT vs. S. Chenniappa Mudaliar reported in [1969] 1 SCC 591 where in the judgment was rendered under Income Tax Act, 1922 on similar issue. [*Balaji Steel Re-rolling Mills vs. Commissioner of Central Excise & Customs [2014] 49 GST 1 (SC)*]

### 3. ***Tribunal may grant extension in stay if the delay in disposing the order is not attributable to the assessee:***

The Revenue is before the Honourable High Court challenging the order of the Tribunal for extending the stay beyond the period of 365 days. Honourable High Court referred to its own judgment in the case of Commissioner vs. Small Industries Development Bank (SIDB) reported in 2014-TIOL-1102-HC-AHM-CX wherein it was held that the Tribunal can, by way of speaking order, extend the stay beyond the period of 365 days if it is satisfied that the delay in disposing the appeal is not attributable to the assessee.

Accordingly, Honourable High Court reserving the liberty in favour of the Revenue has directed the Revenue to submit appropriate application by furnishing the judgment in the case of SIDB before the Tribunal to pass the appropriate speaking order. The Tribunal in the course of passing the order shall call upon the assessee to furnish separate application for extension of stay after expiry of 180 days from the date of initial grant. [*Commissioner of Central Excise and Service Tax vs. Paras Pharmaceuticals Ltd., 2014-TIOL-24-HC-AHM-CX*]

### 4. ***The appeal in relation to rate of duty and valuation lies before the Honourable Supreme Court and not before the Honourable High Court:***

In an issue relating to applicable rate of duty and valuation of inputs removed as such, Honourable High Court dismissing the appeal filed by the Revenue has held that, in terms of Section 35L of the Central Excise Act, 1944 the appeal is maintainable before the Honourable Supreme Court and not before the Honourable High Court. [*Commissioner of Central Excise and Customs vs. M/s General Motors India Pvt Ltd 2014-TIOL-129-HC-AHM-CX*]

### 5. ***Capital goods cleared as such - duty of excise payable on transaction value:***

The Revenue



confirmed demand on the grounds that the Assessee has not reversed CENVAT credit on removal of capital goods as such despite the Assessee has remitted duty of excise on transaction value. On appeal the Tribunal has set-aside the impugned order by placing reliance on the judgment of Honourable High Court of Bombay in the case of Cummins India Ltd., reported in 2009 (234) ELT A120 wherein it is held that the Assessee clearing capital goods as such after put to use is liable to pay duty of excise on transaction value. [M/s Cipla Ltd., vs. CCE, Mumbai 2015-TIOL-15-CESTAT-MUM]

#### Service Tax

6. **Value of goods will not form part of the taxable value to determine service tax if the agreements quantifies the value of goods and services separately:** The issue in an appeal filed by the Revenue pertains to the inclusion of value of goods (used in the course of provision of service) in the taxable value for determining service tax liability. Honourable High Court upon perusing the agreement executed between the Assessee and its customers, rejected the appeal on the grounds that the agreement quantifies the value of goods and value of services separately. Accordingly it is held that the value of goods shall not form part of the taxable value for determining the service tax liability. [Commissioner of Central Excise, Agra vs. Goverdhan Transformer Udyog (P.) Ltd., [2015] 49 GST 185]
7. **Freight charges recovered and actually incurred - differential amount is not includible in**

**assessable value:** The Tribunal has set-aside the demand raised on the grounds that the total amount of freight charges and insurance charges recovered by the Assessee is more than amount of freight charges and insurance charges actually incurred. Reliance placed on the judgment of Honourable Supreme Court in the case of Baroda Electric Meters vs. CCE reported in 1997 (94) ELT 13 (SC). The demand is set-aside on the grounds that duty of excise is on manufacture and not on profit made by the Assessee. [M/s Indo Rama Synthetics (I) Ltd., vs. CCE, Nagpur 2015-TIOL-69-CESTAT-MUM]

8. **Refund of service tax paid by mistake - not governed by Section 11B:** The Assessee claimed the refund of service tax paid on the advance subsequent to cancellation of the contract and repayment of the advances to its customers. The Revenue rejected the application on the grounds that application is filed after two years and hence the claim is barred by limitation in terms of Section 11B of the Central Excise Act, 1944. Reliance placed on the judgment of Honourable High Court in the case of CCE, Bangalore vs. Motorola Private Limited reported in 2008 (11) STR 555 (Kar) wherein it is held that the amounts paid by mistake cannot be termed as payment of duty but has to be considered as a deposit to which provisions of Section 11B is not applicable. Accordingly, the appeal filed by the Revenue is rejected. [Commissioner of Central Excise and Service Tax vs. M/s Madhvi Procon Pvt Ltd., 2015-TIOL-87-CESTAT-AHM]

9. **Cancellation of invoice - Assessee is entitled to refund paid erroneously:** The Assessee is in appeal before the Tribunal against the order rejecting the refund of service tax paid erroneously on the cancelled invoice. The Tribunal relying on the fact that the person to whom the invoice was addressed has not claimed CENVAT credit of service tax shown on the invoice. Further, In the absence of the explanations by the Revenue to show that there was undue enrichment, the appeal filed by the Assessee is allowed. [Honda Motor India Pvt. Ltd., vs. Commissioner of Customs, Central Excise and Service Tax, Noida 2015-TIOL-83-CESTAT-DEL]

#### CENVAT Credit

10. **Indirect expenses also qualify as input service for the purpose of CENVAT Credit Rules, 2004:** The Tribunal has held that in terms of Rule 2(l) of CENVAT Credit Rules, 2004, input services also includes indirect expenses relating to the business of manufacture. Accordingly, the service tax paid on services such as transit insurance, transport insurance (beyond place of removal), insurance on assets, club membership of the trade association, brokerage charges, subscription fees and credit card services shall qualify as input services for the purpose of claiming CENVAT credit. [M/s Essel Propack Ltd., vs. CCE, Thane-I 2015-TIOL-77-CESTAT-MUM]
11. **Revenue cannot deny the CENVAT credit if the duty of excise is levied:** The Tribunal has held that when the Revenue collects the duty of excise on the goods removed from the factory, it cannot deny the



CENVAT credit on the grounds that the process of manufacture had not taken place. [M/s R B Steel Services and Others vs. Commissioner of Central Excise and Service Tax, Rohtak 2015-TIOL-CESTAT-DEL]

**12. Penalty not imposable in the absence of malafide intention:**

Assessee reversed the CENVAT credit claimed erroneously after the Revenue pointed out the error. The Tribunal dismissed the appeal filed by the Revenue on the grounds that the Assessee has reversed the CENVAT credit claimed erroneously immediately after the same is bought to the notice. As such it is held that there does not exist malafide intention on the part of the Assessee to claim inadmissible CENVAT credit. [CCE, Aurangabad vs. M/s Padmashri DR V V Patil SSK Ltd 2015-TIOL-169-CESTAT-MUM]

**13. Notional interest on deposit - not liable to tax under the category renting of immovable property:** The issue before the Tribunal pertains to the levy of

tax on notional interest accrued on security deposit received by the Assessee in the course of renting of immovable property. Relying on the decision of the Tribunal in the case of Magarpatta Township Developers & Construction Co. Ltd. vide Order no. A/1366-1374/14/CSTB/C-I dated 16.07.2014, it is held that notional interest is not includible in the rent agreed upon between the parties for the purpose of levy of service tax under the category renting of immovable property. [K. Raheja Corp Pvt Ltd., vs. CCE, Pune - III 2015-TIOL-100-CESTAT-MUM]

**Customs**

**14. SFIS scrips - transferrable to group company:** The issue before the Honourable High Court relates to the transfer of Served From India Scheme Scrips. As per the Foreign Trade Policy, these Scrips are transferrable within the group company. However, the Director General Foreign Trade (DGFT) rejected the request of the Assessee for transfer of Scrips to another group company on the grounds

that the Assessee is not satisfying the mandatory requirement of the policy insofar as the Assessee is not holding 26% of the shares in other company in the group. On writ petition Honourable High Court allowing the petition held that, in terms of paragraph 9.28 of the Foreign Trade Policy, to qualify as group company, an enterprise must have minimum of 26% or more voting rights or should be in a position to appoint more than 50% of Board of Directors in such another company. It does not envisage that the company which earned Duty Credit Scrips alone should hold 26% or more voting rights or should have power to appoint more than 50% of Board of Directors in the other company. The incentive scheme for export of service is a beneficial scheme and should be liberally constructed. Accordingly, Honourable High Court has directed the DGFT to transfer the Scrips in favour of the other company in the group. [GMR Hotels and Resorts Ltd., vs. UoI 2014-TIOL-97-HC-AP-CUS]



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**CA. Srinivasa.T**



Advt.

**BANGALORE BRANCH OF SIRC OF ICAI**

**LIST OF HOLIDAYS - 2015**

SL NO	PARTICULARS	DATE AND MONTH	WEEK
1	MAKARA SANKRANTI	JANUARY 15	THURSDAY
2	REPUBLIC DAY	JANUARY 26	MONDAY
3	MAHASHIVARATHRI	FEBRUARY 17	TUESDAY
4	CHANDRAMANA UGADI	MARCH 21	SATURDAY
5	GOOD FRIDAY	APRIL 3	FRIDAY
6	AMBEDKAR JAYANTHI	APRIL 14	TUESDAY
7	MAY DAY	MAY 1	FRIDAY
8	RAMZAN	JULY 18	SATURDAY
9	INDEPENDENCE DAY	AUGUST 15	SATURDAY
10	GANESHA CHATHURTHI	SEPTEMBER 17	THURSDAY
11	GANDHI JAYANTHI	OCTOBER 2	FRIDAY
12	MAHALAYA AMAVASYA	OCTOBER 12	MONDAY
13	AYUDHA POOJA	OCTOBER 22	THURSDAY
14	VIJAYA DASHAMI	OCTOBER 23	FRIDAY
15	NARAKA CHATURDASI	NOVEMBER 10	TUESDAY
16	BALIPADYAMI	NOVEMBER 12	THURSDAY
17	CHRISTMAS	DECEMBER 25	FRIDAY

Advt.

# ANALYSIS OF THE WRIGLEY CASE

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

1. *Citation:* [2015] 53 taxmann.com 16 (Delhi - Trib.) Wrigley India (P.) Ltd.v. Assistant Commissioner of Income-tax, Circle -18(1), New Delhi

## Facts:

Wrigley India commenced operations in October 1993 as a wholly owned subsidiary of the William Wrigley Jr Co, USA that was founded in 1891. The Wrigley group is the world's largest manufacturer and marketers of chewing gum with its network in more than 180 countries. Wrigley India is engaged in the manufacture and sale of confectionary products like chewing gums, bubble gum lollipops and toffees. The company is manufacturing and selling these products to the associated enterprises (AEs) as also to the independent enterprises (non AEs). The distinction in respect of these transactions with AEs and non AEs, is that while the transactions with the AEs are in the capacity as limited risk contract manufacturer, its transactions with the domestic independent enterprises is a business transaction with regular entrepreneurship risks.

## TP Study

In the course of dealing with determination of arm's length price in respect of these transactions, the transfer pricing study noted that CUP method cannot be applied to the facts of this case as Wrigley India does not export such products to any unrelated party outside India

and even though Wrigley India sells chewing gums to unrelated parties in India, the terms and risk profile for such transactions differ significantly from that of exports to Wrigley group companies. It was also noted that there is no publicly available information on prices charged in independent transactions of similar or identical nature, which reflect characteristics of the products exported to Wrigley group companies. The use of Resale Price Method was ruled out on the ground that the RPM is applicable in a resale situation where the property or service purchased from an associated enterprise is sold to unrelated enterprise. Even as it was recognized that, the cost plus method is ordinarily used in cases involving manufacture, assembly or other production of goods that are sold to related parties or where the controlled transaction is a provision of services", the TP study rejected the same *inter alia* on the ground that, differences in cost accounting practices would materially affect the gross profit mark up and the ability to make reliable adjustments for such differences would affect the reliability of results. It was also added that the CPM method has not been considered, in this case, as the most appropriate method, on account of inconsistency in cost accounting practices between the comparable uncontrolled transaction and controlled transaction. As none of these direct methods were found

to be most appropriate method for determining the arm's length price and as Profit Split Method (PSM) was also found unsuitable for the reason that neither it was a case of 'transfer of unique intangibles' nor a situation dealing with 'multiple inter-related transactions which cannot be separated', the assessee finally resorted to the Transactional Net Margin Method (TNMM), for want of applicability of all other methods of ascertaining the arm's length price, for benchmarking its sales transactions with the AEs. The assessee thus adopted TNMM with operative profit on operating cost (OP/OC) as the profit level indicator. The assessee selected eight comparables, namely Britannia Industries Limited, Cadbury India Limited, Cremica Agro Foods Limited, Parry's Confectionary Limited, Priya Food Products Ltd, SampreNutritions Limited, Ravalgaon Sugar Farm Ltd and Veermani Biscuit Industries Limited. The TP study further noted that since the information for the financial year 2002-03 was not readily available and since the TP regulations permit use of data for up to two years prior to the relevant financial year, the financial information for the comparable companies was included for the financial year 2001-02 and 2002-03. The TP study then concluded as follows:

Based on our analysis, the potentially comparable companies' operating margins (computed as defined above) lie between (-) 1.37% to 13.17%. The arithmetic mean of the above mentioned range is 6.44%

Information provided by Wrigley India indicates that the net margin earmarked by Wrigley India on





budgeted cost of exports was 10% of costs (excluding *Sales, General and Administrative Expenses*). Hence, Wrigley India's budgeted net margin of the export transaction is within arm's range computed as defined above, and, therefore can be considered to be at arm's length.

#### The TPO's response

This approach to benchmarking the assessee's transactions with the AEs, however, did not find favour with the Transfer Pricing Officer. He rejected this analysis for the short reason that the TNMM requires comparison of net margin realized by the assessee with the net margin realized by the comparables, and that the comparison of budgeted margins with actual margins of the comparables was not permissible. The TPO adopted Cost Plus Method, with gross mark up on costs as the profit level indicator, and adopted the internal comparable as gross mark up realized on the domestic sales. In other words, what the TPO held was that the arm's length price products exported to the AEs can be arrived at by adopting the same mark up on costs of such products, as was achieved on the domestic sales. It was

noted that the assessee had achieved 41.29% of mark upon costs so far as its domestic sales was concerned, and, accordingly, the arm's length price of the products exported to AEs should also have been cost plus 41.29%. It was on this basis that an ALP adjustment of Rs. 2,71,55,592 was recommended in the TPO's order.

The Commissioner of Income-Tax (Appeals) did not waste much time in agreeing with the TPO. Hence, Wrigley approached the Tribunal.

#### ITAT

Drawing reference to the OECD and UN Transfer Pricing Regulations, the Tribunal rule that a sale simplicitor of a FMCG product for an overseas AE without any costs being incurred on the marketing and sales promotion amongst the end users, and sale of a FMCG product to a domestic independent enterprises with full responsibilities for marketing and sales promotion amongst the end users, are not 'comparable transactions' in the sense that profitability in the latter cannot be a proper benchmark for profitability in the former. The Tribunal went on to justify that TNMM is the best method to determine the ALP in this case.

During the course of its judgement, the Tribunal also criticized the TP study saying that it left a lot to be desired. It was of the opinion that no purpose can be served in reporting by a chartered accountant when such reports do not even point out glaring infirmities in taxpayer's approach vis-à-vis the transfer regulation, in a comparison of budgeted profits margin with actual profit margins realized by the comparables which is stated to be ascertainment of ALP on the basis of the TNMM.

#### Conclusion:

The judgement makes us come to a conclusion that the TP Study and Report should be detailed and thorough. It is apparent that the business model of the assessee would determine the ALP method. The TP person doing the TP Study should maintain detailed documentation to justify his study.

In defence of the person who prepared the report, it should be said that those were very early days of Transfer Pricing regime ( the Assessment Years were 2003-04 to 2006-07) when no one had a clue about best practices.

### BANGALORE BRANCH OF SIRC OF ICAI CONGRATULATES

#### RANK HOLDERS OF CA FINAL EXAMS - NOVEMBER 2014

Sl.No.	Roll.No.	Reg.No.	NAME	Marks Obtained	Rank
1	108949	SRO0245915	MANASA V NAYAK	514	29
2	110931	SRO0345907	ANITHA R	510	32
3	109233	SRO0307890	PRANAY GUPTA	509	33
4	111085	SRO0325022	LAKSHMI N K	492	49



# APPILCABILITY OF SERVICE TAX PROVISIONS TO HOSPITALITY SECTOR

CA. P.G. Subramanian, FCA

(Contd. from previous issue)

## Point of Taxation

### 6. How does Point of Taxation Rules apply to services rendered by hotels?

As per Rule 3 of Point of Taxation Rules, 2011, the point of taxation shall be:

- a) Time when the invoice for the service provided or to be provided is issued. As per rule 4(A) of Service Tax Rules, invoice shall be issued within 30 days from the date of completion of service. In case invoice is not issued within 30 days from the completion of service, the point of taxation shall be the date of completion of service.
- b) In case where the person providing the service receives payment before the time specified above, the date of receipt of payment shall be the point of taxation.

In case of short term accommodation service and providing banquet hall the amount is received in advance in some cases. Therefore, the date of receipt of payment shall be the point of taxation.

### 7. When Tax is Payable under Reverse Charge?

Notification No.30/2012-ST, dated 20/06/2012 issued in exercise of powers under Section 68(2) specifies certain services and the person liable to pay service tax on such services. The service tax either wholly or

partially is payable by the person specified in the notification. The point of taxation in case of service tax payable by the recipient of service is governed by rule 7 of Point of Taxation Rules, 2011. As per this rule point of taxation shall be the date on which the payment is made. If the payment is not made within a period of six months from the date of invoice, the point of taxation shall be as if the rules do not exist. In such case, point of taxation will be determined by Rule 3 of Point of Taxation Rules, 2011.

## 5.7 PLACE OF PROVISION OF SERVICE RULES (POPS RULES)

### ❖ What are the provisions relating to Point of Taxation as applicable to Hotels?

- i) Rule 3 of Place of Provision Rules provides that the place of provision of service shall be the location of service recipient, except where the place of provision of service is specified in rules 4 to 12 of POPS Rules for any service. The services provided by hotel, except services by restaurant or short term accommodation, are not specified in any rules 4 to 12 of POPS Rules. Hence, the place of provision of service will be the location of service recipient.
- ii) **Services by Restaurant-** The services by restaurant can be provided only when the person is physically present at the

restaurant. The physical presence of a person is essential for the purpose of rendering the service. Therefore, place of service will be determined by Rule 4(b) of POPS Rules, 2012. It will be the place where services are performed.

- iii) **Short Term Accommodation Service-** The place of provision of service in case of short term accommodation will be governed by Rule 5 of the Service Tax Rules. It will be the place where accommodation is located.

- iv) **Service provider and Service Recipient located in taxable territory-** Even in case of Restaurant Services or Services of short term accommodation, if the provider of service and recipient of service are located in taxable territory, the place of provision of service as per Rule 8 of POPS Rules will be the location of the service recipient.

### ❖ What is naturally bundled service for the purpose of Service Tax?

In case of short term accommodation service, normally various facilities are provided along with the accommodation. Many hotels provide use of Gymnasium, Swimming Pool etc; free to the customers staying in the hotel. Similarly breakfast is also provided to the guest free of charge. These are examples of naturally bundled service.

In this case, the basic purpose of staying in the hotel is to get



accommodation. Other services of providing breakfast and use of facilities are to make the stay more comfortable and convenient. The essential service is accommodation and hence the entire service will be considered as short term accommodation service.

## 5.9 ADVANCE/ NO SHOW CHARGES

❖ *What are the rules regarding payment of Service Tax when Advance is received and subsequently is cancelled? What are the rules regarding no show charges?*

In some cases a service provider may enter into a contract with an entity for the provision of a service to that entity. For example, a company may arrange for stay at the hotel of the Foreign Director who has come to visit the Company. The hotel is paid as per the room booking made in the hotel for the duration of stay of the Director. If the director decides to stay at the Company's guest house without informing the hotel about the cancellation, the hotel is still providing service to the company by retaining the room for him. Any fee charged upon the failure to attend has sufficient nexus with the provision of services and is consideration for the intended service to be provided. Accordingly, Service Tax is payable on such no show charges and advance forfeited

Similarly, Where Advance is received toward room to be provided; such advance is for the purpose of providing the intended services and is liable for service tax at the time of receipt as per Point of Taxation Rules.

## 5.10 GROUP DISCOUNT

Very often, many Companies organizing tour, bargains with the hotel for discount in room tariff

and other facilities. Huge quantity discounts are provided to such tour operators as well as Companies directly approaching the Hotels.

As mentioned, Service Tax is payable on the amount received for the taxable service rendered. In this case, the discount given to the customer shall be considered as quantity discount because of large volume of business provided to them and accordingly, the service tax would be payable only on the amount received by hotel on such short term accommodation.

## 5.11 DECLARED TARIFF

❖ *How does the act define declared tariff?*

Service Tax Department has issued certain clarifications in the matter vide letter no D.O.F. /334/3/2011-TRU, dated 28/02/2011 and Circular No. 139/ 8/2011-TRU , dated 10-05-2011 which are very helpful in understanding the meaning of declared tariff. Gist of the clarifications is as follows:-

- i) Actual levy will be restricted to accommodation with declared tariff of Rs.1000 per day or higher.
- ii) Declared tariff will include charges for all amenities provided in the unit of accommodation, like furniture, air conditioner, refrigerator etc; and any other facility normally provided by a hotel as a part of the stay, but does not include any discount offered on the published tariff for such unit.
- iii) Cost of extra bed will not form part of declared tariff.
- iv) Where declared tariff includes the cost of food or beverages, Service Tax will be charged on the total value of declared tariff. However, where the bill is separately raised for food or

beverages and the amount is charged in the bill, such amount is not considered as part of declared tariff.

- v) It is possible to have separate tariff for the same accommodation in respect of a class of customers which can be recognized as a distinct class on an intelligent criteria. For example, a 5 star hotel can have different categories of rooms starting from Standard to Suites where tariff will vary according to the amenities provided.
- vi) Where declared tariff is revised during tourist season, the liability to pay Service Tax shall be only on the declared tariff for the accommodation where the published tariff is above Rs.1000/-. However, the revision should be made uniformly applicable to all customers and declared when such change takes place.
- vii) For the purpose of Service Tax, Luxury Tax has to be excluded for the taxable value.
- viii) The Department has also made it clear that, while the published declared tariff is the criteria to apply the monetary limit of Rs.1000, actual levy will be only on the charged tariff, which may be below Rs.1000 due to discounts offered during off season or to preferential customers. From this, it is clear that the charged tariff should not be considered for applying the monetary limit of Rs.1000, and that the customers should not be under the mistaken notion that if the charged tariff is below Rs.1000 ( while the published tariff is Rs.1000/- or more), no Service Tax is leviable.





# KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION ®

No. 7/8, 2nd Floor, Shoukath Building, S.J.P. Road, Bangalore - 560 002.



## 27<sup>th</sup> KSCAA Annual Conference



on Saturday & Sunday  
7th & 8th March 2015

**Jnana Jyothi Convention Centre**  
Central College Campus, Bengaluru

### Programme Structure

#### Saturday 7<sup>th</sup> March 2015

08.30 AM	Registration
<b>INAGUARAL SESSION</b>	
09.15 AM	Inaugural Address by Chief Guest Release of Publications Release of Souvenir
10.45 AM	Inauguration of Exhibition & Tea Break
<b>FIRST TECHNICAL SESSION</b>	
11.00 AM	Companies Act 2013 - New Compliance Requirement <b>CA. K. Gururaj Acharya</b>
<b>SECOND TECHNICAL SESSION</b>	
12.15 PM	Assessment of Charitable Trust <b>CA. Dr. N. Suresh</b>
01.15 PM	Lunch Break
02.15 PM	Sponsor's Programme
<b>THIRD TECHNICAL SESSION</b>	
02.30 PM	Consolidated Financials Statements for Unlisted Companies including P. Ltd. Companies 2014-15 <b>CA. M. P. Vijaykumar, Chennai</b>
03.30 PM	Tea Break
<b>FOURTH TECHNICAL SESSION</b>	
03.45 PM	GST - The Way Forward - Cen. Excise & Customs <b>CA. N. Anand, Advocate</b> - VAT <b>CA. Venkataramani S</b> - Service Tax <b>CA. Madhukar N Hiregange</b>
06.45 PM	<b>ENTERTAINMENT PROGRAMME</b>
08.30 PM	Family Dinner

#### Sunday 8<sup>th</sup> March 2015

08.00 AM	Breakfast
<b>SPIRITUAL SESSION</b>	
09.00 AM	Spirituality for Professional Minds <b>Dr. Aralumallige Parthasarathy, Intl. Celebrity</b>
<b>SPECIAL SESSION</b>	
10.00 AM	Role of Council Members in ICAI <b>CA. P.R. Suresh, RCM</b> <b>CA. Cotha S. Srinivas, RCM</b> <b>CA. Nithin Mahadevappa, RCM</b> Moderator : <b>CA. Nityananda N, Past CCM</b>
<b>FIFTH TECHNICAL SESSION</b>	
10.45 AM	FEMA - Liberalised Scheme, Certification & TDS Issues <b>CA. Vivek Mallya</b>
11.45 AM	Tea Break
<b>SIXTH TECHNICAL SESSION</b>	
12.00 Noon	Controversies in Domestic TDS Issues <b>CA. Padamchand Khinchai</b>
01.15 PM	Lunch Break
02.15 PM	Sponsor's Programme
<b>SEVENTH TECHNICAL SESSION</b>	
02.30 PM	Opportunities in Arbitration & Conciliation <b>Sri K.G. Raghavan, Advocate</b>
03.30 PM	Tea Break
<b>EIGHTH TECHNICAL SESSION</b>	
03.45 PM	Union Budget Proposals - Panel Discussion Direct Tax : <b>CA. Vishnumurthy S, CA. Prashanth G.S</b> Indirect Tax: <b>CA. Vishnumoorthi H, CA. Rajeshkumar T.R</b> Moderator: <b>CA. S. Rama Subramanian</b>
05.45 PM	VALEDICTORY SESSION

#### DELEGATE FEES

(Inclusive of applicable taxes)

₹ 1800/- for CA's - if booked on or before 25.02.2015.

₹ 2200/- for CA's - if booked on or after 26.02.2015, ₹ 3000/- for NON CA's,

₹ 1500/- for CA Students - 100 seats only (FCFS)

Cheques/DD's in favour of KSCAA, Payable at Bengaluru

**Rs. 200 rebate for outstation Delegates**

• ₹ 3000/- Page Sponsor for CA's (One Delegate Complimentary)

The Fee covers Delegate Kit, Memento, Souvenir, Publications of KSCAA and Lunch (Day 1 & 2), Family Dinner on Day 1, Breakfast on Day 2 & Coffee/Tea, and Lucky Delegate & Lucky couple prizes

#### This Conference will immensely benefit

- Chartered Accountants • Company Secretaries
- Tax Practitioners • Accounting Professionals
- Advocates • Finance Consultants, Analysts,
- Advisors • CEO's, CFO's & Executives of Industry • CA Students • Others

**CA. Raveendra S. Kore**  
President  
+91 99020 46884

**CA. Dileepkumar T M**  
VP & Chairman, Conf. Committee  
+91 98453 30800

**CA. Raghavendra Puranik**  
Secretary  
+91 96322 45475

**CA. Raghavendra T N**  
Convener  
+91 98801 87870

**CA. Nagappa B Nesur**  
Convener  
+91 98867 11611

For More Details Contact : Ph: +91 80 2222 2155 | Fax: 2227 4679 | info@kscaa.co.in | www.kscaa.co.in



## Convocation 2014



Inauguration



President with Rank Students



Cross section of participants

## Republic Day Celebration



Flag Hoisting



Cross section of participants



Chief Guest CA. G.V. Krishna



Cultural Programme



## Mentoring Programme for Young Members



Inauguration



CA. Chetan Venugopal,  
Co-ordinator



CA. Suresh  
Senapaty



CA. Chhajed  
Prafulla Preme Sukh



CA. K.R.  
Lakshminarayana



Mr. Harish Bijoor



CA. B.P. Rao,  
Past President, ICAI



CA. Srikrupa  
Srinivasan, CFO, EMC



Panel Discussion



Cross section of participants

## Speakers at Study Circle Meetings



CA Dayanivas Sharma



Ms. Jayashree.P



CA. T. R. Venkateswaran



CA Sunil Surana



CA. Ashok Raghavan  
at Tumkur



CA. T. R. Rajesh Kumar  
at Tumkur

Advt.



Advt.